

S.K. No. 10,711

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**THE CANADIAN FEDERATION OF STUDENTS and
CANADIAN FEDERATION OF STUDENTS – SERVICES**

PLAINTIFFS

– and –

ACADIA STUDENTS' UNION

DEFENDANT

**SETTLEMENT BRIEF OF THE PLAINTIFFS,
THE CANADIAN FEDERATION OF STUDENTS and
CANADIAN FEDERATION OF STUDENTS – SERVICES**

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Kentville Justice Centre

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Background

The Parties

1. The Plaintiffs, the Canadian Federation of Students ("CFS") and the Canadian Federation of Students – Services ("CFS-S") (collectively "the Plaintiffs") are separately incorporated corporations involved in the provision of services to its members.
2. The Plaintiffs are national organizations whose membership is composed of student unions representing post-secondary institutions from across Canada.
3. The Defendant, the Acadia Student Union (the "ASU"), has been a member of the Federation since 1990.

The Dispute

4. As a member of the Plaintiffs, the ASU is contractually obligated by the terms of the Plaintiff's By-Laws to ensure that the Plaintiff's membership fees are collected and forwarded to the Federation.
5. The dispute in this case arises as the result of the ASU's ongoing failure to pay membership fees it owes to the Plaintiffs. This claim seeks payment for the fees owing from the 1995/96 academic year through to the present (the "Fees Owing").
6. On December 21, 2001 the Plaintiffs commenced the within action to recover the Fees Owing. Attached at Tab 1 is a copy of the Plaintiff's Statement of Claim.
7. In its Statement of Defence and Counterclaim, filed on September 25, 2002, the ASU claimed that it is not liable for the Fees Owing because it terminated its membership in the Plaintiffs as the result of a de-federation referendum, held in February of 1996 (the "Referendum"). The result of

the referendum was to take effect the following academic year. Attached at Tab 2 is a copy of the ASU's Statement of Defence and Counterclaim.

8. In response, the Plaintiffs claim that the Referendum was not valid because it failed to conform to the Plaintiffs' By-Laws. Specifically, By-Law I section 6(g) of the Plaintiffs' *Constitution and By-Laws as amended at the May 1995 National General Meeting* (the "May 1995 By-Laws") requires a minimum period of twenty-four (24) months between de-federating referendums. The ASU had held an earlier de-federating referendum twelve (12) months prior to the Referendum held in February of 1996. A copy of the May 1995 By-laws are attached at Tab 3.
9. The ASU has since taken the position that the Referendum was valid, because amendment 95/05:267 (the "Amendment"), the amendment upon which By-Law I, section 6(g) was based, was not adopted in accordance with the May 1995 By-Laws. Specifically, the ASU argues that when the Amendment was approved at the Plaintiffs' May, 1995 National General Meeting:
 - (a) The Plaintiffs did not provide notice in accordance with By-Law XV, section 2;
 - (b) The Plaintiffs did not have quorum as required by By-law II, section 6;
 - (c) The Plaintiffs acted upon the Amendment prior to receiving approval from the Minister of Consumer and Corporate Affairs, contrary to By-Law XV section, 4

Issues

10. The following issues are in dispute in this case:
 - (a) Are the Plaintiffs entitled to the 1995/96 membership fees collected and held in trust by the Acadia Student Union?

- (b) Did the Amendment require the degree of notice specified in By-Law XV, section 2?
- (c) Did the Plaintiffs have the necessary quorum on Tuesday, May 30, 1995 to adopt the Amendment?
- (d) Did the Plaintiffs act upon the Amendment prior to receiving approval of the Minister of Consumer and Corporate Affairs?

Analysis

Are the Plaintiffs entitled to the 1995/96 membership fees collected and held in trust by the Acadia Student Union?

11. The Plaintiffs submit that they are entitled, under the contractually binding terms of the Plaintiffs' Constitution and By-laws, to the 1995/96 membership fees (the "1995/96 Fees") collected by the ASU and held in trust on behalf of the Plaintiffs.
12. In the alternative, the Plaintiffs submit that they are entitled to the 1995/96 Fees on a *quantum meruit* basis, and the Plaintiffs intend to bring a motion to amend the Statement of Claim to include such a claim.
13. The Plaintiffs submit that even if the ASU Referendum held in February 1996 is found to be valid, which the Plaintiffs do not admit but specifically deny, the ASU remained a member of the Plaintiffs for the 1995/96 academic year. The Referendum was not held until February of 1996, and the results would not have taken effect (if they took effect at all) until the following academic year.
14. As evidence of its membership, the ASU collected CFS and CFS-S membership fees for the 1995/96 academic year, never remitting the monies to the Plaintiffs.

15. As members of the Plaintiffs for the 1995/96 academic year, the ASU received the various benefits of membership in the Plaintiffs during that time. These benefits included advocacy on behalf of the ASU and its members, access to campaign materials and research publications, access to the Plaintiffs' travel service and access to the Studentsaver Discount card and the International Student Travel Card ("ISIC") for its members.
16. In return for the services provided by the Plaintiffs, the ASU was contractually obliged to, and did, collect membership fees from its members on behalf of the Plaintiffs. Having collected the fees, however, the ASU failed to turn the money over to the Plaintiffs.
17. Because of the ASU's failure to provide the 1995/96 Fees, the Plaintiffs submit that this money has been held in a constructive trust by the ASU for the benefit of the Plaintiffs. The Plaintiffs further submit that they are entitled to this money under the contractually binding terms of the Constitution and By-Laws, or in the alternative, is entitled to this money on a quantum *meruit basis* in payment for the services it provided to the ASU in the 1995/96 academic year.

Did the Amendment require the degree of notice specified in By-Law XV, section 2?

18. A primary goal of the Plaintiffs is to provide an open, democratic forum for student unions from universities across the country. As such, the Plaintiffs are committed to facilitating the greatest degree of dialogue and participation by its members in its decision making process. The Plaintiffs' Constitution and By-Laws reflect this desire, both in their drafting and their application.
19. To this end, it is the established practice of the Plaintiffs at their National General Meetings to require notice pursuant to By-Law XV, section 2 for

motions that propose amendments to the Plaintiffs' Constitution and By-Laws. Subsequent motions that propose modifications to those original motions do not require the same notice as required by the original motion.

20. The Plaintiffs have adopted this practice as a way of facilitating broad participation with the need to maintain an orderly, efficient procedure at its meetings. To do otherwise would require the Plaintiffs to either restrict member's participation or contend with a confusing, unwieldy decision making process.
21. As a member of the Plaintiffs, the ASU was aware of, accepted and participated in this established practice. There is no record of the ASU ever objecting to the practice or the manner in which the May, 1995 amendments were adopted.
22. In the present case, the Amendment did not require notice pursuant to By-Law XV, section 2 because it was a modification to an original motion for which notice has been duly given (the "Original Motion").
23. The Original Motion, which proposed a comprehensive re-writing of the Plaintiffs' By-Laws with respect to de-federation, was first introduced and given preliminary approval at the Plaintiffs' May 1994 National General Meeting. There is no controversy that, following its preliminary approval, notice of the Original Motion was duly given pursuant to By-Law XV, section 2 for its final approval at a subsequent National General Meeting. Attached at Tab 4 is a copy of the Original Motion as it appears in the minutes of the May 1994 National General Meeting.
24. When the Original Motion was put before the May 1995 National General Meeting for final approval, two modifications were proposed, including the Amendment giving rise to the requirement for a twenty-four (24) month period between de-federation votes. Pursuant the Plaintiffs' established practice, notice of the Amendment was not required as it was a

modification to the Original Motion. Attached at Tab 5 is a copy of the Amendment as it appears in the minutes of the May 1995 National General Meeting.

25. Furthermore, prior to raising the argument in the present action, there is no record of the ASU ever objecting to the Amendment on the grounds that notice was not given. Significantly, the ASU is not listed in the Minutes of the May 1995 National General Meeting as among those members that opposed the Amendment. The Plaintiffs therefore submit that this objection is of recent invention and that the ASU are estopped from relying upon it by their failure to raise it at the May 1995 National General Meeting or reasonably thereafter.

Did the Plaintiffs have the necessary quorum on Tuesday, May 30, 1995 to adopt the Amendment?

26. The Plaintiffs submit that a sufficient number of members were in attendance at the plenary session of the General Meeting on Tuesday, May 30, 1995 (the "Tuesday Session"), the session at which the Amendment was adopted, to achieve quorum.
27. By-law II, section 6 sets the quorum requirements for the Plaintiffs' general meeting at "not less than one-half of the members of the Federations having voting rights at the time in person or proxy." At the time of the May 1995 General Meeting, the Plaintiffs had sixty-seven (67) voting members, meaning that quorum was thirty-four (34) voting members.
28. The Plaintiffs acknowledge that when roll call (the "Roll Call") was taken at the Monday, May 29th plenary session (the "Monday Session"), there were only thirty (30) voting members in attendance, an insufficient number to achieve quorum. It is noted that Acadia and a number of other locals were present but did not answer the roll call. However, the minutes of the Tuesday Session reveal that many of the members who are marked as

absent on the Roll Call were, in fact, present at the Tuesday Session taking part in the debates. The minutes of the Tuesday Session are attached at Tab 6.

29. The members whose names appear in the minutes of Tuesday Session but are listed as absent on the Roll Call include the following:

- (i) The York Federation of Students
- (ii) University of Prince Edward Island Students' Union
- (iii) Collège Universitaire de St. Boniface
- (iv) Augustana University Student Union
- (v) Marine Institutes' Student Union
- (vi) McMaster Students' Union
- (vii) Mount St. Vincent Students' Union
- (viii) University of New Brunswick, Fredericton Students' Union
- (ix) Association générale des étudiantes et étudiants du centre universitaire Saint-Louis-de-Maillet
- (x) Acadia Student Union
- (xi) Guelph Central Student Association

30. These eleven (11) members combined with the thirty (30) members who are listed as present on the Roll Call brings the minimum attendance of the Tuesday Session to forty-one (41) members, more than enough to achieve a quorum of thirty-four (34) voting members.

Did the Plaintiffs act upon the Amendment Prior to receiving the approval of the Minister of Consumer and Corporate Affairs?

31. The Plaintiffs submit that they received approval of the successor and equivalent of the Minister of Consumer and Corporate Affairs prior to acting upon the Amendment.
32. By-Law XV, section 4 requires that the repeal or amendment of the Plaintiffs' Constitution or By-Laws "not be enforced or acted upon until the approval of the Minister of Consumer and Corporate Affairs has been obtained."
33. On July 7, 1995, the Plaintiffs submitted the By-Law amendments made at the May 1995 National General Meeting to Industry Canada for Ministerial approval. Such approval was given the same day. The letter from Industry Canada informing the Plaintiffs that approval had been given is attached at Tab 7.
34. All of which is respectfully submitted this 22nd day of October, 2007.



Lynn M. Connors
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Barristers and Solicitors
469 Main Street
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B4N 3V9

Solicitor for the Plaintiffs

TREASURER

F) The Treasurer, in cooperation with the Deputy Chair and in consultation with the appropriate staff of the Canadian Federation of Students-Services, and provincial representatives, shall ensure that the existing services available to the membership are run and delivered in a cost-effective manner.

REFERRED TO ORGANIZATIONAL DEVELOPMENT

94.05.21 (N12) MALASPINA SU/WILFRID LAURIER GSA

BY-LAW AMENDMENT

WHEREAS the Canadian Federation of Students-Services employs various "directors", including the Studentsaver Director; the Canadian Programming Service Director; and the Executive Director; and

WHEREAS the Executive Director position is the only one which is listed in the By-Laws; and

WHEREAS it is not necessary to list any of the hired directors of the Federation in the By-Laws; and

WHEREAS By-Law XVIII - Executive Director is a remnant from the Association of Student Councils' By-Laws under which the Executive Director was an ex-officio member of the Board of Directors; and

WHEREAS the Executive Director is not an ex-officio member of the Canadian Federation of Students/Canadian Federation of Students-Services' National Executive, thereby rendering the By-Law unnecessary; and

WHEREAS the Canadian Federation of Students employs various staff, none of whom are listed in its By-Laws; and

WHEREAS Canadian Federation of Students' By-Law VII - Federation Staff, which was a remnant from the National Union of Students' By-Laws, was repealed in May, 1990; and

WHEREAS By-Law XVII represents an inconsistency between the By-Laws of Canadian Federation of Students-Services and the By-Laws of Canadian Federation of Students; and

WHEREAS inclusion of the Executive Director position leads to confusion over the role of the staff of the Federation and the role of the elected directors of the Federation of Students; therefore

BE IT RESOLVED THAT By-Law XVIII be deleted.

REFERRED TO ORGANIZATIONAL DEVELOPMENT

94.05.22 (N13) ST. THOMAS SU/CAMOSUN SS

BY-LAW AMENDMENT

WHEREAS the Federation is a partnership of students' associations; and

WHEREAS it should be the rules of the partnership which govern how a students' association joins and leaves the partnership; and

WHEREAS the existing rules of the partnership (The Federation's By-Laws) do not fully and adequately establish how a students' association leaves the partnership; therefore

BE IT RESOLVED THAT By-Law I, Section 2 A(iv), be deleted.

BE IT FURTHER RESOLVED THAT the following section be added to By-Law I - Membership:

Section 6: Vote on De-Federating

The individual members of the Federation belonging to a member local association may vote on whether to de-federate, subject to the following rules and procedures:

- A. Notice
- i. Notice of a vote on de-federating must be delivered by registered mail to the head office of the Federation not less than six (6) months prior to the vote.
 - ii. Notice of the vote must include the exact dates and times of voting.
 - iii. Failure to adhere to the notice provisions in article A i) and ii) shall invalidate the results of the vote.
- B. Campaigning
- i. There shall be no less than two (2) weeks of campaigning immediately preceding the voting during which time classes are in session.
 - ii. Only individual members of the member local association and representatives, representatives of the Federation and representatives of other Federation member local associations shall be permitted to participate in the campaign.
- C. Voting
- i. Voting will be conducted at voting stations or, subject to the agreement of the Federation, at a general meeting of the member local association.
 - ii. There shall be no less than sixteen (16) hours of polling over no less than two (2) days, except in the case of voting being conducted at a general meeting.
 - iii. In the event that polling is conducted at a general meeting, representatives of the Federation and Federation member local associations shall be extended full speaking rights in the meeting.
- D. Quorum
- Quorum for the vote shall be that of the member local association or five percent (5%) of the individual members of the local association, whichever is higher.
- E. Administering the Campaign and Voting
- The vote shall be overseen by a committee comprised of two (2) members appointed by the Federation and two (2) members appointed by the member local association. The committee shall be responsible for:
- i. deciding the number and location of polling stations;
 - ii. approving all materials to be distributed during the campaign;
 - iii. deciding the ballot question;
 - iv. overseeing the voting;
 - v. counting ballots;
 - vi. adjudicating all appeals; and,
 - vii. establishing all other rules and regulations for the vote.
- F. Advance Remittance of Outstanding Membership Fees
- In addition to Articles A to E, in order for a de-federation referendum to proceed, a member local association must remit all outstanding Federation fees not less than six (6) weeks prior to the date of the referendum.

REFERRED TO ORGANIZATIONAL

iii. In the event that polling is conducted at a general meeting, representatives of the Federation and Federation member local associations shall be extended full speaking rights in the meeting.

d. Quorum

Quorum for the vote shall be that of the member local association or five percent (5%) of the individual members of the local association, whichever is higher.

e. Administering the Campaign and Voting

The vote shall be overseen by a committee comprised of two (2) members appointed by the Federation and two (2) members appointed by the member local association. The committee shall be responsible for:

i. deciding the manner of voting, be that by referendum, general meeting or a mail-out ballot.

ii. deciding the number and location of polling stations;

iii. approving all materials to be distributed during the campaign;

iv. deciding the ballot question;

v. overseeing the voting;

vi. counting ballots;

vii. adjudicating all appeals; and,

viii. establishing all other rules and regulations for the vote.

f. Advance Remittance of Outstanding Membership Fees

In addition to Articles A to E, in order for a de-federation referendum to proceed, a member local association must remit all outstanding Federation fees not less than six (6) weeks prior to the date of the referendum.

95/05:267

MOTION TO AMEND

Western Ontario Society of Graduate Students/Laurentian Students' General Assembly

Be it resolved that the following article, g) be added to the bylaw amendment in motion 95/05:266:

g) Minimum Period Between De-Federating Votes

In addition to articles a) through f) in order for a de-federation referendum to take place the member local may not hold a de-federation referendum within the previous twenty-four (24) months.

The delegate from Western Ontario Society of Graduate Students said that most points regarding such an amendment had been made. He said that the executive of the Ryerson Students' Union had just conducted a de-federation referendum in the spring of 1995. He said the membership voted decisively to maintain their membership in the Federation. He said the local executive was completely disregarding the wishes of the membership and had served notice that yet another de-federation vote will be

conducted in 1996. He said such actions were clearly dilatory, and should be addressed.

A delegate spoke against the motion, and said that because some colleges and institutes have membership that turns on a frequent basis, the amendment would unduly restrict their ability to decide on Federation membership.

A delegate also spoke against the motion, although she agreed with the spirit of the motion. She said the initiative should come from the local and not be imposed by the Federation.

A delegate from Malaspina supported the motion and said that membership in the Federation also involves responsibility to the students across the country with whom the local federates. She said it is undemocratic for one member local to hold frequent referenda since it wastes the collective resources of the Federation.

95/05:267 CARRIED

Noted opposed: Capilano Student Society; North Island Student Association; Camosun Student Society; and City Centre Student Association; and University of Regina Students' Union

95/05:266 CARRIED

95/05:89 WITHDRAWN

94/05:168 MOTION TO AMEND POLICY

Acadia Student Union/Guelph Central Student Association

Whereas, simultaneous translation is better than consecutive translation; and

Whereas, Canadian Federation of Students has reduced the number of general meeting committees from 11 to 3 in Halifax in 1993; and

Whereas, the Federation is allegedly bilingual; and

Whereas, consecutive translation is virtually impossible to carry out in committees; and

Whereas, it is physically easier to have simultaneous translation in Federation committees; therefore

Be it resolved that the 5th paragraph of the policy entitled **GENERAL MEETINGS - BILINGUALISM** (November 1992, 92.11.56), be amended as follows:

Simultaneous translation will be provided for all plenaries, speakers, **large group** orientation sessions and **all committee meetings**. Consecutive translation will be available **upon request** at all committees, **provincial components**, regional and common interest caucuses, and constituency groups.

A delegate said that one principle, the resolution is excellent. However, she felt that it was necessary to consider the motion pending the report of the Budget Committee.

95/05:268 MOTION TO TABLE

/Simon Fraser Student Society

Be it resolved that motion 94/05:168 be tabled until after the report of the Budget Committee.

CARRIED



Industry Canada Industrie Canada

Corporations Directorate Direction générale des Corporations
9th floor, Journal Tower 3. 9^e étage, Édifice Journal, Tour sud
365 Laurier Avenue West 365, avenue Laurier ouest
Ottawa, Ontario K1A 0G8 Ottawa (Ontario) K1A 0G8

Your file Votre référence

July 10, 1995

Our file Notre référence

121700-3

Canadian Federation of Students
Pam Frache
170 Metcalfe Street
Suite 600
Ottawa, Ontario
K2P 1P5

Dear Ms. Frache:

RE: By-Law Amendments
CANADIAN FEDERATION OF STUDENTS
FEDERATION CANADIENNE DES ETUDIANT(E)S

This will acknowledge receipt of your letter dated July 7, 1995 concerning the By-Law Amendments which were duly sanctioned by the members at the general meeting of May 1995.

The Amendments have received Ministerial approval as of July 7, 1995.

Sincerely,

Mary H. Walsh
Director General
Corporations Directorate