



CA49986

Alter et al. vs. The University of British Columbia et al.  
Amended Appeal Record

**COURT OF APPEAL**

ON APPEAL FROM the Order of The Honourable Justice Greenwood of the Supreme Court B.C. pronounced on June 4, 2024

BETWEEN:

**Noah Alter, Jarryd Jaeger, Cooper Asp, and  
The Free Speech Club Ltd.**

**APPELLANTS**  
(Plaintiffs)

AND:

**The University of British Columbia and  
His Majesty the King In Right of British Columbia**

**RESPONDENTS**  
(Defendants)

**Publication Ban or Anonymity Order (if any) : NIL**

**Sealing Order (if any): NIL**

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AMENDED APPEAL RECORD  
Filed by the Appellants

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Noah Alter, Jarryd Jaeger, Cooper Asp,  
and The Free Speech Club Ltd.

His Majesty the King in Right of British  
Columbia

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SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

DEC 19 2022



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

No. S22 10080  
Vancouver Registry

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



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:



Date: 16/12/2022

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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



ORIGINALLY FILED DECEMBER 19, 2022

No. S2210080  
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  
HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

Defendants

**AMENDED 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, being the Minister of Post-Secondary Education and Future Skills and previously referred to as the Minister of Advanced Education, Skills and Training (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. The defendant, the University of British Columbia (“**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 (the “**BOG**”) 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. The majority of the BOG is appointed by the Lieutenant Governor in Council. The balance of the BOG is appointed by the BOG or is elected by:
- a) faculty, all appointed by the BOG;
  - b) students; or
  - c) staff, all appointed by the BOG,  
who work or study at UBC.
8. The majority of UBC’s Vancouver senate is appointed by the BOG or is elected by faculty, all of whom are appointed by the BOG and work at UBC. The balance of the Vancouver senate is elected by students who study at UBC and others.
9. At all material times UBC owned and operated a university pursuant to the *University Act* near in Vancouver, British Columbia, called “The University of British Columbia” (the “**University**”). The University includes campuses in and near Vancouver being the Point Grey campus and Robson Square campus (“**Robson Square**”).
10. 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.
11. 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**”).
12. 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**” which is described in paragraphs 12 to 26 herein), 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.

13. The manner and degree of Provincial Crown control over the UBC and UBC's delivery of Provincial Crown programs has fundamentally evolved and increased over the last three decades.
14. Pursuant to the *University Act*, significantly amended in 1996:
  - a) UBC may grant university degrees;
  - b) the management, administration and control of the assets, revenue, business and affairs of UBC are vested in the BOG;
  - c) UBC is mandated to own, manage, administer and control its assets, revenue, business and affairs in a manner which promotes and carries on the work of a university in all of its branches;
  - d) UBC may impose and collect penalties, including fines;
  - e) UBC must submit student personal information to the minister responsible for the administration of the *School Act* [RSBC 1996] c. 412 (the "***School Act***") to obtain a personal education number for students;
  - f) UBC may not run any deficit, without the approval of the Minister and the Minister of Finance;
  - g) UBC must return portions of annual grants to the Provincial Crown in the event of labour strikes or lock-outs;
  - h) UBC must make an annual report of its transactions to the Minister including any particulars the Minister may require;
  - i) the Auditor General of British Columbia may appoint UBC's auditor in accordance with the *Auditor General Act* [SBC 2003] c. 2;
  - j) the Minister may interfere in the exercise of powers conferred on UBC except:
    - i) the formulation and adoption of academic policies and standards;
    - ii) the establishment of standards for admission and graduation; and
    - iii) the selection and appointment of staff,which exceptions the Minister does not in fact observe and which exceptions do not apply to the matters alleged herein;
  - k) no new degree program may be offered without the Minister's prior approval;
  - l) at the request of the Minister, UBC must provide the Minister with reports and any other information that the Minister considers necessary to carry out the Minister's responsibilities in relation to universities;
  - m) UBC may not make certain dispositions of its land without the approval of the Minister;



- n) UBC is empowered to expropriate land it considers necessary for its purposes;
  - o) UBC is exempt from the rule against perpetuities;
  - p) UBC is exempt from taxation under, *inter alia*, the *Police Act* [RSBC 1996] c. 367, the *School Act*, and the *Vancouver Charter* [SBC 1953] c. 55;
  - q) UBC may not borrow for specified purposes without the approval of the Minister;
  - r) the president is required to prepare and submit to the Minister an annual report;
  - s) various UBC entities are exempt from civil liability in specified circumstances which are not applicable to this action; and
  - t) UBC is subject to major aspects of the Provincial Control Scheme.
15. All legislation referred to herein shall be referred to in full at the trial hereof.
16. UBC is designated a “public sector employer” under the *Public Sector Employers Act* [RSBC 1996] c. 384, pursuant to which:
- a) the Provincial Crown may direct and coordinate labour negotiations across the public sector, including labour negotiations affecting UBC’s unionized faculty and staff for the purpose of pursuing objectives of the Provincial Crown in such negotiations – nearly all UBC faculty and staff are unionized; and
  - b) the Provincial Crown imposes and may impose terms of employment on UBC’s faculty and staff, including compensation limits and public reporting requirements with respect to senior employee compensation.
17. UBC is designated a “local public body” under the *Freedom of Information and Protection of Privacy Act* [RSBC 1996] c. 165, by which UBC is accountable to disclose information to the public upon request and to protect personal privacy.
18. UBC is designated an “education and health sector organization” *Budget Transparency and Accountability Act* [SBC 2000] c. 23 which, *inter alia*:
- a) requires quarterly, annual and other regular financial and other reports to be prepared by UBC and submitted to the Provincial Crown in accordance accounting policies established by the British Columbia Treasury Board – utilizing such information, the Provincial Crown prepares consolidated provincial financial information and budgets which treat UBC capital, assets, tuition fees and expenses as capital, assets, income and expenses of the Provincial Crown; and
  - b) subjects UBC to major aspects of the Provincial Control Scheme.
19. UBC is designated a “government body” under the *Financial Administration Act* [RSBC 1996] c. 138 which, *inter alia*, subjects UBC to:
- a) British Columbia Treasury Board and British Columbia Comptroller General regulations, directives, policies and guidelines respecting the tracking, planning, management and reporting of capital expenditures which facilitates the

consolidation of UBC capital, assets, and expenses into Provincial Crown financial statements and budgets;

- b) British Columbia Comptroller General investigations including powers of subpoena; and
- c) major aspects of the Provincial Control Scheme.

20. UBC is subject to the *Sexual Violence and Misconduct Policy Act* [SBC 2016] c. 23 pursuant to which, *inter alia*, UBC is required to establish and implement a sexual misconduct policy including specified substantive content including that which is reflected in the Minister's "Preventing and Responding to Sexual Violence and Misconduct at British Columbia Post-Secondary Institutions; A Guide For Developing Policies and Actions" and must monitor the efficacy of such policy including participation in reviews of such policy by the Minister and conducting surveys in accordance with directions from the Minister.

21. UBC has, throughout its history and at all material times, received:

- a) one-time, intermittent and annual grants, endowments, assets, money and other funding;
- b) annual exemptions from taxation;
- c) annual tax sharing revenue; and
- d) annual operating and capital grants through the Provincial Crown's budget and fiscal plan, and other funding,

from the Provincial Crown, His Majesty the King in Right of Canada (the "**Federal Crown**"), and from the City of Vancouver (the "**University Funding**") for the purpose of delivering government programs including, for the Provincial Crown, delivering university education and maintaining student safety for which programs the Minister retains responsibility (i.e. accountability) to British Columbia residents. The majority of UBC's annual revenue is obtained, directly or indirectly, from the Provincial Crown, the Federal Crown and the City of Vancouver for such purpose.

22. Through, the Provincial Control Scheme, UBC is subject to ultimate, extraordinary, routine, regular and highly detailed control by the Provincial Crown including over UBC's core function of delivering university education. By the Provincial Control Scheme, the Provincial Crown, in fact, exercises control over every aspect of UBC's assets and operations including:

- a) capital planning, operations and reporting;
- b) financial planning, operations and reporting including tuition and fee controls;
- c) management planning, operations and reporting;
- d) technology;

- e) human resources composition and policies including BOG composition and executive compensation;
- f) degree program offerings and content;
- g) curriculum design and delivery;
- h) student enrollment, safety, and experience;
- i) preparation of students for labour market integration; and
- j) interactions with governmental and non-governmental entities.

23. The broad purposes of the Provincial Control Scheme is to:

- a) ensure universities, including UBC, are accountable to the Provincial Crown, their boards, students and the public to deliver quality and relevant university education; and
- b) ensure the Minister remains accountable to the public for the delivery of university education, including at UBC, through an integrated and coherent university system that meets the priorities and objectives of the Provincial Crown for the benefit all British Columbia residents.

24. The Provincial Control Scheme includes the following major, mandatory requirements which, subject to the contrary allegations set-out herein, were at all material times observed between UBC and the Provincial Crown:

- a) An “**Accountability Framework**” which establishes measures (including performance measures and specifications and reporting responsibilities) to ensure universities, including UBC, remain accountable to the Provincial Crown to meet the objectives of the Provincial Control Scheme including the current priorities and objectives of the Provincial Crown. The Accountability Framework is developed and maintained by the Minister in consultation with universities including regular meetings. The Minister prepares and delivers to universities, including UBC, an annual “Accountability Framework Standards and Guidelines Manual,” which provides universities and Ministry staff guidelines for Institutional Accountability Plan and Report (see paragraph 24(d) below), including specific performance goals and metrics. The Minister provides annual public reports of consolidated performance metrics of the British Columbia university system, including UBC.
- b) The Minister prepares an annual or regular “**Service Plan**” which sets out Provincial Crown priorities, objectives and performance expectations in relation to the delivery of university education and student safety by, *inter alia*, UBC for which programs the Minister retains responsibility. All universities in British Columbia, including UBC, are treated by the Provincial Crown as a sector of government, including in financial reporting.

- c) Consistent with the priorities, objectives and performance expectations set-out in the Minister's Service Plan, and other Provincial Crown priorities, objectives and performance expectations set-out in other ministerial service plans or elsewhere, an annual "**Mandate Letter**" is delivered by the Minister to UBC directing it to comply with such priorities, objectives and performance expectations. The Mandate Letter is signed by the BOG Chair upon resolution of the BOG acknowledging such direction and is posted annually to UBC's website.
- d) An annual "**Institutional Accountability Plan and Report**" prepared with the participation and consent of the Minister, by which universities, including UBC:
  - i) provide a letter from the BOG Chair and the President, confirming they are accountable for the Institutional Accountability Plan and Report;
  - ii) set out their institutional mission, vision and values as well as specific institutional strategic priorities;
  - iii) report to the Minister on institutional performance of the priorities, objectives and performance expectations set out in the preceding Mandate Letter; and
  - iv) set out institutional goals, objectives and outcomes, which must include the priorities, objectives and performance expectations set out in the present Mandate Letter, including the way the institution will monitor performance.
- e) In addition to hundreds of annual communications between the Minister's department and members of UBC's executive and administration, the Minister meets with the BOG Chair and UBC's President at least three times each year to review UBC performance and planning to ensure alignment with Provincial Crown priorities, objectives and performance expectations. Provincial Crown priorities, objectives and performance expectations set out in Mandate Letters to UBC concurrent with or immediately prior to the events herein, and UBC's corresponding Institutional Accountability Plan and Reports included:
  - i) delivering quality, affordable and relevant university education that works well, is improved where needed, and includes quality and timely customer service;
  - ii) delivering university education that meets local, regional or provincial labour market and economic needs including aligning education with the "Provincial Crown's B.C. Economic Plan;"
  - iii) expanding programming aligned with high demand occupations and priority sectors such as technology and health;
  - iv) developing and recognizing flexible learning pathways for students to access university education including engaging with local school districts to expand dual credit opportunities, supporting lifelong learning pathways

across the public postsecondary system, and advancing and supporting open learning resources;

- v) working closely with the Minister to develop a balanced approach to international education;
- vi) complying with the Provincial Crown's caps on tuition and mandatory fee increases;
- vii) adhering to statutory obligations including freezing executive compensation and appropriate compensation decisions that demonstrate a cost-conscious culture achieved through coordinated, well-informed and transparent decision making and adherence to the Provincial Crown's policies, guidelines, and direction regarding executive compensation, including public disclosure obligations and best practice of annual performance reviews for all senior executives;
- viii) implementing tuition-free Adult Basic Education and English Language Learning programs to domestic students, and collaborating with partner organizations to effectively deliver these programs to meet the needs of adult learners;
- ix) improving the educational success of former youth in care who pursue university education, including implementation of the tuition waiver program and other supports;
- x) aligning institutional processes with K – 12 *curriculum* changes to ensure a seamless transition of students entering university education;
- xi) expand technology-related programming and other programs that align with the growing knowledge-based economy;
- xii) expanding co-op and work-integrated learning opportunities for all students and supporting students' awareness of career planning resources;
- xiii) improving student mental health, safety, overall well-being, and the prevention of sexual violence and misconduct, including creating greater awareness of available supports;
- xiv) supporting "true and lasting reconciliation" with indigenous peoples in British Columbia including implementation, within the university's assets and operations, of the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP") and relevant Calls to Action of the Truth and Reconciliation Commission (the "TRC") including:
  - (1) participating in an engagement process with the Minister and indigenous partners to develop a comprehensive post-secondary strategy that responds to the TRC Calls to Action and UNDRIP;

- (2) closing educational and employment gaps between indigenous and non-indigenous Canadians;
- (3) improving indigenous education attainment levels and success rates;
- (4) developing culturally appropriate *curricula*;
- (5) protecting the right to indigenous languages including creating degree programs in indigenous languages;
- (6) respecting and honouring Treaty relationships;
- (7) educating professors and instructors on how to integrate indigenous knowledge and teaching methods into classrooms; and
- (8) compliance with the Provincial Crown's "10 Draft Principles to Guide the Province's Relationship with Indigenous Peoples" which include:
  - a. maintaining the "honour of the Crown" in all dealings with indigenous peoples;
  - b. complying with section 35 Part II of the *Constitution Act*, 1982 or justifying any infringement on a high threshold which includes indigenous perspectives and satisfies the Crown's fiduciary obligations;
  - c. recognition and implementation of indigenous right to self-determination and self-government;
  - d. meaningful engagement with indigenous peoples by securing their free, prior and informed consent to actions which impact them and their rights, including their lands, territories and resources; and
  - e. acknowledging, affirming, and implementing the unique rights, interests and circumstances of indigenous peoples;
- xv) aligning institutional operations with targets and strategies for minimizing greenhouse gas emissions and managing climate change risk in accordance with the Provincial Crown's "2018 CleanBC" climate plan including a target of a 50% reduction in greenhouse gas building emissions;
- xvi) fostering diversity, inclusion and equity including anti-racism and eliminating systemic discrimination in all its forms;
- xvii) ensuring the BOG represents the diversity of British Columbia including seeking out women, visible minorities, indigenous peoples, persons with disabilities, LGBTQ2S+ individuals, and others who may contribute to diversity;

- xviii) adopting the Gender-Based Analysis Plus lens (“GBA+” is an analytical process to analyze the gendered aspects of government policy to assess the different experiences of women and minorities in connection with government policies, programs and initiatives) to all UBC operations to promote equity including in leadership at senior levels;
  - xix) collaborating in digital research and development projects with industries, government ministries, Crown agencies, public institutions and non-governmental organizations;
  - xx) improving access to, participation in, and success in university education with a focus on vulnerable and underrepresented students, and promoting gender parity;
  - xxi) meeting or exceeding the financial targets identified in Service Plans including maintaining balanced or surplus financial results; and
  - xxii) post COVID-19, resuming full on-campus learning and services for students, faculty and staff by fall 2021, following the direction and guidance of the Provincial Health Officer and the Provincial Crown’s “COVID-19 Go-Forward Guidelines for B.C.’s Post-Secondary Sector.”
- f) An annual “**Budget Letter**” delivered by the Minister to UBC setting-out UBC’s annual operating grant and various obligations of UBC to the Provincial Crown, including student enrollment targets in the program of university education.
- g) A “**Degree Quality Assessment**” process by which the Minister, upon the advice of the Degree Quality Assessment Board, authorizes universities to offer and advertise new degree programs and grant degrees in that program which authorizations are subject to Provincial Crown priorities and objectives including necessary workforce training, attracting international students, expanding opportunities for British Columbia students to study abroad, increasing learner choice, promoting a coherent and integrated public post-secondary system, promoting the protection of learners’ interests and ensuring appropriate use of publicly funded student financial assistance.
- h) An “**Education Quality Assurance**” certification program, of which UBC has been certified since 2009, by which the Minister assures students they will receive a minimum standard of educational quality including legislated requirements. The Minister sets and enforces quality assurance standards including by an “**EQA Brand Use Agreement**” entered into by UBC and by enforcing the standards outlined in an “EQA Policy and Procedures Manual.” Maintenance of the certification permits UBC to host international students and charge such students tuition fees for use of public assets (being UBC assets and operations). Tuition from which international student is a major source of UBC revenue. International students are enrolled with reference to the criteria in the

Minister's "Guidelines Respecting International Students at British Columbia Public Post Secondary Institutions."

- i) A "**Capital Asset Management Framework**" by which the Provincial Crown controls UBC capital tracking, planning, investment, maintenance, and dispositions including Ministerial participation and approval of annual "Institutional 5 Year Capital Plans", for which capital plan the Minister retains responsibility to the public and which capital plans form part of overall Provincial Crown capital planning.
- j) An "**Orientation for B.C. Public Post-Secondary Institution Board Members**" setting-out Provincial Crown requirements and expectations on members of the BOG to ensure transparent stewardship of public resources and accountability to the Provincial Crown; and
- k) An "**Implementation Guide Aboriginal Relations Behavioural Competencies**" setting-out staff and faculty training expectations of the Provincial Crown to develop behavioural competencies to improve abilities to work effectively with the indigenous peoples.

25. Pursuant to the Provincial Control Scheme, UBC is instructed and authorized to perform the government programs set out above including the delivery of university education and student safety (the "**University Programs**"). ~~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**").~~

26. 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 in both formal classroom settings and in other UBC managed *fora* (collectively, the "**Educational Freedoms**").

27. With respect to its campus, UBC:

- a) owns, operates and charges occupants fees for the use of utilities including energy, water, sanitation, sewer and waste management;
- b) controls development and building on campus including through the issuance of land use rules, development & building regulations, a development handbook, codes, development and building permits, building and trade permits, and through building inspections and enforcement;
- c) controls private business operations on campus through permits and business licenses to generate licensing fees and the enforcement of UBC's business license regulations;
- d) controls private transportation operations on campus through transportation permits and the enforcement of UBC's "Transportation Network Services Permit Standard Terms and Conditions" and traffic bylaws;



- e) owns and operates various public amenities including public thoroughfares, parks, libraries, museums, galleries and recreation facilities; and
- f) collects property tax which is shared with the City of Vancouver.

28. UBC is government:

- a) by its nature including its assets, structure, powers and functions;
- b) by virtue of the nature and extent of Provincial Crown control over its assets and operations; and
- c) performs a government function, including the delivery of the Government Programs, in which function the Provincial Crown partakes in decision making.

### **C. THE CLUB**

29. 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 Programs; and
- b) allowing other Canadians to enjoy Educational Freedoms as invitees to events hosted at the University.

30. 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.

31. 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**

32. 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 33 below.

33. 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 24 36 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

34. 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**”).
35. The plaintiffs shall refer to the full terms of the Enrollment Contracts at the trial of this action.

## F. UBC POLICIES and PROCEDURES

36. 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.
- f) Such further and other policies and procedures as shall be proven at the trial of this action.

(collectively, the "**Policies and Procedures**")

37. 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

38. 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.
39. 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.
40. 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.
41. 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 the entered and exited the building and causing property damage.
42. 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.
43. 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

44. Andy Ngo ("**Ng**") is an American journalist, author, and social media influencer known for his coverage of ANTIFA.

45. 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, including the Students, to assemble, to express themselves on the issues raised and to interact with Ngo and one another, including to challenge his Ngo’s position.
46. 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.
47. 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.
48. In anticipation of the Ngo Event the Club and its members, including the Students, started planning including booking Ngo and advertising.
49. 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.
50. 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 expression. 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.
51. 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.
52. 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;
  - vi) any consideration of the plaintiffs' contractual and constitutional rights; or
  - vii) 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**").

53. 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

54. 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**").

55. 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 Ono or 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**

56. 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 46 31 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, causing the Club a loss of goodwill and loss of future income as shall be proven at the trial thereof.

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

57. 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 60 below,

(the “**Contractual Breaches**”).

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

- 58. 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**”).
- 59. 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.
- 60. 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

61. 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.
62. 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.
63. 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.
64. 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 \$15,000.00;
    - 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.
65. In the alternative to 64(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

66. 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 Programs.

67. 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**").
68. 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.
69. 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.
70. 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.
71. 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.
72. The Cancellation Decision and Policy Amendment Decision were an unreasonable and unjustifiable violation of the Applicable *Charter* Rights.
73. 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 Programs, without proper consideration to *Charter* rights and proper balancing of those rights against other valid statutory objectives.

#### **O. JUDICIAL INTERVENTION**

74. 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.
75. As alleged above the Club, the Students and UBC all envisioned a contractual relationship with one another.

76. 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**

77. The Cancellation Decision and Policy Amendment Decision were not consistent with the Policies and Procedures for the reasons given at paragraph 40 55, above.

### **II. NATURAL JUSTICE**

78. 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.

79. 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.

80. 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

81. 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

82. 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 UBC is government and subject to the Charter because:
    - i) it has authority to make, impose and sanction infringement of coercive laws of general application and statutory powers of compulsion on and off its campuses (*McKinney v University of Guelph* [1990] 3 S.C.R. 229, *Godbout c Longueuil (Ville)*, [1997] 3 S.C.R. 844, *Pridgen v University of Calgary* 2012 ABCA 139);
    - ii) it is quintessentially government as, effectively, a special-purpose municipality (*Godbout*);
    - iii) its statutory authority is granted to further a government objective (*McKinney*);

- iv) its governing bodies are either appointed by the Provincial Crown or democratically elected by the staff, faculty and students who work, study and live at UBC (*Godbout*);
  - v) it is subject to ultimate, extraordinary, routine, regular and highly detailed control through the Provincial Control Scheme which affects all aspects of UBC's assets and operations including its core functions (*Harrison v University of British Columbia* [1990] 3 S.C.R. 451, *McKinney, Stoffman v Vancouver General Hospital* [1990] 3 S.C.R. 483, *Lavigne v. O.P.S.E.U.* [1991] 2 S.C.R. 211, *Canadian Federation of Students v Greater Vancouver Transportation Authority*, 2009 SCC 31);
  - vi) it delivers a government program being the University Programs with respect to which the Minister retains accountability (responsibility) to the public (*Eldridge v British Columbia (Attorney General)* [1997] 3 S.C.R. 624) or, in the alternative, it is subject to the *Charter* in its delivery of the University Programs.
- g) 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;
- h) 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;
- i) 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



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:



Date: ~~16/12/2022~~ 03/13/2024

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:**

Auditor General Act, [SBC 2003] c. 2

Budget Transparency and Accountability Act, [SBC 2000] c. 23

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

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

Canada Act 1982 (UK), 1982, c 11

Canada Business Corporations Act, RSC 1985

Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being  
Schedule B to the

Court Order Interest Act, RSBC 1996, c. 79

Crown Proceeding Act, RSBC 1996, c. 89

Financial Administration Act, [RSBC 1996] c. 138

Freedom of Information and Protection of Privacy Act, [RSBC 1996] c. 165

Police Act, [RSBC 1996] c. 367

Public Sector Employers Act, [RSBC 1996] c. 384

School Act, [RSBC 1996] c. 412

Sexual Violence and Misconduct Policy Act, [SBC 2016] c. 23

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

University Act, RSBC 1996, c 468

Vancouver Charter, [SBC 1953] c. 55



No. S2210080  
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 THE PROVINCE OF BRITISH COLUMBIA

Defendants

**RESPONSE TO CIVIL CLAIM**

**Filed by:** His Majesty the King in right of the Province of British Columbia  
(the "**Province**").

**Part 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant's Response to Facts**

1. The facts alleged in NONE of the paragraphs of Part 1 of the amended notice of civil claim are admitted.
2. The facts alleged in paragraphs 5, 6-9, 10-14, 16-26, 28, 55-60, 62-68, 70, and 72-82 of Part 1 of the amended notice of civil claim are denied.
3. The facts alleged in paragraphs 1-4, 15, 27, 29-54, 61, 69, and 71 of Part 1 of the amended notice of civil claim are outside of the Province's knowledge.

**Division 2 – Defendant's Version of Facts**

4. In response to paragraph 5 of Part 1 of the amended notice of civil claim, the provincial government is properly designated as His Majesty the King in right of the Province of British Columbia pursuant to s. 7 of the *Crown Proceeding*



*Act*, R.S.B.C. 1996, c. 89. Section 24(1) of the *Charter* does not provide a basis to name the Province as a defendant.

5. In response to paragraph 6 of Part 1 of the amended notice of civil claim, s. 3(2.1) of the *University Act*, R.S.B.C. 1996, c. 468, provides that the University of British Columbia (“**UBC**”) is composed of a chancellor, a convocation, a board, an Okanagan senate, a Vancouver senate, a council, and faculties.
6. In response to paragraph 7 of Part 1 of the amended notice of civil claim, the composition of the board of UBC is prescribed by s. 19 of the *University Act* and includes 21 members. Eleven of those members are appointed by the Lieutenant Governor in Council, two of whom are to be appointed from among persons nominated by the alumni association.
7. In response to paragraphs 7-8, 10-14, 16-26, 28, 51, and 58 of Part 1 of the amended notice of civil claim, the Province does not control UBC’s daily or routine tasks, and UBC does not perform a governmental policy or program when regulating the use of space on campus.
8. In response to paragraphs 55-60, 62-68, 70, and 72-82 of Part 1 of the amended notice of civil claim, the Province:
  - a. is not a party to, and has no knowledge of, the contracts between UBC and the plaintiffs, including the Enrollment Contracts and the Robson Contract (as these terms are defined in the amended notice of civil claim);
  - b. was not involved in, and has no knowledge of, UBC’s Cancellation Decision or UBC’s Policy Amendment Decision (as those terms are defined in the amended notice of civil claim); and
  - c. was not involved in UBC’s Education Freedom Representations (as that term is defined in the amended notice of civil claim).
9. In further response to paragraphs 54-82 of Part 1 of the amended notice of civil claim, these paragraphs improperly contain argument instead of material facts.

### **Division 3 – Additional Facts**

10. N/A.

## **Part 2: RESPONSE TO RELIEF SOUGHT**

11. The Province opposes the granting of the relief sought in ALL of the paragraphs of Part 2 of the amended notice of civil claim.

## **Part 3: LEGAL BASIS**

### **No cause of action against the Province**

12. The amended notice of civil claim lacks material facts or a legal basis to support a cause of action against the Province.
13. There is no factual basis to support any relief against the Province because:
- a. the Province is not a party to the Enrollment Contracts or the Robson Contract, and has no knowledge of them;
  - b. the Province was not involved in the Education Freedom Representations; and
  - c. the Province did not participate in the Cancellation Decision or the Policy Amendment Decision.
14. There is no legal basis to support any relief against the Province, including because: (1) UBC is not part of the apparatus of government; and (2) when UBC regulates the use of space on campus, it is not implementing a government policy or program.
15. The Province does not have the power to manage UBC's affairs, including the administration and control of its property. That power is vested in UBC's board of governors pursuant to s. 27 of the *University Act*, R.S.B.C. 1996, c. 468.
16. Pursuant to s. 48 of the *University Act*, the Province cannot interfere in the exercise of powers conferred upon a university respecting the formulation and adoption of academic policies and standards.

### **No basis to support the plaintiffs' *Charter* claims**

17. The amended notice of civil claim lacks sufficient material facts or a legal basis to support a cause of action against the Province for the alleged breach of the plaintiffs' rights under ss. 2(b) or (c) of the *Charter*.
18. The Province denies that the plaintiffs have been deprived of their rights under ss. 2(b) or (c) of the *Charter*.

19. In the alternative, if the plaintiffs were deprived of their rights under ss. 2(b) or (c) of the *Charter*, which is denied, the Province did not breach the plaintiffs' rights under ss. 2(b) or (c) of the *Charter*, as alleged or at all.
20. In the further alternative, if the Province deprived the plaintiffs of their rights under ss. 2(b) or (c) of the *Charter*, which is denied, then those deprivations were justified under s. 1 of the *Charter*.
21. In the further alternative, the Province denies that damages pursuant to s. 24(1) of the *Charter* are just or appropriate.

***Crown Proceeding Act***

22. In the further alternative, if UBC is owned or controlled by government, which is specifically denied, actions against the Province for a cause of action that is enforceable against a corporation or other agency owned or controlled by government are statute-barred pursuant to s. 3(2)(d) of the *Crown Proceeding Act*. The Province is therefore not a proper defendant to this action.

Defendant's address for service:

Ministry of Attorney General  
Legal Services Branch

Attention: Emily Lapper, Sergio Ortega, and  
Karin Kotliarsky

E-mail for service:

Date: March 22, 2024

*Emily Lapper*

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

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.



S2210080

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

### **NOTICE OF APPLICATION**

**Name of applicant:** The Defendant His Majesty the King in Right of the Province of British Columbia

**To:** The Plaintiffs Noah Alter, Jarryd Jaeger, Cooper Asp, and the Free Speech Club Ltd.

**And to:** The Defendant, the University of British Columbia

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 7/May/2024 at 10:00am for the orders set out in Part 1 below.

The applicant estimates that the application will take one day.

This matter is not within the jurisdiction of an associate judge.

### **Part 1: ORDERS SOUGHT**

1. An order pursuant to R. 9-5(1)(a) striking the amended notice of civil claim as against the defendant, His Majesty the King in Right of the Province of British Columbia, without leave to amend.

2. An order pursuant to R. 9-5(1)(a) dismissing the action against the defendant, His Majesty the King in Right of the Province of British Columbia and removing the Province from the style of cause.
3. Costs.

## Part 2: FACTUAL BASIS

1. The plaintiffs originally filed their notice of civil claim on December 19, 2022, and filed an amended notice of civil claim on March 13, 2024.
2. The defendants to this action are the University of British Columbia ("**UBC**") and His Majesty the King in right of the Province of British Columbia (the "**Province**").
3. The facts giving rise to claim are set out in paragraphs 38-53 of the amended notice of civil claim. In particular, the plaintiffs allege that:
  - a. In November 2019, the plaintiffs planned an event at UBC and entered into a contract with UBC to rent space to host that event at UBC's Robson Square;
  - b. In December 2019, UBC's Vice President Students, Ainsley Carry, directed UBC's Chief Risk Officer, Ron Holton, to cancel the plaintiffs' event (the "**Cancellation Decision**") and directed that all future events with a particular risk assessment would be refused (the "**Policy Amendment Decision**").
4. With respect to the Province, the plaintiffs plead that:
  - a. UBC receives funding from the Province (para. 11); and
  - b. as a result of the "Provincial Control Scheme" (as that term is defined in the amended notice of civil claim), UBC is "by its very nature part of government or, in the alternative, the [Province] functionally controls the delivery of university education at UBC, including, specifically controlling enrollment, programs and manner of delivering programs, staffing, facilities and operations" (para. 12).
5. The plaintiffs further plead and rely on numerous provincial statutes that set out various statutory obligations on the part of UBC, including the *University Act*, R.S.B.C. 1996, c. 468.

6. In Part 2 of the amended notice of civil claim, the plaintiffs seek the following relief against the Province:
  - a. A declaration that the Cancellation Decision and Policy Amendment Decision breached the plaintiffs' rights under s. 2(b) and 2(c) of the *Charter*;
  - b. *Charter* damages; and
  - c. Costs and interest.
7. In Part 3 of the amended notice of civil claim, the plaintiffs allege, in respect of the Province, that UBC is government for the purposes of s. 32 of the *Charter*; that the Cancellation Decision and Policy Amendment Decision constitute infringements of the plaintiffs' rights under ss s. 2(b) and 2(c) of the *Charter*; and that *Charter* damages under s. 24(1) of the *Charter* are a just and appropriate remedy.
8. Additional causes of action and relief are pleaded in respect of the defendant UBC, including breach of contract and deceptive acts and practices.

### **Part 3: LEGAL BASIS**

1. The plaintiffs' claim against the Province ought to be struck in its entirety pursuant to Rule 9-5(1)(a). The amended notice of civil claim discloses no reasonable claim against the Province.
2. In the alternative, any possible claim against the Province in the amended notice of civil claim is barred by s. 3(2)(d) of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

### **The modern approach to R. 9-5**

3. Under R. 9-5(1)(a), a claim will only be struck if, assuming the facts pleaded are true, it is plain and obvious that the pleadings disclose no reasonable cause of action. To put it another way, the claim has no reasonable prospect of success.

*R. v. Imperial Tobacco Canada Ltd.* 2011 SCC 42 at para. 17.

4. The modern approach to R. 9-5 is robust in the sense that the Court can appropriately “resolve complex questions of law”.

*Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at para. 19.

9. A plaintiff is not entitled to rely on the possibility that new facts may turn up as the action progresses. It is incumbent on the plaintiff to plead all of the facts upon which the claim is being made.

*Imperial Tobacco* at para. 22.

10. Speculative assertions are not assumed to be true and may be subjected to skeptical analysis.

*Young v. Borzoni*, 2007 BCCA 16 at paras. 30-32;  
*Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at para. 52.

11. Conclusions of law in the pleading that are not supported by the pleaded facts will be struck.

*Young* at para. 20;  
*Canadian Bar Association v. British Columbia* 2008 BCCA 92  
(leave to appeal refused [2008] S.C.C.A. No. 185) at para. 51.

12. There is no special consideration given under R. 9-5 for *Charter* claims.

*Canadian Bar Association*, at para. 51

### **No cause of action against the Province on the pleadings**

13. The amended notice of civil claim discloses no cause of action against the Province, nor could there be a cause of action against the Province based on the pleaded facts.

### **The *Charter* claims**

14. The only causes of action alleged against the Province are a breach of s. 2(b) and 2(c) of the *Charter*.



15. The conduct alleged to give rise to the *Charter* breaches, namely the Cancellation Decision and Policy Amendment Decision, are, on the face of the pleading, decisions taken by UBC and/or its officials, and not the Province. There is no independent act of the Province alleged to have breached the plaintiffs' *Charter* rights.
16. Rather, the amended notice of civil claim suggests that the Province exercised control over UBC in carrying out its day to day activities, such that UBC was either part of government or functionally controlled by government. Neither assertion is supported at law.
17. In British Columbia, it is settled law that: (1) the Province does not control a university's daily or routine tasks; and (2) when universities regulate the use of space on campus they are not implementing a government policy or program.

*British Columbia Civil Liberties Association, et al. v. University of Victoria, et al.*, 2016 BCCA 162 at paras. 20-21, 26, 32-36, leave to appeal to the SCC dismissed 2016 CanLII 82919 (SCC).

18. In *British Columbia Civil Liberties Association*, the Court of Appeal found that when universities regulate, prohibit, or impose requirements in relation to activities and events on its property, including the allocation of space to students for free expression of ideas, they do not come within the definition of "government" for the purposes of s. 32 of the *Charter*.

*British Columbia Civil Liberties Association* at paras. 32-36.

19. Finally, contrary to the legal assertion plead in Part 1, paragraph 5 of the amended notice of civil claim, s. 24(1) of the *Charter* does not provide an independent basis to name the Province as a defendant. Section 24(1) of the *Charter* is a remedial provision. If the *Charter* does not apply, and/or there are no material facts pleaded to support any breach of the plaintiffs' *Charter* rights by the Province, then the plaintiffs are not entitled to any relief from the Province under s. 24(1).

#### The Crown Proceeding Act

20. In the alternative, if the plaintiffs are correct that UBC is a corporation that is "by its very nature part of government" or "functionally control[led]" by government, which is denied, then this proceeding is statute-barred.

21. Actions against the Province for a cause of action that is enforceable against a corporation or other agency controlled by government are barred pursuant by s. 3(2)(d) of the *Crown Proceeding Act*.

*Vanmackelberg v Insurance Corporation of British Columbia*, 1995 CanLII 1830 (BCSC) at para 22; *Green v. Proline Management Ltd.*, 2017 BCSC 1656 at para 42.

22. To the extent the amended notice of civil claim discloses any viable causes of action, those causes of action are properly enforceable against the defendant, UBC.

#### **Part 4: MATERIAL TO BE RELIED ON**

1. Amended notice of civil claim, filed March 13, 2024.
2. Such further materials as counsel may advise and this Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on the person,
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: March 22, 2024

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

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

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of this notice of application

☐ with the following variations and additional terms:

.....

.....

.....

Date: .....[dd/mmm/yyyy].....

Signature of ☐ Judge ☐ Associate Judge

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**APPENDIX**

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

**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☒ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above

This **NOTICE OF APPLICATION** is prepared by Emily Lapper, Barrister & Solicitor, of the Ministry of Attorney General, whose place of business and address for service is [REDACTED]

[REDACTED] Facsimile: [REDACTED]  
[REDACTED]



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

---

**NOTICE OF APPLICATION**


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Names of applicants: Noah Alter, Jarryd Jaeger, Cooper Asp, and the Free Speech Club Ltd.

To: The University of British Columbia and His Majesty the King in Right of British Columbia

TAKE NOTICE that an application will be made by the applicants to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on 7/May/2024 at 10:00 am for the order set out in Part 1 below.

The applicants estimate that the application will take 30 minutes.

☐ This matter is within the jurisdiction of an associate judge.

☒ This matter is not within the jurisdiction of an associate judge.<sup>1</sup>

<sup>1</sup> Rule 8-1(18)

## PART 1: ORDER(S) SOUGHT

1. An Order pursuant to Rule 6-1(1) granting leave for the plaintiffs to amend the amended notice of civil claim, filed March 13, 2024 (“**NCC**”) in the event this Honourable Court finds the pleading contains impermissible conclusions of law.
2. An order that no costs be awarded for or against the plaintiffs whatever the outcome of the application, given the public interest in the outcome of these proceedings.
3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

## PART 2: FACTUAL BASIS

4. The plaintiffs filed their notice of civil claim on December 19, 2022, and filed the NCC on March 13, 2024.
5. The defendants in this action are the University of British Columbia (“**UBC**”) and His Majesty the King in Right of British Columbia (the “**Crown**”).
6. The Crown filed its response to the NCC on March 22, 2024.
7. The Crown filed a notice of application (the “**NOA**”) to strike the NCC as against the Crown, *in toto*, on March 22, 2024. The Crown has not applied to strike any discrete portion of the pleadings; it has only applied to strike the NCC as against the Crown, *in toto*. It provides no particulars of any discrete portions of the NCC which ought to be struck. On the basis of the NOA, the plaintiffs have submitted it would be improper to strike any discrete portions of the NCC. Out of an abundance of caution, the plaintiffs are applying for leave to amend the NCC in the event this Honourable Court finds the pleading contains impermissible conclusions of law and orders portions struck.
8. Given the uncertain nature of the Crown’s NOA, the within application is broad and no draft amendment can be provided.

## PART 3: LEGAL BASIS

9. The plaintiff seeks leave to amend the NCC pursuant to Rule 6-1(1).  

*Rule 6-1(1)*
10. Pleadings may contain conclusions of law if they are supported by pleaded facts. The NCC is compliant with this rule.  

*Rule 3-7(9)*

11. When considering R 6-1(1) applications, the court must first determine whether a new cause of action is raised. When amending an originating document, the “cause of action” means such facts to be proven to support the plaintiff’s right to the judgement of the court. A new cause of action does not arise merely because there is a new pleading or alternative remedy or a new characterization of a wrong from the same factual basis.

*Swiss Reinsurance Company v. Camarin Limited*, 2018 BCCA 122, para 31.

*Taylor v. Blenz The Canadian Coffee Company Ltd.*, 2019 BCSC 906, para 36.

12. In the current application, the plaintiffs merely seek leave to amend their pleadings should this Honourable Court strike portions for containing impermissible conclusions of law. The purpose of the amendment is merely to correct technical deficiencies – not to raise new causes of action.
13. Where there is no new cause of action, the courts have adopted a generous approach to granting leave. Amendments should be granted liberally in order to enable the real issues to be determined and tried. The overriding consideration is the interests of justice generally and to direct what is just and convenient between the parties.

*Langret Investments S.A. v McDonnell*, 1996 CarswellBC 544 (BCCA), para 42-44.

*Continental Steel Ltd. v. CTL Steel Ltd.*, 2014 BCSC 104, para 26

14. Amendment will not be allowed where it is “plain and obvious” or “absolutely beyond doubt” that it discloses no reasonable cause of action. However, all doubts on the facts or the law should be resolved in favour of allowing the amendment and proceeding to trial. Courts should only disallow an amendment as a last resort. For the reasons given in the plaintiffs’ application response, being filed herewith, the plaintiffs submit the amendments disclose a reasonable cause of action.

*Plumrose Inc. v A & A Foods Ltd*, 1996 CarswellBC 1916 (SC)

*Forliti (Guardian ad litem of) v Wolley*, 2003 BCSC 1082, para 13

*Jones, McNaughton, Innoventure S & K Holdings Ltd et al v Innoventure (Tri-Cities) Holding Ltd et al*,  
2006 1567.

15. A court can refuse leave to amend if such an amendment will prejudice a party. A mere negative effect on a party is insufficient to demonstrate prejudice. A party must show that its ability to respond has been negatively affected before it can claim prejudice.

*Bel Mar Developments Inc. v North Shore Credit Union*, 2001 CarswellBC 780 (BCSC) at para 9

16. Some examples of prejudice that the courts have found include:
  - a. destruction of documents that could have been important evidence in defence of a proposed claim;
  - b. faded memories and aging witnesses; and
  - c. death of a witness.

*287993 B.C. Ltd. v. Nanaimo (Regional District), 2006 BCSC 786, para 25*  
*Casa Roma Pizza, Spaghetti & Steak House Ltd. v. Gerling Global General Insurance Co.,*  
*1994 CarswellBC 102 (BCCA), paras 54-58.*

17. There is no prejudice to the defendants by these proposed amendments. The amendments are to address any parts of the NCC that this Court may strike for technical deficiency. They do not in any way affect the ability of the defendants to respond. The factual nexus is already known to the defendants through the NCC. Nothing wholly new is being added.

#### **PART 4: MATERIAL TO BE RELIED ON**

18. Amended notice of civil claim, filed March 13, 2024.
19. Notice of application of the Crown, filed March 22, 2024.
20. Application response of the plaintiffs, to be filed herewith.
21. Such further materials as counsel may advise and this Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- a. file an application response in Form 33,
- b. file the original of every affidavit, and of every other document that
  - i. you intend to refer to at the hearing of this application, and
  - ii. has not already been filed in the proceeding, and
- c. serve on the applicant 2 copies of the following and on every other party of record one copy of the following:
  - i. a copy of the filed application response;



- ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

April 5, 2024

Date



Signature of Glenn Blackett, lawyer for applicants

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

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this notice of application

[ ] with the following variations and additional terms

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

Date: ..... [dd/mm/yyyy].....

.....  
 Signature of [ ] Judge [ ] Associate Judge

**APPENDIX****THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☒ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

This **NOTICE OF APPLICATION** is prepared by Glenn Blackett, Barrister, of Blackett Law, whole place of business and address for service is [REDACTED]

[REDACTED].



**Form 33 (Rule 8-1 (10) )**

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

---

**APPLICATION RESPONSE**

---

**Application response of:** The Plaintiffs, Noah Alter, Jarryd Jaeger, Cooper Asp, and The Free Speech Club Ltd., (the “application respondents”)

THIS IS A RESPONSE TO the Notice of Application of the Defendant, His Majesty the King in Right of the Province of British Columbia, filed March 22, 2024.

The application respondents estimate that the application will take one day.

**PART 1: ORDERS CONSENTED TO**

The application respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

None

## PART 2: ORDERS OPPOSED

The application respondents oppose the granting of the orders set out in paragraphs

1, 2 and 3

of Part 1 of the notice of application.

## PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents take no position on the granting of the orders set out in paragraphs

None

of Part 1 of the notice of application.

## PART 4: FACTUAL BASIS

### A. Fundamental Shift in Government Control

1. Almost 35 years ago La Forest J., writing for the Supreme Court of Canada (the “**SCC**”), found that universities, including The University of British Columbia (“**UBC**”), were not “government” entities within the meaning of s. 32(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982 (the “**Charter**”). The Honourable Justice continued:

*My conclusion is not that universities cannot in any circumstances be found to be part of government for the purposes of the Charter, but rather that the appellant universities are not part of government given the manner in which they are presently organized and governed.* [emphasis added]

*McKinney v. University of Guelph, [1990] 3 S.C.R. 229 (“**McKinney**”), para 46*

2. Since that series of decisions, the manner and degree of control exercised by His Majesty The King in Right of British Columbia (the “**Crown**”) over UBC, and UBC’s delivery of Crown programs has fundamentally shifted and increased.

*Amended Notice of Civil Claim, filed March 13, 2024 (the “**NCC**”) para 13*

3. UBC is now subject to routine, regular and highly detailed control by the Crown through a “**Provincial Control Scheme**” which affects all aspects of UBC’s assets and operations including:
  - a. all of its core functions;
  - b. its staff, faculty, and executive including composition (including promoting racial and gender equity), contract negotiation, compensation, policies and conduct;

- c. its primary governing body, the Board of Governors (the “**Board**”), including its composition (including promoting racial and gender equity), conduct and objectives;
- d. *curriculum* design and delivery;
- e. student enrollment, tuition and fees, safety, mental health and experience;
- f. its relationship with indigenous peoples including faculty training;
- g. its relationship with other public sector entities; and
- h. its capital planning, investment, maintenance and dispositions.

*NCC paras 7-25*

4. By the Provincial Control Scheme:

- a. The Minister of Post-Secondary Education and Future Skills (the “**Minister**”) provides annual directions to UBC (by way of annual “**Mandate Letter**”, “**Budget Letter**” and other communications) to comply with designated Crown priorities, objectives and performance expectations in its delivery of programs including undergraduate university education and student safety and mental health. UBC must, upon annual Board resolution, have its Chair (the “**Chair**”) sign the Mandate Letter acknowledging such directions and must post it to UBC’s website.

*NCC paras 24(c) and (f)*

- b. With the participation and consent of the Minister, UBC prepares an annual “**Institutional Accountability Plan and Report**” which sets out UBC’s goals, objectives and outcomes, which must include the priorities, objectives and performance expectations set out in the Mandate Letter (including the way UBC will monitor its performance) and which reports on UBC’s performance of the priorities, objectives and performance expectations set out in the preceding Mandate Letter. It includes a letter from the Chair and UBC’s President to the Minister confirming they are accountable for same.

*NCC paras 24 (d)*

- c. The Minister meets regularly with the Chair and UBC’s President to review UBC’s performance and planning to ensure alignment with Provincial Crown priorities, objectives and performance expectations.

*NCC para 24(e)*

- d. UBC must align its assets and operations with the Crown's economic plans and environmental plans.

*NCC paras 24(e)(ii) and 24(e)(vx)*

- e. UBC must maintain the "honour of the Crown" in all dealings with indigenous peoples, comply with section 35 Part II of the *Constitution Act*, 1982, and satisfy the Crown's fiduciary obligations towards indigenous peoples.

*NCC paras 24(e)(xiv)(8)a and b*

- f. UBC must foster diversity, inclusion and equity including anti-racism and eliminating systemic discrimination in all its forms and must adopt a "Gender-Based Analysis Plus" process to analyze the gendered aspects of its policies and programs to assess the different experiences of women and minorities.

*NCC paras 24(e)(xvi)*

- g. UBC delivers various programs including university education and student safety and mental health, for which programs the Crown (as represented by various ministers including the Minister) retains responsibility to British Columbia residents.

*NCC paras 11, 22, 23, 24 and 25*

- 5. UBC operates very much like an order of government within its geographic area. While the majority of the Board is appointed by the Lieutenant Governor in Council, the balance of the Board (and UBC's Vancouver Senate, UBC's primary academic governing body for its campuses in and near Vancouver) is either appointed by the Board itself or is elected by local electors being:

- a. faculty, all of whom are appointees of the Board;
- b. students; or
- c. staff, all of whom are appointees of the Board, who work or study at UBC.

*NCC 7 and 8*

- 6. The Crown's annual financial information and budgets treat UBC's capital, assets, tuition fees and expenses as capital, assets, income and expenses of the Crown. In many other respects provincial legislation does not differentiate between UBC and government.

*NCC 14, 16, 17, 18(a), 19 and 20*

- 7. UBC has the power to penalize and fine; has powers of expropriation and is exempt from expropriation; is exempt from taxation; collects property tax; is exempt from civil liability; operates utilities; operates a system of development and building regulation; licenses businesses and transportation; promulgates and enforces traffic bylaws; and

owns and operates various public amenities including public thoroughfares, parks, libraries, museums, galleries and recreational facilities.

*NCC 7, 8, 14 and 27*

## B. The Plaintiffs and Relevant Events

8. UBC represents itself as a “university” offering an education characterized by freedoms of inquiry and expression (“**Educational Freedoms**”).

*Amended Notice of Civil Claim, filed March 13, 2024 (the “NCC”) paras 26, 32 and 33*

9. The corporate plaintiff, The Free Speech Club Ltd. (the “**Club**”), was incorporated and operated for the purpose of allowing UBC students and other Canadians to enjoy Educational Freedoms at UBC.

*NCC paras 1 and 29*

10. The individual plaintiffs, Noah Alter, Jarryd Jaeger, and Cooper Asp (the “**Students**”) enrolled at UBC in the belief they would enjoy Educational Freedoms there and became involved with the Club as a means of exercising such Educational Freedoms.

*NCC paras 2 – 4 and 61*

11. For the purpose of exercising their Education Freedoms, the Club and Students organized and planned to attend a January 29, 2020, speaking event at UBC’s Robson Square campus, involving American journalist Andy Ngo. The event was cancelled by UBC purportedly for reasons of safeguarding the emotional and psychological safety of the campus community.

*NCC paras 45 – 53*

12. The plaintiffs allege UBC is government and is delivering relevant government programs (including university education and student safety and mental health) such that it is “government” within the meaning of s. 32(1) of the “*Charter*”. The plaintiffs further allege that UBC’s cancellation of the event constituted a breach of their rights under sections 2(b) and 2(c) of the *Charter* for which a declaration and *Charter* damages is appropriate.

*NCC paras 24, 25, 28, 66 – 72*

13. The NCC includes various allegations of peripheral relevance to the within application including: breach of contract; compensable “deceptive acts or practices” under the *Business Practices & Consumer Protection Act*, SBC 2004, c. 2; and common law rights akin to judicial review.

*NCC paras 56 to 82*

## PART 5: LEGAL BASIS

14. The applicant reasonably summarizes parts of the test under Rule 9-5(1)(a) at paras 3, 4, 9 and 10 of its notice of application (the “**NOA**”) however:

- a. Only if the action is certain to fail because it contains a radical defect should the claim be struck.

*Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263 (S.C.C.), para 15*

- b. The plaintiffs do not rely on the possibility of new facts arising, as suggested at paragraph 9.
- c. “Speculative assertions” means factual allegations which are either admitted to be speculation with no apparent means of obtaining their proof, facts otherwise known to be false, or facts which are inherently incapable of evidentiary proof. Courts should apply this rule with “great caution.” The applicant’s authorities are based on extraordinary fact scenarios involving, effectively, vexatious litigants. There are nothing “speculative” in the NCC pursuant to this narrow rule.

*Young v. Borzoni, 2007 BCCA 16 (“Young”), paras 30 and 34*

*Anderson v. Double M Construction Ltd. 2021 BCSC 1473, para 53*

*Olenga v. British Columbia, 2015 BCSC 1050*

- d. A pleading may contain a conclusion of law supported by pleaded facts. The NCC is compliant with this rule. The applicant has not applied to strike any discrete portion of the pleadings, it has only applied to strike the NCC as against the Crown, *in toto*. It provides no particulars of any discrete portions of the NCC which ought to be struck. On the basis of the NOA, the plaintiffs submit it would be improper to strike any discrete portions of the NCC. Out of an abundance of caution, the respondent is applying concurrently herewith for leave to amend the NCC in the event this Honourable Court finds the pleading contains impermissible conclusions of law and orders portions struck.

*Rule 3-7(9), NOA paras 1 and 2*

- e. A claim should not be struck under Rule 9-5(1)(a) because it is lengthy, complex, novel or because the defendant appears to have a strong defence – “actions that yesterday were deemed hopeless may tomorrow succeed.”

*Young, para 19*

*Knight v. Imperial Tobacco Canada Ltd., 2011 SCC 42, para 21*

*Paradis Honey Ltd. v. Canada (Attorney General), 2015 FCA 89, para 117*



- f. Contrary to paragraph 12 of the NOA, “there is a particular need for generous reading [of pleadings] in constitutional or *Charter* litigation.”

*Canadian Bar Assn. v. British Columbia*, 2008 BCCA 92, para 12

15. Contrary to paragraphs 16 and 17 of the NOA, only the *ratio decidendi* of a case binds a court through the principle of *stare decisis* - findings of fact are not binding. The applicants rely on the *ratio decidendi* of the three 1990’s SCC cases (the “**University Cases**”) which determined that UBC and the University of Guelph were not, at that time and on the evidence before the SCC, “government” entities (or, “government *per se*”). According to the principles established in the University Cases, and the existing relationship between the Crown and UBC, UBC is “government” *per se*.

*Cameron v. Canadian Pacific Railway*, [1918] 2 W.W.R. 1025, paras 4 and 5

*Halsbury’s Laws of England*, vol. 26, § 573

See: *McKinney*, para 46

*Harrison v. University of British Columbia* [1990] 3 S.C.R. 450 (“**Harrison**”)

*Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570 (“**Douglas**”)

*R v Couture*, 2007 SCC 28, para 21

*Carom v Bre-X Minerals Ltd*, 2010 ONSC 6311, para 32

16. In the alternative, a court may depart from *stare decisis* if a new legal issue is raised or there is a significant change in circumstance or evidence that fundamentally shifts the parameters of debate. The University Cases were based on the circumstances prevailing at that time and on the evidence before the Court. As alleged in the NCC, things have significantly changed in the intervening 35 years.

*Bedford v. Canada (Attorney General)* 2013 SCC 72, para 44

*Carter v Canada (Attorney General)*, 2015 SCC 5, para 44

*R v Comeau*, 2018 SCC 15

17. In a case more recently put to the British Columbia Court of Appeal on the topic, decided on the evidence before that Honourable Court, the applicant admitted the respondent university was not government, raised different *Charter* issues than those raised in the NCC, and provided no evidence and made no argument as to circumstances differing from those present in the University Cases as to question of whether the University of Victoria was government *per se*. The Honourable Court relied exclusively on the University Cases, even when applying more recent SCC precedent (i.e. *Eldridge v British Columbia (Attorney General)* [1997] 3 S.C.R. 624 (“**Eldridge**”).

*BC Civil Liberties Assn v University of Victoria*, 2016 BCCA 162 (“**UVic**”), paras 6, 21-26, 32-34, 36

18. Courts must guard against the Crown evading constitutional duties by delegating governmental activity to third parties or by claiming that government activity is “commercial” or “private.”

*Eldridge, paras 40 and 42*

*Godbout c Longueuil (Ville), [1997] 3 S.C.R. 844 (“**Godbout**”), para 48*

*R. v. Buhay, 2003 SCC 30, para 31*

19. An entity will be “government” within the meaning of s. 32(1) of the *Charter* on one of two bases. First, the entity may be found to be part of government *per se*. Courts have applied various criteria to determine whether an entity is government *per se* including:

- a. the degree to which an entity is controlled by government;

*McKinney, paras 40 and 41*

*Harrison, para 56*

*Douglas, paras 37 and 49*

*Stoffman v. Vancouver General Hospital, [1990] 3 S.C.R. 483 (“**Stoffman**”), paras 96, 102 and 105*

*Eldridge, para 44*

*Canadian Federation of Students v GVTA, 2009 SCC 31 (“**GVTA**”), paras 20 and 21*

*Lavigne v. O.P.S.E.U., [1991] 2 S.C.R. 211 (“**Lavigne**”), para 220*

*UVic, para 26*

- b. whether the entity pursues the objectives of government or merely its own objectives;

*McKinney, paras 30, 31, 35, 36 and 41*

*Stoffman, para 104*

*Lavigne, para 220*

*Godbout, para 47*

*Eldridge, para 35*

*UVic, paras 23-26*

- c. whether the entity is possessed of quintessentially governmental features including: democratic representation; community governance within a defined jurisdiction; power to promulgate laws and bylaws; powers of enforcement including penalties and fines; and taxation.

*GVTA, paras 18 and 19*

*Godbout, para 51*

20. Second, a private entity may be “government” under s. 32(1) of the *Charter* to the extent it performs an activity that can be “ascribed to government”, such as a

governmental program or policy, whether or not the entity retains discretion as to the manner of its performance.

*McKinney*, para 36

*Harrison*, para 67

*Lavigne*, para 221

*Eldridge*, paras 32, 33 and 44

*Zaki v University of Manitoba* 2021 MBQB 178, para 167

21. On the basis of the tests outlined in the above cases, UBC is “government” under s. 32(1) of the *Charter*.
22. Unlike private law damages, an action for public law damages under section 24(1) of the *Charter* lies against “the state” and not against “individual actors.” In the event UBC is found to be “government” under section 32(1) of the *Charter* (but not “the state”) the plaintiffs claim for public law damages lies only against the Crown and not against UBC.

*Ward v Vancouver (City)*, [2010] 2 S.C.R. 28 (“**Ward**”), para 22

23. Section 3(2) of the *Crown Proceeding Act*, RSBC 1996, c 89 requires that an action name a corporation owned or controlled by the Crown, and not the Crown, where the cause of action is “enforceable against the corporation.” Given *Ward*, the plaintiffs’ cause of action for public law damages is not enforceable against UBC unless it is “the state” – regardless of the basis upon which UBC may be found to be “government” under section 32(1). Presumably, if UBC is found to be “government” *per se* for the purpose of section 32(1), it will also be “the state” for the purpose of *Ward*.
24. Contrary to the proposition at paragraph 19 of the NOA (for which no authority is provided), *Ward* requires that an action name the state not individual actors.
25. Contrary to the relief claimed at Part 1 paragraph 2 of the NOA, if the NCC is struck against the Crown under Rule 9-5(1)(a) there is no remaining claim against the Crown to “dismiss” under that Rule. Nor is there authority under Rule 9-5(1) to “dismiss” a claim independent of an order striking a relevant pleading.

### **Costs**

26. Whatever the outcome of the Crown’s application, the plaintiffs do not seek costs given the public interest in the outcome of these proceedings.

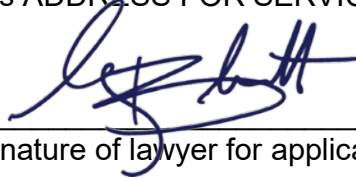
**PART 6: MATERIAL TO BE RELIED ON**

1. Amended Notice of Civil Claim, filed March 13, 2024
2. Such further materials as counsel may advise and this Honourable Court may permit.

☒ The application respondents have filed in this proceeding a document that contains the application respondent's address for service.

☐ The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

Date: 2024-04-05

A handwritten signature in blue ink, appearing to read 'Glenn Blackett', is written over a horizontal line.

Signature of lawyer for application respondents  
Glenn Blackett

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.

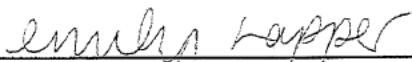
2. The Court should not grant the plaintiffs leave to amend the AN OCC because:


- 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 for service is 



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**

**APPLICATION RESPONSE**

**APPLICATION RESPONSE OF:** The defendant University of British Columbia ("UBC")

THIS IS A RESPONSE to the notice of application of the plaintiffs filed April 5, 2024.

The application respondent estimates that the application will take 20 minutes.

**Part 1: ORDERS CONSENTED TO**

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: NONE

**Part 2: ORDERS OPPOSED**

The application respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: ALL

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The application respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: NONE



## Part 4: FACTUAL BASIS

### A. Overview

1. The plaintiffs bring this application under Rule 6-1 seeking a right to further amend their amended notice of civil claim based on an outcome that is speculative. Such an application is not permissible under the Supreme Court Civil Rules (the “Rules”).

### B. Procedural History

#### ***Multiplicity of Proceedings***

2. The plaintiffs commenced this action on December 19, 2022 after they had already commenced a petition proceeding against UBC on July 10, 2020 in respect of the same matter.
3. UBC intended to bring an application to strike the petition proceeding because it did not comply with the Rules and, if the petition proceeding was not struck, an application to strike this action because of the multiplicity of proceedings, which is an abuse of process.

Affidavit #1 of Robyn Press made April 16, 2024 (“**Press Affidavit**”) at  
Exhibit A, p 1, para 2

4. The plaintiffs advised that it would proceed with this action and “abandon the claims for public law remedies under the [*Judicial Review Procedure Act*]” (that is, abandon the petition proceeding).

Press Affidavit at Exhibit B, p 3, para 2

5. The petition proceeding has not been discontinued by the plaintiffs.
6. UBC has advised the plaintiffs that it will not file a response to civil claim in this action until the plaintiffs discontinue the petition, as they said they would.

Press Affidavit at Exhibit C, p 6, para 3

#### ***The Province’s Application to Strike and Plaintiffs’ Amendment Application***

7. The plaintiffs amended their notice of civil claim on March 13, 2024.

8. His Majesty the King in Right of British Columbia (the "**Province**") brings an application under Rule 9-5(1)(a) to have this action struck, without leave to amend, and dismissed against the Province.
9. Despite the Province seeking to have the entire action struck for disclosing no reasonable claim, rather than certain parts of the amended notice of civil claim, the plaintiffs "Out of an abundance of caution...are applying for leave to amend the [amended notice of civil claim] in the event this Honourable Court finds the pleading contains impermissible conclusions of law and orders portions struck."

Notice of application filed March 22, 2024 at Part 2, para 7

10. The plaintiffs have not provided a proposed further amended notice of civil claim.

Notice of application filed March 22, 2024 at Part 2, para 8

### **C. Funding of the Litigation**

11. In the course of this litigation, the plaintiffs made a costs proposal to UBC in which plaintiffs' counsel wrote that he would "be able to assure payment" should UBC need to apply for costs.

Press Affidavit at Exhibit B, p 4, para 1

12. UBC has asked the plaintiffs, on several occasions, whether the Justice Center for Constitutional Freedoms was funding and would be paying any costs in this litigation.

Press Affidavit at Exhibit A, p 1-2; Exhibit C, p 6, para 5

13. The plaintiffs have not responded to UBC's question about the Justice Center for Constitutional Freedoms.

Press Affidavit at Exhibit A, p 1-2; Exhibit C, p 6, para 5

## **Part 5: LEGAL BASIS**

### **A. Amending Pleadings**

14. UBC relies on Rules 6-1, 8-1, and 14-1 of the Rules.
15. Rule 6-1 of the *Supreme Court Civil Rules* sets out:

(1) Subject to Rules 6-2 (7) and (10) and 7-7 (5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,

(a) once without leave of the court, at any time before service of the notice of trial,[...]

16. UBC cannot respond to, and this Court cannot assess, whether an amendment should be permitted without the plaintiffs having identified their proposed amendments.

17. This application is premature and a waste of the Court's time. The application must fail.

#### **B. Costs**

18. UBC seeks costs under Rule 14-1 of the Rules.

19. The plaintiffs should not be shielded from an adverse costs award. This matter is a dispute amongst private parties—not one of public interest.

*Servatius v Alberni School District No 70*, 2022 BCCA 421 ("**Servatius**") at para 259

20. Even if there is a public interest element, this Court should not depart from the usual costs order because plaintiffs' counsel has previously assured UBC and the Province that if costs were awarded against its clients, they would be paid.

Press Affidavit at Exhibit B, p 6, para 1  
*Victoria (City) v Adams*, 2009 BCCA 56 at paras 185-186

21. Further, if a party seeks to avoid the ordinary costs rules on the basis that the litigation is public interest litigation and the named parties cannot afford costs, the court must know who is truly financing the litigation. Here, the plaintiffs have not responded to the question of whether the Justice Center for Constitutional Freedoms is funding this litigation and would be paying any costs award.

*Servatius* at paras 256-259, 274, 276



**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Robyn Press made April 16, 2024.
2. Amended notice of civil claim filed March 13, 2024.
3. Such further and other materials as counsel may advise and this Court permits.

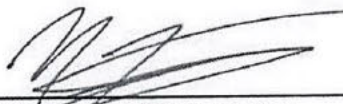
The application respondent has not filed in this proceeding a document that contains the application respondent's address for service. The application respondent's address for service is:

Harris & Company LLP  
Barristers and Solicitors

[REDACTED]

[REDACTED]

Dated: 16 April 2024

  
For: Signature of lawyer for  
University of British Columbia,  
Rodney W. Sieg and Hubert Lai, KC

Order will be submitted when available

Costs Order will be submitted when available

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Alter v. The University of British Columbia*,  
2024 BCSC 961

Date: 20240604  
Docket: S2210080  
Registry: Vancouver

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

Before: The Honourable Justice Greenwood

### Reasons for Judgment

Counsel for the Plaintiffs:

G. Blackett

Counsel for the Defendant, His Majesty the  
King in Right of British Columbia:

K. Kotliarsky  
E. Lapper  
S. Ortega

Counsel for Defendant, The University of  
British Columbia:

N. Tzemis

Place and Date of Hearing:

Vancouver, B.C.  
May 7-8, 2024

Place and Date of Judgment:

Vancouver, B.C.  
June 4, 2024

[1] This is an application under Rule 9-5(1)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 to strike an action against the Province on the basis that the amended notice of claim discloses no reasonable cause of action. The plaintiffs' claim against the Province is based on their position that the *Canadian Charter of Rights and Freedoms* applies to the University of British Columbia.

[2] The background of the application is that in November of 2019, one of the plaintiffs, the Free Speech Club, entered into a contract with the University of British Columbia ("UBC") to rent space at Robson Square, and invited Andy Ngo to speak on the topic of "ANTIFA violence". Ultimately, for reasons that may be disputed, UBC's vice-president of students directed that the event be cancelled. The stated reason for the cancellation taken from plaintiffs' notice of civil claim was "concern about the safety and security of our campus community". UBC's chief risk officer directed staff at Robson Square to return the club's deposit and the event was cancelled.

[3] The plaintiffs have launched an action against both UBC and the Province. As against UBC, the plaintiffs seek damages for breach of contract, a declaration that the cancellation decision breached their *Charter* rights and damages as a remedy for *Charter* breaches. The claim against the Province relates solely to the alleged breaches of the *Charter* and includes damages under s. 24(1) of the *Charter*.

[4] There is no dispute on the facts that all of the decision makers involved in the decision to cancel the event were staff members of UBC. Neither the Province nor any of its employees had any direct involvement or knowledge of the events that led to the decision cancel the speech.

[5] For the reasons that follow, I would grant the application. In my view, the plaintiffs cannot succeed against the Province based on the facts or the law. The substantive claim that the *Charter* applies to the actions of UBC is not legally sustainable in light of the authorities. Even if that argument were sustainable, there are no material facts that establish a valid cause of action against the Province as a defendant. If the plaintiffs' claim were valid and enforceable against UBC, then a



proceeding against the Province for the same cause of action would also be barred by statute.

### **Legal Framework**

[6] The test for striking out a claim is not in dispute. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. In other words, if the claim has no reasonable prospect of success. A court's approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. Actions that yesterday were deemed hopeless may tomorrow succeed. (*Nevsun Resources v. Araya*, 2020 SCC 5 at paras. 64 and 66; and *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at paras. 17 and 21).

### **The Plaintiffs' position**

[7] The plaintiffs agree that there was no direct involvement of the Province or staff members of the Province in the events that gave rise to cancellation of the speaking event at Robson Square. They argue however, that it is necessary to name the Province in the lawsuit to secure damages for any breach of the *Charter*.

[8] The plaintiffs' main argument is that the *Charter* applies to UBC because UBC is properly considered part of the government of the Province under s. 32 of the *Charter*. They face strong headwinds as a result of cases like *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, [1990] S.C.J. No. 123, which found that UBC was not subject to the *Charter*, and *BC Civil Liberties Association v. University of Victoria*, 2016 BCCA 162 ("*UVIC*"), which applied *Harrison*, and found that the question of whether the University of Victoria should be regarded as equivalent to government for all purposes was settled as a result of *Harrison* which remains good law (para. 21).

[9] The plaintiffs contend that both the factual and legal basis of their argument on the application of the *Charter* to UBC is different than the facts and arguments that led to the results in *Harrison* and *UVIC*.

[10] The plaintiffs further argue that it is necessary to pursue a claim against the Province because of the nature of damages as a remedy for a breach of the *Charter*. According to the plaintiff, the decision in *Vancouver (City) v. Ward*, 2010 SCC 27, requires the “state” to compensate an individual for a breach of that individual’s constitutional rights. The plaintiffs’ position is that the most reasonable way to interpret “the state” is simply as the Crown, and that therefore the Province is properly named as a defendant. In essence, the plaintiffs maintain that the Province is liable as a result of the actions of UBC and its officials.

### **Issues**

[11] I would describe the issues that need to be determined as follows:

- a) Is the plaintiffs’ claim bound to fail as a matter of law?;
- b) Do the material facts support the plaintiffs’ claim that the Province breached their *Charter* rights?;
- c) Does the issue of remedy alone give rise to a valid cause of action against the Province?; and
- d) Does the *Crown Proceeding Act*, RSBC 1996, c. 89, bar the action against the Province?

### **Analysis**

#### ***Is the plaintiffs’ claim bound to fail as a matter of law?***

[12] The first question that arises is whether the plaintiffs’ claim against the Province is bound to fail as a matter of law. In this respect, it is noteworthy that the amended notice of claim against UBC includes a claim for damages for breach of contract, injunctive relief and relief based on private law, whereas the claim against the Province is solely based on *Charter* Grounds.

[13] In *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, [1990] S.C.J. No. 122, a majority of the Court held that Ontario universities were not part of

“government” for the purposes of s. 32 of the *Charter*. At issue were the universities’ rules related to mandatory retirement. After recognizing earlier case law to the effect that universities, while they are incorporated by statute and subsidized by public funds, enjoy “substantial internal autonomy”, LaForest J. stated at p. 269:

...there is no question of the power of the universities to negotiate contracts and collective agreements with their employees and to include within them provisions for mandatory retirement. These actions are not taken under statutory compulsion, so a *Charter* attack cannot be sustained on that ground. There is nothing to indicate that in entering into these arrangements, the universities were in any way following the dictates of the government. They were acting purely on their own initiative. Unless, then, it can be established that they form part of government, the universities’ actions here cannot fall within the ambit of the *Charter*...

[14] In *Harrison*, the Supreme Court of Canada specifically considered the *University Act*, RSBC 1996, c 468, which is the governing legislation in British Columbia, but found that the differences between the *University Act* and the legislation at issue in *McKinney* did not change the result. At p. 463-464, LaForest J. provided the following reasons for the majority:

The facts, issues and constitutional questions being similar to those considered in *McKinney v. University of Guelph*, supra, it follows that the present appeals are governed by that case... The relatively minor factual differences in the two cases do not affect the matter. The fact that in the present case the Lieutenant Governor appoints a majority of the members of the university’s Board of Governors or that the Minister of Education may require the university to submit reports or other forms of information does not lead to the conclusion that the impugned policies of mandatory retirement constitute government action. While I would acknowledge that these facts suggest a higher degree of governmental control than was present in *McKinney*, I do not think they suggest the quality of control that would justify the application of the *Charter*. I would in this respect refer to the distinction that I have drawn in the companion appeal of *Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483, between ultimate or extraordinary control and routine or regular control; see p. 513-14. The respondents also sought to establish government control of the university by means of the *Financial Administration Act*, S.B.C. 1981, c. 15, the *Auditor General Act*, R.S.B.C. 1979, c. 24, and the *Compensation Stabilization Act*, S.B.C. 1982, c. 32 (repealed by s. 69 of the *Industrial Relations Reform Act*, S.B.C. 1987, c. 24). These Acts, no doubt, apply to the university in that they monitor and regulate the expenditure of public funds it receives. However, I agree with the Court of Appeal, at p. 152, that “the fact that the university is fiscally accountable under these statutes does not establish government control or influence upon the core functions of the university and, in particular, upon the policy and contracts in issue in this case”.

[15] The *Harrison* decision therefore reflects an express finding that UBC is not in itself government in the sense required by s. 32(1). The British Columbia Court of Appeal applied *Harrison* in *Maughan v. University of British Columbia*, 2009 BCCA 447, leave ref'd, a case involving an allegation of discrimination based on the claimant's interactions with university professors. The Court found that the *Charter* had no application to the claims made by the plaintiff in the circumstances.

[16] More recently, the Court of Appeal found in *UVIC* that the *Charter* did not apply to the University of Victoria. The facts in that case are somewhat similar to the facts alleged in this case. A student group had initially arranged to secure space on the university campus for the purpose of holding an event. The student group's members were opposed to abortion and had held a number of pro-life events in the past that conflicted with the views of some members of the executive of the University of Victoria Student Society. The associate vice-president of student affairs ultimately withdrew his approval of the event and instructed the student group not to proceed. The event proceeded, but the leader of the student group and the BCCLA petitioned the court for *Charter* relief.

[17] The Chambers judge in *UVIC* held that the university was neither controlled by the government, nor performing a specific government policy or program as contemplated in *Eldrige v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, [1997] S.C.J. No. 86 (2015 BCSC 39 at para. 151). Among the arguments he considered and rejected were:

- a) The university was performing a government function by regulating or prohibiting the use of its common spaces for expressive purposes (para 130);
- b) The provision of university education was a government program in the same way as the provision of health care (para. 131); and
- c) The *Charter* applied based on the analysis of Justice Paperny in *Pridgen v. University of Calgary*, 2012 ABCA 139 (paras. 136-141).

[18] The Court of Appeal upheld the chambers judge and found that neither the university nor the activity itself were amenable to *Charter* scrutiny. Willcock J.A. held that the question of whether the university should be regarded as equivalent to government for all purposes should be regarded as “settled” by the decisions of the Supreme Court of Canada in *McKinney*, *Stoffman* and in particular *Harrison* (para. 21). There were subtle distinctions in the composition of the boards of the two universities, but no material distinctions.

[19] Willcock J.A. went on to consider whether the university could be said to be implementing government policy in the actions it took. Neither the fact that the university’s policy was adopted under the *University Act*, nor the fact that the university was fiscally accountable to government was sufficient. There was no routine or regular control of the power over public spaces at the university (paras. 25-26).

[20] Willcock J.A. distinguished *Eldridge* and could not find that the “specific impugned acts” of the *University of Victoria* were governmental in nature. He found that “the government neither assumed nor retained any express responsibility for the provision of a public forum for free expression on university campuses” (para. 32). The Court expressly declined to follow Paperny J. in *Pridgen*, noting that her reasons on that point were *dicta*, not adopted by the majority of her colleagues, and addressed a specific statutory framework that had no applicability in British Columbia.

[21] In my view, *UVIC* is virtually on all fours with the case at bar. Many of the legal arguments the plaintiff seeks to advance were the same or similar arguments to those made in *UVIC*, including the argument that the provision of university education is a government program analogous to health care, and the argument that the court should adopt the analysis of justice Paperny writing for herself in *Pridgen*.

[22] The plaintiff also relies on what he says are factual distinctions between the facts outlined in the amended notice of claim and the facts which led to the result in both *Harrison* and *UVIC* and novel legal arguments that were not put to the court in

those cases. The plaintiff relies on the principle that on a motion to strike, the court must allow novel but arguable claims to proceed to trial.

[23] I have carefully reviewed the statement of facts as set out in the amended notice of claim. The statement of claim includes a vast amount of detail relating to the manner in which UBC interacts with the government, the composition of its board of directors and senate, various reports that UBC is required to undertake under provincial legislation, aspects of its public accountability, its financial dependence on the provincial and federal governments, and oversight in various areas of its operations. However, I do not see anything in the additional material which would take it outside of the scope of the decisions in *Harrison* and *UVIC*.

[24] The jurisprudence establishes that UBC is autonomous in the exercise of its core function. As the Court of appeal noted in *UVIC*, the Supreme Court of Canada explicitly “recognized the significance of the relationships between universities and provincial governments in Canada, including governments’ role in determining universities’ powers, objects and governmental structures, and the role of governments in their funding, but noted that they manage their own affairs and allocate government funds, tuition revenues and endowment funds to meet their needs as they see fit”. The complex nature of the relationship between the university and the provincial government did not alter the traditional nature of a university as a community of scholars and students enjoying substantial internal autonomy (para. 34).

[25] Even accounting for some variation in the facts, and taking a generous approach, I am bound to conclude that the plaintiffs’ claim against the Province has no reasonable prospect of success.

[26] The *University Act*, grants broad powers to the board of governors and senate, but preserves its autonomy over its core functions. For example, s. 48(1)(a) of the *Act* stipulates that the minister must not interfere in the exercise of powers conferred on a university in relation to the formulation and adoption of academic policies and standards.

[27] Some of the facts plead in the amended notice of claim are more in the nature of argument than facts. For example, para. 28 of the statement of claim asserts that “UBC is government” by its nature and the extent of provincial Crown control, and by virtue of the fact that delivery of university education is a government function.

[28] Assuming that all of the assertions that are factual (or reflect legislative facts) are true, as I am bound to do, I see no basis for distinguishing *Harrison* or *UVIC*. While it is true that in *UVIC* the appellants did not press the argument that UBC was government *per se*, as the plaintiffs intend to, in my view the Court of Appeal decided that point.

[29] That leaves the plaintiffs’ argument that UBC is bound by the *Charter* because it is implementing a specific government program. The plaintiffs say their argument is not that in regulating its campus property and affording students an opportunity for free speech the government is implementing government policy. Their argument is a more general argument, based on the broad proposition that the provision of university education is the relevant government policy that UBC is implementing, and as a result the *Charter* applies to all actions of UBC that fall within the implementation of that policy. In oral submissions, they argued that the provision of university education is analogous to the provision of health care.

[30] I am not persuaded by the plaintiffs’ submission in that regard. First, *Eldridge* is clear that in order to attract *Charter* scrutiny an entity that is not itself government must be found to be implementing “a specific governmental policy” (para. 43). Evaluating the governmental policy as broadly as the provision of “university education,” and then applying the *Charter* to a decision to cancel an event at one of the properties controlled by the university, would be virtually the same as a finding that the university was subject to the *Charter* such that all of its activities would be subject to the *Charter*. The acceptance of that argument would result in virtually all of the activities of the university being subject to *Charter* scrutiny. In addition, as noted, the same argument was made in this Court in *UVIC* and was unsuccessful.

[31] The specific factual context in the present case is also relevant. As *Eldridge* instructs, a court must scrutinize the quality of the act in issue to assess whether it is truly governmental in nature (para. 44). Here the primary act undertaken by the university was, as set out in the notice of amended claim, the decision to cancel Mr. Ngo's speech and the rental of Robson Square, and a direction that future events with a "high" risk assessment under UBC's Event Threat Assessment Group (E-TAG) process would be refused.

[32] Both the Chambers judge and the Court of Appeal found in *UVIC* that regulating or prohibiting space controlled by the University from being used for expressive purposes was not sufficient to constitute the performance of a government function (2015 BCSC 39 at paras. 149-151; 2016 BCCA 162 at para. 40).

[33] Section 27(2)(d) of the *University Act* confers on the board in consultation with the senate, the power to maintain the real property of the university, and to "make rules respecting the management, government and control of the real property, buildings and structures". Under s. 27(2)(t), the university may regulate, prohibit and impose requirements in relation to the use of real property and buildings it controls in respect of "activities and events". The activities that the plaintiff impugns thus fall within the university's autonomous authority to regulate the use of property it controls.

[34] In *Lobo v. Carleton University*, 2012 ONCA 498, a motion judge held that the appellants failed to plead the material facts necessary to establish their claim that the respondent university was implementing a specific government program when it failed to allocate space for a pro-life exhibit. As in the present case, the impugned decision in *Lobo* was alleged to have violated the appellant's expressive rights set out in s. 2 of the *Charter*. The Ontario Court of Appeal upheld the judge's decision to strike the claim in the following terms:

...As explained by the motion judge, when the University books space for non-academic extra-curricular use, it is not implementing a specific government policy or program as contemplated in *Eldridge*. In carrying out



this particular activity there is, therefore, no triable issue as to whether Charter scrutiny applies to the respondent's actions. [emphasis added]

[35] *Lobo* was considered and applied by our Court of Appeal in *UVIC*, and both *UVIC* and *Lobo* address similar impugned activity on the part of a university. Applying those cases in this situation, I see no realistic scenario under which the *Charter* would apply to that activity on the basis that it was implementing a specific government policy as contemplated in *Eldridge*. Even accounting for the need to allow novel arguments to proceed, I am driven to conclude that it is plain and obvious that the plaintiffs' *Charter* claim against the Province will fail as a matter of law.

***Have the plaintiffs plead material facts to support their claim that the Province breached their Charter rights?***

[36] Even if the plaintiffs' substantive argument with respect to the application of the *Charter* could succeed, in my view there are no material facts that could establish a breach of the *Charter* by the Province.

[37] Before the issue of remedy arises, a breach of the *Charter* must be established, or as McLachlin C.J. put it in *Ward*, "the wrong on which the claim for damages is based". Establishment of a *Charter* breach is the "first step" (para. 23).

[38] When assessing whether the facts pleaded disclose a valid claim against the Province, it is necessary to assess whether they are capable of establishing a breach of the *Charter* on the part of the Province. In other words, did the Province participate in any "unconstitutional government acts" that would be appropriately remedied under s. 24(1) of the *Charter* (see: *R. v. Ferguson*, 2008 SCC 6 at paras. 50-51)?

[39] There are detailed allegations about UBC's board of governors, its structure and some of its activities, policies, and procedures in the amended notice of civil claim, but no evidence of participation by the Province or any of its employees in any of the acts or decisions that form the subject matter of the claim. Subject to the question of whether the remedy sought by the plaintiffs is sufficient in and of itself to

pursue a claim against the Province, the absence of any factual basis for a claim against the Province is a fatal defect.

[40] I agree with the Province that on the face of the pleading, UBC's actions were decisions taken by UBC and its officials and did not involve the Province. There are no allegations or facts in the amended notice of claim that could establish any involvement by the Province in a breach of the plaintiffs' rights under s. 2(b) and 2(c) of the *Charter*.

[41] As noted above, the thrust of the plaintiffs' submission is that UBC should be considered government under s. 32(1) of the *Charter*, and cases like *Harrison* and *UVIC* should be revisited. The pleaded facts are designed to support the argument that UBC is government, but they do not give rise to an action against the Province for breaches of the *Charter* they did not participate in or have any control over.

[42] Subject to the discussion of the remedy issue, the absence of any facts which would implicate the Province in a breach of the plaintiffs' s. 2(b) or 2(c) *Charter* rights makes it plain and obvious that their action against the Province cannot succeed. I would strike the claim on that basis irrespective of my conclusion on the legal viability of the plaintiffs' main argument.

***Does the issue of remedy alone give rise to a valid cause of action against the Province?***

[43] The plaintiffs argue that the *Ward* decision indicates that the "state" and only the state is liable for *Charter* damages under section 24(1). Accordingly, they say, if they are successful in establishing either that (1) UBC is government within the meaning of s. 32(1) of the *Charter*, or (2) UBC is a private entity but is implementing a specific governmental policy or program as contemplated in *Eldridge*, they would be entitled to an award of damages against the Province.

[44] The plaintiffs argue that *Ward* requires the Province to be named. Damages are payable by the Crown, they say, as a representative for "society writ large"

(*Ward* at para. 54). Their position is that s. 32(1) of the *Charter* provides the necessary nexus or “involvement” of the Province in the impugned conduct.

[45] In my view, the decision in *Ward* does not restrict damage awards under the *Charter* to the federal or provincial Crown, but contemplates such awards being granted against entities other than the Crown itself. In *Ward*, for example, the Supreme Court of Canada differentiated between government entities which are liable for *Charter* damages, and individual actors, such as police officers, who are not.

[46] In *Ward*, the trial judge awarded damages against both the Province and the City of Vancouver. The Supreme Court of Canada noted that there were “two distinct claims to consider” (para. 60). The damage award against the Province was upheld, but it was based on the conduct of corrections officers who were employed by the Province (paras. 72-73, 79).

[47] With respect to the claim against the City, the Court decided not to award damages because a declaration that the seizure of Mr. Ward’s vehicle violated his rights was found to be sufficient in the circumstances (para. 78). I do not read *Ward* as standing for the proposition that damages could not have been awarded against the City in appropriate circumstances. The very fact that the Court assessed the merits of damages clearly suggests that it was open legally to impose them had they been warranted. In other words, *Ward* supports the proposition that *Charter* damages may be applied to an entity to which s. 32(1) applies.

[48] Applying *Ward* to the present case, if the plaintiffs could establish that the *Charter* applies to UBC, and that UBC infringed their rights under ss. 2(b) and 2(c) of the *Charter*, then it stands to reason that UBC would be liable, as government or as an entity carrying out a government function, for any damages that are deemed just and appropriate under s. 24(1) of the *Charter*.

[49] There are a number of cases which have awarded *Charter* damages against entities other than the federal or provincial Crown, where those entities have been

found to be subject to the *Charter*. Thus, in *Mason v. Turner* the Court upheld an award of damages for a breach of *Charter* rights against the City of Nelson for the actions of a police officer. The City of Nelson represented the “state” for the purposes of damages in accordance with the principles in *Ward* (*Mason v. Turner*, 2014 BCSC 211 at para. 124, *aff’d* 2016 BCCA 58). The Province was not a party.

[50] In *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 at para. 149, the Ontario Court of Appeal ordered the Toronto Police Services Board to pay damages for a breach of Mr. Stewart’s *Charter* rights during the G20 summit in Toronto. The provincial Crown was not a party to the proceedings.

[51] *Ward*, *Mason v. Turner*, and *Stewart v. Toronto* show that where an entity is responsible for a *Charter* breach by virtue of being government for the purposes of s. 32(1) of the *Charter*, then the remedy of *Charter* damages may be awarded against that entity, but not against private individuals who may have been involved because they are not subject to the *Charter*. As Kent Roach has observed, *Charter* damages are not available against private entities and have been struck out on that basis, but they are available “against governmental entities bound by the *Charter*” (*Constitutional Remedies in Canada*, 2nd Ed (Toronto: Thompson Reuters, 2023) at 11:13).

[52] In the circumstances of this case, remedy alone under s. 24(1) of the *Charter* does not create a cause of action as against the Province. In my view, as was outlined in *Koita v. Toronto Police Services Board*, [2001] O.J. No. 3641, it is difficult to see how s. 24(1) of the *Charter* gives rise to a cause of action “against a defendant who did not participate in the infringement or deprivation of the *Charter* right or was not liable for the actions of the person who did” (paras. 12-13). As McEwen J. put it in *Whitty v. Wells*, 2014 ONSC 502 at para. 46, “...damages under s. 24 are not a cause of action, but rather a remedy”.

[53] If the plaintiffs could demonstrate that the *Charter* applies to UBC, the result would be that UBC could be held liable for any damages award that this Court concludes is just and appropriate. It would be anomalous if UBC were bound by the

*Charter*, and at the same time immune from an award of damages for breaching an individual's *Charter* rights.

[54] It is true that under the principle in *Eldridge*, an otherwise private entity may be found to attract *Charter* scrutiny in relation to a particularly activity that is governmental in nature, but I consider *Eldridge* to be a very different case than the present case. In *Eldridge*, the issues raised went beyond a specific incident that was said to have breached the plaintiff's rights and extended to the general problem of whether health care providers across the province had to administer health care in accordance with s. 15 of the *Charter* by providing access to sign language interpretation.

[55] It is not surprising that in *Eldridge* British Columbia was the main defendant, as it was responsible for providing health care throughout the province, and it could not evade its *Charter* responsibilities by delegating the implementation of their policies and programs to private entities. The Court in *Eldridge* granted a declaration that would apply to all hospitals in the province, and it recognized that there were "myriad options" available to the provincial government to rectify the situation (para. 96).

[56] By contrast, the allegations made by the plaintiffs in this case revolve around a single and specific incident. They seek a much narrower declaration that cancellation of the speech was a breach of ss. 2(b) and 2(c) of the *Charter*, and they seek damages for compensation in relation to cancellation of the speech. In my view, the *Eldridge* decision does not require naming the province as a defendant in order to seek that relief.

[57] While the plaintiffs stress that among the remedies they are seeking is a declaration that their rights were breached, that alone would not require proceeding against the Province. If the *Charter* applied, I see no reason why the court could not fashion a declaration that UBC infringed the plaintiffs' rights if it were appropriate to do so. A declaration is designed to be a flexible remedy (*Ewert v. Canada*, 2018 SCC 30 at paras. 81-83).

[58] In short, if the plaintiff were able to establish that UBC is subject to the *Charter* either because it is a government entity, or because it was implementing a specific governmental policy or program at the time, the appropriate remedy would still be a remedy against UBC in the circumstances of this case.

[59] I do not think *Ward*, or any of the other authorities brought to my attention require or justify adding the Province as a defendant in these proceedings. Section 24(1) of the *Charter*, in and of itself, does not create an independent cause of action against the Province for the discrete alleged breaches set out in the notice of claim.

***Does the Crown Proceeding Act bar the action against the Province?***

[60] The *Crown Proceeding Act*, creates a general rule which allows actions against the Crown and makes the Crown subject to “all those liabilities to which it would be liable if it were a person” (s. 2(c)). There are certain limitations set out in s. 3(2) of the *Crown Proceeding Act*, including s. 3(2)(d) which provides that nothing in section 2 of the Act:

(d) authorizes proceedings against the government for a cause of action that is enforceable against a corporation or other agency owned or controlled by the government

[61] If a plaintiff can enforce its claim against a defendant that is a corporation or agency owned or controlled by the government, then the Crown continues to enjoy the immunity it enjoyed before the 1974 passage of the *Crown Proceeding Act* (*Skibinski v. Community Living British Columbia*, 2010 BCSC 1500 at para. 85, rev'd in part on other grounds, 2012 BCCA 17).

[62] The Province argues that s. 3(2)(d) acts as a further barrier to the plaintiffs' claim. If the plaintiffs were to succeed in arguing that the *Charter* applies to UBC's actions, the claim against the Province would be statutorily barred.

[63] The plaintiffs' argument in response to the *Crown Proceeding Act* is similar to their argument on the enforceability of damages against the Crown. They argue that s. 3(2)(d) has no application, because they can only enforce a judgment against UBC if UBC is found to be government and may be considered the “state” for the

purposes of an award of damages. In any other case, the plaintiffs say, their claim would only be “enforceable” against the Province.

[64] I have been referred to a number of examples where proceedings were found to be barred under s. 3(2)(d). In *Sellin et al v. Interior Health Authority et al*, (March 14, 2005, Kamloops No. 36652) (BCSC), Masuhara J. found that there was no independent cause of action against the Province for alleged mistreatment in care facilities run by the Interior Health Authority. The actions were all maintainable against the Health Authority or the facilities in question. Recently, in *Arhami v. British Columbia*, (December 20, 2023, New Westminster No. S249380) (BCSC), Brongers J. found that the plaintiff’s claim against the Province for mistreatment at Royal Columbia Hospital was barred by s. 3(2)(d) of the *Crown Proceeding Act* because the claim was enforceable against the Fraser Health Authority.

[65] I have not been drawn to any authority which would take this case outside of the express terms in s. 3(2)(d) of the *Crown Proceeding Act*. Ultimately, this issue comes down to whether the plaintiffs’ claim would be enforceable against UBC if they were to succeed in their argument that UBC should be treated as government under s. 32(1) of the *Charter*, or was subject to the *Charter* by virtue of the fact that it was implementing a specific government policy. I have already addressed that issue and will not repeat that analysis here.

[66] I agree with the Province, that if the plaintiffs were successful in establishing that the *Charter* applied to UBC, then the claim would be enforceable against UBC. In light of that conclusion, s. 3(2)(d) of the *Crown Proceeding Act* would apply with the result being that the Crown would be immune from liability for the same claim.

### **Conclusion**

[67] The application to strike the pleadings against the Province under Rule 9-5(1)(a) is allowed and the claim against the Province is struck. As the defects in the pleadings go to substantive issues rather than formal defects or the manner in which the pleadings are drafted, I would grant the motion to strike without leave to amend the notice of civil claim.

**Costs**

[68] The parties are at liberty to address the issue of costs in writing within 30 days of the release of these Reasons for Judgment, as requested at the hearing.

“Greenwood J.”



## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Alter v. The University of British Columbia*,  
2024 BCSC 1879

Date: 20241010  
Docket: S2210080  
Registry: Vancouver

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

Before: The Honourable Justice Greenwood

### **Reasons for Judgment - Costs**

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The Defendant, His Majesty The King in  
Right of British Columbia's Written  
Submissions Received:

June 18, 2024

The Defendant, The University of British  
Columbia's Written Submissions Received:

June 18, 2024

The Plaintiffs Written Submissions  
Received:

June 24, 2024

The Defendant, His Majesty The King in  
Right of British Columbia's Reply  
Submissions Received:

July 4, 2024

The Defendant, The University of British  
Columbia's Reply Submissions Received:

July 4, 2024

Place and Date of Judgment:

Vancouver, B.C.  
October 10, 2024

**Overview**

[1] Following this court's decision in *Alter v. The University of British Columbia*, 2024 BCSC 961, the parties requested and were granted an opportunity to address costs in writing.

[2] The defendant Province was successful in its application to strike the proceedings, and seeks an order of double costs on the basis of a settlement offer sent to the Plaintiffs in advance of the hearing.

[3] The defendant University of British Columbia also appeared at the hearing of the application and seeks an order for costs payable forthwith and in any event of the cause.

[4] The Plaintiffs seek an order that each party bear its own costs on the basis that the litigation is a public interest proceeding

[5] All of the orders sought are discretionary. Having weighed the relevant factors, and for the reasons that follow, I would award costs to the Province and UBC, but I would not grant any of the specific orders sought by the parties.

**Background**

[6] The submissions on costs in this case relate to the hearing of two interlocutory applications: (1) an application to strike the civil claim against the Province as a defendant, and (2) a related application filed by the Plaintiffs seeking leave to amend the pleadings.

[7] The background of the civil action is set out fully in the reasons for judgment on the application and I will not repeat it here. In brief compass, three students and an entity referred to as the Free Speech Club Ltd. have brought a lawsuit against UBC and the Province. They allege that the decision by a representative of UBC to cancel a speech they had arranged was a breach of contract and a breach of their *Charter* rights. They seek a variety of remedies including damages.

[8] Counsel for the Province, the Plaintiffs, and UBC all appeared at the hearing of the application, and all provided written submissions on costs.

### **Legal framework**

[9] Unless otherwise ordered, costs in a proceeding must be awarded to the successful party (R. 14-1(9)).

[10] The general rule is that unless a court orders otherwise due to special circumstances, costs for an interlocutory application are normally awarded to the successful party, but are not payable until after the conclusion of the trial, and only if that party is successful at trial (Rule 14-1(12), *Araya v. Newsun Resources Ltd.*, 2017 BCSC 336 at paras. 20-21).

[11] There are various exceptions to the general rule that may apply based on the court's discretion, including the three specific orders sought by the parties (ie. double costs, costs payable forthwith and in any event of the cause, and a "public interest" costs order).

[12] It is settled law that all costs awards are highly discretionary (*Nardulli v. C-W Agencies*, 2014 BCCA 31 at para. 80 and 18320 *Holdings v. Thibeau*, 2014 BCCA 494 at paras. 66 and 69).

### **Issues**

[13] There are three main issues that need to be addressed:

- a) Should the Province be awarded double costs?
- b) Should UBC be awarded costs payable forthwith and in any event of the cause?
- c) Should each party bear its own costs on the basis of public interest?

**Analysis****Should the Province be awarded double costs?**

[14] The Province seeks double costs pursuant to rule 9-1(5)(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, on the basis of an offer to settle that was sent to the Plaintiffs several months before the hearing of the application.

[15] In the circumstances, I would grant the usual order for costs in the cause to the Province, but would not exercise my discretion to order double costs.

[16] Under Rule 9-1(5)(b), where an offer to settle had been made, the court “may” award double costs of all or some of the steps taken in the proceeding after the offer to settle was delivered or served.

[17] The factors that a court may consider in deciding whether to make an order for double costs are set out in Rule 9-1(6) and include:

- a) Whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
- b) The relationship between the terms of settlement offered and the final judgment of the court;
- c) The relative financial circumstances of the parties; and
- d) Any other factor the court considers appropriate.

[18] The underlying purpose of the rule is to encourage early settlement of disputes, deter frivolous actions, encourage settlement wherever possible and require litigants to carefully assess the strength or lack thereof of their cases throughout the litigation process (*C.P. v. RBC Life Insurance Company*, 2015 BCCA 30 at para. 94).

[19] One of the main questions in considering an order for double costs is whether the offer to settle ought reasonably to have been accepted. In this case, the “settlement offer” was nothing more than a request that the Plaintiffs file a notice of discontinuance, along with notification that in the absence of doing so, the Province would bring an application to dismiss the claim and seek costs against them.

[20] In my view, there was not much incentive in the settlement offer. Had the Plaintiffs accepted the offer and filed a notice of discontinuance, they would have been liable to an order for costs up to that point (Rule 9-8), and would not have enjoyed a right of appeal against the decision which they have now exercised.

[21] Nor was there any financial benefit to the Plaintiffs contained in the offer. This was more in the nature of a request to abandon their claim against the Province than a true offer to settle. In the circumstances, I am not prepared to conclude that the Plaintiffs “ought reasonably to have accepted the offer.”

[22] There is a strong correlation between the legal basis outlined in the offer and the final judgment of the court, but that alone does not persuade me that an award of double costs is warranted.

[23] The Plaintiffs were intent on proceeding with their claim based on their own views of the law, and their perception of the legal risk that would arise if they did not name the Province as a defendant. While those views were not accepted and did not give rise to a reasonable cause of action against the Province, I would not characterize the Plaintiff’s position as frivolous or vexatious such that they must be deterred by an order for double costs.

**Should UBC be awarded costs, and if so, should they be payable forthwith and in any event of the cause?**

[24] UBC’s position is that even though they were not directly involved in the application to strike, and took no substantive position, they were compelled to attend as a result of two issues raised by the Plaintiffs. First, the Plaintiffs filed a general application seeking leave to amend the notice of civil claim which could potentially

affect the case against them. Second, the Plaintiffs advised that they were seeking an order that no costs should be awarded on the basis that the action was a matter of public interest.

[25] UBC asks that they be granted an order for costs on both applications payable forthwith and in any event of the cause.

[26] I would grant UBC their costs in relation to both applications, but I would award those costs in the cause, and I would not exercise my discretion to order that they be payable forthwith and in any event of the cause.

[27] I agree that UBC had a legitimate interest in any amended notice of civil claim, and in responding to the public interest claim. I do not consider it an accurate or complete characterization of the situation to say, as the Plaintiffs do, that UBC “chose to attend,” or that it if anyone was responsible for their having to attend it was the Province.

[28] The basis of the Plaintiffs’ application for leave to amend was unclear and the amendments sought were not defined until the hearing of the application. It was certainly open to the Plaintiffs to seek leave to amend to address any technical deficiency in the notice of civil claim in response to the motion to strike as they did at the hearing. However, UBC could not reasonably assume there were no other potential issues light of the general and open-ended nature of the application to amend up to that point. In my view, it was reasonable for UBC to respond by attending the hearing.

[29] With respect to the public interest costs issue, in my view the resolution of that issue would have obvious ramifications for UBC. If the litigation were characterized as “public interest” litigation for costs purposes, UBC would be faced a ruling to that effect that could reasonably impact their position in future proceedings. The Plaintiffs argue that the resolution of the costs issue would not have been binding as against UBC, but even if that is so, it would have had significant implications for UBC.

[30] In my view, UBC had standing and a reasonable basis upon which to be heard in relation to aspects of both applications and should be awarded costs. The remaining question is whether the costs should be payable forthwith and in any event of the cause.

[31] The court has a discretion to order costs payable forthwith and in any event of the cause in order to control its own process. The reasons for such an order might include situations where it is unlikely the matter will proceed to trial, where it is necessary for the court to control its own process (for example by deterring unnecessary or unreasonable conduct), or if the application deals with a discrete issue that is severable from the remaining claims. A court should be mindful that such an order could prevent or hinder a meritorious claim from proceeding (*Araya v. Nevsun* at paras. 22-26 and *Uber Canada Inc. v. Surrey (City)*, 2020 BCSC 342 at paras. 5-7).

[32] I am not satisfied that in this case costs should be payable forthwith and in any event of the cause. I would not draw the conclusion that the matter is unlikely to go to trial. There is a separate action for breach of contract that is unaffected by the court's ruling on the strike application, and the plaintiffs have filed an appeal and continue to pursue their action against both parties.

[33] Nor do I see a need for such an order to protect the court's own process or deter unreasonable conduct. The Plaintiffs were simply proceeding in accordance with their view of the law and the appropriate procedure. The default rule for costs in the cause payable at the conclusion of the proceedings is sufficient in the circumstances to address any concerns about efficiency, the nature and timing of the application to amend, and the argument on costs.

**Should each party bear its own costs on the basis of public interest?**

[34] The Plaintiffs argue that no costs should be awarded in light of the public interest nature of the claim.



[35] Looking at all the considerations cumulatively, I am not satisfied that this is an appropriate case in which to exercise the court's discretion in favour of an order that each party bear its own costs on the basis of public interest.

[36] As set out in *Guide Outfitters Association v. British Columbia (Information and Privacy Commissioner)*, 2005 BCCA 368 at para. 8, the overarching question in this situation is whether the normal costs rule is unsuitable on the facts.

[37] In *Guide Outfitters*, the Court of Appeal identified a number of useful factors that may support a special order in relation to costs based on the public interest. Those factors are as follows:

- a) The proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved;
- b) The person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if he or she has an interest, it clearly does not justify the proceeding economically;
- c) The issues have not been previously determined by a court in a proceeding against the same defendant;
- d) The defendant has a clearly superior capacity to bear the costs of the proceeding; and
- e) The plaintiff has not engaged in vexatious, frivolous or abusive conduct.

[38] In this case, there are four points in particular that have persuaded me that the normal costs rule is not unsuitable in the circumstances. Briefly stated, they are as follows:

- a) The issue sought to be litigated is not a novel issue;
- b) The evidence with respect to the Plaintiffs inability to pay costs is unclear;

- c) The Plaintiffs have a personal and pecuniary interest in the outcome of the proceedings that is not trivial; and
- d) Any costs order that is imposed may in any event be paid for by a special interest group that is paying for the Plaintiffs' legal fees.

[39] In my view, the Plaintiffs have not raised a novel legal issue, or a broad question of national importance that has not already been decided. Their action is more akin to an attempt to relitigate well settled principles in the face of recent appellate authorities that are against them.

[40] The nature of the dispute that gave rise to the litigation is a private dispute between UBC and the parties. While the Plaintiffs seek to raise broad issues within that dispute, they clearly have a personal interest in the outcome of the proceedings.

[41] The Plaintiffs place particular emphasis on the fact that their financial interest is modest by comparison to the cost of the proceedings. The total damages sought by all the Plaintiffs for private law claims is \$62,000 and that does not include unspecified damages or *Charter* damages. Thus, while their financial interest in the outcome may not justify the proceeding on purely economic grounds, they clearly have a financial interest that is more than symbolic. In addition, that is only one of the factors to consider.

[42] I accept that both defendants have a superior capacity to bear the costs of the proceeding, but it is not clear to me that the Plaintiffs are impecunious such that they would not be able to pay a costs order. There is an affidavit sworn by Angelo Isodorou, the corporate director of the Free Speech Club, who explains that he makes less than \$100,000 annually. He outlines his understanding that "the other Plaintiffs are in roughly the same financial situation as me," and are "earning roughly average incomes for young Canadians." The finances of the Free Speech Club itself are not addressed at all, and none of the Plaintiffs have provided any direct evidence of their own financial circumstances.

[43] I would also note that Mr. Isodorou's affidavit confirms that the Plaintiffs "will be able to pay a reasonable cost award against them," but he goes on to assert that a costs award would "materially strain" his personal finances and the personal finances of the other plaintiffs.

[44] That brings me to the role of the Justice Centre for Constitutional Freedoms [the "JCCF"]. At the hearing of the application, counsel for the Plaintiffs advised the court that he would be seeking a public interest costs order, but argued that the relative financial strength of the parties was not yet relevant as he had not raised any financial issues with respect to the Plaintiffs. He went on to advise that the JCCF funded an entity by the name of *Charter Advocates Canada* which was paying for the student's legal fees.

[45] In *Servatius v. Alberni School District No. 70*, 2022 BCCA 421 at para. 257, the Court of Appeal noted that "it is clearly relevant to the public interest analysis that a special interest group is funding the litigation." The Court found that had the judge been aware that the JCCF was funding the litigation in *Servatius* and had provided an indemnity in relation to costs, he would not have exercised his discretion as he did.

[46] In this case, Mr. Isodorou deposed that "the Plaintiffs are not indemnified for the costs of this action." The affidavit is silent as to whether the JCCF will pay a costs award if it is imposed. At the hearing, counsel for the Plaintiffs addressed the potential role of the JCCF in the event of a costs order in the following terms:

...if the JCCF sees [the Plaintiffs] get hammered with a big cost award, I'll bet you they're going to feel some incentive to help them out. That's as fulsome as I can be about that fact. I don't see it's relevant yet, but I don't want to be perceived by the court to be hiding something, so I feel compelled to disclose that.

[47] Even in the absence of a clear indemnity in relation to costs, I find it is relevant to the exercise of my discretion that the Plaintiffs have acknowledged that it is likely that the JCCF will indemnify the party litigants in relation to costs.

[48] I agree with the Province that allowing a special interest group that is otherwise funding litigation to delay deciding whether they will pay costs until costs are awarded in order to allow the party litigants to argue that they are impecunious, would not be consistent with the principle of transparency set out in *Servatius*.

[49] The Defendants have described the position of the Plaintiffs in relation to their exposure to a costs award as “coy,” “purposely ambiguous,” or “vague.” Whatever description one adopts, I agree that the evidence is very unclear and militates against the exercise of my discretion in favour of the Plaintiffs. As the Court of Appeal stated in *Servatius*:

[276] Therefore, where as here, a party is seeking to avoid the ordinary costs rule on the basis that the litigation is public interest litigation and on the basis that the named party cannot afford costs, it is necessary for the courts to know who is truly financing that party's lawsuit and who is truly at risk for the potential costs award.

### **Conclusion**

[50] For all of these reasons, the order of the court in relation to costs is as follows:

- a) The Province is awarded its ordinary costs in the cause for both applications;  
and
- b) UBC is awarded its ordinary costs in the cause for its role in both applications.

“Greenwood J.”

# COURT OF APPEAL FOR BRITISH COLUMBIA

## FORM 1

### NOTICE OF APPEAL (RULE 6(1))



Court of Appeal File No.  
(For Registry Use Only)

Case File No. **CA49986**

Supreme Court File No.

S2210080

The file number can be found on the upper right corner of the Supreme Court documents

Supreme Court Registry Location

Vancouver Registry

#### To the respondent(s)

A Court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

### 1. PARTIES TO THE APPEAL

#### Appellant(s)

List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

Noah Alter, Jarryd Jaeger, Cooper Asp and The Free Speech Club Ltd. (Plaintiffs)

#### Respondent(s)

List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

The University of British Columbia and His Majesty The King in Right of British Columbia (Defendants)

## 2. THE ORDER YOU ARE APPEALING

**Is leave to appeal required?**

*Court of Appeal Rule 12 explains when you need leave to appeal. If you are unsure, check "Yes".*

☐ Yes ☒ No

**Who made the order?**

*Name the justice or other decision maker who pronounced the order you are appealing.*

The Honourable Justice Greenwood

**What court and/or tribunal pronounced the order(s)?**

☒ Supreme Court ☐ Tribunal

Name of tribunal

**Date the order was pronounced**

*Include the day, month and year that the order being appealed was pronounced (not the date the*

04/06/2024

DD/MM/YYYY

**City where the order was pronounced**

Vancouver

**Length of lower court hearing**

*Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter "two hours."*

1.5 days

**What type of proceeding are you appealing from?**

*Check one only.*

☐ Trial Judgment ☐ Order of a Tribunal  
☐ Summary Trial Judgment ☒ Chambers Judgment

## 3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

**PART A: LEAVE NOT REQUIRED**
**Part of the order being appealed**

*If you only want to appeal one part of an order, enter the part*

**Order(s) you are seeking on appeal**

Briefly list the order(s) you will ask this Court to make on appeal. For example: "Set aside the trial judgment and order a new trial". Include any order as to costs.

An order allowing the appeal and setting aside the order and remitting the matter to the Supreme Court of British Columbia for a trial on the merits.

**PART B: SEEKING LEAVE TO APPEAL****Part of the order being appealed**

If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.

**Grounds for leave to appeal**

Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

**4. ADDITIONAL INFORMATION****Sealing order**

Is there an order sealing any part of the trial court or tribunal file? If yes, add date(s).

☐ Yes ☒ No

Date

DD/MM/YYYY

**Anonymity order/publication ban**

Are there orders that protect the identity of a party or parties? If yes, add date(s).

☐ Yes ☒ No

Date

DD/MM/YYYY

**Areas of law raised in the appeal**

You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a

- ☒ Constitutional/Administrative  
☐ Motor Vehicle Accidents  
☐ Torts  
☐ Divorce Act (Canada)

- ☐ Civil Procedure  
☐ Municipal Law  
☐ Equity  
☐ Family Law Act

- ☐ Commercial  
☐ Real Property  
☐ Wills and Estates  
☐ Other

**Appeals involving children**

Does this appeal involve the rights or interests of a child? E.g., Parenting order

☐ Yes ☒ No

**5. SERVICE**

Are you representing yourself?

☐ Yes ☒ No

Name(s) and address(es) within BC for service of appellant(s). If you have a lawyer, include the law firm's address; otherwise provide your own residential address.

Glenn Blackett  
Glenn Blackett Law

Phone number(s) of appellant(s)

Email address(es) for service of appellant(s)  
If you provide an email address, you are consenting to have documents served on you by email.

Date form completed

Date

03/07/2024

Name of lawyer or party authorizing filing of this form

Glenn Blackett

DD/MM/YYYY

**To the appellant(s):**

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and Court of Appeal Rules. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

**To the respondent(s)**

**If you intend to participate** in this proceeding, **you must give notice** of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a "Notice of Appearance" (Form 2 of the *Court of Appeal Rules*) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

If you fail to file and serve a Notice Appearance:

- (a) You are presumed to take no position on the appeal, or the application for leave to appeal (if leave is required).
- (b) The parties are not obliged to serve you with any further documents related to the appeal, including an order granting leave to appeal (if leave is required).



**You are presumed to take no position if you fail** to file and serve a Notice of Appearance within the time described above. The filing registries for the British Columbia Court of Appeal are as follows.

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Vancouver BC V6Z 2C5

Other Registries:

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P.O. Box 9248  
STN PROV GOVT  
850 Burdett Ave.  
Victoria BC V8W 1B4

B.C. Court of Appeal  
223 - 455 Columbia St.  
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468.

# COURT OF APPEAL FOR BRITISH COLUMBIA

## FORM 1

## AMENDED NOTICE OF APPEAL (RULE 6(1) )



Court of Appeal File No.  
(For Registry Use Only)

CA49986

Supreme Court File No.

S2210080

The file number can be found on the upper right corner of the Supreme Court documents

Supreme Court Registry Location

Vancouver Registry

### To the respondent(s)

A court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

### 1. PARTIES TO THE APPEAL

#### Appellant(s)

List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

Noah Alter, Jarrod Jaeger, Cooper Asp and The Free Speech Club Ltd.  
(Plaintiffs)

#### Respondent(s)

List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

The University of British Columbia and His Majesty The King in Right of British Columbia  
(Defendants)

## 2. THE ORDER YOU ARE APPEALING

**Is leave to appeal required?**  
*Court of Appeal Rule 12 explains  
 when you need leave to appeal.  
 If you are unsure, check "Yes."*

☐ Yes      ☒ No

**Who made the order?**  
*Name the justice or other  
 decision maker who pronounced  
 the order you are appealing.*

The Honourable Justice Greenwood

**What court and/or tribunal  
 pronounced the order(s)?**

☒ Supreme Court      ☐ Tribunal

Name of tribunal

**Date the order was pronounced**  
*Include the day, month and year  
 that the order being appealed  
 was pronounced (not the date  
 the order was entered).*

04/06/2024

DD/MM/YYYY

**City where the order was  
 pronounced**

Vancouver

**Length of lower court hearing**  
*Indicate in days or hours the length  
 of the hearing that led to the order  
 you are appealing from. For  
 example, if you are appealing a  
 judgment from a trial that took  
 two hours, enter "two hours."*

1.5 days

**What type of proceeding are  
 you appealing from?**  
*Check only one.*

☐ Trial Judgment      ☐ Order of a Tribunal  
☐ Summary Trial Judgment      ☒ Chambers Judgment

### 3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

#### PART A: LEAVE NOT REQUIRED

**Part of the order being appealed**  
If you only want to appeal one part of an order, enter the part that is being appealed.

1. The order striking the amended notice of civil claim ("NCC") as against His Majesty The King in Right of British Columbia's (the "Crown") including defects in the NCC which go to substantive issues (granted in the Crown's application to strike filed March 22, 2024); and
2. The order granting the Crown costs (granted in the Crown's application to strike).

No appeal is advanced in respect of the other orders: a) dismissing the plaintiffs' application for leave to amend; b) granting the University of British Columbia costs in the cause in both the Crown's and the plaintiffs' applications; c) refusing the Crown's request for double-costs; and d) refusing the plaintiffs' request that costs of the applications be made on a public interest basis.

**Order(s) you are seeking on appeal**  
Briefly list the order(s) you will ask this Court to make on appeal.  
For example: "Set aside the trial judgment and order a new trial."  
Include any order as to costs.

~~An order allowing the appeal and setting aside the order and remitting the matter to the Supreme Court of British Columbia for a trial on the merits.~~

1. An order: a) allowing the appeal of the order striking the NCC as against the Crown including defects in the pleading which go to substantive issues; b) reversing such order or, in the alternative, setting it aside; and c) remitting the matter to the Supreme Court of British Columbia for trial on the merits.
2. An order: a) allowing the appeal of the order granting the Crown costs (pronounced in supplemental reasons dated October 10, 2024); and b) reversing such costs.
3. An order: awarding the plaintiffs costs of the appeal.

#### PART B: SEEKING LEAVE TO APPEAL

**Part of the order being appealed**  
If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.

**Grounds for leave to appeal**  
*Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.*

#### 4. ADDITIONAL INFORMATION

**Sealing order**

*Is there an order sealing any part of the trial court or tribunal file? If yes, add date(s).*

☐ Yes

☒ No

Date

DD/MM/YYYY

**Anonymity order/publication ban**

*Are there orders that protect the identity of a party or parties? If yes, add date(s).*

☐ Yes

☒ No

Date

DD/MM/YYYY

**Areas of law raised in the appeal**

*You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a motor vehicle accident.*

☒ Constitutional/  
Administrative

☐ Motor Vehicle  
Accidents

☐ Torts

☐ Divorce Act (Canada)

☐ Civil Procedure

☐ Municipal Law

☐ Equity

☐ Family Law Act

☐ Commercial

☐ Real Property

☐ Wills and Estates

☐ Other

**Appeals involving children**

*Does this appeal involve the rights or interests of a child? E.g., parenting order.*

☐ Yes

☒ No

#### 5. SERVICE

**Are you representing yourself?**

☐ Yes

☒ No

**Name(s) and address(es) within BC for service of appellant(s)** *If you have a lawyer, include the law firm's address; otherwise provide your own residential address.*

Glenn Blackett  
 Glenn Blackett Law



Phone number(s) of appellant(s)

[Redacted]

Email address(es) for service of  
the appellant(s)

*If you provide an email address,  
you consent to have documents  
served on you by email.*

[Redacted]

Date form completed

16/10/2024

DD/MM/YYYY

Name of lawyer or party  
authorizing filing of this form

Glenn Blackett

**To the appellant(s):**

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and Court of Appeal Rules. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

**To the respondent(s)**

**If you intend to participate** in this proceeding, **you must give notice** of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

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Vancouver BC V6Z 2C5

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STN PROV GOVT  
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Victoria BC V8W 1B4

B.C. Court of Appeal  
223 - 455 Columbia St.  
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468.



# COURT OF APPEAL FOR BRITISH COLUMBIA

## FORM 1

### AMENDED AMENDED NOTICE OF APPEAL (RULE 6(1) )



Court of Appeal File No.  
(For Registry Use Only)

CA49986

Supreme Court File No.

S2210080

*The file number can be found on the upper right corner of the Supreme Court documents*

Supreme Court Registry Location

Vancouver Registry

#### To the respondent(s)

A court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

#### 1. PARTIES TO THE APPEAL

##### Appellant(s)

*List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)*

Noah Alter, Jarryd Jaeger, Cooper Asp and The Free Speech Club Ltd.  
(Plaintiffs)



**Respondent(s)**

List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

The University of British Columbia and His Majesty The King in Right of British Columbia  
(Defendants)

## 2. THE ORDER YOU ARE APPEALING

**Is leave to appeal required?**

Court of Appeal Rule 12 explains when you need leave to appeal. If you are unsure, check "Yes."

☐ Yes

☒ No
**Who made the order?**

Name the justice or other decision maker who pronounced the order you are appealing.

The Honourable Justice Greenwood

**What court and/or tribunal pronounced the order(s)?**
☒ Supreme Court

☐ Tribunal

Name of tribunal

**Date the order was pronounced**

Include the day, month and year that the order being appealed was pronounced (not the date the order was entered).

04/06/2024

DD/MM/YYYY

**City where the order was pronounced**

Vancouver

**Length of lower court hearing**

Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter "two hours."

1.5 days

What type of proceeding are  
you appealing from?  
*Check only one.*

☐ Trial Judgment☐ Order of a Tribunal☐ Summary Trial Judgment☒ Chambers Judgment

### 3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

#### PART A: LEAVE NOT REQUIRED

Part of the order being appealed  
*If you only want to appeal one  
part of an order, enter the part  
that is being appealed.*

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No appeal is advanced in respect of the other orders: a) dismissing the plaintiffs' application for leave to amend; b) granting the University of British Columbia costs in the cause in both the Crown's and the plaintiffs' applications; c) refusing the Crown's request for double-costs; and d) refusing the plaintiffs' request that costs of the applications be made on a public interest basis.

Order(s) you are seeking on  
appeal  
*Briefly list the order(s) you will  
ask this Court to make on appeal.  
For example: "Set aside the trial  
judgment and order a new trial."  
Include any order as to costs.*

1. An order: a) allowing the appeal of the order striking the NCC as against the Crown including defects in the pleading which go to substantive issues; b) reversing such order or, in the alternative, setting it aside; and c) remitting the matter to the Supreme Court of British Columbia for trial on the merits.
2. An order: a) allowing the appeal of the order granting the Crown costs (pronounced in supplemental reasons dated October 10, 2024); and b) reversing such costs.
3. An order: awarding the plaintiffs costs of the appeal.

#### PART B: SEEKING LEAVE TO APPEAL

**Part of the order being appealed**

*If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.*

**Grounds for leave to appeal**

*Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.*

**4. ADDITIONAL INFORMATION****Sealing order**

*Is there an order sealing any part of the trial court or tribunal file? If yes, add date(s).*

☐ Yes☒ No

Date

DD/MM/YYYY

**Anonymity order/publication ban**

*Are there orders that protect the identity of a party or parties? If yes, add date(s).*

☐ Yes☒ No

Date

DD/MM/YYYY

**Areas of law raised in the appeal**

*You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a motor vehicle accident.*

☒ Constitutional/  
Administrative☐ Civil Procedure☐ Commercial☐ Motor Vehicle  
Accidents☐ Municipal Law☐ Real Property☐ Torts☐ Equity☐ Wills and Estates☐ Divorce Act (Canada)☐ Family Law Act☐ Other**Appeals involving children**

*Does this appeal involve the rights or interests of a child? E.g., parenting order.*

☐ Yes☒ No**5. SERVICE**

**Are you representing yourself?**

☐ Yes☒ No

**Name(s) and address(es)  
within BC for service of  
appellant(s)** *If you have a  
lawyer, include the law firm's  
address; otherwise provide  
your own residential address.*

Glenn Blackett  
Glenn Blackett Law

**Phone number(s) of appellant(s)**

**Email address(es) for service of  
the appellant(s)**  
*If you provide an email address,  
you consent to have documents  
served on you by email.*

**Date form completed**

25/11/2024

DD/MM/YYYY

**Name of lawyer or party  
authorizing filing of this form**

Glenn Blackett

**To the appellant(s):**

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and Court of Appeal Rules. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

**To the respondent(s)**

**If you intend to participate** in this proceeding, **you must give notice** of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

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Vancouver BC V6Z 2C5

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Victoria BC V8W 1B4

B.C. Court of Appeal  
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Inquiries should be addressed to (604) 660-2468.

Court File No. S2210080  
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  
HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

Defendants

**NOTICE**

under section 8(2)(b) of the *Constitutional Question Act*, RSBC 1996, c 68

TO: Attorney General of British Columbia  
c/o Deputy Attorney General  
Ministry of Attorney General

[REDACTED]  
[REDACTED]  
[REDACTED]

AND TO: Attorney General of Canada  
British Columbia Regional Office  
Department of Justice Canada

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] *Question Act*, at a date to be determined before a presiding judge at the courthouse at 800 Smithe Street in the City of Vancouver, in the Province of British Columbia, the Plaintiffs in this matter will be seeking remedies pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, for violations of their section 2(b) and 2(c) *Charter* rights as set out in the orders sought in the Notice of Civil Claim attached to this Notice of

Constitutional Question as Appendix "A".

AND FURTHER TAKE NOTICE THAT the material facts giving rise to the orders include the facts set out in Appendix "A".

AND FURTHER TAKE NOTICE THAT the Plaintiffs will make arguments on the legal basis set out in Appendix "A".

Dated: January 5, 2024



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Glenn Blackett  
Counsel for the Plaintiffs

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**APPENDIX “A”**

To the Notice of Constitutional Question  
Alter et al v. University of British Columbia et al.  
Registry No. S2210080



SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

DEC 19 2022



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

No. 822 10080  
Vancouver Registry

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:



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', written over a horizontal line.

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