IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *University of Victoria Students' Society v. Canadian Federation of Students ,* 2011 BCSC 122

Date: 20110201
Docket: 10-4638
Registry: Victoria

Between:

University of Victoria Students' Society and José Barrios

Petitioners

And:

Canadian Federation of Students

Respondent

Before: The Honourable Mr. Justice Macaulay

Reasons for Judgment

Counsel for the Petitioners:	D. Borins
Counsel for the Respondent:	M. Palleson
Place and Date of Hearing:	Victoria, B.C. January 6 and 7, 2011
Place and Date of Judgment:	Victoria, B.C. February 1, 2011

[1] The petitioners, University of Victoria Students' Society ("UVSS") and José Barrios, a student at the University of Victoria ("UVIC"), seek by petition to challenge the decision of the National Executive of the respondent, Canadian Federation of Students ("CFS"), to not accept Barrios' petition calling for a referendum at UVIC respecting continued membership in the CFS (the "petition").

[2] Principally at issue are the interpretation and application of the relevant CFS bylaws to the process and a procedural issue whether the UVSS and Barrios should have proceeded by notice of civil claim. Underlying all the claims is whether the National Executive was entitled to reject the petition for non-compliance with the bylaws.

[3] As a student at UVIC, Barrios is a mandatory fee paying member of the CFS. The CFS is a national post-secondary student lobbying organization consisting of various post-secondary student associations from across Canada including the UVSS. The CFS is a registered not-for-profit corporation under Part II of the *Canada Corporations Act,* R.S.C. 1970, c. C-32, and is an extra-provincially registered society in British Columbia.

[4] All undergraduate students who are enrolled at UVIC are automatically members of the UVSS. The UVSS is a registered society under the *Society Act,* R.S.B.C. 1996, c. 433 (the "Society Act"). There are 20 voting members on the UVSS board of directors, all of whom are elected by the undergraduate student body.

[5] The CFS has two types of members: post-secondary associations like the UVSS ("voting members") and individual students attending at each post-secondary institution where the student association is a member of the CFS such as Barrios ("individual members").

[6] The UVSS has been a member of the CFS since 1985. Individual undergraduate students, like Barrios, pay about $8 in individual CFS membership

fees each academic year. During the 2009/2010 academic year, UVIC collected and remitted to the CFS $241,491.78 in fees.

[7] Because membership in the CFS is not voluntary, individual students cannot opt out of paying fees. Nor can voting members voluntarily resign from the CFS. Instead, under the CFS bylaws, the only process for terminating the membership of both individual and voting members in the CFS requires a collective vote to end their membership (the “referendum”).

[8] At the relevant time, the CFS bylaws provided that the individual members have the “sole authority” to trigger a referendum on leaving the CFS by submitting a petition signed by at least ten percent of the individual members of the CFS. Bylaw 1.3.a.iii states:

> The individual members of the Federation collectively belonging to a member local association will have the sole authority to initiate a referendum on continued membership, as described in Section 6 of this Bylaw, by submitting to the National Executive of the Federation a petition, signed by not less than ten percent (10%) of the individual members of the association, calling for the referendum.

The rules and procedure relating to the petition were governed by Bylaw 1.6.a. It states:

> As per Bylaw 1, section 3.a.iii a petition calling for a referendum shall be signed by no less than ten percent (10%) of the individual members of the member local association and delivered to the Nation Executive of the Federation.
>
> The petition shall be worded as follows: “We the undersigned, petition the National Executive of the Canadian Federation of Students to conduct a referendum on the issue of continued membership in the Canadian Federation of Students.”

Upon receipt of a petition, Bylaw 1.6.b.i required the National Executive to “review the petition to determine if it is in order.”

[9] The review of the petition was to be completed within 90 days of receipt of the petition. Bylaw 1.6.b.i states:

> Within 90 days of receipt of the petition described in Bylaw 1, Section 6.a, the National Executive will review the petition to determine if it is in order and, if it is, in consultation with the member local, will schedule a referendum that is not less than 60 days and not more than 90 days following, notwithstanding the provisions in Section 6.b.ii and subject to the following conditions …

The bylaw goes on to restrict the period of time during which the referendum may proceed. In any academic year, it cannot be held later than April 15.

[10] In October 2009, Barrios and some other undergraduate students prepared and circulated a petition calling for a referendum to be held on the question of continued membership in the CFS (the "petition"). The wording of the petition conformed to the CFS bylaw set out above.

[11] After signatures were collected on the petition, the UVIC Office of the Registrar (the "Registrar") reviewed them and gave a letter to Barrios dated October 23, 2009, confirming that the signatures were valid and amounted to over ten percent of the UVIC undergraduate student population. In fact, the petition had 1,972 signatures of which 1,892 were valid. The valid signatures constituted 11.4 percent of the 16,596 undergraduate students registered at UVIC in the fall of 2009.

[12] On November 5, 2009, Barrios served the CFS with the following: a letter advising of the referendum initiative; a notarized copy of the petition; and a copy of the registrar's letter.

[13] In October 2009, while Barrios and others were collecting signatures on the petition, another group of students were collecting signatures on another petition (the "second petition"). The second petition was entitled: "KEEP THE STUDENT MOVEMENT STRONG" and was directed to the board of the UVSS. The preamble states:

> I believe that the University of Victoria Students' Society should continue to work with students across BC and Canada through the Canadian Federation of Students to:
>
> - lobby for reduced tuition fees and student debt
> - demand environmentally sustainable campuses
> - fight student aid cuts

- improve transit services
- get students services like a FREE International Student Identify Card
- continue to work on campaigns such as “Where’s the Justice for Aboriginal Peoples” and the “No Means No” anti-date rape campaign

I believe that none of these objectives can be accomplished when students are divided.

Therefore, I call on the board of the UVIC Students’ Society to defend student unity and to continue to fight for student rights through membership in the Canadian Federation of Students.

I do not want my name to be counted towards any petition to put to question membership in the Canadian Federation of Students (and the Canadian Federation of Students − British Columbia). [Emphasis added.]

[14] On November 13, 2009, the second petition was forwarded to the National Executive of the CFS together with a letter that read, in part:

I am writing to inform you that 2,913 members of the University of Victoria Students’ Society (UVSS), Local 44 of the Canadian Federation of Students, have signed a petition calling for national student unity through membership in the CFS. I respectfully submit this petition for your full consideration in light of recent events at the University of Victoria.

It is my understanding that you are in receipt of a petition signed by what on the surface appears to be the minimum 10% of members of the UVSS required to initiate a referendum on continued membership in the Canadian Federation of Students. I feel compelled to inform you that the petition drive was conducted in a less than transparent manner and many of the organizers of that petition misinformed members as to the goal of the petition, as well as to the actions and role of the Canadian Federation of Students.

…

In light of the potential consequences of this misinformation campaign, myself and other individual members coordinated the circulation of the attached petition to properly inform members about the CFS and to provide any members who signed the petition to initiate a referendum as a result of misinformation with an opportunity to have their names removed.

I respect the right of members to discuss and debate our membership in our national student organization, and ultimately to initiate a referendum process if there is true dissatisfaction on campus. However, it is clear to me and the thousands of others who signed the attached petition that the drive to hold a referendum was not borne by grassroots dissatisfaction with membership, but rather by a small group of individuals with political ends that are antithetical to the goals of a united student movement. These individuals are deliberately misinforming members to achieve their personal ends. As such, I urge you to take the attached petition into consideration when deliberating on the petition to initiate a referendum on the continued membership of Local 44 members. In particular, I urge you to respect the second clause of this

> petition and remove the names of individuals who have signed the petition for student unity from the petition to initiate a referendum, wherever applicable.

In fact, the second petition had 2,846 signatures rather than 2,913 as set out in the above letter. By letter dated February 11, 2010, the Registrar confirmed that 2,180 of the 2,846 were valid, representing 12.9 percent of the undergraduate students (the "second Registrar's letter").

[15] In the meantime, on January 14, 2010, the CFS wrote to the UVSS advising, in part, that the original "petition appears to have been signed by at least ten percent of the Association's individual members and, therefore, appears to meet the minimum requirement set out in the Federation's bylaws." At the same time, the CFS advised that it had received the second petition and that it "needed to verify if the [second] petition has been signed by the required minimum number of individual Federation members belonging to the University of Victoria Student's Society" (emphasis added).

[16] Ultimately, after receiving the second Registrar's letter already referred to, the National Executive reviewed the two petitions and concluded that 340 validated names appeared on both petitions. Subtracting those signatures from the original petition left, according to the National Executive, 1,552 valid signatures or 9.35 percent of the total UVIC undergraduate student population.

[17] On March 24, 2010, well after the expiry of the 90 day deadline set out in the bylaws, and less than one month before the end of the Winter session at UVIC, the CFS wrote to Barrios to advise that it had determined that the petition had not reached the ten percent threshold set out in the bylaws and it was "therefore deemed invalid."

[18] The CFS did not explain in the letter how the National Executive reached its conclusion but there is no doubt that it relied on the second petition to do so. Lucy Watson, a director of the CFS, deposed:

> Although there was no provision for a "counter-petition" [the second petition] in the Federation By-Laws, it has always been the practice of the Federation

> to take into account the stated intention of individual members to have their names removed from a petition seeking a referendum on continued membership …

Watson went on to depose that the document expressing the stated intention had to disclose the necessary information so that the signatures could be validated as set out above. Watson was correct in deposing that the CFS bylaws did not include any reference to a "counter" or "second" petition.

[19] She was, however, incorrect insofar as she appeared to suggest that there was a previous practice of receiving and considering such petitions. In fact, the use of "second" petitions similar to the one in the case at bar surfaced for the first time on several campuses, including UVIC, in the fall of 2009 as a response to the attempts by organizers like Barrios to obtain sufficient signatures on a petition calling for a referendum on continued CFS membership.

[20] In a later affidavit, Watson explained that her reference to a previous practice only related to the fall of 2009:

> Prior to the fall of 2009, the Federation had never received a counter-petition wherein members had requested that their names be removed from a petition seeking a referendum on continued membership. … However, it has been the practice of the Federation since that time to take into account the stated intention of its members.

There was, accordingly, no existing practice at the material time.

[21] Although it has no bearing on the outcome of the present case, the CFS has since amended its bylaws to expressly permit the use of second petitions to countermand otherwise valid signatures on the original petition. Whether or not those amendments are valid is beyond the purview of this proceeding. It is relevant to the present application only insofar as it demonstrates that the bylaws in effect at the material time made no allowance for a second petition.

[22] Accordingly, individual members like Barrios seeking to obtain sufficient valid signatures on a petition in the fall of 2009 would not reasonably have expected that otherwise valid signatures on a petition were subject to being withdrawn. It is

impossible now to determine if having that information would have impacted Barrios' decision to stop seeking more signatures when he did.

[23] Even though almost every decision referred to by counsel dealing with issues of interpretation of the bylaws of an association arose out of a proceeding commenced by petition, the CFS contends that there is no legal basis for using the petition process to seek the relief sought in this proceeding.

[24] As counsel for the CFS points out, unless the *Supreme Court Civil Rules,* B.C. Reg. 168/2009, O.C. 302/2009, otherwise provide, every proceeding must be started by filing a notice of civil claim. See Rule 2-1(1). Filing a notice of civil claim leads, in the usual course, to the full panoply of pre-trial processes required for an action, including oral and documentary discovery, followed by a trial at which witnesses are expected to testify under oath. It goes without saying that the cost and delay associated with filing a notice of civil claim can be considerable.

[25] Rule 2-1(2) requires the party seeking relief to file a petition rather than a notice of civil claim if:

> …
>
> (c) the sole or principal question at issue is alleged to be one of construction of an enactment, will, deed, oral or written contract or other document;

[26] The CFS submits that the sole or principal question at issue here cannot be said to be one of construction of a "written contract or other document." I disagree.

[27] It is correct that the petition seeks a number of orders but, on examination, all relate to the principal question, namely whether the National Executive of the CFS was entitled under the bylaws in effect at the material time to reject the petition calling for a referendum at UVIC respecting continued membership in the CFS. The answer to that question requires me to interpret the bylaws and to consider whether the National Executive acted outside the bylaws in considering and acceding to the second petition in reaching their conclusion that the petition was not in order.

[28] The UVSS and Barrios seek the following orders:

> (a) A declaration that the Petition, as defined below, seeking a referendum on the question of UVSS's continued membership in the Respondent Canadian Federation of Students ("CFS") is valid and in order;
>
> (b) A declaration that the Respondent's refusal to find the Petition in order is a breach of its bylaws and the binding contractual relationship between the Respondent and its members;
>
> (c) A declaration that the CFS Counter-Petition, as defined below, is not in compliance with the CFS bylaws, and is of no force or effect in connection with the validity of the Petition;
>
> (d) An order requiring that a referendum on the question of the UVSS's and the University of Victoria undergraduate students' continued membership in the CFS be held on January 31, February 1, 2, 3 and 4, 2011 in accordance with the CFS bylaws as they were November 4, 2009;
>
> (e) An order requiring the CFS to appoint two members to the Referendum Oversight Committee forthwith;
>
> (f) Costs of this Application; and
>
> (g) Such further and other relief as counsel may advise and to this Honourable Court seems just.

The CFS attempts to characterize the claim as one for specific performance of a contract and refers to authority for the proposition that such claims are inappropriate for petition proceedings.

[29] I need not set out the detail of the decisions respecting specific performance claims. I have no doubt that they are correct insofar as the enforceability of real estate transactions are concerned but they do not apply directly to the present circumstances.

[30] The CFS also relies on *Wang v. British Columbia Medical Association,* 2010 BCCA 43. There, the Court of Appeal dismissed Wang's petition without prejudice to his right to commence an action (under the previous Rules of Court) respecting his claim for breach of contract. The petition sought declaratory and injunctive relief but was presented to the Chambers judge as an application for oppression remedies even though the judge properly determined that oppression remedies were not

available in the circumstances. The Chambers judge then exercised her discretion to allow the matter to proceed as an action and granted the relief sought.

[31] The Court of Appeal found that, in the result, the parties never joined issue on the pleadings and there were, in any event, “hotly contested issues of fact and law” yet “the judge appears to have made findings of credibility” (para. 67). In the present case, there are not, in my view, any significant contested issues of fact and the parties have clearly joined issue on the principal question as I have described it.

[32] Some of the relief claimed may be viewed as consequential or as a form of rectification. The CFS contends that such remedies are not available in a petition proceeding. Without commenting on the specific relief sought here, I do not accept that general proposition.

[33] Neither counsel addressed the point but the extra-provincial registration of the CFS in this province brings it within the *Society Act*, *supra*. Section 85 gives the court broad discretionary powers to intervene, including to give ancillary or consequential directions, if there has been a failure to follow the constitution or bylaws of a society.

[34] As well, I later discuss the private administrative law principles that apply here. It is clear that the court is entitled to intervene in some circumstances to set aside decisions made within private associations. It necessarily follows that the court must also have the power to make ancillary or consequential directions.

[35] Counsel for the UVSS and Barrios referred to the mandatory nature of Rule 2-1(2)(c). It states a person must file a petition if the claim falls within the circumstances set out and removes the discretion to proceed by another means that the previous Rules of Court allowed.

[36] Counsel for the petitioners also relies on *Pazitch v. British Columbia Teachers’ Federation*, [1977] B.C.J. No. 679 (S.C.), decided under the old Rules of Court. There the proceeding was commenced by petition under the *Judicial Review Procedure Act,* R.S.B.C. 1996, c. 241. The court determined that the matter at issue

related to the construction of a document and went on to rule on the proper construction of the bylaws at issue and whether to grant consequential relief. Although the court ultimately dismissed the petition, there is no suggestion in the judgment that the petitioner should have commenced an action rather than proceeding by petition.

[37] I also observe that most, if not all, of the authorities that both counsel referred to on the principal question arose out of proceedings that were commenced by petition. While some cases are distinguishable on the basis that the governing statute required a petition proceeding, the nature of the issues before the court were very similar to the case at bar.

[38] The stated object of the *Rules* is the "just, speedy and inexpensive determination of every proceeding on its merits." See Rule 1-3(1). The object is to be achieved, where practicable, by conducting all proceedings in ways that are proportionate. See Rule 1-3(2). Proportionality is determined by the factors listed in the rule, including the importance of the issues in dispute and the complexity of the proceeding.

[39] I accept the submission of counsel for the UVSS and Barrios that the facts here are largely not in dispute; the matter is not overly complex; and the relief sought, if granted, would only permit the referendum to go ahead. Most importantly, the outcome of this proceeding does not, in any way, decide the important question of whether to continue membership in the CFS. That is left to the referendum process if it proceeds.

[40] To require this matter to go to a trial, whether by requiring the filing of a notice of civil claim or by referring the petition to the trial list under Rule 22-1(7), as I am permitted to do, would not be proportionate because it would delay the proceeding and unnecessarily increase the costs.

[41] There are no credibility issues that must be resolved in this case in order to reach a decision on the merits. The parties have filed extensive affidavit evidence

and are extremely well represented by capable counsel. I am satisfied that the issues can be justly and fairly tried within the present procedure.

[42] I turn next to the principal question that I have earlier set out.

[43] The CFS is a voluntary association and, as discussed above, the relationship between the CFS and the members is determined by contract. Where a dispute involves the internal affairs of a voluntary association, including questions of membership, the courts are traditionally hesitant to become involved (*Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at 173-174).

[44] In determining whether to take jurisdiction in this regard, I must balance the interest in discouraging litigation over the internal decision-making of voluntary associations with the benefit that an authoritative decision or guideline from a court may bring. In *Street v. B.C. School Sports*, 2005 BCSC 958, Silverman J. addressed these competing principles, stating at para. 45:

> … Courts have traditionally not permitted their calendars to become clogged with disputes of this sort, involving the internal business of voluntary organizations, and this is a policy which must continue.
>
> …
>
> … The Courts have no interest in the day-to-day activities of voluntary associations, but they have traditionally maintained a real and important interest in the *processes* by which those organizations govern themselves.

[45] In *Lakeside Colony*, the Court concluded at 175 that if a property or civil right is affected, it is the importance of the right at stake, rather than its characterization, that determines whether the court takes jurisdiction:

> … the question is not so much whether this is a property right or a contractual right, but whether it is of sufficient importance to deserve the intervention of the court and whether the remedy sought is susceptible of enforcement by the court. …

[46] In the case at bar, there is no doubt that the interests at stake are sufficiently important to warrant the intervention of the court. Because individual members cannot opt out of membership in the CFS, the petition and referendum process

represent the only means by which undergraduate students at UVIC can participate in a decision as to their membership in the CFS. Furthermore, the collective financial interests at stake are considerable, with the UVSS collecting and remitting some $240,000 in annual fees to the CFS.

[47] Although the rights at stake are sufficient for me to exercise jurisdiction, my review is limited in scope. As stated by Stirling J. in *Baird v. Wells* (1890), 44 Ch. D. 661, at p. 670 and cited with approval by the Supreme Court of Canada in *Lakeside Colony,* at 175:

> The only questions which this Court can entertain are: first, whether the rules of the club have been observed; secondly, whether anything has been done contrary to natural justice; and, thirdly, whether the decision complained of has been come to *bonâ fide*.

[48] In *North Shore Independent School Society v. B.C. School Sports Society*, [1999] B.C.J. No. 143 (S.C.), the court described the approach to review of the decision-making in voluntary associations as follows at paras. 36-37:

> 36 The narrow scope for judicial review of the decisions of a domestic tribunal were noted by Dohm J. in *Vancouver Hockey Club Ltd. v. 8 Hockey Ventures Inc.* (1987), 18 B.C.L.R. (2d) 372 (B.C. S.C.) at 375.
>
> > The review by the court of orders made by an unincorporated association such as the N.H.L. through its president and chief executive officer (a domestic tribunal as it were) is limited. The power in no way includes the right in the court to substitute its decision for that of the domestic tribunal. The court is not the court of appeal. Rather, its power is narrow and it may only interfere if the order was made without jurisdiction (or against the rules) or if it was made in bad faith or contrary to the rules of natural justice. In addition, the courts will be reluctant to interfere with the decisions of a domestic tribunal where it is shown that internal remedies have not been exhausted. And there is even greater reluctance to interfere if the decision is based upon opinions regarding the standards of propriety and conduct appropriate for members of a particular association. *Dawkins v. Antrobus* (1881), 17 Ch. D. 615 (C.A.); *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329, [1952] 1 All E.R. 1175 (C.A.); *Harelkin v. Univ. Of Regina*, [1979] 2 S.C.R. 561, [1979] 3 W.W.R. 676, 96 D.L.R. (3d) 14, 26 N.R. 364 (Sask.]. These well-known principles provide the foundation for the court's review.
>
> 37 These cases show that the courts are prepared to interfere with the decision of a domestic tribunal where it can be shown that the tribunal

> exceeded its jurisdiction or failed to comply with the rules of natural justice or otherwise acted in bad faith. What these cases also demonstrate is the reluctance of the courts to intervene by substituting the court's judgment for the judgment of the tribunal on a matter of substance within the tribunal's jurisdiction.

[49] Although the above approach is applicable here, the decision of the voluntary association at issue in *North Shore Independent School Society* was very different. The rules of the society provided for specific appeal bodies to review a finding that a student was ineligible to participate in a program in “extraordinary circumstances”. Once that process was exhausted, the petitioner asked the court to interpret the phrase but Brenner J. declined to do so. In his view, the rules provided for the appeal bodies to “decide on a case by case basis just what it is that will constitute extraordinary circumstances” (para. 51). Such findings of fact were expressly permitted by the rules and are outside the reach of judicial review. The central issue in the case at bar is whether the National Executive of the CFS followed a permissible procedure for determining whether or not a petition is “in order”. The latter gives rise to a proper question of whether the executive followed the applicable bylaws and is, accordingly, subject to judicial review.

[50] The review here is necessary to determine whether, as a result of the procedure it adopted, the CFS failed to comply with its bylaws and thereby exceeded its jurisdiction. More particularly, did the bylaws implicitly entitle the National Executive of the CFS to take the second petition into account in determining that the Barrios petition was not in order? On the available evidence, I need not concern myself with an alleged breach of natural justice or bad faith.

[51] In spite of the bylaws making no provision for removal of signatures from an otherwise compliant petition, the CFS says that it has been its practice since the fall of 2009 to take into account the stated written intention of individual members to have their names removed from a petition seeking referendum on continued membership. The CFS says that it adopted the practice because it is one of long-standing in the context of trade union certification and decertification. The CFS maintains that it considers itself to be a national union for students in Canada. The

CFS goes on to submit that, as a principle of contractual interpretation, this practice should be taken into account in interpreting the bylaws.

[52] The petitioners agree that the bylaws must be interpreted in accordance with ordinary principles of contractual interpretation but emphasize that those principles require that the bylaws be interpreted in light of the purpose of the organization and in a manner that is consistent with the other bylaws of the association.

[53] The petitioners submit that the bylaw process to trigger a referendum is complex and fully codified. As a result, they say that no additional procedure, such as a second petition, was permitted under the bylaws in effect at the material time.

[54] In *Lakeside Colony,* the Supreme Court of Canada discussed in detail the use of organizational practice in interpreting the regulations of a voluntary association. The Court considered the role that Hutterite tradition and custom should play in interpreting the relevant articles of association and determined as follows at 191-192:

> A long-standing tradition provides a kind of notice to the member of what rules the association will follow. We also must remember that voluntary associations are meant largely to govern themselves, and to do so flexibly. Therefore, tradition or custom which is sufficiently well established may be considered to have the status of rules of the association, on the basis that they are unexpressed terms of the Articles of Association.

[55] In the case at bar, there was no long-standing practice in effect in the fall of 2009 when Barrios circulated and completed the petition to initiate a referendum under the CFS bylaws. At best, the CFS instituted a new practice permitting the withdrawal of valid signatures on a petition around the time it received the second petition in November 2009. In the circumstances, any CFS practice of removing otherwise valid names from petitions was not sufficiently well established to constitute any kind of notice to Barrios.

[56] As I have already pointed out, Barrios may well have sought to collect more signatures on his petition if he had known that the CFS would rely on the alleged practice. The practice, even if it existed in the fall of 2009, was too new to constitute

sufficient notice to members as to the rules the CFS would follow in determining whether a petition was in order. Accordingly, there was no implicit power to consider a second petition under the CFS bylaws.

[57] In addition, apart from the opinion of the executive of the CFS, there is no evidence to support the proposition that the membership expected or believed that particular practices and legal principles developed in the context of trade unions would apply as a tradition or custom of the CFS to supplement the bylaws.

[58] The CFS submission that it was permitted to take the second petition into account must fail. The National Executive of the CFS invoked a process that was not contemplated by the bylaws in effect at the time and, as a result, applied an irrelevant consideration in determining that the petition was not in order. The adoption of a process outside the bylaws amounted to an excess of jurisdiction.

[59] The three declarations sought by the petitioners all relate to the principal question. With some modification of the language used in the petition, the petitioners are entitled to the first two declarations. I consider the third unnecessary because its content is subsumed in the first two. I make the following declarations:

(1) That the respondent's decision that the petition had not reached the ten percent threshold set out in the bylaws of the Canadian Federation of Students is invalid.

(2) That the petition is valid and in order pursuant to the bylaws of the Canadian Federation of Students.

[60] The petitioners also seek a specific order requiring the CFS to appoint two members to the Referendum Oversight Committee forthwith. That has not happened to this point because the CFS asserted that the petition was not in order. It is, however, the next step in the process under the bylaws following a determination that a petition calling for a referendum respecting continued membership in the CFS is in order. Finally, the petitioners seek an order directing the scheduling of the referendum on specific dates.

[61] Given my declarations, there is no reason to anticipate that the CFS will refuse to take the necessary steps under the bylaw to ensure that the referendum is held as quickly as possible. Hopefully there is still sufficient time to schedule the referendum during the current academic year but I am not willing to grant the additional orders sought at this time. If consequential or ancillary relief becomes necessary, the petitioners will have leave to apply.

[62] Finally, assuming there is no formal offer to settle to take into account, the petitioners are entitled to the costs of the proceeding on Scale B.

"M.D. Macaulay, J."
The Honourable Mr. Justice Macaulay