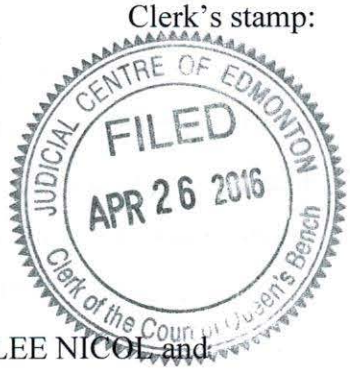
Clerk's stamp:



COURT FILE NUMBER	1603 07352
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
APPLICANTS	UALBERTA PRO-LIFE, AMBERLEE NICOL and CAMERON WILSON
RESPONDENT	THE GOVERNORS OF THE UNIVERSITY OF ALBERTA
DOCUMENT	**ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	July 12, 2016, or such time thereafter as determined.
Time:	10:00 AM
Where:	Law Courts Building Edmonton
Before:	Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

Remedy sought:

The Applicants apply to this Court for judicial review of two separate but interrelated University of Alberta decisions.

The First Decision: Decision Not to Proceed with Complaint

1. A declaration that the decision made by the University of Alberta (Protective Services) on November 30, 2015 (and subsequent decision on appeal by Discipline Officer Chris Hackett released February 4, 2016), not to proceed with the Applicants' complaint against the student protesters who disrupted and blockaded the authorized campus event of UAlberta Pro-Life (the "Club") on March 3 and 4, 2015, (the "First Decision") is unreasonable or otherwise invalid.
2. An Order in the nature of *certiorari* quashing the First Decision.
3. In the alternative, an Order remitting the First Decision back to the University to be reconsidered in accordance with the declarations of the Court.
4. Costs.
5. Such further and other relief as this Court deems just and equitable.

The Second Decision: Decision to Impose $17,500 Security as a Precondition for Approving the February 2016 Event

6. A declaration that the decision made by the University of Alberta (Office of the Dean of Students) on February 12, 2016, to impose a $17,500 security fee on the Club as a condition for permitting an event on February 23 and 24, 2016, at the University (the "Second Decision"), is unreasonable or otherwise invalid.
7. A declaration that the Second Decision unjustifiably infringes the fundamental Canadian value of freedom of expression, and breaches the s. 2(b) and s. 2(d) *Charter* rights of the Applicants.
8. An order in the nature of *certiorari* quashing the Second Decision pursuant to s. 24(1) of the *Charter*.
9. An Order in the nature of *prohibition* prohibiting the University of Alberta from imposing a financial burden on the Applicants as a condition for the exercise of freedom of speech.
10. Costs.
11. Such further and other relief as this Court deems just and equitable.

Grounds of Application

The Applicants

12. UAlberta Pro-Life, formerly "Go-Life: U of A Campus Pro-Life," is a student group registered under the University of Alberta Students' Union.

13. Amberlee Nicol is a student at the University of Alberta and is the President of the Club.

14. Cameron Wilson is a student at the University of Alberta and is the Vice President Finance of the Club.

The Respondent

15. The University of Alberta ("the University") was established in 1908 under the *University Act*, R.S.A. 1906, c. 42, and is currently governed by the *Post-Secondary Learning Act,* S.A. 2003, c. P-19.5 (the "*PSL Act*").

Disruption of the Applicants' 2015 Event

16. On March 3 and 4, 2015, the Applicants conducted an event in the main "quad" on campus at the University of Alberta and did so with the full knowledge and approval of the University (the "2015 Event"). The 2015 Event consisted of setting up a stationary display of posters and seeking to engage passersby in discussion about the topic of abortion, in order to prompt peaceful discussion and debate about what value unborn human life should have within Canada's culture and legal system.

17. Prior to the 2015 Event, the Applicants became aware of a number of University students stating on Facebook internet posts that they were planning to obstruct the 2015 Event.

18. On March 2, 2015, the Applicants, through their counsel, informed the Acting Director of UAPS, the University's President and the University's General Counsel, of the planned obstruction, and provided the University with the names of the University students involved and copies of many Facebook posts, by which individuals publicly identified themselves as planning obstruction.

19. The Applicants requested that the University uphold the rule of law on campus and protect the 2015 Event from interference and disruption, in accordance with the University's *Code of Student Behaviour* (the "*COSB*"). The Applicants also requested that the University warn, and if necessary, take appropriate disciplinary action, against

those students who, in violation of the *COSB*, were inciting inappropriate behaviour, obstruction and disruption.

20. On February 27, 2015, then-University President Dr. Samarasekera released a public statement concerning the 2015 Event. Dr. Samarasekera stated that the University of Alberta was committed to freedom of expression and its duty to facilitate discussion and debate. Dr. Samarasekera reminded the University community that the Club had the same rights and privileges as other student groups and that the 2015 Event was an authorized campus event. She stated that any complaints would be investigated by the UAPS according to the University's existing policies and procedures.

21. Despite Dr. Samarasekera's warning and the advance notice to the University of the intended disruption, on March 3 and 4, 2015, a large group of University students (the "Obstructive Students"), non-students and University staff closely surrounded the Applicants' display, obstructing and disrupting the 2015 Event. The Obstructive Students, with the others involved, held banners which effectively blocked the Applicants' signs, prevented the Applicants from engaging in discussions with passersby, and denied other students the opportunity to see and hear the Applicants' expression. The *COSB* expressly prohibits obstructing a University Activity or University-related Function or inciting others to do so.

22. University of Alberta Protective Services ("UAPS") personnel were present during the 2015 Event, but made no attempt to control the Obstructive Students. UAPS did not require the Obstructive Students to provide UAPS with their identification, as the *COSB* requires students to do when asked by UAPS. UAPS did not photograph the Obstructive Students committing the obstruction and disruption. UAPS did not warn the Obstructive Students that they could be, or would be, prosecuted for violating the *COSB* if they failed to cease and desist from their unlawful conduct. UAPS limited its actions to oral suggestions that the Obstructive Students should cease their misconduct, but took no action beyond making this suggestion. UAPS personnel did, however, attempt to restrict the Applicants' from distributing literature.

The First Decision

23. On March 11, 2015, the Applicants filed a formal complaint with UAPS against the Obstructive Students pursuant to the complaint provisions in the *COSB* (the

"Complaint"). The Complaint included detailed information and evidence in regards to the following:

a. Written evidence (Facebook posts) of the planning and coordination of the obstruction of the 2015 Event;

b. The identity of the Obstructive Students who had obstructed the 2015 Event; and

c. Video and photographic evidence of the conduct of the Obstructive Students.

24. It took UAPS over eight months to release a decision in regard to the Complaint.

25. On November 30, 2015, the Director of UAPS, Mr. Bill Spinks, emailed the Applicants UAPS' decision not to proceed with the Complaint (the "UAPS Decision"). The UAPS Decision confirmed that the University had determined to neither charge nor prosecute the Obstructive Students at the 2015 Event. No reasons were provided by Mr. Spinks for the lengthy delay in reaching or releasing the UAPS Decision.

26. In the UAPS Decision, Mr. Spinks provided the following reasons as to why UAPS had determined not to proceed with the Complaint:

a. The evidence submitted with the Complaint "did not specify how and/or who had made the alleged identification of the individual(s) in the images or video clips";

b. The video and photographic evidence did not specify the date that it was created or who had created it;

c. The video and photographic evidence could therefore not be relied on as factual;

d. The *COSB* does not prohibit assembling or free speech.

27. In the UAPS Decision, Mr. Spinks further, either expressly or by necessary implication, determined the following:

a. It was unlikely that an investigation of the Complaint could substantiate the Complaint;

b. The subject matter of the Complaint was not sufficiently serious to warrant investigation; and

c. UAPS only had one investigating officer and said officer's time would be better utilized investigating more serious complaints.

<u>Appeal of UAPS Decision</u>

28. On December 18, 2015, counsel for the Applicants wrote to Ms. Deborah Eerkes, Director and Discipline Officer with the University of Alberta Office of Student Conduct

and Accountability to appeal the UAPS Decision in accordance with sections 30.5.2(7)(b) and 30.5.2(8) of the *COSB* (the "Appeal of the UAPS Decision").

29. In its Appeal of the UAPS Decision, the Applicants noted that UAPS' discretion was not without limits and was required to be exercised reasonably in accordance with the principles of procedural fairness and the *COSB*. The Applicants also contended that UAPS erred in the UAPS Decision, by:

    a. determining that a valid reason to refuse to proceed with the Complaint was UAPS' ignorance of the identity of the individual(s) who had compiled the evidence submitted in support of the Complaint (the "Evidence");
    b. determining 1) that the dates on which the photographs and videos of the Blockade were taken could not be ascertained, and 2) that this permitted UAPS to disregard the photographs and video portion of the Evidence;
    c. determining that UAPS effectively lacks the resources to proceed with the Complaint, citing the employment of only one investigator;
    d. determining that the number of individuals who are the subject of the Complaint is a relevant factor in determining not to proceed with the Complaint;
    e. determining that UAPS would have been obliged to investigate all 100+ subjects of the Complaint when the *COSB* only applies to students of the University (many of whom had already been identified for UAPS by the Applicants);
    f. determining that the subject of the Complaint was not "serious" enough to warrant proceeding with;
    g. ignoring the public self-identification of the Obstructive Students and subsequent enactment of precisely the obstruction planned; and
    h. inordinately and improperly delaying the release of the UAPS Decision itself, thereby breaching procedural fairness.

30. On December 21, 2015, Ms. Eerkes confirmed that the Appeal of the UAPS Decision had been received within the time allotted under the *COSB*. Ms. Eerkes stated that Discipline Officer Chris Hackett would review the Appeal of the UAPS Decision.

Decision of Chris Hackett, Discipline Officer

31. On February 4, 2016, Discipline Officer Hackett released his decision on the Appeal of the UAPS Decision (the "Appeal Decision"). The Appeal Decision dismissed the Applicants' appeal.

32. In the Appeal Decision, Officer Hackett clarified that the only applicable reason under the *COSB* that enabled Mr. Spinks to not proceed with the Complaint was section 30.5.2(6)(b) – that the Director of UAPS believes that no rule of the *COSB* has been broken.

33. Mr. Hackett did not address or make mention of the delay of the UAPS Decision, or certain other findings in the UAPS Decision that were the subject of the appeal, such as Mr. Spinks finding that the Evidence was unreliable.

34. Instead, in the Appeal Decision, Mr. Hackett found that the Obstructive Students had not been engaged in blockading and disruption, but had rather been engaged in their own freedom of speech at the 2015 Event, and that the Obstructive Students' behaviour was protected under the *COSB*.

35. The *COSB* does not permit a further appeal of Mr. Hackett's Appeal Decision and the Applicants apply to this Honourable Court for judicial review of the adjudication of the Complaint by the University of Alberta in the First Decision.

The Second Decision

36. On January 11, 2016, the Applicants made a written application for authorization from the University of Alberta to hold an event in the main "quad" on campus similar to the 2015 Event (the "2016 Event").

37. On January 21, 2016, the University advised that the Club would be required to obtain a security assessment from UAPS for the 2016 Event. On February 3, 2016, the Club submitted the security assessment form to UAPS.

Security Assessment

38. UAPS did not complete the security assessment itself, but instead involved the Edmonton Police Service ("EPS"). It appears to have taken nine days to complete the security assessment (the "Security Assessment") and submit it to the Office of the Dean of Students. The Office of the Dean of Students then approved the 2016 Event subject to the conditions present in the Security Assessment being implemented. The conditional

approval of the 2016 Event was conveyed to the Applicants on February 12, 2016, via email. The Applicants were informed that the Security Assessment would cost $17,500.00, and that a deposit of $9000.00 was due February 19, 2016, at noon. The Applicants were advised that if they did not like the conditions of approval that they could appeal to the Dean of Students.

39. The Security Assessment noted the 2016 Event was "essentially identical" to the 2015 Event and stated that "the level of security at [the 2015 Event] was appropriate". However, the Security Assessment imposed new security components on the approval of the 2016 Event, as follows:

    a. A double perimeter fence to create a buffer zone between the display and the public;
    b. Moving the location of the display to the north end of the quad; and,
    c. Increased security presence (the "New Components").

40. The Applicants possessed neither the $9000.00 deposit required in one week nor the $17,500.00 to pay the Security Assessment in entirety, and could not raise the funds in such a short time period (11 days). Nor had the Applicants any indication prior to February 12, 2016, that the Security Assessment would include such a substantial charge – there had been no security charge for the 2015 Event to the Applicants or to the Club.

Appeal of Security Assessment

41. The Applicants appealed the Security Assessment on February 19, 2016, to the Dean of Students pursuant to section 5, paragraph 8 of the University of Alberta *Student Groups Procedure*. The Applicants cited the following, *inter alia*, as grounds of appeal:

    a. The legitimacy of their expression and the value to the student body of the expression of different viewpoints;
    b. The unreasonableness of the imposition of a $17,500.00 cost to the Applicants 11 days prior to the 2016 Event and the fact that there was no fee for the 2015 Event;
    c. The right of freedom of expression as a fundamental Canadian value, also enshrined in the *Charter*;
    d. The fact that there was no alcohol, pyrotechnics, or other risk enhancing activities planned for the 2016 Event – merely the peaceful expression of opinion; and

e. The University's decision not to charge or investigate the students who disrupted the 2015 Event, which had created a greater security risk for the 2016 Event for which the University was responsible.

Decision on Appeal of Security Assessment

42. On February 24, 2016, Dr. Everall dismissed the appeal of the Security Assessment. Dr. Everall stated that the Club and the Applicants were delinquent in their fundraising activities, and that is why they were unable to pay the Security Assessment. She also stated, *inter alia*, the following:

    a. That the Applicants had not appealed the security condition itself, but solely the cost (as though the latter did not flow from the former);
    b. The Applicants should only attempt to hold events that they can pay for; and
    c. The Applicants were aware that they had to pay all fees associated with having an event (as though the conditions of the Security Assessment had been known to the Applicants all along).

43. Dr. Everall's decision of February 24, 2016, essentially ignores the contention that the University's refusal to charge or prosecute the students who obstructed the 2015 Event contributed to an elevated safety risk for subsequent displays.

44. Dr. Everall's decision of February 24, 2016, requested that the Applicants respond quickly with their decision whether they would go ahead with the 2016 Event in light of her rejection of their appeal. On February 26, 2016, the Applicants provided their response to Dr. Everall requesting examples of other peaceful campus events on which a large Security Assessment had been imposed, and confirmed that the 2016 Event was cancelled due to the imposition of the Security Assessment. No examples have been provided.

45. The 2016 Event was cancelled.

University is Subject to Public Law

46. The Decisions in this case are subject to judicial review. As such, they are to be assessed according to their compliance with the rule of law, including the public law principles that require public decision-makers to act fairly and reasonably, and exercise their

discretion in accordance with proper principles including the fundamental values of Canadian society and *Charter* values.

The Rule of Law

47. The University is subject to the rule of law. It does not have "absolute and untrammelled discretion", nor has it been granted unlimited arbitrary or capricious power by statutory authority: *Roncarelli v. Duplessis*, [1959] SCR 121.

The Duty of Fairness

48. The Applicants are tuition-paying students of the University who already pay for the upholding of the rule of law on campus. The commitments of the University made in the *COSB*, in other policies and in the February 27, 2015, statement by the then-University President are implied terms of the contract between the University and the Applicants, which the Applicants are reasonably entitled to rely on.

49. The University owes the Applicants the public legal duty to treat them fairly and to protect them, as it would protect and treat other groups at the University. Thus, the University is required to impartially and appropriately apply and enforce its *COSB* and other rules and policies for the equal benefit of all students, including the Applicants.

50. The University has disregarded its public duty to uphold the rule of law for the benefit of the Applicants, and failed in its duty to protect the Applicants' fundamental rights on campus.

The First Decision

51. The University was made aware of the plan to obstruct the 2015 Event. The University informed the student body that, "any complaints will be investigated by UAPS, according to our existing policies and procedures": February 27, 2015 *Statement regarding student display on campus* of President Samarasekera.

52. The 2015 Event was a University Activity, or alternatively a University-related Function, under the *COSB*. The *planning* and *incitement* of the obstruction of the 2015 Event was a breach of the *COSB*. Further, the *actual* obstruction of the 2015 Event was also a breach under the *COSB*.

53. While the University has discretion in deciding whether to take action against offenders of the *COSB*, it cannot exercise that discretion unreasonably. Upon official complaint by the Applicants, and the University's receipt of detailed evidence in support of said

complaint, the University had a duty to act reasonably in its assessment and determination of the Complaint. The University is entitled to exercise its *reasonable* discretion to determine who to investigate and charge.

54. The reasons of UAPS' Bill Spinks not to further investigate, charge or prosecute, however, were capricious and contradictory, and were followed by further contradictory justifications on appeal. Specifically, Discipline Officer Christ Hackett's assertion that the Obstructive Students were engaged in lawful assembly and expression under the *COSB* is inconsistent with the stated intentions and action of the Obstructive Students to obstruct the 2015 Event, the subsequent warning from then-President Samarasekera, and the actual happenings that occurred at the 2015 Event. The Obstructive Students were entirely focused on preventing the expression of the Applicants, not on creating expression of their own.

55. The University's exercise of its discretion was arbitrary and unreasonable, and not rationally connected to the relevant facts. Further, it was a breach of the University's duty of fairness to delay the determination of the Complaint for eight months, a delay for which the University has provided no justification.

56. The University's decision lacks justification, transparency and intelligibility within the decision making process that are the hallmarks of a reasonable decision. It is therefore unreasonable.

The Second Decision

57. Even if it is determined that the University exercised its discretion reasonably in refusing to investigate or charge the Obstructive Students (which is denied), there are unavoidable associated consequences that flow from the decision not to proceed against the Obstructive Students. First among these consequences is the inevitable creation of an elevated security risk for subsequent Club events due to the message the University has sent to students that they may breach the *COSB* with impunity if they disagree with opinions other students are expressing peacefully on campus.

58. By the imposition of the Security Assessment (the "Security Assessment Decision"), the University has attempted to divest itself of the responsibility for determining not to charge the Obstructive Students by foisting upon the Applicants the cost of future obstructive students of the (now cancelled) 2016 Event. This is arbitrary and oppressive.

The Applicants are not responsible for the misconduct of others nor are they responsible for the decision of the University not to hold offenders to account under its own policies.

59. Further, the imposition of the Security Assessment is unreasonable and unfair for the following reasons:

a. It had the practical effect of preventing free and peaceful expression on the University campus due to the Applicants inability to pay;

b. It is without precedent at the University of Alberta for an event involving nothing other than peaceful expression;

c. It purportedly mirrors the security fees that were paid by the University for the 2015 Event for which the University has released no financial information;

d. It confuses and blurs the relevant distinction between *perpetrators* of *COSB* violations, and *victims* of *COSB* violations; and

e. It unnecessarily or disproportionately involves the EPS.

Fundamental Canadian Values, *Charter* Values and the Second Decision

60. The University is required to exercise its statutory discretion in accordance with the fundamental values of Canadian society and the principles of the *Charter*, both of which include the protection of freedom of expression. The University has failed to do so in the following ways:

a. The Security Assessment Decision failed to consider, or to reasonably consider, the fundamental Canadian value of freedom of expression or *Charter*-protected freedom of expression;

b. The Security Assessment Decision infringes the *Charter* s. 2(b) freedom of expression of the Applicants by imposing an unreasonable burden and prior restraint on the exercise of a constitutionally-protected right (in this case, the expression of an opinion on campus through peaceful means); and

c. The Security Assessment Decision places an unreasonable burden on a particular group and effectively prevents group members from associating together for the purposes of expressing their particular viewpoint, contrary to s. 2(d) of the *Charter*.

Evidence to be used in support of this Application:

61. The Record of Proceedings for both the First Decision (including appeal) and the Second Decision before the University of Alberta as outlined herein.

62. Such further and other material as counsel may advise and this Honourable Court will permit.

Applicable Acts and Regulations:

63. The *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

64. *University Act*, R.S.A. 1906, c. 42

65. *Post-Secondary Learning Act,* S.A. 2003, c. P-19.5

66. *Alberta Bill of Rights*, RSA 2000, c A-14

67. University of Alberta *Code of Student Behaviour* and *Student Groups Procedure*.

68. Such further and other material as counsel may advise and this Honourable Court will permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).