



COURT OF APPEAL FILE NO. CA49986
Alter v. The University of British Columbia
 Respondent's Factum

COURT OF APPEAL

ON APPEAL FROM the orders of Justice Greenwood of the Supreme Court of British Columbia pronounced on June 4, 2024 and October 10, 2024

BETWEEN:

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

APPELLANTS
 (Plaintiffs)

AND:

The University of British Columbia and His Majesty The King in Right of British Columbia

RESPONDENTS
 (Defendants)

RESPONDENT'S FACTUM

His Majesty The King in Right of British Columbia

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

His Majesty the King in Right of the Province of British Columbia

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CHRONOLOGY

Date	Event
December 19, 2022	The plaintiffs file their notice of civil claim. The Province was not served with the notice of civil claim until December 2023.
March 13, 2024	The plaintiffs file an amended notice of civil claim.
March 22, 2024	The Province files an application to strike the plaintiffs' claim against it pursuant to R. 9-5(1)(a).
April 5, 2024	The plaintiffs apply to amend their claim under R. 6-1(1) in the event their claim against the Province is struck.
May 7-8, 2024	The hearing of the Province's strike application and the plaintiffs' amendment application proceeds before Justice Greenwood.
June 4, 2024	In reasons indexed as <i>Alter v. The University of British Columbia</i> , 2024 BCSC 961, Justice Greenwood grants the Province's strike application without leave to amend. Justice Greenwood grants leave for written costs submissions.
June 14, 2024 & July 4, 2024	The parties deliver written submissions with respect to costs.
July 3, 2024	The plaintiffs file their notice of appeal.
October 10, 2024	In reasons indexed as <i>Alter v. The University of British Columbia</i> , 2024 BCSC 1879, Justice Greenwood orders costs against the plaintiffs.
October 16, 2024	The plaintiffs file an amended notice of appeal to include an appeal from the costs order.
November 26, 2024	The plaintiffs file a further amended notice of appeal, pursuant to the Order of the Honourable Madam Justice Bennett (in Chambers).
December 2024-November 2025	The parties engage in hearings before a Registrar of the Supreme Court, the British Columbia Supreme Court, and this Court to settle the form of Justice Greenwood's order made June 4, 2024.
December 18, 2025	In reasons indexed as <i>Alter v. The University of British Columbia</i> , 2025 BCCA 453, this Court settles the form of order made June 4, 2024 (CA50481).

OPENING STATEMENT

At the heart of this appeal is a single question: whether the appellants' amended notice of civil claim discloses a reasonable claim against the Province. The answer is no.

The appellants allege UBC's decision to cancel a speaker event on campus breached their *Charter* rights to freedom of expression and peaceful assembly. There is no allegation that the Province had any involvement in, or even knowledge of, the events that led to UBC's cancellation decision. However, the appellants seek *Charter* damages from the Province for UBC's actions.

The appellants named the Province as a defendant because they misapprehend the Supreme Court of Canada's decision in *Ward*. The appellants argue that *Ward* stands for the proposition that only the federal or provincial Crown can be liable for damages under s. 24(1) of the *Charter*, even where another entity is responsible for the *Charter* breach. On the appellants' theory: (1) UBC is bound by the *Charter* but immune from *Charter* damages; and (2) the Province is liable to pay for any *Charter* breaches committed by UBC, despite having no knowledge of, or involvement in, those breaches.

The appellants' claim against the Province is bound to fail for two independent reasons. First, the *Charter* does not apply to UBC. Second, and alternatively, even if the *Charter* did apply to UBC, the appellants did not plead any material facts that could establish a *Charter* breach by the Province. Section 24(1) of the *Charter* does not create an independent cause of action against the Province.

Much of the appellants' factum is dedicated to the first issue: the chambers judge's conclusion that the *Charter* does not apply to UBC. However, this Court can dismiss the claim against the Province on either of the two bases set out above.

The appellants' claim against the Province is bound to fail and this appeal should be dismissed.

PART 1 – STATEMENT OF FACTS

1. His Majesty the King in right of the Province of British Columbia (the “**Province**”) does not accept the facts as framed by the appellants in their factum. The appellants’ statement of facts includes improper argument.¹ As this appeal arises from an application to strike under Rule 9-5(1)(a), the Province provides the following factual overview grounded in the appellants’ pleadings.

I. The pleadings and the underlying facts

2. The appellants are a university club called the Free Speech Club Ltd. (the “**Club**”) and three individuals, who (at all material times) were students at the University of British Columbia (“**UBC**”) and executives of the Club.²

3. In the amended notice of civil claim (“**Amended Claim**”), the appellants allege that:

- a. on November 25, 2019, the Club entered into a contract with UBC to rent space on campus to host an event on the topic of “ANTIFA violence” with Andy Ngo as the speaker (the “**Event**”);
- b. on December 19, 2019, UBC decided to cancel the Event and to refuse to host all future events with a high-risk assessment; and
- c. on December 20, 2019, UBC advised the Club that it was cancelling the Event due to safety and security concerns

(collectively, “**UBC’s Actions**”).³

¹ See for example, the appellants’ factum (“**AF**”) at paras. 5, 8.

² Amended Claim at paras. 1-4, Amended Appeal Record (“**AAR**”) at p. 30; *Alter v. The University of British Columbia*, 2024 BCSC 961 (“**RFJ**”) at para. 2.

³ Amended Claim at paras. 45 to 53, AAR at pp. 47-48.

4. As the chambers judge found, there is no dispute on the facts that neither the Province, nor any of its employees, had any direct involvement in or knowledge of UBC's Actions or the events that led to them.⁴

5. In the Amended Claim, the appellants further plead:

- a. numerous provincial statutes, which outline UBC's statutory powers and obligations, including the *University Act*;⁵
- b. that UBC receives funding from: (1) the Province; (2) the federal government; and (3) on occasion, municipal governments;⁶ and
- c. various policies and legislative provisions that the appellants argue establish that: (1) UBC is by its very nature part of government; or (2) the Province "functionally controls the delivery of university education at UBC".⁷

6. In their Amended Claim, the appellants seek the following relief as against the Province: (1) a declaration that UBC's Actions breached the appellants' rights under ss. 2(b) and (c) of the *Charter*;⁸ (2) *Charter* damages; and (3) costs and interest.⁹

7. In the legal basis of the Amended Claim, the appellants allege, in respect of the Province, that:

- a. UBC is government for the purposes of s. 32 of the *Charter*;
- b. UBC's Actions infringed the appellants' ss. 2(b) and (c) *Charter* rights; and

⁴ RFJ at para. 4.

⁵ R.S.B.C. 1996, c. 46 ("*University Act*"). Amended Claim at paras. 7-10, 12-20, AAR at pp. 31-34.

⁶ Amended Claim at paras. 11, 21, AAR at pp. 31, 34.

⁷ Amended Claim at paras. 12, 22, 24, AAR at pp. 31, 34-40.

⁸ *Canadian Charter of Rights and Freedoms*, ss. 2(b)-(c), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11. Amended Claim, Part 2 at paras. 4(b), 5(b), 6(b), 7(b), AAR at pp. 55-58.

⁹ Amended Claim, Part 2 at paras. 4(b), 5(b), 6(b), 7(b), AAR at pp. 55-59.

- c. *Charter* damages against the Province under s. 24(1) of the *Charter* are a just and appropriate remedy.¹⁰

8. The Amended Claim does not allege that the Province breached any provision of the *Charter*. Rather, all the alleged *Charter* breaches only involve UBC.

9. Although not material to any issue in this appeal, the Amended Claim also alleges that UBC, but not the Province, breached a contract with the Club and engaged in deceptive acts and practices.

II. Procedural history

10. The appellants initially filed a notice of civil claim in December 2022 but did not serve the claim on the Province until December 2023. The appellants amended their claim in March 2024. The Province applied to strike the Amended Claim as against the Province that same month.¹¹

11. The chambers judge granted the Province's application to strike, finding that it was plain and obvious the appellants could not succeed against the Province based on the facts or the law.¹² Specifically, the chambers judge held that:

- a. Accepting the pleaded facts as true, there was no basis to distinguish binding case law that found that the *Charter* did not apply to UBC.¹³
- b. Even if the appellants could succeed in establishing the *Charter* applied to UBC: (1) there are no material facts pleaded in the Amended Claim that could establish a cause of action against the Province;¹⁴ (2) section 24(1) of the *Charter* does not create an independent cause of action against the

¹⁰ Amended Claim, Part 3 at paras. 1(f), 1(g), 1(i), AAR at pp. 59-60.

¹¹ The appellants also brought an application to amend their Amended Claim in the event the claim against the Province was struck. The chambers judge denied that application (see RFJ at para. 67). No appeal is taken from that order (see AF, at para. 93).

¹² RFJ at para. 5.

¹³ RFJ at paras. 23-25, 28, 30, 35.

¹⁴ RFJ at paras. 36, 42.

Province;¹⁵ and (3) the Supreme Court of Canada's decision in *Ward* does not stand for the proposition that *Charter* damages can only be awarded against the Crown.¹⁶

- c. Even if the appellants were successful in establishing that the *Charter* applied to UBC because UBC is controlled by the Province, the claim would be enforceable as against UBC, and s. 3(2)(d) of the *Crown Proceeding Act* would bar the claim against the Province. The Province is not advancing this argument in this appeal.

12. In subsequent reasons for judgment on costs, the chambers judge awarded the Province and UBC their costs of the application.¹⁷

PART 2 – ISSUES ON APPEAL

13. There is only one issue on appeal: whether the chambers judge erred in holding that the Amended Claim discloses no reasonable cause of action against the Province and is bound to fail.

PART 3 – ARGUMENT

I. Standard of review

14. The Province agrees with the appellants that the standard of review in an appeal of an application to strike pleadings pursuant to Rule 9-5(1)(a) is correctness.¹⁸

¹⁵ RFJ at para. 52.

¹⁶ RFJ at paras. 58-59 citing *Vancouver (City) v. Ward*, 2010 SCC 27.

¹⁷ *Alter v. The University of British Columbia*, 2024 BCSC 1879 at para. 50. AAR at p. 132. Both respondents were also awarded costs of the appellants' unsuccessful application to amend their claim, but no appeal is taken from that aspect of the order.

¹⁸ *Situmorang v. Google, LLC*, 2024 BCCA 9 at para. 52.

II. Overview

15. The claim against the Province is bound to fail for two stand-alone reasons:
- a. The *Charter* does not apply to UBC because: (1) UBC is not government or controlled by government;¹⁹ and (2) UBC's Actions were not taken in the course of implementing a specific government program.²⁰
 - b. The Amended Claim does not plead any material facts that could establish a *Charter* breach by the Province,²¹ and s. 24(1) of the *Charter* does not create an independent cause of action against the Province.²²
16. This Court can strike and dismiss the appellants' claim against the Province on either of these two stand-alone bases.²³ In doing so, this Court may consider that courts typically avoid deciding constitutional issues that are not necessary to resolve the dispute.²⁴

III. Applicable legal principles under Rule 9-5(1)(a)

17. The chambers judge correctly set out the test for striking a claim: A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action.²⁵ In deciding strike applications, courts do not give special consideration to alleged *Charter* infringements.²⁶

¹⁹ RFJ at paras. 23-25, 28.

²⁰ RFJ at para. 35.

²¹ RFJ at paras. 36, 42.

²² RFJ at paras. 52, 58-59.

²³ *N.K. v. M.H.*, 2020 BCCA 121 at paras. 76-77.

²⁴ *Rain Coast Water Corp. v. British Columbia*, 2019 BCCA 201 at para. 176. See also *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at para. 108.

²⁵ RFJ at para. 6.

²⁶ *Scott v. Canada (Attorney General)*, 2013 BCSC 1651 at para. 21, rev'd on other grounds 2017 BCCA 422, citing *Canadian Bar Assn. v. British Columbia*, 2008 BCCA 92 at para. 51.

IV. The *Charter* does not apply to UBC

18. The first basis on which this Court can dismiss the claim against the Province is that the *Charter* does not apply to UBC. UBC's Actions therefore cannot constitute a *Charter* breach, and the appellants are not entitled to *Charter* damages.

19. The Supreme Court of Canada's jurisprudence on s. 32(1) of the *Charter* identifies two ways in which the *Charter* could apply to UBC: (1) if UBC is controlled by government or is government by nature; or (2) if UBC is implementing a specific government policy or program.²⁷ The Supreme Court recently emphasized the importance of not blurring the lines between these two distinct branches of the s. 32(1) test.²⁸

20. The chambers judge correctly applied both branches of the test to the pleaded facts and held that the appellants' claim that UBC's Actions are subject to the *Charter* was bound to fail under both branches.

A. UBC is not controlled by government and is not government by nature

21. The first branch of the test under s. 32(1) of the *Charter* provides that an entity may be government if: (1) its activities are subject to routine or regular control by government, as opposed to ultimate or extraordinary control; or (2) it is government by its very nature.²⁹ If the *Charter* applies to UBC under this first branch, then the *Charter* would apply to all of UBC's activities.³⁰

²⁷ *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31 at paras. 15-16; See also *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10 at paras. 61, 70.

²⁸ *Dickson* at para. 73.

²⁹ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para. 44; See also *Dickson* at para. 70.

³⁰ *Ibid.*

UBC is not controlled by government

22. In 1990, in *Harrison*, the Supreme Court of Canada held that UBC was not controlled by government for the purposes of s. 32(1) of the *Charter*.³¹

23. The doctrine of *stare decisis* requires that this Court only reconsider a settled ruling of the Supreme Court of Canada in two situations: (1) where a new legal issue is raised; and (2) where there is a change in the circumstances or evidence that fundamentally shifts the parameters of the debate.³² Neither condition is met in this case: the appellants do not raise any new legal arguments and there has been no change in circumstances that fundamentally shifts the parameters of the debate.

24. In BC, the Legislature chose to establish universities as autonomous entities. Unlike colleges, universities in BC are not Crown agents.³³ Section 48(1) of the *University Act* ensures UBC's independence over its core functions by prohibiting the Minister from interfering with: (1) the formulation and adoption of academic policies and standards; (2) the establishment of standards for admission and graduation; and (3) the selection and appointment of staff.³⁴

25. In 1988, in *Harrison BCCA*, this Court considered what is now s. 48(1) of the *University Act* in deciding that UBC was not controlled by government:

[16] By enacting those provisions, the legislature has said, in the clearest possible terms, that the government shall not interfere with the right of the university to be independent in carrying out its core functions. The essence of a university is academic freedom. These provisions may be seen as preserving the historic freedom and independence of the university. The

³¹ *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451 at 463-464.

³² *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 44.

³³ *College and Institute Act*, R.S.B.C. 1996, c. 52, s. 50(1) makes colleges Crown agents in clear language. *Connell v. University of British Columbia*, 1988 CanLII 183 (B.C.C.A.) at para. 11 ("*Harrison BCCA*") rev'd on other grounds in *Harrison*. See also *BC Civil Liberties Association v. University of Victoria*, 2016 BCCA 162 at paras. 20-21, 27 ("*UVIC*").

³⁴ *University Act*, s. 48(1).

university being free to act in those areas, there is little left for the government to control.³⁵

26. In 1990, in *Harrison*, the Supreme Court of Canada affirmed this Court's conclusion that UBC was not controlled by government despite considering the following facts, which are also pleaded by the appellants in the Amended Claim:³⁶

- a. The Lieutenant Governor appointed a majority of UBC's board of governors (the "**Board**"), which was "the body in which governance of the University [was] largely reposed", and the Lieutenant Governor could, at any time, remove an appointed member of the Board.³⁷
- b. The Board enjoyed what the dissent described as "government-like powers", including being exempt from taxation and from expropriation, as well as being able to expropriate property.³⁸
- c. UBC could not sell its property without the Lieutenant Governor's approval.³⁹
- d. At one time the Board's powers were subject to the authority of the council of the university, a body whose members were appointed by the Lieutenant Governor, and that had "virtually no limits" on its powers. The council had to submit an annual report about UBC's operations to the Minister.⁴⁰
- e. After the litigation in *Harrison* started, the *University Act* was amended to disband the council. The Minister received many of the council's powers, including that UBC had to give the Minister reports and any other information that the Minister considered necessary to carry out her duties.⁴¹

³⁵ *Harrison BCCA* at para. 16.

³⁶ *Harrison*. See also *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229.

³⁷ *Harrison* at 459, 466-467. Note that some of the government appointees needed for a majority had to be appointed from a group nominated by the alumni association.

³⁸ *Harrison* at 467.

³⁹ *Harrison* at 467.

⁴⁰ *Harrison* at 467.

⁴¹ *Harrison* at 468.

- f. The functions of UBC were prescribed by statute. The *University Act* required UBC to provide instruction “in all branches of knowledge”, to establish bursaries and scholarships, and to carry on the work of a university.⁴²
- g. The Province funded approximately 80 percent of UBC’s operating costs and assisted UBC financially in other ways, including through foundations that were Crown agents.⁴³
- h. The Province monitored and regulated how UBC spent funds provided through certain provincial statutes.⁴⁴
- i. UBC required the Minister’s approval to establish new degree programs.⁴⁵
- j. Various statutes treated UBC as a government body, a public body, and a public sector employer.⁴⁶
- k. Before being repealed, the *Compensation Stabilization Act* provided that a government appointed commissioner could monitor and regulate UBC’s employee compensation practices.⁴⁷

27. Writing for the majority in *Harrison*, Justice La Forest considered the facts before the Court and concluded that they did not suffice to cross the threshold from “ultimate or extraordinary control” to “routine or regular control”, as required under s. 32(1).⁴⁸

28. In 2009, in *Maughan*, this Court relied partly on *Harrison* to hold that UBC was neither a “government actor” nor subject to the *Charter*.⁴⁹

⁴² *Harrison* at 468.

⁴³ *Harrison* at 469-470.

⁴⁴ *Harrison* at 463-464, 470-471. The relevant statutes were the *Financial Administration Act*, S.B.C. 1981, c. 15, the *Auditor General Act*, R.S.B.C. 1979, c. 24, and the *Compensation Stabilization Act*, S.B.C. 1982, c. 32.

⁴⁵ *Harrison* at 469.

⁴⁶ *Harrison* at 471. For the relevant statutes, see note 44 above.

⁴⁷ *Harrison* at 471.

⁴⁸ *Harrison* at 463-464.

⁴⁹ *Maughan v. University of British Columbia*, 2009 BCCA 447 at paras. 52-54.

29. In 2012, the *University Act* was amended to add s. 19.1, which specifies that members of the Board “must act in the best interests of the university”.⁵⁰ An equivalent Ontario provision was considered by the Supreme Court of Canada in *McKinney* where the Court held that the provision supported the conclusion that government had “no legal power to control the universities even if it wished to do so”.⁵¹

30. In 2016, in *UVIC*, this Court found that the University of Victoria was neither government nor controlled by government under the first branch of the s. 32(1) test, holding that the subtle factual differences between the University of Victoria and the findings made by the Supreme Court with respect to UBC in *Harrison* did not justify a different outcome:

21 The question whether the University of Victoria should be regarded as an agent of government or equivalent to government for all purposes, insofar as the application of the *Charter* is concerned, is settled by the decisions of the Supreme Court of Canada in *McKinney*, *Stoffman* and in particular *Harrison*. All that is said in *Harrison* about the relationship between the University of British Columbia and the Government of British Columbia is equally applicable to the relationship between the University of Victoria and the government. There are subtle distinctions in the composition of the boards of the universities but the appellants cannot point to any material distinctions that would place the present case beyond the scope of the *Harrison* decision.⁵²

31. More recently, in *Kishawi*, the BC Supreme Court found that Vancouver Island University was not controlled by government.⁵³ Justice Young specifically highlighted both ss. 19.1 and 48(1) of the *University Act* (also applicable to UBC) as reflecting a

⁵⁰ *University Act*, s. 19.1.

⁵¹ *McKinney* at 273.

⁵² *UVIC* at para. 21.

⁵³ *Kishawi v. Vancouver Island University*, 2025 BCSC 2487 at paras. 159-161, 168.

legislative scheme that “creates significant independence of the university in managing and governing its own affairs”. Specifically, the Court noted that:

- a. Section. 19.1 “requires that members of the board of the university act in the best interests of the university, which may differ from governmental interests”.
- b. Section 48(1) “specifically outlines that the minister may not interfere in the statutory authority granted to any body established under the Act”.⁵⁴

32. In this case, the appellants argue that the chambers judge misapplied *stare decisis*, relying on the outcomes in *Harrison* and *UVIC* without considering the facts pleaded in the Amended Claim.

33. There is no merit to this argument. The chambers judge’s reasons expressly state that he considered the factual assertions in the Amended Claim and assumed them to be true.⁵⁵ The chambers judge accurately described the Amended Claim as setting out a vast amount of detail about: (1) UBC’s interactions with the Province; (2) the composition of UBC’s board of directors and senate; (3) UBC’s various reporting obligations; (4) UBC’s financial dependence on the provincial and federal governments; and (5) the Province’s oversight of various areas of UBC’s operations.⁵⁶

34. Despite taking a generous approach to the pleadings, the chambers judge correctly concluded that the appellants had failed to plead material facts to take their claim “outside of the scope of the decisions in *Harrison* and *UVIC*”.⁵⁷

⁵⁴ *Kishawi* at paras. 160-161.

⁵⁵ RFJ at para. 28.

⁵⁶ RFJ at para. 23.

⁵⁷ RFJ at paras. 23, 25, 28.

35. The chambers judge made no error in this regard. As set out in greater detail in Schedule “A” to this factum, the facts pleaded in the Amended Claim to support the argument that the Province controls UBC either:

- a. are not material facts, but rather set out legal arguments and conclusions;⁵⁸
- b. were considered by the Supreme Court in *Harrison* and remain unchanged;⁵⁹
- c. speak to a collaborative relationship between UBC and the Province, as opposed to the Province exercising routine or regular control over UBC;⁶⁰ or
- d. do not establish control by the Province over UBC in light of ss. 19.1 and 48(1) of the *University Act*, which ensure the Board acts in the best interest of the university and that UBC maintains autonomy over its core functions.

36. In the Amended Claim, the appellants focus on certain provisions of the *University Act* to argue that the relationship between the Province and UBC has changed since the Supreme Court’s decision in *Harrison* in 1990.⁶¹ In this context, the Amended Claim refers to the *University Act* being “significantly amended in 1996”.⁶² However, there was only one amendment made to the *University Act* in 1996, and the Amended Claim makes no reference to it.⁶³

⁵⁸ See *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 44, 51-52. The following paragraphs in the Amended Claim relate to the application of the *Charter* to UBC and contain improper legal argument and conclusions: paras. 12, 13, 14(t), 18(b), 19(c), 21-26, 28, 66-73.

⁵⁹ See Schedule “A” for a comparison between the facts pleaded Amended Claim and the facts considered in *Harrison*.

⁶⁰ This is the case of the various forms of collaboration between the Province and UBC pleaded at para. 24 of the Amended Claim. For example, the appellants plead that UBC, the Province, and Indigenous partners engage in a process to develop to strategy to respond to the TRC Calls to Action and UNDRIP (para. 24(e)(xiv)(1)).

⁶¹ Amended Claim at paras. 13-14.

⁶² Amended Claim at para. 14.

⁶³ The tenth general revision of the Revised Statutes of BC was published in 1996. The only amendment made to the *University Act* in 1996 provided that a university may pay to a municipality the lesser of: (1) the amounts that would be payable as municipal taxes,

37. Most of the provisions of the *University Act* referenced in the Amended Claim were in place when the Supreme Court decided *Harrison*. Most of these provisions have either been in place since 1974 or go as far back as 1908, when UBC was founded.⁶⁴

38. As the chambers judge correctly found, assuming the pleaded facts to be true, the relationship between UBC and the Province does not alter “the traditional nature of a university as a community of scholars and students enjoying substantial internal autonomy”.⁶⁵ In light of well-settled precedents, the pleaded facts are bound to fail in establishing *routine or regular control* by government as required under s. 32(1) of the *Charter*.

UBC is not government by nature

39. UBC is not government by nature as it is not part of the apparatus of government.⁶⁶ UBC does not possess the typical indicia of an entity that is government by nature, specifically:⁶⁷

- a. UBC’s governance body is not democratically elected by members of the general public and is not accountable to constituents.⁶⁸ UBC’s governance is primarily composed of the Board, as well as a Vancouver and Okanagan senate. The majority of board members are appointed, not elected.⁶⁹ While the majority of senate members are elected, they are not elected by the general public.⁷⁰

if universities were not exempt from those taxes; or (2) an amount specified by the minister (see *Budget Measures Implementation Act*, 1996, S.B.C. 1996, c. 9, s. 21). That provision is now found at s. 27(2)(w) of the *University Act*.

⁶⁴ See Schedule “A”.

⁶⁵ RFJ at para. 24, citing *UVIC* at para. 34.

⁶⁶ *McKinney* at 269-275; See also *UVIC* at para 21; *Eldridge* at para. 37.

⁶⁷ *Dickson* at para. 77.

⁶⁸ *Dickson* at paras. 77, 79.

⁶⁹ *University Act*, s. 19(2).

⁷⁰ For example, some senate members are elected by faculty members, some are elected by students, some are elected by the convocation. See *University Act*, ss. 35.1(2) and 35.1(3).

- b. UBC does not have a general taxing power that is indistinguishable from the taxing powers of Parliament or the provinces.⁷¹ UBC may only collect fees for specific purposes as set out in the *University Act*.⁷²
- c. UBC is not generally empowered to make, administer, and enforce laws.⁷³ The Board may only regulate, prohibit, and impose requirements as set out in s. 27 of the *University Act*.⁷⁴
- d. UBC does not exercise a power that the federal or provincial governments would otherwise have to perform themselves.⁷⁵

B. UBC is not implementing a specific government policy or program

40. Under the second branch of the s. 32(1) test, an entity may be subject to the *Charter* if it is implementing a government policy or program. If this branch of the test is met, only the entity's governmental activities will be subject to *Charter* scrutiny.⁷⁶

41. The appellants raise two arguments under the second branch of the test – that UBC is implementing a specific government policy or program by: (1) providing a university education; or (2) maintaining student safety.

Providing a university education is not a specific government program

42. The chambers judge correctly dismissed the appellants' first argument that UBC is implementing a specific government policy or program by providing a university

⁷¹ *Dickson* at paras. 77, 80.

⁷² For example, *University Act*, ss. 8, 27(2)(m), 27(2)(t.3), and 27.1.

⁷³ *Dickson* at paras. 77, 81.

⁷⁴ Section 27(2)(t), 27(2)(t.1), and 27(2)(t.4) of the *University Act*.

⁷⁵ *McKinney* at 269-275. Also see *BC Civil Liberties Association v. University of Victoria*, 2015 BCSC 39 at paras. 121-124, 150 ("*UVIC BCSC*"), aff'd 2016 BCCA 162.

⁷⁶ *Eldridge* at para. 44.

education.⁷⁷ That exact argument was advanced and rejected in cases with similar facts to the ones pleaded in the Amended Claim.⁷⁸

43. In 2012, in *Lobo*, the Ontario Court of Appeal held that Carleton University was not implementing a specific government program framed as “the delivery of post-secondary education” when the university refused to allocate space for a pro-life exhibit.⁷⁹

44. In 2015, in *UVIC BCSC*, the BC Supreme Court considered and rejected the same argument.⁸⁰ In that case, as in this one, the executive of a student club argued that the university’s decision not to allocate space for a club event infringed his s. 2 *Charter* rights.⁸¹ As the appellants do in this case, the petitioners in *UVIC BCSC* argued that: “like the provision of health care, the provision of post-secondary education is a government program”.⁸² Chief Justice Hinkson dismissed that argument, holding that:

[150] Given the reasoning in *McKinney* and *Harrison*, the fact that the University is engaged in the provision of post-secondary education cannot result in every endeavour that is undertaken by the University falling under *Charter* scrutiny.⁸³

45. Although the petitioners in *UVIC BCSC* did not press this argument on appeal, in *UVIC* this Court upheld Chief Justice Hinkson’s decision, noting that:

[27] [...] The view that the core function of universities is a public good, and universities which are charged with delivery of that good thereby act as agents of the state, was rejected in *McKinney*. [...] ⁸⁴

⁷⁷ RFJ at paras. 17, 21, 29-30.

⁷⁸ *UVIC BCSC*; *Lobo v. Carleton University*, 2012 ONCA 498.

⁷⁹ *Lobo* at paras. 3-4.

⁸⁰ *UVIC BCSC*.

⁸¹ *UVIC BCSC* at paras. 1-4.

⁸² *UVIC BCSC* at para. 131.

⁸³ *UVIC BCSC* at para. 150.

⁸⁴ *UVIC* at para. 27.

Maintaining student safety is not a specific government program

46. The appellants' second argument, that the *Charter* applies to UBC because "maintaining student safety" is a government program, is doomed by settled precedent holding that regulating the use of space on campus is not a government program.

47. The appellants' slight reframing of the alleged government program does not suffice to distinguish this case from settled precedent. UBC's Actions, whether motivated by promoting student safety or not, arose from UBC's regulation of the use of space on campus.⁸⁵ This Court in *UVIC* and the Ontario Court of Appeal in *Lobo* both concluded that universities do not deliver a government program by regulating the use of space on campus.

48. In *UVIC*, student safety was also a factor in the university's decision not to allocate space for an event.⁸⁶ However, this Court rejected the argument that the University of Victoria was implementing the government policy or program of "affording students a forum for free expression" by regulating the use of space on campus. Justice Willcock concluded that:

- a. there is no specific statutory direction in BC that governs a university's discretion to regulate, prohibit or impose requirements relating to activities and events on their property;⁸⁷ and
- b. there is no routine or regular control of that power by the Province.⁸⁸

49. As this Court also noted in *UVIC*, the Province has neither assumed nor retained any express responsibility for the provision of a forum for free speech on campuses.⁸⁹ This is different from jurisdictions like the United Kingdom, where universities have a

⁸⁵ Under s. 27(t) of the *University Act*, UBC's board has the power to: "regulate, prohibit and impose requirements in relation to the use of real property, buildings, structures and personal property of the university, including in respect of (i) activities and events".

⁸⁶ *UVIC BCSC* at para 80(a).

⁸⁷ *UVIC* at paras. 25-26.

⁸⁸ *Ibid.*

⁸⁹ *UVIC* at para. 32.

statutory obligation to “... take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment, and for visiting speakers”.⁹⁰

50. Similarly, in *Lobo*, the Ontario Court of Appeal found that Carleton University was not implementing a government policy or program by regulating the use of space on campus for extra-curricular activities:

[4] [...] As explained by the motion judge, when the University books space for non-academic extra-curricular use, it is not implementing a specific government policy or program as contemplated in *Eldridge*. In carrying out this particular activity there is, therefore, no triable issue as to whether *Charter* scrutiny applies to the respondent’s actions.⁹¹

51. The BC Supreme Court recently reached the same conclusion in *Kishawi*.⁹²

C. Conclusion

52. Accordingly, the chambers judge made no error in finding that the appellants’ claim against the Province was bound to fail.⁹³ If UBC is not subject to the *Charter*, then, as a matter of law, there is no cause of action against the Province. This Court can dismiss the appeal on this basis alone.

V. The appellants do not plead material facts to ground a *Charter* claim against the Province

53. Further, and in the alternative, this Court can dismiss this appeal on the basis the chambers judge correctly held that:

- a. to obtain *Charter* damages from the Province, the appellants first have to establish a *Charter* breach by the Province;⁹⁴

⁹⁰ *Education (No. 2) Act 1986* (UK), c. 61, s. 43(1), cited in *UVIC* at para. 32.

⁹¹ *Lobo* at para. 4.

⁹² *Kishawi* at paras. 169-170.

⁹³ RFJ at para. 35.

⁹⁴ RFJ at paras. 37, 52.

- b. the appellants did not plead any material facts to ground a *Charter* claim against the Province;⁹⁵
- c. section 24(1) of the *Charter* does not create an independent cause of action against a party who does not participate in or know about the alleged *Charter* breach;⁹⁶ and
- d. *Ward* does not stand for the proposition that *Charter* damages may only be awarded against the federal or provincial Crown.⁹⁷

A. No material facts to ground a *Charter* claim against the Province

54. The appellants allege that their *Charter* rights were breached by UBC's Actions. On the face of the Amended Claim, UBC's Actions were decisions made by UBC and its officials; they did not involve the Province.⁹⁸ There is no dispute that the Province did not participate in or know about UBC's Actions.⁹⁹

55. The factual references to the Province in the Amended Claim are only there to support the appellants' argument that the *Charter* applies to UBC. Even assuming the *Charter* applies to UBC, this would not ground a claim for *Charter* damages from the Province for UBC's Actions. Any *Charter* damages claim would be against UBC alone.

B. Section 24(1) of the *Charter* does not create an independent cause of action

56. The appellants cannot ground a claim against the Province by relying solely on s. 24(1) of the *Charter* because s. 24(1) does not create an independent cause of action

⁹⁵ RFJ at para. 36.

⁹⁶ RFJ at para. 52. *Koita v. Toronto Police Services Board*, [2001] O.J. No. 3641 at paras. 12-13.

⁹⁷ RFJ at para. 45.

⁹⁸ RFJ at para. 40.

⁹⁹ RFJ at para. 4.

against a defendant that did not participate in the alleged *Charter* infringement.¹⁰⁰ Damages under s. 24(1) of the *Charter* are not a cause of action, they are a remedy.¹⁰¹

C. *Ward* does not limit *Charter* damages to the federal and provincial Crown

57. The appellants named the Province as a defendant due to their misinterpretation of the Supreme Court of Canada's decision in *Ward*.¹⁰² The appellants mistakenly believe that, even if they establish that the *Charter* applies to UBC's Actions and that those actions breached the appellants' *Charter* rights, *Ward* will not allow them to obtain *Charter* damages from UBC.¹⁰³ Therefore, the appellants named the Province to seek *Charter* damages from the Province for UBC's Actions. On this point, the chambers judge correctly held that nothing in *Ward* requires or justifies naming the Province as a defendant in this action because *Ward* does not say that only the federal or provincial Crown can be liable for *Charter* damages.¹⁰⁴

58. In *Ward*, the Supreme Court of Canada held that courts may award *Charter* damages against a governmental entity where the claimant:

- a. establishes that their *Charter* right has been breached; and
- b. demonstrates that damages are a just and appropriate remedy, considering whether they would fulfill one or more of the following objectives: (1) compensation; (2) vindication of rights; and (3) deterrence of future breaches.¹⁰⁵

¹⁰⁰ *Koita* at paras. 12-13.

¹⁰¹ *Whitty v. Wells*, 2014 ONSC 502 at para. 46.

¹⁰² *Ward*.

¹⁰³ AF at para 81.

¹⁰⁴ RFJ at paras. 45, 59.

¹⁰⁵ *Ward* at para. 4.

59. The Supreme Court in *Ward* held that if an entity is responsible for a *Charter* breach, then *Charter* damages may be awarded against that entity but not against the individual actors involved in the breach.¹⁰⁶

60. At the trial level, in *Ward BCSC*, the trial judge awarded *Charter* damages against both the Province and the City of Vancouver.¹⁰⁷ On appeal, the Supreme Court of Canada upheld the *Charter* damages awarded against the Province, which arose out of the actions of corrections officers employed by the Province.¹⁰⁸ The Court reversed the *Charter* damages awarded against the City, which arose out of the actions of municipal police officers, because the Court concluded that a declaration of the breach adequately served the need for vindication and deterrence.¹⁰⁹

61. As the chambers judge noted, the fact that the Court in *Ward* considered the merits of awarding *Charter* damages against the City suggests that it was open to the Court to impose *Charter* damages against the City.¹¹⁰ In other words, *Ward* supports the proposition that *Charter* damages may be awarded against entities other than the Crown when those entities are bound by the *Charter* under s. 32(1). Kent Roach has similarly observed that *Charter* damages are available “against governmental entities bound by the *Charter*”.¹¹¹

62. Courts across the country, including this Court, have had no trouble applying *Ward* to award *Charter* damages against entities other than the Crown:

- a. In *Mason*, this Court upheld a *Charter* damages award payable by the city for the actions of a police constable. The Province was not a party.¹¹²

¹⁰⁶ *Ward* at para. 22.

¹⁰⁷ *Ward v. City of Vancouver*, 2007 BCSC 3 at para. 130.

¹⁰⁸ *Ward* at paras. 8, 72-73, 79.

¹⁰⁹ *Ward* at paras. 74-78.

¹¹⁰ RFJ at para. 47, citing *Ward* at para. 78.

¹¹¹ *Constitutional Remedies in Canada*, 2nd Ed (Toronto: Thompson Reuters, 2023) at 11:13.

¹¹² *Mason v. Turner*, 2016 BCCA 58 at paras. 9, 16.

- b. In *Stewart*, the Ontario Court of Appeal ordered the Toronto Police Services Board to pay *Charter* damages for a breach of Mr. Stewart's *Charter* rights. The Province of Ontario was not a party.¹¹³

63. As an alternative, the appellants more narrowly argue that the federal or provincial Crown must always pay damages for an entity's *Charter* breaches if that entity is subject to the *Charter* under the second branch of the s. 32(1) test, meaning that the entity is not government or controlled by government, but is delivering a specific government policy or program that is subject to the *Charter*.¹¹⁴

64. For this argument, the appellants rely on the Supreme Court of Canada's decision in *Eldridge*, which did not address *Charter* damages. Instead, *Eldridge* summarized the test to determine whether the *Charter* applies to an entity under s. 32(1).¹¹⁵ The Court affirmed that under the second branch of the test, the *Charter* can apply to an entity if the entity is implementing a government policy or program.¹¹⁶

65. If the *Charter* applies because an entity is implementing a government policy or program, then the *Charter* applies to the entity's performance of that governmental activity, but not to its non-governmental or private activities.¹¹⁷ However, as the Court explained in *Eldridge*, in performing that particular governmental activity, the entity is considered part of government within the meaning of s. 32 of the *Charter*:

[36] Legislatures have created many other statutory entities, however, that are not as clearly autonomous from government. There are myriad public or quasi-public institutions that may be independent from government in some respects, but in other respects may exercise delegated governmental powers or be otherwise responsible for the implementation of government policy. When it is alleged that an action of one of these bodies, and not the legislation that regulates them, violates the *Charter*, it must be established

¹¹³ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 at para. 149.

¹¹⁴ AF at para. 76.

¹¹⁵ *Eldridge* at para. 44.

¹¹⁶ *Ibid.*

¹¹⁷ *Dickson* at para. 61. *Eldridge* at para. 44.

that the entity, in performing that particular action, is part of “government” within the meaning of s. 32 of the *Charter*.¹¹⁸

66. *Eldridge* does not stand for the appellants’ proposition that only some sections of the *Charter* will apply to the entity’s governmental activities. If the *Charter* applies to an entity under s. 32, then the entire *Charter* applies, including s. 24. *Eldridge* does not suggest that courts should parse out which *Charter* provisions apply to an entity performing a government program. To the contrary, *Eldridge* says that in performing a particular government activity, the entity is “part of ‘government’ within the meaning of s. 32 of the *Charter*”.

67. To hold otherwise would lead to an interpretation that is discordant with the wording of s. 32 of the *Charter*. Section 32 starts with the words “[t]his Charter applies”,¹¹⁹ indicating that if, under s. 32, the *Charter* applies to an entity, then the entire *Charter* applies.

68. Any possible doubts on this point have been conclusively resolved in Ontario, where courts have consistently held that independently governed Children’s Aid Societies (“**CASs**”) are: (1) subject to the *Charter* under the second branch of the s. 32 test; and (2) responsible for the damages flowing from their *Charter* breaches:

[65] It is well established that CASs are subject to potential *Charter* action and can be held directly liable for damages under section 24 of the *Charter*. The Courts have specifically held, and the Court of Appeal has confirmed, that CASs are independently responsible actors under the *Charter* and that “HMQ is not liable for the actions of these various entities”. The acts of discrimination and mistreatment alleged against CASs and their personnel were committed not by the [Crown] Defendants but by separate legal entities; their actions and discretion must be exercised in accordance with the *Charter*, and that duty is enforceable directly against them.¹²⁰

¹¹⁸ *Eldridge* at para. 36. For a recent application of this aspect of *Eldridge*, see *Budge v. Fraser Valley Regional Library*, 2024 BCSC 10 at para. 39.

¹¹⁹ *Charter*, s. 32.

¹²⁰ *BM v. Ontario*, 2025 ONSC 4575 at para. 65 (citations omitted).

69. Ontario courts have also held that hospitals, the bodies at issue in *Eldridge*, are responsible for their own *Charter* damages, and that the Crown is not liable for *Charter* damages arising from hospitals' *Charter* breaches.¹²¹

70. The appellants' proposition that the Province should be liable for UBC's Actions would also negate the deterrence function of *Charter* damages.¹²² If this Court accepts the appellants' argument, then the consequences of a *Charter* breach would be borne by a party that did not participate in or have any knowledge of the *Charter* breach and did not have control over the entity that breached the *Charter* (since the Court would have concluded that the Province did not exercise daily or routine control over UBC).

71. As the chambers judge noted, it would be anomalous if UBC was bound by the *Charter* but also immune from *Charter* damages.¹²³ A just and appropriate remedy under s. 24(1) must be "fair to the party against whom the order is made".¹²⁴ It would be unfair to award *Charter* damages against a party that: (1) did not participate in, or know of, the *Charter* breach; and (2) had no control over the entity that breached the *Charter*.

72. If there were a finding at trial that UBC breached the appellants' *Charter* rights, then it would be open to the Court to award *Charter* damages against UBC. To conclude otherwise would go against recent Supreme Court of Canada jurisprudence where the Court held that s. 24(1) of the *Charter* must: (1) be construed in "a manner that best ensures the attainment of its objects", (2) remain "flexible and responsive to the needs of a given case", and (3) be "allowed to evolve to meet the different contexts in which *Charter* violations occur".¹²⁵

73. Therefore, if this Court determines that there is an arguable case that the *Charter* applies to UBC, then it is UBC that should be liable for any *Charter* damages that a court

¹²¹ *Stolove v. Waypoint Centre for Mental Health Care*, 2024 ONSC 3639 at paras. 71-74, 323-326, aff'd 2025 ONCA 376 citing: *CR v. Ontario*, 2019 ONSC 2734; *Zaugg v. Ontario (Attorney General)*, 2019 ONSC 2483.

¹²² *Ward* at para. 4.

¹²³ RFJ at para. 53.

¹²⁴ *Canada (Attorney General) v. Power*, 2024 SCC 26 at para. 40.

¹²⁵ *Power* at paras. 37, 40.

deems appropriate and just. There is simply no need to include the Province as a defendant in this action and the claim against the Province is bound to fail.

VI. Costs

74. If the claim against the Province remains struck following this appeal, then the Province seeks its costs.¹²⁶

PART 4 – NATURE OF ORDER SOUGHT

75. The Province seeks an order dismissing the appeal, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Vancouver, Province of British Columbia, this 23rd day of December, 2025.



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

¹²⁶ *Cepuran v. Carlton*, 2022 BCCA 376 at para. 16.

SCHEDULE A: ANALYSIS OF STATUTORY FACTS IN THE AMENDED CLAIM

Facts in the Amended Claim	Response
Para 14(a): UBC may grant university degrees.	UBC has been able to grant university degrees since it was founded in 1908. ¹²⁷
Para 14(b): The management, administration and control of the assets, revenue, business, and affairs of UBC are vested in the board of governors.	These powers have been vested in the Board since UBC was founded in 1908. ¹²⁸ The Supreme Court of Canada considered this in <i>Harrison</i> . ¹²⁹
Para 14(c): UBC is mandated to own, manage, administer and control its assets, revenue, business and affairs in a manner which promotes and carries on the work of a university in all of its branches.	UBC has been required to do this since 1974. ¹³⁰ The Supreme Court of Canada considered this in <i>Harrison</i> . ¹³¹
Para 14(d): UBC may impose and collect penalties, including fines.	The Board has had this power since 2009. ¹³² This power does not support the argument that the Province controls UBC.
Para 14(e): UBC must submit student personal information to the minister responsible for the administration of the <i>School Act</i> to obtain a personal education number for students.	The Board has had this requirement since 1999. ¹³³ While this specific information requirement was enacted after 1990, the Supreme Court of Canada in <i>Harrison</i> considered that UBC had to provide information to the minister at the minister's request. ¹³⁴

¹²⁷ *British Columbia University Act, 1908*, S.B.C. 1908, c. 53, s. 58(c). This power is now found at s. 2 of the *University Act*.

¹²⁸ *University Act 1908*, s. 38. This power is now found at s. 27(1) of the *University Act*.

¹²⁹ *Harrison* at 459.

¹³⁰ *Universities Act*, S.B.C. 1974, c. 100, s. 47(f). This requirement is now found at s. 47(2)(f) of the *University Act*.

¹³¹ *Harrison* at 468.

¹³² *Miscellaneous Statutes Amendment Act*, S.B.C. 2009, c. 22, s. 12. This power is now found at s. 27(2)(x.1) of the *University Act*.

¹³³ *Education Statutes Amendment Act (No. 2)*, 1999, S.B.C. 1999, c. 30, s. 15. This requirement is now found at s. 27(5) of the *University Act*.

¹³⁴ *Harrison* at 463, 468.

Facts in the Amended Claim	Response
Para 14(f): UBC may not run any deficit, without the approval of the Minister and the Minister of Finance.	UBC has required approval from the Province to run deficits since UBC was founded in 1908. ¹³⁵
Para 14(g): UBC must return portions of annual grants to the Provincial Crown in the event of labour strikes or lock-outs.	UBC has had to return portions of annual grants to the Provincial Crown in the event of lock-outs since 1993. ¹³⁶ While this particular provision was enacted after 1990, the Supreme Court of Canada in <i>Harrison</i> considered various statutes that allowed the Province to monitor and regulate the expenditure of funds received by UBC. ¹³⁷
Para 14(h): UBC must make an annual report of its transactions to the Minister including any particulars the Minister may require.	UBC has had to make an annual report of its transactions and report any particulars required by the Province since UBC was founded in 1908. ¹³⁸ The Supreme Court of Canada considered UBC's reporting requirements, including the annual report requirement in <i>Harrison</i> . ¹³⁹
Para 14(i): The Auditor General of British Columbia may appoint UBC's auditor in accordance with the <i>Auditor General Act</i> .	The Province has been able to appoint UBC's auditor since UBC was founded in 1908. ¹⁴⁰ The Supreme Court of Canada in <i>Harrison</i> considered the application of the <i>Auditor General Act</i> to UBC. ¹⁴¹
Para 14(j): The Minister may interfere in the exercise of powers conferred on UBC except: (i) the formulation and adoption of academic policies and standards; (ii) the establishment of standards for admission and	Notwithstanding the appellants' strained characterization of this provision, the same provision prohibiting interference (as applied to the former universities council)

¹³⁵ *University Act 1908*, s. 40. This requirement is now found at s. 29(1.1) of the *University Act*.

¹³⁶ *Advanced Education, Training And Technology Statutes Amendment Act*, S.B.C. 1993, c. 36, s. 5. This requirement is now found at s. 30 of the *University Act*.

¹³⁷ *Harrison* at 463-464.

¹³⁸ *University Act 1908*, s. 43. This requirement is now found at s. 32 of the *University Act*.

¹³⁹ *Harrison* at 463-464, 467.

¹⁴⁰ *University Act 1908*, s. 42. This is now found at s. 33 of the *University Act*.

¹⁴¹ *Harrison* at 463, 471.

Facts in the Amended Claim	Response
graduation; and (iii) the selection and appointment of staff.	has been in place since 1974. ¹⁴² It has applied to the minister since 1987, when the council was disbanded. ¹⁴³ This Court considered this provision as supportive of UBC's independence from government in <i>Harrison BCCA</i> . ¹⁴⁴
Para 14(k): No new degree program may be offered without the Minister's prior approval.	A provision giving the power to approve new degrees to the former universities council has been in place since 1974. ¹⁴⁵ The provision requiring approval by the minister has been in place since 1987, when the council was disbanded. ¹⁴⁶ The Supreme Court of Canada considered this requirement in <i>Harrison</i> . ¹⁴⁷
Para 14(l): At the request of the Minister, UBC must provide the Minister with reports and any other information that the Minister considers necessary to carry out the Minister's responsibilities in relation to universities.	This provision (as applied to the former universities council) has been in place since 1974. ¹⁴⁸ The same provision has applied to the minister since 1987, when the council was disbanded. ¹⁴⁹ The Supreme Court of Canada considered this requirement in <i>Harrison</i> . ¹⁵⁰
Para 14(m): UBC may not make certain dispositions of its land without the approval of the Minister.	UBC has required approval from the Province for dispositions of land since 1913. ¹⁵¹ The Supreme Court of Canada considered this requirement in <i>Harrison</i> . ¹⁵²

¹⁴² *Universities Act 1974*, s. 71. This limitation is now found at s. 48(1) of the *University Act*.

¹⁴³ *University Amendment Act*, S.B.C. 1987, c. 48, s. 8.

¹⁴⁴ *Harrison BCCA* at paras. 15-16.

¹⁴⁵ *Universities Act 1974*, s. 70(e).

¹⁴⁶ *University Amendment Act 1987*, s. 8. This provision is now found at s. 48(2) of the *University Act*.

¹⁴⁷ *Harrison* at 469.

¹⁴⁸ *Universities Act 1974*, s. 70(j).

¹⁴⁹ *University Amendment Act 1987*, s. 8. This is now found at s. 49(1) of the *University Act*.

¹⁵⁰ *Harrison* at 468.

¹⁵¹ *British Columbia University Amendment Act*, S.B.C. 1913, c. 74, s. 3. This requirement is now found at s. 50(2) of the *University Act*.

¹⁵² *Harrison* at 467.

Facts in the Amended Claim	Response
Para 14(n): UBC is empowered to expropriate land it considers necessary for its purposes.	UBC has had this power since it was founded in 1908. ¹⁵³ The Supreme Court of Canada considered this power in <i>Harrison</i> . ¹⁵⁴
Para 14(o): UBC is exempt from the rule against perpetuities.	UBC has been exempt from the rule against perpetuities since 1963. ¹⁵⁵
Para 14(p): UBC is exempt from taxation under, inter alia, the <i>Police Act</i> , the <i>School Act</i> , and the <i>Vancouver Charter</i> .	UBC has been exempt from taxation since it was founded in 1908. ¹⁵⁶ The Supreme Court of Canada considered this exemption in <i>Harrison</i> . ¹⁵⁷
Para 14(q): UBC may not borrow for specified purposes without the approval of the Minister.	UBC's borrowing for specified purposes has required approval by the Province since UBC was founded in 1908. ¹⁵⁸
Para 14(r): The president is required to prepare and submit to the Minister an annual report.	UBC has had to submit an annual report to the Province since UBC was founded in 1908. ¹⁵⁹ UBC's president has had to prepare an annual report and present UBC's submissions to the universities council since 1974, ¹⁶⁰ and to the Minister since 1987. ¹⁶¹ The Supreme Court of Canada considered UBC's reporting obligations in <i>Harrison</i> . ¹⁶²

¹⁵³ *University Act 1908*, s. 7. This power is now found at s. 51 of the *University Act*.

¹⁵⁴ *Harrison* at 467.

¹⁵⁵ *Universities Act*, S.B.C. 1963, c. 52, s. 37. This exemption is now found at s. 52 of the *University Act*.

¹⁵⁶ *University Act 1908*, s. 47. This exemption is now found at s. 54 of the *University Act*.

¹⁵⁷ *Harrison* at 467.

¹⁵⁸ *University Act 1908*, s. 45. This requirement is now found at s. 58 of the *University Act*.

¹⁵⁹ *University Act 1908*, s. 43.

¹⁶⁰ *Universities Act 1974*, s. 60(3).

¹⁶¹ *University Amendment Act 1987*, s. 9. This requirement is now found at s. 62(3) of the *University Act*.

¹⁶² *Harrison* at 463, 467-468.

Facts in the Amended Claim	Response
Para 14(s): Various UBC entities are exempt from civil liability in specified circumstances which are not applicable to this action.	The same UBC entities have been exempt from liability in the same specified circumstances since 1974. ¹⁶³
Para 16: UBC is designated a “public sector employer” under the <i>Public Sector Employers Act</i> , RSBC 1996, c. 384.	UBC has been designated a “public sector employer” under the <i>Public Sector Employers Act</i> and various predecessor statutes since at least 1982. ¹⁶⁴ The Supreme Court of Canada considered this in <i>Harrison</i> . ¹⁶⁵
Para 17: UBC is designated a “local public body” under the <i>Freedom of Information and Protection of Privacy Act</i> .	UBC has been designated a “local public body” under the <i>Freedom of Information and Protection of Privacy Act</i> since 1994. ¹⁶⁶ This does not support the argument that the Province controls UBC.
Para 18: UBC is designated an “education and health sector organization” in the <i>Budget Transparency and Accountability Act</i>	UBC has been a “government reporting entity” under the <i>Budget Transparency and Accountability Act</i> since that statute first came into force in 2000, ¹⁶⁷ and an “education and health sector organization” since 2004. ¹⁶⁸ This does not support the argument that the Province controls UBC.
Para 19: UBC is designated a “government body” under the <i>Financial Administration Act</i> .	UBC has been designated as a “government body” under the <i>Financial Administration Act</i> since 1983. ¹⁶⁹ The

¹⁶³ *Universities Act 1974*, ss. 83, 84. These exemptions are now found at ss. 68-69 of the *University Act*.

¹⁶⁴ *Compensation Stabilization Act*, s. 1, “public sector employer”.

¹⁶⁵ *Harrison* at 471.

¹⁶⁶ *Freedom of Information and Protection of Privacy Amendment Act*, 1993, S.B.C. c. 46, s. 28.

¹⁶⁷ *Budget Transparency and Accountability Act*, S.B.C. 2000, c. 23, s 1, “government reporting entity”; *Financial Administration Act*, R.S.B.C. 1996, c. 138, “government body”; *Educational Institution Capital Finance Act*, R.S.B.C. 1996, c. 105, “designated educational institution”.

¹⁶⁸ *Budget Measures Implementation Act*, S.B.C. 2004, c. 14, s. 2(b).

¹⁶⁹ *Provincial Treasury Financing Amendment Act*, S.B.C. 1983, c. 25, s. 9; *Educational Institution Capital Finance Act*, R.S.B.C. 1979, c. 102, s. 1, “designated education institution”.

Facts in the Amended Claim	Response
	Supreme Court of Canada considered this in <i>Harrison</i> . ¹⁷⁰
Para 20: UBC is subject to the <i>Sexual Violence and Misconduct Policy Act</i> .	UBC and all public post-secondary institutions in BC have been subject to the <i>Sexual Violence and Misconduct Policy Act</i> , since the statute came into force in 2016. ¹⁷¹ This statute requires public post-secondary institutions to establish a sexual misconduct policy, which does not establish government control over UBC.
Para 21: UBC has, throughout its history and at all material times, received [various forms of funding by the Province, Canada, and the city of Vancouver].	In <i>Harrison</i> , the Supreme Court of Canada considered that the Province funded approximately 80% of UBC's operating costs and assisted UBC financially in other ways, including through foundations that were Crown agents. ¹⁷²

¹⁷⁰ *Harrison* at 471.

¹⁷¹ *Sexual Violence and Misconduct Policy Act*, S.B.C. 2016, c. 23.

¹⁷² *Harrison* at 469-470.

APPENDIX A: LIST OF AUTHORITIES

Authorities	Para # in factum
CASE LAW	
<i>Alter v. The University of British Columbia</i> , 2024 BCSC 961	2, 4, 10, 11, 15, 17, 33, 34, 38, 42, 52, 53, 54, 57, 61, 71,
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<i>Carter v. Canada (Attorney General)</i> , 2015 SCC 5	23
<i>Cepuran v. Carlton</i> , 2022 BCCA 376	74
<i>Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)</i> , 2023 SCC 31	16
<i>Connell v. University of British Columbia</i> , 1988 CanLII 183 (B.C.C.A.)	24, 25, Sched. A
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Authorities	Para # in factum
<i>Eldridge v. British Columbia (Attorney General)</i> , [1997] 3 S.C.R. 624	21, 39, 40, 64, 65, 66, 69
<i>Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component</i> , 2009 SCC 31	19
<i>Harrison v. University of British Columbia</i> , [1990] 3 S.C.R. 451	22, 24-28, 30, 32, 34-37, 44, Sched. A
<i>Kishawi v. Vancouver Island University</i> , 2025 BCSC 2487	31, 51
<i>Koita v. Toronto Police Services Board</i> , [2001] O.J. No. 3641	53, 56
<i>Lobo v. Carleton University</i> , 2012 ONCA 498	42, 43, 47, 50
<i>Mason v. Turner</i> , 2016 BCCA 58	62
<i>Maughan v. University of British Columbia</i> , 2009 BCCA 447	28
<i>McKinney v. University of Guelph</i> , [1990] 3 S.C.R. 229	26, 29, 30, 39, 44, 45
<i>Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.</i> , 2021 BCCA 362	35
<i>N.K. v. M.H.</i> , 2020 BCCA 121	16
<i>Rain Coast Water Corp. v. British Columbia</i> , 2019 BCCA 201	16
<i>Scott v. Canada (Attorney General)</i> , 2013 BCSC 1651	17
<i>Scott v. Canada (Attorney General)</i> , 2017 BCCA 422	17
<i>Situmorang v. Google, LLC</i> , 2024 BCCA 9	14
<i>Stewart v. Toronto (Police Services Board)</i> , 2020 ONCA 255	62
<i>Stolove v. Waypoint Centre for Mental Health Care</i> , 2024 ONSC 3639	69
<i>Vancouver (City) v. Ward</i> , 2010 SCC 27	11, 53, 57, 58, 59, 60, 61, 62, 70

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<i>Ward v. City of Vancouver</i> , 2007 BCSC 3	60
<i>Whitty v. Wells</i> , 2014 ONSC 502	56
<i>Zaugg v. Ontario (Attorney General)</i> , 2019 ONSC 2483	69
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<i>Advanced Education, Training And Technology Statutes Amendment Act</i> , S.B.C. 1993, c. 36, s. 5	Sched. A, p. 31
<i>Auditor General Act</i> , R.S.B.C. 1979, c. 24	26
<i>British Columbia University Act, 1908</i> , S.B.C. 1908, c. 53, s. 7, 38, 40, 42, 43, 45, 47, 58(c)	Sched. A, pp. 30, 31, 33
<i>British Columbia University Amendment Act</i> , S.B.C. 1913, c. 74, s. 3	Sched. A, p. 32
<i>Budget Measures Implementation Act</i> , S.B.C. 2004, c. 14, s. 2(b)	Sched. A, p. 34
<i>Budget Measures Implementation Act</i> , 1996, S.B.C. 1996, c. 9, s. 21	36
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<i>Canadian Charter of Rights and Freedoms</i> , ss. 2, 24(1) and 32, Part 1 of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c. 11	Throughout
<i>College and Institute Act</i> , R.S.B.C. 1996, c. 52, s. 52(1)	24
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<i>Educational Institution Capital Finance Act</i> , R.S.B.C. 1979, c. 102, s. 1	Sched. A, p. 34

Authorities	Para # in factum
<i>Educational Institution Capital Finance Act</i> , R.S.B.C. 1996, c. 105	Sched. A, p. 34
<i>Financial Administration Act</i> , R.S.B.C. 1996, c. 138	Sched. A, p. 34
<i>Financial Administration Act</i> , S.B.C. 1981, c. 15	26
<i>Freedom of Information and Protection of Privacy Amendment Act, 1993</i> , S.B.C. 1993, c. 46, s. 28	Sched. A, p. 34
<i>Miscellaneous Statutes Amendment Act</i> , S.B.C. 2009, c. 22, s. 12	Schedule A, p. 30
<i>Provincial Treasury Financing Amendment Act</i> , S.B.C. 1983, c. 25, s. 9	Sched. A, p. 34
<i>Sexual Violence and Misconduct Policy Act</i> , S.B.C. 2016, c. 23	Sched. A, p. 35
<i>Universities Act</i> , S.B.C. 1974, c. 100, s. 47(f), 60(3), 70(e), 70(j), 71, 83, 84	Sched. A, pp. 30, 32-34
<i>Universities Act</i> , S.B.C. 1963, c. 52, s. 37	Sched. A, p. 33
<i>University Act</i> , R.S.B.C. 1996, c. 46, ss. 2, 8, 19.1, 19(2), 27, 29, 30, 32, 33, 35.1, 47(2)(f), 48, 49(1), 50(2), 51, 52, 54, 58, 62(3), 68, 69	5, 24, 25, 26, 29, 31, 35, 36, 37, 39, 47, Sched. A, pp. 30-34
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