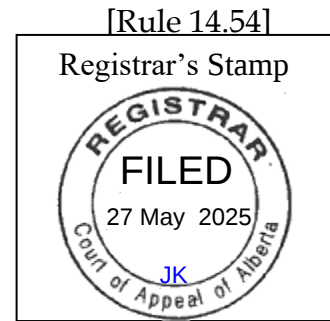


COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER: 2401-0254AC
TRIAL COURT FILE NUMBER: 2201-10658
REGISTRY OFFICE: CALGARY



APPLICANTS:

THE FACULTY ASSOCIATION OF THE
UNIVERSITY OF CALGARY, CANADIAN
ASSOCIATION OF UNIVERSITY TEACHERS
and CANADIAN ASSOCIATION OF LAW
TEACHERS

STATUS ON APPEAL:

PROPOSED JOINT INTEVENORS

RESPONDENT:

ALBERTA (INFORMATION AND PRIVACY
COMMISSIONER)

STATUS ON APPEAL:

APPELLANT

RESPONDENT:

GOVERNORS OF THE UNIVERSITY OF
CALGARY

STATUS ON APPEAL:

RESPONDENT

DOCUMENT:

**MEMORANDUM OF ARGUMENT OF
PROPOSED JOINT INTERVENORS**

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I. Introduction

1. The Faculty Association of the University of Calgary (the “Faculty Association”), the Canadian Association of University Teachers (“CAUT”), and the Canadian Association of Law Teachers/ L’Association Canadienne des Professeurs de Droit (“CALT”) (the “Intervenors”) apply to be joint intervenors in this appeal.

2. In the decision below, the Chambers Justice concluded that an adjudicator from the Office of the Information and Privacy Commissioner applied an unreasonably narrow interpretation of the “research information” and “teaching materials” excluded from disclosure under ss 4(1)(h) and (i) of the *Freedom of Information and Protection of Privacy Act*, [RSA 2000, c F-25](#) (“FOIPPA”) (*Governors of the University of Calgary v Alberta Information and Privacy Commissioner*, [2024 ABKB 522](#)). The Chambers Justice further found that, for the purposes of FOIPPA, “participation in social activism” is distinguishable from the “study of social activism”, and academic freedom does not encompass the former.

3. If granted leave to intervene, the Intervenors will advance a broad interpretation of the “research information” and “teaching materials” exemptions in FOIPPA, based on academic freedom. They will submit that academic freedom, and these exceptions, can apply to both the study of activism and what the Chambers Justice described as “participation in social activism”. These issues are not fully addressed by the parties.

II. Issue

4. Do the Intervenors meet the requirements for an intervention order?

III. Argument

5. When deciding whether to grant an intervention order pursuant to [Rules 14.37\(2\)\(e\)](#) and [14.58](#), the Court considers whether the proposed intervenor has an interest in the subject matter of the proceeding: *Papaschase Indian Band v Canada (Attorney General)*, [2005 ABCA 320](#), at para 5. This will be the case where the Court’s decision will

specially affect the proposed intervenor or where the proposed intervenor has particular insight or expertise regarding the issues facing the Court: *Papaschase* at para 2.

6. The Court may also consider whether the intervenor's submissions are necessary to properly decide the matter or to ensure the intervenor's interests are protected; will be useful, different, or bring particular expertise; will cause delay or prejudice; will widen the dispute between the parties; or will transform the court into a political arena: *Pedersen v Alberta*, [2008 ABCA 192](#), at para 3.

A. The Intervenors' Interest in the Subject Matter of the Appeal

7. This appeal concerns how academic freedom informs the interpretation of the "teaching materials" and "research information" exceptions in s 4(1)(h)(i) of *FOIPPA*, and whether those exceptions can encompass "participation in social activism". This is a complex issue of public importance with implications for academic freedom protections, the public's access to information, the privacy and intellectual property rights of academic staff, the work of post-secondary academics and Canadian legal education. The Intervenors' interest in this appeal is summarized below and is detailed in the affidavits of James Kent Donlevy, David Robinson and Graham Reynolds.

1) The Intervenors will be specially affected by this appeal

8. The Intervenors represent distinct interests from the parties to the appeal. The Faculty Association is the bargaining agent for the University of Calgary's academic staff, including the two law professors subject to the access to information request at the core of this dispute. The outcome of this appeal will therefore have a tangible impact on the rights of the Association's members (Donlevy Affidavit, paras 7-8, 12-13).

9. CAUT is a national federation of university and college faculty associations. Due to the precedential value of this appeal and the similarity between provincial freedom of information legislation, the Court's decision will affect CAUT members' academic freedom protections (Robinson Affidavit, paras 15, 36).

10. CALT is a national association promoting issues of mutual interest to Canadian law professors, including best practices in legal pedagogy, research, and improving the legal system. Many CALT members have interwoven activities into their pedagogy and scholarship that may be characterized as “participation in social activism”. As such, the outcome of this appeal will impact law professors’ teaching and research practices and, in turn, legal education and research at large (Reynolds Affidavit, paras 6, 12-14).

2) The Proposed Intervenorors have particular insight on issues of academic freedom

11. The Intervenorors’ expertise will be useful to the Court.

12. The Faculty Association’s mandate is to promote the interests of academic staff at the University of Calgary, a crucial part of which is defending academic freedom which is necessary to uphold intellectual independence and academic integrity (Donlevy Affidavit, paras 10-11). The Association has acquired extensive expertise on the ambit of academic duties and the risks of an over-broad or over restrictive understanding of what academic freedom entails (Donlevy Affidavit, paras 10-11).

13. CAUT raises public awareness on academic freedom through investigations, publications, committee work, courses, workshops and conferences, (Robinson Affidavit, paras 18-20, 28, 30). The internationally accepted definition of academic freedom espoused by CAUT and its members is broad and includes extramural academic freedom (Robinson Affidavit, paras 22-26). CAUT has relevant experiencing as a joint intervenor on issues involving academic freedom protections (Robinson Affidavit, para 33).

14. CALT has particular insight regarding the pluralistic and interdisciplinary nature of contemporary legal research and education, which increasingly involves direct participation in public interest initiatives in the community and sub-communities (Reynolds Affidavit, para 7-13). CALT can provide insight into community engagement and similar participatory action research methods, which does not often conform to the

traditional forms of “research” or “teaching” within the walls of a law school classroom, and produces tangible outcomes for affected communities (Reynolds Affidavit, para 12). CALT can help the court understand why participatory community-based research and teaching activities appropriately constitute academic work in today’s increasingly experiential and pluralistic law school environment (Reynolds Affidavit, paras 9-11).

15. In sum, the Intervenor can provide the Court with unique perspectives and specialized expertise. This will help the Court provide needed clarity regarding the relationship between “activism”, academic freedom, participatory forms of research and pedagogy, and the scope of the research and teaching exceptions under *FOIPPA*.

B. The Intervenor’s Proposed Submissions

16. If granted leave to intervene, the Intervenor will advance a broad interpretation of the “teaching materials” and “research information” exceptions in s 4(1)(h) and (i) of *FOIPPA*, necessary to protect academic freedom principles at the core of these exemptions. The Intervenor will submit that distinguishing between the “study of” and “participation in” activism is a flawed analytical approach to discern the type of academic work captured by these exceptions, as it misunderstands current pedagogical and research methods adopted by various academics, and those in law faculties specifically. They will submit that these exceptions may apply to what the court below referred to as “participation in social activism”, and that such an interpretation is consistent with *FOIPPA*’s underlying academic freedom purpose. Finally, the Intervenor will propose an analytical approach, which is inclusive of community engagement, to assist adjudicators in determining whether the “teaching materials” and “research information” exceptions apply to the particular academic activity at issue.

17. These submissions will assist the Court in delineating the scope of “research information” and “teaching materials” for the purposes of *FOIPPA*.

18. These proposed submissions do not widen the dispute. While “there are no bright

lines precluding an intervenor from raising issues and argument not raised below”, an intervenor is not to “extend legal argument well beyond what the courts below and the parties have advanced”: *AC and JF v Alberta*, [2020 ABCA 309](#), at para 11. However, an intervenor may argue a point “inextricably linked to an issue” already before the Court: *AC and JF*, at para 11.

19. The issue of whether activism can come within the exceptions in *FOIPPA* is inextricably linked to the issues already before this Court. It arises by virtue of the underlying facts and the core legal questions on appeal: what is the proper interpretation of the meaning of the “research information” and “teaching materials” exceptions in *FOIPPA*. Furthermore, the University of Calgary has raised this issue in its factum, by noting that it disagrees with the Chamber Justice’s comments on this point (Respondent Factum, at paras 19, 80). As such, the Intervenor’s participation would not extend the legal argument well beyond what is already before this Court.

20. The Intervenor’s will not take a position on the outcome of the appeal or introduce new evidence, and their participation will not prejudice the parties. The Intervenor’s seek to submit one joint factum on September 15, 2025, one month ahead of the October 16, 2025, scheduled appeal, to ensure their participation does not cause delay.

IV. Conclusion & Relief Sought

21. The Proposed Intervenor’s seek an order granting them leave to intervene, to file a factum of 30 pages or less, on or before September 15, 2025, and to make oral submissions not exceeding 15 minutes, without liability for, or entitlement to, costs.

All of Which is Respectfully Submitted this 23rd day of May 2025.
Estimated Time for Oral Argument: 15 minutes



Kelly Nychka and Camila Franco
Counsel for the Proposed Intervenor’s

V. Table of Authorities

Case law	Paragraph(s)
<i>Papaschase Indian Band v Canada (Attorney General)</i> , 2005 ABCA 320	2, 5
<i>Pedersen v Alberta</i> , 2008 ABCA 192	3
<i>AC and JF v Alberta</i> , 2020 ABCA 309	11

Legislation	Section(s)/ Rule(s)
<i>Freedom of Information and Protection of Privacy Act</i> , RSA 2000, c F-25	4(1)(h),(i)
<i>Alberta Rules of Court</i> , Alta Reg 124/2010	14.37(2)(e) 14.58