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July 24th, 2007

STUDENT SOCIETY OF MCGILL UNIVERSITY

C/O Mr. Boris Savoie-Doyer

3600 McTavish, suite 1200

Montreal, QC H3A 1Y2

RE : Election of the Executive Committee of CFS-Q
Our ☎: 26173-011

Dear Sir:

You have solicited the opinion of the undersigned as per the legality of the recent elections of the Executive Committee of the Canadian Federation of Students-Quebec Component (hereinafter described as "CFS-Q"). This follows the reception of a legal opinion from the firm Lapointe Rosenstein signed by M^{re} Marvin Liebman and Philip Katan, articling student. In their opinion, clause 6.5 a) of the CFS-Q's Constitution, Bylaws and standing resolutions prohibits individual members of voting members of CFS-Q from being eligible for election to the Executive Committee of CFS-Q. We have been given documentation to determine if this interpretation is correct and we will base ourselves solely on this documentation to make the following determinations.

THE FACTS

The CFS-Q exists since April 3rd, 1998 as a duly recognized corporation under the *Quebec Companies Act, Part III* and the CFS exists since October 9th, 1981 as a duly recognized corporation under Part II of the *Canada Corporations Act*. The SSMU and Dawson Student Union (DSU) are both prospective members according to the official member list of both CFS and CFS-Q. We have also analyzed decisions rendered by Chief Returning Officer, Amanda Aziz, which on two separate occasions on May 30th and June 13th, duly recognize the eligibility of Aaron Donny-Clark and Nina Amrov who are individual members of the SSMU and Mahdi Altalibi who is an individual member of the DSU.

Finally, we have analyzed the Minutes of the Quebec Special Annual Meeting where Nina Amrov was elected as a chairperson of CFS-Q and Mahdi Altalibi was elected as



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deputy chairperson. Both of these elections were duly ratified by the members present and the ballots destroyed. Of note, a motion was also adopted at that meeting that Bylaw 6.5 c) be interpreted in the broadest possible sense to be inclusive rather than exclusive. A second candidate from the SSMU, Aaron Donny-Clark, was deemed ineligible due to section 6.5 c) that provides that no more than two at large members of the Executive Committee be elected from any one member local association. Since these events have taken place, problems have been raised with regards to the eligibility of the duly elected members of the Executive Committee of CFS-Q. Hopefully, this opinion will put an end to this affair.

OUR OPINION

1. A FEW DEFINITIONS

Since the purpose of this opinion is to analyze CFS-Q's Constitution Bylaws and standing resolutions to determine who is eligible for election as an Executive Committee Member, it is useful to first and foremost look at the said Constitution to identify if some terms have been defined. Bylaw I states at section 1.1 that:

"The Canadian Federation of Students is a pan-Canadian student organization. The Canadian Federation of Students-Quebec Component is a chartered Provincial component of the Canadian Federation of Students."

This Bylaw also defines what is a local association and most importantly for this opinion at section 1.4, it defines what is an individual member:

"An individual member shall be any individual who is a member of a member local association of the federation, or who is on the executive committee of the Quebec component."

2. THE RELATIONSHIP BETWEEN THE CFS AND THE CFS-Q

The first problem the undersigned has with the opinion of our confrere Liebman, and we say this with the greatest respect, is that it fails to recognize the intricate relationship between the CFS and its provincial components such as CFS-Q. Rather, he adopts a strict literal interpretation of the Constitution Bylaws and standing resolutions of CFS-Q which is contrary to the more modern approach to interpretation recognized again and again by the Supreme Court of Canada and by such learned authors as professors Côté and Driedger. Taken completely out of context, section 6.5 a) could be constructed as restricting the right to be eligible for the Executive Committee of the CFS-Q to individual fee paying members of the federation. But a careful review of both the global context in



which these Bylaws have been drafted and an analysis of the intent and the meaning given to these terms clearly mandates another approach.

To better understand this link between the two organizations, one needs to look no further than at section 2.1 of CFS-Q' Bylaws which states:

"Full membership

General Description: full membership is a membership of unlimited duration, and entails membership in the chartering organization, Canadian Federation of Students.

[..]

c) *The official wording for a referendum on certification shall only include the following:*

i) *"Do you wish to apply for full membership in the Canadian Federation of Students?";*

[..]"

And it states at section 2.2:

"Prospective Membership

General Description: prospective membership is a membership of limited duration and entails prospective membership in a chartering organization, Canadian Federation of Students."

And it states at section 2.4:

"Suspension and Expulsion of Member Local Associations:

[..]

"d) A member local association, having had its voting privileges suspended or having been expelled by the national plenary of the Federation shall be deemed to have had its voting privileges suspended or to have been expelled respectively, from the Quebec Component.

[..]"



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With these notions in mind, one can clearly see that it is not sufficient to simply state that CFS and CFS-Q are separate entities. The reality is much more complex than this simple statement and to properly understand and interpret the Bylaws of CFS-Q it is necessary to understand the general context in which these Bylaws operate. To do this, one need to look at the definition given by CFS' Bylaws to a provincial component:

"A provincial component will be taken for all purposes as an organization within the Canadian Federation of Students comprised of all member local association within a particular province."

Bylaw VII explains what a provincial component is and it specifically provides for automatic membership:

"5. Automatic membership in a provincial component. A member local association automatically belongs to the particular provincial component corresponding to the province in which said member is located."

And provides for voting at provincial component meetings:

"Each member local association belonging to a Federation Provincial Component shall have one vote in meetings of the Provincial Component at National General Meetings."

And furthermore the designating of a Provincial Component is provided for at section 7:

"Upon a request of the member local association located within a particular province, the member local associations within that province shall comprise the provincial component, subject to ratification vote by the national plenary and provided that the Provincial Component includes in its constitution the national preamble and statement of purpose."

It is therefore in our opinion very clear from a simple reading of the above Bylaws of both CFS and CFS-Q that the latter could not exist if it was not for the former. Also, we must point out that although CFS-Q's Bylaws are not binding on CFS, the reverse is not true. For example, the conditions prescribed in CFS' Bylaws for a Referendum of affiliation or for payment of fees are binding upon the provincial components.



TYPES OF MEMBERS

Both CFS and CFS-Q recognize two types of membership and give certain rights to both categories of members. Given the above-mentioned relation between the two organizations, we will start by looking at CFS' Bylaw I on membership. This Bylaw states that there two types of members at the Federation: "*individual members*" and "*voting members*". Students or individual members are represented through the Local Student Association to which they belong. Local Student Associations representing individual members are called "*voting members*". The individual members of the Federation will be all the students comprised in a Local Student Association that is a voting member. To obtain that status, the Local Student Association must comply with section 2 and 3 of Bylaw I. Although not as explicit, CFS-Q's Bylaws clearly use the same system and one can look at section 1.4 which defines individual members as a proof of this.

This distinction between an individual member and a voting member is clearly stated at section 3 a) of CFS's Bylaw I where one can find that:

"iv) Individual members of the Federation have the right to have their interests represented collectively in the Federation through their local student association, but will not have voting rights at the Federation general meetings."

And in the same section, one will find the rights of voting members which states:

"b) i) Each voting member of the Federation will have one vote at and participate in general meetings of the Federation provided all outstanding delegate fees for past meetings have been paid in full. [...]"

This distinction is central in the complete understanding of who does what in both federations. More specifically for the purpose of this opinion, who is responsible for the payment of fees: the voting member or the individual member? It is our opinion after review of the Bylaws of both federations that it is the voting member's responsibility to collect and pay fees to both federations. The individual member has no responsibility towards this. One need only to look at CFS-Q's Bylaw, section 2.1 e) which states:

"The Quebec Component full membership due shall be \$6.11 per year, per local association individual member, pro rated as per the policy of the member-local association with regard to the levying of its local association fee. [...] The fee shall be levied on all member association unless the component votes to exempt a local for a specific length of time."



Moreover, the member local association can be suspended and even expelled from the Federation if it fails to meet its financial obligations to the Federation. This is not the case for an individual member. Also, if one looks at section 2.5 of the Bylaws, par. f) states that:

"In order for a defederation referendum to proceed, a member local association must remit all outstanding membership fees not less than six (6) weeks prior to the date of the referendum."

Finally, section 2.6 talks of a binding contract between the voting member and the Federation and does not even talk about the individual member:

"a. A member local association's application form, once accepted by the plenary of the Federation, shall constitute a binding contract to remit Federation membership fees in each Federation fiscal year.

b. Should a member local association fulfill the provisions of Bylaw 2.5, said local association shall remain liable for Federation membership dues owed from the date of membership to the end of the Federation's fiscal year in which said member association voted to decertify."

If one turns its attention to the Bylaws of CFS, one can clearly at section 2 a) v) and vi) of Bylaw I and at section 2 b) vi) that the same burden is imposed on the shoulders of voting members and not at all on the shoulders of the individual members. Moreover, at section 3 c), ii) and iii) of Bylaw I, the CFS imposes the responsibility to collect and pay the fees without imposing any method of doing so.

If a local association decides to take the membership dues from its budget without raising its dues collected from its member students accordingly, it will be perfectly legal for them to proceed in this way and there are no compelling reasons that would justify stripping the members of this association of their individual rights to seek election in the CFS or the CFS-Q executive simply because the local association they are members of has enough spending power to remit all due fees to the CFS and the CFS-Q without raising its base fee. Which again raises the question: what do the words "fee paying" mean at section 6.5 a) of CFS-Q's Bylaws since an individual is under no obligation to do so?

INDIVIDUAL MEMBERSHIP AND FEE PAYING MEMBER

As previously mentioned, no provision contained in the CFS or CFS-Q's Bylaws require payment on the part of an individual member of any fee of any kind. Rather it is the local student association that has the duty to pay these sums and the method to calculate the



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amount of fees owed by the local student association to the respective Federation is based on the number of individual members comprised in that local. In our opinion, this is solely a method of calculation and cannot be understood as to place any obligation on the shoulders of any individual member.

As previously mentioned, this is very clear from the wording of both CFS and CFS-Q's Bylaws. Therefore, it is our opinion that considering all the above and considering section 1.4 of CFS-Q's Bylaws and section 2.2 f) of same, one must look at the words "fee paying" at section 6.5 a) as an exercise of style that has no impact on the eligibility of an individual member of either prospective member or a full member.

To come to this conclusion, one must also keep in mind that according CFS' Bylaws, both prospective members and full members must pay the fees provided for by the same Bylaws. Even though CFS-Q's Bylaws do not require a prospective member to pay these fees, Standing Resolution 24 of CFS provides for the transfer of "one-sixth of the annual Canadian Federation of Students membership fees paid by individual members belonging to Quebec member local associations". Since prospective members do pay fees to CFS and, by virtue of Standing Resolution 24, a part of these fees are transferred to CFS-Q, it follows that individual members of local associations having acquired prospective membership are indeed "fee-paying" members within the spirit of CFS-Q's Bylaws.

But even more specifically, section 2.1 e) of CFS-Q's Bylaws provides that the component can exempt a local from the payment of fees for a specific period of time. This puts forward the question of the eligibility of the individual member to the Executive Committee in the case where the component has exempted its voting member from the payment of fees. This person would not be eligible if we adopt the interpretation put forward by our confrere. Therefore, one can clearly see that the correct interpretation to be given to section 6.5 a) must rest on the definition of an individual member provided for at section 1.4, since it is the only one compatible with both CFS and CFS-Q's Bylaws. This is the only logical solution to correctly interpret these Bylaws.

To adopt the interpretation put forward by our confrere would mean that individual members of the Federation would not be treated equally, the whole contrary to the text and the spirit of the Bylaws of both federations. We must not forget that, nowhere else is the term "fee-paying member" defined in the Bylaws. Far from being a very clear and distinct category, this nomenclature seems to induce more confusion than it brings clarity, coherence or even equity to the CFS and CFS-Q architecture.

As long as the local association remits its fees to the CFS and the CFS-Q, there should be nothing to prevent an otherwise perfectly eligible member to seek election in the CFS and CFS-Q structure simply because the local association he or she is a member of has not raised its base fee in order to pay the CFS or CFS-Q fees. It is clear that the member pays a fee to his or her local association, and is thus in this sense at least a



CFS and CFS-Q member who pays a fee, and that this local association pays the CFS and CFS-Q in this members' name. Thus, to understand the true meaning of Article 6.5 a) of Bylaw VI of CFS, one should put the emphasis on "individual" rather than "fee-paying" when reading the term "fee-paying member". Indeed, most if not all students members of a local association pay a fee to this association, and this association in turn pays a fee to the CFS.

The confusion arising from the use "fee paying" should be explained by poor political drafting rather than by introducing an artificial and unjust distinction between individual members paying a special fee levied by their local association specifically for the CFS and the CFS-Q costs and individual members whose local association simply pays all its dues to the CFS and CFS-Q from its consolidated fund, without raising a specific CFS and CFS-Q fee. A distinction this important, erratic and apparently unjustifiable would necessitate much more explicit provision in the CFS and CFS-Q Bylaws, at the very least under the form of a provision somewhere in the Bylaws explicitly preventing prospective individual members from running. Since this is not the case, the latter interpretation is clearly not the right one, and it follows that the correct way to read Article 6.5 a) Bylaw VI of CFS is by reading the words "individual fee-paying member" essentially as meaning "individual member".

THE CONDUCT OF THE PARTIES

Finally, as in any situation it is important to analyze the conduct of the parties to interpret a contract. In the present circumstances, the national chairperson of CFS acted as CRO and in two e-mails dated May 30th and June 13th, she explicitly recognized the eligibility of individual members of prospective members for the election of the Executive Committee of CFS-Q. Also, it is of extreme importance that during said meeting, not only an individual member of a prospective member was elected but this election was duly ratified by a motion without any points of order being raised. It is particularly worth of notice, in addition to the fairly long period of time elapsing between the announcement and declaration of validity of the candidates and the date of the election, that the motion to ratify the election result in the case of the CFS-Q Chair was moved by the local association now contesting the eligibility of the candidates.

And this even though at the same time section 6.5 c) was duly analyzed and interpreted by the members present and made it impossible for a second candidate of the same prospective member to serve on the Executive Committee. It is impossible to pretend in these circumstances that all these discussions happened while nobody knew that section 6.5 a) contained the words "fee paying". The members present knew better that to give any importance to these words. This should not change.



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CONCLUSION

It is therefore our professional opinion that individual members as described at section 1.4 of the Bylaws of CFS-Q are eligible to serve on its Executive Committee since the words "fee paying" at section 6.5 a) must be read down and given a meaning compatible with the global interpretation to be given to the Bylaws of CFS-Q and CFS. Furthermore, the conduct of the parties himself in the present circumstances, and the structure and history of both CFS and CFS-Q, favor such a result.

If you have any questions, please feel free to contact the undersigned.

In the meantime, we remain,

Yours truly,

ROBINSON SHEPPARD SHAPIRO

S.E.N.C.R.L. - L.L.P.

A handwritten signature in black ink, appearing to be 'PAT/sg', written over a horizontal line.

Philippe-André Tessier, CRIA
PAT/sg

Encl.

COUR SUPÉRIEURE
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No: 500-17-038173-079

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COMPONENT,

Demanderesse

c.

NINA AMROV ET AL,

Défendeurs

et

MALAMO BEAUMONT-SAWAS ET AL,

Mis en cause

No: 500-17-038176-072

FÉDÉRATION CANADIENNE DES ÉTUDIANTES ET DES
ÉTUDIANTS, ÉLÉMENT DU QUÉBEC ET AL,

Demandeurs

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GEORGES SOULE ET AL,

Défendeurs

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