No. 10 4638
Victoria Registry

In the Supreme Court of British Columbia

Between:

UNIVERSITY OF VICTORIA STUDENTS' SOCIETY

and

JOSÉ BARRIOS

Petitioners

And:

CANADIAN FEDERATION OF STUDENTS

Respondent

MEMORANDUM OF ARGUMENT OF THE PETITIONERS

I. OVERVIEW OF THE APPLICATION

1. This application involves the interpretation of the Bylaws of the Canadian Federation of Students ("CFS"), a national student association, to determine the proper procedures for resigning from the association.

2. José Barrios is a student at University of Victoria ("UVIC"). He doesn't want to be a member of the CFS, paying mandatory fees, but he is required to be a member because of a vote taken by UVIC students over 20 years ago. The current students at UVIC have never been permitted to vote on whether they want to be members of this association.

3. José believes that most of the current students at UVIC would prefer not to be members. Unfortunately, according to the CFS bylaws, they cannot simply resign from the CSF. Under the CSF's bylaws, the only way to resign his membership is to have 10% of the students sign a petition, which then permits a vote to go ahead. If a majority vote to leave, then José and all the other students at UVIC can resign and stop paying fees to the CFS.

4. José initiated a petition and obtained the signatures of more than 10% of the students. He asked the CFS to schedule a vote. The CFS has; however, refused to schedule a vote. It says that it has received another petition which somehow negates José's petition. There is nothing in the CFS bylaws recognizing such a counter-petition.

5. The petitioners submit that the bylaws are clear. Once a petition has been submitted that meets the 10% threshold requirement a vote must be held. There is no process available under the bylaws for negating or disregarding a petition, or that allows the CFS to refuse to hold a vote once a petition that has reached the 10% has been delivered.

6. The petitioners seek a declaration that the Bylaws, properly interpreted, do not permit the CFS to rely on the counter-petition and that the petition submitted by José is valid. The petitioners seek an order to schedule a referendum and to direct the CFS to appoint its representatives to the committee tasked with overseeing the referendum.

7. Importantly, the effect of the relief sought, if granted, will not end the membership of the University of Victory Students' Society and José Barrios in the CFS: rather, it will only trigger a vote providing students at UVIC an opportunity to vote on their membership.

II. FACTS

The Parties

8. The Petitioner, University of Victory Students' Society ("UVSS"), is the undergraduate student society at UVIC. All undergraduate students who are enrolled at the UVIC are automatically members of the UVSS. The UVSS's mandate is to represent the interests of its members on a variety of issues. The UVSS's leadership consists of four executive members, eleven directors at large, and five advocacy representatives, who collectively comprise the twenty voting members on the UVSS board of directors. All representatives are elected by the undergraduate student body. The UVSS is a registered society under the Society Act, RSBC 1996, c.433 (the "Society Act").

Affidavit #1 of J. Coccola, paras. 6 to 9

9. José Barrios is undergraduate student at UVIC, a member of the UVSS, and also an Individual Member of the CFS.

Affidavit #1 of J. Barrios, paras. 1 to 6

10. The CFS is a national post-secondary student lobbying organization comprised of various post-secondary student associations from across Canada, including the UVSS. The CFS has two types of members: post secondary student associations ("Voting Members") and the individual students attending at each post-secondary institution where the student association is a member of the CFS ("Individual Members"). The CFS is a registered not-for-profit corporation under Part II of the *Canada Corporations Act (Canada)*, 1970, c. C-32 and is an extra-provincially registered society in British Columbia. The CFS is not a labour union.

Affidavit #1 of J. Coccola, paras. 10 and 11

Affidavit #1 of J. Coccola, paras. 17

Affidavit #1 of J. Barrios, paras. 13

Affidavit #2 of J. Coccola, para. 7

UVSS's membership in the CFS

11. The UVSS is a Voting Member of the CFS and has been since 1985. As a result, every undergraduate student at UVIC is an Individual Member of the CFS.

Affidavit #1 of J. Coccola, paras. 18 to 20

12. The CFS Bylaws are significantly different than most other voluntary associations in that membership in the CFS is not voluntary. Voting Members and Individual Members of the CFS have no way to resign on their own. Nor are they permitted to opt out of fees.

Affidavit #1 of J. Coccola, paras. 18 to 20

13. The CFS' membership fees are collected by UVIC from all Individual Members attending UVIC. During the 2008/2009 academic year, $232,629 of CFS membership fees were collected by UVIC from Individual Members attending UVIC and remitted to the CFS. During the 2009/2010 academic year, $241,491.78 of CFS membership fees were collected by UVIC from Individual Members attending UVIC and remitted to the CFS. This amounts to approximately $8.00 per UVIC undergraduate student in CFS membership fees per academic year.

Affidavit #1 of J. Coccola, paras. 18 to 22

Termination of Membership in the CFS

14. Instead of allowing members to resign in the ordinary way, the CFS' bylaws codify a complex process to which Individual Members and Voting members must adhere in order to terminate their membership in the CFS.

Affidavit #1 of J. Barrios, paras. 12 to 15

15. Under the CFS bylaws, the process for terminating membership in the CFS of both Individual and Voting Members is a collective decision of the Individual Members. The CFS bylaws provide that if the Individual Members vote collectively to end their membership in the CFS, both their membership and the membership of their student association will terminate.

Affidavit #1 of J. Barrios, para. 14

Petition Triggers a Referendum

16. The Bylaws, as they were at the relevant time, provided that the Individual Members have the "sole authority" to trigger a vote on leaving the CFS by submitting a petition signed by at least *ten percent* of the Individual Members to 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.

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.3.a.iii

17. The Bylaws, as they were at the relevant time, provided that a petition must contain specific wording and be delivered to the CFS National Executive. Bylaw 1.6.a 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."
>
> **Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.a**

National Executive Must Schedule a Referendum if Petition Submitted

18. The CFS bylaws, as they were at the relevant time, require the National Executive to "review the petition to determine if it is in order". If it is, the CFS *must* schedule a referendum. The Bylaws are clear that the National Executive *must* complete this task "within 90 days of receipt of the petition", and, if so, *must* set the dates for the referendum "not less than 60 days and not more than 90 days following". 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 ...
>
> **Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.b.i**

19. As a result of the strict timelines set out in Bylaw 1.6.b.i and the prohibition under the CFS Bylaws from holding a referendum between April 15 and September 15 (Bylaw

6.1.b.ii.), a petition must be submitted to the CFS by early November, at the latest, to ensure a referendum can be scheduled within the same academic year.

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.b.i and Bylaw 6.1.b.ii

CFS Must Appoint Representatives to the Referendum Oversight Committee

20. The Bylaws, as they were at the time, required that within 14 days of the scheduling a referendum, a Referendum Oversight Committee ("ROC") comprised of four members – two appointed by the applicable student association and two appointed by the CFS – must be formed. Bylaw 1.6.c states:

> The referendum will be administered by a four (4) person Referendum Oversight Committee composed of two (2) members appointed by the National Executive and two (2) members appointed by the applicable member local association. Within fourteen (14) days following the scheduling of the referendum, the National Executive will appoint two (2) representatives to serve on the Committee and request in writing from the member local association the appointment of two (2) representative [*sic.*] to serve on the Committee. ...

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.c

Mr. Barrios' Decision to Initiate a Referendum

21. In August 2009, José Barrios decided to initiate a referendum on the question of continued membership of UVIC undergraduate students, as Individual Members of the CFS and the UVSS, as a Voting Member of the CFS.

Affidavit #1 of J. Barrios, para. 7

22. He was aware that other student associations and Individual Members in British Columbia had encountered substantial difficulties in their dealings with the CFS when seeking to hold a referendum on the question of terminating membership in the CFS.

Affidavit #1 of J. Barrios, para. 8

23. He was aware that in the spring of 2008 students at Simon Fraser University ("SFU") voted in favour of terminating their membership in the CFS, but that the CFS refused to recognize the referendum on the basis that the CFS claims that the referendum was not held in accordance with the CFS Bylaws.

Affidavit #1 of J. Barrios, para. 8(a)

24. He was further aware that the Simon Fraser Student Society, the student association at SFU, was embroiled in litigation with the CFS over the status of the referendum that was held at SFU in the spring of 2008.

Affidavit #1 of J. Barrios, para. 8(b)

25. He was aware that in the spring of 2008 the CFS had sought an injunction against the holding of a referendum at Kwantlen Polytechnic University ("KPU") on the basis that the CFS claimed that the student association at KPU had not complied with CFS bylaws with respect to the organization of the referendum.

Affidavit #1 of J. Barrios, para. 8(b)

26. Since he was aware of the problems that other student associations have faced in connection with referendums to leave the CFS and the legal challenges they faced from the CFS, he was very careful to ensure that everything he did to initiate a referendum was in strict compliance with the CFS' Bylaws. In the October 29, 2009 issue of the student

newspaper, the Martlet, Mr. Barrios was quoted as saying, "We're following their rules to the tee to make sure they don't stop the democratic process on a technicality".

Affidavit #1 of J. Barrios, para. 9

Affidavit #1 of J. Barrios, para. 11

27. Other than the rules contained in the CFS Bylaws as of August 2009, Mr. Barrios was not aware of any other rules or practices governing calling a referendum. He relied exclusively on the rules in the Bylaws.

Affidavit #2 of J. Barrios, para. 6

UVIC students initiated the referendum process

28. In October 2009 a group of UVIC undergraduate students, led by Mr. Barrios, (the "UVIC Students"), commenced the process mandated by the CFS Bylaws to initiate a referendum. Specifically, Mr. Barrios and the UVIC Students prepared and circulated a petition calling for a referendum to be held on the question of continued membership in the CFS (the "Petition").

Affidavit #1 of J. Barrios, paras. 16

29. The language of the Petition was drafted in strict accordance with the CFS Bylaws, as they were at the time.

Affidavit #1 of J. Barrios, para. 16

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.a

UVIC Registrar verified the Petition

30. Once signatures had been collected, Mr. Barrios asked the UVIC Officer of the Registrar (the "Registrar") to confirm that the signatures on the Petition were those of members of UVIC undergraduate students and that the total number of verified students represented at least ten percent of the UVIC undergraduate student population at the time.

Affidavit #1 of J. Barrios, paras. 18

31. The Registrar reviewed the signatures on the Petition and sent Mr. Barrios a letter dated October 23, 2009 confirming that she had validated the signatures on the Petition and concluded that the signatures on the Petition amounted to over ten percent of the UVIC undergraduate student population (the "Registrar's Letter"). The Registrar concluded that the petition contained 1972 signatures of which 1,892 signatures were valid. The Registrar confirmed that 11.4% of the undergraduate population of UVIC had signed the Petition.

Affidavit #1 of J. Barrios, paras. 19

Delivery of the Petition

32. In strict accordance with the CFS Bylaws, as they were at the time, on November 5, 2009 Mr. José Barrios served on the CFS: a letter on the CFS advising the CFS that the Individual Members at UVIC had initiated a referendum on continued membership; a notarized copy of the Petition; and a copy of the Registrar's Letter.

Affidavit #1 of J. Barrios, paras. 23 and 24

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.b.i

Affidavit #1 of J. Barrios, para. 34

Affidavit #1 of L. Watson, paras. 7 and 8

CFS Counter-Petition

33. In or around October 2009, a second petition began circulating at UVIC (the "Counter-Petition").

Affidavit #1 of J. Barrios, para. 25

34. The Counter-Petition bore the title "KEEP THE STUDENT MOVEMENT STRONG!" The Counter-Petition states that: "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:

(a) "lobby for reduced tuition fees and student debt";

(b) "demand environmentally sustainable campuses";

(c) "fight student aid cuts";

(d) "improve transit services";

(e) "get students services like a FREE International Student Identify Card";

(f) "continue to work on campaigns such as "Where's the Justice for Aboriginal Peoples" and the "No Means No" anti-date rape campaign"

Affidavit #1 of J. Barrios, para. 26

Affidavit #1 of L. Watson, para. 10, Exhibit C and para. 12

35. The Counter-Petition then states, "Therefore, I call on the board of the UVic Students' Society to defend student unity and to continue to fight for students rights through membership in the Canadian Federation of Students".

Affidavit #1 of J. Barrios, para. 27

Affidavit #1 of L. Watson, para. 10, Exhibit C, and para. 12

36. At the very end of the Counter-Petition's language, there is a statement that indicates that by signing, the student does not want to have his or her name counted towards "any petition to put to question membership in the CFS".

Affidavit #1 of J. Barrios, para. 28

Affidavit #1 of L. Watson, para. 10, Exhibit C, and para. 12

37. Despite being directed to the UVSS, the UVSS was never presented with a copy of the Counter-Petition.

Affidavit #1 of J. Coccola, paras. 41

38. Nowhere in the CFS bylaws, as they were at the time, was the use of another petition to negate a petition recognized.

Affidavit #1 of J. Barrios, para. 12, Exhibit C

Affidavit #1 of L. Watson, para. 16

CFS Acknowledges that Petition met the Threshold, but Does not Schedule Referendum

39. In January 2010, the CFS wrote to the UVSS acknowledging that the CFS National Executive received the Petition submitted by Individual Members of the CFS. The CFS further acknowledged that "the petition appears to meet the minimum requirement set out in the Federation's bylaws". However, the CFS failed to schedule a referendum.

Affidavit #1 of J. Barrios, para. 30, Exhibit I

40. In the same letter, the CFS National Executive advised that it was in receipt of an unverified counter-petition.

Affidavit #1 of J. Barrios, paras. 30, Exhibit I

Affidavit #1 of L. Watson, para. 22

41. The CFS requested the help of the UVSS to assist in verifying the names on the counter-petition.

Affidavit #1 of J. Barrios, paras. 30, Exhibit I

Affidavit #1 of L. Watson, para. 22

42. The UVSS Board of Directors was advised of the letter from the CFS. No vote was held agreeing to assist to the CFS with verification and the UVSS did not take any steps to assist with verification.

Affidavit #2 of J. Coccola, para. 8

43. Ms. Veronica Harrison, the Chairperson of the student society at the time, passed on the CFS's request to Raizy Marmorstein, the student who had circulated the Counter-Petition. Ms. Marmorstein then took steps to have the Counter-Petition verified.

Affidavit #1 of L. Watson, para. 23

44. By way of letter of February 11, 2010, the University of Victoria confirmed that 2180 of the 2846 signatures on the Counter-Petition were valid. In other words, approximately 23% of the signatures (666 signatures) on the Counter-Petition were not valid.

Affidavit #1 of L. Watson, para. 26

45. As with the Petition, the Registrar did not indicate *which* signatures on the Counter-Petition were valid, *only* the total *number* of signatures on the petition that were valid.

Affidavit #1 of J. Barrios, para. 19

Affidavit #1 of L. Watson, para. 26

46. Despite having no way of knowing which signatures were signatures of valid students on either the Petition or the Counter-Petition, the CFS deducted 340 signatures from the Petition. Without any explanation of how the CFS could have possibly known which of the signatures were valid, Ms. Watson states passively in her affidavit: "After a review of both petitions, it was determined that 340 students whose signatures had been validated signed both petitions". Given the limited information provided by the Register and the omission in Mr. Watson's affidavit of any details as to how the validity of each signature was determined by the CFS National Executive, it is unclear how this task could have been performed.

Affidavit #1 of L. Watson, para. 26

Ninety- Day Deadline Expires

47. The CFS has 90 days to review a petition to determine if it is in good order after the receipt of the petition.

Affidavit #1 of L. Watson, para. 14

Affidavit #1 of J. Coccola, para. 26

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.b.i

48. According to the CFS bylaws as they were at the time, the deadline for the CFS National Executive to determine if the Petition was in order was 90 days after the Petition was delivered on November 5, 2009. Thus, the deadline expired on February 3, 2010.

Affidavit #1 of L. Watson, para. 14

49. The CFS concluded that the Petition was in good order and confirmed this as of January 14, 2010 ("the petition appears to meet the minimum requirement set out in the Federation's bylaws" per D. Molenhuis letter of January 14, 2010).

Affidavit #1 of J. Barrios, paras. 30

50. However, as of the expiration of the deadline on February 3, 2010, the CFS National Executive did not take steps to schedule a referendum.

Affidavit #1 of J. Barrios, paras. 30 and 31

Affidavit #1 of J. Coccola, para. 34

51. The CFS did not even have a verified Counter-Petition in its hands until after the 90 day deadline had expired.

Affidavit #1 of L. Watson, para. 26

52. In late March 2010, well after the expiry of the 90 day deadline and less than a month before the end of the Winter Session at UVIC, the CFS wrote to José Barrios to

advise him that it had determined that the Petition had not reached the 10% threshold set out by the Bylaws and it was "therefore, deemed invalid". The sole basis that the CFS relied on for finding that the Petition was invalid was its reliance on the Counter-Petition.

Affidavit #1 of J. Barrios, paras. 31.

Affidavit #1 of L. Watson, para. 28 and 29

Affidavit #1 of J. Coccola, para. 43

UVSS seeks a resolution

53. On July 23, 2010, counsel for the UVSS delivered a letter to the CFS asking that the CFS confirm that the Petition is in order, that a referendum on continued membership in the CFS be held, and that the CFS make appointments to the ROC as required by the CFS bylaws. The UVSS' counsel urged that this matter be resolved out of court.

Affidavit #1 of J. Coccola, para. 42

54. The CFS's counsel replied on August 14, 2010 that the Petition is not in order because of the receipt of the Counter-Petition. The CFS's counsel did not provide any other reason for refusing to find the Petition in order or refusing to schedule a referendum other than the CFS's reliance on the Counter-Petition.

Affidavit #1of J. Coccola, para. 43

Affidavit #2 of J. Coccola, para. 9

CFS Practice

55. Ms. Lucy Watson states in her affidavit #1 that 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 if

the document expressing their intention to have their name removed is in compliance with the criteria noted above in paragraph fifteen (15)." Ms. Watson provides no details or examples of the CFS even having adhered to such a practice.

Affidavit #1 of L. Watson, para. 16

56. Titus Gregory, who has written an extensive paper on CFS membership practices, swore that he was not aware of any counter-petitions being taken into consideration prior to the fall of 2009 and not aware of the practice that Mr. Watson claimed prior to the Fall of 2009.

Affidavit #1 of T. Gregory, para. 13

57. In Mr. Watson's second (unfiled) affidavit, after making a number of disparaging and remarks about Mr. Gregory that are unsupported by any evidence in an attempt to tarnish his credibility, Ms. Watson confirms that Mr. Gregory is, in fact, correct that no practice exists. She contradicts her own affidavit by stating:

> 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. It was only in the fall of 2009 that the concept of a counter-petition was introduced to the National Executive. However, it has been the practice of the Federation *since that time* to take into account the stated intention of its members.

Affidavit #2 of L. Watson, para. 12

58. In other words, at the time, the CFS never had any practice of taking into account other petitions received after the delivery of a petition seeking a referendum.

59. At no time have either of the Petitioners been notified by the CFS or anyone else of the practice to which Ms. Watson refers. At the time that the petition was circulated, neither of the Petitioners had ever heard of Ms. Watson's claimed practice. Of course,

since Ms. Watson now confirms that there was no practice, it is not hard to understand the reason.

Affidavit #2 of J. Coccola, paras. 5 & 6

Affidavit #2 of J. Barrios, paras. 5

60. Mr. Barrios, very reasonably, was under the impression that only the rules set out in the CFS Bylaws, as they were when he submitted the Petition, governed the process.

Affidavit #2 of J. Barrios, paras. 6

61. In any event, there is nothing in the CFS Bylaws that provides a past practice exception allowing the CFS to override the explicit requirements of its Bylaws,

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Bylaw 1.6.b.i

CFS Amends its Bylaws

62. Since the Petition was served on the CFS, the CFS has changed its bylaws regarding triggering and holding withdrawal referendums twice: once at a meeting in late November 2009 and again at a meeting in May 2010.

Affidavit #1 of J. Coccola, paras. 12 to 14

63. Among the amendments in November 2009, the threshold to trigger a withdrawal referendum was raised from 10% to 20%.

Affidavit #1 of J. Coccola, paras. 12 & 13

64. Among the changes to the CFS bylaws in May 2010 was a new bylaw to include a process by which Individual Members may have their names removed from a petition seeking a referendum. The new bylaw states:

> An individual member may request that her name be removed from a petition. If the National Executive receives such a request in writing, before the conclusion of the verification process of the petition, the name must be struck from the petition. The name shall not be included in the total number of names on the petition.

Affidavit #1 of J. Coccola, para. 14

Affidavit #2 of J. Coccola, para. 9, Exhibit A, Bylaw 1.6.a

65. In May 2010, the CFS also added to Bylaw 1.6.b.i. The Bylaw now includes a sentence that states that "The National Executive will have the sole authority to determine whether the petition described in Bylaw 1, Section 6.a is in order."

Affidavit #2 of J. Coccola, para. 9, Exhibit A, Bylaw 1.6.b.i

III. ISSUES

a. Does the Court have jurisdiction to hear this matter by way of petition?

b. Did the CFS Bylaws, as they were at the time the Petition was delivered, permit the CFS to rely on the Counter-Petition to deny students at UVIC a referendum on terminating their membership in the CFS?

IV. ANALYSIS

a. Does the Court have jurisdiction to hear this matter by way of petition?

66. It is well established that the constitution and bylaws of a not-for-profit corporation, such as the CFS, are a binding contract between the corporation and its members.

67. In *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 the Supreme Court of Canada considered the nature of a society's constitution and bylaws and the relationship created between the members. Mr. Justice Gonthier writing for the majority held:

> From the point of view of the church Constitution, the Articles of Association are rules contemplated by Article 2(f) of the Constitution, and are therefore valid only in so far as they are consistent with the Constitution. While the members of the Association have contracted amongst themselves with respect to the Articles, they have also contracted amongst themselves and with other colonies with respect to the Constitution. Both the Articles and the Constitution are therefore the source of legal obligation between the members of the local colony. The same reasoning applies to other organizations with local associations that are themselves associated, as Blair J.A. observed in *Organization of Veterans of the Polish Second Corps of the Eighth Army v. Army, Navy & Air Force Veterans in Canada* (1978), 20 O.R. (2d) 321 (C.A.), at p. 341:
>
> > The relationship between national organizations and their incorporated local units is contractual. By adherence to the national organization, the members of the local association are taken to have accepted its constitution as a contract binding on them and all the members both of the local and national organization: see Carrothers, *Collective Bargaining Law In Canada* (1965), pp. 515-9; Brian G. Hansen, case note 61 *Can. Bar Rev.* 80 (1978), on *Canadian Union of Public Employees et al. v. Deveau et al.* (1977), 19 N.S.R. (2d) 24.
>
> ***Lakeside Colony of Lakeside Colony of Hutterian Brethren v. Hofer,* [1992] 3 S.C.R. 165 at paragraph 45**

68. In *Senez v. Montreal Real Estate Board*, [1980] 2 S.C.R. 555, the Supreme Court discussed the nature of the bylaws of a voluntary association and concluded as follows:

> The foregoing indicates that the Board does not belong to the category of political corporations or to that of professional corporations as such, which the legislator for reasons of public interest may invest with monopolies, on which he may confer privileges or to which he may delegate a true legislative authority, which may be effective not I only against their members but with respect to the public--such as, for example, the power to prescribe a tariff of professional fees. The Board more closely resembles the type of voluntarily formed groups which, in English law, is known as "voluntary associations", such as social clubs, philanthropic, sports or even professional bodies, but the by-laws of which affect only members and apply only to them [TRANSLATION] "in a manner based on agreement and of a private nature": *Gagné v. Ouellet* [[1958] R.L. 102.] (at p. 107).
>
> In the second volume of the Traité de Droit Civil du Québec, the author Gérard Trudel, correctly in my opinion, equates the by-laws of such corporations to provisions of a contractual nature. At pp. 482 and 483 he writes:
>
> > [TRANSLATION] In general, only the members of the corporation are subject to the by-laws and their consequences; they exist and have their authority merely by virtue of the application of a sort of contractual agreement; they are a type of adhesion contract ...
> >
> > Insubordination by a member equates to a breach of his contractual obligations to the corporation.
>
> It could also be said that a breach by the corporation of its own by-laws equates to a breach of its contractual obligations to its members.
>
> When an individual decides to join a corporation like the Board, he accepts its constitution and the by-laws then in force, and he undertakes an obligation to observe them. In accepting the constitution, he also undertakes in advance to comply with the by-laws that shall subsequently be duly adopted by a majority of members entitled to vote, even if he disagrees with such changes. Additionally, he may generally resign, and by remaining he accepts the new by-laws. The corporation may claim from him arrears of the dues fixed by a by-law. Would such a claim not be of a contractual nature? What other basis could it have in these circumstances? In my view, the obligation of the corporation to provide the agreed services and to observe its own by-laws, with respect to the expulsion of a member as in other respects, is similarly of a contractual nature.

***Senez v. Montreal Real Estate Board*, [1980] 2 S.C.R. 555 at pages 566 to 567.**

69. Thus, the CFS's bylaws and constitution represent a binding contract between the CFS and its Voting Members and Individual Members and are the source of legal obligation between the CFS, and the Petitioners.

70. Rule 2-1(2)(c) the *Supreme Court Civil Rules* (the "*Rules*") requires that where the "... principal question at issue is alleged to be one of construction of ... a written contract or other document", a "person must file a petition...".

***Supreme Court Civil Rules*, B.C. REG. 168/2009 as amended, Rule 2-1(2)(c)**

71. In BC, Courts have relied on what was Rule 10(1)(b) of *The Rules of Court* to consider and interpret the proper construction of the bylaws of a domestic society. In *Pazitch v. British Columbia Teachers' Federation* [1977] B.C.J. No. 679, Mr. Justice Berger considered the construction of the bylaws of the British Columbia Teachers' Federation and whether to grant an order to require the respondent to provide access to certain documents to the petitioner.

***Pazitch v. British Columbia Teachers' Federation* [1977] B.C.J. No. 679 at paragraph 4**

72. As in *Pazitch*, this court may interpret the proper construction of the bylaws of the CFS and grant appropriate ancillary relief if appropriate.

73. As noted in McLachlin & Taylor's *BC Supreme Court Practice*, "Rule 2-1(2) differs from its predecessor in that the use of a petition is mandatory in the circumstances there enumerated, whereas SCR 1990, Rule 10(1) was permissive."

***BC Supreme Court Practice* at 2-3**

74. In particular, Rule 10(1)(b) provided a litigant with the option to commence a proceeding by way of origination application when the sole or principal question was one of construction of a contract, but did not mandate that approach. Rather Rule 10(1)(b) was discretionary. It stated:

> An application, other than an interlocutory application or an application in the nature of an appeal, may be made by originating application where: ... (b) 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.
>
> ***Rules of Court*, B.C. REG. 221/90 as amended, Rule 10(1)(b)**

75. Now, according to Rule 2-1(2)(c), where the principal question at issue is alleged to be the construction of a written contract or document, a litigant has no choice but to bring a matter by way of petition.

76. Here the principle question, without doubt, is with respect to the construction of a written contract: what are the proper procedures for resigning from the association and, in particular, did the CFS Bylaws, as they were at the time the Petition was tendered, permit the CFS to take the Counter-Petition into account?

77. The *Rules* do not stipulate that if there are other ancillary questions to the principal question at issue, the matter may be brought by way of Notice of Civil Claim. Where the principal question is one of construction of a written contract or a document, as it is here, there is no option to bring the proceeding by way of Notice of Civil Claim.

78. The *Rules* also do not stipulate that the Court cannot provide consequential ancillary relief upon consideration of the construction of a written contract. In fact, Rule 22-1(7)(a) explicitly permits the Court "on hearing of a chambers proceeding" to "grant or refuse the relief claimed in whole or in part". Rule 22-1(1)(a) indicates that for the purposes of Rule 22-1, ""chambers proceeding" includes ...a petition proceeding".

***Supreme Court Civil Rules*, B.C. REG. 168/2009 as amended,, Rule 22-1(1) & 22-1(7)**

79. Furthermore, the interpretation of *Rule* 2-1(c) that the respondent seeks is not congruent with *Rule* 1-3(1), which sets out that "The object of these Supreme Court Rules is to secure the just, speedy, and inexpensive determination of every proceeding on its merits" and the new Rule 1-3(2) regarding proportionality which states that:

> (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
>
> (a) the amount involved in the proceeding,
>
> (b) the importance of the issues in dispute, and
>
> (c) the complexity of the proceeding.

***Supreme Court Civil Rules*, B.C. REG. 168/2009 as amended, Rule 1-3(1) & 1-3(2)**

80. The facts are not in dispute; this matter is not complex; and the relief sought, if granted, would *only* permit for a referendum to occur: it would not have the effect of ending the petitioners' membership in the CFS. To require a matter of this nature to go to trial would not be proportionate, would delay the proceeding, and unnecessarily increase the costs.

81. Moreover, under Rule 22-1(7), allows the Court to:

> (d) order a trial of the chambers proceeding, either generally or on an issue, and order pleadings to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings and for the disposition of the chambers proceeding.

***Supreme Court Civil Rules*, B.C. REG. 168/2009 as amended, Rule 22-1(7)**

82. Where a matter must be brought by petition, the respondent may seek under Rule 22-1(7) (previously Rule R. 52(11)(d)) to have the matter placed on the trial list.

83. In *Buckley v. British Columbia Teachers' Federation* [1992] B.C.J. No. 1329, Mr. Justice Hood determined that an application to the court under s.227 of the *Company Act* must be brought by way of petition. The respondent submitted that the foundation of the petitioner's claim was seriously disputed and that the matter cannot be resolved on the basis of affidavit evidence. Hood J. held that:

> Section 224 gives the court a very wide discretion in the protection of individual shareholders or members. With a view to bringing to an end, or remedying the matters complained of, the court may make the order it considers appropriate. The section creates a cause of action in the member and s. 227 stipulates how that cause is to be resolved, that is, in a summary way; and it seems to me that the sections must contemplate that in resolving the cause in the summary way some disputed facts will have to be resolved.
>
> It does not seem necessary that I decide how these provisions of the Company Act generally stand in relation to R. 52(11)(d); but they do not appear to clash. It seems to me that generally a s. 224 application will not involve substantial issues being in dispute; and if a substantial issue is in dispute, or if for some other reason such as complexity of issues or fairness a trial of an issue, or even a full trial, is necessary, the judge hearing the motion can direct the trial of the issue (a procedure which I note has already been followed by the respondent) and in effect may turn the proceedings into a trial, if necessary. However, in my opinion, at least initially, the resolution of the members' complaints is to be by summary procedure, subject, as I say, to the directions of the judge hearing the application. It is not simply a question of whether, on the relevant facts and applicable law, there is a bona fide triable issue, but whether as well that issue can be tried within the summary procedure framework as were the issues before Maczko J. In any event, the protection afforded by R. 52(11)(d) is available from the hearing judge. I think it important to note as well that he or she will be in a better position to appreciate what really is at issue between the parties and how those issues should be resolved.
>
> Counsel for the respondent relies on the principles applicable to a R. 52(11)(d) application without regard, it seems, to those which may be applicable to a s. 224 application. But those provisions are meant to meet the very situation which arises here and deal with it in a summary and less expensive way. Indeed, present day R. 18A trials serve a similar function and on a similar evidentiary basis. While s. 224 proceedings may not be analogous to a R. 18A trial, in my view they are closer thereto than to a R. 18 application; and in the

> end may have roughly the same effect. Further, as I have already noted, during the s. 224 proceedings if it appears that some other proceeding is necessary to obtain or clarify some evidence, or even a full trial, the hearing judge may order that which is necessary to be done.
>
> ***Buckley v. British Columbia Teachers' Federation*** **[1992] B.C.J. No. 1329**

84. *Buckley, supra* was followed in *Gaylor v. Galiano Trading Co.* [1996] B.C.J. No. 2004. *Gaylor* involved similar facts to the *Buckley* case: in the face of a petition brought under the *Company Act* for an oppression remedy, the respondent sought to have the matter removed to the trial list. Mr. Justice Bauman held:

> In the result in Buckley, Hood J. dismissed the application under Rule 52(11)(d) holding that the petitioner should be entitled to proceed in a summary way unless the respondent could clearly show the hearing judge that a full trial was necessary.
>
> ***Gaylor v. Galiano Trading Co.*** **[1996] B.C.J. No. 2004 at para. 14.**

85. The established test under what is now Rule 22-1(7) is set out in *Haagsman v, British Columbia (Minister of Forests)* (1998), 64 BCLR (3d) 180. Mr. Justice Sigurdson discussed the discretion of the court to convert a petition into an action and the appropriate test:

> 46 Under Rule 52(11)(d) I have a discretion, in proper circumstances, to convert these petitions into actions and in appropriate situations, to treat them as claims for summary trial. What are the factors I should consider? In Del Zotto v. Minister of National Revenue (1995), 103 F.T.R. 150 at 157, the court described some of the factors which I think generally should be considered on an application to convert a petition to an action:
>
> (1) the undesirability of multiple proceedings;
>
> (2) the desirability of avoiding unnecessary costs and delays:
>
> (3) whether the particular issues involved require an assessment of demeanour and credibility of witnesses; and

(4) the need for the court to have a full grasp of all the evidence.

86. In *Woodward's Ltd* v. *Montreal Trust Co. of Canada*, [1992] B.C.J. No. 1263, Chief Justice Esson determined that the matter should be heard by way of petition, even where there was a triable issue, because the matter could be decided by reference only to the documents.

***Woodward's Ltd v. Montreal Trust Co. of Canada*, [1992] B.C.J. No. 1263**

87. In the circumstances of this matter, where the UVSS is required to bring a matter by way of petition, it makes sense to apply the approach discussed in the cases outlined above to determine whether this matter can be heard by way of petition:

i) Has the respondent demonstrated that a full trial is required (*Gaylor*)?

ii) Can the matter be tried within the summary framework of a petition (*Buckley*)?

iii) Can the matter be determined by reference only to the documents (*Woodwards*)?

iv) Would a transfer to the trial list create unnecessary costs and delays (*Haagman*)?

v) Do the particular issues involved require an assessment of demeanour and credibility of witnesses (*Haagman*)?

vi) Is there a need for the court to have a full grasp of all the evidence (*Haagman*)?

88. The petitioner submits that when the above tests are considered in the context of the new Rules, this matter is clearly a matter that should be determined within the summary framework of a petition.

b. Did the CFS Bylaws, as they were at the time the Petition was delivered, permit the CFS to rely on the Counter-Petition to deny students at UVIC a referendum on terminating their membership in the CFS?

A. PRINCIPLES GOVERNING INTERPRETATION OF THE BYLAWS

89. Because the CFS determined and advised the petitioners that "the petition appears to meet the minimum requirement set out in the Federation's bylaws", and has relied solely on the Counter-Petition to find that the Petition was not valid, the central issue in this case is whether the CFS Bylaws permit it to rely on the Counter-Petition to deny UVIC students a vote on whether they wish to leave the CFS.

90. Because the Bylaws of a voluntary association are the source of legal obligation between the members, the answer to this question is resolved by interpreting the Bylaws to determine whether they permit for a Counter-Petition. A review of the principles that have guided Canadian courts in the interpretation of Bylaws of voluntary associations strongly suggests that the Bylaws do not permit for consideration of the Counter-Petition.

i) The Bylaws Must be Interpreted in Accordance with Constitution

91. The bylaws of a voluntary association must be interpreted in accordance with the constitution of the society. In *Lakeside Colony of Hutterian Brethren* the Supreme Court of Canada held that:

> ... the Articles of Association are rules contemplated by Article 2(f) of the Constitution, and are therefore valid only in so far as they are consistent with the Constitution.

***Lakeside Colony of Hutterian Brethren, supra* at para. 45**

92. The first value that the CFS Preamble sets out is "to organize students on a democratic, cooperative basis in advancing our own interests, and advancing the interests of our community".

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Preamble, Article 1

93. The CFS Statement of Purpose indicates the following "functions" of the CFS:

(a) to promote and support the interests and activities of democratic student organisations in all provinces and at all educational institutions in Canada.

(b) to bring together post-secondary students from all parts of Canada to discuss and take common, democratic positions on questions affecting students.

Affidavit #1 of J. Barrios, para. 12, Exhibit C, Statement of Purpose, Article 2 and 5

94. Between the Preamble and Statement of Purpose, the term "democratic" is mentioned three times. Democracy is clearly meant to be a cherished value of the CFS and its Bylaws should be interpreted in a fashion that furthers democracy, not restricts it.

95. The Bylaws setting out the process to trigger a referendum must be interpreted in light of the lofty democratic goals set out in the CFS Preamble and Statement of Purpose. An interpretation of those Bylaws that would prevent the holding of a democratic vote on an issue as important as ending membership in the CFS cannot be viewed as democratic. This is especially true in light of the unusual construction of the CFS Bylaws that does not allow Individual Members to resign as they desire, but rather requires that resignation is only possible through collective decision making.

ii) The Bylaws must be interpreted in a manner that accords with the Other Bylaws of the Association

96. The bylaws of a voluntary association must be interpreted in a manner that accords with the other bylaws of the voluntary association. The Ontario Court of Appeal recently re-affirmed the well established principle of contract interpretation that the provisions should be read, not standing alone, but in light of the agreement as a whole. The court held:

> Before considering the relevant provisions of the Contract, it is useful to recall certain of those well-established principles. The "normal rules of construction lead a court to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract": see Consolidated-Bathurst Export Ltd. v. Mutual Boiler & Machinery Insurance, [1980] 1 S.C.R. 888, at p. 901. To the extent possible, the contract should be construed as a whole and effect should be given to all of its provisions. The provisions should be read, not standing alone, but in light of the agreement as a whole: see Hillis Oil & Sales Ltd. v. Wynn's Canada Ltd., [1986] 1 S.C.R. 57, at p. 66.
>
> ***Seip & Associates Inc. v. Emmanuel Village Management Inc.*, [2009] O.J. No. 1024 (OCCA) at paragraph 47**

97. In this matter, the process that is set out to trigger a referendum is complex and fully codified. Each step is carefully set out. It makes no sense in light such a carefully and fully set out code that there are *other* external processes, not referred to within the Bylaws, that can be employed to defeat an Individual Member's effort to trigger a referendum.

98. Furthermore, in light of the fact that the Bylaws provide for a carefully structured referendum on termination of membership in the CFS and the limited purpose of the Petition to trigger such a referendum, it makes no sense that a battle of duelling petitions should be played out at the most preliminary stage. The democratic process of a referendum triggered by the Petition will allow all Individual Members of the CFS at UVIC to vote for or against terminating membership in the CFS. It is within the

referendum process and during the campaigning period leading up to a referendum, a period explicitly provided for and carefully governed under the Bylaws, that both sides will be heard and all Individual Members will be given the opportunity to vote. Given that the Bylaws explicitly permit for a democratic process for students to vote freely on their membership through referendum, only a strained interpretation of the Bylaws would see that same process played out through a battle of petitions and counter-petitions at the most preliminary triggering stage.

iii) The Bylaws must be Interpreted in Accordance with the Reasonable Expectations of the Members

99. The Respondent's conduct vis-à-vis its members is governed by its Bylaws. Its Bylaws govern the management of a voluntary association and set out the various rights and responsibilities of the members, directors and officers. Any interpretation must be guided by the parties' reasonable expectations.

R. Jane Burke-Robertson & Arthur Drache, *Non-Share Capital Corporations,* looseleaf (Toronto: Carswell, 2008) at 4-16

***Chu v. Scarborough Hospital Corp.,* [2006] CarswellOnt 8361 at paras. 42 (Sup. Ct.) *aff'd.* [2007] O.J. No. 3131**

***Rhee v. Korean Society of British Columbia for Fraternity and Culture,* [1993] B.C.J. No. 1048 at para. 14**

100. The democratic rights at stake are important and cut to the very heart of the relationship of the membership with the CFS. In fact, within the context of a "voluntary association" organization that does not allow for its members to freely terminate their membership on their own accord and does not provide any other rights to Individual Members, there can be no other right as important as the right to trigger a referendum on termination of membership.

101. Here the Individual Member, José Barrios, relied on the process to the tee. He had every reason to believe that if he tendered a petition with signatures of 10% of the student body, a referendum would be scheduled. He further he had every expectation that another instrument tendered after the Petition could not be relied on by the CFS to defeat his Petition and to, effectively, serve up the CFS a victory to maintain the *status quo* at UVIC. The CFS interpretation of the Bylaws would require that *whatever* steps José Barrios took; he could have no say on his membership in the CFS and must resign himself to membership in the CFS and the mandatory dues that go along with CFS membership. The CFS cannot create reasonable expectations through its Bylaws and then dash those expectations by adopting an unreasonable interpretation of its own Bylaws.

B. THE RESPONDENT'S BYLAWS MUST BE INTERPRETED FAIRLY, REASONABLY, AND IN GOOD FAITH

102. The Bylaws must be interpreted reasonably, fairly, and in good faith.

> ***Hong v. Young Kwang Presbyterian Church of Vancouver*, [2007] B.C.J. No. 783, 30 B.L.R. (4th) 254 at paras. 49 to 51**
>
> ***Rhee v. Korean Society of British Columbia for Fraternity and Culture,* [1993] B.C.J. No. 1048 at para. 14**
>
> ***Chu v. Scarborough Hospital Corp.,* [2006] CarswellOnt 8361 at paras. 35, 37 and 42 (Sup. Ct.) *aff'd.* [2007] O.J. No. 3131 at para. 22 (Div. Ct.)**
>
> ***Conacher v. Rosedale Golf Assn.*, [2002] CarswellOnt 527 at para. 22 (S.C.J.)**

103. In addition to the explicit contractual obligations provided for in the Bylaws, the contractual relationship between the Respondent and the Petitioners is subject to an implied duty of good faith "not to act in a way that defeats or eviscerates the very purpose and objective of the agreement". The Court of Appeal for Ontario has affirmed

that an implied contractual term of good faith will be imposed to prevent parties from evading their contractual duties through actions that, while not explicitly prohibited by the terms of the contract, would have the effect of defeating the legal rights provided for in the contract.

> ***Nareerux Import Co. v. Canadian Imperial Bank of Commerce*, [2009] O.J. No. 4553 at para. 69 (C.A.)**
>
> ***Civiclife.com Inc. v. The Attorney General of Canada*, [2006] CanLII 20837 at paras. 49 and 51 (C.A.)**

104. In this matter, clearly the CFS has an incentive to invalidate the Petition. It has a direct financial interest in preventing any referendum from occurring that could result in the defederation of the UVSS. In fact, by preventing a referendum, the CFS effectively reaches the exact same outcome as if it had won a referendum: it retains students of UVIC as members and the approximately quarter of a million dollars in fees that they pay to the CFS on an annual basis. If the Bylaws of the CFS are interpreted to permit for a Counter-Petition, the effect is to eviscerate the legal rights explicitly provided to the Petitioners under the contract and that cannot be said to be in good faith.

105. An interpretation of the Bylaws that permits for consideration of a Counter-Petition would nullify the very right provided under the Bylaws -- the contractual bargain of the parties -- and must be avoided.

C. THE BYLAWS DO NOT PERMIT FOR CONSIDERATION OF THE COUNTER-PETITION

106. Where the process contemplated in the Bylaws is properly followed, the CFS has no discretion to refuse to hold a referendum. The parties' rights in relation to the defederation process are codified. Once a petition for defederation was served on the Respondent, the right to a referendum was irrevocably triggered. As a result, if the CFS wanted to prevent the UVSS from defederating, its relief was prescribed by the processes codified in its Bylaws: it could campaign on the UVIC and convince students to vote to

stay in the CFS, but it could not take steps to defeat the petition to pre-empt the referendum from occurring.

107. At no time has the CFS taken the position that José Barrios did not follow the proper procedure and, in fact, in its letter of January 14, 2010, acknowledged that the Petition met the threshold required.

Affidavit #1 of J. Barrios, para. 30, Exhibit I

108. The Respondent, however, relies exclusively on the Counter-Petition to refuse to hold a referendum. The Bylaws of the Respondent, as they were at the time, do not contemplate consideration of a Counter-Petition or address the effect that any such Counter-Petition can have. The CFS Bylaws, properly interpreted, provide no legal basis to consider the Counter-Petition in reference to the threshold required to trigger a referendum under the Bylaws.

109. The Bylaws, as they were at the time, established a 10% *threshold* to trigger a referendum. Interpreting the Bylaws so as to allow the Respondent to rely on the Counter-Petition to remove names from the Petition after the Petition was delivered renders the 10% threshold meaningless. If a Petition contained the necessary 10% and an unanticipated Counter-Petition was accepted after the Petition was delivered to reduce the number of signatories on the Petition to 9%, could another group of students, or the original group, circulate a counter-counter-petition to bring the number back over the threshold? Could the Respondent then circulate a counter-counter-counter-petition? Under the CFS interpretation an Individual Member will never know the true number of signatures required to meet the 'threshold' under the Bylaws.

110. The Respondent suggests that Counter-Petitions are common in the context of labour disputes. However, the Respondent is not a labour union, nor is it governed by the statutory regime which governs such entities. The authority for unionized employees to withdraw their support arises under a codified statutory system of labour relations, governed by statute: a regime that has no application to the case at bar. There is no

authority that can be pointed to in the context of voluntary associations which would authorize such a process. Rather, the Respondent is a non-profit corporation and is governed by its Bylaws, which made no mention of a Counter-Petition process at the time.

111. Moreover, that the Bylaws as they were in November 2009 cannot be interpreted to provide for the consideration of a Counter-Petition is clear as a result of the changes the CFS membership made to the bylaws in May 2010 to provide for a process to remove signatures. If the CFS Bylaws, the source of legal obligation between the parties, already provided authority to the National Executive to consider a Counter-Petition, why did the membership amend the Bylaws to provide for the very same process in May 2010?

D. THE COUNTER-PETITION DOES NOT MEET THE STANDARD REQUIRED BY THE BYLAWS FOR A PETITION

112. Even if the CFS Bylaws, as they were at the time, entitled the CFS to remove names from the Petition, the Counter-Petition does not meet the requisite standard of clarity required.

113. As set out above, the Bylaws, as they were at the time, required the petition to contain the following clear explicit wording:

> 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.

114. Yet, the Counter-Petition does not even come close to containing the degree of clarity and specificity that is required of a petition under the CFS Bylaws. Far from being a clear question, the Counter-Petition was a loaded document that indicated that signatories espoused such values as environmentalism, reduced tuition fees, and justice for aboriginal people and then, buried at the end of the document, appears a statement that the signatories also wished to have their names removed from 'any' petition putting

to question membership in the CFS. The specific Petition was not attached, referenced, or provided to students who were signing the Counter-Petition. For example:

(a) the Counter-Petition does not petition the CFS, but rather was directed to the UVSS. The Counter-Petition states that: "I call on the board of the UVic Students' Society to defend student unity and to continue to fight for students rights through membership in the Canadian Federation of Students". Since the Counter-Petition is directed to the UVSS, a reasonable person signing the Counter-Petition would believe it was to be delivered to the UVSS, not the CFS. Since the UVSS has no role in initiating CFS referendums under the CFS Bylaws (the "sole authority" for initiating a referendum lies with the Individual Members), why would the UVSS play a role in removing signatures from the Petition?

(b) the Counter-Petition was entitled "Petition to Support Student Unity" and indicated that the signatory believed that the UVSS should work through the CFS 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"; and "continue to work on campaigns such as "Where's the Justice for Aboriginal Peoples" and the "No Means No" anti-date rape campaign"". Again, a reasonable person signing the Counter-Petition would have assumed that they were lobbying the UVSS to work with the CFS on these causes or one of these causes, not removing their name from the Petition.

(c) The final paragraph on the Counter-Petition is almost like an afterthought. After a long pre-amble, it states: "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-BC]". The statement does not reference the

> Petition. The statement is not addressed to the CFS. And the statement does not even accurately capture the purpose of the Petition, which is not to "put to question membership in the Canadian Federation of Students", but rather is to petition the CFS National Executive to hold a referendum on continued membership.

115. Thus, the Counter-Petition, *prima facie*, is misleading and unclear and, as a result, patently unfair. A student could have signed the Counter-Petition for any *one* of the reasons set out in the document and reasonably would have concluded that he or she was lobbying the UVSS to take up one of those issues. The Counter-Petition is far from clear that it was going to be used to direct the CFS to remove names from the Petition. In fact, some students may well have signed the Counter-Petition before signing the Petition.

116. Even if the CFS Bylaws could be interpreted to allow for a Counter-Petition, they cannot be interpreted to permit for a Counter-Petition that is, on its very face, misleading, unclear, and, as a result, patently unfair.

E. 90 DAY LIMIT

117. The CFS Bylaws, as they were at the time, required that the CFS determine whether the petition was in good standing within 90 days.

118. While the CFS determined that the Petition met the minimum threshold of 10% within 90 days, it was only after the expiration of the 90 days that the CFS decided to invalidate the Petition based on the Counter-Petition. In fact, the verification letter with respect to the Counter-Petition from the Registrar was dated February 11, 2010, six days after the 90 period expired and it was not until March 24, 2010 that the CFS advised Mr. Barrios that it was not going to grant a referendum.

119. The 90 day deadline has no meaning if the CFS can exceed that deadline and, after the expiration, determine that a Petition is "invalid". Clearly the determination must be made within 90 days. To do otherwise would set no time limitations on validating a Petition and render the Bylaw stipulating a 90 day deadline meaningless. Even if the

Bylaws can be interpreted to implicitly allow for the Counter-Petition, the time limit for doing so cannot be left open beyond 90 days.

F. THE RELIANCE ON THE COUNTER-PETITION WAS FLAWED

120. The CFS relied on the Registrar's verification of the Counter-Petition to conclude that the Petition did not meet the required threshold. However, there was no way that the CFS could have reasonably come to that conclusion. The verification letter only indicates the number of valid student names on the Counter-Petition, but does *not* indicate which names are valid student names. Although the Counter-Petition contained 2846 signatures, only 2180 were valid. In other words, approximately 23% of the signatures were invalid. The CFS had no way of knowing the specific names that were invalid on the Counter-Petition, yet it removed 340 names from the Petition based on the Counter-Petition.

G. RECTIFICATION OF ACTIVITIES OF A VOLUNTARY SOCIETY

121. The Courts will step in to rectify activities of a voluntary association where bylaws have been unreasonably or unfairly interpreted, a decision has been made in bad faith, or contrary to the rules of natural justice.

Vancouver Hockey Club Ltd. v. 8 Hockey Ventures Inc.
(1987), 18 B.C.L.R. (2d) 372 (S.C.) at page 7

122. In *Bala v. Scarborough Muslim Assn.* 2008 CarwellOnt 7101, 55 B.L.R. (4th) 237, 305 D.L.R. (4th) 186, the court held that there was nothing in the bylaws giving the Management Committee the power to disqualify a candidate based on his past conduct (para. 18). The respondent argued that the court should not interfere with the affairs of the voluntary association. The court determined that "there was a fundamental flaw in the electoral process and a candidate was disqualified for reasons not justified by the Constitution of the Association". On that basis that the conduct of the Management Committee was unjustified, the court stepped in to provide a remedy.

***Bala v. Scarborough Muslim Assn.* 2008 CarwellOnt 7101, 55 B.L.R. (4th) 237, 305 D.L.R. (4th) 186 at paras. 18 to 20.**

123. In *Domaoan v. Filipino Assn. in British Columbia*, [1986] B.C.J. No. 1203 (BCCA), the Appellate sought to overturn the decision of Mr. Justice Toy. Mr. Justice Toy had ordered a new election on the basis that the Board of Directors did not permit the Respondent to run in the election because he refused to fill out a certificate indicating whether he was at present an officer or director of any other cultural or civic Filipino organizations, whether he was prepared to resign from such an office, or whether he had ever been convicted of a crime involving moral turpitude. The BC Court of Appeal held that the constitution and bylaws of the association did not require such a certificate. Counsel argued that the court should not have interfered with the internal affairs of the society. In dismissing the appeal Hutcheon J.A. stated:

> Nor do I look upon the failure to conduct the proper election, that is to say, refusing a member the right to stand for the office of director, as a matter that is of minor moment. I would consider it to be a serious matter and I would not have come to a different conclusion, as I see it, than the judge did in this instance. Accordingly, I would dismiss the appeal.

***Domaoan v. Filipino Assn. in British Columbia (B.C.C.A.),* [1986] B.C.J. No. 1203 (BCCA) at paras. 20 to 25**

124. In *Chu v. Scarborough Hospital,* [2006] Carswell Ont 8361, the Board of Director's refused to recognize the membership of certain members on the basis of its interpretation of the term "annual member". The effect of the Board's interpretation was to reduce the corporate accountability of the Board by placing "complete control of governance matters in the hands of the directors and negating any meaningful role for the Approved Annual Members" (para 42). The respondent argued that the court should not interfere with the affairs of the voluntary association. The court questioned whether the business judgement rule was applicable and determined that the Board of Director's interpretation of the relevant bylaw was "not reasonable" (paras. 35 and 37) and in breach

of the reasonable expectations of the members (para. 42). On appeal, the court stated that "The actions of the Board in this case, grounded on its interpretation of the word "annual", in our view created a situation of unfairness. In view of the situation of unfairness to the Respondent created by the actions of the Board, we cannot find any palpable or overriding error".

***Chu v. Scarborough Hospital Corp.*, [2006] CarswellOnt 8361 at paras. 35, 37 , and 42 (Sup. Ct.) *aff'd.* [2007] O.J. No. 3131at para. 22**

125. In *Hong v. Young Kwang Presbyterian Church of Vancouver, Supra*, the court considered the bylaws of the respondent in connection with the appropriate election procedure. The respondents contended that the matter was one of internal governance and should be dealt with under the Church's internal rules and not by the Court. The Court provided a remedy to the petitioner on the basis that the respondent's interpretation of its bylaws was not reasonable or fair.

***Hong v. Young Kwang Presbyterian Church of Vancouver*, [2007] B.C.J. No. 783, 30 B.L.R. (4th) 254 at paras. 49 to 51**

126. Even if the CFS National Executive honestly constructed the Bylaws to come to a conclusion that the Bylaws allowed for the Counter-Petition, that is not sufficient. If the CFS construction of the Bylaws is the wrong construction, its interpretation cannot be binding on the members. The CFS cannot extend its jurisdiction by giving a wrong interpretation to the contract, no matter how honestly the interpretation is held. The CFS only has that jurisdiction which is conferred to it on the contract's true interpretation, not upon what it thinks the contract confers.

***Lee v. Showmens Guild of Great Britain*, [1952] 2 Q.B. 329, [1952] 1 All E.R. 1175 (C.A.)**

127. This is not a case about the decision of a domestic tribunal regarding acceptance on a high school hockey team. The Petitioners are not seeking review of the application of internal policies or opinions regarding the standards of propriety and conduct appropriate for members of a particular association. The CFS is unlike almost all voluntary associations where a member who does not like the opinion of a club or church and what the organization is doing can simply resign and walk away. Rather this case involves an interpretation that the CFS gave to its Bylaws which directly resulted in depriving Individual Members of their right to vote on leaving the CFS. Without the supervision of the courts, Individual Members of the CFS are left with no recourse to ensure that the rules of membership are reasonably and fairly interpreted. In this circumstance, it is entirely appropriate for the court to step in to supervise the affairs of the CFS.

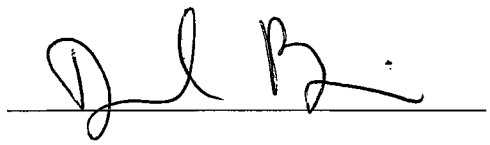
CONCLUSION

128. The CFS Bylaws as they were in November 2009 contained a detailed process by which an Individual Member could trigger a referendum. Mr. Barrios relied on and followed that process to a tee. There is no disagreement that, but for the reliance on the Counter-Petition, the Petition met the minimum threshold under the Bylaws to trigger a referendum. The Counter-Petition was clearly not provided for in the Bylaws and has no validity vis-à-vis the Petition. If the CFS Bylaws, as they were at the time, permitted for removal of names from the Petition, the Counter-Petition, does not meet the requisite standard of clarity required and, in any event, was not relied upon by the CFS until after the 90 day deadline had expired.

129. The limited purpose of the Petition is to trigger a referendum on membership in the CFS. A referendum triggered by the Petition will allow all Individual Members of the CFS at UVIC to vote for or against terminating membership in the CFS. Given the Bylaws explicitly permit for a democratic process for students to vote freely on their membership, only a strained interpretation of the Bylaws would see that very process played out at a preliminary stage through a battle of petitions and counter-petitions.

130. The Petitioner respectfully asks that this Court step in to declare the invalidity of the Counter-Petition and require the CFS to allow UVIC students their right under the Bylaws to vote on whether they wish to leave the CFS.

DATED: January 4, 2011



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