Justice Centre
for Constitutional Freedoms

October 30, 2017

VIA EMAIL: clubs@sfuo.ca

Constitutional Committee of the Board of Administration
Student Federation of the University of Ottawa
07 – 85 University Private (University Centre)
Ottawa, ON K1N 8Z4

Dear Committee Members,

Re: Unlawful revocation of club status of uOttawa Students for Life

We write on behalf of the students of uOttawa Students for Life ("SFL"), a campus club formerly registered with the Student Federation of the University of Ottawa ("SFUO").

On Friday, October 13, 2017, SFL received an email from the SFUO notifying SFL that it had been approved as a Club by the SFUO. However, one week later, on Friday, October 20, 2017, SFL received an email from the SFUO stating that SFL's club status had been removed from the SFUO Clubs System (the "Decision").

As Committee Members, you are responsible to ensure that the SFUO does not violate its legal obligations, or the legal rights of students. The Decision and other actions taken by SFUO described below violate SFL members' freedom of expression and association.

Relevant Facts

SFL is a human rights club at the University of Ottawa. It has been a registered campus club for the past 10 years. During this time, SFL members have peacefully held events and shared their views on life issues. SFL seeks to promote the value of all human life from conception to natural death, and engages other students in discussion and debate, consistent with the purpose of the university.

Within the first two months of the 2017-18 academic year, SFL has been the subject of censorship perpetrated by the SFUO on two separate occasions.

Tabling event

First, on Thursday, September 28, 2017, an executive of the SFUO ordered SFL club members to stop tabling in the Jock Turcot University Centre on campus. This occurred during Clubs Week, after SFL booked space through the *Clubs Week* Doodle page. SFL had been there for approximately 45 minutes, without incident, when SFUO VP Equity, Leila Moumouni-Tchouassi

approached SFL members and stated that they had to immediately pack up and leave. Ms. Moumouni-Tchouassi stated that SFUO had received complaints about SFL, although she did not specify the nature or quantity of the alleged complaints. Ms. Moumouni-Tchouassi proceeded to inform the SFL members that their club went against SFUO policy, although she failed to cite or produce a specific policy, implying that SFL's views on life issues could not be expressed there.

Ms. Moumouni-Tchouassi threatened to call University of Ottawa Protection Services if SFL members did not leave the Jock Turcot University Centre. The SFL members then left, and were prevented by Ms. Moumouni-Tchouassi from tabling for the majority of the time that had been booked.

Removal of club status

Second, SFUO arbitrarily revoked SFL's club status only a week after it had reapproved SFL's status for the 2017-2018 school year. On October 13, 2017, SFL received an email from Linda Lacombe, via the clubs@sfuo.ca email address, stating, in part, "This message is just to inform you that your club has been approved."

Then, on October 20, 2017, SFL received an another email from "clubs@sfuo.ca", this time unsigned, stating:

> This email is to inform you of your club's removal from the SFUO clubs system. This decision was made due to the ways in which your mandate is in contention with the SFUO's principles. If you have any questions, please feel free to get in contact with the SFUO Club Committee through clubs@sfuo.ca, and if you wish to appeal this decision the Clubs Committee will put you in contact with the Constitutional Committee of the Board of Administration.

Thus, SFUO has revoked SFL's club status on the basis of SFL's "mandate" being in "contention" with unspecified SFUO "principles". Recognition of club status from the SFUO is crucial for a student group to engage with other students at the University of Ottawa. The Decision discriminates against SFL based on its pro-life opinions and beliefs. This decision violates the principles of natural justice, SFUO's own Constitution and policies, and the fundamental Canadian values of freedom of expression and association, which are crucially important at academic institutions.

Rights of Students for Life

Freedom of expression is not merely an aspiration or ideal, it is a legal right held by students at the University of Ottawa, including SFL members.

In *Wilson v University of Calgary,* the Court set aside as unreasonable the university's decision to find students guilty of non-academic conduct for having peacefully expressed pro-life opinions on campus. The court held that the university had failed to properly take into account students' expressive rights and the "nature and purpose of a university as a forum for the expression of

differing views":

> Members of the University community expect to be able to engage in the exchange of ideas and open discourse. Mr. Hickie's reasons fail to demonstrate that he took into account the nature and purpose of a university as a forum for the expression of differing views. Nor do they demonstrate that any prior attempt to balance *Charter* values by interfering "no more than necessary" was reasonably undertaken. Neither Ms. Houghton's nor the Appeal Boards' decisions demonstrate that due regard has been given to the importance of the expressive rights and Mr. Hickie's conclusion to the contrary is unreasonable.[1]

Apart from the *Canadian Charter of Rights and Freedoms,* freedom of expression must be respected at educational institutions:

> Freedom of expression is not, however, a creature of the *Charter*. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society.[2]

Further, the freedom of expression "protects the right to receive expressive material as much as it does the right to create it".[3]

Public Discussion of Abortion is a Recognized Right in Canada

The Decision based on SFL's mandate is clearly directed at discouraging SFL's expression of its beliefs and opinions on abortion and other life issues.

The Supreme Court of Canada held in *R. v. Morgentaler* that the protection of unborn human life is a valid legal objective that "hangs in the balance" in the shaping of public policy about abortion,[4] that there is a "public interest in the protection of the unborn",[5] that the state has a "compelling legal interest in the protection of the foetus,"[6] and that the "protection of foetal interests by Parliament is also a valid governmental objective".[7]

In *Winnipeg Child and Family Services (Northwest Area) v G(DF)*, the Supreme Court stated that the resolution of the debate about the personhood of the unborn child is "fundamentally normative" and must be resolved by bodies other than courts based on the open consideration of "broad social,

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[1] 2012 ABCA 139 [*Wilson*] at para 163.
[2] *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 12 [emphasis added].
[3] *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 SCR 1120 at paras 40-41 citing *Edmonton Joumal v Alberta (Attomey General)*, [1989] 2 SCR 1326 at pp 1339-1340.
[4] [1988] 1 SCR 30, at p 110-114; 123-28 (per Beetz and Estey JJ).
[5] Ibid. at p 146 (per McIntyre and LaForest JJ).
[6] Ibid at p 183 (per Wilson J).
[7] Ibid at p 75 (per Dickson CJ and Lamer J).

political, moral and economic choices".[8] Indeed, courts affirm that "the importance of communicating those ideas and beliefs [about the "value of human life" and "the debate on abortion"] lies at the 'very heart of freedom of expression'."[9]

Difficult though some may find the abortion issue, there must be room for free and open discussion about the nature of unborn human life, and about whether and to what extent that life should be valued and protected within our culture and our legal system. Public educational institutions ought to be a *locus* of peaceful, vigorous and provocative debate on so important an issue.

Peaceful, public and vigorous pro-life advocacy is just as entitled to protection under the fundamental Canadian value of free expression as is pro-choice advocacy.

The Decision violates SFUO's legal obligations

No rule, policy or by-law grants the SFUO authority to withhold club recognition based on the political, philosophical or moral opinions of club members. In fact, the SFUO Constitution's "Statement of Principles" mandates that the SFUO, among other things, must aim to "establish a framework whereby its members can share experiences, skills and ideas, communicate, and exchange information and debate".

Consequentially, the pro-life views of SFL do not contradict any SFUO principles. Rather, the SFUO policies impose obligations on the SFUO to foster an environment that is conducive to the free exchange of ideas and intellectual diversity at the University of Ottawa. However, through its Decision to strip SFL of its club status, certain SFUO executive(s) have instead imposed their own views on abortion as a pre-requisite for club status recognition. The Decision is therefore outside the mandate of the SFUO, and *ultra vires.*

Further, the Decision is particularly egregious in light of the fact that SFUO membership is mandatory for all University of Ottawa undergraduate students. In an authoritarian fashion, the SFUO has imposed one particular ideological viewpoint on students, and punishes diverse opinions and beliefs with the revocation of club status.

The Decision of the SFUO to remove SFL as a recognized club in the SFUO Clubs System violates the policies and principles of the SFUO and disregards the values of freedom of expression and association, which should permeate every academic institution.

Student associations should support free speech and vigorous debate, not attempt to muzzle it. As John Stuart Mill stated, "To refuse a hearing to an opinion, because they are sure that it is false, is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility". As stated in a case upholding the right of a non-student to distribute "graphic anti-abortion" materials at a university campus:

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[8] *Winnipeg Child and Family Services (Northwest Area) v G(DF)*, [1997] 3 SCR 925 at para 12, citing *Tremblay v Daigle*, [1989] 2 SCR 530.
[9] *Wilson* at para 157, quoting *R v Spratt*, 2008 BCCA 340 at paras 26-27.

> Does anyone actually expect to attend a university campus and encounter only the ideas they already embrace? Are only select viewpoints now permissible on our university campuses? John Stuart Mill in his essay "On Liberty" opined that "he who knows only his own side of the case, knows little of that."[10]

Conclusion

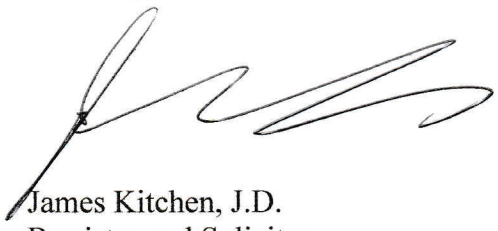
As the Constitutional Committee of the Board of Administrators for the SFUO, you have a legal duty not to permit continued violations of students' legal rights.

As an organization representing the interests of a diverse student body, the SFUO cannot allow some peoples' intolerance for different opinions to brand the SFUO as an entity that engages in discrimination based on belief. To do so would violate the foundational values of any academic institution, and the fundamental values of freedom of expression and freedom of association that define who we are as Canadians.

We demand that the Constitutional Committee of the Board of Administration of the SFUO exercise its authority to correct the unlawful Decision, and that the SFUO return club status to SFL and its position in the SFUO Clubs System no later than November 3, 2017.

Govern yourselves accordingly.

Sincerely,



James Kitchen, J.D.
Barrister and Solicitor
Justice Centre for Constitutional Freedoms
jkitchen@jccf.ca

Enclosures

c.c. Hadi Wess, SFUO President
Leila Moumouni-Tchouassi, SFUO VP Equity
Kathryn LeBlanc, SFUO VP Services & Communications
Axel Gaga, SFUO VP University Affairs

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[10] *R v Whatcott*, 2012 ABQB 231 at para 33.