

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**COPY**

Date: 20100120  
Docket: S094085  
Registry: Vancouver

Between:

**Kwantlen University College Student Association**

Petitioner

And:

**Canadian Federation of Students – British Columbia Component**

Respondent

Before: The Honourable Madam Justice B.J. Brown

**Oral Reasons for Judgment**

In Chambers  
January 20, 2010

Counsel for Petitioner

D.B. Borins

Counsel for Respondent

D.G. Crane

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** This is a petition brought by the Kwantlen University College Student Association against the Canadian Federation of Students – BC Component.

[2] In their petition the KSA ask for a declaration that:

1. the powers of CFS-BC are or have been exercised in a manner oppressive or unfairly prejudicial to the KSA, contrary to the provisions of the *Society Act* and the *Company Act*;
2. an order that such relief as may be necessary to remedy the oppressive or unfairly prejudicial conduct;
3. a declaration that the refusal by CFS-BC's Executive Committee to ratify the election of Derek Robertson as the representative of KSA to the CFS-BC Executive Committee on May 11<sup>th</sup>, 2008, and June 6<sup>th</sup>, 2009, is a breach of the bylaws of CFS-BC, s. VI(4);
4. an order that the KSA's election of Derek Robertson is ratified effective the date of the order;
5. an order that any resolution or other motion approved by CFS-BC's Executive Committee on or after May 11<sup>th</sup>, 2008, and before the date of the order is void and of no effect, unless and until such resolution is approved by CFS-BC's Executive Committee in a meeting at which Derek Robertson is a voting participant, or in the alternative, that CFS-BC return all monies remitted to CFS-BC by the KSA or Kwantlen students from May 11<sup>th</sup>, 2008, to the date of this order; and
6. costs.

The petitioner relies on ss. 71 and 85 of the *Society Act* and ss. 200, 271, and 272 of the *Company Act*.

[3] By way of background, the KSA is a society incorporated pursuant to the *Society Act*. It is a representative student association which defends the rights and interests of Kwantlen students. Kwantlen has approximately 18, 000 full-time and part-time students.

[4] CFS-BC is a society incorporated pursuant to the *Society Act*. It is an affiliate of the Canadian Federation of Students. It is the provincial component of the CFS.

[5] Membership of CFS-BC is made up of voting local association members and non-voting individual members. The local association members of the CFS-BC are 16 democratic student associations representing students at various universities

across British Columbia including Kwantlen. The individual members of CFS-BC are the individual students who are members of each local association member of CFS-BC.

[6] KSA is the student association at Kwantlen and is a local association member of both CFS and CFS-BC. Each year Kwantlen students pay approximately \$4 each in membership fees to CFS-BC. KSA is required to collect the CFS-BC membership fees from its students and remit those fees to CFS-BC. From July 2007 to September 2009 KSA remitted approximately \$185,000 to CFS-BC.

[7] CFS-BC is governed by its Executive Committee, which has four at-large positions, one aboriginal caucus liaison, one women's caucus liaison, one representative elected from each of the 16 local association members. Each member of the Executive Committee has one vote. KSA has one seat on the Executive Committee.

[8] Bylaw VI(4) of the CFS-BC provides:

The Local Representatives shall be elected by their respective local associations, in a manner consistent with the policy and bylaws of said member local association, and ratified at the BC Component Executive Committee Meeting.

[9] Each local representative serves a term of one year on the Executive Committee from the date of ratification by the CFS-BC Executive Committee. The Kwantlen students' only participation in the governance of CFS-BC is through their ability to elect a local representative to the CFS-BC Executive Committee.

[10] By the KSA bylaws and regulations, KSA's local representative to CFS-BC executive is the KSA director of external affairs. The KSA director of external affairs is elected at large by Kwantlen students at a general election held each February.

[11] CFS-BC's Standing Resolution 2 sets out the requirements for the Executive Committee to ratify a local representative. First, the local representative must swear or affirm an oath of office; second, the local association member, KSA in this case,

must provide a letter listing a duly recorded motion of the local association member's board of directors filling the local representative position on the Executive Committee and the letter must be signed by two signing officers of the local association member and received by CFS-BC not less than three working days before the Executive Committee meeting at which the ratification is to occur.

[12] In February 2008 the KSA held a general election. Derek Robertson ran in the election and was elected the KSA's director of external affairs for the period April 1, 2008, to March 31, 2009.

[13] By virtue of the bylaws and regulations of the KSA, he was elected as the KSA's local representative on the CFS-BC Executive Committee. The KSA council also resolved that Derek Robertson would be its local representative at its meeting on April 23<sup>rd</sup>, 2008. On May 7, 2008, KSA notified CFS-BC that Derek Robertson would be its local representative. The Executive Committee of the CFS-BC met on May 11, 2008. Although Derek Robertson met the requirements of Standing Resolution 2, the CFS-BC Executive Committee refused to ratify his nomination.

[14] In February 2009 KSA held a general election. Derek Robertson ran for re-election to the position of director of external affairs and was re-elected. Again KSA council appointed Derek Robertson as its local representative on March 12, 2009. On May 15, 2009, KSA notified CFS-BC that Derek Robertson would be its local representative. On June 4, 2009, lawyers for CFS-BC wrote to lawyers for KSA indicating that the Executive Committee had refused to ratify Mr. Robertson in 2008 because it had no confidence, in light of his statements and actions, that Mr. Robertson was capable of discharging his fiduciary duty to the society.

[15] On June 6, 2009, CFS-BC Executive Committee met to consider ratifying Derek Robertson as the representative for KSA. Again he met all criteria to Standing Resolution 2, and again the Executive Committee refused to ratify the KSA's nomination of Derek Robertson as its local representative.

[16] The CFS-BC provides an explanation for their refusal to ratify Mr. Robertson in the affidavit of Michael Olson. He says that Mr. Robertson's activities in support of the defederation vote at Kwantlen which took place in April 2008 were fundamentally in conflict with his duty to CFS-BC. Mr. Olson is concerned that Mr. Robertson's purpose in becoming a KSA representative is to undermine the CFS-BC rather than to fulfil his obligations to the CFS-BC.

[17] Mr. Olson says that in February 2008 when Mr. Robertson was sitting as the Kwantlen student's representative on the Executive Committee of CFS-BC, Mr. Robertson was asked about the political climate on campus and how to address concerns regarding the defederation activities at Kwantlen. Mr. Olson says that Mr. Robertson did not disclose to the Executive Committee the extent of campaign efforts by the KSA council to convince Kwantlen students to vote to defederate nor his own participation in those efforts.

[18] Mr. Olson says:

The fact that Mr. Robertson was sitting as a director of the CFS-BC at the same time as he was playing a role in the movement to have the KSA separate from the Federation was a factor that was extremely troubling to me, as it was to other members of the Executive Committee. I concluded from this that he could not be trusted to take seriously his duty of loyalty to the Federation as a director.

[19] I turn now to the positions of the parties. The petitioner argues that the ratification process is solely a formal procedure designed to ensure that new directors have been properly elected by their respective local associations and to formally mark the commencement of the one-year term in office of the local representative. The ratification is not discretionary and does not permit the executive board to bar admission of any duly elected local representative. KSA says that CFS-BC's refusal twice to ratify its elected local representative is a breach of its own bylaws and is oppressive to the KSA.

[20] The KSA says further that a combination of refusing to recognize its validly elected local representative, conducting meetings and transacting business in the

absence of a KSA representative, failing to inform KSA of the executive committee meetings and decisions, collecting CFS-BC membership funds while denying representation to KSA and unfairly hindering or obstructing participation of KSA in the CFS-BC executive is oppressive and unfairly prejudicial.

[21] KSA says that there is no legal basis for CFS-BC's refusal to ratify Mr. Robertson as its representative and the interpretation given by CFS-BC to Standing Resolution 2 is contrary to s. 24 of the *Society Act*. KSA says that the *Society Act* contains provisions whereby the members can remove a director, but there is no provision under the *Society Act* for directors to prevent a fellow director from taking office. They cannot refuse to permit a director to take office on the basis of apprehension of bias or on the apprehension that the director will not uphold his or her obligations to the society.

[22] The CFS-BC argues that the decision of the directors to deny ratification to Mr. Robertson was made in good faith and complied with the society's constitution and bylaws. The petitioner and Mr. Robertson were given a full opportunity to be heard and the decisions were otherwise in accordance with the rules of natural justice. The CFS-BC says that in these circumstances the court has no jurisdiction to, and should not, review the decision in question.

[23] CFS-BC says that the directors were entitled to consider whether Mr. Robertson could be trusted to uphold his fiduciary duty of loyalty to the respondent if he became a director. The respondent relies on a series of decisions dealing with sports clubs and social clubs to the effect that the court should not intervene in decisions such as these.

## **DISCUSSION**

[24] Section 85 of the *Society Act* provides the court with certain powers. Section 85(1):

85(1) Despite anything in this Act, if an omission, defect, error or irregularity occurs in the conduct of the affairs of a society by which

- (a) a breach of this Act occurs or
  - (b) there is default in compliance with the constitution or bylaws of the society  
...
- the court may
- d(i) to rectify or cause to be rectified or to negate or modify or cause to be modified the consequences in law of the omission, defect, error or irregularity, or ...
  - (e) give the ancillary or consequential directions it considers necessary.

[25] In my opinion, this petition is answered fully by the provisions of the *Society Act*. Section 24 of the *Society Act* provides that:

24(1) The members of a society may, in accordance with the bylaws, nominate, elect or appoint directors.

The members of CFS-BC society are each local student's association; in this case the KSA. The directors of CFS-BC are the members of the Executive Committee (Bylaw V). As already noted, the local representatives to the Executive Committee are to be elected by their respective local associations, in a manner consistent with the policy and bylaws of that member local association, pursuant to bylaw VI(4).

[26] If the CFS-BC Executive Committee is correct in its interpretation of bylaw VI (4), then to be elected, a director must be both elected or appointed by its member and approved by the Executive Committee. I accept the argument of the KSA that the *Society Act* does not clothe the directors of a society, in this case the Executive Committee, with authority to determine who should be directors of a society. The *Society Act* specifically provides that it is the members of a society who may elect, nominate or appoint directors. As in *Demiris v. Hellenic Community of Vancouver*, [2000] B.C.J. No. 907, this additional requirement is *ultra vires* a society because it conflicts with the *Act*.

[27] In *Demiris* the bylaw read:

The bylaws of the society ... may by extraordinary resolution ... be amended ... provided that the written consent of Archdiocese is first obtained before voted on.

Shabbits J considered the *Act* and the bylaws and said:

I am of the opinion that the members of the respondent Society were entitled to change its bylaws by acting in accordance with s. 23 of the *Act*. The requirement that there be the written consent of the Archdiocese before the vote, which an earlier amendment had sought to entrench, was void, and of no effect. The *Act* sets out the manner in which bylaws can be amended. The requirement that amendments be by resolution passed in a general meeting by a majority of not less than 75 percent of the votes is the protection to individual members and minority interests which the legislature has adopted. It is that that governs the affairs of all of societies incorporated under the *Act*, including those of the respondent.

[28] Similarly here, the *Act* governs the affairs of the society. Section 24 of the *Act* provides the manner in which directors of a society are to be elected. The *Act* does not contemplate that after members have appointed or elected directors, then they must be approved by other Executive Committee members. To do so is in conflict with the *Act*, and the interpretation placed on bylaw VI (4) by the CFS-BC conflicts with s. 24 of the *Act* and would be *ultra vires*.

[29] I need go no further in these reasons; however, I will say that it is my view that it is unreasonable for the Executive Committee to determine in advance that someone will not properly fulfil their duties as a director or abide by their oath as a director, based on their activities during a campaign to defederate. Mr. Robertson may or may not properly fulfil his duties. Until he is given the opportunity to do so, no one will know. Should he fail to do so, there are appropriate measures for removal of directors.

[30] The respondent argues, as I have indicated, that the court should not, or has no jurisdiction to, intervene in a case such as this, relying on *North Shore Independent School Society v. B.C. School Sports Society*, [1999] B.C.J. No. 143. In that case Brenner J., (as he then was) considered a petition brought against the B.C. School Sports Society. BCSSS was a voluntary association of secondary schools in the province. At issue was the interpretation of eligibility rules. BCSSS had declared one of Collingwood's students to be ineligible to participate in BCSSS programs because he had transferred from a public school the previous year.

[31] Under the eligibility rules, any student transferring schools during his third, fourth or fifth year of eligibility was only eligible if that student fell within one of 12 situations outlined. Unless one of the 12 listed conditions was met, the student was, *prima facie*, ineligible. The rules also provided for an appeal. At appeal the committee had the ability to waive the student's ineligibility where extraordinary circumstances inhibited the student's opportunity to stay in school athletics. The final appeal was binding on all parties. At issue was the meaning of the phrase "extraordinary circumstances." As Brenner J. indicated, the application was to have the court review the decision of the domestic tribunal as to how they interpreted the meaning of their policies. Brenner J. reiterated a statement often made by courts that courts will be reluctant to intervene in internal matters of sports or social clubs. Brenner J. referred to a decision of Dohm J., (as he then was) in *Vancouver Hockey Club v. 8 Hockey Ventures Inc.* to the following effect:

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 ... 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.

[32] I take no issue with these general statements. However, the issue here is not the application of internal policies or opinions regarding the standards of propriety and conduct appropriate for members of a particular association. Rather, the issue is whether the bylaws as interpreted or applied by the Executive Committee are in conflict with the *Society Act*. I have concluded that they are, and this distinguishes this case from those such as *North Shore Independent School Society v. Vancouver Hockey Club*.

[33] I turn now to the proper remedy. The petitioner argues that CFS-BC conduct constitutes oppression, that the court has power to compensate an aggrieved person. The petitioner argues that to compensate it for the oppressive and unfairly prejudicial behaviour of the CFS-BC, then CFS-BC should, amongst other things, be

ordered to return the KSA's membership fees for that period and appoint Mr. Robertson to the CFS-BC board for the balance of his term in office.

[34] The respondent says that this would not be an appropriate remedy, that s. 85 of the *Society Act* permits the court to correct any irregularity, and that that is what has happened in this case, at most. The respondents say that they were not acting in bad faith and that they have interpreted ratification in a way that is reasonably supported by the language of the bylaws.

[35] Assuming that the conduct of the respondents constituted oppressive and unfairly prejudicial conduct, I would not be prepared to grant the relief that the petitioner seeks. First, the fees are the fees of the individual students of Kwantlen, not the fees of the KSA. Secondly, it is my view that it is likely that the students at Kwantlen have received benefit from the CFS-BC, despite not having Mr. Robertson sit on the board. Third, the KSA could have brought this petition more promptly after the refusal to ratify in 2008.

[36] In my view, the situation is appropriately addressed by correcting the irregularity as contemplated by s. 85 and ordering that Mr. Robertson be recognized as a member of the Executive Committee.

[37] The petitioner is entitled to its costs. So turning to the petition, I am granting the relief sought at paras. 3, 4 and 6, and I am refusing the relief sought at 1, 2 and 5 of the petition.

[38] Is there anything else I need to address?

[39] MR. BORINS: No, My Lady.

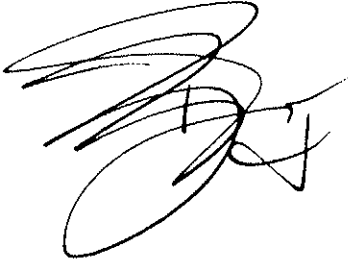
[40] MR. CRANE: No, My Lady. I'm assuming 6 is costs. I don't have a petition in front of me, so –

[41] THE COURT: Yes, 6 is costs.

[42] MR. CRANE: No. That's all, My Lady.

[43] THE COURT: Thank you.

B.J. Brown J.

A handwritten signature in black ink, appearing to be 'B.J. Brown', written in a cursive style.