



Justice Centre for Constitutional Freedoms

November 2, 2018

VIA EMAIL AND FACSIMILE

University of Manitoba Students' Union
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Dear UMSU Board of Directors,

RE: Analysis of Motion Deeming Peaceful Expression as “Coercion”

It has come to our attention that the University of Manitoba Students' Union ("UMSU") will be deciding on a motion to adopt a certain “Reproductive Rights Position Statement” (the “Motion”) on Monday, November 5, 2018.

As an organization dedicated to defending freedom on university campuses across Canada, the Justice Centre writes to provide you with the following context and analysis addressing the Motion. In our view, the Motion denigrates certain students' peaceful expression and undermines freedom of expression on your campus.

Contextual Background

On September 24, 2018, members of a UMSU-recognized student club were peacefully sharing their opinions with fellow students and offering literature. The students had prior approval from UMSU to participate in the “tabling” event in the UMSU University Centre building, where various student clubs were promoting their views, interests and activities.

During the event, however a group of UMSU executives approached the students and demanded that they cease distributing a postcard discussing sex-selective abortion (the “Postcard”). The Postcard cites, among other things, a Canadian Broadcasting Corporation (“CBC”) investigation regarding sex-selective abortion.

The UMSU executives claimed that they had received complaints about the Postcards being “offending” and “off putting”. The students immediately complied with executives' demand. The students also sought to address what they perceived as the executives' concerns, but the executives refused to permit the students even to show the Postcard to others who asked to see it.

On September 28, 2018, Carly Mastromonaco, USMU VP Student Services, informed the students by email that not only had the USMU Executive determined that the students had violated the Safe Environment Policy, but “all future UMSU table bookings for your group Culture for Life have been revoked until further notice.” Ms. Mastromonaco cited “complaints of distress and discomfort”.

On October 4, 2018, the students immediately sought to clarify “how UMSCL breached the Safe Environment Policy and what specific actions of the UMSCL members lead to the breach.”

Eventually, on October 23, 2018, Jakob Sanderson, current president of UMSU, responded, claiming that the students were “discriminating or harassing members on the basis of sex”.

Mr. Sanderson went on to inform the students that he would be proposing the Motion, and that in his view “the actions of UMSCL that we flagged in University Centre weeks ago would be clearly prohibited under this motion.”

The Basis for UMSU’s Motion is Invalid

The UMSU executive has accused a group of students of engaging in “discriminatory harassment” for providing information on sex-selective abortions, based off of a CBC investigation. The actions of the students in no way constitute discrimination or harassment.¹

Despite the invalidity of these allegations, they are cited as the basis for the Motion:

AND WHEREAS there have been individual students and groups whose behavior [sic], language or action on the subject of reproductive rights, has caused students to feel that they are being discriminated against on the basis of sex, including pregnancy, the possibility of pregnancy or circumstances related to pregnancy.

Further, within the Motion itself is a strong implication that expressing concerns about sex-selective abortion is “coercion or attempted coercion with respect to making reproductive choices.” By telling the students that their actions would be “clearly prohibited” by the Motion, Mr. Sanderson equated merely providing the Postcard to “coercion or attempted coercion”. That is a

¹ Both “discrimination” and “harassment” are serious concerns defined in the *Governance and Operations Manual of the University of Manitoba Students' Union*: Section XXIII: Safe Environment Policy at sections 4(a), (b) and (d): “Discrimination” refers to “forms of oppression that can affect how certain groups of people access post-secondary education and perpetuate inequities in society”; “Harassment” refers to a list of objectively identifiable behaviour:

- i. A severe single incident or a series of incidents of objectionable and unwelcome conduct or comments, directed toward a specific person or group, which does not serve a reasonable work or academic purpose, and objectively would have the effect of creating an intimidating, humiliating, hostile or offensive work or learning environment;
- ii. Verbal or written abuse, threats or intimidation that objectively is humiliating or demeaning;
- iii. Objectionable and unwelcome conduct or comments that objectively impacts the mental or physical health of another person.”

very serious allegation. Coercion is “the action or practice of persuading someone to do something by using force or threats”.² It is clear the students were in no way forcing or threatening anyone with respect to reproductive choice. Rather, they were simply offering information about the issue of sex selective abortion.

Freedom of Expression and “Safety”

As an entity, UMSU is right to expressly affirm that it “recognizes and believes in the right to free speech” and that “reproductive rights are a complex issue for many, and UMSU recognizes its members' freedom of thought and expression on the issue.”

Similarly, the University of Manitoba states concerning a “Respectful Work and Learning Environment”:

We have a commitment to academic freedom and freedom of thought, inquiry, and expression among its members which may result in respectful disagreements regarding beliefs or principles.

A proper understanding of these concepts is essential for a healthy and free society. As stated in the University of Manitoba's policy on *Academic Freedom and Responsibilities*:

The common good of society depends upon the search for truth and its free exposition.³

There should be no greater celebration of, and protection for, freedom of expression than at Canada's institutions of higher learning. Freedom of expression is the lifeblood of Canada's liberal democracy and “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.”⁴

Freedom of expression is meaningless if censorship can be justified merely because someone considers content to be “offensive” or subjectively feels “discomfort” when viewing it. As the Supreme Court of Canada has stated, Canadians “are expected to put up with some controversy in a free and democratic society”.⁵ Further, in the context of expression regarding abortion, the British Columbia Court of Appeal has stated that “the importance of communicating those ideas and beliefs lies at the very heart of freedom of expression.”⁶

There is, however a disturbing trend on university campuses where some have attempted to manipulate the concept of “safety” to censor discussion of important but controversial issues. Safety is a serious issue, including on university campuses. “Safety” is grossly misconstrued to

² English Oxford Dictionary: <https://en.oxforddictionaries.com/definition/coercion> [emphasis added].

³ http://umanitoba.ca/admin/governance/governing_documents/community/239.html

⁴ *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 12. [Emphasis added]

⁵ *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2009 SCC 31 at para 77.

⁶ *R. v. Spratt*, 2008 BCCA 340 at paras 26-27 [internal quotes omitted].

equate it with a right not to have one's ideas and beliefs challenged. So defined, it has then been used to impose so-called "safe environments", where dissent and diversity of thought are implicitly prohibited and compelled ideological conformity is enforced.

On a university campus, emotional discomfort is inevitable, where students should expect to encounter views and facts that challenge one's thinking or perception. Instead of being encouraged to further censorship and shield themselves from disagreeable ideas, students should be taught that being exposed to unpopular, offensive and uncomfortable ideas is a necessary part of not only a good education, but also an essential part of the pursuit of truth and living in a free society.

As the Ontario Court of Appeal recently ruled, extending the concept of what is "unsafe" to include peaceful expression "goes much too far".⁷ As the Court stated, "the error is readily apparent": expression does not cease to be peaceful and thereby become subject to censorship, simply because of a person's "subjective feelings".⁸ The standard must be objective.

Analysis of the Motion

The Motion states:

WHEREAS UMSU's Safe Environment Policy states that UMSU recognizes and believes in the right to free speech, yet acknowledges that free speech should not violate other groups or individuals rights to feel safe [Emphasis added]

Such a statement is at odds with Canadian law regarding the fundamental value of freedom of expression. Individuals and groups do not have a "right" to silence those around them simply because they subjectively "feel" unsafe when exposed to views or facts they find distressing.

The Motion repeatedly condemns "coercion or attempted coercion with respect to making reproductive choices". As explained above, Mr. Sanderson's claim that providing the Postcard to fellow students amounts to coercion is baseless, and quite frankly, irresponsible for a person in his position.

Coercion or attempted coercion is a serious offense, and it is inappropriate to condemn it only in regard to one issue. Behaviour such as coercion or attempted coercion is already condemned and sanctioned by the University of Manitoba as non-academic misconduct.⁹

By analyzing the Motion and its context, it is apparent that the Motion is a thinly veiled attempt to institute censorship of the expression of views and facts opposed by executives of UMSU.

⁷ *Bracken v. Fort Erie (Town)*, 2017 ONCA 668 at paras 49-52.

⁸ *Ibid.*

⁹ See *Student Non-Academic Misconduct and Concerning Behaviour Procedure*, section 2.5.

Conclusion

UMSU has a statutory mandate to represent the entirety of the student body at the University of Manitoba and promote their "common interests".¹⁰ As such, UMSU has a duty to respect the diversity of student opinions, not censor expression based on subjective feelings and executive opinions.

Further, all students pay mandatory fees to the UMSU, and the UMSU provides students with critical services and opportunities integral to student life, learning and growth.¹¹ UMSU thus has a duty to foster an environment that is conducive to the free exchange of ideas and intellectual diversity at the University of Manitoba.

The Motion is proposed on an invalid basis and runs counter to the fundamental Canadian value of freedom of expression, which serves as a foundation for higher education.

It is apparent that the Motion will serve only as a means of stifling expression.

As a public advocate for Canada's fundamental freedoms, we urge you to reject the Motion.

Sincerely,



For: Marty Moore

Barrister and Solicitor

Justice Centre for Constitutional Freedoms

Enclosure

cc: UMSU Executives

MM/jk

¹⁰ See *The University of Manitoba Students' Union Act*, R.S.M. 1990, c. 203 at section 4, Objects.

¹¹ See *Ibid* at section 4(d).