

RULE/LA RÈGLE 26.02 (C)

Court File No. CV-23-00708190-00CP

THE ORDER OF HONOURABLE JUSTICE LEIPER
L'ORDONNANCE DU
DATED/FAIT LE March 12 2025

ONTARIO

SUPERIOR COURT OF JUSTICE

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Date: 2025.06.03
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REGISTRAR BETWEEN GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

R.H. and R.B.

Plaintiffs

and

YORK UNIVERSITY and YORK FEDERATION OF STUDENTS

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: YORK UNIVERSITY
4700 Keele St., Kaneff Tower 1050
Toronto, ON M3J 1P3

TO: YORK FEDERATION OF STUDENTS
4700 Keele St., 336, Student Centre, York University
Toronto, ON M3J 1P3

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 York University campus as promoted, incited by and as a result of the actions of the Defendant York Federation of Students (YFS) 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

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- 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 YFS 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. YFS has failed or refused to ensure or comprehensively represent the Class Members' rights and concerns at York University;
 - v. the rights of the Class Members under York University's (i) *Code of Student Rights & Responsibilities*, (ii) *Regulation Regarding Student Organizations*, (iii) *Responsibilities of Faculty Members (Senate Policy)* and related York University codes, regulations and policies identified below have been violated by and as a result of the acts or omissions of York University and the YFS 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 York University campus or through any York 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 York University campus or through any York University communications channel, including but not limited to on social media platforms and websites;
- iii. requiring the Defendants to enforce forthwith York University's (i) *Code of Student Rights & Responsibilities*, (ii) *Regulation Regarding Student Organizations*, (iii) *Responsibilities of Faculty Members (Senate Policy)* and related York University codes, regulations and policies in respect of discrimination, hatred and antisemitism on the York 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 Defendants to afford the Class Members an effective grievance mechanism to address antisemitism or any other manifestation of hatred on the York University campus or through any York University communications channel;
- vi. enjoining the Defendants or any of them from allowing the antisemitic mural referred to below to remain in place, and requiring the Defendants to ensure that the mural is taken down forthwith;
- 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, 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 York University:
 - i. an interim, interlocutory and permanent injunction:
 1. requiring York University to decertify YFS as an authorized York student federation;
 2. in the alternative, enjoining York University from remitting student membership fees to, or otherwise funding, YFS, unless and until YFS 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 \$3,000,000;
 - ii. aggravated or exemplary damages in the amount of \$3,000,000;
 - 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. York University has become, for over a decade, home to ongoing 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 denied the ability and opportunity to participate in and benefit from the educational and social experiences that York University and the YFS promised them.

4. York 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. York stands by inactively as students and faculty engage in hate speech and abuse in violation of York's codes, regulations and policies.

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

6. This Class Proceeding has three objectives:

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- a. to redress and remedy the past and ongoing discrimination, harassment and harms that Jewish students at York 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 a learning environment free of the discrimination, antisemitism, and culture of hatred prevailing at York University.
7. 78 years after the liberation of Auschwitz and other Nazi concentration camps, Jewish students and faculty at York 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 York University campuses for which York University and YFS 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 relied when enrolling in York University.

The Plaintiffs

10. The Plaintiff, R.H., is an undergraduate student at York University, and a member of the York Federation of Students.

11. The Plaintiff, R.B., graduated from York University in June of 2023, and was a member of the YFS throughout his studies at York University.

12. R.H. and R.B. came to York University eager to proudly practice Judaism, identify as Jews, and display their Jewish ancestry in the same way and with the same freedom that other students are able to show pride in their identities.

13. From the beginning of their studies at York University, R.H. and R.B. faced — and R.H. continues to face — persistent hate and discrimination based solely on their Jewish identity. The details are set out below.

The Class

14. The proposed Class is defined as:

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

The Defendants

15. York University is an internationally recognized public research university in Toronto, Ontario.

16. York University is governed by the *York University Act, 1965*,¹ which in part provides as follows:

4. The objects and purposes of the University are,

*(a) the advancement of learning and the dissemination of knowledge;
and*

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

(b) the intellectual, spiritual, social, moral and physical development of its members and the betterment of society.

5. The University may establish and. Maintain faculties, schools, institutes, departments, chairs and courses.

6. The University may grant in all branches of learning any and all university degrees, diplomas and certificates.

17. York University describes itself as follows:

York is a leading international teaching and research university, and a driving force for positive change. Empowered by a welcoming and diverse community with a uniquely global perspective, we are preparing our students for their long-term careers and personal success.

Home to one of the largest and most diverse student bodies in Canada, our 54,500+ students from 172 countries, 370,000+ alumni and leading professors are working with 323+ university, industry and NGO partners to tackle pressing issues. Recognized as a global leader for five consecutive years in the Times Higher Education Impact Rankings, and number one in global joint research publications in Ontario, York is positioned to take on the challenges that matter most.

Through our leading programs and 16,900+ diverse experiential education opportunities including internships, community placements, co-ops and capstone projects, we are preparing our students for meaningful careers, longterm success, and the critical knowledge to work toward a better future.

Across our multiple campuses in the Toronto area, including the Keele, bilingual Glendon and Markham campus (opening spring 2024), and globally in Hyderabad, India, and Costa Rica, we continue to innovate. This brings success to our students in our top-ranked Schulich School of Business and Osgoode Hall Law School and in the liberal arts, creative and performing arts, professional studies, health, engineering, education and sciences.

We value collaboration, diversity and inclusivity. Together, we can make things right for ourselves, our communities, our planet and our future.

York University (York U) is a leading international teaching and research university, and a driving force for positive change. Empowered by a welcoming and diverse community with a uniquely global perspective, we are preparing our students for their long-term careers and personal success.

18. The YFS is a private non-profit corporation. It is the largest student union in Canada, representing approximately 55,000 students. Membership in YFS is mandatory for York Students.

19. York University imposes and collects YFS membership fees as a condition of a student's enrolment and remits the fees to YFS under York University Presidential Regulation Number 4—Regulations Regarding Student Government Organizations.

Antisemitism and Hatred of Jews

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

21. 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.

22. 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[.]”

23. 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*)

24. 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.

25. 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.

26. 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.

27. 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.

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

York's Codes, Regulations and Policies

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

30. York 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.

31. The following is a summary of York’s codes, regulations and policies:

<p>i. <u>Mission and Vision:</u></p> <p>York University states that its mission is centered on the pursuit, preservation, and dissemination of knowledge, excelling in both research and teaching. It claims (i) to value, <i>inter al.</i>, critical intellect, diversity, academic freedom, social justice, and accessible education, and (ii) to embody the characteristics of its urban and multicultural setting in Toronto.</p> <p>York describes its vision as being to offer a diverse student body access to a high-quality, research-intensive learning environment that serves the public good.</p>
<p>ii. <u>Human Rights Policy and Procedures:</u></p> <p>With this policy, York University claims to affirm its commitment to human rights, and, in particular, to the principle that every member of the York community has a right to equal treatment in services (including education, facilities or accommodation), contracts, and employment, without harassment or discrimination on the grounds prohibited by the <i>Ontario Human Rights Code</i>.</p> <p>Any York community member who infringes a right of another community member protected by the <i>Ontario Human Rights Code</i>, “shall be subject to complaint procedures, remedies, and sanctions set out in the University's policies, codes, regulations, and collective agreements [...]”.</p>

iii. Statement of Policy on Free Speech:

This statement affirms York’s commitment to free speech. However, the statement also affirms that freedom of speech is not absolute and does not protect “expression that constitutes hate speech, harassment, threats, discrimination or otherwise violates the law”, and that York “will not tolerate members of our community or guests engaging in threatening speech or actions which violates [*sic*] York’s commitments to ensure the safety of community members...”.

Regarding students, the statement specifies that they are responsible for “upholding an atmosphere of civility, diversity, equity and respect in their interactions with others, and should strive to make the campus safe, support the dignity of individuals and groups, and uphold individual and collective rights and responsibilities”.

iv. Academic Accommodation for Students’ Religious Observances:

York states its commitment to sustaining an inclusive, equitable community in which all members are treated with respect and dignity, and to respecting the religious beliefs and practices of all members of the community.

The guideline directs that “No student should be materially disadvantaged / penalized because of religious observance”.

v. Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations:

The York Senate affirms in this policy Senate affirms that (i) no individual or group of individuals shall cause by action, threat or otherwise, a disturbance that obstructs any academic activity organized by the university or its units, and (ii) students and instructors are expected to maintain a teaching and learning environment that is physically safe and conducive to effective teaching and learning for all concerned, and to be civil and respectful at all times within the learning environment, including within classrooms, laboratories, libraries, study halls and other places where academic activities are conducted and in areas proximate to those where academic activities are taking place.

vi. <u>Online Harassment Guide for Faculty and Staff at York University:</u>
This Guide sets out York’s prohibition of harassment in online and virtual environments, and provides detailed options for recourse.
vii. <u>Regulation Regarding Student Organizations:</u>
This regulation requires that the activities and financing of student activities by York University student organizations must be conducted in an open, accessible, democratic, non-discriminatory and legally and financially responsible manner. York specifies that it will deny privileges to a student organization if its beliefs or procedures are contrary to the foregoing principle or lead to activities that are contrary to it.
viii. <u>Code of Student Rights and Responsibilities</u>
The Code sets out the rights and responsibilities of every student at York University, including the right to participate in activities for students at the University without experiencing harassment, intimidation, discrimination, disruption or acts of violence. The Code is clear that students have the responsibility to (among other things), “uphold an atmosphere of civility, honesty, equity and respect for others which values the inherent diversity in our community.” Violations of the Code give the University grounds to impose sanctions, ranging from a reprimand to expulsion.

YFS’ Constitution and Policies

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

33. The YFS 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.

34. The following is a summary of the YFS policies:

i. <u>Constitution of the York Federation of Students</u>
<p>The <i>Constitution</i> of the YFS sets out the federation’s structure and foundational principles. It defines the “basic aims” of the YFS as:</p> <ul style="list-style-type: none">● to organise students on a democratic, cooperative basis for advancing students’ interests, and advancing the interests of the students’ community;● to provide a common framework within which students can communicate, exchange information, and share expertise, skills and ideas;● to ensure the effective use and distribution of the resources of the student movement;● to bring students together to discuss and co-operatively achieve necessary educational, administrative, and legislative change wherever decision-making affects students;● to facilitate co-operation among students in organising services which supplement the learning experience, provide for human needs, and which develop a sense of community with our peers and with other members of society;● to articulate the desires of students to fulfill the duties and be accorded the rights of citizens in Ontario, in Canada, and in the international community; and● to achieve the goal of a system of public post-secondary education which is accessible to all, which is of high quality, and which is rationally planned; which recognises the legitimacy of student representation and the validity of students’ rights; and whose role in society is clearly recognised and appreciated. <p>The <i>Constitution</i> also defines the YFS’ foundational purposes. These include:</p> <ul style="list-style-type: none">● to represent, promote and defend the common interests of undergraduate students at York University;● to promote and support the interest and activities of undergraduate student associations in all departments, faculties and colleges at York University; and● to represent York University undergraduate students at the administrative level of decision-making and to do so by speaking on their behalf with one united voice. <p>The <i>Constitution</i> commits the YFS to uphold these foundational aims and purposes.</p>
ii. <u>By-laws of the York Federation of Students</u>
<p>The <i>By-laws</i> set out the rights, privileges and responsibilities of all YFS members.</p> <p>According to the <i>By-laws</i>, all members of the YFS have the right and privilege to “have their interests represented collectively in the Federation through their</p>

constituency representatives,” and “the protection and support of the Federation in accordance with the objectives of the Federation”.

Members of the YFS also have the responsibility to respect the goals and objectives of the YFS as defined in the *Constitution*, *By-Laws*, and any legal agreement adopted by the YFS in their name.

The *By-laws* also set out the specific responsibilities of those in leadership roles in the YFS. According to the *By-laws*, Directors have the responsibility to, among other things, “act in the best interest of the Constituency that they are representing.” Similarly, the Vice President of Equity is responsible for, among other things, promoting the “Board’s initiatives and activities that aim to raise awareness of discrimination on campus and in the community” and ensuring that, “all activities and endorsements of The Board reflect the anti-oppressive mandate of the Federation”.

Directors and Executives who fail to perform their duties as specified by the *By-laws* and *Constitution* may face sanctions from the YFS. The YFS may also discipline executive officers and directors when it determines that it has “just cause” to do so.

The *By-laws* also establish the Equity Committee, which is required to (among other tasks):

- discuss and develop, and formulate policy recommendations for the Federation and for the University that aim to raise awareness of discrimination and promote equity in the University community;
- work to facilitate campus-wide discussion and action on issues of equity, and, in this spirit, work with the Clubs Committee and Community Service Groups the Board with the aim of promoting this discussion; and
- ensure that members of all the YFS’ committees are aware of the Federation’s position with respect to equity issues.

iii. Club Ratification Policy

This Policy sets out the procedure that student clubs must follow to be ratified by the YFS and the circumstances in which a ratified student group may lose its official recognition.

According to the *Club Ratification Policy*, the activities and objectives of clubs seeking ratification should advance (or, at least, attempt to advance) the “educational, recreational, social or cultural values of the York University Community”. The YFS claims that it “does not support, promote or fund activities that are discriminatory as defined by the *Ontario Human Rights Code* and YFS policies,” and “will not support clubs that partake in activities that are against the law of Ontario and Canada”.

According to this Policy, the YFS will only ratify clubs that meet these (and other) requirements. Once ratified by the YFS, student clubs are able to access funding from the YFS, opportunities to table at YFS events, club listings on the YFS website, anti-oppression training organized by the YFS, and, if requested, liability insurance provided by the YFS.

The Policy also sets out the grounds that the YFS may rely on to de-ratify recognized student groups. These include, among others:

- failure to comply with the language or the spirit of the Club Ratification policy in any way;
- abuse of any YFS services or privileges; and
- committing an offence that is contrary to federal, provincial, municipal laws or YFS policies and procedures.

Any one or combination of these actions are grounds for the YFS to de-ratify a recognized student group.

iv. Club Funding Operations Policy

This Policy sets out the different types of funding that clubs may receive from the YFS, and the terms which the YFS claims to consider when distributing funds to student groups.

All applications for club funding must be in accordance with the YFS' policies, *By-laws*, and *Constitution*. The YFS purports that it will not fund activities that are "against the law in Ontario and Canada," and it will not "support, promote, or fund activities that are discriminatory as defined by the Ontario Human Rights Code and YFS policies."

v. Creating Safe(r) Spaces: Equity Statement

In this Statement, the YFS claims that it is "an equity based organization." The YFS claims that it is "devoted to fighting inequality, discrimination and marginalization in not only our campus but in our communities," and is "committed to the fight for equitable and saf(er) spaces for learning and growing not just on our campus, but in our communities as a whole."

The Jewish Experience at York: A *Fear Society*

35. Jewish students at York University have long endured a pervasive culture of antisemitism that the Defendants have consistently failed to address.

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

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

38. York students have been attacked for displaying their Jewish identity on campus. One Jewish student was called “*the devil*” after speaking about antisemitism. At a speech about the Israeli-Palestinian conflict by Norman Finkelstein, Jewish students were targeted, bullied, and harassed.

39. Jewish students at York 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.

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

The 2009 YFS Riot

41. Emblematic of the historical and ongoing systemic antisemitism that York University and the YFS have left unchecked is the 2009 riot targeting Jewish students.

42. On February 11, 2009, Jewish students at York were attacked in a hate riot on campus.

43. These students were singled out and pursued for being Jewish by a mob of more than 100 people. They were assailed by screams of “*Zionism equals racism*” and “*Racists off campus*” hurled at them only because of their religion. At least one senior representative of the YFS, Vice President of Equity Krisna Saravanamuttu, was present during the riot and actively contributed to its escalation.

44. The Jewish students had to take refuge in the Hillel student organization offices at York.² The rioters blocked and banged on the glass doors, thus forcibly confining the students. The rioters chanted, “*Die, bitch, go back to Israel,*” and “*Die, Jew, get the hell off campus.*”

² 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

45. York's campus security and YFS officials did nothing to stop the riot. They advised the Jewish students to remain in the Hillel office. Police arrived almost an hour later. They escorted the barricaded students out amidst cries of "*get off our campus*" and "*shame on Hillel.*"

Antisemitic Vandalism and Statements

46. Jewish students have been repeatedly subjected to antisemitic graffiti on York's campuses. Antisemitic symbols, graffiti and tropes such as Nazi swastikas have appeared regularly on York classroom walls and chalkboards.

47. 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.

48. Faculty have openly and shamelessly denied or minimized the Holocaust. In 2020, while teaching at Osgoode Hall Law School, Professor Faisal Bhabha, an Associate Professor at York's Osgoode Hall Law School, told a discussion panel that "*accusing Israel of exaggerating the Holocaust could be, for some, a plausible argument.*" York University continues to employ Professor Bhabha as an Associate Professor.

49. The Defendants have allowed blatantly antisemitic publications to be distributed on the University's campuses, including:

- a. copies of *Your Ward News* have been allowed to circulate on campus. Our Courts have held *Your Ward News* to be a criminal hate publication: *R. v. Sears*, 2021 ONCA 522;

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.

- b. in 2008, York's community newspaper, *Excalibur*, published an article entitled "*Jewish Attack Not a Surprise*", justifying a school shooting at a religious school in Israel that left eight students dead;

The November 2019 Riot and the Hon. Thomas A. Cromwell's (Ignored) Report

50. On November 20, 2019, Herut, a Jewish student organization at York, hosted an on-campus event featuring former members of the Israel Defense Forces. Herut submitted its event application nearly two months in advance. Herut asked that York security be present, anticipating that individuals would try to disrupt the event.

51. At an advance event information table on campus a month before, a hostile mob surrounded Herut personnel and members, spitting and swearing at them, triggering traumatic memories of the similar patterns of abuse of Jews in Nazi Germany. Three days later, the YFS rejected Herut's application for official recognition.

52. A few weeks later, members of the York group Students Against Israeli Apartheid (SAIA) began advertising a counterprotest of Herut's event. A SAIA leader posted on Facebook that "*you would have to actually put a bullet right through my Palestinian skull before you even TRY to bring an Israeli soldier to my campus.*"

53. The event on November 20, 2019, turned into another riot targeting Jewish students. Soon after the event began, protesters began banging on the walls outside the University venue, Vari Hall. They filled the hallways and stairwells at Vari Hall, yelling threateningly and chanting for an "*intifada*", a call for a violent campaign targeting Jews.³

³ "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.

54. Attendees were pushed, spat on, and verbally attacked. Some attendees were directed to take refuge in the Hillel office for their safety. At least one YFS executive member engaged in the violent behaviour. The YFS was guilty of enabling, encouraging, and inciting the violent antisemitic behaviour.

55. R.B. was sitting in the Hillel office on the third floor of the Student Centre, which is attached to Vari Hall, at the time of the riot. He had been planning on attending Herut's event with several of his Jewish colleagues. However, as they were getting ready to leave for the event, a Hillel staff member informed them that a riot had broken out in the building, and they would need to remain locked in the Hillel office for their own safety.

56. Hillel staff then took the necessary steps to lock down the office. They locked the front doors and covered the windows. Campus security did not attend to offer the students protection or verify their well-being.

57. R.B. watched the riot unfold through a crack in the window covering. The violence he witnessed traumatized him. When he was finally allowed to leave the office, he raced to his car to get home as soon as possible.

58. Thereafter, whenever R.B. went to the York University campus, he frequently hid any indicators of his Jewish identity, including the Star of David necklace he regularly wears. He struggled to stay focused in his classes, and his grades soon began to fall.

59. The Defendants took no proper measures to stop the aggressions. They did nothing to ensure that event attendees were protected from the rioters. As a result, Jewish students were denied their right to assemble and participate freely in an event by and for their community. Instead, they were bullied, intimidated, harassed, and attacked because of their religious beliefs.

60. For weeks after the riot, Jewish students continued to be bullied, intimidated, harassed, attacked, and abused on campus. Jewish students were spat on when walking through hallways in University buildings. One student was called a “dirty Jew”. The Defendants did nothing to stop this behaviour echoing that of World War II Germany.

61. As a result of the physical and psychological harm inflicted on Jewish students, Class Members were obliged to curtail or compromise their participation in educational and student activities at York.

62. In response to complaints following the riot, York engaged the Honourable Thomas A. Cromwell to conduct an independent review of the University’s policies, procedures, and practices. The Terms of Reference provided to Mr. Cromwell failed to include any reference to antisemitism.

63. The YFS refused to respond to Mr. Cromwell’s inquiries. As he noted in his review:

[...] my only disappointment was the failure of the York Federation of Students to respond to, let alone participate in my Review. Emails, voicemail and a hand-delivered letter did not elicit any response.

64. Mr. Cromwell concluded that:

*[...] my terms of reference in effect ask me to consider one main question: how well does the current framework of policies, procedures and practices serve the University as it deals with complex, quickly evolving and potentially dangerous situations arising from use of its facilities for extra-curricular activities? **The events of November 20, 2019 tested that framework and exposed some gaps and weaknesses.***

(Emphasis added.)

65. Mr. Cromwell outlined a series of recommendations to improve the University’s framework. The University President gave a public but hollow undertaking to “immediately begin implementing” Mr. Cromwell’s recommendations. York has not done so. The damage and harm to the Class Members persist.

66. Mr. Cromwell recommended that the University develop a clear, effective, and transparent process for complaints about alleged racist, harassing, and discriminatory conduct. While the University has developed a nominal process, it is not “clear”, “effective” or “transparent.” Students — Jewish and otherwise — filing discrimination complaints are met with serial bureaucratic obstacles. Complaints go nowhere.

67. After Mr. Cromwell delivered his report and recommendation, Friends of Simon Wiesenthal Center for Holocaust Studies wrote to York President, Rhonda Lenton on June 4, 2020 stating in part as follows:

The November 20, 2018 incident was an anti-semitic incident that underlay the decision to have Mr. Cromwell conduct his independent review. Regrettably, the Terms of Reference presented to Mr. Cromwell failed to include any reference to anti-Semitism. That may well explain why Mr. Cromwell's [sic] only makes passing reference to anti-Semitism in his report.

The fact remains that the issue of anti-Semitism, and hatred towards Jews continues at York. Nothing in the Cromwell report addresses that issue.

68. President Lenton did not respond to the Friends of Simon Wiesenthal's letter.

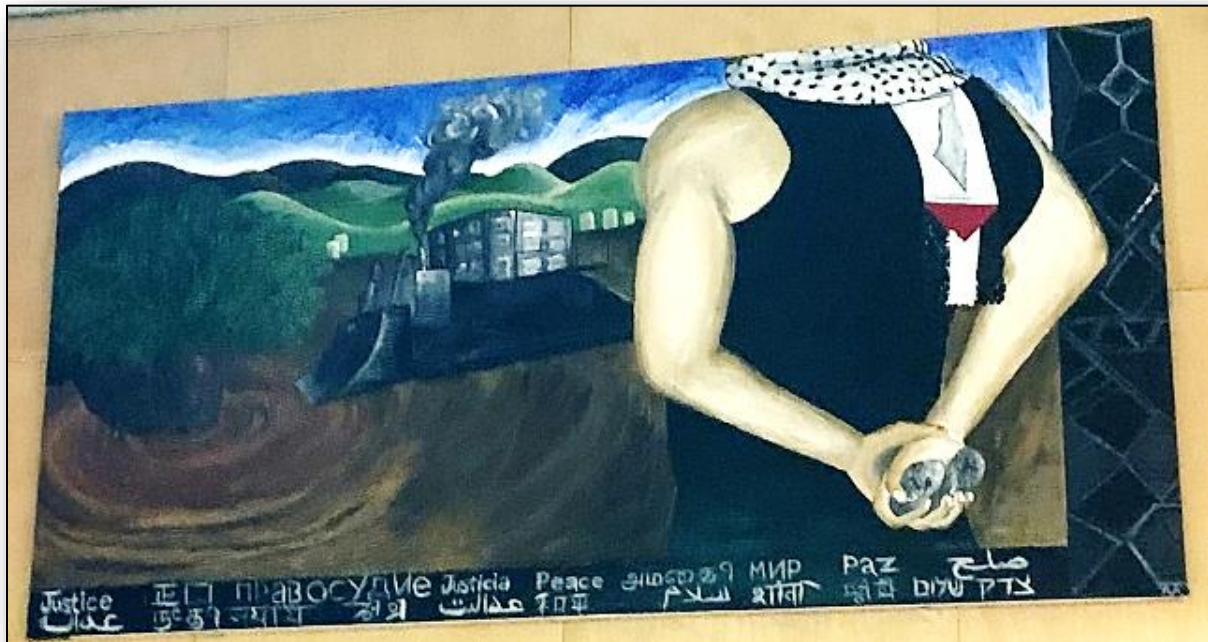
69. The Defendants have consistently failed to address the systemic hate underlying antisemitism on campus and take adequate steps to create meaningful change for the Class Members and ensure their safety and well-being.

“Palestinian Roots”: Advocating Israel's Elimination

70. Further nurturing the culture and context of antisemitism that has grown over the years at York is the graphic depiction of a call to violence against Israelis and Jews by the painting “Palestinian Roots” by Ahmad Al Abid.

71. The painting, prominently displayed in the York Student Centre, was the winning submission in a 2013 York Student Centre competition and has hung there ever since over a public stairwell.

72. The painting features a figure wearing a *keffiyeh*, a Palestinian headdress, bearing the image of a borderless Israel, including the West Bank and Gaza Strip, atop a Palestinian flag:



73. The painting is a call to violence. Atop the misleading words “*justice*” and “*peace*” in different languages, the image promotes the murder of Israeli citizens and Jewish people and advocates for the elimination of the historic Jewish homeland. York University has acknowledged the painting to be offensive.

74. Both R.B. and R.H. have been subjected to the mural’s violent messaging since the beginning of their studies at York University. They were and are routinely confronted with the mural on their way to classes or student activities around campus. The mural faces the front door in the main building on campus, where students buy food. It is also in the building where Hillel’s office is located. The mural is a relentless reminder that Jewish students are not safe at York University.

75. York and the York Student Centre have refused calls from students, donors, and its former Chair, Gayle McFadden — to remove the offending painting. It remains there to this day.

76. Joanne Rider, a former spokesperson for York University speaking on its behalf, claimed that the matter was outside the University's jurisdiction. It was and is not.

77. Class Members are forced to endure daily this overt message of violence and hate targeting them specifically.

YFS and BDS: "Antisemitic and contrary to Canadian values"

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

79. 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.

80. On March 21, 2013, YFS passed a resolution endorsing BDS. It continues to support BDS. YFS also continues to support and accommodate antisemitic, anti-Israel rallies and actions. Its President has encouraged the public to "*Smash Zionism*" on social media.

81. The BDS resolution is antisemitic and discriminatory. In the years since the resolution first passed, YFS 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 York environment and triggers in its Jewish students the apprehension that they are being singled out.

82. York has taken no steps to restrain these activities. Its inaction only emboldens the perpetrators.

Antisemitism Around the Events of October 7, 2023

83. Life for Jewish students at York University has worsened palpably since October 7, 2023.

84. 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.

85. 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.

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

87. As York students and people around the world mourned the loss of life and brutality in Israel on October 7, the YFS celebrated it, issuing a statement on October 12, 2023 praising Hamas' actions. The statement spared no vitriol or hatred, targeting what it termed "*the settler-colonial apartheid state of so-called Israel*" and describing the massacre as a "*strong act of resistance*."

88. R.H. received a copy of this letter from the YFS. She, like other Jewish students at York University, was profoundly disturbed by the letter's contents.

89. In the following weeks, Jewish students were subjected to rallies at the York campuses praising Hamas' actions and calling for more violence against Jews. Speakers at these rallies openly called for violence against Jewish and Israeli individuals. Jewish students have been physically assaulted, bullied, and harassed during these rallies. They have been demonized and threatened, all without consequence for the perpetrators.

90. Jewish students, including R.H., often avoid going to campus on days when these rallies take place out of fear for their physical safety.

91. York faculty and staff have made similar hate-filled statements 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. At least one faculty member has justified Hamas' crimes as "*resistance*".

92. Jewish students have been repeatedly and unjustly labelled as "*white supremacists*" and "*colonizers*." R.H. was called a colonizer by one of her peers who had discovered that R.H. is Jewish.

93. Disparaging Jews as "*colonizers*" deprecates the historical connection of and claims by Jews to Israel by falsely depicting them as "*colonizers*" or "*foreigners*" in their own ancestral and United Nations-recognized homeland. Disparaging Jews as "*white supremacists*" willfully discounts centuries of violence that Jews have endured and continue to endure at the hands of white supremacists and ignorantly disregards the millions of Jews who are racialized.

94. The risks, damage and harms to Jewish students at York 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.

R.H.'s and R.B.'s Personal Experiences

95. The pervasive culture of discriminatory, hate-based, and antisemitic speech and conduct at York University has left R.H. and R.B. unsafe and psychologically distressed on the York University campus, in the York University facilities, and in classes and activities.

96. R.H. has avoided attending some classes and often avoids interacting with her fellow students on campus, fearing that her peers may further victimize her. When she does go to class, R.H. normally leaves campus immediately as soon as the class finishes and arranges for a friend to accompany her around campus for her safety. Her educational and campus life experience is materially lessened.

97. R.B. is still traumatized by the hatred and violence he was subjected to as a Jewish student at York University. After the 2019 riot, he avoided using campus facilities, including the library, and mapped his routes on campus to avoid large crowds or gatherings. He was unable to focus on schoolwork properly. His grades suffered measurably, as a result of which R.B. lost his entrance scholarship and other scholarship opportunities.

98. Both R.H. and R.B. are now apprehensive of being targeted by virtue of their Jewish heritage. Fearing that they will be the victims of further discrimination and Jew-hatred if their peers discover they are Jewish, they consistently take steps to hide their identity from other students and faculty members at York University, for example by concealing their Star of David necklaces while on campus.

99. Because of the discriminatory, hate-based, and antisemitic speech and conduct at York University, R.B. and R.H. were and are denied the complete postsecondary education and fulfilling university experience they reasonably expected and would otherwise have had. They have felt unable to participate in classroom discussions, and often avoid social interactions with their peers. They have missed out on opportunities to engage with the broader university community and create the lifelong memories that make university especially valuable for students.

100. R.H.'s and R.B.'s experiences are common to the Class Members. Jewish students in the York University community are apprehensive about attending classes and being on campus. Like

R.H. and R.B., 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 York University.

101. The University's silence and inaction regarding complaints from Jewish students demonstrate to R.B., R.H. and the 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.

The Ongoing Harms to the Class Members

102. The ongoing discrimination, antisemitism, hatred, and public incitement and wilful promotion of hatred that Jewish students at York 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

103. Each Class Member, and all students who attend York University, were or are in a contractual relationship with the University and the YFS. Under this contractual relationship, in exchange for the Class Members' paying tuition and fees and becoming students and YFS members, York University and YFS 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;

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- 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 York University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities; and
- g. to represent all York University students, standing up to inequity, discrimination, hatred, antisemitism, and marginalization on the York University campus while addressing deep-rooted systemic issues affecting the Class Members' student experience;

104. York University and the YFS 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.

105. York University and YFS breached their good faith and contractual obligations to the Class Members in the following ways:

York University

- a. York 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 York 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;
- j. it has failed and continues to fail to take steps to have the offending antisemitic painting and other antisemitic symbols and messaging removed from public display on campus; and

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

York Federation of Students

- l. YFS 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;
- m. 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;
- n. it has discriminatorily denied and continues to deny Class Members the YFS benefits that non-Jewish York students enjoy;
- o. 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;
- p. 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;
- q. it has enabled, facilitated, promoted, and continues to enable, facilitate or promote a climate of intimidation, fear and denigration amongst Jewish students on campus;
- r. 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;

- s. it and its representatives and members have violated, promoted, encouraged, and condoned, and continue to violate, promote, encourage and condone violations of York University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities, including sponsoring and participating in discriminatory, hate-based, and antisemitic activities;
- t. it has failed and continues to fail in its mandate and obligation to represent all York University students, fighting inequity, discrimination, hatred, and marginalization on the York University campuses while addressing deep-rooted systemic issues affecting the Class Members' student experience;
- u. it has failed and continues to fail to sanction YFS representatives and members who perpetrated or participated in discriminatory, hate-based, and antisemitic speech and activities;
- v. it has failed and continues to fail to take steps to have the offending antisemitic painting and other antisemitic messaging removed from public display in areas it controls; and
- w. 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

106. 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.

107. 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.

108. The Defendants have breached their duty of care to the Class Members as follows:

York University

- a. York 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 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;
- g. it has failed to take steps to have the offending antisemitic painting and other antisemitic messaging removed from public display on campus; and
- h. it continued and continues to fund and support the YFS in the face of YFS' ongoing violations of York's codes, regulations and policies against discriminatory, hate-

based, and antisemitic activities including inciting, sponsoring and participating in antisemitic activities.

York Federation of Students

- i. YFS has enabled, incited, facilitated, promoted or participated in discriminatory, hate-based, and antisemitic events and conduct, targeting Jewish students on campus;
- j. 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;
- k. 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;
- l. 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;
- m. it created or fostered, and continues to create or foster a climate of fear and denigration amongst Jewish students on campus;
- n. it has enabled, incited, facilitated, promoted or participated in discriminatory, hate-based, and antisemitic meetings, lectures, conferences or gatherings in its control on campus;
- o. it and its representatives and members have violated, and incited and condoned violations of York University's codes, regulations and policies against discriminatory, hate-based, and antisemitic activities, including sponsoring and participating in discriminatory, hate-based, and antisemitic activities;

- p. it failed and continues to fail in its mandate and obligation to represent all York University students, and to take steps to oppose inequity, discrimination and marginalization on the York University campuses, while concurrently addressing deep-rooted systemic issues affecting the Class Members' student experience;
- q. it failed and continues to fail to restrain or sanction YFS representatives and members who perpetrate or participate in discriminatory, hate-based, and antisemitic activities;
- r. it failed and continues to fail to have the antisemitic painting and other antisemitic messaging removed from public display in areas it controls; and
- s. 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

109. The nature of the relationship between York University and its students, including the current Class Members, is fiduciary.

110. 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.

111. The students' interests are directly affected by York 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.

112. 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.

113. Students enrolling at York 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.

114. York 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.

115. In breach of its fiduciary duty to the Class Members, York 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,

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

117. 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.

118. 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

119. 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 or diminished enjoyment of life;
- d. loss of or diminished 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 York 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

120. 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.

121. 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 injured the Class Members' dignity, feelings, and self-respect.

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

Punitive Damages

123. 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.

124. 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

125. 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.

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

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

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

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Court File No. CV-23-00708190-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

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