



MEMAURI LAW
| BARRISTER & SOLICITOR |

of counsel to the Justice Centre for Constitutional Freedoms

Ph: [REDACTED]
email: [REDACTED]

June 6, 2022

By email: [REDACTED]

University of Saskatchewan
Governance Office
Administration Place
Saskatoon, Saskatchewan
S7N 5A2

Attention: Dr. [REDACTED]

Re: [REDACTED] **Complaint**

As you may be aware, we represent [REDACTED], a College of Law student who is subject to a complaint made by another student, [REDACTED] (the "**Complaint**").

The Complaint was submitted by way of email on March 11, 2022 under the *Standard of Student Conduct in Non-Academic Matters and Procedures for Resolution of Complaints and Appeals* (the "**Standard**") based on vague allegations that one or more of [REDACTED] responses to a question posed to him by his law professor breached unspecified provisions of the *Discrimination and Harassment Prevention Policy* (the "**Policy**").

It appears this matter is in the process of being scheduled for an ADR. However, our hope is that this will not be necessary upon your review and consideration of our comments herein. [REDACTED] impugned statements demonstrate that his responses were completely legitimate and reasonable and in particular, not in violation of the *Standard* or *Policy*. We also advise that [REDACTED], the student claiming to be harassed by [REDACTED] course assignment response, was not even registered in [REDACTED] class, and [REDACTED] does not know nor has he spoken to [REDACTED]. The Complaint is an attempt to abuse the *Policy* to punish [REDACTED] for sensitive views that [REDACTED] does not approve of.

The Complaint is meritless on its face and is an attempt to intimidate students like [REDACTED] from expressing views on sensitive and important indigenous matters, which do not conform to

one narrow perspective. We urge you in the strongest terms, to exercise your power under Section IV.2(g) of the *Standard* to immediately dismiss this frivolous and vexatious complaint.

REASONS FOR OUR REQUEST TO DISMISS COMPLAINT

We have now had an opportunity to review the *Standard* and *Policy* along with the *Guidelines for Academic Conduct* (the "**Guidelines**") and the *Academic Misconduct Regulations* (the "**Regulations**"). It is upon the review of these documents that we make our immediate request as follows.

The allegation relates to academic misconduct

As a procedural and technical matter, the Complaint was improperly filed under the *Standard* for allegations of conduct which occurred during and in the exercise of academic tasks. ■■■■■ ■■■■■ impugned statements were made as part of his course exercise and fall squarely within the *Regulations* and not the *Standard*. Further, where there is uncertainty, Section I of the *Regulations* provide:

"In the event that there is a conflict with any other guideline or policy statement at the college, school or departmental level, these Regulations take precedence"

Our client received a letter dated April 20, 2020, from Ms. ■■■■■, the Academic Governance and Hearings Advisor (the "**Letter**"), where she states that you opined the matter is within the jurisdiction of the *Standard* and that it will proceed to a formal hearing. Section 2(b) of the *Standard* provides:

"...In cases where it is not clear whether the allegation relates to academic or non-academic misconduct, the Secretary shall consult with the Chairs of University Council and Senate (or their designates) and will rule on the matter. This decision will be final and not subject to appeal."

Please revisit your decision and dismiss the Complaint or please provide us with the basis of your opinion as to how the Complaint falls within the *Standard* and not the *Regulations*, along with the reasoning obtained from the Chairs of University Council and Senate, which were prescriptively required in matters of uncertain jurisdiction.

The allegations are frivolous and vexatious

Technicalities aside, we request that you immediately dismiss the Complaint against ■■■■■ ■■■■■ in exercise of your role pursuant to Section IV. 2(g) of the *Standard* on the following grounds:

1. Complaints related to harassment, such as the one made by ██████████, should be made pursuant to the *Policy* and has a prescribed form titled, "DHPS Complaint Form" which requires at the bear minimum that the complainant identify the prohibited grounds that the allegations are based on. The form also requires substantial information, such as date, location, time, and specific allegations. These elements of the Complaint are substantially lacking. This is inherently unfair to ██████████ ██████████, for reasons that are expanded on in the following paragraph.
2. The process is unfair to ██████████ as there is not enough detail in the Complaint. ██████████ cannot possibly know the clam he is supposed to meet at any potential hearing. The Complaint is substantially lacking in context, specificity and detail as required by the *Standard* itself.

The Complaint states, "The particular area of concern is section (e) Discrimination and Harassment Policy." One is left to assume the Complaint is referring to Section 4(e) of the *Standard* but this is not clearly identified and subject to speculation. Given the seriousness of the allegation, our client should not be left to guess the nature of the allegations being made against him.

Moreover, the Complaint does not identify the statements that allegedly amount to harassment of ██████████ (and others). The Complaint simply states:

"██████████ has posted numerous discussion posts within the required first year course Kwayeskastasowin: Setting Things Right (attached to this email). His posts are incredibly disrespectful and filled with anti-Indigenous sentiments, which have contributed to the creation of an unsafe atmosphere for Indigenous students, myself included, within the College of Law. His posts have had significant emotional, psychological and physical impacts on both the Indigenous and non- Indigenous professors, teachers assistants, and students alike.

The particulars do not at all satisfy the requirement of the *Standard*. Section IV. 2(a)(iii) of the *Standard* states, "A formal complaint against a student or students: shall be specific with the pertinent details of the alleged incident(s)"

The allegation in the Complaint that ██████████ "numerous discussion posts" are "incredibly disrespectful", "anti-indigenous" and express "racist views", does not identify any particular statement that would be a violation of any particular section of the *Standard* or *Policy*. Nonetheless, ██████████ was required to respond to these bald allegations, which was utterly unfair and unjust to him. ██████████ cannot read the mind of ██████████ or the other unidentified people that he allegedly harassed.

If the Complaint fails to identify how the impugned statements are alleged to be a violation of the *Policy*, how is [REDACTED] to defend a case against him when he cannot know the case made against him. This is a requirement of the *Audi Alteram Partem Rule* in all administrative law matters.

3. It appears the complainant herself, is not abiding by the *Guidelines* which clearly states under the heading, “Dealing with sensitive topics: the student role”:

Students should identify their own perspectives on sensitive issues, respect alternate views, and refrain from imposing their own values on others. Every student should respect the rights of others by treating all participants equitably, by tolerating and respecting their views, and by avoiding stereotyping. Any one student or group of students with a specific agenda should not dominate classroom discussion

A student should help maintain a safe environment for discussion that facilitates open debate, recognizing that any view can be legitimately examined critically in an objective and disinterested fashion.

Moreover, the complainant appears to be in breach of Section III (5)(a) of the *Standard* herself, for commencing a serious complaint against another student in a professional college without:

1. Properly filing in the prescribed form;
 2. Identifying with specificity in detail what the allegation is;
 3. Not abiding by the *Guidelines* pursuant to the section: “Dealing with sensitive topics: the student role”; and
 4. Making unfounded allegations against another student in a class she is not involved in for remarks privately made in such class.
4. Of further concern, you should be aware that the Complaint reproduces a document alleging to contain the impugned statements from a private class discussion to which she was not privy.

Section 5.1 titled, “Privacy, permission and consent”, of the *Academic Courses Policy on Class Delivery, Examinations, and Assessment of Student Learning* (the “**Course Policy**”) provides as follows:

The classroom is considered to be a private space accessible only by members of a class, where student and instructor alike can expect to interact in a safe and supportive environment. Recording of lectures or other classroom activities should not infringe on privacy rights of individuals.”

Section 5.2 titled, “Intellectual property and copyright”, of the *Course Policy* provides:

“Class recordings are normally the intellectual property of the person who has made the presentation in the class. Ordinarily, this person would be the instructor. Copyright provides presenters with the legal right to control the use of their own creations. Class recordings may not be copied, reproduced, redistributed, or edited by anyone without permission of the presenter except as allowed under law.”

██████████ had a reasonable expectation that his answers to course assignments would remain private within the classroom. He was and is correct to rely on this presumption. It would be preposterous to hold that ██████████ should have reasonably known that ██████████, or some other person outside of the classroom, would have obtained a copy of his answer and that this person would have felt harassed by such answer.

A germane question of serious concern to you should be how were our client’s impugned statements in a private class circulated and who breached the *Course Policy* to cause such disruption, which was further inflamed by a frivolous complaint. According to the *Course Policy*, the statements are intellectual property and copyright statements belonging to our client.

FREEDOM OF SPEECH AT THE UNIVERSITY OF SASKATCHEWAN

We take this opportunity to impress upon you that freedom of expression is a core and indispensable component of intellectual and academic inquiry. Enforcement of dogma, whether it be with respect to holding the correct opinion on the harms and benefits resulting from Western colonialism, or any other historical or current issue, is anathema to the U of S’ core purpose. Without clear and uncompromising protections of freedom of expression at the U of S, there can be no academic freedom or truth finding. Should complaints like ██████████ be permitted to proceed, students will be placed in a position where the cost of speaking freely, and expressing opinions that are not in line with the current orthodoxy, are much too grave.

Western institutions of higher education, such as the U of S, have been built upon freedom of inquiry and thought. This must include the freedom to offend, to make others feel uncomfortable, which appears to be the basis of the prescriptions as stated in the *Guideline* as referenced above. The University cannot perform its functions without a broad and generous scope for freedom of expression. The University can never be a “safe space” where some topics, words, or ideas are off limits for fear of offending or upsetting others.

The result of requiring ██████████ to defend himself against such obviously frivolous claims in a formal tribunal, or else face potentially severe consequences to his academic career is the imposition of social and intellectual conformity. It would create a culture where deviation from prescribed set of opinions is punished through fear, ostracism and even sanction. Instead of

encouraging students to bring such censorial complaints, the University should be encouraging open-mindedness, listening to others, for only when exposed to contrary views can students such as ██████████ have confidence in their own opinion.

CONCLUSION

Our client's response letter to the Complaint requested that the matter be dismissed on the basis that the Complaint is frivolous and vexatious. After reviewing the Letter, it is unclear whether his request was considered or a decision made. If it was considered and denied, we herein request an appeal of such decision to the Provost (or designate), pursuant to Section IV. 2(h) of the *Standard* and that a copy of this letter in its entirety be supplied to the decision maker.

We understand that our client requested an appeal to the Academic Governance and Hearings Advisor by way of an email dated April 25, 2022 and a response was received on April 27, 2022 from the Academic Governance and Hearings Advisor indicating that appeals pursuant to Section IV. 2(h) only apply when the Secretary chooses to summarily dismiss the complaint without a hearing. With respect, this interpretation is not supported in the plain text of Section IV. 2(h) in the *Standard*.

To that effect, we herein demand that either the claim be dismissed for one or all of the reasons above or that our client's request for an appeal be submitted to the Provost (or designate) for consideration prior to proceeding with any further process in this matter and that the matter of the ADR be put on hold until determination of the above.

In a March 18, 2022 letter to ██████████, you had advised our client that "the university takes such allegations seriously", referring to the vague and inflammatory allegations made by ██████████. The stigma arising out of unproven allegations of racism can have a long-term negative reputational effect on our client. The U of S can rest assured that ██████████ also takes these allegations very seriously and he intends on defending his rights. We also demand that our client's procedural rights also be taken seriously.

We wish to avoid having our client undergo the ADR and the potential hearing process as to avoid the unnecessary anxiety and uncertainty that it has already caused by this frivolous complaint. However, should the U of S force ██████████ to defend himself against ██████████, we will represent him throughout, and will also advise our client of other immediately available legal options to pursue against the complainant, University and administrative decision makers.

While we appreciate the difficulty associated with sensitive topics such as this, and while we very much promote and respect rightful indigenous reconciliation efforts, we opine that such efforts should not come through permitting unfounded and frivolous allegations against an innocent individual to proceed, in an effort to advance the cause. We trust that with your

diligent review of the Complaint and after considering our comments herein, the Complaint will be dismissed without delay.

We look forward to your response.

Yours truly,

Andre Memauri

Andre Memauri

c.

[REDACTED]