No. S-252602
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

NOTICE OF APPLICATION

Name of Applicant: British Columbia Civil Liberties Association (the "BCCLA" or the "applicant")

To: The Petitioners: Andrew Irvine, Nathan Cockram, Brad Epperly, Christopher Kam and Michael Treschow
The Respondent: The University of British Columbia
The Intervener: Sylix Okanagan Nation Alliance

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on April 24, 20262026 at 9:45 am for the orders set out in Part 1 below.

The applicant estimates that the application will take 30 minutes. This matter is within the inherent jurisdiction of the Court.

Part 1: ORDERS SOUGHT

1. An order that the British Columbia Civil Liberties Association ("BCCLA") be granted leave to intervene and make written and oral submissions in these proceedings.

2. An order that the style of cause in these proceedings be amended to add BCCLA as "Intervener".

3. An order that BCCLA:

    a. receive copies of all pleadings, submissions and lists of documents exchanged or produced by the parties;

    b. may apply for access to specific documents from the list of documents exchanged or produced by the parties;

c. may file written submissions in respect of the hearing of the petition, as directed by the Court; and

d. may present oral arguments at the hearing of the petition as directed by the Court.

4. No costs be awarded for or against BCCLA in respect of this application, the hearing of the Petition filed April 7, 2025, or the proceeding generally.

5. Such further and other relief as this Court deems just.

Part 2: FACTUAL BASIS

A. Overview

1. This case raises issues of public importance regarding the meaning of "non-political in principle" in the context of a university and the role of the courts in overseeing the alleged "political" actions of universities in British Columbia.

2. BCCLA applies for leave to intervene in this proceeding to make submissions regarding the interpretative principles relevant to discerning the meaning of "non-political in principle" in s. 66 of the University Act (the "Act").

3. The Petitioners take issue with several actions of the University of British Columbia ("UBC" or the "University"), which they say violate the statutory requirement that UBC be "non-political in principle". They seek orders related to three topics: (1) UBC's acknowledgement that UBC is on unceded land; (2) resolutions adopted by the Okanagan Senate and the Faculty of Creative and Critical Studies with respect to the ongoing war in Israel and Palestine; and (3) job postings that indicate UBC is seeking candidates who share a commitment to the values of equity, diversity, and inclusion.

4. The Petitioners seek the following relief pursuant to s. 2 of the *Judicial Review Procedure Act*, RSBC 1996, c. 241 ("JRPA"):

    a. First, orders prohibiting and restraining UBC from certain communications related to land acknowledgements, Israel and Palestine, and equity, diversity and inclusion;

    b. Second, orders in the nature of certiorari, quashing, setting aside, and declaring to be invalid and of no force and effect some UBC decisions related to land acknowledgements, Israel and Palestine, and equity, diversity and inclusion;

    c. Third, an order of mandamus requiring UBC to retract, withdraw and remove from its website statements or communications related to the above impugned topics.

5. The Petitioners also seek an order defining the scope of the University for the purposes of s. 66 of the Act.

6. The main issue in the proceeding is the definition of "non-political in principle" in s. 66 of the Act. The Petitioners submit an expansive definition of "non-political in principle",

arguing that the University is statutorily prohibited from making any statement that could broadly be construed as "political". The Petitioners rely on *Charter* values and principles, in particular freedom of expression in s. 2(b) of the *Charter*, in interpreting the term "non-political" in the Act. The Petitioners' take the view that a strict adherence to "non-political in principle" in subsection 66(1) of the Act is required to protect academic freedom at the University.

B. The proposed intervener

4. BCCLA is a non-profit, non-partisan, unaffiliated advocacy group. It was incorporated in 1963 pursuant to the British Columbia *Society Act*, with its registered office at 306-268 Keefer Street, Vancouver, British Columbia, V6A 1X5.

    Affidavit #1 of Vibert Jack at para. 6 ["**Jack Affidavit #1**"].

5. The objectives of BCCLA include the promotion, defence, sustainment, and extension of civil liberties and human rights throughout British Columbia and Canada. For over 60 years, BCCLA has worked in the field of civil liberties with significant focus on protecting freedom of expression and assembly.

    Jack Affidavit #1 at paras. 3 and 6.

6. BCCLA engages in a wide range of advocacy activities, including policy submissions to all levels of government, bringing complaints and litigating test cases for breaches of civil liberties, and frequently intervening in cases that raise civil liberties and/or human rights issues. The Supreme Court of Canada has granted BCCLA leave to intervene in more than 100 appeals, making BCCLA one of the Court's more frequent non-governmental interveners.

    Jack Affidavit #1 at paras. 6-9 and 15.

7. BCCLA has experience litigating and intervening in many cases pertaining to relevant civil liberties issues, including freedom of expression, human rights, the role of the *Interpretation Act* and reconciliation with Indigenous peoples.

    Jack Affidavit #1 at paras. 12-16.

8. For example, BCCLA has intervened in several important Supreme Court of Canada decisions regarding freedom of expression and the open court principle, as freedom of expression also protects the right to receive information. BCCLA has also intervened before this court on multiple occasions, including recently in *Kishawi v Vancouver Island University*, 2025 BCSC 2487. In *Kishawi*, the petitioner was a student at Vancouver Island University who had been found to have breached the Student Conduct Code and was suspended following expressive conduct in support of Palestine. BCCLA argued that the petitioner's conduct constituted an exercise of her freedom of expression that the University ought to have considered in rendering its decision.

    Jack Affidavit #1 at paras. 12.

9. BCCLA has also engaged in significant advocacy and interventions regarding reconciliation with Indigenous peoples. In particular, BCCLA recently jointly intervened

with the First Nations Leadership Council ("FNLC") before the BC Court of Appeal in *Gitxalaa Nation v British Columbia (Chief Gold Commissioner)*. In *Gitxalaa Nation*, BCCLA and FNLC provided guidance on the interpretive significance of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") in light of the enactment of s. 8.1(3) of the *Interpretation Act* and other statutory reforms aimed at ensuring the consistency of BC law with UNDRIP.

Jack Affidavit #1 at para. 14.

10. BCCLA has been involved in significant litigation and advocacy regarding freedom of expression, including as it relates to that on a university campus. For instance, BCCLA intervened in *UAlberta Pro-Life v Governors of the University of Alberta,* a 2020 decision of the Alberta Court of Appeal regarding decisions of the University of Alberta in response to pro-life/anti-abortion protests on campus and *Teksavvy Solutions Inc v Bell Media Inc*, 2021 FCA 100, where BCCLA proposed a new test for injunctive relief that better accounted for potential impacts on freedom of expression.

Jack Affidavit #1 at para. 12.

C. Context of this case

11. On April 7, 2025, the Petitioners filed the Petition at issue. The Petitioners seek various forms of relief, including orders of prohibition, certiorari, and mandamus related to UBC:

(a) acknowledging that UBC is on unceded Indigenous land or requiring or encouraging others to do the same;

(b) making statements or declarations of support or condemnation of Israel or Palestine, and

(c) requiring expressions of agreement with, or fidelity or loyalty to diversity, equity and inclusion doctrines as a condition of applying for UBC faculty positions.

Petition dated April 7, 2025.

12. The Petitioners argue that the above noted actions infringe the requirement in s. 66 of the Act that universities are "non-political in principle".

13. On December 5, 2025, the Respondent, UBC, filed its responding materials. The Respondent argues that none of the matters advanced by the petitioners are a decision or conduct of the University that is justiciable under the *Judicial Review Procedures Act*, RSBC 1996, c 241. In the alternative, the Respondent argues that "non-political in principle" should be interpreted to mean that the University itself cannot have a political institutional affiliation and cannot engage in activity with the primary purpose of promoting political views over others.

UBC Response dated December 5, 2025.

Part 3: LEGAL BASIS

Test on application to intervene

14. This Court has the discretionary and inherent jurisdiction to permit interveners. Applicants must demonstrate either a direct interest in the litigation or that the case raises public law issues, legitimately engages the applicant's interests, and the applicant represents a perspective or point of view that will assist the court in resolving them.

Beaudoin v. British Columbia, 2021 BCSC 226 at para. 9 [*Beaudoin*].

15. In the exercise of this Court's inherent jurisdiction in assessing a trial intervener application, judges have regard to the considerations applied in appellate intervention applications tempered by the reality that, unlike in the Court of Appeal, evidence and submissions are not yet fully known.

Beaudoin, supra at para. 14.

16. In addressing the public interest aspect of such an application, the Court will consider the following factors:

a. The nature of the applicant, the directness of the applicant's interest in the matter, and the suitability of the issues in the case to an intervention;

Equustek Solutions Inc. v. Google Inc., 2014 BCCA 448 at para. 10.

b. Whether the applicant offers a distinct perspective without expanding the litigation by raising issues not already part of it; and

Gibralter Mines Ltd. v. Harvey, 2021 BCSC 927 at para. 14.

c. Whether the applicant offers principled submissions on points of law relevant to the case as opposed to supporting the position of one party or the other.

Gibralter, supra at para. 13.

BCCLA has a direct interest in this case and a distinct perspective

17. This case raises important issues related to freedom of expression, academic freedom, Indigenous justice and reconciliation, and the role of the courts in balancing competing rights. The protection of these rights is at the heart of BCCLA's mandate: the promotion, defence, sustainment, and extension of civil liberties and human rights throughout British Columbia and Canada.

Jack Affidavit #1 at paras. 4, 6-9.

18. The issues raised in this case take on a greater importance as the remedies sought threaten the expressive rights of hundreds of members of the community at British Columbia's largest university. BCCLA also has a demonstrated interest in and expertise on the right to freedom of expression in the university context, having intervened most recently in *Kishawi v Vancouver Island University*, 2025 BCSC 2487.

Jack Affidavit #1 at para 12.

BCCLA's proposed submissions offer principled assistance on points of law

19. BCCLA's expertise in freedom of expression issues will assist the Court in resolving the statutory interpretation issues raised in the petition.

20. In particular, if granted leave to intervene, BCCLA expects to make three discrete submissions on the statutory interpretation of "non-political in principle" in subsection 66(1) of the Act:

    a. A judicial interpretation of s. 66 of the Act has the potential to impact freedom of expression across the University. It must be interpreted so as to avoid capturing a broader sphere of expressive content than was intended by the legislature. This interpretation is necessary to limit unintended consequences on freedom of expression, such as a chilling effect on expressive content by those considered part of the University apparatus.

    b. Section 66 of the Act ought to be interpreted consistently with the statutory objective of ensuring the University is a diverse community of scholars, capable of providing instruction in all branches of knowledge. This purpose necessarily requires the University to act and make decisions that are consistent with equality, freedom of expression, and non-discrimination. These principles emerge as a matter of statutory interpretation, irrespective of the *Charter*'s applicability in a given proceeding.

    c. Section 66 of the Act ought to be interpreted considering the impact of the common law presumption of conformity with UNDRIP and s. 8.1 of the *Interpretation Act*. In interpreting the phrase "non-political in principle", the textual, purposive, and contextual interpretation that most accords with UNDRIP prevails. An interpretation of "non-political" that would restrict UBC from acknowledging the unceded, Indigenous territories on which it is located would directly contradict Articles 15 and 26 of UNDRIP and should be avoided if possible.

i. Section 66 ought to be interpreted so as to avoid prohibiting speech that the legislature did not intend to capture

21. When interpreting s. 66, which inherently impacts the political speech of members of the University, there is a risk that the interpretation will have unintended effects on freedom of expression. BCCLA proposes to assist the Court by providing submissions on the consequences of a broad interpretation of s. 66 and, in particular, the meaning of "non-political in principle".

22. It is well established that the legislature does not intend for interpretations that result in negative consequences and is not "presumed to act unreasonably or unjustly." The words of the Act must be interpreted based on that premise. Interpretations that lead to ridiculous or frivolous consequences, are unreasonable or inequitable, or that render other aspects of the statute pointless or futile should be rejected.

    Waugh v Pedneault (Nos 2 and 3), [1948] BCJ No 1, para 3 (BCCA); *Ontario (Attorney General) v Norwood Estate*, 2021 ONCA 493, at paras 99-100; *R v*

Proulx, [2000] 1 SCR 61, at para 92. See also *Northrop Grumman Overseas Services Corp v Canada (Attorney General)*, 2009 SCC 50, at paras 41-42.

23. An expansive definition of "non-political in principle" has the real potential to capture a much broader sphere of expressive content than was intended by the legislature in crafting this provision. These effects reach beyond the purpose of s. 66, namely, to protect the University against partisan political interference.

24. Where a scheme protects expressive content, it is generally afforded a large, liberal interpretation. A broad interpretation in this context recognizes the centrality of political speech as a form of expression and the consequences of failing to protect that speech in a democracy. Conversely, a broad interpretation of the word "non-political" in the context of legislation that restricts speech would have the inverse impact on freedom of expression—it would *restrict* rather than *protect* a vast terrain of expressive content.

25. Imposing a restriction on UBC that it refrain from speech, decisions, and actions that fall into the broad category of "political" would have a chilling effect on the expressive content of anyone considered part of the University apparatus. Indeed, a broad interpretation of "non-political in principle" would expose members of the University to scrutiny over every statement or communication, including silence, that could be deemed as "political". This interpretation is antithetical to the flourishing of academic freedom and threatens to have a harmful effect on freedom of expression at British Columbia's largest university.

26. BCCLA proposes to make submissions on the necessary contours of what is meant by "non-political in principle", so as to avoid these unintended consequences. Critically, the plain language and context of the Act cannot mean that any communication from a university that touches, or refers to, issues that have become politicized means that the university itself is political "in principle". To be "non-political in principle" requires institutional independence from government and the political sphere, but it does not require fractions of the university, such as senates or faculties, to refrain from deliberating or making statements about issues that could broadly be defined as political, such as commenting on the ongoing conflict and human rights issues in Palestine and Israel. To find otherwise would result in unintended overreach with respect to the censuring of expression and the potential for constant judicial intervention in the University's internal affairs, which was clearly not intended by the legislature.

ii. UBC has a statutory duty to promote a diverse educational environment

27. BCCLA proposes to make submissions on the potential inconsistency between s. 66 and s. 47 of the Act, which prescribes the broader purpose of the University as an institution. The words "non-political in principle" must be interpreted in a manner consistent with the entire context, including "the history of the provision at issue, its place in the overall scheme of the Act, the object of the Act itself, and Parliament's intent both in enacting the Act as a whole and in enacting the particular provision at issue." Section 66 must therefore

be interpreted so as to support the flourishing of scholarship and instruction in all branches of knowledge, as prescribed in s. 47.

> *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, at para 34; *University Act*, RSBC 1996, c 468, subsection 47(2)(b), (c), (d), and (e).

28. Critically, s. 66 must be interpreted so as to provide the University with autonomy to fulfil that purpose and fulfil its statutory obligation to provide instruction and foster knowledge by instructors. The University is fundamentally intended to be "an institution as a community of scholars and students", a purpose which informs s. 66. Indeed, the university in Canada has been recognized as having roots in providing "a broad scope of education", with "enlightenment" being arguably its "raison d'etre".

> *McKinney v University of Guelph*, [1990] 3 SCR 229, at 268; *Harelkin v University of Regina*, [1979] 2 SCR 561, at 594; *UAlberta Pro-Life v Governors of the University of Alberta*, 2020 ABCA 1, at paras. 109-110.

29. In order to provide instruction in all branches of knowledge, the University must necessarily create an environment in which scholars of all backgrounds, representing a diverse array of fields of knowledge and expertise, can work, debate, deliberate, and flourish. As such, "non-political in principle" cannot be interpreted such that the University operates with broad restrictions on its activities and is prohibited from fulfilling this purpose. Nor can s. 66 be interpreted so as to restrict the University's ability to act in accordance with its obligations under other legislation, such as the *Human Rights Code* of BC. BCCLA proposes that these principles emerge as a matter of statutory interpretation, irrespective of the *Charter*'s direct applicability.

iii. The Court's interpretation of "non-political" must be consistent with s. 8(1) of the *Interpretation Act*

30. BCCLA proposes to assist the Court by providing submissions on recent judicial guidance on the role of sections 2(1) and 8(1) of the *Interpretation Act* in statutory interpretation, in particular the Court of Appeal's decision in *Gitxalaa v British Columbia*, which set out a methodology for interpreting BC legislation in a manner consistent with UNDRIP.

> *Gitxalaa v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 ["*Gitxalaa*"].

31. The *Interpretation Act* was amended in November 2021 by adding s. 8.1 which addresses both s. 35 of the *Constitution Act, 1982*, and UNDRIP:

> 8.1(1) In this section:
>
> "Declaration" has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;
>
> "Indigenous peoples" has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;
>
> "regulation" has the same meaning as in the *Regulations Act*.

> (2) For certainty, every enactment must be construed as upholding and not abrogating or derogating from the aboriginal and treaty rights of Indigenous peoples as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
>
> (3) Every Act and regulation must be construed as being consistent with the Declaration.
>
> *Gitxalaa*, *supra*, at para 88.

32. In interpreting the phrase "non-political", the courts must strive for the textual, purposive, and contextual interpretation that most accords with UNDRIP. As the Court of Appeal explained in *Gitxalaa*, s. 8.1(3) "requires that British Columbia's laws be interpreted to conform with the binding international rights, obligations and principles recognized in UNDRIP and to generally harmonize with the international standards and extended rules that it articulates, wherever possible." This provision imposes a presumption of consistency between BC legislation and UNDRIP. An interpretation of "non-political" that would restrict UBC from engaging in and promoting acknowledgements of the unceded, Indigenous territories on which it is located would directly contradict Articles 15 and 26 of UNDRIP, which recognize the rights of Indigenous peoples to the dignity and diversity of their cultures and lands.

> *Gitxalaa*, supra, at para 92.

BCCLA's intervention will not expand the litigation

33. BCCLA seeks traditional intervener status. It does not seek any role in the development of the record or testing of evidence. It does not seek any appeal rights. It asks only to make written and oral submissions as a friend of the Court on three discrete points of statutory interpretation relevant to s. 66.

34. BCCLA does not intend to intervene in direct support of any of the parties, but instead will seek to assist this Court by articulating the proper considerations for interpreting s. 66 of the Act.

35. BCCLA will ensure that its submissions do not duplicate those of the parties in these and any other aspects.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Vibert Jack, sworn March 25, 2026; and

2. Such further and other material as counsel may advise and this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: March 25, 2026

Signature of ☒ Lawyer for Applicants
Claire K. Boychuk; Wassim Garzouzi;

To be completed by the Court only:
Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

_____

_____

_____

Date: _____

_____
Signature of ☐ Judge ☐ Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☒ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above