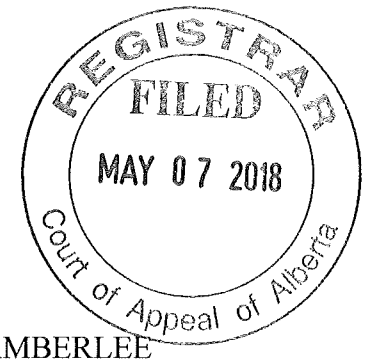
COURT OF APPEAL OF ALBERTA



COURT OF APPEAL FILE NUMBER:	1703-0283AC
TRIAL COURT FILE NUMBER:	1603 07352
REGISTRY OFFICE:	EDMONTON
APPLICANTS:	UALBERTA PRO-LIFE, AMBERLEE NICOL and CAMERON WILSON
STATUS ON APPEAL:	APPELLANTS
RESPONDENT	THE GOVERNORS OF THE UNIVERSITY OF ALBERTA
STATUS ON APPEAL:	RESPONDENT
DOCUMENT:	**FACTUM OF THE APPELLANTS**

Appeal of the Judgement of
The Honourable Madam Justice Bonnie L. Bokenfohr
Dated the 11th day of October, 2017
Filed the 11th day of October, 2017

FACTUM OF THE APPELLANTS

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I. FACTS

1. This appeal arises in relation to the judicial review of two separate but related decisions made by officials of the University of Alberta, referred to in the judgment below as "the Complaint Decision" and "the 2016 Security Costs Decision."

2. The Hearing of the judicial review took place before Mme. Justice Bonnie L. Bokenfohr on June 8th and 9th, 2017, with Reasons for Decision given October 11, 2017 (*UAlberta Pro-Life v Governors of the University of Alberta*, 2017 ABQB 610) ("Reasons for Decision").

Complaint Decision

3. Concerning the Complaint Decision, the key facts are as follows:

   a. On March 3 and 4, 2015, the registered campus club UAlberta Pro-Life held an event in the main "Quad" on the University of Alberta north campus (the "2015 Event")[1];

   b. The 2015 Event consisted primarily of a display of large posters with photographs of preborn babies at different stages of fetal development, and photographs showing abortions performed at the same stages (the "Display")[2];

   c. The individual Appellant Amberlee Nicol was, at all material times, a student at the University and was President of UAlberta Pro-Life. The individual Appellant Cameron Wilson was, at all material times, a student at the University of Alberta and Vice President Finance of UAlberta Pro-Life[3];

   d. UAlberta Pro-Life was and is a registered student group, formally recognized by the University. Its 2015 Event was approved by the University[4];

[1] Reasons for Decision, para 1, at **TAB 14**.
[2] *Ibid*.
[3] *Ibid*. at para 4.
[4] *Ibid*. at para 1.

e. Some individual students and other people, opposed to the 2015 Event, began using social media to publicly plan the blockading, obstruction and interruption of the 2015 Event, with the express purpose of silencing its message[5];

f. UAlberta Pro-Life made the University of Alberta Protective Services ("UAPS"), the campus security department, and the University itself aware of the planned blockade prior to the 2015 Event. The Appellant students provided the Respondent University with the names of the specific individual students who publicly planned on social media to block and obstruct the 2015 Event[6];

g. On February 27, 2015, then-President of the University, Dr. Indira Samarasekera, issued a statement (the "Statement"), advising would-be blockaders that, with regard to the planned 2015 Event, the University would "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." She further noted that "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." She concluded by advising that:

> 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.…[7]

h. The *Code of Student Behaviour* ("*Code*") is a policy document issued by the University[8]. Dr. Samarasekera referenced the exact wording of the *Code* in her letter

[5] Samples of that communication were before the court below judicial review justice as pp. 16 through 22 of the February 4 Amended Certified Record of Proceedings ("Feb 4 ACROP"), EXTRACTS, A16-A22.
[6] EXTRACTS, Vol 1, A13-A22.
[7] EXTRACTS, Vol 1, A12.
[8] EXTRACTS, Vol 2, A190-A240.

to the campus, warning the campus that interference with the 2015 Event would be a breach of the *Code's* requirements. The *Code* states that:

> 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.[9]

i. The *Code* binds the University to interpret the *Code* in a way which protects freedom of speech, assembly and association:

> Nothing in this Code shall be interpreted in such a way as to prohibit the activities or to violate the principles that are set out in the first paragraph of this section. Nothing in this Code shall be construed to prohibit peaceful assemblies and demonstrations, or lawful picketing, or to inhibit free speech.[10]

j. The *Student Group Procedures* ("*SGP*") is a document issued by the University[11] which governs the application process for approved-campus clubs to hold events at the University;

k. On both March 3 and March 4, throughout the entire time of the 2015 Event, over 100 University students, faculty, staff, and members of the general public (the "Blockaders" or "Obstructers") came with handheld signs and banners, and formed a human barrier around the Display, which barrier Justice Bokenfohr found to be "significantly obstructing" the Display. The Blockaders also cheered and chanted while standing in obstruction of the Display[12], and made it virtually impossible for students to carry on civil conversation or debate;

[9] EXTRACTS, Vol 2, A192.
[10] EXTRACTS, Vol 2, A192.
[11] EXTRACTS, Vol 2, A225-A231.
[12] Reasons for Decision, para 5-6, at **TAB 18**; EXTRACTS, Vol 1, A34-A48.

l. To its credit, UAPS set up a designated space for the Blockaders to engage in legitimate, peaceful, non-obstructive expression of their own. The Blockaders refused to make use of this space, and disregarded repeated UAPS directions to cease their obstruction of the Display. For the duration of two days, the Blockaders continued to disrupt and obstruct the Display[13];

m. On March 11, 2015 the Applicants filed formal written complaints with UAPS against the Obstructers. The Applicants identified three students individually by name, providing evidence to UAPS of their public plans to obstruct the 2015 Event. The complaints alleged that these persons breached specific sections of the University of Alberta Code of Student Behaviour (the "*Code*")[14];

n. UAPS commenced an investigation. It took UAPS over eight months to decide whether it would move forward with the appellants' complaint. 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[15];

o. the Applicants appealed the Director's decision to the Discipline Officer (the "DO"), as provided for under the *Code*, submitting a detailed written submission with specific reasons, prepared by legal counsel[16];

p. On February 4, 2016 the DO denied the appeal and released his reasons for doing so (the "Complaint Decision")[17];

q. In the Complaint Decision, the DO identified the issue before him as "whether or not it was appropriate for [the Director of UAPS] to make the decision not to proceed

[13] Reasons for Decision, para 5, at **TAB 14**; EXTRACTS, Vol 1, A34-A48; and UAPS Report at EXTRACTS, Vol 1, A76-A80;
[14] Reasons for Decision, para 7 at **TAB 14**.
[15] *Ibid.*
[16] *Ibid* at para 9.
[17] *Ibid* at para 9; see also EXTRACTS, Vol 1, A1-A3.

with charges under the *Code* against the accused students." He held that the decision was reasonable and appropriate given the circumstances[18].

2016 Security Costs Decision

4. The material facts were as follows:

   a. On January 11, 2016, UAlberta Pro-Life sought approval to hold another event essentially identical in form and content to the 2015 Event, proposing February 23 and 24, again in the main Quad (the "2016 Event")[19];

   b. On January 21, 2016, a Student Event Risk Management Coordinator advised that UAlberta Pro-Life was required to work with UAPS on a security assessment for the event.[20] UAlberta Pro-Life had not been required get a security assessment for the 2015 Event, or any prior events;

   c. UAlberta Prolife submitted a security assessment form to UAPS on February 3, 2016.[21] UAPS completed its security assessment and estimated the cost of security for the event, based on the previous year's experience, at $17,500.00[22];

   d. On February 12, 2016, 11 days prior to the planned start date of the 2016 Event, UAlberta Pro-Life received an email advising them that the 2016 Event was approved subject to several conditions:

      i. the Event would be held in main Quad, but toward the north end in a less frequented area (the "Location Condition");

      ii. a double perimeter barrier would have to be erected around the Event (the "Barrier Condition");

[18] *Ibid* at para 10.
[19] *Ibid* at para 35.
[20] *Ibid* at para 41.
[21] EXTRACTS, Vol 2, A292-A295.
[22] Reasons for Decision, at paras 41 and 59 at **TAB 14**.

iii. security would be required, including peace officers from UAPS and police officers from the Edmonton Police Services (EPS) (the "Security Condition"); and

iv. UAlberta Pro-Life was required to pay for the costs of security, estimated at $17,500, including a deposit of $9,000 payable in advance of the Event and the balance of $8,500 to be paid subsequently (the "Costs Condition")[23];

e. UAlberta Pro-Life made a Request for Reconsideration ("RFR") to the Dean of Students, as provided for under the Student Groups Procedure[24];

f. The planned dates for the 2016 Event were changed from February 22-23 to March 3-4[25];

g. In a letter dated February 24, 2016 (the "2016 Security Costs Decision"), Dean Everall affirmed the Costs Condition[26];

h. An application for judicial review of the 2016 Security Costs Decision was made and heard together with the application for judicial review of the Complaint Decision.

II. GROUNDS OF APPEAL

Complaint Decision

5. The Appellants appeal the Complaint Decision on the following grounds:

i. The court below erred in finding that the Appellants do not have standing to challenge the merits of the decision by University of Alberta DO Chris

[23] *Ibid*, at paras 41; EXTRACTS, Vol 2, A257.
[24] Reasons for Decision at para 42 at **TAB 14**.
[25] EXTRACTS, Vol 2, A248.
[26] Reasons for Decision, at para 42 at **TAB 14**.

Hackett not to charge the students who blockaded and disrupted an authorized campus event held by the Appellants in March 2015;

ii. The University's *Code of Student Behaviour*, which holds that all students at the University of Alberta have a right to freedom of speech and a right to have their exercise of this freedom respected, creates positive rights that can be enforced by the Appellants as against the Respondent; and

iii. The Respondent acted in bad faith when it repeatedly declared to the Blockaders at the 2015 Event that they were in breach of the *Code*, yet thereafter refused to take any disciplinary action.

2016 Security Costs Decision

6. The Appellants' grounds of appeal for the 2016 Security Costs Decision are as follows:

i. The *Canadian Charter of Rights and Freedoms* apply to the exercise of speech by students at the University of Alberta in these circumstances;

ii. There is a common law right to freedom of speech and expression at the University of Alberta that protects the Appellants; and

iii. It was unreasonable for the Respondent to impose a $17,500 security fee on the Appellants as a prerequisite for permission to communicate with their fellow students through the holding of an event similar to that held in 2015.

III. STANDARD OF REVIEW

7. In this judicial review, both parties and the judge agreed the standard of review for both Complaint Decision and the 2016 Security Costs Decision was that of reasonableness. What is at issue on this appeal is whether Justice Bokenfohr correctly applied that standard in her review of these two decisions.

IV. ARGUMENT

A. Complaint Decision

i. The Appellants have standing to challenge the merits of the decision by University of Alberta DO Chris Hackett not to charge the Blockaders

8. The court below held that university students have no right to any substantive review of the Complaint Decision:

> 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.[27]

9. The practical effect of this reasoning is to shield public universities from judicial scrutiny even when their conduct is biased, discriminatory, irrational or not founded upon facts.

10. If a student's right is limited only to procedural fairness, the university can condone egregious misconduct with impunity, simply by going through the motions of providing token procedural fairness.

11. The *Code* is part of the University's contractual obligation to all fee-paying student that the University will enforce the *Code* in order to protect their basic rights. Behaviour prohibited by the *Code* are a "reverse mirror" that points to students' basic rights. For example, prohibitions on theft and assault point to a right to have one's person and property protected. Prohibitions on the obstruction of university-related activities point to the right of students to express opinions without facing physical intimidation or harassment in the form of blockading and interrupting. The *Code*'s Introduction states at p. 2:

[27] Reasons for Decision at para 21 at **TAB 14**.

> 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.
> …
> Nothing in this Code shall be interpreted in such a way as to prohibit the activities or to violate the principles that are set out in the first paragraph of this section. Nothing in this Code shall be construed to prohibit peaceful assemblies and demonstrations, or lawful picketing, or to inhibit free speech.[28]

12. The Supreme Court of Canada has recognized the contractual relationship between fee paying students and the university they attend, finding the university has corresponding duties. In *Young v Bella*, the Court held:

> The appellant, even as a "distant" student, was a fee-paying member of the university community, and this fact created mutual rights and responsibilities. The relationship between the appellant and the University had a contractual foundation, giving rise to duties that sound in both contract and tort: *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147.[29]

13. By virtue of the *Code,* the University has made representations to all prospective students that it will uphold freedom of expression on campus, and "maintain an atmosphere in which the safety, the security, and the inherent dignity of each member of the community are recognized." Students at the University, including the Appellants, have a right to rely on these representations as part of the contract between themselves and the University of Alberta.

14. Despite the *Code* and the unequivocal Statement of Dr. Samarasekera, the University, by failing to pursue the Complaint, turned a blind eye to a premeditated act of obstruction, which it had foreknowledge of, and which threatened the "safety, the security and the inherent dignity" of the Appellants.

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[28] EXTRACTS, Vol 2, A192.
[29] 2006 SCC 3, at para 31, at **TAB 2**.

15. The lower court held that the University can, effectively, disregard substantive enforcement of the *Code*, and thereby determined that the University may ignore the rule of law and the contractual obligations of the student-university relationship. The *Code* contains no disclaimer to students that the University actually has no intention of upholding the *Code*. The University has not pointed to any proviso that might allow it to ignore the *Code*, or a fail to act reasonably to enforce it when doing so might be unpopular or inconvenient. There is nothing present in the *Code* to warn students that the *Code* is merely lip service, or something to be ignored at the whim of the University.[30]

16. The Statement of University President Samarasekera concerning the 2015 Event admitted and reaffirmed the Respondent's duties under the *Code*:

> It is **our duty** to foster and facilitate discussion and debate in an environment that is a safe place space for all students.
> 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.
> 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.**[31] [emphasis added]

17. Second, respectfully, Bokenfohr J. minimized the conduct of the Obstructers in the Decision. Her Ladyship makes reference to the "significant obstruction" of the 2015 Event, and the refusal of the Obstructers to stay in the area designated for lawful protest by UAPS. But Bohkenfohr J. took no notice of the following relevant facts, all of which are in evidence:

a) The extensive and detailed planning of the obstruction of the 2015 Event, and the fact that this evidence was presented to UAPS in the Complaint[32];

[30] See also Transcript of Lower Court Hearing, p. 98, lines 36-40; p. 99, lines 39-41; p. 100, lines 1-9.
[31] EXTRACTS, Vol 1, A12
[32] See Brief of the Applicants at the lower court, para. 23; see also EXTRACTS, Vol 1, A16-A18.

b) The intention of the Obstructers to "block the display", and their stated willingness to even be arrested by UAPS in furtherance of this goal[33]; and

c) The repeated warnings by UAPS to the Blockaders, to cease their conduct, throughout both days of the 2015 Event[34].

18. The failure to consider fully and properly the relevant evidence contributed to the errors of law contended in the Decision.

19. It is an error of law to ignore relevant evidence, and thereby conclude that the Appellants' interests were not "specifically and directly affected by the outcome of the investigative process" but were rather "similar interests" shared with "[e]very member of the public".[35]

20. The Appellants, by peacefully expressing opinions that are very unpopular in some quarters, have interests which were directly affected by the Complaint Decision in a manner which is not shared by the student body at large.[36] The actions of the Obstructers infringed their rights under the *Code* in front of the entire student body. The Appellants were shamed and their "inherent dignity" infringed. The Obstructers' conduct conveyed to the student body that the Applicants were not worth hearing and could be physically censored by their peers with impunity. By failing to hold the Obstructers accountable for violating the *Code*, when abundant evidence made it clear what had transpired on campus in March of 2015 and which individuals violated the *Code*, the University deliberately consented to the mistreatment of the Appellants by the Obstructers.[37]

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[33] EXTRACTS, Vol 3, A365.
[34] EXTRACTS, Vol 3, A365.
[35] See Reasons for Decision at para 22, at **TAB 14**.
[36] See e.g. *Friends of the Old Man River Society v. Association of Professional Engineers, Geologists and Geophysicists of Alberta*, 2001 ABCA 107, at para 5, at **TAB 8**: "FOR is an environmental protection society. It opposed the construction of the dam but **otherwise had no relationship with the Engineers, APEGGA, Opron or the Province of Alberta**." [Emphasis added]
[37] See e.g. *C.U.P.E., Local 30 v. WMI Waste Management of Canada Inc. (1996),* 34 Admin. L.R. (2d) 172, CarswellAlta 40 at paras 17-18 (Alta. C.A.), at **TAB 3** (common law definition of "directly affected …

21. Both the *Old Man* and *Mitten* decisions deal with a professional disciplinary review situation where the complainant was a member of the public, not a member of the profession. These situations are distinct and separate from the fact scenario at bar, and should be distinguished. As was noted in *Old Man*, "the Act [in that case, the Alberta *Engineering*, Geological *and Geophysical Professions Act*] is directed solely to the Association and its members; the rights, duties and responsibilities contained in the Act relate only to them."

22. In contrast, the University through the *Code* recognizes the rights of all students in relation to their interactions with each other, and represents to all students that the University has tasked itself with maintaining an atmosphere on campus which ensures "safety", "security" and "inherent dignity", and freedom of expression.

ii. The University's Code of Student Behaviour, which protects the right of every student to express opinions peacefully without obstruction, creates positive rights that can be enforced by the Appellants as against the Respondent

23. It is respectfully submitted that Bokenfohr J. erred in failing to review the merits of the Complaint Decision, and incorrectly dismissed the Appellants' standing to raise the merits of the Complaint Decision. It is submitted that this Honourable Appellate Court should review the Complaint Decision to determine if the "decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law"[38] and not merely for procedural fairness.

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points to a personal and individual interest as distinct from the general interest which appertains to the whole community"); *C.S.A. of A. v. Farran* (1976), 68 D.L.R. (3d) 338, 1976 CarswellAlta 296 (Alta. C.A.), at **TAB 5** ("aggrieved" being interpreted to mean party suffering some peculiar grievance of own beyond some grievance suffered by them in common with rest of public). Also see Hearing Transcript, p. 99, 32-40; p. 100, lines 10-24.

[38] Dunsmuir v. New Brunswick, [2008] 1 SCR 190, 2008 SCC 9, para. 47, at **TAB 7**.

24. The Complaint Decision asserts, contrary to the facts, that no University rule was broken (section 30.5.2(6)), and relies on this false assertion to justify not proceeding with the Complaint. This renders the Complaint Decision unreasonable.

25. It was both disingenuous and intellectually dishonest for the DO to determine that there was no breach of the *Code* vis-a-vis the Complaint. UAPS' own report says that the Obstructers were in breach of the *Code*, and details UAPS observation of these breaches.[39] President Samarasekera also warned that obstruction of authorized campus events was a breach of the *Code*. The *Code* itself states:

> 30.3.4(1)b No Student shall, by action, words, written material, or by any means whatsoever, obstruct University Activities or University-related Functions.
> 30.3.4(1)c No Student shall use words that incite others to behaviour that is inappropriate to members of the University Community, whether or not in connection with a demonstration, rally or picketing.
> 30.3.5(2)a No Student shall use any facility, equipment, material, service or resource contrary to express instructions or without property authority.
> 330.3.5(2)b No Student shall enter or remain in any University building, facility, room, or office, without the proper authority, contrary to express instructions …

26. The evidence before the DO and before the court below is this: the Blockaders planned to obstruct and interfere with a duly authorized campus event. They then carried out their plans.[40] They incited other persons to assist them in their obstruction.[41] They occupied University grounds contrary to repeated instructions from UAPS to vacate the area.[42] The Blockaders publicly boasted of their plans to violate the *Code*, and of their "success" in obstructing and silencing other students.[43] The Complaint Decision ignored the record before the DO. With respect, Justice Bokenfohr J. also ignored the record evidencing the breaches of

[39] EXTRACT, Vol 3, A365-A368.
[40] EXTRACTS, Vol 1, A16-A22.
[41] EXTRACTS, Vol 1, A16-A22.
[42] Reasons for Decision, at para 6, at **TAB 14**; EXTRACT, Vol 3, A365-A368.
[43] EXTRACT, Vol 3, A365.

the *Code*. This is a palpable and overriding error which requires correction by this Honourable Court.

27. The DO asserted in his Decision that the Blockaders' actions were not in breach of the *Code* on the basis that, somehow, the Blockaders were also exercising their rights to free speech, and that "so long as they do not harm people or property, disrupt essential University business, or prevent other parties from speaking at all, the parties should be allowed to argue." This assertion is devoid of support in the evidence, which makes it clear that the Blockaders did, in fact, "prevent other parties from speaking," and that the Blockaders rejected their opportunity to "argue" for their opinions in the space provided for that purpose by UAPS. Physical obstruction is prohibited by the *Code* because it does not constitute "argument".

28. Further, freedom of expression cannot be used to excuse perpetrators from otherwise wrongful behaviour. As noted by Orsborn, J. in an oral decision rendered May 12, 2003 in *St. John's International Airport Authority Inc. v. P.S.A.C.*[44]:

> … it should not be overlooked that what the law protects is the peaceful exercise of freedom of expression. It does not protect a right of expression through tortious or criminal means. Freedom of expression is indeed a fundamental and protected Canadian value. **But the freedom of express oneself, either individually or collectively, does not carry with it or incorporate the right … to intentionally or deliberately obstruct**, delay and impede others as they go about their lawful business.
>
> To suggest that the right of freedom of expression carries with it or incorporates the legal right to intentionally impose delay or inconvenience on others through the use of physical obstruction, human or otherwise, would be a perversion of the protective value**. Such a suggestion seeks to have unlawful conduct masquerade as, and be cast off as, legitimate freedom of expression**." [emphasis added]

29. The right to freedom of expression, recognized and granted to all students at the University of Alberta, expressly excludes any "right" to obstruct the lawful activities and events of other people. To accept the physical blockading of a university-authorized stationary

[44] (May 12, 2003) 200301T2254 (N.L. T.D.), at pp. 8 and 9 (cited at para. 21 by Harrington J. in *Toromont Cat v. International Union of Operating Engineers, Local 904*, 2007 NLTD 212, rev'd on other grounds, 2008 NLCA 24), at **TAB 13**.

display by a registered student group, as constituting "freedom of expression," is a perversion of the rule of law, and a rejection of the purpose of the *Code*. By the University's own admission rules were being broken in March of 2015, and section 30.5.2(6) is not engaged so as to give UAPS a valid reason not to pursue the complaint.

iii. The Respondent act in bad faith when it repeatedly declared to the offending students at the 2015 Event that they were in breach of the Code, and thereafter refused to charge them

30. UAPS warned the Blockaders that the Blockaders were in breach of the *Code*. The Blockaders themselves publicly expressed, on social media their intention to breach the *Code*. The Record is clear that there were a number of breaches of the *Code*, including under sections 30.3.4(1)c., 30.3.6(5), 30.3.4(1)b. and 30.3.6(2)a. In light of the foregoing, it was disingenuous and duplicitous for the DO to find that there had been no breach of the *Code*. Pursuant to the Supreme Court of Canada decisions in *Dunsmuir*, this willful refusal to consider relevant facts cannot be covered over, or otherwise justified, by adherence to procedural fairness. The University has no legal authority to exempt itself from Supreme Court requirements.

31. The explanation of the DO as to *why* no breach of the *Code* had occurred confirms bad faith: the DO claimed the Obstructers were engaged in their own lawful expression while obstructing other students' university-authorized Display and while disobeying UAPS, when UAPS told the Obstructers to cease violating the *Code*. The DO claimed, falsely, that no provision of the *Code* had been broken.[45] The Record makes it clear that Obstructers were *not* engaged in their own lawful expression; they were ordered to cease and desist their activities by UAPS. The

[45] See Transcript of the Lower Court Hearing, p. 72, lines 22-27; p. 84, lines 15-18; and that the decision of the DO that no breach of the Code occurred is entitled to deference: p. 85, lines 35-40, p. 86, line 1.

Blockaders prevented the lawful and authorized expression of other students, and were not engaged in lawful expression of their own.[46]

32. The same *Code* which describes the conduct of the Blockaders as unlawful also states that the "inherent dignity" of the Appellants will be upheld by the University. The *Code* says that the University will uphold freedom of speech and association as integral to the University campus.

33. The UAPS report makes it clear that the Blockaders violated section 30.3.4(1)b the *Code*, which states: "No Student shall, by action, words, written material, or by any means whatsoever, obstruct University Activities or University-related Functions." The *Code* further states that University-related Functions "include, but are not limited to, activities occurring in the course of work or study assignments inside or outside the University; at work or study-related conference or training sessions; during work or study-related travel; during events such as public lectures, performances, social or sports activities".[47] A university-approved event by a registered student organization is a "University-related Function".

34. The same University which condemned the Obstructers in March of 2015 for their unlawful interference with the approved 2015 Event, and which informed the Blockaders that the obstruction of the Display was an offence under the *Code*, reversed its position in November of 2015 by justifying this same misconduct as legitimate expression. Pointing to procedural fairness as an excuse to render an unreasonable decision is contrary to both the letter and the spirit of the Supreme Court ruling in *Dunsmuir*.

35. A duty of fairness is imposed where "a decision is administrative and affects the rights, privileges or interests of an individual".[48] Respectfully, it was an error in law for Bokenfohr J. to

[46] See Transcript of Lower Court Hearing, p. 28, lines 38-41; p. 29, lines 1-24: the primary purpose of the Obstructers was to obstruct. It is not clear what Justice Bokenfohr meant when she discussed the "joys of youth" in reference to the Blockaders conduct.
[47] Extracts, Vol 2, A202.
[48] *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 at para 20 [*Baker*], at **TAB 1**.

find that the Respondent's Complaint Decision was done in good faith, and the absence of good faith constitutes a lack of fairness.

B. The 2016 Security Costs Decision

i. **The *Canadian Charter of Rights and Freedoms* applies to the exercise of speech by students at the University of Alberta**

36. The question of whether or not the *Charter* applies must always be determined on a standard of correctness.[49] The Appellants contend that the *Charter* applies to the administrative decision to impose the Security Fee because it infringed their right to freedom of expression under section 2(a).

37. Alberta courts have ruled that the *Charter* applies to Universities under certain circumstances: *Pridgen v University of Calgary*,[50] *R v Whatcott*,[51] and *Wilson v University of Calgary Board of Governors*[52]. These cases indicate that some public university actions will attract *Charter* scrutiny, and that where a statutory authority is being exercised (such as specific authority under the Alberta *Post-Secondary Learning Act*), decisions and actions may be subject to the *Charter*. Paperny J.A. noted in *Pridgen* that, "where a public aspect to regulation or disciplinary proceedings" is involved, courts have concluded "that limits placed on the regulated individual's freedom of expression and association are subject to the *Charter*."[53]

38. In the decision of the lower court in *Pridgen*, Strekaf J. found that the University of Calgary was tasked with implementing "a specific government policy" (the provision of accessible post-secondary education to the public in Alberta), which was a "specific government objective" evidenced in the structure of the Alberta *Post-Secondary Learning Act*.[54] She went on to say that

[49] *R v Whatcott*, 2012 ABQB 231, para. 15, citing 2004 ABQB 280 (CanLII), 365 A.R. 228 at para. 24, at **TAB 11**.
[50] 2012 ABCA 139 ("*Pridgeon ABCA*"), at **TAB 10**.
[51] 2011 ABPC 336 and 2012 ABQB 231, at **TAB 11** and **TAB 12**.
[52] 2014 ABQB 190, at **TAB 16**.
[53] *Pridgeon ABCA*, para. 92, at **TAB 10**.
[54] *Pridgeon*, para. 51, at **TAB 10**.

while "universities may be autonomous in their day-to-day operations", they "act as the agent for the government in facilitating access to those post-secondary education services contemplated in the PSL Act."

39. The following statutory objectives of the University from the *Post Secondary Learning Act* and section 30.1 of the *Code* can be summarized as follows:

    a. To uphold the freedom to learn, teach, speak and associate in the context of the pursuit of truth and the advancement of knowledge; and

    b. To maintain an atmosphere in which the safety, the security, and the inherent dignity of each member of the community engaged in the pursuit of said freedoms is recognized.

40. At the lower court in *Pridgen*, Justice Strekaf was satisfied that the University of Calgary was not a *Charter*-free zone, and stated that,

> …the University is the vehicle through which the government offers individuals the opportunity to participate in the post-secondary educational system. When a university committee renders decisions which may impact, curtail or prevent participation in the post-secondary system or which would prevent the opportunity to participate in learning opportunities, it directly impacts the stated policy of providing an accessible educational system as entrusted to it under the *PSL Act*. The nature of these activities attracts *Charter* scrutiny.[55]

41. In *Pridgen,* the university infringed speech by using student disciplinary proceeding. In the case at bar, the University does so by imposing the Security Fee on a student club as a condition of holding an approved-campus event at an outside public area of the University known as the "Quad".

[55] *Ibid*, at paras. 59, 67 and 69.

42. Participation in university society, and the exercise of the ability to dialogue with fellow students, is an important aspect of the *Post-Secondary Learning Act* (as noted by Strekaf J.[56]) and the delegation of government authority to the University. The Student Group Procedure, which governs the booking of authorized campus activities by registered clubs, states that, "the University recognizes that participation in the activities of Student Groups is a beneficial aspect of the University experience."[57] The Security Fee was imposed as a condition of full participation in the University community, and it effectively prevents the Appellants from participating in campus life on an equal footing with other students, whose opinions may be more popular. Participating fully in campus life should not depend on adhering to popular opinions.

43. The University is authorized to levy a security fee for an activity under the *Student Group Procedure*, "depending on the nature of the activity."[58] The act of levying a fee is discretionary, and when a discretionary action infringes a *Charter* right, the decision must be reasonable.[59]

44. The justification for the imposition of the Security Fee depends on the University's essential fallacy in this case: namely, that the Display itself causes danger, rather than the Blockaders violating the *Code*. The University unreasonably targets the Appellants, who sought and obtained the University's approval for the Display, and demands payment of $17,500 to participate in campus life as members of the University community. This fallacy, that danger is caused by the Display rather than the Blockaders, forms the foundation of the Security Costs Decision. Dean Everall claims that the Display is intended to "evoke a vigorous and emotional response from passersby", thereby implying that the Appellants are responsible for the Blockaders violating the *Code*. This is unreasonable. Dean Everall claims that the Appellants could have

[56] *Pridgen v University of Calgary*, 2010, ABQB 644, para. 68.
[57] EXTRACTS, Vol 3, A471.
[58] *Student Group Procedure*, section 5, EXTRACTS, Vol 3, A471.
[59] *Dore*, at **TAB 6**, para. 24: "It goes without saying that administrative decision-makers must act consistently with the values underlying the grant of discretion, including Charter values."

applied to hold the 2016 Event in a classroom, which again absolves the Blockaders of their responsibility for continuing to violate the *Code*, even when directed repeatedly by UAPS to cease from doing so. Dean Everall implies that only popular expression, or expression not subjected to physical obstruction, can take place on campus; expression that is threatened by those who openly plan to violate the *Code* must be limited to a classroom.[60] This kind of thinking constitutes an open invitation to all students: threaten to obstruct expression you disagree with, and you will be rewarded by having the University imposing Security Fees on people you disagree with, or by relegating their expression to a classroom where far fewer people will hear it.

45. The Dean's arguments in the Security Costs Decision ignore the conduct of the Obstructers, whose violations of the *Code* at the 2015 Event were excused.

46. The position of the University is classic victim blaming.

47. In its appeal of the initial security decision, counsel for the Appellants wrote to Dr. Everall, noting the failure of the Dean to properly reason from cause to effect:

> The discussion of ideas should not incite violent behaviour from those who disagree, especially in a university setting, an institution of learning. Self-control and accountability are hallmarks of the rule of law in our society, which the University should encourage in the student body. I presume the University does not levy security assessments against professors who teach on controversial topics and espouse unpopular theories. Rather, the University expects students to master themselves, with emotions under the control of intellect and reason. There is no reason why the University should not expect and require accountability from the student body on this issue, either.[61]

48. With respect, the lower court decision suffers from the same flaw. Bokenfohr J. unreasonably labels the Obstructers who violated the *Code* at the 2015 Event as "counter protesters, [62] thereby mischaracterizing the Appellants as "protesters". The Appellants are not "protesters". The Appellants are, and were at the 2015 Event, students who are authorized by University to hold a University function in accordance with the rule of law, to express their

[60] EXTRACTS, Vol 2, A241-A248.
[61] EXTRACTS, Vol 2, A304.
[62] Reasons for Decision, at para. 68, at **TAB 14**.

opinions on campus in a peaceful manner. Calling the Obstructers "counter protesters" further presumes, incorrectly, that the Obstructers were engaging in legitimate "protest" rather than violating the *Code*, as the University itself had recognized in March of 2015.

49. Bokenfohr J. claims that the pictures in the Display "attracted" these "counter demonstrators", as though the Appellants had erected some sort of magnet that irresistibly caused the Blockaders to reject the repeated warnings of UAPS to stop violating the *Code*. This unreasonably blames the victims of the *Code* violations, and excuses the Blockaders for not controlling themselves.[63] Entirely absent from the Judgment are mention of the pre-meditated nature of the actions of the Obstructers, the failure of the University to hold them to account following the 2015 Event, and the role that failure of the University played in encouraging a repeat of the hooliganism at the 2015 Event.

50. The Display does not *cause* danger anymore than a pretty girl causes rape. The Appellants talking to students at the Display does not endanger the campus anymore than a professor in class discussing a controversial topic incites obstruction or disruptioin of her lecture. The 2016 Event was not inherently dangerous. It involved no wild animals, electricity, alcohol or fireworks, or anything else which would justify the imposition of an onerous security fee. The imposition of a $17,500 security fee as a condition of peaceful, authorized expression at an institution of higher learning, such as the University of Alberta, is unreasonable. It treats the exercise of expression, which is the very purpose and function of the University, as an inherently dangerous and risky act, and entirely ignores the actual perpetrators: students who do not abide by the *Code*, and who are not required by the University to abide by the *Code* or by the instructions of UAPS.

51. Bokenfohr J. erred in law by declining to address the issue of whether the Respondent was required to consider freedom of expression under the *Charter* in levying the Security Fee.

[63] *Ibid*, at para. 67.

Bokenfohr J. found it moot on the basis that "the University voluntarily assumed responsibility for considering freedom of expression in this instance."[64]

52. As established by the Record, the University paid only token lip service to the freedom of expression provisions of the *Code*. The imposition of the exorbitant Security Fee was so significant an impediment to the 2016 Event that, practically speaking, it amounted to a prohibition. But the quantum of the Security Fee is of lesser concern than it being imposed on the wrong party, namely the Appellants. It should have been imposed on the Blockaders, whose identity was and is known to the University.

53. If the University had truly considered freedom of expression as a paramount concern, it would have planned to recoup security fees from obstructing students who breached the *Code*, using the enforcement mechanisms under the section 30.4.2(6). of the *Code*, such as levying fines for misbehavior and ensuring the collection of such fines by filing liens against the ability of students to graduate pending payment. If the University actually cared about freedom of expression, it would have pursued the parties responsible for the disruption and obstruction of the 2015 Event, instead of letting them act with impunity.

ii. The common law right to freedom of speech and expression at the University of Alberta that protects the Appellants

54. In *Pridgen* at the Alberta Court of Appeal, Justice O'Ferrall held that regardless of the applicability of the *Charter* to the university, it was required to consider whether its actions violated the students' rights to freedom of expression and freedom of association, which he found enjoyed legal protection pre-dating the *Charter* through the common law:

> 178 I agree with my colleagues that the appeal must be dismissed. I also agree that the decision of the Review Committee of the General Faculties Council was unreasonable. It was unreasonable for any number of reasons identified by the chambers judge and by my colleagues on the panel.

[64] Reasons for Decision at paras 43-49 at **TAB 14**.

> 179 One of the reasons I believe the decision was unreasonable was that no consideration was given to the students' rights to freedom of expression and freedom of association. However, in my view, the issue in this **case is not whether the University is a "*Charter*-free zone".** The issue is simply whether, in disciplining the students for their comments or for their association with the social media site which was critical of one of the University's sessional lecturers, the University's disciplinary body, the General Faculties Council, **ought to have considered whether its discipline violated the students' rights to freedom of expression and freedom of association.**
>
> 180 **Freedom of expression and freedom of association have enjoyed legal protection in this country long before the *Charter* was promulgated. Civil liberties are protected in various ways. The *Charter* is one of them. The common law is another. One of the ways the common law protects civil liberties is to give citizens the right to apply for the administrative law remedies which are available when those citizens have been aggrieved by illegal or unauthorized official action.** These were the remedies sought in this case. There were no applications for *Charter* declarations or *Charter* remedies in this case. The students simply applied for the administrative law remedy of an order setting aside the General Faculties Council Review Committee's decision. One of their grounds was that their freedom of expression was protected by the Alberta *Bill of Rights*.
>
> 181 While civil liberties enjoy protection, they also must be balanced against other recognized values. This case is an example. In discharging its "core function" (that of educating students), it may be that the University may properly discipline students in ways which have the effect of limiting their freedom of expression and association. But when student discipline has the effect of limiting the students' civil liberties, there must be evidence that the disciplinary body at least considered the students' civil liberties and then balanced them against the value or values which limiting the students' freedom was intended to protect.[65] [*Emphasis added]*

55. The common law of contracts likewise requires the University to uphold its commitment to protect freedom of expression concerning the Appellants. In *Wilson v University of Calgary Board of Governors*, Justice Horner, noted the parties agreed that "the relationship between student and university is contractual."[66] She noted that the terms of the contract between the university and student are reflected in a documents including "the university calendars, internal admission, withdrawal and appeal procedures and academic policies."[67]

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[65] 2012 ABQB 139 at paras 178-81, at **TAB 10**.
[66] *Wilson* at para 170, at **TAB 16**.
[67] *Ibid* citing *Yen v. Alberta*, 2010 ABQB 380 (Alta. Q.B.) at para 43, at **TAB 17**, and *Bella v. Young*, 2006 SCC 3 (S.C.C.) at para 31, at **TAB 2**.

56. The common law right to freedom of expression and association predates the *Charter*. As O'Farrell J.A. held in *Pridgen*, the common law exists to permit aggrieved citizens, such as the Appellants, "the right to apply for the administrative law remedies which are available when those citizens have been aggrieved by illegal or unauthorized official action."

iii. It was unreasonable for the Respondent to impose a $17,500 security fee on the Appellants as a prerequisite for permission to communicate with their fellow students through the holding of an event similar to that held in 2015

57. In *Wilson v University of Calgary Board of Governors*, Justice Horner discussed the appropriate consideration of the *Charter* required by universities in Alberta. In the case before her, she was addressing the issue of student discipline arising out of a pro-life display that was significantly more provocative than the display the Appellants planned to set up for the 2016 Event. Like the instant case, the facts in *Wilson* also saw a university which unreasonably assigned a "safety and security" risk to students who wished only to express their opinions on campus, rather than assigning this "safety and security" risk to people who had engaged, and could again engage, in the unlawful physical obstruction of a display on campus. After canvassing the law on the applicability of the *Charter* to Alberta universities,[68] Justice Horner rejected the claim of the University of Calgary that its reasons had "properly balanced such rights against the University's statutory objectives under the *PSLA*, and were therefore reasonable."[69] The Appellants ask this Honourable Appellate Court to address a similar claim made in Bokenfohr J.'s decision, which acknowledged that the Appellants' freedom of expression was impacted, but still found that a cursory balancing against other interest was within the range of possible acceptable outcomes.[70]

[68] *Wilson v University of Calgary Board of Governors*, 2014 ABQB 190 at paras 147-48, at **TAB 16**.
[69] *Ibid* at para 149.
[70] Reasons for Decision at paras 67-67 at **TAB 14**.

58. Relying on the Supreme Court of Canada's decision in *Doré v. Barreau du Québec*, as Bokenfohr J. did,[71] Horner J. described the correct approach as follows:

> First, the decision maker should consider the statutory objectives. They should then ask how the *Charter* value at issue will best be protected in view of the statutory objectives. This second step requires one to engage in a proportionality exercise of balancing statutory objectives against the severity of any infringement: *Doré* at paras 55-56.[72]

59. Rather than find that the 2016 Security Costs Decision evidenced how freedom of expression could "best be protected in view of the statutory objectives", Bokenfohr J. found that there was "another reasonable approach" that would have better protected the Appellants freedom of expression:

> It is 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.[73]

60. With respect, this assertion is not supported by the Record. The Record establishes that the "counter protesters" were *solely* responsible for the risk identified in the assessment; they did not merely "contribute" to it. Blaming the victim, and absolving the Blockaders of their responsibility, is unreasonable. The Appellants urge this Honourable Court to reject this approach.

61. By failing to consider how the freedom of expression could best be protected with minimal effect on the Appellants' expression, both the decision of Bokenfohr J. and the underlying 2016 Security Costs Decision are unreasonable as a matter of law, and evidence a failure to apply *Dore*. According to Horner J. in *Wilson*, the law requires more:

> The Appeal Board's consideration of the severity of the interference with the Students' *Charter*-protected interests is limited to the fact that University did not ban the GAP display, but rather requested the Students' to turn their signs inwards. Neither the Appeal Board's nor Mr. Hickie's decisions address the effect that this request might have on the ability of the Students' to realistically express their thoughts and beliefs. **Mr. Hickie's**

[71] *Ibid* at para 55.
[72] *Wilson* at para 152, at **TAB 16**.
[73] Reasons for Decision at para 68 at **TAB 14**.

> **conclusion that there was a reasonable attempt to balance these interests does not fall within a range of possible, acceptable outcomes.**
> With respect, his failure to properly consider the effects of this request may stem from the assertion in the Notice that such effect would be minimal. The Notice states that the University is "merely" requesting the students turn any signs with the actual content of their display inward. Again, with respect, **there is nothing "mere" or trivial about such a demand.** Rather, **the effects of this request on the ability of the Students to freely express their beliefs should have been further considered in order to satisfy any proportionality exercise**. **There is no discussion as to whether turning one's sign inward is the best way to protect the *Charter* values in issue in view of the statutory objectives.** As stated by the Court in *Doré* at para 4: "...the protection of *Charter* guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it".[74]

62. Bokenfohr J. did not ask how best to protect the Appellants' rights to freedom of expression. Instead, she purported to apply the test as follows, at paragraphs 67 and 68:

> The [impugned 2016 Security Costs] 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.

63. The "other interests" may well be the University's obligations to ensure safety and security, and to avoid unnecessary expense, but merely mentioning these factors in the same context as UAlberta Pro-Life's freedom of expression does not amount to a "balancing" of the severity of the infringement with the statutory objectives. Assigning security costs to the Appellants rather than the Blockaders does not qualify as "balancing," and instead disregards the facts established by the Record. The effect on the Security Fee was the pricing of the Appellants' freedom of expression out of existence. Proper consideration to protecting their freedom of expression interests, protected by the rule of law and by the University's contractual obligations, was not given.

64. The University had other, far more appropriate and just options to pay for security, any need for which results exclusively from would-be Obstructers. If the Respondent was concerned about its budget, and about the costs of its efforts to prevent the Blockaders from violating the

[74] *Wilson* at paras 158-59, at **TAB 16**.

Code, it could have and should have assessed fines to those individuals who violated the *Code*.[75] Finally, it should be noted that there is no evidence (apart from a bald assertion by the Dean) that making the University pay the costs of security would have any impact at all on any other program.

65. The 2016 Security Costs Decision (like the Complaint Decision) fails to weigh the infringement of the Appellants' legal rights against the interests or desires of the Blockaders, who enjoy no "right" to obstruct or disrupt the lawful activities of their fellow students. While the Decision does go on to find that there might be disadvantages to the University having to pay the full cost (which disadvantages do not appear to be based on any facts in evidence but, rather, on a number of assertions made by the Dean in her decision and ratified, without reasons, by Bokenfohr J.), there is no analysis or justification for this finding. The central problem with both the Complaint Decision and the Security Fee Decision is a blame-the-victim approach which absolves the Blockaders of their responsibility for violating the *Code*.

66. It is submitted that, even if Bokenfohr J.'s assertions regarding tuition freezes and "closed systems" were in evidence (as opposed to being taken from an unrelated court decision), this does not amount to an analysis of the proportionate impact between the Appellants' freedom of expression and the University, particularly because there is nothing in evidence to support the assertions that:

a. If the University did have to pay the estimated $17,500 in security costs that any other program or group would suffer adverse consequences;

b. The $17,500 costs estimate represented *additional* security costs incurred by the University because of the blockade of the 2015 Event; or

c. That UAPS would have been unable to handle any additional or unrelated security issues that arose during the blockade with the personnel and resources they

[75] *See Code*, section 30.4.2(6), EXTRACTS, Vol 3, A436.

already had in place in the course of ordinary operations.

67. In her Reasons, at para.54, Bokenfohr J. pointed out that:

> 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).

68. The Appellants submit that the test as articulated by the Supreme Court and set out by Bokenfohr J. requires more than merely mentioning freedom of expression. The test requires a balancing based on the facts, taking into account that there is no legal right to obstruct University Functions. With respect, no such balancing occurred at any level in either of the Decisions under appeal.

69. The 2016 Security Costs Decision itself, as well as Bokenfohr J's review of it, are based on a mischaracterization of the Applicants' complaints:

> 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.[76]

70. The Appellants complied fully with all University rules and requirements, regarding both the 2015 Event, and in seeking approval for the 2016 Event, in conformity with their contractual rights as members of the University community. There is no basis for suggesting that the Appellants sought to express themselves "wherever and using whatever means" when in fact the Appellants at all times respected University policies and procedures.

71. Further, the Record establishes that what the Applicants objected to was <u>not</u> the University's policy of imposing security costs on students holding risk-creating events. Rather, it was with the imposition of such costs on UAlberta Pro-Life instead of on the individuals whose unlawful behaviour threatened the peace. In making and upholding the 2016 Securities Cost

[76] Reasons for Decision at para 66 at **TAB 14**.

Decision, the University acted unreasonably by enabling the Blockaders – *not* the Appellants – to "express themselves on campus wherever and using whatever means they choose without having to pay any security associated costs." Neither the University nor the court below properly applied the test in *Doré*.

72. In short, the Appellants object to the University's decision to impose security costs on the victims of the Blockaders' *Code*-breaking activities, which are the sole cause of any risk or danger.

73. It is submitted that, taken with the University's 2015 Complaint Decision to do nothing at the Event to enforce the *Code*, and to decline to pursue charges or a full investigation, the 2016 Security Cost Decision told the Appellants that their lawful expression is not worthy of protection.

V. RELIEF SOUGHT

74. The Appellants respectfully request that the Decision of Bokenfohr J. in these matters be set aside as follows:

A. Relief claimed regarding the Complaint Decision:

i. A declaration that the Complaint Decision was unreasonable;

ii. An Order in the nature *certiorari* quashing the Complaint Decision;

iii. In the alternative, an Order remitting the Complaint Decision back to the University to be considered in accordance;

iv. Costs; and

v. Such further and other relief as this court deems just and equitable.

B. Relief claimed regarding the 2016 Security Costs Decision:

i. A declaration that the 2016 Security Costs Decision is unreasonable;

ii. A declaration that the 2016 Security Costs Decision unjustifiably infringes the fundamental Canadian value of freedom of expression, and breaches the

contractual rights of the Appellants to be protected by the rule of law;

iii. An order in the nature of *certiorari* quashing the 2016 Security Costs Decision pursuant to section 24(1) of the *Charter*;

iv. An Order in the nature of *prohibition* prohibiting the University of Alberta from imposing a financial burden on the Appellants as a precondition for the exercise of the freedom of expression;

v. Costs; and

vi. Such further and other relief as this court deems just and equitable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 7th day of May, 2018.

Estimated time for Appellants' argument: 90 minutes

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Jay Cameron
Counsel for the Appellants

TABLE OF AUTHORITIES

APPENDIX

Cases Cited

TAB 13: *Toromont Cat v. International Union of Operating Engineers, Local 904*, 2007 NLTD 212.

TAB 14: *UAlberta Pro-Life v. Governors of the University of Alberta*, 2017 ABQB 610.

TAB 15: *Warman v. Law Society of Alberta*, 2015 ABCA 368.

TAB 16: *Wilson v. University of Calgary Board of Governors*, 2014 ABQB 190.

TAB 17: *Yen v. Alberta*, 2010 ABQB 380.

Legislation

TAB 18: *Post-secondary Learning Act*, S.A. 2003, c. P-19.5