

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

**OUTLINE**

**PART I**

The following relief will be sought at the hearing:

1. An Order pursuant to section 71 of the *Society Act* and sections 200 and 272 of the *Company Act* that the Respondents the Canadian Federation of Students, Canadian Federation of Students - Services, and Canadian Federation of Students - British Columbia Component (collectively “the CFS”) be wound up or, in the alternative, that the CFS rectify their documents by removing the Simon Fraser Student Society (“the SFSS”) from their membership list, and amending their records to reflect that the SFSS is not longer a member of the CFS;
2. Costs of this proceedings; and
3. Any other remedies the Court may consider appropriate.

**PART II**

4. The SFSS and individual students at Simon Fraser University have been members of the CFS since 1982.

5. The SFSS is a society incorporated under the *Society Act* and is the local student association that represents students at Simon Fraser University ("SFU"). Its purposes, as set out in its Constitution and Bylaws, include representing and advocating for the interests of its student members.
6. The Respondent Canadian Federation of Students is a Canadian non-profit corporation, and is an extra-provincially registered society in British Columbia under the *Society Act*. One of the functions of the CFS is to advocate political positions in the name of its members.
7. The Respondent Canadian Federation of Students – British Columbia Component is the British Columbia branch of the CFS and is a society registered in British Columbia under the *Society Act*.
8. The Respondent the 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*.
9. 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 CFS organizations, as well as the SFSS, prior to 20 March 2008 when they voted to leave the CFS.
10. As members of the CFS the SFU students paid membership fees to the CFS, which were collected by SFU. During 2007-2008, SFU students paid \$470,524.08 in membership fees to the CFS.
11. There are two categories of members in the CFS, as set out in the CFS National Bylaws ("the CFS Bylaws"):
  - (a) "Voting Members" - the local student association at the university or college whose students are members of the CFS and which is entitled to vote at CFS meetings. 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" - 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").
12. The CFS Bylaws state that CFS members can end their membership in the CFS ("Defederate") by way of a referendum on defederation ("Defederation Referendum") and, further, that the Individual Members of the Local Association have sole authority to initiate the Defederation Referendum by petition signed by at least 10% of the Individual Members and delivered to the National Executive of the CFS, along with notice of the dates and times of the Defederation Referendum.
  13. On 24 August 2007, the SFSS delivered a petition signed by 10.75% of its Individual Members requesting a Defederation Referendum. It also delivered a Notice setting out the dates and times of the Defederation Referendum.
  14. The Defederation Referendum proceeded on 18-20 March 2008, at the same time as the SFSS general elections and other referendums. The question posed to the voters concerning Defederation was the following:
 

*Are you in favour of maintaining membership in the Canadian Federation of Students?*
  15. Representatives of both sides of the debate -- those in favour of remaining in the CFS and those in favour of Defederation -- participated actively in the campaign leading up to the vote.
  16. Quorum for referendums is 5%; i.e. the results will not be binding unless 5% of the eligible voters cast their ballots. In the case of the Defederation Referendum, 4,490 or 17% of the eligible voters cast their ballots and 66.97% of them voted in favour of Defederation.

17. The SFU Independent Electoral Commission certified the results of the Defederation Referendum.
18. None of the persons who voted in the Defederation Referendum, or who were eligible to vote in the Defederation Referendum have legally challenged its results.
19. The CFS has not has not commenced any legal proceedings to set aside the results of the Defederation Referendum. It has simply ignored them, continued to list the SFSS as a member of the CFS and demand that the SFSS pay membership fees.
20. If, as anticipated, the CFS alleges irregularities in the Defederation Referendum process at the hearing of this Petition as justification for its conduct, the SFSS's position is that those allegations are without foundation or, in the alternative, relies on sections 85 of the *Society Act*. In addition, it is the SFSS's position that unless and until a successful application is brought to set aside the results of the Defederation Referendum, the results of that vote stand and it is not open to the CFS to collaterally attack their legality.

### **The Oppression Remedy**

21. The oppression remedies set out in sections 272 and 200 of the *Company Act* are available to societies in British Columbia by virtue of section 71 of the *Society Act* which states:

*71(1) Despite the repeal of the Company Act R.S.B.C. 1996, Part 9 of that Act continues to apply to a society and an extraprovincial society as though Part 9 of that Act had not been repealed.*

22. Section 272 of the *Company Act*, which is found in Part 9 of that *Act*, incorporates s. 200 of the *Act*.

*272. If an application for an order to wind up a company is made by a member on the ground that it is just and equitable, the court, if it is of the opinion that the applicant is entitled to relief either by winding up the company or under section 200, either may make and order for winding up or make an order under section 200 as the court consider appropriate.*

23. Section 200 of the *Company Act* states the following:

*200 (1) A member of a company may apply to the court for an order on the ground*

*(a) that the affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner oppressive to one or more of the members, including the applicant, or*

*(b) that some act of the company has been done, or is threatened, or that some resolution of the members or any class of members has been passed or is proposed, that is unfairly prejudicial to one or more of the members, including the applicant.*

*(2) On an application under subsection (1), the court may, with a view to bringing to an end or to remedying the matters complained of, make an interim or final order it considers appropriate, and, without limiting the generality of the foregoing, the court may*

*(a) direct or prohibit any act or cancel or vary any transaction or resolution,*

....

*(j) direct rectification of any record of the company.*

24. The remedies set out in sections 272 and 220 of the *Company Act* are available to members of societies in British Columbia.

*Buckley v. British Columbia Teacher Federation (BCTF), [1990] B.C.J. No. 491 (S.C.)*

*Lee v. Lee's Benevolent Assn. of Canada, [2007] B.C.J. No. 1212 (S.C.)*

25. Oppressive remedies have been defined as conduct that is "burdensome, harsh and wrongful" or which "lacks probity and fair dealing" in the affairs of a company to the prejudice of some portion of its members. It is concerned with the manner in which the majority has conducted itself and not simply whether it has violated the member's legal or proprietary rights:

*The court is concerned not only with the narrow question whether there has been a breach of the provisions of the Companies Act or*

*of the Articles of Association of the company, but with the wider question whether the majority had dealt honestly and fairly with the minority in conducting the affairs of the company, or in exercising the powers of the directors.*

*Paley v. Leduc, [2002] B.C.J. No. 2845 (S.C.), citing O'Neill v. Dunsmuir Holdings (New Westminster) Ltd. [1980] B.C.J. No. 47 (S.C.)*

26. Unfairly prejudicial conduct is conduct in which a party's rights, interests or reasonable expectations are disregarded to the party's detriment.

*Whereas the focus with regard to "oppression" is on the character of the conduct complained of, it is apparent from the judgment of Lord Wilberforce [in Ebrahimi v. Westbourne Galleries, [1972] 2 All E.R. 492 (H.L.)] that the focus with regard to the "just and equitable" provision (in our Act "unfairly prejudicial") is on the effect of the injured shareholder of the impugned conduct.*

*Nystad v. Harcrest Apt. Ltd (1986), 3 B.C.L.R. (2d) 39 (B.C.S.C., cited in Paley, supra, at para 32*

27. The reasonable expectation of the members is the starting point for an application pursuant to sections 200 and 272 of the *Company Act*.
28. In the present case, the CFS's conduct has been both oppressive and unfairly prejudicial to the SFSS and its Individual Members.
- (a) It has acted wrongfully and in bad faith by failing to comply with its own bylaws governing Defederation, with intent to prevent the SFSS and its Individual Members from exercising their lawful right to defederate and cease to be members of CFS.
  - (b) It has acted wrongfully and in bad faith by ignoring its legal obligation to the SFSS and its Individual Members to accept the results of the Defederation Referendum.
  - (c) It has acted wrongfully and in bad faith by refusing to remove the SFSS from its list of members and amending its documents to reflect that the SFSS and its Individual Members are no longer members of the CFS.

29. That unfair and oppressive conduct has caused the SFSS and its individual members prejudice by:

- (a) Continuing to list them as members of the CFS, an organization they are no longer part of.
- (b) Having the CFS purporting to represent and speak on behalf of them and in their name when the CFS has no authority to do so.

Dec 15 / 2008  
Dated

  
Solicitor for the Petitioner

THIS Outline was prepared and delivered by Susan M Coristine of the firm Coristine Woodall, Barristers & Solicitors, whose place of business and address for service is 660-220 Cambie St., Vancouver, B.C., V6B 2M9, fax: (604) 689-3292.