

Court File No. 14-62744

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN FEDERATION OF STUDENTS and  
CANADIAN FEDERATION OF STUDENTS - ONTARIO

Applicants

and

UNIVERSITY OF TORONTO GRADUATE STUDENTS' UNION

Respondent



APPLICATION UNDER RULE 14 OF THE RULES OF CIVIL PROCEDURE

**NOTICE OF APPLICATION**

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on March 20, at 10:00 a.m., at 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO

OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID  
MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date DEC 02 2014

Issued by

A Goodwin-Rusch  
Local Registrar

Address of

court office: 161 Elgin Street  
Ottawa ON K2P 2K1

TO: University of Toronto Graduate Students' Union  
16 Bancroft Ave  
Toronto, ON  
M5S 1C1

## APPLICATION

1. The applicants make application for:
  - (a) A declaration that quorum as required by the Canadian Federation of Students' Bylaws (the "CFS Bylaws") was not reached on the vote conducted on November 24-28, 2014 with respect to the issue of continued membership of the University of Toronto Graduate Students' Union ("UTGSU") in the Canadian Federation of Students ("CFS");
  - (b) A declaration that the UTGSU continues to be a member of the CFS;
  - (c) A declaration that quorum as required by the Canadian Federation of Students-Ontario Bylaws (the "CFS-O Bylaws") was not reached on the vote conducted on November 24-28, 2014 with respect to the issue of continued membership of the UTGSU in the Canadian Federation of Students-Ontario ("CFS-O");
  - (d) A declaration that the UTGSU continues to be a member of the CFS-O;
  - (e) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (f) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*;
  - (g) the costs of this proceeding, plus all applicable taxes; and
  - (h) Such further and other relief as to this Honourable Court may seem just.

2. The grounds for the application are:

**The Parties**

- (a) The CFS is a federal non-share capital corporation. The CFS has a membership of approximately 600,000 individual university and college members;
- (b) The CFS is the largest national union for students attending post-secondary education institutions in Canada;
- (c) The CFS-O is a provincial component of the CFS. The CFS-O is a separate entity from the CFS;
- (d) The UTGSU is a not-for-profit corporation incorporated under the laws of Ontario;

**UTGSU's Membership in the CFS and CFS-O**

- (e) The UTGSU is a local association member of the CFS and the CFS-O;
- (f) The CFS Bylaws set out the rights and responsibilities of CFS members;
- (g) At all times material to this application, the CFS and its member local associations were regulated by the CFS Bylaws, as amended from time to time;
- (h) Similarly, the CFS-O Bylaws set out the rights and responsibilities of CFS-O members;

- (i) At all times material to this application, the CFS-O and its member local associations were regulated by the CFS-O Bylaws, as amended from time to time;
- (j) The CFS and CFS-O Bylaws are binding contractual documents to which the UTGSU must adhere;

**The Vote on Continued Membership in the CFS and the CFS-O**

- (k) In Fall 2013, an individual graduate student member at the University of Toronto submitted a petition to both the National Executive of the CFS and the Executive Committee of the CFS-O requesting a vote on the question of continued membership of the UTGSU and its individual members;
- (l) A third party, Deloitte, reviewed the names and student numbers on the petitions against a membership list. After extensive review and internal testing, Deloitte determined that the petitions did not meet the minimum thresholds set out in the CFS and CFS-O Bylaws;
- (m) The National Executive of the CFS and Executive Committee of the CFS-O determined that the petitions were not in order and, therefore, the referendum process had not been triggered;
- (n) However, Deloitte's findings and the decision of the National Executive and Executive Committee with regard to the validity of the petitions were subsequently challenged by the UTGSU by way of legal proceedings;

- (o) The litigation commenced by UTGSU was contentious including the exchange of eight (8) affidavits and cross examinations spanning over three (3) days;
- (p) In the context of the litigation, additional investigations were undertaken by Deloitte. Following these additional investigations, the litigation resulted in a settlement;
- (q) As a term of the settlement, the CFS and the CFS-O proceeded with a vote on membership amongst the graduate students at the University of Toronto;

#### **The Bylaws Require Quorum**

- (r) Bylaw 1, Article 6 of the CFS Bylaws provides the requirements and process for a vote on decertification. Article 6(h) provides:

- h. Quorum

- Quorum for any vote on decertification shall be that of the member local association or ten percent (10%) of the individual members of the local association, whichever is higher.

- (s) Bylaw 2, Article 5 of the CFS-O Bylaws provides the requirements and process for a vote on decertification from the CFS-O. Article 5(d) provides:

- d. Quorum

- Quorum for the vote shall be that of the member local association or ten percent (10%) of the individual members of the local association, whichever is higher.

- (t) The Bylaws of the UTGSU do not have any provision for quorum relating to voter turnout at a referendum.
- (u) Accordingly, quorum for a vote on decertification from the CFS and CFS-O was 10% of all individual members of the local association as provided in the CFS and CFS-O Bylaws;

**Quorum was not Reached**

- (v) A vote on UTGSU's continued membership in the CFS and the CFS-O proceeded on November 24-28, 2014;
- (w) On November 29, 2014, the Chief Returning Officer ("CRO") who oversaw this vote found that:

According to the University of Toronto Administration, the total number of eligible voters was 16,056, putting QUORUM at 1606.

The total votes were 1586; with 12 double enveloped ballots left to be verified by the Administration. If all the envelopes are verified by the Administration the total vote count will be 1598. The total number of voters was verified by the poll clerk sheets, as well as the final tally of all ballots. The only caveat to this is that at one station, on one particular day, there was 1 (one) more ballot cast than appeared on the poll clerks list. This vote was counted and is part of the total noted above.

It should be immediately apparent that in any event, QUORUM was not reached as per the Bylaws governing the referendum.

- (x) As quorum of 10% was not reached on this vote, the UTGSU continues to be a member of the CFS and the CFS-O;
- (y) In a report, the litigation committee of the UTGSU has stated that all ballots "were counted accurately and fairly". This same report does not argue that the 10% quorum was in fact reached;

- (z) Rule 14 of the *Rules of Civil Procedure*; and
  - (aa) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit of Lucy Watson sworn December 2, 2014;
  - (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 2, 2014

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CANADIAN FEDERATION OF STUDENTS - ONTARIO et al.

- and -

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**ONTARIO**  
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**PROCEEDING COMMENCED AT**  
**OTTAWA**

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