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April 10, 2025

By Facsimile: 250-707-0166 (27 pages)

Syilx Okanagan Nation
101-3535 Old Okanagan Hwy
Westbank, British Columbia
V4T 3L7

Attn: Chief Clarence Louie

Dear Chief Louie:

Re: Andrew Irvine et al. v. UBC
BCSC File no. VLC-S-S-252602

I am counsel of record for Andrew Irvine, Michael Treschow, Brad Epperly, Christopher Kam and Nathan Cockram, who are the Petitioners in the attached Petition.

I write in open letter to respond to the Press Release issued by Syilx Okanagan Nation Chiefs dated April 9, 2025. My clients were dismayed to read that Syilx Okanagan Nation Chiefs interpret the Petition as a challenge to Syilx Okanagan Nation claims to rights and title and as an attempt to erase Syilx Okanagan presence and rights. This is not the intention of the Petition.

The purpose of the Petition is to promote and sustain academic freedom for professors and students within UBC. In particular, the land acknowledgement aspect of the Petition is intended in part to foster academic research, learning and debate on the issue of what, if anything, supports Canadian claims to territorial sovereignty. This issue, even when stated within the narrow perspective of the law, is resistant to being reduced to the presence or absence of conquest or treaty.

Land acknowledgements, as set out in the Petition, do not merely convey that there is no treaty dealing with traditional territory. An unceded land acknowledgement conveys that the land is stolen and that Canada's claim to territorial sovereignty is not legitimate. This is a highly political claim asserting by implication that even Indigenous claims to rights and title under Canadian law are not truly legitimate as claims to Indigenous rights and title are a function of and implicitly affirm Canadian territorial sovereignty.

511-55 EAST CORDOVA STREET • VANCOUVER, BC • V6A 0A5
PHONE: 604-694-1919 • FAX: 604-608-1919
www.gratlandcompany.com *A Law Corporation

My clients do not perceive the claims of Syilx Okanagan Nation to rights and title, including to the small territory on which the UBC Okanagan campus sits, to depend on UBC making land acknowledgements. Still more, my clients do not perceive that the claims and aspirations of Syilx Okanagan Nation to cultural autonomy and political sovereignty over your historical territory and the resources within your territory turn on UBC land acknowledgements.

I should be clear that **nothing in the Petition is intended to prevent the administration of UBC from continuing to engage with Syilx Okanagan Chiefs on the path to reconciliation, from continuing to promote awareness of Syilx Okanagan history and contributions within UBC, negotiating agreements in respect of land or financial management with Syilx Okanagan Nation or from officially and formally acknowledging the rights and political existence of Syilx Okanagan Nation at administrative or governance functions**. **The purpose of the Petition is to restrict UBC administration from imposing land acknowledgements in the academic setting in a manner that restricts the academic freedom of professors and students**. It does not erase or diminish any Indigenous groups or Nations to open spaces in academia for disagreement and debate.

My clients specifically support the work undertaken by UBC to support and sustain awareness of Indigenous issues within the University, including the ongoing support for the First Nations House of Learning on the UBC Vancouver campus and the introduction this year of the Indigenous Land Stewardship degree program. These initiatives and many others enhance the pursuit of and advancement of knowledge and learning at UBC.

My clients respect and acknowledge the interest of Syilx Okanagan Nation in this Petition. Although we believe that the Petition does not challenge or diminish the interests of or presence of Syilx Okanagan Nation on the UBC campus, **we would consent to your full participation in the proceedings should you wish to participate**.

Thank you for your time and attention.

Sincerely,

Jason Gratl

Jason Gratl*

JG/jk

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY
APR 07 2025

S-252602

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ANDREW IRVINE, NATHAN COCKRAM, BRAD EPPERLY, CHRISTOPHER KAM and MICHAEL TRESCHOW

PETITIONERS

AND

UNIVERSITY OF BRITISH COLUMBIA

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

University of British Columbia
6200 University Blvd
Vancouver, British Columbia
V6T 1Z4

AND ON NOTICE TO:

Attorney General of British Columbia
c/o Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria, British Columbia
V8W 9J7

The address of the registry is:

Supreme Court of British Columbia
Vancouver Registry
800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

The petitioners estimate that the hearing of the petition will take two days.

[X] This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by

[X] the person named as petitioner in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
(b) serve on the petitioner
    (i) 2 copies of the filed response to petition, and
    (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioners is: Gratl & Company Barristers and Solicitors 511 - 55 East Cordova Street Vancouver, British Columbia V6A 0A5 Attn: Jason Gratl Fax number address for service (if any) of the petitioners: 604-608-1919 E-mail address for service (if any) of the petitioners: service@gratlandcompany.com jason@gratlandcompany.com
(2)	The name and office address of the petitioners' lawyer is: Gratl & Company Barristers and Solicitors 511 - 55 East Cordova Street Vancouver, British Columbia V6A 0A5 Attn: Jason Gratl

Claim of the Petitioners

Part 1: ORDERS SOUGHT

The Petitioners seek the following orders:

1. An order or orders pursuant to s.2 of the *Judicial Review Procedure Act,* RSBC 1996, c.241 ("*JRPA*") in the nature of prohibition, prohibiting and restraining the University of British Columbia ("UBC") from engaging in political activity within the meaning of s.66 of the *University Act*, RSBC 1996, c.468, which requires that "[a] university must be non-sectarian and non-political in principle," and, in particular, orders prohibiting and restraining the following exercises or purported exercises of statutory power, including:

    a. An order prohibiting and restraining UBC from declaring or acknowledging that UBC is on unceded Indigenous land and prohibiting UBC from requiring or encouraging other persons to declare or acknowledge that UBC is on unceded Indigenous land;

    b. An order prohibiting and restraining UBC from making statements or declarations of support or condemnation of Israel or Palestine or stating opinions on the absolute or relative morality, lawfulness or political justification of violence in Israel or Palestine; and

    c. An order prohibiting and restraining UBC from requiring expressions of agreement with, fidelity to or loyalty to diversity, equity and inclusion doctrines, or any other political beliefs, as a condition of applying for UBC faculty positions and/or as a condition of appointment as UBC faculty.

2. An order pursuant to s.2 of the *JRPA*, in nature of certiorari, quashing, setting aside and declaring to be invalid and of no force and effect the following exercises or purported exercises of statutory power by UBC:

    a. The decision or decisions to declare or acknowledge that UBC is on unceded Indigenous land, the action taken of declaring or acknowledging

that UBC is on unceded Indigenous land, and the decision or decisions to require and/or encourage other persons to declare or acknowledge that UBC is on unceded Indigenous land;

b. The decision of UBC bodies to make official statements or declarations supporting or condemning Israel or Palestine or stating opinions on the absolute or relative morality, lawfulness or political justification of violence in Israel or Palestine; and

c. The decision to impose and/or approve faculty application procedures and faculty hiring or faculty appointment criteria that require expressions of agreement with, fidelity to or loyalty to diversity, equity and inclusion doctrines, or any other political beliefs, as a condition of applying for faculty positions or as a condition of hiring or appointment of UBC faculty.

(the "Impugned Exercises of Statutory Power" or "Impugned Exercises").

3. An order in the nature of mandamus, pursuant to s.2 of the *JRPA*, requiring UBC to retract, withdraw and remove from its website or other forms of print and electronic communication within its power or control any statement or communication that articulates the Impugned Exercises of Statutory Power.

4. In respect of the orders made above, an order specifying that UBC includes the Chancellor of UBC, the President and Vice-Chancellor of UBC, the Principal and Deputy Vice-Chancellor of UBC Okanagan, the Vice-Presidents of UBC, the UBC Board of Governors and its committees, the UBC Vancouver Senate and its committees, the UBC Okanagan Senate and its committees, and all UBC faculties, schools, departments, institutes, centres, programs and other academic and administrative units, as well as their Deans, Assistant Deans, Heads, Assistant Heads and other bodies, offices, committees and administrators speaking and writing in their governance or administrative roles and capacities.

5. In respect of the orders made above, an order specifying that those speaking and writing on behalf of the University do not include professors, instructors, lecturers,

scholars, researchers, artists, performers, librarians, archivists, curators, students and other members of Convocation not holding an administrative or governance position or role within the University.

Part 2: FACTUAL BASIS

Overview

1. The *University Act*, RSBC 1996, c.468, s.66, expressly requires that "[a] university must be non-sectarian and non-political in principle." The *University Act*, and its express requirement that universities are "non-political in principle", is binding on all constituent parts of the University of British Columbia ("UBC" or the "University") enacted under the *University Act*, including its Chancellor, Board of Governors, Vancouver Senate, Okanagan Senate, its Faculties, Deans, Assistant Deans and respective committees, and other bodies, offices and committees in their administrative and governance roles.

2. Section 66 of the *University Act* is an express and specific statutory provision intended to preserve and uphold academic freedom and ensure the administrative apparatus of universities in British Columbia does not impinge upon or interfere with the academic freedom of professors, instructors, lecturers, scholars, researchers, artists, performers, librarians, archivists, curators and students who do not hold an administrative or governance position within the University. Academic freedom includes rights to pursue the evidence where it leads, to study, research, write, publish and teach without administrative interference and to engage in political discourse. The Petitioners bring this proceeding to secure the implementation of s.66 and uphold the principle of academic freedom within UBC.

3. The Petitioners assert that UBC has exercised its statutory powers in a manner that infringes the statutory requirement that it be "non-political in principle". In particular, UBC has, as detailed below, made the following decisions and exercised or purported to exercise its statutory powers to take the following actions and measures:

a. UBC has declared and/or acknowledged, orally and in writing, electronically on its website and in print media, that UBC is on unceded Indigenous land;

b. UBC has required and/or encouraged persons within its sphere of influence, including professors and students, to declare or acknowledge that UBC is on unceded Indigenous land;

c. UBC has issued and publicized declaratory statements condemning violence in Israel or Palestine and has issued and publicized opinions on the morality, lawfulness or justification of violence in Israel or Palestine; and

d. UBC has imposed and/or approved application processes for hiring faculty members and criteria for hiring or appointing faculty members that require applicants to express agreement with, fidelity to or loyalty to diversity, inclusion and equity doctrines ("DEI" or "EDI").

4. The above-noted actions and exercises or purported exercises of statutory power are contrary to s.66 of the *University Act*.

The Petitioners

5. The Petitioners are four current tenured full-time UBC faculty members ranking from Associate Professor to (full) Professor and one recent graduate from a PhD program at UBC. The Petitioners have extensive academic credentials, teaching experience, research achievements and administrative experience, and include two former University Governors.

Part 3: LEGAL BASIS

Overview

6. Section 66 of the *University Act* provides as follows:

> 66(1) A university must be non-sectarian and non-political in principle.

7. UBC's decisions and purported exercises of statutory power set out above are political in nature, and are in breach of s.66 of the *University Act* and should be set aside, quashed and corrected.

Political Declarations that UBC Lands are Unceded

8. UBC repeatedly utters political declarations that UBC lands are unceded. These declarations or "land acknowledgements" are posted to numerous pages of the UBC website. UBC includes declarations that UBC lands are unceded on official planning documents and programming material. UBC administrators, including the Chancellor of UBC, the President and Vice-Chancellor of UBC, the Principal and Deputy Vice-Chancellor of UBC Okanagan and others include declarations that UBC lands are unceded in letterheads, email signature lines, posters, banners and official communications made on behalf of UBC. Declarations that UBC land is unceded are recited in accordance with standardized wording at the commencement of UBC administrative meetings, graduate student examinations, official ceremonies and meetings of the Vancouver and Okanagan Senates and Board of Governors (collectively, the "Unceded Land Declarations").

9. The repeated official and formal declaration or assertion by and on behalf of UBC that UBC lands are on unceded Indigenous territory is a political position or political statement. The term "unceded" means, in ordinary usage, that the claim to Canadian sovereign territory is illegitimate or unethical or contrary to international law. In its ordinary and common meaning, the declaration that land is unceded is often considered synonymous or closely affiliated in meaning with the assertion that the territory of Canada is "stolen land" and that the speaker, at least to some degree, and in this respect, does not recognize Canada as a lawful or legitimate state. The use of the term "unceded" is inherently political.

10. By repeatedly asserting that UBC lands are unceded, UBC takes a political position on one side of a controversial political debate about Canada's sovereignty and the political need for or claim to Indigenous cultural autonomy and/or sovereignty. Taking the position that UBC lands are unceded puts UBC at odds with the law as

articulated by the Supreme Court of Canada in *Delgamuukw*, which finds that Canadian territory may be impressed with Indigenous rights and/or title and/or that such rights or title may be extinguished.

Delgamuukw v. British Columbia, 1997 CanLII 302 (SCC)

11. In addition to UBC repeatedly declaring in its official capacity that UBC lands are unceded, UBC repeatedly directs and encourages UBC faculty and students to declare that UBC lands are unceded by means of propagating a standard template for course syllabus containing the unceded land declaration, encouraging faculty and students to declare that UBC lands are unceded at the commencement of academic events, including research presentations, conferences, doctoral examinations and other academic and administrative meetings.

12. In the context of the administrative or official UBC declaration or UBC land acknowledgment, the assertion that UBC lands are unceded is not open to debate or contradiction. Students and faculty are not able to object to or argue against the declaration that the lands are unceded. Students and faculty are not given an opportunity to object to or disagree or argue against the declaration that the lands are unceded. In this sense, UBC's declarations that UBC lands are unceded is authoritatively and prescriptively political.

UBC Engages in Politics in relation to Israel and Palestine

13. UBC engages in political debate and positioning in respect to conflicts in Israel and Palestine. For instance, on April 24, 2024, the Okanagan Senate adopted the following resolution:

Motion Approved for Agenda Item 13

Whereas the International Court of Justice ruled on 26 January 2024 that the case made by the state of South Africa that Israeli military actions in Gaza plausibly constitute genocide, these actions including the failure to distinguish between combatants and non-combatants, the displacement of the majority of the population, the targeting of all hospitals, the targeting

and destruction of all universities, and the obstruction of humanitarian aid, among other crimes under international law;

And whereas multiple international organizations, including the World Bank on 19 March 2024, have identified that famine is imminent for more than one million Palestinians in Gaza as a result of the Israeli state's bombardment, invasion, and blockade of the territory;

Be it resolved that the Okanagan Senate:

Condemns the perpetration of genocide, and the violation of international laws pertaining to human rights; in this case the occupation, siege, and invasion of Gaza by the state of Israel;

Condemns the violent attack on Israeli nationals and Jewish persons undertaken by Hamas on 7 October 2023;

Supports all those who peacefully oppose this war, including those in Israel who have gone to the streets at great personal risk to protest the invasion; and

Asks members of the UBC community to support and strengthen ties with UBC members impacted by the crisis, and to stand with all those seeking peace and the immediate amelioration of the current crisis in Gaza.

14. In February of 2024, the Faculty of Creative and Critical Studies passed a resolution condemning Israel's conduct in Gaza. The resolution is as follows:

Motion: Faculty for Palestine

That the Faculty of Creative and Critical Studies (FCCS) supports Faculty for Palestine at UBC by endorsing the Joint Statement on Canadian Universities and Palestine against scholasticide in Palestine authored by the Palestinian-Canadian Academics and Artists Network (PCAAN) in February 2024.

Accordingly, FCCS calls on The University of British Columbia to:

- Condemn Israel's destruction of the education system in the Gaza Strip and call for an immediate ceasefire.
- Express support for Gaza's universities, staff and students.
- Review all partnerships, including research cooperation, student exchange and study abroad programs, and funding relations, with Israeli educational and other institutions. End any relation that might

be connected to 'plausibly genocidal acts' within the terms of the ICJ ruling.

- Publicly condemn discriminatory and recriminatory actions taken by Israeli universities against Palestinians and Israelis who have criticized the war in Gaza.

15. These resolutions dealing with the Israel/Gaza conflict (the "Israel/Gaza Resolutions") are nakedly political.

UBC Imposes Political EDI Criteria for Hiring Processes and Appointment Decisions

16. UBC imposes and/or requires application processes for hiring faculty members and criteria for hiring or appointing faculty members that require applicants to express agreement with, adherence to, fidelity with or loyalty to diversity, equity and inclusion doctrines and ideologies ("DEI" or "EDI"). Application processes at UBC for hiring faculty members regularly require applicants to prepare a statement showing their personal agreement with, adherence to and advancement of EDI political principles ("EDI Statement Requirement"). The EDI Statement Requirement is a standard requirement for any applicant for a faculty position to include in his or her application materials a statement identifying his or her past and intended future contributions to EDI, or words to that effect. By implication, candidates who have not contributed to EDI initiatives and do not intend to contribute to EDI initiatives are unable to apply unless they submit a deceitful statement.

17. UBC approves hiring or appointment criteria for faculty positions that include express requirements for viable candidates personally to adhere to and commit to EDI beliefs and values ("EDI Belief Requirement"). For example, a 2024 UBC Vancouver Department of Psychology job advertisement included the following EDI Belief Requirement:

> "The Department of Psychology is committed to advancing diversity, equity, and inclusion, and advancing Indigenous priorities in accordance with a 5-year strategic growth and hiring plan (see https://psych.ubc.ca/edi). As one part of the initiative, we are committed to ongoing hiring of new faculty members *who share a commitment to our departmental values of equity,*

> *diversity, inclusion, and justice*, including expanding our departmental diversity in the broadest sense." (emphasis added)

18. Similarly, a 2024 UBC Okanagan Faculty of Applied Sciences advertisement for a faculty position in Civil Engineering approved by UBC included the following EDI Belief Requirement:

> "Our work is shaped by our values: professionalism and integrity, scholarship and teaching excellence, commitment to students, partnerships and collegiality, initiative, innovation, and willingness to change, and community, the environment, and sustainability. We believe that equity, diversity, inclusion, and Indigenous reconciliation support these values, and so we foster them in our students, staff, and faculty. As such, applicants for our positions *must strongly commit to these values*. To learn more about these values, visit https://apsc.ubc.ca/EDI and https://ok.ubc.ca/about/indigenous-engagement/" (emphasis added).

19. The EDI Belief Requirements and EDI Statement Requirements (the "EDI Hiring Requirements") are political in nature. EDI principles or values are regularly understood to include a commitment to the political value of equality of outcome (rather than equality of opportunity), and are regularly understood to entail a view of politics and economy that believes race, gender and ethnicity are fundamental categories that are indispensable to the achievement of justice for individuals, groups and society at large. EDI principles, beliefs and values are informed by critical race theory and include the belief that individuals, institutions and societies are inherently patriarchal, colonialist and racist. To impose EDI Hiring Requirements is to require faculty applicants to expressly commit to a set of specific political beliefs as a condition of employment.

Analysis

20. The Unceded Land Declarations, the Israel/Gaza Resolutions and the EDI Hiring Requirements (the "Impugned Actions") violate UBC's statutory requirement under s.66 of the *University Act* to remain "non-political in principle". The Petitioners say that s.66 of the *University Act* is a broad provision that prohibits any university bound by the Act from taking or pursuing political positions.

21. In violating s.66 of the *University Act*, it is the Petitioners' position that UBC effectively generates political pressure upon the University's professors, instructors, lecturers, scholars, researchers, artists, performers, librarians, archivists, curators and students who are or may be reasonably apprehensive that appointments, promotions, and other opportunities or forms of advancement may be unavailable to anyone who fails to agree publicly with a political position advanced by the University.

22. The comprehensive and modern principle of statutory interpretation is as follows:

> [T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> *Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC) at para.21

23. The *Interpretation Act,* RSBC 1996, c.238 requires s.66 of the *University Act* to be construed "as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its object".

> *Interpretation Act,* RSBC 1996, c. 238, s.8

24. The first step in the modern approach is to examine the text of s.66(1).

> *British Columbia Human Rights Tribunal v. Schrenk,* 2017 SCC 62 at para 32
> *Manns v. Vancouver Island Health Authority,* 2024 BCCA 110 at para 15

25. Section 66(1) requires UBC to be "non-political in principle":

> 66 (1) A university must be non-sectarian and non-political in principle.
>
> (2) Despite subsection (1), a theological college incorporated in British Columbia may be affiliated with a university under a resolution or order made by the senate and approved by the board.
>
> (3) An incorporated theological college affiliated with a university may, despite that affiliation, have power to confer and grant degrees in theology, including honorary degrees.
>
> (4) Despite any other provisions of this Act, an affiliated college may

> (a) make provisions it considers proper in regard to religious instruction and religious worship for its own students, and
>
> (b) require religious observance as part of its discipline.

26. "Non-political" is not further defined and does not appear elsewhere in the *University Act*. The ordinary meaning of a provision or phrase refers to "the natural meaning which appears when the provision is simply read through as a whole". In other words, it is the "reader's first impression meaning".

> *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association,* 1993 CanLII 31 (SCC) at p 735
> *A.T. v. British Columbia (Mental Health Review Board),* 2023 BCCA 283 at para 43

27. The ordinary meaning of "non-political" is the antonym of "political". The provision should be interpreted to mean that the University must not be political in principle.

28. There is no singular dictionary or common definition of "non-political", "political" or "politics". The term "political" is a broad one embracing various common meanings, including the policies and ideals of political parties, governance of the state and its relationship to citizens or subjects, and political ideologies that are associated with certain political structures, orders and points of view. The broad general or common meaning of the word "political" and the inclusion of the term "in principle" supports a broad reading of the term "political", which would imply a broad restriction on the conduct of the University.

29. "Non-political" is situated next to "non-sectarian". The majority of s.66 addresses sectarianism and how theological colleges affiliated with the University may impose sectarian requirements. Subsections (2) to (4) permit affiliated theological colleges to impose sectarian interests, including religious doctrine, on students. Subsection (1) conversely prohibits sectarianism within the University itself. There is no narrowing or specificity; the provision clearly is requiring a broad prohibition on all things sectarian (including actions, statements, orders and commitments). In parallel, "non-political" broadly prohibits all things political (including actions, statements, orders and commitments).

30. Cases in the context of criminal prosecutions support a broad ordinary meaning of the term "political". Cases in the context of human rights similarly support a broad meaning of the word "political". Cases dealing with freedom of expression generally accord broad protection to political speech.

> *R. v. Cawthorne*, 2016 SCC 32 at para 27
> *Taman v. Canada (Attorney General)*, 2017 FCA 1 at para 9
> *Bratzer v. Victoria Police Department*, 2016 BCHRT 50

31. The "context and purpose" of the *University Act* supports the proposition that a broad interpretation of the term "political" coheres with the greater purpose of the University. Attending to the context and purpose of s.66(1) reflects the need to "approach statutory language in the manner that best reflects the underlying aims of the statute" such that the interpretation of s. 66(1) is harmonious "with the object of the Act and the intention of Parliament".

> *Manns, supra,* at para 176.
> *Schrenk, supra,* at para 50

32. Section 47 of the *University Act* sets out its powers and purposes as follows:

> 47(1) In this section, "university" means a university named in section 3 (1).
>
> (2) A university must, so far as and to the full extent that its resources from time to time permit, do all of the following:
>
> > (a) establish and maintain colleges, schools, institutes, faculties, departments, chairs and courses of instruction;
> >
> > (b) provide instruction in all branches of knowledge;
> >
> > (c) establish facilities for the pursuit of original research in all branches of knowledge;
> >
> > (d) establish fellowships, scholarships, exhibitions, bursaries, prizes, rewards and pecuniary and other aids to facilitate or encourage proficiency in the subjects taught in the university and original research in all branches of knowledge;

> (e) provide a program of continuing education in all academic and cultural fields throughout British Columbia;
>
> (f) generally, promote and carry on the work of a university in all its branches, through the cooperative effort of the board, senate and other constituent parts of the university.

33. The Petitioners place emphasis on the statutory role of the University to provide instruction in all branches of knowledge and to pursue research in all branches of knowledge. Effective instruction and research in turn require that professors, instructors, lecturers, scholars, researchers, artists, performers, librarians, archivists, curators and students all have the academic freedom to carry out their work. The Petitioners say that the term "political" in s.66 must be interpreted consistently with s.47, such that the University and its administrative components are prohibited from undertaking political activities that are inconsistent with the academic freedom necessary for instruction, research and the pursuit of knowledge. In enacting s.66 of the *University Act*, the legislature recognized that political (and religious) activity on the part of the university administration risks stifling the pursuit of research and instruction in all branches of knowledge.

34. The term "political" should be interpreted in respect of the *Charter* values and principles. Freedom of expression cases decided pursuant to s.2(b) of the *Charter* place political speech at the heart of democracy. The following cases are exemplary:

> "Political expression contributes to our democracy by encouraging the exchange of opposing views."
>
> *Saskatchewan (Human Rights Commission) v. Whatcott,* 2013 SCC 11, at para.117
>
> "The right of the people to discuss and debate ideas forms the very foundation of democracy."
>
> *Harper v. Canada (A.G.),* 2004 SCC 33, at para.12
>
> "... full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions ... This, in turn, ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens"

Figueroa v. Canada (A.G.), 2003 SCC 37, at para.28.

35. Academic freedom is a "critically important value in a free and democratic society" and is the "essence of a university". In *Grant,* the SCC stated that the "free exchange of ideas is an 'essential recognition of the search for the truth'". This "'marketplace of ideas'...extends beyond the political domain to any area of debate where truth is sought through the exchange of information and ideas".

Grant v. Torstar Corp, 2009 SCC 61 at para 49
Harrison v. University of British Columbia, 1988 CanLII 183 (BCCA) at para 16

36. The academic freedom of individual professors, instructors, lecturers, scholars, researchers, artists, performers, librarians, archivists, curators and students is closely linked to freedom of expression. Academic freedom must protect all forms of knowledge production, especially "unpopular or even offensive expression". The Alberta Court of Appeal put the connection in the following terms:

> [115] Academic freedom and freedom of expression are inextricably linked. There is an obvious element of free expression in the protection of academic freedom, whether limited to the traditional conception of academic freedom as protecting the individual academic professional, or applied more broadly to promote discussion in the university community as a whole. Interestingly, the protection of free speech on campus is not universally seen as a threat to academic freedom. The United States Supreme Court has linked the two concepts, noting that:
>
> > ... state colleges and universities are not enclaves immune from the sweep of the First Amendment. ... the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. ... The college classroom, with its surrounding environs, is peculiarly the 'marketplace of ideas', and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding academic freedom.: *Healy v James*, 408 U.S. 169 (1972) at 180.
>
> [116] The United Kingdom has also recognized the obligation of universities to promote freedom of speech on campus. The *Education (No. 2) Act 1986* imposes an obligation on universities and colleges to take the steps that "are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the

> establishment, and for visiting speakers": section 43(1), quoted in Barendt, 2005, at 501.
>
> [117] In my view, there is no legitimate conceptual conflict between academic freedom and freedom of expression. Academic freedom and the guarantee of freedom of expression contained in the *Charter* are handmaidens to the same goals; the meaningful exchange of ideas, the promotion of learning, and the pursuit of knowledge. There is no apparent reason why they cannot comfortably co-exist. That said, if circumstances arise where these values actually collide, a section 1 analysis would be required to properly balance them. That circumstance does not arise in this case.
>
> *Pridgen v. University of Calgary,* 2012 ABCA 139 at para 115
> *R. v. Sharpe,* 2001 SCC 2 at para 21

37. According statutory protection to the political speech of professors, instructors, lecturers, scholars, researchers, artists, performers, librarians, archivists, curators and students within the University accords with the societal values underlying the right to free expression in Canada. In *Irwin Toy*, the Supreme Court of Canada set out the following principles:

> We have already discussed the nature of the principles and values underlying the vigilant protection of free expression in a society such as ours. They were also discussed by the Court in *Ford* (at pp. 765-67), and can be summarized as follows: (1) seeking and attaining the truth is an inherently good activity; (2) participation in social and political decision-making is to be fostered and encouraged; and (3) the diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed. In showing that the effect of the government's action was to restrict her free expression, a plaintiff must demonstrate that her activity promotes at least one of these principles.
>
> *Irwin Toy Ltd v. Quebec (AG)*, [1989] 1 S.C.R. 927

38. The "meaningful exchange of ideas, the promotion of learning, and the pursuit of knowledge" discussed in *Pridgen*, which is essential for the academic work of professors, instructors, lecturers, scholars, researchers, artists, performers, librarians, archivists, curators and students can be carried out only with a broad and vigorous protection of individual academic freedom.

39. The broad and vigorous protection afforded to academic freedom is in turn ensured only through the strict adherence of the university to s.66(1) of the *University Act* that the university "be non-sectarian and non-political in principle".

40. A narrow and less vigorous adherence to s.66(1) would allow the university to potentially diminish academic freedom throughout the university, either intentionally or through neglect. The diminishment of academic freedom will:

    a. Effectively erase the distinction between academic work and political advocacy within the university;

    b. Make it increasingly difficult for professors, instructors, lecturers, scholars, researchers, artists, performers, librarians, archivists, curators and students to carry out their academic work;

    c. Tarnish the reputation of the university as a place committed to integrity, truth-seeking and honest inquiry in teaching, research and scholarship; and

    d. Contradict the object and purpose of the *University Act* itself.

41. The Petitioners say that the Impugned Actions have adverse effects on their academic freedom and entitlements as members of faculty. UBC's official declarations that UBC lands are unceded inhibits free inquiry, discussion, lecture and debate of the scope of Indigenous political rights in Canada. Persons wishing or intending to articulate the position that the Musqueam and/or Okanagan people effectively ceded their lands or that Musqueam and/or Okanagan rights or title have been fully or partially extinguished can reasonably conclude that their political views or legal opinions are not welcome at UBC.

42. Similarly, the EDI Hiring Requirements imposed by UBC effectively prohibit the appointment to faculty of any person, however qualified, who does not personally support and uphold EDI principles and values. A person, for example, who took the political position, on the basis of equality of opportunity, that all hiring of faculty should be done on the basis of merit, would be prevented from applying for a faculty

position and prevented from being appointed as faculty. A critic of critical race theory, for example, would be ineligible for appointment as faculty and would be deterred from exercising their entitlement to apply for a position. In the case of the Petitioner Nathan Cockram, Dr. Cockram was effectively excluded from applying for or being appointed to otherwise open UBC faculty positions by the EDI Hiring Requirements.

43. The long-term effect of EDI Hiring Requirements will be to continue to create a political intellectual vacuum at UBC in the space that would otherwise be opposed to or politically neutral in respect of DEI and DEI principles and values. Indeed, it is at least arguable that this is the intended effect of UBC's political hiring restrictions.

44. UBC political criticism of Israel and Hamas restricts contrary expression by students and faculty alike. Any student or faculty member who wanted to express the view that Israel's conduct complies with international law and/or is politically or morally justified, or that Hamas' attack on Israeli citizens and armed forces complies with international law and/or is politically or morally justified may well be inhibited by UBC's official political position on the issue. UBC's declaratory political positioning inhibits expression of opinion on campus, or inhibits the range of permissible expression.

Remedies

45. The Petitioners seek remedies pursuant to the *JRPA* in the nature of prohibition, mandamus and certiorari. Section 2(2) of the *JRPA* provides as follows:

> (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:
>
> (a) relief in the nature of mandamus, prohibition or certiorari;
>
> (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Certiorari

46. The Petitioners seek an order in the nature of certiorari quashing the decisions of UBC and its administrative and governance units to declare that UBC lands are unceded Indigenous lands and requiring and suggesting that students and faculty members declare that UBC lands are unceded Indigenous lands, quashing any criteria for faculty position applications and appointments that require adherence to political DEI values or doctrines and quashing the declarations made in February and April of 2024 in respect of Israel/Gaza.

47. Policy decisions may be, and frequently are, subject to judicial review, particularly where they have a constitutional dimension. There is no general bar on an application for judicial review of policy decisions. The Court of Appeal characterized the remedy as follows in *Nova-BioRubber*:

> [52] The remedy of *certiorari* is historically broad in scope. *Certiorari* is available as a general remedy for the supervision of public bodies with powers to "decide any matter affecting the rights, interests, property, privileges, or liberty of any person": *Martineau v. Matsqui Disciplinary Bd.*, 1979 CanLII 184 (SCC), [1980] 1 S.C.R. 602 at 628. It is open to the court on a petition seeking relief in the nature of *certiorari* to quash the decision, and remit the matter to the decision maker with an order in the nature of *mandamus* directing reconsideration: *Canadian Airlines International Ltd v. Canadian Air Line Pilots Assn.* (1997), 1997 CanLII 3823 (BC CA), 39 B.C.L.R. (3d) 131 (C.A.) at para. 73.

Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia, 2022 BCCA 247 paras.52 and 57

Gibbons v. Comox Valley (Regional District), 2024 BCSC 2141, para. 56-63

48. The Petitioners say that the criteria for an order in the nature of certiorari are met.

Mandamus

49. The Petitioners seek an order in the nature of mandamus in respect of its statutory duty to refrain from political activity. In particular, the Petitioners seek the following orders:

a. an order requiring UBC to remove assertions that UBC lands are "unceded" from its website, internal guidance documents and official communications on behalf of UBC;

b. an order requiring UBC to remove adherence to EDI values and requirements to require applicants to make EDI adherence statements as a condition of applications for faculty positions; and

c. an order requiring UBC to retract the political declarations made in April of 2024 and February of 2024.

50. Mandamus is an extraordinary remedy used to secure the performance of a public duty. The duty must be non-discretionary, the right sought to be protected must be clear and the order should not be granted in doubtful cases. The criteria for issuing an order of mandamus are as follows:

> [39] *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742, 1993 CanLII 3004 (C.A.) [*Apotex*], is a leading case on *mandamus*. Justice Levine helpfully distills the Federal Court of Appeal's analysis in *Paldi Khalsa Diwan Society v. Cowichan Valley (Regional District)*, 2014 BCCA 335 [*Cowichan Valley*]:
>
> > [56] The principles applicable to a claim for *mandamus* relief were summarized by the Federal Court of Appeal in *Apotex Inc. v. Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 F.C. 742 at 766-769 (citations omitted):
> >
> > 1. There must be a public legal duty to act.
> >
> > 2. The duty must be owed to the applicant.
> >
> > 3. There is a clear right to performance of that duty, in particular:
> >
> > (a) the applicant has satisfied all conditions precedent giving rise to the duty;
> >
> > (b) there was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a

subsequent refusal which be either expressed or implied, e.g. unreasonable delay;

4. Where the duty sought to be enforced is discretionary, the following rules apply:

(a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as "unfair", "oppressive" or demonstrate "flagrant impropriety" or "bad faith";

(b) *mandamus* is unavailable if the decision-maker's discretion is characterized as being "unqualified", "absolute", "permissive" or "unfettered";

(c) in the exercise of a "fettered" discretion, the decision-maker must act upon "relevant", as opposed to "irrelevant", considerations;

(d) *mandamus* is unavailable to compel the exercise of a "fettered discretion" in a particular way; and

(e) *mandamus* is only available when the decision-maker's discretion is "spent"; i.e., the applicant has a vested right to the performance of the duty.

5. No other adequate remedy is available to the applicant.

6. The order sought will be of some practical value or effect.

7. The Court in the exercise of its discretion finds no equitable bar to the relief sought.

8. On a "balance of convenience" an order in the nature of *mandamus* should (or should not) issue.

Rogers Communication Inc. v. British Columbia (Assessors of #01, 08, 09, 10, 11, 14, 15, 20, 22, 23, 45, 50 and 53), 2022 BCSC 1688 at para.39

51. The Petitioners say that the criteria for orders in the nature of mandamus are met.

Prohibition

52. The Petitioners seek a remedy in the nature of prohibition pursuant to the *JRPA*. In particular, the Petitioners seek a remedy prohibiting UBC from making or requiring

others to make declarations that UBC lands are unceded Indigenous lands, from imposing adoption of DEI doctrines or beliefs as hiring or appointment criteria for faculty positions and from making political declarations dealing normatively with Israel and/or Hamas.

53. Orders of prohibition are intended to prevent proceedings or orders from being made. Here, an order of prohibition is appropriate because UBC has a pattern of engaging in the Impugned Actions.

The Redeemed Christian Church of God v. New Westminster (City), 2021 BCSC 1401, at para. 73 (rev'd on other grounds 2022 BCCA 224)

54. The Petitioners say that the criteria for an order in the nature of probation are established.

. Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Andrew Irvine, to be filed;
2. Affidavit #1 of Nathan Cockram, to be filed;
3. Affidavit #1 of Brad Epperly, to be filed;
4. Affidavit #1 of Christopher Kam, to be filed;
5. Affidavit #1 of Michael Treschow, to be filed.

Date:

Signature of lawyer for Petitioners
Jason Gratl
Gratl & Company
Barristers and Solicitors
511-55 Cordova Street East
Vancouver, British Columbia
V5A 0A5

Order made
[ ] in the terms requested in paragraphs _____ of Part 1 of this petition
[ ] with the following variations and additional terms:

_____

_____

_____