

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

CANADIAN FEDERATION OF STUDENTS  
CANADIAN FEDERATION OF STUDENTS ONTARIO

Plaintiff

- and -

THE STUDENTS' FEDERATION OF THE UNIVERSITY  
OF OTTAWA - LA FEDERATION DES ETUDIANTS DE  
L'UNIVERSITE D'OTTAWA, INC.

Defendant

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FACTUM

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DATE: February 2, 1995

GOWLING, STRATHY & HENDERSON  
Barristers and Solicitors  
2600-160 Elgin Street  
Ottawa, Ontario  
K1P 1C3

JOHN G. JAWORSKI/TODD J. BURKE  
(613) 232-1781

Solicitors for the Plaintiff

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**PART I - THE MOTION**

1. The motion is for an injunction enjoining the Defendant, its directors, officers, servants, agents, and employees from holding a Referendum at the University of Ottawa scheduled for February 13, 14 and 15, 1995 relating to the issue as to whether the Defendant should maintain its membership in the Plaintiffs organizations.

**PART II - THE FACTS**

2. The Plaintiffs CFS and CFS Ontario are bodies corporate incorporated under the laws of Canada and the laws of Ontario. The Defendant is also a body corporate incorporated under the laws of Ontario with its Head Office located in the City of Ottawa.

**Caron Affidavit, Record, Paragraphs 2, 3 and 5**

3. The Defendant is a member of the Plaintiffs and as such is bound by the prevailing By-Laws and Standing Resolutions of the CFS and CFS Ontario.

**Caron Affidavit, Record, Paragraph 4 and 6  
Exhibits "A", "B", "C"**

4. The Defendant has scheduled a Referendum at the University of Ottawa for February 13, 14 and 15, 1995 to determine the student population's wishes with respect to the continued membership of the Defendant with the Plaintiffs.

**Caron Affidavit, Record, Paragraph 8**

5. On January 15, 1995, the Defendant's Board of Administration ratified Elections and Referendum Regulations ("Regulations"), which Regulations at clause 14(b) prohibit members of the Plaintiffs, its agents and assigns who are not members of the Defendant from campaigning on campus, soliciting votes and inciting voters to vote or abstain from voting for particular candidates or referendum questions.

**Caron Affidavit, Record, Paragraph 9, Exhibit "C"**

6. On January 31, 1995 the Plaintiff CFS's lawyers wrote to the Defendant and advised that clause 14(b) of the Regulations are in breach of Article 3.0.5(a) of the Plaintiff CFS Ontario's By-Laws, which state that representatives of the Plaintiffs, or its designates, must have the freedom to provide information to members of the student federation, which freedom includes campaigning in public student spaces, distribution of literature and equal participation in public forums and debates.

**Caron Affidavit, Record, Paragraph 10, Exhibit "D"**

7. On February 1, 1995 the Plaintiff CFS received a letter from the Defendant's lawyers stating that any person not complying with the aforementioned Regulation would be expelled from campus.

**Caron Affidavit, Record, Paragraph 11, Exhibit "E"**

8. On February 1, 1995, in response to the letter from the Defendant's lawyers, the Plaintiff CFS's lawyers forwarded a letter advising the Defendant's lawyers that clause 14(b) of the Regulations was a clear contravention of the by-laws of the Plaintiff CFS Ontario and that steps taken under clause 14(b) are in breach of the Defendant's contractual obligations with the Plaintiffs.

**Caron Affidavit, Record, Paragraph 12, Exhibit "F"**

9. On February 1, 1995 the Plaintiff CFS received from the Elections Convenor at the Defendant a letter confirming the Defendant would penalize anyone found violating the Regulations.

**Caron Affidavit, Record, Paragraph 13, Exhibit "G"**

10. On February 2, 1995 the Plaintiff CFS received a letter from the University of Ottawa confirming authorization of University Protection Services to take steps against any person infringing the Regulations under the Trespass Law of Ontario.

**Caron Affidavit, Record, Paragraph 14, Exhibit "H"**

11. The Defendant is attempting to bar the Plaintiffs from participating freely in the upcoming Referendum, contrary to the

Defendant's contractual obligations with the Plaintiffs. The Plaintiffs free participation in the Referendum is essential to the referendum process as the student population cannot be fully advised of the issues at hand without such participation.

**Caron Affidavit, Record, Paragraph 15**

12. The Plaintiffs will suffer irreparable harm should the Referendum proceed as scheduled. Campaigning has already begun at the University of Ottawa campus and as such the Defendant's refusal to allow the Plaintiffs to participate, contrary to the Defendant's contractual obligations, has jeopardised the Plaintiffs' ability to set forth its position to the students and respond to criticisms and concerns being levelled against it.

**Caron Affidavit, Record, Paragraph 16**

13. The Defendant continues to refuse to allow the Plaintiffs to participate in the Referendum campaign.

**Caron Affidavit, Record, Paragraph 17**

**PART III - THE LAW**

14. The Rules of Civil Procedure state that a failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute.

**Rules of Civil Procedure, Rule 2.01.**

15. The Court may by Order extend or abridge any time prescribed by the Rules, or an Order, on such terms as are just.

**Rules of Civil Procedure, Rule 3.02.**

16. A motion for an Order extending time may be made before or after the expiration of the time prescribed.

**Rules of Civil Procedure, Rule 3.02.**

17. In an urgent case, a motion may be made before the commencement of a proceeding on the moving party's undertaking to commence a proceeding forthwith.

**Rules of Civil Procedure, Rule 37.17.**

18. An urgent motion may be set down for hearing on any day on which a Judge or Master is scheduled to hear motions, even if counsel estimates that the hearing is likely to be more than two hours long.

**Rules of Civil Procedure, Rule 37.05(3).**

19. In the Unified Family Court or the Ontario Court (General Division) an interlocutory injunction or mandatory order may be granted or a receiver or a receiver and manager may be appointed by an interlocutory order, where it appears to a Judge of the Court to be just or convenient to do so. An interlocutory injunction or mandatory order may include such terms as are considered just.

**Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, s.101.**

20. An interlocutory injunction or mandatory order under section 101 of the Courts of Justice Act may be obtained on motion to a Judge by a party to a pending or intended proceeding.

**Rules of Civil Procedure, Rule 40.01.**

21. On a motion for an interlocutory injunction or a mandatory order, the moving party shall, unless the Court orders otherwise, undertake to abide by any Order concerning damages that the Court may make if it ultimately appears that the granting of



the Order has caused damage to the responding party for which the moving party ought to compensate the responding party.

**Rules of Civil Procedure, Rule 40.03.**

22. On the motion for interlocutory injunction the moving party need not establish a strong prima facie case. The moving party must establish that there is a substantial issue to be tried; and the granting of the relief will depend on other matters, including the threat and harm to the moving party which may not be adequately compensated by damages, the balance of convenience, and the effect of the injunction on both parties.

**Yule, Inc. v. Atlantic Pizza Delight Franchise (1968) Ltd.**  
**(1977) 35 C.P.R. (2d) 273 (Div. Ct.).**

23. When considering the issue of irreparable harm the question the Court must ask itself is whether it is just in all the circumstances that the Plaintiff should be confined to a remedy in damages.

**Yule, Inc. v. Atlantic Pizza Delight Franchise (1968) Ltd.**  
**(1977) 17 O.R. (2d) 505 (Div. Ct.).**

24. The moving party need not establish a strong prima facie case; it is sufficient to satisfy the Court that the case is not frivolous and that there are substantial issues to be tried.

**Bernard v. Valentini (1978) 18 O.R. (2d) 656 (H.C.J.).**

25. On a motion for an interim injunction, the Court ought not resolve factual issues but should dispose of the matter using the balance of convenience test as set out in Yule, Inc. v. Atlantic Pizza Delight Franchise (1968) Ltd.

Wald v. Pape (1978) 22 O.R. (2d) 163 (H.C.J.).

26. Interlocutory injunctions are granted with a view to preserving the status quo, to assure that the subject-matter of the litigation is not destroyed or irreversibly altered before trial, and to protect the right of the Plaintiff as set up in the action from being defeated by some act of the Defendant before trial.

City of London v. Talbot Square Ltd. (1978) 93 D.L.R. (3d) 364 (Ont. Div. Ct.).

27. Whether in their nature injunctions are prohibitory or mandatory, such interlocutory orders are made only with a view to assuring that the rights of the Plaintiff asserted in the action may be effectually enforced by the Court in the event that the action ultimately succeeds.

City of London v. Talbot Square Ltd. (1978) 93 D.L.R. (3d) 364 (Ont. Div. Ct.).

28. The party opposing the making of the an interlocutory injunction has the burden of proof to establish that damages would be an adequate remedy.

Maker v. Davanne Holdings Limited [1954] O.R. 935 (H.C.J.)

29. An interlocutory injunction was granted on the motion of a minority of members of a trade union local to restrain merger of their local with another union.

McMillin v. Vandell [1972] 1 O.R. 146 (H.C.J.).

30. The balance of convenience issue is not limited strictly to the parties before the Court. The Court may take into account what effect the granting or not granting of relief will have upon others and the public interest should be taken into consideration in deciding where the balance of convenience lies.

Manitoba (P.G.) v. Metropolitan Stores Ltd. [1987] 1 S.C.R. 110.

31. The Court entertained a motion for an interim injunction and the situation of urgency where the Plaintiffs had not yet commenced a proceeding but where they undertook, through their counsel, to commence the proceeding forthwith.


Warkentin v. Sault Ste. Marie Board of Education (1985) 49 C.P.C. 31 (Ont. Dist. Ct.).

**PART IV - ORDER SOUGHT**

32. The Plaintiff respectfully requests that this Honourable Court grant an interim and interlocutory injunction until the trial or other disposition of this action, restraining the Defendant, its directors, officers, servants, agents and employees from holding a Referendum at the University of Ottawa scheduled for February 13, 14 and 15 1995 relating to the issue as to whether the Defendant should maintain its membership in the Plaintiffs organizations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: February 3, 1995



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**GOWLING, STRATHY & HENDERSON**  
Barristers and Solicitors  
2600-160 Elgin Street  
Ottawa, Ontario  
K1P 1C3

**JOHN G. JAWORSKI/TODD J. BURKE**  
(613) 232-1781

Solicitors for the Plaintiff

SCHEDULE A

1. Courts of Justice Act, Section 101.
2. Rules of Civil Procedure, Rule 2.01.
3. Rules of Civil Procedure, Rule 3.02.
4. Rules of Civil Procedure, Rule 37.05.
5. Rules of Civil Procedure, Rule 37.17.
6. Rules of Civil Procedure, Rule 40.
7. Yule, Inc. v. Atlantic Pizza Delight Franchise (1986) Ltd. (1977) 35 C.P.R. (2d) 273 (Div. Ct.).
8. Bernard v. Valentini (1978) 18 O.R. (2d) 656 (H.C.J.).
9. Wald v. Pape (1978) 22 O.R. (2d) 163 (H.C.J.).
10. City of London v. Talbot Square Ltd. (1978) 93 D.L.R. (3d) 364 (Ont. Div. Ct.).
11. Maker v. Davanne Holdings Limited [1954] O.R. 935 (H.C.J.).
12. McMillin v. Yandell [1972] 1 O.R. 146 (H.C.J.).
13. Manitoba (P.G.) v. Metropolitan Stores Ltd. [1987] 1 S.C.R. 110.
14. Warkentin v. Sault Ste. Marie Board of Education (1985) 49 C.P.C. 31 (Ont. Dist. Ct.).

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THE STUDENT'S FEDERATION OF THE UNIVERSITY OF  
OTTAWA-LA FEDERATION DES ETUDIANTS DE L'UNIVERSITE  
D'OTTAWA, INC.

Court File No. 88989/95

ONTARIO COURT (GENERAL DIVISION)

Proceeding commenced at Ottawa, Ontario

FACTUM

GOWLING, STRATHY & HENDERSON  
Barristers & Solicitors  
Suite 2600  
160 Elgin Street  
Ottawa, Ontario  
K1P 1C3  
(613) 232-1781

John G. Jaworski  
Solicitors for the Plaintiff  
Canadian Federation of Students

DEPOSE A LA COUR DE L'ONTARIO  
(Par. 101) LA MUNICIPALITE REGIONALE  
D'OTTAWA-CARLETON

FEB 6 1995

THE REGIONAL MUNICIPALITY  
OF OTTAWA-CARLETON

Service of a copy  
hereof admitted  
this 6<sup>th</sup> day of

A.D. 19 95

Solicitor for

*Christine Miron*  
*for*  
*Francis L. Lamoureux*