



S-082674

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SIMON FRASER STUDENT SOCIETY

PETITIONER

AND:

CANADIAN FEDERATION OF STUDENTS, CANADIAN
FEDERATION OF STUDENTS - SERVICES, CANADIAN
FEDERATION OF STUDENTS - BRITISH COLUMBIA
COMPONENT

RESPONDENTS

PETITION TO THE COURT

THIS IS THE PETITION OF:

SIMON FRASER STUDENT SOCIETY

ON NOTICE TO:

CANADIAN FEDERATION OF STUDENTS, CANADIAN
FEDERATION OF STUDENTS - SERVICES, CANADIAN
FEDERATION OF STUDENTS - BRITISH COLUMBIA
COMPONENT

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the Petitioner applies to court for the relief set out in this Petition.

IF YOU WISH TO BE HEARD at the hearing of the Petition or wish to be notified of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the Petitioner's address for delivery, which is set out in this Petition.

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YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the Petitioner may continue this application without further notice.

Where this Petition is served on a person in British Columbia, the time for Appearance by that person is 7 days from the service (not including the day of service).

Where this Petition is served on a person outside British Columbia, the time for Appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance

1. deliver to the Petitioner
 - (a) 2 copies of a response in Form 124, and
 - (b) 2 copies of each affidavit on which you intend to rely at the hearing, and
2. deliver to every other party of record
 - (a) one copy of a response in Form 124, and
 - (b) one copy of each affidavit on which you intend to rely at the hearing

The address of the registry is:

800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

The ADDRESS FOR DELIVERY is:

Coristine Woodall
Barristers & Solicitors
660 – 220 Cambie Street
Vancouver, British Columbia
V6B 2M3

Fax number for delivery (if any): (604) 689-3292

Email address for delivery: generaldelivery@woodall.ca

The name and office address of the Petitioner's Solicitor is:

Susan M. Coristine
Coristine Woodall
Barristers & Solicitors
660 – 220 Cambie Street
Vancouver, British Columbia
V6B 2M9

The Petitioner applies for the following orders:

1. An Order under s. 71 of the *Society Act, R.S.B.C. ch. 422* and s. 272 of the *Company Act, R.S.B.C. 1996, c. 62*.
2. An Order under s. 85 of the *Society Act* rectifying any omission, defect, error, or irregularity in the procedures relating to the Defederation Referendum, if any.
3. An Order directing the Respondents to rectify all of their records that list the names of its members by deleting the name of the Petitioner and the names of all members of the Petitioner.
4. An Order cancelling the contract between the Respondents and the Petitioner concluded in 1982 by which the Petitioner agreed to collect and pay fees to the Respondents.
5. Costs of this proceeding, and
6. Such further relief as this Honourable Court deems just and appropriate.

The Petitioner will rely on Rules 10, 45 and 57 of the *Supreme Court Rules*, Sections 71 and 85 of the *Society Act*, R.S.B.C. 1996 c. 433 and Sections 272 and 200 of the *Company Act*, R.S.B.C. 1996, c. 63, and the inherent jurisdiction of the Court.

At the hearing of this Petition will be read:

1. The Affidavit of Derrick Harder, sworn 14 April 2008,
2. The Affidavit of Titus Gregory, sworn 11 April 2008,

copies of which are served herewith.

The facts upon which this Petition is based are as follows:

1. The Petitioner, the Simon Fraser Student Society (“the Petitioner”), is a society incorporated under the *Society Act* and is the local student association that represents students at Simon Fraser University (“SFU”).
2. The Respondent Canadian Federation of Students (“CFS”) is a Canadian non-profit corporation and an extra-provincially registered society in British Columbia under the *Society Act*, with offices in Vancouver at 2344 Spruce St, Vancouver, British Columbia.
3. The Respondent Canadian Federation of Students – British Columbia Component (“CFS - BC Component”) is the British Columbia branch of the CFS and is a society registered in British Columbia under the *Society Act*, with offices in Vancouver at 250- West 8th Avenue, Vancouver, British Columbia.
4. The Respondent Canadian Federation of Students – Services provides services for CFS members and is a Canadian non-profit corporation and an extra-provincially registered society in British Columbia under the *Society Act* with offices in Vancouver at 2344 Spruce Street, Vancouver, British Columbia.
5. Members of the CFS national component are automatically members of the CFS-BC Component and CFS Services, and SFU Students were members of all three organizations (collectively “the CFS”), as well as the SFSS.
6. There are two categories of members in the CFS, as set out in the CFS National Bylaws (“the CFS Bylaws”):

(a) "Voting Members" refers to the local student association at the university or college whose students are members of the CFS. Voting Members are also referred to "Local Associations" in the CFS Bylaws. In the case of SFU, the Voting Member or Local Association is the SFSS.

(b) "Individual Members" refers to the individual students at the university or college, who collectively make up the Voting Member. In the case of SFU, the Individual Members are the individual students at Simon Fraser University ("SFU Students").

7. Under the CFS Bylaws, Individual Members of a university or college can join the CFS only if they have first voted in favour of doing so in a referendum. In 1982, the members of the Petitioner voted in favour of the Petitioner and its members joining the CFS.
8. Under the CFS bylaws and practice, if the Individual Members of a college or university vote to join the CFS, that decision is implemented through a contract between the Local Association and the CFS. The Petitioner and the CFS concluded such a contract in 1982 ("the CFS-SFSS Contract").
9. The Respondents do not have the power to amend the CSF-SFSS Contract unilaterally. Any provision in the CFS Constitution or Bylaws that purports to amend the CFS-SFSS Contract unilaterally is without force or effect.
10. The CFS-SFSS Contract requires the Petitioner to abide by all provisions of the CFS Bylaws of general application, but it does not require the Petitioner to abide by any CFS Bylaw that conflicts with any provision of the Constitution, Bylaws and rules of the Petitioner concerning referenda. Paragraph 5 of the CFS-SFSS Agreement states the following:

The Member institution [the Petitioner] shall conduct all referenda required by the By-Laws of the Federation in the same manner as any other referendum it may conduct.
11. The CFS-SFSS Contract also included the following implied terms:

(a) the CFS and all persons appointed by the CFS would conduct themselves reasonably and in good faith in all dealings with the Petitioner generally;

(b) the CFS and all persons appointed by the CFS would conduct themselves reasonably and in good faith in relation to any referendum concerning the membership of the Petitioner in the CFS;

(c) where the CFS or any person appointed by it had discretion concerning any act or decision concerning a referendum, that discretion would be exercised in a manner that does not conflict with the Constitution, Bylaws or rules of the Petitioner concerning referenda;

(d) if the CFS amended its Bylaws, it would only do so in accordance with the CFS Constitution and Bylaws and the *Society Act*, and would not do so in a manner that conflicted with the Constitution, Bylaws or rules of the Petitioner concerning referenda; and

(e) if any provision of the Constitution or Bylaws of the CFS concerning referenda conflicted with the Constitution, Bylaws, rules or historic practices of the Petitioner concerning referenda, the Constitution, Bylaws, rules and historic practices of the Petitioner would prevail.

12. The Petitioner, in its capacity as a member of CFS, had a reasonable expectation that:

(a) the CFS and all persons appointed by the CFS would conduct themselves reasonably and in good faith in all dealings with the Petitioner generally;

(b) the CFS and all persons appointed by the CFS would conduct themselves reasonably and in good faith in relation to any referendum concerning the membership of the Petitioner in the CFS;

(c) the CFS would conduct itself in a manner consistent with the CFS-SFSS Contract, and

(d) the CFS would recognize the results of any referendum conducted in accordance with the Petitioner's Constitution, Bylaws and rules and historic practices governing referenda.

13. A term of the CFS-SFSS Contract requires the Petitioner to collect student membership fees and pay those fees to the CFS. The fees that the Petitioner pays to the CFS are collected by SFU, acting on behalf of the Petitioner, from the Petitioner's members. During 2007-2008, SFU students paid \$470,524.08 in membership fees to the CFS. The obligation of the Petitioner to collect fees for the CFS (or to cause SFU to collect fees on behalf of the Petitioner for the CFS) is contingent on the Petitioner remaining a member of the CFS.
14. Under the Constitution and Bylaws of the Petitioner, and the laws of general application to societies and student societies, the Petitioner does not have the legal capacity to collect fees from students on behalf of the CFS or pay those fees to the CFS except in accordance with a decision of a student referendum conducted pursuant to the Constitution, Bylaws, rules and historic practices of the Petitioner. Any contract under which the Petitioner agreed that fees collected from SFU students would be collected and paid to the CFS, or would continue to be collected from students and paid to the CFS, in violation of its own Constitution and Bylaws, or laws of general applications to societies and/or student societies, would be void *ab initio*.
15. On 18-20 March 2008, the SFU students voted on five referendum questions, including the following question concerning membership in the CFS:

Are you in favour of maintaining membership in the Canadian Federation of Students?

(the "Defederation Referendum")

16. The SFU students also voted on the following question concerning the allocation of fees that would otherwise have been paid to the CFS should the Petitioner cease to be a member of the CFS:

If the Simon Fraser Student Society ceases to be a member of the Canadian Federation of Students, do you agree that the former CFS membership fees of \$7.64 per semester for full-time students and \$3.82 for part-time students should be redirected into a Society Development Fund which will result in no overall fee increase for students?

17. Quorum for the referendum was 5% of the Petitioner's total membership. A total of 4490 (or 17 %) of the Petitioner's members qualified to vote did vote in the Defederation Referendum. Of those, 2676 (or 66.97%) voted not to remain in the CFS, 1469 voted to remain in the CFS, and 42 ballots were spoiled or blank.
18. This represents a high turnout for SFU voters. In 2007, only 1325 students turned out to vote in the general election and referendums, and in 2006 only 1938 turned out to vote.
19. Although the CFS has not commenced any legal challenge with respect to the Defederation Referendum, it has refused to accept its outcome and claims that it is not binding on either the CFS or the Petitioner's membership. In a document on its "votecfs" web site called "Myths and Facts", the CFS states the following:

The Executive of the Simon Fraser Student Society (SFSS) conducted an internal straw poll that broke the democratically set rules of the SFSS [sic]. Prior to the poll, the SFSS Executive engaged in a six month long campaign of lies and misinformation, almost identical to the campaign the KSA Executive conducted. The vote does not change Simon Fraser students' membership in the CFS. All it does is provide information to the Executive of the SFSS.

20. The CFS has acted in an oppressive manner, in a manner that is unfairly prejudicial to the Petitioner, by:
 - (a) acting in bad faith in relation to the Defederation Referendum;
 - (b) acting in relation to the Defederation Referendum a manner calculated to infringe the Constitution, Bylaws, rules and historic practices of the Petitioner concerning referenda;
 - (c) refusing to recognize the results of the Defederation Referendum; and

(d) refusing or neglecting to rectify its records to reflect the fact that the Petitioner and its members are no longer members of the Respondents.

21. The Petitioner estimates that the hearing of the Petition will take three days.

15 April 2008.
Dated

S. Cristine
Solicitor for the Petitioner

THIS PETITION is filed and delivered by Susan M. Cristine, of the firm Cristine Woodall, Barristers & Solicitors, whose place of business and address for service is 660 – 220 Cambie Street, Vancouver, British Columbia, V6B 2M9. Telephone: (604) 689-3242. Facsimile: (604) 689-3292, email address for delivery is generaldelivery@woodall.ca