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**Canadian Federation of Students (Ontario) v. Students
Federation of the University of Ottawa**

Between

Canadian Federation of Students (Ontario), plaintiff, and
Students Federation of the University of Ottawa/Federation des
Etudiants de L'Universite d'Ottawa, respondent

[1995] O.J. No. 4774
No. 88989/95

**Ontario Court of Justice (General Division)
Ottawa, Ontario
Chilcott J.**

Oral judgment: February 9, 1995.
(13 pp.)

Injunctions — Mandatory injunctions — When available — Associations — Election of members — Validity of elections.

This was an application by the Canadian Federation of Students for an injunction directing a new election and referendum for a local organization's failure to comply with the rules as set out in the applicable bylaws. The local organization, Students Federation of the University of Ottawa, held an election and referendum in which it asked its members whether they wanted to remain members of the Canadian Federation. At issue was the time to be allowed for a new campaign before the new referendum would be held.

HELD: Application allowed. The Federation established that its case was not frivolous and that there was a substantive issue to be tried as to whether the local organization failed to comply with the dominant section of the bylaws that governed the holding of a referendum. The Federation also showed that it would suffer irreparable harm that could not be compensated in damages if the relief sought were not granted. The balance of convenience favoured the Federation. An injunction was granted effective immediately and continuing for six weeks during the campaign. An election in accord with the rules was to be held at the end of the period, and an unlimited number of people could campaign on either side with no monetary or salary limit. The Federation was to pay the costs of the new referendum.

Counsel:

John G. Jaworski and Todd J. Burke, for the plaintiff.
Ronald Landriault and François Lamoureux, for the respondent.

¶ 1 **CHILCOTT J.** (orally):— Well, if I do it, I'm going to give you one week to campaign, and that will be the week of the 6th, and hold it on the 13th, the referendum. I don't think you need two weeks.

¶ 2 **MR LANDRIAULT:** I'm told that it cannot be done in less than twenty days, because some nominations - or at least some steps have to be taken, according to the rules.

¶ 3 **THE COURT:** What can be less than twenty days? Do you mean the holding of if?

¶ 4 MR LANDRIAULT: The holding of it, yes.

¶ 5 And of course, the election people have to resign, and if they have to appoint new people or scrutineers, well, I don't know.

¶ 6 THE COURT: Well, what if I allow the campaign for the week of the 13th, and the election would be the 20th or March. How is that?

¶ 7 MR JAWORSKI: It is satisfactory to us, your honour.

¶ 8 THE COURT: Yes? How about that?

¶ 9 MR LANDRIAULT: Well, it's difficult to envisage, your honour. All the steps that would have to be taken --

¶ 10 THE COURT: I'm trying to accommodate you.

¶ 11 MR LANDRIAULT: I appreciate that.

¶ 12 THE COURT: I am mindful; I can make it a week later if you like.

¶ 13 MR LANDRIAULT: My own inclination is that it should be sooner but I am told that there are some very difficult problems in holding it sooner, because it seems to me that to hold it later will mean a protracted campaign that will start even before the campaign period, and there is little that can be done.

¶ 14 THE COURT: Well, that was my concern. I am moving it back because of the instructions that you are obviously given. I am trying to accommodate you.

¶ 15 MR LANDRIAULT: I am told that new staff would have to be hired, and that is why it cannot be much before the 20th.

¶ 16 THE COURT: Well, I'm suggesting the campaign start on the week of the 13th. That is a Monday, and that the referendum - if I so decide - be held on the 20th.

¶ 17 MR JAWORSKI: It's going to be difficult. It may be feasible but it will be difficult.

¶ 18 THE COURT: That gives you four weeks from today.

¶ 19 MR LANDRIAULT: I am told that these dates might work, your honour.

¶ 20 THE COURT: I'm sorry?

¶ 21 MR LANDRIAULT: I'm told that the 13th to the 20th might be appropriate dates if your honours so decides.

¶ 22 THE COURT: Alright. We'll take fifteen minutes and I'll be back with something.

¶ 23 MR LANDRIAULT: Your honour, I wonder if I may address a problem that has arisen during recess?

¶ 24 THE COURT: Yes.

¶ 25 MR LANDRIAULT: I have been asked by the defendants if your honour would consider limiting participation in the campaign to the elective persons and volunteers, rather than have employees that are paid, and the problem that this creates -- and I am not sure what your honour's decision will be, but I gather from the conversations that we've had that you are inclined to set a new date for the referendum.

¶ 26 Now, what happens to all the election and referendum rules that were set? What happens to the expenditure limit? What happens to the dates that are set in there? What happens to the approval of material? Is your honour's decision such that it is invalidating the regulation for referendums that was passed on January 15th?

¶ 27 THE COURT: No.

¶ 28 MR LANDRIAULT: So that the limit of expenditures would still be two hundred dollars?

¶ 29 THE COURT: Well, I am presuming now, unless we are going to go right back to the six months where everything is going to be approved, that the election -- and I'll tell you: I'm going to grant the injunction. The election is going to be in accordance with the rules that are presently in place. The only thing I am doing is giving them a chance to campaign and come on the campus.

¶ 30 MR LANDRIAULT: Wouldn't the rules as they exist with the two hundred dollars --

¶ 31 THE COURT: The rules that have been set down. Otherwise we're going to get into the whole thing and I'm not going to do that.

¶ 32 MR LANDRIAULT: Well, so that we are not back here before you or somebody else within two or three weeks -- I wanted to be clear that the rules, the way they are set up: the two hundred dollars includes the salaries of employees. So if for one day, fifteen employees from the National Federation show up on campus, they are already in breach. That is what the by-laws say. There is no objection to elected persons, the president, and Mr. Hunt and Mr. Caron, but if we go beyond that, then we are clearly in breach, so -

¶ 33 THE COURT: Well, I am then going to get into -- I'm going to be out there running the election myself!

¶ 34 MR JAWORSKI: Well, that is exactly the problem. He is assuming that anybody who comes on site is going to be someone who is being paid, and being paid to be there, and we already know they have got people who are paid to be there. I think what we do is we just let the election go, if your honour so chooses to set it, and let the people campaign pursuant to the by-laws.

¶ 35 MR LANDRIAULT: If your honour's decision was to say that two elected persons from the National and the Ontario section, and as many volunteers as they wish, I think this would obviate the difficulty, except that we might then get into the definition of volunteers.

¶ 36 But as long as the referendum rules and by-laws are in place, I guess that they will have to be followed. It is in the national constitution to --

¶ 37 THE COURT: Is there any limit at the present time on the rule for the number of people from each side that can campaign, or is it --

¶ 38 MR LANDRIAULT: There's no limit on the numbers providing they are volunteers, but there is a monetary limit of two hundred dollars, and in order to achieve that monetary limit there is a formula that says that if you are paid, it is to be considered, so that part of the regulation will be very quickly breached if some paid employees canvass on the campus.

¶ 39 MR JAWORSKI: The only problem I have with that, your honour, not to belabour the point is that what is going to happen is: the Federation of Students is going to show up on site and we are going to have a situation where there is going to be somewhat of a brouhaha with student services removing people from site. We are all back here to determine who is allowed on site and who is not allowed on site. I think the by-law, s. 3.0.5(a) is clear that it can be anybody who is a representative of the Federation as designates, and those are issues that can be dealt with at the trial: whether those people should have been on site or should not have been on site; whether they

are paid or they are not paid. They are assuming they are being paid. That hasn't happened yet, and it is the governing by-law which is 3.0.5(a).

¶ 40 THE COURT: Alright. I have reviewed the material. The Court is concerned here that the decision in this matter will not be a catalyst for further proceedings or disputes between the Plaintiff and the Defendant.

¶ 41 That is exactly what was addressed to me. I was hoping that we could finally put this stage of this matter to rest, but I see that that may be impossible and I will deal with that again in my reasons.

¶ 42 It is clear that the Defendant is a participating member of the Plaintiff, and as such is bound by the rules and by-laws of the Plaintiff. These by-laws are set out at Tab B of the Plaintiff's motion record, and they were amended as recently as June 1994, at the general meeting.

¶ 43 I think the by-laws are clear. S. 3.0.10 makes it clear that any referendum regarding membership in the plaintiff association is to be governed by the association's regular referendum or election rules.

¶ 44 I might say that on that section alone I would have refused to grant the injunction. However in my opinion, that section must be read in conjunction with s. 3.0.5(a) which reads as follows:

"The member association, in addition to the by-laws and regulations of their own constitutions, shall give six months notice, in writing and by registered mail, to the chairperson of the Federation, of the date of any referendum concerning membership in the Federation.

Said notice shall include the specific wording of the referendum question and the rules governing the referendum, including all applicable appeal processes in accordance with by-law 3.1.10.

The name of the chief electoral officer (C.E.O.) shall be forwarded to the chairperson of the Federation three months prior to the date of the referendum.

Once the local student association has become a full member, it may only withdraw its membership subsequent to the approval by the members of a local student association, in a referendum to withdraw from the Federation.

During the referendum concerning membership in the Federation representatives of the Federation or its designates must have the freedom to provide information to members of the Federation at the member campus holding said referendum.

Freedom to provide information includes, but is not limited to campaigning and public student spaces, distribution of literature, and equal participation in public forums and debates".

¶ 45 As I say, that section must be read with the section I referred to earlier, and in my opinion that section is the dominating section: 3.0.5(a) is the dominant section.

¶ 46 Therefore I think they must be read together and there is an obligation to fulfill those provisions, and the

local student association, i.e., the defendant, The Student Federation of the University of Ottawa and LA FEDERATION DES ETUDIANTS DE L'UNIVERSITE D'OTTAWA INC have not complied with those sections.

¶ 47 The leading authority in this province on injunctions is *Hewell Inc v. Atlantic Pizza Delight Franchise (1968) Ltd et als*, 17 O.R. (2d) 505. That is a decision of the Divisional Court.

¶ 48 In the motion it has set out the three rules, the three factors or questions to be considered in an application for the granting of an injunction, or for injunctive relief.

¶ 49 In the motion before me the Plaintiff has satisfied me that its case is not frivolous and that there is a substantive question to be tried. I am persuaded as well that if the relief sought is not granted that there will be irreparable harm that cannot be compensated in damages.

¶ 50 The balance of convenience and the effect of the injunctive relief is clear to me. It is clear in my mind that the disruption and the inconvenience will be less if the relief is granted.

¶ 51 I therefore grant the injunction for the period commencing now, February the 9th, 1995, to March the 20th, 1995, at midnight, in accord with the rules, except that the provision in those rules dealing with a paid person will be deleted and there will be an unlimited number of people who can campaign on either side, and there will be no monetary or salary limit on those people.

¶ 52 The election campaign is to commence at 12:01 a.m. on March 13th, 1995, and the vote to be held on March 20th, 1995.

¶ 53 The Plaintiff will pay the cost of the new referendum in respect of the fourth question as set out on Tab C of the Defendant's motion record. That question is "Do you wish to remain a member of the Canadian Federation of Students (C.F.S.) and its affiliated organizations? Yes or No?"

¶ 54 In view of what occurred after I returned to Court to render this decision, I am also putting in another direction that if there is any further directions required in respect to this matter, to come back before this Court.

¶ 55 The costs of this motion will be to the trial judge.

¶ 56 Is there anything else?

¶ 57 Thank you.

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