Ontario

Tribunals Ontario

Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

(Disponible en français)

tribunalsontario.ca/hrto

How to Respond to an Application Where You Are Named as a Respondent

Use this form if you have been named as a respondent in a human rights application under section 34 of the *Human Rights Code*.

If you fail to respond to the Application, you may be deemed to have accepted all of the allegations in the Application, and the Tribunal may proceed without further notice to you.

Before you start:

1. Read the questions and answers below.
2. Download and read the Respondent's Guide from the Tribunal's website tribunalsontario.ca/hrto.
   If you need a paper copy or accessible format contact us at:

Human Rights Tribunal of Ontario	Phone:	416-326-1312	Toll-free:	1-866-598-0322
15 Grosvenor Street, Ground Floor	Fax:	416-326-2199	Toll-free:	1-866-355-6099
Toronto, Ontario M7A 2G6	TTY:	416-326-2027	Toll-free:	1-866-607-1240
	Emai:	hrto.registrar@ontario.ca		
	Website:	tribunalsontario.ca/hrto		

   The Tribunal has other guides and practice directions to help all parties to an Application understand the process. Download copies from the Tribunal's website or contact us.

3. Complete each section of the Response form that applies to you. As you fill out each section, refer to the instructions in the Respondent's Guide.

Questions about Responding to an Application

The following questions and answers are provided for general information. They should not be taken as legal advice or a determination of how the Tribunal will decide any particular application.

What happens if I fail to complete a Response Form?

You may be deemed to have accepted all the allegations. The Tribunal may deal with the Application without any further notice to you.

What is the time limit for responding?

Respondents must file a completed Response form no later than **thirty-five (35) days** after the Tribunal sends them a copy of the Application. The cover letter from the Tribunal gives you the exact date.

Are there defences to discrimination under the *Human Rights Code*?

Yes, there are some defences and exemptions in the *Code*. Please see the Respondent's Guide**.** If you believe one of these applies, please explain how when you fill out the Response form.

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Can the Tribunal deal with an application where the facts and issues have been dealt with or are being dealt with in another proceeding?

The *Code* has special rules depending on what the other proceeding is and at what stage the other proceeding is at. Read the Respondent's Guide and get legal advice if:

1. You are currently involved in, or were previously involved in a civil action based on the same facts and the applicant asked for a human rights remedy; **or**
2. A complaint was ever filed with the Ontario Human Rights Commission based on the same subject matter; **or**
3. You are currently involved in, or were previously involved in another proceeding (for example, a union grievance based on the same facts.

You must file a Response even if you believe that the Tribunal should defer the the Application or that the Application is outside the jurisdiction of the Tribunal, except where you allege the issues in dispute fall within exclusive federal jurisdiction.

Learn more

To find out more about human rights in Ontario, visit www.ohrc.on.ca or phone 1-800-387-9080.

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Note: Complete all parts of this form, using the **Respondent's Guide** for help. If your form is not complete, the Tribunal may return it to you. At the end of this form, you will be required to read and agree to a declaration that the information in your Response is complete and accurate (if you are a lawyer or legal representative assisting a respondent with this Form 2, please see the **Practice Direction On Electronic Filing of Applications and Responses By Licensed Representatives**).

Respondents must file a completed Response form no later than **thirty-five (35) days** after the Tribunal sends them a copy of the Application. The cover letter from the Tribunal gives you the exact date.

Tribunal File Number	2022-51511-I

Contact Information for the Respondent

Respondent Contact Information

Please choose the type of Respondent: (•) Organization Respondent ( ) Individual Respondent

1. Respondent Contact Information - Organization

Contact information for a responding organization, such as a corporation, association, or group. Please complete both this section and Question 3.

Full Name of Organization
University of Toronto Faculty Association

Organization Type:

( ) Corporation
( ) Partnership
( ) Sole proprietorship
(•) Unincorporated business/organization
( ) Other (specify):

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Name of the person within this organization who is authorized to negotiate and bind the organization with respect to this Application.

First (or Given) Name	Last (or Family) Name	Title
Nellie	De Lorenzi	

Street #	Street Name	Apt/Suite
720	Spadina Avenue	419

City/Town	Province	Postal Code	Email
Toronto	Ontario	M5S 2T9	delorenzi@utfa.org

Daytime Phone	Cell Phone	Fax	TTY
416-978-3351			

What is the best way to send information to you?
(If you check email, you are consenting to delivery of documents by email)

○ Mail ◉ Email ○ Fax

Is this Response being filed on behalf of any other respondent? ○ Yes ◉ No

3. Representative Contact Information

Complete this Section only if you are authorizing a lawyer or other Representative to act for you.

☒ **I authorize the organization and/or person named below to represent me.**

My representative is:

☒ Lawyer	LSUC #	54077J
☐ Paralegal	LSUC #	

☐ Other- please specify the Nature of Exemption from licensing requirements in the text box below:
(e.g. Unpaid family member or friend)

For further information, see the Tribunal's Policy on Representation before the HRTO at tribunalsontario.ca/hrto.

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First (or Given) Name	Last (or Family) Name	
Kirsten	Mercer	

Organization (if applicable)
Goldblatt Partners LLP

Street #	Street Name	Apt/Suite
20	Dundas Street West	1039

City/Town	Province	Postal Code	Email
Toronto	Ontario	M5G 2C2	kmercer@goldblattpartners.com

Daytime Phone	Cell Phone	Fax	TTY
416-979-4230			

What is the best way to send information to your representative?
(If you check email, you are consenting to delivery of documents by email)

○ Mail ◉ Email ○ Fax

Contact Information - Additional Respondent(s) and Affected Person(s)

Please complete this selection if you believe another person or organization should be named as a respondent or given notice as an affected person(s).

4. Contact Information - Additional Respondent

If there is another organization or person who is not already named as a respondent on the Application form and who you believe should be named as a respondent, provide their contact information here. See the Tribunal's **Practice Direction on Naming Respondents** for more information on how to correctly name a potential respondent.

Please choose the type of respondent: ○ Organization Respondent ○ Individual Respondent

Additional Respondent Contact Information - Organization

Full Name of Organization

Name of Contact Person from the Organization

First (or Given) Name	Last (or Family) Name	Title

Street #	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email

Daytime Phone	Cell Phone	Fax	TTY

Add Another Respondent

5. Contact Information - Affected Person

If there is any other organization (such as a union or occupational association responsible for collective bargaining) or person who is not already named as an affected person on the Application form and who might be affected by this Application to the Tribunal, provide their contact information here.

Please choose the type of affected person: ◯ Organization ◯ Contact

Affected Person Contact Information - Organization

Full Name of Organization

Name of Contact Person from the Organization

First (or Given) Name	Last (or Family) Name	Title

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Street #	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email

Daytime Phone	Cell Phone	Fax	TTY

Add Another Affected Party

Request for Early Dismissal of the Application

6. Request for Dismissal - without Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because one of the four situations below applies. Put an "X" in the box that applies. Please see the Respondent's Guide.

I request that the Tribunal dismiss this Application because:

☐ A claim based on the same facts has been filed in civil court, requesting a remedy based on the alleged human rights violation. (Attach a copy of the statement of claim and the court decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)

☐ A complaint was filed with the Ontario Human Rights Commission based on the same, or substantially the same, facts as this Application. (Attach a copy of the complaint and the decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)

☐ The applicant signed a full and final release with respect to the same matter. (Attach a copy of the release. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)

☐ The issues in the Application are within exclusive federal jurisdiction. (Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)

Note: If you put an "X" in any of the boxes above, go to Question 20. Except in these four situations, or as otherwise directed by the Tribunal, requests to dismiss an Application will not be considered without a complete response.

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7. Request for Dismissal under s. 45.1 of the Code - with Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. Put an "X" below if you are making this request. Please see the Respondent's Guide.

a) ☐ I request that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. (Attach a copy of the decision)

b) Please name the other proceeding:

c) Explain why you believe the other proceeding has in whole or in part appropriately dealt with the substance of the Application.

Note: You must complete the entire Response form and attach a copy of the document that started the proceeding and a copy of the decision.

Request to Defer the Application

8. Request to Defer

Complete this section only if the facts of the Application are part of another proceeding that is still in progress.

a) Describe the other proceeding:

☐ A union grievance	Name of Union:	

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☐ A claim before another board, tribunal or agency	Name a board, tribunal, or agency:	
☒ Other	Explain what the other proceeding is:	The Applicant filed a complaint with UTFA, which triggered the initiation of the Complaint Process outlined in the UTFA Internal Harassment and Discrimination Policy. A copy of the initial complaint was appended to the Application (Form 1)

b) Are you asking the Tribunal to defer (postpone) the Application until the other proceeding is completed? (Attach a copy of the document that started the other proceeding)	◉ Yes	○ No

Responding to the Allegations in the Application

9. Responding to the Allegations

Please summarize the facts and defences that support your Response to this Application. See the Respondent's Guide.

Please include as part of your response:

- any submissions you make that the Application is outside the Tribunal's jurisdiction;
- what allegations in the Application you agree with;
- what allegations in the Application you disagree with;
- any additional facts that you intend to rely on; and
- any defences that you intend to rely on.

See Schedule A (Attached).

10. Exemptions

Complete this section only if you are relying on one of the exemptions found in the *Code*. See the Respondent's Guide.

a) What exemption in the *Code* do you believe applies to this Application?

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b) Please explain why you believe the exemption applies:

11. Knowledge of the Events

a) When and how did you first become aware of the events described in the Application?

See Schedule A (Attached).

b) How did you respond and what was the outcome?

See Schedule A (Attached).

12. Disability and Employment

Complete this section only if the applicant alleges that they experienced discrimination in employment on the ground of disability. See Respondent's Guide.

a) Did you know about the applicant's particular needs before seeing the Application?	◯ Yes	◯ No

b) What are the requirements (essential job duties) of the position in question?

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c) Do you have a written policy, job description or other documentation that describes the requirements of the job?	○ Yes	○ No
d) Was the applicant unable to perform the requirements of the job because of their disability?	○ Yes	○ No (Go to 13)

Note: If you said "Yes" to Question 12c, you must attach a copy of the policy, job description or other document that describes the requirements of the job.

Questions About Internal Human Rights Policies

13. Internal Human Rights Policies

Complete this section only if the respondent is an organization. Please see the **Respondent's Guide.**

a) Do you have a policy related to the type of discrimination alleged in the Application?	◉ Yes	○ No
b) Do you have a complaint process to deal with discrimination and harassment?	◉ Yes	○ No (Go to 14)

Note: You must attach a copy of the policy, complaint process, or the document that started the complaint, and the decision, if any.

Mediation

14. Choosing Mediation to Resolve the Application

Mediation is one of the ways the Tribunal tries to resolve disputes. It is a less formal process than a hearing. Mediation can only happen if both parties agree to it. A Tribunal Member will be assigned to mediate the Application. The Member will meet with you to talk about your Response. The Member will also meet with the applicant and will try to work out a solution that both sides can accept. If Mediation does not settle all the issues, a hearing will still take place and a different Member will be assigned to hear the case. Mediation is confidential.

Do you agree to try mediation? ☒ **Yes**

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Documents that Support Your Response

15. Important Documents You Have

If you have documents that are important to your Response, list them here. List only the most important. Indicate whether the document is privileged. Please see the Respondent's Guide.
Note: You are not required to send copies of your documents at this time. However, if you decide to attach copies of the documents you list below to your Response, they will be sent to the other parties to the Application along with your Response.

Document Name	Why It Is Important To My Response
See Schedule B (Attached).	See Schedule B (Attached).

Add more Documents

16. Important Documents the Applicant Has

If you believe the applicant has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response

Add more Documents

17. Important Documents Another Person or Organization Has

If you believe another person or organization has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response	Name of Person or Organization Who Has It
See Schedule B (attached)	See Schedule B (attached)	See Schedule B (attached)

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Add more Documents

Confidential List of Witnesses

18. Witnesses

Please list the witnesses that you intend to rely on in the hearing. **Note:** The Tribunal will not send this list to the applicant. See the Respondent's Guide.

Name of Witness	Why This Witness Is Important To My Response
See Schedule C (attached)	See Schedule C (attached)

Add more Witnesses

Other Important Information

19. Other Important Information the Tribunal Should Know

Is there any other important information you would like to share with the Tribunal?

The Respondent, UTFA, would like the Tribunal to note its objection to being required to file the Response without having been afforded sufficient time to investigate, review the relevant materials and consult with all necessary parties.

Further, because UTFA has delegated the investigation of the Applicant's internal complaint to an independent third party, UTFA does not have access to all necessary materials and evidence. Nor would it be appropriate for UTFA to engage in this fact-finding exercise, including interviewing witnesses, while that independent process in underway.

Finally, because UTFA has delegated the investigation of the Applicant's internal complaint (including many allegations that are repeated in the Application) to a third party, it would be inappropriate for UTFA to be forced to take a position in its Response on matters that are still the subject of that process. Because of the independence of that review process, UTFA cannot even be certain whether any additional issues have been raised in the course of that investigation, which may or may not overlap with incidents or issues addressed in this Response.

The Association believes that a Case Management Conference (CMC) ought to be convened at the Tribunal's earliest convenience to address these issues and determine the best way to proceed with the adjudication of the Applicant's complaint. It will be the Respondent's position that it is premature to proceed with this Application until the independent investigation is complete, and that it would be prejudicial to UTFA to require it to do so.

Should the Tribunal elect not to convene a CMC with the parties, UTFA will bring a formal Request for an Order during Proceedings (Form 10) seeking that the Tribunal delay consideration of this matter and/or dismiss all or parts of the Application.

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Checklist of Required Documents

20. Documents from Questions 6 to 13

Put an "X" in the box beside the documents that you are required to send with your Response. Put the Tribunal File Number on each document.

- ☐ Copy of a statement of claim and the Court decision, if any (from Question 6)
- ☐ Copy of a complaint filed with the Ontario Human Rights Commission and decision, if any (from Question 6)
- ☐ Copy of a full and final release that the applicant signed dealing with same matter (from Question 6)
- ☐ Submissions in support of a Request for Dismissal without Full Response (under Question 6)
- ☐ Copy of a decision from another type of proceeding that appropriately dealt with the substance of the Application (from Question 7)
- ☒ Copy of a document that started another type of proceeding based on the same facts (from Question 7 & 8)
- ☐ Copy of the policy, job description or other document that describes the requirements of the job (from Question 12)
- ☒ Copy of your organization's policy on discrimination or harassment relevant to this Application (from Question 13)
- ☒ Copy of your organization's complaints process relevant to this Application (from Question 13)
- ☒ Copy of the applicant's internal complaint (from Question 13)
- ☐ Copy of the decision from the internal complaint process (from Question 13)

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Declaration and Signature

21. Declaration and Signature

Declaration:

To the best of my knowledge, the information in my Response is complete and accurate.

Signature Date (dd/mm/yyyy)

11/05/2023

☒ Please check this box if you are filing your response electronically. This represents your signature.
You must fill out the date, above.

Accommodation Required

If you require accommodation of *Code* related needs please contact the Registrar at HRTO.Registrar@ontario.ca or

Phone: 416-326-1312 Toll-free: 1-866-598-0322
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240

Collection of Information:

Under the Ontario *Human Rights Code*, the Human Rights Tribunal of Ontario (HRTO) has the right to collect the personal information requested on this form. We use the information to resolve your application. After you file the form, your information may also be available to the public. If you have questions about how the HRTO uses your personal information, contact the HRTO at 416-326-1312 or 1-866-598-0322 (toll-free.)

Submit to HRTO	Print Form

Note: Only submit your Response once. If the Tribunal receives this Response more than once, it will only accept the first Response Form received.

Schedule A
Response of the University of Toronto Faculty Association ("UTFA" or the "Association")

1. Except as explicitly set out in this Response, the Respondent denies the allegations of fact contained in the Application and puts the Applicant to the strict proof thereof.

Summary

2. The true nature of the Applicant's complaint appears to be that UTFA is vicariously liable for the conduct, actions or speech of certain members and Officers of the Association, which UTFA expressly denies for the reasons set out below.

3. The Application also appears to suggest that UTFA may have breached a duty it is alleged to owe to the Applicant by failing to promptly address the Applicant's concerns about the incidents, either proactively or when they were brought to UTFA's attention.

4. UTFA's position is that at all times it acted properly and consistently with its obligations under the Code, the Association's Constitution and its bylaws, within the constraints impose upon it by its overarching mandate to vigilantly promote and protect academic freedom and the free exchange of ideas among its Council Members.

5. Whether or not UTFA breached a duty that it owes to the Applicant as a function of his membership in a vocational association, which is not admitted but is expressly denied, the Applicant has not pleaded any factual basis upon which the Tribunal could reasonably conclude that UTFA's actions or lack thereof in response to the events outlined in the Application, or the Applicant's internal complaint, were in any way connected with his identity as a white man, or that there is any nexus whatsoever between UTFA's actions and a prohibited ground or characteristic protected by the *Code*.

6. UTFA expressly denies that it failed to act appropriately in the face of either alleged improper conduct by its Council members or concerns raised by the Applicant, and in any event, UTFA expressly denies that it was motivated in its actions or inactions by any discriminatory purpose or otherwise in a manner connected to a protected characteristic of the Applicant in contravention of the *Code*.

7. UTFA pleads that, at all times, it acted in a manner consistent with its obligations to its members, its institutional and operational constraints as a democratic and representative body, its policy constraints and obligations as an association within the context of the university community and its duties to promote and protect substantive equality under the *Code*.

8. More precisely, UTFA does not manage or otherwise police the conduct of its members or officers on expressly unmonitored email/electronic fora or among members of its Committees. UTFA is bound by its duties to uphold free speech and academic freedom and refrains from unduly interfering with the free expression of its Council members while they engage in the deliberative exchange of ideas and opinions with respect to the governance of the Association.

9. Furthermore, within the organizational structure of the Association, only Council acting as a whole, and not individual members of the Executive Committee, would have the authority to sanction another Council member; UTFA states that the Association, as a legal entity, does not have such authority. As such, there is no disciplinary action that the Association could have taken *vis a vis* its Council members to address the behaviour complained of by the Applicant beyond the repeated efforts the President and other members took to implore *all* Council members to engage with respect and civility—had it even been appropriate to do so, which UTFA expressly denies.

Overview and Factual Background

10. Although the Application alleges discrimination in the area of membership in a vocational association, as is described in more detail herein, the specific incidents alleged do not constitute an impairment of the Applicant's membership in a vocational association.

(a) The Parties

UTFA

11. The University of Toronto Faculty Association ("UTFA" or the "Association") is the official representative of faculty and librarians on employment matters which include salary, pension, benefit negotiations, and workplace grievances.

12. The Association is a vocational association within the meaning of the *Code*.

13. The University of Toronto Faculty Association exists to protect and advance the wellbeing of the faculty, librarians and research associates of the University of Toronto, the University of St. Michael's College, the University of Trinity College,

and Victoria University. UTFA also works closely with the Canadian Association of University Teachers (CAUT) and the Ontario Confederation of University Faculty Associations (OCUFA) to stand up for the interests of teachers, researchers and librarians in all Canadian universities.

14. Section 2.1 of UTFA's Constitution provides that UTFA's purpose is:

> "… to promote the welfare of the current and retired faculty, librarians, and research associates of the University of Toronto, the University of St. Michael's College, the University of Trinity College, and Victoria University, and generally to advance the interests of teachers, researchers and librarians in Canadian universities."

15. This mandate is fundamentally connected to public deliberation, debate and advocacy within and beyond the University of Toronto. In fact, UTFA's mission goes further than the purpose described in Section 2.1. As set out on its website:

> "A key part of UTFA's mission is to be an effective actor in the public sphere, whether it's on issues relating to post-secondary education, or on broader public policy debates that matter to our members. For example, we've has [sic] added our voice to those who are alarmed by the implications of federal government decisions on research funding, and the apparent muzzling of federal research scientists, many of whom collaborate with university colleagues. UTFA makes its voice heard where it matters."

16. As is discussed in more detail below, the preservation and protection of academic freedom is central to UTFA's mission and mandate.

The Applicant

17. Marcin Pęski (the "Applicant") is a Professor in the department of economics at the University of Toronto and a member of UTFA. From July 1, 2016 to June 30, 2018 and July 1, 2019 to June 30, 2022, the Applicant served as a member of the UTFA Council. During his term on Council, the Applicant was one of its most active, engaged, and outspoken participants.

18. Marcin Pęski identifies as a white man of European ancestry.

(b) UTFA's Organizational Structure

19. UTFA is the only independent advocate for faculty and librarians at the University of Toronto. The President alone is elected by the whole membership.

20. The affairs of UTFA are managed by a Council of about 60 people, who are elected by the membership on a constituency basis for three-year-terms, approximately one-third being elected by the membership on a constituency basis. Detailed policy development is undertaken by standing committees and an Executive Committee and submitted to Council through the Executive Committee.

21. The Association has a small staff responsible for the implementation of policy and the day-to-day operations of the Association.

(c) Academic Freedom is an Animating Value of the University Context

22. Academic freedom has been given numerous, but generally consistent, definitions by courts, universities, and faculty groups. At its core, academic freedom protects the right of academic staff to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their position or being adversely affected at their institutions.

23. The right to academic freedom for faculty and librarians has been enshrined in the *University of Toronto's Statement of Institutional Purpose*, where freedom of speech, academic freedom, and freedom of research are acknowledged as the "most crucial of all human rights". As the Statement says:

> …we affirm that these [human] rights are meaningless unless they entail the right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself. It is this human right to radical, critical teaching and research with which the University has a duty above all to be concerned; for there is no one else, no other institution and no other office, in our modern liberal democracy, which is the custodian of this most precious and vulnerable right of the liberated human spirit.

24. Article 5 of the *Memorandum of Agreement* (MOA) between the University of Toronto Governing Council and the University of Toronto Faculty Association (UTFA) defines the scope of academic freedom as "the freedom to examine, question, teach, and learn, and it involves the right to investigate, speculate, and

comment without reference to prescribed doctrine, as well as the right to criticize the University of Toronto and society at large."

25. The importance of academic freedom and free speech within the University context cannot be overstated. These are core values of all actors within the University context, including UTFA.

26. Both academic freedom and collegial governance are core values of UTFA and of the University. "Academic freedom is not just a nice job perk. It is the philosophical key to the whole enterprise of higher education." (Louis Menard, The Marketplace of Ideas: Reform and Resistance in the American University (New York, New York: W.W. Norton, 2010) at 131.)

27. By its nature and design, UTFA exists as a space for dialogue and exchange among peers, who are chosen to represent the membership in deliberations and decision-making at Council. The protection of its members' right to speak freely, to deliberate openly and without fear of reprisal is pivotal to UTFA's very existence, and its role as a champion and shield for academic freedom is pivotal.

28. It is against this factual and contextual backdrop that the allegations asserted in the Application must be considered.

(d) The Political Nature of Association Deliberations and Activities

29. UTFA via its Council, Executive and President engage in advocacy on issues that affect our diverse membership. This advocacy includes, but is not limited to, policy negotiations and Association grievances. Some prominent and at times contentious recent issues discussed at Council, and about which UTFA has been advocating, include COVID occupancy restrictions/masking and health and safety; market-based pay differentials; salary discrimination based on gender, racialization, Indigeneity, LGBTQ2S, and/or disability and the root causes of significant, persistent, pervasive, and systemic pay gaps; and dual delivery teaching.

30. On March 23, 2021, the Civility Working Group produced a document and had a discussion at Council in which the following recommendation was made to adopt *Robert's Rules of Order* for the Association's business, that use of the listserve be curtailed in favour of discussions at committees, Executive meetings and Council meetings, and that a reminder be provided at the start of each meeting highlighting the need for respectful decorum.

31. The Applicant strenuously opposed any effort to curtail debate on the Council listserv/email list.

32. This deeply engaged and highly-charged environment, in which the Applicant was a frequent and active participant, provides the backdrop for most if not all of the interactions described in the Application.

(e) Factual Background

33. Despite the characterization of the facts in the Application, the events alleged by the Applicant took place within a broader political and ideological context.

34. Contrary to the impression advanced by the Applicant, he was engaged as an active participant in a series of political and ideological debates about the role that the Association should play and the positions it should take on various issues of public, social and academic concern within the University Community.

35. The events described in the Application are also set against the backdrop of a series of hotly contested political campaign within the Association characterized by fundamental ideological differences among the candidates, wherein the individuals identified by the Applicant as having acted improperly towards him were known by the Applicant and others to actively support the successful candidate on the opposite side of the electoral contest of the UTFA Presidency, than the Applicant.

36. The Applicant was an outspoken advocate and campaigner for the losing candidate for the UTFA Presidency.

37. The Applicant's interactions with his peers on Council were often criticized as being uncivil, disrespectful and discriminatory- in particular the Applicant's conduct and demeanor in respect of his female colleagues, and most notably women in positions of power and authority and/or more vocal female members of Council. The Applicant was repeatedly asked by his peers to refrain from visibly exhibiting disrespect towards his female colleagues through eye-rolling, sneering and laughing when his female colleagues were intervening in Association debates.

38. Numerous efforts were made by the Applicant's peers seeking that he refrain from his disruptive and gendered style of engagement. An illustrative example of these efforts is the email sent by Jeff Bale, on February 28, 2022 to Counsel colleagues, with the subject "Last week's Council meeting":

> *Dear Colleagues,*
>
> *We are writing to you all because of our great concern for the profoundly disturbing Council meeting this past week, on the 23rd. There was such disruptive and insulting behaviour that we feel the*

well-being of UTFA Council is at stake, as is UTFA as a whole. Many of you might share our distress as well.

Those at the meeting will recall repeated interruptions of the Speaker, interruptions that impeded the effective flow and timeline of the meeting. Interruptions that effectively silenced others in the meeting by their intensity and venom. There were hurtful statements in the chat by a member of Council accusing the President of talking too much. After a presentation by the Equity Committee regarding a survey they are designing, instead of respectful engagement regarding epistemological, ontological or methodological issues about the survey design which could have led to a helpful, productive conversation to support the work of the Committee, we heard questions that were actually in the form of a personal attack impugning the expertise, intent and integrity of one of the Committee members. To compound this insulting behaviour, this member cautioned the Council Speaker not to interrupt him, turning the attention of the meeting on himself rather than the matter at hand, and in effect undermining the work of the Association.

There will always be legitimate, reasonable, and healthy differences of opinion on what kinds of policy directions UTFA should pursue, as well as legitimate, reasonable, and healthy differences in assessing how UTFA's officials can and should carry out their work. We welcome such debate in the interest of strengthening the work of our Association on behalf of our membership. But attacks on any member, including the elected UTFA Executive, are unacceptable. We see them as the opposite: unhealthy, destructive, and even anti-democratic in the sense that they disrupt governance guidelines.

The personalized attacks we witnessed at Wednesday's meeting are not new; they have happened repeatedly over the past many months. Not only are they disruptive to our Council business and chilling to engaged discourse, we experience them as cruel. It is important to note that the targets of this inappropriate, aggressive, behaviour are women, women in key leadership roles in the organization. We see this aggressive behaviour reproducing dynamics of male privilege manifested in broader society both historically and currently when women are accused of being too loud, too 'uppity', too smart, taking up too much space.

We are writing this note to ask you to consider carefully what you can do to directly and immediately shift the culture of our Council meetings so these kinds of personalized, misogynist and other attacks have no hearing, and to ensure that the limited time we have each month to work as a Council allows all of us to contribute meaningfully. What can you contribute to the conversation during each Council meeting to help focus our attention on the most important matters at hand and the substantive necessary debates and discussion we need to have about those matters? As well, what can you refrain from adding (such as comments in the chat and in unmoderated Council emails that fuel animosity)?

We are proud that UTFA is doing such good work advocating for its members. At the Town Halls we saw how much our members respect UTFA's accomplishments and its leadership. As parts of the world around us often fall to violations of democratic norms, let us reorder our priorities and insist that UTFA be a space where we are vigilant against obstruction and disrespect.

We would like to host a conversation on these important questions at a special meeting. If you would like to join us in a collegial discussion, ***please email us directly by March 7****, after which we'll determine a date. We ask that you do NOT "reply all" or debate these points via email, for the reasons we have already explained above.*

39. The email was signed by Jeff Bale, Connie Guberman and Arjumand Siddiqi.

40. UTFA pleads that the Association lacks authority in its Constitution and By-Laws to sanction speech by Council members. Notwithstanding that fact, during the relevant time, UTFA repeatedly implored *all* Council members to engage with civility and respect towards other Council members, and encouraged moderation in the tone of debate when matters became heated or strained.

41. UTFA admits that neither the Association nor UTFA Council intervened to sanction any member of that representative body for comments made in the course of the Association's activities, including in the face of the numerous concerns that were expressed about the Applicant's own conduct.

42. Within the academic and intellectual community of the University of Toronto, a high degree of sensitivity and restraint is required in service of the core institutional value of preserving the public sphere as a space for the exchange of

ideas.

43. UTFA pleads that an analytical framework that situates an individual's social power against the backdrop of their identity is an analytical framework does not constitute discrimination.

44. UTFA pleads that it made best efforts over a series of months during Council meetings and individual interactions with Council and Executive members to moderate the tone of the debate and encourage civility among its members. Notwithstanding these efforts, a complaint was made by the Applicant to UTFA leadership on January 22, 2022 by email, and a formal complaint filed with UTFA on March 8, 2022.

45. UTFA's attempts to facilitate a mediated discussion of these issues among Council members, was unsuccessful.

46. In response to the internal complaint, and in light of the fact that it did not, at the time, have a policy governing disputes between its members of that kind raised in the internal complaint, UTFA sought advice about how to proceed.

47. Ultimately, UTFA elected to move forward in developing an internal complaint procedure in the Spring of 2022.

48. This work culminated in the Policy and Procedure for Internal Harassment and Discrimination Complaints (the "Complaints Policy"). The Complaints Policy was formally adopted by UTFA in June 2022.

49. UTFA initiated an investigation under the Complaints Policy in July 2022 (the "Independent Investigation"). UTFA is aware that a number of witnesses have been contacted during the course of the Independent Investigation, including the Applicant, and the That investigation is ongoing.

UTFA's Response to the Application

(a). The Substance of the Complaint Is Outside of the Tribunal's Jurisdiction

50. UTFA pleads that the Application arises from matters that are outside of this Tribunal's jurisdiction.

51. The allegations in the Applications primarily relate to comments made during broad debates and deliberations within UTFA Council pertaining to social and political issues on the university campus, the governance of the affairs of the

Association and the actions that the Association should take in response to these issues. Given the nature of the issues at stake, it is typical that participants in the debate would put forward differing opinions, and at times, these debates may become heated.

52. This Tribunal does not have jurisdiction to intervene in these debates and to do so would insert the Tribunal into the adjudication of matters that are properly protected by academic freedom and freedom of expression.

53. This Tribunal has been clear that "it is not within its jurisdiction to address issues of social, political, or academic debate on a university campus" (*Hart v. McMaster University*, 2021 HRTO 241). This Tribunal has also stated that:

> "[I] it is well-established that courts and tribunals should be restrained in intervening in the affairs of a university in any circumstance where what is at issue is expression and communication made in the context of an exploration of ideas, no matter how controversial or provocative those ideas may be… [G]iven the importance of academic freedom and freedom of expression in a university setting, it will be rare for this Tribunal to intervene where there are allegations of discrimination in relation to what another person has said during a public debate on social, political, and/or religious issues in a university." (*McKenzie v. Isla,* 2012 HRTO 1908)

54. The Association was, at all material times, fully seized of its critical dual obligations in respect of its duties under the *Code* and its responsibilities to the protection of academic freedom and free speech within the University.

55. The Tribunal has rightly exercised restraint in inserting itself into the fray of this nuanced exploration of challenging and provocative ideas given the importance of these animating values of free expression and academic freedom, and UTFA respectfully pleads that the Tribunal ought to exercise such restraint in the face of this Application.

56. UTFA respectfully pleads that the Applications should be dismissed for want of jurisdiction.

(b). The Application is Premature as the Incidents Alleged in the Application are Already the Subject of and Internal Investigation

57. On March 8, 2022, the Applicant filed an internal complaint with UTFA complaining of the conduct raised in the First Alleged Incident and the Second Alleged Incident. A copy of the initial Internal Complaint was filed as an appendix to the Application (the "Internal Complaint").

58. As is detailed above, at the time that the Internal Complaint was filed, UTFA did not have a formal policy setting out a process to address complaints of this nature, but the Association had begun work to develop such a policy.

59. UTFA decided that the Internal Complaint would be addressed via the Complaints Policy, once it was approved by Council and brought into force.

60. UTFA admits that the Independent Investigation process has not moved as quickly as it would have chosen, and has been paused while UTFA seeks to remedy the structural challenges that it encountered, but UTFA expressly denies that the pace or conduct of the Independent Investigation was in any way related to the subject matter of the complaint or the identity of the complainant, including in any way connected to a protected characteristic of the Applicant.

61. Rather, the complaint process (as noted above, the first complaint investigated under the Complaints Policy) brought to light some previously unforseen structural and operational challenges with the design and process set out in the Complaints Policy. UTFA has been working in good faith to address these challenges in order to advance the Internal Complaint in as prompt a manner as possible.

62. UTFA pleads that it has, at all times, acted in good faith and denies that any delay in investigating or otherwise responding to the Internal Complaint is in any way related to a protected characteristic of the Applicant. Any allegations to the contrary are bald assertions made wholly without merit and UTFA puts the Applicant to the strict proof thereof.

63. Importantly, because the investigation of the Internal Complaint was delegated by UTFA to the Independent Investigation, the Association itself has not been privy to the ongoing fact-finding or determinations of the investigators. UTFA's ability to meaningfully respond to this Application is materially hindered by the fact that it is not yet in receipt of the findings and recommendations of the Independent Investigation.

64. This gap represents a problem for the Association in its efforts to take a position in this proceeding--and ultimately for the Tribunal in its own fact-finding and determinations arising from the Application.

65. The Association would be prejudiced if it is required to respond to an Application in the face of this informational gap and while the Independent Investigation of the Internal Complaint is incomplete. The Association cannot reasonably be expected to take a position in its Response without having sufficient opportunity to consider the outcome and findings of the Independent Investigation.

66. Furthermore, UTFA is required to remain open to all possible outcomes of the Independent Investigation and must be able to act without bias or a pre-determined point of view on receipt of the results of that Independent Investigation. Being required to take a position in its Response to the Application in an adversarial process such at this proceeding is inconsistent with its values and obligations in respect of the Internal Complaint.

67. The fact that the Independent Investigation is not yet complete gives rise to a prejudice that is both material and substantial prejudice.

68. For these reasons, UTFA requests that the Application should be stayed for a reasonable period, pending the conclusion of the Independent Investigation.

(c) The Applicant Has Not Been Discriminated Against in Relation to His Membership in a Vocational Association

69. The Applicant claims that UTFA's conduct was discriminatory on the basis of membership in a vocational association.
70. UTFA expressly denies that the Applicant's membership in a vocational association was limited or impaired in any way by discriminatory conduct for which the Association is liable. The Applicant remains a member of the Association whose interests in respect of the Internal Complaint are being advanced through the Independent Investigation. The Applicant was not subjected to adverse differential treatment by the Association. Any allegation to the contrary is expressly denied.

71. At all relevant times the Applicant's relationship to UTFA was that of a member of UTFA Council—the governing body of UTFA—and not as a general member of the Association. That is, during the period about which the Applicant complains, the Applicant did not stand *vis a vis* UTFA as a member who required the Association's representation (such as through a grievance process relating to his terms and conditions of employment, for example), but rather as a member of the body that governs and administers UTFA's affairs. The incidents that form the basis of the Applicant's allegations are all interactions between the Applicant as

one member of UTFA's governing Council and other individual members of UTFA's governing Council. Any negative repercussions that the Applicant may have experienced in his capacity as a member of governing Council—which UTFA expressly denies—had no impact on his membership in UTFA as a whole in the representative services that he was afforded as a member of the Association. UTFA pleads that there is no legal basis at law for the Applicant's assertion that the Association's actions or inactions *vis a vis* a member of UTFA Council constitutes discrimination on the basis of membership in a Vocational Association.

72. Furthermore, UTFA pleads that Applicant's decision not to pursue a particular opportunity within UTFA or to resign from his role on Council is the result of his own decision and cannot properly be attributed to UTFA, and in any event does not impact on his membership in UTFA as a vocational association.

73. UTFA therefore denies that on the face of the Applicant's Application, there has been any differential treatment as a member of a vocational association. The Application should therefore be dismissed.

(d). The Applicant's Claim of Reverse Discrimination is Inconsistent with the Protection of Substantive Equality

74. While the Respondent is unable to fully respond to the Application as the matters raised are still the subject of the Independent Investigation (as described above), the Association nevertheless and respectfully submits that the nature of complaints alleged in the Application, viewed within their proper factual context, is inconsistent with Tribunal's mandate to advance substantive equality.

75. Both men and women are protected from discrimination on the basis of sex. However, differential treatment constitutes discrimination only when it imposes a burden or withholds a benefit in a manner that reflects the stereotypical application of <u>presumed</u> group or personal characteristics, or otherwise has the effect of perpetuating or promoting the view that the complainant is less capable or worthy of recognition or value as a human being or as a member of society.

76. In human rights legislation such as the Code, the focus of a discrimination analysis ought to be on whether the action in question reinforces, perpetuates, or exacerbates a disadvantage. The Supreme Court of Canada has also recently held that membership in protected groups "often brings with it a unique constellation of physical, economic and social barriers," and that the identical treatment of individuals, without accounting for such barriers, may in fact produce inequality. (*Fraser v. Canada* (Attorney General), 2020 SCC 28)

77. In other words, differential treatment is sometimes necessary in order to achieve true, substantive equality.

78. The simple fact of invoking someone's race or gender in the course of an interaction does not implicitly or automatically give rise to a claim of discrimination, even if the interaction is a critical one. In the instant case, the Applicant's allegations amount to an assertion of reverse discrimination: essentially that by being called out as a white man for exerting privilege and engaging in gendered conduct that his colleagues alleged was discriminatory towards his female colleagues he is in fact alleging that he is the subject of discriminatory treatment that engages the protection of the *Code*.

79. The Tribunal has been disinclined to accept applications of reverse discrimination, on account of the need to promote "substantive equality" rather than "formal equality."

80. The Tribunal has found that where conduct alleged in a Application does not perpetuate an arbitrary disadvantage towards the Applicant (*Galuego v. Spectrum Health Care*, 2016 HRTO 1367)

81.) or where a stereotype is not advanced in a way that oppresses an historically marginalized group (*Lindsay v. Toronto District School Board,* 2020 HRTO 496), an Application can be dismissed as having no reasonable prospect of success.

82. Furthermore, the Tribunal's jurisprudence reminds parties that the purpose of human rights legislation is to remedy historic inequity and systemic discrimination. In *Maclean v. The Barking Frog (*2013 HRTO 630) , the Tribunal pointed out the importance of addressing complaints through the purposive lens of the HRTO's mandate to address historic inequality.

> There are many things that could be said about societal beliefs in Ontario, but the notion that men are less worthy than women is not among them. In fact, the entire history of gender discrimination in this province reveals the opposite, which is why women had to fight for basic equality through a right to vote and for equal pay for equal work, to give just two examples. While progress has been made, discrimination against women in our society still persists… In my view, the notion that charging a lower cover charge for women somehow demeans men as a gender in the overall societal context does not bear scrutiny. (*Maclean v. The Barking Frog*,

2013 HRTO 630)

83. UTFA pleads that the Application fails to advance a claim grounded in the Tribunal's mandate to advance substantive equality and asserts that the Tribunal ought not lend its authority to the advancement of reverse discrimination claims such as that advanced by the Applicant. As such, the Application should be dismissed.

UTFA Denies that it Acted in a Discriminatory Manner in Respect of the Applicant's Membership in a Vocational Association or Otherwise

84. The Applicant has alleged three specific incidents as the basis of his Application:

    1. *A series of exchanges among Council members on an unmoderated forum that the Applicant alleges constitute harassment. ("the First Alleged Incident")*

    2. *An email exchange with Judith Taylor allegedly in her capacity of Chair of the Membership Committee, that the Applicant alleges constitute discriminatory conduct*. (the "Second Alleged Incident")

    3. *An alleged communication between Judith Taylor and the Chair of Economics Department. (the "Third Alleged Incident")*

85. The Applicant alleges that these three incidents constitute the adverse conduct upon which his Application is based. (Applicant's Application (Form 1), dated December 22, 2022, Q.8, page 8)

86. The Applicant alleges that he experienced discriminatory conduct in his membership in a vocational association on the basis of his race, colour, sex and gender identity.

87. UTFA admits that the Applicant is a cis-gendered white man of European ancestry.

88. For the reasons set out above with respect to substantive equality, the Association denies that the Applicant's gender identity as a cis-gendered man attracts the protection of the *Code*.

(a) The First and Second Incidents

89. The First and Second Incidents are the subject of an investigation that was convened pursuant to the Complaints Policy. The Complaints Policy was not yet in effect at the time that the internal complaints were made, but came into effect

shortly thereafter. UTFA determined that the complaint would be investigated in accordance with the Complaints Policy.

90. As a result of the design of this process, UTFA is not privy to the fact-gathering and investigative analysis that has been done with respect to these complaints and UTFA is not in a position to meaningfully respond to these allegations until the Independent Internal Investigation is complete.

91. As set out above, UTFA pleads that it would be prejudiced if it were required to proceed with the Application in the face of an incomplete evidentiary record and without the benefit of the findings of the Independent Internal Investigation. Further, it would be improper for UTFA to take a position in this proceeding on questions that are still the subject of the Independent Internal Investigation.

92. With respect to the allegation that UTFA's President's actions following the Second Alleged Incident communicate or otherwise indicate UTFA's implicit support of any alleged discrimination, UTFA admits that, on December 6, 2021, the National Day of Remembrance and Action on Violence Against Women, UTFA's President sent a message recognizing the National Day of Remembrance and Action. However, UTFA expressly denies that its statement decrying gender violence and misogyny represents the UTFA President's "implicit support" for comments made in an email exchange by Prof. Taylor or is in any way connected to the events described in the Application and puts the Applicant to the strict proof thereof.

93. UTFA reserves its rights to amend its Response once the Independent Internal Investigation is complete.

(b) The Third Incident

94. With respect to the Applicant's allegation that Judith Taylor communicated with the Chair of his department, UTFA has no knowledge of the facts pleaded, which are speculative and based on hearsay and puts the Applicant to the strict proof thereof.

95. Moreover, on its face, the Application does not contain even an allegation of discrimination or conduct otherwise in contravention of the *Code*.

96. Although the Applicant claims to be aware of the existence of an email exchange between Prof. Taylor and the Chair of the Economics Department, he admits that he does not know the contents of the email and has never seen it. He has no direct knowledge about whether the email exchange in fact occurred, or whether any comments by Prof. Taylor did, in fact, make any assertions about the Applicant in connection with his race or gender. The allegation that the

communication, if it occurred, was discriminatory, is a bald assertion based on speculation, and UTFA puts the Applicant to the proof thereof.

97. Furthermore, although the Applicant implies that Prof. Taylor's email to his Chair could give rise to some form of adverse treatment, he has not pled that he suffered any adverse impact whatsoever arising from the email, but instead relies on hypotheticals and speculation as to a theoretical harm to his reputation. The Applicant uses language such as "*could* be prejudicial" and "*potentially* used against me" without asserting any evidence that such harm did in fact occur.

98. Neither UTFA nor the Applicant are privy to the details of the alleged communication between Prof. Taylor and the Chair. But in any event the Application does not plead any facts or allegations that give rise to the protection of the *Code*, much less conduct for which UTFA could be held vicariously or otherwise liable. As this Tribunal has consistently found:

> With respect, the HRTO does not have the power to deal with general allegations of unfairness. In order for an Application to continue there must be a basis "beyond mere speculation and accusations to believe that an applicant could show discrimination on the basis of one of the grounds alleged in the Code". (*Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389 (CanLII) at para. 17)

99. The allegations are bald, speculative, based on hearsay, and fail to disclose any discriminatory conduct or intent. As such, UTFA requests that the Third Alleged Incident be dismissed.

100. In the event that the Tribunal denies the Association's request to dismiss the allegations in the Third Alleged Incident, the Association demands further particulars of the content of the alleged communication and the manner in which the Applicant alleges the complained of content represents a breach of the Code, either by Prof. Taylor or by UTFA, including any disadvantage he has actually experienced as a result of the communication.

Defences

101. If this Tribunal finds that it has jurisdiction to consider the Application, UTFA relies on the following defences.

(a) No Discriminatory Conduct

102. UTFA specifically denies that the Applicant has suffered or will suffer differential treatment based on a protected characteristic in breach of the “Code”, whether as a result of the events complained of in the Application or otherwise and puts them to the strict proof thereof.

103. UTFA specifically denies that it or the actions of any member of the Association demonstrated an intention to discriminate or incite discrimination based on a prohibited ground in breach of the Code.

(b) UTFA has a *bona fide* Interest in Academic Freedom: Speech in the Public Interest Cannot be Unduly Restrained

104. UTFA specifically denies that UTFA, as a political Association that exists in the context of a university with policies that protect speech & academic freedom, has either the obligation or the legal capacity to manage the conduct of its Council members as they engage in the rigorous and free exchange of ideas in the course of governing the Association’s affairs. Nor should it.

105. Faculty Associations and individual members of the Association are encouraged to share ideas openly; debate is encouraged.

106. As is outlined in more detail above, academic freedom gives rise to a bona fide interest that mitigates against restraining the speech of its Members.

(c) Harms Alleged are Excessive, Remote and Speculative any Harm the Applicant Experienced Arises out of His Own Discriminatory Conduct

107. If the Tribunal finds that the Applicant has established a prima facia claim for discrimination, and does not find that any of the Association’s defences shield it from liability for such discrimination, which is expressly denied, the Tribunal must then consider whether the harms alleged can be properly attributed to the Association.

108. The harms and loss asserted in the Application are excessive, remote and speculative, and UTFA puts the Applicant to the proof thereof.

109. As previously stated, UTFA expressly denies that the Applicant’s membership in a vocational association was limited or impaired in any way by discriminatory conduct for which the Association is liable.

110. While UTFA is limited in its ability to make a determination about matters that remain the purview of the Independent Investigation, for the purpose of this Response, UTFA pleads that the harms, humiliation or adverse impacts that the

Applicant experienced in the course of his dealings and interactions with Council arose from the Applicant's own conduct. UTFA denies that it is liable for the harms alleged.

111. The Harms alleged in the Application are speculative and remote. UTFA expressly denies that the harms alleged can be properly attributed to any discriminatory conduct by UTFA for which UTFA can be liable, and puts the Applicant to the strict proof thereof.

UTFA Cannot Be Vicariously Liable to the Applicant for the Conduct of Another Member or Officer

112. The Application purports to assert a claim for discrimination in membership of a vocational association, but none of the events reflect unequal treatment by UTFA.

113. Instead, the true nature of the Applicant's claim appears to be a claim that UTFA ought to be held vicarious liability for the conduct of its officers or members.

114. UTFA is aware of no legal authority and expressly denies, in the context of its constitutional and operational structure, that it can be vicariously liable to a member of the Association for the conduct of Council member or officers of the Association in the course of Council business or otherwise, and puts the Applicant to the strict proof thereof.

115. In the alternative, if the Tribunal finds that UTFA can be held vicariously liable to a member of the Association for the conduct of another Council member or officer of the Association, UTFA expressly denies that the conduct complained of in the Application constitutes a breach of the Code.

116. In the further alternative, if the Tribunal finds that the conduct complained of in the Application constitutes a breach of the Code, UTFA asserts that at all times it discharged its obligations to the Applicant and its actions were at all times the result of a bona fide belief it its obligation to uphold free speech and academic freedom.

Conclusion

117. UTFA respectfully requests that the Application be dismissed.

118. Alternatively, and in any event, UTFA requests that the Application be delayed pending the completion of the Independent Investigation of the Internal Complaint.

Schedule B to the Response of UTFA

Preliminary List of Documents

DOCUMENTS UTFA HAS		
	Document Name/Description	**Why It Is Important To UTFA's Response**
1	Prof. Peski's internal complaint (already provided by Applicant)	Outlines the content and timing of initial complaint
2	UTFA Emails and correspondence about Prof. Peski's complaint	Outlines UTFA's response to the concerns raised by the Applicant
3	UTFA Policy and Procedure for Internal Harassment and Discrimination Complaints	Policy that was used to address the Applicant's internal complaint;
4	*University of Toronto's Statement of Institutional Purpose*	Policy that sets obligations respecting UTFA's duties to protect and preserve intellectual freedom
5	Article 5 of the *Memorandum of Agreement* (MOA)	Agreement that affirms obligations respecting UTFA's duties to protect and preserve intellectual freedom
6	UTFA Constitution & Bylaws	Sets out UTFA's governing and operating framework; evidence of the absence of authority within UTFA to take further action in response to the Complaint;
7	Diagram of UTFA's organizational structure	Infographic to illustrate UTFA structure
8	Advisory on Respectful Workplace Policies	Supports UTFA's efforts
9.	Various correspondence detailing Council and Executive concerns about the Applicant's gendered conduct	Evidence of the context in which the complained-of comments were made; support for the Respondent's position that the Application asserts a claim of reverse discrimination,
10.	Correspondence and documents pertaining to the Complaints Review Committee with respect to the Applicant's internal complaint and the challenges that arose in the process	Provides evidence with respect to the Applicant's internal complaint and the challenges that arose in the process

DOCUMENTS THE APPLICANT HAS		
	Document Name/Description	Why It Is Important To UTFA's Response
	n/a	

DOCUMENTS ANOTHER PERSON/ORGANIZATION HAS		
	Document Name/Description	Why It Is Important To UTFA's Response

1.	Report of the Independent Investigation (not yet complete)	Provides details

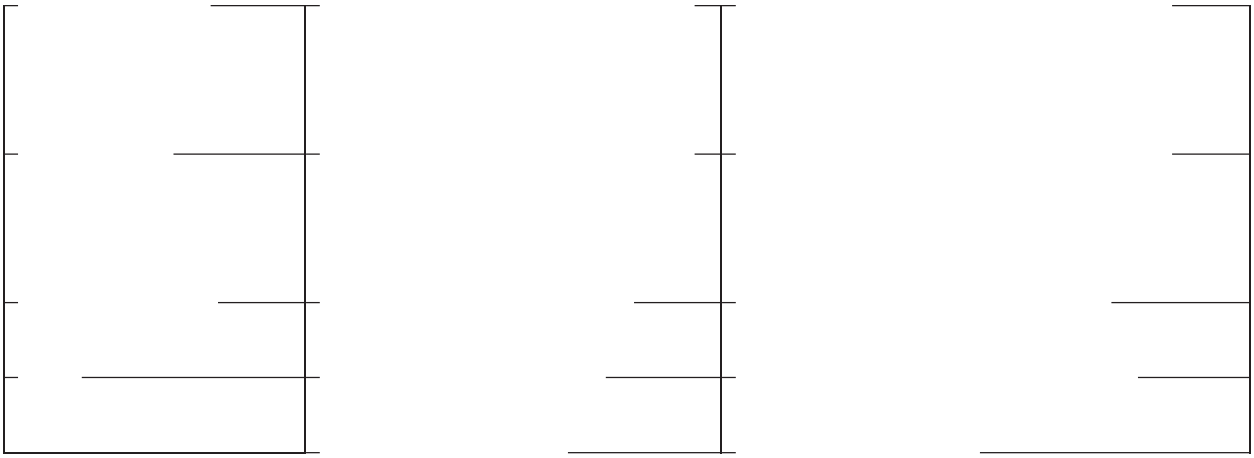
UTFA reserves the right to provide an updated list of documents that are important to its Response.

1375-2031-0786, v. 2

Schedule C to the Response of UTFA

Preliminary List of Witnesses

Witness Name	Title	Scope of Evidence



UTFA reserves the right to vary or update this list of witnesses as required.

1385-6062-9250, v. 1