

DEC 19 2022



**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  
HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

Defendants

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

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

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

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

## **PART 1: STATEMENT OF FACTS**

### **A. PARTIES**

1. The plaintiff, The Free Speech Club Ltd. (the “**Club**”) is a corporation formed under the Canada Business Corporations Act, RSC 1985, c C-44 with a registered office in Vancouver, British Columbia.
2. The plaintiff, Noah Alter (“**Alter**”) is a resident of Vancouver, British Columbia who, at all material times, was a fee-paying student at The University of British Columbia (“**UBC**”). Alter was the President of the Club during the 2018-2019 and 2019-2020 academic years.
3. The plaintiff, Jarryd Jaeger (“**Jaeger**”) is a resident of Vancouver, British Columbia who, at all material times, was a fee-paying student at UBC. He was the President of the Club for the 2020-2021 academic year.
4. The plaintiff, Cooper Asp (“**Asp**”) is a resident of Vancouver, British Columbia who, at all material times was a fee-paying student. He was the President of the Club for the 2020-2021 academic year and, at all material times, a director of the Club and actively involved in the Club’s activities at the UBC’s campus (Alter, Jaeger and Asp are referred to herein collectively as the “**Students**”).
5. The defendant, Her Majesty the Queen in Right of the Province of British Columbia (the “**Provincial Crown**”) is named in these proceedings pursuant to section 7 of the *Crown Proceeding Act*, RSBC 1996, c. 89 and section 24(1) of 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 (the “**Charter**”). The Provincial Crown assigns a Minister to oversee the government’s delivery of the program of university education (the “**Minister**”). The Provincial Crown’s address for service is in care of the Honourable Niki Sharma, Attorney General, PO Box 9044 Stn Prov Govt, Victoria, BC V8W 9E2.
6. UBC is a corporation continued under the University Act, RSBC 1996, c 468 (the “**University Act**”). The UBC is composed of and controlled by, inter alios, a board of governors and the Vancouver senate. UBC’s address for service is in care of the Office of the University Counsel, 6328 Memorial Road, Room 240, Vancouver, BC, V6T 1Z2.

### **B. UNIVERSITY**

7. At all material times UBC owned and operated a university pursuant to the University Act in Vancouver, British Columbia, called “The University of British Columbia” (the “**University**”). The

University includes campuses in Vancouver being the Point Grey campus and Robson Square campus (“**Robson Square**”).

8. Pursuant to the *University Act*, UBC is mandated to own, manage, administer and control its property, business and affairs in a manner which promotes and carries on the work of a university in all of its branches.
9. UBC has, throughout its history and at all material times did receive:
  - a) grants, endowments, assets, money and other funding; and
  - b) annual operating and capital grants through the Provincial Crown’s budget and fiscal plan, and other funding,from the Provincial Crown and His Majesty the King in Right of Canada (the “**Federal Crown**”), and, on occasion, municipal governments, for the purpose of carrying on the work of a university in all of its branches including the enrollment of undergraduate students in a program of university education (the “**University Funding**”).
10. Through the *University Act*, the Minister’s annual Service Plan, the British Columbia Accountability Framework Standards Manual, UBC’s periodic Mandate Letter, UBC’s Institutional Accountability Plan and Report, Annual budget letters, the Education Quality Assurance certification program, of which UBC has been certified since 2009, the University Funding, and other governmental programs and policies as shall be proven at the trial of this action (the “**Provincial Control Scheme**”), UBC is by its very nature part of government or, in the alternative, the Provincial Crown functionally controls the delivery of university education at UBC including, specifically, controlling enrollment, programs and manner of delivering programs, staffing, facilities and operations.
11. The manner and degree of Provincial Crown control over the UBC has fundamentally evolved and increased over the last three decades.
12. Pursuant to the Provincial Control Scheme, UBC is instructed and authorized to perform a governmental objective, statutory scheme and government program, specifically, the work of a university including the delivery of university education and the regulation of freedom of expression by students on university grounds (the “**University Program**”).
13. As contrasted with other forms of education and training, a “university” education is essentially and inherently defined as including both the freedom of inquiry and the freedom of expression (collectively, the “**Educational Freedoms**”).

### C. THE CLUB

14. The Club was incorporated and at all material times operated for the sole purpose of:
  - a) allowing UBC students, including the Students, to exercise their Educational Freedoms while enrolled in the University Program; and

- b) allowing other Canadians to enjoy Educational Freedoms as invitees to events hosted at the University.
15. Prior to the events described herein the Club hosted several exciting and thought-provoking speaker-events at UBC in coordination with UBC administration to ensure the physical safety of participants. The activities of the Club, and others like it, attracted many students to UBC who wished to participate in a stimulating university education. The Club has never hosted an event at UBC which in any way “got out of hand” or otherwise represented any material risk to physical safety.
16. As a result of UBC’s suppressive conduct described herein, the Club is effectively defunct and tens of thousands of UBC students have since been denied a stimulating university education at UBC and thousands of Canadians have been denied the opportunity to enjoy Educational Freedoms as invitees at events hosted at the University.

#### **D. REPRESENTATIONS**

17. At all material times, UBC made various representations to the general public, including to the Students, that it delivered a university education, including:
- a) its name, which includes the word “university”;
  - b) its motto, *Tuum Est*, a Latin phrase meaning “It Is Yours”, expressing UBC’s purpose as a venue for professors, students, and the public to gather and learn uninhibited;
  - c) various claims within the UBC Strategic Plan, including that UBC aspires to “[l]ead as a model public institution, fostering discourse, knowledge exchange and engagement”;
  - d) by posting to its website the following statements (the “**Educational Freedoms Representations**”):
    - i) A 1976 UBC “Senates’ Statement on Academic Freedom” (the “**Senate Statement**”) which states, *inter alia*:

“The members of the University enjoy certain rights and privileges essential to the fulfilment of its primary functions: instruction and the pursuit of knowledge. Central among these rights is the freedom, within the law, to pursue what seems to them as fruitful avenues of inquiry, to ... learn unhindered by external or non-academic constraints, and to engage in full and unrestricted consideration of any opinion.

This freedom extends not only to the regular members of the University, but to all who are invited to participate in its forum. Suppression of this freedom, whether by institutions of the state, the officers of the University, or the actions of private individuals, would prevent the University from carrying out its primary functions.

All members of the University ... 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.”

- ii) Other documents containing substantially similar statements including:
- (1) a February 1997 Space Rental Policy;
  - (2) an October 7, 2015 “Academic Freedom: An Extended Excerpt from the Report of the Honourable Lynn Smith, QC”;
  - (3) a November 2016 report titled “Academic Freedom at UBC: Historical Notes” by N. Guppy, Senior Advisor to the Provosts;
  - (4) an April 6, 2017, “President's Message to the UBC Community on Respectful Debate”;
  - (5) an April 2018, “Freedom Matters” statement;
  - (6) an undated “FAQ’s about academic freedom”; and
  - (7) such further and other documents as shall be proven at the trial of this action, which documents also represent and acknowledge that, *inter alia*:
    - (8) UBC respects the Educational Freedoms which freedoms are “paramount;
    - (9) the Educational Freedoms are conditions indispensable for the performance of the purposes of higher education and are distinct to universities;
    - (10) the search for truth is the central purpose of institutions of higher learning and cannot occur without the Educational Freedoms;
    - (11) Educational Freedoms are “the stuff of democracy”, “a cornerstone of university culture” and necessary for the “common good of society”;
    - (12) UBC’s role is to provide a forum for the free exchange of ideas;
    - (13) Educational Freedoms are at the root of the academy and that supporting, safeguarding, preserving, promoting and defending those rights are a positive obligation, are core to UBC’s mission, and apply to students, faculty, all who are invited to participate in UBC’s forum, and others;
    - (14) UBC’s executive has an unwavering commitment the Educational Freedoms; and

(15) the Education Freedoms are deserving of special protection as they relate to unconventional and controversial expression; and

iii) The statements referred to in paragraph 18 below.

18. At all material times:

- a) A statement affirming that UBC students enjoyed Educational Freedoms, substantially similar to the Senate Statement, and the Senate Statement itself, formed part of UBC's university calendar (the "**UBC Calendar**") which is a comprehensive guide to all programs, courses, services, and academic policies and procedures at the UBC including the Policies and Procedures (defined at paragraph 21 below).
- b) UBC states on its website that, by registering at UBC, students have initiated a contract including the statutes, rules and regulations, and ordinances (including bylaws, codes, and policies) of UBC and of the faculty or faculties in which the student is registered and students are required to declare being bound by such contractual terms including a link to the UBC Calendar (the "**Declaration**"). The UBC Calendar also includes the Declaration. UBC expressly reserves to itself prosecutorial discretion as to the enforcement of Policies and Procedures ("**Prosecutorial Discretion**"). UBC does not reserve to itself the right not to comply with the Policies and Procedures.
- c) The Educational Freedoms Representations, the UBC Calendar, the Declaration and UBC's name, which included the word "university", constitute an offer to prospective students by UBC to deliver a university education including the Educational Freedoms, being an essential characteristic thereof, and in accordance with the UBC Calendar and the Declaration, including the Policies and Procedures (the "**Offer**").

## **E. ENROLLMENT CONTRACTS**

19. On or about:

- a) September 1, 2016, Asp accepted the Offer and entered into a contract with UBC;
- b) September 1, 2016, Alter accepted the Offer and entered into a contract with UBC; and
- c) September 1, 2018, Jaeger accepted the Offer and entered into a contract with UBC (the "**Enrollment Contracts**").

20. The plaintiffs shall refer to the full terms of the Enrollment Contracts the trial of this action.

## **F. UBC POLICIES and PROCEDURES**

21. UBC's policies and procedures included the following.

- a) At all material times, the Senate Statement and statements substantially similar thereto.

- b) At all material times, a Regulatory Framework Policy which:
  - i) delegates to the UBC President the power to may approve and amend procedures with a report required by the President to the next meeting the UBC board of governors; and
  - ii) delegates to the UBC President the power to designate a member of the UBC executive as having primary responsibility for the implementation and administration of policies and procedures.
- c) At all material times, the Space Rental Policy and associated policy which states, *inter alia*, that it is a UBC priority to utilize all indoor spaces to meet UBC's mandate and to support the creation of a vibrant campus, year-round and that the unit responsible for administering the booking is required to establish rules including an obligation on the booking party to work with UBC to ensure safety and security. The President designated the Vice-President, Finance and Operations as primarily responsible for the Space Rental Policy.
- d) An Event Threat Assessment Group Process (“**E-TAG**”) to identify, control and mitigate physical risks arising from campus events but, consistent with the Education Freedoms, does not limit events, it only operates to ensure physical safety at events. E-TAG was not in force on November 25, 2019, but came in to force no later than February 24, 2020. In the alternative, E-TAG was in force as of about November 25, 2019, and was amended from time to time thereafter. So far as is known to the plaintiffs, once E-TAG came into force it provided the following scheme:
  - i) an iterative process is required whereby physical risks are assessed in the context of standard control and mitigation measures and, if the residual risk remains too high, further control and mitigation measures are planned, the residual risk again assessed, and so on;
  - ii) a four-week lead-time is required between a booking and an event to ensure the process could be fully implemented;
  - iii) the process included the iterative development of a safety plan including liaising with event organizers and police;
  - iv) UBC’s department of Safety & Risk Services (“**SRS**”) leads an initial assessment and, if an event is high risk, on an iterative basis, makes a recommendation to an executive committee consisting of UBC’s President, Provost & Vice President Academic, Vice President Finance & Operations, Vice President Human Resources, Vice President Students, University Counsel and Vice President External (the “**Executive Committee**”) including detailed information on the speaker, the social context surrounding the speaker, a residual risk rating, a list of proposed controls, a key controls rating, and a recommendation (an “**SRS Recommendation**”);

- v) neither SRS nor the executive had, at any material time, the authority to cancel an event or, in the alternative, authority to cancel an event in any circumstance except by the Executive Committee upon receipt of an SRS Recommendation indicating physical risks that could not be reasonably controlled or mitigated after a comprehensive, iterative, risk assessment.
- e) At all material times, a Code of Conduct (the “**Student Code**”) which prohibits, *inter alia*: assaulting, harassing, intimidating, or threatening other individuals or groups; endangering the health or safety of others; destroying, defacing or damaging UBC property; disrupting University activities; and encouraging, aiding, or conspiring in any such prohibited conduct. A student or student group in breach of the Student Code may be sanctioned by UBC by, *inter alia*, reprimand, probation, suspension or expulsion, costs and fines or loss of privileges including use of facilities; and
- f) Such further and other policies and procedures as shall be proven at the trial of this action (collectively, the “**Policies and Procedures**”).

22. The plaintiffs shall refer to the full terms of the Policies and Procedures at the trial of this action.

#### **G. SUPPRESSION OF EDUCATIONAL FREEDOMS ON CAMPUS**

- 23. On June 23, 2019, UBC students hosted an event on UBC’s main campus (the “**June Event**”). The June Event was booked on May 16, 2019, and over the following five weeks UBC imposed several changes with respect to physical security for the June Event including significant planning changes throughout the 23 days prior to the June Event and even on the day of the June Event when UBC increased the campus security personnel from six members to eight members.
- 24. Attempts were made by a UBC student group calling itself “Students Against Bigotry” (“**SAB**”) to suppress the Educational Freedoms of the UBC students and others attending or wishing to attend the June Event. Those attempts included SAB members ignoring safety controls and mitigations, banging on windows, blowing air horns at attendees, physically blocking people from accessing the venue, vandalism and other attempts to interfere with the event including pulling a fire alarm.
- 25. On October 19, 2019, UBC students hosted another event on UBC’s main campus (the “**October Event**”). Prior to the event SAB posted on social media encouraging protests and advised protesters to wear masks to conceal their identity. UBC implemented less rigorous control and mitigation measures for the October Event than it had for the June Event. For example, no RCMP were present or on standby as they had been at the June Event.
- 26. Again, attempts were made by masked members of SAB and masked members of a group calling itself “anti-fascist” or “ANTIFA” to suppress the Educational Freedoms of the UBC students and others attending or wishing to attend the October Event. Those attempts included pounding windows



(including with boots), blocking entrances and exits, pushing and shoved campus security, pushing and shoved attendees as they entered and exited the building and causing property damage.

27. Because UBC had implemented less rigorous control and mitigation measures for the October Event than for the June Event an effective RCMP response was delayed for one hour.
28. Pursuant to its Prosecutorial Discretion, but contrary to the positive obligation UBC undertook to protect Educational Freedoms, UBC chose not to sanction any students or student groups as a result of the suppressive and violent conduct referred to above under the Policies and Procedures or otherwise seek to reduce such conduct in the future.

## **H. ANDY NGO EVENT**

29. Andy Ngo (“**Ngo**”) is an American journalist, author, and social media influencer known for his coverage of ANTIFA.
30. On or about November 25, 2019, the Club, including the Students, planned a Club-hosted event at UBC on January 29, 2020, with Ngo speaking on the subject of ANTIFA violence (the “**Ngo Event**”). The Ngo Event was to include also a question-and-answer segment allowing UBC students, faculty and other attendees to express themselves on the issues raised and interact with Ngo including to challenge his position.
31. On November 25, 2019, the Club entered into a contract with UBC to rent space at UBC’s Robson Square for the Ngo Event (the “**Robson Contract**”). The Robson Contract incorporated all rules and regulations established from time to time by UBC (including the Policies and Procedures) but provided UBC no right to terminate for any reason except *force majeure* events.
32. At the time of the Robson Contract, so far as the plaintiffs are aware, E-TAG was not in force and, at no material time were the plaintiffs advised of the existence of E-TAG nor was it available to them by searching UBC’s records.
33. In anticipation of the Ngo Event the Club and its members, including the Students, started planning including booking Ngo and advertising.
34. No later than December 6, 2019, members of UBC’s SRS were aware of the Ngo Event and that no E-TAG process had been complete. SRS delayed work on an initial E-TAG risk assessment until December 13, 2019. Nobody from UBC contacted any of the plaintiffs at this time.
35. On December 12, 2019, a group calling itself the Vancouver and District Labour Council (“**VDLC**”) wrote to UBC’s President, Santa J. Ono (“**Ono**”), objecting to and vilifying Ngo as, *inter alia*, “far-right” and demanding the event be cancelled expressly for the purpose of suppressing Ngo’s freedom of speech. Four minutes after receipt of VDLC’s letter Ono emailed UBC’s Vice President Students, Ainsley Carry (“**Carry**”) stating simply: “who approved this speaker?” Shortly thereafter Ono called UBC’s Associate Vice-President, Equity and Inclusion, Sara-Jane Finlay (“**Finlay**”)

expressing his concern that Robson Square employees may not have followed E-TAG. Still at this time nobody from UBC contacted any of the plaintiffs.

36. On December 13, 2019, UBC's SRS completed an initial E-TAG risk assessment (the "**Initial Ngo E-TAG Assessment**"). It concluded the Ngo Event was high risk based on, *inter alia*, the potential escalation of the conduct of SAB and ANTIFA at the June Event and October Event. The initial assessment gave only cursory consideration to measures to control and mitigate physical risks. Nobody from UBC including SRS contacted any of the plaintiffs in preparing or upon completion of the Initial Ngo E-TAG Assessment.
37. On December 19, 2019, Carry saw an SAB social media post about the Ngo Event saying, *inter alia* "we cannot allow this to happen." Other users responded to the post with various suggestions for cancelling the event including throwing a milkshake at Ngo, delaying Ngo's travel to the event with a climate march, and yelling and whistling during the event. On the same day:
- a) without:
    - i) having received, been made aware of, or having reviewed the Initial Ngo E-TAG Assessment, any SRS Recommendation, or any measures to control and mitigate physical or other risks;
    - ii) any safety plan having been developed much less considered;
    - iii) any attempt to *liaise* with the plaintiffs or police;
    - iv) any involvement of the Executive Committee including the Vice President Finance & Operations;
    - v) any iterative control and mitigation, assessments or planning; or
    - vi) any attempt to consult any of the plaintiffs, and
  - b) partially on the basis of "concern for the emotional and psychological safety of individuals whose sense of belonging and security at UBC might be undermined",

Carry unilaterally:

- c) directed UBC's Chief Risk Officer (of SRS), Ron Holton ("**Holton**") to cancel the Ngo event (the "**Cancellation Decision**"); and
  - d) directed that all future events with an initial E-TAG risk assessment of "high" would be refused (the "**Policy Amendment Decision**").
38. On December 20, 2019, Holton emailed the Club's administrator and corporate director, Angelo Isidorou ("**Isidorou**"), advising that, *inter alia*, "... the UBC Executive has decided to cancel this event ... The reason for the cancellation is the concern about the safety and security of our campus community, which is always a primary concern ..." (the "**Termination Notice**"). Holton thereafter

directed the Associate Director of Robson Square to return the Club's deposit under the Robson Contract, which was returned.

## **I. POLICY NON-COMPLIANCE**

39. The Ngo Event was, in fact, cancelled on the basis of, *inter alia*:

- a) Carry's and Finlay's impressions of Ngo's character and the content of Ngo's speech;
- b) The demands of Ngo's political opponents including members of VDLC, SAB, and ANTIFA, and other like-minded individuals and groups; and
- c) Carry's desire to preserve the emotional and psychological safety of students and others including non-student members of VDLC, SAB, and ANTIFA.

(the "**Irrelevant Considerations**").

40. The Cancellation Decision and the Policy Amendment Decision were not compliant with the Policies and Procedures because, *inter alia*:

- a) they constituted a breach of the Educational Freedoms and no consideration was given to the Educational Freedoms;
- b) they were effectively made by Carry's delegates including SAB, VLDC and ANTIFA and Carry had no authority to:
  - i) make such decisions;
  - ii) delegate any such decision-making power; or
  - iii) delegate any such decision-making power to such groups;
- c) in the alternative, they were made by Carry, who had no authority to make them;
- d) they failed to consider UBC's mandate or UBC's priority to create a vibrant campus;
- e) they limited events;
- f) they were made without any consideration of, and without any iterative consideration of, controls and mitigations, assessments, planning, recommendations, or consultation;
- g) they constituted a waiver and amendment of Policies and Procedures by Carry, who had not authority to do so; and
- h) they were made on the basis of the Irrelevant Considerations

(the "**Policy Non-Compliance**").

## **J. BREACH OF ROBSON CONTRACT**

41. The Cancellation Decision constituted a breach of the Robson Contract and the Club suffered a loss of net revenue from ticket sales, merchandise and monetization of video content in the approximate amount of \$7,000.00 (the “**Robson Damages**”). As alleged at paragraph 16, the Cancellation Decision and Policy Amendment Decision effectively destroyed the Club and, with it, the Students’ hopes of enjoying a university education while enrolled at UBC.

## **K. BREACH OF ENROLLMENT CONTRACTS**

42. The Cancellation Decision and Policy Amendment Decision were:
- a) made with a wanton and reckless disregard for the Club’s and Students’ contractual rights;
  - b) made with knowledge of the damages that would be caused to the Club and Students, as alleged herein;
  - c) breaches of the Enrollment Contracts for reasons including:
    - i) they constituted a failure of UBC to deliver a university education to the Students, as agreed;
    - ii) due to the Policy Non-Compliance, they constituted a breach of the Policies and Procedures incorporated into the Enrollment Contracts;
    - iii) they constituted a failure of UBC to exercise the discretion granted to it under Enrollment Contracts in good faith and, specifically, the discretion was not exercised in a reasonable manner consistent with the purposes for such discretion was granted but was exercised in an arbitrary or capricious manner unconnected to the purposes of that discretionary power; and
    - iv) the reasons referred to at paragraph 45 below,
- (the “**Contractual Breaches**”)

## **L. DECEPTIVE ACT OR PRACTICE**

43. The Enrollment Contracts and the Education Freedom Representations were the supply of services (education) by a supplier (UBC) to consumers (the Students) for purposes that are primarily personal and are a solicitation, offer, advertisement or promotion by a supplier with respect to such services (collectively, “**Consumer Transactions**”).
44. In the course of business UBC participates in Consumer Transactions by supplying services (including education) to consumers and by soliciting, offering, advertising or promoting such services.
45. The matters alleged herein constitute “deceptive acts or practices” under the *Business Practices & Consumer Protection Act*, SBC 2004, c. 2 for reasons including:

- a) UBC:
    - i) made and relied on written descriptive and other representations, as alleged above; and
    - ii) engaged in conduct, as alleged above,

that had the capability, tendency or effect of deceiving or misleading the Students as to the Educational Freedoms they would enjoy if enrolled at UBC;
  - b) UBC represented that its services:
    - i) included Educational Freedoms, which they did not or did not in part; and
    - ii) were university education, which they were not or were not in part;
  - c) UBC represented that its services included the right to Educational Freedom which differed from fact in whole or in part; and
  - d) UBC used exaggeration, innuendo or ambiguity about the Educational Freedoms the Students would enjoy if enrolled at UBC which was a material fact and it had a misleading effect on the Students
- (the “**Deceptive Acts or Practices**”).

## **M. DAMAGES**

- 46. The Students enrolled at UBC in the belief that they would enjoy a university education there including, most importantly, the opportunity to engage in full and unrestricted consideration of any opinion. They enrolled at UBC and not other, censorious, institutions because they believed UBC was committed to upholding Educational Freedoms. The Students became involved with the Club and other student organizations as a means of exercising those Educational Freedoms while enrolled and after graduation. The Students intended to exercise their Educational Freedoms as a means of developing professional skills and reputations that would later serve them in their professional life.
- 47. By the Cancellation Decision and Policy Amendment Decision, UBC’s commitment to Educational Freedoms effectively collapsed. UBC surrendered Educational Freedoms to the “heckler’s veto” including the personal impressions of UBC’s executive members and student members of SAB and ANTIFA. The Cancellation Decision and Policy Amendment Decision show a wanton and reckless disregard for the Educational Freedoms, generally, and to the plaintiffs’ contractual and other civil rights, specifically. The Cancellation Decision and Policy Amendment Decision have chilled free speech on UBC’s campuses.
- 48. As a result of these decisions, the Students’ singular opportunity to experience a university education, including the Educational Freedoms that brought them to UBC, was terminated.

49. The Contractual Breaches and Deceptive Acts or Practices each or, in the alternative, one of them, caused the Students the following damages, which were foreseeable:
- a) Special damages being tuition amounts paid to UBC for a university education not delivered or, in the alternative, delivered only in part in the following approximate amounts:
    - i) Asp: approximately \$15,00.00;
    - ii) Alter: approximately \$15,000.00; and
    - iii) Jaeger: approximately \$25,000.00; and
  - b) General damages or aggravated damages for distress, humiliation, anguish, grief, wounded pride, damaged self-confidence, self-esteem, loss of reputation, mental suffering, distress, humiliation, embarrassment, and anxiety.
50. In the alternative to 49(a) UBC was enriched by the receipt of tuition amounts and other fees paid by the Students, the Students were deprived of such amounts, and there is no juristic reason for UBC's retention of such amounts.

#### **N. *CHARTER***

51. The UBC is a government entity subject to the *Charter* in all of its operations. In the alternative, UBC is subject to the *Charter* in its deliver of the University Program.
52. The Cancellation Decision and Policy Amendment Decision violated the Club's, the Students', and other students' and visitors':
- a) freedom of thought, belief, opinion and expression, including their right to listen guaranteed in section 2(b) of the *Charter*; and
  - b) freedom of peaceful assembly guaranteed in section 2(c) of the *Charter*,  
  
(the "**Applicable *Charter* Rights**").
53. The Ngo Event was scheduled at Robson Square which is an UBC space specifically designed for students and others to physically gather and engage in expression and expressive events.
54. The Ngo Event was designed by the Club and the Students to peacefully gather and engage their fellow students in a discussion and learning opportunity of an important topic: ANTIFA violence which had, throughout 2019, detrimentally affected the Educational Freedoms on UBC campus.
55. The Cancellation Decision and Policy Amendment Decision restricted, in purpose and effect, the freedom of expression of the Club and the Students and the other Ngo Event attendees.
56. In making the Cancellation Decision and Policy Amendment Decision UBC failed to even acknowledge the Applicable *Charter* Freedom much less consider any proportionate balancing of the Applicable *Charter* Rights with other statutory objectives.

57. The Cancellation Decision and Policy Amendment Decision were an unreasonable and unjustifiable violation of the Applicable *Charter* Rights.
58. It would be appropriate and just to award *Charter* damages to the plaintiffs to:
- a) compensate the plaintiffs for the damages alleged herein;
  - b) vindicate the plaintiffs loss of *Charter* rights; and
  - c) deter UBC and other universities from operating or, in the alternative, delivering a University Program, without proper consideration to *Charter* rights and proper balancing of those rights against other valid statutory objectives.

## **O. JUDICIAL INTERVENTION**

59. The Cancellation Decision and Policy Amendment Decision affected significant civil rights and interests of the Club and the Students including the rights to:
- a) receive a university education including its inherent and essential features: Educational Freedoms;
  - b) enjoy the benefits of the Robson Contract and the Enrollment Contracts;
  - c) enjoy the benefits of the Applicable *Charter* rights.
60. As alleged above the Club, the Students and UBC all envisioned a contractual relationship with one another.
61. This Honourable Court has jurisdiction to intervene with respect to the Cancellation Decision and Policy Amendment Decision to ensure they were consistent with the Policies and Procedures, the rules of natural justice and that they were made in good faith.

## **I. INCONSISTENCY WITH RULES**

62. The Cancellation Decision and Policy Amendment Decision were not consistent with the Policies and Procedures for the reasons given at paragraph 40, above.

## **II. NATURAL JUSTICE**

63. A high degree of natural justice was applicable in the context of the Cancellation Decision and Policy Amendment Decision given:
- a) UBC's statutory mandate to deliver university education including the University Funding;
  - b) universities are some of society's most important fora for the discussion and debate of ideas;
  - c) the Club and UBC had entered the Robson Contract;
  - d) the Students and UBC had entered the Enrollment Contracts;

- e) the importance of the Ngo Event to the Students, the Club and to other students and invitees;
- f) that the Students and others associated together under the auspices of the Club for the express purpose of exercising Educational Freedoms at UBC; and
- g) UBC's stated commitment to Educational Freedom including by contract and including the positive obligation to protect and safeguard it.

64. The duty of natural justice which applied in the circumstances included the obligations to:

- a) advise the plaintiffs of the existence of E-TAG or whatever rules UBC was applying to the Ngo Event and the cancellation;
- b) provide the plaintiffs with the Initial Ngo E-TAG Assessment or, at least, make the plaintiffs aware of its general findings;
- c) permit the plaintiffs to make submissions as to the Initial Ngo E-TAG Assessment including with respect to factual assumptions and proposed control and mitigating measures;
- d) advise the plaintiffs of the reasons being considered to justify cancellation and permit the Club and Students to make submissions;
- e) observe the above duty on an iterative basis as the E-TAG process continued;
- f) consider the plaintiffs' submissions without bias; and
- g) expedite its procedures if delay was likely to necessitate cancellation, which the plaintiffs deny was the case.

65. In breach of the applicable duty of natural justice, prior to making the Cancellation Decision and Policy Amendment Decision, UBC did none of the above.

### **III. GOOD FAITH**

66. The Cancellation Decision and Policy Amendment Decision were made on the basis of the Irrelevant Considerations, were made on the basis of Policy Non-Compliance and Carry was biased as to the outcome of the decision (including because of pressure from Ono) and, as such, the decisions were not made in good faith .

### **P. INJUNCTION**

67. The plaintiffs are entitled to a permanent injunction restraining and enjoining UBC from the conduct outlined above as:

- a) UBC has unlawfully breached the Enrollment Contracts and Robson Contract;
- b) UBC has unlawfully breached the plaintiffs' Applicable *Charter* Rights;



- c) UBC has failed to comply with the Policies and Procedures and the rules of natural justice and has not made decisions in good faith, as alleged above;
- d) damages alone are an insufficient remedy; and
- e) there is no impediment to this Court's discretion to grant a permanent injunction.

## **PART 2: RELIEF SOUGHT**

1. The plaintiffs are petitioners and UBC is the respondent in Supreme Court of British Columbia Action No. S-207334 (the "**Petition Proceedings**") pursuant to which the plaintiffs seek various remedies under the *Charter* and under the *Judicial Review Procedure Act*, RSBC 1996, c. 241 (the "**JRPA**").
2. The within action, which relates to the same series of events, includes claims against the Provincial Crown and seeks, against the defendants, different remedies than those requested in the Petition Proceedings, including damages, different declarations, different injunctive relief and private law judicial intervention (as compared to judicial review).
3. To the extent there is any apparent duplication of remedies between the within action and the Petition Proceedings, this action should be interpreted as excluding those duplicative remedies.
4. **The Club claims the following relief against:**
  - a) UBC:
    - i) special damages for breach of contract in the approximate amount of \$7,000.00;
    - ii) general or aggravated damages for breach of contract;
    - iii) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of the Club's *Charter* freedoms of:
      - (1) thought, belief, and opinion (not expression) guaranteed under section 2(b); and
      - (2) peaceful assembly, guaranteed under section 2(c).
    - iv) *Charter* damages for compensation (in the approximate amount set-out above at subparagraph 4(a)(i)), vindication and deterrence;
    - v) with respect to student or student group requests to host events on campus, an injunction prohibiting UBC from interfering with *Charter* freedom of:
      - (1) thought, belief, and opinion (not expression); and
      - (2) peaceful assembly,

subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

- vi) an order in private law declaring that the Cancellation Decision and Policy Amendment Decision were:
    - (1) inconsistent with the Policies and Procedures;
    - (2) a breach of natural justice; and
    - (3) not made in good faith.
  - vii) an injunction in private law requiring UBC to consider future Club related events in a manner consistent with applicable rules, in accordance with natural justice and in good faith;
  - viii) costs;
  - ix) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
  - x) such further and other relief as to this Court may deem just;
- b) **Her Majesty the Queen in Right of the Province of British Columbia:**
- i) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of the Club's *Charter* freedoms of:
    - (1) thought, belief, opinion and expression guaranteed under section 2(b); and
    - (2) peaceful assembly, guaranteed under section 2(c).
  - ii) *Charter* damages for compensation, vindication and deterrence;
  - iii) costs;
  - iv) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
  - v) such further and other relief as to this Court may deem just.

5. **Alter claims the following relief against:**

- a) **UBC:**
  - i) special damages for breach of contract and for deceptive acts or practices in the approximate amount of \$15,000.00;
  - ii) in the alternative restitution to remedy unjust enrichment in the approximate amount of \$15,000.00;
  - iii) general or aggravated damages for breach of contract;

- iv) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of the Alter's *Charter* freedoms of:
  - (1) thought, belief, and opinion (not expression) guaranteed under section 2(b); and
  - (2) peaceful assembly, guaranteed under section 2(c).
- v) *Charter* damages for compensation (in the approximate amount set-out above at subparagraph 5(a)(i)), vindication and deterrence;
- vi) with respect to student or student group requests to host events on campus, a permanent injunction prohibiting UBC from interfering with *Charter* freedom of:
  - (1) thought, belief, and opinion (not expression); and
  - (2) peaceful assembly.

subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society;
- vii) costs;
- viii) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
- ix) such further and other relief as to this Court may deem just.

b) **Her Majesty the Queen in Right of the Province of British Columbia:**

- i) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of Alter's *Charter* freedoms of:
  - (1) thought, belief, opinion and expression guaranteed under section 2(b); and
  - (2) peaceful assembly, guaranteed under section 2(c).
- ii) *Charter* damages for compensation (in the approximate amount set-out above at subparagraph 5(a)(i)), vindication and deterrence;
- iii) costs;
- iv) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
- v) such further and other relief as to this Court may deem just.

6. **Jaeger claims the following relief against:**

a) **UBC:**

- i) Special damages for breach of contract and for deceptive acts or practices in the approximate amount of \$25,000.00;

- ii) in the alternative restitution to remedy unjust enrichment in the approximate amount of \$25,000.00;
  - iii) general or aggravated damages for breach of contract;
  - iv) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of the Jaeger's *Charter* freedoms of:
    - (1) thought, belief, and opinion (not expression) guaranteed under section 2(b); and
    - (2) peaceful assembly, guaranteed under section 2(c).
  - v) *Charter* damages for compensation (in the approximate amount set-out above at subparagraph 6(a)(i)), vindication and deterrence;
  - vi) with respect to student or student group requests to host events on campus, a permanent injunction prohibiting UBC from interfering with *Charter* freedom of:
    - (1) thought, belief, and opinion (not expression); and
    - (2) peaceful assembly.

subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society;
  - vii) costs;
  - viii) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
  - ix) such further and other relief as to this Court may deem just.
- b) **Her Majesty the Queen in Right of the Province of British Columbia:**
- i) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of Jaeger's *Charter* freedoms of:
    - (1) thought, belief, opinion and expression guaranteed under section 2(b); and
    - (2) peaceful assembly, guaranteed under section 2(c).
  - ii) *Charter* damages for compensation (in the approximate amount set-out above at subparagraph 6(a)(i)), vindication and deterrence;
  - iii) costs;
  - iv) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
  - v) such further and other relief as to this Court may deem just.

7. **Asp claims the following relief against:**

a) **UBC:**

- i) Special damages for breach of contract and for deceptive acts or practices in the approximate amount of \$15,000.00;
- ii) in the alternative restitution to remedy unjust enrichment in the approximate amount of 15,000.00;
- iii) general or aggravated damages for breach of contract;
- iv) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of the Jaeger's *Charter* freedoms of:
  - (1) thought, belief, and opinion (not expression) guaranteed under section 2(b); and
  - (2) peaceful assembly, guaranteed under section 2(c).
- v) *Charter* damages for compensation (in the approximate amount set-out above at subparagraph 7(a)(i)), vindication and deterrence;
- vi) with respect to student or student group requests to host events on campus, a permanent injunction prohibiting UBC from interfering with *Charter* freedom of:
  - (1) thought, belief, and opinion (not expression); and
  - (2) peaceful assembly.subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society;
- vii) costs;
- viii) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
- ix) such further and other relief as to this Court may deem just.

b) **Her Majesty the Queen in Right of the Province of British Columbia:**

- i) a declaration that the Cancellation Decision and Policy Amendment Decision were breaches of Jaeger's *Charter* freedoms of:
  - (1) thought, belief, opinion and expression guaranteed under section 2(b); and
  - (2) peaceful assembly, guaranteed under section 2(c).
- ii) *Charter* damages for compensation (in the approximate amount set-out above at subparagraph 7(a)(i)), vindication and deterrence;

- iii) costs;
- iv) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
- v) such further and other relief as to this Court may deem just.

### **PART 3: LEGAL BASIS**

1. The legal basis for the Plaintiff's claim against the Defendant, as set-out in detail above, is:
  - a) UBC breached the Robson Contract and Enrollment Contracts causing general, special and aggravated damages to the plaintiffs;
  - b) UBC engaged in deceptive acts or practices under the *Business Practices & Consumer Protection Act*, SBC 2004, c. 2 for which the Students may bring this action to recover damages under s. 171(1) thereto;
  - c) In the alternative to damages for breach of contract or for deceptive acts and practices, the Court has equitable jurisdiction to grant restitution to remedy an unjust enrichment including UBC's retention of the Students' tuition;
  - d) In private law, the plaintiffs are entitled to judicial intervention to compel compliance with rules, procedural fairness and the duty of good faith in circumstances where significant civil rights and interests are at stake, as on these facts.
  - e) The Court has jurisdiction in private law to grant declarations and has equitable jurisdiction to grant a permanent injunction restraining UBC, when considering future Club related events, from failing to observe applicable rules, procedural fairness and good faith, and it is just that the Court exercise such jurisdiction on these facts;
  - f) The Cancellation Decision and Policy Amendment Decision constitute infringements of the plaintiffs':
    - i) freedom of thought, belief, opinion and expression, in purpose and effect, including their right to listen guaranteed in section 2(b) of the Charter; and
    - ii) freedom of peaceful assembly guaranteed in section 2(c) of the Charter,
 and such infringements were not prescribed by law nor demonstrably justified in a free and democratic society;
  - g) The Court has jurisdiction under s. 24 of the *Charter* to grant declarations of constitutional infringements and a permanent injunction restraining UBC, with respect to student or student group requests to host events on campus, from interfering with Charter freedom of thought, belief, opinion and expression, and freedom of peaceful assembly, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society and it is just that the Court exercise such jurisdiction on these facts;

- h) The Court has jurisdiction under s. 24 of the *Charter* to award damages against the state to achieve the goals of compensation, vindication and deterrence and it is just and appropriate that the Court exercise such jurisdiction on these facts.

Plaintiffs' Address for Service:

Glenn Blackett Law



Attention: Glenn Blackett



Fax number address for service (if any):

E-mail address for service (if any):



Place of trial:

Vancouver, British Columbia

The address of the registry is:

800 Smithe Street

Vancouver, BC, V6Z 2E1

Date: 16/12/2022

A handwritten signature in blue ink, appearing to read 'Glenn Blackett'.

Signature of Glenn Blackett

Glenn Blackett Law

Lawyer for the plaintiffs

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

## APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

### **PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The plaintiffs seek relief including damages, declarations and injunctions under contract, the common law, equity and the *Charter* arising from the defendants cancellation of a student organized free speech event.

### **PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

☐ a motor vehicle accident

☐ medical malpractice

☐ another cause

A dispute concerning:

☐ contaminated sites

☐ construction defects

☐ real property (real estate)

☐ personal property

☐ the provision of goods or services or other general commercial matters

☐ investment losses

☐ the lending of money

☐ an employment relationship

☐ a will or other issues concerning the probate of an estate

☒ a matter not listed here

### **PART 3: THIS CLAIM INVOLVES:**

[Check all boxes below that apply to this case]

☐ a class action

☐ maritime law



- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

**PART 4:**

*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*

*Business Practices & Consumer Protection Act, SBC 2004, c. 2*

*Supreme Court Civil Rules, B.C. Reg. 168/2009*



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**Contact:** Ashley Sexton  
**Phone:** 403 606 3749  
**Fax:**  
**Email:** [asexton@jccf.ca](mailto:asexton@jccf.ca)

Date: 12/19/2022	AZ	Email
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**INVOICE #: 97-739596**

**Action # : S2210080**

Description	Non-Taxable Disb.	Taxable Disb.	Taxable Fees
Disb Chq#: C639979			
Disburse	200.00	0.00	9.50
Supreme	0.00	0.00	25.00
Document Scan	0.00	0.00	9.00
Copies made in office-50	0.00	0.00	50.00
<b>SUBTOTALS</b>		200.00	93.50
		<b>TAXABLE TOTAL</b>	93.50
		GST 105630594RT	4.68
		<b>NON -TAXABLE TOTAL</b>	200.00
		<b>Total</b>	298.18

SEE TERMS AND CONDITIONS ON REVERSE

PLEASE REMIT PAYMENT TO OUR NEW WESTMINSTER OFFICE

Date 19 12 22 AZ

DD MM YY

Thank You

99 Sixth Street, **New Westminster**, BC Canada V3L 5H8 Tel: 604-659-8600 1-800-553-1936 Fax: 604-525-2593  
840 Howe St – Suite 100, **Vancouver**, BC Canada V6Z 2L2 Tel: 604-659-8700 1-800-806-2788 Fax: 604-682-5793  
1207 Douglas St – Suite 512, **Victoria**, BC Canada V8W 2E7 Tel: 250-405-6000 1-800-667-7767 Fax: 250-383-1614

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## FEES

The fees listed are the normal ones charged and do

\* If needed, also include any estimated down payment at purchase & CE - Errors and Omissions Excepted.

**URGENT FILES**

There are specific dates for the remaining sessions. I don't suggest that ASHA can be ambiguous. There is something beautiful and joyful about it. I made this as a way to make sure that its goals, if you will, are not lost. I'm going to be large, time-consuming, and, obviously, unkind. The most we can do is to make sure that the goals are not lost. I'm going to be large, time-consuming, and, obviously, unkind.

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