

Form 67 (Rule 16-1(5))

NO. S104638
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

UNIVERSITY OF VICTORIA STUDENTS' SOCIETY

PETITIONER

AND:

CANADIAN FEDERATION OF STUDENTS

RESPONDENT

RESPONSE TO PETITION

Filed by: the Respondent, Canadian Federation of Students (the "petition respondent")

THIS IS A RESPONSE TO the Petition filed November 15, 2010.

Part 1: ORDERS CONSENTED TO

The petition respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Petition: none.

Part 2: ORDERS OPPOSED

The petition respondent opposes the granting of the orders set out in sub-paragraphs 1(a) – (g) of Part 1 of the Petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the Petition: none.

Part 4: FACTUAL BASIS

1. The Canadian Federation of Students ("CFS") agrees with the facts set out in Part 2 of the Petition, paragraphs 1 – 6, 8 – 9 and 11 – 18. The CFS does not agree with the remainder of the facts set out in the Petition.

2. With respect to paragraph 7 in the Petition, the CFS says that the applicable CFS bylaws (the "CFS Bylaws") set out how a member is to go about withdrawing from the CFS. CFS practise and, where applicable, decisions of the National Executive of the CFS (the "National Executive"), are part of that process.
3. With respect to paragraph 10 of the Petition, the CFS relies upon the CFS Bylaws and does not agree with the summary of the CFS Bylaws in paragraph 10.
4. With respect to the second petition (the "Second Petition") described in paragraph 16 of the Petition, in September – October, 2009 an independent group of University of Victoria ("UVic") undergraduate students became concerned with the way that the petition (the "Referendum Petition") which sought a referendum on the continued membership of the UVic Students' Society ("UVSS") in the CFS was being promoted. As a result, this group of UVic undergraduate students decided to put together the Second Petition. Over the course of approximately two weeks, 2,846 members of the UVSS signed the Second Petition.
5. Under cover of a letter dated November 13, 2009 from a UVic undergraduate student, Raizy Marmorstein, addressed to the National Executive, the Second Petition was delivered to the CFS shortly after November 13, 2009.
6. The concerns that the students who organized the Second Petition had with the promotion of the Referendum Petition are set out in the November 13, 2009 letter.
7. The Second Petition contains the following:

"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)."
8. Many of the UVic undergraduate students who signed the Referendum Petition also signed the Second Petition indicating that those students did not want their names counted towards the Referendum Petition.
9. In January 2010, the National Executive of the CFS met to review the Referendum Petition in compliance with Bylaw I, section 6(b) which provides that the National Executive must within 90 days of receipt of a petition review the petition to determine if it is in order. At the time the National Executive met, it was also in receipt of the Second Petition.
10. In a letter dated January 14, 2010 from the CFS to the UVSS, the National Treasurer of the CFS, Dave Molenhuis, wrote:

"As you may already be aware, the Canadian Federation of Students National Executive is in receipt of a petition submitted

from individual members of the Federation belonging to the University of Victoria Students' Society seeking a referendum on the question of continued membership in the Federation. The 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.

In addition, the National Executive is in receipt of a second petition by individuals requesting that their names be removed from the initial petition seeking a referendum on the question of continued membership. The National Executive is requesting your assistance in verifying the authenticity of the names on the petition.

As a first step, the National Executive needs to verify if the petition has been signed by the required minimum number of individual Federation members belonging to the University of Victoria Students' Society. We are therefore requesting the assistance of the Students' Society in verifying the authenticity of the names appearing on the petition, including the enrolment status (or membership status, if different). Please ask that each name on the petition be marked as valid (or invalid) by the Registrar's office.

The Registrar must be able to confirm that the name of the individual and the student number as they appear on the petition are legible and therefore verifiable. In addition, a sworn statement from the University of Victoria authenticating the names and confirming undergraduate enrolment numbers for the fall 2009 semester would likely suffice.

Please let me know at your earliest convenience whether the University of Victoria Students' Society will be able to assist with the verification. Please do not hesitate to contact me if you have any questions."

11. By an e-mail dated February 4, 2010, Veronica Harrison, chairperson of the UVSS responded to the CFS's January 14, 2010 letter and advised that the person who was coordinating the Second Petition was going to submit it to the Registrar for verification.
12. The Second Petition was submitted to the UVic Registrar who confirmed in a letter dated February 11, 2010 that 2,180 signatures on the Second Petition were valid signatures of undergraduate students at UVic and therefore members of the UVSS.
13. If the validated signatures of the UVic undergraduate students who signed both petitions are not counted for the Referendum Petition, the Referendum Petition

contains less than 10% of the individual members of the UVSS and is not a valid continued membership petition under the CFS Bylaws.

14. After the Second Petition was verified, the CFS sent to the UVSS a letter dated March 24, 2010 which stated that the National Executive had determined that the number of signatories on the Referendum Petition did not meet the 10% threshold required by the CFS Bylaws.

Part 5: LEGAL BASIS

1. There is no legal basis for using a petition in order to obtain the relief sought in this proceeding. In particular, the relief sought does not fall within Rule 2-1(2) of the Supreme Court Civil Rules. For this reason, the Petition should be dismissed.
2. Further, and in any event, the National Executive at all times and in all respects acted in accordance with the CFS Bylaws and there is for this reason no legal basis for the relief claimed in the Petition.
3. The CFS Bylaws read in part:

"3. Membership Rights and Responsibilities

a. Rights of Individual Members

i. The individual members of the Federation collectively belonging to a member local association will have the sole authority to make decisions through referendum on all questions of membership in the Federation, subject to the other provisions of this Bylaw.

...

6. Referendum on Continued Membership

The individual members of the Federation belonging to a member local association may vote on continued membership, subject to the following rules and procedures:

a. Petition

As per Bylaw I, 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 National Executive of the Federation.

...

b. Schedule

i. Within 90 days of receipt of the petition described in Bylaw I, 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. . ."

[emphasis added]

4. In November 2009, the National Executive received both the Referendum Petition and the Second Petition. In accordance with the CFS Bylaws, the National Executive reviewed the Referendum Petition within 90 days of receipt and corresponded with the UVSS by way of the January 14, 2010 letter.
5. The decision of the National Executive was communicated to the UVSS by way of a letter dated March 24, 2010 and this letter reads in part as follows:

"As you are aware, the Canadian Federation of Students' National Executive received a petition from individual members of the Federation belonging to the University of Victoria Students' Society seeking a referendum on the question of continued membership in the Federation. In addition, the National Executive received a second document signed by individuals requesting that their names be removed from that petition seeking a referendum on the question of continued membership in the Federation.

In accordance with Bylaw I, 6. bi, the National Executive has undertaken a review of the petition to determine whether it is in order. As a result of this process, it has determined that the number of signatories on the petition to initiate a referendum on the question of continued membership did not meet the ten percent (10%) threshold required by the Federation's Bylaws.

To state the obvious, in order for a vote on the question of continued membership in the Federation to be initiated, there must be adherence to the Bylaws. As described above, the petition did not meet the ten percent (10%) threshold set out in the Bylaws and, therefore, was deemed invalid."

6. The decision of the National Executive that the Referendum Petition was not in order was taken in accordance with the CFS Bylaws. It is consistent with both principle and common sense that in the context of an organization such as the CFS, students have the ability to withdraw their support for a membership petition prior to a decision being made by the National Executive. This is also consistent with CFS practice.
7. Further, the decision of the National Executive regarding the Referendum Petition was a matter of internal management of the CFS association and a court


ought to be reluctant to interfere with or second-guess the executive of an association in these circumstances.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Lucy Watson, made the 9th day of December, 2009.
2. Such further and other evidence as counsel may present and this Court may allow.

The petition respondent estimates that the application will take four and a half hours.

Date: 09/12/2010



Signature of lawyer for petition respondent
Lawyer: Martin L. Palleson

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