



CA49986

Alter et al. vs. His Majesty the King in Right of British Columbia
Appellants' Factum

COURT OF APPEAL

ON APPEAL FROM the Order of the Honourable Justice Greenwood of the Supreme Court of British Columbia pronounced on June 4, 2024

BETWEEN:

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

APPELLANTS

(Plaintiffs)

AND:

His Majesty the King in Right of British Columbia

RESPONDENT

(Defendant)

Publication Ban or Anonymity Order (if any) : NIL

Sealing Order (if any): NIL

APPELLANTS' FACTUM

Filed by the Appellants

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and The Free Speech Club Ltd.**

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CHRONOLOGY

Date	Event	Reference
March 13, 2024	Plaintiffs file an Amended Notice of Civil Claim in the Supreme Court of British Columbia (the “ BCSC ”).	Amended Notice of Civil Claim, filed March 13, 2024 (the “ NCC ”)
March 22, 2024	Defendant, His Majesty the King in Right of British Columbia (the “ Province ”) files an application pursuant to <i>Rule</i> 9-5(1)(a) to strike the NCC, in part, without leave to amend.	Notice of Application (British Columbia), filed March 22, 2024 (the “ Application ”)
April 5, 2024	Plaintiffs file an application to amend the NCC pursuant to <i>Rule</i> 6-1(1) in the event the BCSC strikes portions of the NCC for defects in form as opposed to substance.	Notice of Application (Plaintiffs), filed April 5, 2024 (the “ Amendment Application ”)
June 4, 2024	Honourable Justice Greenwood pronounces an order (the “ Order ”) granting the Application and refusing the Amendment Application on the basis defects “go to substantive issues.” A form of order has yet to be agreed, settled or entered.	Reasons for Judgment, dated June 4, 2024 (the “ Reasons ”)
July 3, 2024	The plaintiffs / appellants file a notice of appeal to this Honourable Court.	Notice of Appeal, filed July 3, 2024
October 10, 2024	Honourable Justice Greenwood issues supplemental reasons as to costs, following written submissions of the parties.	Reasons for Judgment - Costs, dated October 10, 2024 (the “ Costs Reasons ”)
October 16, 2024	The plaintiffs / appellants file an amended notice of appeal.	Amended Notice of Appeal, filed October 16, 2024

OPENING STATEMENT

This is an appeal from an order striking the plaintiffs' *Charter* claims on the basis that the *Charter* does not apply to UBC and, if it did, the Province is not liable for *Charter* damages. Courts have determined the *Charter* does not apply to UBC. These cases were determined on the facts before the courts including, three decades ago, insufficient government control. The rule of *stare decisis* dictates that, should the facts sufficiently change, so too must that outcome. The plaintiffs allege that government now exercises sufficient control over UBC such that, on the authorities, it is "government". The contemporary system of routine and regular control of UBC includes the government annually: telling UBC what to do; requiring that UBC track, measure and report its performance of those tasks; receiving a public acknowledgment of accountability from UBC to do so; attending regular meetings with UBC's Board Chair and President to ensure compliance. The government considers UBC a Crown representative, responsible to maintain the "Crown's honour," Crown compliance with Part II of the *Constitution Act*, 1982 and Crown fiduciary obligations. This does not describe an "essentially autonomous" entity. This contemporary system of control has not been placed before or analysed by the courts, as it must if the *Constitution* is to keep pace with changing circumstance. The judgment below barely mentioned the system and failed entirely to analyze it against binding legal principles. Rather the lower court appears to have relied on precedent to determine the facts and, on those facts, the outcome. That is a violation of the rule of *stare decisis* which renders the law inert and the judicial process immune to changes in circumstance. The question in this appeal is: might the contemporary system, as pleaded, lead to a finding UBC is "government". To hold that this system certainly does not constitute sufficient control is, in effect, to declare deep government involvement in universities immune to *Charter* scrutiny, whatever the facts. The lower Court also determined that a "private entity" (under *Eldridge*) is "the state" liable for *Charter* damages (under *Ward*). Respectfully, this must be incorrect. If the meanings of words used to express legal principles are so malleable as to mean, even, their complementary opposites, the law becomes wholly arbitrary. "Private entity," in fact, means "not the state." This case, therefore, represents an important opportunity for this Honourable Court to confirm foundational aspects of the rule of law and constitutionalism.

PART 1 - STATEMENT OF FACTS

1. On an application under *Rule* 9-5(1)(a) no evidence is admissible¹ and the facts material to this appeal are those alleged in the NCC.
2. The claim arises out of an attempt to host and attend a free speech event (the “**Event**”) at the University of British Columbia’s (“**UBC**”) Robson Square Campus on January 29, 2020. The Event was to feature journalist Andy Ngo speaking on the subject of ANTIFA violence. Students, faculty, and others would have an opportunity to assemble and communicate with Mr. Ngo and with one another, including during a question-and-answer session.²
3. The Event was booked with UBC. Seventeen days later a group wrote to UBC’s President and demanded the Event be cancelled, expressly to suppress free expression. Eight days later UBC cancelled the Event on the basis of, *inter alia*, “concern for the emotional and psychological safety of individuals whose sense of belonging and security at UBC might be undermined.”³
4. The plaintiffs’ claim against UBC various common law, equitable, and statutory causes of action.⁴ The plaintiffs claim against UBC and the Province causes of action pursuant to the *Canadian Charter of Rights and Freedoms*⁵ (the “**Charter**”).⁶
5. Based on UBC’s circumstances *circa* 1990, the SCC determined UBC was not subject to the *Charter*.⁷ The NCC alleges UBC is now subject to routine, regular and highly detailed Provincial control through a vast regulatory scheme affecting all aspects of UBC’s assets and operations (the “**Control Scheme**”).⁸ Key elements of the Control

¹ *Rule* 9-5(2).

² NCC at Part 1, paras. 44 - 45 (unless otherwise indicated, a reference to the NCC shall be a reference to Part 1 thereof).

³ NCC at paras. 50 and 52 - 53.

⁴ See, for example, NCC at paras. 56, 57, 60, 65, 76, 81, and Part 2. paras. 4(a), 5(a), 6(a), and 7(a).

⁵ Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.

⁶ See, for example, NCC at paras. 66 - 73, and Part 2. paras 4 - 7.

⁷ *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451 (“**Harrison**”) at para 56.

⁸ NCC at paras. 7 - 25.

Scheme are explored below (see Part 3.C.). By virtue of the Control Scheme the plaintiffs allege the *Charter* applies to UBC as a government entity pursuant to the *1990 Cases*.⁹

6. UBC delivers programs, for the Province, of university education and student safety for which programs the Minister of Post-Secondary Education and Future Skills (the “**Minister**”) retains responsibility.¹⁰ Pursuant to *Eldridge*¹¹ the plaintiffs allege the *Charter* applies to UBC insofar as it delivers these programs (see Part 3.E.).

7. The plaintiffs further allege UBC is, in essence, a special purpose municipality¹² subject to the *Charter* pursuant to the principles expressed in *Godbout* and *GVRD*¹³(see Part 3.D.).

8. Neither the Supreme Court of Canada¹⁴ nor this Honourable Court¹⁵ (the “**BCCA**”) has considered the *Charter*’s applicability to UBC: in light of the Control Scheme; pursuant to *Eldridge* in light of the Control Scheme; or as government “by nature” pursuant to *Godbout* and *GVRD* and in light of the Control Scheme.

PART 2 - ERRORS IN JUDGMENT

9. It is respectfully submitted that Greenwood J. of the BCSC erred by incorrectly concluding the NCC discloses no reasonable claim: under the *Charter*, against the Province; and not barred by the *Crown Proceeding Act* (RSBC 1996, c. 89) the (“**CPA**”).

⁹ The “**1990 Cases**” means, herein, *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229 (“**McKinney**”), *Harrison, Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483, 1990 CarswellBC 277 (“**Stoffman**”) and *Douglas/Kwantlen Faculty Assn. v. Douglas College* [1990] 3 S.C.R. 570, 1990 CarswellBC 278 (“**Douglas**”).

¹⁰ NCC at paras 5, 11, 12, 21, 24(b), 25, 26 and 28(c).

¹¹ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 (“**Eldridge**”).

¹² NCC at paras 7, 8 and 27 and *University Act* (RSBC 1996, c. 468) (the “**Act**”) at ss. 19(1), 27(2)(d), (t) - (t.4), (w), (x.1) and (x.2), 35.1, 51 – 54, 68, 69 and Part 9

¹³ *Godbout c. Longueuil (Ville)*, [1997] 3 S.C.R. 844 (“**Godbout**”) and *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31 (“**GVRD**”).

¹⁴ *McKinney* and *Harrison*.

¹⁵ *BC Civil Liberties Association v. University of Victoria*, 2016 BCCA 162 (“**UVic**”) and *Maughan v. University of British Columbia*, 2009 BCCA 447.

PART 3 - ARGUMENT

A. Standard of Review - Correctness

10. The standard of review on an appeal from a decision to strike pleadings pursuant to *Rule 9-5(1)(a)* is generally one of correctness¹⁶ and, specifically, as to pure questions of law and whether pleaded facts constitute a cause of action known to law (an extricable question of law).¹⁷ The errors in the Reasons are pure questions of law or, in the alternative, extricable questions of law. They include, primarily: “is the plaintiffs’ claim bound to fail as a matter of law?”;¹⁸ is a “private entity” “the state” answerable for *Charter* damages pursuant to *Ward*?;¹⁹ need the Province have “participated” in the cancellation to attract liability under the *Charter*?;²⁰ and are *Charter* damages a form of vicarious liability?²¹ The standard for discretionary costs orders is discussed below.

B. *Stare Decisis* Does not Bind Courts as to Fact or Outcome

11. The Reasons err in their application of the rule of *stare decisis*. Greenwood J. incorrectly applied caselaw as if it were binding as to facts and outcomes. However, under the rule of *stare decisis*, only the legal principle is binding.²² The fact UBC was not sufficiently controlled by government in 1990 to attract *Charter* scrutiny does not mean it remains, in fact, “essentially autonomous” today. Nor does it mean that, whatever the contemporary facts or new legal issues raised, the outcome must remain unchanged.

¹⁶ *Watchel v. British Columbia*, 2020 BCCA 100 at para 28; *Kindylides v. John Does*, 2020 BCCA 330 at para. 18; *Muldoe v. Derzak*, 2021 BCCA 199 at para 27.

¹⁷ *Housen v Nikolaisen*, 2002 SCC 33 at paras. 8 and 28; *Oh v. Coquitlam (City)*, 2018 BCCA 129 at para. 8.

¹⁸ Reasons at para. 11(a) [emphasis added].

¹⁹ *Vancouver (City) v. Ward*, 2010 SCC 27 (“**Ward**”); Reasons at paras. 48, 51, 53, 58 and 65.

²⁰ Reasons at para. 38 and 52.

²¹ Reasons at para. 52.

²² *Cameron v. Canadian Pacific Railway* (1918), [1918] 2 W.W.R. 1025, 1918 CarswellSask 106 at paras. 4 and 5; *R. v. Ingram*, (1981) 12 Sask. R. 242, 1981 CarswellSask 25 (“**Ingram**”) at paras. 7 – 9; *R v. Couture*, 2007 SCC 28 at para. 21; *Carom v. Bre-X Minerals Ltd.*, 2010 ONSC 6311 at para. 32; *Sriskandarajah v. United States of America*, 2012 SCC 70 at para. 18; *Canada (Attorney General) v. Confédération des syndicats nationaux*, 2014 SCC 49 at para. 26.

Rather, the binding legal principles in precedent may lead to a different outcome where the pleaded facts or arguments raised are different.²³

12. If *stare decisis* operated as the Reasons suggest – to bind courts to the facts and outcomes of prior decisions – the legal principles expressed in prior caselaw are rendered inert. This is an inversion of *stare decisis* and a gross violation of the rule of law.

13. *Stare decisis* is also subject to exceptions: subsequent decisions which have affected the validity of the precedent or a binding law was not considered by the precedent.²⁴ Further, *stare decisis* is “not a straitjacket that condemns the law to *stasis*.” Applying a “high threshold,” a court may reconsider where a new legal issue is raised or there is a change in circumstances or evidence that “fundamentally shifts the parameters of the debate.”²⁵ Although the plaintiffs need not rely on this exception, the Control Scheme represents a fundamental change and the plaintiffs raise new legal issues.

14. The issue of the *Charter*’s application to universities has been considered in a number of cases including *McKinney* and *Harrison*. They established the legal principle that, where an entity is sufficiently controlled by government, such that it ceases to be “essentially autonomous” it is subject to the *Charter*.²⁶ In *Eldridge*, the Supreme Court of Canada (the “**SCC**”) established the legal principle that the *Charter* also applies to private entities in respect of activities that can be ascribed to government. Only these legal principles are binding, not the factual finding that government did not exercise sufficient control; not the outcome that a university is not subject to the *Charter*.

15. The Reasons misapply *stare decisis*. The Reasons rely on precedent for the propositions that: 1. UBC is not controlled by government (which is a previous finding of fact):

²³ Halsbury’s Laws of England, vol. 18, § 535; *Ingram* at para. 7; *R. v. Sullivan*, 2022 SCC 19 (“**Sullivan**”) at paras 6 and 64.

²⁴ *Sullivan* at para. 73.

²⁵ *Bedford v. Canada (Attorney General)*, 2013 SCC 72 at para 44; *Carter v. Canada (Attorney General)*, 2015 SCC 5 at paras. 42 and 44; *R v. Comeau*, 2018 SCC 15 at paras. 31 and 34.

²⁶ *McKinney* at para. 40; *Harrison* at para. 56; see also expressions of the “control” test at *Stoffman* at para 102 and *Douglas* at paras. 36, 37 and 49.

*"The jurisprudence establishes that UBC is autonomous ...",*²⁷

and 2. UBC is not bound by the *Charter* under section 32(1) (which is a previous outcome):

*"... the plaintiffs' Charter claims against the Province will fail as a matter of law."*²⁸

16. The correct approach is to apply binding legal principles to the facts pleaded in the NCC (including, critically, the Control Scheme) to determine if the claims are "certain to fail," notwithstanding previous findings of facts and contrary outcomes. *McKinney* did not "for all purposes"²⁹ settle whether universities are government, as La Forest J. himself gratuitously clarified in *McKinney* itself:

*"My conclusion is not that universities cannot in any circumstances be found to be part of government ... but rather that the appellant universities are not part of government given the manner in which they are presently organized and governed."*³⁰

17. The BCCA has properly recognized that the *Charter* may be found to apply to universities where a litigant presents distinguishing facts.³¹

18. *Eldridge* demonstrates that, just as the application of new facts may upset a prior outcome, so too may the application of new legal principles. While in *Stoffman* the SCC had determined hospitals were not subject to *Charter* scrutiny (for want of sufficient government control),³² in *Eldridge* the SCC determined they were, at least insofar as they delivered "health services."³³ To borrow a line from the Reasons, acceptance of that

²⁷ Reasons at para 24 [emphasis added]; see also Reasons at para 34 citing *Lobo v. Carleton University*, 2012 ONCA 498 in which the court concludes, on the basis of deficient pleadings, that university "... is not implementing a specific government policy or program ..." – a finding of fact.

²⁸ Reasons at para 35 [emphasis added]; see also paras. 15, 28, 30, and 35.

²⁹ Reasons at para 8.

³⁰ *McKinney* at para. 46 [emphasis added].

³¹ *UVic*, para 21.

³² *Stoffman* at para 102.

³³ *Eldridge* at paras. 50 - 52.

argument resulted in virtually all of the activities of the hospital being subject to *Charter* scrutiny.³⁴

19. Even if prior caselaw is binding in the manner reflected in the Reasons, the NCC alleges a change in circumstances that “fundamentally shifts the parameters of the debate” and raises new legal issues which justify reconsideration.

C. *Harrison*: The Alleged Facts Describe Routine and Regular Control

20. The 1990 Cases, as supplemented by later cases,³⁵ established the principle that an entity will be subject to the *Charter* as a “government entity” if controlled by government such that it is not “essentially autonomous.”³⁶ The outcome of *McKinney* and *Harrison*, given the facts circa 1990, was that the universities were not “government entities” pursuant to s. 32(1) of the *Charter*.³⁷ Comparing UBC to the University of Guelph, the Court concluded:

The relatively minor factual differences ... do not affect the matter. The fact that ... the [Province] appoints a majority of the ... board ... or that the Minister ... 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 ... they [do not] 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 ... between ultimate or extraordinary control and routine or regular control ... The respondents also sought to establish government control ... by means of [other legislation] ... However, I agree with the Court of Appeal ... that ‘the fact that the university is fiscally accountable under these statutes

³⁴ Reasons at para. 30.

³⁵ Including *GVRD* and *UVic*.

³⁶ *Douglas* at para 49.

³⁷ *McKinney* at paras 45 and 46; *Harrison* at para. 56.

does not establish government control or influence upon the core functions of the university ...”³⁸

21. If the outcome of this appeal depends, as it must, on the legal principles of the *1990 Cases* and the facts alleged, the plaintiffs’ claim that UBC is not “essentially autonomous” is meritorious and not “certain to fail.” The NCC describes far greater Provincial control, qualitatively and quantitatively, than described in *Harrison*. In fact, the key *indicia* emphasized in the quote above are all now “on their heads.” Now, the Province does not merely have the right to demand “reports” but in fact demands and receives reports regularly which confirm UBC is doing what it has been told; the Minister exercises control over UBC on a routine and regular basis; UBC bears not only “fiscal accountability” but also “process accountability” and “program accountability”;³⁹ and the Province exercises control over all of UBC’s operations and assets including over its core functions.

i. System of Control – The Control Scheme

a) Institutional Accountability Plan and Report

22. The Minister prepares regular departmental “Service Plans” which set out the Province’s priorities, objectives and performance expectations for universities in its integrated and coherent university education system (the “**Province’s Objectives**”), for which system of university education the Minister remains accountable to the public.⁴⁰

23. Each year UBC is directed to comply with the Province’s Objectives by means of a “Mandate Letter” which, upon receipt, is then signed by UBC’s Board of Governor’s (“**BOG**”) Chair (the “**BOG Chair**”), upon resolution of the BOG, acknowledging such direction. The Mandate Letter is posted, annually, to UBC’s website, representing public confirmation of the relationship of UBC-to-Province accountability.⁴¹

24. Each year UBC delivers to the Minister, consistent with the Minister’s specifications and with the Minister’s participation and consent, an “Institutional Accountability Plan and

³⁸ *Harrison* at para. 56; [emphasis and comments added]

³⁹ Meaning: “conduct programs in intended ways” and “conduct programs to produce specified results,” respectively.

⁴⁰ NCC at paras. 23 and 24(a).

⁴¹ NCC at para. 24(c).

Report” (“**IAPR**”) which sets out UBC’s goals, objectives and intended results, which must include the Province’s Objectives, and which must include the metrics by which UBC will measure its performance of the Province’s Objectives. The IAPR includes a report on UBC’s performance of the preceding year’s Province’s Objectives.⁴² The IAPR includes a letter from the BOG Chair and UBC’s President expressly confirming UBC’s accountability to the Province to implement the IAPR.⁴³ The Minister meets with the UBC’s BOG Chair and President at least three times each year to review UBC’s performance and planning to ensure alignment with the Province’s Objectives.⁴⁴

25. These high-level communications are the tip of an iceberg. The Control Scheme, described in the NCC, necessitates hundreds of annual communications between the Minister’s department and members of UBC’s board, executive and administration – affecting all UBC operations and assets including its core function.

26. The IAPR system, alone, is a system of Provincial control completely foreign to the relationship described in *Harrison* and *McKinney*. UBC is accountable to the Province to perform the Province’s Objectives. Even UBC’s “own” objectives are subject to regular Ministerial oversight and consent.⁴⁵ The IAPR is but one of many important levers of power exercised by the Minister on a routine and regular basis to control UBC’s operations and assets.

27. The IAPR illustrates three major features which distinguish contemporary reality from that facts described in the *1990 Cases*. First, those cases draw a critical distinction between the possession of power and the exercise of power. An entity is not “government” merely because government possesses “ultimate or extraordinary” power over it – the government must actually exercise that power in some “routine and regular” manner.⁴⁶ In *Stoffman*, that the minister might require by-law revisions was unpersuasive, “... at least

⁴² NCC at paras. 24(a) and (d).

⁴³ NCC at para. 24(e).

⁴⁴ NCC at para. 24(e).

⁴⁵ NCC at para 24(d).

⁴⁶ *Stoffman* at paras. 102 – 104; *Harrison* at para. 56; *GVRD* at paras 17 – 21.

until such revision [had] actually been ordered.”⁴⁷ The Control Scheme is a routine and regular exercise of government power.

28. Second, the *1990 Cases* indicate that the fact an entity pursues objectives of government is pivotal. *McKinney* rejected the argument universities were controlled because they were creatures of statute with natural person powers, saying they “... may be established to facilitate the performance of tasks that those seeking incorporation wish to undertake and to control, not to facilitate the performance of tasks assigned to government.”⁴⁸ Professor Hogg’s concern, echoed in *Slaight*,⁴⁹ that government might “authorize action by others that would be in breach of the *Charter*” was dismissed as applicable only where an entity is performing a governmental objective not where, “... private individuals do things of their own choosing without engaging governmental responsibility.”⁵⁰ Ultimately, while the university’s “fate [was] largely in the hands of government” it was not “government” because their governing board’s “duty is not to act at the direction of the government but in the interests of the university.”⁵¹

29. See *Stoffman* to similar effect.⁵² Douglas College, on the other hand, was “government” largely due to its pursuit of governmental objectives: “... the college is a Crown agency established by the government to implement government policy.”⁵³ More recently, TransLink was determined by the SCC to be government because, *inter alia*, “it has no independent agenda.” Applying this aspect of *GVRD* to the University of Alberta, the Alberta Court of Appeal’s Justice M. Crighton stated:

“... the test for s. 32 ... [in *GVRD*] ... rests on the ability to identify an area of government policy and objectives that the University can be said to be

⁴⁷ *Stoffman* at para. 29 [comment added].

⁴⁸ *McKinney* at para 30 [emphasis added].

⁴⁹ *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 (“*Slaight*”) at para. 90.

⁵⁰ *McKinney* at para. 31 [emphasis added].

⁵¹ *McKinney* at para. 40 [emphasis added].

⁵² *Stoffman* at para. 104.

⁵³ *Douglas* at paras. 9, 18, 37 and 49 [emphasis added].

*implementing for the state more broadly and not just for internal University objectives.”*⁵⁴

30. By the Control Scheme, UBC is accountable to the Province, as it acknowledges annually and publicly, to pursue the Province’s Objectives.

31. To the extent it might be argued that UBC, however, retains some discretion as to its objectives: 1) even that discretion is subject to annual review and consent of the Minister; 2) it is discretion of UBC’s BOG which, itself, is subject to substantial government control and influence; and 3) it is the discretion of a democratically elected body and, therefore, more correctly understood as an inherently governmental entity’s “distinct political mandate.”⁵⁵

32. Third, the IAPR reports, like the rest of the Control Scheme, do not merely facilitate financial transparency (or “fiscal accountability”) they make UBC accountability to achieve the Province’s specific, desired results (i.e. “program accountability”).

33. An entity obligated to pursue government objectives and permitted to pursue only such other objectives as the Minister permits is not “essentially autonomous.” To the extent any autonomy is retained, it is significantly restricted by the Control Scheme and is a form of autonomy more like that of a city council. Various “government entities” retain wide discretion in the implementation of their statutory mandates (for example, police services⁵⁶ and school boards⁵⁷).

b) The Rest of the Control Scheme

34. The Province holds and exercises power over UBC through its legislative power, its power of appointment and influence over the BOG, and its spending power. It is the leverage of these powers that permits the Province to impose, for example, the IAPR. As

⁵⁴ *UAlberta Pro-Life v. Governors of the University of Alberta*, 2020 ABCA 1 at para. 139 [comment added].

⁵⁵ *Godbout* at para. 52.

⁵⁶ *Société des Acadiens et Acadiennes du Nouveau-Brunswick Inc. v. Canada*, [2008] 1 S.C.R. 383.

⁵⁷ *York Region District School Board v Elementary Teachers Federation of Ontario*, 2024 SCC 22 at para. 81.

in 1990, UBC is subject to a statutory mandate to “carry on the work of a university in all its branches.”⁵⁸ The word “university” denotes education featuring free inquiry.⁵⁹ Even in its constating legislation, therefore, UBC is not free to pursue its “own objectives” – its permitted objectives are solely those assigned to it by the Province. This factor was not, alone, sufficient to ground a finding of “government” in *Harrison*.

35. The Province possesses and exercises significant, if not overwhelming, control over UBC’s BOG. The Province retains the power of appointment over the majority of the BOG (which administers UBC’s property, business and affairs) all of which Province appointees serve at the pleasure of the Province. The Province now has additional BOG powers: the BOG Chair must be selected from the Province’s appointees; and the Province may remove, even, elected members of the BOG upon a 2/3 BOG resolution.⁶⁰ The Province also imposes diversity requirements for BOG positions including Chancellor and President.⁶¹ BOG members are subject to an orientation to ensure accountability to the Province to achieve its objectives.⁶²

36. UBC remains financially dependant on the Province. Most of UBC’s revenue comes from government. Tuition from international students is conditional on compliance with government standards and requirements.⁶³ All tuition income is, of course, available to UBC thanks to the endowments, grants, assets, money and other funding UBC has received from government over its history.⁶⁴ UBC enjoys the benefits of tax exemptions⁶⁵ and now the Minister may restrict UBC’s tax exemption where property is used for designated purposes.⁶⁶

⁵⁸ *Act* at s. 47(2)(f).

⁵⁹ NCC at paras. 26 and 32 - 33.

⁶⁰ *Act* at ss. 19(2), 19.2(2) and 35.1(2).

⁶¹ NCC at para. 24(e)(xvii).

⁶² NCC at para. 24(j).

⁶³ NCC at para 21, 24(h)

⁶⁴ NCC at paras.11 and 21.

⁶⁵ *Act* at ss. 27(2)(w) and 54.

⁶⁶ *Act* at s. 54(4).

37. The *Act* continues Provincial control over borrowing but now imposes an obligation, in the event of a strike, to return unused portions of annual Crown grants.⁶⁷ Grants are paid by the Crown to UBC in exchange for UBC delivering university education.⁶⁸

38. The Minister now uses its power to approve new degree programs to ensure programs meet various Crown priorities and objectives including a coherent, integrated and diverse public post-secondary education system (which system includes Douglas College, a government entity)⁶⁹ provincial workforce requirements, and appropriate use of Crown student financial assistance.⁷⁰

39. In *Harrison*, the SCC references, *inter alia*, the *Financial Administration Act* (the “**FAA**”) by which the Crown regulates UBC’s planning, management, and reporting processes (“process accountability”)⁷¹ and the *Auditor General Act*⁷² by which UBC is subject to regular Crown audit. In *Harrison* only Wilson J. references the *University Foundations Act* which makes UBC’s foundation a wholly owned Crown asset and Crown agent and defines the foundation’s purposes.⁷³

40. *Harrison* does not reference the *Public Sector Employers Act* (“**PSEA**”) which gives the Province significant power over UBC’s employment contracts and collective bargaining. Pursuant to these powers the Province may direct and coordinate labour negotiations across the public sector, including labour negotiations with UBC’s unionized faculty and staff (nearly all UBC faculty and staff are unionized) for the purpose of pursuing Provincial objectives. The Province may impose terms of employment on UBC’s faculty and staff, including compensation limits and public reporting requirements with

⁶⁷ *Act* at ss. 29, 30, 31 and 58

⁶⁸ See also NCC at paras. 11 and 21.

⁶⁹ NCC at para. 23(b) and 24(g).

⁷⁰ *Act* at s. 48(2); NCC at para. 24(g) and (h).

⁷¹ S.B.C. 1981, c. 15 (now R.S.B.C. 1996, c. 138) ss. 1, 4.1(1), 9.1(1), 9.1(3) and 8.1(1).

⁷² R.S.B.C. 1979, c. 24 (now S.B.C. 2003, c. 2).

⁷³ R.S.B.C. 1979, c. 420.5 (now R.S.B.C. 1996, c. 471 at paras. 2(1)(a), 3, 4, 5(1)(a), 9, 13 and 14.

respect to senior employee compensation.⁷⁴ Nor does *Harrison* reference The *Budget Transparency and Accountability Act* (“**BTAA**”) which now requires UBC to provide regular financial reports which are used to prepare consolidated Provincial financial information and budgets. In the Province’s financial statements and budgets it treats UBC’s capital, assets, tuition fees and expenses as capital, assets, income and expenses of the Province.⁷⁵ *Harrison* does not reference the *Freedom of Information and Protection of Privacy Act* (“**FOIPP**”) by which UBC is designated a "local public body" and (subject to narrow exceptions) subject to governmental disclosure and privacy requirements.⁷⁶ *Harrison* does not reference the *Sexual Violence and Misconduct Policy Act* by which UBC is required to establish and implement a sexual misconduct policy including substantive content dictated by the Province and to monitor the efficacy of such policy including participation in reviews of such policy by the Province.⁷⁷ *Harrison* does not reference the Province’s “Capital Asset Management Framework” by which UBC’s capital assets are now tightly controlled, including annual Provincial participation in and approval of 5-year capital plans.⁷⁸

41. The Control Scheme set-out in the NCC was simply not before the SCC in *Harrison*. Nor was it before the BCCA in *UVic*. The appellants in *UVic* “acknowledge[d] the University of Victoria [was] not an ‘organ of the state’” and failed to “... point to any material distinctions that would place the present case beyond the scope of *Harrison*.”⁷⁹ The plaintiffs in this action do advance the argument UBC is an organ of government and do point to facts which substantially distinguish *Harrison* and *Uvic*.

⁷⁴ R.S.B.C. 1996, c. 384 at ss. 1, 6, 7, 12, 14.3(4), 14.3(4), 14.3(6)(a)-(d), 14.4 and 14.6; NCC at para. 16.

⁷⁵ S.B.C. 2000, c. 23 at ss. 9 and 10; NCC at para. 19(a).

⁷⁶ R.S.B.C. 1996, c. 165 at ss. 3(3)(h)-(i) and Schedule 1

⁷⁷ S.B.C. 2016, c. 23 at ss. 2, 2(1)(c), 3(1)(b) and 5; NCC at para 20.

⁷⁸ NCC at para 24(i)

⁷⁹ *UVic* at paras. 6, 21 and 22 [emphasis and comment added]

ii. Subject Matter of Control

42. By the Control Scheme, UBC is subject to routine, regular and highly detailed Provincial control over every aspect of its assets and operations including its capital, finance, management, technology, human resources, and governance.⁸⁰

43. The fourth major feature of the Control Scheme which distinguishes UBC's present reality from that described in *Harrison* and *McKinney*⁸¹ is the sheer breadth of the UBC operations and assets subject to Provincial control and influence.

44. While in *Harrison* the SCC found no "control or influence upon the core functions of the university" the Control Scheme affects, quite literally, every aspect of UBC's operations and assets including, directly and in numerous ways, UBC's core function (university education).

45. The NCC details the Province's Objectives set-out in the Crown's recent IAPRs.⁸² In relation to the manner in which university *curriculum* is delivered, the Crown requires that UBC *inter alia*: 1) educate professors on how to integrate indigenous knowledge and teaching methods into class,⁸³ provide education in indigenous languages,⁸⁴ educate in a manner appropriate to indigenous cultural methods,⁸⁵ and implement the unique rights, circumstances and interests of indigenous people (collectively, the "**Indigenization Objective**"); 2) expand opportunities for cooperative education (the "**Coop Objective**");⁸⁶ 3) foster diversity, inclusion and equity including anti-racism and eliminating systemic discrimination in all its forms (the "**DEI Objective**");⁸⁷ 4) improve access to and success in university education by underrepresented students including former youth in care,

⁸⁰ NCC at para 22.

⁸¹ See also above at paragraph 27.

⁸² NCC at para. 24(e).

⁸³ NCC at para. 24(e)(xiv)(7).

⁸⁴ NCC at paras. 24(e)(xiv) and 24(e)(xiv)(5); *Truth and Reconciliation Commission of Canada: Calls to Action* No. 10(iv).

⁸⁵ NCC at paras. 24(e)(xiv) and *The United Nations Declaration on the Rights of Indigenous Peoples* at Article 14(1).

⁸⁶ NCC at para 24(e)(xii).

⁸⁷ NCC at para. 24(e)(xiv).

indigenous students, and women (the “**Success Objective**”);⁸⁸ 5) deliver adult education “effectively”;⁸⁹ 6) deliver quality education that “works”;⁹⁰ and 7) conduct on-campus learning.⁹¹ Greenwood J. incorrectly concluded the Province does not, in fact, interfere with academic policies and standards given s. 48(1)(a) of the *Act*.⁹² Contrary facts, assumed to be true, are pleaded throughout the NCC including, most directly, at paragraph 14(j): “... which exceptions the Minister does not in fact observe ...” [emphasis added]

46. In relation to the curriculum delivered, the Province requires UBC to, *inter alia*: align with K – 12 *curriculum* changes;⁹³ develop culturally appropriate *curricula* for indigenous students;⁹⁴ and implement the objectives identified at paragraph 45, above.

47. In relation to the programs delivered, the Province requires UBC to, *inter alia*: deliver quality, affordable and relevant education⁹⁵ that meets labour market and provincial economic needs; deliver education in high demand occupations including technology and health;⁹⁶ align programming with the “Provincial Crown’s B.C. Economic Plan;”⁹⁷ offer flexible learning pathways,⁹⁸ adult education,⁹⁹ and programs in indigenous languages;¹⁰⁰ and implement the objectives identified at paragraph 45, above.

48. In addition to the Province’s power to control collective bargaining and to negotiate faculty contracts and impose terms,¹⁰¹ in relation to UBC’s faculty, the Province requires UBC to, *inter alia*: promote gender equity;¹⁰² maintain a cost-conscious compensation

⁸⁸ NCC at paras. 24(e)(ix) and 24(e)(xiv)(3); see also 24(e)(i)

⁸⁹ NCC at para. 24(e)(viii).

⁹⁰ NCC at para. 24(e)(i).

⁹¹ NCC at para. 24(e)(xxii).

⁹² Reasons at para. 26.

⁹³ NCC at para 24(e)(ix).

⁹⁴ NCC at para 24(e)(xiv)(4).

⁹⁵ NCC at para 24(e)(i).

⁹⁶ NCC at para 24(e)(iii).

⁹⁷ NCC at para 24(e)(ii).

⁹⁸ NCC at para 24(e)(iv).

⁹⁹ NCC at para 24(e)(viii).

¹⁰⁰ NCC at para. 24(e)(xiv)(5).

¹⁰¹ See above at para. 40.

¹⁰² NCC at para. 24(xviii).

culture;¹⁰³ and implement the DEI Objective, the Indigenization Objective, and the Coop Objective.

49. In relation to the students receiving education, the Province requires UBC to, *inter alia*: provide programs to adults, to students in high demand and knowledge-based fields, and to former youth in care;¹⁰⁴ to limit international students;¹⁰⁵ to implement the DEI Objective and to promote gender parity;¹⁰⁶ to implement the Indigenization Objective and to close indigenous educational and employment gaps;¹⁰⁷ and to implement the Success Objective.

50. In relation to the tuition charged to students receiving education, the Province requires UBC to, *inter alia*: comply with Provincial tuition caps;¹⁰⁸ provide tuition free adult education;¹⁰⁹ waive tuition;¹¹⁰ and to implement the Indigenization Objective, the DEI Objective, and the Success Objective.

51. In relation to a vast array of other UBC operations and assets, the Province requires UBC to, *inter alia*: improve student mental health and prevent sexual violence;¹¹¹ comply with the Crown's constitutional and fiduciary duties towards indigenous Canadians¹¹² including prior consultation relating to land;¹¹³ align capital and operations with the Province's "2018 CleanBC" climate plan including reduce greenhouse emissions by 50%;¹¹⁴ increase BOG diversity and gender equity;¹¹⁵ and collaborate in research and development with Provincial ministries, Crown agencies and public institutions.¹¹⁶

¹⁰³ NCC at para. 24(e)(vii).

¹⁰⁴ NCC at paras. 24(e)(iii),(vii),(ix) and (xi).

¹⁰⁵ NCC at para. 24(e)(v).

¹⁰⁶ NCC at para. 24(e)(xx).

¹⁰⁷ NCC at para. 24(e)(xiv)(2).

¹⁰⁸ NCC at para. 24(e)(vi).

¹⁰⁹ NCC at para. 24(e)(viii).

¹¹⁰ NCC at para. 24(e)(ix).

¹¹¹ NCC at para. 24(e)(xiii).

¹¹² See below at para. 61.

¹¹³ NCC at para. 24(e)(xiv)(8)(d) and (e).

¹¹⁴ NCC at para. 24(e)(xv).

¹¹⁵ NCC at para. 24(e)(xvii) and (xviii).

¹¹⁶ NCC at para. 24(e)(xx).

52. The Control Scheme is, therefore, an exercise of significant and wide-ranging control over all of UBC's assets and operations including UBC's core function. UBC is obligated to pursue the Province's Objectives and may only pursue such other objectives for which its Crown-dominated-and-controlled BOG obtains Provincial consent. UBC is not "essentially autonomous." The SCC's prediction in *Harrison* was apparently wrong: Provincial influence over university decisions has apparently not been "strenuously resisted" by UBC.¹¹⁷

53. UBC's circumstances are more akin to Douglas College *circa* 1990 which was found to be "government" because: it was created for the purpose of conducting post-secondary education and training; it was designated an agent of the Province¹¹⁸; its board was appointed by and removable at the pleasure of the Crown; and government was able "by law [to] direct its operations" including, in consultation with the college, setting policies and directives for post-secondary education and training in the province, approval of board bylaws, and providing most of its operating funds.¹¹⁹ UBC is also similarly situated to TransLink which was found to be "government" because: government could exercise "substantial control over the day-to-day operations of TransLink;" government had power to appoint the majority of its board; to the extent government did not have complete control over TransLink, control was shared by another order of government; and, the government employed a system of control much like the IAPR system:

*"... [government] must ratify TransLink's strategic transportation plan ... [and] TransLink must 'prepare all its capital and service plans and policies and carry out all its activities and services in a manner that is consistent with its strategic transportation plan.'"*¹²⁰

54. While the Reasons make passing reference to this complex regulatory relationship of Provincial control over UBC, the penultimate conclusion, that the contemporary relationship is indistinguishable from *Harrison*, is reached with no analysis whatsoever

¹¹⁷ *Harrison* at paras. 41 to 42.

¹¹⁸ See below at para. 61.

¹¹⁹ *Douglas* at paras. 36, 37 and 49.

¹²⁰ *GVRD* at paras. 17 – 21.

followed by the incorrect observation that “... the jurisprudence establishes that UBC is autonomous,”¹²¹ and, to similar effect, that the *Act* prohibits interference.¹²²

55. The contemporary relationship between the Province and UBC is such that UBC has ceased to be “essentially autonomous.” Applying the legal principles expressed in *Harrison* (and other authorities) to UBC’s circumstances today, leads inexorably to the conclusion that UBC is government. Either the *Charter* applies to UBC or the Province’s significant presence at UBC is (unconstitutionally) immune from *Charter* scrutiny. Worse yet, such immunity would apply at university campuses, which are *loci*:

*“... of discourse, dialogue and the free exchange of ideas; all the hallmarks of a credible university and the foundation of a democratic society.”*¹²³

56. Whether or not the plaintiffs will succeed in their claims, they are meritorious and not “certain to fail.”¹²⁴

D. *Godbout*: The Alleged Facts Describe a Quintessentially Governmental Entity

57. A government entity may also be identified “by its very nature.”¹²⁵ In *Godbout* the SCC determined that a municipality was subject to the *Charter*. According to La Forest J. (and the two justices who concurred in his opinion) the:

*... ambit of s. 32 is wide enough to include all entities that are essentially governmental in nature and is not restricted merely to those that are formally part of the structure of the federal or provincial governments.*¹²⁶

¹²¹ See above at para. 46.

¹²² Reasons at paras. 23, 24 and 26.

¹²³ *Pridgen v. University of Calgary*, 2012 ABCA 139 (“**Pridgen**”) at para. 122.

¹²⁴ *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at paras. 14-15; for the test on an application to strike, see also *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17 and *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, 1985 CarswellNat 151 at para. 8.

¹²⁵ *Eldridge* at para 44.

¹²⁶ *Godbout* at para 47; see also *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10 at paras 70, 76 and 77.

58. Municipalities are “government” because: councils are democratically elected by and accountable to constituents in a manner analogous to legislatures: “[t]o my mind, this itself is a highly significant (although perhaps not a decisive) *indicium* of ‘government’ ...”; municipalities possess general taxing power;¹²⁷ municipalities are empowered to make laws, to administer them and to enforce them within a defined territorial jurisdiction and to enact coercive laws binding on the public generally, for which offenders may be punished; and municipalities derive their existence and law-making authority from the provinces which the SCC found to be most significant, although it noted that municipalities “have distinct political mandates” and are not, therefore, “agents” of the province.¹²⁸

59. The “government by nature” test was further fleshed-out in *GVRD* where the regional district was declared “government” because: the *LGA*¹²⁹ defined “local government” to include “the council of a municipality” and “the board of a regional district” including electoral area directors; the *LGA* described regional districts as “independent, responsible and accountable order[s] of government within their jurisdiction” intended to provide “good government for its community”; the *LGA*’s designation of regional districts as “government” was consistent with the powers granted to the regional district by statute (to operate any service the board considers necessary or desirable for its geographic area; to recover the costs of its services; and to make bylaws which are enforceable by fine or by imprisonment).¹³⁰

60. To these *indicia* of “government by nature” should be added “special government-like powers” noted by Wilson J.: expropriation; exemption from expropriation; and exemption from taxation.¹³¹ In addition, the majority in *Douglas* found that the college’s designation as a Crown agent (or “agency”) made “immediately evident” that “the college

¹²⁷ While Parliament has an unrestricted right of taxation under the *Constitution Act*, 1867 at s. 91(3), the Provinces enjoy more restricted authority under ss. 92(2) and 92(9), and municipalities enjoy only such powers of taxation as are granted to them by a provincial legislature – such as ss. 280 and 396 of the *Vancouver Charter*, S.B.C.1953, c 55.

¹²⁸ *Godbout* at paras. 51 – 55.

¹²⁹ *Local Government Act* R.S.B.C. 1996, c. 323 (the “**LGA**”)

¹³⁰ *GVRD* at paras. 18 and 19.

¹³¹ *Harrison* at para. 6; *Douglas* at para. 6.

is simply a delegate through which the government operates a system of post-secondary education in the province.”¹³²

61. UBC is considered an order of government by the Province itself. The Province instructs UBC to: maintain the “honour of the Crown” in all dealings with indigenous peoples; comply with Part II, s. 35 of the *Constitution Act*, 1982 (the “**Constitution Act**”) or justify infringements consistent with Crown fiduciary obligations; respect and honour treaty obligations; implement indigenous rights to self-determination and self-government; and meaningfully engage with indigenous peoples in connection with lands, territories and resources (the “**Crown’s Constitutional Duties**”).¹³³ These are all inherently and exclusively Crown duties.¹³⁴ UBC is, therefore, substantively treated by the Province as its agent – like Douglas College and the Greater Vancouver Regional District.¹³⁵

62. The Province, therefore, views itself as constitutionally present at UBC. The plaintiffs agree. The *Constitution* is not, however, a buffet from which the Province can pick and choose. UBC’s responsibility to comply with the Province’s constitutional duties applies just as surely to Part I of the *Constitution Act* as it does to Part II.

63. In numerous other ways the Province treats UBC as an organ of government. UBC is part of an integrated and coherent post-secondary education system with respect to which the Province provides annual, consolidated performance metrics.¹³⁶ The Province’s consolidated financials treat UBC capital, assets, tuition fees and expenses as capital, assets, income and expenses of the Province.¹³⁷ UBC is designated a “public sector employer” under the *PSEA* subject to Provincial coordination of labour negotiation and terms of employment;¹³⁸ *FOIPP* designates UBC a “local public body” subject to

¹³² *Douglas* at para. 37.

¹³³ NCC at para. 24(e)(xiv)(8).

¹³⁴ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras. 16 - 18 and 35; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 at para 34

¹³⁵ *Douglas* at para. 34 and 36; *GVRD* at para. 17.

¹³⁶ NCC at paras. 23(b) and 24(a) and (g)

¹³⁷ NCC at paras 18(a) and 19(a).

¹³⁸ *PSEA* at s. 1.

governmental protection and disclose obligations, purposes vital to a free and democratic society.¹³⁹ *BTAA* designates UBC an “education and health sector organization” for the purpose of preparing consolidated provincial financial information.¹⁴⁰

64. Not only does the Province treat UBC as a manifestation of the Crown, by its very nature UBC is governmental. UBC: is significantly controlled by the government through the Control Scheme; pursues, primarily or exclusively, Provincial objectives; and is possessed of so many “quintessential” features of government it is, practically, a special purpose municipality. The minority of UBC’s Board not appointed by the Province, and the members of UBC’s senate not appointed by the Board, are elected by various UBC constituencies who work or study at UBC – just as councillors are elected by residents.¹⁴¹ UBC is exempt from taxation and collects property tax.¹⁴² UBC: is empowered to make bylaws, to administer them and to enforce them within its territorial jurisdiction, including by penalty and fine – it is even empowered to constitute quasi-judicial tribunals for the hearing and determination of disputes;¹⁴³ derives its existence and law making authority from the Province under the *Act*; owns and operates energy, water, sanitation, sewer, and waste management utilities;¹⁴⁴ is exempt from expropriation and the rule against perpetuities and empowered by the legislature to expropriate;¹⁴⁵ enjoys special exemption from civil liability;¹⁴⁶ controls development and building on campus through development and building regulations including permits, inspections and enforcement;¹⁴⁷ controls private business operations on campus through license regulations;¹⁴⁸ controls private transportation operations on campus through transportation permits, traffic bylaws

¹³⁹ *FOIPP*, sections 3(3)(h)-(i) and Schedule 1; *R v Skakun*, 2014 BCCA 223 at paras 8-9.

¹⁴⁰ *BTAA* at ss. 9 and 10.

¹⁴¹ *NCC* at paras. 7 and 8; *Act* at ss. 19(1), 35.1 and Part 9.

¹⁴² *Act* at ss. 27(2)(w) and 54; *NCC* at para. 27(f).

¹⁴³ *Act* at ss. 27(2)(d), (t) – (t.4), (x.1) and (x.2)

¹⁴⁴ *NCC* at para. 27(a).

¹⁴⁵ *Act* at ss. 51 – 53.

¹⁴⁶ *Act* at ss. 68 and 69.

¹⁴⁷ *NCC* at para. 27(b).

¹⁴⁸ *NCC* at para. 27(c).

and enforcement;¹⁴⁹ and owns and operates various public amenities including public thoroughfares, parks, libraries, museums, galleries and recreation facilities.¹⁵⁰

65. UBC acts in its territorial jurisdiction (its campuses) and towards its constituents (students, staff and faculty) in a manner practically indistinguishable from a municipal government. Given the “government by nature” test set-out in *Godbout* and *GVRD*, UBC is a form of “government” for the purpose of section 32(1) of the *Charter*.

66. Greenwood J. completely failed to address the plaintiffs’ argument that UBC is government by nature, nor was the argument advanced in *Harrison* or *Uvic*.

E. *Eldridge*: The Alleged Facts Describe Activities Ascribed to Government

67. Responding to the risk that s. 32(1) of the *Charter* might be applied too formalistically and, thereby, “... permit the provisions of the Charter to be circumvented by the simple expedient of creating a separate entity and having it perform the role,”¹⁵¹ the SCC, in *Eldridge*, developed another major branch of s. 32(1) finding: a private entity engaged in an activity that can be ascribed to government. With respect, the Reasons misstate the *Eldridge* test in several ways.

68. First, the penultimate question is whether an activity can be “ascribed to government” in the sense that “while it is a private actor that actually implements the program, it is government that retains responsibility for it.”¹⁵² The Reasons fail to cite or apply the test. Second, the factors that might serve to ground an *Eldridge*-type finding “... do not readily admit of any *a priori* elucidation ...” and the “... implementation of a specific statutory scheme or a government program ...” is but one example.¹⁵³ The Reasons indicate that “specific government program” is the only test.¹⁵⁴

¹⁴⁹ NCC at para. 27(d).

¹⁵⁰ NCC at para. 27(e).

¹⁵¹ *McKinney* at para. 220.

¹⁵² *Eldridge* at para. 42.

¹⁵³ *Eldridge* at paras. 42 and 44.

¹⁵⁴ Reasons at para 30.

69. Third, where in *Eldridge* La Forest J. uses the word “specific”¹⁵⁵ the Honourable Justice meant “particular” (i.e. identifiable), a term he uses throughout the decision.¹⁵⁶ The Reasons misconstrue “specific” to mean “narrow.” That the SCC did not mean “narrow” is evident from the case itself. La Forest J. emphasized the adjective “specific” when contrasting government action from “what may loosely be termed a ‘public function’.”¹⁵⁷ As observed by Paperny J. of the Alberta Court of Appeal, “*Eldridge* does not require that a particular activity have a name or program identified, but rather that the objective be clear. The objectives set out in the *PSL Act*, while couched in broad terms, are tangible and clear.”¹⁵⁸ It is also evident that “specific” does not mean “narrow” from the outcome of *Eldridge*. The identified government activity was “health services” – a decidedly broad program.

70. Fourth, the Reasons conclude it is impermissible to identify a governmental policy as broad as “university education” because that “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*.”¹⁵⁹ However, respectfully, this is mistaken in two ways. As set-out above, precedent does not bind as to outcome. Further, this was the exact outcome of *Eldridge* itself. While in *Stoffman* the SCC had determine the Vancouver General was not generally subject to the *Charter*, in *Eldridge* hospitals, including the Vancouver General, were found to be subject to the *Charter* insofar as they delivered “health services” – rendering virtually all of Vancouver General’s activities subject to *Charter* scrutiny. There is no principled basis upon which to distinguish a program of “university education” from “health services.”

71. Fifth, *Eldridge* states that, where an entity is delivering a government program, the *Charter* still only applies to it insofar as there is a “... ‘direct and ... precisely-defined connection’ between a specific government policy and the hospital’s impugned conduct.”¹⁶⁰ In *Eldridge* the program was “health services” and the impugned conduct

¹⁵⁵ *Eldridge* at para. 43: “In order for the Charter to apply ... it must be found to be implementing a specific governmental policy or program.”

¹⁵⁶ *Eldridge* at paras. 36, 43 and 44.

¹⁵⁷ *Eldridge* at para. 43.

¹⁵⁸ *Pridgen* at para 104.

¹⁵⁹ Reasons at para. 30.

¹⁶⁰ *Eldridge* at para. 51.

was a failure to provide sign language interpretation. A direct and precisely defined connection was identified between health services and a failure to provide sign language interpretation as follows: "... Effective communication is quite obviously an integral part of the provision of medical services."¹⁶¹ The Reasons incorrectly apply *Eldridge*, however, by requiring that the impugned conduct be the government program.¹⁶² In fact, the concept of "connection" is entirely absent from the Reasons. The correct test is to identify a government program (university education), impugned conduct (cancellation of a free speech event), and a direct and precisely-defined connection between them. That connection is evident in the fact that, like communication to health services, freedom of expression is an "integral part" of university education, as expressly and repeatedly acknowledged by UBC itself.¹⁶³

72. The NCC also establishes other government programs including "student safety."¹⁶⁴ The connection between that program and the cancellation is clear: the free speech event was purportedly cancelled for reasons of safety.¹⁶⁵

73. The appellants in *Uvic* argued that the university advanced government policy because it relied on statutory powers granted to it by government.¹⁶⁶ The plaintiffs do not advance that argument. The authorities are clear that more than the mere grant of statutory power is necessary to find an entity "government"¹⁶⁷ and that *Eldridge* applies only insofar as an activity is ascribed to government.

74. On a proper application of *Eldridge*, the *Charter* applies to UBC insofar as it delivers university education and student safety and the *Charter*, therefore, applies to the impugned conduct because there is a direct and precisely-defined connection to those programs. The *Charter* claims are not certain to fail.

¹⁶¹ *Eldridge* at para. 69.

¹⁶² Reasons at paras. 31 – 35.

¹⁶³ NCC at paras. 32 and 33.

¹⁶⁴ NCC at paras 21, 22(h), 24(b), 24(e)(xiii), and 25.

¹⁶⁵ NCC at para 52.

¹⁶⁶ *Uvic* at paras. 23 – 41.

¹⁶⁷ *McKinney* at para 30.

F. *Ward*: A Private Entity is not “the State”

75. As set-out above, the NCC asserts that UBC is subject to *Charter* scrutiny either: as a “government entity” (*per McKinney* and *Godbout*); or as a “a private entity ... engaged in activities that can in some way be attributed to government.”¹⁶⁸ *Ward* is clear that *Charter* damages lay only against “the state”:

*“The nature of the remedy is to require the state (or society writ large) to compensate an individual for breaches of the individual’s constitutional rights.”*¹⁶⁹

76. Should the *Charter* apply to UBC as a “private entity” (*per Eldridge*) it is, therefore, tautologically true that UBC, as a “private entity,” is not “the state” potentially liable for damages under the *Charter*. The terms “private entity” and “the state” are “complimentary opposites”: mutually exclusive and cover all possible referents. The Reasons are manifestly wrong, therefore, where they conclude, “[a]pplying *Ward* ... if the plaintiffs could establish that the Charter applies to UBC ... then it stands to reason that UBC would be liable, as government or as an entity carrying out a government function, for any [*Charter*] damages ...”¹⁷⁰

77. The Reasons cite a number of authorities in support of this proposition.¹⁷¹ However, in none of those authorities (including Kent Roach and the authorities cited therein¹⁷²) was a “private entity” found to be “the state” answerable for *Charter* damages. Rather, in all of the authorities “government entities” were found to be exclusively liable for claims of *Charter* damages: the Federal Crown,¹⁷³ Provincial Crowns,¹⁷⁴

¹⁶⁸ *Eldridge* at para. 41[emphasis added].

¹⁶⁹ *Ward* at para. 22.

¹⁷⁰ Reasons at para. 48; see also para. 47 to similar effect.

¹⁷¹ Reasons at paras. 49 to 52.

¹⁷² Kent Roach, *Constitutional Remedies in Canada*, 2nd Ed (Toronto: Thompson Reuters, 2023) at 11:13 (“**Roach**”).

¹⁷³ *Spidel v. R.*, 2011 FC 1448; *Forrest v. Kirkland*, 2012 ONSC 429; *Whitty v. Wells*, 2014 ONSC 502.

¹⁷⁴ *Koita v. Toronto Police Services Board*, [2001] O.J. No. 3641, 2001 CarswellOnt 3195 (“**Koita**”); *Ward*; *Payne v. Mak*, 2017 ONSC 243 [affirmed *Payne v. Mak*, 2018 ONCA 622, at para. 48]

Municipalities,¹⁷⁵ and the Toronto Police Service Board.¹⁷⁶ The Reasons are, therefore, more correct where they, later, state: “[a]s Kent Roach has observed, *Charter* damages are not available against private entities ...”¹⁷⁷ In fact, Roach did not so neatly address the issue before this Court, stating instead that *Ward* only made it “crystal clear” that *Charter* damages “... are ordered against governments and not against individuals exercising governmental functions or exceeding their legal authority.”¹⁷⁸

78. It may be argued that, contrary to the observation at paragraph 76, the specific question before this Court (whether a “private entity” is “the state”) was not expressly dealt with in *Ward* – that the SCC only distinguished between “the state” and “individual actors” (by which the court almost certainly meant “natural persons”). On this theory, it might further be argued that the Reasons are, therefore, correct insofar as they state that *Ward* really stands for the simple proposition that the remedy of *Charter* damages is available only against entities “subject to the *Charter*.”¹⁷⁹ However, this is incorrect given: 1) “individual actors” are, in fact, “subject to the *Charter*”;¹⁸⁰ and that *Ward* clearly contemplates entities “subject to the Charter” not being liable for *Charter* damages. That is the entire premise of *Ward*’s paragraph 21 including where it states:

“... deterrence as an object of *Charter* damages is not aimed at deterring the specific wrongdoer, but rather at influencing government behaviour in order to secure state compliance with the Charter in the future.”¹⁸¹

¹⁷⁵ *Ward*; *Mason v. Turner*, 2014 BCSC 211; *Mallett v. McCaskill*, 2014 MBQB 227

¹⁷⁶ *Good v. Toronto Police Services Board*, 2013 ONSC 3026; *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255; although beyond the scope of this appeal the plaintiffs respectfully submit that these decisions may be incorrectly decided given the policy reasons given in *Ward*.

¹⁷⁷ Reasons at para. 51 [emphasis added].

¹⁷⁸ Roach [emphasis added].

¹⁷⁹ Reasons at para 51.

¹⁸⁰ For example: *R v Wilson*, 1994 CanLII 689 (BCSC) at pp. 11 – 12 (private individual acting under the authority of the *Criminal Code*, RSC 1985, c. C-46); *Slaight* at pp 1048, 1077 and 1078 (adjudicator appointed pursuant to a legislative provision who derived all his powers from the statute); *R. v. Therens*, [1985] 1 SCR 613, 1985 CanLII 29 (SCC) at para 1 (police officers); and *Ward* (police officers and prison guards).

¹⁸¹ *Ward* at para 29 [emphasis added].

79. While it may seem “... anomalous if [an entity] were bound by the *Charter*, and at the same time immune from an award of damages ...”¹⁸² such anomaly is expressly mandated by *Ward*, most obviously as it relates to natural persons.

80. *Ward* remains clear authority for the proposition that only “the state” (and, therefore, not “private entities”) is liable for *Charter* damages. In the words of Kent Roach, “... s. 24(1) damages are ordered against governments ...”¹⁸³

G. *Ward*: The NCC Alleges a Cause of Action Against the Province

81. Given the foregoing, to the extent UBC is subject to the *Charter per Eldridge*, only the Province is liable for damages flowing from UBC’s *Charter* infringements (just as the Province was liable for the damages flowing from the *Charter* infringements of prison staff in *Ward*). The plaintiffs’ cause of action against the Province is as follows: UBC delivers programs of university education and student mental health and safety; given the Province’s Control Scheme those programs are ascribed to the Province; the Province may not evade its *Charter* duties by delegating implementation of programs to private entities¹⁸⁴ so the *Charter* (*per* s. 32(1)) applies to UBC insofar as it delivers the programs; UBC (the “specific wrongdoer”) has infringed the plaintiffs’ *Charter* rights (ss. 2(b) and 2(c)) so the plaintiffs are entitled to an effective remedy (s. 24(1)) including *Charter* damages; which remedy is not available against the Province’s delegate, UBC (the “specific wrongdoer”), but is only available against “the state” (in this case, the Province).

82. Contrary to the Reasons, the plaintiffs do not assert, expressly or by implication, that a “... remedy alone gives rise to a valid cause of action against the Province.”¹⁸⁵ Rather, the plaintiffs make the anodyne observation that a cause of action (a factual situation which entitles a litigant to a remedy¹⁸⁶) for *Charter* damages does not exist

¹⁸² Reasons at para. 53 [comments added].

¹⁸³ Roach at 11:13 [emphasis added].

¹⁸⁴ *Eldridge* at para 43.

¹⁸⁵ Reasons at paras. 43, 52 and 59.

¹⁸⁶ *Domco Industries Ltd. v. Mannington Mills Inc.* (1988) 24 F.T.R. 234, 1988 CarswellNat 632, at para. 12, citing *Letang v. Cooper*, [1964] 2 All E.R. 929 (C.A.).

without s. 24(1). A remedy is a necessary, but not sufficient, condition for a cause of action.

83. The Reasons come to the conclusion that, contrary to *Ward*, the plaintiffs have no cause of action against the Province for *Charter* damages because the Province neither “participated in the infringement ... [nor] was ... liable for the actions of the persons who did.”¹⁸⁷ Greenwood J. here quotes *Koita*, which was decided before and was effectively overruled by *Ward*. While *Koita*¹⁸⁸ asserts that *Charter* damages against the state necessitate the participation or vicarious liability of the state, *Ward* imposed liability on the state for the conduct of officers without state participation¹⁸⁹ and expressly confirmed that *Charter* damages are not, “... in the nature of a tort claim for which the state is vicariously liable ...” *Charter* damages are “a public law action directly against the state.”¹⁹⁰

84. The law is replete with causes of action against defendants who attract potential liability through some preliminary involvement, which liability is crystalized by events in which the defendants were not “participants”. For example, in tort law initial “proximity” creates the duty (the potential liability) and tortfeasors often become liable for their failure to act; in agency law the grant of actual or even ostensible authority creates potential liability and a principal may then become liable through an agent’s conduct in which the principal did not participate or even specifically forbade; and in surety law a guarantor assumes potential liability which may crystalize on the debtor’s default, in which default the guarantor did not participate.

85. The *Charter*’s application clause (s. 32(1)), substantive guarantees (for example, ss. 2(b) and 2(c)) and remedial clause (s. 24(1), as interpreted by *Ward*), render the state, and only the state, directly liable for *Charter* damages where an infringement occurs and

¹⁸⁷ Reasons at para. 52.

¹⁸⁸ *Koita* at paras. 12 and 13.

¹⁸⁹ The closest the case comes to any state participation is the lower court’s determination that the Corrections Branch’s written policy did not permit the strip search but, D. Tysoe J. continues, if it did it would have been a *Charter* infringement: see *Ward v. Vancouver (City)*, 2007 BCSC 3 at para 86.

¹⁹⁰ *Ward* at para. 21.

damages are a just and appropriate remedy. Just as *Eldridge* confirms constitutional duties may not be evaded by delegation, *Ward* confirms that this specific duty (liability for *Charter* damages) may not be evaded by delegation either – liability remains directly with the state, notwithstanding delegation.

86. It is not necessary for the plaintiffs to plead Provincial participation (in the cancellation) or vicarious liability to have pleaded a valid cause of action against the Province for *Charter* damages and other remedies.

H. The Crown Proceedings Act is Redundant

87. Pursuant to s. 3(2)(d) of the *CPA*, only if UBC is found to be both: “government” under s. 32(1) of the *Charter*; and “the state” answerable for *Charter* damages under s. 24(1), would the plaintiffs have pleaded no monetary claim “enforceable” against the Province. As to the plaintiffs’ request for a remedial declaration, it is not “enforceable” against anyone. The *Crown Proceedings Act*, therefore, has no bearing on the outcome of this appeal.

I. Costs

88. In supplementary reasons Greenwood J.: 1) awarded costs to the Province for its application to strike; 2) refused the Province’s application to double costs for a formal offer; 3) awarded costs to UBC for, both, the Province’s application to strike and the plaintiffs’ application to amend; 4) refused UBC’s application that costs be payable forthwith; and 5) refused the plaintiffs’ application for public interests costs in respect of the applications. As to costs, the plaintiffs appeal number 1) only (the “**Provincial Costs Order**”).¹⁹¹

89. If it is determined that the decision was incorrect on the merits, the Provincial Costs Order would work an injustice and, the plaintiffs submit, should be reversed.¹⁹²

¹⁹¹ Costs Reasons.

¹⁹² *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at paras. 30 and 31.

PART 4 - NATURE OF ORDER SOUGHT

90. An order: a) allowing the appeal of the order striking the NCC as against the Province 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 BCSC for trial on the merits.

91. An order: a) allowing the appeal of the order granting the Province costs (pronounced in the Costs Reasons); and b) reversing such costs.

92. An order: awarding the plaintiffs costs of the appeal.

93. No appeal is advanced in respect of the other orders: dismissing the plaintiffs' application for leave to amend the NCC; granting UBC costs in the cause (in the Province's Application and in the plaintiffs' Amendment Application); refusing the Province's request for double-costs; and refusing the plaintiffs' request that costs of both applications be assessed on a public interest basis.

94. Such further and other order as this Honourable Court deems just.

Dated at the City of Calgary, in the Province of Alberta, this 16th day of October 2024.



Glenn Blackett
Counsel for the Appellants

APPENDICES: LIST OF AUTHORITIES

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APPENDICES: ENACTMENTS***Canadian Charter of Rights and Freedoms*****Rights and freedoms in Canada**

1 The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association.

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Enforcement of guaranteed rights and freedoms

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

University Act, RSBC 1996, c. 468

Part 6 — Board of Governors

Composition of board

19 (1) The board of a university, other than the University of British Columbia, is composed of 15 members as follows:

- (a) the chancellor;
- (b) the president;
- (c) 2 faculty members elected by the faculty members;
- (d) 8 persons appointed by the Lieutenant Governor in Council, 2 of whom are to be appointed from among persons nominated by the alumni association;
- (e) 2 students elected from students who are members of an undergraduate student society or a graduate student society;
- (f) one person elected by and from the employees of the university who are not faculty members.

(2) The board of the University of British Columbia is composed of 21 members, as follows:

- (a) the chancellor;
- (b) the president;
- (c) a faculty member who works through a part specified under section 3.1, elected by the faculty members who work through the part;
- (d) 2 faculty members who work through a part not specified under section 3.1, elected by the faculty members who work through the part;
- (e) 11 persons, appointed by the Lieutenant Governor in Council, 2 of whom are to be appointed from among persons nominated by the alumni association;
- (f) a student who studies through a part specified under section 3.1, elected from the students who
 - (i) are members of an undergraduate student society or a graduate student society, and
 - (ii) study through any part specified under section 3.1;
- (g) 2 students who study through a part not specified under section 3.1, elected from the students who

(i)are members of an undergraduate student society or a graduate student society, and

(ii)study through any part not specified under section 3.1;

(h)one person who must work through a part specified under section 3.1, elected by and from the employees of the university who

(i)are not faculty members, and

(ii)work through any part specified under section 3.1;

(i)one person who must work through a part not specified under section 3.1, elected by and from the employees of the university who

(i)are not faculty members, and

(ii)work through any part not specified under section 3.1.

...

Board chair

19.2 (1)The members of the board of a university, other than the University of British Columbia, must elect a chair from among the 8 members of the board appointed under section 19 (1) (d).

(2)The members of the board of the University of British Columbia must elect a chair from among the 11 members of the board appointed under section 19 (2) (e).

...

Powers of the Board

27 (1)The management, administration and control of the property, revenue, business and affairs of the university are vested in the board.

(2)Without limiting subsection (1) or the general powers conferred on the board by this Act, the board has the following powers:

...

(d)in consultation with the senate, to maintain and keep in proper order and condition the real property of the university, to erect and maintain the buildings and structures on it that in the opinion of the board are necessary and advisable, and to make rules respecting the management, government and control of the real property, buildings and structures;

...

(t.1)to regulate, prohibit and impose requirements in relation to noise on or in real property, buildings and structures of the university;

(t.2)for the purposes of paragraphs (t) and (t.1), to provide for the removal, immobilization or impounding, and recovery, of any property associated with a contravention of a rule or other instrument made in the exercise of a power under this section;

(t.3)to set, determine and collect fees for the purposes of paragraphs (t) to (t.2), including in relation to approvals, permits, security, storage and administration, and expenses related to any of these;

(t.4)to regulate, prohibit and impose requirements in relation to nuisance on or in real property, buildings and structures of the university, including providing for remediation of a nuisance and recovery of the costs of remediation;

(u)to acquire and deal with

(i)an invention or any interest in it, or a licence to make, use or sell the product of an invention, and

(ii)a patent, copyright, trade mark, trade name or other proprietary right or any interest in it;

(v)to require, as a term of employment or assistance, that a person assign to the board an interest in an invention or an interest in a patent, copyright, trade mark, trade name or other proprietary right resulting from an invention

(i)made by that person using the facilities, equipment or financial aid provided by the board, or

(ii)made by that person while acting within the scope of the person's duties or employment, or resulting from or in connection with the person's duties or employment as an officer or employee of the university;

...

(w)to pay to a municipality incorporated under an Act a grant in a year not exceeding the lesser of

(i)the amount that would be payable as general municipal taxes in the year on property of the university within the municipality if the property were not exempt from these taxes, and

(ii)the amount specified by the minister or calculated in the manner specified by the minister;

...

(x.1)to impose and collect penalties, including fines, in relation to a contravention of a rule or other instrument made in the exercise of a power under this section;

(x.2)to provide for the hearing and determination of disputes arising in relation to

(i)the contravention of a rule or other instrument made in the exercise of a power under this section, and

(ii)the imposition of a penalty under paragraph (x.1);

...

Limit on expenditures

29 (1)In this section:

"expenditure" includes amortization, allowances for doubtful accounts and other non-cash expenses;

"revenue of the university from other sources" does not include

(a)unrealized gains or losses on investments, or

(b)endowments received by the university.

(1.1)The board must not incur any liability or make any expenditure in a fiscal year beyond the amount unexpended of the grant made to the university and the estimated revenue of the university from other sources up to the end of and including that fiscal year, unless an estimate of the increased liability or over-expenditure has been first approved by the minister and Minister of Finance.

Reduction of grant

30 (1)If the services of employees of a university are withheld, or the university locks out the employees, as a consequence of a dispute or other disagreement between the university and employees of the university

(a)the total of unexpended amounts of the grant made to the university in the fiscal year is reduced by the value of the benefits, and

(b)the amount of the reduction calculated under paragraph (a) is a debt due and owing to the government and must be

(i)paid by the university to the government, or

(ii) withheld by the minister from future grants to the university in the fiscal year or a future fiscal year.

(2) In subsection (1) (a) the "value of the benefits" is the value of the benefits the employees would receive for the period of the withholding or lockout in the fiscal year if the employees had worked, less the costs necessarily incurred by the university as a consequence of the withholding or lockout and approved by the minister.

Short term borrowing

31 (1) The board may, by resolution, borrow money required to meet the expenditures of the university until the revenues of the current year are available.

(2) Money borrowed under subsection (1) must be repaid out of current revenues and may be secured by promissory notes of the university.

Part 7 — Senate

Senates of the University of British Columbia

35.1 (1) The University of British Columbia must have a Vancouver senate and an Okanagan senate.

(2) The Vancouver Senate is composed of the following:

(a) the chancellor;

(b) the president, who is the senate's chair;

(c) the academic vice president who must work through a part not specified under section 3.1 or equivalent;

(d) the deans of faculties who must work through a part not specified under section 3.1;

(e) the chief librarian or a person designated for the purpose by the chief librarian;

(f) the director of continuing education or a person designated for the purpose by the director;

(g) a number of faculty members equal to twice the number of senate members provided in paragraphs (a) to (f), to consist of 2 members of each faculty elected by the members of that faculty, and the remainder elected by the faculty members in the manner that they, in joint meeting, determine, but only faculty members employed through parts not specified under section 3.1 can vote or be elected;

(h) a number of students, equal to the number of senate members provided in paragraphs (a) to (f), elected from the students who are members of an undergraduate student society or a graduate student society, in a manner that ensures that at least one student from each faculty is elected, but only students studying through parts not specified under section 3.1 can vote or be elected;

(i) 4 persons who are not faculty members, elected by and from the convocation;

(j) one member to be elected by the governing body of each affiliated college of the university;

(k) additional members, determined by the senate, without altering the ratio set out in paragraphs (g) and (h).

(3) The Okanagan Senate is composed of the following:

(a) the chancellor;

(b) the president, who is the senate's chair;

(c) the academic vice president who must work through a part specified under section 3.1 or equivalent;

(d) the deans of faculties who must work through a part specified under section 3.1;

(e) the chief librarian or a person designated for the purpose by the chief librarian;

(f) the director of continuing education or a person designated for the purpose by the director;

(g) a number of faculty members equal to twice the number of senate members provided in paragraphs (a) to (f), to consist of 2 members of each faculty elected by the members of that faculty, and the remainder elected by the faculty members in the manner that they, in joint meeting, determine, but only faculty members employed through parts specified under section 3.1 can vote or be elected;

(h) a number of students, equal to the number of senate members provided in paragraphs (a) to (f), elected from the students who are members of an undergraduate student society or a graduate student society, in a manner that ensures that at least one student from each faculty is elected, but only students studying through parts specified under section 3.1 can vote or be elected;

(i) 2 persons who are not faculty members, elected by and from the convocation;

(j) additional members, determined by the senate, without altering the ratio set out in paragraphs (g) and (h).

...

Part 9 — Nominations, Elections and Voting

Rules for elections

43 (1)The senate must make and publish all rules necessary and consistent with this Act in respect of nominations, elections and voting.

(2)The registrar must conduct all elections that are required.

Nomination paper to registrar

44 A nomination paper is not valid unless at least 4 weeks before the date of the election

(a)it is delivered at the office of the registrar, or

(b)if sent by mail, it is received by the registrar.

Election register

45 (1)In every year in which an election is to take place, the registrar must prepare an alphabetical list, to be called the election register, of the names and known addresses of all members of the convocation who are entitled to vote at an election.

(2)The election register must be open to inspection at all reasonable hours by all members entitled to vote.

(3)The registrar must similarly keep an alphabetical list of the names of all students who are members of the undergraduate student society or the graduate student society.

Voters to be registered

46 Only those persons whose names appear in the election registers are entitled to vote at an election.

...

Part 10 — Powers and Duties of a University

Functions and duties of university named in section 3

47 (1)In this section, "university" means a university named in section 3 (1).

(2)A university must, so far as and to the full extent that its resources from time to time permit, do all of the following:

(a)establish and maintain colleges, schools, institutes, faculties, departments, chairs and courses of instruction;

(b)provide instruction in all branches of knowledge;

(c) establish facilities for the pursuit of original research in all branches of knowledge;

(d) establish fellowships, scholarships, exhibitions, bursaries, prizes, rewards and pecuniary and other aids to facilitate or encourage proficiency in the subjects taught in the university and original research in all branches of knowledge;

(e) provide a program of continuing education in all academic and cultural fields throughout British Columbia;

(f) generally, promote and carry on the work of a university in all its branches, through the cooperative effort of the board, senate and other constituent parts of the university.

Minister not to interfere

48 (1) The minister must not interfere in the exercise of powers conferred on a university, its board, senate and other constituent bodies by this Act respecting any of the following:

(a) the formulation and adoption of academic policies and standards;

(b) the establishment of standards for admission and graduation;

(c) the selection and appointment of staff.

(2) Despite subsection (1), a university must not establish a new degree program without the approval of the minister.

...

Expropriation of land

51 A university may expropriate any land that it considers necessary for its purposes.

Perpetuities

52 The rule against perpetuities and other rules restricting the holding of land do not apply to property of a university.

Exemption from expropriation

53 (1) Land that is vested in a university is not liable to be entered, used or taken by any municipal or other corporation, or by any person possessing the right of taking land compulsorily for any purpose.

(2) A power to expropriate land under an Act enacted after July 4, 1974 does not apply to land vested in a university, unless, in the Act, the power is, in express terms, made to apply to that land.

Exemption from taxation

54 (1) Unless otherwise provided in an Act, the property vested in a university and held or used by or on behalf of the university for university purposes is exempt from taxation under the [Community Charter](#), the [Local Government Act](#), the [Police Act](#), the [School Act](#), the [Vancouver Charter](#) and the [Taxation \(Rural Area\) Act](#).

(2) If property vested in a university is disposed of by lease to a college affiliated with the university, so long as it is held for college purposes, the property continues to be entitled to the exemption from taxation provided in this section.

(3) If property vested in a university is held or used by or on behalf of a student society affiliated with the university, so long as it is held or used for university purposes, the property continues to be entitled to the exemption from taxation provided in this section.

(4) Subsections (1), (2) and (3) do not apply to property used for a prescribed purpose.

...

Borrowing

58 (1) With the approval of the minister and Minister of Finance, a university may borrow money for the purpose of

(a) purchasing or otherwise acquiring land for the use of the university, or

(b) erecting, repairing, adding to, furnishing or equipping any building or other structure for the use of the university.

(2) The board may

(a) enter into any agreement that it may consider necessary or advisable for carrying out the purposes mentioned in this section, and

(b) execute in the name of the university all agreements, deeds and other instruments considered necessary or advisable to carry into effect the provisions of the agreement.

(3) [Repealed 1998-6-19.]

...

Part 12 — General

No liability for acts of students

68 An action, prosecution or other proceeding does not lie and must not be instituted against a university, the board, the senate or the members of the board or the senate, or any officer or employee of a university, in respect of any act or omission of a student arising out of an association or activity organized, managed or controlled, in whole or in part, by students of a university or of an affiliated college.

...

Limitation of liability

69 (1)An action or proceeding must not be brought against a member of a board, senate or faculties, or against an officer or employee of a university, in respect of an act or omission of a member of a board, senate or faculties, or officer or employee, of the university done or omitted in good faith in the course of the execution of the person's duties on behalf of the university.

(2)In an action against a university, if it appears that the university acted under the authority of this Act or any other Act, the court must dismiss the action against the university.

Financial Administration Act, RSBC 1996, c. 138

Part 1 — Definitions and Application

Definitions

1 In this Act:

"appropriation" means

- (a) an appropriation in a Supply Act,
- (b) a provision in this or another Act that expressly
 - (i) authorizes or directs payment from or out of the consolidated revenue fund,
 - (ii) authorizes payment from or out of a special fund, or
 - (iii) dispenses with the need for another appropriation, or
- (c) an appropriation by special warrant under section 24;

"banking instrument" means a cheque, draft, telegraphic or electronic transfer or other similar instrument;

"consolidated revenue fund" means the consolidated revenue fund referred to in section 12;

"currency" means the currency of a country or any other unit of monetary value;

"designated institution" means an institution designated under section 79 (1) (d);

"estimates" means the estimates of revenue and expenditure for a fiscal year presented to the Legislative Assembly, being

- (a) the main estimates presented annually, and
- (b) any supplementary estimates for the fiscal year,

and includes any replacement of or revision to the estimates made before passage by the Legislative Assembly of the final Supply Act that relates to those estimates;

"expenditure" includes amounts appropriated for amortization, allowances for doubtful accounts or other non-cash expenses and, in relation to this, a reference to paying, spending or otherwise expending amounts includes the application of non-cash expenses to the purposes for which they are appropriated;

"fiscal year", when used to mean the fiscal year of the government, means the period from April 1 in one year to March 31 in the next year;

"general fund" means the general fund, referred to in section 12 (2), of the consolidated revenue fund;

"government" does not include government corporations;

"government body" means

(a) a government corporation,

(b) a hospital district board, a board of school trustees or a francophone education authority as defined in the [School Act](#),

(c) a university or an institution as defined in the [College and Institute Act](#), and

(c.1) [Repealed 2004-33-15.]

(c.2) [Repealed 2012-7-55.]

(d) any other local or Provincial public authority designated by regulation of the Lieutenant Governor in Council;

"government corporation" means a corporation

(a) that is, under an Act, an agent of the government,

(b) of which the government owns, directly or indirectly, more than 50% of the issued voting shares, or

(c) that is controlled by the government, and for the purpose of this definition a corporation is controlled by the government when a majority of the members of the corporation or of its board of directors or board of management consists of either or both of the following:

(i) persons appointed as members by the Lieutenant Governor in Council, by a minister or by an Act;

(ii) public officers acting as public officers;

"government organization" means a government organization as defined in the [Budget Transparency and Accountability Act](#);

"investment management corporation" means the British Columbia Investment Management Corporation established under Part 3 of the [Public Sector Pension Plans Act](#);

"minister" means a member of the Executive Council;

"Minister of Finance" means the minister who has administration of this Act;

"ministry" means

(a) a ministry of the executive government of British Columbia, or

(b) a branch of the executive government of British Columbia that is not part of a ministry but is designated by the Lieutenant Governor in Council as a ministry for the purposes of this Act;

"money received for another person" means money that is paid to the government or a public officer under an agreement or undertaking, or by way of gift or bequest, and that is to be paid to another person specified in the agreement or undertaking or by the donor of the gift or bequest, but does not include money received as reimbursement for or as a contribution towards expenditures made by the government;

"pension fund" means

(a) a pension fund established under Part 2 or 3 of the [Members' Remuneration and Pensions Act](#) or continued under the [Public Sector Pension Plans Act](#),

(b) any pension fund held in trust by the government or a public officer, and

(c) any prescribed pension fund that has been established for the benefit of employees of a government body;

"pooled investment portfolio" means a portfolio of investments or loans, or both, established under section 43;

"property" does not include money or securities;

"public accounts" means the public accounts under section 9 of the [Budget Transparency and Accountability Act](#);

"public body" means

(a) an agency of the government,

(b) a board, commission, council or other body of persons, whether or not incorporated, all the members or all the members of the board of management or board of directors of which are appointed by an Act, an order of the Lieutenant Governor in Council or a minister of the government,

(c) a corporation, more than 50% of the shares or ownership of which is, directly or indirectly, vested in the government, or

(d) a corporation, association, board, commission or society to which a grant or advance of public money is made, or the borrowings of which may be guaranteed by the government under the authority of any Act,

but does not include the B.C. Ferry Authority, established under the [Coastal Ferry Act](#), or British Columbia Ferry Corporation;

"public debt" means direct debt obligations of the government;

"public money" means all money received, held or collected by, for or on behalf of the government and includes

(a) revenues of the government,

(b) special funds,

(c) money borrowed by the government or received through the issue and sale of securities, and

(d) trust funds,

but does not include money received, held or collected by a government corporation unless that money is payable to the government under an enactment;

"public officer" includes a minister and a person employed in the public service of British Columbia;

"public property" means all property belonging to the government, but does not include property belonging to a government corporation;

"securities" means bonds, debentures, deposit certificates, promissory notes, treasury bills or other evidences of indebtedness, shares and stock, and includes any documents commonly known as securities;

"special account" means an account in the general fund where the authorization to spend money from the account is located in an Act other than a Supply Act;

"special fund" means the special fund established under section 47.1 or a fund designated as a special fund by the Lieutenant Governor in Council;

"Treasury Board" means the Treasury Board continued by this Act;

"trust funds" means

(a) money held in trust by the government or a public officer, and

(b) pension funds, sinking funds maintained by the government, money received for another person and money paid to the government as a deposit to ensure the doing of any act or thing;

"vote" means an appropriation under a Supply Act identified in the estimates as a vote.

...

Part 2 — Organization

Management of capital expenditures

4.1 (1) Without limiting any relevant authority under another provision of this or any other Act, Treasury Board may make regulations or issue directives respecting the planning, management and reporting of capital expenditures by government and government bodies.

...

Power to compel persons to answer questions and order disclosure

8.1 (1) For the purposes of an examination under section 8 (2) (d), the Comptroller General may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the Comptroller General to answer questions on oath or affirmation, or in any other manner;

(b) produce for the Comptroller General a record or thing in the person's possession or control.

...

Comptroller General authority respecting government organizations

9.1 (1) When directed to do so by directive or regulation of the Treasury Board with respect to a government organization or a class of government organizations, the Comptroller General must, in accordance with the directive or regulation,

(a) develop and issue policies and guidelines and establish procedures for the recording and reporting of the revenues, expenditures, assets, liabilities and equity of the government organization or class of government organizations,

(b) issue directives respecting the methods by which the accounts of the government organization or class of government organizations are kept,

(c) evaluate financial management throughout the government organization or class of government organizations and recommend to the Treasury Board improvements considered necessary,

(d) examine and report to the Treasury Board on any or all of the financial and accounting operations of a government organization, or

(e) perform other duties with respect to the government organization or class of government organizations assigned to the Comptroller General by the Treasury Board.

(2) For the purposes of subsection (1), the Comptroller General, in addition to the powers given to the Comptroller General under this or any other Act,

(a)has access at all times to all government organizations and to their records, and

(b)may require from any officer or employee of a government organization information and explanations necessary for the performance of the Comptroller General's duties.

(3)A government organization must comply with a policy, procedure, directive or other requirement of the Comptroller General under this section.

(4)A policy, procedure, directive or other requirement of the Comptroller General under this section must be consistent with section 23.1 of the [Budget Transparency and Accountability Act](#).

(5)This section applies despite any other enactment.

University Foundations Act, RSBC 1996, c. 471.**Foundations continued**

2 (1)The following foundations are continued as corporations:

(a)The University of British Columbia Foundation;

...

Foundations are agents of the government

3 Each foundation is for all purposes an agent of the government.

Capital of foundations

4 (1)The capital of each foundation is one share with a par value of \$100.

(2)The share in each foundation must be issued to and registered in the name of the Minister of Finance and must be held by that minister on behalf of the government.

Purposes and powers

5 (1)The purposes of each foundation are as follows:

(a)to develop, foster and encourage public knowledge and awareness of the relevant university and the benefits to the people of British Columbia in connection with that university;

...

Liability of members

9 A member of a foundation is not personally liable for loss or damage suffered by a person as a result of anything done in good faith in the exercise of a power given by this Act.

...

Annual audit required

13 Unless the Auditor General is appointed in accordance with the [Auditor General Act](#) as the auditor of a foundation, the board must appoint an auditor who is authorized to be the auditor of a company under sections 205 and 206 of the [Business Corporations Act](#) to audit the accounts of the foundation at least once each year.

Exemption from property taxes

14 Property vested in a foundation is exempt from taxation under the [Community Charter](#), the [Local Government Act](#), the [Vancouver Charter](#), the [Taxation \(Rural Area\)](#)

[Act](#) and the [School Act](#) if the property is being used for educational purposes in connection with a program operated by the relevant university.

Public Sectors Employers Act, RSBC 1996, c. 384

1 In this Act:

"contract of employment" means a policy or contract, whether written or oral, express or implied, with respect to or containing terms of employment between a public sector employer and an employee or a class of employee;

"council" means the Public Sector Employers' Council continued under section 3;

"employers' association" means an employers' association established under section 6;

"employment compensation standard" means a standard established under section 14.2 or 14.3 (5);

"employment termination" includes the expiry, cessation, change or renewal of a contract of employment;

"employment termination standard" means a standard established under section 14.4;

"public sector employee" means a person employed by, or appointed to an office with, a public sector employer, but does not include a justice or a person appointed as a justice;

"public sector employer" means

(a) the government,

(b) unless exempted by the regulations,

(i) a corporation or an unincorporated board, commission, council, bureau, authority or similar body that has on its board of management or board of directors 50% or more members who are appointed by an Act, a minister or the Lieutenant Governor in Council, or

(ii) a subsidiary, as defined in section 1 (1) of the [Business Corporations Act](#), of a corporation that is a public sector employer,

(c) a board of school trustees as defined in the [School Act](#) or a francophone education authority as defined in that Act,

(d) a university as defined in paragraph (a) of the definition of **"university"** in section 1 of the [University Act](#),

(d.1) Royal Roads University continued under the [Royal Roads University Act](#),

(d.2) [Repealed 2002-35-12.]

(d.3) the Thompson Rivers University,

(e)an institution as defined in the [College and Institute Act](#) and a special purpose, teaching university as defined in the [University Act](#),

(f)a hospital as defined in the [Hospital Act](#) or an employer that is designated in the regulations as a health care employer, and

(g)an employer that is designated in the regulations as a social services employer;

"public service sector" means the government and the employees of the government;

"sector" means all the employers referred to in a paragraph of the definition of "public sector employer" and the employees of those employers.

...

Public Sector Employers' Associations

6 (1)An employers' association must be established for each sector other than the public service sector.

(2)The purposes of an employers' association are to coordinate the following with respect to a sector:

(a)compensation for employees who are not subject to collective agreements;

(b)benefit administration;

(c)human resource practices;

(d)collective bargaining objectives.

(3)In addition, it is a purpose of an employers' association

(a)to foster consultation between the association and representatives of employees in that sector, and

(b)to assist the council in carrying out any objectives and strategic directions established by the council for the employers' association.

(4)Every public sector employer referred to in paragraphs (b) to (g) of the definition of "public sector employer" must become and remain a member of the employers' association for the sector that applies to that employer.

Requirements

7 (1)Every employers' association must do the following:

(a)make provision for the representation of the government on the board of directors of the association;

(b)make provision to levy fees and assessments from its members for the purposes referred to in section 6;

(c)have a properly constituted board of directors and bylaws or rules considered necessary by the minister for the administration and management of the employers' association;

(c.1)comply with any strategic direction that is set by the council in the exercise of its functions under section 4 and that is of general application or applies specifically to that association;

(c.2)with respect to persons who are employed by the association and who are not subject to a collective agreement, comply

(i)as if it were a public sector employer, with any employment compensation standard or employment termination standard that is of general application, or

(ii)with any employment compensation standard that the minister may establish, under section 14.3, specifically for those persons or that association;

(c.3)provide, without charge, to the council copies of

(i)contracts of employment relating to persons who are employed by the association and who are not subject to a collective agreement, and

(ii)other information that the council requests for the purpose of monitoring compliance with paragraph (c.2);

(d)comply with any further conditions prescribed by the Lieutenant Governor in Council.

(2)If authorized to do so by its bylaws or rules, an employers' association may levy additional fees or assessments for the provision of other services for its members.

(3)An employers' association may bargain collectively on behalf of its members if authorized to do so under section 43 of the [Labour Relations Code](#), section 12 of this Act or any other enactment.

(4)Despite any other Act, the constitution and bylaws or rules of the employers' association are not effective until approved by the minister.

(5)Despite the [Societies Act](#), an employers' association must not exercise any of the borrowing powers conferred by the [Societies Act](#) without the prior approval of the minister.

Division 2 — Collective Bargaining

Direction by minister

12 (1) Subject to subsection (2), the minister may, on application of 2 or more employers that are members of an employers' association or on the minister's own motion and after the investigation considered necessary or advisable, direct the board to consider whether in a particular case an employers' association or any group of employers in an employers' association would be an appropriate bargaining agent for the employers in a sector or a part of a sector.

(2) The minister must not make a direction under this section unless

(a) an employers' association or any employers that are members of an employers' association have at any time before or after the commencement of this Act made an application for accreditation under section 43 of the Code or any predecessor to that section, and

(b) the minister considers that the direction is necessary to secure and maintain industrial peace and promote conditions favourable to settlement of disputes.

(3) If a direction is made under subsection (1), the board must determine whether the employers' association or any group of employers in the employers' association is appropriate for collective bargaining for the employers in the sector or part of the sector and must make any other examination of records, inquiry or findings including the holding of hearings it considers necessary to determine the matter.

(4) The board must make its determination under subsection (1) within the time period specified by the minister.

(5) After a determination under subsection (3) and if the board considers it necessary or advisable, the board may recommend to the minister that the employers' association or any group of employers in the employers' association should be the bargaining agent for all or any of the employers in the sector.

(6) When the minister receives a recommendation from the board, the minister may direct that the employers' association or any group of employers in the employers' association has exclusive authority to bargain collectively for the employers who are named by the minister and to bind those employers by collective agreement.

(7) The board may modify or cancel an accreditation under section 43 of the Code to reflect a direction under subsection (6).

(8) The minister may cancel or modify a direction under subsection (6).

...

Division 2 — Employment Compensation Standards

Other compensation standards

14.3(4) If directed to prepare a compensation plan and report under this section, the employers' association or public sector employer in respect of whom the direction is issued must, in accordance with the minister's direction,

- (a) prepare the plan and report, and
- (b) submit them for review by the minister.

...

(6) On the minister issuing a direction to an employers' association or a public sector employer under subsection (1), no increase in compensation may be provided to employees or persons in positions or occupations in respect of which the direction is issued unless

- (a) a compensation plan in respect of those employees or persons is approved by the minister and the increase in compensation is consistent with the applicable employment compensation standard resulting from the operation of subsection (5),
- (b) the increase in compensation was agreed to before the date on which the minister issues the direction and the increase in compensation is consistent with the applicable employment compensation standard, if any, that was in force and effect before the issuance of the direction,
- (c) the increase is the result of a change in an employee's or person's position within a range of positions that was established for the sector, employee or person before the issuance of the direction, or
- (d) the increase is within a range of compensation that was established for the employee's or person's position before the issuance of the direction.

...

Division 3 — Employment Termination Standards

Employment termination standards

14.4 (1) The Lieutenant Governor in Council may, by regulation, establish employment termination standards for an employee.

(2) In making regulations under subsection (1), the Lieutenant Governor in Council may do one or more of the following:

- (a) delegate a matter to the council, the Treasury Board, an employers' association, a public sector employer or the minister;

(b) confer a discretion on the council, the Treasury Board, an employers' association, a public sector employer or the minister;

(c) establish different standards for different public sector employers or public sector employees;

(d) specify positions or occupations or categories of positions or occupations for the purpose of paragraph (c).

(3) If the Lieutenant Governor in Council establishes an employment termination standard by regulation under subsection (1), effective on the date on which the regulation comes into force,

(a) the standard is deemed to be included in all applicable contracts of employment that are commenced, changed or renewed on or after that date, and

(b) any provision of an applicable contract of employment referred to in paragraph (a) that conflicts or is inconsistent with the standard is void to the extent of the conflict or inconsistency.

(4) The Employment Termination Standards regulation (B.C. Reg. 379/97) made under this Act before the commencement of this section continues, as amended by this section, and is deemed to have been made under this section.

(5) On the effective date,

(a) the Employment Termination Standards regulation (B.C. Reg. 379/97) is deemed to have been amended as set out in the Schedule to the *Public Sector Employers Amendment Act, 2002*,

(b) the employment termination standards set out in that regulation are deemed to be included in all applicable contracts of employment that are in force on the effective date or are commenced, changed or renewed on or after that date, and

(c) any provision of an applicable contract of employment referred to in paragraph (b) that conflicts or is inconsistent with any of those standards is void to the extent of the conflict or inconsistency.

(6) Subsection (5) is retroactive to the extent necessary to give it force and effect on and after the effective date.

(7) The amendment to section 5 (2) of the Employment Termination Standards regulation (B.C. Reg. 379/97) made under this section does not apply in relation to an employee with whom a contract of employment was entered into before the effective date and which contract of employment is for a definite term unless that contract of employment is changed or renewed on or after the effective date.

Division 4 — Compensation Information**Compensation information to be specified and provided**

14.6 (1) For each senior employee, a public sector employer must provide for the chief executive officer of the council a report specifying all the terms and conditions of employment relating to the senior employee's compensation.

(2) If any change is made to the terms and conditions of employment relating to a senior employee's compensation, the public sector employer must provide for the chief executive officer of the council a revised report specifying each change made to those terms and conditions.

(3) The terms and conditions referred to in subsection (1) and any changes to them must be specified and provided in a form and in a manner acceptable to the chief executive officer of the council.

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

Part 2 — Fiscal Reports: Public Accounts and Other Reports

Public accounts

9 (1) Annual public accounts for each fiscal year must be prepared in accordance with this section and with the accounting policies as established by Treasury Board.

(2) The public accounts for a fiscal year must include the following:

(a) for the government reporting entity, for the fiscal year and the preceding fiscal year, financial statements of

(i) the revenues and expenses and the resulting surplus or deficit,

(ii) the balance sheet as at the end of those fiscal years, and

(iii) changes in cash and cash equivalents;

(b) for the government reporting entity, supplementary schedules that include

(i) amounts held and administered in trust, and

(ii) a summary of debt at the end of the fiscal year, including a statement of the Provincial government direct operating debt at the end of that fiscal year;

(c) for the taxpayer-supported government reporting entity,

(i) a statement of the debt guaranteed by that entity as at the end of the fiscal year, and

(ii) a supplementary schedule that includes staff utilization for that fiscal year, except in relation to the staff of education and health sector organizations;

(d) for the government as reported through the consolidated revenue fund, supplementary schedules that include

(i) appropriations for the fiscal year compared to the actual expenditures for that fiscal year,

(ii) assets, debts and obligations written off in that fiscal year under section 17 of the [*Financial Administration Act*](#),

(iii) debts and obligations forgiven in that fiscal year under section 18 of the [*Financial Administration Act*](#),

(iv) remissions made in that fiscal year under section 19 of the [*Financial Administration Act*](#),

(v) information required by sections 25 (2) [*amounts received by government*], 26 (3) [*liabilities in excess of appropriation*], 70 (2) and (3) [*borrowing transactions and leases*] and 74 (3) [*payments on guarantees and indemnities*] of the [Financial Administration Act](#),

(vi) revenues and expenses and the resulting surplus or deficit for the fiscal year and the preceding fiscal year,

(vii) the balance sheet as at the end of the fiscal year and the preceding fiscal year, and

(viii) changes in cash and cash equivalents between the fiscal year and the preceding fiscal year;

(e) a summary of the accounting policies of the government reporting entity as established by Treasury Board;

(f) other information required to be included in the public accounts by Treasury Board or by this or any other Act;

(g) other information the minister considers appropriate;

(h) the report of the Auditor General as required by section 11 (1) of the [Auditor General Act](#).

(3) By August 31 in each year, the minister must make public the public accounts for the previous fiscal year.

Quarterly reports

10 (1) Quarterly reports must be prepared in accordance with this section and with the accounting policies as established by Treasury Board.

(2) Each quarterly report must include the following:

(a) for the government reporting entity, statements of

(i) the revenues and expenses, and the resulting surplus or deficit, for the period from April 1 in the fiscal year to which the report applies to the end of the quarter to which the report applies,

(ii) the debt at the end of the quarter to which the report applies, and

(iii) in respect of the items referred to in subparagraphs (i) and (ii),

(A) the anticipated amounts, in respect of that fiscal year, through that quarter, and

(B) the actual amounts, in respect of the previous fiscal year, through the comparable quarter;

(b)for the government reporting entity, statements of

(i)the forecast of revenues and expenses and the resulting surplus or deficit for the fiscal year to which the quarterly report applies,

(ii)the forecast of the debt as at the end of that fiscal year, including a forecast of the Provincial government direct operating debt at the end of that fiscal year, and

(iii)in respect of the items referred to in subparagraphs (i) and (ii),

(A)the amounts provided in the estimates in respect of that fiscal year, and

(B)the actual amounts in respect of the previous fiscal year;

(c)a supplementary schedule that presents a forecast of staff utilization of the taxpayer-supported government reporting entity for the fiscal year to which the quarterly report applies, except in relation to the staff of education and health sector organizations;

(d)other information the minister considers appropriate.

(3)Subject to subsections (4) and (5), a quarterly report must be made public on or before

(a)September 15, in respect of the first 3 months of the fiscal year,

(b)November 30, in respect of the first 6 months of the fiscal year,

(c)February 28, in respect of the first 9 months of the fiscal year, and

(d)May 31, in respect of the preceding fiscal year, if estimates for the current fiscal year have not been presented to the Legislative Assembly by that date.

(3.1)[Repealed 2009-14-16.]

(4)A quarterly report in respect of the first 3, 6 or 9 months of a fiscal year is not required to be made public under subsection (3) (a), (b) or (c) if

(a)the main estimates for a fiscal year are presented to the Legislative Assembly no later than 60 days after the applicable date set out in that subsection, and

(b)the information required to be included in the quarterly report is made public with or before the presentation of those main estimates.

(5)A quarterly report in respect of the first 3, 6 or 9 months of a fiscal year is not required to be made public under subsection (3) (a), (b) or (c) if, but for this subsection, the quarterly report would have been required to be made public on or before a date that is within the period that

(a) begins on the date a general election is called, and

(b) ends on the date that is 40 days after the designated date following that general election.

(6) If 2 consecutive quarterly reports are not required to be made public under subsections (4) and (5), the minister must make public a report that provides a fiscal update in respect of the fiscal year within 90 days after the designated date following the general election.

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

Part 1 — Introductory Provisions

Application

3 (3) This Act does not apply to the following:

...

(h) a record of a question or answer to be used on an examination or test;

(i) a record containing teaching or research materials of

(i) a faculty member, as defined in the [College and Institute Act](#) and the [University Act](#), of a post-secondary educational body,

(ii) a teaching assistant or research assistant employed at a post-secondary educational body, or

(iii) another person teaching or carrying out research at a post-secondary educational body;

...

Schedule 1

(Note: see section 1)

Definitions

In this Act:

"adjudicator" means a person designated under section 60;

"affiliate" means an affiliate within the meaning of the *Business Corporations Act*;

"agency" means, for the purposes of section 33 (2) (k) and the definitions of "common or integrated program or activity" and "data-linking program",

(a) a government institution subject to the *Privacy Act* (Canada),

(b) an organization

(i) subject to the *Personal Information Protection Act*, or

(ii) operating in British Columbia that is subject to the *Personal Information Protection and Electronic Documents Act* (Canada),

(c) a public body, a government institution or an institution as defined in applicable provincial legislation having the same effect as this Act, or

(d) a prescribed entity;

"associate" means, in relation to a service provider,

(a) an officer, director or partner of the service provider,

(b) an affiliate of the service provider,

(c) a subcontractor, or further sub-subcontractor, of the service provider or an affiliate of the service provider, or

(d) an employee, officer, director or partner of an affiliate referred to in paragraph (b) or of a subcontractor or further sub-subcontractor referred to in paragraph (c),

to or through whom access is made available to personal information that is

(e) subject to Division 2 [*Use and Disclosure of Personal Information by Public Bodies*] of Part 3, and

(f) held because of the service provider's status as a service provider;

"commissioner" means the commissioner appointed under section 37 (1) or 39 (1);

"common key" means information about an identifiable individual that is common to 2 or more data sets;

"common or integrated program or activity" means a program or activity that

(a) provides one or more services through

(i) a public body and one or more other public bodies or agencies working collaboratively, or

(ii) one public body working on behalf of one or more other public bodies or agencies, and

(b) is confirmed by regulation as being a common or integrated program or activity;

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

"data-linking" means the linking, temporarily or permanently, of 2 or more data sets using one or more common keys;

"data-linking program" means a program of a public body that involves data-linking if at least one data set in the custody or under the control of a public body is linked with a

data set in the custody or under the control of one or more other public bodies or agencies without the consent of the individuals whose personal information is contained in the data set;

"data set" means an aggregation of information that contains personal information;

"day" does not include a holiday or a Saturday;

"digital archives" has the same meaning as in the *Information Management Act*;

"domestic violence" means physical or sexual abuse of

(a) an individual,

(b) a parent or child of the individual referred to in paragraph (a), or

(c) any other individual who is in a prescribed relationship with the individual referred to in paragraph (a)

by an intimate partner of the individual referred to in paragraph (a);

"educational body" means

(a) a university as defined in the *University Act*,

(b) [Repealed 2003-5-19.]

(c) Royal Roads University,

(c.1) [Repealed 2002-35-8.]

(d) an institution as defined in the *College and Institute Act*,

(d.1) the Thompson Rivers University,

(e) [Repealed 2004-33-18.]

(f) [Repealed 2003-48-14.]

(g) a board as defined in the *School Act*, or

(h) a francophone education authority as defined in the *School Act*;

"employee", in relation to a public body, includes

(a) a volunteer, and

(b) a service provider;

"exercise of prosecutorial discretion" means the exercise by

(a) Crown counsel, or a special prosecutor, of a duty or power under the *Crown Counsel Act*, including the duty or power

(i) to approve or not to approve a prosecution,

(ii) to stay a proceeding,

(iii) to prepare for a hearing or trial,

(iv) to conduct a hearing or trial,

(v) to take a position on sentence, and

(vi) to initiate an appeal, or

(b) a federal prosecutor, or an individual retained as a federal prosecutor, of a duty or power under the *Director of Public Prosecutions Act* (Canada), including a duty or power

(i) to initiate and conduct prosecutions, and

(ii) to conduct any appeal related to such a prosecution or proceeding;

"head", in relation to a public body, means

(a) if the public body is a ministry or office of the government of British Columbia, the member of the Executive Council who presides over it,

(b) if the public body is designated in, or added by regulation to, Schedule 2, the person designated as the head of that public body in that Schedule or by regulation, and

(c) in any other case, the person or group of persons designated under section 77 as the head of the public body;

"health care body" means

(a) a hospital as defined in section 1 of the *Hospital Act*,

(b) [Repealed 2021-39-47.]

(c) a regional hospital district and a regional hospital district board under the *Hospital District Act*,

(d) and (e) [Repealed 2008-28-147.]

(f) a Provincial mental health facility as defined in the *Mental Health Act*,

(g) a regional health board designated under section 4 (1) of the *Health Authorities Act*, or

(h)[Repealed 2002-61-17.]

(i)British Columbia Emergency Health Services, as described in section 2 (1) of the *Emergency Health Services Act*;

"Indigenous governing entity" means an Indigenous entity that exercises governmental functions, and includes but is not limited to an Indigenous governing body as defined in the *Declaration on the Rights of Indigenous Peoples Act*;

"Indigenous peoples" has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;

"intimate partner" means, with respect to an individual, any of the following:

(a)an individual who is or was a spouse, dating partner or sexual partner of the individual;

(b)an individual who is or was in a relationship with the individual that is similar to a relationship described in paragraph (a);

"judicial administration record" means a record containing information relating to a judge, an associate judge or a justice of the peace, including

(a)scheduling of judges and trials,

(b)content of judicial training programs,

(c)statistics of judicial activity prepared by or for a judge, and

(d)a record of the judicial council of the Provincial Court;

"law enforcement" means

(a)policing, including criminal intelligence operations,

(b)investigations that lead or could lead to a penalty or sanction being imposed, or

(c)proceedings that lead or could lead to a penalty or sanction being imposed;

"local government body" means

(a)a municipality,

(b)[Repealed 2003-52-79.]

(c)a regional district,

(d)an improvement district as defined in the *Local Government Act*,

(e)a local area as defined in the *Local Services Act*,

(f) a greater board as defined in the *Community Charter* or any incorporated board that provides similar services and is incorporated by letters patent,

(g) a board of variance established under Division 15 of Part 14 of the *Local Government Act* or section 572 of the *Vancouver Charter*,

(h) the trust council, the executive committee, a local trust committee and the Islands Trust Conservancy, as these are defined in the *Islands Trust Act*,

(i) the Okanagan Basin Water Board,

(j) a water users' community as defined in section 1 (1) of the *Water Users' Communities Act*,

(k) the Okanagan-Kootenay Sterile Insect Release Board,

(l) a municipal police board established under section 23 of the *Police Act*,

(m) a library board as defined in the *Library Act*,

(n) any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in paragraphs (a) to (m) and all the members or officers of which are appointed or chosen by or under the authority of that body,

(o) a board of trustees established under section 37 of the *Cremation, Interment and Funeral Services Act*,

(p) the South Coast British Columbia Transportation Authority, or

(q) the Park Board referred to in section 485 of the *Vancouver Charter*;

"local public body" means

(a) a local government body,

(b) a health care body,

(b.1) a social services body,

(c) an educational body, or

(d) a governing body of a profession or occupation, if the governing body is designated in, or added by regulation to, Schedule 3;

"minister responsible for this Act" means the member of the Executive Council charged by order of the Lieutenant Governor in Council with the administration of this Act;

"museum archives of government" has the same meaning as in the *Museum Act*;

"officer of the Legislature" means the Auditor General, the Commissioner appointed under the *Members' Conflict of Interest Act*, the police complaint commissioner appointed under Part 9 of the *Police Act*, the Information and Privacy Commissioner, the Human Rights Commissioner, the Chief Electoral Officer, the merit commissioner appointed under the *Public Service Act*, the Representative for Children and Youth or the Ombudsperson;

"personal identity information" means any personal information of a type that is commonly used, alone or in combination with other information, to identify or purport to identify an individual;

"personal information" means recorded information about an identifiable individual other than contact information;

"program or activity" includes, when used in relation to a public body, a common or integrated program or activity respecting which the public body provides one or more services;

"prosecution" means the prosecution of an offence under an enactment of British Columbia or Canada;

"provincial identity information services provider" means a provincial identity information services provider designated under section 69.2 (1);

"public body" means

(a) a ministry of the government of British Columbia, including, for certainty, the Office of the Premier,

(b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2, or

(c) a local public body

but does not include

(d) the office of a person who is a member or officer of the Legislative Assembly, or

(e) the Court of Appeal, Supreme Court or Provincial Court;

"record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records;

"service provider" means a person retained under a contract to perform services for a public body;

"social services body" means Community Living British Columbia established under the *Community Living Authority Act*;

"third party", in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than

(a) the person who made the request, or

(b) a public body;

"trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

(a) is used, or may be used, in business or for any commercial advantage,

(b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,

(c) is the subject of reasonable efforts to prevent it from becoming generally known, and

(d) the disclosure of which would result in harm or improper benefit.

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

...

Requirement for policy

2 (1) A post-secondary institution must establish and implement a sexual misconduct policy that

(a) addresses sexual misconduct, including sexual misconduct prevention and responses to sexual misconduct,

(b) sets out procedures for the following:

(i) making a complaint of sexual misconduct involving a student;

(ii) making a report of sexual misconduct involving a student;

(iii) responding to a complaint of sexual misconduct involving a student;

(iv) responding to a report of sexual misconduct involving a student, and

(c) addresses any other matter prescribed by regulation.

(2) A post-secondary institution must make the post-secondary institution's sexual misconduct policy publicly available on an internet site maintained by or on behalf of the post-secondary institution.

...

Review of policy

3 (1) A post-secondary institution must review its sexual misconduct policy

(a) at least once every 3 years, and

(b) when directed to do so by the minister.

(2) A post-secondary institution must

(a) determine whether its sexual misconduct policy requires amendments based on a review under subsection (1), and

(b) if the post-secondary institution determines amendments are required, make those amendments.

(3) For the purposes of subsection (1) (a), the first 3-year period begins on the date that a post-secondary institution establishes its first sexual misconduct policy under section 2.

...

Survey

5 (1)The minister may direct a post-secondary institution to conduct a survey for the purpose of assessing the effectiveness of its sexual misconduct policy.

(2)If the minister directs a post-secondary institution to conduct a survey under subsection (1), the minister may specify the following:

- (a)who the post-secondary institution must include in a survey;
- (b)the date by which the post-secondary institution must submit the survey results to the minister;
- (c)questions that the post-secondary institution must include in the survey;
- (d)the manner in which the post-secondary institution must conduct the survey.

(3)If the minister directs a post-secondary institution to conduct a survey under subsection (1), the post-secondary institution must

- (a)conduct the survey,
- (b)comply with any matters specified by the minister under subsection (2), and
- (c)submit the survey results to the minister on or before the date specified by the minister, if any, under subsection (2).

Occupiers Liability Act, RSBC 1996, c. 337**Definitions**

1 In this Act:

"limited liability entity", in relation to a resource road, means each of the following:

- (a) the maintainer, if any, of the resource road;
- (b) the government;

"maintainer", in relation to a resource road, means the person, including, without limitation, the government, that is obligated or authorized under an enactment to maintain the resource road, but does not include a prescribed person or a person within a prescribed class of persons;

"motor vehicle" means a vehicle that is

- (a) intended to be self-propelled, and
- (b) designed primarily for travel on land on surfaces other than rails;

"occupier" means a person who

- (a) is in physical possession of premises, or
- (b) has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises,

and, for this Act, there may be more than one occupier of the same premises;

"premises" includes

- (a) land and structures or either of them, excepting portable structures and equipment other than those described in paragraph (c),
- (b) ships and vessels,
- (c) trailers and portable structures designed or used for a residence, business or shelter, and
- (d) railway locomotives, railway cars, vehicles and aircraft while not in operation;

"resource road" means any road or portion of a road that is

- (a) on Crown land, and
- (b) used or intended for use by motor vehicles,

but does not include a municipal highway or a provincial public highway as those terms are defined in the [Transportation Act](#);

"tenancy" includes a statutory tenancy, an implied tenancy and any contract conferring the right of occupation, and "landlord" must be construed accordingly.