



EFC

The Evangelical Fellowship *of* Canada

Pro-Life Clubs and the Law

**A Reference Guide for Students and their Legal Counsel
on the Law and Legal Principles Involved with Pro-Life Campus Club Challenges**

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The Evangelical Fellowship of Canada
1810-130 Albert Street
Ottawa, ON K1P 5G4
Phone (613) 233-9868 Fax (613) 233-0301
Ottawa@efc-canada.com
www.theefc.ca www.activatecpl.theefc.ca

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1. Introduction

The purpose of this handbook is to inform university students of their rights and freedoms on campus, and to provide starting points for students to protect these rights when they are violated by their universities and student unions. Students' rights and freedoms will be examined in the context of pro-life groups.

Across Canada's university campuses, pro-life clubs are being censored and discriminated against by universities and student unions. Often, the clubs will be denied official club status and thus stripped of funding and access to facilities, or in extreme cases, club members will face disciplinary hearings. This unfortunate national trend has been supported by the national association of student unions, the Canadian Federation of Students (CFS), which has stated that all member student unions are to have a pro-choice position and are not to tolerate pro-life "anti-women" clubs.¹ Given that two-thirds of Canadians do not know abortion is legal through all nine months of pregnancy, this movement to silence pro-life groups is alarming because such groups aim to educate the public on abortion and the sanctity of life.²

In this hostile environment, students need to know their rights and freedoms and know how to protect them. This handbook primarily draws on case law and legislation from Ontario and British Columbia, but the general principles are still applicable to all provinces. Finally, this handbook is meant to inform and should not be understood as legal advice. If you believe that your rights and freedoms have been violated, you should consider contacting a lawyer or your community legal services.

2. History of Campus Pro-life Clubs

In our pluralist democracy, the crackdown and censorship of pro-life groups by universities and student unions is, unfortunately, not a novel trend. Since the late 1960s, there has been a narrowing of opinions on North American and European campuses. The desire for "one voice" on controversial issues stems, some would argue, from a narrowed understanding of liberalism or an extreme political correctness.³

Some of the most enthusiastic censors have been students themselves. Student unions create a system of officially sanctioned clubs in order to simplify access to campus space for organized student activities. This simplification, however, also means that student governments have a unique authority over clubs and unfortunately, this authority has been abused.

Since 1999, Lifeline has hosted the Genocide Awareness Project (GAP) at the University of British Columbia (UBC). GAP is a display of images from the Holocaust and the Rwandan genocide juxtaposed against images of aborted fetuses. The university, however, has gone to great lengths to limit this event. It is only allowed once per semester between 10 am and 2 pm. Moreover, to limit the visibility of the display, Lifeline is only allowed to display four signs that must face inward. The university continues to be accused by Lifeline of denying the group their right to share the reality of abortion. In March 2010, UBC did not protect their own pro-life student protesters who were being bullied and threatened by non-UBC

¹ Charlotte Prong Parkhill, "Loss of Club Status not end of road for university's pro-life organization" *The Guelph Mercury* (28 October 2008), online: [Guelph Mercury](http://news.guelphmercury.com/article/396898) <<http://news.guelphmercury.com/article/396898>>.

² Katherine Laidlaw, "Few Canadians know rules on abortion, poll finds," *National Post* (4 August 2010), online: [National Post](http://www.nationalpost.com/news/Canadians+know+rules+abortion+poll/3356045/story.html) <<http://www.nationalpost.com/news/Canadians+know+rules+abortion+poll/3356045/story.html>>; Daniel Bitonti and Julia Chapman, "The Life Choice Affair" *The Ontario* (6 November 2008), online: <http://theontarion.ca/viewarticle.php?id_page+2016> [*Life Choice Affair*].

³ "Editorial: U of G association made a bad choice" *The Guelph Mercury*, (October 27, 2008)

student protesters during a GAP event. On not intervening, UBC maintained that these unauthorized protesters were free to stand on UBC property.⁴

In 2000, the University of Victoria Students' Society (UVSS) attempted to marginalize pro-life clubs, such as "Youth Protecting Youth," by passing official policies supporting the "pro choice" stance. Clubs could not take an opposing position. UVSS finally changed its policies after YPY filed a lawsuit for discrimination.⁵ Ten years later, UVSS found itself in the same position. The union has recently settled with YPY over another discrimination lawsuit that arose when UVSS took issue with YPY's posters and continued invitations of pro-life speakers.⁶

The experiences of pro-lifers at UBC and the University of Victoria are not unique as pro-lifers at other universities across Canada, from Saint Mary University to the University of Victoria, have faced numerous challenges to sharing their message.

3. Freedom of Expression

Freedom of expression has enjoyed prominence and protection during 250 years of Canadian common law, flowing from a British heritage and the *Magna Carta*. This freedom has been enshrined in the *Canadian Charter of Rights and Freedom* as a "fundamental freedom":

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

The right is also protected in the United Nations *Universal Declaration of Human Rights*, to which Canada is a party.

Freedom of expression, sometimes commonly referred to as free speech, deserves maximum protection because it is essential to a working democracy. As the Supreme Court of Canada (SCC) stated in *WIC Radio Ltd. v. Simpson*⁷: "we live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones."⁸

Universities have traditionally been regarded as spaces for discussion and debate on controversial issues and thus, "the free flow of ideas and information through unimpeded expression is critical to any attempt to comprehend and convey understanding of the enormous complexities that comprise the ... world."⁹ The SCC in *R.W.D.S.U. v. Dolphin Delivery Ltd.*¹⁰ recognized the particular importance of free speech in universities:

Freedom of expression is ... one of the fundamental concepts that has formed the basis for historical development of the ... education institutions of western society. Representative democracy, as we know it today, which is in great part the product

⁴ Patrick Craine, "Pro-Aborts at the University of BC Censor Pro-Life Display" *LifeSiteNews.com* (15 March 15, 2010), online: <<http://www.lifesitenews.com/ldn/2010/mar/10031510.html>>.

⁵ Craig Jones, "Immunizing Universities from Charter Review: Are We 'Contracting Out' Censorship?" (2003) 52 UNBLJ 261 at 267.

⁶ Sunny Dhillon, "Anti-Abortion group gets funding, settles lawsuit with UVic students' society" *The Canadian Press* (19 July 2010), online: <<http://www.canadaeast.com/wellness/article/1141378>>.

⁷ 2008 SCC 40, [2008] 2 S.C.R. 420.

⁸ *Ibid.* at para. 4.

⁹ *Supra* note 5 at 270; *Maughan v. British Columbia*, 2008 BCSC 14, [2008] B.C.J. No. 3 at para. 1 [*Maughan*].

¹⁰ [1986] 2 S.C.R. 573.

of free expression and discussion of varying ideas, depends upon its maintenance and protection.¹¹

This statement was affirmed by the SCC in *McKinney v. University of Guelph*¹² where Chief Justice Dickson and Justices LaForest and Gonthier. described academic freedom, related to free speech in the university context, as “essential to our continuance as a lively democracy.” Academic freedom “serves a vital role in the life of the university ... against the censorship of ideas.”¹³

Justice Ball of the Saskatchewan Court of Queen’s Bench, in *R. v. Whatcott*,¹⁴ considered the special role of free speech in the university because the campus was “a locale one would expect to facilitate and encourage free and open intellectual discussions.”¹⁵ With on-going debates and discussions, Justice Cullen, of the British Columbia Supreme Court’s Bench, in *Maughan v. University of British Columbia*¹⁶ reminded Canadians that “controversy and conflict are not infrequent by-products of academic discourse as ideas which are adverse to strongly held beliefs or deeply felt sensibilities sometimes gain currency in the pursuit of education.”¹⁷

Academic Freedom – Is there a right?

Academic freedom, which arises in the university context, encompasses the right to teach, learn, and publish without requiring orthodoxy, the threat of reprisal, or discrimination. It protects both the true and false and the repugnant and righteous.¹⁸ “Academic freedom” in *Maughan* was defined as “the freedom to express and explore ideas to advance both knowledge and understanding.”¹⁹ This very freedom protected the complainant in *Ogden v. Simon Fraser University*²⁰ from not disclosing the identities of his research sources even though his thesis was subpoenaed by the Vancouver coroner.

Although academic freedom is the essence of a university, the British Columbia Supreme Court in *Students for Life v. University of British Columbia*²¹ confirmed that there is no constitutional right to the freedom. In this case, pro-life club Lifeline wanted to invite the Center for Bioethical Reform (CBR) to UBC for an event. CBR was touring universities with images from the Genocide Awareness Project (GAP). Additional security measures had to be arranged to host CBR and the GAP but talks between UBC and Lifeline concerning these arrangements broke down. Lifeline, however, still used the images from GAP in their general campaign against abortion. The group brought a claim against UBC for limiting the group’s academic freedom and thus breaching UBC’s contract with students.

The court in *Students for Life* agreed with Lifeline that there was a general contract between UBC and students as a result of students paying their tuition fees. It was debatable whether academic freedom, present in a statement of policy entitled “Know your Rights and Responsibilities,” was an essential

¹¹ *Ibid.* at paras. 12-14.

¹² [1990] S.C.J. No. 122 [*McKinney*].

¹³ *Ibid.* at para. 69.

¹⁴ 2002 SKQB 399, [2002] S.J. No. 599 [*Whatcott*].

¹⁵ *Ibid.* at para. 37.

¹⁶ *Maughan*, *supra* note 9.

¹⁷ *Ibid.* at para. 1.

¹⁸ Leslie Green, “Civil Disobedience and Academic Freedom,” (2003) 41 Osgoode Hall L. J. 381 at paras. 8-9, 21.

¹⁹ *Supra* note 16 at para. 2.

²⁰ [1998] B.C.J. No. 2288 (B.C. Prov. Ct) [*Ogden*].

²¹ 2003 BCSC 864, [2003] B.C.J. No. 1326 [*Students for Life*].

element of that contract.²² The court concluded that a statement of policy in a university document does not entitle students to a contractual right. There was no term, express or implied, that academic freedom formed an essential part of the contract. The court agreed with UBC's argument that although the university has a policy on academic freedom, "it is not open to an individual student to determine for the University how it ought to promote the principles of academic freedom and privilege."²³ Thus, it was, and remains, at the university's discretion whether they wish to enforce academic freedom as a right of students.

The court also supported its decision by stating that there is no evidence that UBC ever intended to be contractually bound by its statement on academic freedom. Lifeline was never told by UBC that such statements had legal consequences.²⁴ The court did, however, leave the possibility for the future of entertaining arguments that an academic freedom policy creates an enforceable contractual right. If there is evidence that the university intended the policy to be contractually binding or the university stated that the policy is to have legal consequences, arguments can be made that this was an offer by the university to have a contract with student regarding academic freedom. Although the principles of academic freedom do not extend to legal obligations on the part of the university, they are still "fundamental to the operation of any accredited University."²⁵

Does the *Charter of Rights and Freedoms* apply to universities and student unions?

The protection of section 2(b), the freedom of expression clause, will only be afforded if the *Charter* applies to universities. As per section 32 of the *Charter*, the *Charter* only applies to the Parliament and government of Canada, and provincial legislatures and governments (which includes municipal councils and school boards as they are creatures of provincial legislation). Only where there has been government action of some sort will the *Charter* restrain the action in order to protect the rights of individuals. For example, the *Charter* does not regulate the relations between private persons such as a landlord refusing to rent to a tenant because of his or her race. If a civil liberty is restricted in such circumstances, the victim may find a remedy under provincial human rights legislation, tort law, or contract law – to name a few.²⁶

Universities and student unions must be part of the government in order for the *Charter* to apply. As a result of the decision in *McKinney*, there is a presumption against the application of the *Charter* to universities. The court in *McKinney* found that the university was an actor independent of the government and thus immune from *Charter*. Despite receiving large government grants, fulfilling government agendas, and having government appointees on the board of directors, universities are deemed more private than governmental because of the levers of control. Board of governors oversee the university, similar to a private corporation, without the ability of government to interfere. Governmental strings are present but they are not substantial enough to challenge the board of governors' control.²⁷ Thus, universities have been found not to be part of government, as understood by s. 32 of the *Charter*.

Four different sets of reasons were presented against applying the *Charter* to universities, and *McKinney* remains the authority for *Charter* application to universities. Since *McKinney*, the SCC has not been presented with another case to consider free speech as a *Charter* right on campus.²⁸ Justice Sopinka in

²² *Ibid.* at para. 79.

²³ *Supra* note 20 at para. 68.

²⁴ *Supra* note 21 at para. 94.

²⁵ *Supra* note 20 at para. 68.

²⁶ Peter Hogg, *Constitutional Law of Canada*, looseleaf vol. 2 (Toronto: Carswell, 2007) at 37-29.

²⁷ *Supra* note 12 at para. 43-44.

²⁸ *Supra* note 5 at 272.

his concurring majority opinion, however, left open the possibility that some university activities could be governmental in nature and attract *Charter* scrutiny.²⁹

The court in *Whatcott* confirmed that universities may face *Charter* scrutiny if they perform certain public functions. In *Whatcott*, a pro-life protestor was charged for leafleting on the University of Regina campus in violation of a university by-law against distributing written material or advertising matter. The University of Regina could not use *McKinney* to defend their actions as the enforcement of this particular by-law was a government function. Its enforcement was similar to the enforcement of municipal parking by-laws. The court concluded that the actions of the university, preventing Whatcott from communicating his beliefs, infringed upon his freedom of expression as protected by s. 2(b).

Although the *Charter* has no direct application to universities where no sufficient governmental nexus exists, there are cases that suggest there is indirect application to the common law. The judiciary are generally obliged “to apply and develop the principles of the common law in a manner consistent with the fundamental values enshrined in the Constitution,”³⁰ which includes the *Charter*.

Student unions are private incorporated entities that are independent from universities. The *Charter* does not apply to them.³¹ However, provincial human rights legislation does.

Freedom of Expression, Human Rights Legislation, and “Hate Propaganda”

It is important to remember that in common law, a person is free to do anything that is not positively prohibited. The laws exist to draw the boundaries of what is and is not allowed. In the context of free speech, all speech is legal until it violates laws prohibiting certain speech such as libel, defamation, and hate propaganda. As constitutional expert Peter Hogg stated: “what is left is the civil liberty of speech.”³²

Pro-lifers have been accused of discriminating or promoting violence against women, distributing or displaying materials “offensive” to women, and/or spreading hate speech. Regardless of whether one finds pro-lifers’ messages or images offensive, disgusting, or distasteful, they are perfectly lawful unless captured by human rights legislation or any other law that would prohibit them. Human rights legislation, in particular, is designed only to limit free speech in order to protect identifiable groups from hate propaganda.³³ Thus, such legislation, applicable to all universities and student unions, is helpful in defining the limits on expression and knowing what is and is not lawful speech. To balance protecting minorities and freedom of speech, the SCC ruled in *R. v. Keegstra*³⁴ and *Canada (Human Rights Commission) v. Taylor*³⁵ that only expressions which vilify and detest the identifiable group are sufficient to merit a limit on free expression. Distasteful or offensive speech is insufficient.³⁶ Although the *Charter*

²⁹ *Supra* note 12 at paras. 422-423.

³⁰ *Supra* note 10 at para. 39.

³¹ *Supra* note 5 at 266.

³² *Supra* note 26 at 34-2.

³³ Luke McNamara, “Negotiating the Contours of Unlawful Hate Speech: Regulation Under Provincial Human Rights Laws in Canada” (2005) 38 U.B.C. L. Rev. 1 at para 229. Although human rights legislation was originally enacted to deal with employment matters, housing, and discrimination on sex and race, many commissions have heard complaints on matters related to freedom of speech.

³⁴ [1990] 3 S.C.R. 697.

³⁵ [1990] 3 S.C.R. 892.

³⁶ Jeff Brunner, “Canada’s Use of Criminal and Human Rights Legislation to Control Hate Propaganda,” (1999) 26 Man. L. J. 299 at para. 49-50.

does not apply to universities or student unions, case law regarding s. 2(b) of the *Charter* has been an important standard for provincial human rights adjudicators in hate speech cases.³⁷

Provincial human rights legislation only sets limits on speech when the expression is “hate speech.” Thus, all speech that is not hate speech is lawful – including those that some believe to be sexist, racist, or discriminatory. Consistent with the *Charter’s* interpretation of s. 2(b), provincial human rights legislation has a high threshold in defining “hate” as adjudicators are wary of infringing freedom of expression.³⁸

For example, in Ontario, the following legislation exists on hate speech:

(1) A right under Part I [of the Human Rights Code] is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I.

(2) Subsection (1) shall not interfere with freedom of expression of opinion.³⁹

In Ontario, the display of a sign or symbol will only be unlawful under section 13 if the person *intends* to unlawfully discriminate or *intends* to incite others to discriminate because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, or disability. The sign or symbol cannot merely indicate discrimination.⁴⁰ The very limited scope given to unlawful hate speech is reflected by the lack of case law pertaining to this provision. In spite of accusations of discrimination, if pro-lifers do not intend to discriminate or intend to incite discrimination against women, their messages and images, no matter how offensive, are lawful.

In British Columbia, the following provisions on hate propaganda exist in the *Human Rights Code*:

(1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) is likely to expose a person or a group or class of persons to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.⁴¹

Thus far, the British Columbia Human Rights Tribunal has narrowly interpreted the parameters of the hate speech prohibition.⁴²

³⁷ *Supra* note 33 at para 229.

³⁸ *Ibid.*

³⁹ *Human Rights Code* R.S.O. 1990, c. H-19, s. 13 [OHRC].

⁴⁰ *Supra* note 33 at para. 19. It is important to remember that section 13 in the Ontario Code is different from section 13 of the *Canadian Human Rights Code*.

⁴¹ *Human Rights Code*, R.S.B.C. 1996, c. H-210, s. 7 [BCHRC].

The Tribunal has limited the reach of s. 7(1)(a) by requiring evidence of discrimination or an intention to discriminate in the statement, sign, or symbol. In *Stacey v. Campbell and Choose Life Canada*,⁴³ Kevin Stacey lodged a complaint with the British Columbia Human Rights Commission alleging that an advertisement placed by Choose Life Canada in a newspaper breached s. 7(1)(a). The ad, which referred to homosexuality as “buggery” and “sodomy,” criticized the SCC decision that Alberta’s human rights legislation was contrary to section 15 of the *Charter* because sexual orientation was not included as a ground of unlawful discrimination. Stacey, however, failed to persuade the Tribunal that the ad indicated an intention to discriminate or was discrimination in and of itself. The Tribunal narrowly interpreted s. 7(1)(a) and required evidence that the communication “indicates discrimination or an intention to discriminate with respect to the fields of activity that are covered by the other sections of the Code.”⁴⁴ The Tribunal stated:

On its face, broader interpretations than the one I have advanced are possible. The provision could be interpreted so as to prohibit publications of all statements that indicate discrimination or an intention to discriminate on any of the prohibited grounds, whether or not the discrimination itself would contravene the Code ... However, in my opinion, such an interpretation would have a more severe impact on the Respondents’ freedom of expression and religion than the interpretation I have proposed.⁴⁵

It is apparent from this decision that the Tribunal is wary of limiting freedom of expression. Unless it can be proven that the images used by pro-lifers indicate discrimination or intent to discriminate against women, these images, no matter how offensive, are lawful under s. 7(1)(a) and do not have to be removed at the request of the student unions.

The Tribunal has interpreted the scope of s. 7(1)(b) in light of the *Charter*’s interpretation of s. 2(b) and have generally been concerned with limiting free speech. In the leading case on the section, *Canadian Jewish Congress v. North Shore Free Press Ltd.*⁴⁶, “hatred or contempt” was understood as “unusually strong and deeply-felt emotions of detestation, calumny and vilification” that extends “only to that expression giving rise to the evil sought to be eradicated and provides a standard of conduct sufficiently precise to prevent the unacceptable chilling of expressive activity.”⁴⁷ The complaint arose from an article in a newspaper which allegedly exposed Jewish persons to hatred or contempt. The Tribunal first asked whether a reasonable person would understand the message as expressing hatred or contempt in the context of the expression. Second, the court asked whether a reasonable person would consider the communication likely to increase the risk of exposure of target group members to hatred or contempt. Although Tribunal found the news articles to be anti-Semitic, grossly inaccurate, and “offensive, harmful and mean-spirited,” the tribunal did not find that it was sufficiently full of “hatred or contempt” in that there was “calumny, detestation or vilification.”⁴⁸

In 2000, the Alma Mater Society (AMS), UBC’s student union, organized a movement against the GAP displays. AMS forced Lifeline to remove images that compared abortion to the Holocaust and banned any

⁴² *Supra* note 33 at para. 195. See *Canadian Jewish Congress v. North Shore Free Press Ltd.* (1997), 30 C.H.R.R. D/5 [CJC].

⁴³ 2002 B.C.H.R.T. 35 [Stacey].

⁴⁴ *Ibid.* at para. 34.

⁴⁵ *Ibid.* at para. 37.

⁴⁶ CJC, *supra* note 42.

⁴⁷ *Supra* note 35 at para. 121.

⁴⁸ CJC, *supra* note 42 at paras. 249-252.

written material making the comparison from the Student Union Building.⁴⁹ From this example, universities and student unions cannot censor pro-lifers even if they find such images discriminatory and offensive unless they can prove that a reasonable person would interpret this pro-life message as “calumny, detestation or vilification.” Moreover, considering that the images from the GAP are displayed in the context of the university, a space designated for debate, it is likely that a reasonable person would not understand this message as expressing hatred or contempt but as contributing to the abortion debate. Even if the reasonable observer interpreted these images as merely discriminatory, provincial human rights legislation only captures hate speech.

No Freedom of Opinion: Youth Protecting Youth at the University of Victoria

The cases thus far have discussed censorship by universities and student unions where they have disagreed with the way pro-life groups convey their message. Some student unions have gone so far as to censor pro-life groups simply because they are pro-life.

In the fall of 2008 at the University of Victoria, the UVic Students’ Society (UVSS) decided that a poster by “Youth Protecting Youth” (YPY), a pro-life club, violated UVSS’s policies. YPY posted a picture of a smiling baby along with the text, “Is this the face of the enemy?” and hosted a speaker to discuss the pro-life position.⁵⁰ UVSS adopted a by-law that no club could take a position opposed to an official UVSS policy and UVSS happened to have a “pro choice” policy. UVSS believed that pro-life advocacy was a form of harassment and discrimination against women. As a result, the UVSS stripped YPY of club status.⁵¹

YPY eventually regained their status after filing a complaint with the B.C. Human Rights Commission. YPY claimed that it was censored and discriminated against by UVSS, who was targeting pro-life groups. YPY eventually settled with UVSS out of court in 2010. UVSS has agreed to give the group \$700 of funding that should have been paid over the last two years, reinstate the club, and revise UVSS policies to remove the by-laws that target anti-abortion groups.⁵²

It is important to note that both Ontario and B.C. human rights provisions on hate propaganda discussed earlier contain subsections explicitly stating that the limits on free speech due to hate speech do not include opinions. Thus under B.C. human rights legislation, UVSS has no right to silence YPY because YPY supports an opposing opinion.

4. Freedom from Discrimination

Human Rights Legislation on Discrimination in “Public Services”

Pro-life clubs often face resistance from universities and student unions when seeking campus space to set up information booths, show documentaries, or invite speakers. Universities and student unions may be out of *Charter* reach, but they are not immune from provincial human rights legislation. All provinces

⁴⁹ *Supra* note 33 at 267.

⁵⁰ *Supra* note 6.

⁵¹ “Students and BCCLA to fight censorship at UVic” *The Interim*, (9 June 2010), online: <<http://www.theinterim.com/activism/youth-activism/students-and-bccla-to-fight-censorship-at-u-vic/>>.

⁵² *Supra* note 6.

prohibit discrimination in employment, accommodation, services, and facilities on specified grounds.⁵³ Every province has legislation outlawing discrimination in public accommodation and services that are customarily available to the public. For pro-life groups, this means that universities and student unions cannot prevent the groups from using campus space for organized activities, on the basis that members have certain characteristics, if this space is usually available to the public. If universities or student unions do so, this could constitute discrimination in public accommodation, services, and facilities.

Ontario

The *Ontario Human Rights Code* states that you have the right to be free from discrimination and harassment in your job, families, and services, housing, contracts, and membership in unions or vocational associations. Discrimination is to treat someone unfairly, deny a benefit, exclude or impose obligations because of a characteristic or perceived characteristic as specified by the *Code*. Intent is not necessary to prove discrimination. The provision is as follows:

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.⁵⁴

From this provision, you have the right to be free from discrimination that is: (1) in a specific social area such as public services; and (2) because of a ground protected by the *Code*. Your rights under the *Code* are not violated if you only have a specific social area or a ground. For example, your rights would not be violated if a stranger on the street makes a racist comment because this is not in a specified social area.⁵⁵

British Columbia

The relevant provisions pertaining to accommodation is as follows:

8. (1) A person must not, without a bona fide and reasonable justification,
 - (a) deny to a person or class of persons any accommodation service or facility customarily available to the public, or
 - (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

Because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.⁵⁶

In limiting space for student activities, universities often argue that it is at their discretion to provide space to student activities. The space is, thus, unavailable to the general public and does not violate human rights legislation. The SCC rejected this argument regarding public accommodation, services, and

⁵³ M.C. Crane, "The University and its Students – A 'Very Public Relationship': A Comment on the Decision of The Supreme Court of Canada in *University of British Columbia v. Berg*" (1993) 27 U.B.C. L. Rev. 339 at 339.

⁵⁴ *OHRC*, *supra* note 39 at s. 1.

⁵⁵ Ontario Human Rights Commission, "Guide to your Rights and Responsibilities under the *Human Rights Code*" *Ontario Human Rights Commission* (15 January 2009), online: Ontario Human Rights Commission <<http://www.ohrc.on.ca/en/resources/Guides/GuideHRcode2/pdf>> at 30.

⁵⁶ *BCHRC*, *supra* note 41 at s. 8(1).

facilities in *University of British Columbia v. Berg*⁵⁷ when they considered the meaning of “customarily available to the public” in s. 8 (formerly s. 3) of the *B.C. Human Rights Code*. In 1985, Janice Berg, a graduate student, complained to the B.C. Council of Human Rights that she had been discriminated against by the school on the basis of her mental disability, recurrent depression. Graduate students are entitled to keys to certain facilities after hours as long as they are given satisfactory ratings by the university. Berg had been refused these keys as a result of unsatisfactory ratings. Her complaint rested on s. 8.

Chief Justice Lamer stated that “public” service cannot mean available to all citizens because no service or facility is ever absolutely available to all who want to use it.⁵⁸ Students, by virtue of being admitted to a university or school within the university, become the “public” for the university. Every service has its own public, and once that “public” has been defined through eligibility criteria, the *Code* prohibits discrimination within that public. In determining what is “customarily available,” the Chief Justice stated that discretion is no excuse against allegations of discrimination. Where discretion is usually used in favour of extending a service, that service is considered to be “customarily available to the public” and subject to statute against discrimination.⁵⁹ Moreover, there is no case law supporting the argument that discriminatory practices are allowed because the service provided is discretionary.

Although this case discusses the interpretation of a provision in the B.C. *Code*, the similar structure of other provincial human rights legislation leads one to believe that this interpretation of “customarily available to the public” applies to other codes.⁶⁰

No Space, No Funding: Student Unions, Pro-Life Clubs, and “Public” Services and Facilities

Some student unions have become enthusiastic deniers of constituting pro-life clubs and thus denying the members access to space, audio-visual equipment, and funding.

In 2006, the Carleton University Students’ Association (CUSA) voted to ban student groups with “anti-choice” agendas from counsel-managed spaces. This ban, in the form of a policy, stated: “CUSA further affirms that actions such as campaigns, distributions, solicitations, lobbying efforts, displays, events, etc. that seek to limit or remove a woman’s options in the event of pregnancy will not be supported.” CUSA claimed that they were supporting students who find anti-choice discriminatory towards women. They argued that anti-choice limits a woman’s right to choose her best option. Moreover, they had no interest in funding a stance that supported the recriminalization of abortion. Thus, Carleton Lifeline, the university’s pro-life club, would not be permitted to suggest that Canada should have an abortion law. CUSA maintained that as long as Lifeline does not make such suggestions and statements, they can continue to receive funding.⁶¹

Chief Justice Lamer in *Berg* did leave the possibility that the services provided by student unions may be captured by the human rights provision on accommodation for denying funding and stripping club status. In defining “public,” the Chief Justice recognized that “every service has its own public, and once that

⁵⁷ [1993] 2 S.C.R. 353, 102 D.L.R. (4th) 665 [*Berg*].

⁵⁸ *Ibid.* at para. 54.

⁵⁹ *Supra* note 57 at para. 55.

⁶⁰ Cynthia L. Chewter, “Justice in the University: Legal Avenues for Students,” (1994) 3 *Dalhousie J. Legal Stud.* 105 at 132.

⁶¹ “Carleton University’s student council has voted to deny funding to campus anti-abortion groups” *National Post* (7 December 2006) <<http://www.canada.com/nationalpost/story.html?id=ae49adbf-8f14-4f93-9341-f9b3ec047a8c&k=8324&p=1>>.

“public” has been defined through the use of eligibility criteria, the *Code* prohibits discrimination within that public.”⁶² All undergraduate students become the student union’s “public” when they pay annual student fees, included in their tuition.

The Chief Justice stated that although there may be a “public” in every service, some services created public relationships while others established private ones. Thus a “relational approach,” which examined the relationship between the service provider and the user, would determine whether the provider’s service created a public relationship.⁶³ For universities, granting access to facilities is part of the ordinary educational and recreational services. After all “the school exists to provide accommodations, services or facilities to its students.”⁶⁴

In application to student unions, it is noted that the University of Guelph’s Central Student Association (CSA), like many others, exists to engage the collective interests of students on a range of issues such as public transit and neighbourhood relations, as well as the opportunity to form and become involved in clubs.⁶⁵

5. Right to Procedural Fairness

The duty to be fair requires administrative decision-makers to act fairly towards the persons affected by their decision. This duty refers to the *procedures* used by the decision-maker to come to his or her decision and does not refer to the actual outcome. In other words, the duty to be fair does not include the duty to give a fair outcome.⁶⁶

The principles of procedural fairness have been drawn from the *Charter*, the *Canadian Bill of Rights*, and administrative law.⁶⁷ Historically, the requirements of procedural fairness, also known as rules of natural justice, only applied to decision-makers carrying out a “judicial or quasi-judicial” function. Thus, this only included cases where the decision-maker was determining legal rights, but excluded cases where the decision-maker was determining policy.⁶⁸ In *Nicholson v. Haldimand-Norfolk (Regional Municipality Commissioners of Police)*⁶⁹ the SCC considerably expanded the reach of procedural fairness by adopting a more flexible approach. Chief Justice Laskin explained that “to endow some with procedural protections while denying others any at all would work injustice when the results of a statutory decision raise the same serious consequences for those adversely affected.”⁷⁰

The content of the rules of natural justice is captured by two maxims: *audi alteram partem* – the right of a person to know and answer the case against him or her – and *nemo iudex in sua causa* – the right for a person not be the judge in his or her own cause.⁷¹

⁶² *Supra* note 57 at 55.

⁶³ *Ibid.* at para. 60.

⁶⁴ *Ibid.* at para. 64-5.

⁶⁵ *Central Students’ Association*, online: Central Students’ Association

<http://www.csaonline.ca/index.php?option=com_content&view=article&id=42&Itemid=41>.

⁶⁶ Neil Craik and Craig Forcese, *Public Law: Cases, Materials, and Commentary* (Toronto: Emond Montgomery Publications Limited, 2006) at 287.

⁶⁷ Evangelical Fellowship of Canada, “Zoned Out: Religious Freedom in the Municipality” *Evangelical Fellowship of Canada* (28 June 2010), online: Evangelical Fellowship of Canada

<http://www.evangelicalfellowship.ca/NetCommunity/SSLPage.aspx?pid=734&nccsm=21&_nccspID=990> at 8.

⁶⁸ *Supra* note 66 at 287.

⁶⁹ [1979] 1 S.C.R. 311.

⁷⁰ *Ibid.*

⁷¹ *Supra* note 66 at 288.

Audi alteram partem, depending on the context, may include notice of hearings or meetings, the opportunity to make written or oral submissions,⁷² the right to counsel, the right to disclosure, the right to present witnesses, the right to cross-examine witnesses, the right to an impartial and unbiased decision maker, and the right to reasons for any decision made.⁷³ The right to notice of disciplinary hearings is one of the preconditions to *audi alteram partem* as without notice a student will be unable to exercise any other procedural guarantees. At minimum, the reasons behind an allegation against a student must be disclosed. Without disclosure, the student cannot respond to the allegations effectively.⁷⁴

Nemo iudex in sua causa, the requirement that a person not be the judge in his or her own cause, means that the decision-maker must not be biased.⁷⁵ The Ontario High Court in *Re Schabas et al. and Caput of the University of Toronto et al.*⁷⁶ stated that only a showing of actual bias will suffice. The decisions in *Healey v. Memorial University of Newfoundland*⁷⁷ and *Kane v. University of British Columbia*,⁷⁸ however, challenged this standard. The SCC in *Kane* held that it was not necessary for a court to find that there was actual prejudice to a party who has been refused the opportunity to respond to evidence or a representation made by the other side. Based on the principles in *Kane*, the complainant in *Healey* was not required to show actual prejudice on behalf of the Senate in disciplinary proceedings.

Healey involved a young medical student named Healey, who was required to withdraw from medical school after allegedly abusing a female classmate. The court concluded that the Senate was biased because they did not consider the arguments in Healey's favour after receiving a letter from the Dean. The letter contained a newspaper clipping about a doctor who was allowed to graduate from medical school after allegedly abusing fellow classmates and now stood accused of assaulting his female patients. The Senate inferred the connection between the article and Healey's case. The court decided that the Senate showed bias when it did not give Healey a chance to see the article that was clearly prejudicial against him and rebut the inferences contained in it.⁷⁹

Rules of Natural Justice and University Disciplinary Procedures

Universities are statutory bodies and all statutory bodies have a duty to act fairly. When the legislature delegates power to universities, it is assumed that universities will exercise their regulatory powers while adhering to the rules of natural justice.⁸⁰ The SCC case of *Cardinal v. Kent Institutions*⁸¹ is commonly

⁷² *Mikkelsen v. University of Saskatchewan*, [2000] S.J. No. 115 (Sask. Q.B.) [*Mikkelson*]; *Khan v. University of Ottawa*, (1997), 148 D.L.R. (4th) 577 (Ont. C.A.). It is not clear whether in non-academic hearings a written submission will suffice in the requirements for procedural fairness. *Khan*, however, was entitled to an oral hearing by the Examinations Committee because her credibility was at issue. One is also entitled the opportunity to correct or contradict any statement prejudicial to that person. "The right to procedural fairness means little unless the person affected is informed of contrary information and arguments and given an opportunity to address them before the decision is made."

⁷³ *Mikkelsen*: *Mikkelson*, at minimum, was entitled to a written response from the Dean.

⁷⁴ *Supra* note 60 at 116-8.

⁷⁵ *Supra* note 66 at 288.

⁷⁶ (1974), 52 D.L.R. (3d) 495 (Ont. H.C.).

⁷⁷ [1993] N.J. No. 61 (Nfld. S.C. (T.D.)) [*Healey*]. *Healey* is cited as the example of when the highest degree of procedural protection is afforded to a student facing disciplinary proceedings.

⁷⁸ [1980] 1 S.C.R. 1105 [*Kane*].

⁷⁹ *Supra* note 77 at para. 26.

⁸⁰ *Supra* note 60 at 112.

⁸¹ [1985] 2 S.C.R. 643.

cited for the proposition that “a duty of procedural fairness rests on every public authority making administrative decisions affecting the rights, privileges or interests of individuals.”⁸²

The degree of procedural protection owed to students during disciplinary proceedings is dependent on the stage of proceedings and on the context of the particular statute and rights affected.⁸³ The SCC in *Baker v. Canada (Minister of Citizenship & Immigration)*⁸⁴ proposed a test for gauging the appropriate level of protection afforded. The test involves the careful weighing of five factors:

(1) the nature of the decision being made and the processes followed in making it;⁸⁵

The closer a tribunal’s procedures are to a judicial-like process, the higher the degree of protection is afforded.⁸⁶ For example, there is a relatively low degree of procedural protection for the student attending a Dean’s meeting but a higher degree of protection for the student appearing before a university tribunal and appeal hearings. University tribunal and appeal hearings are highly formal and quasi-judicial. Thus, students are given the right to be represented by counsel, to call witnesses, to cross-examination, and to other rights given in a formal trial.⁸⁷

(2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates;⁸⁸

The amount of procedural protection afforded is also influenced by the level and context of the proceedings.⁸⁹

(3) the importance of the decision to the individuals affected;⁹⁰

Justice Dickson, as he then was before becoming Chief Justice of the SCC, in *Kane* stated that “a high standard of justice is required when the right to continue in one’s profession or employment is at stake. A disciplinary suspension can have grave and permanent consequences upon a professional career.”⁹¹ Although *Kane* dealt with a professor instead of a student, it is analogous to a situation in which a student’s right to continue at the institution is at stake.⁹²

(4) the legitimate expectations of the claimant;⁹³

Greater procedural protection will be given if there is no opportunity to appeal a decision or when a decision is final and further requests cannot be submitted.⁹⁴

(5) the choice of procedures made by the agency itself.⁹⁵

⁸² *Ibid.* at para. 94.

⁸³ Mike Hamilton, “Lessons Still To Be Learned: Fairness in Academic Discipline Proceedings,” (2009) 18 *Educ. & L.J.* at 235.

⁸⁴ [1999] 2 S.C.R. 817 [*Baker*].

⁸⁵ *Ibid.* at para. 23.

⁸⁶ *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653.

⁸⁷ *Supra* note 83 at 230-231.

⁸⁸ *Supra* note 84 at para. 24.

⁸⁹ *Ibid.* at 232.

⁹⁰ *Supra* note 84 at para. 25.

⁹¹ *Supra* note 78.

⁹² *Supra* note 60 at 233.

⁹³ *Supra* note 84 at para. 26.

⁹⁴ *Ibid.* at para. 24.

⁹⁵ *Ibid.* at para. 27.

This factor is meant to respect the choices of the university in selecting its own procedures. The court will, however, consider whether the decision-making body has a particular expertise in determining the appropriate procedures.⁹⁶

The SCC has stated that even if the rules of natural justice are not adhered to at a certain level of proceedings, if there is opportunity to correct these violations by appealing the decision to a higher body, then there has been no breach of the rules of natural justice. Any violations of natural justice in a university tribunal hearing are “cured” when a higher body, such as the university Senate, hears an appeal and does adhere to the principles of procedural fairness.⁹⁷

Campus Pro-Life at the University of Calgary

Throughout 2006 and 2007, Campus Pro-Life (CPL) set up images from the Genocide Awareness Project (GAP) four times in hopes of exposing the injustice of abortion and promoting the sanctity of human life. During these years, the university defended the students’ right to expression. In 2008, however, the university reversed its policy without explanation and stripped the right of CPL to set up the GAP display. Committed to advocating their message, CPL continued to set up their displays, even when faced with trespass charges in 2009.⁹⁸

Once again, in April 2010, CPL students were issued notices by campus security threatening punishment for their actions. The university charged the students under section 4.10 under the Non-Academic Misconduct Policy for “failure to comply with a campus security officer or university official in legitimate pursuit of his/her duties.” At the hearing held behind closed doors, the students were found guilty.

The conduct of the university during these procedures is cause for alarm. According to CPL, they “never received an explanation for why the university reversed their position” nor had they received “any explanation as to what a security official’s legitimate duties actually include.”⁹⁹

Judicial Review of University Proceedings

Universities and their officers may not be “government” for the purposes of *Charter* application, but their statutory duties make them susceptible to judicial review under administrative law.¹⁰⁰ Governmental control exists over certain university processes as a result of the *Judicial Review Procedure Act*¹⁰¹ in Ontario and similar legislative provisions in other provinces. The *Act* grants courts the power to supervise the way universities use their authority in order to ensure that the principle of fairness is upheld. Judicial review, similar to an appeal, is a way to challenge a decision made by an administrative tribunal. For example, to challenge a decision by a judge in a trial involving breach of contract, you would file an appeal to an appellate court. To challenge the decision by a University Senate Committee to expel, you would bring a judicial review application.¹⁰²

⁹⁶ *Ibid.*

⁹⁷ *King v. University of Saskatchewan* [1969] S.C.R. 678.

⁹⁸ Renato Gandia, “Anti-abortion display back at U of C More Trespassing Notices Issued” *The Calgary Sun* (3 March 2009).

⁹⁹ Theresa Gilbert, “Calgary students found guilty in closed-door hearing” *The Interim* (9 June 2010), online: The Interim <<http://www.theinterim.com/activism/youth-activism/calgary-students-found-guilty-in-closed-door-hearing/>>.

¹⁰⁰ Greg M. Dickinson, “University President Can be Sued as Public Office Holder: Is the Sky Falling in Academe?,” (2006) 16 *Educ. & L.J.* 113 at 115.

¹⁰¹ R.S.O. 1980, c. 224.

¹⁰² Carolyn Brandow, “Judicial Review of Tribunal Decisions” *The Litigator* (December 2009) at 103.

Courts are reluctant to intervene in the internal affairs of universities and will only review the record when it finds that there have been gross violations of natural justice or where the procedures were manifestly unfair.¹⁰³ In other words, if university disciplinary hearings for pro-life club members are inconsistent with the principles of procedural fairness, the courts will intervene to ensure that procedural fairness is observed.

Courts have stressed that applications for judicial review of a decision should only be made as a last resort. Thus, students should take advantage of the internal procedures available to a university to correct its errors and of rights of appeal granted by statute. It is only when these routes are unavailable or have been exhausted, that students should apply for judicial review.¹⁰⁴

There are limitations to judicial review. First, like other administrative bodies, universities are perceived by the courts as having expertise in educational matters. Consequently, courts have been especially deferential when reviewing university decisions and wary of meddling in university affairs.¹⁰⁵ Second, the court restricts itself to questions of whether the tribunal has acted in accordance with the law. For example, questions such as whether the decision was made in good faith or whether the doctrine of fairness was applied.¹⁰⁶ Only the tribunal's decision is reviewed. The court does not retry the case nor is it concerned with the merits of the case. The tribunal's reasons behind the decision, however, may be considered to determine whether the decision was erroneously made.¹⁰⁷ The court cannot substitute its discretion for that of the tribunal decision-maker simply because the court would have arrived at a different decision.¹⁰⁸

Rules of Natural Justice and Student Union Disciplinary Procedures

In *Lakeside Colony of Hutterian Brethren v. Hofer*,¹⁰⁹ the SCC confirmed that in disciplinary hearings held by associations, "the most basic requirements of natural justice are that of notice, the opportunity to make representations, and an unbiased tribunal."¹¹⁰ The SCC reiterated this requirement in *Martineau v. Matsqui Institution (no. 2)*¹¹¹:

... The fact that a decision-maker does not have a duty to act judicially, with observance of formal procedure which that characterization entails, does not mean that there may not be a duty to act fairly which involves importing something less than the full panoply of conventional natural justice rules.¹¹²

Thus, when deciding on the club status of pro-life groups, student unions have a duty to act in accordance with the rules of natural justice.

Similar to university tribunal hearings, the degree of procedural protection afforded to the student facing a student union's disciplinary hearing depends on *Baker's* five factors: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the

¹⁰³ *Supra* note 60 at 114.

¹⁰⁴ *Supra* note 102 at 103.

¹⁰⁵ *Supra* note 60 at 108.

¹⁰⁶ Harry Wruck, "The Continuing Evolution of the Tort of Misfeasance in Public Office" (2008) 41 U.B.C. L. Rev. 69 at 69.

¹⁰⁷ *Supra* note 102 at 103.

¹⁰⁸ *Supra* note 106 at 69.

¹⁰⁹ (1992), 142 N.R. 241 (S.C.C.).

¹¹⁰ *ibid.* at 171.

¹¹¹ [1980] 1 S.C.R. 602.

¹¹² *Ibid.* at para. 75.

statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself.¹¹³

Lakehead University Life Support at Lakehead University

After two long years of fighting to regain club status, Lakehead University Life Support (LULS) was reconstituted in February 2009. Later that year in October, however, the Lakehead University's Student Union (LUSU) voted in favour of stripping the group of its club status. LULS appeared before the student union because of allegations that a woman was told by a LULS member that she was a murderer if she had had an abortion.¹¹⁴

The process of coming to that decision violated LUSU's own policies. The complaint was not handled properly by the union as outlined in the LUSU Club Policies 2009-2010 2.6.1.2. The complaint was not reported to the Chief Justice of the student union as required and the union presumed the accusations to be true without affording LULS a chance to respond to the allegations and defend themselves.¹¹⁵

Following the decision, LULS filed a complaint to LUSU's judicial review committee and took part in student deputation sessions. The unfairness of the original vote became manifestly apparent to some members of the student union. Eventually in January 2010 the union re-voted in favour of granting LULS club status.¹¹⁶

Unlike university tribunal hearings, when an association's disciplinary committee fails to observe the rules of natural justice, judicial review is unavailable.¹¹⁷ Where the rules of natural justice are violated, however, courts will still step in and set aside their wariness of meddling in the internal affairs of associations. For example, the courts will intervene when a member of a club is expelled from a club or association, is temporarily or permanently disqualified from participating in its activities, or is disciplined for breach of the club rules, and the process of expulsion, disqualification, or discipline is unfair.¹¹⁸ The courts will not involve themselves in a student union's affairs if the student union has acted in good faith, not acted illegally or unlawfully, and acted in accordance with the rules of natural justice.

¹¹³ Application of *Baker* to cases involving an association: *Kanigan (Guardian Ad Litem) v. Castlegar Minor Hockey Association* [1996] B.C.J. No. 2431; *Beauchamp (Litigation Guardian of) v. North Central Predators AAA Hockey Assn.* (2004), 247 D.L.R. (4th) 745 (Ont. S.C.); and *Miramichi Minor Hockey Club Inc. v. New Brunswick Amateur Hockey Assn.*, [1999] N.B.J. No. 631 (N.B. Q.B. T.D.).

¹¹⁴ Patrick B. Craine, "University Pro-Life Group Has "Same Mentality" as Tiller Murderer: Student Union Leader," *LifeSiteNews.com* (9 November 2009), online: *LifeSiteNews.com* <<http://www.lifesitenews.com/ldn/2009/nov/09110902.html>>.

¹¹⁵ *Supra* note 114; "Press Release: Open Bias, Discrimination & Misinformation Against Pro-Life Students" *National Campus Life Network* (9 November 2009), online: *National Campus Life Network* <<http://www.ncln.ca/articles.php?id=2&article=226>>.

¹¹⁶ Theresa Gilbert, "Lakehead Life Support obtains club status" *The Interim* (30 March 2010), online: *The Interim* <<http://www.theinterim.com/activism/youth-activism/lakehead-life-support-obtains-club-status/>>.

¹¹⁷ *Walton (Litigation guardian of) v. Saskatchewan*, [1998] S.J. No. 125 at para. 10 (Sask. Q.B.).

¹¹⁸ *Rakowski v. Malagerio* (2007), 84 O.R. (3d) 697, 2007 CarswellOnt 539 at para. 30 (Ont. S.C.J.) [*Rakowski*].

Justice Steele in *Mugford et al. v. The Newfoundland Amateur Hockey Association et al.*¹¹⁹ formulated the test for courts intervening in the affairs of non-profit organizations or associations: has the organization (1) acted in good faith and (2) generally in accord with the concepts of natural justice? This does not mean that the student union disciplinary committee must follow a process similar to legal proceedings or that there needs to be an application of all natural justice rules. The question is whether the organization has acted in a way that meets the legitimate expectations of a fair-minded observer.¹²⁰

In *Mowat v. University of Saskatchewan Students' Union*¹²¹ and *Canadian Federation of Students v. Mowat*,¹²² the Saskatchewan courts (Queen's Bench and Appeal) applied the test for associations. The executive committee of the University of Saskatchewan's Student Union (USSU) arbitrarily changed the requirement that the Elections Board must ratify the results of a referendum in order for the results to be official. When the Elections Board exercised its power to not ratify the results because of irregularities, the committee simply changed the rules and substituted its own ratification for that of the Elections Board.

On the issue of natural justice, the courts decided that USSU's actions were inconsistent with the principles of procedural protection because the union failed to follow the procedure that they laid out in their by-laws to ensure a fair electoral outcome. Moreover, they did not notify the interested parties of changes in the by-law. Although the Elections Board was created by the student union and the union was legitimately authorized to create such a body, the court warned that this power to create rules did not allow the committee to arbitrarily change the rules.¹²³

Good faith refers to the motivations of the decision-makers. In *Mowat*, USSU did not act in good faith. The courts determined this by examining the reaction of the union to the Election Board's refusal to ratify the election results. When USSU was faced with an inconvenient decision, it decided to amend the rules in its favour and impose its own outcome.¹²⁴

Where's the Procedural Fairness?: Life Choice and the Central Student Association at the University of Guelph

In March 2008, Life Choice (LC) set up a table with informational pamphlets to attract those passing by. They only wanted to educate fellow classmates on abortion and provide an alternative viewpoint.¹²⁵ Central Student Association (CSA) members claimed, however, that the event promoted banning abortion

¹¹⁹ unreported 1982 No. C.B. 408.

¹²⁰ *Mowat v. University of Saskatchewan Students' Union* 2006 SKQB 462, [2006] S.J. No. 681 at para 60 [Mowat].

¹²¹ *Ibid.*

¹²² 2007 SKCA 90, [2007] S.J. No. 463.

¹²³ *Supra* note 120 at para. 54-56.

¹²⁴ *Ibid.* at paras. 54, 61.

¹²⁵ *Life Choice Affair*, *supra* note 2.

¹²⁶ Mags Storey, "Guelph pro-life group faces crackdown" *Christianweek.org* (15 February 2009), online: *Christianweek.org* <<http://www.christianweek.org/stories.php?id=358>>.

¹²⁷ *Life Choice Affair*, *supra* note 2.

¹²⁸ *Supra* note 126.

and promoted violence by using the materials comparing abortion to murder. Allegations that LC was violent in their approach to advocacy were also tossed around. As a result of this event, the CSA voted unanimously to strip LC of official club status.¹²⁶

When the CSA's Board of Directors held the meeting to decide on LC's fate, LC was not invited. As a result, they were not given an opportunity to respond to CSA's accusations. Moreover, they were not even alerted that their accreditation status was on the meeting's agenda. By not notifying LC of the decision until after it was made, CSA did not follow its own policies.¹²⁷ When LC appealed this decision in November, the CSA shut the meeting down, consulted legal counsel, and then decided to create an independent tribunal to deal with the issue in the future. The tribunal would ensure that LC would have the fairest hearing possible when they appealed CSA's decision.¹²⁸

After another CSA board meeting in 2009, CSA announced that Life Choice had been reinstated.¹²⁹

Student Unions and Corporations and Associations Law

Under corporations and associations law, pro-life clubs have the right to be free from oppression and prejudice when their student union exercises its power. Courts can intervene in student union affairs if a pro-life club member brings an action through oppression remedy clauses found in the various provincial corporations acts. This requires, however, that the student union be an incorporated entity. In *Mowat*, the complainant alternatively sought relief under section 225(1) of *The Non-Profit Corporations Act*,¹³⁰ to declare the union's activities to be of no force and effect.¹³¹ The USSU was incorporated pursuant to this Act. The provision read:

225(1) A complainant may apply to the court for an order pursuant to this section and the court may make an order to rectify the matters complained of where the court is satisfied that the result of any act or omission of the corporation or any of its affiliates, the manner in which any of the activities or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the manner in which the powers of the directors of the corporation or any of its affiliates are or have been exercised:

(a) is oppressive or unfairly prejudicial to any member, security holder, creditor, director or officer or, where the corporation is a charitable corporation, the public generally; or

(b) unfairly disregards the interests of any member, security holder, creditor, director or officer or, where the corporation is a charitable corporation, the public generally.

(2) In connection with an application pursuant to this section, the court may make an interim or final order it considers appropriate, including an order:

(a) restraining the conduct complained of;

...

¹²⁹ Thaddeus M. Baklinski, "Flip-Flop: Pro-Life Group at University of Guelph Now Granted Full Club Status" *LifeSiteNews.com* (3 February 2009), online: [LifeSiteNews.com](http://www.lifesitenews.com/ldn/2009/feb/09020309.html) <<http://www.lifesitenews.com/ldn/2009/feb/09020309.html>>.

¹³⁰ 1995, S.S. 1995, c. N-4.2.

¹³¹ *Supra* note 120 at para. 27.

(h) varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract.

222 In this Division:

...

"complainant means"

(a) a member or a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates;

(b) a director or an officer or a former director or officer of a corporation or of any of its affiliates;

(c) the Director; or

(d) any other person who, in the discretion of the court, is a proper person to make any application pursuant to this Division.

The Saskatchewan Court of Appeal in *Canadian Federation of Students* explained the purpose of s. 225 to be a statutory remedy for particular kinds of corporate conduct that is oppressive, unfairly prejudicial, or unfairly disregards the interests of specified persons. Such provisions should be interpreted broadly and applied flexibly.¹³² The appropriate question pertaining to this provision would be "whether an otherwise valid exercise of corporate power amounts to oppression, unfair prejudice and so forth."¹³³ Natural justice concepts such as the denial of procedural fairness can inform the examination of "oppressive" acts but generally, the meanings of "oppressive," "unfair prejudice," and "unfair disregard" should be derived from the section itself.¹³⁴

The appellate court found that the reversal of the by-law in order to ratify the referendum result was unfairly prejudicial, within the meaning of s. 225(1)(a), to the students who voted against joining the Canadian Federation of Students. This action also unfairly disregarded the interests of these students, within the meaning of s. 225(1)(b).¹³⁵

In Ontario, incorporated student unions are designated as non-profit organizations under the *Ontario Business Corporations Act*.¹³⁶ As stated in the constitution of the York Federation of Students, the association "shall assume all liabilities, obligations, and undertakings of whatever nature held by the Federation" in accordance with the *Act*.¹³⁷ Section 248 of the *Act* is the relevant oppression remedy clause.

¹³² *Supra* note 122 at paras. 27-28.

¹³³ *Ibid.* at para. 37.

¹³⁴ *Ibid.* at para. 30.

¹³⁵ *Ibid.* at para. 36.

¹³⁶ R.S.O. 1990, c. B. 16.

¹³⁷ "York Federation of Students Constitution," online: York Federation of Students <http://www.yfs.ca/downloads/YFS_CONSTITUTION.pdf>.

In British Columbia, incorporated student unions are entities pursuant to the *Society Act*.¹³⁸ Section 85 allows courts to intervene to remedy irregularities in a society's affairs.¹³⁹

6. Bad Faith, Improper Purpose, and Irrelevant Considerations

Students have a right to be free from powers exercised by universities and student unions in bad faith and for improper purposes. Issues of bad faith, improper purposes, and irrelevant considerations refer to the exercise of discretion, as oppose to procedural fairness, which is concerned with natural justice. In determining bad faith, the court will examine the motivations of the decision-makers.¹⁴⁰ The SCC in *Roncarelli v. Duplessis*¹⁴¹ defined "good faith" as:

... [C]arrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent for an alien purpose ... it does not mean arbitrarily and illegally attempting to divest a citizen of an incident of his civil status.¹⁴²

Universities and the Tort¹⁴³ of Misfeasance in a Public Office

A public official may be held liable for misfeasance in a public office, for a violation of an individual's constitutional right or freedom, or for bad faith decision making. Courts can provide remedies against these officials for their wrongful acts in the tort of misfeasance in a public office.¹⁴⁴ This tort rests on the fundamental rule of law principle that those who hold public office and exercise public functions are subject to the law and must not abuse their powers to the detriment of the ordinary citizen.¹⁴⁵

Freeman-Maloy v. York University is authority that university statutory decision-makers must not make decisions in bad faith or for improper purposes. If a university president engages in misconduct, that person may be sued under the tort of misfeasance of public office. This case involved the President of York University suspending a student for participating in demonstrations. The student alleged that the president maliciously abused her statutory power. The court dealt with the question of whether the president occupied a public office within the meaning of the tort. The difficulty rested on whether the tort should be restricted to public officers who are governmentally controlled. The Ontario Court of Appeal ruled that although universities operate separately from the government, there exists some degree of governmental control as they operate under statute, perform public functions, and receive funding from the government.¹⁴⁶

The elements for the plaintiff to prove in order to satisfy this tort were established in *Odhavji Estate v. Woodhouse*¹⁴⁷:

First the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer.¹⁴⁸

¹³⁸ R.S.B.C. 1996, c. 433.

¹³⁹ R.S.B.C. 1996, c. 433, s. 85.

¹⁴⁰ *Supra* note 66 at 300.

¹⁴¹ [1959] S.C.R. 121.

¹⁴² *Ibid.*

¹⁴³ A tort is a breach of a civil duty owed to another.

¹⁴⁴ *Supra* note 106 at para. 11.

¹⁴⁵ *Freeman-Maloy v. Marsden et al.*, [2006] O.J. No. 1228 at para. 10 (Ont. C.A.) [*Freeman-Maloy*].

¹⁴⁶ *Ibid.* at para. 25.

¹⁴⁷ 2003 SCC 69, [2003] 3 S.C.R. 263.

¹⁴⁸ *Ibid.* at para 22.

Unlawfulness occurs when the public official: (1) acts in excess of the powers granted; (2) breaches the relevant statutory provisions that he or she applied; or (3) acts for an improper purpose.¹⁴⁹

Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff.¹⁵⁰

This could be the intention to injure a person or class of persons or a public officer acting with the knowledge that his or her conduct was unlawful and likely to harm the plaintiff.¹⁵¹

It is important to know that this tort is not limited to the misuse of powers granted but also includes the abuse of powers not actually possessed.¹⁵² This understanding of the tort is consistent with the attempt to capture a broad range of misconduct that occurs in the misfeasance of a public office such as omissions.¹⁵³

Student Unions and the Enactment of By-Laws in Bad Faith

Student Unions often believe that they are authorized to enact any by-laws they choose and that their member students must abide by them. Courts, however, have placed limits on the power of student unions, and associations in general, to enact by-laws. The general rule from *Rakowski v. Malagerio*¹⁵⁴ is that a student union must exercise its power *bona fide* (in good faith, with good intention) without fraud, oppression, or improper motives.

Rakowski is the authority for courts to examine the by-law and strike it down if it is enacted in bad faith.¹⁵⁵

The Humber Students' Federation (HSF) created Policy 17 which precluded a member or director of another student club at Humber College from being Director of the HSF unless the group had been sanctioned by HSF. Rakowski was a member of the National Association of Disabled Students, a group unsanctioned by HSF. He challenged his ineligibility to be Director because of Policy 17.

Justice Perrell of the Ontario Superior Court of Justice presented a two-stage approach to determining whether a by-law was enacted in bad faith. First, the court considered whether Policy 17, on its face, is unreasonable, discriminatory, or inconsistent with the objects of HSF, contrary to public policy, contrary to the public interest, and contrary to the *Charter of Rights and Freedoms*. The court stated that it was important to view the policy separate from allegations of bad faith and improper purpose.¹⁵⁶

Second, the court considered bad faith. Justice Perrell applied the laws for enacting municipal by-laws to enacting student union by-laws. A student association acts in bad faith if it "abuses the powers conferred on it or if the by-law is so unreasonable, unfair, or oppressive that it is, upon any fair construction, an abuse of the powers."¹⁵⁷ In determining bad faith, courts may consider whether there is the presence of "unfairness, partiality, secretiveness, unreasonableness, improper motives, oppression, fraud, or the absence of procedural fairness."¹⁵⁸

¹⁴⁹ *Ibid.* at para. 23.

¹⁵⁰ *Ibid.* at para. 22.

¹⁵¹ *Supra* note 106 at para. 37.

¹⁵² *Supra* note 146 at para. 17.

¹⁵³ *Ibid.* at para. 20.

¹⁵⁴ *Supra* note 118.

¹⁵⁵ *Ibid.* at para. 40.

¹⁵⁶ *Ibid.* at paras. 42-54.

¹⁵⁷ *Ibid.* at para. 56

¹⁵⁸ *ibid.*

The onus of proving that a by-law is not in the public interest and is passed in bad faith rests on the student seeking to quash the by-law. It is important to remember that courts will be deferential to the exercise of the student union's powers and may not be quick to find bad faith.

The court eventually decided to uphold Policy 17. First, the function of the by-law was to eliminate any conflicts of interest. This was consistent with the student union's purpose "to represent the needs and interests and to advocate on behalf of the student body."¹⁵⁹ Moreover, on its face, the policy did not limit freedom of speech. If Rakowski was qualified and elected as President of the union, he could still advocate on behalf of disabled undergraduates. If the standard of determining a *Charter* violation is "on its face," it may be likely that a court would rule that the 2006 policy enacted by Carleton University Students' Association (CUSA) interferes with free speech. The policy states that CUSA will revoke club status if the club engages in "actions such as campaigns, distributions, solicitations, lobbying efforts, displays, events, etc. that seek to limit or remove a woman's options in the event of pregnancy".¹⁶⁰ Such a provision seeks to silence pro-life groups.

Second, the motivation behind enacting this policy was a concern for the independence of the union president. This was not enacted in bad faith. Applying this to pro-life clubs, if there is evidence that the union enacted the by-law to marginalize pro-life groups, then the court may decide that the by-law was enacted in bad faith.

Student Unions and their Non-discrimination Policies

University of Guelph

In section 4.0 of Appendix F in the Central Student Association (CSA) Policy Manual, the rights afforded to female students are "the fundamental right of all women to control their bodies," including "access to safe, reliable birth control and family planning information and the right of choice in the method" and the "freedom of choice in choosing one's stance in the matter of abortion."¹⁶¹ According to the CSA, this policy is consistent with the Canadian Federation of Students (CFS) and their refusal to support "anti-choice organizations."¹⁶²

It was these policies that Life Choice (LC) violated during the "Life Fair." While fighting to regain club status after it was unfairly revoked, there was concern that even with accreditation, LC may be unable to express its views because the policy manual prohibits material that promotes discrimination against women, and that includes materials that would deem abortion "immoral."¹⁶³

Lakehead University

In 2008, changes were made to the constitution of the Lakehead University Student Union (LUSU) to increase "civility" amongst campus clubs. Under the amendments, clubs must make their messages "positive" and refrain from offensive or disparaging speech. When advocating, clubs cannot slander the

¹⁵⁹ *Ibid.* at para. 45.

¹⁶⁰ *Supra* note 61.

¹⁶¹ Kathleen Gilbert, "University of Guelph Student Association Pulls the Plug on Pro-Life Student Group," *LifeSiteNews.com* (21 October 2008), online: [LifeSiteNews.com](http://www.lifesitenews.com) <<http://www.lifesitenews.com/ldn/2008/oct/08102111.html>>.

¹⁶² *Life Choice Affair*, *supra* note 2; *Supra*, note 160. It should be noted that these policies are still present in the CSA Policy Manual. See http://www.csaonline.ca/files/Policies/CSAPolicies_July16_2010.pdf.

¹⁶³ Charles Lewis, "Intolerance triumphs on Canadian campuses" *National Post* (29 November 2008).

¹⁶⁴ Charles Lewis, "Student union bans 'negative' opinions" *National Post* (4 December 2008).

¹⁶⁵ *Ibid.*

¹⁶⁶ *ibid.*

opposing side. Moreover, clubs are not to “impose” their views. Thus, when a club sets up a booth, members are not allowed to approach students with material. The student must approach the booth.¹⁶⁴

When the changes were made, Lakehead University Life Support (LULS), who had been trying to gain official status since 2007, believed that the new rules made it difficult for the group to advocate their cause effectively. The club was worried that they would have to change their mandate to “pro-choice” given that they could not express their belief that abortion kills a human being.¹⁶⁵ The student union, openly supportive of pro-choice, argued that this stance was “neutral” and did not favour any side of the debate.¹⁶⁶

7. Conclusion & Recommendations

Your club has been censored, stripped of official club status, or worse, charged with non-academic misconduct. What do you do? Here is a review of the possible steps you can take that were discussed. Remember, these are starting points and should not be considered as legal advice.

Step One: Know your Rights

You have the right to free speech. Our *Charter* may not be able to protect your freedom of expression on campus, but our legal system allows any speech that is not prohibited by law. Provincial human rights legislation only limits speech that is “hate speech,” which is nothing less than “detestation, calumny, and vilification.” Any argument by a university or student union that certain images or messages should be banned because they are discriminatory does not change how our legal system works.

You have the right to be free from discrimination in public services and facilities that is customarily available to the public. From *Berg v. University of British Columbia*, students are the “public” of universities and student unions. The argument that access to services and facilities are at the discretion of universities and unions is no excuse for discriminatory treatment.

You have the right to procedural fairness when you appear before hearings. Procedural fairness, or natural justice, consists of several principles such as the right to an unbiased decision-maker, the right to know the policies you have violated, and the right to respond to any allegations against you.

You have the right to be free from powers exercised in bad faith and for improper purposes. University Presidents derive their powers from statutes, and courts are interested in ensuring this power is not abused. Student unions do not derive power from statute, but courts can still hold them accountable in common law and corporations and associations law if they use their powers in bad faith or for improper purposes.

Step Two: Know the Rules of Procedure

All universities and student unions have rules governing how they handle non-academic misconduct and by-law/policy violations. (See Appendix 1 for university rules in Ontario, British Columbia, and Alberta and Appendix 2 for student union rules in Ontario, British Columbia, and Alberta) It is important to know whether and where you can appeal decisions. Universities and student unions have a duty to act fairly according to natural justice. Depending on *Baker’s* five factors, you could be afforded a high or low level of procedural fairness.

Step Three: Know your Remedies beyond Campus

You have exhausted all the routes available within the university with no satisfactory result. Here are some options outside the university:

Human Rights Tribunal

You can file a complaint with your provincial Human Rights Tribunal if you have been discriminated against:

1. in a specific social setting such as a university
2. on a specific ground such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, or disability.

Once you have these two elements, you have established a complaint. In Ontario, you file an application with the Human Rights Tribunal for an order under section 45.2. The Human Rights Legal Support Centre can help you complete this application. The application must be filed within a year after the incident, or if there was a series of incidents, within one year after the last incident in the series.¹⁶⁷ Under section 43(2), an application will not be thrown out without giving each party the chance to present oral arguments or without written reasons for the Tribunal's decision. Once the application is filed, it can take a year for it to be resolved. Parties have the opportunity to try and settle the application through mediation if they agree to do so.¹⁶⁸

If you are unsatisfied with the decision of the tribunal, you have the right to appeal under section 45.7(1). If you remain unsatisfied with the appeal decision, then you may apply for judicial review as stated in section 45.8.¹⁶⁹

Judicial Review of a University's Decision

A university tribunal's decision is subject to administrative law. It is usually only if all internal routes have been taken that the court will involve itself in the university's affairs through judicial review. The court's powers are limited in a judicial review as they will not establish a full trial but only ensure that the rules of natural justice were observed.

If judicial review is unavailable, you may still have legal recourse through the tort of misfeasance of public office. This tort will succeed if the following elements are proven:

1. the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer.
2. the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff.

Court Intervention and Student Unions

A student union is not subject to judicial review. The court will still intervene only if the organization has:

1. not acted in good faith and;
2. not in accord with the principles of natural justice.

If the student union is an incorporated entity, the court can intervene through the oppression remedy clause found in provincial business and corporations acts.

¹⁶⁷ "Human Rights Applications: Discrimination and Harassment" Human Rights Legal Support Centre, online: <<http://www.hrlsc.on.ca/docs/HRLSC%20PPAO%20HR%20InfoGuide%20FINAL.pdf>> at 4.

¹⁶⁸ *Ibid.* at 5.

¹⁶⁹ *Supra* note 39.

Student Union by-laws can be struck down by the court if they are enacted in bad faith. The court will apply a two-part test:

1. is the policy or by-law, on its face, unreasonable, discriminatory, or inconsistent with the objects of student union, contrary to public policy, contrary to the public interest, and contrary to the Charter of Rights and Freedoms?
2. Did the student association act in bad faith in that it abused the powers conferred on it or the by-law was so unreasonable, unfair, or oppressive that, upon any fair construction, is an abuse of the power?

Final Thoughts

Any student standing in front of a university Senate with the possibility of suspension or expulsion would be scared. Any student who is told he or she cannot express a contrary opinion or face consequences would feel oppressed. By understanding that other students across Canada are also scared and feeling oppressed and knowing your legal rights, you can continue to advocate for the cause you believe in the way that you think is most effective.

Appendix 1: University Codes of Conduct and Rules of Procedure

ONTARIO

Algoma University –

“Code of Student Conduct (Non-Academic)”

http://www.algomau.ca/uploads/file/pdf/code_of_student_conduct_non_academic_policy.pdf

“Procedures for the Code of Student Conduct (Non-Academic) Policy”

http://www.algomau.ca/uploads/file/pdf/student_conduct_code_non_academic_procedures.pdf

Brock University –

“Code of Conduct” <http://www.brocku.ca/student-discipline/code-of-conduct>

“Information on the Disciplinary Process” <http://www.brocku.ca/student-discipline/information-on-the-disciplinar>

Carleton University –

“Student Rights and Responsibilities Policy” <http://www2.carleton.ca/secretariat/policies/student-rights-and-responsibilities-policy/>

“What to do if accused” <http://www2.carleton.ca/studentaffairs/student-rights-and-responsibilities/what-to-do-if-accused/>

Lakehead University –

“Student Related: Code of Student Behaviour and Disciplinary Procedures”

<http://policies.lakeheadu.ca/policy.php?pid=60>

McMaster University –

“Student Code of Conduct”: <http://www.mcmaster.ca/policy/Students-AcademicStudies/StudentCode.pdf>

Nipissing University –

“Code of Student Conduct”: Available at Student Affairs

Queen’s University –

“Non-Academic Discipline at Queen’s” <http://www.queensu.ca/secretariat/senate/policies/nonacad.html>

Ryerson University –

“Student Code of Non-Academic Misconduct” <http://www.ryerson.ca/senate/policies/pol61.pdf>

Trent University –

“The Trent University Charter of Student Rights and Responsibilities”

<http://www.trentu.ca/studentaffairs/documents/TrentUniversityCharterofStudentRightsandResponsibilities.pdf>

University of Guelph –

“Judicial Committee: Student Information Frequently Asked Questions for Charges under Student Rights and Responsibilities”

http://www.uoguelph.ca/studentaffairs/home/documents/judicial_committee_student_information_000.pdf

“Hearing Board: Terms of Reference and Rules of Procedure”

http://www.uoguelph.ca/studentaffairs/home/documents/hearing_board_terms_reference.pdf

“Hearing Board: Student Information Frequently Asked Questions for Appeals”

http://www.uoguelph.ca/studentaffairs/home/documents/hearing_board_student_information.pdf

University of Ontario Institute of Technology –

“Student Conduct”

http://www.uoit.ca/EN/main2/about/14057/14152/Administrative_Policies/student_conduct.html

University of Ottawa –

“Declaration of Student Rights at the University of Ottawa”

http://www.uottawa.ca/governance/consultation/?page_id=17 (see side panel for table of contents)

University of Toronto –

“Code on Student Behaviour”

<http://www.governingcouncil.utoronto.ca/Assets/Governing+Council+Digital+Assets/Policies/PDF/ppjul012002.pdf>

University of Western Ontario –

“The University of Western Ontario Code of Student Conduct” <http://www.uwo.ca/univsec/board/code.pdf>

“University Discipline Appeal Committee (UDAC) Appeal Application”

http://www.uwo.ca/univsec/board/UDAC_Application.pdf

University of Windsor –

“Policy S6: Student Code of Conduct” <http://www.mcmaster.ca/policy/Students-AcademicStudies/StudentCode.pdf>

“Bylaw 31: Student Affairs and integrity”

<http://web4.uwindsor.ca/units/senate/main.nsf/982f0e5f06b5c9a285256d6e006cff78/ccdbd162d2a5ffa38525738e00581d10!OpenDocument>

York University –

Student Code of Conduct” <http://www.yorku.ca/secretariat/policies/document.php?document=124>

BRITISH COLUMBIA

Capilano University –

“Student Rights and Responsibilities” <http://www.capilanou.ca/current/policies/University-Policies/rights.html>

“Student Conduct Policy” <http://www.capilanou.ca/current/policies/University-Policies/conduct.html>

Emily Carr University of Art and Design –

“University policies and procedures” <http://www.ecuad.ca/about/governance/policies>

Kwantlen Polytechnic University –

“Bylaws and Policies” <http://www.kwantlen.ca/policies/#board>

Royal Roads University –

“Board Policies” <http://www.royalroads.ca/governance/board-policies>

“Learner Rights and Responsibilities”
https://www.royalroads.ca/sites/default/files/tiny_files/Board_Reports/Royal_Roads_University_Learner_Rights_and_Responsibilities.pdf

“Student Organization Policy”
https://www.royalroads.ca/sites/default/files/tiny_files/Board_Reports/Royal_Roads_University_Student_Organization.pdf

Simon Fraser University –

“Code of Academic Integrity and Good Conduct” <http://www.sfu.ca/policies/files/Students/S10.01.pdf>

“Principles and Procedures for Student Discipline” <http://www.sfu.ca/policies/files/Students/S10.02.pdf>

“University Board on Student Discipline” <http://www.sfu.ca/policies/files/Students/S10.03.pdf>

“Senate Committee on Disciplinary Appeals” <http://www.sfu.ca/policies/files/Students/S10.04.pdf>

Thompson Rivers University –

“Student Rights Handbook” <http://trusu.ca/dl/Advocacy-SRH-Layout.pdf>

“Board of Governors Bylaws” <http://www.tru.ca/board/bylaws.html>

“Policy Manual” <http://www.tru.ca/policy.html>

University of British Columbia –

“Guide to Student Rights and Responsibilities” – available at the AMS Ombuds Office

“Discipline for Non-Academic Misconduct”
<http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,750,0>

“Rules for President’s Advisory Committee on Student Discipline”
http://www.universitycounsel.ubc.ca/discipline/PACSD_Rules.pdf

University of Fraser Valley –

“Policies” <http://www.ufv.ca/Secretariat/policies.htm>

“Clubs and Association Funding Policy” http://www.ufvsus.ca/susfiles/SUS_ClubsPolicy.pdf

University of Northern British Columbia –

“Policies & Procedures – Student Affairs” http://www.unbc.ca/policy/category/student_affairs.html

“Recognition of a Student Government, Society or Organization at the University of Northern British Columbia”

http://www.unbc.ca/assets/policy/student_services/student_services_recognition_of_a_student_government_organization_or_society_at_unbc.pdf

University of Victoria –

“University policy manual” <http://www.uvic.ca/universitysecretary/policies/browse/>

Vancouver Island University –

“Student Code of Conduct” <http://www.viu.ca/policies/documents/procedures/32.05.001.pdf>

“Student Conduct Appeals” <http://www.viu.ca/policies/documents/procedures/32.06.001.pdf>

“Procedures” <http://www.viu.ca/policies/procedures.asp>

ALBERTA

Athabasca University –

“Non-Academic Misconduct Policy”

http://www.athabascau.ca/calendar/page11.html#non_academic_misconduct

Grant MacEwan University –

“Student Rights and Responsibilities”

<http://www.macewan.ca/web/services/ims/client/upload/E3101%20Student%20Rights%20and%20Responsibilities.pdf>

“Student Discipline”

<http://www.macewan.ca/web/services/ims/client/upload/E3102%20Student%20Discipline.pdf>

“Student Appeals”

<http://www.macewan.ca/web/services/ims/client/upload/E3103%20Student%20Appeals.pdf>

Mount Royal University –

“Code of Student Conduct”

http://www.mtroyal.ca/wcm/groups/public/documents/pdf/code_student_conduct.pdf

University of Calgary –

“Non-Academic Misconduct Policy” <http://www.ucalgary.ca/policies/files/policies/Non-Academic%20Misconduct%20Policy.pdf>

“Use of University Facilities for Non-Academic Purposes”
<http://www.ucalgary.ca/policies/files/policies/Use%20of%20University%20Facilities%20for%20Non-Academic%20Purposes.pdf>

University of Lethbridge –

“Non-academic Offenses Policy” <http://www.uleth.ca/policymanual/policyview?id=463>

Appendix 2: Student Union By-Laws, Constitution, and Rules of Procedure

ONTARIO

Algoma University Students' Union: <http://www.ausu.ca/>

"AUSU Constitution" http://www.ausu.ca/index.php?section_id=29

"By-Laws" http://www.ausu.ca/index.php?section_id=68

"Policies" http://www.ausu.ca/index.php?section_id=63

Alma Mater Society (Queen's University): <http://www.myams.org/>

"AMS Constitution" http://www.myams.org/images/stories/ams_constitution.pdf

"Non-Academic Discipline" <http://www.myams.org/society/cia/ams-non-academic-discipline>

The Brock University Students' Union: <http://www.busu.net/>

"Bylaws" <http://www.busu.net/government/legislation/bylaws>

"Operating Policies & Procedures Manual" http://www.busu.net/content/docs/policies/bod_policies.pdf

Carleton University Students' Association: <http://www.cusaonline.com/>

"Bylaws of The Carleton University Students' Association"
http://www.cusaonline.com/Downloads/bylaw_dec_09.pdf

"The Constitution of The Carleton University Students' Association"
http://www.cusaonline.com/Downloads/cusa_constitution_09.pdf

"The Policies of The Carleton University Students' Association"
http://www.cusaonline.com/Downloads/cusa_policies_2010.pdf

"Carleton University Students' Association (CUSA) By-law VIII Club and Societies Code of Conduct"
http://www.cusaonline.com/Downloads/clubs_conduct_code.pdf

"Clubs Handbook" http://www.cusaonline.com/Downloads/clubs_handbook_0910.pdf

Central Student Association (University of Guelph): <http://www.csaonline.ca/>

"Policies 2010" http://www.csaonline.ca/files/Policies/CSAPolicies_July16_2010.pdf

"By-Laws 2010" http://www.csaonline.ca/files/By-Laws/CSABylaws_April7_2010.pdf

Federation of Students of the University of Waterloo: <http://www.feds.ca/>

"Federation of Student Bylaws" <http://governance.feds.ca/system/files/2009-06-25+FEDS+Combined+Bylaws+Format+Edited.pdf>

“Federation of Students Policies”

<http://governance.feds.ca/system/files/Current+Council+Policies+April+2008.pdf>

“Student Council Procedures” <http://governance.feds.ca/system/files/2009-04-02+Combined+Council+Procedures+1-18+including+November+changes+2008.pdf>

“Board of Directors Procedures” <http://governance.feds.ca/system/files/2009-04-21+New+Board+Procedures+%2820+April+2009%29.pdf>

Lakehead University Student Union: <http://www.lusu.ca/>

“Lakehead University Student Union (LSSU) Constitution”

http://www.lusu.ca/Minutes/2009_Constitution.pdf

Laurentian University Students’ General Association: <http://www.sga-age.ca/>

“Constitution and Bylaws of the Students’ General Association of Laurentian University” http://en.sga-age.ca/index.php?section_id=23

McMaster Students’ Union: <http://www.msumcmaster.ca/home.htm>

“MSU Constitution” <https://www.msumcmaster.ca/content/documents/Link/MSU%20Constitution.pdf>

“MSU Bylaws”

<https://www.msumcmaster.ca/studentGovernment/policies/generalInformation/MSUBylaws.htm>

“MSU Operating Policies”

<https://www.msumcmaster.ca/studentGovernment/policies/generalInformation/MSUOperatingPolicies.htm>

Nipissing University Student Union: <http://www.nusu.com/>

“NUSU By-Laws” – Only accessible to registered students

Ryerson Students’ Union: <http://www.rsuonline.ca/>

“By-Laws” <http://files.cfsadmin.org/file/rsu/8692903e522325614d95b4e550a8e6b9e953f04d.pdf>

Students’ Federation, University of Ottawa: <http://www.sfuoc.ca/>

“SFUO Constitution” <http://www.sfuoc.ca/pdf/constitution/constitution.pdf>

University of Toronto Students’ Union: <http://www.utsu.ca/>

“U.T.S.U. By-Laws”

<http://files.cfsadmin.org/file/utsu/0f6ae37cfad7d32242f73a8a78b46377c39d2f89.pdf>

The University Students’ Council of The University of Western Ontario:

<http://www.usc.uwo.ca/index.asp>

“Clubs Policy” <http://www.usc.uwo.ca/westernclubs//resources/clubspolicy/>

“By-Law #1: A by-law relating to the conduct and business of the University Students’ Council”

<http://www.usc.uwo.ca/government/documents/bylaw/uscBylaws.pdf>

Trent Central Student Association: <http://www.trentcsa.ca/>

“2009-2010 By-Laws and Policies” http://www.trentcsa.ca/reports/Policy_Book_Online_Edition.pdf

University of Windsor Students’ Alliance: <http://www.uwsa.ca/>

“UWSA Constitution” <http://media.liftinflight.com/uwsa/uploads/documents/Constitution.pdf>

“Official By-Laws for the University of Windsor Students’ Alliance 2009-2010”
http://uwsa.ca/media/uploads/new_documents/by_laws_uwsa_2009_2010.pdf

Wilfred Laurier Student Union: <http://www.wlusu.com/>

“WLUSU Policy Manual”
[http://waterloo.wlusu.com/content/documents/fileItemController/WLUSU%20Policy%20Governance%20Manual%20\(10-11\).pdf](http://waterloo.wlusu.com/content/documents/fileItemController/WLUSU%20Policy%20Governance%20Manual%20(10-11).pdf)

“WLUSU Constitution”
<http://waterloo.wlusu.com/content/documents/fileItemController/WLUSUConstitution.pdf>

York Federation of Students: <http://www.yfs.ca/>

“YFS Constitution” http://www.yfs.ca/downloads/YFS_CONSTITUTION.pdf

“YFAC By-Laws” http://www.yfs.ca/downloads/YFS_Bylaw2009.pdf

Your Student Association (UOIT): <http://your-sa.ca/>

“SA By-laws” http://your-sa.ca/images/stories/pdf/bylaw/sa_bylaws0809.pdf

“SA Club Policy” http://www.your-sa.ca/images/stories/pdf/clubs/club_policy_amended_aug08_2003Edition.pdf

“SA Code of Conduct” http://your-sa.ca/images/stories/sa_code_of_conduct_0809.pdf

BRITISH COLUMBIA

AMS Student Society of UBC Vancouver: <http://www2.ams.ubc.ca/>

“AMS Constitution” http://www2.ams.ubc.ca/images/uploads/AMS_CONSTITUTION_NEW_2008.pdf

“AMS By-laws” http://www2.ams.ubc.ca/images/uploads/AMS_Bylaws_NEW_2008.pdf

“AMS Code of Procedure” http://www2.ams.ubc.ca/images/uploads/New_Code_2010_May.pdf

Capilano Students’ Union: <http://www.csu.bc.ca/>

“Constitution & Bylaws” <http://www.csu.bc.ca/constitution/>

Emily Carr Students’ Union: <http://www.emilycarrstudentsunion.ca/>

Kwantlen Student Association: <http://www.kusa.ca/>

“Constitution” <http://www.kusa.ca/files/File/Constitution1995.pdf>

“Bylaws” <http://www.kusa.ca/files/File/Bylaws2000.pdf>

“Policies” <http://www.kusa.ca/index.php?pid=146>

Northern Undergraduate Student Society (University of Northern British Columbia):

<http://nugss.unbc.ca/>

“NUGSS bylaws” http://nugss.unbc.ca/Bylaws_Oct_09.pdf

“NUGSS policy manual” http://nugss.unbc.ca/docs/Policy_Manual_Feb_2010.pdf

The Royal Roads University Student Association: <https://learner.royalroads.ca/moodle/login/index.php>
(Student access only)

“RRUSA Constitution” and “RRUSA Activities” <http://myrru.royalroads.ca/learners/learner-services/student-society>

Simon Fraser Student Society: <http://www.sfss.ca/>

“Simon Fraser Student Society Constitution and By-Laws” <http://www.sfss.ca/Library/docs/SFSS-Const-By-laws-2010.pdf>

Thompson Rivers University Students’ Union: <http://trusu.ca/>

UFV Student Union Society: <http://www.ufvsus.ca/>

“Policy and Governance Manual” http://ufvsus.ca/susfiles/SUS_Governance_01.pdf (Part One) and http://ufvsus.ca/susfiles/SUS_Governance_02.pdf (Part Two)

University of Victoria Students’ Society: <http://uvss.uvic.ca/>

“Constitution and Bylaws”
<http://uvss.uvic.ca/upload/docs/Policy%20and%20Bylaws/Constitution%20and%20Bylaws%20%28Amended%202010-02-11%29.pdf>

“Clubs Policy” [http://uvss.uvic.ca/upload/docs/Policy%20and%20Bylaws/2010-11%20Clubs%20Policy%20\(Amended%202010-06-21\).pdf](http://uvss.uvic.ca/upload/docs/Policy%20and%20Bylaws/2010-11%20Clubs%20Policy%20(Amended%202010-06-21).pdf)

ALBERTA

Athabasca University Students’ Union: <http://www.ausu.org/>

“AUSU Policies” <http://www.ausu.org/bylaws/policies.php>

“AUSU Bylaws” <http://www.ausu.org/downloads/bylaws.pdf>

Students’ Association of MacEwan –

Bylaws -

<http://www.macewan.ca/web/services/ims/client/upload/Current%20SA%20Bylaws,%20updated%20March%208,%202010.pdf>

Policies – Discipline <http://www.macewan.ca/web/services/ims/client/upload/SC%20Policy%203%20-%20Discipline%20.pdf>

Policies – Club Policies <http://www.macewan.ca/web/services/ims/client/upload/SC%20Policy%2019%20-%20Clubs.pdf>

Students' Association of Mount Royal University: <http://www.samrc.com/home.htm>

“SAMRU Bylaws” <http://www.samrc.com/content/documents/Image/governance/SAMRU%20Bylaws%20-%20Approved%20January%2026,%202010.pdf>

University of Alberta Students' Union <http://www.su.ualberta.ca/>

“Bylaws” http://www.su.ualberta.ca/student_government/rules/bylaws

“Operating Policies” http://www.su.ualberta.ca/student_government/rules/operating_policies

“Political Policies” http://www.su.ualberta.ca/student_government/rules/political_policies

University of Calgary Students' Union: <http://www.su.ucalgary.ca/>

“Constitution” http://www.su.ucalgary.ca/fileadmin/media/government/leg_docs/Constitution.pdf

“The Union Bylaw” http://www.su.ucalgary.ca/fileadmin/media/government/leg_docs/The_Union_Bylaw_-_April_2010.pdf