



Justice Centre for Constitutional Freedoms

September 11, 2019

VIA EMAIL AND FACSIMILE

Board of Governors Secretariat
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Dear Members of the Board of Governors,

RE: Security Fees and Reconsideration of Policy No. 107: Booking and Rental of UBC Space

It has come to our attention that the UBC Board of Governors is considering potential changes to Policy No. 107: Booking and Rental of UBC Space (the “Booking Policy”). As an organization committed to upholding free speech on university campuses, the Justice Centre has an interest in the outcome of the Board’s deliberations.

We understand the Board is accepting submissions from the public as part of its deliberation regarding the Booking Policy. The within submissions are provided to the Board of Governors to urge the Board to only adopt changes to the Booking Policy that upholds freedom of expression on UBC’s campuses. Specifically, the Justice Centre recommends that the Board revise and improve the Booking Policy to disallow the practice of imposing “security fees” in response to expression the content of which is unpopular or controversial.

Background

There should be no greater celebration of, and protection for, freedom of expression than at Canada’s institutions of higher learning. Freedom of expression is the foundation of liberal democracy. The same holds true for universities, where freedom of inquiry, freedom of thought, and the freedom to criticize represent the cornerstone upon which western institutions of higher education have been built.¹ The very mission and purpose of higher education is the pursuit of

¹ *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 19.

truth and knowledge in preparation for a life of usefulness in society, something that is only made possible by the freedom to propose new ideas and to critique and debate existing ideas without fear of reprisal.

Notwithstanding that today's students must be prepared to face a diverse range of opinions and expression in their future careers, and in public and private life, Canadian universities are increasingly an environment in which students are sheltered and protected from ideas and opinions which they do not agree with. Universities have an obligation as educators to expose students to diverse expression that challenges their beliefs and opinions, even if those beliefs and opinions happen to relate to, or touch upon, what students consider to be their identity. The creation of an artificial scholarly environment that is also unreflective of life in the real world is a profound failure of Canadian universities.

Recent Events at UBC

UBC has recently found itself at the centre of the ongoing debate regarding campus free speech. Several entities have entreated UBC to disallow freedom of expression on its campuses and embrace censorship of minority viewpoints. Others, including the Justice Centre, have encouraged UBC to resist such calls for censorship and take greater measures to uphold free speech on its campuses. We commend UBC for recently permitting minority expression on its campuses, however urge UBC to cease placing barriers to free expression by imposing extraneous fees on individuals and groups with unpopular views—which only enables those who threaten protests as a means of silencing their opponents.

Unfortunately, UBC has a history of imposing (and increasing) security fees in contexts where difficult issues are addressed, or minority expression is involved. In June 2019, UBC demanded—without reason—organizers pay a \$500 security fee for a public lecture on campus by Jenn Smith, a well-known local transgender speaker. On June 19, four days before the lecture, UBC demanded an additional \$750 security fee to be paid in less than 24 hours as a condition of the lecture proceeding. UBC administration made vague allusions to safety as the reason for the sudden and last-minute imposition of an additional security fee. Organizers had no choice but to pay the additional security fee.

Most recently, UBC demanded a UBC student group, Students for Freedom of Expression pay a \$400 security fee, in addition to regular fees, to host a lecture by a speaker that UBC students want to hear.

Security Fees

UBC is acting contrary to its stated commitment to free expression on campus when it imposes security fees in the circumstances described above. Requiring speakers and listeners to pay, in order to express and hear ideas, instead of requiring payment from those who disrupt and attempt to silence, results in the censorship of valuable ideas and perspectives. By putting a price on *free*

speech, UBC has contributed to the creation of a chilling effect on expression on its campus and not adhered to its stated commitment that freedom of expression:

extends not only to the regular members of the University, but to all who are invited to participate in its forum. Suppression of this freedom, whether by institutions of the state, the officers of the University, or the actions of private individuals, would prevent the University from carrying out its primary functions. ...behaviour that obstructs free and full discussion, not only of ideas that are safe and accepted, but of those which may be unpopular or even abhorrent, vitally threatens the integrity of the University's forum.²

Any risk of disruption or concerns regarding violence and safety arise *solely and entirely* from unruly persons who do not respect the individual rights of others or the rule of law. Security fees risk a “hecklers veto”—the power of obstructive and lawless individuals and groups to stifle dialogue and the exchange of ideas they disapprove of. The likelihood of “protests” and unsupported fears about “safety” does not justify penalizing peaceful speakers and listeners by imposing security fees. The Court of Queen’s Bench of Alberta rejected the University of Calgary’s reliance on an unspecified reference to “safety and security” as justification for censoring the peaceful expression of opinion on campus.³

The intention of disruptive protestors is often to “de-platform” speakers they disapprove or disagree with, effectively silencing such speakers. Various juvenile and sometimes criminal means are typically employed to achieve this objective, including threatening to protest an event and vandalize the venue and to disrupt the event through tactics such as triggering fire alarms and employing noise makers. Such lawless and disruptive individuals are motivated to continue engaging in, and threatening to engage in, such conduct because they have come to expect UBC and other universities to respond by putting a price on expression they disagree with through the imposition of large security fees or by simply canceling speaking events. The inevitable result is that only the few able to *pay* are able to express their minority viewpoints at UBC and other universities. Such minority viewpoints are therefore expressed less and less—the exact desired outcome of censorious protestors and which UBC ought not contribute to.

One must question if the imposition of security fees is intended by UBC to be a disincentive to those attempting to express and listen to minority or unpopular viewpoints in an effort to indirectly effect the cancellation of speaking events and thereby absolve UBC of being required to act to uphold the freedom to express minority or unpopular views on campus.

UBC has an obligation to uphold the rule of law on campus. It should not respond to increasingly frequent disruption tactics by imposing security fees—not on the rule-breakers who seek to silence views they disagree with—but on those who abide by the rules and seek only to express their views in a peaceful manner. By extorting security fees from those who seek only to express their opinions and listen to others, UBC has effectively blamed the victim and

² See “Statement from the Provost regarding June 23rd event at UBC” posted to the UBC website on June 14, 2019 by UBC Provost and VP Academic Andrew Szeri (Statement from the Provost).

³ *Wilson v University of Calgary*, 2014 ABQB 190 at paras 153-162.

encouraged the bullies. This punish-the-victim approach tacitly condones mob disruption of free expression and encourages further attempts at campus vigilante censorship.

Difficult though some issues may be, there must be room on university campuses for free inquiry and open discussion regarding any issue. The open discussion of various views, even if considered controversial by some, enriches discourse both on and off campus and is essential to one of the purposes of higher education—the pursuit of truth. Courts have stated that universities are to facilitate the free exchange of ideas for the good of society. As the Alberta Court of Queen's Bench notably remarked:

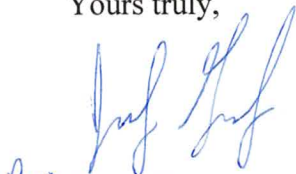
Does anyone actually expect to attend a university campus and encounter only the ideas they already embrace? Are only select viewpoints now permissible on our university campuses? John Stuart Mill in his essay "On Liberty" opined that "he who knows only his own side of the case, knows little of that."⁴

Conclusion and Recommendation

Freedom of expression is a core component of intellectual inquiry and the basis for academic freedom. It must include the right to discuss and criticize ideas, religious beliefs and human conflicts. On a campus dedicated to the pursuit of truth and open academic discourse—which UBC ostensibly strives to be—students will encounter unwelcome expression. The right to speak and to hear are basic rights at an institution which exists to facilitate the operation of the marketplace of ideas, the search for truth, and the peaceful expression of opinion. Placing a price on the expression of unpopular, minority, or controversial expression through the imposition of security fees conflicts with UBC's commitment to *free* expression. It restricts the expression of those without the means to pay, which creates an uneven playing field in the marketplace of ideas and results in a chilling effect on freedom of expression on UBC's campuses—a consequence which UBC ought to be loath to produce.

The Justice Centre respectfully recommends that the Board of Governors take this unique opportunity to improve the Booking Policy by introducing provisions that will disallow the tactic of indirect censorship that is the imposition of security fees.

Yours truly,



Per: James Kitchen

Barrister and Solicitor

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⁴ *R v Whatcott*, 2012 ABQB 231 at para 33.