

Q.B. No. 655 of 2006

CANADA  
PROVINCE OF SASKATCHEWAN

IN THE QUEEN'S BENCH  
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

ROBIN MOWAT

PLAINTIFF

AND:

UNIVERSITY OF SASKATCHEWAN STUDENTS' UNION

DEFENDANT

AND:

CANADIAN FEDERATION OF STUDENTS

MOVING PARTY

**NOTICE OF MOTION**

**TAKE NOTICE** that an application will be made to the presiding judge in chambers at the court house in Saskatoon, Saskatchewan, on Wednesday the 23<sup>rd</sup> day of August, 2006 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard on behalf of the Plaintiff, Robin Mowat, **FOR AN ORDER:**

1. That all of the following paragraphs be struck from the Affidavit of Gavin Gardner, sworn July 7, 2006:

(a) **Part of Paragraph 18 states:**

18. There was a clear precedent for the Executive to take a clear stand on the subject matter of referenda. In past referenda, for example, relating to the establishment of a transit pass and an infrastructure fee, the Executive and USC took an active role in endorsing and advocating for the passing of the referendum.

Should be struck because:

The statements are hearsay and argumentative.

(b) **Part of Paragraph 21 states:**

21. After seeking legal advice, on September 29, 2005, the USC passed a resolution which created a compromise respecting the oversight of the referendum.

Should be struck because:

The statement is argumentative.

(c) **Part of Paragraph 26 states:**

26. I spent some time at the "yes" information booth, also located in the tunnel, and was told by many students that the "no" team, including Robin Mowat, were spreading information that was clearly false, including that it would cost individual students \$900 per year if we joined the CFS, and that I was being bribed by the CFS. I include these statements made by third parties not for the truth of their contents (as it is clearly false information), but rather to relay statements that were made to me.

Should be struck because:

The statements are hearsay, argumentative, irrelevant and scandalous.

(d) **Paragraph 27 states:**

27. During the campaign, my office was entered and my personal notebook was stolen, altered, and electronically scanned and e-mailed to Councillors of the USSU. The matter was investigated by Campus Security but no charges were laid.

Should be struck because:

The statements are irrelevant and scandalous.

(e) **Paragraph 29 states:**

29. Throughout the campaign leading up to the Referendum, and as far back as November 2004, the *Sheaf* published articles covering the campaign and the issues relating to federation with the CFS. In other words, there was significant exposure of the

issues, what was involved with joining the CFS, and the pros and cons of federation with the CFS.

Should be struck because:

The statements are hearsay and argumentative.

(f) **Part of Paragraph 30 states:**

30. The question had been duly reviewed by the USSU solicitor.

Should be struck because:

The statement is hearsay and argumentative.

(g) **Part of Paragraph 32 states:**

32. Approximately 20% of students voted, as opposed to, for example, only 15% at the 2006 USSU General Elections.

Should be struck because:

The statement is hearsay.

2. If CFS is added as a party in this matter, that all or part of the following paragraphs be struck from the Affidavit of Lucy Watson, sworn July 5, 2006:

(a) **Paragraph 19 states:**

19. In the early months of 2005, representatives of the CFS, the CFS-S and the Council of the USSU discussed potential dates for the scheduling of the referendum. Initially, the USSU proposed that the referendum take place in March, 2005. However, the CFS and the CFS-S was concerned with the timing of the referendum given that the USSU had only been a prospective member for a short period of time.

Should be struck because:

The statements are hearsay and argumentative.

(b) **Paragraph 28 states:**

28. It is my understanding that Gardiner expedited the process for establishing the Appointments Board in order to facilitate the selection of the USSU members for the ROC. Gardiner also established the hiring process for the positions of Chief Returning Officer ("CRO") and the Assistant Chief Returning Officer.

("ACRO"). Dorinda Stahl and Martin Olszynski were hired as the CRO and ACRO respectively.

Should be struck because:

The statements are hearsay.

(c) **Part of Paragraph 31 states:**

31. The Plaintiff, Robin Mowat, is quoted in the article, expressing his concerns with the plan by the USSU to join the CFS. In addition, the article states that Mr. Mowat had attended the previous USSU Council meeting of August 25, 2005 where the decision to endorse the membership had been made.

Should be struck because:

The statements are hearsay. The appended articles do not quote Mr. Mowat.

(d) **Paragraph 35 states:**

Notice of the referendum was posted on the University of Saskatchewan Student's Union "Buzz Boards" throughout the campus of the university on September 19, 2005. The referendum dates were also published in the newspaper and on the USSU website.

Should be struck because:

The statements are hearsay.

(e) **Part of Paragraph 39 states:**

39. During the campaign, Mr. Mowat made an announcement to the meeting of the Commerce Student Society that he would pay individuals to campaign for the "No" campaign. That Commerce Student Society meeting took place on September 26, 2005.

Should be struck because:

The statements are hearsay, argumentative, irrelevant and scandalous.

(f) **Paragraph 48 states:**

48. Mr. Ring and at least two other "no" campaigners were repeatedly in violation of Section 5 of the Referendum Protocol which provides that there shall be no campaigning within thirty feet of the polling stations on election day. Mr. Ring was

observed wearing a tee-shirts emblazoned with "No CFS" standing within 15-20 feet of one of the busiest polls during the vote. After repeated requests from the poll clerks to move from the area, the clerks requested that the ROC resolve the problem. Despite the repeated requests to move outside of thirty foot zone, Mr. Ring and his colleagues refused to move.

Should be struck because:

The statements are hearsay and argumentative.

**(g) Paragraph 49 states:**

49. Mr. Ring was also asked repeatedly to stop circulating false information during the campaign. The false information included such claims as "Voting yes means higher tuition fees", "Voting yes means cafeteria prices will rise", "CFS encourages women to have abortions", "University of Saskatchewan students will be sued if they join the CFS", "Anyone who tries to get of CFS is sued", "CFS is suing Travel CUTS," "CFS is suing Brandon University Students' Union", "CFS is suing University of Regina Students' Union", "If the referendum passes, Gavin Gardiner will be receiving a job with the CFS."

Should be struck because:

The statements are hearsay, irrelevant and scandalous.

**(h) Part of Paragraph 56 states:**

56. Mr. Mowat advised the ROC when he submitted his complaints that he would initiate legal action should the ROC not accepts his complaints.

Should be struck because:

The statement is hearsay.

**(i) Part of Paragraph 76 states:**

76. The referendum was held in compliance with applicable By-Laws of CFS and CFS-S.

Should be struck because:

The statement is argumentative.

**3. Solicitor-client costs of this application.**

4. Such further and other relief as this Honourable Court may allow.

**ON THE FOLLOWING GROUNDS:**

- (a) Rule 319 of *The Queen's Bench Rules of Saskatchewan* states that, *inter alia*, Affidavits shall be confined to such facts as the witness is of his own knowledge to prove and the costs of every Affidavit which shall unnecessarily set forth matters of hearsay or argumentative manner, copies of or extracts of documents, shall be paid by the party filing the same.
- (b) Rule 327 of *The Queen's Bench Rules of Saskatchewan* states that the Court may order to be struck out from any Affidavit any matter which is scandalous, and may order the costs of any application to strike such matter to be paid as between solicitor and client.

**AND FURTHER TAKE NOTICE** that in support of this application will be read:

- (a) This Notice of Motion, with Proof of Service;
- (b) Pleadings and proceedings had and taken herein; and
- (c) Such further and other material as this Honourable Court may allow.

DATED at Saskatoon, Saskatchewan, this 15<sup>th</sup> day of August, 2006.

**ROBERTSON STROMBERG PEDERSEN**

Per: 

Jennifer D. Pereira, Solicitors for the  
Plaintiff

This document was delivered by:

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