

AMENDED THIS July 16<sup>th</sup> 2024 PURSUANT TO  
MODIFIÉ CE A CONFORMÉMENT À  
☒ RULE/LA RÈGLE 26.02 ( A )  
☐ THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED / FAIT LE \_\_\_\_\_  
REGISTRAR GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE OF JUSTICE

Court File No.: CV-24-00718888-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

NICOLE SZWERAS

Plaintiff

- and -

TORONTO METROPOLITAN UNIVERSITY

Defendant

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

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

Date: April 23, 2024

Issued by \_\_\_\_\_  
Local registrar

Address of court office Superior Court of Justice  
330 University Ave.  
Toronto, ON M5G 1R7

TO: **TORONTO METROPOLITAN UNIVERSITY**  
350 Victoria Street  
Toronto, ON M5B 2K3

## CLAIM

1. The Plaintiff claims:

- (a) General damages in an amount of \$300,000, or in such other amount to be determined by the Court;
- (b) Special damages in an amount to be determined by the Court;
- (c) Damages for wrongful dismissal in an amount to be determined by the Court;
- (d) Punitive damages in the amount of \$1,000,000;
- ~~(e) A declaration that TMU violated the TMU Commitments (defined below) by failing to apply, or inadequately applying, the TMU Conduct Policies (defined below) with respect to conduct involving Jewish TMU community members since October 7, 2023, as described herein;~~
- ~~(f) A declaration that TMU breached duties of care owing to the Plaintiff by violating the TMU Commitments and failing to apply, or inadequately applying, the TMU Conduct Policies with respect to conduct involving Jewish TMU community members since October 7, 2023, as described herein;~~
- ~~(g) A declaration that TMU breached its contract with the Plaintiff by violating the TMU Commitments and failing to apply, or inadequately applying, the TMU Conduct Policies with respect to conduct involving Jewish TMU community members since October 7, 2023, as described herein;~~
- ~~(h) A declaration that TMU discriminated against the Plaintiff in the manner in which it failed to apply, or inadequately applied, the TMU Conduct Policies with respect to conduct involving Jewish TMU community members since October 7, 2023;~~

(i) ~~— An order directing TMU to apply the TMU Conduct Policies in a complete and fulsome manner to any and all conduct involving Jewish TMU community members and report to the TMU community thereon;~~

(j)(e) ~~—~~ pre-judgment and post-judgment interest;

(k)(f) ~~—~~ costs of this action; and

(l)(g) ~~—~~ such further and other relief as this Honourable Court deems just.

#### **A. — Overview**

2. ~~— The Plaintiff's claim relates to TMU's actions and inaction with respect to ongoing and pervasive antisemitism and intimidating, offensive, demeaning, threatening, disruptive, unwelcome, and unwanted conduct towards the Plaintiff and other Jewish students, staff, and faculty at the Toronto Metropolitan University ("TMU") since October 7, 2023. TMU's failure to apply, or its inadequate application of, its own policies and procedures expressly prohibiting such conduct has led to a poisoned antisemitic learning and working environment for the Plaintiff. TMU's actions and inaction have breached duties of care owing to, breached its contract with, and have discriminated against the Plaintiff as described below.~~

#### **B.A. The Parties**

3.2. ~~—~~ The Plaintiff, Nicole Szweras ("**Nikki**" or the Plaintiff) is a student at TMU in its Media Production program within TMU's RTA School of Media. In addition, prior to January 2024, while a student at TMU, Nikki was employed by TMU in its Equipment Distribution Centre ("**EDC**").

4.3. ~~—~~ The Defendant, TMU, is a public university located in Toronto, Ontario established pursuant to the *Toronto Metropolitan University Act, 1977*, as amended.

**C.B. TMU's commitment to the protection of its community members**

i. TMU commitments to students, staff, and faculty

5. ~~TMU's stated mandate, aims, objectives, policy framework and policies, including in its Mission and Aims of Toronto Metropolitan University policy, the Senate Policy Framework, the Student Code of non-Academic Conduct, the Discrimination and Harassment Prevention Policy, and the Accommodation of Student Religious, Aboriginal and Spiritual Observance policy, provide consistent commitments to the health, safety, and well-being of its students, staff, and faculty and to the values of equity, diversity, respect, inclusion, and dignity for all in the university community (together referred to herein as "TMU Commitments"). Throughout TMU's stated mandate, aims, objectives, policy framework and policies are consistent commitments to the health, safety, and well-being of its students, staff, and faculty and to the values of equity, diversity, respect, inclusion, and dignity for all in the university community. In particular:~~

(a) ~~In its Mission and Aims of Toronto Metropolitan University policy, TMU notes that, as one of the aims in carrying out its mission, TMU is to provide students with "activities and support systems that enhance the success and well-being of the whole student";~~

(b) ~~The Senate Policy Framework provides for a series of values and principles guiding policy development including:~~

(i) 4.1.1 ~~"...a commitment to inclusion is infused throughout the University...";~~

(ii) 4.1.2 ~~"Equity and diversity are essential components of a modern, accessible post-secondary institution.... All students, staff and faculty are respected and appreciated as valuable members of the University Community, and a commitment to equity is embedded in our everyday thinking and actions.";~~

(iii)4.1.6 — "~~Wellbeing: The University is committed to the success of its community by creating a safe, secure, collegial, healthy and inclusive environment that puts people first, is supportive of the whole person and enhances the development of physical, mental, emotional, and spiritual wellbeing. Wellbeing is fundamental to positive social and academic outcomes and health communities. It focuses on strengths individuals bring our community, honouring and learning from each person's lived experiences. It involves creating welcoming, accessible and accommodating work, learning and social environments.~~";

(e) — ~~The Student Code of non Academic Conduct provides: "The University values equity, diversity, honesty, respect, inclusion, and the well being and dignity of all community members."~~

(d) — ~~The Discrimination and Harassment Prevention Policy states:~~

(i) "~~The University is committed to fostering a collegial study and work milieu that is free of discrimination and harassment and one in which all individuals are treated with respect and dignity~~";

(ii) "~~It is the responsibility of the University to exercise its authority to prevent discrimination and harassment, to penalize the repetition of discrimination and harassment, and to respond promptly to known or apparent incidents of discrimination and harassment, whether or not a complaint has been filed~~"; and

(e) — ~~The Accommodation of Student Religious, Aboriginal and Spiritual Observance policy provides that "Toronto Metropolitan is a community which celebrates diversity and places a high value on inclusion and respect for differences"~~.

4. \_\_\_\_ (together referred to herein as "**TMU Commitments**")

ii. TMU policies to fulfill commitments and ensure community compliance

6.5. \_\_\_\_ TMU has several policies directed at fulfilling the TMU Commitments, ensuring compliance by students, staff, and faculty with those commitments, and to further them

by protecting students from conduct that would be inconsistent with those commitments. These policies include: The Statement of Student Rights and Responsibilities; the Student Code of Non-Academic Conduct; the Statement on Freedom of Speech; the Discrimination and Harassment Prevention Policy; the Bookable Space Policy; the Posters Policy; and, for students who are also employees of TMU like Nikki, the Workplace Civility and Respect Policy (collectively referred to herein as the "**TMU Conduct Policies**").

~~(1) — Statement of Student Rights and Responsibilities~~

~~7. — The Statement of Student Rights and Responsibilities, which all students are required to abide by, provides that students at TMU:~~

~~(a) — have the right to:~~

~~(i) — a learning environment that is safe, free from harassment and discrimination;~~

~~(ii) — a learning environment which is characterized by mutual respect and civility;~~

~~(iii) — a learning environment that, while safeguarding dissent, is free from interference and disruption;~~

~~(iv) — an environment where adequate measures are taken to protect the security of students on university property;~~

~~(v) — the right to complain without fear of reprisal; and~~

~~(b) — have the responsibility to:~~

~~(i) — abide by federal, provincial and municipal statutes in addition to university policy;~~

- ~~(ii) — treat all members of the community, including faculty, staff and fellow students, with respect;~~
- ~~(iii) — not falsely or maliciously allege charges/offenses under the regulations of the Student Code of Academic Conduct and the Student Code of Non-Academic Conduct;~~
- ~~(iv) — refrain from~~
  - ~~(A) — behaviour, which they know, or ought reasonably to know, obstructs teaching, learning, evaluation, research, administration and the other usual or authorized activities of the University;~~
  - ~~(B) — conduct and activities likely to endanger the health or safety of the student or another person;~~
  - ~~(C) — assault or the threat of assault to another person;~~
  - ~~(D) — behaviour that they know or ought reasonably to know would cause another person to fear bodily harm, or that may endanger personal wellbeing or may obstruct the teaching and/or learning process;~~
  - ~~(E) — unwelcome or persistent behaviour (e.g. personal harassment) that they know, or ought reasonably to know, would cause another person to feel humiliated, demeaned or intimidated or which may obstruct the teaching, learning and/or work process of another person and which includes, but is not limited to, hazing and aggressive religious recruiting; and~~
- ~~(v) — ensure that their guests abide by university policy.~~



~~(2) — Student Code of Non-Academic Conduct~~

~~8. — The purpose of the Student Code of Non-Academic Conduct is stated as:~~

- ~~(a) — "to establish community standards of non-academic conduct for Toronto Metropolitan University";~~
- ~~(b) — provide "a non-exhaustive list of the rights, expectations, and responsibilities related to non-academic student conduct"; and~~
- ~~(c) — identify "sanctions that may be assigned which are proportionate to conduct that does not meet community standards; conduct that jeopardizes the proper and orderly functioning of academic and non-academic programs, activities, or operations of the University; conduct that endangers the health, safety, rights, or property of the members of its community".~~

~~9. — The Student Code of Non-Academic Conduct recognizes that "student conduct that breaches this Code can impact the well-being of the community".~~

~~10. — The Student Code of Non-Academic Conduct applies to on-campus, off-campus and online conduct.~~

~~11. — The Student Code of Non-Academic Conduct is concerned with "conduct that reasonably has had an adverse effect on the safety and well-being of the community or on a complainant's course of learning, teaching, living, research, or work at the University or in exceptional circumstances where there is a sufficient connection to the University."~~

~~12. — It notes that it "is meant to ensure student accountability, whether through Alternative Dispute Resolution or through sanctions assigned following a decision."~~

~~13. — It provides that:~~

- (a) — ~~"Students have the right to participate in peaceful and lawful assemblies and demonstrations without harassment, disruption, or acts of violence in accordance with the University's Statement on Freedom of Speech";~~
  - (b) — ~~"All students at the University are expected to conduct themselves in a manner that supports the University as a learning, teaching, living, research, and work environment where the rights and responsibilities of all students, staff, and faculty are respected. Students may also be responsible for the conduct of their guests"; and~~
  - (c) — ~~"...students are expected to strive to make the community safe and uphold an environment defined by mutual respect, equity, civility, dignity, and inclusivity".~~
14. — ~~It provides a non-exhaustive list of conduct that does not meet TMU's community standards including:~~
- (a) — ~~"Violence, and/or Threats of Violence, to a Person's Physical or Mental Well-being";~~
  - (b) — ~~"Harassment, such as: Unwelcome remarks, words, actions or contact; verbal abuse; non-verbal abuse; unwelcome gestures; distributing malicious or untrue information about community members — unwanted physical or verbal behaviour that is known or should be known to be unwelcome, humiliating, threatening, or demeaning. This includes conduct that arises from, or is motivated, in whole or in part, by bias, prejudice or stereotypes of a community member or groups' personal characteristics as defined in the Discrimination and Harassment Prevention Policy";~~
  - (c) — ~~"Disrupting or interfering with a class, examination, event, or operation";~~
  - (d) — ~~"Failure to comply with University policies and procedures, including but not limited to the Sexual Violence Policy, Discrimination and Harassment Prevention Policy"; and~~

(e) — "~~Bringing an unfounded Complaint with a malicious or vexatious intent~~".

15. — ~~It also establishes a complaint resolution process and sanctions for violations of the code.~~

(3) — ~~Statement on Freedom of Speech~~

16. — ~~TMU's Statement on Freedom of Speech provides that the "right to freedom of speech comes with the responsibility to exercise that right in an atmosphere free of intimidation and in an environment that supports the free speech rights of those with opposing views".~~

(4) — ~~Discrimination and Harassment Prevention Policy~~

17. — ~~The Discrimination and Harassment Prevention Policy provides that:~~

(a) — ~~"Every member of the University Community has a right to equal treatment with respect to employment and with respect to the receipt of education services and related services and facilities without discrimination or harassment on the basis of the [prohibited grounds]";~~

(b) — ~~prohibited grounds include race, ancestry, place of origin, colour, ethnic group and creed;~~

(c) — ~~"Every member of the University Community is responsible for creating an environment which is free of discrimination and harassment. Individuals acting on their own and/or on behalf of the University and the University itself can be held responsible under this Policy and in law for discriminatory and harassing acts. Those found to have engaged in such conduct on the basis of a prohibited ground will be subject to discipline. Those found to have been harassed or discriminated against on the basis of a prohibited ground will be entitled to a remedy";~~

(d) — ~~"The University recognizes that discrimination and harassment are both human rights and health and safety matters which can have an impact on the physical and emotional well being of an individual and the overall health of the University"; and~~

(e) — ~~direct discrimination and systemic discrimination are both prohibited.~~

18. — ~~The policy also prohibits harassment, which it defines as "a course of unwanted remarks, behaviours, or communications in any form based on a prohibited ground of discrimination where the person responsible for the remarks, behaviours or communications knows or ought reasonably to know that these are unwelcome."~~

19. — ~~The policy further describes a poisoned environment as an environment "where harassing or discriminatory behaviours are sufficiently severe and/or pervasive and cause significant and unreasonable interference to a person's study or work environment, they may be deemed as creating an intimidating, hostile and offensive work or study environment. A poisoned environment can interfere with and/or undermine work or academic performance and can cause emotional and psychological stress not experienced by other employees or students. As such, it results in unequal terms and conditions of employment or study and prevents or impairs full and equal enjoyment of employment or educational services, benefits, or opportunities. Although a person may not be the target of the behaviours, a person may feel the effects of certain harassing or discriminatory behaviours at their place of work or study."~~

20. — ~~It also establishes a complaint resolution process and sanctions for violations of the policy.~~

(5) — *Bookable Space Policy*

21. — ~~The purpose of this policy is to guide management and establish terms and conditions for the use of Bookable Space (as defined therein).~~

22. — ~~The policy provides that:~~

- (a) ~~"The University shall manage Bookable Space in accordance with the University's core mission and objectives in the *Toronto Metropolitan University Act*, Section 3, the *Academic Plan*, and University policies, procedures, and guidelines";~~
- (b) ~~"The University shall consider the safety and security of the University Community and University Property in managing Bookable Space"; and~~
- (c) ~~"The Event Organizer and event attendees shall comply with University policies, procedures, guidelines, and regulations...".~~
- (6) ~~Posters Policy~~

23. ~~The Posters Policy applies to the posting of posters on TMU property. The policy provides that all posters must be approved by TMU and "Any posters not bearing the stamp or in a location not approved for posterizing will be removed without notice". The policy provides for several other requirements, including:~~

- (a) ~~"Posters must be sponsored by a TMU student organization registered in ExploreTMU or a TMU department";~~
- (b) ~~"The content of the poster must adhere to the TMU Student Code of Non-Academic Conduct — Policy 61 and Discrimination and Harassment Prevention Policy";~~
- (c) ~~"Student Life and Campus Engagement staff will review posters on a daily basis based on the requirements above and provide a stamp in the designated space";~~
- (d) ~~"Posters must be placed on the designated boards located throughout campus";~~
- (e) ~~"Posters should not be placed on glass or doorways";~~

(f) — "The [Student Learning Centre (SLC)] has no poster/solicitation opportunities"; and

(g) — "Unauthorized posters in the SLC will be removed".

(7) — Workplace Civility and Respect Policy

24. — This policy applies to all faculty and staff, including to Nikki's place of employment when she worked for TMU at the EDC.

25. — TMU specifically contemplated the impact that incivility and disrespect have on an employee noting that the "impact can be severe as it may result in employee turnover, low productivity, reduced morale, diminished loyalty, and physiological impacts such as stress and depression that can lead to increased absenteeism."

26. — The policy defines incivility as follows:

(a) — "Incivility deals with a broad range of behaviours including, but not limited to, unprofessional behaviour; rudeness; shouting or swearing; intimidation or bullying; threatening comments or behaviours/actions; unsolicited and unwelcome conduct, comment (oral or written including email communication), gestures, actions or contact that cause offense, humiliation, or physical or emotional harm to any individual";

(b) — "Incivility can also create a poisoned work environment, which may affect more than one employee";

(c) — "Specific actions that are considered uncivil such as, comment or conduct that a person knows or ought to know would be unwelcome, offensive, embarrassing or hurtful, rudeness, or display of offensive material can vary dramatically by place, time and context. Differences including, but not limited to, social role, gender, social class, religion and cultural identity may all affect the perception of a given behaviour. Consequently, a

~~behaviour that is considered perfectly acceptable by some people, and in some cultures, may be considered inappropriate and rude by others."~~

~~27. — The policy also describes a poisoned work environment as:~~

- ~~(a) — "Where uncivil behaviors are sufficiently severe and/or pervasive and cause significant and unreasonable interference to the work environment, they may be deemed as creating an intimidating, hostile and offensive environment";~~
- ~~(b) — "A poisoned environment can interfere with and/or undermine work performance and can cause emotional and psychological stress"; and~~
- ~~(c) — "Although a person may not be the target of the behaviours, a person may feel the effects of certain harassing or discriminatory behaviours at their place of work."~~

~~28. — The policy prohibits incivility in stating "all managers, faculty and staff have a responsibility to act in good faith and be active participants in contributing to the creation and enhancement of a community culture of respect, inclusion, civility, dignity and understanding for the people with whom they work."~~

~~29. — The policy also directs TMU to address incivility in the workplace when it notes that "incidents of incivility cannot be ignored and must be addressed."~~

iii. Failure to comply with TMU Commitment and TMU Conduct Policies

~~30.6. —~~ It is apparent based on the circumstances described below that TMU's self-proclaimed TMU Commitments and TMU Conduct Policies are mere platitudes and the TMU Conduct Policies are not applied equally to those in the university community, are not implemented, not appropriately implemented, or are inadequate to fulfill the TMU Commitments ~~with respect to Nikki or other Jewish students, staff, or faculty at TMU.~~ Such unequal treatment in the application of, failure to implement, or inadequacy of the

TMU Conduct Policies has created a poisoned work and study environment at TMU for the Plaintiff.



**D.C. Antisemitic Environment at TMU**

i. Antisemitism and Anti-Zionism

31. The International Holocaust Remembrance Alliance ("**IHRA**") definition of antisemitism (adopted by the governments of Canada and Ontario among many others) provides, among other things, that the following are "contemporary examples of antisemitism":

- (a) "Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion";
- (b) "Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions";
- (c) "Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews";
- (d) "Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust)";
- (e) "Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor";
- (f) "Drawing comparisons of contemporary Israeli policy to that of the Nazis";  
and
- (g) "Holding Jews collectively responsible for actions of the state of Israel."

32. — As reflected in IHRA's definition of antisemitism, the State of Israel is a central, critical, and inextricable element of Jewish identity. As the historical birthplace of the Jewish people, the land of Israel is at the core of Jewish identity, ancestral tradition, religion, and culture.

33. — Zionism is the movement for the reestablishment, development, and protection of the Jewish nation in the land of Israel, which arises from the Jewish people's continuous presence and ethnic and historic roots in the land of Israel and the right of the Jewish people, like any other people, to self-determination.

34. — Anti-Zionism, therefore, is inherently discriminatory and antisemitic, in particular when expressed in terms of, for example, denying the Jewish people's right to self-determination or the right of the State of Israel to exist; denying that the State of Israel has the right to self-defense, like any other country; accusing Israel of being inherently racist or comparable to the Nazis; or invoking classic antisemitic falsehoods, tropes or unfounded rumors against Israel and its people.

35. — Further, statements glorifying, condoning, and justifying violence against Israel and its citizens is hurtful, upsetting and disturbing to Jewish people everywhere causing Canadian Jews fear and insecurity of another genocide or another period of intolerance.

36. — This is particularly impactful for Jewish Students like Nikki who have strong ties to Israel. Nikki's mother was born in Israel, Nikki has Israeli citizenship, has family and friends living in Israel (including those called to serve in the Israel Defence Forces ("**IDF**") following the massacre of October 7, 2023), and has traveled to Israel many times. Israel is a fundamental part of her Jewish identity, like so many Jewish people throughout the world.

37. — Antisemitism in all its above-noted forms has been on flagrant display at TMU for years, and, in particular, following the massacre of October 7, 2023.

ii. — History of antisemitism at TMU

38. — ~~TMU has a long history of antisemitism on campus.~~

39. — ~~In 2010, the Taskforce on Anti Racism investigated allegations of systemic racism at TMU (then called Ryerson University) including antisemitism. The Taskforce chronicled reports of antisemitism at a student publication, Jewish students' reticence in running for student office, threatening protests aimed at Jewish students and organizations, Jewish students being shut out from anti-racism meetings for being a "Zionist", a collective reticence to raise issues of Jewish concern, the derogatory discussion of the Holocaust in class, Jewish students' belief in needing to hide their identities, and Jewish students and faculty being fearful to engage in civil discussion on controversial issues. The Taskforce concluded that:~~

(a) — ~~"The level of fear and apprehension expressed was extremely high and sometimes quite reminiscent of how Jews felt in Europe before and during WWII. The need to hide identity expressed by the Jewish members of this community and sometimes by Muslim representatives as well speaks urgently to the need to address the increasing tensions felt by these two groups on campus."; and~~

(b) — ~~"It is incumbent on Ryerson University to create a safe, secure and open environment where views and opinions of different groups can be expressed without fears for personal safety or the need to hide ethno-religious identities. There is often a fine line between the expression of free speech and hateful speech. Since the laws of Canada against hate speech and incitement to hatred are fraught with ambiguity and often difficult to prove in court, the university should take the initiative by developing progressive and firm guidelines to promote free and open dialogue on campus."~~

40. — This report was written over a decade ago. It does not appear that TMU heeded these recommendations as history appears to continue to repeat itself at TMU, in particular following October 7, 2023.

iii.i. Antisemitic environment at TMU since October 7, 2023

41. — On October 7, 2023, the terrorist organization known as Hamas launched an attack on Israel engaging in murder, torture, rape, extreme violence, and kidnapping against Israeli civilians. Thousands of armed Hamas operatives and their supporters invaded southern Israel, while others launched thousands of rockets toward Israeli civilian populations. Once inside Israel, the Hamas operatives dispersed into Israeli towns shooting, raping, torturing, burning, and mutilating unarmed civilians, including infants, children, and the elderly, taking hundreds of hostages (the "**October 7 Massacre**"). Israel eventually repelled the combatants and regained control over the affected area. By that time, Hamas had killed approximately 1,200 people and abducted over 200 more. The October 7 Massacre was the single deadliest day for Jews since the Holocaust. Since then, senior Hamas officials have vowed that the October 7 Massacre would be repeated over and over again until the complete annihilation of Israel, consistent with their founding charter.

42. — In addition to Nikki's direct ties to Israel, the October 7 Massacre directly personally impacted Nikki. Nikki's brother was in Israel on October 7, 2023 having just travelled there. Nikki has family and friends in Israel, some of whom were called up to serve in the IDF to defend Israel following October 7, 2023. The period following October 7, 2023 was a challenging time for Nikki as well as for Jewish students at TMU and Jews around the world.

43.7. Shockingly, sShortly following the October 7 Massacre (in which the terrorist organization known as Hamas launched an attack on Israel engaging in murder, torture, rape, extreme violence, and kidnapping against Israeli civilians) and in the weeks and months thereafter, numerous TMU community members celebrated, justified, and excused Hamas's mass rape, murder, and kidnapping. Since then, many have engaged in

harassment and intimidation against Nikki and other Jewish TMU community members with whom she communicates~~against Nikki and other Jewish TMU community members in support of Hamas's attack and in condemnation of Israel's self-defense response to the war started by Hamas.~~

(1) *Rhetoric contrary to TMU Conduct Policies and its tolerance by TMU*

44.8. Antisemitic comments are made by students and student organizations accredited and funded by the Toronto Metropolitan Students' Union in social medial posts and on campus during rallies and protests. Nikki's colleagues and co-students repeatedly posted inflammatory, false, inaccurate, and offensive posts about Israel, Zionism, and the October 7 Massacre.

45.9. On October 12, 2023 TMU published a "Statement on the Conflict in the Middle East". That statement makes no mention of Hamas, the October 7 Massacre, or the blameworthiness of any such actions. This is in contrast to TMU's statements on other wars or incidents. While the statement states that TMU "will not tolerate anti-Semitic or anti-Muslim rhetoric or racism of any kind" at TMU, it did not provide any guidance on of what rhetoric TMU considered problematic. President of TMU, Mohamed Lachemi, published a similar statement on October 16, 2023. It quickly became apparent that such statements were simply token platitudes that were not acted upon, ineffectually acted upon, or unequally acted upon by TMU.

46.10. Despite these statements, students, staff, and faculty continued to celebrate, justify, and excuse Hamas's mass rape, murder, and kidnapping and engaged in harassment and intimidation against Nikki and against other Jewish TMU community members that Nikki is aware of.

47.—It became common place at TMU for TMU community members to use the following slogans in rallies, signs, and graffiti throughout TMU and in TMU buildings: "Intifada" (including "long live the Intifada", "Intifada until victory", and "globalize the Intifada"); "From the River to the Sea Palestine will be free"; and "Only one solution, Intifada revolution".

- (a) — ~~"From the River to the Sea Palestine will be free"~~ — a reference to the Jordan River and the Mediterranean Sea where the Israel is situated and which Nikki and Jewish people around the world interpret as a call for the elimination of the State of Israel;
- (b) — ~~"Intifada"~~ (including ~~"long live the Intifada"~~, ~~"Intifada until victory"~~, and ~~"globalize the Intifada"~~) — which, in this context, to Nikki and Jewish people around the world refers to the period in the early 2000's commonly called the "Second Intifada" in which dozens of suicide bombings and other attacks (many of which undertaken by Hamas) against Israeli civilians in places like night clubs, malls, pizzerias, movie theatres, hotels, buses, among other places frequented by civilians — a period of terror for most Israelis and the Jewish people in general; and
- (c) — ~~"Only one solution, Intifada revolution"~~ — which, to Nikki and Jewish people around the world, is a reference to rejecting the concept of a "two state solution" (where a Palestinian state exists as neighbour to the State of Israel) and calling for a violent elimination of State of Israel, with undertones to the Nazi's "Final Solution" during the holocaust that exacerbates the intergenerational trauma experienced by the families of holocaust survivors, such as Nikki.

48.11. While catchy slogans to some, to Nikki and to Jewish people around the world these are slogans that call for the destruction of the State of Israel and violence against Jewish people everywhere (the slogans referred to above are collectively referred to herein as the "**Antisemitic Violence-Inciting Slogans**"). The Antisemitic Violence-Inciting Slogans all meet the International Holocaust Remembrance Alliance's HRA's definition of antisemitism. Many of the Antisemitic Violence-Inciting Slogans are perceived as direct threats to Nikki's personal safety and that of the other Jewish TMU community members with whom she engages, which impacts Nikki's environment at TMU.

49.12. The Antisemitic Violence-Inciting Slogans are intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and

respectful learning environment, and unreasonably interfere with a person's study or work environment – all contrary the TMU Conduct Policies.

~~50-13.~~ That these Antisemitic Violence-Inciting Slogans are intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environments ~~for Jewish people, such as Nikki~~, is known to TMU. TMU is fully aware that these Antisemitic Violence-Inciting Slogans are repeated by TMU community members in rallies, posters, signs, and graffiti throughout TMU and in TMU buildings. Since October 7, 2024, no meaningful or effective actions have been taken by TMU to apply the TMU Conduct Policies to any TMU community member communicating the Antisemitic Violence-Inciting Slogans nor to advocate for such TMU community members to express their views in manner that is not intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment ~~for Jewish people, such as Nikki~~.

14. \_\_\_ Months after the Antisemitic Violence-Inciting Slogans began being utilized at TMU after October 7, 2023, President Lachemi appeared to confirm to members of Parliament on January 24, 2024 that such slogans would be contrary to the TMU Conduct Policies. However, TMU has taken no, or inadequate, action to apply the TMU Conduct Policies to those who utilize such slogans, and their use continues uninhibited at TMU before and after the President's letter.

15. \_\_\_ On the contrary, the Antisemitic Violence-Inciting Slogans appear to be sanctioned by TMU. In particular, an event titled "Teach-in For Palestine" was held at TMU on October 26, 2023, and supported and/or organized by the Politics & Public Administration department of the Faculty of Arts of TMU and the Toronto Metropolitan Faculty Association. The flyer advertising for such an event prominently displayed at TMU (which is required to be approved by TMU in accordance with the Posters Policy) the statement "From the River to the Sea Palestine will be Free" among other statements was

superimposed over the entire map of Israel. TMU's sanctioning of an Antisemitic Violence-Inciting Slogan, further contributed to an unwelcome learning environment.

51. —

52. — On October 20, 2023, the self-proclaimed "Abolitionist Organizing Collective" and 74 signatories, most of whom identified as current students, at TMU's Lincoln Alexander Law School ("**LALS**") published an open letter directed at the Dean of LALS (the "**LALS Student Letter**")~~, in which those students, among other things:~~

(a) — ~~deny Israel's existence and right to exist as a country;~~

(b) — ~~stand in solidarity with and support "all forms of resistance", including the October 7 Massacre;~~

(c) — ~~claims that Israel is responsible for the October 7 Massacre; and~~

(d) — ~~calls for the elimination of the State of Israel.~~



~~53.17.~~ All of the above ~~The statements within the~~ LALS Student Letter contained statements that are antisemitic and intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment ~~for Jewish people, such as Nikki~~ – contrary to the TMU Conduct Policies.

~~54.18.~~ While the Dean of the LALS made a statement condemning the LALS Student Letter, the President of TMU did not. Instead of initiating an application of the TMU Conduct Policies to the students who signed the LALS Student Letter, or addressing the student group under whose name the LALS Student Letter was published, TMU deferred its obligation to enforce the TMU Commitments and TMU Conduct Policies. TMU outsourced its responsibilities to the Honourable Mr. Justice Michael MacDonald, former Chief Justice of Nova Scotia. Despite the direct and immediate impact of the LALS Student Letter and the acts of antisemitism, intimidation and harassment ~~felt by Nikki and other Jewish TMU community members~~ following the October 7 Massacre, TMU directed, encouraged or caused the delay of the application of the TMU Conduct Policies as against the conduct of the students who signed the LALS Student Letter to be deferred until April 2024 or later, after the school year would be complete.

~~55.19.~~ In addition to the deferral of addressing the LALS Student Letter, TMU also deferred or failed to address separate incidents of antisemitism, harassment and intimidation reported to TMU by referencing the "external review" of Justice MacDonald or the need to await the outcome of that review, despite that review being limited to the LALS Student Letter.

20. The abdication of the application of the TMU Policies and delay of the completion of that application in this context told Nikki that TMU had no intention to address the ~~antisemitic~~ statements in the LALS Student Letter in the immediate time that mattered, thereby failing to meet its responsibility "to exercise its authority to prevent discrimination and harassment, to penalize the repetition of discrimination and harassment, and to respond promptly to known or apparent incidents of discrimination and harassment, whether or not a complaint has been filed" as required by the Student Code of non-

Academic Conduct. It was clear to Nikki that TMU expected her to complete her school year in the presence of this and related conduct that was intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment ~~for Jewish people, such as Nikki~~, with TMU's tolerance of that conduct, all while being expected to pay tuition for the privilege of that experience.

56.——

(2) *Conduct organized and directed by TMU student organizations*

~~57.~~21. The antisemitism on campus has also been perpetrated, directed, and organized by student organizations that are funded and sanctioned by the Toronto Metropolitan Student Union ("**TMSU**").

~~58.~~22. TMSU funds such student organizations through funds collected and transferred to it by TMU from the fees Nikki and all TMU students must pay – they cannot opt out of such funding. The student organizations must comply with the TMU Conduct Policies.

~~59.~~23. Examples of student organizations' perpetration, direction and organization of conduct that was intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment ~~for Jewish people, such as Nikki~~, includes, among other things, public posts (including on October 7, 2023, as events were unfolding) celebrating, glorifying and justifying the horrific massacre by Hamas and organizing and leading rallies inside TMU buildings and on TMU campus where Antisemitic Violence-Inciting Slogans are frequently made. Nikki is not aware of any actions taken by TMU to apply the TMU Conduct Policies with respect to these student organizations or their TMU community members.

(3) *Conduct perpetrated, condoned, and encouraged by TMU faculty*

60. —The antisemitism and conduct that is intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment for Jewish people, such as Nikki, at TMU has also been perpetrated, facilitated, or condoned by TMU faculty. ~~Some examples of which Nikki is aware of include:~~

(a) — ~~a complaint made to TMU in which it was noted that, following October 7, 2023, first year Jewish law students were afraid to go to their mandatory LALS legal theory class where the professor berated the State of Israel, to the point that several Jewish students left the class in tears. After raising this with the administration they were transferred to another class, but no action was taken with respect to this professor;~~

(b) — ~~an event titled "Teach in For Palestine" was held at TMU on October 26, 2023, and supported and/or organized by the Politics & Public Administration department of the Faculty of Arts of TMU and the Toronto Metropolitan Faculty Association ("TFA"). The flyer advertising for such an event prominently displayed the statement "From the River to the Sea Palestine will be Free" among other statements superimposed over the entire map of Israel. In addition to TMU's use and sanctioning of an Antisemitic Violence-Inciting Slogan, the implication was that the State of Israel should not exist — not a welcoming learning environment for Nikki and other Jewish TMU community members;~~

(c) — ~~in a quiz in a TMU Anthropology class in November 2023, the professor included a question that inquired "Pinkwashing refers to:" with the provided answers including "the state of Israel using gay rights as a distraction from Palestinian human rights questions." Jewish students in the class understandably found the question offensive and lodged a complaint;~~

(d) — ~~On or around November 6, 2023, over a dozen TMU faculty and staff signed an open letter which, if not adopting the LALS Student Letter, then certainly seeking to deflect or minimize its antisemitic content;~~

(e) — a Jewish faculty member reported that in the planning of an office holiday party with the inclusion of a Christmas tree and Christmas lights, a more senior employee asked a Jewish employee to not bring a menorah to the party because of “everything going on”; and

(f) 24. On February 26, 2024, a professor at the LALS wrote and had published an article seemingly in defence of the students who wrote the LALS Student Letter and deploring the application of the TMU Conduct Policies, in which he compared statements of the support of all forms of “resistance” (which in the context of the LALS Student Letter includes the October 7 Massacre) to the same way “one can like “all forms of art” (poetry, sculpture, even graffiti) but dislike specific artists or pieces”.

~~64.~~ 25. Nikki is not aware of any actions taken by TMU to apply the TMU Conduct Policies with respect to these incidents or faculty members. This, again, leaves Nikki with the impression that TMU has no interest in addressing the antisemitic environment ~~Nikki and other Jewish TMU community members experienced at TMU.~~

(4) *Other conduct perpetrated by TMU community members*

~~62.~~ 26. Conduct that is antisemitic, intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment ~~for Jewish people, such as Nikki, by TMU community members contributing to the poisoned environment at TMU for Nikki and other Jewish TMU community members continued.~~ No action, or inadequate action, was taken by TMU to enforce the TMU Conduct Policies and ensure TMU community member complied with such policies to ensure such conduct ceased.

63. ~~This includes the following examples of violations of the TMU Conduct Policies that TMU was made aware of, for which no, or inadequate, action was taken by TMU:~~

- ~~(a) — on November 11, 2023, in the LALS student lounge, the statement "long live the intifada" was written on a notice board. Jewish law students were uncomfortable using this shared space thereafter;~~
- ~~(b) — on November 20, 2023, a military style knife was left on the lectern of a TMU Jewish contract lecturer. TMU security downplayed the incident until the issue was escalated by others. Despite attempts to obtain information about the investigation of the incident, the professor received no further information. In order to be certain of their safety on campus, the professor sought accommodation in order to not attend lectures and exam proctoring in person — an absurd consequence to the Jewish victim of a clear threat to their safety, demonstrating a failure to protect the safety of Jews on campus; and~~
- ~~(c) — A person later identified as a TMU student was observed wearing and carrying protest signs and a portable speaker walking around TMU campus disrupting academic activities including coming to the door of the classroom where a Jewish faculty member was teaching, where only the faculty member could see him, and would not leave until staff called security — a clear act of intimidation and disruption.~~

64.27. Nikki's environment at TMU includes seeing other Jewish students on TMU campus ~~are also being~~ intimidated and harassed when seeking to express their views, and are harassed and intimidated at rallies and protests, including being shouted at to provide proof the October 7 Massacre indeed occurred; facing statements like "you people control the media. Hitler should've finished you off, you dirty Jew"; and signs with statements such as "go back to where you came from". Nikki is not aware of any steps TMU to apply the TMU Conduct Policies to this conduct.

~~65.28.~~ Similarly, on November 3, 2023, Nikki participated in the "Silent Protest for Peace & Humanity" where she and other participating students were surrounded by a group of TMU students who proceeded to intimidate, harass, and interfere with their ability to present their silent protest. One of the accosting TMU students was heard saying "next time on campus you won't be together" – a clear threat to the participants' safety. TMU students spat on the ground in front Nikki and the group she was with. Despite the organizers of the "Silent Protest for Peace & Humanity" arranging for TMU security to be present, TMU security took no action to stop or prevent such conduct. TMU security was needed to escort Nikki and the other participating students to the Hillel office while the harassing TMU students followed. Nikki is not aware of any steps TMU took to apply the TMU Conduct Policies to the students intimidating and harassing the Silent Protest participants.

~~66.29.~~ On November 29, 2023, at a protest on TMU property organized by or participated in by TMU student organizations and TMU community members, in addition to the use of common Antisemitic Violence-Inciting Slogans, an individual held a sign with a Swastika in place of the Jewish Star on a re-creation of the Israeli flag on the steps of the TMU Student Centre. TMU issued a statement calling such protest unacceptable and declared that an investigation would be conducted. No update from TMU on what occurred with the investigation, whether the individual was a TMU community member, nor what sanctions, if any, were implemented has ever been provided. Without such update to the TMU community, Nikki ~~and other Jewish TMU community members she is aware of~~ were left with the continued unmistakable impression that no action was to be taken by TMU in this regard other than mere platitudes. The lack of follow-up by TMU further fostered an atmosphere of antisemitism and fear and discomfort by Nikki ~~and other Jewish TMU community members she is aware of~~.

~~67.30.~~ Further, in March 2024, students in TMU buildings walked around with signs that stated: "Zionism Off Our Campus". ~~To Nikki and other Jewish students, staff, and faculty,~~ †This is a call for Jews to be removed from campus. Nikki is unaware of any action taken by TMU with respect to this incident. This incident deeply affected Nikki, leading her to question her place in the world that tolerates this rhetoric. This incident, and the Swastika

incident, contributed deeply to Nikki's discomfort in having to face such TMU community members in class and at work, further leading to the poisoned atmosphere she was required to endure.

~~68.31.~~ Such actions do not create an atmosphere free of intimidation or an environment that supports the free speech rights of those with opposing views and violated the TMU Conduct Policies. No student attending an institute of higher learning should have to face such an environment.

(5) *Concerns of Jewish TMU community members repeatedly raised with TMU*

~~69.32.~~ Nikki is aware that ~~the~~ concerns of Jewish students, staff and faculty were repeatedly reported to and raised with TMU administration and Board of Governors. They were met with platitudes and stock references to the TMU Conduct Policies and supports available, but no, or ineffective, concrete action was undertaken to address and cease the conduct that was antisemitic, intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment ~~for Jewish people, such as Nikki.~~

~~70.33.~~ One particular example was a November 2, 2023, meeting between TMU and representatives from Hillel (including Nikki). The Jewish students, including Nikki, expressed their concerns with the antisemitic environment on campus, the Antisemitic Violence-Inciting Slogans, antisemitic comments, intimidation and harassment at rallies, the lack of support and action from TMU, and provided suggestions on how to address these issues. The TMU attendees repeated the common platitudes of the importance of a safe space for the Jewish students and stock references to the availability of support services at TMU. Nikki and the other representatives from Hillel thought that left the meeting with the impression that TMU heard their concerns and believed TMU would take action. However, other than platitudes like "we hear you" and being committed to a safe space and stock references to support services at TMU, TMU took no action that Nikki was aware of following that meeting. This made Nikki feel manipulated and that the meeting was simply tokenism.



~~71.~~34. Additionally, as another sign of the lack of support of the Jewish TMU community members, including Nikki, and the double standard in the application of the TMU Conduct Policies, one of the TMU administration attendees at the November 2, 2023 meeting mentioned that they would be happy to stand in solidarity with the Jewish students at rallies, but not if an Israeli flag were present. The suggestion to Nikki was that TMU believed there was something wrong with support for, or existence of, the Jewish State.

~~72.~~35. Even the support that TMU's continual stock references referred to were not available, or not effective, for Nikki. On December 11, 2023 Nikki wrote to TMU Student Care with the re: line "Urgent – need assistance" in which she asked for assistance with a professor who would not accept assignments late because of the impact the hostile and antisemitic environment at TMU has had on her. Nikki has not received a response from TMU Student Care other than an acknowledgement of receipt. Further, the TMU counsellor Nikki engaged through the support services offered by TMU was entirely ineffective – no suggestions on how to cope with this environment were provided other than a historical reference of the practice of some Jewish people hiding their Jewish identity in public.

#### ~~iv.~~ii. Hostile work environment

~~73.~~36. Since September 2022, Nikki worked for TMU in the EDC within the RTA. She, among some of the other staff who are fellow TMU students ("**EDC Student-Staff**") in the Media Production program, worked for TMU to facilitate the rental of media equipment for students' use.

~~74.~~37. Prior to the October 7 Massacre, Nikki did not experience any adverse issues tied to her Jewish identity while working at the EDC. Following the October 7 Massacre, the environment at the EDC drastically changed. In particular,

- (a) fellow EDC Student-Staff interactions with Nikki turned cold and unwelcoming as compared to their prior interactions;



- (b) EDC Student-Staff began posting political messages in the workplace, including on Nikki's property. Such political statements were inappropriate in the workplace and made Nikki and Jewish student patrons of the EDC uncomfortable. While EDC staff should have dealt with this, it was left to Nikki to raise it with her EDC supervisor and remove a sign board that Nikki previously brought to the EDC. No action was taken, or statement was made by the EDC to the EDC Student-Staff on the inappropriateness of positing such political messages at work;
- (c) Nikki and her friends were ostracized in EDC Student-Staff social circles; and
- (d) Eventually, EDC Student-Staff simply ignored Nikki altogether.

~~75.~~38. Then, on or about November 16, 2023, a fellow EDC Student-Staff made a defamatory "complaint" against Nikki by circulating it by email to her supervisor and copying all EDC staff except for Nikki. Nikki only found out about the complaint from a non-EDC Student-Staff friend, as it appears that the complaint had been seen by other students with whom Nikki interacted. Nikki had to ask TMU about the complaint as TMU did not advise her of it. In response, TMU advised Nikki that they were investigating the complaint, but TMU refused (at any point in time) to tell Nikki what the substance of the allegations in the complaint were – violating the TMU Conduct Policies. The fact that all the EDC Student-Staff, other than Nikki, and other TMU students were aware of the defamatory complaint, TMU's refusal to advise Nikki of the substance of the complaint, and Nikki's need to seek such information from other EDC Student-Staff was not only humiliating but it put Nikki and her peers in an uncomfortable position.

~~76.~~39. Approximately two weeks later, Nikki found out what the defamatory complaint was about – not from TMU. The complaint alleged Nikki made unspecified "actions and opinions" that "victimize systemic oppressors" which allegedly caused discomfort to the complainant. This was surprising to Nikki as, at no time, had Nikki expressed any views or opinions to the complaint at all. It appeared to Nikki that the complainant simply projected some unspecified actions or opinions on to Nikki because she is Jewish. The

complaint also clearly implied that Nikki was a racist, which amounted to a stunning and hurtful allegation to Nikki and denigrated her character to her peers with no opportunity to defend herself.

77.40. Nikki advised TMU that she could not return to work in such an environment. TMU advised Nikki that she did not need to attend work and that they would continue to pay her. They did so for the remaining weeks until the term ended. While not required to work at the EDC, Nikki was still required to attend class with these students and access the EDC for her classes.

78.41. At the same time as Nikki was facing these spurious allegations, Nikki saw a photo on social media identifying the EDC Student-Staff complainant being feted as the "Best EDC Employee".

79.42. The spurious defamatory complaint, the disclosure of the complaint to all except Nikki, not being able to attend work, the delay in TMU addressing the complaint, and TMU's apparent condoning of ostracism at work and in the classroom before, during and after this matter caused Nikki significant mental distress.

80.43. Eventually on December 6, 2023, after repeated follow-ups by Nikki and her family, TMU wrote to Nikki and, without expressly stating so, appeared to conclude their investigation into the complaint. TMU described the complaint as speaking to "differences of political opinions among colleagues in the workplace". Again, Nikki was surprised because at no time had TMU ever asked Nikki what her political opinions were or told Nikki how TMU surmised what her opinions were. Again, actions or opinions were being projected on to Nikki because she is Jewish – this time by TMU.

81.44. TMU's characterization of the complaint as a difference of political opinion was a refusal by TMU to acknowledge or address the antisemitic nature of the complaint. TMU did not specifically advise Nikki that the complaint was dismissed or found to be without merit, nor did it suggest anything to resolve any issues as between Nikki and the complainant. TMU did invite Nikki to meet with them to consider whether her concerns about the complaint and EDC environment may fall under the TMU Conduct Policies.

82.45. On December 11, 2023, Nikki met with TMU staff, including a representative from Human Resources, about the complaint and investigation. Nikki raised her concerns about the complaint, investigation, and environment at EDC and about her experiences at TMU following the October 7 Massacre. During this meeting, Nikki specifically noted that she felt the complainant (another TMU staff and student) discriminated against her by making a complaint about unspecified actions or opinions that the complainant projected on to Nikki because she is Jewish, that the complainant appeared to be holding Nikki publicly responsible for all actions of the Israeli government, that the complaint spuriously alleged Nikki was a racist, and irresponsibly spread these allegations to other EDC Student-Staff and TMU students. No action was taken by TMU in regard to the concerns raised by Nikki at that meeting.

83.46. Thereafter, following the December holiday break the EDC prepared its January shift schedule in an online calendar available to all EDC staff. On January 4, 2024 when Nikki accessed the online calendar, she saw that she was not scheduled for any shifts, but she could see that other EDC Student Staff were being scheduled for shifts. Then Nikki's access to that calendar was revoked, which she noticed on or about January 19, 2024. Nikki's assumption was TMU did not want her back working at the EDC. These actions by TMU following the complaint and investigation were a termination of Nikki's employment.

84.47. It was only three weeks after seeing that other EDC Student Staff were scheduled for shifts but she wasn't, on January 23, 2024, that TMU asked whether Nikki was interested in returning to the EDC advising that they were "aware that there have been some issues last term" and that TMU wanted "to reassure [Nikki] that we're actively working to address them".

85.48. As a result of the environment at the EDC, the spurious complaint made against her, the nature of the investigation into that complaint, the failure of TMU to take meaningful action on Nikki's complaint, the exclusion of Nikki from shifts in January 2024, the removal of Nikki's access to the EDC calendar, the failure of TMU to take actual steps to "actively" address the "issues last term" as TMU promised, the failure to direct or

provide any education about antisemitism or facilitate open dialogue about such issues at the EDC, and TMU's failure to address the antisemitic atmosphere on campus, created an employment environment at TMU in which Nikki could not work, and could not reasonably be expected to work. This not only applied to the EDC but to any position at TMU.

v.iii. Pattern of failing to act and inequitable responses

86:49. What is described above are repeated examples of conduct by TMU community members that violate the TMU Conduct Policies. At minimum, these are examples of conduct that may violate the TMU Conduct Policies, which should have been investigated and addressed by TMU.

87:50. However, contrary to the TMU Commitments, TMU has failed or refused to apply the TMU Conduct Policies to the conduct described above, has failed to adequately do so, or do so in a timely fashion. The failure to abide by the TMU Commitments and apply the TMU Conduct Policies has facilitated, encouraged, and condoned the conduct described above and allowed the development of an unsafe, unwelcome, and poisoned study and work environment.

88:51. TMU, by its actions and inactions, applies a double standard with respect to its application of the TMU Commitments and the TMU Conduct Policies with respect to conduct relating to Jewish TMU community members like Nikki. Where intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted conduct has been felt by other TMU community members from another identifiable groups, TMU has applied the TMU Conduct Policies in a completely different manner than it has as described above.

89. ~~As a recent example, on March 14, 2024, a complaint was received by TMU that a visiting scholar had used a racially derogatory term during a lecture at the LALS while discussing a criminal case in which the term appeared as part of the evidentiary record. Within three days of the complaint, the Dean of the LALS wrote to all LALS students acknowledging the pain and distress the incident caused and advising that the visiting~~

~~scholar had stepped away from all activities relating to their role and attached a copy of the visiting scholar's apology. The emphatic, direct and immediate response to this incident is in stark contrast to the lack of any action to cease the use of Antisemitic Violence Inciting Slogans or any other statements or conduct following the October 7, 2023 Massacre that Nikki and other Jewish TMU community members found painful and distressing.~~

~~90.52.~~ When TMU applies such a double standard, TMU fails its TMU Commitments to uphold its stated founding values of equity, diversity, and inclusion and to ensure a safe, respectful teaching and learning environments for all students, faculty, and staff.

~~91.53.~~ TMU's failure to abide by the TMU Commitments and apply the TMU Conduct Policies at all, apply those policies inadequately, or apply a double standard to their application to conduct involving Jewish TMU community members, has created the poisoned antisemitic environment at TMU for Nikki ~~and other Jewish TMU community members.~~

#### vi.iv. Impact of poisoned environment

~~92.54.~~ The impact of this poisoned antisemitic environment at TMU for Nikki ~~and other TMU Jewish community members~~ has been severe.

~~93.55.~~ The thought of attending school causes Nikki dread and panic and she avoids going to campus whenever she can. On certain days she did not attend school for fear of confrontation, intimidation, and harassment.

~~94.56.~~ She has contemplated transferring out of TMU, however the TMU Media Production program is the most esteemed university level program of its kind in Canada. Nikki is aware that many of the first year Jewish LALS students and their allies have explored transferring to other law schools.

~~95.57.~~ The benefits that TMU's highly esteemed RTA program promised Nikki when enrolling at TMU, have been completely soured. Nikki no longer looks forward to participating in the fourth-year practicum involving in-person group work in her last year

of the program – a highly attractive and valuable aspect to the RTA program. Regardless, the group she joined to complete the fourth-year practicum has now refused to work with her further and Nikki may now be forced to complete her requirements through a solitary year-long writing project. In addition, Nikki lost her previous enthusiasm to participate in the "RTA in LA" course, where students travel to Los Angeles to complete their course, and resulted in Nikki delivering her application late – potentially affecting her rejection from that opportunity. The RTA TARA awards are typically something of great interest to TMU Media Production students, but Nikki had no interest in attending and did not submit any work for consideration for an award. Nikki avoids all extra curricular or non-mandatory work, other than her role on School Council.

~~96.58.~~ Nikki's academic work has suffered as a result of the environment and incidents described above. As a result of the impact the poisoned environment at TMU has had on her, Nikki has had to submit assignments late and has had to fight with faculty to accept those late assignments and obtain completion marks.

~~97.59.~~ Nikki's educational experience has been vastly more difficult and less rewarding as a result of the environment at TMU. She has been deprived of the educational opportunities, benefits, and educational fulfillment that non-Jewish students at TMU receive.

~~98.60.~~ Nikki has often resorted to consciously removing or refraining from wearing any clothing or jewelry that may identify her as Jewish. When she does wear such identifying clothing or jewellery, she does so in fear. As one example, on the day Nikki became aware of the EDC Student-Staff member's complaint, she removed Jewish identifying stickers from her laptop. TMU has shamefully failed to satisfy its own TMU Commitments and TMU Conduct Policies resulting in a poisoned antisemitic study and work environment such that ~~Jewish students have~~ Nikki has to hide ~~their~~ her identity or ~~are~~ is fearful when ~~they~~ she do show ~~their~~ her identity.

~~99.61.~~ Nikki has lost all confidence in TMU's ability to address the antisemitic conduct on campus or fairly apply the TMU Conduct Policies. Nikki is in contact with other Jewish TMU community members ~~She knows of other Jewish TMU community members~~

~~with~~who share the same impression further impacting the poisoned environment Nikki experiences at TMU.

~~100-62.~~The environment and the incidents described above have had a profoundly negative impact on Nikki's dignity, mental health, and wellbeing.

**E.D. TMU breached duties owed to the Plaintiff**

~~101-63.~~TMU is responsible for all aspects of the operation of the university and the conduct of the students it agrees to enrol. TMU has established the TMU Commitments and TMU Conduct Policies applicable to all students, staff, and faculty. TMU requires all students to abide by the TMU Conduct Policies and establishes mechanisms to oversee their compliance. In particular, through the TMU Commitments, TMU represents to its students that it is committed to the health, safety, and well-being of its students, staff and faculty and to the values of equity, diversity, respect, inclusion and dignity for all.

~~102-64.~~By virtue of its relationship with Nikki (including the TMU Commitments and TMU Conduct Policies), TMU owed Nikki a duty of care. That duty includes, but is not limited to:

- (a) providing an environment that is safe, free from intimidation, harassment, and discrimination;
- (b) fostering a collegial study and work milieu that is free of discrimination and harassment and one in which all individuals are treated with respect and dignity;
- (c) exercising its authority to prevent discrimination and harassment, to penalize the repetition of discrimination and harassment, and to respond promptly to known or apparent incidents of discrimination and harassment, whether or not a complaint has been filed;
- (d) creating a safe, secure, collegial, healthy, and inclusive environment that enhances wellbeing;



- (e) providing an environment where adequate measures are taken to protect the security of students on University property;
- (f) Fulfilling the TMU Commitments;
- (g) Fulfilling the TMU Commitments equally to all students, staff, and faculty;
- (h) Adequately and properly supervising the conduct of students, staff, and faculty to ensure compliance with the TMU Commitments and TMU Conduct Policies;
- (i) Enforcing the TMU Conduct Policies when such policies are violated or potentially violated by students, staff, and faculty; and
- (j) Applying the TMU Conduct Policies equally to all students, staff, and faculty.

~~103.65.~~As described above, TMU has been and continues to be in breach of these duties.

~~104.66.~~TMU knew or ought to have known that, as a consequence of the above-note failures, Nikki would suffer immediate and long-term damages including, but not limited to pain and suffering, mental distress, depression, and anxiety.

**F.E. TMU breached its contract with the Plaintiff**

~~105.67.~~At all material times an express contractual relationship existed between TMU and Nikki by virtue of her enrollment at TMU and as defined by and through the TMU Commitments and TMU Conduct Policies. Through the TMU Commitments and TMU Conduct Policies published and provided to students, TMU made contractual commitments to Nikki and all TMU students concerning safety, discrimination, harassment, and intimidation. Had Nikki known TMU was not committed to providing a safe, supportive, and equitable environment for Jewish students to pursue their studies and would not fulfil the TMU Commitments and TMU Conduct Policies, Nikki would not have enrolled in TMU.



~~406.~~68. Among other things Nikki agreed to pay TMU tuition and TMU agreed, among other things, to provide her with a safe learning environment free of violence, threats, discrimination, harassment, and intimidation to be achieved by TMU abiding the TMU Commitments and adequately applying the TMU Conduct Policies.

~~407.~~69. Nikki has complied and continues to comply with her obligations.

~~408.~~70. TMU has breached and continues to breach its contractual obligation to Nikki by, among other things, its continued failure to comply with its obligations under its contract, including by, among other things, failing to take measures to ameliorate, prevent, and sanction the intimidating, offensive, demeaning, threatening, disruptive, unwelcome, and unwanted conduct ~~that Nikki and other Jewish students have endured and continue to endure~~, failing to enforce provisions of the TMU Conduct Policies, and failing to meet Nikki's reasonable expectations of the educational benefits to which she is entitled.

~~409.~~71. As a result of TMU's breaches, Nikki has sustained and continues to sustain damages in amounts to be determined at trial.

~~410.~~72. TMU's Commitments and the TMU Conduct Policies clearly identify that it was in the reasonable expectation of the parties that breaches of contract may result in emotional and psychological damage.

#### **G.F. TMU discriminates against the Plaintiff**

~~411.~~73. The *Human Rights Code*, RSO, 1990, C H.19 (the "**HRC**") prohibits discrimination based on prohibited grounds including race, ancestry, place of origin, colour, ethnic group and creed.

~~412.~~74. As described above, conduct that is antisemitic, intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work environment ~~for Jewish people, such as Nikki~~, is routinely undertaken by other TMU community members without consequence, or adequate consequence.

~~113.75.~~ Even though every instance of conduct that is antisemitic, intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interferes with study or work environment for Jewish people, such as Nikki, alleged herein is prohibited by one or more of the TMU Conduct Policies, TMU has failed or refused to enforce or adequately enforce these policies to remedy or prevent that behavior. As a result of TMU's actions and inactions described above, TMU has made it clear that it will permit, tolerate, and condone such conduct targeted at Jewish Students. Such deliberate indifference and discriminatory application of TMU's Conduct Policies cultivated a poisoned discriminatory environment for Nikki.

~~114.76.~~ In comparison to the actions taken by TMU with respect to events or misconduct relating to other racial, religious or ethnic groups, TMU applies a double standard by selectively applying the TMU Commitments and selectively enforcing the TMU Conduct Policies, in effect deeming Jewish students unworthy of the protections it readily affords non-Jewish students victimized by conduct that is similarly intimidating, offensive, demeaning, threatening, disruptive, unwelcome, unwanted, not supportive of a safe and respectful learning environment, and unreasonably interfere with study or work.

~~115.77.~~ These discriminatory practices are in violation of the *HRC*.

~~116.78.~~ As a result of TMU's violation of the *HRC*, Nikki has suffered and continues to suffer damages, including injury to her dignity, sense of self worth and self-respect and deprivation of equal access to the educational opportunities and benefits.

#### **H.G. TMU wrongfully dismissed the Plaintiff**

~~117.79.~~ TMU terminated Nikki's employment on or about January 4, 2024, when it chose not to schedule Nikki for any shifts in January 2024 and revoked her access to the EDC calendar, all following completion of their investigation of a spurious complaint lodged against her.

~~118.~~80.In the alternative, as a result of the hostile antisemitic environment condoned and fostered by TMU, the false and discriminatory complaint lodged against Nikki by her co-workers, the manner in which TMU investigated and addressed that complaint, the failure to take any action to address Nikki's corresponding discrimination complaint against her co-worker, and the failure of TMU to apply the TMU Conduct Policies with respect to Nikki's experiences with her student co-workers, TMU created a hostile work environment in which Nikki could not fulfill her employment duties. As a result, TMU fundamentally breached its employment relationship with Nikki and therefore constructively dismissed Nikki from such employment.

~~119.~~81.In accordance with the *Employment Standards Act, 2000*, Nikki was entitled to the minimum notice and severance pay entitlements set out therein as a result of the termination of her employment with TMU. In addition, Nikki is entitled to reasonable notice of the termination of her employment.

~~120.~~82.TMU did not provide any notice or severance pay to Nikki when terminating her employment. As a result, TMU wrongfully dismissed Nikki and owes her damages accordingly.

**1.H. TMU conduct warrants condemnation in punitive damages**

~~121.~~83.TMU conducted its affairs with wanton and callous disregard for Nikki's interests, safety, and well-being. The high handed and callous behaviour of TMU warrants the condemnation of this Honourable Court.

~~122.~~84.Nikki requests punitive damages to demonstrate to other institutions of higher learning that such wilfully irresponsible and tortious behaviour will not be tolerated and will act as a deterrent to other institutions of higher learning in Canada who are in the same position.

**J.I. Venue**

~~423.85.~~ The trial of this action should take place in the city of Toronto, in the Province of Ontario.

April 23, 2024

**Koskie Minsky LLP**  
900-20 Queen Street West  
Toronto, ON M5H 3R3

**David Rosenfeld** LSO#: 51433A  
Tel: 416-595-2700

**Lawyers for the Plaintiff**

NICOLE SZWERAS  
Plaintiff

and

TORONTO METROPOLITAN  
UNIVERSITY  
Defendant

Court File No.: CV-24-00718888-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AMENDED STATEMENT OF CLAIM**

**Koskie Minsky LLP**  
900-20 Queen Street West  
Toronto ,ON M5H 3R3

**David Rosenfeld** LSO#: 51433A  
Tel: 416-595-2700

**Lawyers for the Plaintiff**