



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*.

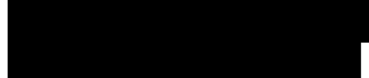
19. In the alternative, if the plaintiffs were deprived of their rights under ss. 2(b) or (c) of the *Charter*, which is denied, the Province did not breach the plaintiffs' rights under ss. 2(b) or (c) of the *Charter*, as alleged or at all.
20. In the further alternative, if the Province deprived the 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

A handwritten signature in blue ink that reads "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.