

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NICHOLAS BYERS and BRENT FOSTER

PETITIONERS

AND:

THE CARIBOO COLLEGE STUDENT SOCIETY
(INCORPORATION #S14199)

RESPONDENT

RESPONDENT'S OUTLINE

Part III

Basis for opposing relief:

1. On February 7, 8 and 9, 2006 the respondent, Cariboo Student Society (the "CSS"), now the "Thompson Rivers University Student Union", in concert with the Canadian Federation of Students (the "CFS"), conducted a referendum to determine whether its members wished it to become a full member of the Canadian Federation of Students. The students of Thompson Rivers University voted overwhelmingly in favour of membership. The petitioners seek to set aside the results of the referendum, on the ground that it was conducted pursuant to the bylaws of the CFS, rather than the bylaws of the CSS. The respondent says that the referendum was properly conducted under the bylaws of the Canadian Federation of Students.
2. The Petition in this matter is expressed to be based on only one fact, i.e., "The Cariboo College Student Society By-laws are not being followed to run the

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referendum". The respondent concedes that this is so, and say that the CSS bylaws are inapplicable. The sole issue to be decided under this Petition, then, is whether or not the CSS bylaws were to be followed. Many of the allegations raised in the affidavits and Outline of the petitioners are outside the scope of this issue, and in some cases are unsupported by any evidence.

3. The Canadian Federation of Students ("the CFS") is a national student organization, with provincial chapters. Its members are individual university and college student societies as representatives of their respective individual members. Under the CFS bylaws, a student society may be either a "full member" or a "prospective member".
4. On June 29, 2005 a majority of the directors of the CSS resolved to apply for prospective membership in the CFS [Affidavit of Terry Monteleone, paragraph 2]. This application was made pursuant to Bylaw 1, Article 2(b)(i) of the bylaws of the CFS. [Exhibit A to Monteleone affidavit].
5. Under the CFS bylaws, prospective membership is described as "a trial membership of limited duration". The prospective member association has full voting rights in CFS national general meetings. The CFS bylaws provide that a prospective member association must hold a referendum on full membership within twelve months of its acceptance as a prospective member.
6. The rules and procedures for a referendum in which the individual members of a prospective member association may vote on full membership in the CFS are set out in Bylaw 1, Article 4 [Monteleone affidavit, Exhibit 1, p. 3]. The CFS rules and procedures provide for the scheduling of the referendum, for the creation of a Referendum Oversight Committee, for giving notice and campaigning, including campaign materials, as well as voting, vote-counting, and appeals. A prospective member association in the CFS is required to adhere to these rules if it wishes to become a full member of the CFS. The process by which the CSS

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became a full member of the CFS was strictly in accordance with the rules and procedures in CFS Bylaw 1.

7. No challenge is made by the petitioners to the decision by the directors of the CSS to apply for prospective membership in the CFS, nor could it have been. The CSS directors were fully within their rights in making the application, and in doing so they were acting in full compliance with the bylaws of the CSS.
8. Implicit in its application for prospective membership was the agreement by the CSS that if its application were accepted, its status within the CFS would be governed by the bylaws of the CFS, in the same manner as all other members. Hence, the CSS was contractually bound to conduct a referendum with respect to moving from prospective membership to full membership in accordance with the bylaws of the CFS.
9. The decision In *Canadian Federation of Students (Ontario) v. Students Federation of the University of Ottawa* [1995] O.J. No. 4774 is directly on point. There the local student society conducted a referendum with respect to continued membership in the CFS. It did so in accordance with its own bylaws, rather than the bylaws of the CFS. The CFS was successful in setting aside the referendum on the basis that it should have been conducted pursuant to the CFS bylaws. The court held:
 - ¶142 It is clear that the Defendant is a participating member of the Plaintiff, and as such is bound by the rules and by-laws of the Plaintiff...
 - ¶143 I think the by-laws are clear. S. 3.0.10 makes it clear that any referendum regarding membership in the plaintiff association is to be governed by the association's regular referendum or election rules.
10. In response to the allegations set out in paragraph 1 of the petitioners' Outline concerning the *University Act*, the respondent says that the referendum in

question was initiated by the directors of the CSS, and conducted as equal partners with the CFS. The referendum was, in every respect, in accord with the provisions of Section 27.1(3)(b) of the *University Act*, which make no provision as to which bylaws must govern the referendum process. The legislative purpose behind that section of the *University Act* is clear: it is to ensure that a decision of a student society to join a provincial or national student organization be supported by a majority of the members of the society voting in a referendum.

11. The respondent asks that the Petition be dismissed, with costs.

Dated at Vancouver, British Columbia this 6th day of April, 2006

"D.G. Crane"
Solicitor for the Respondent