Court of Queen's Bench of Alberta

Citation: UAlberta Pro-Life v Governors of the University of Alberta, 2017 ABQB 610

Date:
Docket: 1603 07352
Registry: Edmonton

Between:

UAlberta Pro-Life, Amberlee Nicol and Cameron Wilson

Applicants

\- and -

Governors of the University of Alberta

Respondent

Reasons for Decision
of the
Honourable Madam Justice Bonnie L. Bokenfohr

I. Introduction

[1] On March 3 and 4, 2015 the UAlberta Pro-Life student group held an event in the main "Quad" on the University of Alberta north campus. The event included large stationary displays of approximately 700 square feet with photographs of whole and dismembered human fetuses at various stages of development. UAlberta Pro-Life is a registered student group recognized by the University and had approval from the University for the event. On both days, throughout the entire time of the display, many University students, faculty, staff, and the general public attended, standing side by side holding signs and banners blocking the displays. They also cheered and chanted to protest the UAlberta Pro-Life display.

[2] Members of UAlberta Pro-Life later complained to the University that the obstructing demonstrators breached the University Code of Student Behaviour (the Code) and organizers and

attendees should be disciplined. The University ultimately decided not to proceed with the complaint and did not take any disciplinary action. The UAlberta Pro-Life complainants seek judicial review of the University decision not to proceed with the complaint (the Complaint decision).

[3] In early 2016, UAlberta Pro-Life again sought approval to hold the same event in the main "Quad". The University approved the event, subject to the condition that UAlberta Pro-Life pay the actual costs of security for the event, a cost the University estimated at $17,500.00. UAlberta Pro-Life objected to the condition, arguing that the cost was prohibitive and effectively prevented them from holding the event. They seek judicial review of the University's decision to grant approval subject to this condition, arguing that the University has interfered with their right to freedom of expression (the Security Cost decision).

II. The Complaint Decision

Background

[4] The Applicants are Amberlee Nicol and Cameron Wilson, students at the University of Alberta. Ms. Nicol is President of UAlberta Pro-Life and Mr. Wilson is Vice President Finance of UAlberta Pro-Life.

[5] The March 3 and 4, 2015 UAlberta Pro-Life event was held in "Quad", a pedestrian high traffic open area towards the centre of the campus. University students, faculty, staff, and members of the general public came with handheld signs and banners, and formed a human barrier significantly obstructing the UAlberta Pro-Life display from the time it was erected on each day to the time it was taken down. They also cheered and chanted in protest of the UAlberta Pro-Life display.

[6] University Alberta Protective Services (UAPS) set up a designated space for the counter protesters and announced that they were required to stay in that designated space. The counter protesters did not comply and continued to stand in front of the UAlberta Pro-Life display making loud pronouncements in protest.

[7] On March 11, 2015, the Applicants filed complaints with UAPS identifying approximately 100 individuals they asserted organized or participated in the counter protest and specifically naming three individuals they alleged organized the counter protest. The complaint alleged that these persons breached specific sections of the Code.

[8] UAPS commenced an investigation. On November 30, 2015 the Director of UAPS (the Director) notified the complainants that he was exercising his discretion and declining to proceed with the complaint.

[9] The Applicants appealed the Director's decision to the Discipline Officer, as provided for under the Code, submitting a detailed written submission prepared by legal counsel. On February 4, 2016 the Discipline Officer released the Complaint decision.

[10] In the Complaint decision, the Discipline Officer identified the issue before him as "whether or not it was appropriate for [the Director] to make the decision not to proceed with charges under the Code against the accused students." He reviewed both the Director's decision and the UAPS investigation record, and held that the decision to not proceed was reasonable and appropriate given the circumstances and therefore denied the appeal.

[11] The Code does not provide complainants with a further right of internal appeal.

[12] This judicial review application requires the court to answer the following questions:

- What decision is subject to review? The decision of the Director, the Decision of the Complaint Officer, or both?
- Do the Applicants have standing to seek judicial review of the decision? What is the scope of that review?
- What is the appropriate standard of review?
- What is the outcome of the review on that standard?

Analysis

The Decision Under Review

[13] The Originating Application and written materials filed by the Applicants suggest that they are seeking judicial review of both the Director's initial decision and the Discipline Officer's appeal decision. That cannot be the case.

[14] Generally, an applicant must exhaust internal appeal procedures. When they do so, it is the final decision of the appeal body that is subject to review: ***Harelkin v. University of Regina***, [1979] 2 S.C.R. 561; ***Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)***, [1989] 2 S.C.R. 49; ***Canadian Pacific Ltd. v. Matsqui Indian Band***, [1995] 1 S.C.R. 3; ***Strickland v. Canada (Attorney General)***, 2015 SCC 37. In this case, it is the Discipline Officer's Complaint decision that is subject to review.

Standing and Scope of Review

[15] The Applicants challenge the merits of the Discipline Officer's Complaint decision arguing that it was unreasonable. The University argues that the Applicants do not have standing to challenge the merits of the Complaint decision; rather, they have limited standing to challenge the procedural fairness of the appeal to the Discipline Officer and the Complaint decision.

[16] The complaint procedure framework set out in the Code and the Applicants' role is relevant to this issue. The rights of complainants and complained against students are expressly set out in the Code.

[17] Complainants have the following rights:

- to initiate proceedings;
- to have the Director decide whether to proceed with the complaint;
- to be notified of the Director's decision;
- to appeal to the Discipline Officer the Director's decision to not proceed with and/or investigate a complaint; and
- if the Discipline Officer decides that the decision of the Director was appropriate, the right to a written decision with reasons from the Discipline Officer.

[18] If a complainant has been physically injured, discriminated against or harassed, or claims to have had property damaged or stolen, such a complainant has the following rights:

- to be consulted before any informal resolution;
- to provide evidence of injury or damage for which restitution may be an appropriate remedy;
- to be informed to the time and location of any hearing; and
- to be consulted as to whether they should be a witness at the hearing.

[19] The Code specifically provides that if the complaint is dismissed, no further proceedings shall be taken respecting the complaint.

[20] The Code also expressly sets out the rights of the student subjects of complaints. These rights are significantly different when the Director decides to proceed with a complaint and believes that disciplinary measures are warranted. These rights are the right to:

- notice of the complaint;
- choose whether or not to provide evidence against themselves;
- be presumed not to have committed an offence until established;
- have their case adjudicated within a reasonable time;
- consult with an advisor at any meeting and to be advised of their rights;
- reasonable disclosure of the case against them;
- reasonable notice of any meeting or hearing;
- an opportunity to respond to any allegations before a decision is made;
- present at any appeal before the University Appeal Board; and
- be advised of the reasons for any decision.

[21] The status afforded complainants under the Code is similar to the status afforded complainants in professional discipline matters. The role of a complainant in professional regulatory matters and their standing to seek judicial review has been addressed by the Alberta Court of Appeal in ***Friends of the Old Man River Society v. Association of Professional Engineers, Geologists and Geophysicists of Alberta***, 2001 ABCA 107, ***Mitten v. College of Alberta Psychologists***, 2010 ABCA 159, and ***Warman v Law Society of Alberta***, 2015 ABCA 368. These cases all confirm that a complainant's standing is limited to issues of procedural fairness. Complainants are not entitled to seek review of the reasonableness of the decision on the merits.

[22] The policy rational behind ***Mitten*** and ***Friends of the Old Man River*** was succinctly explained by Wakeling JA in ***Warman*** (dissenting but not on this point):

> With one caveat [the standing to contest whether there was procedural fairness] a person who makes a complaint under the *Legal Profession Act* about the conduct of a member of the Law Society is not a party to the process the complaint

> initiates. The only parties are the Law Society and the member whose conduct is the subject of the complaint.
>
> Both the *Legal Profession Act* and the common law make this clear.
>
> The interests of the Law Society and the member are specifically and directly affected by the outcome of the investigative process created by the *Legal Profession Act* in a manner that is fundamentally different from members of the public.
>
> The Law Society has a statutory responsibility to investigate complaints and monitor the conduct of its members. And the outcome of an investigative process may adversely affect the ability of a member to practice law. A complainant has no obligation to investigate complaints and monitor the conduct of members of the Law Society and his or her ability to practice law is not affected in any way by the outcome of the complaint.
>
> The fact that a complainant may be adversely affected by a legal profession whose members do not comply with norms established under the *Legal Profession Act* is not a sufficient interest to accord a complainant standing. Every member of the public has a similar interest (at paras 35-39). [footnotes omitted]

[23] The above rationale applies equally to complainants under the Code. The University has a statutory responsibility to supervise student affairs and in furtherance of that responsibility has been given the power to discipline students: *Post-Secondary Learning Act* SA 2003, c P-19.5 (PSLA) at s. 31(1). The Code was established by the University General Faculty Council (GFC) in furtherance of this mandate, and it identifies behaviours deemed unacceptable, setting out the sanctions for such behaviours and a description of the discipline and appeal processes.

[24] The Code expressly sets out the different roles and rights of those who submit complaints versus those who are subjects of complaints. A complainant's rights are quite limited when contrasted with the rights of the complained about student. For example, if a Discipline Officer decides to proceed with a complaint and impose a sanction, the complained against student has a further right to appeal the matter to the University Appeal Board. The complainant has no recognized role in any subsequent appeal or hearing. They have the right to be consulted as to whether they should appear as a witness, but they are not a party to the proceedings.

[25] The only parties to the complaint process are the University, as represented by the Director and the Discipline Officer at different stages, and the student who is the subject of the complaint. Just as the outcome of a professional disciplinary matter may adversely affect the ability of a regulated member to practice in their discipline, the outcome of a Code proceeding may have significant consequences for a complained against student with sanctions up to and including expulsion, impacting the student's future professional and employment prospects. On the other hand, complainants do not face such adverse consequences; a decision not to proceed with their complaint entails no financial risk or risk to their ongoing education.

[26] The Applicants argue that this matter can be distinguished from the professional regulatory regime on the basis that the Code creates rights for complainants -- the right to be free from behaviours prohibited by the Code. The Discipline Officer's decision not to proceed with their complaint interferes with these rights. They further argue that this interference is

sufficiently significant for the court to exercise its discretion and allow the Applicants to seek judicial review of the merits of the decision.

[27] I do not agree. The Code is about the relationship between the University and students who are alleged to have committed a disciplinary offence. The Code does not create rights that complainants can enforce as against the University or other students.

[28] I find that the Applicants' standing is limited to issues of procedural fairness. They do not have standing to seek review of the merits of the Complaint decision.

Standard of Review

[29] Issues of procedural fairness are not subject to a traditional standard of review analysis. Rather, the issue is whether the proceedings meet the level of fairness required by law. The duty of fairness owed to the Applicants as complainants is limited. The issue is whether the statutory appeal process was conducted "in a fundamentally unfair manner": ***Tran v College of Physicians and Surgeons of Alberta***, 2017 ABQB 337 at paras 29-30; ***Mitten*** at paras 16-17; ***Friends of the Old Man River*** at paras 46 and 49; ***Institute of Chartered Accountants of Alberta (Complaints Inquiry Committee) v Barry***, 2016 ABCA 354 at para 5.

The Complaint Decision was Procedurally Fair

[30] The Applicants exercised their right of appeal. They were represented by counsel on the appeal. The Record reveals that, in addition to the 11 page letter of appeal itself, there are 45 pages of attachments. The Discipline Officer issued his decision on February 4, 2016, less than two months after the appeal. The Applicants do not assert that there was delay in the appeal process. In argument the Applicants conceded that there were no concerns that the appeal procedure itself was unfair.

[31] The procedural unfairness, they argue, is in the delay that occurred at the investigation stage. While the Applicants are entitled to seek judicial review of the fairness of the appeal process, this does not extend to seeking judicial review of the underlying investigation. This was made clear in both ***Friends of the Old Man River*** at para 41 and ***Mitten*** at para 18, and is a corollary of the findings in ***Harelkin***, ***Matsqui Indian Band***, and ***Strickland***. See also ***Actton Transport Ltd. v. British Columbia (Employment Standards)***, 2010 BCCA 272 at para 56; ***King v. University of Saskatchewan***, [1969] S.C.R. 678 noted at para 32; ***Posluns v. Toronto Stock Exchange et al.***, [1968] S.C.R. 330; ***Hnatiuk v. The Society of Management Accountants of Manitoba***, 2013 MBCA 31 at para 78; and ***Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.***, 2013 FCA 250 at para 82.

[32] Even if the timing of the investigation were somehow captured by this review there was no breach of procedural fairness. The Applicants complained about the actions of approximately 100 individuals over the course of two days. They submitted photographs and videos from the event as well as social media posts from before and after the event. The Record clearly demonstrates that the investigation of this complaint had to be prioritized against unrelated investigations involving violence or immediate safety concerns. The UAPS investigator updated the Applicants on the status of the complaint.

[33] In summary, the Applicants' standing is limited to issues of procedural fairness before the Discipline Officer. The Applicants are not challenging the fairness of the appeal procedure. Even if they had, I find that the appeal process was fair.

[34] The application for judicial review of the Discipline Officer's decision is dismissed.

III. The Security Cost Decision

Background

[35] In January 2016 UAlberta Pro-Life applied to the University for permission to hold another event in Quad on February 23 and 24, 2016. The proposed event was essentially identical to the one held in 2015.

[36] Student groups and student events are governed by the University Student Groups Procedure. This Procedure was established by the University GFC under its delegated authority from the Board of Governors and PSLA. Section 18 of the PSLA provides that the "board may make any bylaws the board considers appropriate for the management, government and control of the university buildings and land" and s. 31(1) provides "The general faculties council has general supervision of student affairs…"

[37] UAlberta Pro-Life, as a registered and recognized student group, is entitled to benefits identified in the Student Groups Procedure as:

- ability to book space with the University;
- use of the University's institutional liquor licenses and the ability to receive permission for gaming events;
- use of the University's name and insignia;
- exclusive use of the group's name on campus;
- access to and ability to rent University property and equipment; and
- use of campus facilities for solicitation of membership.

[38] The Procedure goes on to provide that:

> All of the above benefits are subject to applicable University of Alberta policies, procedures and regulations.
>
> This Procedure in no way limits the freedom of students and others to associate; however, groups of students not **Recognized** by the Dean of Students will not have access to the above benefits.

[39] By registering as a student group UAlberta Pro-Life agreed to abide by the Student Groups Procedure. The Procedure requires that all student group events and activities be approved. It also expressly states that the University may require the presence of UAPS or the Edmonton Police Service (EPS) and the associated cost will be the student group's responsibility.

> Depending on the nature of the activity, the Dean of Students may require a Student Group to obtain additional insurance or require the presence of University of Alberta Protective Services or the Edmonton Police Service. The cost of these will be the responsibility of the Student Group.

[40] The Procedure sets out a review process if a student group is dissatisfied with the initial decision regarding its event application.

[41] UAlberta Pro-Life complied with the Student Groups Procedure and submitted a request for approval to the Office of the Dean of Students. A Student Event Risk Management Coordinator responded and began working with the individual who submitted the request to obtain additional information. She also advised that UAlberta Pro-Life was required to work with UAPS on a security assessment for the event. UAlberta Pro-Life submitted a security assessment form to UAPS. UAPS completed its security assessment and relying on what had occurred the previous year and the level of security that had been required, estimated the cost of security for the event at $17,500.00. The Student Event Risk Management Coordinator advised UAlberta Pro-Life that the event was approved on a number of conditions, including the condition that UAlberta Pro-Life pay a $9,000.00 deposit towards the actual costs of security for the event.

[42] As provided for in the Student Groups Procedure, UAlberta Pro-Life submitted a request for reconsideration to the Dean of Students. The Dean of Students Request for Reconsideration decision confirmed the cost condition, including the requirement of a $9,000.00 deposit before the event. It is this decision that is the subject of the Applicant's judicial review application.

Analysis

Freedom of Expression and the Role of the *Charter* and *Charter* Values in this Review

[43] The Applicants argue that the University's decision to charge them $17,500.00 for security is unreasonable as it unjustifiably infringes the fundamental value of freedom of expression.

[44] The University argues that the *Charter* does not apply and that the common law does not require the University to consider freedom of expression.

[45] The legal arguments put forward and the issues engaged when considering whether the *Charter* applied or whether the common law required the University to consider freedom of expression are incredibly interesting. The fact is, however, that the University did consider freedom of expression in making its decision. While I acknowledge that the issue of whether a University is required to consider freedom of expression, regardless of whether the *Charter* applies, is a legal question that is ripe for exploration and decision, it is not an issue that this court must answer today.

[46] Review of the decision will, therefore, proceed on the basis that the University voluntarily assumed responsibility for considering freedom of expression in this instance.

[47] I note that the Record also contains a number of other references to the University's commitment to protecting freedom of expression. The first paragraph of the Code states:

> The University is defined by tradition as a community of people dedicated to the pursuit of truth and advancement of knowledge, and as a place where there is freedom to teach, freedom to engage in research, freedom to create, freedom to learn, freedom to study, **freedom to speak**, freedom to associate, freedom to write and to publish. There is a concomitant obligation upon all members of the University community to respect these freedoms when they are exercised by others. For these freedoms to exist, it is essential to maintain an atmosphere in which the safety, the security, and the inherent dignity of each member of the community are recognized. [emphasis added]

[48] Before the 2015 event, UAlberta Pro-Life became aware through social media that a counter demonstration was being planned at their event. They advised members of the University's administration. The University President released a statement:

> The university is aware of concerns regarding a display scheduled to be set up in Quad on March 3rd and 4th by the student group [UAlberta Pro-Life], and takes these concerns seriously.
>
> The University of Alberta will always start from a position that supports a right to freedom of expression. It is our duty to foster and facilitate discussion and debate in an environment that is a safe space for all students.
>
> It is clear that there are passionate viewpoints on either side of the abortion debate. As Canadians, we are fortunate to live in a society that values democracy and protects our freedom of expression. As a place of higher learning, the university supports freedom of expression, including academic freedom, and we encourage our community to partake in a true exchange of ideas, and to do so in a respectful and civil manner.
>
> [UAlberta Pro-Life] is a registered student group on campus and, as such, has the same rights and privileges as other student groups. That includes access to the same spaces as any other student group. They have followed university policies and procedures in preparation for their display on campus next week, and in placing posters about the event. Both University of Alberta Protective Services and the Office of the Dean of Students have been working with the group in advance of their event to ensure they follow procedures and expectations with regard to conduct.
>
> A safe and respectful campus community is always a high priority. The university does not condone activity that violates the Student Group Procedures or the Code of Student Behaviour. Any complaints will be investigated by UAPS, according to our existing policies and procedures.

[49] Whether universities are bound, either by virtue of the *Charter* or common law, to grant freedom of expression to their students, it may very well be that universities will unilaterally choose to do so and the issue will become moot.

Standard of Review

[50] The parties agree that the appropriate standard of review is reasonableness. They disagree on whether the principles set out by the Supreme Court of Canada in ***Doré v. Barreau du Québec***, 2012 SCC 12 apply.

[51] The Court in ***Doré*** held that an administrative law approach was more appropriate than a traditional s. 1 Oakes analysis when determining whether an administrative decision maker has exercised their statutory discretion in accordance with *Charter* protections. ***Doré*** did not alter the well-established principles of what constitutes reasonableness. Rather, ***Doré*** confirmed that where the *Charter* is involved, any assessment of reasonableness will necessarily include an element of proportionality (at para 57).

[52] The Alberta Court of Appeal recently reviewed the reasonableness standard:

> A decision is reasonable if it is justifiable, transparent and intelligible. The reasons must be read together with the outcome and serve the purpose of showing whether the result falls within the range of possible acceptable outcomes that are defensible in respect of the facts and law. The decision must be able to stand up to a somewhat probing examination, and it will be unreasonable only if there is no line of analysis within the reasons that could reasonably lead the decision-maker to its conclusion. [authorities omitted]

[53] The Court went on to note that when assessing reasonableness, the Court should review the reasons as a whole and not parse the decision or seize on specific errors. Further, the decision-maker need not make an explicit finding on each constituent element, and its reasons do not need to include every argument, statutory provision, jurisprudence or other detail. The Court added (at para 40):

> The decision "must be approached as an organic whole, not as a line-by-line treasure hunt for error": ***Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd***, 2013 SCC 34 (CanLII) at para 54, [2013] 2 SCR 458. The reviewing court should look at the reasons offered or which could be offered in support of the decision and try to supplement them before seeking to subvert them: ***Newfoundland Nurses' Union*** at para 12.

[54] In ***Doré***, the Supreme Court held that the reasonableness analysis in the *Charter* context centres on proportionality, ensuring that the decision interferes with the relevant *Charter* guarantee "no more than is necessary given the statutory objectives." A decision that disproportionately impairs the guarantee is unreasonable, but if it reflects a proper balance of the mandate with *Charter* protection, it is reasonable (at para 7).

[55] Given my finding that the University did, in fact, consider freedom of expression, I will be applying the reasonableness standard of review as informed by ***Doré***.

The 2016 Security Cost Decision was Reasonable

[56] The Dean of Students Request for Reconsideration decision sets out in detail the reasons for decision over eight pages. It was issued in a timely manner. There is no suggestion by the Applicants that the reconsideration process was procedurally unfair.

[57] It was reasonable for the University to require the Applicants to participate in a security assessment. The University is responsible for the "appropriate management, government and control of the university buildings and lands" (PSLA s. 18). As owner of the lands, they also have a duty to take reasonable care to ensure that individuals on its lands will be reasonably safe. The University cites ss. 5-6 of the *Occupiers' Liability Act*, RSA 2000, c O-4. The University is therefore required to assess risks arising from its operations or activities on its lands in order to ensure all participants' safety.

[58] It was also reasonable for the University to have UAPS prepare the security assessment given their specialized expertise and firsthand experience with the 2015 event.

[59] The security assessment and estimated cost for security is well supported by the Record. The proposed event was virtually identical to the 2015 event. UAPS' experience with the 2015 event informed their assessment of what would be required to provide appropriate security for

the proposed 2016 event. It considered the challenges faced the year prior and identified a number of hazards including: counter demonstrators, attempts to disturb displays, verbal altercations requiring security presence to avoid escalation, physical altercations, disruption to pedestrian traffic in Quad, emergency response to the area, disruption to the work and study environment, and the ability of UAPS to respond to other matters on campus, including emergencies, while providing security management at the event.

[60] UAPS went on to identify a number of risk mitigation strategies including: the presence of uniformed law enforcement personnel, double perimeter fencing to mitigate the risk of adverse interactions and to increase the visibility of the UAlberta Pro-Life display by preventing counter demonstrators from creating a barrier directly in front of the display, and proactive planning. The estimated cost of security is almost entirely the cost of UAPS and EPS personnel identified as required for the event, with the exception of $300.00 for fencing. The need for uniformed law enforcement personnel as a risk mitigation strategy was clearly identified and the rationale set out, including the rationale of having both UAPS and EPS members.

[61] The estimated deployment is based on the previous year's deployment and conclusion that the level of personnel the previous year was appropriate and a similar number of law enforcement personnel would be required. The risk assessment candidly stated that UAPS had the benefit of learning from the past experience and were better able to plan for the proposed event with a better understanding of what measures are required to ensure safety and security.

[62] The Student Groups Procedure clearly states that the University may require the presence of UAPS or EPS officers and that the associated costs would be the student group's responsibility. There is nothing in the Record to suggest that that University was requiring UAlberta Pro-Life to pay more than the actual costs of security for the proposed event.

[63] The University's rationale for requiring student groups to pay the security costs for their events and activities was explained in the decision as follows:

> There are important reasons for the need to pass along costs of security to Student Groups. Presently, there are almost 500 Recognized Student Groups on campus. Other than through the granting noted above, the University does not have the ability to bear the direct costs related to the extra-curricular activities of Student Groups on campus. While the University has recognized the value provided by Student Groups, it is important to recognize that they are secondary to the University's main function which is curriculum-based learning and academic endeavours. The University does, however, bear many of the indirect costs related to Student Groups, many ground and facility costs, some insurance costs, and costs related to leadership, organizational development, finance and event organizer training provided to Student Groups and their executive members.

[64] The decision must also be considered in the context of University funding and the resources available to the University. Universities are generally funded through base government grants, specific grants, and tuition fees. Tuition fees are regulated by government and have in recent years been subject to a 'freeze': *Public Post-secondary Institutions Tuition Fees Regulation*, Alta Reg 273/2006. As the Supreme Court of Canada has recognized, it is a closed system with limited resources: ***McKinney v. University of Guelph***, [1990] 3 S.C.R. 229 at 284. Expenditures in one area will mean fewer resources available in another area.

[65] During submissions, UAlberta Pro-Life argued there was no evidence that the University imposed the costs of security on other students groups, suggesting that UAlberta Pro-Life was being treated differently by the University. While there is no evidence on the Record that the University is imposing security costs on other student groups, there is also no evidence on the Record that they are not imposing such costs on other student groups. There is simply no evidence in the Record on this point. In the absence of evidence on the issue, what the University may or may not be doing with other student group events cannot form part of this court's reasonableness assessment.

[66] At its heart the Applicants' argument is that they should be able to express themselves on campus wherever and using whatever means they choose without having to pay any security associated costs. This is simply not the proportionate balancing of freedom of expression these circumstances require. Where UAlberta Pro-Life chooses to hold their event will impact the risk assessment and security costs. What they intend to do at the event will impact the risk assessment and security costs. It is evident from the Record that it was the location of the event together with the size of the display and nature of the photographs on the display that attracted the counter demonstrators. Both the risk assessment and decision suggest that if UAlberta Pro-Life modified either the location or the display, the security costs may be reduced.

[67] The decision to require the Applicants to pay the cost of security for their event was consistent with the Student Groups Procedure and was based on a security assessment that is well supported by the Record. The University recognized that the event was a form of expression and expressly stated that it values the expression of diverse points of view. The decision balanced this against the University's obligation to ensure safety and security and the financial impact on University operations, including other University programs, if student groups were not required to pay the cost. Passing along the actual costs of security does impact UAlberta Pro-Life's exercise of freedom of expression. That impact had to be balanced against other interests.

[68] It also arguable that another reasonable approach would be to require UAlberta Pro-Life be responsible for only a portion of the costs, since the anticipated counter protesters contribute to the risk identified in the assessment. While that may have been another possible outcome, the decision that UAlberta Pro-Life pay the full cost falls within the range of possible acceptable outcomes defensible in respect of the facts of this case and the law.

IV. Disposition

[69] Both applications for judicial review are dismissed.

[70] The parties may speak to costs, if necessary, within 30 days of the issue of these Reasons.

Heard on the 8th and 9th days of June, 2017.
Dated at the City of Edmonton, Alberta this 11th day of October, 2017.

Bonnie L. Bokenfohr
J.C.Q.B.A.

Appearances:

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