

☐ RULE/LA RÈGLE 26.02 ()

☒ THE ORDER OF THE HONOURABLE JUSTICE LEIPER

L'ORDONNANCE DU

DATED/FAIT LE MARCH 12, 2025

Lynetta Aversa

REGISTRAR Date: 2025.06.11 07:03:18 -04'00' GREFFIER

SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-23-00708529-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

M.J.

Plaintiff

and

TORONTO METROPOLITAN UNIVERSITY and RYERSON STUDENTS'
UNION, operating as TORONTO METROPOLITAN STUDENTS' UNION

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 _____ Issued by _____
Local Registrar

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

TO: TORONTO METROPOLITAN UNIVERSITY
350 Victoria St.
Toronto, ON M5B 2K3

TO: TORONTO METROPOLITAN STUDENTS' UNION
55 Gould Street
Toronto, ON M5B 1E9

CLAIM

1. The Plaintiffs claim on their 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 Plaintiffs as Representative Plaintiffs of the Class;
- b. an Order initializing the names of the Plaintiffs and any Class Member as defined below in all materials filed in this proceeding;
- c. a sealing Order for any information in this proceeding and any interlocutory proceedings related to this matter that might identify the Plaintiffs or any Class Member;
- d. 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 Plaintiffs or any Class Member be redacted;
- e. 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 Plaintiffs or any Class Member;
- f. a Declaration that:
 - i. the Class Members have been the object of, and subjected to, discrimination, hatred, and antisemitism on the Toronto Metropolitan University campus as promoted, incited by, and as a result of the actions of the Defendant Toronto Metropolitan Students' Union (TMSU) 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 TMSU 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 TMSU has failed or refused to ensure or comprehensively represent the Class Members' rights and concerns at Toronto Metropolitan University;
 - v. the rights of the Class Members under Toronto Metropolitan University's (i) *Non-Academic Code of Student Conduct*, (ii) *Discrimination and Harassment Prevention Policy*, and related Toronto Metropolitan University codes, regulations and policies have been violated by and as a result of the actions or inaction of Toronto Metropolitan University and the TMSU described below; and
 - 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.
- g. 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 Toronto Metropolitan University campus or through any Toronto Metropolitan 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 Toronto Metropolitan University campus or through any communications channel associated with Toronto Metropolitan University, including but not limited to on social media platforms and websites;
 - iii. requiring the Defendants to enforce forthwith Toronto Metropolitan University's (i) *Non-Academic Code of Student Conduct*, (ii) *Discrimination and Harassment Prevention Policy* and related Toronto Metropolitan University codes, regulations and policies in respect of discrimination, hatred, and antisemitism on the Toronto Metropolitan University campus;
 - iv. requiring the Defendants to implement and enforce forthwith practices, policies, and procedures designed to eliminate discriminatory, antisemitic, and other hate-based conduct on campus;
 - v. requiring the Toronto Metropolitan University to decertify the TMSU as an authorized Toronto Metropolitan University student federation until it

is fully compliant with the practices, policies, and procedures referred to above;

- vi. enjoining Toronto Metropolitan University from remitting student membership fees to, or otherwise funding, the TMSU, unless and until the TMSU complies with the practices, policies, and procedures referred to above; and
- vii. requiring the Defendants to afford the Class Members an effective grievance mechanism to address antisemitism or any other manifestation of hatred on the Toronto Metropolitan University campus or through any Toronto Metropolitan University communications channel.
- h. damages for negligence in the amount of \$25,000,000;
- i. in addition to the relief in paragraph 1(h) above, or in the alternative, damages for breach of contract in the amount of \$25,000,000;
- j. in addition to the relief in paragraphs 1(h) and (i) above, or in the further alternative damages for breach of or failure to comply with their obligations under the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2 in the amount of \$25,000,000;
- k. in addition to the relief in paragraphs 1(h)-(j) above, 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*;
- l. as against Toronto Metropolitan University:
 - i. an interim, interlocutory and permanent injunction:
 - 1. requiring Toronto Metropolitan University to decertify TMSU as an authorized Toronto Metropolitan University student federation;

2. in the alternative, enjoining Toronto Metropolitan University from remitting student membership fees to, or otherwise funding, TMSU, unless and until TMSU complies with the practices, policies and procedures referred to above;
- ii. in addition, or in the further alternative, damages for breach of fiduciary duty in the amount of \$25,000,000;
- 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. Toronto Metropolitan University, formerly Ryerson 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 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 language, acts, and images. They have been and are denied the ability and opportunity to participate in and benefit from the educational and social experiences that Toronto Metropolitan University and the TMSU promised them.

4. Toronto Metropolitan University is aware of this historic problem. Yet it continues to enable systemic discrimination 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. Toronto Metropolitan University stands by inactively as students and faculty engage in hate speech and abuse in violation of its codes, regulations and policies.

5. The TMSU, emboldened by Toronto Metropolitan University'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 Toronto Metropolitan 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 bring an end to the discrimination, antisemitism, and hatred at Toronto Metropolitan University.

7. 78 years after the liberation of Auschwitz and other Nazi concentration camps, Jewish students and faculty at Toronto Metropolitan University live under the menace and fear that was thought to, and ought to, have ended: virulent antisemitism.

8. This class action addresses the historical and ongoing antisemitic incidents and actions on the Toronto Metropolitan University campuses for which Toronto Metropolitan University and the TMSU 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 both the principles of higher learning and the express or implied representations and contractual terms on which Jewish students rely when enrolling in Toronto Metropolitan University.

The Plaintiff

10. The Plaintiff, M.J., was an undergraduate student, employee, and resident of Toronto Metropolitan University from 2020 until he graduated from the University in June 2024. He was also a member of the Toronto Metropolitan Students Union throughout his studies at Toronto Metropolitan University.

11. M.J. was born in Israel before moving to Canada with his family in 2006. He is a practising Jew and considers his creed to be a significant part of his life.

12. M.J. lived in a student residence building on the Toronto Metropolitan University campus from when he first enrolled at the university up to his graduation.

13. From 2021 to 2024, M.J. worked for Toronto Metropolitan University as a Residence Advisor in the same residence building where he lived. As part of his position, he was responsible for (among other things) supervising up to 50 students who resided in his residence building, and providing students in his care with the support they need to achieve their academic, social and personal goals.

14. M.J. came to Toronto Metropolitan University eager to proudly practice Judaism, identify as a Jew, and display his Jewish ancestry in the same way and with the same freedom that other students are able to show pride in their identities.

15. Since he began his studies at Toronto Metropolitan University, M.J. has faced persistent hate and discrimination based solely on his Jewish identity, the details of which are set out below.

The Class

16. The proposed Class is defined as:

- a. all Jewish students currently enrolled at Toronto Metropolitan University; and
- b. all other Jewish students who attended Toronto Metropolitan University within the two years preceding this action.

The Defendants

17. Toronto Metropolitan University is an internationally recognized public research university in Toronto, Ontario.

18. Toronto Metropolitan University's enabling statute is the *Toronto Metropolitan University Act, 1977*,¹ which in part provides as follows:

3. The objects of the University are:

(1) The advancement of learning, and the intellectual, social, moral, cultural, spiritual, and physical development of the University's students and employees, and the betterment of society.

(2) The advancement of applied knowledge and research in response to existing and emerging societal needs and in support of the cultural, economic, social, and technological development of Ontario.

¹ Bill 149 3rd Session, 27th Legislature, Ontario 13-14 Elizabeth II, 1965.

(3) The provision of programs of study that provide a balance between theory and application and that prepare students for careers in professional and quasi-professional fields.

19. Toronto Metropolitan University describes itself as follows:

Urban, culturally diverse and inclusive, Toronto Metropolitan University is Canada's leader in innovative, career-oriented education. Home to almost 46,000 students with more than 120 graduate and undergraduate programs and a vibrant school of continuing education, the TMU community also includes almost 4,000 faculty and staff and nearly 200,000 alumni worldwide.

20. The TMSU is a private non-profit corporation. Membership in the TMSU is mandatory for all full-time Toronto Metropolitan University undergraduate and law students, a group that consists of over 41,000 students according to the most recent enrolment count.

21. Toronto Metropolitan University imposes and collects TMSU membership fees as a condition of a student's enrolment, which it then remits to the TMSU.

Antisemitism and Hatred of Jews

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

23. 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.

24. 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[.]”

25. 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*)

26. 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 19th Century in response to historical anti-Jewish hatred, persecution, and discrimination across the world.

27. 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.

28. 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.

29. 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.

30. Much of the antisemitism at Toronto Metropolitan University and which the TMSU promotes falls into the preceding descriptions. It inheres in depictions of the Israeli flag with a swastika drawn over the Star of David, and statements such as "globalize the intifada," provocatively displayed and directed at Jewish students throughout the Toronto Metropolitan University campuses.² It is a direct, religion-based attack on the many students at Toronto Metropolitan University for whom the State of Israel is integral to their Jewish identity.

² "Intifada" is a call for terror targeting Jews around the world. The *Merriam-Webster Dictionary* defines "intifada" narrowly as an "armed uprising of Palestinians against Israeli occupation of the West Bank and Gaza Strip". An intifada took place between 2000 and 2005, and consisted of random suicide bombings, shootings, stonings and rocket attacks against Jews. Approximately 1,000 Israelis died in the attacks. Calls to launch another intifada are meant to and do terrorize the Jewish community.

Toronto Metropolitan University's Codes, Regulations and Policies

31. Toronto Metropolitan University has issued at least five codes, regulations and policies over the course of more than a decade. Individually and collectively, these documents promise Toronto Metropolitan University students equality, freedom from discrimination, protection from hatred, and enforcement of violations.

32. Toronto Metropolitan University has denied Jewish students the benefit of the rights and principles that 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, but not in favour of Jewish students. Violations targeting Class Members are ignored or treated with indifference.

33. The following is a summary of Toronto Metropolitan University's codes, regulations and policies:

<u>Discrimination and Harassment Prevention Policy, approved April 1999</u>
The Discrimination and Harassment Prevention Policy affirms the right of students at Toronto Metropolitan University to study and work in an environment that is free of discrimination and harassment. In the Policy, Toronto Metropolitan University claims that it is committed to fostering a work and study environment free of discrimination and harassment, where all individuals are treated with respect and dignity.
The Policy states that "it is the responsibility of the University to exercise its authority to prevent discrimination and harassment, to penalize the repetition of discrimination and harassment, and to respond promptly to known or apparent incidents of discrimination and harassment, whether or not a complaint has been filed. By law, the University and its senior administrators such as chairs, deans, directors, vice-presidents, the president, and others with supervisory responsibility have a legal responsibility to respond promptly to known or apparent incidents of discrimination and harassment, whether or not a complaint has been filed and to exercise authority to prevent and/or penalize the repetitions of such behaviour."
The Policy gives the University grounds to impose penalties on members of the university community (including faculty and staff) who violate the Policy. Sanctions range from a directive from the chair or director to cease the behaviour up to

dismissal/expulsion. The Policy also allows the university to sanction an administrator for failing to act on complaints of discrimination or harassment.

Student Code of Non-Academic Conduct, approved May 4, 2021

In the Student Code, the University states that it “values equity, diversity, honesty, respect, inclusion, and the well-being and dignity of all community members.” The Student Code outlines a non-exhaustive list of the rights, expectations and responsibilities related to non-academic student conduct. It applies to both students and student groups.

The Student Code applies to all conduct on campus and conduct off campus where the conduct “reasonably has had an adverse effect on the safety and well-being of the community or on a complainant’s course of learning, teaching, living, research or work at the University or in exceptional circumstances where there is a sufficient connection to the University.” The Student Code also applies to online activity when the activity is connected to the University and has an adverse effect on the safety of the community or the affected student’s course of learning, teaching, living, research, or work at the University.

The Student Code expressly identifies harassment that arises from or is motivated by, in whole or in part, bias, prejudice or stereotypes as a violation of the Student Code. Like the Discrimination and Harassment Policy, violations of the Student Code give the University grounds to impose sanctions ranging from a written reprimand to expulsion.

Policy 150: Accommodation of Student Religious, Aboriginal and Spiritual Observance, first approved October 2, 2001

In Policy 150, Toronto Metropolitan University claims that it celebrates diversity and places a high value on inclusion and respect for differences. The policy outlines the procedure that students must follow to request accommodations for religious, indigenous and spiritual observances and the appeal process when they do not reach a mutually agreed upon accommodation.

Policy 103: Mission and Aims of Toronto Metropolitan University, approved June 13, 1994

In Policy 103, Toronto Metropolitan University outlines its core mission and aims. The Policy states that the university aims to “provide its students an educational experience of high quality, fostering in them professional knowledge and skills, critical enquiry, ethical standards, creativity, commitment to lifelong learning, a capacity to make an early and sustained contribution to their chosen field and to be effective problem solvers.”

Statement on Freedom of Speech, dated May 4, 2010

In the Statement on Freedom of Speech, Toronto Metropolitan University acknowledges that, in order to achieve and sustain the University’s ideals, members of its community must have, among other things, freedom from harassment and

discrimination. The Statement notes that “the right to freedom of speech comes with the responsibility to exercise that right in an atmosphere free of intimidation and in an environment that supports the free speech rights of those with opposing views.”

TMSU’s Policies

34. The TMSU has published at least seven issues or operational policy documents that promise students equality, freedom from discrimination, protection from hatred, and enforcement of violations.

35. TMSU 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.

36. The following is a summary of the TMSU policies:

<u>Toronto Metropolitan Students’ Union By-Laws</u>
<p><u>The By-Laws set out the governance structure of the TMSU. Among other things, the By-Laws establish the position of the Vice President of Equity, whose duties include:</u></p> <ul style="list-style-type: none">• liaising and lobbying the university administration on equity and sustainability;• developing internal and external equity campaigns on issues that affect Members;• making recommendations to the Board of Directors about equity issues and policies;• organising trainings and workshops for Directors and Members of the Corporation on anti-oppression, social justice and sustainability issues. <p>The By-Laws also establish the Social Justice Committee, whose mandate is to review any matters relating to the TMSU’s advocacy, events and programming on social and environmental justice issues.</p>
<u>Issues Policy #2: Anti-Racism Policy, adopted April 11, 2007</u>
<p>In the Anti-Racism Policy, the TMSU states that it believes that “all students have the right to study, work and socialize in an affirming environment that is free from harassment, violence, and discrimination.”</p>

The TMSU further claims that it objects to any and all forms of discrimination on the basis of race, ethnicity, place of origin, immigration status, linguistic ability and religious or spiritual belief – both real and perceived. The Policy establishes an anti-racism committee within the TMSU with the stated purpose of promoting anti-racism awareness on campus through events, educational materials, general campaigns and outreach.

Issues Policy #4: Non-Academic Codes of Conduct, adopted April 11, 2007

In the Non-Academic Codes of Conduct policy, the TMSU claims to support freedom of conscience and religion and opposes any speech or expression rooted in hate speech including, but not limited to, antisemitism, islamophobia, racism, sexism, homophobia, transphobia, and ableism.

Issues Policy #13: Religious, Cultural and Spiritual Freedom, adopted March 31, 2012

In its Religious, Cultural and Spiritual Freedom policy, the TMSU states that it has an anti-oppression mandate and strives to achieve inclusion both on campus and within society as well. The TMSU claims in the Policy that it supports accommodations for cultural holidays during academic sittings, having multifaith spaces, and amongst other things, food options that are inclusive to all members on campus.

Operational Policy #2: Affiliate Student Groups, adopted September 20, 2001

The Affiliate Student Groups Policy outlines the procedure that student groups must follow to obtain official recognition from the TMSU. The policy notes that the TMSU's executive committee may approve or deny a group's application for official recognition based on (among other factors) whether the affiliate group's actions coincide with the *Human Rights Code* and TMSU and Toronto Metropolitan University policies.

Operational Policy #11: Diverse Representation, Adopted July 7, 2005

In the Diverse Representation policy, the TMSU claims that "the Executive Committee will commit the Toronto Metropolitan Students' Union to take proactive and practical steps that will allow the Toronto Metropolitan Students' Union to develop and implement a strategy for inclusivity in our services, events, advocacy, campaigns, and to further ensure there is diversity and diverse representation in all programming and organization of our work." The Policy further notes that all committees of the TMSU must develop and implement a strategy to ensure that the TMSU is striving for inclusion, diversity, and diverse representation of all its members.

<u>Operational Policy #36: Student Group Policy, adopted March 20, 2003</u>
The Student Group Policy outlines the responsibilities of student groups that are recognized by the TMSU. According to the Policy, student groups must not act contrary to the <i>Human Rights Code</i> , the TMSU's policies or the University's policies. The Policy specifically notes that "TMSU groups may not proselytize."
<u>Operational Policy #37: Student Group Probation Policy</u>
The Student Group Policy outlines the process by which a TMSU group may be placed on probation for violating one or more of its policies.

The Jewish Experience at Toronto Metropolitan University: A *Fear Society*

37. Jewish students at Toronto Metropolitan University have long endured a pervasive culture of antisemitism that the Defendants have consistently failed or refused to address.

38. Because of the activities and conduct enabled, encouraged, and funded by the Defendants, Jewish students at Toronto Metropolitan University 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 Toronto Metropolitan University for fear that doing so will trigger acts of aggression against them as Jews.

39. Robbed of a school environment free from discrimination, Jewish students cannot be on campus at Toronto Metropolitan University without a reasonable apprehension of physical or psychological harm, having been attacked in the past for displaying their Jewish identity on campus.

40. Jewish students at Toronto Metropolitan University 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.

41. The incidents below exemplify and contextualize the antisemitism at Toronto Metropolitan University over the years, fostering the *fear society* that gives rise to this class proceeding.

Antisemitic Vandalism, Statements, and Incidents Over the Past Decade

42. Set out below are some of the antisemitic incidents to which Jewish students have historically been subjected that have contributed to the poisoned environment at Toronto Metropolitan University. The Defendants have neglected or refused to safeguard students' well-being and respond to these incidents in a manner that upholds their codes, regulations and policies:

- In 2015, antisemitic graffiti was found in a washroom on the University's campus calling for Jews and all their supporters to "*burn in hell*". Next to the message, a Star of David was depicted with an "X" over it. Other messages such as "*die jews*" and "*Sept. 11 should have happened in Israel*" have also appeared on walls of buildings on the Toronto Metropolitan University campus.
- In 2017, a Jewish social work student was denied the opportunity to apply for placement positions by a Toronto Metropolitan University administrator at two non-profit Jewish community organizations, the Prosserman Jewish Community Centre and the United Jewish Appeal, because the organizations' values were "*in opposition*" to the University's. The placement coordinator told the student that the University would not allow her to complete her placement at either organization as the organizations' actions did not reflect the University's values of — as noted in the media — "*anti-oppression; anti-racism; anti-colonialism and decolonization; feminism; anti-capitalism; Queer and trans liberation struggles; issues in disability and madness (cct); among others (many of which are not listed on the school's own website)*". When the student notified senior University administrators of this, she

was initially met with silence. When the administrators finally did respond, they did not offer to place the student at either agency. Instead, she completed her placement at an organization serving children with autism.

- Also in 2017, a lecturer in the University's Department of Geography & Environmental Studies, Dr. Valentina Capurri, spread antisemitic rhetoric on her then-publicly accessible Twitter profile. Her tweets, which garnered international media attention, contained repeated references to "zios" (a derogatory reference to Zionists), including "zio trolls", "zio-murderer", and Canada's "zio-fanatic PM". She also stated that ISIS and Israel "*are in bed together*" and, in response to a motion passed in the Canadian Parliament condemning antisemitism, commented "*could we go any lower in Canada?*". Despite complaints from students to the University administration and negative international media attention, Toronto Metropolitan University did not disclose having taken any disciplinary action. Dr. Capurri continues to lecture at Toronto Metropolitan University to this day.

43. The cumulative effect of these and other incidents has harmed the mental and psychological health and well-being of Jewish students at Toronto Metropolitan University and impaired their ability to learn and study freely. It has left them reluctant to reveal their faith or freely express their views due to well-founded fears of reprisals, indicative of a poisoned campus environment toward Jewish students.

Taskforce on Anti-Racism's (Ignored) Report: “We [Jewish Students] at times feel defeated, silenced, can’t always talk about ourselves and our ethnicities.”

44. In 2009, Ryerson University (now Toronto Metropolitan University) established a taskforce to investigate allegations of systemic racism and antisemitism at the University and create a “roadmap for achieving the vision of Ryerson as an ‘inclusive university’”. Its final report, released in January 2010, outlined some of the incidents of antisemitism that led to the need for the investigation, including non-exhaustively:

- A Jewish student being kicked out of an anti-racism meeting after she identified herself as Israeli. The student was told, “*well you’re from Hillel and you are Zionist and your opinion doesn’t matter here*”.
- At Campus Caravan, an annual display of Toronto Metropolitan University student organizations, TMSU members handed out information on the war in Gaza and displayed a large model of a military tank aimed at the neighbouring Hillel table.
- In-class discussions regarding the Holocaust in which participants, particularly students, freely diminished or negated the Holocaust.
- Ongoing antisemitic content in the *Free Press* newspaper, a student-run media outlet funded by student fees and widely distributed on the Toronto Metropolitan University campus at the time. The Taskforce reviewed the newspaper's content and determined that it was “*strongly anti-Israel and bordering on anti-Semitism*”. The Taskforce noted that antisemitism at Toronto Metropolitan University “*takes the more subtle forms of writing articles critical of Israel*”.

45. Jewish students expressed to the Taskforce the need to hide their identities from their peers to keep themselves safe at the University. As one student said, *“I think a lot of students are afraid of being identified as Jewish; they will walk by the Hillel table and not stop and talk even though we know very well they are Jewish”*.³

46. Despite the Taskforce’s findings over ten years ago, the Defendants have not properly addressed those findings or taken adequate steps to create meaningful change for the Class Members and ensure their safety and well-being. The Defendants have consistently failed to address the systemic hate underlying antisemitism on campus that the Taskforce identified.

The November 2016 Holocaust Education Week Walkout

47. The historic and ongoing antisemitism at Toronto Metropolitan University is further borne out by the dismissive minimization of the Holocaust on campus.

48. On November 29, 2016, a group of students brought forward a motion at a General Meeting of the then-Ryerson Students’ Union (**RSU**, now the TMSU) to commemorate Holocaust Education Week on campus.

49. The motion would have committed the RSU to offering annual Holocaust education programs to emphasize the value of pluralism and diversity. The motion was apolitical. It did not mention Israel.

50. Soon after the meeting began, a group of students started denigrating the students who had brought the motion forward with antisemitic slurs. The offending group yelled that *“too many Jewish students”* were speaking.

³ Hillel is a large Jewish student organization. Hillel Ontario works to amplify Jewish campus life across nine universities with a combined Jewish student population of over 21,000. Hillel engages with, empowers, and inspires Jewish university and college students. By promoting Jewish identity through life-changing trips and campus initiatives, cultivating student leadership and embracing religious, and political, diversity in an inclusive environment, students learn to make a meaningful impact on the future of the Jewish people and the world, while they grow intellectually, socially, and spiritually.

51. As the motion was being discussed, two RSU-recognized groups (still recognized by the TMSU today) — the Muslim Students Association and the Students for Justice in Palestine — staged a preorganized walkout.

52. The walkout resulted in the meeting losing its quorum, so the Holocaust commemoration resolution could not be voted on. To ensure this result, a group of students patrolled the hallway outside the meeting space to prevent anyone who had exited from re-entering.

53. The RSU, including its then President, was actively involved in planning and executing this tactic, along with the Muslim Students Association and the Students for Justice in Palestine.

54. The incident resulted in international media attention and condemnations. Toronto Metropolitan University responded to the criticism with a statement claiming that the University was “*very concerned*” about allegations of antisemitism that stemmed from the incident.

55. Yet, the University took no adequate steps to punish the students responsible for the blatantly antisemitic walkout or to discipline the RSU for its involvement.

The TMSU and BDS: “Antisemitic and contrary to Canadian values”

56. The Boycott, Divestment and Sanctions (BDS) movement targets Israel with boycotts, divestments, and economic sanctions against companies that maintain operations in Israel.

57. BDS is “*antisemitic and contrary to Canadian values*”, *per* Prime Minister Justin Trudeau. On February 22, 2016, Parliament passed a resolution (42nd Parliament, 1st 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.

58. On April 2, 2014, the then-RSU passed a resolution endorsing BDS. The TMSU continues to support BDS. The resolution committed the Student Union to cease working with companies that do business in Israel and encouraged the University to cut ties with all companies and investments in Israel. No other country was similarly targeted.

59. The resolution was enthusiastically supported by then-RSU President Rajean Hoilett. He went on soon after, in August 2014, to bring a similar motion forward at the Ontario branch of the Canadian Federation of Students to endorse BDS and commit its student unions to lobbying their universities to divest from Israeli companies and institutions.

60. The BDS resolutions are antisemitic and discriminatory. In the years since the resolutions first passed, the TMSU has not passed any others targeting any country other than Israel. This exclusive focus on the Jewish state necessarily adds to the toxicity of the Toronto Metropolitan University environment and triggers in its Jewish students the apprehension that they are being singled out.

61. Toronto Metropolitan University has taken no steps to restrain these activities. Its inaction only emboldens the perpetrators.

Antisemitism Around the Events of October 7, 2023

62. Life for Jewish students at Toronto Metropolitan University has worsened palpably since October 7, 2023.

63. 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. Additionally, 230 Israeli individuals were kidnapped, including elderly Holocaust

survivors and children as young as 9 months old. The events of October 7, 2023 were the largest targeted massacre of Jews since the Holocaust.

64. Hamas is committed to the destruction of Israel and its Jewish inhabitants, the creation of an Islamic state in Israel's place, and the annihilation of Jews around the world.

65. Since its inception, Hamas has carried out countless indiscriminate terror attacks on Israeli civilians, including bombings, rocket attacks, shootings, and stabbings.

66. Like many other Jewish students at Toronto Metropolitan University, M.J. has direct ties to Israel. Having been born in Israel, news of the atrocities that took place on October 7th has had a profound and traumatic impact on him and his family.

Calls for Violence Against Jews and Israelis at Toronto Metropolitan University

67. Since October 7, Jewish students have been subjected to physical and verbal acts of antisemitic aggression that have been met with inaction and enablement by the Defendants. Whether buying coffee, getting to classes or simply walking on the Toronto Metropolitan University campus, Class Members cannot escape the hate toward Jewish people that the Defendants have been tolerating or enabling.

68. While on campus, Jewish students have had to endure rallies on the Toronto Metropolitan University campus praising Hamas' actions and openly calling for more violence against Jewish and Israeli individuals. Toronto Metropolitan University students have openly called for an "*intifada*" against the Jewish people. Jewish students have been physically and verbally assaulted, bullied and harassed during these rallies.

69. Participants at the rallies have directed verbal abuse at Jewish students, such as "*you are not a Jew, you are a dirty Zionist*", "*genocidal*", "*baby killers*", and "*Islamophobic*". These

accusations are antisemitic and discriminatory. The Defendants took no steps to prevent or curtail the abuse.

70. Jewish students have also had to suffer antisemitic graffiti and vandalism on and around the Toronto Metropolitan University campus, for example, “*long live the intifada*” on the wall of a student lounge, and “*long live the resistance*” (i.e., Hamas) and “*resistance is justified*” (referring to October 7) written in chalk on a University campus sidewalk.

71. M.J. has been subjected to TMSU-sanctioned clubs disseminating messaging and advertisements calling for an “*intifada*” on social media. They have put up signs advocating an “*intifada until victory*” on and around the Toronto Metropolitan University campus, including on the steps to the Student Learning Centre, which the University celebrates as the “*symbolic front door*” of its campus.

72. On November 29, 2023, M.J. was shocked to witness a person holding up an Israeli flag with a Nazi swastika drawn over the Star of David at a rally outside the front doors of the Student Learning Centre. Toronto Metropolitan University security agents were present. They did nothing to intervene or have the offending individual removed.

73. The next day, Toronto Metropolitan University issued a statement condemning the display of an “*unmistakeable symbol of hate and antisemitism*” on campus. The University did not explain why its agents had not intervened immediately, nor did it commit to taking such action in the future.

74. Inside the Student Learning Centre, students in front of the first-floor Starbucks in the building have been seen holding up signs proclaiming “*your coffee is pro-genocide*”. Jewish students inside the Student Learning Centre have had to face peers holding up banners saying “*Zionists off our campus*”. None of these aggressions has resulted in action by the University.

BDS Demands

75. BDS rallies have disrupted the University community and have made Jewish students feel unsafe at the University. Students continue to campaign openly on campus for the University to boycott and divest from anything or anyone associated with Israel.

76. For example, on April 30th, 2024, a group of masked protesters stormed a Board of Governors meeting demanding (among other things) that the University divest from businesses, companies and corporations profiting from Israel, and launch an academic boycott of study abroad programs, research initiatives and relationships with Israeli universities. The students threatened to “escalate” their demands should they not be met by May 10, 2024. They made no such demands with respect to any other country.

77. In the following days, students rallied on campus to insist that the Toronto Metropolitan University heed their demands. Speakers at these rallies called for the students and workers at universities and colleges around the world to rise up “*against the Zionist-led, imperialist funded genocide in Palestine*”. Student access to parts of the University has been shut down due to the safety concerns these rallies have elicited.

78. Jewish students trying to respond with their perspectives are shouted down, surrounded by angry mobs and, in some cases, physically assaulted.

79. For example, in December 2023, Jewish students in the Student Learning Centre holding up a sign with the words “*free the hostages*” were surrounded by a hostile group who vilified them with the age-old antisemitic trope that the Jewish students controlled the news media and social media: “*you lot control everything*”. The Defendants took no steps to shut down the offenders or protect the students.

80. M.J. was forced to take this antisemitic abuse as he went to class, deepening the well-founded apprehension that Toronto Metropolitan University is not a safe space for Jewish students.

The Lincoln Alexander Law School Letter: Celebrating the October 7 Massacre

81. On October 20, 2023, 74 students at the Toronto Metropolitan University’s Lincoln Alexander School of Law – about one-sixth of the law school’s student body –published a letter in which they:

- denied Israel’s right to exist, stating that, “*‘Israel’ is not a country, it is a brand of a settler colony*”;
- blamed Israel for Hamas’ terrorist acts, stating: “*We assert that Hamas’ attack was a direct result of Israel’s 75-year-long systemic campaign to eradicate Palestinians, and that Israel is therefore responsible for all loss of life in Palestine*”;
- expressed support for “*all forms of Palestinian resistance*”, including the October 7 massacre;
- demanded the destruction of Israel.

82. The students’ letter propagated old antisemitic tropes, including claims that Jews are responsible for atrocities committed against themselves. The students’ demands for the destruction of Israel and their denial of Israel’s right to exist are instances of antisemitism identified in the IHRA definition of antisemitism (see above) that the Canadian government and other countries have adopted.

83. Several faculty members of the Lincoln Alexander School of Law assisted with the drafting of the letter.

84. After the letter attracted significant media attention and public condemnation, the Lincoln Alexander School of Law issued a public statement criticizing the letter, claiming that the

University “*unequivocally condemn[s] the sentiments of Antisemitism and intolerance expressed in this message*”.

85. Despite this statement, the University failed to discipline the students and faculty who wrote the letter or indicate what steps it would take to protect Jewish students from further hatred and violence. Instead, the University merely asked students to “*move forward*”.

86. The President of Toronto Metropolitan University failed to issue any statement regarding the letter. The University then outsourced its investigation of the incident to the Honourable Michael MacDonald, the former Chief Justice of Nova Scotia from 2004 to 2019.

87. Despite the harm that the letter caused Jewish students like M.J. and the need for an institutional response to the spreading antisemitism on campus, Toronto Metropolitan University chose to delay enforcing its codes, regulations and policies against the perpetrators of the letter until after the school year, when many of the offending students will have graduated.

88. Toronto Metropolitan University has further failed or refused to respond to antisemitism on campus on the pretext of awaiting the outcome of Mr. MacDonald’s review. The University’s pretext for inaction and avoiding its duties under the University’s codes, regulations and policies is disingenuous. The scope of Mr. MacDonald’s review is limited to the Law School letter.

89. On May 31, 2024, Mr. MacDonald released his final report, *Strengthening the Pillars: Report of the TMU External Review* (“the MacDonald Report”). As part of his review, Mr. MacDonald met with Jewish students, faculty members and employees of TMU who described their experience at the University. Members of the Jewish Law Students’ Association reported that they no longer feel safe at Toronto Metropolitan University, and that they feel “mentally and emotionally depleted”. One Jewish professor described having to move her classes online due to concerns for her physical safety.

90. While Mr. MacDonald concluded that the letter did not violate Toronto Metropolitan University's Student Code of Non-Academic Conduct, he acknowledged that, "many Jewish students at LASL experienced an "intimidating, hostile, and offensive" study environment in the Fall of 2023, for a variety of reasons of which the letter was a significant one".

91. The University responded to the Report with a public but hollow undertaking to "focus on sustaining an environment where all of our community members feel welcome and can continue to focus on teaching, learning, scholarly and creative research, and delivering a positive university experience for all." The University did not acknowledge the harms Jewish students, faculty and employees have experienced outlined in the MacDonald Report, nor did the University say anything about addressing those harms.

92. The response from the Jewish community has been characterized by great difficulty in accepting the MacDonald Report's conclusions as reflected in, for example, the statement issued by the Centre for Israel and Jewish Affairs:

The final report by the external evaluator acknowledges that the letter replete with antisemitic content signed by TMU law students was harmful, flawed, aggressive, troubling, offensive, and harsh. However, the reasoning that it does not break the university code – because the letter could be left open to interpretation, or that some hadn't fully read it, or, worse, that some signed it despite all of that – shakes our confidence in the report and misses the target by failing the students, faculty, staff, and the university itself. [...]

93. Toronto Metropolitan University's abdication of its duties has left Jewish students like M.J. even more vulnerable to the threatening and demeaning culture of antisemitism and the toxic environment that the students have been living through at the University. As a result, the damage and harm to the Class Members persists.

Faculty and Staff Contributing to the Antisemitic Culture

94. Faculty and staff at Toronto Metropolitan University have contributed to the culture of antisemitism at Toronto Metropolitan University with hate-filled statements inside the classroom and on social media. Many have stood idly by when students have uttered antisemitic statements in classroom discussions. Others have openly encouraged antisemitic comments themselves.

95. On October 26, 2023, the Faculty of Arts and Faculty Association Equity Committee sponsored a “*Teach-in for Palestine*” event on campus, featuring a range of speakers from the University’s faculty. Promotional materials for the event posted on the University’s website included the genocidal slogan “*From the River to the Sea Palestine will be Free*”.⁴ The event itself included remarks by faculty encouraging students to refer to Hamas as “*freedom fighters*” and cast the Israelis as “*terrorists*”.

96. Professors have also expressed their support for the Law School students who signed the letter discussed above. On January 16, 2024, the Toronto Metropolitan Faculty Association, the Toronto Metropolitan Graduate Students’ Union, and the Toronto Metropolitan Association of Part-Time Students, released a letter seeking to defend the antisemitic content in the Law School letter. The associations criticized Toronto Metropolitan University for even engaging Mr. MacDonald for the review. They denied that the letter “*shut down the speech of others*”, ignoring the letter’s profound impact on Jewish students at the University.

97. M.J. has been adversely affected by his fellow Residence Advisors’ posting statements on social media that incite violence against Jews and Israelis. He has seen a marked change in their

⁴ The slogan “*From the River to the Sea, Palestine will be Free*” calls for the elimination of the State of Israel. It is commonly heard at the University or seen written on posters displayed at rallies on campus. It has frequently been used by terrorist organizations to advocate for the elimination of Israel. The phrase has been banned in Germany and condemned as antisemitic by the U.S. House of Representatives.

behaviour toward him since the October 7 massacre: once friendly and welcoming, his coworkers now ignore him and treat him coldly due to his Jewish-Israeli identity.

98. The Defendants have allowed or enabled these and similar activities and conduct in disregard of Jewish and other students' well-being and safety, in violation of their codes, regulations and policies noted above.

99. The risks, damage and harms to Jewish students have been heightened because the Defendants, disregarding Jewish and other students' well-being and safety, have allowed, enabled, funded, or turned a permissive blind eye to the increased antisemitic activities and conduct on campus since the events of October 7.

Complaints From the Class Members Are Met with Silence and Indifference

100. Jewish students, faculty and staff have repeatedly brought to the attention of the administration at Toronto Metropolitan University the toxic environment on campus and the adverse impact it has had on their university experience. Their administration has responded with indifferent silence and inaction.

101. M.J. co-authored an email to Toronto Metropolitan University after he found posters on the University campus justifying the October 7 massacre. The posters depicted a Star of David covered in blood.

102. The email brought to the University administration's attention that the "*targeting of Israel as a whole has real consequences for the Jewish community on campus, not only instilling fear and intimidation, but also a direct correlation to the safety and security of all students*". The University made no response other than an acknowledgment of receipt.

103. In November 2023, M.J. signed a petition from a group of Jewish students that explained their feeling unsafe at the University. The petition was sent to the University administration. The administration did not respond.

104. The University's silence and inaction regarding complaints from Jewish students demonstrate to M.J. and other class members that the University will not enforce its codes, regulations and policies to address the antisemitic, intimidating, and threatening conduct and environment to which the students have been subjected.

M.J.'s Personal Experience

105. M.J.'s personal experience at Toronto Metropolitan University reflects the experiences of all the Class Members.

106. The pervasive culture of antisemitism at the University and the University's inaction have left M.J. feeling unsafe on campus, in University facilities, in his student residence room and in his classes.

107. M.J. has a reasonable apprehension of being a target because of his heritage. As a result, he was unable to stay overnight in his student residence room and rarely used many of the services on campus that he paid for, including the gym and the library.

108. M.J. has been denied the opportunity to obtain a full postsecondary education and a fulfilling university experience. His academic experience has declined since October 7 due to the psychological harm at the University following Hamas' terrorist attack. He has not had access to the higher learning environment he reasonably expected and paid for.

109. M.J. has had to curtail classroom participation and social interactions with his peers. He has been deprived of opportunities to engage with the broader university community and create the lasting experiences and relationships that enrich the university experience for so many students.

110. The Toronto Metropolitan University administration failed to provide substantive support and resources to M.J. in his role as Residence Advisor so that he may address the rising antisemitism on campus and keep the Jewish students in his residence building safe.

111. The toxic environment on campus forced M.J. to stay at his parents' home as much as possible during his final year of studies, so he was unable to be on site to ensure the safety of the students in his care.

112. M.J. has communicated his concerns to senior administrators in his student residence building and at the University. His concerns have gone unheeded, met with silence and indifference.

113. M.J. and all the Class Members are being denied the education and experience to which they are entitled at Toronto Metropolitan University.

The Ongoing Harms to the Class Members

114. The ongoing discrimination, antisemitism, hatred, and public incitement and wilful promotion of hatred that M.J. and other Jewish students at Toronto Metropolitan University have experienced and continue to experience have resulted in some or all of the following harm and damage to the Class Members, non-exhaustively:

- 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 cultural and academic events on campus 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

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

- a. to afford all students uncompromised educations, scholarship, experiences, services, resources, opportunities, and facilities;
- 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 free of discrimination, hatred, antisemitism, the incitement of hatred, the wilful promotion of hatred, and the wilful promotion of antisemitism on campus;
- e. to prevent damage to the Class Members' physical and psychological health and wellness resulting from discrimination, hatred, antisemitism, the incitement of hatred, the wilful promotion of hatred, and the wilful promotion of antisemitism;
- f. to honour and enforce Toronto Metropolitan University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities; and
- g. to represent all Toronto Metropolitan University students, standing up to inequity, discrimination, hatred, antisemitism, and marginalization on the Toronto Metropolitan University campus while addressing deep-rooted systemic issues affecting the Class Members' student experience;

116. Toronto Metropolitan University and the TMSU 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.

117. Toronto Metropolitan University and TMSU breached their good faith, fair dealing and contractual obligations to the Class Members as follows:

Toronto Metropolitan University

- a. Toronto Metropolitan University 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 provided and continues to provide the perpetrators of the discriminatory, hate-based, and antisemitic speech, activities and actions with opportunities and accommodations to continue their speech, activities and actions;
- 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 Toronto Metropolitan University students enjoy, including but not limited to physical protection, 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 TMSU in the face of the TMSU's ongoing violations of Toronto Metropolitan University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities.

Toronto Metropolitan University Students' Union

- k. the TMSU 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 TMSU benefits that non-Jewish Toronto Metropolitan University 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 antisemitic 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 Toronto Metropolitan 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 Toronto Metropolitan University students, fighting inequity, discrimination, hatred, and marginalization on the Toronto Metropolitan University campuses while addressing deep-rooted systemic issues affecting the Class Members' student experience;
- t. it has failed and continues to fail to sanction TMSU representatives and members who perpetrated or participated in discriminatory, hate-based, and antisemitic speech and 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

118. 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.

119. 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.

120. The Defendants have breached their duty of care as follows:

Toronto Metropolitan University

- a. Toronto Metropolitan University 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 classes 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 codes, regulations and policies;
- 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 TMSU in the face of the TMSU's ongoing violations of Toronto Metropolitan University's codes, regulations and

policies against discriminatory, hate-based, and antisemitic activities including inciting, sponsoring and participating in antisemitic activities.

Toronto Metropolitan University Students' Union

- h. TMSU 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 has 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 have violated, and incited and condoned violations of Toronto Metropolitan 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 Toronto Metropolitan University students, and to take steps to oppose inequity, discrimination and marginalization on the Toronto Metropolitan 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 TMSU 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

121. The nature of the relationship between Toronto Metropolitan University and its students, including the current Class Members, is fiduciary.

122. 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.

123. The students' interests are directly affected by Toronto Metropolitan 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.

124. 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.

125. Students enrolling at Toronto Metropolitan 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.

126. Toronto Metropolitan 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.

127. In breach of its fiduciary duty to the Class Members, Toronto Metropolitan 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 failed to make the Class Members' education and well-being a priority, and failed to protect the Class Members from physical and psychological damage and harms, including injury to their dignity, feelings, and self-respect.

Breach of the *Occupiers' Liability Act*.

128. The Defendants have failed and continue to fail in their duty as occupiers of premises of and on the Toronto Metropolitan 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 Toronto Metropolitan University premises, in accordance with section 3 of the *Occupiers' Liability Act*, RSO 1990 c. O.2.

129. 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.

130. 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

131. As a result of the breach of contract, negligence, breach of fiduciary duty, and breach of the *Occupiers' Liability Act*, all as 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 or diminishment of enjoyment of life;
- d. loss of or diminishment 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 Toronto Metropolitan 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

132. 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.

133. The Defendants' acts, omissions, and conduct 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.

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

Punitive Damages

135. 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.

136. 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

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

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

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

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

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Court File No. CV-23-00708529-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

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