

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RUTH LOBO and JOHN McLEOD

Plaintiffs

- and -

CARLETON UNIVERSITY, DR. ROSEANN O'REILLY RUNTE,
DAVID STERRITT, RYAN FLANNAGAN and ALLAN BURNS

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$2,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

DEFAULT JUDGMENT

IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: _____, 2011

Issued by: _____

Address of Court Office:
161 Elgin Street
Ottawa, Ontario K2P 2K1

TO: CARLETON UNIVERSITY
Attention: University Secretary and General Counsel
607A Robertson Hall
Ottawa, Ontario K1S 5B6

AND TO: DR. ROSEANN O'REILLY RUNTE
503 Tory Building
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6

AND TO: DAVID STERRITT
261 Stormont House
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6

AND TO: RYAN FLANNAGAN
430 Tory Building
1125 Colonel By Drive
Ottawa, Ontario, K1S 5B6

AND TO: ALLAN BURNS
203 Robertson Hall
1125 Colonel By Drive
Ottawa Ontario K1S 5B6

CLAIM

1. The Plaintiffs, Ruth Lobo and John McLeod, claim the following relief against the Defendant, Carleton University:
 - a. a declaration that the Defendant has breached section 4 of Carleton University's *Human Rights Policies Procedures* and sections 2 and 3 of the *Students Rights and Responsibilities Policy*;
 - b. an Order that the Defendant comply with section 4 of the *Human Rights Policies and Procedures* and sections 2 and 3 of the *Students Rights and Responsibilities Policy* such that the Plaintiffs be able to openly promote their beliefs on campus;
 - c. a declaration that Carleton University violated sections 2, 9 and 15 of the *Canadian Charter of Rights and Freedoms*;
 - d. damages in the amount of \$25,000 for violation of the Plaintiffs' rights under the *Canadian Charter of Rights and Freedoms*;
 - e. general damages for wrongful arrest in the amount of \$25,000;
 - f. general damages for breach of contract in the amount of \$25,000;
 - g. special damages for the cost of defending the trespass charges in an amount to be determined and provided before trial;
 - h. punitive and exemplary damages in the amount of \$100,000.00;
 - i. costs of this action on a substantial indemnity basis;
 - j. pre and post judgment interest on all amounts in accordance with the *Courts of Justice Act*; and
 - k. such further and other relief as this Honourable Court may deem just.

2. The Plaintiffs, Ruth Lobo and John McLeod, claim the following relief against the Defendants, Carleton University, Dr. Roseann O'Reilly Runte, David Sterritt, Ryan Flannagan and Allan Burns, jointly and severally:

- a. general damages for negligence in the amount of \$25,000;
- b. general damages for pain and suffering and damages to reputation in the amount of \$25,000;
- c. costs of this action on a substantial indemnity basis;
- d. pre and post judgment interest on all amounts in accordance with the *Courts of Justice Act*; and
- e. such further and other relief as this Honourable Court may deem just.

The Parties

3. The Plaintiff, Ruth Lobo ("Lobo"), is an individual who resides in the City of Calgary, Alberta. Lobo was, at all material times, a registered, tuition paying student at Carleton University who, at the relevant time period, was 22 years old. Lobo had been studying at Carleton University since September 2005 and is completing a Bachelor of Arts in Human Rights.

4. The Plaintiff, John McLeod ("McLeod"), is an individual who resides in the City of Ottawa. McLeod is a registered, tuition paying student at Carleton University who, at the relevant time period, was 23 years old. McLeod has been majoring in business at Carleton University since September 2008.

5. The Defendant, Carleton University, is a comprehensive university operating in Ottawa, Ontario. Carleton University is constituted by virtue of the *Carleton University Act, 1952, S.O. 1952*.

6. The Defendant, Dr. Roseann O'Reilly Runte ("Runte"), is an individual who resides in the City of Ottawa. At all material times, she was a member of Carleton University's administration. Specifically, Runte was the President and Vice-Chancellor of Carleton University. As President and Vice-Chancellor of Carleton University, Runte is Carleton University's directing mind and therefore aware of and responsible of all actions taken and decisions made by the university administration.

7. As President and Vice-Chancellor of Carleton University, Runte directed, authorized or acquiesced the individual Defendants to act in the manner that they did.

8. The Defendant, David Sterritt ("Sterritt"), is an individual who resides in the City of Ottawa. At all material times he was a member of Carleton University's administration. Specifically, Sterritt was the Director of Carleton University's Housing and Conference Services. As Director of Carleton University's Housing and Conference Services, Sterritt oversees the usage and the booking of space on campus.

9. The Defendant, Ryan Flannagan ("Flannagan") is an individual who resides in the City of Ottawa. At all material times, he was a member of Carleton University's administration. Specifically, Flannagan was the Director of Carleton University's Student Affairs. As Director of Carleton University's Student Affairs, Flannagan oversees the development and implementation of student programs and services which aim at making the Carleton University experience a positive one for students.

10. The Defendant, Allan Burns ("Burns"), is an individual who resides in the City of Ottawa. At all material times, he was a member of Carleton University's administration. Specifically, Burns was the Director of Safety for Carleton University. Burns is a retired police officer. As Director of Safety for Carleton University, Burns oversees all issues relating to campus security.

11. Runte, Sterritt, Flannagan and Burns are referred to herein collectively as the “individual Defendants”.

Carleton Lifeline

12. Carleton Lifeline is a campus pro life group, composed of the individual Plaintiffs and other like-minded Carleton University students who sincerely and honestly share the moral, religious, social and political belief that life begins at conception and that abortion is therefore the taking of a human life.

13. Carleton Lifeline is an unincorporated body created in September 2006. It operates as one of over 180 campus clubs at Carleton University.

14. The Plaintiffs Lobo and McLeod were both, at all material times, members of Carleton Lifeline. Lobo was Carleton Lifeline’s President and McLeod was its treasurer. Lobo and McLeod are jointly referred to herein as “Carleton Lifeline”.

The Genocide Awareness Project

15. The Genocide Awareness Project (hereinafter referred to as “GAP”) is a travelling photo-mural exhibit which compares abortion to historically recognized forms of genocide. GAP uses images of aborted unborn babies and genocide atrocities.

16. GAP was conceived by the Centre for Bio-Ethical Reform based in Lake Forest, California. In the past, the GAP exhibit has been displayed on a large number of university campuses in both Canada and the United States.

17. In or about July 2010, Carleton Lifeline completed a Booking Request Form and submitted it to Carleton University’s Housing and Conference Services. The Booking Request Form was for the use of Tory Quad over October 4, 2010, October 5, 2010 and October 6, 2010 to display GAP.

18. Tory Quad was specifically chosen by Carleton Lifeline because it is a large outdoor area with high traffic commonly and frequently used by numerous other campus groups as a forum for peaceful expression of various kinds.

19. On August 9, 2010, Steritt, in his capacity as Director of Carleton University's Housing and Conference Services, wrote to Carleton Lifeline. He advised that because GAP uses "promotional materials which are disturbing and offensive to some," Carleton University would not permit Carleton Lifeline to set up GAP in Tory Quad. Rather, Carleton Lifeline would only be permitted to set up the GAP display in Porter Hall.

20. Porter Hall is a closed-off room, with no walk-through traffic and virtually no exposure or visibility for any student group wanting to exercise its free expression rights in a meaningful and effective manner.

21. On August 18, 2010, Lobo and McLeod advised Carleton University that its proposal that GAP be set up in Porter Hall was a form of censorship and discrimination and breached Carleton University's own policies. Carleton Lifeline asked that Carleton University provide the legal justification or the university policy relied upon to enforce such censorship. Carleton Lifeline further stated that it would not submit to Carleton University's censorship.

22. Specifically, Lobo and McLeod advised Carleton University that it was violating section 4 of the *Carleton University Statement on Conduct and Human Rights* contained in the *Human Rights Policies and Procedures* and sections 2 and 3 of the *Students Rights and Responsibilities Policy*.

23. Without providing legal justification, Carleton University and Sterritt refused to change their position. They indicated that they would not allow Carleton Lifeline to display GAP in Tory Quad. Further, they refused or failed to provide Lobo and McLeod with the legal or other justification or the university policy which they relied upon in support of their decision.

24. In refusing to provide legal or other justification for, or the university policy which they relied upon in support of their decision, the Defendants, Carleton University and Sterritt breached the duty of care they owed to the Plaintiffs.

25. On October 4, 2010, Lobo and McLeod, as part of Carleton Lifeline, attended Carleton University's Campus with the intention of displaying GAP in Tory Quad.

26. Before arriving at Tory Quad, Lobo and McLeod were intercepted by the Defendant Burns, four special constables of Carleton University's Department of University Safety and nine officers of the Ottawa Police Service.

27. Lobo and McLeod were informed that if they did not comply with Carleton University's directive that they not display GAP in Tory Quad, they would be arrested.

28. After refusing to display GAP in Porter Hall, and notwithstanding the fact that they had not arrived at Tory Quad to set up the GAP exhibit, the Plaintiffs were arrested. Lobo and McLeod were handcuffed. Lobo and McLeod were taken into secure Ottawa Police Services vans and transported to another location on Carleton University's campus. Lobo and McLeod were each charged and fined with two counts of trespassing under the *Trespass to Property Act*, R.S.O. 1990, c. T.21. Lobo and McLeod were then released.

29. The Ottawa Police arrested Lobo and McLeod at the request and direction of Carleton University and Burns.

30. Carleton University's decision to have Lobo and McLeod arrested, charged with trespassing and fined was excessive, unjustified and constituted an attempt to bully, intimidate and censor them.

31. Carleton University and Burns' decision to have the Lobo and McLeod arrested, charged with trespassing and fined was negligent, in bad faith and not made to further the objectives for which the statute was created.

“Choice” Chain

32. “Choice” Chain is an exhibit involving individuals standing in public areas holding 3-foot by 4-foot signs of first-trimester aborted unborn babies. The participants then hand out literature on abortion and enter into discussions with those who approach them. No comparison to genocide atrocities are made in the “Choice” Chain display.

33. On October 27, 2010, Lobo and McLeod, as part of Carleton Lifeline, attended Carleton University’s campus to display “Choice” Chain.

34. Carleton University’s policies do not require students or student clubs to book “standing space”. Accordingly, no Booking Request Form was completed nor submitted to Carleton University’s Housing and Conference Services.

35. Shortly after commencing “Choice” Chain, Lobo and McLeod were approached by the Defendant, Flannagan. Flannagan advised Lobo and McLeod that he was “disappointed” that they conducted “Choice” Chain without first consulting him. Flannagan threatened non-academic misconduct charges against Lobo and McLeod. Flannagan stated that “Choice” Chain was offensive and should not have been displayed on campus.

36. When asked which university policy Lobo and McLeod were violating by conducting “Choice” Chain, Flannagan provided no answer.

37. Flannagan repeatedly requested that Lobo and McLeod stop conducting “Choice” Chain. He consistently refused or failed to provide the legal justification or the university policy on which he based this request.

38. Although “Choice” Chain generated animated discourse on campus which should be a goal of a university dedicated to academic freedom, Lobo and McLeod were not made aware of any complaints made by other Carleton University students.

39. On October 27, 2010, while Lobo and McLeod conducted “Choice” Chain, an animal rights student held his own exhibit which was conducted in a similar fashion to “Choice” Chain. This animal rights student used graphic images of baby seals having been brutally beaten and slaughtered.

40. In or about November 2010, an animal rights group exhibited a display in the University Centre. This group used graphic images of seals having been violently beaten to death.

41. In or about November 2010, during Holocaust Awareness Week, large displays using graphic images of victims of the holocaust were exhibited in the University Centre. The University Centre is a high traffic area on campus.

42. The exhibitors of the animal rights and holocaust displays were permitted to continue with their exhibits without interruption. They were not asked to cease their expression. They were not ordered to use a room that lacks walk-through traffic. They were not threatened with non-academic misconduct charges. They were not arrested. They were not charged and fined under the *Trespass to Property Act*, R.S.O. 1990, c. T.21.

43. Carleton University sought to censor Lobo and McLeod on the basis of their message and not their medium.

The Ultimatum

44. In or about early November 2010, Flannagan requested a meeting with Lobo and McLeod and insisted on them meeting without their legal counsel.

45. On November 18, 2010, Flannagan wrote to Lobo and McLeod. Flannagan proposed an “agreement” allowing a “Permitted Exhibit Zone” which would apply solely to Carleton Lifeline and for “Choice” Chain.

46. This proposed “agreement” by Carleton University sought to censor Carleton Lifeline, Lobo and McLeod by imposing the following restraints:

- a. Carleton Lifeline, Lobo and McLeod could only conduct “Choice” Chain in a designated and contained area on campus;
- b. if conducting “Choice” Chain, Carleton Lifeline, Lobo and McLeod were obligated to transport its images to and from the designated area in a specific manner such that the images could not be seen while being transported;
- c. Carleton University would “warn” other Carleton University students of the display ahead;
- d. Carleton Lifeline, Lobo and McLeod could not approach or engage other Carleton University students while conducting “Choice” Chain;
- e. protestors would be permitted to engage Carleton Lifeline, Lobo and McLeod in “vigorous” discussion; and
- f. Carleton Lifeline, Lobo and McLeod would be required to provide notice of “Choice” Chain at least four business days in advance.

47. Lobo and McLeod were then advised that if they did not accept the proposed “agreement” and continued to conduct “Choice” Chain, they could be arrested by Carleton University’s Campus Safety and the Ottawa Police Service.

48. Carleton University and Flannagan have never imposed such an “agreement” on any other student or student club. There is no legal basis for Carleton University and Flannagan to impose such an “agreement”, nor do they have the authority, under any of Carleton University’s policies to propose or enforce such a policy.

49. In making threats towards, and in attempting to bully and intimidate the Plaintiffs, Carleton University and Flannagan breached their duty of care.

The Wrongful Arrest

50. As registered and tuition-paying students, Lobo and McLeod had the right to be on Carleton University's campus at all times and especially during times when classes are being offered.

51. Lobo and McLeod were charged with two counts of trespassing under the *Trespass to Property Act*, a provincial offence not usually requiring police officers to handcuff and transport those accused in a secured Ottawa Police van.

52. Lobo and McLeod were publicly handcuffed and loaded into secured Ottawa Police vans in a busy area of campus. Lobo and McLeod were however never taken off campus.

53. Despite the fact that Lobo and McLeod had not yet arrived at their destination (Tory Quad) Carleton University instructed and directed the Ottawa Police Service to arrest Lobo and McLeod and charge them with two counts of trespassing. Specifically, the charges were for "engaging in prohibited activity" and "failure to leave the premises when directed".

54. Lobo and McLeod were not engaging in prohibited activity as there are no Carleton University policies prohibiting displays such as GAP. Further, in any event, they had not even had the opportunity to set up the GAP display.

55. Carleton University acted maliciously, arbitrarily, without warning and in bad faith when they had Lobo and McLeod arrested for trespassing on their own campus.

56. Despite the fact that GAP was to be set up by five students, in the course of a peaceful display, Carleton University chose to have Lobo and McLeod intercepted by fourteen peace officers, which included the Defendant Burns, four Special Constables of Carleton University's Department of University Safety and nine officers of the Ottawa Police Service.

57. Carleton University deliberately chose the location in which to intercept Lobo and McLeod, have them handcuffed and loaded into secured vans because the area is a high traffic one. At peak times, such as when Lobo and McLeod were arrested, a large number of Carleton University students would witness Lobo and McLeod being arrested, causing them to be humiliated.

58. In directing the Ottawa Police Service to arrest them, Carleton University acted deliberately, maliciously and in bad faith with the intent of intimidating, bullying, humiliating and censoring Lobo and McLeod and with the intention of tarnishing their reputations individually and as a group.

59. As a result of the wrongful arrest by Carleton University, Lobo and McLeod have suffered the damages as set out herein.

The Charter violations

60. Carleton University is a creation of the Province of Ontario. It was established by the *Carleton University Act, 1952, S.O. 1952*, an act of the Provincial Government of Ontario.

61. All powers to Carleton University are derived from the *Carleton University Act* and accordingly, from the Province of Ontario.

62. The *Post-secondary Education Choice and Excellence Act, 2000, S.O. 2000, c. 36, Sch.*, (“PSECEA”) provides that only the Minister of Training Colleges and Universities has the authority to operate and maintain a university unless they are authorized by the Minister of Training Colleges and Universities or an Act of the Assembly.

63. Carleton University’s power to own and manage its property is specifically conferred on it through the *Carleton University Act*. In managing its property, Carleton University is therefore acting as a delegate of the provincial government and operating under statutory authority.

64. Section 7 of the *Carleton University Act* grants it the authority to own and acquire real property.
65. Section 15(1) of the *Carleton University Act* grants the Board of Governors of Carleton University the authority to manage and control its real property.
66. Section 22(g) of the *Carleton University Act* also grants Carleton University, through its Senate, the authority to make rules and regulations respecting the conduct and activities of the students of the University.
67. In managing its real property and in creating rules and regulations respecting the conduct and activities of its students, Carleton University is exercising a statutory authority that is conferred upon them by the Province of Ontario.
68. The *Carleton University Act* provides the University with the necessary powers to implement the government program of providing post-secondary education services pursuant to the *PSECEA*.
69. Without the power and authority conferred on it by the *Carleton University Act*, Carleton University could not execute its mandate or successfully implement the government program of providing post-secondary education services pursuant to the *PSECEA*.
70. With regard to these functions, which are carried out pursuant to the power and authority conferred on them by the *Carleton University Act* and while implementing a government program, Carleton University is subject to and bound by the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the "*Charter*").
71. In operating and maintaining a university, thereby offering post-secondary education services, Carleton University is implementing a government program or policy pursuant to the *PSECEA*.

72. Carleton University violated Lobo and McLeod's *Charter* rights including the following:

- a. their section 2(a) and 2(b) *Charter* rights by having them arrested for attempting to peacefully express their opinions, intimidating them, threatening them with non-academic misconduct charges and putting them in a position where they were fearful of holding and voicing their beliefs and opinions;
- b. their section 2(c), 2(d), 9 and 15 *Charter* rights by having them arrested for attempting to erect the GAP display, by threatening them with trespass and non-academic misconduct charges for conducting "Choice" Chain and by attempting to force them into the proposed agreement for "Choice" Chain;
- c. their section 9 *Charter* rights by having them arbitrarily detained; and
- d. their section 15 *Charter* rights by attempting to force them into an agreement which was not justified in law or by Carleton University's policies, and which did not apply to other students, and by not permitting them to express their beliefs and opinions because their opinions were unpopular, while permitting other students to voice controversial opinions.

73. As a result of Carleton University's *Charter* violations, Lobo and McLeod have suffered the damages as set out herein.

The Breach of Contract

The Contract

74. Lobo and McLeod are in a contractual relationship with Carleton University.

75. Lobo and McLeod had a reasonable expectation that Carleton University would adhere to and comply with its policies.

76. Carleton University's policies constitute implied terms of the contract between Carleton University, Lobo and McLeod.
77. Carleton University's policies prohibit the university administration from censoring controversial or unpopular ideas or messages, and from discriminating against individuals who hold such opinions.
78. Carleton University's policies are open, notorious and available on its website.
79. When students receive their registration packages from Carleton University, they are directed to the Undergraduate Calendar and the University's policies.
80. Students are referred to and advised to familiarize themselves with Carleton University's policies. Students are told by Carleton University that its policies govern the operation of the University and campus and that all members of the University community are subject to its policies.
81. Carleton University represents to actual and prospective students that it will honour and enforce its own policies.
82. The Undergraduate Calendar echoes the promises made in Carleton University's policies stating:

Carleton University is a community of faculty, staff and students who are engaged in teaching, learning and research. Its members are part of the community at large and are governed by the law common to all persons. But **membership in the academic community also entails certain rights and responsibilities. The University respects the rights of speech, assembly and dissent; it prohibits discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, national origin, creed, sex, sexual orientation, age, marital status, family status, political affiliation or belief, or handicap that is defined as such in the Ontario Human Rights Code; it requires tolerance and respect for the rights of others and it promotes an environment conducive to personal and intellectual growth (emphasis added).**

83. The Undergraduate Calendar goes on to specifically refer students to the *Human Rights Policy and Procedures* (“*HRPP*”):

15.1 Carleton University’s Human Rights Policy

The University has in place policies and procedures to deal with allegations of discrimination and harassment, including sexual harassment. These are outline in detail in the Carleton University Human Rights Policies and Procedures, effective May 1, 2001.

The policy is available at: Carleton.ca/equity.

84. Carleton University’s policies themselves state, at sections 18 and 19 of Part I of the *HRPP*, that a breach of the policies by third party contractors will be treated as a breach of their contract.

85. Specifically, sections 18 and 19 of Part I of the *HRPP* reads as follows:

Actions by Individuals who are not Members of the University Community

18. Contractors, their employees and representatives, people who access University services, and visitors to the University, including volunteers, are expected to conduct themselves in any University-related activity in a manner consistent with University policies.

19. Allegations of discrimination, harassment or misconduct against such persons will be dealt with by management as potential breaches of contract and/or may result in suspension of University privileges such as access to campus or University services.

86. Section 2 of Part 1 of the *HRPP* states that membership in the University community entails certain rights, responsibilities and obligations which include, but are not limited to:

- a. An obligation to deal ethically and fairly with other members;
- b. An obligation not to discriminate or harass;
- c. The University’s requirement of civil conduct and respect for the rights of others; and,
- d. The University’s goal to provide a safe environment, conducive to personal and intellectual growth.

87. Section 23 of Part I of the *HRPP* states that a number of other University policies and procedures further articulate the commitments of the University as described in the *HRPP*.

88. Specifically, section 23 of Part I of the *HRPP* reads as follows:

23. A number of specific University policies and procedures (including regulations for instructional offences, personnel policies, computer usage policies, and human rights policies) **further articulate these commitments of the University.** Where there is no specific policy, a request for action or complaint may be initiated pursuant to this Statement (**emphasis added**).

89. Lobo and McLeod chose to attend Carleton University and pay their tuition fees to the University on the basis of Carleton University's promise to honour and uphold freedom of expression on campus, without discrimination based on one's moral, religious, social or political beliefs and convictions.

90. Carleton University holds itself out as being a bastion of academia, academic freedom, freedom of expression and tolerance. Carleton University's policies purport to protect academic freedom and the free exchange of ideas as well as to protect students from discrimination on the basis of political belief.

91. A number of the promotional materials Carleton University uses to attract students include references to Carleton University's multiculturalism, diversity, tolerance and commitment to academic freedom. Carleton University's *Strategic Plan* reads as follows:

Carleton does not find its origin in one religious tradition. **This means that all groups are equal and welcome and there is no entity favoured by tradition.** Carleton is poised to bridge the gap between different traditions, finding common ground and celebrating differences in the process. Carleton has always reached out to the world and has long found in its international exchanges and programs a source of pride. **As a young institution, Carleton is not encumbered by traditions that can limit vision and prevent global thought. Carleton is indeed flexible and capable of responding to the needs of society and the demands of the**

market. As befits a future-oriented university, Carleton's researchers excel in pushing the boundaries of knowledge and creativity and consistently adapt the latest techniques and technologies in their teaching.

Carleton's professors and students explore daily the meaning of life and the universe (emphasis added).

92. In order to attend Carleton University and successfully complete their degree requirements, students are obligated to honour Carleton University's policies and conduct themselves in a manner consistent with the policies.

93. By holding itself out as a university committed to the protection of academic freedom, the free exchange of ideas, freedom of expression and freedom from discrimination on the basis of political or social belief and conviction, Carleton University induced Lobo and McLeod into choosing Carleton University as the university at which to continue their post-secondary education.

94. Carleton University clearly intended that the policies would form part of the contract between them and the students and the students clearly understood that they would receive the benefit of them.

95. It is a reasonable expectation that both parties to the contract, being the University and the students, will be bound by these policies as part of the contract and in fact, the policies are incorporated by reference to them.

The Terms of the Contract

96. Carleton University entered into a contract with each registered and tuition-paying student, including Lobo and McLeod. The contract between Carleton University and its students included, but was not limited to, the following implied terms:

- a. Carleton University would honour its policies as was represented by the Undergraduate Calendar, Carleton University's behaviour and the policies themselves;
- b. Carleton University would honour and uphold the freedom of expression of its students as specified at section 2 of Part I of the *HRPP*;
- c. Carleton University would honour and uphold the academic freedom of its students as specified at section 4 of Part I of the *HRPP*;
- d. Carleton University would permit students to peacefully assemble, demonstrate and picket on campus as specified at section 3 of Part IV of the *Students Rights and Responsibilities Policy* ("*SRRP*");
- e. Carleton University would not discriminate against or provide differential treatment to its students on the basis of their political, moral, religious and social beliefs or convictions as specified at section 5, Part I of the *HRPP*; and,
- f. Carleton University would protect and promote the free exchange of ideas and opinions on campus as specified at sections 4 and 5 of Part I of the *HRPP* and section 2 of Part VI of the *SRRP*.

97. Section 6 of Part 1 of the *HRPP* states that the University respects the rights of speech and dissent and that it upholds the right to peaceful assembly and expression of dissent.

98. Section 7 of Part 1 of the *HRPP* states that the University promotes equity and diversity and that every member of the University community has a right to study, work and live in a safe environment that is free of discrimination or harassment.

99. Section 4 of the *HRPP* states that Carleton University will uphold the academic freedom of its members. It defines academic freedom as;

- a. The right to criticize society;
- b. The right to examine, question and learn without reference to prescribed doctrine;
- c. The frank discussion of controversial ideas;
- d. The examination of various or competing perspectives;
- e. The pursuit and publication of controversial research; and,
- f. The study and teaching of material with controversial and even offensive content.

100. Specifically, section 4 of Part I of the *HRPP* reads as follows:

4. The University's fundamental commitment to scholarship encourages its members to perform to the highest standards of academic excellence. **The University upholds its members' academic freedom** so they can carry out their scholarly work without threat of interference.

4.1 Academic freedom is the freedom to examine, question, teach and learn. It involves the right to investigate, speculate and comment without reference to prescribed doctrine, as well as the right to criticize the University and society at large.

Academic freedom carries with it the duty to use that freedom in a manner consistent with ethical guidelines and human rights law, and the scholarly obligation to base research and teaching on an honest search for knowledge. It may also be circumscribed by civil and criminal law.

4.2 The frank discussion of controversial ideas, the examination of various or competing perspectives, the pursuit and publication of controversial research, and the study and teaching of material with controversial and even offensive content in the context of conscientious, professional instruction in the University are protected within academic freedom (emphasis added).

101. Sections 2 and 3 of Carleton University's *SRRP* state that the University upholds and will take reasonable steps to ensure that students are aware of their

rights and responsibilities, which include the right to freedom of discussion and freedom of assembly.

102. Specifically, sections 2 and 3 of the *SRRP* read as follows:

The University upholds and will take reasonable steps to ensure that students, as members of the University community, are aware of their rights and responsibilities, as follows:

[...]

2. Freedom of Discussion

The traditional privileges of freedom of inquiry and freedom of expression which are enjoyed by members of a university community are reflected in the concept of academic freedom.

These can be assured only if all members of the community share the responsibility of granting these freedoms to others and accept the obligation of a standard of behaviour which respects the rights of others. **Students may think, speak, write, create, study, learn, pursue social, cultural and other interests and associate together for these purposes** subject to the principles of mutual respect for the dignity, worth and rights of others as outlined by the Ontario Human Rights Code and the “Carleton University Statement on Conduct and Human Rights”, which appears in Carleton’s omnibus Human Rights Policy (**emphasis added**).

3. Assembly

Peaceful assemblies, demonstrations and lawful picketing are allowed within established laws.

103. Section 8 of Part I of the *HRPP* prohibits discrimination against students on the basis of political belief or affiliation.

104. Specifically, section 8 of Part I of Carleton University’s *HRPP* reads as follows:

8. The grounds on which the University strives to provide accommodation and protect against discrimination and harassment include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, political affiliation or belief, sex, sexual

orientation, gender identity, age, marital status, family status and disability within the meaning of the *Ontario Human Rights Code*.

105. Section 5 of Part I of the *HRPP* states that all members of the University, and particularly those who have supervisory authority over others, have a responsibility to ensure that the University's educational environment is free from discrimination.

106. Specifically, section 5 of the *HRPP* reads as follows:

Responsibilities of Members of the University Community

5. The University and all members of the University community share responsibility for ensuring that the University's educational, work and living environments are safe and free from discrimination and harassment.

5.1 Members of the University who have supervisory authority over others, or who make or influence decisions regarding members of the University community, bear a particular responsibility in this regard.

5.2 Academic and administrative managers are expected to foster an environment in their area that is free of discrimination or harassment, to not condone or disregard activities within their areas of responsibility that violate or disregard human rights, and to act in a timely, proactive and effective manner if they become aware of any violation of University policies.

The Breaches

107. Carleton University breached the implied terms of the contract entered into between Carleton University, Lobo and McLeod by:

- a. refusing or failing to honour Carleton University's policies;
- b. discriminating against Lobo and McLeod on the basis of their political belief or affiliation;
- c. refusing to permit Lobo and McLeod to assemble, demonstrate and picket on campus; and,

- d. having Lobo and McLeod arrested for the expression of their beliefs.

108. As a result of Carleton University's breach of contract, Lobo and McLeod have suffered the damages as set out herein.

The Negligence

109. Lobo and McLeod were both, at all material times, full-time fee-paying students of Carleton University.

110. Through a number of policies, Carleton University specifically recognizes that fee-paying students of Carleton University have the right to exercise their freedom of speech and dissent on campus grounds.

111. As a Post-secondary institution, Carleton University and its employees exercise a significant amount of power and authority and can negatively or positively affect the academic success, careers and future lives of its students.

112. Carleton University, its employees, and agents also have the power to exercise disciplinary measures against its students:

- a. by defining and identifying instances of non-academic misconduct;
- b. by imposing sanctions such as fines, cumulative community service, letters of reprimand which are kept in a student's academic record, and exclusion from University facilities for a specified or unspecified period of time; and,
- c. pursuant to its authority under the *Carleton University Act*, to access and utilize both the criminal and civil justice systems.

113. These powers over students give rise to a duty of care.

114. To ensure the proper administration of that power and authority, a number of policies have been created and enacted.

115. The policies, which also ensure that students have the right to freedom of speech and dissent, govern the relationship between the University, its employees and the students.

116. Policies such as the *HRPP* and the *SRRP* establish how the University and its employees will use their power and authority over Carleton University's students. The *HRPP* and the *SRRP* also inform students of their rights and obligations as well as the rules of the University.

117. In fact, the *HRPP* and the *SRRP* themselves acknowledge that the University has a legal obligation and a responsibility to take reasonable steps to prevent discrimination and harassment and to provide procedures to resolve problems and handle complaints.

118. Specifically, the *HRPP* states, at section 1 of its Part V:

1. The University has a legal responsibility to take reasonable steps to prevent discrimination and harassment and to provide procedures to resolve problems and handle complaints.

119. At section 2 of its Part VI, the *HRPP* further acknowledges its obligation to provide a diverse environment. Specifically, it states:

2. The University accepts that it has an obligation to provide an environment that encompasses diversity, secures inclusivity, and guarantees safety and security in order to sustain high morale and loyalty, maximize productivity for work and study, and promote academic excellence and collegial relationships. Factors that prevent or inhibit such an environment, arising from systemic discrimination or harassment, are detrimental to the entire well-being of the institution and its members.

120. Carleton University and the individual Defendants have the obligation to exercise prudence and due diligence in carrying out their duties, which include, but are not limited to, the implementation, administration and enforcement of Carleton University's policies.

121. Fee-paying students have the reasonable expectation that Carleton University, its employees, officers and agents will exercise their extensive power over them in a transparent, consistent and predictable manner in accordance with a number of specific policies and procedures, which are open, notorious and available on the Carleton University Website.

122. Carleton University and the individual Defendants owed a duty of care to Lobo and McLeod, which includes adhering to Carleton University's policies. The Defendants were negligent in the carrying out of their duties.

123. Specifically, the Defendants were negligent in their dealings with Lobo and McLeod in that:

- a. they acted without justification;
- b. they failed or refused to adhere to section 4 of Carleton University's *HRPP*; and,
- c. they failed or refused to adhere to Sections 2 and 3 of Carleton University's *SRRP*.

Further, the Defendants handled the incident insensitively and aggressively resulting in excessive intimidation and embarrassment.

124. As a result of the negligence of the Defendants, Lobo and McLeod have suffered the damages as set out herein. These damages were foreseeable and the Defendants knew or ought to have known that Lobo and McLeod would suffer these damages.

The Negligence of the Individual Defendants

125. The individual were, at all material times, employees of Carleton University.

126. As part of their function as employees of Carleton University, the individual Defendants are required to honour and implement Carleton University's various policies.

127. The individual Defendants each disagree with Carleton Lifeline's political views and the message they were attempting to transmit through GAP and "Choice" Chain.

128. The individual Defendants' decision not to honour and implement Carleton University's policies was fuelled by their personal political, moral, social and religious beliefs.

129. The individual Defendants each put their personal beliefs ahead of their professional obligations, thereby acting outside their capacity as employees of Carleton University.

Burns' Negligence

130. Lobo and McLeod state that Burns was negligent in:

- a. Refusing to permit Lobo and McLeod to set up the GAP display in Tory Quad;
- b. Resorting to threats and intimidation tactics;
- c. Refusing to provide a legitimate reason for his refusal to allow Lobo and McLeod to set up GAP in Tory Quad;
- d. Ignoring his responsibilities and obligations under the *HRPP* and the *SRRP*;
- e. Putting his personal political, moral, social and religious beliefs ahead of his professional obligations; and,
- f. Ultimately instructing the Ottawa Police Service to arrest Lobo and McLeod in public amongst their peers.

131. Burns breached his duty of care, which included, but was not limited to:

- a. Honouring, administering and enforcing the *HRPP*;
- b. Honouring, administering and enforcing the *SRRP*,
- c. Exercising his disciplinary power and authority in a transparent, consistent and predictable manner, in accordance with Carleton University's policies and procedures.

Flannagan's Negligence

132. Lobo and McLeod state, and the fact is, that Flannagan was negligent in:

- a. Requesting that Lobo and McLeod stop conducting "Choice Chain";
- b. Threatening Lobo and McLeod with non-academic misconduct while allowing other groups to exhibit similar displays on campus, thereby negatively impacting their careers and future lives, and
- c. Ignoring his responsibilities and obligations under the *HRPP* and the *SRRP*;
- d. Putting his personal political, moral, social and religious beliefs ahead of his professional obligations; and,
- e. Attempting to impose an "agreement" on Carleton Lifeline, Lobo and McLeod under the threat of being arrested by the Ottawa Police Service.

133. Flannagan breached his duty of care, which included but was not limited to:

- a. Honouring, administering and enforcing the *HRPP*;
- b. Honouring, administering and enforcing the *SRRP*,

- c. Exercising his disciplinary power and authority in a transparent, consistent and predictable manner, in accordance with Carleton University's policies and procedures.

Sterritt's Negligence

134. Lobo and McLeod state, and the fact is, that Sterritt was negligent in:

- a. Refusing to permit Lobo and McLeod to display GAP in Tory Quad; and,
- b. Ignoring his responsibilities and obligations under the *HRPP* and the *SRRP*;
- c. Putting his personal political, moral, social and religious beliefs ahead of his professional obligations; and,
- d. Refusing to provide Lobo and McLeod with a justification for his decision not to permit them to display GAP in Tory Quad.

135. Sterritt breached his duty of care, which included but was not limited to:

- a. Honouring, administering and enforcing the *HRPP*;
- b. Honouring, administering and enforcing the *SRRP*,
- c. Exercising his disciplinary power and authority in a transparent, consistent and predictable manner, in accordance with Carleton University's policies and procedures.

Runte's Negligence

136. In her capacity as President of Carleton University, Runte is responsible for instructing and managing all of Carleton University's administration.

137. Runte is also responsible, as President of Carleton University, for the implementation of Carleton University's *Systemic Human Rights Issues Policy* ("*SHRIP*") contained in the *HRPP*.

138. Runte's responsibility to implement the *SHRIP* is found at section 5, Part VI of the *HRPP*, which reads:

5. Responsibility for implementation of this policy is vested in the President. As necessary, he or she may appoint a Systemic Human Rights Issues Committee composed of faculty members, administrative staff and students, and a Chair. The Chair and members of the Committee shall be chosen for their human rights expertise and their knowledge of the University's systems of administration and academic governance.

139. The *SHRIP* deals with the systemic discrimination of Carleton community members and defines "systemic discrimination" at section 3 (Part VI of the *HRRP*):

3. Systemic discrimination is understood to arise from a combination or interaction of aspects of the University's culture, habits, decisions, practices and policies rather than due to isolated or discrete instances of discrimination, harassment or misconduct. A systemic problem is seen to exist if a barrier or obstacle to participation in the University affects members of the University community in a disproportionately negative way that is not clearly related to employment or program requirements, or if an individual's or a group's rights to generally available opportunities are limited because of attributed rather than actual characteristics.

140. The *SHRIP* goes on to state that:

4. Every member of the Carleton University community has the right to study, work and live in an environment free of systemic discrimination or harassment on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, political affiliation or belief, sex, sexual orientation,

gender identity, age, marital status, family status or disability as defined in the *Ontario Human Rights Code*.

141. Lobo and McLeod state, and the fact is, that Runte was negligent in:

- a. Refusing to honour, administer and enforce the *SRRP*;
- b. Refusing to honour, administer and enforce the *HRPP*;
- c. Refusing to honour, administer and enforce the *SHRIP*;
- d. Putting her personal political, moral, social and religious beliefs ahead of her professional obligations;
- e. Instructing Flannagan to, or alternatively, acquiescing when Flannagan requested that Lobo and McLeod stop conducting “Choice Chain”;
- f. Instructing Flannagan to, or alternatively, acquiescing when Flannagan threatened Lobo and McLeod with non-academic misconduct while allowing other groups to exhibit similar displays on campus, thereby negatively impacting their careers and future lives, and
- g. Instructing Flannagan to, or alternatively, acquiescing when Flannagan attempted to impose an “agreement” on Lobo and McLeod under the threat of being arrested by the Ottawa Police Service.

142. Runte breached her duty of care, which included but was not limited to:

- a. Honouring, administering and enforcing the *HRPP*;
- b. Honouring, administering and enforcing the *SRRP*,
- c. Honouring, administering and enforcing the *SHRIP*;

- d. Exercising her disciplinary power and authority in a transparent, consistent and predictable manner, in accordance with Carleton University's policies and procedures.

143. Despite having been made aware that Lobo and McLeod were being subjected to systemic discrimination, and despite having been asked for her help and assistance, Runte refused to honour her duties as President of Carleton University which included, but were not limited to, the administration and enforcement of the *SHRIP*.

144. Runte therefore failed to meet her duty of care towards Lobo and McLeod.

Vicarious Liability

145. As the employer of the individual Defendants, Carleton University, permitted or acquiesced the individual Defendants to act in the manner that they did and, as such, is vicariously liable for their actions.

Damages

146. As a result of the actions of the Defendants, Lobo and McLeod have suffered the damages as plead herein, which include, but are not limited to:

- a. the censoring of their views and opinions;
- b. the violation of their *Charter* and contractual right to freedom of expression;
- c. the violation of their right to academic freedom;
- d. the violation of their right to equal treatment;
- e. the violation of their section 2, 9 and 15 *Charter* rights;
- f. diminished academic performance;
- g. the degradation of their university experience;

- h. tarnished reputation as a result of their wrongful arrest and the Defendants negligence;
- i. public humiliation as a result of their wrongful arrest and the Defendants negligence;
- j. leaving them with the fear of having and voicing differing or unpopular opinions as a result of their wrongful arrest and the Defendants negligence;
- k. the fear of reprisal for having and voicing differing or unpopular opinions as a result of their wrongful arrest and the Defendants negligence;
- l. the stress associated with pending trespass charges;
- m. the cost associated with defending the trespass charges;
- n. a loss of trust and a loss of confidence in Carleton University's faculty and administration; and
- o. a loss of trust and a loss of confidence in police services and law enforcement agencies.

Punitive Damages

147. Notwithstanding the fact that Carleton University allowed other groups and students to display similar exhibits, neither of these displays attracted scrutiny, discipline, arrest, threats or imposed restrictions from Carleton University and its administration.

148. The Defendants have treated Lobo and McLeod in a high-handed and oppressive manner.

149. The conduct of Carleton University and its administration described herein constitutes such wanton and reckless disregard of their professional duties, their

contractual obligations as well as their *Charter* obligations and has caused such devastating harm that an award of punitive, aggravated, or exemplary damages is warranted.

150. Lobo and McLeod ask that the trial for this action take place in Ottawa.

Date of Issue: February 18, 2011 **VINCENT DAGENAIS GIBSON LLP/s.r.l.**
325 Dalhousie Street, Suite 600
Ottawa, Ontario K1N 7G2

ALBERTOS POLIZOGOPOULOS
Tel : (613) 241-2701
Fax : (613) 241-2599
Solicitors for the Plaintiffs