



No. 10 1936
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

ANASTASIA PEARSE, on her own behalf and on behalf of the UNIVERSITY
OF VICTORIA YOUTH PROTECTING YOUTH

PETITIONERS

AND:

UNIVERSITY OF VICTORIA STUDENTS' SOCIETY

RESPONDENT

PETITION TO THE COURT

THIS IS THE PETITION OF:

Anastasia Pearse, on her own behalf and on behalf of
University of Victoria Youth Protecting Youth
c/o Arvay Finlay
1350 - 355 Burrard Street
Vancouver BC V6C 2G8

ON NOTICE TO:

University of Victoria Students' Society
Student Union Building
University of Victoria
PO Box 3035
Victoria BC V8W 3P3

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the petitioner applies to court for the relief set out in this petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the petitioner may continue this application without further notice.

TIME FOR APPEARANCE

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this Petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, where the time for appearance has been set by order of the court, within that time.]

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance:

- (a) deliver to the petitioner
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each affidavit on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each affidavit on which you intend to rely at the hearing.

(1) The address of the registry is:	850 Burdett Avenue Victoria BC V8W 1B4
(2) The ADDRESS FOR DELIVERY is:	Arvay Finlay Barristers 1350 – 355 Burrard Street Vancouver BC V6C 2G8
	Fax number for delivery (if any): 604.687.1941

(3) The name and office address of the petitioners' solicitor is:

Joseph J. Arvay, Q.C.
Arvay Finlay
Barristers
1350 – 355 Burrard Street
Vancouver BC V6C 2G8

The petitioners apply to this Court for:

1. an order or declaration that the respondent's past and current refusals to fund and/or ratify the University of Victoria Youth Protecting Youth ("YPY") were and are unlawful.
2. an order that the respondent shall grant YPY funding and ratification forthwith;
3. an order enjoining the respondent from revoking or refusing such funding or ratification in the future so long as the YPY continues to operate in the future as it has in the past and to the present;
4. an order that the respondent shall pay to YPY the sum of all funds refused since October 2008 to be deposited in YPY's Trust Account;
5. an order quashing the respondent's amendments to the UVSS's *Policy Manual – Board of Directors Policy* dated April 21, 2010 (the "Amendments");
6. such ancillary or consequential directions as this Honourable Court considers necessary; and
7. costs.

The petitioners will rely on:

1. the *Society Act*, R.S.B.C. 1996, c. 433 [*Society Act*], ss. 4(3), 32 and 85;
2. the *University Act*, R.S.B.C. 1996, c. 468 [*University Act*];
3. the University of Victoria Students' Society *Constitution and Bylaws*;
4. the *University of Victoria Students' Society Policy Manual Board of Directors Policy*;
5. the University of Victoria Students' Society *Terms of Reference Policy*; and
6. the *Canadian Charter of Rights and Freedoms*.

At the hearing of this petition will be read Affidavit #1 of Anastasia Pearse, sworn April 30, 2010, a copy of which is served herewith.

The facts upon which this petition is based are as follows:

1. The respondent, the University of Victoria Students' Society (the "UVSS") is a corporation pursuant to the *Society Act*. UVSS may be sued in its corporate name pursuant to s. 4(3) of the *Society Act*.
2. UVSS is the sole representative organization for the entire student body at the University of Victoria (the "University"). UVSS is a member of the Canadian Federation of Students. UVSS is governed by an elected Board of Directors (the "Board") consisting of four executive directors, eleven directors at large, and five constituency representatives. Directors at Large and Executive Directors are elected by the student body. Constituency Directors are elected by the groups they represent. All registered undergraduate students at the University are mandated to be members of the UVSS and must pay annual student fees which are collected by the University along with tuition and other fees pursuant to s. 27.1 of the *University Act*.
3. UVSS offers various services to students including the ratification of clubs. Club status provides free rooms for activities, access to audio-visual equipment, permits fund-raising activities, and allows the clubs to put up posters in UVSS controlled facilities or venues.
4. Clubs Council is a standing committee of UVSS. The Director of Services is the Chair of Clubs Council. Members include one director elected by the Board, one representative of the graduate student society, and one representative from each active UVSS club. Clubs Council assists the UVSS Director of Services in the administration of UVSS clubs. Clubs Council has the following duties:
 - a. assist the Director of Services in their duties as chair of the committee;
 - b. allocate and distribute funds to clubs subject to approval by the Board;
 - c. review the constitution, financial practices and membership standing of UVSS clubs;
 - d. recommend the ratification of new clubs to the Board;
 - e. review and recommend changes to clubs policy; and
 - f. carry out all other duties as directed by the Board.
5. *UVSS Policy Manual Board of Directors Policy, Part III ("Clubs Policy")* provides a complete code for conditions for club ratification. Clubs must:
 - a. have a constitution that complies with clubs policy set out in Part III of the Board of Directors Policy Manual and is approved by Clubs Council and ratified by the Board of Directors;
 - b. complete a "Club Verification Form" for each semester of activity;

- c. submit a report of activities each active term to the Director of Services, which includes any constitutional changes;
 - d. submit a copy of the membership list and each member's status (member/non-member) to the Director of Services annually;
 - e. allow any interested student to join the club;
 - f. have at least ten active members, no less than two thirds of whom are University of Victoria students;
 - g. have at least three executive members, two of whom must be University of Victoria students, elected by the membership of the club; and
 - h. not deny any club member the right to vote in the election of the executive.
6. A club that meets these requirements can fill out a budget request form each semester for funding in the form of monetary grants from the UVSS.
7. Clubs will have their funding denied or revoked in the following circumstances:
- a. no club shall receive funding if the requirements in Part B, ss. 2, 4 or 5 of the *Clubs Policy* are not met;
 - b. in the event that a club incurs a debt, negative balance or loan against their trust account, they will receive 50% of their total determined budget allocation while the remainder is withheld to pay the incurred debt until it is paid in full;
 - c. at the end of each fiscal year, all unspent funds in the clubs budget accounts shall be returned to the clubs control account; and
 - d. clubs that have been found to violate Clubs Policy may be disciplined by, *inter alia*, freezing of accounts, denial of funding or withdrawal of unspent funds for no more than one year.
8. The UVSS does not pay for any activity that results in the personal benefit of individual members and does not pay for alcohol. Club funding is generated from the mandatory student fees collected by the UVSS. Clubs are also encouraged to raise funds for their activities to supplement the funds allocated by UVSS.
9. Clubs can be disciplined in the following manner:
- a. an order to cease the violation and to refrain from committing the same or similar violation again;
 - b. public censure;
 - c. freezing of accounts, denial of funding or withdrawal of unspent funds for no more than one year;

- d. withdrawal of room or AV booking privileges for no more than one year;
 - e. withdrawal of postering and bannering privileges for no more than one year;
 - f. withdrawal of clubs status for no more than one year.
10. Clubs can be disciplined for violating the following policies:

PART F. HARASSMENT

...

2. VIOLATIONS

Clubs shall not engage in harassment. Harassment means the abusive, unfair, or demeaning treatment of a person or group of persons that has the effect or purpose of unreasonably creating a hostile or intimidating environment by engaging in:

- a. Abuses of the power that one holds over another or the misuse of authority;
- b. Behaviour that discriminates against a person or group of persons on the basis of race, colour, ancestry, place of origin, nationality, religion, family or marital status, physical or mental disability, age, sex, sexual orientation, or conviction for a criminal charge;
- c. Behaviour that has the effect or purpose of seriously threatening or intimidating a person; or
- d. Any other behaviour that has the effect or purpose of unreasonably creating a hostile or intimidating environment.
- e. Attempting to proselytise members of other religious clubs through membership lists, or during club meeting or other organised functions

11. The purpose of the *Clubs Policy* on harassment is as follows:

1. PURPOSE

Part F is intended to support ideological diversity and to promote an environment within which all members of the University of Victoria community can fully participate in respectful debate and sharing of ideas, and to prevent behaviours by clubs that is threatening, harassing, or discriminating towards students on campus.

12. Until April 2010, there are no other written policies providing guidance on whether ratification and/or funding should be given to a club.

13. The petitioner Anastasia Pearse (“Ms. Pearse”) is a student at the University, a member of UVSS and the President of YPY.

14. YPY is a club at the University of Victoria, formed under the UVSS Bylaws (the “Bylaws”) and the *Clubs Policy*, and has been a club at the University since prior to 1999. YPY

engages in education, advocacy and other measures in support of alternatives to abortion. In the fall of 2008, YPY had 48 members, the majority of whom are Christian. About half of the Christian members are Roman Catholic.

15. In 2008 and 2009, YPY fulfilled the eight criteria for ratification as a club.

16. In the spring semester of 2008, YPY filled out a Club Verification Form and Club Budget Request Form. On January 28, 2008 the Board ratified YPY and granted funding.

17. In February 2008, YPY had a poster campaign that included three posters from Feminists for Life (the "Posters"). The Posters had been approved for posting by the UVSS Information Booth. The Posters did not include any mention of rape.

18. In March 2008, some students complained to the Board about the Posters. YPY was not advised of these complaints. The Posters were removed from the Student Union Building. YPY then added a club endorsement to the Posters and they were once again approved to be posted, this time by a Board Member.

19. In May 2008, the Canadian Federation of Students passed offering support to members who refuse to allow "anti-choice" organisations access to their resources.

20. In the summer semester of 2008, YPY completed a Club Verification Form and Club Budget Request Form. YPY was ratified as a club and received funding of \$196 for the summer semester.

21. In the fall semester of 2008, YPY completed a Club Verification Form and Club Budget Request Form.

22. On September 23, 2008, at a UVSS Clubs Council committee meeting, YPY's status was challenged. YPY was given no notice that a complaint would be made. At the meeting, Clubs Council decided to approve ratification for YPY, but to deny it funding. On October 6, 2008, YPY appealed the Clubs Council decision to the Board. The Board sent the matter back to Clubs Council for reconsideration. On October 21, 2008, Clubs Council affirmed its decision of September 23, 2008.

23. On November 3, 2008, YPY appealed the decision of Clubs Council to not approve funding. The Board rejected the appeal and decided to deny YPY funding for a period of one semester. The reasons for rejection of the appeal centred on Board members' desire to uphold Clubs Council's decision, the poster campaign of February 2008 and the concern that the Posters created "ambient violence", and the fact that UVSS had declared itself pro-choice.

24. On or about November 10, 2008, YPY received approval from the UVSS to hang one of the Posters in the Student Union Building.

25. In the spring semester of 2009, YPY filled out a Club Verification Form and Club Budget Request Form.

26. On January 23, 2009 and February 3, 2009, Ms. Pearse asked UVSS Director of Services Christine Comrie whether a complaint had been made against YPY and asked for the one week notice mandated by the *Clubs Policy*. On February 3, 2009, Ms. Comrie replied that she was unaware of any complaint against YPY.

27. On February 10, 2009, Clubs Council approved both ratification and funding for YPY.

28. On February 23, 2009, the Board reversed the Clubs Council decision to give YPY funding. The Board decided to deny YPY funding for a period of one semester. The reasons for rejecting the motion were similar to the ones given the previous semester. No member of YPY was given any notice that its funding was at risk or was going to be discussed at the Board meeting. No member of YPY was present at the Board meeting and YPY was not given a chance to be heard. YPY asked the Board for reasons and was not given any formal reasons.

29. On April 6, 2009, YPY appealed the Board's decision. YPY gave a presentation at the Board meeting. The Students For Choice gave a presentation opposing YPY's appeal and comparing YPY to the Ku Klux Klan. The Pro-choice Students For Equity Club gave a presentation supporting the appeal. The appeal was unsuccessful.

30. In the summer semester of 2009, YPY did not request funding.

31. In the fall semester of 2009, YPY completed a Club Verification Form and Club Budget Request Form.

32. On September 29, 2009, Clubs Council granted YPY status. A separate vote was held for YPY's funding and debate centered on YPY's plan to bring anti-abortion activist Stephanie Gray, representative of The Canadian Center for Bio-Ethical Reform ("Ms. Gray") to campus. The stated concern was that Ms. Gray had links to the Genocide Awareness Project ("GAP"). The student representative for the Students For Choice Club alleged that YPY "promotes racism, sexism, and anti-Semitism." Ms. Pearse stated that Ms. Gray was invited for debate not to promote GAP. Clubs Council approved funding.

33. On October 5, 2009, the Board ratified YPY as an established club, but reversed the decision of the Clubs Council to grant YPY funding. The Board decided to deny YPY funding for a period of one semester. The main reason the Board decided to deny funding was because YPY planned to bring Ms. Gray to the University that semester.

34. On October 21, 2009, YPY hosted a debate between Ms. Gray and medical ethicist Eike-Henner Kluge ("Dr. Kluge"). The debate attracted far more students than the venue could accommodate and Ms. Gray and Dr. Kluge repeated the debate in the afternoon. At the debate, Ms. Gray did not present the billboards used by GAP. She warned the attendees prior to presenting a video of an abortion. She drew an analogy between abortion and the Holocaust. There were student protestors at the debate.

35. Based on the October 5, 2009 refusal to fund the club and previous refusals, YPY filed a formal complaint with the University's Equity and Human Rights Office. This complaint was dismissed on jurisdictional grounds on February 2, 2010.

36. On November 16, 2009, YPY appealed the Board's October 5, 2009 decision to the Board, and the appeal was refused.

37. In the spring semester of 2010, YPY filled out a Club Verification Form and Club Budget Request Form.

38. On January 26, 2010, Clubs Council passed a motion to recommend discipline and suspension of YPY's club status. This recommendation was based on the following complaints:

- a. YPY used GAP materials and resources on campus;
- b. YPY was sexist and anti-Semitic;
- c. YPY used moralistic evangelizing;
- d. YPY hosted Stephanie Gray whose organization is sexist, racist, anti-Semitic and who showed a graphic film of an abortion;
- e. YPY used anti-choice and anti-woman propaganda that amounted to hate speech on campus;
- f. YPY provided misinformation/facts that were not reliable;
- g. YPY said that women who have had abortions are murderers; and
- h. YPY used tactics of discrimination.

39. The complaints are either unfounded or otherwise would not justify any denial of funding or club status. Nevertheless, based on these complaints, on February 8, 2010, the Board decided to deny YPY funding for one year. The Board decided to deny YPY club status indefinitely pending the findings of an Organizational Development Committee (the "OD Committee"), which is directed to "develop a 'Conditions of Club Status' policy based on YPY's club activities and the complaints submitted against them". The Board stated that YPY will only be considered for clubs status if they agree in writing to the *Conditions of Club Status* developed by the OD Committee.

40. On February 13, 2010, YPY delivered a letter to the Board, refusing to participate in the OD Committee's proceedings as a condition of receiving status and requesting an appeal of the Board's decision of February 8, 2010 at a Special General Meeting.

41. On February 22, 2010, the Board refused to grant YPY's request for an appeal of the Board's decision at a Special General Meeting.

42. On April 21, 2010, the Board voted to pass amendments to the UVSS's *Policy Manual – Board of Directors Policy* dated April 21, 2010 (the "Amendments").

43. On April 21, 2010, after the Board passed the Amendments, the Board voted to grant YPY club status for the remainder of the semester provided that the Director of Services

contacted YPY to advise YPY of the Amendments and that they take effect immediately. YPY was not granted funding at this time.

The petitioners estimate that the application will take 2 days.

ARVAY FINLAY

Per:

Joseph J. Arvay Q.C.

Joseph J. Arvay, Q.C.

Solicitors for the Petitioners

Dated: April 30, 2010

This Petition is filed by Solicitors for the Petitioners, Arvay Finlay, Barristers, whose place of business and address for service is 1350 – 355 Burrard Street, Vancouver, British Columbia, V6C 2G8. Telephone: 604.689.4421 / Fax: 604.687.1941.

No. _____
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BETWEEN:

ANASTASIA PEARSE, on her own behalf and on behalf
of the UNIVERSITY OF VICTORIA YOUTH
PROTECTING YOUTH

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PETITION TO THE COURT

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