



# Justice Centre for Constitutional Freedoms

June 28, 2019

VIA EMAIL AND FACSIMILE

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Dear Mr. Ono,

**RE: June 23, 2019 Jenn Smith Lecture Facilitated by Canadian Christian Lobby**

We write further to the events surrounding a lecture by Jenn Smith at the Vancouver campus of the University of British Columbia (UBC) on Sunday, June 23, 2019 and the actions of UBC arising therefrom.

We wish to commend UBC for facilitating the lecture and removing those individuals who attempted to disrupt and prevent the lecture and silence Mr. Smith. However, UBC's imposition of a \$1,250 "security fee" on the organizers of the lecture places a price on what is a basic right in an institution which exists to facilitate the operation of the marketplace of ideas, the search for truth, and the peaceful expression of opinion, and conflicts with UBC's commitment to *free* expression.

Placing a price on free speech restricts the expression of those without the means to pay, which creates an uneven playing field in the marketplace of ideas and results in a chilling effect on freedom of expression on UBC's campuses – a consequence which UBC ought to be loath to produce.

**Background**

In early June 2019, a grassroots organization called Canadian Christian Lobby (CCL) submitted a request to UBC to book a room for a lecture by Jenn Smith titled "Erosion of Freedom" and subsequent question and answer period (the "Event"). Mr. Smith is a local transgender

individual who regularly speaks publicly on issues regarding transgenderism, individual freedoms and women's rights.

UBC approved the booking request but required CCL to pay a \$500 "security fee" in addition to paying the room rental and other fees. No reason was provided for the security fee. CCL paid the fees, including the security fee, and the Event was scheduled for June 23.

On June 19, four days before the Event, UBC demanded an additional \$750 security fee to be paid in less than 24 hours as a condition of the Event proceeding. UBC made vague allusions to safety as the reason for the sudden and last-minute imposition of an additional security fee. Not desiring the Event to be cancelled, CCL reluctantly paid to UBC the additional \$750.

The Event proceeded on the evening of June 23. Prior to and during the Event, a crowd of unruly protestors were present outside the building the Event occurred in and engaged in aggressive behaviours such as repeatedly banging on the exterior glass of the building. Unfortunately, three disruptive protestors, one of them wearing a face mask, found their way into the room in which the Event was taking place. As Mr. Smith was beginning his lecture, the three disruptive protestors moved to the front of the room, sat down facing the audience and began to chant loudly, preventing the approximately 75 attendees from listening to Mr. Smith's presentation. About this time, the fire alarm was activated by an unidentified individual.

Thankfully, UBC campus security responded appropriately by inviting Police officers present to escort the disruptive protesters out of the room and by permitting the Event attendees to re-enter the room after taking a short period of time to deactivate the fire alarm and ensure no fire was present in the building.

The Event continued without any further disruption.

### **Freedom of Expression on University Campuses**

Freedom of expression is not merely an aspiration or ideal; it is the lifeblood of liberal democracies and the cornerstone of higher education. There should be no greater celebration of, and protection for, freedom of expression, including the expression of minority, unpopular or "controversial" viewpoints, than at institutions of higher learning, such as UBC. Freedom of expression "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."<sup>1</sup> Further, freedom of expression "protects the right to receive expressive material as much as it does the right to create it".<sup>2</sup>

Notwithstanding that today's students must be prepared to face a diverse range of opinions and expression in their future careers, and in public and private life, Canadian universities are

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<sup>1</sup> *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 [*Dolphin Delivery*] at para 12.

<sup>2</sup> *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 SCR 1120 at paras 40- 41 citing *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at pp 1339-1340.

increasingly an environment in which students are sheltered and protected from ideas and opinions which they do not agree with. The very mission and purpose of higher education is the pursuit of truth and knowledge in preparation for a valuable, meaningful and productive life in society, something that is only made possible by the freedom to propose new ideas, and the ability to critique and debate existing ideas without fear of reprisal or the imposition of additional barriers. Canadian universities must stop paying mere lip service to freedom of expression; they must effectively uphold it and defend it as part of the process of education.

Courts have stated that universities are to facilitate the free exchange of ideas for the good of society. As the Alberta Court of Queen’s Bench notably remarked:

Does anyone actually expect to attend a university campus and encounter only the ideas they already embrace? Are only select viewpoints now permissible on our university campuses? John Stuart Mill in his essay "On Liberty" opined that "he who knows only his own side of the case, knows little of that."<sup>3</sup>

One of the purposes of freedom of expression is “to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”<sup>4</sup> As the Supreme Court of Canada has elsewhere stated, “the guarantee of freedom of expression serves to protect the right of the minority to express its view, however unpopular it may be; adapted to this context, it serves to preclude the majority's perception of ‘truth’ or ‘public interest’ from smothering the minority's perception.”<sup>5</sup>

Difficult though some may find the issues of human sexuality and gender, there must be room on university campuses for free and open discussion about such issues. It is not against the public interest to hold and express diverse views regarding sexuality and gender.<sup>6</sup> The open discussion of various views, even if considered “controversial” by some, enriches discourse both on and off campus and is essential to one of the purposes of higher education—the pursuit of truth.

### **UBC’s Handling of the Event**

We commend UBC for permitting an external group such as CCL to book a room and host a lecture the content of which included minority and unpopular views. We also applaud UBC for not cancelling the Event when, inevitably, UBC received criticism for allowing the Event. In permitting the Event, despite opposition to the unpopular views to be expressed during the Event, UBC respected free expression on its campus to a greater degree than many universities in Canada.

We further commend UBC for upholding freedom of expression on its campus by acting appropriately to ensure the removal of the disruptive individuals attempting to prevent the Event attendees from listening to Mr. Smith, and by ensuring the Event resumed in a timely manner

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<sup>3</sup> *R v Whatcott*, 2012 ABQB 231 at para 33.

<sup>4</sup> *Saskatchewan (Human Rights Commission v Whatcott)*, 2013 SCC 11 at para 50.

<sup>5</sup> *R v Zundel*, [1992] 2 SCR 731, at p 753.

<sup>6</sup> *Civil Marriage Act*, SC 2005, c 33, preamble; s 3.1.

following the activation of the fire alarm (which is an increasingly common tactic used to censor expression on university campuses). It is an immeasurable benefit to students and the general public alike when controversial issues are permitted to be addressed in the marketplace of ideas.

In this regard, UBC acted in accordance with its position that “behaviour that obstructs free and full discussion, not only of ideas that are safe and accepted, but of those which may be unpopular or even abhorrent, vitally threatens the integrity of the University's forum.”<sup>7</sup>

However, UBC undermined its stated commitment to free expression by imposing a \$1,250 security fee on the Event organizers—\$750 of which was unexpectedly demanded to be paid immediately only a few days before the Event. The imposition of the security fee could well be interpreted as the placing of a disincentive onto the Event organizers in an attempt to indirectly effect the cancellation of the Event and thereby absolve UBC of being required to act to uphold the freedom to express “controversial” views on campus.

Those who organized and attended the Event were peaceful. Any risk of disruption or concerns regarding violence and safety arise *solely and entirely* from unruly persons who do not respect the individual rights of others or the rule of law. The \$1,250 security fee risks a “hecklers veto”—the power of obstructive and lawless individuals and groups to stifle dialogue and the exchange of ideas they disapprove of. The likelihood of “protests” and unsupported fears about “safety” do not justify penalizing peaceful speakers by imposing security fees. The Court of Queen’s Bench of Alberta rejected the University of Calgary’s reliance on an unspecified reference to “safety and security” as justification for censoring the peaceful expression of opinion on campus.<sup>8</sup>

The apparent intention of the disruptive protestors was to “de-platform” Mr. Smith and shut down the event. Such lawless and disruptive individuals are motivated to continue engaging in, and threatening to engage in, the same unlawful conduct that occurred during the Event because they have come to expect UBC and other universities to respond by putting a price on expression they disagree with through the imposition of large security fees. The inevitable result is that only the few able to *pay* are able to express their minority viewpoints at UBC and other universities. Such minority viewpoints are therefore expressed less and less—the exact desired outcome of censorious protestors, but which UBC ought not contribute to.

Requiring speakers and listeners to pay, in order to express and hear ideas, instead of requiring payment from those who disrupt and attempt to silence, results in the censorship of valuable ideas and perspectives. By putting a price on *free* speech, UBC has contributed to the creation of a chilling effect on expression on its campus and not adhered to its stated commitment that freedom of expression:

extends not only to the regular members of the University, but to all who are invited

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<sup>7</sup> See “Statement from the Provost regarding June 23rd event at UBC” posted to the UBC website on June 14, 2019 by UBC Provost and VP Academic Andrew Szeri (Statement from the Provost).

<sup>8</sup> *Wilson v. University of Calgary*, 2014 ABQB 190 at paras 153-162.

to participate in its forum. Suppression of this freedom, whether by institutions of the state, the officers of the University, or the actions of private individuals, would prevent the University from carrying out its primary functions.<sup>9</sup>

UBC has an obligation to uphold the rule of law on campus. It should not respond to increasingly frequent disruption tactics by imposing “security fees”—not on the rule-breakers who seek to silence views they disagree with—but on those who abide by the rules and seek only to express their views in a peaceful manner. By extorting "security fees" from those who seek only to express their opinions and listen to others, UBC has effectively blamed the victim and encouraged the bullies. This punish-the-victim approach tacitly condones mob disruption of free expression and encourages further attempts at campus vigilante censorship.

### **Conclusion**

Freedom of expression is a core component of intellectual inquiry and the basis for academic freedom. It must include the right to criticize ideas and belief systems, including beliefs about transgenderism. On a campus dedicated to the pursuit of truth and open academic discourse—which UBC ostensibly strives to be—students will encounter unwelcome expression.

We extol UBC for upholding free expression on its campus by ensuring the Event proceeded despite concerted efforts to disrupt it. However, we urge UBC to discontinue imposing security fees on those who desire to peacefully express themselves because of the unlawful behaviour of others.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James Kitchen', with a long horizontal stroke extending to the right.

James Kitchen  
Justice Centre for Constitutional Freedoms

c.c. UBC Board of Governors  
UBC Campus Security  
Andrew Szeri, Provost and VP Academic

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<sup>9</sup> Statement from the Provost.