

AMENDED THIS June 03 2025 PURSUANT TO  
MODIFIÉ \_\_\_\_\_ CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (  C  )

THE ORDER OF HONOURABLE JUSTICE LEIPER  
L'ORDONNANCE DU

Court File No. CV-24-00712229-00CP

DATED/FAIT LE March 12 2025 **ONTARIO**

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**SUPERIOR COURT OF JUSTICE**

REGISTRAR GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

**B E T W E E N:**

R.G.A.

Plaintiff

and

**MCMASTER UNIVERSITY and MCMASTER STUDENTS' UNION  
INCORPORATED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, C.6

**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's 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 FAIL TO DEFEND THIS PROCEEDING, 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date June 03 2025

Issued by E-filing

Local Registrar

Address of

Court Office: Superior Court of Justice  
330 University Ave.  
Toronto, ON M5G 1R7

**TO: MCMASTER UNIVERSITY**  
1280 Main Street West  
Hamilton, ON L8S 4L8

**AND TO: MCMASTER STUDENTS UNION INCORPORATED**  
1280 Main Street West, MUSC 201  
Hamilton, ON L8S 4S4

## CLAIM

1. The Plaintiff claims on her own behalf and on behalf of the Class Members as against the Defendants:

- a. an Order certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff of the Class
- b. an Order certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff of the Class;
- c. an Order initializing the name of the Plaintiff and any Class Member in all materials filed in this proceeding;
- d. a sealing Order for any information in this proceeding and any interlocutory proceedings related to this matter that might identify the Plaintiff or any Class Member;
- e. in the alternative to the relief in paragraph 1(c), an Order that any information in this proceeding and any interlocutory proceedings related to this matter that might identify the Plaintiff or any Class Member be redacted;
- f. an Order directing that no person shall publish, disseminate, or make public any information in any document filed concerning this proceeding that could identify the Plaintiff or any Class Member;
- g. a Declaration that:
  - i. the Class Members have been the object of, and subjected to, discrimination, hatred and antisemitism on the McMaster University campus as promoted, incited by and as a result of the actions of the Defendant the McMaster Students Union (**MSU**) described below;

- ii. the Defendants, or any of them, have infringed the Class Members' right to equal treatment with respect to services, goods and facilities, free of discrimination because of race, ancestry, place of origin, ethnic origin, or creed, in violation of the *Human Rights Code*, R.S.O. 1990, c. H.19;
  - iii. the actions of the MSU described below constitute public incitement of hatred, wilful promotion of hatred, and wilful promotion of antisemitism directed toward the Class Members as defined in section 319 of the *Criminal Code of Canada*, R.S.C., 1985, c. C-46;
  - iv. the MSU has failed or refused to ensure or comprehensively represent the Class Members' rights and concerns at McMaster University;
  - v. the rights of the Class Members under McMaster University's (i) *Code of Student Rights & Responsibilities*, (ii) *Discrimination and Harassment Policy*, (iii) *Code of Conduct for Faculty and Procedure for Taking Disciplinary Action* and related McMaster University codes, regulations and policies have been violated by and as a result of the actions or inaction of McMaster University and the MSU described below;
  - vi. the Defendants, or any of them, are in breach of or have failed to comply with their obligations under section 3 of the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2;
- h. an interim, interlocutory and permanent injunction:
- i. enjoining the Defendants or any of them from authorizing or in any way allowing any and all meetings, gatherings, conferences, or

- communications that promote or incite antisemitism or any other manifestation of hatred on the McMaster University campus or through any McMaster University communications channel;
- ii. enjoining the Defendants or any of them from publishing, disseminating, promoting or in any way authorizing or facilitating any groups or activities that promote or incite antisemitism or any other manifestation of hatred on the McMaster University campus or through any McMaster University communications channel;
  - iii. requiring the Defendants to enforce forthwith McMaster University's (i) *Code of Student Rights & Responsibilities*, (ii) *Discrimination and Harassment Policy*, (iii) *Code of Conduct for Faculty and Procedure for Taking Disciplinary Action* and related McMaster University codes, regulations and policies in respect of discrimination, hatred and antisemitism on the McMaster University campus;
  - iv. requiring the Defendants to implement and enforce forthwith practices, policies and procedures designed to eliminate discrimination, antisemitic and other hate-based conduct on campus;
  - v. requiring McMaster University to decertify the MSU as an authorized McMaster student group;
  - vi. enjoining McMaster University from remitting student membership fees to, or otherwise funding, the MSU, unless and until the MSU complies with the practices, policies and procedures referred to above;

- vii. requiring the Defendants to afford the Class Members an effective grievance mechanism to address antisemitism or any other manifestation of hatred on the McMaster University campus or through any McMaster University communications channel;
- i. damages for negligence in the amount of \$25,000,000;
- j. in addition, or in the alternative, as against the Defendants McMaster University and MSU, damages for breach of contract in the amount of \$25,000,000;
- k. in addition, or in the further alternative, as against the Defendant McMaster University, damages for breach of fiduciary duty in the amount of \$25,000,000;
- l. in addition, or in the further alternative, damages, restitution or compensation for injury to dignity, feelings and self-respect pursuant to section 46.1 of the *Human Rights Code*;
- m. as against all the Defendants:
  - i. punitive damages in the amount of \$1,000,000;
  - ii. aggravated or exemplary damages in the amount of \$1,000,000;
  - iii. pre-judgment interest under section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - iv. post-judgment interest under section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - v. the costs of this proceeding on a substantial indemnity basis; and

- vi. such further and other relief as counsel may submit and this Honourable Court deem just.

### **The Nature of This Action**

2. McMaster University has become, for over a decade, home to systemic discrimination, harassment, hatred, antisemitism, violent discourse, and actual or threatened physical harm amongst the student body.

3. Jewish students at McMaster University have been and are increasingly subjected to a relentlessly menacing and hostile anti-Jewish learning and social environment. They must traverse classrooms and campus grounds infused with anti-Jewish words, acts and images. They have been denied the ability and opportunity to participate in and benefit from the educational and social experiences that McMaster University and the MSU promised them.

4. McMaster University is aware of this historic problem. Yet it continues to enable systemic discrimination and anti-Jewish conduct by failing to stop it, by not enforcing or selectively enforcing its policies and rules against it, or by turning a blind eye to the problem altogether. McMaster University stands by inactively as students and faculty engage in hate speech and abuse in violation of McMaster's codes, regulations and policies.

5. The MSU, emboldened by McMaster's inaction, has been and is guilty of fostering and promoting the anti-Jewish conduct.

6. This Class Proceeding has three objectives:

- a. to redress and remedy the past and ongoing discrimination, harassment and harms that Jewish students at McMaster University in Toronto have suffered and continue to suffer because of persistent and recurring acts of antisemitism, intolerance, and hatred on campus for which the Defendants are responsible,

- b. to define and implement meaningful and lasting steps to ensure a safe, secure, tolerant and supportive learning environment for all students, regardless of race, religion or ethnicity, and
  - c. to foster an inclusive, respectful and supportive environment for all students and staff by *inter alia*, bringing an end to the discrimination, antisemitism, and hatred at McMaster University.
7. 80 years after the liberation of Auschwitz and the other Nazi concentration camps, Jewish students and faculty at McMaster live under the menace and fear that was thought to, and ought to, have ended back then: virulent antisemitism.
8. This class action addresses the historical and ongoing antisemitic sentiments and actions on the McMaster University campuses for which McMaster University and the MSU are directly or indirectly liable. This is not a Jewish issue alone. It is a human rights issue.
9. The result of the Defendants' actions or omissions is a toxic atmosphere of discrimination, hatred and expressed or implied threats of violence, inconsistent with the principles of higher learning, and the express or implied representations and contractual terms on which Jewish students relied when enrolling in McMaster University.

### **The Plaintiff**

10. The Plaintiff, R.G.A., is an undergraduate student at McMaster University, and a member of the McMaster Students' Union.
11. R.G.A. came to McMaster University eager to identify as a Jew, proudly practice Judaism, and display her Jewish ancestry in the same way and with the same freedom that other students are able to show pride in their identities.



12. From the beginning of her studies at McMaster University, R.G.A. faced, and continues to face, persistent hate and discrimination based solely on her Jewish identity. The details are set out below.

### **The Class**

13. The proposed Class is defined as:
- a. All Jewish students currently enrolled at McMaster University; and
  - b. All Jewish students who attended McMaster University within the two years preceding this action.

### **The Defendants**

14. McMaster University is an internationally recognized public research university in Hamilton, Ontario. It is home to 32,174 undergraduate and 5,363 graduate students, for a total student population of 37,537 as of the 2023-2024 academic year. It is governed by the *McMaster University Act, 1976*.

15. McMaster University describes its mission as follows:

*At McMaster, our purpose is the discovery, communication and preservation of knowledge. In our teaching, research and scholarship, we are committed to creativity, innovation and excellence. We value integrity, quality, inclusiveness and teamwork in everything we do. We inspire critical thinking, personal growth and a passion for lifelong learning. We serve the social, cultural and economic needs of our community and our society.*

16. The MSU is a private non-profit corporation. It is the current students' union representing undergraduate students at McMaster University. MSU represents approximately 27,000 students, which makes them the largest student group at the University.

17. Membership in the MSU is mandatory for McMaster University undergraduate students with 18 or more course units (i.e., credits associated with courses). McMaster University imposes

and collects membership fees as a condition of a student's enrolment. It remits the fees to the MSU in accordance with McMaster University's *Financial Accountability Policy for Student Organizations that receive Fee Remittances from the University*.

### **Antisemitism and Hatred of Jews**

18. Antisemitism is a form of prejudice, discrimination, or hostility directed against Jews as a religious, ethnic, or cultural group.

19. The Government of Canada and over 30 other countries have adopted the International Holocaust Remembrance Alliance's definition of antisemitism (the **IHRA Definition**) on June 27, 2019, through *Canada's Anti-Racism Strategy 2019 to 2022*:

*Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.*

20. Under the IHRA definition, the following are "contemporary examples of antisemitism":

- "Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion";
- "Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions";
- "Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews";
- "Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust)";
- "Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust";

- “Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations”;
- “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”;
- “Applying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation”;
- “Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis”;
- “Drawing comparisons of contemporary Israeli policy to that of the Nazis”;
- “Holding Jews collectively responsible for actions of the state of Israel”; and
- “Criminal acts are antisemitic when the targets of attacks, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Jewish or linked to Jews[.]”

21. Section 319 of the *Criminal Code* makes the public incitement of hatred, the wilful promotion of hatred, and the wilful promotion of antisemitism a crime:

#### **Public incitement of hatred**

**319 (1)** Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

#### **Wilful promotion of hatred**

**(2)** Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

#### **Wilful promotion of antisemitism**

(2.1) Everyone who, by communicating statements, other than in private conversation, wilfully promotes antisemitism by condoning, denying or downplaying the Holocaust

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction. [...]

### Definitions

(7) In this section,

**Communicating** includes communicating by telephone, broadcasting or other audible or visible means; (*communiquer*)

**Holocaust** means the planned and deliberate state-sponsored persecution and annihilation of European Jewry by the Nazis and their collaborators from 1933 to 1945; (*Holocauste*)

**identifiable group** has the same meaning as in section 318; (*groupe identifiable*)

**public place** includes any place to which the public have access as of right or by invitation, express or implied; (*endroit public*)

**statements** includes words spoken or written or recorded electronically or electromagnetically or otherwise, and gestures, signs or other visible representations. (*déclarations*)

22. Zionism is the deeply held conviction that Jews have the right to self-determination and statehood in their indigenous and ancestral homeland, Israel. It evolved in the 19<sup>th</sup> Century in response to historical anti-Jewish hatred, persecution, and discrimination across the world.

23. Zionism advocates for a modern state in the Jewish people's indigenous and ancestral homeland, to reclaim Israel and to afford refuge from the bigotry and danger to which Jews have been subjected perennially. Zionism ensures that Jews have the same right to nationhood and self-determination as other peoples and nations.

24. Anti-Zionism grounded in hostility to the right of Jews to self-determination in their indigenous and ancestral homeland, Israel, is inherently and necessarily discriminatory and antisemitic when expressed as:

- a denial of the Jewish people's right to self-determination;
- questioning or advocating against the right of the State of Israel to exist because of its Jewish foundation;
- applying standards of conduct to Israel but to no other country or people;
- denying Israel's right to self-defence against terrorism, invasion, murder, rape, and kidnapping;
- accusing Israel of being inherently racist or comparable to the Nazis; or
- invoking classic antisemitic tropes against Israel and its people.

25. Anti-Zionism is often dissembled antisemitism. To challenge a Jewish person's and the Jewish community's right to self-determination by dismissing, demonizing and delegitimizing Israel's existence and right to exist under the guise of anti-Zionism is to cloak religious hatred as political opinion.

26. Much of the antisemitism at McMaster University and which the MSU promotes falls into the preceding descriptions. It inheres in such statements as "*death to Zionists*" and "*Zionism is racism,*" provocatively displayed and directed at Jewish students throughout the McMaster campuses. It is a direct, religion-based attack on the students at McMaster for whom Zionism and the existence of the State of Israel are integral to their Jewish identity.

### **McMaster's Codes, Regulations and Policies**

27. McMaster University has issued at least seven codes, regulations and policies over the course of more than a decade that are pertinent to this action. Individually and collectively, these

documents promise McMaster students equality, freedom from discrimination, protection from hatred, and enforcement of violations. The following is a summary of the seven codes, regulations, and policies:

**i. Code of Student Rights and Responsibilities, approved May 18, 2016**

The Code sets out the rights and responsibilities of every student, including the right to live and work in an environment free from discrimination, harassment, intimidation, and violence, and the responsibility to support this environment. In the Code, McMaster University claims it is committed to integrity, inclusiveness and teamwork. Violations of the Code give the University grounds to impose sanctions, ranging from an oral warning to expulsion.

The Code expressly identifies as a violation (among others), “engaging in verbal or non-verbal behaviour or communication toward any individual or group that may be perceived to be intimidating, degrading, harassing and/or discriminatory (that may violate the Discrimination & Harassment Policy), and in a manner that exceeds the bounds of freedom of expression.”

**ii. Freedom of Expression, Protest and Dissent: Guidance for Event Organizers and Participants, dated June 8, 2018**

This Statement outlines key guiding principles for those organizing and participating in events at McMaster, including protests. It notes that it is the responsibility of all members of the University community to respect the rights and freedoms of others and engage with one another in a “spirit of mutual respect, understanding, and regard for human dignity.”

Among other examples, this Statement notes that “inciting violence or hatred against an individual or a group, either verbally or through the display of signs, slogans or symbols” is not acceptable at McMaster University.

**iii. Code of Conduct for Faculty and Procedure for Taking Disciplinary Action, approved September 14, 1994**

The Code of Conduct for Faculty outlines the duties and responsibilities of all faculty members at McMaster University. Violations of the Code give the University grounds to discipline faculty members, including (among other disciplinary actions) removal of the faculty member from the University.

The Code of Conduct identifies discriminatory conduct as a violation of the Code, and specifies that all faculty members “will not discriminate against any member of the University community on grounds prohibited by [the] *Ontario Human Rights Code*.”

**iv. Discrimination & Harassment Policy, approved May 13, 2015**

The Discrimination and Harassment Policy affirms the right of all members of the university community, including students, to study, work, and live in an environment that is free of discrimination and harassment. The Policy prohibits discrimination and harassment on the grounds articulated in the Ontario Human Rights Code, and any discriminatory or harassing action directed at one or more individuals or groups that creates “a poisoned environment which interferes with academic or work performance, in a manner that exceeds the bounds of freedom of expression and academic freedom.” The Policy applies to all members of the university community, including both faculty and students.

In the Policy, McMaster University states that it is committed to providing the policies, resources and organizational structures required to support an environment free from discrimination and harassment. The Policy also recognizes that McMaster University “has a legal and ethical responsibility to address Complaints of Discrimination and Harassment, to enable accessible processes for resolution, and to provide support to all Community Members involved in such processes.” Violations of the Policy give the University grounds to issue sanctions against the offender. Sanctions range from a written reprimand to expulsion (for student offenders) or dismissal (for faculty offenders).

**v. Policy on Student Groups (Recognition, Risk Assessment and Event Planning), approved April 12, 2017**

The Policy on Student Groups sets out the roles and responsibilities of student unions, ratified clubs and academic societies at McMaster University. The Policy specifies that all recognized student groups are responsible for safeguarding the University’s reputation “by adhering to all University policies and procedures, and abiding by the laws of the land.” It also recognizes the MSU as the official representative of full-time undergraduate students, including all undergraduate student clubs.

The Policy also affirms that “the University has a responsibility to inform itself of campus organizations which use its facilities and name and to deny, suspend or withdraw recognition if the requirements of this policy or other University policies are not observed.” Student groups that violate the Policy may face sanctions, including the suspension or withdrawal of their privileges and official status (among other disciplinary measures).

**vi. Policy on Academic Accommodation for Religious, Indigenous and Spiritual Observances, approved May 13, 2015**

The Policy on Academic Accommodation outlines how students can request accommodations for religious, indigenous and spiritual observances, and the procedure they must follow when an instructor fails to accommodate their request. In the Policy, McMaster University claims that it strives to be welcoming and inclusive of all its members and respectful of their differences.

**vii. McMaster University Statement on Building an Inclusive Community with a Shared Purpose, approved March 4, 2010**

The Statement on Building an Inclusive Community with a Shared Purpose affirms McMaster University's commitment to creating an inclusive community with a shared purpose. The Statement identifies three values that are essential for an inclusive community:

(1) a respectful community where freedom of expression, belief, and diversity of knowledge occur in a framework of dignity, respect, and public engagement;

(2) a collaborative community where participants jointly move the academic vision forward in respectful and non-confrontational ways, having regard for personal and collective safety and well-being; and

(3) a diverse community that enables us to learn from our differences and that affirms our shared accountability for achieving access, equity, and meaningful inclusion of under-represented groups at all levels of the campus community.

**MSU'S Constitution and Policies**

28. The MSU has published several policy documents that, along with its Constitution, promise students equality, freedom from discrimination, protection from hatred, and enforcement of violations.

29. The MSU has denied Jewish students the benefit of the rights and principles these documents promise. It has failed to honour the assurances the documents purport to afford students. It has not enforced the regulations, codes and policies, or has enforced them selectively, never in favour of Jewish students. Violations targeting Class Members are ignored or treated with indifference.

30. The following is a summary of the MSU's Policies:



**i. Constitution of the McMaster Students Union**

The *Constitution* of the MSU sets out the union’s structure and foundational principals. It defines the “purpose” of the MSU as:

to draw into a true society all students at McMaster University. In pursuit of this, it will foster activities and events which will enhance the University experience of its members and contribute to the life of the University as a whole. Further, it will seek to facilitate communication between the student body, the University, and other organizations and will organize and regulate student self-government.

The Constitution also sets out the grounds the MSU may rely on to recall an executive or officer, including: (1) Failure to make reasonable attempts to carry out the duties of office or obey the policies of the MSU as outlined in the Constitution, bylaws, or other official documents of the MSU; and (2) Using the position held in contravention of the legitimate rights and interests of the member’s constituents.

**ii. Operating Policy – Interfaith Council**

This Policy establishes a council of representatives from different faith-based associations at McMaster University to:

1. work to address issues of common concern that affect the greater McMaster community.
2. build connections between students of different spiritual affiliations, furthering the goal of a more unified campus community,
3. To facilitate and encourage religious dialogue within the McMaster community.

The Council is responsible for (among other things) offering recommendations to the McMaster Students Union and University on relevant issues and policies, and hosting events such as social gatherings, educational forums, and panels.

**iii. Operating Policy – MSU Governance & You Committee**

This Policy establishes the Governance and You Committee. The purpose of this committee is to (among other things):

1. increase the diversity and representation of student government at McMaster in terms of, but not limited to, gender, race, sexuality, ability, Indigenous status, and other underrepresented groups; and
2. work towards a long-term cultural shift of inclusivity in the MSU and greater McMaster community.

The Policy claims that success and outcomes of the committee will be measured in the context of seeking long-term solutions to the issue of marginalized groups being underrepresented in student governance.

**iv. Operating Policy - Promotions & Advertising**

The MSU claims that the purpose of this policy is to ensure that promotions and advertising on the McMaster campus are done in good taste, and to outline a procedure for determining and evaluating good taste. The Policy defines “good taste advertising”

as “that which does not promote violence, substance abuse, oppressive or discriminatory practices, or contravene the McMaster University Anti-Discrimination Policy or the MSU’s Anti-Oppression Policy.”

To ensure that the MSU’s purported expectations, the Policy provides that all posters that fall within the purview of the Policy, except those initialed by departments or offices of McMaster University, are to be approved and stamped by the Underground Media + Design, which is run by the MSU.

**v. Operating Policy – Campus Events**

This Policy establishes the Campus Events services, whose stated purpose is to (among other things) organize entertainment, cultural, educational, and general interest events that will enhance the university experience of MSU members and contribute to life of the university as a whole. The MSU claims in this Policy that Campus Events strives to ensure that student input is incorporated in the selection and planning of events.

**vi. Operating Policy – Club Operations**

The Club Operations Policy sets out the duties, privileges and membership rules that apply to MSU-recognized student clubs. Among other duties, all MSU-recognized clubs are expected to operate in accordance with all relevant McMaster University Policies, and MSU bylaws and operating policies. The Policy stipulates that all allegations of misconduct made on the basis of discrimination or harassment will be dealt with according to any pertinent MSU and McMaster University policies.

**vii. Operating Policy – Club Status**

This Policy sets out the procedures by which a student club may attain recognition from the MSU, and the circumstances in which the MSU may revoke, suspend or otherwise limit the privileges that accompany a Club’s recognition status. The Policy provides a list of offences that constitute a “material breach of the conditions under which clubs are recognized by the MSU”, including:

- Class A Offences - actions that interfere with the right of an individual or group to enjoy life in the McMaster community.
- Class B Offences - actions which negatively affect the ability of the MSU to properly provide support to its Clubs.
- Class C Offences - actions which endanger the safety or security of any person or property. According to the Policy, Class C offences will “always result in a punitive sanction.”

Clubs found guilty of any of these offences may face sanctions from the MSU, ranging from a letter of caution to disbandment.

**Viii. Operating Policy – MSU Diversity + Equity Network (DEN)**

This Policy sets out the operating parameters and structure of the MSU Diversity and Equity Network (“the DEN”). Among other things, the purpose of the DEN is to build and maintain a campus that celebrates, advocates, and ensures inclusivity and equity in areas including, but not limited to, race, ethnicity, culture, faith, and spirituality. The

DEN is responsible for creating “space on campus devoted to inclusiveness and diversity”, and “advocate and lobby on behalf of its purpose and core principles on the McMaster campus and in the broader community”.

31. The Defendants have denied Jewish students the benefit of the rights and principles that McMaster and MSU promise in these codes, regulations and policies. They have failed to honour the assurances they have made to students. They have not enforced the regulations, codes and policies, or have enforced them selectively, and not in favour of Jewish students. Violations targeting Class Members are ignored or treated with indifference.

**The Jewish Experience at McMaster: A *Fear Society***

32. Jewish students at McMaster University have long endured a pervasive culture of discrimination and antisemitism that the Defendants have consistently failed to address.

33. Because of the activities and conduct enabled, encouraged, and funded by the Defendants as set out in this pleading, Jewish students at McMaster live in a *fear society*. They are denied the right to express their views or identity. Jewish students’ freedom to discuss their faith or display their religion by wearing religious symbols, such as a Star of David or a kippah, has been suppressed at McMaster for fear that doing so will trigger acts of aggression against them as Israelis or Jews.

34. Robbed of a school environment free from discrimination, Jewish students cannot walk on campus at McMaster University without a reasonable apprehension of physical or psychological harm.

35. McMaster students have been attacked for displaying their Jewish identity in public and at student meetings on campus.

36. Jewish students at McMaster are physically and psychologically abused, harassed and intimidated into a traumatized silence, and — along with students of all faiths — forced to suppress views in support of Israel, the homeland at the centre of Judaism for millennia.

37. The incidents below exemplify and contextualize the antisemitism at McMaster over the years, giving rise to the *fear society* that gives rise to this class proceeding.

**Antisemitic Vandalism and Statements**

38. Over the past decade, students at McMaster University have freely and openly made hateful statements toward Jewish people, including declaring support for Hitler and calling for the mass murder of Jews. The following are just some of the hateful statements by students at McMaster University:

- a. In 2013, Esra Bengizi, a student of English and French at the time, tweeted “I’m actually going to the rule the world and get rid of anyone who doesn’t have basic common sense or if you’re yahoodi [Jewish].” In 2014, she posted, “you’d be stupid if you think Hitler wasn’t a great leader.” In 2015, Ms. Bengizi posted a short video clip on her social media featuring a picture of Hitler with a voice-over parody of the pop song “Uptown Funk,” with the lyrics: “stop, wait a minute, heat the oven, put the Jews in it... This is that Auschwitz.”
- b. In 2014, Lina Assi, who later became the President of the Solidarity for Palestinian Human Rights, a student group recognized by McMaster and the MSU, posted on social media that, “FALASTEEN BLADNA W EL YAHOOD KLABNA [Palestine is our land and the Jews are our dogs].” In 2017, Ms. Assi tweeted a graphic featuring an individual aiming a gun at the camera with a caption that read: “GOOD NIGHT ZIONISM.”

- c. In 2017, Nadira Masad, a Political Science and Government student at McMaster, tweeted, “Death to Israel and all Zionists,” “Gods [*sic*] chosen people’ Imfaoooo oh you mean god chose you to kindle hell fire with.. Tru” and “Zionists don't count as human beings. I would say they're cockroaches, but that's offensive to the cockroaches.” In previous years, Ms. Masad publicly expressed her support for Hitler; in 2011 she tweeted, “Adolf Hitler; if you had taken them all, the world would have a lot less problems right now” and in 2013 she tweeted, “Hitler was on to something... #SorryNotSorry.”

39. Despite repeated notifications from Jewish advocacy groups alerting McMaster University to the antisemitic and genocidal social media posts, the university administration initially ignored their concerns. When the posts garnered media attention, McMaster University finally initiated an investigation. However, no consequential steps were taken to punish the students responsible for the posts. In fact, some of the students went on to be hired in teaching positions at the University, including Esra Bengizi, who worked as a Graduate Teaching Assistant and a Graduate Research Assistant from 2018 to 2019.

40. In addition to hateful statements, Jewish students have been subjected to antisemitic graffiti on McMaster’s campuses. Antisemitic statements and Nazi swastikas have appeared in bathroom stalls, classrooms and even on the McMaster University sign. The Defendants have neglected or refused to safeguard students’ well-being and rid the University of these acts of visual and verbal vandalism.

41. These antisemitic incidents are only a few examples of the conduct informing the systemic discrimination and antisemitism at McMaster University. The Defendants’ disregard for the issue

and lack of meaningful responsive action represents a failure to protect their Jewish students and enforce the University's codes, regulations and policies.

**The MSU and BDS: “Antisemitic and contrary to Canadian values”**

42. Boycott, Divestment and Sanctions (**BDS**) is a movement that targets the Jewish homeland with boycotts, divestments, and economic sanctions against the State of Israel.

43. BDS is “antisemitic and contrary to “Canadian values”, *per* Prime Minister Justin Trudeau. On February 22, 2016, Parliament passed a resolution (42<sup>nd</sup> Parliament, 1<sup>st</sup> Session – Vote No. 14) rejecting BDS:

*[...] which promotes the demonization and delegitimization of the State of Israel, and call upon the government to condemn any and all attempts by Canadian organizations, groups or individuals to promote the BDS movement, both here at home and abroad.*

44. On March 23, 2015, the MSU passed a resolution endorsing the BDS movement. It continues to support BDS. This boycott of Israeli entities continues to be in effect to the present day.

45. The MSU has not passed any resolutions advocating the boycott of any country other than Israel. This singular focus on the world's only Jewish state raises questions about the consistency and impartiality of the MSU's resolution-making process, thus leaving McMaster University's Jewish students feeling uniquely singled out and targeted.

46. In addition to the ongoing boycott of Israel, the MSU also continues to support and accommodate antisemitic, anti-Israel rallies and actions.

47. McMaster University has taken no steps to restrain these activities.

### **Antisemitism Around the Events of October 7, 2023**

48. Life for Jewish students at McMaster University has worsened palpably since October 7, 2023.

49. On that day, members of Hamas — designated as a terrorist organization by Canada, the United States, the United Kingdom, the European Union, Japan, and Australia — invaded Israel and killed, tortured, and kidnapped Israeli civilians. Approximately 1,200 Israelis were murdered in the attack. Approximately 230 Israelis were kidnapped, including elderly Holocaust survivors and children as young as 9 months old. The events of October 7 have been described as the largest targeted massacre of Jews since the Holocaust.

50. In the following weeks, Jewish students were subjected to rallies at the McMaster campuses praising Hamas' actions and calling for more violence against the Jewish community. Speakers at these rallies have openly called for violence against Jewish and Israeli individuals. Jewish students have been physically assaulted, bullied, and harassed during these rallies.

51. Faculty and staff at McMaster have made similar hate-filled statements both inside the classroom and on social media. Many have stood idly by and taken no action when students have uttered antisemitic statements during classroom discussions. Others have openly made antisemitic comments themselves.

52. Jewish students have faced reprisals from faculty for speaking out in favour of Israel. Shortly after October 7, the teaching assistant for one of R.G.A.'s tutorials made negative comments about Israel during class, accusing the state of committing genocide against the Palestinian people. This teaching assistant was responsible for grading some of R.G.A.'s coursework. R.G.A. approached the teaching assistant after class to discuss her comments in a civil and peaceful manner. During the discussion, the teaching assistant insinuated that Jewish people started the conflict with Gaza because of what happened to them during the Holocaust.

R.G.A expressed her belief that the conflict arose as a result of Hamas' actions on October 7. Her teaching assistant did not agree and walked away.

53. R.G.A. later emailed the teaching assistant to ask if their conversation would affect her grades in the course. She was assured that it would not. However, shortly after their discussion, R.G.A.'s grades in the class plummeted from As to Cs to an F on her final exam. She ended the course with a final grade of C-, a marked departure from the grades she had achieved before her conversation with the teaching assistant and the grades she had in her other courses.

54. R.G.A. appealed to her professor for help and was given a re-read of her assignments and final exam. Her grades improved dramatically after the intervention of her professor, and she ended the course with a B+.

55. R.G.A. was targeted for no other reason than because she is Jewish and responded to offensive statements made about Jews by an employee of the university. Fearing that she might be targeted again, she is now apprehensive to identify herself as Jewish to other students at McMaster University or express her views on issues that affect Jewish students at the University.

56. In addition to the opprobrious conduct outlined above, the following examples highlight some of the incidents that have collectively contributed to a hostile and unsafe environment for Jewish students at McMaster University since October 7, 2023:

- a. Ghada Sasa, a PhD student and a current teaching assistant at McMaster, has organized protests outside of Jewish businesses and institutions. On October 7, 2023, as the massacre of Israelis was still ongoing, Ms. Sasa posted on X, formerly Twitter, saying "what news to wake up to! Free Palestine from the river to the sea." Ms. Sasa has also rallied her X followers to inveigh against Jewish members of the university, posted



statements defending the display of a swastika outside Parliament Hill, and compared Zionism to Nazism.

- b. In the weeks following the October 7 attacks, posters of missing Israelis kidnapped by Hamas were put up throughout the campus as part of a worldwide campaign to call attention to the human tragedy. The posters have been repeatedly ripped down by hostile students. In one instance, a group of students ripped down hostage posters while a crowd of students surrounded them and cheered them on. Rather than condemn these actions, a McMaster University spokesperson called the posters “unauthorized,” stating that “it is not illegal to remove an unauthorized poster and the actions of the students are not considered a hate crime under Canadian law.”
- c. The Goldblatt Lecture, an annual lecture series in Jewish studies established in 2002, was scheduled in person for October 23, 2023, exploring the theme “How to Think about Antisemitism: Anti-Jewish Racism.” The University administration refused to let it proceed and moved the lecture to an online virtual format just prior to the event. The University issued a statement claiming that “the ongoing conflict in Israel and Gaza has heightened tensions and raised the risk of possible disruptions at public events.” This is a further instance of the University’s inability to maintain a safe environment for free academic discourse with respect to its Jewish community.
- d. On October 30, 2023, a vigil organized by Jewish student groups to honour and commemorate the victims of the October 7 attacks was forced into a secret location because of safety concerns for the attendees. Despite the extreme security precautions that Jewish student organization, McMaster Hillel (**Hillel**) took, a group of students still managed to locate and disrupt the event.

- e. On November 22, 2023, Hillel organized a vigil to commemorate the Israeli hostages that were kidnapped by Hamas on October 7. R.G.A. visited the vigil to pay her respects to the hostages. Shortly after she arrived, R.G.A. and three of her Jewish friends were surrounded by a mob of angry and aggressive students. These students berated them about their views on the conflict between Israel and Hamas. R.G.A. tried to maintain a peaceful conversation with them, but the crowd only became more aggressive. A campus security officer eventually escorted R.G.A. away from the scene. R.G.A. has not been advised of any disciplinary measures that the university took in respect of the students who targeted her and her Jewish friends that day.
- f. Jewish students on campus have been subjected to chants and calls for “death to Jews” and “Israelis must go.” In classroom discussions, students have called for the deportation of Jews from Israel and accused Jews of being war criminals.
- g. Common spaces and multifaith centres on the McMaster campus lack Jewish representation. During a recent trip to an interfaith room on the McMaster University campus, R.G.A. noticed that the room contained symbols from other common faiths in Canada but was devoid of any Jewish symbols or representation. Without equal representation, R.G.A. felt, and continues to feel, that she and her Jewish peers are not welcome at McMaster University.
- h. Students have disrupted events run by Jewish organizations on campus. In or around December 2023, R.G.A. was at an event hosted by Hillel in which Bassem Eid, a Palestinian man living in Israel, spoke to the audience about the ongoing conflict between Israel and Hamas. During the Q & A session, a member of the audience asked

Mr. Eid a series of questions about his views on the conflict. During their discussion, this individual told the room that he did not believe Israel should exist.

57. The Defendants have allowed or enabled these and similar activities and conduct in disregard of Jewish and other students' well-being and safety. As a result, Jewish students at McMaster University feel ostracized and marginalized. The anti-Jewish animus on campus has not only hampered the Jewish community's educational experience but has raised significant concerns about the overall safety of McMaster University's on-campus environment.

58. The risks and harms to Jewish students have been heightened because the Defendants have allowed, enabled, funded, or turned a blind eye to the increase in antisemitic activities and conduct since the events of October 7, disregarding and endangering Jewish and other students' well-being and safety.

### **R.G.A.'s Personal Experiences**

59. The pervasive culture of discriminatory, hate-based, and antisemitic speech and conduct at McMaster University has left R.G.A. feeling unsafe and psychologically distressed on the McMaster University campus, in McMaster University facilities, and in classes and activities.

60. R.G.A. is apprehensive of being targeted by virtue of her Jewish heritage. Fearing that she will be the victim of further discrimination and Jew-hatred if her peers discover that she is Jewish, she has taken steps to hide her identity from other students and faculty members at McMaster University, by *inter alia* avoiding large-scale Hillel events where other students might see her and identify her as Jewish.

61. Because of the discriminatory, hate-based, and antisemitic speech and conduct at McMaster University, R.G.A. was and is denied the complete postsecondary education and fulfilling university experience she reasonably expected and would otherwise have had. She has

felt unable to participate in classroom discussions, and often avoids social interactions with their peers. She has missed out on opportunities to engage with the broader university community and create the lifelong memories that make university especially valuable for students.

62. R.G.A.'s experiences are common to the Class Members. Jewish students in the McMaster University community are apprehensive about attending classes and being on campus. Like R.G.A., Class Members have been denied the education and interactions that they reasonably expected and were entitled to, and would otherwise have had as students at McMaster University.

63. The University's silence and inaction regarding complaints from Jewish students demonstrate to R.G.A and the Class Members that the University will not enforce its codes, bylaws and regulations to address the antisemitic, intimidating, and threatening conduct and environment to which the students have been subjected.

### **The Ongoing Harms to the Class Members**

64. Jewish students at McMaster University have experienced and continue to experience ongoing discrimination, antisemitism, hatred, and public incitement and wilful promotion of hatred. They have suffered some or all of following the harm and damage:

- a. they are denied their right to a university education in a respectful, peaceful, and productive academic setting;
- b. they are subject to an ongoing toxic academic and social environment;
- c. they have suffered and continue to suffer physical violence;
- d. they have suffered and continue to suffer psychological harm from a reasonable apprehension of violence, and from implicit or explicit threats of violence;
- e. they have been subjected to actual or reasonably apprehended intimidation and threats of harm based only on their religion or cultural beliefs;

- f. they have suffered injury to their dignity, feelings and self-respect;
- g. they have been excluded from or forced out of student and academic activities and organizations through real or reasonably apprehended threats of harm based only on their religion or cultural beliefs;
- h. they have suffered academically and have been unable to participate fully in academic activities;
- i. they have been made to feel and believe that they are less important than other students, second-class students free to be maligned, vilified, abused, intimidated and excluded with impunity;
- j. they have been denied the space or equal opportunity to voice their faith, beliefs and opinions in the safe and secure manner necessary for informed, meaningful dialogue because of real or reasonably apprehended threats of harm based only on their religion or their cultural beliefs;
- k. they have been denied the space or equal opportunity to express their concerns and discuss widespread on-campus hate speech and conduct because of actual or reasonably apprehended threats of harm based only on their religion or cultural beliefs;
- l. they have been denied the space or opportunity to participate meaningfully in on-campus cultural and academic events because of actual or reasonably apprehended threats of harm based only on their religion or cultural beliefs;
- m. they have been denied or excluded from participation in classroom and other academic discussions because of actual or reasonably apprehended threats of harm based only on their religion or cultural beliefs;

- n. they have been denied meaningful career preparation and critical knowledge to work towards a better future;
- o. they have been denied equal treatment with respect to services, goods and facilities, and
- p. they have suffered aggression or the reasonably apprehended threat of aggression based on their expressions of religious beliefs or opinions.

## **Causes of Action**

### **Breach of Contract**

65. Each Class Member, and all students who attend McMaster University, were or are in a contractual relationship with the University and all undergraduate students are in a contractual relationship with the MSU. Under this contractual relationship, in exchange for the Class Members' tuition and fees and becoming students and MSU members, McMaster University and MSU agreed to these express or implied terms (non-exhaustively):

- a. to afford all students uncompromised education, scholarship, experiences, services, resources, opportunities, and facilities while ensuring the safety and security of all students on campus;
- b. to afford all students preparation for long-term careers and personal success commensurate with a leading international teaching and research university;
- c. to deter and prevent discrimination, hatred, antisemitism, the incitement of hatred, the wilful promotion of hatred, and the wilful promotion of antisemitism on campus;
- d. to ensure a safe and secure higher learning environment for all students;

- e. to enable students' educational advancement to proceed in an atmosphere free from discrimination, hatred, antisemitism, the incitement of hatred, the wilful promotion of hatred, and the wilful promotion of antisemitism;
  - f. to prevent damage to the Class Members' physical and psychological health and wellness as a result of discrimination, hatred, antisemitism, the incitement of hatred, the wilful promotion of hatred, and the wilful promotion of antisemitism;
  - g. to honour and enforce McMaster University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities; and
  - h. to represent all McMaster University students, standing up to inequity, discrimination, hatred, antisemitism, and marginalization on the McMaster University campus while addressing deep-rooted systemic issues affecting the Class Members' student experience.
66. McMaster University and the MSU had and have the obligation to perform their contractual duties with honesty, in good faith and fair dealing, in accordance with the elevated standards of an internationally recognized institution of higher learning.
67. McMaster University and the MSU breached their good faith and contractual obligations to the Class Members in the following ways:

**McMaster University**

- a. McMaster has authorized, permitted and/or enabled, and continues to authorize, permit and/or enable the discriminatory, hate-based, and antisemitic speech, acts and conduct set out above, despite having actual notice of them;
- b. it has given and continues to provide the perpetrators of the discriminatory, hate-based, and antisemitic speech, acts and conduct an ongoing platform;

- c. it has permitted, disregarded and/or enabled, and continues to permit, disregard and/or enable physical and psychological harms to the Class Members, including injury to their dignity, feelings, and self-respect;
- d. it has permitted, disregarded and/or enabled, and continues to permit, disregard and/or enable the creation and perpetuation of a toxic academic and social environment for Class Members;
- e. it has discriminatorily denied and continues to deny Class Members the benefits that non-Jewish McMaster students enjoy, including but not limited to physical protection, psychological or emotional support, the sense of belonging and inclusion, the ability to speak freely in class and written course work concerning their Jewish identity, their right to express their religion and viewpoints, and their right to express their attachment to Israel, their ancestral homeland;
- f. it has failed and continues to fail to ensure that Jewish students were or are able to attend class in a safe and secure environment, free of discrimination, hatred, antisemitism, violence or threats of violence;
- g. it has failed and continues to fail to enforce its own codes, regulations and policies against discriminatory, hate-based, and antisemitic activities;
- h. it has failed and continues to fail to take steps to stop or limit incidents of discrimination, hatred, and antisemitism targeting Jewish students on campus;
- i. it has failed and continues to fail to sanction students or student organizations who have perpetrated or participated in discriminatory, hate-based, and antisemitic activities; and



- j. it has continued and continues to fund and support the MSU in the face of MSU's ongoing violations of McMaster's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities.

**McMaster Students' Union:**

- k. the MSU has enabled, facilitated, promoted or participated in, and continues to enable, facilitate, promote or participate in discriminatory, hate-based, and antisemitic events and conduct, targeting Jewish students on campus;
- l. it has created or fostered, and continues to create or foster a toxic environment of intimidation, danger or impending harm to the Class Members by reason of the acts or omissions set out above;
- m. it has discriminatorily denied and continues to deny Class Members the MSU benefits that non-Jewish McMaster students enjoy;
- n. it has authorized, permitted and/or enabled, and continues to authorize, permit and/or enable physical and psychological harms to the Class Members, including injury to their dignity, feelings, and self-respect;
- o. it has failed and continues to fail to combat or limit discriminatory, hate-based, and antisemitism conduct targeting Jewish students on campus, giving rise to physical and psychological harms to the Class Members;
- p. it has enabled, facilitated, promoted, and continues to enable, facilitate or promote a climate of intimidation, fear and denigration amongst Jewish students on campus;
- q. it has enabled, facilitated, promoted or participated in, and continues to enable, facilitate, promote or participate in discriminatory, hate-based, and antisemitic meetings, lectures, conferences or gatherings in its control on campus;

- r. it and its representatives and members have violated, promoted, encouraged and condoned, and continue to violate, promote, encourage and condone violations of McMaster University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities, including sponsoring and participating in discriminatory, hate-based, and antisemitic activities;
- s. it has failed and continues to fail in its mandate and obligation to represent all McMaster University students, fighting inequity, discrimination, hatred, and marginalization on the McMaster University campuses while addressing deep-rooted systemic issues affecting the Class Members' student experience;
- t. it has failed and continues to fail to sanction MSU representatives and members who perpetrated or participated in discriminatory, hate-based, and antisemitic activities; and
- u. it has failed and continues to fail to provide the safe and secure environment to which all students are entitled regardless of race, ancestry, religion, creed, ethnic origin, or place of origin.

**Negligence**

68. Each of the Defendants was in a sufficiently close relationship of proximity with the Class Members to give rise to a duty of care such that, in the Defendants' reasonable contemplation, their negligence was likely to cause damage to the Class Members.

69. Consequently, the Defendants owed the Class Members a duty of care to ensure a safe and secure higher learning environment, and to enable their educational advancement free from discrimination, hatred, antisemitism, and ongoing threatened and actual damage to the Class Members' physical and psychological health and wellness.

70. The Defendants breached their duty of care as follows:

**McMaster University**

- a. McMaster authorized, permitted and/or enabled, and continues to authorize, permit and/or enable the discriminatory, hate-based, and antisemitic acts and conduct set out above;
- b. it authorized, permitted and/or enabled, and continues to authorize, permit and/or enable physical and psychological harms to the Class Members, including injury to their dignity, feelings, and self-respect;
- c. it failed and continues to fail to ensure that Jewish students were or are able to attend class in a safe and secure environment, discrimination, free of hate, antisemitism, violence or threats of violence;
- d. it failed and continues to fail to enforce its policies and regulations, such as the ones set out in its *Code of Student Rights and Responsibilities*;
- e. it failed and continues to fail to take steps to stop or limit incidents of discrimination, hatred, and antisemitism targeting Jewish students on campus;
- f. it has failed to sanction students or student organizations who have perpetrated or participated in discriminatory, hate-based, and antisemitic activities; and
- g. it continued and continues to fund and support the MSU in the face of MSU's ongoing violations of McMaster's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities including inciting, sponsoring and participating in antisemitic activities.

**McMaster Students' Union**

- h. the MSU has enabled, incited, facilitated, promoted or participated in discriminatory, hate-based, and antisemitic events and conduct, targeting Jewish students on campus;

- i. it has created or fostered, and continues to create or foster an environment of danger, discrimination and perceived harm to the Class Members by reason of the acts or omissions set out above;
- j. it authorized, permitted and/or enabled, and continues to authorize, permit and/or enable physical and psychological harms to the Class Members. including injury to their dignity, feelings, and self-respect;
- k. it failed and continues to fail to take steps to stop or limit incidents of discrimination, hatred, and antisemitism targeting Jewish students on campus, giving rise to physical and psychological aggression of the Class Members;
- l. it created or fostered, and continues to create or foster a climate of fear and denigration amongst Jewish students on campus;
- m. it enabled, incited, facilitated, promoted or participated in discriminatory, hate-based, and antisemitic meetings, lectures, conferences or gatherings in its control on campus;
- n. it and its representatives and members violated, and incited and condoned violations of McMaster University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities, including sponsoring and participating in discriminatory, hate-based, and antisemitic activities;
- o. it failed and continues to fail in its mandate and obligation to represent all McMaster University students, and to take steps to oppose inequity, discrimination and marginalization on the McMaster University campuses, while concurrently addressing deep-rooted systemic issues affecting the Class Members' student experience;

- p. it failed and continues to fail to restrain or sanction MSU representatives and members who perpetrate or participate in discriminatory, hate-based, and antisemitic activities; and
- q. it failed and continues to fail to provide the safe and secure environment to which all students are entitled regardless of race, ancestry, creed, religion, ethnic origin, and place of origin.

**Breach of Fiduciary Duty**

- 71. The nature of the relationship between McMaster University and its students, including the current Class Members, is fiduciary.
- 72. The Class Members are in a power dependency relationship with the University wherein they place their trust and confidence in the University to educate and assist them in developing and achieving their personal and professional goals.
- 73. The students' interests are directly affected by McMaster University's exercise of discretion or control. Its actions or omissions can and do affect the interests of the Class Members. The University has undertaken to each student to act in their best interests. It owes each Class Member a fiduciary duty of loyalty.
- 74. Like most university students, the Class Members were and are vulnerable to the acts and omissions of the University. Post-secondary education is a formative (and costly) experience with significant implications for students' futures.
- 75. Students enrolling at McMaster University reasonably rely on the University to ensure that the central learning and social experience in their lives — their university years — is positive and meaningful and will lead to successful future endeavours.

76. McMaster University controls all aspects of the educational process and social environment to which the students submit. The Class Members (and all students) have the reasonable expectation and understanding that the University will act in and prioritize their best interests, cultivating and nurturing a safe, secure and positive atmosphere of higher learning.

77. In breach of its fiduciary duty to the Class Members, McMaster University has authorized, permitted and/or enabled, and continues to authorize, permit and/or enable the acts set out in the preceding paragraphs. As a result, it did not make the Class Members' education and well-being a priority, and did not protect the Class Members from physical and psychological harms, including injury to their dignity, feelings, and self-respect.

**Breach of the Occupiers' Liability Act,**

78. The Defendants have failed and continue to fail in their duty as occupiers of premises of and on the McMaster University campus to take such care as in all the circumstances is reasonable to see that the Class Members are reasonably safe while on the McMaster University premises, in accordance with section 3 of the *Occupiers' Liability Act*, RSO 1990 c. O.2.

79. Particulars of the Defendants' breaches of the *Occupiers' Liability Act* are as set out above in respect of their breach of contract, negligence, and breach of fiduciary duty.

80. As a result of the Defendants' breaches of the *Occupiers' Liability Act*, the Class Members have suffered the loss and damage set out below.

**Damages**

81. As a result of the breach of contract, negligence, breach of fiduciary duty, and breach of the *Occupiers' Liability Act*, set out above, each of the Class Members has sustained and will continue to sustain loss and damage, including:

- a. actual or threatened physical or psychological harms including trauma, stress, fear of open spaces, fear of crowds, fear of disclosing their religion, fear of disclosing their personal beliefs;
- b. injury to their dignity, feelings, and self-respect
- c. loss of enjoyment of life;
- d. loss of the ability to learn;
- e. the need for psychological counselling and treatment;
- f. loss of the ability to advance academically;
- g. a degraded university education and resulting impaired occupational prospects;
- h. loss of the ability to acquire all the knowledge and skills necessary for optimal career and occupational success and advancement;
- i. loss of career preparation and critical knowledge to work toward a better future;
- j. loss of competitive advantage;
- k. loss of the costs associated with their enrolment at McMaster University, including tuition and fees;
- l. pain and suffering;
- m. other damages and expenses particulars of which are not yet available, but will be provided before trial.

### **Human Rights Code Damages**

82. Sections 1 and 2 of the *Human Rights Code*, R.S.O. 1990, c. H.19 provides as follows:

#### *Services*

*1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.*

*Accommodation*

*2 (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.*

*Harassment in accommodation*

*(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.*

83. The acts, omissions, and conduct of the Defendants described above have infringed the Class Members' rights as set out in sections 1 and 2 of the *Human Rights Code*, and have injured the Class Members' dignity, feelings, and self-respect.

84. Consequently, the Class Members are entitled to damages pursuant to section 46.1 of the *Human Rights Code*.

**Punitive Damages**

85. By authorizing, permitting and/or enabling the discriminatory, hate-based, antisemitic conduct detailed above, the Defendants are guilty of arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour in respect of the Class Members.

86. An award of punitive damages against the Defendants is necessary in addition to the damages claimed above for deterrence and denunciation: to deter the Defendants and others from similar misconduct in the future, and to mark the community's collective condemnation of what the Defendants have allowed to happen.



## Aggravated Damages

87. The defendant's conduct has been particularly high-handed or oppressive, thereby increasing the Class Members' humiliation, anxiety, and injury to their dignity, feelings, and self-respect.

88. Consequently, the Class Members are entitled an award of aggravated damages.

89. The Plaintiffs plead and rely upon the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.

90. The Plaintiffs propose that this action be tried in Toronto

~~January 2, 2024~~ January 27, 2025

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R.G.A.

Plaintiff

-and-

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Defendants

Court File No. CV-24-00712229-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**FRESH AS AMENDED STATEMENT OF CLAIM**

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