



**FORM 66**  
**RULES 16-1(2) and 16-1(19)(b)(ii)**

Court File No. **VLC-S-S-207334**

File No.  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

NOAH ALTER, DIVITA RAITHATHA, JARRYD JAEGER, COOPER ASP and

THE FREE SPEECH CLUB LTD.

Petitioners

and

UNIVERSITY OF BRITISH COLUMBIA

Respondent

**PETITION TO THE COURT**

ON NOTICE TO:

Hubert Lai, Q.C.  
University Counsel, University of British Columbia  
Old Administration Building, Room 240  
6328 Memorial Road  
Vancouver BC, V6T 1Z2  
Telephone: 604-822-1897  
Facsimile: 604-822-8731

AND TO:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA  
Legal Services Branch  
6<sup>th</sup> Floor, 1001 Douglas Street  
Victoria BC, V8V 1X4  
Facsimile: 250-356-9154

**This proceeding is brought for the relief set out in Part 1 below by the persons named as petitioners in the style of proceedings above**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition in the United States of America, within 35 days after that service,
- (c) if you were served with the petitioner anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

<p>(1) The address of the registry is:          800 Smithe Street          Vancouver BC, V6Z 2E1</p>
<p>(2) The ADDRESS FOR SERVICE of the petitioner is:          Marty Moore          Justice Centre for Constitutional Freedoms          #253, 7620 Elbow Drive SW          Calgary, Alberta T2V 1K2          Direct line: (587) 998-1806          Fax number for service of the petitioners: N/A          E-mail address for service of the petitioner: mmoore@jccf.ca</p>
<p>(3) The name and office address of the petitioner’s lawyer is:          Mitchell B. Cohen, Q.C., and Marty Moore          Justice Centre for Constitutional Freedoms          #253, 7620 Elbow Drive SW          Calgary, Alberta T2V 1K2          Direct line: (587) 998-1806          Email: mcohen@jccf.ca; mmoore@jccf.ca</p>

## CLAIM OF THE PETITIONERS

### PART I: ORDERS SOUGHT

1. The Petitioners seek the following:
  - a. An Order pursuant to section 2(2)(a) of the *Judicial Review Procedure Act*, RSBC 1996, c 241 (the “*JRPA*”) quashing the decision of the Respondent University of British Columbia (“*UBC*”) cancelling the Petitioners’ speaker space booking (the “*Decision*”) as a violation of *UBC*’s duty of procedural fairness;
  - b. An Order pursuant to section 2(2)(a) of the *JRPA* quashing the *Decision* on the basis of unreasonableness, including its failure to uphold *UBC*’s commitments to respect freedom of expression and maintain an open forum for the free and full consideration and discussion of any opinion;
  - c. A Declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) that the *Decision* was an unreasonable and therefore unjustified infringement of the section 2(b) freedom of expression protected on the campus of *UBC*;
  - d. An Order pursuant to section 2(2)(b) of the *JRPA* and section 24(1) of the *Charter* directing *UBC* disclose to the Petitioners the assessment criteria it applies for evaluating whether to permit speaker events on the campus of *UBC*, including events featuring speakers who may be considered by some to be controversial;
  - e. An Order pursuant to section 2(2)(a) or 2(2)(b) of the *JRPA* and section 24(1) of the *Charter* directing *UBC* to consider the Petitioners’ request to host a speaker event with Andy Ngo at *UBC*, and to act reasonably and respect the Petitioners’ right to

freedom of expression and procedural fairness in undertaking assessment and decision making in regard to allowing the Petitioners to host talks and presentations on UBC property; and,

- f. Such other relief which this Honourable Court deems just and appropriate.
2. The Petitioners do not seek the costs of this Petition, and ask that no costs be awarded against them, on the basis that this Petition is in the public interest.

## **PART II: FACTUAL BASIS**

### **THE PARTIES**

#### **The Free Speech Club**

1. The Free Speech Club (the “Club”) is an active student club at UBC. It was formed by UBC students in October 2016. It is incorporated under the *Canada Business Corporations Act* with its registered office in British Columbia.
2. The Club’s mission is to inspire others to protect, sustain and promote free speech. It is committed to cultivating open dialogue with a diversity of opinions on campus. A key focus of the Club is hosting intellectually stimulating events on campus, which commonly involve a presentation followed by a discussion with the speaker. The target audience of the Club’s events is UBC students.

#### **The Students**

3. Noah Alter was, at all material times, a fee-paying student at UBC. He was the president of the Club during the 2018-2019 and 2019-2020 academic years.
4. Divita Raithatha was, at all material times, a fee-paying student at UBC. She served as an executive of the Club for the 2019-2020 academic year.

5. Jarryd Jaeger was, at all material times, a fee-paying student at UBC. He is the incoming president of the Club for the 2020-2021 academic year.
6. Cooper Asp was, at all material times, a fee-paying student at UBC. He is a co-founder of the Club and a corporate director. He has been active in facilitating its activities since 2016.

### **The University of British Columbia**

7. The Respondent University of British Columbia (“UBC”) is a statutory corporation pursuant to section 3(1)(a) of the *University Act*, RSBC 1996, c 468 (“*University Act*”).
8. UBC was created in the early 1900s by the Government of British Columbia through the *University Endowment Act* passed in 1907 and the *University Act* passed in 1908.
9. UBC operates campuses in Vancouver (Point Grey and Robson Square) and the Okanagan.
10. UBC’s Board of Governors is granted the statutory authority for the “management, administration and control of the property” of UBC pursuant to section 27 of the *University Act*, including, without limitation, the power “to regulate, prohibit and impose requirements in relation to the use of real property, buildings, structures and personal property of the university including in respect of [...]activities and events[.]”
11. Pursuant to UBC’s *Space Rental Policy* and UBC’s *Regulatory Framework Policy*, significant decision-making authority concerning the use of real property has been delegated to the UBC President and UBC Executive.

### **THE EVENT**

12. In November 2019, Noah Alter arranged for journalist Andy Ngo to attend at UBC and give a presentation entitled “Understanding ANTIFA Violence”. The Club then scheduled a speaker event featuring Andy Ngo at UBC’s Robson Square location on January 29, 2020 (the “Event”).

13. On November 25, 2019, the Club finalized an agreement with UBC to rent event space at UBC Robson Square for the Event. The Club had previously hosted several speakers at UBC Robson Square without issue.

#### **THE DECISION**

14. On or before December 20, 2019, without any prior notice or opportunity to respond provided to the Petitioners, the Executive of UBC unilaterally and unconditionally decided to cancel the Event.

15. On December 20, 2019, Ron Holton—UBC’s Chief Risk Officer—sent an email notifying the Club of the cancellation of the Event (the “Decision”). Mr. Holton advised that “[t]he reason for the cancellation is the concern about the safety and security of our campus community, which is always a primary concern.”

16. Although a meeting with the UBC Executive concerning the Decision was sought, the Petitioners have not been provided an opportunity to meet with any member of the UBC Executive concerning the Decision.

#### **THE REFUSAL OF LEGAL DEMAND**

17. On December 31, 2019, counsel for the Petitioners sent a letter to UBC warning that unless UBC reinstated the Event, legal proceedings would be initiated. UBC’s counsel responded on January 8, 2020, refusing to reinstate the Event.

### **PART III: LEGAL BASIS**

18. This Petition is brought on the following legal basis:

- a. The Decision violated UBC’s duty of procedural fairness;

- b. The Decision is unreasonable and disregards UBC’s commitments to freedom of expression and academic freedom;
- c. The Decision resulted in an unreasonable violation of the *Charter* freedom of expression, as guaranteed in section 2(b) of the *Charter*.

**A. THE DECISION VIOLATED UBC’S DUTY OF PROCEDURAL FAIRNESS**

19. UBC acted in an unfair, secretive and improper manner—in blatant disregard of its duty of procedural fairness—in making the Decision.

**The Importance of the Event**

20. The Event is an issue of substantial significance to the Petitioners, the student body of UBC, the public at large and—according to its own statements and policies—UBC itself. As such, the Decision cancelling the Event merited significant procedural fairness.

21. The Decision prevented the Event at UBC which would have permitted UBC students and the public to hear a presentation from a prominent journalist and participate in the discussion of the important and relevant public issue of Antifa violence.

22. The Petitioners associate together as a student group at UBC specifically for the purpose of hosting these kinds of speaker events and discussions.

23. UBC’s own policies and statements affirm that freedom of expression is an important right at UBC and commit it to providing an open forum for public events and discussion.

24. The Decision also violated the Petitioners’ contractual rights as students of UBC and their rights pursuant to their contract to rent UBC event space for the Event.

**No Notice or Opportunity to be Heard**

25. The Petitioners received no notice or prior indication of any of UBC’s concerns.

26. They were afforded no opportunity to be heard prior the UBC Executive unilaterally cancelling the Event.

**Lack of Reasons or Avenue of Appeal**

27. While citing “concern about the safety and security”, the Decision failed to provide the Petitioners with any basis for understanding of the UBC Executive’s rationale. Likewise, the Decision fails to provide this Court with meaningfully reviewable reasons.

28. The Petitioners were not provided with any avenue to appeal the Decision.

**B. THE DECISION IS UNREASONABLE**

29. The Decision of the UBC Executive is arbitrary and unreasonable, lacking justification, intelligibility and transparency.

30. The Decision displays no rational or logical basis. Its vague reference to “concern about the safety and security” does not identify what particular risks influenced the Decision.

31. The Petitioners were provided with no rationale as to why additional security measures could not have mitigated concern about safety and security related to the Event.

32. There is no indication given why the Decision was made over five weeks prior to the Event and without collaborative attempts with the Club to address any safety or security concerns, as had been done for past Club events at UBC.

33. The Club has a history of hosting events at UBC. It has previously worked with UBC to successfully address concerns about safety and security. In regard to the Event however, UBC did not propose a single security measure to address its concerns, though a number of security measures could have been considered in discussions with a view to facilitating the Event and free speech at UBC.



34. The Decision does not provide any indication—let alone an intelligible and transparent rationale—why measures could not have been taken to address UBC’s expressed “concern about the safety and security of our campus community”.
35. The cancellation of a public event based on an asserted “concern about the safety and security” of the event, without taking reasonable efforts to identify and address such concerns and consider mitigating measures is not a reasonable exercise of UBC’s statutory power over university property for events.
36. Outright, unconditional, unilateral cancellation does not fall within the range of reasonable alternatives available to UBC concerning the Event.

**i. The Decision Unreasonably Disregards UBC’s Commitment to Freedom of Expression and Academic Freedom**

37. The Decision unreasonably failed to consider the importance of the fundamental societal value of freedom of expression and UBC’s applicable commitments to uphold freedom of expression and academic freedom on campus.
38. UBC has publicly and expressly committed itself to respecting and protecting freedom of expression and academic freedom on its campuses.
39. UBC’s *Space Rental Policy* states that “UBC respects the right to freedom of expression...”<sup>1</sup>
40. UBC’s *Senate Statement on Academic Freedom* states that members of UBC enjoy certain rights and privileges, including the freedom “to engage in full an unrestricted consideration of any opinion.” Further, this freedom further extends to “all who are invited to participate in its forum.” The “[s]uppression of this freedom”, even by “officers of the University, or

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<sup>1</sup> Section 2.1 of UBC Space Rental Policy.

the actions of private individuals”, is deemed to “prevent the University from carrying out its primary functions.” The statement concludes by asserting that:

[a]ll members of the University must recognize this fundamental principle and must share responsibility for supporting, safeguarding and preserving this central freedom. 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. Such behaviour cannot be tolerated.

41. This commitment is further reflected in UBC’s publication of the following quote from Dr. Andrew Szeri, Provost and Vice-President, Academic, UBC Vancouver, published on the UBC website:

UBC must be an open forum where members of the university have the freedom ‘to engage in full and unrestricted consideration of any opinion’. While engaging in such discussion, I encourage our students, faculty and staff to uphold the university’s values in creating a positive and respectful environment, even when considering opinions that may fundamentally differ from their own.<sup>2</sup>

42. UBC acted with an unreasonable disregard of its commitments to freedom of expression and academic freedom by cancelling the Event five weeks before it was scheduled to occur, without attempting to address, resolve or mitigate any concern it had for safety and security in order to permit the Event to proceed.

### **C. UNREASONABLE VIOLATION OF THE *CHARTER* FREEDOM OF EXPRESSION**

43. Universities are some of society’s most important fora for the discussion and debate of ideas. In this regard, UBC carries out a critical government-mandated function in hosting expressive events and discussions at UBC.
44. The Government of British Columbia has created and endowed UBC. It continues to extensively fund and exercise control over it, including by appointing a majority of the UBC Board of Governors.

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<sup>2</sup> <https://academic.ubc.ca/support-resources/freedom-expression>

45. It would undermine Canada's core values to not respect the *Charter* rights of participants in UBC's forum.
46. The Decision shutdown a student-initiated speaker event and discussion at UBC. It clearly inhibited students' and visitors' freedom of expression—including their right to listen—on a UBC campus.
47. The Event was scheduled at an UBC event space specifically designed for students and others to engage in expression and expressive events. The Event was designed by the Petitioners to engage their fellow students in a discussion of an important topic, providing a learning opportunity for all involved.
48. The Decision by the UBC Executive fails to acknowledge the applicable freedom of expression protections in place at UBC, let alone demonstrate a proportionate balance of the freedom of expression with any legitimate concerns for safety and security.
49. The Decision was therefore an unreasonable and unjustifiable violation of the *Charter* freedom of expression protected at UBC.

## **REMEDIES**

50. The Petitioners desire to host Mr. Ngo as a speaker at UBC as part of their continued goal of contributing to UBC's forum for discussion by cultivating open dialogue by hosting speakers.
51. The Decision was procedurally unfair and is unreasonable. It should therefore be quashed.
52. This Court's analysis and declaration concerning the freedom of expression protected at UBC will guide UBC's consideration of the Petitioners' continued request to host Mr. Ngo as a speaker at UBC, and similar applications by the Petitioners and others at UBC.

53. A direction by this Honourable Court to UBC to disclose its processes and the criteria it considers in rendering decisions concerning events hosting speakers at UBC will help ensure such decisions are procedurally fair. This Honourable Court's direction to UBC to reasonably assess the right to freedom of expression in such decisions will ensure that UBC carries out its legal duty to the Petitioners.

54. These orders, as well as a declaration that the Decision violated the *Charter* freedom of expression, will provide needed guidance to parties in permitting the Petitioners to host speaker events at UBC. These remedies are appropriate and just.

#### **PART IV: MATERIAL TO BE RELIED UPON**

55. The Affidavits of Jarryd Jaeger, Noah Alter, Divita Raithatha, Cooper Asp and Angelo Isidorou, and such further and other Affidavits as the Petitioners may advise and this Honourable Court may permit;

56. The *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;

57. The *Judicial Review Procedure Act*, RSBC 1996, c 241;

58. The *University Act*, RSBC 1996, c 468;

59. Such further and other material as counsel may advise and as this Honourable Court may permit.

The petitioners estimate that the hearing of the petition will take three hours.

Date: July 9, 2020



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Mitchell B. Cohen, Q.C., and Marty Moore  
Counsel for the Petitioners

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....  
.....  
.....

Date: ..... Signature of  Judge  Master