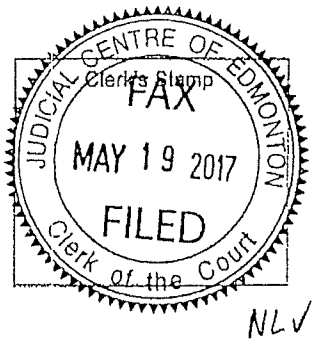

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COURT FILE NUMBER	1603-07352
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
APPLICANTS	UALBERTA PRO-LIFE, AMBERLEE NICOL, CAMERON WILSON
RESPONDENT	THE GOVERNORS OF THE UNIVERSITY OF ALBERTA
DOCUMENT	**BRIEF OF THE APPLICANTS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Contents

PART 1: OVERVIEW

1. The Applicants apply for Judicial Review of two related decisions of the Respondent, referred to herein as the "First Decision" and the "Second Decision".[1]

First Decision

2. The First Decision dealt with events at the University of Alberta (the "University") in March 2015. On March 3 and 4, 2015, the Applicants conducted an event in the main "Quad" on the University of Alberta campus (the "2015 Event"). The 2015 Event consisted of a stationary display of posters on the topic of abortion from a pro-life perspective (the "Display"). UAlberta Pro-Life, a registered and official campus club, had applied for and received full approval for the 2015 Event from the University of Alberta.

3. In advance of the 2015 Event the Applicants became aware through social media that a group of students planned to gather numerous individuals to obstruct the Display, in order to prevent the Applicants from communicating their expression to other people.

4. The Applicants gathered evidence of the planned obstruction and presented it to University of Alberta Protective Services ("UAPS"). The evidence provided to UAPS included the names of individuals planning the obstruction of the 2015 Event as evidenced by public Facebook posts. Following the receipt of the evidence of the planned obstruction, then-University President Indira Samarasekera wrote an open letter to all University students reminding them that the Applicant's 2015 Event had been approved by the University, and that violations of the University's *Code of Student Behaviour* (the "*COSB*") would be investigated.[2] The *COSB* expressly prohibits obstructing University Activities or University-related functions. *COSB* also prohibits inciting others to do so.

5. Despite these warnings, students, University staff and other third persons (the "Blockaders") carried out their plans and closely surrounded the 2015 Event with signs, large banners and bed sheets to prevent communication of the Applicants' expression (the "Blockade"). UAPS had established designated areas for protest or expression of opposing

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[1] The Records of Proceedings for each of the First Decisions and the Second Decision are referred to herein as "RoP1" and "RoP2", respectively.
[2] RoP1, Tab 2, p. 12.

viewpoints, which the Blockaders deliberately ignored in order to directly obstruct the Display itself and to prevent it from being seen. During the Blockade, UAPS asked warned the Blockaders that they must move to the designated area. The Blockaders ignored these warnings from UAPS.

6. The Blockaders obstructed the 2015 Event from 9 AM in the morning (when the Display was set up) until approximately 3:50 PM, at which time the Applicants dismantled the Display for the night on March 3. The Blockaders duplicated their blockade in an identical fashion on March 4, 2015 when the Display was set up again. The Blockaders succeeded, in large measure, in preventing the Applicants from communicating their message and from engaging other people in discussions and peaceful debate.

7. On March 11, 2015, the Applicants filed a complaint with UAPS against the Blockaders, providing UAPS with the names of individuals who had planned and carried out the Blockade of the Display. In addition to a written complaint describing the events of March 3 and 4, 2015, video evidence and photos were submitted to UAPS of the Blockade, as well as numerous social media posts of named individuals who organized and participated in the Blockade.

8. Nearly nine months passed. On November 30, 2015, UAPS' Bill Spinks confirmed that the University had determined not to investigate or charge the Blockaders under the *COSB* (the "Spinks Decision"). Unbeknownst to the Applicants at that time, UAPS had not even begun to look into the Complaint until approximately October 26, 2016, more than seven months after the Complaint had been submitted.

9. In rejecting the Complaint, Mr. Spinks held, *inter alia*, that he could not determine what day the video and photographic evidence of the Blockade had been created, or who had compiled the evidence, and claimed that this evidence was therefore unreliable. Mr. Spinks excused the conduct of the Blockaders, stating they were simply engaging in free speech by blockading the Display. Mr. Spinks also claimed that UAPS did not have resources to investigate the students involved, and that the resources that UAPS did have would be better devoted to more serious issues.

10. On December 18, 2015, counsel for the Applicants wrote to Ms. Deborah Eerkes, Director and Discipline Officer with the University of Alberta Office of Student Conduct and

Accountability, to appeal the Spinks Decision in accordance with the provisions of the *COSB*. On February 4, 2016, the assigned Discipline Officer, Chris Hackett, upheld the Spinks Decision. Mr. Hackett found that the Blockaders had not been engaged in obstruction and disruption, as complained, but had rather been "expressing their own opinions" at the 2015 Event. Mr. Hackett went on to claim that the *COSB* actually protected the actions of the Blockaders.

11. The Applicants apply for Judicial Review of Mr. Hackett's Decision (the "First Decision").

Second Decision

12. On January 11, 2016, while waiting for the Respondent to render its decision in regard to the obstruction of the 2015 Event, the Applicants applied to the University for permission to hold another event in February 2016 in the "Quad" area of campus, with a similar stationary display as had been used in 2015 (the "2016 Event").

13. On January 21, 2016, the Respondent advised that the Club would be required to obtain a security assessment from UAPS for the contemplated 2016 Event. The Applicants had not been required to obtain a security assessment for the 2015 Event. The Applicants submitted the security assessment form on February 3, 2016. The Respondent did not request or require any of the Blockaders to obtain a security assessment, either in 2015 or 2016.

14. UAPS involved the Edmonton Police Service ("EPS") in conducting the security assessment (the "Security Assessment"), which was thereafter provided to the Office of the Dean of Students. On February 12, 2016, the Respondent informed the Applicants that the 2016 Event could not proceed unless the Applicants paid $17,500, with a $9,000 deposit due by 12:00 noon on February 19, 2016.

15. Not having $17,500 for security fees, the Applicants appealed the conditions of approval to the University's Dean of Students on February 19, 2016, citing, *inter alia*, the following grounds of appeal:

    a) Their impecuniosity;
    b) The value to the student body of the expression of different viewpoints;

c) The unreasonableness of the imposition of a $17,500.00 cost to the Applicants 11 days prior to the 2016 Event, and the fact that there was no security fee for the 2015 Event;
d) The right of freedom of expression as a fundamental Canadian value, also enshrined in the *Charter*;
e) The fact that there was no alcohol, pyrotechnics or other risk-enhancing activities planned for the 2016 Event – merely the peaceful expression of opinion; and
f) The University's decision not to charge or investigate the students who disrupted the 2015 Event, which had greatly exacerbated the security risks at the 2015 Event and 2016 Event, for which the University was solely responsible.

16. On February 24, 2016, Dr. Everall dismissed the appeal of the Security Assessment. Dr. Everall claimed that the Applicants were delinquent in their fundraising activities, and that is why they were unable to pay the Security Assessment. She also generally stated the following:

a) That the Applicants had not appealed the security condition itself, but solely the cost (as though the latter did not flow from the former);
b) The Applicants should only attempt to hold events that they can pay for; and
c) The Applicants were aware that they had to pay all fees associated with having an event.

17. The 2016 Event was cancelled by the Applicants, who communicated to Dr. Everall that the cancellation was due solely to the Applicants' inability to pay the security fees demanded by the Respondent to approve the 2016 Event.

18. The Applicants apply for Judicial Review of the decision of Dr. Everall of February 24, 2016 (the "Second Decision").

PART 2: THE PARTIES

19. UAlberta Pro-Life ("UAlberta"), formerly "Go-Life: U of A Campus Pro-Life," is a registered student group under the University of Alberta Students' Union.

20. Amberlee Nicol is a student at the University of Alberta and is the President of the Club.

21. Cameron Wilson is a student at the University of Alberta and is the Vice President Finance of the Club.

22. The University of Alberta was established in 1908 under the *University Act*, R.S.A. 1906, c. 42, and is currently governed by the *Post-Secondary Learning Act,* S.A. 2003, c. P-19.5 (the "*PLSA*" or the "*Act"*).

PART 3: KEY FACTS OF FIRST DECISION

23. At all stages material to this Judicial Review, the University was aware that the Blockaders engaged in detailed planning to deliberately blockade the 2015 Event. Counsel's March 2, 2015, letter to UAPS contained social media posts from the student Blockaders making the following statements:

    a) "it would be awesome to hold a banner in front of them to block the view [of the Display]" –RoP1 Tab 2, p. 16;
    b) "the idea of a physical barrier is gold. While they may certainly have the legal right to host the event, we most certainly have the legal rights to obstruct it from view" –RoP1 Tab 2, p. 17;
    c) "I was thinking of creating a human 'wall' of people holding tall signs with LGBTQ colours or other messaging to block the genocide display…" –RoP1 Tab 2, p. 18; and
    d) "People who have the time and ability should try and organize a physical barrier to stop other students from having to see this [Display]. Sheets taped to hockey sticks and large pieces of cardboard will work. They don't have to be fancy, but you'll be able to stop others from having to look at the images" –RoP1 Tab 2, p. 20.

24. President Samarasekera's February 27, 2015, letter to the campus addressed student "concerns" in regard to UAlberta's Display.[3] The President reminded the University

[3] RoP1, Tab 1, p. 12.

community that UAlberta Pro-Life "is a registered student group on campus and, as such, has the same rights and privileges as other student groups", including access to the same spaces as any other student groups. Dr. Samarasekera informed the campus that UAlberta had gone through the proper channels to have the 2015 Event approved and stated that "the University does not condone activity that violates the Student Group Procedures or the Code of Student Behaviour". The President concluded by stating that complaints would be investigated by UAPS.

25. On March 2, 2015, one day prior to the 2015 Event, UAPS and Dean Dr. Robin Everall met with some of the planned student Blockaders, who informed the University that they planned "to block the display."[4] According to UAPS, the student Blockaders "did not seem concerned about possible consequences" to their actions.

26. In social media posts, one of the student leaders[5] confirmed her awareness that UAPS had established a designated area for those seeking to protest the 2015 Event.[6] One of the Blockaders, in regard to UAPS' establishment of a designated protest area, stated, "Wow are you kidding me?? Designated area?!?! FUCK THAT."[7] The first individual in question bragged in another post that she was a "hard ass" and would probably be arrested during the blockade of the Display.[8] One of her cohorts stated that if so-and-so was being arrested, "then I will too. Fuck."[9] Two University professors, Dr. Kristopher Wells and Dr. Cristina Stasia, actively assisted and encouraged the Blockaders as they made preparations to obstruct the Display.[10]

27. The organizers of the Blockade advertised the upcoming blockade of the Display on social media. One of the advertisements for the Blockade stated, "Let's Talk, Not."[11] A virtual meeting was hosted by five of the student leaders (identified by first and last name) of the proposed Blockade.[12]

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[4] RoP2, Tab 15, p. 123
[5] This individual was also involved with the destruction of UAlberta's advertising around campus. See RoP1, Tab 3, p. 58.
[6] RoP1, Tab5, p. 137.
[7] *Ibid.*
[8] RoP1, Tab 5, p. 159.
[9] *Ibid*.
[10] RoP1, Tab 3, p. 59.
[11] RoP1, Tab 5, p. 133
[12] *Ibid.*

28. On the morning of the 2015 Event, two of the student leaders of the Blockaders gave a speech to their fellows, which was posted to social media thereafter (the "Speech").[13] In the Speech, the leaders of the Blockaders identified themselves by name, and stated that the Blockaders were there to "take back their campus". Rejecting and defying the Respondent's lawful authority, the Blockaders stated they would "not accept any limitation on [their] ability to block" the Display.

29. Once the Display was set up by the Applicants on March 3, 2015, the Blockaders left their designated protest area, established as a protective boundary by UAPS, and closely surrounded the Display. UAPS formally requested that the Blockaders return to the designated protest area behind the barriers. According to UAPS' investigation notes, "it was explained that COSB and/or other UAPS/EPS action may take place for non-compliance."[14] This communication was repeated to all of the Blockaders by one of the student leaders. Following this announcement, the mob refused to return to the designated protest area, continuing to blockade the Display.[15] Later in the day, UAPS again informed the Blockaders that they must move back to the designated protest area.[16] The Blockaders again refused to cease their blockade of the Display, disobeying official instructions from UAPS personnel to return to the designated protest areas.[17] During the day, one of the Applicants, Amberlee Nicol, was observed by UAPS personnel taking video of the Blockaders blocking the Display.[18]

30. UAPS and EPS observed the 2015 Event throughout the day, but did not compel any of the Blockaders to move back to the designated areas. UAPS observed that as soon as the Applicants took down the Display at approximately 3:50 PM on March 3, the Blockaders began to disperse.[19]

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[13] RoP1, Tab 5, p. 137
[14] RoP2, Tab 15, p. 123
[15] *Ibid.*
[16] RoP2, Tab 15, p. 124
[17] The official warning stated: "To Individuals and organizations participating in the pro-choice demonstration in Quad area of University of Alberta on March 3 and 4, 2015 – The University again advises you that your demonstration on University property is on the strict condition that you remain behind the buffer which has been established on the south of the walkway across from the Go Life event. The buffer is to maintain the safety and security of all individuals on University property. The University requires that you now move your demonstration to behind the buffer." See RoP2, Tab 15, p. 134
[18] RoP2, Tab 15, p. 125
[19] RoP2, Tab 15, p. 125

31. Following the events of March 3, 2015, the Blockaders took to social media to congratulate each other in defying the University and blocking the Display.[20]

32. As the mob began to gather the following day, on March 4, 2015, at 9:10 AM, UAPS personnel again instructed them to stay within the designated protest areas and "again advised that blockading the display was a violation of the COSB."[21] These warnings were again disregarded. The Blockaders proceeded to surround and obstruct the Display once it was set up. UAPS read the Official Warning throughout the day, and was again ignored and disobeyed, as before.[22] UAPS confirms that it took photographs evidencing the blockade of the Display by the Blockaders.[23] UAPS did not ask the Blockaders to show their identification to UAPS.[24]

33. As before, those who had been involved in the blockade of the Display again took to social media to congratulate each other for the blockade. Some posted videos of themselves and their friends covering the Display, and identified themselves and their friends by first and last names.[25] These names and videos were thereafter provided to UAPS.

Complaint and Decision of Director Bill Spinks

34. On March 11, 2015, the Applicants filed a complaint with UAPS in regard to the blockade of the Display during the 2015 Event (the "Complaint").[26] Photographs, video, and many social media posts, including the specific names of individuals involved, were provided to UAPS as part of the Complaint. UAPS confirmed receipt of these materials,[27] much of which duplicated the evidence that UAPS already had in its own possession. The Complaint, in addition to a general charge of mischief and creating a mob, alleges that the following sections of the *COSB*[28] were broken by one or more of the student Blockaders:[29]

    a) Section 30.3.4(1)(c) – inciting or encouraging others to act inappropriately to the University community;

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[20] See for example, RoP1 Tab 5, p. 160
[21] Amended RoP1 521 Addendum, p. 8, para. 37
[22] Amended RoP1 521 Addendum, p. 9, paras. 42, 44-46
[23] See Amended RoP1 Addendum 521
[24] See *COSB* s. 30.3.6(3)
[25] RoP1, Tab 5, p. 149, 175 and 176
[26] RoP1, Tab 3
[27] RoP1, Tab 4
[28] See RoP1, Tab 6 for full *COSB*
[29] RoP1, Tab 3, p. 60

b) Section 30.3.6(5) – counseling or encouraging, knowingly aiding or assisting, another to commit an offence under the *COSB*; and

c) Section 30.3.4(1)b – obstructing University activities or University-related functions.

35. Mr. Spinks dismissed the Complaint on November 30, 2015. Mr. Spinks claimed that he could not tell who had compiled the voluminous photographic and video evidence regarding the students Blockaders, and that it was therefore unreliable. Mr. Spinks also implied that the Blockaders were exercising their own freedom of speech under the *COSB*, that it was unlikely that the particulars of the Complaint could be substantiated upon investigation, and that the conduct complained of was not sufficiently serious to use UAPS resources to pursue it.[30]

36. The circumstances under which UAPS may decide not to proceed with a complaint are limited under section 30.5.2(6) of the *COSB*.[31] In dismissing the Complaint, Mr. Spinks ultimately claimed that no University rule had been broken.

37. During the course of this Judicial Review, the Applicants learned that UAPS waited until approximately October 26, 2015 (more than seven months after the 2015 Event) to commence investigation of the student Blockaders who obstructed the blockade of the Display in March 2015.[32] Also unbeknownst to the Applicants at the time, when investigating officer Lawrence Fraser contacted four of the Blockading students, he started his communications by informing each one that UAPS lacked sufficient evidence to charge them under the *COSB*. He then informed each Blockader that she did not have to answer any of his questions in regard to the events of March 3 and 4, 2015.[33] Unsurprisingly, the student Blockaders refused to answer any of Mr. Fraser's questions. Mr. Fraser then closed his investigative file on November 19, 2015, claiming that there

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[30] RoP1, Tab 4

[31] RoP1, Tab 6, p. 218: "The Director of UAPS and/or Dean may decline to proceed with and/or investigate a complaint under the following circumstances: (b) Where the Director of UAPS and/or Dean believes that no University rule has been broken".

[32] RoP1, Tab 5, p. 101

[33] RoP1, Tab 5, pp. 101-105. The *COSB* requires UAPS to inform an individual under investigation that answering questions is entirely voluntary and that they do not have to participate in the investigation.

was insufficient evidence to proceed with the Complaint.[34] The Applicants appealed the Spinks Decision[35] within the 15 days allotted under the *COSB*.[36]

Appeal of Spinks Decision and Hackett Decision on Appeal

38. In their December 18, 2015, letter of appeal,[37] the Applicants provided a synopsis of events leading up to the 2015 Event, and cited the following seven main errors:

a) Mr. Spinks' contention he could not ascertain who had compiled the evidence against the Blockaders, and that therefore the evidence was unreliable;
b) Mr. Spinks' finding that the dates of the videos and photos could not be ascertained, and that therefore the evidence that UAPS had was unreliable;
c) Mr. Spinks' contention that UAPS lacked the resources to investigate the Complaint, especially in light of the fact that the complainants had provided UAPS with substantial evidence;
d) Mr. Spinks' excuse that there were too many individuals involved in the Blockade, and that therefore it should not be investigated;
e) Mr. Spinks' contention that the Blockade was not serious enough to investigate (that no breach of the *COSB* had occurred); and
f) The inordinate delay involved in UAPS rendering of the Spinks Decision to not proceed with the Complaint, which was a breach of procedural fairness.

39. Discipline Officer Chris Hackett dismissed the appeal of the Spinks Decision on February 4, 2016 (the "Hackett Decision").[38] Mr. Hackett stated that UAPS "did an investigation" and "eventually" decided not to pursue charges. Mr. Hackett did not address the contention of the Applicants that the eight-month delay in investigating and rendering a verdict in the Complaint was inordinate or a breach of procedural fairness. Mr. Hackett found that no breach of the *COSB* had occurred, and stated that the Blockaders were engaged in their own legitimate freedom of speech when they blockaded the Display. Mr. Hackett confirmed that no further appeal under the *COSB* was available to the Applicants.

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[34] RoP1, Tab 5, p. 105
[35] RoP1, Tab 5, p. 4
[36] RoP1, Tab 2, p. 55; *COSB* 30.5.2(7)(b) and 30.5.2(8)
[37] RoP1, Tab 2
[38] RoP1, Tab 1, p. 1.

PART 4: THE LAW and STANDARD OF REVIEW for the FIRST DECISION

40. The standard of review for the First Decision is reasonableness.[39] As stated in *Dunsmuir*:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.[40]

41. More recently, the Supreme Court of Canada has said that a Tribunal's *reasoning* is required to be transparent and intelligible.[41]

42. The exercise of discretion by a public administrative body is therefore not without limits, but is subject to legal restrictions on its exercise in accordance with the requirements of procedural fairness and its own internal regulations. In *Roncarelli v. Duplessis*,[42] Justice Rand noted the following:

> In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. … "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.

In *Cardinal v. Director of Kent Institution*,[43] the Court held unanimously:

> There is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a

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[39] *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 (CanLII) ("*Dunsmuir*")
[40] *Dunsmuir,* para. 47.
[41] *Mouvement laïque québécois v. Saguenay (City),* [2015] 2 SCR 3, 2015 SCC 16 ("*Saguenay*")
[42] [1959] SCR 121 ("*Roncarelli*") at p. 140
[43] [1985] 2 S.C.R. 643 at 653 (*Cardinal*)

> legislative nature and which affects the rights, privileges, or interests of an individual."[44]

43. Once it has been established that a duty of procedural fairness is owed, the content and extent of that duty is determined through a consideration of the factors set out in *Baker v. Canada* (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 [*Baker*].

44. Unreasonable delay may result in a breach of procedural fairness, which is reviewed on a standard of correctness.[45]

45. The Supreme Court in *Blencoe v British Columbia (Human Rights Commission)*,[46] confirmed that "natural justice and the duty of fairness are part of every administrative proceeding."[47] The Court held that all delays result in a breach of procedural fairness, but accepted that unacceptable delays may amount to an abuse of process in certain circumstances even where the fairness of a hearing was not compromised. To determine whether a delay is unacceptable, the Court should consider whether the delay was "unreasonable or inordinate," and whether it tainted the proceedings.[48]

PART 5: ARGUMENT ON FIRST DECISION

46. The Applicants submit that the First Decision is unreasonable for the reasons below.

Blockaders Intention Was to Blockade and Obstruct, Not Engage in Expression

47. Both the Spinks Decision and the Hackett Decision concluded that the Blockaders were engaged in their own expression while blockading the Display. This finding is illogical, unjustifiable, directly contradicts an overwhelming abundance of unambiguous evidence in UAPS' possession, and is not otherwise supported by the evidence.

48. The evidence is unambiguous. The Blockaders planned to blockade the Display, they informed UAPS that they intended to block the Display,[49] and they blocked the Display on March 3 and 4, 2015. The Blockaders were repeatedly told by UAPS that their

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[44] The Court's remarks in *Cardinal* were recently reaffirmed by a unanimous Court in *Mission Institution v. Khela*, 2014 SCC 24 at para. 82 *("Khela")*
[45] *Smith v Canada (National Defence),* 2010 FC 321 (CanLII) ("*Smith*"), at paras 34-37
[46] 2000 SCC 44 (CanLII), [2000] 2 SCR 307 ("*Blencoe*")
[47] *Blencoe*, para. 102.
[48] *Blencoe*, paras. 101, 102.
[49] RoP2, Tab 15, p. 123

Blockade of the Display was a breach of the *COSB*,[50] consistent with the Statement of (then) President Samarasekera. There is an abundance of photos and video evidencing the Blockade, and the Blockaders thereafter publicly bragged and congratulated each other on social media that they had blocked the Display. There is no ambiguity about what they planned to do, what they did, or who they were.

49. Moreover, the Facebook "virtual reality planning meeting" of the Applicants was entitled "Let's Talk, Not." Consistent with this *modus operandi*, the Blockaders set up in the morning while the Display was being erected and dispersed only once the Display was taken down at the end of the day, indicative of their purpose to stop the Applicants from exercising their legal right to express their views peacefully on campus, in the context of an event expressly approved by the University. Their obstruction, which does not qualify as expression[51] was defiant of the University, the Rule of Law, and the rights of the Applicants. They targeted Dr. Samarasekera for defiance specifically.[52]

50. Further, the Blockaders' statement that "We will not allow any limitation on our ability to block this hateful, deceitful display"[53] shows no intention of expressing an opinion, but rather an intention to silence opinion.

51. Had the Blockaders been intent on peacefully and legitimately expressing their opposition to the Applicants' message, they could have availed themselves of these rights from the designated protest area established by UAPS. They could have held their signs and spoken their message to all passersby and all gathered, but they had no interest in doing so. They eschewed designated protest areas in favour of obstructing and covering the display of the Applicants with bed sheets and signs, defying UAPS when instructed to cease their blockade. Their expressed purpose and actions were to silence the expression of others' views, and not to express their own.

Finding that No Breach of *COSB* Occurred Contradicts both Samarasekera and UAPS Itself

52. Similarly, the finding of both Spinks and Hackett that no breach of the *COSB* occurred is a contradiction of the evidence in UAPS' possession, and of the plain reading of the *COSB*

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[50] RoP2, Tab 15, p. 123-125
[51] *RWDSU v. Dolphin Delivery Ltd.,* [1986] 2 SCR 573, 1986 CanLII 5 (SCC), para. 20.
[52] RoP1, p. 153.
[53] RoP1, Tab 5, p. 137.

itself. Most unusually, however, both Spinks and Hackett's findings in this regard are a contradiction of UAPS' own repeated warnings to the Blockaders.

53. On February 27, 2015, Dr. Samarasekera warned and reminded the student body at the University that the Applicants had a recognized right to freedom of expression as an official campus club that had obtained University approval to hold the 2015 Event. Dr. Samarasekera stated that complaints would be investigated, with the implication that *COSB* violators would be prosecuted. It is doubtful that Dr. Samarasekera meant an investigation such as the slipshod, ineffective "investigation" which occurred.

54. On March 3 and 4, 2015, UAPS repeatedly advised the Blockaders that they were breaching the *COSB*, and ordered them to return to the designated protest areas. These instructions and warnings were uniformly defied, according to the Record of Proceedings, without any consequences for this defiance.

55. UAPS' assertion that the Blockaders were breaching the COSB is supported by a plain reading of Section 30.3.4(1)b the *COSB*, which states: "No Student shall, by action, words, written material, or by any means whatsoever, obstruct University Activities or University-related Functions." The *COSB* further states that "University-related Functions" "include, but are not limited to activities occurring in the course of work or study assignments inside or outside the University; at work or study-related conference or training sessions; during work or study-related travel; during events such as public lectures, performances, social or sports activities…" etc.

56. The University which condemned interference with the Applicants' approved campus event, threatened investigation of complaints, and informed the Blockaders that the obstruction of the Display was an offence under the *COSB*, reversed itself 180 degrees to claim, in both the Spinks and Hackett Decisions, that the Blockaders did not breach the *COSB*. The University that unequivocally condemned the conduct of the Blockaders, both before and during the disruption of this 2015 university event, now defends that same conduct. This is inherently unreasonable, as well as a dereliction of duty to uphold the Rule of Law and the legal rights of the Applicants.

Investigative Failings Unjustifiable

57. No competent investigator who is acting in good faith informs a suspect that he possesses inadequate information to charge him as a preamble to investigating him, and then asks

the suspect if he wishes to participate in the inquiry. Doing so virtually ensures non-cooperation.

58. Moreover, a complete review of the Complaint reveals that there is more than sufficient evidence to charge the student leaders of the Blockade. The evidence shows the named individuals in question openly bragging about the Blockade on social media, both in written posts and in pictures and video. UAPS was aware of the intention of the Blockaders from the beginning. UAPS watched the same individuals it had met with conducting the Blockade.

Evidentiary Findings of Spinks Unreasonable

59. The Spinks Decision discloses a number of glaring factual and logical errors that cause the Applicants to wonder whether Mr. Spinks bothered to review the file at all prior to rendering his decision at the end of November 2015.

60. First, Mr. Spinks found that he could not tell who compiled the photographic and video evidence submitted with the Complaint, and that therefore the evidence was unreliable. UAPS itself had observed, and documented its observation, of Ms. Nicol taking video and photographic evidence of the Blockade.[54] Mr. Spinks' claim is demonstrably false. Further, even if the evidence against the Blockaders was submitted anonymously, that does not render the evidence unreliable. Anonymously-submitted evidence of a theft, a sexual assault, a break-and-enter or any other breach of the *COSB* would not be disregarded by UAPS simply due to its anonymous submission, especially if it contained the perpetrator self-identifying him or herself, and bragging about the acts in question.

61. Second, Mr. Spinks' claim that the photographic and video evidence submitted in the Complaint is unreliable because he could not determine the date it was produced is equally absurd.[55] UAPS had been aware for weeks of the Applicants' upcoming Display in Quad, as well as the Blockaders' plans to disrupt the event. UAPS observed the *COSB* violations first hand, and compiled its own photographic evidence of the Blockade, which showed the same signs and same people as in the photographic evidence submitted with the Complaint. The Applicant Ms. Nicol had identified the date of the Complaint as March 3

[54] RoP2, Tab 15, p. 125
[55] RoP1, Tab 4, p. 64

and 4, 2015. Mr. Spinks' disregard of the evidence submitted to him, on the pretence that he could not determine the date it was produced, is unreasonable and is a poor excuse for abdicating his responsibility.

62. Third, Mr. Spinks claims he took into consideration the likelihood of the charges being substantiated, and the nature and seriousness of the allegations. In citing these two considerations, Mr. Spinks implied that the charges were unlikely to be substantiated and the offences complained of were not at all serious.

63. In regard to the likelihood of the charges being substantiated, Mr. Spinks had ample evidence to prove that the *COSB* had been violated, including social media "confessions" (often in the form of boasting) of the students involved. In regard to the seriousness of the allegations, the Blockade of the Display effectively shut down a university-approved campus event, and rendered moot the Applicants' significant time, effort and energy which they had expended on planning and running the event. The Blockaders, in contrast, were not an official and approved campus club, and made no effort to comply with the University's approval process. They formed an obstructing mob in defiance of the UAPS, the *COSB*, Dr. Samarasekera, the authority of the University, the Applicants' peaceful exercise of free expression rights, and the Rule of Law. In categorizing the Blockade as "not very serious" and "not worthy of investigation," Mr. Spinks trivialized the *COSB*, the Rule of Law, and the Blockade's regressive impact on the legal rights of the Applicants, who were entirely law-abiding. If a professor had a class disrupted with a disobedient mob, or the President had a speech disrupted by a Blockade, the Applicants doubt that UAPS would view such behaviour as "trivial" and "not worthy of investigation."

Unreasonable Delay

64. As stated above, a breach of procedural fairness, such as in the case of delay, is reviewable on a standard of correctness.[56] This unjustified and unexplained delay also constitutes a lack of transparency in the decision-making process.

65. Mr. Hackett failed to address the Applicants' complaint about the delay of more than seven months. The Record of Proceedings show that it took UAPS over seven months to even begin its cursory "investigation". By the time it did so, some of the students under

[56] *Smith*, paras. 34-37

investigation were no longer at the University, having graduated or otherwise ended their studies.[57] The leader of the Blockade had left the country to study abroad by the time she was "investigated" by Mr. Fraser. The delay tainted the investigative process and is a breach of procedural fairness that is rendered all the more egregious because the Applicants had already provided an abundant evidence additional to what UAPS gathered itself on March 3 and 4, 2015.

66. A duty of fairness is imposed where "a decision is administrative and affects the rights, privileges or interests of an individual."[58] The decisions of both Mr. Spinks and Mr. Hackett were administrative, and affected the rights of the Applicants to exercise their legal right to express their opinions peacefully on campus. The Respondent had a legal duty to act fairly. The delay of more than seven months before this "investigation" was even commenced is a breach of procedural fairness. The Applicants had a legitimate expectation that the Complaint would be treated seriously and in a timely fashion. It was not.

Conclusion on First Decision

67. For all the reasons set out above, the Applicants respectfully submit that the First Decision is unreasonable.

Relief Sought on First Decision

68. The Applicants seek the following relief in regard to the First Decision:

a) A declaration that the First Decision was unreasonable or otherwise invalid;
b) An Order in the nature of *certiorari* quashing the First Decision;
c) In the alternative, an Order remitting the First Decision back to the University to be reconsidered in accordance with the directions of the Court;
d) Costs; and
e) Such further and other relief as this Honourable Court deems just and equitable.

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[57] RoP1, Tab 5, p. 101
[58] *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 at para. 20 ("*Baker*")

PART 6: KEY FACTS of SECOND DECISION

69. On January 11, 2016, UAlberta Pro-Life applied for permission to hold another event in Quad on February 23 and 24, 2016 (the "2016 Event"), essentially identical to the 2015 Event.[59] On January 14, 2016, Chelsea Livingstone, the Student Event Risk Manager, responded by requesting information on advertising, photos of the intended display and a reminder to publicize the fact that pictures would be taken at the 2016 Event.[60] UAlberta Pro-Life representatives and Ms. Livingstone exchanged several more emails in regard to pictures and site layout. On January 21, 2016, Ms. Livingstone required the Applicants to work with UAPS on a security assessment for the 2016 Event, making it clear that without a security assessment the 2016 Event would not be approved.[61] No security assessment had been required of the Applicants for the 2015 Event.[62]

70. The Applicants submitted the Special Duty Request Form assessment form to UAPS on February 3, 2016,[63] but did so under protest, noting that they had already waited nearly a month to have the 2016 Event approved. On the Special Duty Request Form, the Applicants also confirmed that they were not serving alcohol at the 2016 Event, and that their only intention was to peacefully express their opinion.

71. UAPS consulted with EPS to generate the security assessment (the "Assessment"), and submitted same to the Dean of Students on February 12, 2016.[64]

Security Assessment

72. In the Assessment, UAPS refers in detail to the 2015 Event, noting that the 2015 Event was "substantially identical" to that planned for 2016.[65] UAPS' characterizes the issues that occurred at the 2015 Event as "contention between two factions," and states that "the presence of law enforcement personnel is the best possible control for an event which attracts vigorous opposition and contention between two factions."[66]

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[59] RoP2, Tab 4, p. 45
[60] RoP2, Tab 6, p. 66
[61] RoP2, Tab 8, p. 69
[62] RoP2, Tab 1, p. 7, para. 1
[63] RoP2, Tab 13, p. 106
[64] RoP2, Tab 1, p. 5
[65] RoP2, Tab 13, p. 87
[66] RoP2, Tab 13, p. 90

73. The Assessment states that "in advance of the event last year, large numbers of individuals organized via social media, a large counter-demonstration." [67] UAPS calculated the number of the aforesaid Blockaders ("counter-demonstrators") at approximately 1,300 in total, and estimates that at any given time there were 50-100 Blockaders present at the 2015 Event.[68] The Assessment states that the 2016 Event "presents extraordinary security risks, which differ in magnitude from those usually dealt with by UAPS on campus."[69]

74. In the Assessment, UAPS' admits that at the 2015 Event it had what it characterizes as "difficulty" preventing the Blockading *COSB* violators ("counter-demonstrators") from moving outside of the Designated Area.[70] Bizzarely, the Assessment also states that security at the 2015 Event was "appropriate", and that UAPS actually intended to utilize one less individual for security than at the 2016 Event: 7 UAPS staff (as opposed to 8 UAPS staff in 2015), and 4 EPS officers.[71]

75. The Assessment stated that security for the 2016 Event would cost $17,500, but neither the Security Assessment nor the Record of Proceedings contains facts or analysis as to the security costs incurred by the University in 2015.

76. The Applicants received conditional approval from Dean Everall (the "Dean's Decision") on February 12, 2016, subject to the Applicants agreeing to the implementation of the conditions in the Assessment, including the payment $17,500 for security (the "Security Fee"), with a deposit in the amount of $9,000 to be made to the University by February 19, 2016.[72]

Appeal of Dean's Decision

77. The Applicants appealed the entirety of the Dean's Decision on February 19, 2016, further to section 5, paragraph 8 of the *Student Group Procedure* (the "*SGP*").[73] Through their counsel, the Applicants stated that neither UAlberta Pro-Life, nor the individual students, were able to pay the Security Fee. The Applicants contended that the imposition of a

[67] RoP2, Tab 13, p. 90
[68] RoP2, Tab 13, p. 95
[69] RoP2, Tab 13, p. 92
[70] RoP2, Tab 13, p. 88
[71] *Ibid*, then see RoP2, Tab 13, p. 95
[72] RoP2, Tab 4, p. 29
[73] RoP2, Tab 4, p. 25-28

$17,500 fee was the same as a rejection of their Application, especially on such short notice, with the 2016 Event scheduled for February 23 and 24, and in light of the fact that the University had not charged the Applicants security fees for the 2015 Event.

78. Further, the Applicants stated the following in regard to the Dean's Decision:

a) That the Applicants have a right pursuant to the *Canadian Charter of Rights and Freedoms* to express themselves on campus in a peaceful fashion;
b) That the reason UAlberta existed was to express student pro-life views on campus;
c) That UAlberta was an official campus club with certain rights that had been infringed by the Blockaders violating the *COSB* at the 2015 Event, and that it was unjust to punish UAlberta through the imposition of the Security Fee for the misdeeds of the Blockaders (who had defied the University's President and UAPS, and received no punishment);
d) That UAlberta had demonstrated good faith and compliance with the University's official processes, "in sharp contrast" with the unruly and defiant Blockaders;
e) That the University itself chose not to investigate and prosecute the Blockaders who planned, coordinated and executed a raucous obstruction of the 2015 Event, and that the University's indifference to the misdeeds of the Blockaders should not be justified to impose an onerous Security Fee on the law-abiding Applicants.[74]

79. The Applicants also reasoned that "if the University was sincere about establishing and maintaining order on campus, to facilitate the peaceful expression of divergent views, the University would investigate those who coordinated and planned to disrupt such expression." Instead, through levelling a $17,500 security fee on the Applicants, the Applicants stated the University was preventing the legitimate, legal, and peaceful expression of opinion by a registered campus club.[75]

80. Finally, the Applicants stated the following:

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[74] *Ibid.* p. 28
[75] *Ibid.* p. 28

> The discussion of ideas should not incite violent behaviour from those who disagree, especially in a university setting, an institution of learning. Self-control and accountability are hallmarks of the rule of law in our society, which the University should encourage in the student body. I presume the University does not levy security assessments against professors who teach on controversial topics and espouse unpopular theories. Rather, the University expects students to master themselves, with emotions under the control of intellect and reason. There is no reason why the University should not expect and require accountability from the student body on this issue, either.[76]

81. Due to the appeal of the Dean's Decision the scheduling time for the 2016 Event was moved to March 2 and 3, 2016.

Dean Everall's Decision on Appeal

82. Dean Everall provided her decision on the appeal[77] to counsel for the Applicants on February 24, 2016, and stated the following, *inter alia*:

1) That UAlberta was responsible for the costs of any events that it wanted to hold and should have known better than to apply for an event it could not pay for;
2) That UAlberta had failed to act responsibly and apply for grants and conduct fundraising throughout the year in order to pay the Security Fee;
3) That UAlberta could hold the 2016 Event in a classroom instead of in Quad, which would be safer (and less expensive) for the Applicants;
4) That many other groups have annual budgets in excess of $20,000, and that therefore the imposition of the Security Fee for a one-time event on the Applicants was not unreasonable;
5) That the 2016 Event was calculated by the Applicants to "evoke a vigorous and emotional response from passersby";
6) That it was the planned 2016 Event itself that caused security risks and danger to the campus and not the misbehaviour of students who coordinate to prevent the expression of the Applicants;
7) That the University has a responsibility to take reasonable steps to ensure public safety on campus;

[76] *Ibid.* p. 28
[77] RoP2, Tab 1

8) That Dr. Everall had no choice but to order the Applicants to pay for the Security Fee because the *SGP* required it;
9) That no security fee was levied against the Applicants for the 2015 Event because the University did not know that the 2015 Event would give rise to "significant public safety risks that it, in fact, did".

83. The Applicants appeal for Judicial Review of the Second Decision.

PART 7: LAW AND STANDARD OF REVIEW of SECOND DECISION

84. As an administrative decision, the Second Decision is reviewable on a standard of reasonableness: *Doré v Barreau du Québec*.[78] The question of whether an administrative decision-maker has exercised its statutory discretion in accordance with *Charter* protections (in this case section 2(b) freedom of expression) must be conducted in accordance with the rules of administrative law. On judicial review on a reasonableness standard, courts are concerned with justification, transparency and intelligibility within the decision-making process. The decision must fall within a range of possible, acceptable outcomes that are defensible in respect of both the facts and law.[79] In some cases, there is only one reasonable outcome.[80]

85. In assessing whether the Dean's Decision infringes the *Charter*, the question is whether Dean Everall disproportionately, and thus unreasonably, limited a *Charter* right.[81] The Dean's Decision must interfere with the relevant *Charter* guarantee no more than is necessary given the statutory objectives.[82]

Statutory Objectives of the University

86. The University is governed by the Alberta *Post-Secondary Learning Act* and associated regulations, and the University's own enactments, such as the *COSB* and the *SGP*.

87. In part, the preamble to the *Act* states as follows:

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[78] 2012 SCC 12 ("*Doré*")
[79] *Dunsmuir*, at para. 47
[80] See e.g. *Trinity Western University v The Law Society of British Columbia*, 2016 BCCA 423 at para 130.
[81] *Doré*, at para 6
[82] *Doré*, at para 7

> WHEREAS the Government of Alberta is committed to ensuring that Albertans have the opportunity to enhance their social, cultural and economic well-being through participation in an accessible, responsive and flexible post-secondary system; and
>
> WHEREAS the Government of Alberta is committed to ensuring Albertans have the opportunity to participate in learning opportunities through a co-ordinated and integrated system approach, known as Campus Alberta, wherein post-secondary institutions collaborate to develop and deliver high quality learning opportunities;
>
> …

88. The University of Alberta's General Faculties Counsel has authority under section 26(1) of the *Act* to pass and amend the *COSB*. Section 30.1 of the *COSB* states as follows:

> **The University is defined by tradition as a community of people dedicated to the pursuit of truth and advancement of knowledge,** and as a place where there is freedom to teach, freedom to engage in research, freedom to create, **freedom to learn**, freedom to study, **freedom to speak, freedom to associate**, freedom to write and to publish. **There is a concomitant obligation upon all members of the University community to respect these freedoms when they are exercised by others. For these freedoms to exist, it is essential to maintain an atmosphere in which the safety, the security, and the inherent dignity of each member of the community are recognized.** [emphasis added]
>
> …
>
> Included in the Code of Student Behaviour are descriptions of unacceptable behaviour for Students in the University, the sanctions for commission of the offences, and explanations of the complete discipline and appeal processes. The definition of "Student" used in this document is a broad definition, one that includes current and former Students (see 30.2 for a definition of "Student"). Other members of the University Community, including Student Groups, are governed by other regulations. (GFC 03 FEB 2014)
>
> **The offences listed in the Code of Student Behaviour describe, in general terms, behaviours which if left unchecked would, to an unacceptable degree, infringe upon the freedoms described above and thus threaten the proper functioning of the University. Nothing in this Code shall be interpreted in such a way as to prohibit the activities or to violate the principles that are set out in the first paragraph of this section. Nothing in this Code shall be construed to prohibit peaceful assemblies** and demonstrations, or lawful picketing, **or to inhibit free speech.** Nothing in this Code shall prevent the University from referring an individual matter to the appropriate law enforcement agency, should such action be considered necessary.

89. From the foregoing, the following statutory objectives of the University relevant to the case at bar are summarized as follows:

- To uphold the freedom to learn, teach, speak and associate in the context of the pursuit of truth and the advancement of knowledge;
- To maintain an atmosphere in which the safety, the security, and the inherent dignity of each member of the community engaged in the pursuit of said freedoms is recognized.[83]

90. The *SGP* governs UAlberta as an entity, but complaints made in regard to the conduct of individuals is governed by the *COSB*.[84]

91. The University is also responsible for upholding the *Charter* rights of the Applicants.

92. Section 2(b) of the *Charter* states:

> Everyone has the following fundamental freedoms:
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
>
> (d) freedom of association.

PART 8: ARGUMENT ON SECOND DECISION

93. The Applicants state that the Second Decision was unreasonable for the reasons set out below.

Blockaders and UAlberta Not "Rival Factions"

94. The repeated characterizations by UAPS and Dr. Everall that the Applicants and the Blockaders (and anticipated "counter-demonstrators" in 2016) are just "rival factions" in an ideological conflict, on legal par with each other, is evidence of a serious and dangerous flaw in both perception and judgment. This error taints the analysis of the Second Decision, as it did in the First Decision, and lays the groundwork for an unreasonable and unjustifiable result.

95. UAlberta Pro-Life is an official campus club, which abided by all rules and regulations in obtaining the University's permission to hold the 2015 Event. UAlberta had a legal right to operate the 2015 Display, and to be protected from *COSB* violations carried out by

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[83] This conclusion concerning the relevant statutory objectives of the University of Alberta in this case is similar to findings made by Alberta Courts concerning the relevant statutory objectives of the University of Calgary under the *Act*: *Pridgen v University of Calgary*, 2012 ABCA 139 at paras. 50-51, 121, 125; *Pridgen v University of Calgary*, 2010 ABQB 644 at para 59; *R v Whatcott*, 2012 ABQB 231 at paras 32-34.

[84] RoP2, Tab 17, p. 225

other people. In 2016, UAlberta again complied with all University application requirements.

96. The Blockaders, in contrast, obtained no permission from the University, which sternly and repeatedly warned the Blockaders **not** to breach the *COSB* by obstructing the Display. The Blockaders defied the COSB, Dr. Samarasekera, and the Rule of Law.

97. Further, the Blockaders were not an official campus club, and made no effort to express their own opinions or philosophy. They were a mob whose very formation and purpose was in breach of the *COSB*.[85]

98. The Assessment is fundamentally flawed at its foundation, because UAPS adheres to the ridiculous fancy that the "counter-demonstrators" were and are some sort of "other official group" engaged in legitimate, authorized action, and that UAPS should therefore take steps to accommodate their "demonstration" at the 2016 Event.

Failure to Charge Blockaders Causitive of Further and Greater Risk

99. Had the University acted promptly on its repeated (but empty) threats against the Blockaders in 2015, the 2016 Event would have had a much different legacy to build on. If the Blockaders had been compelled to immediately disperse at the 2015 Event, and the leaders charged (or even arrested) under the *COSB* or the Alberta *Trespass to Premises Act*, whether immediately or in the days following the Event, future would-be Blockaders would think seriously about the consequences for defiance of the University. Respect for the Rule of Law and the rights of others might have grown, but the delay in commencing an investigation, and the decision not to prosecute any of the Blockaders, decreased respect for the Rule of Law.

100. The University's demonstrated failure to uphold the Rule of Law emboldened the Blockaders, and effectively encourages other students to obstruct and interrupt the expression of ideas and opinions with which they disagree. The first hour of the Blockade was allowed to become an entire day of obstruction and defiance on March 3, 2015. Warning after warning was read, none followed up with any consequences. UAPS did not even bother to ask the Blockaders for their name, as is their right to do so under the *COSB*.

[85] *COSB* section 30.3.4(6)c

One day of defiance begat a second day of the same on March 4, 2015. Two days of successful rebellion gave rise to a celebration, a foreseeable result.

101. The University followed its inaction on March 3 and 4, 2015, with more inaction, procrastinating for more than seven months without investigation or consequence. Then, in a fitting culmination of spinelessness, the University invented the justification that no breach had occurred under the *COSB* (thereby contradicting itself) in order to comply with one of the four circumstances (s. 30.5.2(6)b) under the *COSB* where it would be justified in not conducting an investigation.[86]

102. The University's final and crowning injustice was to levy a $17,500 security fee on the Applicants for the 2016 Event, a classic example of "blaming the victim."

103. When Golda Meir was Prime Minister of Israel, she was once asked in a cabinet meeting to place a curfew on women, to help end a series of rapes. "But it's the men who are attacking the women," she replied. "If there's to be a curfew," she decreed, "let the men stay at home."[87] The justice of this logic is obviously lost on the University, which ignores entirely the difference between the victims of *COSB* violations and the perpetrators of *COSB* violations.

UAlberta Not Deficient in Fundraising

104. In her decision on appeal, Dr. Everall blames the Applicants for their inability to pay the $17,500 Security Fee imposed by the University. This contention is unreasonable. First, no fee had been levied on the group in 2015. Secondly, the UAPS had informed the Applicants in the Spinks Decision that the events of the 2015 Event were essentially unconcerning and trivial, such that the Applicants would have had no expectation that they would be subject to a security fee, and certainly not in the magnitude of $17,500. Third, the fact that UAPS condoned the obstruction in 2015, and refused to discipline the Blockaders during or after the Event, means that UAPS services are not worth $17,500 in any event. It is unreasonable for Dr. Everall to contend that the Applicants should have budgeted for such a substantial cost, as no indication of any security fee had been forthcoming prior to its imposition. Certainly, the Applicants could not have foreseen that

[86] RoP1, Tab 6, p. 220
[87] "*Golda*", Burkett, Eleanor: Harper; 1st edition (April 29, 2008), p. 247.

they would be subject to such a fee a mere 11 days from the 2016 Event. Similarly, UAlberta could not have known that it might need to fundraise further for such an unforeseen and unreasonable cost, as Dr. Everall contends.

105. Dr. Everall also contended that the Security Fee was not an onerous requirement because other campus groups had annual budgets of $20,000. This might be true for some athletic or sporting teams who receive corporate sponsorship, but does not hold true for student clubs who engage in occasional advocacy or educational activities. Further, the 2016 Event was a one-time event spanning two days. It is unreasonable for Dr. Everall to argue that the Applicants expend what she claims is the equivalent of an entire year's worth of funds on a two day event without essentially any notice that the funds would be "required." . Other student groups budget and fundraise for foreseeable expenses, which is an opportunity that the Applicants did not have with the Security Fee.

Applicants Could Have Applied to Hold Event in Classroom

106. Dr. Everall's suggestion that the Applicants could and perhaps should hold the 2016 Event in a classroom (since they could not pay the Security Fee) is unreasonable, and undermines the Applicants' free expression rights. The risk to the Applicants arose solely through the unlawful actions of the Blockaders and the Respondent's choice to condone them. If other official student groups could peacefully express themselves in Quad without being mobbed, why should the Applicants be forced to hide in a classroom? Moreover, the Applicants had no indication that the University would be any more rigorous in applying the *COSB* in a classroom than in Quad, because the Respondent has established a record of condoning *COSB* violations.

Event was Inherently Dangerous

107. Both Dr. Everall and UAPS contend that the 2015 and 2016 Events are dangerous in and of themselves. No danger arises from the peaceful expression of the Applicants. Danger arises solely from the defiance and unwillingness of students and staff, such as those involved in the Blockade, to respect the legal right of students to communicate their opinions peacefully on campus. Counsel for the Applicants referenced the need for the University to require students to hold their emotions under the control of reason. Dr.

Everall ignored this contention in her decision on appeal, but the validity of the point remains.

108. Dr. Everall also stated that the 2015/2016 Events were designed to "provoke an emotional response from passersby." This is a misapprehension and mischaracterization of the facts. The risk to the Applicants at the 2015 Event arose only due to the calculated planning of the mob, coupled with the University's inaction, and not due to passersby. Nothing in the Record of Proceedings suggests that there was a risk from passersby.

Security Provisions and Security Fee Justified For Sake of Public Safety

109. Dr. Everall attempts to justify the imposition of the Assessment on the Applicants by stating that the University is responsible to ensure public safety. The University's primary tool for ensuring public safety is to uphold of the Rule of Law.

110. By refusing to hold the student Blockaders to account, the University jeopardized public safety not only at the 2015 Event, but generally for all students at all University events. By repeatedly warning the Blockaders, and then doing nothing in the face of open defiance, the University communicates that the *COSB* should not be taken seriously. The Respondent's inaction invites all students to express their opposition to unpopular viewpoints not by using speech, reason and debate, but by violating the rights of the persons they disagree with. The Security Fee and updated Assessment do not make the campus materially safer if the Respondent is not willing to enforce the *COSB*.

111. Upholding the Rule of Law is in everyone's best interest, and the cost of doing so is borne by all students (through their tuition fees) and by the general public (through taxation). To penalize any one group because its members are at a higher risk of being victimized by unlawful behaviour is another manifestation of the Respondent's "blame the victim" thinking. If an additional Security Fee is to be paid in order to facilitate the free exercise of legal rights, let the Blockaders pay it. The Respondent knows who the Blockaders are, and can invoice them without any difficulty. The Blockaders have publicly admitted to – and boasted about – violating the *COSB*.

Diametrically Opposite Findings Between First Decision and Second Decision

112. There are irreconcilable contradictions between the rationale used to dismiss the Complaint in the First Decision, and the rationale used to impose the conditions in the Dean's Decision in respect of the 2016 Event.

113. The First Decision classified the behaviour of the Blockaders as the exercise of free speech, claiming that the Blockaders were simply involved in a "peaceful assembly or demonstration" when they covered the Display in 2015.[88] The Second Decision relies on an Assessment in which UAPS characterizes the commotion of the 2015 Event in starkly opposite terms, calling what occurred "volatile", with a "risk of violence", and claiming that the "essentially identical" 2016 Event presented an "extraordinary security risk", with a risk of physical violence. The Respondent uses contradictory interpretations of the facts to arrive at each of its two Decisions, which also suggests a willingness to manipulate the facts for its own self-serving purpose.

Applicants' Right to Freedom of Expression

114. The University of Alberta affirmed its support for freedom of expression in a statement by then-President Dr. Indira Samarasekera, warning the Blockaders prior to the 2015 Event.[89] Indeed, the policies of the University require that freedom of expression be protected.[90] Yet, despite the University's written commitment to free speech, it effectively censors unpopular opinion (or opinion unpopular with the Blockaders) by way of a $17,500 Security Fee. Dr. Everall claims that over 40 campus clubs have budgets of over $20,000 per year, such that the $17,500 fee for the Applicants to express their opinions peacefully on campus is not "insurmountable". This is irrelevant, because no student group should have to *buy* the ability to simply express an opinion on a Canadian University Campus. The concept that only those able to *pay* should be able to express themselves is antithetical to the very purpose of a university and to the free society. The cost of upholding the Rule of Law should be borne by all (through tuition fees and taxation), or paid for by those, like the Blockaders, who threaten the Rule of Law.

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[88] RoP1, Tab 1, p. 2; RoP1, Tab 4, p. 64
[89] RoP1, Tab 2, p. 12.
[90] For example, section 30.1 of the *COSB* (RoP1, Tab 6, p. 192), quoted above at paragraph 88, evidences the University's obligation to protect freedom of expression.

115. The University is under the statutory obligation to provide "learning opportunities",[91] for which it is in turn generously endowed by the government to carry out.[92] In making decisions that limit access to "learning opportunities", the University must take into account freedom of expression under the *Charter*.[93] Further, universities are premised on the principle of freedom of expression, and in order for a decision to be reasonable, a university decision must take "into account the nature and purpose of a university as a forum for the expression of differing views" and demonstrate the University's reasonable balancing to interfere with freedom of expression "no more than necessary".[94]

116. The Second Decision falls far short of this standard. Banning students from a prominent University forum because they cannot pay an inordinately large fee is entirely unreasonable. It is rendered outrageous by the fact that the only reason the $17,500 fee was imposed is because the Applicants sought to address a "controversial matter"[95] and rule-breaking Blockaders opposed their viewpoint. According to the Second Decision, expression on the University of Alberta campus is only free if the expression is popular. That is *de facto* censorship, not free expression.

117. There is no semblance of a proportional balance that impaired the Applicants' freedom of expression more than was necessary.

118. In *Wilson*, the Court rejected the University of Calgary's justification of "safety and security" for censoring the peaceful expression of opinion on campus.[96] The University of Calgary attempted to justify censorship based on an incident where students had physically obstructed a display,[97] as the Blockaders did at the University of Alberta. Justice Horner chided the University of Calgary for thinking its demand represented a proportional interference with the freedom of expression.[98] Further, she found that the

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[91] See *PSLA* Preamble; *Pridgen v University of Calgary,* 2012 ABCA 139 [*Pridgen ABCA*] at paras 120-122; *Pridgen v University of Calgary,* 2010 ABQB 644 [*Pridgen ABQB*] at paras 59, 67; *R v Whatcott,* 2012 ABQB 231 [*Whatcott ABQB*] at paras 6, 28-30, 32.
[92] The University of Alberta received $1,129,488,000 in government funding for the 2015-2016 year. See http://campusfreedomindex.ca/campus/university-of-alberta/
[93] *Pridgen ABCA* at paras 120-122, 126; *Pridgen ABQB* at para 67; *Whatcott ABQB* at paras 28-34.
[94] *Wilson v. University of Calgary Board of Governors*, 2014 ABQB 190 [*Wilson*] at para 163.
[95] RoP2, Tab 1, p. 7.
[96] *Wilson* at paras 153-162.
[97] *Ibid* at para 160.
[98] *Ibid* at para 158-159.

record evidenced no discussion as to whether the University's demand that students turn their signs inwards (to hide them from the view of passersby) was the best way to protect freedom of expression in light of the statutory objectives.[99] The Respondent in this case, likewise, attempts to use "safety and security" to justify *de facto* censorship by way of security fees and by way of condoning *COSB* violations.

119. The *de facto* prohibition of the Applicants' Event (unless the "security fee" could be paid) evidences a reckless disregard for the purpose of the university and its obligation to facilitate the free exchange of ideas. The Second Decision is unreasonable and in violation of the University's obligation under the *Charter,*[100] the *Alberta Bill of Rights*,[101] and the common law[102] to protect the fundamental value of freedom of expression.

PART 9: CONCLUSION on SECOND DECISION

For all of the reasons set out above the Applicants state that the Second Decision is unreasonable.

Part 10: ORDER SOUGHT on SECOND DECSION

120. The Applicants respectfully request the following:

a) A declaration that the decision made by the University to impose a $17,500 security fee on the Applicants as a condition for permitting an on February 23 and 23, 2016, is unreasonable or otherwise invalid.

b) A declaration that the Second Decision unjustifiably infringes the fundamental Canadian value of freedom of expression, and breaches the section 2(b) *Charter* rights of the Applicants;

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[99] *Wilson* at para 159-160.
[100] Section 2(b).
[101] Section 1(d).
[102] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 56 ("...though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter ."); *R.W.D.S.U. v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 at para. 12 ("Freedom of expression is not, however, a creature of the *Charter*. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society." [Emphasis added]); See also *Pridgen ABCA,* per O'Ferrall J.A. at paras. 178-84.

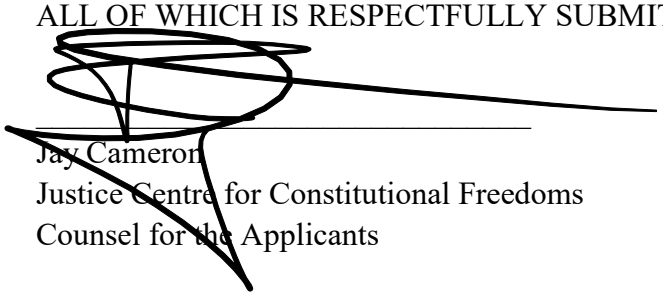
c) An Order in the nature of *certiorari* quashing the Second Decision pursuant to section 24(1) of the *Charter*;

d) An Order in the nature of *prohibition* prohibiting the University from imposing a financial burden on the Applicants as a condition for the exercise of freedom of speech;

e) Costs;

f) Such further and other relief as this Court deems just and equitable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19th day of May, 2017.



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Counsel for the Applicants

SCHEDULE "A" LIST OF CASE AUTHORITIES

Baker v. Canada (Minister of Citizenship & Immigration), [1999] 2 S.C.R. 817

Blencoe v British Columbia (Human Rights Commission), 2000 SCC 44

Cardinal v. Director of Kent Institution, [1985] 2 S.C.R. 643

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Trinity Western University v The Law Society of British Columbia, 2016 BCCA 423

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