



This is the 1st Affidavit
of Robyn Press in this case
and was made on April 16, 2024

No. 2210080
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**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

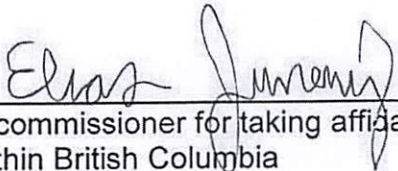
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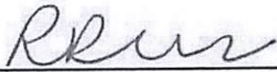
I, Robyn Press, paralegal c/o 1400-550 Burrard Street, Vancouver, British Columbia,
AFFIRM THAT:

1. I am a paralegal employed by Harris & Company LLP, counsel for the defendant University of British Columbia, and, as such, have personal knowledge of the facts and matters deposed to in this Affidavit, save and except where stated to be based upon information and belief, and, where so stated, I believe such facts and matters to be true.
2. Attached and marked as **Exhibit "A"** to this Affidavit is a copy of a letter from Rodney W. Sieg to Glenn Blackett dated January 26, 2024.

3. Attached and marked as **Exhibit "B"** to this Affidavit is a copy of a letter (without enclosures) from Mr. Blackett to Mr. Sieg, Emily Lapper, Sergio Ortega, and Karin Kotliarsky dated February 9, 2024.
4. Attached and marked as **Exhibit "C"** to this Affidavit is a copy of a letter (without enclosures) from Mr. Sieg to Mr. Blackett dated February 22, 2024.
5. I have reviewed the correspondence in our file for this matter and, as of today's date, Mr. Blackett has not responded to Mr. Sieg's letter dated February 22, 2024.

AFFIRMED BEFORE ME at Vancouver,
British Columbia, on April 16, 2024


A commissioner for taking affidavits
within British Columbia


Robyn Press

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January 26, 2024

Rodney W. Sieg

By Email

Our file 027639.936

Workplace Law
& Advocacy

Glenn Blackett Law

Attention: Glenn Blackett

Dear: Glenn Blackett

Re: Free Speech Club et al. v. UBC et al. (No. S2210080, the "Action")
Free Speech Club et al. v. UBC et al. (No. VLC-S-S-207334, the "Petition")

This is Exhibit "A" referred to in the
affidavit of Robyn Press
sworn (or affirmed) before me, at
Vancouver, BC, this 16th day of
April, 2024
Elias J. Murray
A Commissioner for taking Affidavits
for British Columbia

We write in response to your letter of January 5, 2024. There are a number of procedural problems with what your clients have done.

The Petition

The Amended Petition does not comply with the Rules of Court. Our client will bring an application to strike the Amended Petition, in part, based on the judgment of our Court of Appeal in *Redeemed Christian Church of God v. New Westminster (City)*, 2022 BCCA 224, which confirmed that a party may only bring a *Charter* claim by petition if the petition complies with the *Judicial Review Procedure Act*, RSBC 1996 c 241.

Your clients' amendments to the Petition make clear that what is being complained about is a breach of contract and specifically an alleged breach of the rental agreement between the University and the Free Speech Club. You will note that our client's Response to the original Petition was that the dispute was contractual in nature and so not appropriate for Judicial Review. Your clients' amendments now confirm that our client's position was correct.

Further, if the Amended Petition is not struck, our client does not consent to the filing of the draft affidavit attached to your letter. It does not comply with the Rules of Court. Your clients are seeking to introduce thousands of pages of new evidence that is in no way responsive to the affidavit materials filed by our client. Your clients are trying to create an entirely new factual case.

Ms. Raithatha's request to be removed as a Petitioner raises the question of who will be left to pay the costs of the Petition proceedings should a court award costs to our client. It has been my understanding that the Petition proceedings were funded by the Justice Centre for Constitutional

Freedoms. Please advise if that continues to be the case, and please advise whether the costs, if ordered against your clients, would be paid by the Justice Centre for Constitutional Freedoms.

In response to your clients' purported demand for documents, that demand is premature and our client's application to strike the Amended Petition should be heard first.

In any event, your clients' demand for documents is not appropriate in the context of a Judicial Review proceeding. Rule 7-1 deals with document disclosure obligations in an Action not in a Judicial Review. Rule 7-1(11) does not apply since your clients have not received a list of documents from our client, nor are they entitled to one. In a Judicial Review, while the court retains jurisdiction to order certain documents to be disclosed, either as part of the record before the decision maker, or because of the few exceptions recognized by the jurisprudence regarding when other documents may be relevant, your clients have not invoked any of these reasons. Instead your clients have made impermissible and broad documentary demands as if this was an Action.

The Action

If the Amended Petition is not struck, the Action will create a multiplicity of proceedings which constitutes an abuse of process. Our client will therefore bring an application to strike the Action, to be heard at the same time as our client's application to strike the Amended Petition

Our client will argue that it is an abuse of process for the same plaintiffs (or petitioners) to bring multiple proceedings against the same defendants (or respondents) in relation to the same subject matter. Both the Petition and now the Amended Petition as well as the Action involve substantially the same plaintiffs or petitioners, the same defendants or respondents, and both are based on the same factual circumstances— the cancellation of the speaking event.

We will deliver our client's applications to strike in the next short while. I anticipate that that the hearing of both applications will take more than two hours and likely at least a day. In due course my office will be in touch with your office to schedule the hearing date.

Yours very truly,
Harris & Company LLP

Per:



Rodney W. Sieg *
* Law Corporation

RWS/ap

Enclosure

cc Client

Emily Lapper and Sergio Ortega, Counsel for the Attorney General

GLENN BLACKETT LAW

Barrister

February 9, 2024

WITHOUT PREJUDICE EXCEPT AS TO COSTS

via email: [REDACTED]

Attorney General of British Columbia
Ministry of Attorney General
Legal Services Branch
Litigation Group
[REDACTED]

Harris & Company LLP
[REDACTED]

Attention: Emily Lapper, Sergio Ortega,
and Karin Kotliarsky

Attention: Rodney Sieg

This is Exhibit "B" referred to in the
affidavit of Robyn Press

sworn (or affirmed) before me, at

Vancouver, BC, this 16th day of
April, 2024

Elias J. J. J.
A Commissioner for taking Affidavits
for British Columbia

Dear Sirs or Madams:

Re: Free Speech Club et al. v. UBC et al. (No. S2210080, the "Action")
Free Speech Club et al. v. UBC (No. VLC-S-S-207334, the "Petition")

Thank you again for your letters of January 26, 2024.

Petition Proceeding

We believe *The Redeemed Christian Church of God v New Westminster (City)*, 2022 BCCA 224 is distinguishable on the bases that: 1) the relevant "statutory power" under the *Judicial Review Procedure Act* [RSBC 1996] c. 241 is not UBC's natural person powers; and 2) with respect, the petition has little to do with the rental agreement. However, to keep things simple and to avoid unnecessary applications, our clients have instructed us to migrate the *Charter* claims fully into the civil claim proceeding and to abandon the claims for public law remedies under the *JRPA*.

That could be most simply achieved by discontinuing the petition and amending the civil claim to add the petition's lone unique *Charter* claim (a declaration for breach of s. 2(b) expression rights). However, a discontinuance leaves our clients exposed for costs under rule 9-8(4) and unnecessarily wastes effort in the preparation of the affidavits.

We don't dispute your client's entitlement to costs, but we think a cost award should recognize that: 1) we commenced the petition before the decision in *Redeemed*; 2) to some extent, this is akin to a conversion; 3) there was no extra effort involved in there being multiple applicants; and 4) while our clients are abandoning their rights to public law remedies, they are not abandoning their rights to private law remedies for the same basic reasons (per *Lakeside Colony of Hutterian Brethren v. Hofer* [1992] 3 S.C.R. 165).

[REDACTED]

[REDACTED]

GLENN BLACKETT LAW

Barrister

Which is to say, prior to discontinuing the claim we would like to come to an agreement on costs or, at least, have UBC's waiver of rule 9-8(4) reserving, however, the right to apply for costs should the parties not come to an agreement. Under an agreement, I will be able to assure payment. In addition, a consent order should be obtained that the affidavits be re-filed in the civil claim.

Alternatively, we suggest a consent order converting the relevant petition claims into the extant civil claim (except Ms. Raithatha, whose costs we propose be simply waived).

Parallel Proceedings

Trusting the parties can resolve the petition on some reasonable basis I do not think I need to resolve Ms. Lapper's concerns as to *Greengen Holdings Ltd. v. British Columbia (Ministry of Forests)* 2018 BCCA 214, but note that the rule applies where a party seeks inconsistent remedies in a petition proceeding and civil claim, which is not the case here.

Affidavit

This should also resolve Mr. Sieg's concerns regarding the proposed affidavit. We agree the affidavit is not "responsive" as contemplated under Rule 16-1(6). For that reason, we did not simply file it but sought consent and contemplated an order under Rule 16-1(7). We believe the affidavit meets the test outlined in *Tietz v. Affinor Growers Inc.*, 2022 BCCA 307.

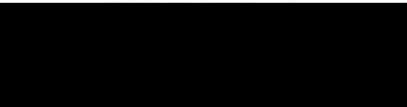
No Cause of Action Against the Province

While we recognize we are fighting precedential headwinds (including *BC Civil Liberties Assn v University of Victoria*, 2016 BCCA 162) we think the time is ripe for a revisit of *Harrison v University of British Columbia* [1990] 3 S.C.R. 451 (on which *BC Civil Liberties Assn* was based) as the circumstances have clearly and significantly changed over the 35 years since that decision was rendered (see *Carter v. Canada (Attorney General)*, 2015 SCC 5). A review of the draft affidavit demonstrates, clearly, that UBC is no longer pursuing "its own objectives" but is, rather, significantly and broadly controlled by government, acting as government, and delivering government programs.

As there seems to be contemplation of an application under Rule 9-5(1) for which none of this evidence would be admissible, we thought it wise to outline more fulsomely the alleged change in circumstances. To that end, we have instructions to file the attached amendment and are in the process of doing so.

While section 48 of the *University Act* [RSBC 1996] c. 468 restricts certain ministerial interference, the evidence demonstrates the minister does not, in fact, observe that restriction. In any case, we think the statutory restriction neither applies to the facts alleged nor insulates government or government action from *Charter* scrutiny.

However, we have some sympathy for your last argument, that naming the Crown is not necessary. We would have preferred not to name the Crown but for the decision in *Ward v Vancouver (City)*, 2010 SCC 27 which states that "[a]n action for public law damages — including constitutional damages — lies against the state and not against individual actors." I take that to mean the Crown is a necessary party to the extent our clients have claimed *Charter*



GLENN BLACKETT LAW

Barrister

damages on the basis UBC is delivering a government program (*per Eldridge v British Columbia (Attorney General)* [1997] 3 S.C.R. 624). I do not see how we can safely release the Crown without jeopardizing our clients' claims for *Charter* damages.

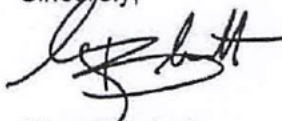
Summary Trial

Based on our review of the caselaw (*Pavlovic v. The Owners, Strata Plan LMS 2211*, 2022 BCSC 1368, *Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83, *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202, *Hryniak v. Mauldin*, 2014 SCC 7), we think a summary trial is an appropriate means of resolving isolated *Charter* issues because it is certain to significantly reduce the time and expense of resolving such issues as compared to trial. It is, therefore, consistent with the purpose of the *Rules*. Our instructions remain to apply for summary trial of an issue.

Extension

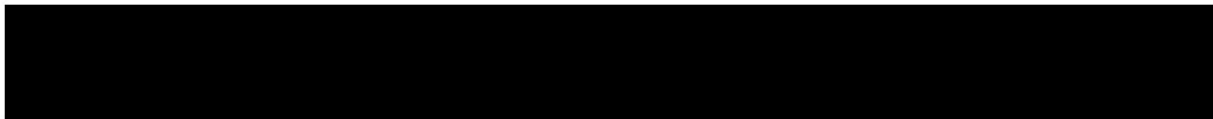
Once we serve the filed amended claim on your clients, we would ask that responses be provided within 20 days thereof.

Sincerely,



Glenn Blackett

Encl.





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February 22, 2024

By Email

Rodney W. Sieg

Our file 027639.908

Workplace Law
& Advocacy

Glenn Blackett Law

Attention: Glenn Blackett

Dear Counsel:

Re: Free Speech Club et al. v. UBC et al. (No. S2210080, the "Action")
Free Speech Club et al. v. UBC (No. VLC-S.S-207334, the "Petition")

This is Exhibit "C" referred to in the
affidavit of Robyn Press
sworn (or affirmed) before me, at
Vancouver, BC, this 16th day of
April, 2024
Elinor J. Murray
A Commissioner for taking Affidavits
for British Columbia

We write in response to your letter dated February 9th, 2024.

Your letter is marked "WITHOUT PREJUDICE EXCEPT AS TO COSTS". Your February 9th letter is not a without prejudice communication. Our client is relying on the fact that your clients will "abandon the claims for public law remedies under the JRPA".

Please provide us with a copy of your clients' filing to abandon the Petition as soon as is practicable. Until that filing occurs the concerns we raised regarding the multiplicity of proceedings continues to exist. Our client will take no steps in relation to the Action until that multiplicity of proceedings has been removed.

Under the Supreme Court Civil Rules, once your clients abandon the Petition, our client is entitled to its costs. We attach a bill of costs for your review. Please advise whether your clients will agree to the bill and give you instructions to execute the Certificate of Costs.

As to the assurance you have personally given regarding the payment of costs, you did not answer the question we posed in our earlier letter regarding whether the Justice Centre for Constitutional Freedoms ("JCCF") is funding the litigation and will pay the costs. I assume you have given your personal assurance that the costs will be paid because it is the JCCF who will do so. Please confirm my assumption is accurate. I do not wish to put you in a position where you have made a personal guarantee enforceable only against you as an individual.

In regard to the question of what affidavits your clients may wish to file in the Action, that is a matter for your clients to decide. If and when your clients file any affidavit material in the Action, our client will consider those affidavit materials and make the appropriate response at that time.

Lastly, it is premature to consider whether the Action is amenable to a summary trial application. I have my doubts given the number of factual issues raised by the Amended Notice of Civil Claim. In any event, you have not yet received our client's Response to Civil Claim, and the parties have not completed any of the pre-trial discovery processes. At this point, none of the parties are in a position to properly consider whether a summary trial procedure is appropriate.

Yours very truly,
Harris & Company LLP

Per:



Rodney W. Sieg *
* Law Corporation

RWS/ap

Encl

cc Client

Emily Lapper, Sergio Ortega, and Karin Kotliarsky (counsel for the Attorney General of BC and HMTK)