

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Byers et al v. Cariboo College Student Society,***
2006 BCSC 603

Date: 20060418
Docket: 38229
Registry: Kamloops

Between:

Nicholas Byers and Brent Foster

Petitioners

And

Cariboo College Student Society (Incorporation #S14199)

Respondent

Before: The Honourable Mr. Justice Blair
in Chambers

Reasons for Judgment

Nicholas Byers and Brent Foster appeared
on their own behalf

Counsel for the Respondent

D.G. Crane

Date and Place of Trial/Hearing:

April 10, 2006
Kamloops, B.C.

[1] The petitioners, Nicholas Byers and Brent Foster, are both students at Thompson Rivers University (“TRU”), formerly known as the University College of the Cariboo, (“UCC”) and members of the respondent, Cariboo College Student Society (“the Society”), now known as the Thompson Rivers University Students’ Union.

[2] On February 8, 2006 Messrs. Byers and Foster filed a petition seeking an interlocutory injunction to halt a referendum then underway to determine whether the students at TRU favoured joining the Canadian Federation of Students (“the Federation”). I heard the application on February 9, 2006 and declined to grant an injunction halting the referendum which was then underway. I held that the petitioners had failed to establish that there would be irreparable harm suffered should the injunction not be granted.

[3] The petitioners who are opposed to the Society joining the Federation return to court seeking a declaration that the referendum result is invalid. In the referendum, the students voted in favour of joining the Federation by a margin of 1,290 in favour, 345 against, with one spoiled ballot.

[4] The petitioners stated in their pleadings that the sole basis for opposing the referendum was because the Society’s by-laws were “not being followed to run the election”. However, in their recent submission the petitioners, although still contending that the Society’s by-laws should dictate the manner in which the referendum was conducted, expanded their concerns to include complaints about the manner in which the referendum was conducted, referring to a number of what

the petitioners consider to be irregularities in the process leading up to and including the voting process. They cite among a number of complaints, irregularities in the appointment and conduct of the members of the Referendum Oversight Committee, restrictions on campaigning against the referendum, and the manner in which the vote was conducted, all of which the petitioners submit gave an unfair advantage to those in favour of the referendum passing, but a disadvantage to those opposed to the vote. I have referred to just some of the irregularities alleged by the petitioners to provide a background to the claim advanced at this most recent hearing.

[5] D. G. Crane, counsel for the Society, sought clarification at the opening of the hearing as to the scope of the petitioners' claim, noting that in the petition, the petitioners' claimed that the referendum should be conducted pursuant to the by-laws of the Society, not those of the Federation. However, he noted that the petitioners' written outline and affidavit material was directed towards alleged electoral irregularities, indicating a shift in the petitioners' position into matters not addressed in the petition. Mr. Crane advised he would respond to the claim as found in the petition, but was not in a position to address a controverted election which he construed as being the petitioners' new position. However, the Society's president, Terry Monteleone and the Society's executive director, Nathan Lane in their affidavits filed February 9, 2006 and April 10, 2006 respectively responded to the petition and, to some extent addressed the petitioners' allegations about voting irregularities.

[6] In the end, I heard the petitioners on both issues, specifically which by-laws ought to have been utilized to conduct the referendum and the alleged irregularities found in the voting process and I will address both issues in this judgment.

[7] The Society's directors in June 2005 applied for prospective membership in the Federation, a status which contemplated the holding of a referendum within a 12-month period to determine whether UCC students, members of the Society, wished to become full members of the Federation. The Federation granted the Society prospective membership in November, 2005, and the Federation and the Society's directors prepared to hold the required referendum by appointing a Referendum Oversight Committee consisting of two representatives from the Society and two representatives from the Federation.

[8] The oversight committee assumed responsibility for preparing the rules for the referendum including the rules of conduct during the referendum campaign to be applied to those either supporting or opposing the Society's affiliation with the Federation. The Federation's by-laws formed the basis upon which the referendum was to be conducted a provision agreed to by the Society when it applied for and obtained status as a prospective member. The application of the Federation's by-laws is logical in that it is typically the organization in which membership is sought which sets the rules upon which it is prepared to grant membership. However, within the broad parameters of the Federation's by-laws the oversight committee had the capacity to finalize the details of the referendum campaign, as found in its Referendum Rules dated January 17, 2006.

[9] Although not directly on point, the case of **Canadian Federation of Students (Ontario) v. Students Federation of the University of Ottawa**, [1995] O.J. No. 4774, Ontario Court of Justice (General Division), dealt with a situation in which the defendant University of Ottawa student federation, a member of the plaintiff Canadian Federation of Students, conducted a vote to determine whether the Ottawa students wanted to sever their relationship with the plaintiff Canadian Federation. Chilcott J. held that the vote should be held by the rules of the plaintiff Canadian Federation, not those of the defendant.

[10] I conclude that in response to the question raised in the petition before me, that the Society accepted in applying for and obtaining prospective membership in the Federation, it accepted that the referendum of the Society's members would be conducted pursuant to the Federation's by-laws. There are no grounds advanced that convince me that the Society's by-laws ought to prevail in the conduct of the referendum.

[11] With respect to the petitioners' expanded claims about faults in the conduct of the referendum process, including the voting, I appreciate that the petitioners did not amend the petition to raise allegations of voting irregularities. Regardless, I conclude that there is sufficient material before me to consider and address these allegations.

[12] It is of some interest that in spite of this matter first coming before the court partway through the voting process, the petition contains no complaints about the referendum process to that date, concentrating solely on which by-laws ought to

have been followed in conducting the referendum. While I am aware that the affidavits in support of the petition describe problems in obtaining information about the referendum's rules, the process appears to have been transparent with the information available to those seeking it. The Society also offered funding for those opposing the referendum.

[13] The petitioner, Nicholas Byers, filed a complaint with the oversight committee on February 1, 2006, a few days before the referendum commenced in which he expressed his concern that the referendum was being conducted under the Federation's by-laws, rather than those of the Society. He did not indicate any concern in that complaint about irregularities in the referendum of which he now complains.

[14] Although the petitioners expressed considerable concern at the hearing about the referendum balloting process, Mr. Lane in his affidavit described the process which I accept as a rational voting process. It was a process which functioned well enough to determine that Mr. Byers had voted twice in the referendum and had been refused the opportunity to vote a third time.

[15] Mr. Byers' conduct in voting twice and attempting to vote on a third occasion places him in a tenuous position when it comes to pursuing his complaints against the Society. He seeks to invoke the equitable jurisdiction of this court, but comes before the court after having breached the rule of one person, one vote. His conduct is reprehensible and will not be condoned by this court.

[16] I am not convinced that the irregularities alleged by the petitioners offer an appropriate basis upon which I might set aside the referendum. The petition is dismissed. The Society will have its costs at Scale 3 and the Society can determine whether it wishes to pursue the collection of the costs against the two petitioners.

“R.M. Blair, J.”
The Honourable Mr. Justice R.M. Blair