File No. 209759
New Westminster Registry

In the Supreme Court of British Columbia

Between

THE REDEEMED CHRISTIAN CHURCH OF GOD, BRITISH COLUMBIA

Petitioner

and

CITY OF NEW WESTMINSTER

Respondent

WRITTEN ARGUMENT OF THE PETITIONER

Justice Centre for Constitutional Freedoms
#253, 7620 Elbow Drive SW
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PART I: SUMMARY

1. The Redeemed Christian Church of God, British Columbia ("Grace Chapel") is a multi-ethnic Christian church which gathers together in New Westminster for worship, teaching, and open declaration of their Christian beliefs. Grace Chapel rents space in New Westminster in which to conduct its religious events.

2. In 2018, Grace Chapel booked space—as it had done previously—in the Anvil Centre, a conference centre owned-and-operated by the City of New Westminster (the "City"), to host a Christian youth conference (the "Conference"). The theme of the Conference was a Biblical reference from Romans 3:4, "Let God Be True," which is initialized as "LGBT".

3. In response to a sole email complaint which falsely speculated that the Conference was "an anti-LGBTQ event", the City—within a matter of hours—unilaterally cancelled Grace Chapel's rental of the Anvil Centre for the Conference, without providing Grace Chapel with an opportunity to respond.

4. The reason the City provided to Grace Chapel for the cancellation was the City's unsubstantiated claim that an individual listed on the Conference poster as "facilitating" "represents views and a perspective that run counter to City Of [sic] New Westminster and Anvil Centre booking policy" which prohibit the promotion of "*racism, hate, violence, censorship, crime or other unethical pursuits*."

5. The City's cancellation of the Conference violated its duty of procedural fairness, was unreasonable and an unjustified infringement of the *Charter* freedoms of expression, religion and association, and was tainted with a reasonable apprehension of bias.

6. Grace Chapel therefore petitions this Court for judicial review to vindicate its procedural and constitutional rights and to protect Grace Chapel's exercise of them into the future.

PART II: FACTS

The Petitioner

7. The Petitioner—Grace Chapel—is a society under the *Societies Act*[1] and a multi-ethnic Christian church that meets in New Westminster.[2] Grace Chapel does not own any facilities, but rents space for Sunday services, other religious events and office needs.[3]

The Respondent

8. The Respondent—the City of New Westminster (the "City")—is an incorporated municipality under the *Local Government Act*[4] and empowered as an order of government within its jurisdiction pursuant to the *Community Charter*.[5]

The Anvil Centre

9. The Anvil Centre is "a multi-purpose community conference centre" which is "wholly owned by the City and managed by City employed staff."[6]

10. The City's "Official Community Plan" further describes the Anvil Centre as "a state-of-the art facility that provides a place for performance and visual arts, explorations of history and

[1] *Societies Act*, SBC 2015, c 18.
[2] Affidavit of Ronald Brown (the "Ronald Brown Affidavit") at para 2 .
[3] Ronald Brown Affidavit at para 2.
[4] *Local Government Act*, RSBC 2015, c 1 (the "*Local Government Act*").
[5] *Community Charter*, SBC 2003, c 26 (the "*Community Charter*").
[6] Affidavit of Vali Marling (the "Vali Marling Affidavit") at para 5.

heritage, community gathering, interaction and play", as well as providing for "performances, conferences and celebratory events."[7]

11. The Anvil Centre is thus a City owned-and-operated venue whose primary purpose is to facilitate the diverse public's expressive activity. Its existence flows from the City Council's power under the *Community Charter* to "provide any service that the [City] council considers necessary or desirable."[8]

The Policy

12. To govern use of the Anvil Centre, the City Council has enacted the "Anvil Centre Booking and Space Policy and Procedures" (the "Policy").[9] The Policy is an exercise of the City Council's power under the *Community Charter* to "prohibit and impose requirements in relation to […] municipal services" and "public places".[10]

13. The Policy is carried out by City employees, as delegated by the City Council: under the heading titled "AUTHORIZATION", the Policy states that "Anvil Centre staff are responsible for the implementation of this policy authorized by City Council."[11]

14. Pursuant to the Policy, access to the Anvil Centre may be restricted or prohibited on the basis of the content of expressive activity: under the heading titled "CONDITIONS & INSURANCE", the Policy states—among other things—that "[u]ser groups will be restricted

[7] Vali Marling Affidavit, Exhibit A at p 25.
[8] *Community Charter*, s 8(2).
[9] Ronald Brown Affidavit, Exhibit "O"; Referred to in the Vali Marling Affidavit at para 7.
[10] *Community Charter*, s 8(3)(a) and (b).
[11] Ronald Brown Affidavit, Exhibit "O", first page of exhibit.

or prohibited if they […] promote racism, hate, violence, censorship, crime, or other unethical pursuits."[12]

The Conference

15. Grace Chapel planned to host a one-day Christian youth conference to be held on July 21, 2018 (the "Conference").[13]

16. In keeping with the Conference's Christian religious nature, Grace Chapel chose the theme of "Let God Be True", a Biblical phrase drawn from Romans 3:4.[14]

17. Grace Chapel had previously rented space in the Anvil Centre for religious events and proceeded to make inquiries about booking space at the Anvil Centre for the Conference.[15]

18. In May of 2018, Grace Chapel entered into a License Agreement with the Anvil Centre (the "License Agreement") for use of space for the Conference (the "Rental").[16]

19. On June 20, 2018 —a month before the Conference—Grace Chapel paid the last of the money owed to the Anvil Centre for the Rental, in accordance with the License Agreement.[17]

The Cancellation

20. That evening (June 20, 2018), a poster for the Conference (the "Poster") was displayed in a window in the space rented by Grace Chapel for its Sunday services.[18]

[12] Ronald Brown Affidavit, Exhibit "O" at p 5.
[13] Ronald Brown Affidavit at para 4.
[14] This is reflected in the image of the Conference poster, attached to the Ronald Brown Affidavit at Exhibit "L".
[15] Ronald Brown Affidavit at paras 3-6.
[16] Ronald Brown Affidavit at paras 6-12 and Exhibit "F".
[17] Ronald Brown Affidavit at para 15.
[18] Ronald Brown Affidavit at para 16 and Exhibit "L" at p 4.

21. The Poster listed names of individuals who would be involved in the Conference: Josh Bredahl ("speaking") and Stephanie Standerwick ("singing") are shown in pictures on the Poster, Kari Simpson and Tia MacDougall ("facilitating") are listed below without pictures, Grace Chapel pastors Dorcas & Seun Salami ("Teens' Pastors") and Bayo & Ola Adediran ("Senior Pastors") are also listed further below.[19]

22. At **8:47 pm that evening** (June 20, 2018), the Anvil Centre received a complaint by e-mail about the Conference (the "Complaint E-mail"), which included a social media screenshot of the Poster. The sender described the Conference as "an anti-LGBTQ event", drawing attention to the listing of Kari Simpson in the Poster as a facilitator for the Conference.[20]

23. The sender urged the Anvil Centre "to rethink allowing this event to take place at your venue."[21]

24. At **9:35 am** the following morning (June 21, 2018), Anvil Centre Director of Sales and Marketing Heidi Hughes responded to the Complaint E-mail, informing its sender that the Anvil Centre was "looking into the matter" and would "get in touch with" the sender "once we have had a chance to review the situation."[22]

25. According to Vali Marling, Ms. Hughes sought advice concerning the Conference from both Ms. Marling and Blair Fryer, the City's Communications and Economic Development Manager. They reviewed the Poster and Ms. Simpson's online presence, and erroneously

[19] Ronald Brown Affidavit, Exhibit "L" at p 4.
[20] Vali Marling Affidavit at para 17 and Exhibit I.
[21] Vali Marling Affidavit, Exhibit I.
[22] Vali Marling Affidavit, Exhibit I, p 1,

concluded that the Conference would be "a platform for Ms. Simpson to disseminate her anti-LGBTQ views".[23]

26. At **11:52 am**, News 1130 posted an article on their website discussing the Conference (the "News 1130 Article").[24]

27. At **11:58 am**, Ms. Hughes sent an e-mail to City Manager Lisa Spitale—the City's highest administrative official—seeking approval for cancelling the Conference.[25] Included in that e-mail is the following passage:

> One of the speakers featured on their playbill promoting this free event open to members of the public is Kari Simpson, the Founder of CultureGuard (an anti-LGBT group) and a well-known anti-LGBT activist. Her social media presence is quite extensive and I've included some links to her posts below.
>
> **Simpson is also anti SOGI 123**. (SOGI l 2 3 helps educators make schools inclusive and safe for students of all sexual orientations and gender identities (SOGI). At a SOGI-inclusive school, students' biological sex does not limit their interests and opportunities, and their sexual orientation and how they understand and express their gender are welcomed without discrimination). **The provincial government is firmly on record defending SOGI 123 and its importance in BC schools**.
>
> Our Anvil Centre Booking and Space Allocation Policy (EDMS 474125) states that:
>
> > *User groups will be restricted or prohibited if they:*
> >
> > *a) promote racism, hate, violence, censorship, crime or other unethical pursuits;*
> > *b) involve non-sanctioned sales of ancillary services;*
> > *c) disrupts other facility patrons or operations*
> > *d) involve busking or providing entertainment for tips, gratuities or donations without written permission in the Event Booking Agreement;*
> > *e) misrepresent the scope and/or purpose of the booked function;*
> > *f) Intend to conduct activities in City facilities that are incongruent with the Mission and Vision of Anvil Centre and the City of New Westminster;*

[23] Vali Marling Affidavit at paras 18-20 and Exhibits J and K.
[24] Ronald Brown Affidavit at para 17 and Exhibit "L".
[25] Vali Marling Affidavit, *supra* note 6 at para 20 and Exhibit K.

> *g) include animals within civic facilities (Provincially certified and leashed guide dogs ore exempted);*

Our License agreement for Anvil Conference Centre states the following:

> g) Not to use or permit the Premises to be used for any performance, exhibition, entertainment or any other purpose which is illegal or which, in the reasonable opinion of Anvil Centre, is immoral, improper or may cause public disorder in or near the Premises.

Blair, Vali and I have discussed and, given the information above and our belief that allowing this event to proceed would be in contravention of our Anvil Centre Booking and Space Allocation Policy, our recommendation is that we cancel this event immediately. Please let us know if you concur with this course of action and we'll contact the group in question.[26]

28. At **12:05 pm**, City Manager Spitale approved the Cancellation, e-mailing her concurrence with the recommendation to immediately cancel the Conference.

29. Nowhere in this correspondence is there any consideration of the impact cancellation of the Conference would have on the *Charter* rights of its organizers and participants.

30. At **12:41 pm** on June 21, 2018, Ms. Hughes communicated the Cancellation decision to Grace Chapel by e-mail (the "Cancellation Decision"), stating that

> We became aware today, that one of your event speakers / facilitators, Kari Simpson, highlighted for your July 21st, 2018 event, **vocally represents views and a perspective that run counter to City Of** [sic] **New Westminster** and Anvil Centre booking policy. [Emphasis added]
>
> Specifically Anvil Centre booking policy *restricts or prohibits user groups if they promote racism, hate, violence, censorship, crime or other unethical pursuits*. [Emphasis in original] In accordance with our policy we are informing you that we are cancelling your booking and will immediately process a refund for the entirety of your booking fee.[27]

[26] Vali Marling Affidavit, , Exhibit K.
[27] Ronald Brown Affidavit at para 18 and Exhibit "M"; Vali Marling Affidavit at para 21 and Exhibit "L".

Grace Chapel was Given No Opportunity to be Heard Prior to the Cancellation Decision

31. At no time between

- the receipt of the Complaint E-mail by the Anvil Centre (**8:47 pm** on June 20, 2018),
- the posting of the News 1130 Article concerning the Conference (**11:52 am** on June 21, 2018),
- the e-mail from Ms. Hughes to City Manager Spitale recommending that the Conference be cancelled (**11:58 am** on June 21, 2018),
- the e-mail response from City Manager Spitale accepting the recommendation to cancel the Conference (**12:05 am** on June 21, 2018), and
- the e-mail from Ms. Hughes informing Grace Chapel of the Cancellation Decision (**12:41 am** on June 21, 2018)

was Grace Chapel given any opportunity to address the City's speculations and presumptions about the Conference. No attempt was made by the City to discuss the Conference with Grace Chapel, or to clarify Ms. Simpson's role within it.[28] The City made an assumption regarding the content of a Conference that had not happened, and based upon that presupposition immediately and unilaterally cancelled the Conference a month before it was scheduled to occur.

The City Refused to Reconsider the Cancellation Decision

32. At approximately 1:00 pm on June 21, 2018—following soon after receipt of the e-mail communicating the City's Cancellation Decision—Grace Chapel administrator Ronald Brown, telephoned Ms. Hughes on behalf of Grace Chapel, explaining that **no hate, racism or**

[28] Vali Marling Affidavit at paras 17-21 and Exhibits I to L; Ronald Brown Affidavit at paras 16-18 and Exhibits "L" and "M".

violence would be promoted at the Conference and asking Ms. Hughes to reconsider the Cancellation Decision.[29]

33. At 1:19 pm, Mr. Brown e-mailed Ms. Hughes, again reiterating that no hate, racism or violence would be promoted at the Conference and that "[t]his is a Christian conference for Teens and Youth".[30] Mr. Brown urged that "due process should prevail" and that the Anvil Centre should give Grace Chapel "an opportunity to explain what our intentions are."[31]

34. The City refused to reconsider its decision. While Ms. Hughes expressed a willingness to meet, she stated that "**this does not change our decision and the event is cancelled**."[32]

35. On July 6, 2018, counsel for Grace Chapel sent a letter to Ms. Marling, again requesting that the Anvil Centre permit Grace Chapel to proceed with the Conference, drawing particular attention to the Anvil Centre's constitutional obligations under the *Charter*. The letter was also sent to Ms. Hughes, to Mayor Jonathan X. Coté and to the rest of the City's Councillors.[33]

36. No response to the letter was received.[34]

PART III: LEGAL ARGUMENT

Issues

37. The Petitioner submits that the Cancellation Decision raises the following issues:

    A. The City of New Westminster—including Anvil Centre staff—were bound to respect the *Charter* in making the Cancellation Decision.

    B. The Cancellation Decision infringes freedom of expression protected by section 2(b).

[29] Ronald Brown Affidavit at para 19.
[30] Ronald Brown Affidavit, Exhibit "N".
[31] Ronald Brown Affidavit, Exhibit "N"; Vali Marling Affidavit, at para 21 and Exhibit L.
[32] Ronald Brown Affidavit at para 20 and Exhibit "N"; Vali Marling Affidavit at para 21 and Exhibit L [emphasis added].
[33] Ronald Brown Affidavit at para 23 and Exhibit "P".
[34] Ronald Brown Affidavit at para 23; Vali Marling Affidavit at para 24.

C. The Cancellation Decision infringes freedom of religion protected by section 2(a).

D. The Cancellation Decision infringes freedom of association protected by section 2(d).

E. The Cancellation Decision is an unreasonable and therefore unjustified infringement of *Charter* freedoms.

F. The Cancellation Decision violated the City's duty of procedural fairness and the principles of natural justice.

G. The Cancellation Decision raises a reasonable apprehension of bias.

H. This Court has jurisdiction to grant the remedies sought, which are appropriate and just.

Standard of Review

The standard of review for the cancellation decision on its merits and substantive outcome is reasonableness

38. In accordance with the Supreme Court of Canada's recent clarification of the standard of review for administrative decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*,[35] as well as the recent decision of the BC Court of Appeal in *Murray Purcha v Barriere (District)*,[36] the presumptive standard for review of the merits and substantive outcome of the Cancellation Decision is **reasonableness**.[37]

39. Upon reasonableness review, the court must review the decision "to ensure that [it is,] as a whole[,] transparent, intelligible, and justified."[38]

[35] *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 [*Vavilov*].
[36] *Murray Purcha & Son Ltd v Barriere (District)*, 2019 BCCA 4 [*Barriere (District)*] at para 3.
[37] *Vavilov* at paras 23-25.
[38] *Vavilov* at para 165.

A decision which infringes Charter freedoms must proportionately balance those freedoms with the applicable statutory objectives

40. Additionally, where a decision infringes on *Charter* protections, this Court's reasonableness review requires consideration of whether the decision proportionately balances the *Charter* protections infringed with the applicable statutory objectives.[39] In order to be found reasonable, a decision infringing *Charter* rights or freedoms must give "effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate".[40]

41. Once the petitioner shows that its *Charter* rights are engaged by a decision, the burden of proof then shifts to the decision maker—in this case the City—to show that 1) the decision made demonstrates that the decision maker balanced the statutory objectives with the *Charter* protections engaged, and 2) that the decision proportionately balances these factors to give effect as fully as possible to the *Charter* protections at stake.[41] This burden flows from the structure of the *Charter* and the language of section 1, which requires that limits on *Charter* rights and freedoms be "demonstrably justified in a free and democratic society."[42] In a post-*Vavilov* decision, the Alberta Court of Appeal recently stated:

> To be consistent with the *Charter*, the limitation must, in my view, be demonstrably justified in a free and democratic society. Although that expression about demonstrable justification does not figure prominently in the cases from *Dore* onward, it is not erased from the *Charter* as linguistic frill. As pointed out in *Loyola*, at para 40, "*Doré*'s proportionality analysis is a robust one and 'works the same justificatory muscles" as the *Oakes* test'".

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[39] *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 79 [*TWU*], citing *Doré v. Barreau du Québec*, 2012 SCC 12 [*Doré*] at paras 3 and 7 and *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*] at para 32; see also *CHP v Hamilton (City)*, 2018 ONSC 3690 [*CHP*] at para 57: "Failure to balance said interests will, by definition, render a decision unreasonable as per *Doré v. Barreau du Quebec*".
[40] *TWU* at para 80, citing *Loyola* at para 39.
[41] See *Canadian Centre for Bio-Ethical Reform v City of Peterborough*, 2016 ONSC 1972 at para 15: "The onus is first on the Applicant to establish that its constitutionally enshrined freedom has been limited. The onus then shifts to the Respondent to establish that the limit was imposed in pursuit of its statutory objectives and that the Applicant's freedom of expression was not limited more than reasonably necessary given those statutory objectives."
[42] *Charter*, s 1.

> Furthermore, and of key importance, the onus on proving the 'section 1 limit' on expression freedom even under administrative law should be on the state agent as it is the exercise of power by an emanate of the state.[43]

The standard of review for violations of procedural fairness—including bias—is correctness

42. The standard of review of the Cancellation Decision on the issue of procedural fairness—which includes the question of whether there is a reasonable apprehension of bias—is correctness.[44]

A. The City—including Anvil Centre staff—were Bound to Respect the Charter in Making the Cancellation Decision

43. The City, as a municipality, is **government** for the purpose of *Charter* applicability,[45] and as such the *Charter* applies to "**all of its activities**", including those that might in other circumstances be thought of as "private".[46]

44. The applicability of the *Charter* is determined by section 32(1), which reads in part as follows:

> 32. (1) This Charter applies
>
> […]
>
> (b) to the legislature and **government** of each province in respect of all matters within the authority of the legislature of each province.[47]

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[43] *UAlberta Pro-Life v Governors of the University of Alberta*, 2020 ABCA 1, paras 161-62; see also *Doré* at para 63: "Disciplinary bodies must therefore demonstrate that they have given due regard to the importance of the expressive **rights at issue**, both in light of an individual lawyer's right to expression and the public's interest in open discussion" (Emphasis added).
[44] *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Barriere (District*) at para 3. In *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 [*Baker*] at para 45, the Court stated that "procedural fairness […] requires that decisions be made free from a reasonable apprehension of bias by an impartial decision maker."
[45] *Canadian Federation of Students v Greater Vancouver Transportation Authority*, 2006 BCCA 529 [*Canadian Federation of Students*] at paras 54-66, affirmed in *Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component*, 2009 SCC 32 [*Greater Vancouver Transportation Authority*].
[46] *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 [*Eldridge*] at para 40 (Emphasis added).
[47] *Charter*, s 32(1)(b) (emphasis added).

45. As explained by La Forest J (as he then was) in writing for a unanimous Supreme Court of Canada in *Eldridge v British Columbia (Attorney General)*,[48]

> [T]he *Charter* may be found to apply to an entity on one of two bases. **First, it may be determined that the entity is itself "government" for the purposes of s. 32**. This involves an inquiry into whether the entity whose actions have given rise to the alleged *Charter* breach can, **either by its very nature** or in virtue of the degree of governmental control exercised over it, properly be characterized as "government" within the meaning of s. 32(1). **In such cases, all of the activities of the entity will be subject to the *Charter*, regardless of whether the activity in which it is engaged could, if performed by a non-governmental actor, correctly be described as "private"** […].

46. La Forest J also quoted in *Eldridge* from his earlier judgment judgment in *Lavigne v Ontario Public Service Employees Union*,[49] to emphasize the Court's rejection of the argument that the *Charter* does not apply to government activity which is "private, contractual, or non-public [in] nature":

> We no longer expect government to be simply a law maker in the traditional sense; we expect government to stimulate and preserve the community's economic and social welfare. **In such circumstances, government activities which are in form "commercial" or "private" transactions are in reality expressions of government policy**, be it the support of a particular region or industry, or the enhancement of Canada's overall international competitiveness. In this context, one has to ask: why should our concern that government conform to the principles set out in the *Charter* not extend to these aspects of its contemporary mandate? **To say that the *Charter* is only concerned with government as law maker is to interpret our Constitution in light of an understanding of government that was long outdated even before the *Charter* was enacted.**[50]

47. In *Canadian Federation of Students*, the BC Court of Appeal *per* Prowse JA (as she then was) concluded that the Greater Vancouver Transportation Authority ("TransLink") is subject to the *Charter* under section 32 as "government".[51]

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[48] *Eldridge* at para 44, quoted in *Greater Vancouver Transportation Authority*, at para 15 (emphasis added).
[49] *Lavigne v Ontario Public Service Employees Union*, [1991] 2 SCR 211 [*Lavigne*].
[50] *Eldridge* at para 40, citing *Lavigne* at p 314 (emphasis added).
[51] *Canadian Federation of Students* at para 96.

48. In reaching that conclusion, Prowse JA referred to the judgment of La Forest J in *Godbout v Longueuil (City)*,[52] in which he held that municipalities "cannot but be described as government entities", and that consequently **the *Charter* applies to all of their activities**.[53]

49. Further, Prowse JA's conclusion that Translink is "government" for the purpose of *Charter* applicability on the basis that the Greater Vancouver Regional District ("GVRD")—which controls Translink—"[l]ike the municipality in ***Godbout***, […] cannot but be described as a governmental entity, or as quintessentially government."[54]

50. As noted in the Supreme Court of Canada decision affirming her judgment, Prowse JA "based her finding that the GVRD was governmental in nature based on s. 5 of [the version of the *Local Government Act* then in force], which defines 'local government' as 'the council of a municipality' and 'the board of a regional district'."[55]

51. That definition is retained in the Schedule of the current *Local Government Act*.[56]

52. The case at hand involves an administrative decision by employees of a municipality, including the municipality's highest administrative official, and about which the Mayor was briefed.[57]

53. That decision applied a policy approved by the municipality's council and adopted pursuant to a statutory power. It concerned access to a public space in a City owned-and-operated property.

54. That property exists for the exercise of constitutional rights.

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[52] *Godbout v Longueil (City)*, [1997] 3 SCR 844 [*Godbout*], cited in *Canadian Federation of Students* at paras 56-59.
[53] *Godbout* at paras 50-55.
[54] *Godbout* at para 85.
[55] *Greater Vancouver Transportation Authority*, at para 18.
[56] *Local Government Act*, *supra* note 4, Schedule.
[57] Vali Marling Affidavit, Exhibit "K"

55. The Cancellation Decision was therefore an exercise of government authority subject to the *Charter*. The City—including Anvil Centre staff—were required to respect the rights and freedoms guaranteed by the *Charter* in making the Cancellation Decision.

B. The Cancelation Decision Infringes Freedom of Expression

56. McLachlin J (as she then was) aptly summarized the nature of the *Charter's* guarantee of freedom of expression in *R v Zundel*[58]:

> The purpose of the guarantee is to permit free expression to the end of promoting truth, political or social participation, and self-fulfilment. That purpose extends to the protection of minority beliefs which the majority regard as wrong or false [….] Thus 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.[59]

57. The three part test for whether freedom of expression protected under section 2(b) of the *Charter* is engaged was set out in the Supreme Court of Canada in *Montréal (City) v 2952-1366 Québec Inc* [*City of Montreal*],[60] and was reiterated in *Greater Vancouver Transportation Authority*.[61]

58. Applied in the present context, the three-part test asks the following three questions:

    1. Did the Conference have expressive content, bringing it within section 2(b) protection?
    2. Did the method or location of the expression remove that protection?
    3. If the expression is protected by section 2(b), did the Cancellation Decision infringe that protection, either in purpose or effect?

[58] *R v Zundel*, [1992] 2 SCR 731 [*Zundel*].
[59] Zundel at p 753.
[60] Montréal (City) v 2952-1366 Québec Inc, 2005 SCC 62 [*City of Montreal*] at para 56.
[61] *Greater Vancouver Transportation Authority* at para 37.

i. The Conference had expressive content

59. First, it is readily apparent that the Conference had expressive content, with speakers presenting and singers performing. Section 2(b) extends *prima facie* constitutional protection to all human activity intended to convey a meaning. Such activity may only be excluded from that protection on the basis of its method or location.

ii. The method and location of the expression did not remove Charter protection

60. The Conference was to feature messages delivered to an audience through the spoken and sung word, constituting neither violence nor the threat of violence. It therefore cannot be excluded from protection of section 2(b) on the basis of its method.

61. As explained by the Supreme Court of Canada majority in *City of Montreal*:

> The basic question with respect to expression on government-owned property is whether the place is a public place where one would expect constitutional protection for free expression on the basis that expression in that place does not conflict with the purposes which s. 2(b) is intended to serve, namely (1) democratic discourse, (2) truth finding and (3) self-fulfillment. To answer this question, the following factors should be considered:
> (a) the historical or actual function of the place; and
> (b) whether other aspects of the place suggest that expression within it would undermine the values underlying free expression.[62]

62. In the case of the Anvil Centre—much like busses, where constitutional protection for free expression has been recognized[63]—"not only is there some history of use of this property as a space for public expression, […] there is actual use".

[62] *City of Montreal, supra* note X at para 74.
[63] *Greater Vancouver Transportation Authority, supra* note X.

63. Further, unlike busses, expression is not merely an incidental function of the Anvil Centre: **it is its primary purpose**, as reflected in the Anvil Centre's mission statement[64] and also in the description of the Anvil Centre in the City's "Official Community Plan"[65]

64. That there is some degree of restriction on access to the Anvil Centre should not exclude it from the scope of section 2(b): it is not comparable to—as one example—a government office, in which exclusion of the public is essential to its ongoing function.[66]

65. Instead—and much like busses—it is a space where payment of a fee is the means through which access to a public service is allocated. Limitation of access to the space does not deprive it of its status as a public place.

iii. The Cancellation Decision infringed protection for expression by both purpose and effect

66. As reflected in the record, the City's express purpose for the Cancellation Decision was to prevent expression at the Conference, which was its ultimate effect.

iv. Conclusion on section 2(b)

67. The Petitioner's burden of showing that the Cancellation Decision infringed the freedom of expression under section 2(b) is therefore met.

C. The Cancellation Decision Infringes Freedom of Religion Protected by Section 2(a)

68. "A truly free society is one which can accommodate a wide variety of beliefs".[67] The City's actions in this case demonstrate direct opposition to this essential principle of a free society.

[64] Vali Marling Affidavit at para 6.
[65] Vali Marling Affidavit, Exhibit A at p 25.
[66] *City of Montreal* at para 64.
[67] *R. v Big M Drug Mart Ltd*, [1985] 1 SCR 295 [*R v Big M Drug Mart*] at page 336 (para 94).

Justice Dickson, as he then was, writing for a majority of the Supreme Court of Canada in *R v Big M Drug Mart* described the "essence" of the freedom of religion protected in our *Charter*:

> The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.[68]

69. The freedom of religion is "about both religious beliefs and religious relationships"[69] and is both individual and "profoundly communitarian."[70] For these reasons, McLachlin CJ (as she then was) and Moldaver J, reached the conclusion in their minority opinion in *Loyola High School v Quebec (Attorney General)* that section 2(a) protects a religious organization "if (1) it is constituted primarily for religious purposes, and (2) its operation accords with these religious purposes."[71] Abella J, writing for the majority in *Loyola*, did not find it necessary to determine "whether corporations enjoy religious freedom in their own right",[72] as the majority in *Law Society of British Columbia v Trinity Western University* [*TWU*] likewise declined to do.[73]

70. However, as stated by Abella J in *Loyola*, religious organizations which are "the subject of the administrative decision" are "entitled to apply for judicial review and to argue that the [decision maker] failed to respect the values [including the *Charter*-protected religious freedom of the members of the [religious] community] underlying the grant of [the administrative decision maker's] discretion as part of its challenge to the merits of the decision."[74]

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[68] *R v Big M Drug Mart* at p 336 (para 94).
[69] *TWU* at para 64.
[70] *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 [*Hutterian Brethren*] at para 89.
[71] *Loyola* at para 100, see also analysis from paras 89-101.
[72] *Loyola* at paras 33-34.
[73] *Law Society of British Columbia v. Trinity Western University*, supra at para. 61: "For the reasons set out below, we find that the religious freedom of members of the TWU community is limited by the LSBC's decision. It is unnecessary to determine whether TWU, as an institution, possesses rights under s.2(*a*) of the *Charter*."
[74] *Loyola* at para 34.

65. The standing of a religious community to assert rights under section 2(a) is reflected in *Alberta v Hutterian Brethren of Wilson Colony*, in which the Supreme Court of Canada had no difficulty finding that the Colony had collective 2(a) rights.[75]

66. Grace Chapel is a multi-ethnic parish of the Redeemed Christian Church of God denomination.[76] It is, by definition, an entity constituted for religious purposes, and its operations of conducting "Sunday services" and "events" are the collective exercise of the Christian religion of its members and attendees.[77]

67. As a Christian church with the legal status of a society, Grace Chapel exists to facilitate the collective exercise of these practices as founded upon the sincere religious beliefs of its members and other participants, the Conference being one such example. Grace Chapel is thus entitled to apply for judicial review of the Cancellation Decision on the basis that it failed to respect the *Charter*-protected religious freedom of the members of Grace Chapel's religious community.

68. Where state action interferes with the collective exercise of religious freedom, other *Charter* protections are also implicated, including the freedom of expression (discussed above) and the freedom of association (discussed below).[78]

i. The Cancellation Decision interfered with Grace Chapel's religious beliefs and practices

[75] *Hutterian Brethren* at para 3. There was no section 2(a) individual claimant in the case. The Court effectively accepted the standing of a religious community to assert the individual right of community members under section 2(a), and proceeded to a section 1 analysis to determine if the infringement of freedom of religion at issue was justified.
[76] Ronald Brown Affidavit at para 2.
[77] Ronald Brown Affidavit at para 2.
[78] *TWU* at para 76.

69. In *Syndicat Northcrest v Amselem,*[79] the Supreme Court of Canada set out at two-step test for whether there has been an infringement of freedom of religion under section 2(a).[80] Applying this test to the present case, Grace Chapel must demonstrate a sincerely-held practice or belief with a nexus with religion and that the impugned state conduct interferes with that practice or belief in a manner that is more than trivial or insubstantial.[81]

70. The Conference planned by Grace Chapel's pastoral staff[82] was expressly a Christian conference with the theme of "Let God Be True", premised on the Biblical text of Romans 3:4.[83] The Conference was a collective religious practice of Grace Chapel for the declaration, teaching and dissemination of its religious beliefs. Grace Chapel demonstrated their sincere commitment to engaging in this religious practice and expressing their religious beliefs by planning and arranging the Conference over the course of six months and publicly advertising the Conference, expressly referencing its religious nature.

71. The Cancellation Decision prevented Grace Chapel from expressing, declaring, teaching and disseminating their religious beliefs in the public conference space they had booked at the City's Anvil Centre where they had advertised that their Conference would occur. This was more than a trivial and insubstantial interference with Grace Chapel's religious practice and expression of their religious beliefs.

72. The Cancellation Decision therefore infringed the freedom of religion protected by *Charter* section 2(a).

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[79] *Syndicat Northcrest v Amselem*, 2004 SCC 47 [*Amselem*].
[80] *Amselem* at paras 56-57.
[81] *TWU* at paras 60-75.
[82] Ronald Brown Affidavit at paras 4-5.
[83] Ronald Brown Affidavit, Exhibit "L".

ii. The Cancellation Decision violated the City's duty of neutrality

73. The Supreme Court of Canada has also recognized that section 2(a) imposes a state duty of neutrality on government actors which requires that "the state neither favour nor hinder any particular belief, and the same holds true for non-belief".[84] In this regard, the state must "abstain from taking any position and thus avoid adhering to a particular belief."[85] A breach of the state duty of neutrality is made out where

    1) the state is professing, adopting or favouring one belief to the exclusion of all others and

    2) the exclusion has resulted in interference with the complainant's freedom of conscience and religion.[86]

74. The Cancellation Decision reveals an intention by the City to profess, adopt or favour one belief as to LGBTQ issues to the exclusion of other beliefs. In her affidavit, Vali Marling notes the City's commitment and ongoing work at the Anvil Centre to document "narratives" from the LGBTQ community.[87] The City, then by speculation and presumption, concluded that Grace Chapel's Conference, with the theme of "Let God Be True" and the initials LGBT, would express a contrary view about LGBTQ issues, and that this was "incongruent with the Mission and Vision of the City and the Anvil Centre."[88] Likewise, the City stated in its e-mail informing Grace Chapel of the City's Cancellation Decision:

> Kari Simpson, highlighted for your July 21st, 2018 event, vocally **represents views and a perspective** that **run counter to City Of New Westminster** […] policy.[89]

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[84] *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 [*Saguenay (City)*] at para 72.
[85] *Saguenay (City)* at para 72.
[86] *Saguenay (City)* at para 83.
[87] Vali Marling Affidavit at para 8.
[88] Vali Maring Affidavit at para 19.
[89] Ronald Brown Affidavit at para 18 and Exhibit "M" (emphasis added).

75. In essence, only beliefs consistent with the City's conception of LGBTQ issues were permitted to be expressed at the Anvil Centre, while beliefs viewed contrary to the City's view are excluded. This position is the antithesis of state neutrality.

76. By cancelling the Conference, the City interfered with the exercise of religious freedom in a significant manner, going as far as to express its disapproval for the content of the religious beliefs which it presumed would be manifested at the Conference.

77. In contrast, the duty of neutrality requires the City to "encourage everyone to participate freely in public life regardless of their beliefs" [90] and "**neither encourage nor discourage any form of religious conviction whatsoever**."[91]

78. Further, the City is prohibited from using its powers "in such a way as to promote the participation of certain believers or non-believers in public life to the detriment of others."[92]

79. By its Cancellation Decision, the City enshrined its views on LGBTQ issues as the only acceptable views permitted to be expressed at the Anvil Centre, expressly excluding differing beliefs it presumed would be shared at the Conference.

80. This is a direct violation of the City's duty of neutrality required by *Charter* section 2(a).

iii. Conclusion on section 2(a)

81. The City's Cancellation Decision thus infringed the freedom of religion protected under section 2(a) and the state duty of neutrality imposed under section 2(a) of the *Charter*.

[90] *Saguenay (City)* at para 75.
[91] *Saguenay (City)* at para 78 (emphasis added).
[92] *Saguenay (City)* at para 76.

D. The Cancellation Decision Infringes Freedom of Association Protected by Section 2(d)

82. Section 2(d) must be interpreted in light of its context and historical origins.[93] The emergence of freedom of association as a fundamental freedom "has its roots **in the protection of religious minority groups**."[94] Further, association is recognized as having "always been the means through which political, **cultural and racial minorities**, **religious groups** and workers have sought to attain their purposes and fulfil their aspirations."[95]

83. As set out in *Mounted Police Association of Ontario v Canada* (Attorney General), the freedom of association under section 2(d) of the *Charter* protects 1) the right to join with others and form associations, 2) the right to join with others in the pursuit of other constitutional rights, and 3) the right to join with others to meet on more equal terms the power and strength of other groups or entities.[96]

84. The test for infringement of section 2(d) is whether the impugned government action constitutes "a substantial interference with freedom of association" in either its purpose or effect.[97]

i. *The Conference concerned the collective exercise of constitutional rights*

85. As is outlined in the discussion of the Cancellation Decision's infringement of section 2(a) of the *Charter*, the Conference to occur at the Anvil Centre was for the purpose of individuals, many of whom belong to cultural and racial minorities, joining together for the collective

[93] *Mounted Police Association of Ontario v Canada (Attorney General)* [*Mounted Police*] at para 47, quoting *R v Big M Drug Mart* at p 344.
[94] *Mounted Police* at para. 56 (emphasis added).
[95] *Mounted Police* at paras 35 and 57, the latter quoting *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at p 366) [*Alberta Reference*] (emphasis added).
[96] *Mounted Police* at paras 52, 53, 63 and 66. at para 121.
[97] Mounted Police at para 121.

exercise of freedom of religion: more specifically "to declare religious beliefs openly and without fear of hindrance or reprisal" and "to manifest religious belief by worship and practice or teaching and dissemination".[98]

86. As part of its effort to attain these purposes, Grace Chapel associated with Kari Simpson, who was engaged by Grace Chapel to be a facilitator for the collective exercise of these rights.

ii. The Cancellation Decision is a substantial interference with freedom of association

87. On the basis of Grace Chapel's association with Ms. Simpson for the Conference, the City cancelled the Conference. Both the Cancellation Decision's purpose and effect was substantial interference with the freedom of association between Grace Chapel and Ms. Simpson.

iii. Conclusion on Section 2(d)

88. The Petitioner's burden of demonstrating an infringement of section 2(d) of the *Charter* is therefore met.

E. The Cancellation Decision is an Unreasonable Infringement of the *Charter*

89. Given the fact that the City's Cancellation Decision infringed *Charter* protections, the burden then falls on the City to show that the Cancellation Decision reflects a proportionate balance of the *Charter* protections engaged and the statutory objectives, which requires that the Cancellation Decision give "effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate"[99]:

> For a decision to be proportionate, it is not enough for the decision-maker to simply balance the statutory objectives with the *Charter* protection in making its decision. Rather, the reviewing court must be satisfied that the decision proportionately balances these factors, that is, that it "gives effect, as fully as possible to the *Charter* protections

[98] *R v Big M Drug Mart* at p 366 (para 94).
[99] *TWU* at para 79-80.

> at stake given the particular statutory mandate" (*Loyola*, at para. 39). Put another way, the Charter protection must be "affected as little as reasonably possible" in light of the applicable statutory objectives (*Loyola*, at para. 40). When a decision engages the *Charter*, reasonableness and proportionality become synonymous. Simply put, a decision that has a disproportionate impact on *Charter* rights is not reasonable.
>
> The reviewing court must consider whether there were other reasonable possibilities that would give effect to *Charter* protections more fully in light of the objectives. This does not mean that the administrative decision-maker must choose the option that limits the *Charter* protection least. The question for the reviewing court is always whether the decision falls within a range of reasonable outcomes (*Doré*, at para. 57; *Loyola*, at para. 41, citing *RJR-MacDonald In. v Canada (Attorney General)*, [1995] 3 SCR 199, at para. 160). However, if there was an option or avenue reasonably open to the decision-maker that would reduce the impact on the protected right while still permitting him or her to sufficiently further the relevant statutory objectives, the decision would not fall within a range of reasonable outcomes. This is a highly contextual inquiry.[100]

i. The Cancellation Decision did not attempt to balance Charter protections with statutory objectives

90. A Court inquiry into whether an administrative decision reflects a proportionate balance between *Charter* protections and applicable statutory objectives is properly an inquiry into the decision that was actually made.[101] For ease of reference, the City's Cancellation Decision stated:

> We became aware today, that one of your event speakers / facilitators, Kari Simpson, highlighted for your July 21st, 2018 event, vocally represents views and a perspective that run counter to City Of [sic] New Westminster and Anvil Centre booking policy.
>
> Specifically Anvil Centre booking policy *restricts or prohibits user groups if they promote racism, hate, violence, censorship, crime or other unethical pursuits*. In accordance with our policy we are informing you that we are cancelling your booking and will immediately process a refund for the entirety of your booking fee.[102]

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[100] *TWU* at paras 80-81.
[101] See *Vavilov* at para 15: "the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it"; see also para 83: "It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome."
[102] Ronald Brown Affidavit, para 18 and Exhibit "M"; Vali Marling Affidavit, *supra* note 6 at para 21 and Exhibit "L" (emphasis in original).

91. Far from demonstrating a proportionate balance of *Charter* protections, the scant reasons given by Ms. Hughes for the Cancellation Decision are devoid of any indication of a *Charter* analysis. The Decision was made mere hours after receiving a lone complaint. There is no evidence in the record showing that the City's decision-makers ever turned their minds to the impact of the Cancellation Decision upon the *Charter* protections it engaged.

92. The City abjectly failed to proportionately balance the *Charter* protections infringed by its Cancellation Decision.

93. In *CHP v City of Hamilton*, in which the City argued that an advertisement was "discriminatory as against transgendered people and therefore contravenes the City's policies",[103] three judges of the Ontario Division Court held:

> It is clear that, where competing *Charter* interests are being considered, the City must balance those interests in order to reach a reasonable decision. **Failure to balance said interests will, by definition, render a decision unreasonable** as per *Doré v. Barreau du Quebec* 2012 SCC 12 (CanLII), 2012 SCC 12.[104]

94. Similarly, the failure of the City in this case to engage in a *Charter* analysis, including a balancing of any competing interests, renders the Cancellation Decision unreasonable on its face. Consequently, the City is unable to meet its burden to justify the Cancellation Decision as a reasonable and proportionate balance of the *Charter* rights engaged by the Cancellation Decision.

95. This is consistent with the Supreme Court's *Vavilov* decision, which notes that "it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome":

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[103] *CHP* at para 32.
[104] *CHP* at para 57 (emphasis added).

> Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision.[105]

ii. The Cancellation Decision was not a proportionate balance of Charter protections

96. Ignoring the fact that the City failed to even attempt to balance the *Charter* protections—which is fatal to any finding that the Cancellation Decision is reasonable and justified—the Cancellation Decision is not a proportionate balance of the *Charter* protections at stake.

97. It should be noted that this is not a case like *TWU*, in which the Supreme Court of Canada majority found that the decision-makers in that case—the Benchers of the Law Society of British Columbia—were "faced with only two options": namely, "to approve or reject TWU's proposed law school."[106]

98. The City was not faced with a binary choice to either cancel or not cancel the Conference as planned. **The Cancellation Decision was founded on a presumption** by City staff that the prior statements of Ms. Simpson which are referenced in the affidavit of Ms. Marling were "*racism, hate, violence, censorship, crime or other unethical pursuits*" and were representative of the expression which was to occur at the Conference.

[105] *Vavilov* at para 96.
[106] TWU at para 84.

99. The Anvil Centre staff could have reached out to Grace Chapel to address its speculative and presumptuous concerns. They could have inquired into the nature of the Conference and the religious message being shared at it; they could have inquired into Ms. Simpson's role at the Conference, including asking whether Ms. Simpson was even speaking at the Conference, and if so, what would be the nature of her expression. The City could have requested assurances from Grace Chapel that no "*racism, hate, violence, censorship, crime or other unethical pursuits*" would be promoted at the Conference.

100. The City did none of these things.

101. At **no time** between receipt of the Complaint E-mail at 8:47 pm on June 20, 2018, and the making of the Cancellation Decision the following afternoon did City officials reach out to Grace Chapel for clarification regarding **what would actually occur at the Conference**.

102. Soon after the Cancellation Decision was communicated to Grace Chapel at 12:41 pm, church administrator Ronald Brown reached out to Ms. Hughes both by telephone and e-mail.

103. Mr. Brown stated on both occasions that **no hate, racism or violence would be promoted at the Conference**. This clarification was to no avail: Ms. Hughes on behalf of the City refused to reconsider the Cancellation Decision in light of this information, or any other information that Grace Chapel would have offered. The willingness expressed by Ms. Hughes to meet with Grace Chapel was hollow: she made clear that any further discussion **would have no impact on the Cancellation Decision.**

99. Likewise, the letter from Grace Chapel's counsel drawing the City's attention to its *Charter* obligations in relation to the Conference—dated July 6, 2018— drew no response, further

indicating the finality of the Cancellation Decision without regard to the *Charter* protections engaged.

iii. The Cancellation Decision failed to provide meaningfully reviewable reasons

100. The Cancellation Decision is rather like the decision in *Canadian Centre for Bio-Ethical Reform v South Coast British Columbia Transportation Authority*,[107] which the BC Court of Appeal set aside, after concluding:

> In the case at bar, there are no dots for a court to connect. In denying the CCRB's advertisement request, Mr. Beaudoin **did not acknowledge the CCRB's right to freedom of expression**, **let alone explain how the denial represents a proportionate balance with TransLink's objectives**.[108]

101. Similarly, the Cancellation Decision makes no acknowledgement of any of the *Charter* protections—including expression, religion and association—which it infringed, and likewise made no attempt to explain how it reflected a proportionate balance in light of the City's objectives. In fact, the Cancellation Decision never referenced a single "view" or "perspective" of Ms. Simpson, let alone explain how that view or perspective promoted "*racism, hate, violence, censorship, crime or other unethical pursuits*." It would be inappropriate for this Court to rely on the City's internal records which it did not disclose to Grace Chapel:

> [R]reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. It would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, **but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party**.[109]

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[107] *Canadian Centre for Bio-Ethical Reform v South Coast British Columbia Transportation Authority*, 2018 BCCA 344 [*South Coast*].
[108] *South Coast* at para 54 (emphasis added).
[109] *Vavilov* at para 95 (emphasis added).

102. In sum, the Cancellation Decision is an unreasonable, and therefore unjustified, infringement of the *Charter* freedoms of expression, religion and association, which requires appropriate and just remedy from this Court.

F. The Cancellation Decision Violates the City's Duty of Procedural Fairness, and is Contrary to Natural Justice

103. As stated by the Supreme Court of Canada in *Baker v Minister of Citizenship and Immigration*, an administrative decision which "affects 'the rights, privileges or interests'" of individuals "is sufficient to trigger the duty of [procedural] fairness".[110] As recently observed by the BC Court of Appeal in *Barriere (District)*, that "general rule will yield only to clear statutory language or necessary implication to the contrary."[111]

104. In the latter case, the Court held that the duty applied to the exercise of a municipal power under section 8(2) of the *Community Charter*.[112]

105. Procedural fairness is "eminently variable" and "'its content is to be decided in the specific context of each case'".[113] In *Barriere (District)*, the BC Court of Appeal stated that the *Community Charter* does not assist in determining the content of the duty when it applies, and that "procedural duties will arise from the manner in which a municipality chooses to carry out" its responsibilities under section 8(2).[114]

106. In *Baker*, a non-exhaustive list of factors influencing the content of the duty was provided: (1) the nature of the decision being made and the process followed in making it, (2) the nature

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[110] *Baker* at para 20, quoting *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at p 653.
[111] *Barriere (District)* at para 36, citing Canada *(Attorney General) v Mavi*, 2011 SCC 30 at paras 38-39.
[112] *Barriere (District)*, at paras 39-40, citing the *Community Charter*, s 8(2).
[113] *Baker*, *supra* note X at para 21, quoting *Knight v Indian Head School Division No 19*, [1990] 1 SCR 653 at p 682. See also *Barriere (District)* at para 41.
[114] *Barriere (District)* at para 40, in reference to the *Community Charter*, s 8(2).

of the statutory scheme and the terms of the statute pursuant to which the body operates, (3) the importance to the individuals affected; (4) the legitimate expectations of the person challenging the decision, and (5) the choices of procedure made by the [administrative body] at issue.[115]

107. In *Therrien (Re)*[116]—decided after *Baker*—the Supreme Court of Canada described the "duty to act fairly" as having "two components: the right to be heard (*audi alteram partem*) and the right to an impartial hearing (*nemo judex in sua causa*)."[117]

108. In *Nova Scotia Public Service Long Term Disability Plan Trust Fund v Hyson*,[118] the Nova Scotia Court of Appeal described the former as "a fundamental principle of natural justice."[119]

109. The Cancellation Decision presently at issue was an administrative decision which breached the contractual and constitutional rights of Grace Chapel and participants in the Conference. Yet, Grace Chapel was not afforded any notice or opportunity to be heard before the Cancellation Decision was made: a decision based upon a presumption that could have either been dispelled or addressed had any such prior opportunity been given.

110. The Cancellation Decision was made within mere hours after the receipt of a public complaint, and only scant reasons were given which neither addressed the affected rights nor provided adequate explanation for how the Conference would have breached the applicable Policy.

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[115] *Baker* at paras 22-27.
[116] *Therrien (Re)*, 2001 SCC 35 at para 82.
[117] *Therrien (Re)* at para 82.
[118] *Nova Scotia Public Service Long Term Disability Plan Trust Fund v Hyson*, 2017 NSCA 46 [*Hyson*].
[119] *Hyson* at paras 38 and 39.

111. After that decision was communicated, the City made clear that it could not be persuaded to reconsider, even after counsel for Grace Chapel drew its attention to its constitutional obligations.

112. Given these facts, the Cancellation Decision violates the City's duty of procedural fairness in this matter, and is contrary to the principles of natural justice.

G. The Cancellation Decision Raises a Reasonable Apprehension of Bias

113. In *Baker,* it was stated that "[p]rocedural fairness also requires that decisions be made free from a reasonable apprehension of bias by an impartial decision maker",[120]

114. The standard for such an apprehension varies "depending on the context of the type of function performed by the administrative decision-maker involved".[121] In the context of decisions of municipal councillors, which attracts a comparatively lower standard, "the party alleging disqualifying bias must allege that there is a prejudgment of the matter" to such an "extent that any representations at variance" with the adopted view "would be futile."[122] Statements made by individual councillors in that context cannot satisfy this test "unless the court concludes that they are the expression of a final opinion of the matter, which cannot be dislodged."[123]

115. *Baker* illustrates that a reasonable apprehension of bias can arise from the record and reasons given for the decision at issue. In that case, such an apprehension resulted from the notes of

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[120] *Baker* para 45.
[121] *Baker* at para 47, citing *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 [*Newfoundland Telephone*], and *Old St. Boniface Residents Assn. Inc v Winnipeg (City)*, [1990] 3 SCR 1170 [*Old St. Boniface*] at p 1192.
[122] *Old St. Boniface* at p 1197.
[123] *Old St. Boniface* at p *1197*.

an immigration officer leading to the impugned decision, which were regarded by the Court as the reasons for that decision.[124] Those notes, "and the manner in which they [were] written," disclosed neither "the existence of an open mind or a weighing of the particular circumstances of the case free from stereotypes".[125]

116. The test for a reasonable apprehension of bias was set out in the dissenting judgment of de Grandpré J. in *Committee for Justice and Liberty v. Canada (National Energy Board),*[126] in which he stated that

> … the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. . . [T]hat test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."[127]

117. In *Braemar Bakery v Manitoba (Liquor Control Submission*,[128] the Manitoba Court of Appeal stated that "in dealing with an allegation of apprehension of bias, evidence which would have the effect of negating bias is irrelevant and not to be considered,"[129] quoting from the textbook *Principles of Administrative Law*[130] as follows:

> common sense says that the delegate (or another party) can lead evidence to contradict that introduced by the applicant for the judicial review. The purpose of such evidence is to show that there is no reasonable apprehension of bias disclosed by the facts. **<u>On the other hand, it would appear to be wrong in principle to permit the delegate (or another party) to lead evidence to show that there was no actual bias, or no actual participation by a disqualified person in the decision. Such evidence is</u>**

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[124] *Baker*, *supra* note X at paras 44, 48.
[125] Ibid at para 48.
[126] *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 [*Committee for Justice and Liberty*].
[127] *Committee for Justice and Liberty* at p 394, as quoted in *Baler* at para 46.
[128] 1999 CanLII 18650 (MBCA) [*Braemar Bakery*].
[129] *Braemar Bakery* at para 13.
[130] David Philip Jones and Anne S de Villars, *Principles of Administrative Law*, 2d ed, (Toronto: Carswell 1994) ("*Principles of Administrative Law*").

irrelevant to determining whether there is an apprehension of bias, and therefore is inadmissible.[131]

118. As has been outlined at length, the record and the reasons concerning the Cancellation Decision demonstrate that the City presumed—based upon the Conference's "Let God Be True" theme and the listing on the Poster of Kari Simpson—that the Conference would be a platform for hateful expression.

119. Further, the emphasis within the record on Ms. Simpson's views on the SOGI 123 curriculum indicate that the opprobrium held by the City's decision for a citizen's position on a policy of the provincial government of the day—a reasonable matter of debate in a free and democratic society—was a significant factor leading to the Cancellation decision.[132]

120. That decision indicates that only beliefs consistent with the City's conception of LGBTQ issues are to be permitted at the Anvil Centre, reflecting a prejudice against views to the contrary.

121. Grace Chapel was given no prior opportunity to rebut the City's presumptions, and the City indicated that anything Grace Chapel might say would be futile in persuading the City to abandon those presumptions.

122. These facts would lead a reasonable, right minded person to conclude that the City would not decide the question of the Conference fairly.

123. The Petitioner has therefore met its burden to prove that the Cancellation Decision raises a reasonable apprehension of bias.

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[131] *Braemar Bakery*, *supra* note X at para 13, citing *Principles of Administrative Law*, at p 365 [Emphasis added in *Braemar Bakery*].
[132] Vali Marling Affidavit, Exhibit K at pp 108-109.

H. This Court has Jurisdiction to Issue the Remedies Sought, which are Appropriate and Just in the Circumstances

124. As an administrative decision that engages *Charter* rights, is of a public nature, and which was made pursuant to a statutory power, the Cancellation Decision is subject to review by this Court, which has jurisdiction to issue under section 24(1) of the *Charter* and sections 2(2)(a) and (b) of the *Judicial Review Procedure Act*[133] to issue the orders sought in PART IV below.

125. As indicated by this Court in *Noyes v Board of School Trustees, School District 30 (South Cariboo)*,[134] a petitioner may validly "combine his petition under the *Canadian Charter of Rights and Freedoms* with a complimentary request for relief under the *Judicial Review Procedure Act*."[135]

126. This Court—as a superior court of general jurisdiction—is always a court of competent jurisdiction to issue remedies under section 24(1) of the *Charter*, a power embodied "in the supreme law of Canada" which "cannot be strictly limited by statute or rules of the common law."[136]

127. Accordingly, this Court is empowered to remedy *Charter* violations in any way that it "considers appropriate and just in the circumstances,"[137] and has wide discretion to issue remedies which should "meaningfully vindicate the rights and freedoms" of the Petitioner.[138]

128. Further, this Court has a concurrent power under section 2(2)(b) of the *JRPA* to issue a declaration "in relation to the exercise [of] a statutory power", as well as a power under section

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[133] *Judicial Review Procedure Act*, RSBC 1996, c 241 [*JRPA*], ss (2)(2)(a) and (b).
[134] *Noyes v Board of School Trustees, School District 30 (South Cariboo)*, 1985 CanLII 508 (BCSC) [*Noyes*].
[135] *Noyes* at para 7.
[136] *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 [*Doucet-Boudreau*] at para 51.
[137] Charter, s 24(1).
[138] *Vancouver (City) v Ward*, 2010 SCC 27 at para 20, citing *Doucet-Boudreau*.

2(2)(a) of the *JRPA* and the common law to issue relief in the nature of prohibition and certiorari.

129. The Supreme Court has held that "[a] court can properly issue a declaratory remedy so long as it has the jurisdiction over the issue at bar, the question before the court is real and not theoretical, and the person raising it has a real interest to raise it." [139] Those factors are met in this case.

130. Further a declaration is "an effective and flexible remedy for the settlement of real disputes".[140] A declaration would place the City on notice that it must respect its substantive and procedural obligations under the *Charter* and administrative law when making decision concerning access to public spaces under its control, in which Grace Chapel and other members have an ongoing interest.

131. In light of the unreasonableness, procedural unfairness and bias with which the Cancellation was made, Grace Chapel also submits that this Court should issue an order quashing the Cancellation Decision.

132. Finally, Grace Chapel submits that an order of prohibition should be issued, to ensure that the City is prevented in future from denying use of City facilities to Grace Chapel on the basis of the ideas, views, opinions, perspectives, values or beliefs as ascribed by the City to Grace Chapel or the speakers it chooses to select for its events: a powerful remedy which both vindicates and protects the exercise of constitutional rights in facilities such as the Anvil Centre.

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[139] *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 46.
[140] *R v Gamble*, [1988] 2 SCR 595 at p 649.

PART IV: RELIEF SOUGHT

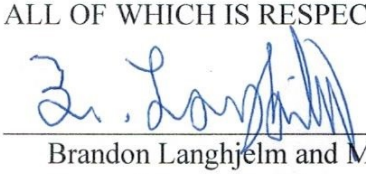
133. The Petitioner therefore seeks the following:

a. A Declaration pursuant to section 2(2)(b) of the *JRPA* and section 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") that the Cancellation Decision was procedurally unfair, biased, unreasonable, and unjustifiably infringed the freedoms of conscience, religion, thought, belief, opinion, expression, and association as protected by sections 2(a), 2(b), and 2(d) of the *Charter*, respectively;

b. An Order pursuant to section 2(2)(a) of the *JRPA* and section 24(1) of the *Charter* quashing the Cancellation Decision;

c. A further Order pursuant to section 2(2)(a) of the *JRPA* and section 24(1) of the *Charter* prohibiting the Respondent from denying the use of its facilities to the Petitioner on the basis of the ideas, views, opinions, perspectives, values or beliefs as ascribed by the Respondent to the Petitioner or speakers selected by the Petitioner.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of February, 2020:



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