

Relief Sought1. The Plaintiff claims from the Defendants, jointly and severally:

- (a) General damages in the amount of \$200,000.00 for misfeasance in public office, or, in the alternatives, for abuse of process, or for conspiracy to injure;
- (b) General damages in the amount of \$200,000.00 for defamation;
- (c) General damages for breach of academic freedom in the amount of \$50,000.00;
- (d) Equitable compensation for breach of fiduciary duty in the amount of \$100,000.00;
- (e) Damages for breach of contract in the amount of \$50,000.00;
- (f) Aggravated damages in the amount of \$50,000.00;
- (g) Exemplary or punitive damages in the amount of \$200,000.00;
- (h) Special damages in an amount to be specified before trial;
- (i) His costs of this action on a substantial indemnity scale;
- (j) Pre- and post-judgment interest in accordance with the provisions of the *Courts of Justice Act*;
- (k) An order directing the Defendants to cease and desist in the publication of certain libelous communications concerning the Plaintiff that have appeared on the York University website continuously since May 7, 2004;
- (l) Such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiff was born in Barrie, Ontario in July, 1982. He resides in Toronto, although his permanent mailing address remains that of his parents' house in Barrie.
3. The Plaintiff is, and was at all material times except during his "suspension" from May 1 to July 21, 2004, an Honours political science student at York University.
4. After having completed two years of study towards an Honours degree in political science at the University of Toronto, the Plaintiff transferred to York University for the academic year 2003-2004. During that academic year he took a full course load in political science, and obtained the grade of "A" in every course save one, in which he obtained a "B+".
5. The Plaintiff is a political activist who participates in demonstrations and other activities aimed at drawing attention to violations of human rights in Canada and around the world. The Plaintiff intends to establish a career either as a political scientist or as a journalist, or engaging in some combination of these two disciplines. The Plaintiff has a reputation for non-violent political activism that evidences a concern for all human beings, and for integrity and responsibility. His reputation is essential to the pursuit of his career plans.

6. The Defendants are subject to the provisions of *The York University Act, 1965*.
7. The government, conduct, management and control of York University are vested in the Defendant Board of Governors, except as to such matters assigned by *The York University Act, 1965* to the Senate of York University.
8. The Defendant Dr. Lorna Marsden is, and was at all material times, the President of York University. She was appointed to the office of President pursuant to the provisions of *The York University Act, 1965*.
9. Dr. Lorna Marsden serves in the position as President at the pleasure of the Board of Governors of York University.

Overview

10. In a letter dated April 21, 2004, the Defendant Marsden wrote to the Plaintiff that she was prohibiting him from registering for courses or attending on the York University campus for a three year period beginning May 1, 2004. The letter stated that this punishment was imposed because the Plaintiff had violated University rules and regulations in the course of his participation in two demonstrations on campus.

11. President Marsden had no jurisdiction to impose the punishment specified in her letter of April 21, 2004.
12. The prohibition on his attending on the campus of York University made it difficult for the Plaintiff to perform two summer jobs that he had been hired to do.
13. The Plaintiff made application for judicial review of the imposition of the punishment. The Defendants brought a preliminary motion to have this application stayed or dismissed. The Defendants' preliminary motion was dismissed, and the Plaintiff's right to seek judicial review was upheld.
14. The Defendants subsequently "vacated" their punishment of the Plaintiff, so the application for judicial review became moot.
15. The Plaintiff was permitted to register for courses at York University for the Fall 2004 semester, and he did so register.
16. The Defendants made several statements in the media that the Plaintiff alleges were defamatory of him.
17. This is an action for damages for the wrongful punishment and for the defamation of the Plaintiff.

Background

18. The Plaintiff engaged in demonstrations for human rights while a student at York University. In particular, he participated in demonstrations on the campus of York University on October 22, 2003 and March 16, 2004.

19. In a letter dated November 12, 2003, Anne Marie Ridley of the University Complaint Centre stated that the Plaintiff had, on October 22, 2003, used a sound amplification device without permission and ignored University officials who asked the Plaintiff to stop. She referred the Plaintiff to Presidential Regulation Number 2, which governs student behaviour at York University. She then wrote, “I would like to hear your response to these concerns, and so I invite you to meet with me at your earliest convenience.”

20. Shortly after receiving the letter of November 12, the Plaintiff met with Ms. Ridley in her office. The Plaintiff explained that he had not had time to review the code of conduct thoroughly but that he was ready to meet then or later. Ms. Ridley said that she needed to contact the security personnel who were present at the October 22 demonstration before she would be ready to discuss the matter with the defendant.

21. It was the Plaintiff's understanding that it was then up to Ms. Ridley to get back to him.
22. The Plaintiff received no other formal complaint from any official of York University about any aspect of his conduct from the time of the meeting with Ms. Ridley until he received a letter dated April 21, 2004 from President Marsden.
23. President Marsden's letter dated April 21, 2004 stated:

In the past year you have been involved in conduct that is unacceptable according to the standards of York University. Specifically, on October 22, 2003 you were seen attending an unauthorized demonstration in Central Square and in Vari Hall Rotunda and using an unauthorized sound amplification device. This demonstration was in violation of the Temporary Use of Space Policy and the Policy for Use of Vari Hall Rotunda.

On November 12, 2003 you were sent a registered letter from the Office of Student Affairs telling you that your behaviour was unacceptable and asking for your attendance at a meeting to discuss the October 22nd incident. You failed to reply to the letter. When seeing Ms Ridley from OSA in person, you responded to her request for a meeting by saying you were too busy but would try to set something up. You also refused to give updated contact information to our offices. These responses were unsatisfactory.

On March 16, 2004, you were seen setting up and participating in an unauthorized demonstration in the Vari Hall Rotunda. Again, you were seen to be using an unauthorized sound amplification device. This demonstration was also in violation of the Temporary Use of Space Policy and the Policy for Use of Vari Hall Rotunda. During the October and March demonstrations, you interfered with the proper functioning of University programmes and activities, contributed to the threat of harm to the safety and well-being of York University community members, and failed to abide by reasonable instructions given orally and in writing by an official of the University authorized to secure compliance with regulations, rules, practices and procedures, all contrary to Presidential Regulation 2.

- As a result of your actions outlined above, and pursuant to my authority over the conduct of students, I have determined that you will not be permitted to re-register at York University for three calendar years from May 1, 2004 and I am instructing the University Registrar accordingly. After May 1, 2004, and until you re-register, you have no purpose on campus and are therefore asked not to attend the premises of York University. If you are seen on the premises, you will be issued a notice of trespass.
24. President Marsden's letter dated April 21, 2004 was post-marked April 26, 2004.
25. President Marsden's letter dated April 21, 2004 was received at the Plaintiff's Barrie address on April 28, 2004.
26. President Marsden publicly asserted "The decision comes to me. He cannot appeal."
27. Prior to receiving President Marsden's letter dated April 21, 2004, the Plaintiff was not even made aware that disciplinary procedures against him were being contemplated.
28. The Plaintiff was given no opportunity to make any representations whatsoever before President Marsden sent him the letter dated April 21, 2004 .
29. In spite of numerous requests made by the Plaintiff's counsel to President Marsden's counsel, President Marsden has refused to provide the record of what was before her when she decided to punish the Plaintiff.

30. President Marsden stated that her punishment of the Plaintiff was pursuant to her authority under *The York University Act, 1965* and associated regulations.
31. In spite of numerous requests by the Plaintiff and many others, President Marsden refused to specify what sections of the *The York University Act, 1965* and/or any regulations gave her the authority to punish the Plaintiff in the manner she did.
32. The regulations of York University state that a student is entitled to a hearing by a University Discipline Tribunal before being prohibited from registering for classes on the grounds of alleged misconduct.
33. On May 27, 2004, the York University Senate passed a motion declaring:
- “that Senate respectfully requests that President Marsden do the following:
- reconsider and rescind her decision on the suspension of Daniel Freeman-Maloy and in doing so permit him to attend on campus for the purpose of pursuing his studies and his employment;
- and ensure that all disciplinary action against students is taken within the context of established regulations, due process, and with regard to the values of the University.
34. The Senate is York University’s highest academic decision-making body, but authority over the conduct of the Defendant Marsden is, pursuant to *The York University Act, 1965*, vested in the Defendant Board of Governors.
35. On June 10, 2004, counsel for York University sent a letter to the Plaintiff’s counsel containing what she termed “York University’s proposal with respect to the matter

involving Daniel Freeman-Maloy.” This letter was headed “With Prejudice.” The letter stated that President Marsden would appoint a panel to reconsider the penalty if the Plaintiff signed a statement.

36. The statement that the Defendants requested the Plaintiff to sign was the following:

I acknowledge that my conduct at York University during the academic year of 2003/04 fell below the standards expected of students at that University in a number of respects. Specifically, I realize that statements I made in respect of Henry Wu, a member of the Board of Directors of the York University Foundation, were personally threatening to him. The demonstrations which I organized and led were conducted in locations and in a manner which I knew was not permitted by the University’s rules and unnecessarily disrupted academic activity and inflamed confrontations. I ignored the University’s published rules and requests of University officials to alter my plans and behaviour, and to meet with them to discuss my behaviour after the fact. I understand that my behaviour constituted breaches of the Standards of Student Conduct set out in Presidential Regulation Number 2 and fell below the standards expected of York University students. I am sorry for the disruptions and the other adverse effects caused by my actions.

37. The Plaintiff’s statements concerning Henry Wu that the Defendants were referring to in the previous paragraph were made at a demonstration located more than ten kilometers from the campus of York University, and the Defendants were aware that those statements had not been made on campus.

38. The Defendants do not have jurisdiction to punish a student for conduct at a demonstration that takes place off the campus of York University.

39. The Plaintiff did not threaten Henry Wu, or anyone, at any time.
40. The statement that the Defendants requested the Plaintiff to sign contained many falsehoods; the Plaintiff did not agree to sign it.
41. On June 17, 2004, the Plaintiff commenced an application for judicial review of Defendant Marsden's decision prohibiting him from registering and from attending on campus. A hearing before the Divisional Court was scheduled for August 10, 2004. On June 22, 2004, counsel for York University filed a Notice of Appearance in response to this application.
42. On July 2, 2004, counsel for York University sent a letter via facsimile to the Plaintiff's counsel indicating that the University had decided to hold a disciplinary hearing about the Defendant's conduct. This letter stated, in part:
- I am writing to advise you that I will be delivering a Notice of Hearing in the manner provided for in *Presidential Regulations Numbers 2 and 3*. A University Discipline Tribunal will be convened to determine whether Mr. Freeman-Maloy's course of conduct fell below the Standards of Student Conduct as set out in *Presidential Regulation Number 2*. If the Tribunal finds that Mr. Freeman-Maloy's conduct fell below the Standards of Student Conduct, the University Discipline Tribunal will then consider the issue of penalty. The range of possible penalties are set out in the Presidential Regulations.
- We are in the process of determining scheduling issues. I anticipate the Notice of Hearing will contain a date for the hearing of July 21 or July 22, 2004 or very shortly thereafter.
43. The Defendants asserted that the suspension and ban from campus were still in place in spite of their having scheduled a hearing. The Defendants served a Notice of

Hearing for July 21, 2004.

44. The Defendants made an interlocutory motion to the Divisional Court to quash or stay the application for judicial review on the grounds that the hearing scheduled for July 21, 2004 would offer an adequate alternate remedy. The Plaintiff took the position that President Marsden's conduct had created reasonable apprehension of bias with respect to any discipline hearing convened by the defendants. The Plaintiff made a cross-motion requesting that the discipline hearing of July 21 be stayed pending the disposition of the application for judicial review. Madame Justice Epstein of the Divisional Court dismissed the Defendants' motion on the grounds that the alternate remedy of a hearing was not "adequate". Madame Justice Epstein granted the Plaintiff's cross-motion to stay the discipline hearing, stating that otherwise the Plaintiff would be "caught in a procedural nightmare."

45. On July 22, 2004, the Defendants informed the Plaintiff that they had "vacated" President Marsden's punishment of him.

46. The discipline hearing that had been scheduled by the Defendants and the application for judicial review were both abandoned.

Misfeasance in Public Office

47. The governance of York University is specified in the *York University Act, 1965*. The conduct of students and the procedure for disciplining students whose conduct contravenes the standards are prescribed in *Presidential Regulation Number 2*, a regulation enacted pursuant to the *York University Act, 1965*. This Regulation prescribes a series of steps that must be followed prior to the convening of a Trial Panel of the University Discipline Tribunal. These steps include: the making of a complaint to a complaints officer; the reduction of the complaint to writing; the conduct of a preliminary investigation by the complaints officer; advising the Provost of the complaint; the determination by the Provost of whether the complaint involved a minor or a serious infraction; consideration of mediation by the complaints officer; the referral of the complaint to the Provost; and arranging for the prosecution before the Trial Panel by the Provost.
48. None of the required steps enumerated above was followed before President Marsden imposed punishment in her letter of April 21, 2004 and none of those required steps were followed before the Defendants gave notice of the hearing of July 21, 2004.
49. Students alleged to have engaged in “serious infractions” of *Presidential Regulation Number 2* are to be dealt with through the formal adjudicative procedures established in section E of *Presidential Regulation Number 2* unless they are dealt with by mediative procedures on consent. This section provides for a hearing before the Trial Panel; such a hearing proceeds in accordance with the principles of natural justice.

50. A decision of the Trial Panel of the Defendant York's University Discipline Tribunal may be appealed to an Appeal Panel of the University Discipline Tribunal established by Presidential Regulation Number 3. The Appeal Panel affords the parties to the appeal, at its discretion, an opportunity to present oral or written argument or both. The Appeal Panel renders a written decision
51. Any party to an appeal may submit a petition in writing requesting that the President review the decision of the Appeal Panel. The parties may make written submissions to the President. The President may dismiss or grant the petition, affirm, reduce or increase the sanctions imposed, order that the matter be reconsidered by an appropriate panel of the University Discipline Panel, or make such other disposition of the matter as seems appropriate in all the circumstances.
52. The Plaintiff was not afforded any hearing or formal procedures as provided for in Presidential Regulation Number 2, nor was the Plaintiff permitted to make any oral, written or any other submissions prior to Dr. Marsden's findings that he had breached the regulations and her imposing the sanction of a suspension for three years. He had not even been made aware that disciplinary procedures against him were being contemplated. He was given no opportunity to make any representations whatsoever.

53. The Defendant Dr. Lorna Marsden did not have jurisdiction to make any findings with respect to the Plaintiff's conduct and did not have jurisdiction to impose any sanctions upon him.
54. Before President Marsden's letter of April 21, 2004 was sent to the Plaintiff, the members of the Board of Governors informed President Marsden that they approved of the contents of the letter.
55. President Lorna Marsden and the members of the Board of Governors, and other officials of York University, knew that the regulations of York University required that a student be afforded the opportunity of a hearing before the student could be denied the right to register for a subsequent semester on the grounds of misconduct.
56. The Defendants knew that they were acting unlawfully in punishing the Plaintiff in the manner indicated in the letter of April 21, 2004.
57. No other student has ever been prohibited from registering for classes at York University on the grounds of alleged misconduct without having been offered the opportunity of a hearing into the allegations.
58. The Defendants knew that they were acting unlawfully in convening a hearing for July 22, 2004 in the manner that they did.

59. The Defendants became aware that the banning of the Plaintiff from York University's campus had the effect of making it very difficult for him to perform the two summer jobs that he had obtained. The Defendants further knew that both of those jobs would have provided training that was important to the Plaintiff's future career plans, and that performing well in those jobs would have provided excellent references for his future employment.
60. The Defendants knew that prohibiting the Plaintiff from re-registering for three years would substantially impair the Plaintiff's future career.
61. The Defendants knew that punishing the Plaintiff as they did would make it very difficult for him to obtain entrance to any other university to complete his undergraduate studies.
62. The Defendants used the full resources of York University to oppose the Plaintiff's attempts to obtain the rights to pursue his summer employment, to continue his studies, and to clear his name.
63. The position of President of York University is a public office, pursuant to the *York University Act, 1965*.
64. The position of membership on the York University Board of Governors is a public office, pursuant to the *York University Act, 1965*.

65. The Defendant President Marsden deliberately disregarded her duty to follow the regulations in disciplining a student. She knew that she was flagrantly violating the regulations in imposing punishment as she did, and numerous persons and organizations reminded her of that fact. She nonetheless persisted with her punishment until the interlocutory ruling of the Divisional Court made it apparent that the punishment would be quashed on judicial review.
66. The members of the Board of Governors had the responsibility of preventing President Marsden from unlawfully punishing the Plaintiff. Instead of fulfilling that responsibility, the members of the Board of Governors aided and abetted President Marsden in her unlawful actions against the Plaintiff.
67. The Defendants consciously and deliberately abused their powers in order to punish the Plaintiff. They acted maliciously and for improper purposes, as particularized below.

The First Libel

68. On May 7, 2004, the defendant York University posted on its website in “Y File: York’s daily bulletin” an article under the headings “From the President” and “The primacy of the academic function”. The said article was written and/or authorized by

the Defendant Dr. Lorna Marsden and was published by the Defendant York University on its internet website.

69. The impugned article reads as follows:

From the **The primacy of the academic function**
President

In accordance with the powers of the University president in the York University Act and in our regulations, a York University student, Daniel Freeman-Maloy, is being permitted to complete his academic year but will not be permitted to re-enroll at York for three years. Mr. Freeman-Maloy has knowingly, repeatedly and intentionally disrupted classes and has broken University regulations regarding student conduct on campus by acting as the lead protagonist in two highly confrontational and disruptive protests in Vari Hall, a central academic building where such activity is prohibited. He declined to meet with the University, saying to a University official that it would be a “waste of my time”. Furthermore, he has never responded to any written or oral requests for a meeting. This attitude sets him apart from other students who are co-operating with the disciplinary process and remain members of the York community.

Mr. Freeman-Maloy was warned on several occasions, including during the March 16th protest, to cease disruption of the academic activities of the University. He repeatedly refused to follow the instructions of University officials. This was Mr. Freeman-Maloy’s first year at York University and so the University took special pains to acquaint him with our rules and regulations by all available means. He chose to ignore them all.

Apart from disrupting the primary academic function of the University, Mr. Freeman-Maloy by his actions provoked a situation where his inflammatory behaviour created concerns on the part of the University with regard to his fellow students and security was required to intervene. We cannot allow individual students to manufacture confrontations designed to create threats to students’ personal safety.

Actions of this nature demonstrate a disregard for the rights and security of the vast majority of York students who wish to pursue their studies in a peaceful and safe environment. Following a review of the case, a determination was made that the seriousness of Mr. Freeman-Maloy’s actions and his utter disregard for the rest of the academic community here at York warranted this unusual measure. This decision was discussed with the Board of Governors of the University in advance.

Finally, I would like to stress that this is not about Mr. Freeman-Maloy's politics – we have many students who share a wide range of similar and different views. This is about the right of York to provide a respectful and civil place where the expression of all views and academic debate can take place.

Lorna R. Marsden
President and Vice-Chancellor

70. A true copy of the article as posted is attached to this claim as “Appendix A”.
71. The article was false and defamatory of the Plaintiff in its ordinary and natural meaning.
72. In its plain meaning, the libelous article meant, was intended to mean, and was understood to mean:
- a. That the Plaintiff knowingly, repeatedly and intentionally disrupted classes;
 - b. That the Plaintiff declined to meet with the University,
 - c. That the Plaintiff said to a University official that it would be “a waste of my time” to meet;
 - d. That there were oral and written requests for a meeting that he did not respond to;
 - e. That the Plaintiff manufactured confrontations designed to create threats to students' personal safety;
 - f. That the Plaintiff had a disregard for the rights and security of the vast majority of York students;

- g. That the Plaintiff had an utter disregard for the rest of the academic community at York University;
- h. That the Plaintiff did not cooperate with some disciplinary process at York University; and
- i. That the Plaintiff's actions were a much more serious contravention of University rules and regulations than that of any other students who participated in protests during the academic year.

73. Each of the Defendants' assertions in the previous paragraph is false and is defamatory of the Plaintiff.

74. As a result of the publication of the libel, the plaintiff has suffered, continues to suffer and will in the future suffer damage to his feelings and to his reputation.

75. By notice dated 16 June 2004, the Defendants were served with a detailed complaint with respect to the first libel, requesting that a full and fair retraction be published on the website. The Defendants refused to publish a retraction. They have maintained the libelous article on their website from May 7, 2004 up until the date of this statement of claim.

76. The website on which the article was posted is frequently accessed by students, faculty and staff members of York University, by academics and students around the

world, and by members of the general public.

77. The Defendants have not published any retraction or apology to date. Subsequent statements of the Defendants have reinforced the sting of the libel by continuing to imply that the plaintiff had engaged in particularly egregious violations of the student code of conduct.

The Second Libel

78. On July 29, 2004, the Canadian Jewish News published and broadcast both in print and by the internet, an article entitled “York U rescinds suspension of pro-Palestinian student.” The said article, written by Jessica Hellen, who is identified in the article as a Canadian Jewish News intern, has continued to be made available on the Canadian Jewish News internet website since July 29, 2004. A true copy of that article is attached as “Appendix B”.

79. The impugned section of the article reads as follows:

“[Nancy] White said the suspension sends a strong message to other students. ‘I think we will continue to be very clear in standing behind our message that we are against threats and confrontations and hold everyone accountable to our code of conduct,’ she said, and added that it is important for students to understand that York ‘fully supports freedom of expression and debate on campus’ but is ‘against violence, threats and confrontations.’”

80. The printing of these statements in the context of the article as a whole creates the false impression that, in the course of participating in two protests at York University, the Plaintiff engaged in conduct that included “violence, threats and confrontations.”
81. Each of the Defendants’ assertions in the previous paragraph is false and is defamatory of the Plaintiff.
82. As a result of the publication of the libel, the plaintiff has suffered, continues to suffer and will in the future suffer damage to his feelings and to his reputation.
83. By notice dated 11 August 2004, the Defendants were served with a detailed complaint with respect to the libel, requesting that a full and fair retraction be published. The Defendants have not published a retraction.
84. Nancy White was acting pursuant to her employment by the Defendant York University and was following the direction of the Defendant Dr. Lorna Marsden in making the statements attributed to her in the article of July 29, 2004.
85. As a result of the publication of the libel, the plaintiff has suffered, continues to suffer and will in the future suffer damage to his feelings and to his reputation.
86. The Defendants have not published any retraction or apology to date. Subsequent statements of the Defendants have reinforced the sting of the libel by continuing to

imply that the plaintiff had engaged in particularly egregious violations of the student code of conduct.

The Third Libel

87. The Plaintiff complains of and objects to the article published and broadcast both in print and by the internet on August 25, 2004, entitled “Student Reinstated.” A true copy of that article is attached as “Appendix C”. Said article has continued to be made available on the Excalibur internet website since August 25, 2004.

88. The article was published by the Excalibur Publications Inc.

89. Mr. Freeman-Maloy complains of and objects to the article as being libelous of him.

In particular, the following statements are false and defamatory:

“It was clear that the president has the authority to suspend students who fail to live up to a specific student code of conduct. The ruling in this specific case was about process not power,” says York director of media relations Nancy White.

White disputes Freeman-Maloy’s contention that York’s suspension of him was an attempt to muffle free speech.

“We’re against violence, threats and confrontation. We are for freedom of expression,” she says. “We are giving him a second chance to abide by the student code of conduct.”

90. The printing of these statements in the context of the article as a whole creates the false impression that, in the course of participating in two protests at York University, the Plaintiff engaged in conduct that included “violence, threats and confrontations.”

91. Each of the Defendants' assertions in the previous paragraph is false and is defamatory of the Plaintiff.

92. As a result of the publication of the libel, the plaintiff has suffered, continues to suffer and will in the future suffer damage to his feelings and to his reputation.

93. By notice dated 2nd September 2004, the Defendants were served with a detailed complaint with respect to the libel, requesting that a full and fair retraction be published. The Defendants have not published a retraction.

94. Nancy White was acting pursuant to her employment by the Defendant York University and was following the direction of the Defendant Dr. Lorna Marsden in making the statements attributed to her in the article of August 25, 2004.

95. As a result of the publication of the libel, the plaintiff has suffered, continues to suffer and will in the future suffer damage to his feelings and to his reputation.

96. The Defendants have not published any retraction or apology to date. Subsequent statements of the Defendants have reinforced the sting of the libel by continuing to imply the false allegation that the plaintiff had engaged in particularly egregious violations of the student code of conduct.

The Breach of the Plaintiff's Right to Academic Freedom

97. The Plaintiff pleads that the tort of breach of academic freedom is established when:

(a) the Defendant has a duty to uphold academic freedom;

(b) the Defendant contravenes the Plaintiff's academic freedom; and

(c) the Plaintiff has a reasonable expectation that the Defendant would not contravene the Plaintiff's academic freedom in the circumstances in which the contravention occurred.

98. The Plaintiff is a political activist who participated in demonstrations on October 22, 2003 and March 16, 2004 on the York University campus. On both of these occasions, there were two opposing groups demonstrating simultaneously: one in support of human rights of Palestinians and one in support of the Israeli army's occupation of the West Bank and the Gaza Strip. Although the Plaintiff is Jewish, he was part of the group supporting Palestinian human rights at both demonstrations.

99. The Plaintiff pleads that the right of students to participate in political demonstrations on campus is a fundamental component of academic freedom.

100. The Plaintiff pleads that the principles of academic freedom require that universities tolerate a reasonable amount of noise and slight disruptions that might

accompany political demonstrations, as long as there is no violence.

101. The Plaintiff was one of many students to use a megaphone at both of the campus demonstrations referred to in President Marsden's letter of April 21, 2004. Both demonstrations involved opposing crowds loudly and vigorously exchanging views.
102. Neither the Plaintiff nor any other of the supporters of Palestinian human rights engaged in any acts of violence or made any threats of violence at either demonstration.
103. The Plaintiff was the only student who was suspended for participation in either demonstration.
104. Henry Wu is an active member of the York Foundation, an organization that raises funds for York University. The Plaintiff gave a speech, at a demonstration outside a hotel owned by Mr. Wu located more than ten kilometers from York University, criticizing Mr. Wu's treatment of his employees.
105. The Plaintiff pleads that the punishment imposed upon him by President Marsden was motivated at least in part by President Marsden's antipathy to the Plaintiff's support for Palestinian rights and to the Plaintiff's criticism of Henry Wu. The Plaintiff pleads that the Board of Governors collaboration with President Marsden in imposing that punishment was also motivated at least in part by their antipathy to

the Plaintiff's support for Palestinian rights and to the Plaintiff's criticism of Henry Wu. The Plaintiff pleads that these are improper purposes.

106. The Plaintiff pleads that the punishment imposed upon him was meant to have and has had a chilling effect on students' rights to participate in political demonstrations.

107. The Plaintiff pleads that the tort of breach of academic freedom has been made out against the Defendants as set out herein.

108. The Plaintiff states that it is vital to the functioning of our democratic society that universities not only uphold the principles of academic freedom but that they appear to do so, and that the failure to do so constitutes a civil wrong.

Abuse of Process

109. The Plaintiff pleads that the Defendants' flagrant failure to follow the required disciplinary procedures and their imposing of punishment for improper purposes constitutes the tort of abuse of process.

Conspiracy to injure

110. President Marsden, members of the Board of Governors, and other officials of York University agreed that they would summarily and unlawfully punish the Plaintiff as

set out in President Marsden's letter of April 21, 2004. They further agreed to use the resources of York University to attempt to justify that punishment and to oppose any attempts by the Plaintiff to regain his right to pursue his studies.

111. The agreement contemplated the use of York University spokespeople and internet facilities to defame the Plaintiff in an attempt to have the extraordinary punishment imposed upon him accepted by the public, and such use was made of spokespeople and internet and other facilities.
112. The Defendants entered into their agreement with the intention of destroying or substantially limiting the Plaintiff's career and reputation, and with the knowledge that their actions would undoubtedly have that effect.
113. Pursuant to their agreement to injure the Plaintiff, the Defendants did use resources of York University to defame the Plaintiff, both before and after they "vacated" President Marsden's punishment.

Breach of Fiduciary Duty

114. The Defendants have a duty to all students enrolled at York University to be concerned about their well-being, to treat them impartially and to act in good faith in carrying out any disciplinary action against them.

115. The Defendants have a duty to all students enrolled at York University to provide an environment conducive to having the students complete their academic programmes.
116. The Defendants have a duty to give every student the benefit of the procedures in *Presidential Regulation Number 2* before suspending the student for three years.
117. The Defendants breached their duties to the Plaintiff and acted maliciously in punishing him and in defaming him.

Breach of Contract

118. The Plaintiff pleads that the Defendant York University enters into contracts with its students as follows:
- a) The “offer” consists of the University’s offering to admit the student to a programme of studies;
 - b) The “acceptance” consists of the student’s agreeing to accept the offer of admission;
 - c) The student’s paying of tuition is “consideration”.
119. The Plaintiff pleads that the contracts that York University enters into with its students include the term that University regulations will be followed in any punishment of the student.

120. The Plaintiff entered into such a contract with York University, and York University was bound by that contract during all the relevant times.
121. The University breached that contract by imposing the punishment in President Marsden's letter of April 21, 2004 and by serving Notice of a hearing for July 21, 2004.

Particulars of Malice

122. Particulars of malice on the part of the Defendant Marsden include:
- a. She wrote or authorized the publication of the false assertions in the impugned articles in a deliberate attempt to make the Plaintiff's behaviour look sufficiently egregious to justify her having exceeded her jurisdiction in disciplining the Plaintiff;
 - b. She knew when she imposed punishment on the Plaintiff that she had no authority to do so in the circumstances;
 - c. She imposed a suspension of three years when she knew that punishment was incommensurable with any reasonable interpretation of the allegations and that it was inconceivable that any properly constituted University Trial Panel would impose such a punishment on the basis of the allegations against the Plaintiff;

- d. She knew that a suspension of a student for three years would make it extremely difficult for him to ever obtain his degree;
- e. She arranged that many members of the administrative staff of York University would collaborate with her in attacking the reputation of the Plaintiff;
- f. The Plaintiff was the only student that she summarily punished for participation in the two demonstrations, although she knew that students demonstrating in favour of the Israeli occupation had engaged in behaviour that was much more aggressive and threatening than anything the Plaintiff was accused of doing;
- g. Her disciplining of the Plaintiff and her writing or authorizing of the articles were motivated at least in part by her desire to protect the private interests of her associate Henry Wu; and
- h. Before disciplining the Plaintiff and writing or authorizing the publication of the libelous articles, she took no steps whatsoever to contact the Plaintiff to verify the accuracy of her allegations against him.

123. Particulars of malice on the part of the Defendant Board of Governors include:

- a. Aiding and abetting the Defendant Marsden in punishing the Plaintiff when they knew she had no authority to impose any punishment in the circumstances;

- b. Agreeing to the suspension for a three year period when they knew that such a harsh penalty was inappropriate on any reasonable reading of the allegations;
- c. Abetting the Defendant Marsden in her defamation of the Plaintiff;
- d. Allowing staff members of York University to assist the Defendant Marsden in her continued attacks on the Plaintiff throughout the period April 26 through August 25, 2004; and
- e. Deliberately failing to fulfill their responsibility of preventing President Marsden from initiating and continuing her attacks on the Plaintiff.

Additional Harm to the Plaintiff

124. President Marsden's decree that he would be suspended for three years was devastating to the Plaintiff. He did not feel that he would be able to resume studies after a three year absence. He did not believe that any other university would admit him when his record indicated that he had been punished so severely for alleged misconduct. He felt that his career plans would have to change drastically: he would have to seek work that did not require any academic background.
125. At the time that the Plaintiff received the April 21, 2004 letter, he had completed most of his course work for the spring 2004 semester, but he still had one final examination to write. His preparation for that examination was severely hindered by the distress and tension caused by that letter and the resultant threat to his

education and career. He performed much worse on that final examination than he would have had he not been under that stress.

126. The Plaintiff had been hired to be the opinions page editor of the student newspaper at York University, Excalibur, commencing in May, 2004 and continuing for a year. The ban from campus imposed by President Marsden prevented him from performing this job until after the ban was lifted. He did ultimately take up the position. However, he lost several months' salary and, more importantly, several months experience. Summer employment at the newspaper is regarded as the time that new editors can begin to get used to working together and to learn how to perform the job so that they will be prepared when the more intense fall schedule begins. The Plaintiff's current performance as editor still suffers from the lack of experience and of integration into the position caused by his late start. He started this year at Excalibur with none of the training, experience, routines, personal and professional connections, or accumulated material that he would have expected to have developed had he not been banned from campus during the summer.

127. The Plaintiff was hired to work over the summer of 2004 as a research assistant to York University Professor David Noble. This position involved research in the Plaintiff's field under the supervision of an expert, and thus was potentially of great academic benefit to the Plaintiff. The ban from campus prevented him from using York's libraries and from consulting with Professor Noble in his office. This substantially interfered with his ability to perform the research. Moreover, the

Plaintiff spent a great deal of time and effort working on his judicial review application and in preparing for the hearing the Defendants scheduled for July 21, 2004. This expended time and effort, and the tension he felt over his future, lessened his performance as research assistant. The summer position of research assistant was of considerably less value to both the Plaintiff and to Professor Noble than it would have been if President Marsden had not imposed her punishment.

128. By the time that the Plaintiff was permitted to register for the Fall 2004 semester, many of the courses that he wished to take were “closed” as a result of pre-registration. He was therefore unable to take several courses that he considered important to his studies.

129. The Plaintiff has suffered and continues to suffer anxiety as a result of the Defendants’ attacks on him. As a result of the Defendants’ actions and defamatory statements, many members of the York University and wider communities view him as an extreme and violent demonstrator. This has been very detrimental to his personal, academic and political relationships.

130. The Plaintiff feels that York University officials are watching him very closely in order to seek the opportunity to punish him for any slight infraction. He feels inhibited in his political activities, on and off campus, as a result of that pressure.

Aggravated Damages

131. The Defendants have aggravated the damages caused to the Plaintiff by, *inter alia*, the following:
- a. Publishing the libels maliciously and in bad faith, for improper motives as alleged above, with knowledge that they were false or with reckless disregard for their falsity;
 - b. Referring concerned persons to the libel in attempts to justify the Defendant Marsden's improper punishment of the Plaintiff;
 - c. Wrongfully marshalling the resources of York University to attack the Plaintiff rather than exercising their fiduciary duty to protect him as a student; and
 - d. Continuing to attempt to rationalize their attack on the Plaintiff even after the penalties that had been imposed upon him were "vacated".

Punitive Damages

132. The Plaintiff pleads that punitive or exemplary damages are warranted to ensure that the Defendants are appropriately punished for their contempt for their responsibility to the Plaintiff as a student, for the Plaintiff's right to academic freedom, for their malicious conduct in suspending the Plaintiff, and for their vindictive conduct in defaming the Plaintiff after the breach.

133. The Plaintiff further pleads that punitive damages are required in order to ensure that the Defendants do not similarly attack other students in the future. Even after the punishment of the Plaintiff was “vacated”, none of the Defendants issued any apology or retraction to the Plaintiff. On behalf of the Defendant York University, administrative officials issued statements justifying the Defendants’ attacks on the Plaintiff. No spokesperson for the Defendants has given any assurance that they will not punish other students in a similarly unlawful manner.
134. Extensive punitive damages are required to insure that President Marsden does not use her office to similarly punish and/or defame students in the future, and to insure that the Board of Governors exercises its responsibility to protect students from such attacks by the President and other officials of the University.
135. Punitive or exemplary damages are required to insure that the malicious conduct of the Defendants is appropriately punished.

The Plaintiff proposes that this action be tried in the City of Toronto in the Province of Ontario.

Dated at Toronto, this 5th Day of August, 2004.

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