

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-038173-079

DATE: SEPTEMBER 12, 2007

**IN THE PRESENCE OF: THE HONOURABLE MR. JUSTICE MARK G. PEACOCK,
J.S.C.**

CANADIAN FEDERATION OF STUDENTS, QUEBEC COMPONENT
Plaintiff

v.

NINA AMROV

-And-

MAHDI ALTALIBI

Defendants

-And-

MALAMO SAVVAS BEAUMONT

-And-

SOSHIMA VERA-CADET

-And-

MELANEE THOMAS

-And-

ROLAND NASSIM

-And-

MAX SILVERMAN

-And-

ERICA JABOUIN

-And-

PATRICE BLAIS

**-And-
THE POST-GRADUATE STUDENTS' SOCIETY OF MCGILL UNIVERSITY INC.
-And-
CONCORDIA STUDENT UNION
-And-
CONCORDIA UNIVERSITY GRADUATE STUDENTS ASSOCIATION
-And-
STUDENTS' SOCIETY OF MCGILL UNIVERSITY
-And-
DAWSON STUDENT UNION
-And-
LA CAISSE POPULAIRE PLACE DESJARDINS
Mis en Cause**

-AND-

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-038176-072

DATE: SEPTEMBER 12, 2007

IN THE PRESENCE OF:
THE HONOURABLE MR. JUSTICE MARK G. PEACOCK, J.S.C.

FÉDÉRATION CANADIENNE DES ÉTUDIANTES ET DES ÉTUDIANTS, ÉLÉMENT

DU QUÉBEC
-And-
NINA AMROV
-And-
MAHDI ALTALIBI
Plaintiffs

v.
GEORGE SOULE
-And-
SOSHIMA VERA CADET
-And-
MELANEE THOMAS
-And-
ERIKA JABOUIN
-And-
ROLAND NASSIM
-And-
SHANICE ROSE
Defendants

JUDGMENT

[1] This judgment will proceed under the following headings:

	Paragraph
A- Context	2
B- Procedural History	14
C- Issues	23
D- Analysis	24
1- General Principles	25
2- Findings of Fact and Application of Relevant Law to the Facts	26
i- Appearance of Rights	26
a. The Eligibility of Ms. Amrov and Mr. Altalibi for the Positions to which they were Elected on the CFSQ Executive Committee	26

	Paragraph
b. Was Ms. Beaumont legally replaced (a) as the DSU-P representative on the CSFQ Executive Committee and (b) as the DSU-P representative on the Plenary for the August 3rd S.G.M.?	48
i. Was the August 3rd S.G.M. legally adjourned?	69
ii. Were Ms. Amrov and Mr. Altalibi legally removed from their functions by the August 3rd S.G.M.?	78
iii. If so, were Ms. Cadet and Ms. Thomas legally elected to CFSQ Executive Committee?	85
3- Irreparable Harm	86
4- Balance of Convenience	89
E- Conclusions	94

A- Context

[2] The Court is seized with two competing injunction proceedings for two different groups, each claiming to have been duly elected to two of the three "at-large" executive positions on the Canadian Federation of Students – Quebec Component ("CFSQ").

[3] By reviewing their *Constitutions*, the Court must determine issues concerning eligibility for election to the Executive Committee, the representativeness of delegates from a member association (DSU-P) and the legality of votes for destitution and new elections: all at the stage of a safeguard order.

[4] Ms. Nina Amrov ("Ms. Amrov") and Mr. Mahdi Altalibi ("Mr. Altalibi") were elected as the CFSQ Chairperson and CFSQ Deputy Chairperson respectively at a Special General Meeting ("S.G.M.") held on June 17, 2007.

[5] What is CFSQ? It is a federation of five post-secondary students' associations, which represents graduate and under-graduate students at McGill and Concordia Universities and C.E.G.E.P. students at Dawson College.

[6] CFSQ is affiliated with a national student organization known as the Canadian Federation of Students. CFSQ is a separate corporation and no evidence was lead as to any legal relationship between the CFSQ and the national body.

[7] To analyze these issues, it is necessary to understand the CFSQ structure. CFSQ is composed of two types of member "local associations":

- a) Full Members:
 - i) Concordia Students' Union ("CSU-F"), also known as Local 91;
 - ii) The Post-Graduates' Students Society of McGill ("PGSS-F"), also known as Local 79; and
 - iii) Concordia University Graduates' Students' Association ("CUGSA-F"), also known as Local 83;¹ as well as
- b) Prospective Members:
 - i) Students' Society of McGill University ("SSMU-P"); and
 - ii) Dawson Students' Union ("DSU-P").²

[8] Under the *Constitution, By-Laws* and *Standing Resolutions* of the CFSQ³ all member local associations – prospective and full – are given the same rights and privileges, although only the students who belong to “full member” local associations pay \$6.11 per year as a membership fee to the CFSQ. However, the students of the “prospective member” local associations pay no fee in the one year restricted period during which their “local association” is allowed to be a prospective member and before they have a referendum within their own local association to determine whether they wish their local association to become a “full member”.

[9] In the weeks following the election of Ms. Amrov and Mr. Altalibi (both individual members of the two prospective member local associations), the CSU-F raised issues concerning the eligibility of Ms. Amrov and Mr. Altalibi on the grounds that, under the *Constitution*, only “*individual fee paying members of the Federation*” were eligible for election to the executive positions to which they were elected, and as individual members of prospective member local associations, they did not pay fees to the CFSQ and, consequently were ineligible.

[10] CSU-F then gave notice to have a Special General Meeting called, amongst others to remove Ms. Amrov and Mr. Altalibi from their functions.⁴

[11] As a related issue, there was an internal conflict ongoing amongst the members of the DSU-P Executive as to who should represent DSU-P at the CFSQ. In fact, the majority of the sitting directors of DSU-P sought to remove Ms. Malamo Beaumont

¹ For clarity and ease of reference, the abbreviation for any full member will be designated putting a “-F” after the abbreviation for the local association’s name, i.e. “CSU-F”.

² Similarly, for the prospective member local association, the same convention will apply as noted in footnote 1, except that the abbreviation will be “-P”, i.e. “SSMU-P”.

³ Exhibit P-VC-2. Exhibits in the **Amrov proceedings** (#500-17-038176-072) will be identified as Exhibit P-Amrov-# and for the **Cadet proceedings** (#500-17-038173-079), Exhibit P-Cadet-#.

⁴ See Exhibits P-Cadet-4 and 15.

Savvas ("Ms. Beaumont"), their Vice President External, as the DSU-P- representative director on the CFSQ's Board of Directors.

[12] Whether this removal was legally undertaken becomes important since the vote of the DSU-P director became the deciding vote as to whether the August 3, 2007 S.G.M. was legally adjourned before: (a) there was a vote on the removal of Ms. Amrov and Mr. Altalibi and (b) an election was held where Ms. Soshima Vera-Cadet ("Ms. Cadet") was elected as CFSQ Chairperson and Ms. Melanee Thomas ("Ms. Thomas") as CFSQ National Executive Representative.

[13] The Court is being asked by both sides for a Safeguard Order which would allow them to exercise their respective offices in the interim.

B- Procedural History

[14] The injunction proceedings taken by Ms. Amrov and Mr. Altalibi (the "**Amrov proceedings**") were instituted on August 13, 2007 while the injunction proceedings on behalf of Ms. Vera-Cadet and Ms. Thomas (the "**Cadet proceedings**") were instituted two days later on August 15, 2007.

[15] Both sides have been involved in procedural manoeuvring seeking to exercise control of the CFSQ including:

- a) "tit for tat" changing of the locks on the CFSQ office on multiple occasions;
- b) seeking to obtain access to the CFSQ bank account; and
- c) filing modifications to the corporate registrations.⁵

[16] On August 15, 2007, Madam Justice Carole Julien issued a Safeguard Order applicable to both proceedings which effectively froze all of the activities of the CFSQ by enjoining all parties from accessing the CFSQ office, pending the then-proposed hearing of the provisional injunctions before this Court scheduled for August 20, 2007.

[17] As a result of a motion heard at the outset of the hearing before this Court, both proceedings were joined.⁶ Furthermore, the parties agreed that they would proceed directly to the hearing on the permanent injunction and filed an Agreed Schedule which could allow for a hearing on the merits in November, 2007.

[18] Accordingly, the parties pleaded their respective positions regarding the proper Safeguard Order that the Court should issue in the interim. The parties relied

⁵ See Exhibit P-Cadet-12: *Déclaration modificative*, CIDREQ, July 25, 2007.

⁶ Pursuant to Article 271, *C.P.C.*

exclusively on the affidavits that they had filed and the exhibits referred to therein. No cross-examinations on these affidavits were filed and no oral evidence was called by either party.

[19] One Affiant said that any inability for the CFSQ to function normally throughout the Fall of 2007 would cause prejudice to the CFSQ membership since the Quebec government had announced its intention to increase tuition fees in the Fall of 2007 and "*many student unions have already taken strike mandates for the early Fall*".⁷

[20] The same Affiant indicated that:

"A failure on the part of the CFS-Q, as the representative of most of the Anglophone post-secondary students in Quebec, to be ready to work with the rest of the Quebec student movement could be detrimental to the overall struggle and would be a de-facto failure in the primary mission of the CFS-Q."

[21] At the same time, the Court recognizes three other important considerations:

- a) that a safeguard order should seek to protect the rights of all parties and not create a factual situation which could prejudice or prejudice the final outcome after a full hearing on the merits;
- b) in the present case, the likely final determination will be based on a judicial interpretation of the constitutional documents for CSFQ and DSU-P, as opposed to an appreciation of the credibility of witnesses; and
- c) as a student organization of modest means, legal costs and procedures must be kept proportional and reasonable (art 4.1 & 4.2, C.C.P.).

[22] In this context, the Court proposes to review the evidence in a fuller and more detailed way to determine how it can best safeguard all of the parties' rights, while at the same time seeking to ensure that those ultimately affected – the individual student members of the CFSQ – can have confidence that their federation and member locals are operating under the rule of law.

C- Issues

[23] **1- Appearance of Right**

⁷ Affidavit of Aaron Donny-Clark, dated August 18, 2007 at para. 34, 35 and 36.

- i- **The Eligibility of Ms. Amrov and Mr. Altalibi for the Positions to which they were Elected on the CFSQ Executive.**
- ii- **Was Ms. Beaumont legally replaced (a) as the DSU-P representative on the CSFQ Executive Committee and (b) as the DSU-P representative at the Plenary for the August 3, 2007 CFSQ Special General Meeting ("August 3rd S.G.M.")?**
- iii- **Was the August 3rd S.G.M. legally adjourned?**
- iv- **Were Ms. Amrov and Mr. Altalibi legally removed from their functions by the August 3rd S.G.M.?**
- v- **If so, were Ms. Cadet and Ms. Thomas legally elected to the CFSQ Executive Committee?**

2. Irreparable Harm

3. Balance of Convenience

D- Analysis

[24] At the outset, the Court underscores the first of the objects of the CFSQ contained in its letters patent:

"Regrouper les étudiantes et étudiants du Québec en un organisme démocratique et coopératif, afin de faire progresser leurs intérêts et ceux de la communauté éducative".⁸ (emphasis added)

1- General Principles

[25] To begin, it is useful to review the legal criteria for safeguard orders:

- a) a safeguard order must minimize the inconvenience to the party against whom it is ordered;
- b) a safeguard order must do the minimum necessary to safeguard the rights of the parties, recognizing that a full evaluation on the merits will occur shortly;⁹ and

⁸ See Exhibit P-Cadet-1 at page 31.

⁹ *Turmel v. 3092-4484 Québec Inc.*, J.E. 94-1280 (C.A.) cited with approval in *Natrel Inc. v. F. Berardini inc.*, [1995] R.D.J. 383, 387 (CA).

- c) while the criteria for an interlocutory injunction also apply to the safeguard order, the Court hearing a safeguard demand must achieve this balance: not simply undertake a cursory analysis of the *status quo* while neither proceeding to a full analysis on the merits (which have yet to be pleaded).¹⁰

2- Findings of Fact and Application of Relevant Law to the Facts

i- Appearance of Rights

a. The Eligibility of Ms. Amrov and Mr. Altalibi for the Positions to which they were Elected on the CFSQ Executive Committee

[26] First, the Court needs to analyze the election on June 19, 2007, the date when Ms. Amrov presented herself for election as CFSQ Chairperson and Mr. Altalibi presented himself for election as CFSQ Deputy Chairperson. They were members of the SSMU-P and the DSU-P respectively: both prospective member local associations.

[27] They were duly-elected by the Plenary of the CFSQ at this S.G.M. At the time, their election was duly-ratified, based on a motion by the representative of the CSU-F and seconded by the DSU-P (represented by Ms. Beaumont).

[28] The facts leading up to this election are important to understand. On May 30, 2007, the SSMU-P representative on the CFSQ Executive asked the Chief Returning Officer for the June 19 election the following question: "*Do the candidates [Ed. note: For the "at-large" positions in the June 19 election] need to be individual fee-paying members? Or, individual members who upon completion of the successful referendum would be fee-paying?*"¹¹

[29] The relevance of this question is seen from reading Art. 6.5, *Constitution* of the CFSQ.¹² Since SSMU-P is a prospective member local association, its individual student members pay no membership fees to the CFSQ: hence, were they ineligible to run?

¹⁰ *Aubut v. Marois*, J.E. 2000-1090 (C.A.) at para. 9.

¹¹ See Exhibit P-Cadet-9 at page 2.

¹² See Exhibit P-Cadet-2: Art 6.5(a) states that for an individual to be nominated for "*any position on the Executive Committee*" they "*must be an individual fee-paying member of the Federation or a member currently serving on the Executive*" (emphasis added).

[30] To understand the significance of the phrase "individual fee paying member", the Court must analyze the two categories of CFSQ membership: Art. 2.1 – *Full Membership* and Art. 2.2 – *Prospective Membership*.

[31] The fee component of full membership is stated under the heading "*Full Membership*" at Art. 2.1 (e):

"The Quebec Component Full Membership due shall be \$6.11 per year, per local association individual member, pro-rated as per the policy of the member-local association with regard to the levying of its local association fee. ... The fee shall be levied on all member associations unless the component votes to exempt a local for a specific length of time."

[32] At all relevant times, it must be remembered that there were only three local associations with full membership: CSU-F, PGSS-F and CUGSA-F.

[33] In Art. 2.2 – *Prospective Membership*¹³, no membership fees are paid. Why is this? One reason may be that the prospective membership is only for a limited duration which requires that a referendum be held by the local association:

"Within one full year following the granting of their prospective membership. However, within that period, a prospective member shall be entitled to the rights and benefits accorded to a full member."

[34] As Art 2.2 (d) demonstrates, the prospective membership is for the local association: the individual member is defined elsewhere (Art. 5.1):

"An "individual member" shall be any individual who is a member of a member local association of the Federation or is on the executive committee of the Québec Component."

[35] A "local association", amongst other things, must be an organization of students that represents students at only one post-secondary institution and is locally and democratically controlled.¹⁴

[36] The importance of following due democratic process is emphasized throughout the CFSQ *Constitution*.¹⁵

¹³ See Exhibit P-Cadet-2.

¹⁴ See Exhibit P-Cadet-2.

[37] It is in the context of this legal-factual background that the SSMU-P representative to the CFSQ Executive Committee asked the question on eligibility for the "at-large" positions to the Chief Returning Officer in the lead-up to the June 19, 2007 elections.

[38] The answer from the Chief Returning Officer is the genesis for all this litigation:

*"It is, in fact, fee-paying members. However, there is no prospective membership fee for the CFSQ, so SSMU members [Ed. note: SSMU is a prospective member] are eligible."*¹⁶

[39] It must be remembered that the three "at large positions" on the Executive Committee: Chairperson, Deputy Chairperson and National Executive Representative were elected by the "Plenary".¹⁷ The other five remaining positions on the Executive Committee were composed of one representative chosen by each of the full and prospective member local associations.¹⁸

[40] To interpret the meaning of "individual fee paying member" as a matter of the *Constitution* of the CFSQ, the Court is not bound either by the opinion given by the CFSQ Chief Returning Officer nor by the vote held on June 19, 2007 or its subsequent ratification.

[41] Ms. Amrov and Mr. Altalibi submit that they are included within this definition because:

- a) emphasis must be placed on the words "individual member" and that "fee-paying" merely refers to the fact that individual students pay fees to their local association [even though none of those fees go to the CFSQ];
- b) since all member associations have equal rights and privileges, the article of general application (Art. 2.2. (f)) must govern and take precedence over this exception (Art. 6.5 (a)). Otherwise, prospective member local associations would be discriminated against since their individual members would be excluded from these three executive positions; and

¹⁵ See Exhibit P-Cadet-2 at para. 2 (a) being the first purpose of the organization *"to organize students on a democratic co-operative basis in advancing students' interests and advancing the interests of the student community"*.

¹⁶ See Exhibit P-Cadet-9: This response was given on May 30, 2007.

¹⁷ See Exhibit P-Cadet-2, Art. 1.6: *"The "Plenary" is that portion of the General Meeting in which formal decision-making by the delegates of member local associations transpires."*

¹⁸ Exhibit P-Cadet-2, Art. 6.2.

- c) in the alternative, individual members of prospective member local associations do pay fees but those fees happen to be zero dollars.

[42] The Court cannot agree with these submissions for the following reasons:

- a) Art. 2.2 (f) which provides that "*a prospective member shall be entitled to all the rights and benefits accorded to a full member*" is under the heading "Prospective Membership" where membership applies to the "local students' associations' prospective membership". Hence, the basis for ensuring equality is between local students' associations (full and prospective) and not between individual members. This equality is achieved amongst all member local associations naming one representative to the Executive Committee;
- b) Article 2.2 in which the equality provision is found makes reference to the lapsing of prospective membership of a "*local student association*". No reference is made to "*individual member*". Hence, the equality in "rights and benefits" is amongst all the local associations only, irrespective of whether they are full or prospective members; and
- c) If individuals from prospective members were eligible for those three at-large executive positions, this could produce a potential situation where the Executive Committee consisted of three individuals from full member locals (the 3 representatives) and five individuals from prospective member locals (2 representatives and 3 at-large Executives). This could produce deadlock or give the balance of power to the prospective locals who could run the CFSQ for their year of prospective membership and then fail to receive the positive referendum results required to continue in full membership. This is not consistent with the democratic purposes of the CFSQ referred to earlier and could not have been intended.

[43] With the consent of all parties, Ms. Cadet and Ms. Thomas filed Annex 1 being amendments to the *By-Laws* of the CFSQ, contained in Exhibit P-Cadet-2. As amended by Motion 2007/06:25, the composition of the Executive Committee was modified at Art. 6.2 by allowing "*one representative from each prospective member local to be elected by their respective local association*". Prior to this amendment, the previous Art. 5.2 (b) only allowed for representation on the Executive Committee for the only members then in existence, the three full members.

[44] Clearly, Art. 6.5 (a) – which was not amended although Art. 5.2 was – must be read down as having some meaning. Prior to the amendment of Art. 5.2, Art. 6.5 (a) required that each of the six members of the Executive Committee must be an "individual fee paying member" and hence, must come from one of the three full member local associations. The fact that Art. 6.5 (a) was not amended must mean that

the requirement for fee paying to the CFSQ is still in force with the exception that it does not apply to the representatives from the local association as mandated by amended Art. 5.2(b).

[45] Stated differently, once the amendment was made to Art. 5.2, clearly Art. 6.5 (a) could only apply to the three "at large" positions since the local representatives at least from the two prospective members could clearly never be "*individual fee paying members*" of the Federation.

[46] On this basis, the Court concludes that it is more apparent than doubtful – at this preliminary stage – that neither Ms. Amrov nor Mr. Altalibi fulfill the eligibility requirements for the "at large" positions to which they were elected.

[47] For the reasons mentioned, this Court can neither permit Ms. Amrov nor Mr. Altalibi to fulfill the functions of Chairperson and Deputy Chairperson respectively in the interim.¹⁹

b. Was Ms. Beaumont legally replaced (a) as the DSU-P representative on the CSFQ Executive Committee and (b) as the DSU-P representative on the Plenary for the August 3rd S.G.M.?

[48] Having decided that it is more apparent that Ms. Amrov and Mr. Atalibi do not have the necessary eligibility, the Court must now determine whether the votes held at the August 3rd, 2007 S.G.M. were legal. In view of the closeness of the three votes in question: (a) on adjournment, (b) on destitution and (c) on voting for replacements, it is necessary first to consider the representativeness of those voting.

[49] In particular, the legality of the representation for DSU-P is brought into issue by all parties.

[50] Accordingly, the Court must determine the appearance of rights on this issue.

[51] The question is: Who is legally entitled to represent the DSU-P at the CFSQ: (a) Ms. Beaumont, the duly-elected Vice President External for DSU-P who is

¹⁹ Reference should be made to Art. 838, Code of Civil Procedure regarding the Court's power to "oust" an ineligible office holder and order "*that a third party be declared to be entitled to such office ...*".

constitutionally mandated²⁰ or (b) has she been legally destituted to permit Ms. Shanice Rose, Vice President Finance to replace her at the S.G.M. and thereafter at the CFSQ Executive?

[52] The evidence discloses that the problem arose concerning Ms. Beaumont when she, as the DSU-P representative at the June 19, 2007 Special General Meeting, supported the McGill undergraduate student Ms. Amrov and the Dawson student, Mr. Altalibi contrary to the wishes of the other Dawson representatives at that meeting (including Vice President Finance Ms. Rose).

[53] The *Constitution* of the DSU-P – a Quebec Part III company known as Dawson Student Union Inc. – does not specifically provide for the destitution of directors.

[54] It is clear law that only the shareholders can remove a director provided that such a power is in the company's incorporation documents.²¹

[55] In the DSU-P's spring elections on May 11, 2007, Ms. Beaumont was elected Vice President External with 389 votes in favour and 126 votes against (no other candidate presenting).²² As part of the mandate required by the incorporating documents, Ms. Beaumont was the DSU-P representative to the CFSQ.

[56] Absent any power to destitute a director, there was nonetheless a power in the Executive Council to:

*“Amend or repeal any disposition in the present constitution, but such amendment or abrogation will be in effect only until the next Annual General Assembly, unless it is ratified by 2/3 of the members during a Special General Assembly, called for that purpose. If the amendment is not ratified by the members of the next Annual General Assembly by a simple majority vote following the modification, then it ceases to be in effect, but only from the date of this annual general assembly”.*²³

[57] There is no evidence of any attempt by the Executive Council to amend the Vice President External's mandate under the *Constitution*.

²⁰ See Exhibit P-Amrov-20, Art. 5.13: The Vice President External is “to serve as the main representative to any student federation or coalition, the Union [Ed. note: Dawson Student Union] may join, as appropriate”.

²¹ Paul Martel, *Compagnie au Québec Les aspects juridiques* (Montreal, Qc: Wilson & Lafleur, 2006l) at pages 21-43 and 44.

²² Affidavit of Ms. Shanice Rose, August 17, 2007, Exhibit SR-D-3.

²³ See Exhibit P- Amrov-20: Article 8(5).

[58] On the other hand, at a meeting of the Executive Council of the DSU-P held on June 20, 2007 – in a vote of three to one of the four directors present (including Ms. Rose and Ms. Beaumont) – the Executive Council purported to remove Ms. Beaumont as official DSU-P representative to the CFSQ and replace her with Ms. Rose and also replace Ms. Beaumont with Ms. Rose as the official representative of the DSU-P on the CFSQ Executive.²⁴

[59] On July 24, 2007, the President of DSU-P brought this purported change to the attention of the CFSQ Executive Committee.²⁵

[60] One day prior to the CFSQ August 3rd SGM, the DSU-P Executive appointed Ms. Shanice Rose, Ms. Margot Dunnet and Mr. Ryan Soloman to be the delegates to that meeting.²⁶

[61] At this stage, it is important to note who is entitled to vote at the August 3rd S.G.M.

[62] Article 1.6 of the CFSQ *Constitution* notes that at the Plenary: “*formal decision making by the delegates of member local associations transpires*”. However, voting at these general meetings is not done by the individual delegates but rather “*by a majority vote of the member locals*”.²⁷

[63] It is in this context, that the Court must determine the legality of the decisions of the DSU-P Executive. While the *Constitution* of the DSU-P may have allowed the Executive to amend the *Constitution* – thereby modifying the duties of the Vice President External - this was not done.²⁸

[64] However, in this case, the DSU-P Executive Council – because of a disagreement with Ms. Beaumont and despite the large plurality with which she won her election – chose to undertake what effectively amounted to her destitution.

[65] As a matter of law, the Court finds – at this safeguard stage – that the DSU-P Executive did not have the power to do this nor to remove Ms. Beaumont as a member of the DSU-P delegation to the August 3rd S.G.M.

²⁴ See Exhibit P-Amrov-22.

²⁵ See Exhibit P-Cadet-11.

²⁶ See Exhibit P-Cadet-18.

²⁷ See Exhibit P-Cadet-2, Art. 3.8 (a).

²⁸ The Court underscores the important democratic principle established by this extraordinary right of the Executive to modify the constitution mid-term. Any such proposed amendment must, ultimately, be ratified by the membership and this is only proper in view of the important rights that can be effected.

[66] Accordingly, the Court finds that Ms. Beaumont had a right to attend the said meeting as the “main representative” of the delegation from the DSU-P.²⁹

[67] The original decision of the DSU-P taken on June 20, 2007 to effectively destitute Ms. Beaumont has been contested in the **Amrov proceedings** on the grounds that there was an insufficient *quorum* of the Executive Council.

[68] Based on what the Court has decided it is not necessary to determine this issue. However, if another Court is of the opposite view, the Court would find that there was *quorum*, for the following reasons:

- a) the *Constitution* of the DSU-P contemplates two elections for the nine positions on the DSU-P Executive: one at the March General Assembly, where the newly-elected directors’ mandate goes from June 1st to May 31st and a second election at the October General Assembly where the mandate starts then and ends on May 31st of the next year. Implicitly, the By-Laws confirm that there will not be the full nine directors for part of the year (as in this very case where there were only five directors in office in June, 2007). Accordingly, the word “*quorum*” in Article 5 (4) and the words “*majority of the directors*” must refer to the directors then in office and not the full nine directors; and
- b) use of similar wording in other articles (Art. 3 (6), 3 (9), 3 (10), 4 (12) and 8(5) of the DSU *Constitution*) confirms that the number of directors relevant for *quorum* on June 20, 2007 is five and not nine.

i. Was the August 3rd S.G.M. legally adjourned?

[69] The circumstances of the CFSQ August 3rd S.G.M. are outlined in the most detailed way in draft minutes prepared by Ms. Margot Dunnet (“Ms. Dunnet”) who was one of the DSU-P delegation appointed by the DSU-P Executive on August 2, 2007.³⁰

[70] In view of the fact that these are draft minutes, the Court accepts that they are admissible in evidence although it discounts their weight in view of their draft status.

[71] The draft minutes can be compared with the following paragraphs from the August 12, 2007 affidavit of Ms. Beaumont herself regarding her version of what transpired at the CFSQ August 2nd Executive meeting and August 3rd S.G.M.:

²⁹ See Exhibit P-Amrov-20, Art. 5 (13).

³⁰ See Exhibit P-Cadet-20.

"46. *During that meeting [Ed. note: The August 2, CFSQ Executive Committee Meeting], the EC ratified my position as the representative of the DSU;*

47. *During that meeting we also approved a budget and a campaign guide that were to be presented at the August 3rd S.G.M.;*

48. *From the start of the meeting on August 3rd, there were heated arguments concerning my position as the representative of the DSU;*

49. *Ms. Nina Amrov, Chairperson of the CFS-Q, explained that I had been ratified during the 2nd of August EC meeting as the DSU representative, and that the EC had thereby rejected the DSU EC resolution appointing others as DSU delegates. She explained that I would be voting as the sole DSU delegate;*

50. *She explained that because I was duly elected and that the Constitution of the DSU gave me the obligation to vote on its behalf, there was no way that a resolution passed without quorum could go against the Constitution;*

51. *There was again a heated debate following that decision and the CSU appealed from the decision of the Chair, the outcome was that the decision was upheld;*

52. *The GSA representative put a motion of adjournment on the table and it was adopted;*

53. *After the adjournment, Mr. Brent Farrington, Deputy Chairperson of the CFS National, declared himself Chair and continued the meeting, and decided to recognize Ms. Shanice Rose, Mr. Ryan Solomon and Mr. Brandon Vergera as the DSU delegates, despite being notified by Mr. Mahdi Altalibi that the meeting had been adjourned.*

54. *I then left the premises.*³¹

[72] First, the Court wishes to point out that Ms. Amrov had no clear right to do what she did in paragraph 50 of Ms. Beaumont's affidavit. As the Court has found, Ms. Beaumont was the "main representative" but not the only representative to the S.G.M.

³¹ Affidavit of Ms. Malamo Beaumont Savvas dated August 12, 2007, para. 46-54 annexed to the *Requête des demandeurs en injonction interlocutoire* dated August 14, 2007, case no. 500-17-038176-072 (C.S., Montreal).

and whether she was to be the designated person to vote on behalf of DSU-P was not a matter for Ms. Amrov but an internal matter for the DSU-P.

[73] Paragraph 52 of Ms. Beaumont's Affidavit is in direct contradiction to the draft minutes prepared by Ms. Dunnet wherein the Motion to Adjourn was defeated with two in favour and three member locals voting against: CSU-F, PGSS-F and DSU-P. Accordingly, as far as this vote to adjourn is concerned, all depends on whether Ms. Beaumont was entitled to cast a vote for the DSU-P or whether it was Ms. Rose on behalf of she and her other two colleagues.

[74] In the circumstances just described and based on the Court's prior analysis of the DSU-P *Constitution*, the Court finds it doubtful that either Ms. Rose or Ms. Beaumont had the right on behalf of DSU-P to vote at this plenary. This determination was an internal matter to be decided by the DSU-P delegates but which, by the DSU-P Constitution, had to include Ms. Beaumont but did not. Accordingly, in the circumstances, the Court finds that the Motion to Adjourn – in the absence of a legal DSU-P vote – was deadlocked at two and two and hence, did not carry.

[75] As can be seen from the draft minutes³², the meeting went on thereafter for another three hours in which many other resolutions were passed, including those on destitution and the new elections.

[76] However, the problem that arises is that as per paragraph 53 of Ms. Beaumont's Affidavit, the new Chair, Mr. Farrington from the National Office, recognized Ms. Rose, Mr. Soloman and Mr. Vergera as the DSU-P delegates, and not Ms. Beaumont. As she says, the result was that she then left the premises.

[77] It will also be seen from Exhibit P-Cadet-20, the delegations of the CSU-F and SSMU-P left the meeting at 2:11 P.M. thus leaving only the delegations from CSU-F, PGSS-F, and Ms. Rose and her colleagues from DSU-P.

ii. Were Ms. Amrov and Mr. Altalibi legally removed from their functions by the August 3rd S.G.M.?

[78] The Court finds that the proper formalities had been followed to permit a destitution to occur. Effective notice had been given to Ms. Amrov and Mr. Altalibi that such destitution could occur at the August 3rd S.G.M.³³ and as a result of Exhibit P-Cadet-9, they were advised of the allegations against them i.e. non-eligibility. As a

³² See Exhibit P-Cadet-20.

³³ See Exhibit P-Cadet-11.

result of Exhibit P-Cadet-15, they were to be given a full right to defend themselves and hear reasons why their destitution should be opposed.

[79] This notice complied with the legal requirements of the letters patent.³⁴

[80] However, as has been noted, the DSU-P delegation was not constituted in compliance with the DSU-P *Constitution*.

[81] Had Ms. Beaumont – as was required by the DSU-P *Constitution* – been part of this delegation, the Court cannot presume how the DSU-P delegation would have voted.

[82] The Court's task is to apply and ensure that the law is respected and not to presume upon the democratic choices of the parties.

[83] Accordingly, since the DSU-P delegation was not properly constituted, the vote on the destitution must – at the safeguard stage – be considered doubtful to non-existent.

[84] This, of course, is of no salvation to either Ms. Amrov nor Mr. Altalibi since the Court has earlier found that they did not have the eligibility to hold their executive positions in any event.

iii. If so, were Ms. Cadet and Ms. Thomas legally elected to the CFSQ Executive Committee?

[85] For the reasons just given, the Court comes to the same conclusion that the election of Ms. Cadet and Ms. Thomas - from a legal perspective - is either doubtful or non-existent.

3. Irreparable Harm

[86] The Court cannot find that either side has proven an apparent right to govern. Both sides allege the paralyzing of the CFSQ as irreparable harm. They are both right.

[87] That said, the Court finds that neither of the parties have proven any irreparable harm that so much favours their side so as to justify the Court applying its discretion to issue a safeguard order to allow one side to continue in office until the hearing of the injunction (effectively *quo warranto*) proceedings on the merits. To do so would require the Court to involve itself in the democratic process – a role it does not have.

³⁴ See Exhibit P-Cadet-1 at page 4, para. 3.

[88] Moreover, given the lack of any apparent or even doubtful rights to the elected positions in issue, the Court does not want to prejudge the final decision on the merits.

4. Balance of Convenience

[89] For the reasons aforementioned, it is not necessary for the Court to consider balance of convenience in this case.

[90] Based on these reasons, it is the Court's intention to continue the present *status quo* which keeps all parties from exercising the powers of the CFSQ until the outstanding matters are resolved in a full hearing on the merits. Should matters arise in the interim which require immediate attention – the payment of bills, for example – the Court will have to be addressed in the normal course for modifications to the present judgment.

[91] While it is regrettable that the thousands of students who are members of the CFSQ must wait for the decision of this Court on the merits, the basis of any democracy – including any student democracy – is the rule of law. It is the respect for that rule of law that gives democracy – including decisions taken at meetings and the results of elections – its legitimacy and broad support.

[92] It is in all the parties' interests that the legal issues be narrowed and all legal procedures reduced to the essential. The present judgment has been written with this in mind. Moreover, future consideration may wish to be given to using scarce legal resources to "tighten up" these two *Constitutions* with a view of avoiding such legal entanglements.

[93] The goal should be the earliest hearing with a view to reducing costs, since from the proceedings as drafted, two law firms will be seeking fees from the CFSQ. For obvious reasons, the Court expresses no opinion on this matter at this juncture.

E- Conclusions

[94] **FOR THESE REASONS, THE COURT:**

[95] **ORDERS** that the parties respect this Safeguard Order which shall continue in effect until December 14, 2007 at 5:00 P.M. or at any earlier date where replaced by a judgment of this Court, including, without limitation the final judgment on the merits;

[96] **ORDERS** that all the parties named in the present procedures, including, without limitation, their agents do not enter into the premises of the CFSQ located at 1500 De Maisonneuve West, Montreal, Local B.405 from the time of the announcement of this present judgment;

[97] **ACKNOWLEDGES** that the keys for the said Local have been given to Mtre William De Merchant who will retain the said keys until the decision on the merits of the present case or December 14, 2007 at 5:00 P.M., whichever occurs earlier;

[98] **DISPENSES** with the service of the present judgment in keeping with the Consent of the attorneys and the presence of the parties at the earlier proceedings;

[99] **ALL WITH COSTS**, to follow.

(S) MARK G. PEACOCK

MARK G. PEACOCK, J.S.C.

Case no. 500-17-038173-079:

Mtre Jean Lemoine

Mtre Roseline Ouellette

Mtre Francis P. Donovan

RAVINSKY RYAN

Attorneys for Plaintiff and Mise En Cause Soshima Vera-Cadet,
Melanee Thomas, Roland Nassim, Erica Jabouin

Mtre William De Merchant,

Mtres Pierre-Louis Fortin-Legrís

OUELLET, NADON & ASSOCIATES

Attorneys for Defendants Nina Amrov -and- Mahdi Altalibi

Me Stéphane Roy

Mtre Angela Markakis

Mtre Philippe Kattan

LAPOINTE ROSENSTEIN

Attorneys for Mis En Cause Concordia Student Union
And Dawson Student Union

Mtre Patrice Blais, Attorney (self-represented)

Mis En Cause

The Post-Graduate Students' Society of McGill University Inc.

-and- Concordia University Graduate Students Association

-and- Students' Society of McGill University

Mis En Cause (not represented)

Me Line Guilbault
GILBERT SÉGUIN BROSSARD
Attorneys for La Caisse Populaire Place Desjardins (Desistment)

Dates of hearing: August 20 and 21, 2007

Case no. 500-17-038176-072:

Mtre William De Merchant
Mtre Pierre-Louis Fortin-Legris
OUELLET, NADON & ASSOCIATES
Attorneys for Plaintiffs

Mtre Jean Lemoine
Mtre Roseline Ouellette
RAVINSKY RYAN
Attorneys for Defendant George Soule, Sioshima Vera-Cadet, Melanee Thomas, Erica Jabouin, Roland Nassim

Mtre Stéphane Roy
Mtre Angela Markakis
Mtre Philippe Kattan
LAPOINTE ROSENSTEIN
Attorneys for Defendant Shanice Rose

Dates of hearing: August 20 and 21, 2007