

No. S2210080
Vancouver Registry



In the Supreme Court of British Columbia

NOAH ALTER, JARRYD JAEGER,
COOPER ASP and THE FREE SPEECH CLUB LTD.

Plaintiffs

and

THE UNIVERSITY OF BRITISH COLUMBIA, and
HIS MAJESTY THE KING IN RIGHT OF BRITISH COLUMBIA

Defendants

APPLICATION RESPONSE

Application response of: His Majesty the King in right of the Province of British Columbia (the "Province" or "application respondent").

THIS IS A RESPONSE TO the notice of application of the plaintiff filed on April 5, 2024.

The application respondent estimates that the application will take 1 day, to be heard together with the Province's notice of application filed March 22, 2024.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of **NONE** of the orders set out in Part 1 of the notice of application.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of **ALL** of the orders set out in Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of **NONE** of the orders set out in Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. The Province relies on the facts set out in its notice of application filed on March 22, 2024.

Part 5: LEGAL BASIS

1. The Court has discretion to decide whether to permit the plaintiffs to amend the amended notice of civil claim ("**AN OCC**"). In exercising its discretion, the Court may consider:

- a. the degree to which the pleadings are deficient;
- b. whether the deficiencies can be addressed by an obvious or straightforward amendment;
- c. the merit of the claim; and
- d. the prejudice that could occur by dismissing the claim.

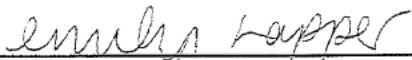
Jones v. Bank of Nova Scotia, 2018 BCCA 381 at para. 35.

2. The Court should not grant the plaintiffs leave to amend the AN OCC because:
 - a. as set out in the Province's notice of application, there is no possible cause of action against the Province;
 - b. the plaintiffs admit in their application response that they do not rely on the "possibility of new facts arising", so the plaintiffs could not plead new material facts to support a cause of action against the Province;
 - c. the plaintiffs have not proposed amendments that would cure the defects in the AN OCC; and
 - d. the Province's application to strike only impacts the plaintiffs' *Charter* claim.

Part 6: MATERIAL TO BE RELIED ON

1. Amended notice of civil claim, filed March 13, 2024.
2. The Province's notice of application, filed March 22, 2024.
3. The plaintiffs' application response, filed April 5, 2024.
4. Such further materials as counsel may advise and this Court may permit.

Date: April 12, 2024


Counsel for the Province Emily Lapper,
Sergio Ortega, and Karin Kotliarsky

This **APPLICATION RESPONSE** is prepared by Emily Lapper, Barrister & Solicitor, of the Ministry of Attorney General, whose place of business and address

