IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Presch v. Alma Mater Society of the University of British Columbia,* 2017 BCSC 963

Date: 20170330
Docket: S171611
Registry: Vancouver

Between:

Logan Presch

Petitioner

And

Alma Mater Society of the University of British Columbia and Eviatar Bach

Respondents

Before: The Honourable Mr. Justice Verhoeven

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	H. Mickelson, Q.C., V. Broughton, Articled Student
Counsel for the Alma Mater Society of UBC:	A. Wood, R. Dallakyan, Articled Student
Appearing for Eviatar Bach:	E. Tweel
Appearing for Jordan Buffie:	P. Tetrault
Place and Date of Hearing:	Vancouver, B.C. March 27 & 28, 2017
Place and Date of Ruling:	Vancouver, B.C. March 30, 2017

THE COURT:

Introduction

[1] The petitioner, Mr. Logan Presch, seeks orders as follows:

(a) an order invalidating the decision of the Alma Mater Society ("AMS") of the University of British Columbia ("UBC"), to allow the Proposed Question set out below to be put forward to the members of the AMS for a referendum vote during the week of April 3, 2017; and/or

(b) an order enjoining the AMS from allowing the Proposed Question to be put forward to the AMS for a vote.

[2] The Proposed Question is as follows:

> Do you support your student union (AMS) in boycotting products and divesting from companies that support Israeli war crimes, illegal occupation, and the oppression of Palestinians?

[3] The petition as filed seeks only the injunctive relief set out in paragraph (b) above. During submissions the relief sought in paragraph (a) was added. The other parties had notice of the additional or alternative relief being sought. I raised the matter during the hearing of the petition earlier this week. No party objected. The petition should therefore be taken as having been amended to include the relief as set out in paragraph (a).

Background

[4] The AMS has approximately 53,000 members. Under its bylaws, UBC Vancouver students who are not in default of payment of AMS fees are active members of the AMS.

[5] The referendum on the Proposed Question (the "referendum") was initially scheduled to be held during the week of March 6, 2017. This petition was filed February 22, 2017. There were prior court appearances. As a result of the petition being filed the referendum was postponed and is now scheduled to be held next week - that is, the week of April 3, 2017 - subject to the Court's orders. Next week is

the final week of the academic year at UBC. Submissions on this matter were heard earlier this week on Monday and Tuesday; that is, March 27 and 28. Thus, the decision is being rendered today in circumstances of some urgency.

[6] The Proposed Question is obviously highly political in nature. The politics of the question are of no concern to the Court. I must emphasize that the Court's role is restricted to dealing only with the legal issues raised by the petition.

[7] The petitioner argues that the Proposed Question violates the constitution and bylaws of the AMS, including the AMS Code of Procedure (the "Code") in two specific ways:

1. the Proposed Question is not capable of a meaningful "yes" or "no" answer as required by Section IX, Article 4(2)(a) of the Code and Bylaw 4(2) of the AMS bylaws; and

2. the Proposed Question could result in the AMS breaking a contract with one or more of its service providers without meeting the requirements set out in Section IX, Article 4(2)(c) of the Code.

[8] Section IX, Article 4 of the Code is headed "Referendum Regulations." Sections 1 and 2 thereof are as follows:

> 1. The Elections Committee shall conduct Society referenda in accordance with Bylaw 4, the applicable portions of these Electoral Procedures, and other rules and regulations developed by the Committee, provided that those rules and regulations are consistent with the Constitution, Bylaws and Code of the Society.
>
> 2. Referendum questions shall adhere to a standard format and conform to the following rules:
>
> (a) The question shall be phrased in such a way that it can be answered 'yes' or 'no'.
>
> (b) Nothing illegal may be proposed by the question.
>
> (c) In cases where the proposed question would break a contract, the intent to break the contract must be specifically stated and the penalty for breaking the contract must be included as part of the question.

[9] Sections 3 through 9 of Section IX, Article 4 of the Code, which follow the two sections I just read, deal with other aspects of referendum campaigns. For example, Section 3 mandates the provision of staff resources to assist drafters of potential referendum questions. Section 4 provides:

> The Election Committee shall publicize each referendum by means of advertisements...

[10] Section 5 requires campaign material to be approved by the Elections Committee. Section 6 mandates neutrality on the part of the AMS unless its Council decides by resolution to support a side. Section 7 deals with "yes" and “no" committees and includes a number of details as to the involvement of these committees, which I do not need to refer to. Section 8 refers to the duties of the Elections Administrator, and Section 9 refers to the requirements of the referendum handbook.

[11] The fundamental premise of all of these rules is, of course, that the referendum question will be one that calls for a "yes" or "no" answer.

[12] The requirement that the referendum question be phrased in such a way that it can be answered “yes” or “no” is also found in Bylaw 4 of the AMS bylaws, as mentioned earlier.

[13] Sections 1 and 2 of Bylaw 4 are as follows:

> 1. A referendum for the Society shall be called by the President upon:
>
> (a) a Resolution of Council; or
>
> (b) a petition duly signed by five percent (5%) of the active members or one thousand (1000) active members, whichever is the lesser number, evidencing their Student Numbers, and delivered to the Vice-President Academic and University Affairs.
>
> 2. The text of the referendum shall be drafted to ensure that the question is capable of being answered "yes" or "no" and if in the opinion of Council a petition for a referendum does not meet this requirement, Council shall forthwith refer the referendum to the Court to prepare a clear and unambiguous question.

[14] Section 2 is at the heart of the petitioner’s first argument.

[15] The "Court" referred to in that section is the AMS student court.

[16] Sections 3, 4, and 5 of Bylaw 4 are as follows:

> 3. Subject to Bylaw 4(5), a referendum shall be put to the members not less than ten (10) days and not more than thirty (30) days after the passing of a Resolution of Council calling for the referendum or the submission to the Vice-President Academic and University Affairs of a petition referred to in Bylaw 4(1)(b), or not less than ten (10) and not more than thirty (30) days after the Court supplies Council with a suitable text for the question if the referendum is referred to the Court in accordance with Bylaw 4(2).
>
> 4. A referendum of the Society shall, subject to these Bylaws, be acted upon by the Society where:
>
> > (a) a majority, or such greater percentage as may be required by the *Societies Act* (as in cases where the *Societies Act* requires a Special Resolution), of the votes cast support the referendum; and
> >
> > (b) the number of votes cast supporting the referendum is equal to or greater than eight percent (8%) of the active members of the Society.
>
> 5. No referendum shall be held except during the School Year.

[17] There is no issue in this case that more than 1,000 active AMS members signed a petition calling for a referendum on the Proposed Question. I do not have in the record before me any document or other record evidencing that the AMS president called a referendum on the Proposed Question, but there is no issue that she has done so by some means or other.

[18] I also do not have any document or record such as a resolution evidencing that the AMS student council addressed the issue set out in Bylaw 4(2); that is, whether the Proposed Question is capable of being answered “yes” or “no” as is required. I am left to infer that it must have done so. The record contains a letter from the AMS president in answer to a request for information from counsel for the petitioner. That letter simply said that the referendum would be on a March 6 ballot.

[19] I also have an affidavit sworn by the AMS president, Ms. Nasiri, the form of which is not very satisfactory. In that affidavit the president states at paras. 6 and 7:

> Council is of the opinion that the Proposed Question is capable of being answered “yes” or “no.”

> In the opinion of the AMS, the Proposed Question does not require the AMS to break any current contracts.

[20] These paragraphs do not state the basis for the facts contained therein. For example, there is no indication that there were actual formal resolutions that support these assertions. However, in the circumstances I must take those statements at face value. So I must infer, despite the deficiency of the record, that the AMS Council did not consider it necessary to refer the Proposed Question to the student court to prepare a clear and unambiguous question because it was of the view that the Proposed Question was capable of being answered "yes" or "no."

[21] The AMS put the very same question before the students for a referendum in 2015 (the "2015 referendum"). At that time the majority of the voting members supported the resolution. However, those voting in favour numbered less than eight percent of active AMS members, and therefore in accordance with the AMS bylaws the Council was not obliged to act on the resolution.

[22] The minutes of the AMS Council for 2015 reveal that it considered many of the same issues addressed in these proceedings at that time. The minutes of the AMS Council for 2017 in evidence are incomplete and do not contain all of the relevant information.

[23] The proponent of the referendum (and the 2015 referendum) is the UBC chapter of a group called Solidarity for Palestinian Human Rights ("SPHR"). The president of the UBC chapter of SPHR is Mr. Jordan Buffie, who has been made a party to these proceedings on his own application. He has provided an affidavit and made submissions through a non-lawyer agent.

[24] Mr. Buffie states that SPHR has approximately 20 active members at UBC. He states that the referendum is part of what he refers to as the boycott, divestment, and sanctions ("BDS") movement, which is intended to affect the policies of the State of Israel by means of economic pressure.

[25] Mr. Buffie states that SPHR is antiracist. He strenuously denies that the efforts of SPHR are in any way anti-Semitic. The petitioner, Mr. Presch, who does not happen to be Jewish, accepts this and accepts that the question is not intended to foster anti-Semitism. However, he states in his affidavit that the holding of the 2015 referendum created a toxic environment on campus; that it was divisive, polarizing, and created hostility. Other affidavits before the Court also refer to the hostile environment surrounding the 2015 referendum, as perceived by a number of persons on campus at that time.

[26] Mr. Presch acknowledges that there are legitimate issues concerning Israeli policy in respect of the Israeli-Palestinian conflict, but states that he would prefer that debates concerning such issues occur in other ways, rather than through the means of the referendum.

[27] In response, Mr. Buffie states that in the view of SPHR the referendum does not create the hostile environment referred to by Mr. Presch. Mr. Buffie submits that the referendum helps to promote serious discussion of an important political issue and does not preclude other avenues of dialogue. Mr. Buffie submits that it is entirely possible for students to consider boycotting companies that are alleged to be complicit in the violation of Palestinian human rights, while promoting further dialogue on campus between supporters of Israel and supporters of Palestinian human rights.

[28] I state these competing viewpoints for context only. As noted earlier, the political perspectives and questions engaged by the Proposed Question are not directly relevant to the issues before the Court.

Analysis

[29] The petitioner relies on ss. 104 and 105 of the *Societies Act*, S.B.C. 2015, c. 18 [*Societies Act*]. Those sections are as follows:

> **Compliance or restraining orders**
>
> 104 (1) This section applies if

(a) a person contravenes or is about to contravene a provision of this Act, the regulations or the bylaws of a society, or

(b) a society is carrying on activities that are inconsistent with or contrary to its purposes.

(2) On the application of a member or director of a society in relation to which this section applies or another person whom the court considers to be an appropriate person to make an application under this section, the court may make an order,

(a) in a case described in subsection (1) (a), directing the person who has contravened or is about to contravene a provision referred to in that subsection to comply with or refrain from contravening the provision, or

(b) in a case described in subsection (1) (b), directing the society to refrain from carrying on activities that are inconsistent with or contrary to its purposes.

(3) If the court makes an order under subsection (2), the court may make any ancillary or consequential orders it considers appropriate.

Court may remedy irregularities

105 (1) This section applies if an omission, defect, error or irregularity in the conduct of the activities or internal affairs of a society results in

(a) a contravention of this Act or the regulations,

(b) the society acting inconsistently with or contrary to its purposes,

(c) a default in compliance with the bylaws of the society,

(d) proceedings at, or in connection with, a meeting of members or directors of the society, or an assembly purporting to be such a meeting, being rendered ineffective, or

(e) a resolution consented to by members or directors of the society, or records purporting to be such a resolution, being rendered ineffective.

(2) Despite any other provision of this Act, if an omission, defect, error or irregularity described in subsection (1) occurs,

(a) the court may, either on its own motion or on the application of a person whom the court considers to be an appropriate person to make an application under this section, make an order

(i) to correct or cause to be corrected, or to negative or modify or cause to be modified, the consequences in law of the omission, defect, error or irregularity, or

(ii) to validate an act, matter or thing rendered or alleged to have been rendered invalid by or

> as a result of the omission, defect, error or irregularity, and
>
> (b) the court may make any ancillary or consequential orders it considers appropriate.
>
> (3) Unless the court orders otherwise, an order under subsection (2) does not prejudice the rights of a third party who has acquired those rights for valuable consideration and without notice of the omission, defect, error or irregularity that is the subject of the order.

[30] As to the legal principles applicable with respect to what is now s. 105 of the *Societies Act*, I adopt the discussion set out in the decision of Justice Ross in *Bector v. Vedic Hindu Cultural Society*, 2014 BCSC 230 [*Bector*] at paras. 5-9:

> **General Principles**
>
> [5] The petitioners seek relief pursuant to s. 85 of the *Society Act*, R.S.B.C. 1996, c. 433 [the Act]. The scope of s. 85 was described by Madam Justice Rowles in *Samra v. Guru Nanak Gurdwara Society*, 2008 BCCA 202 at para. 13 as follows:
>
> > [13] Section 85(1) of the *Society Act* provides that if an omission, defect, error or irregularity occurs in the conduct of the affairs of a society by which there is default in compliance with the constitution or bylaws of the society, the court may make an order 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.
>
> [6] Section 85 provides:
>
> > 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,
> >
> > (b) there is default in compliance with the constitution or bylaws of the society, or
> >
> > (c) proceedings at, or in connection with, a general meeting, a meeting of the directors of the society or an assembly purporting to be such a meeting are rendered ineffective,
> >
> > The court may
> >
> > (d) either of its own motion or on the application of an interested person, make an order
> >
> > (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
>
> (ii) to validate an act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the omission, defect, error or irregularity, and
>
> (e) give the ancillary or consequential directions it considers necessary.
>
> (2) The court must, before making an order, consider the effect of it on the society and its directors, officers, members and creditors.
>
> (3) An order made under subsection (1) does not prejudice the rights of a third party who has acquired those rights for valuable consideration without notice of the omission, defect, error or irregularity cured by the order.

[7] The test under the section was described in *Hong v. Young Kwang Presbyterian Church*, 2007 BCSC 502 at para. 41, as follows:

> [41] The test under s. 85 of the Act may be summarized as follows:
>
> (a) Has an omission, defect, error or irregularity (collectively referred to as an "irregularity") occurred in the conduct of the affairs of the society?
>
> (b) If there has been an irregularity, does it breach the *Act*, the constitution or the bylaws of the society, or does it render a general meeting ineffective?
>
> (c) If the answer to (b) is "yes", then the court may make orders to rectify the consequences in law of the irregularity and may make ancillary or consequential directions it considers necessary. However, before making such orders the court must consider the effect of any such order on the society and its directors, officers, members and creditors.

[8] As a general principle, the courts have adopted a cautious approach to the application of s. 85. The approach to be taken was described in *Garcha v. Khalsa Diwan Society – New Westminster*, 2006 BCCA 140, by Mr. Justice Hall, for the court, as follows at para. 9:

> [9] After referring to the submissions of the parties and citing the *Khangura* case, in which Goldie J.A. commented on the approach to be taken by the court under s. 85 of the *Act*, the section invoked in this case, Sigurdson J. said this, adopting these comments from the judgment of Low J. (as he

> then was) in *Sargit Singh Gill v. Khalsa Diwan Society* (3 December 1999), Vancouver Registry, A993150 (B.C.S.C.):
>
> > The court must find irregularities or errors before it has jurisdiction under s. 85. In my opinion, there must be some connection between any irregularity proven and the relief sought. The authority under the section is to correct the problem and make necessary ancillary or consequential directions. The scope of the section is not very broad and the court's discretion is not unfettered.
> >
> > The court is always reluctant to interfere in the internal affairs of any corporate body. The respondent society should be left to govern itself in a democratic fashion and make its own decisions, including what may be seen by some of its members to be mistakes. The court should not presume that those in executive charge of the society will conduct themselves contrary to the interests of the society or that they will breach the rules of natural justice to the extent those rules apply to the business at hand.
>
> [9] In *Erickson v. Luggi*, 2004 BCCA 52, Madam Justice Southin noted that the powers of the court under s. 85 do not extend to permit a court to alter or impose bylaws on a society, or to fill what appears to be a gap in the society's bylaws (see also: *Re Gitxsan Treaty Society*, 2012 BCSC 452).

[31] Again, the petitioner's first argument is that the proposed referendum violates Bylaw 4 and Section IX, Article 4(2)(a) of the Code. For convenience here I repeat Bylaw 4(2):

> The text of the referendum shall be drafted to ensure that the question is capable of being answered "yes" or "no" and if in the opinion of Council a petition for a referendum does not meet this requirement, Council shall forthwith refer the referendum to the Court to prepare a clear and unambiguous question.

[32] With respect to this provision (and the similar provision in the Code), the petitioner argues that the only sensible interpretation of the first clause, (requiring the question to be "capable of being answered yes or no") is that the question itself must be clear and unambiguous. The petitioner argues that otherwise the second clause would not make sense - that is, the clause requiring the referendum to be referred to the student court to "prepare a clear and unambiguous question" if the

council is of the opinion that the question is not capable of being answered “yes” or “no.”

[33] I do not agree with that proposition. In in my view there are two standards set out in Bylaw 4(2). The first is a simple one, and that is whether the question is capable of being answered “yes” or “no.” The second standard is the clear and unambiguous standard.

[34] The bylaw thus establishes a two-stage process. In the first stage the Council must decide if a proposed question is capable of being answered “yes” or “no.”

[35] The machinery of the Code for referenda (or “referendums,” opinion as to the correct term is divided) envisages that questions will be worded in that form. Otherwise the whole process would not be workable.

[36] However, the bylaw does not state that the question must be clear and unambiguous, at the first stage. It easily could have so stated. It does not. It seems to me that the bylaw deliberately sets a very low bar for the form of a referendum question. If the question as proposed does not meet this basic and fundamental requirement, the Council is obliged to refer the matter to the student court, engaging the second stage. The student court's task at that stage appears to be more onerous. It must take whatever it is given by way of a proposed question, probably in conjunction with related materials, and prepare a question that is clear and unambiguous.

[37] The second stage only comes into effect if the question as proposed does not meet the first test of being capable of a “yes” or “no” answer.

[38] In my view this is not an insensible procedure. It makes sense that if the proponent has failed to state a question that is answerable with “yes” or “no” such that the Council is obliged to go to the trouble and expense of referring the matter to the student court, then the court will prepare a question that is free from ambiguity. This second stage necessarily involves rewriting the question as proposed.

[39] It is noteworthy that the bylaws and Code contain almost no constraints on the form or content of referendum questions. For example, nothing in the bylaws or Code restrains the topic of the referendum to issues of student affairs or governance. The only restrictions are those found in Bylaw 4 and Section IX, Article 4 of the Code. These restrictions and requirements are minimal. Thus it is open to members of the AMS to hold a referendum on almost any topic. The bylaws and Code also provide very little room for manoeuvre on the part of the AMS president and Council. If a valid petition is received, the AMS president and Council must proceed as directed by the bylaws and Code.

[40] This too seems to me to be by design. The AMS bylaws and Code allow the AMS to be used as a vehicle for political expression. Consistent with this, over the past several decades, referenda (or again, referendums) have been held on a wide variety of issues. Most have been directed to what might be called student governance issues of one sort or another, but several have dealt with broader affairs or world affairs.

[41] For example, in 1967 there was a referendum dealing with the Vietnam War. That was described in the summary given to me as an opinion referendum. In 1972 there was a referendum having to do with abortion, also described in the record before me, which is only a summary, as an opinion referendum. In 1987 there was a referendum having to do with South Africa. The details are not before me. However, that referendum apparently involved a movement to boycott the products of two specific companies.

[42] Now, it is fair to say that the bylaws applicable on these prior occasions may have been quite different than those before me, but in my view that does not affect the overall point. That is, that the AMS bylaws allow for the members of the AMS to requisition or require a referendum with practically no limit on form or content. It may be and historically has been the case that political issues can be the subject of a referendum. It seems to me that a "political referendum" may not necessarily have clear consequences in terms of implementation by the AMS. Thus an AMS

referendum may form part of the robust and vigorous political debate that is often seen on university campuses. This context distinguishes this case from the other cases relied upon by the petitioner.

[43] In particular, the petitioner referred to or relied upon three cases: (1) *Burlington Public School Board v. Town of Burlington* (1918), 44 O.L.R. 561 (S.C.) [*Burlington*]; (2) *Markus v. Trumbell County Board of Elections*, 259 N.E. 2d (Ohio Sup. Ct. 1970) [*Markus*], a 1970 decision of the Supreme Court of Ohio; and (3) *Whitecourt (Town of) v. Eglinski*, 2006 ABQB 559 [*Whitecourt*], a decision of Justice Slatter, then of the Alberta Court of Queen's Bench. It is not necessary that I deal with any of these cases in detail. All of these cases involved local government affairs.

[44] For example, in *Burlington* there was a funding or in other words a monetary plebiscite. The question there was whether the town should borrow $30,000 to buy land in order to build a school. The court held that the question as reframed by the city council was misleading and confusing, and thus would prevent a proper vote.

[45] In *Markus*, the referendum question had to do with the rezoning of a certain parcel of land, but the ballot question was misleading as to the actual extent of the rezoning.

[46] In *Whitecourt,* the issue involved the site of a proposed public pool and fieldhouse facility. The matter was highly controversial. One of the proposed questions referred to multiple proposed locations, so that it would not be possible to determine and implement the preference of the electorate.

[47] The facts of these cases are so far removed from the case before me that they provide no guidance.

[48] The petitioner argues that Bylaw 4(2) requires a "yes" or "no" answer to be "meaningful" in the sense that it yields a clear and unambiguous determination of the intention of the electorate in so voting. In other words, the question should be stated in such a way that a "yes" or "no" answer is a clear indication of some particular

intent. In support of this contention, the petitioner points to Bylaw 4(4), which I referred to previously. I will refer to it again for convenience. That bylaw section provides:

> A referendum of the Society shall, subject to these Bylaws, be acted upon by the Society...

[49] The bylaw then sets out the basic threshold for action by the AMS, including the requirement that the number of votes cast in support of the referendum must be equal to or greater than eight percent of the active AMS members. That was the criterion that the 2015 referendum failed to meet.

[50] As a result, the referendum result has no practical effect unless the majority of voters support it, and those voting in favour exceed eight percent of AMS membership. I add incidentally that I do not think it is correct to say that a referendum that gathers more positive votes than negative votes fails. However, the AMS is not obliged to act upon it.

[51] I do not agree with the contention that the word "meaningful" must be read into Bylaw 4(2), or that the referendum question must be meaningful in the sense argued by the petitioner. Again, the context is important. This is not a case of a monetary bylaw or a zoning bylaw, for example, where clarity is essential. In the case of an AMS referendum, the topic may be almost anything that 1,000 or more AMS members wish it to be, including, as I said, general political issues.

[52] The duty of the AMS is simply to "act upon" the referendum under Bylaw 4(4). The bylaws do not state how the AMS is to act upon the referendum result. It seems to me that the wording of Bylaw 4(4) is deliberately broad and is intended to afford the Council considerable latitude in implementing the result of a referendum. This is consistent with the nature of the referendum process. In particular, it seems to me that an ambiguous referendum question would therefore lead to very ample latitude in deciding how it should be acted upon.

[53] It may be that the requisite support for a vague, ambiguous referendum question would leave the AMS Council with troublesome issues regarding implementation. It seems to me that this is a consequence of the manner in which the AMS bylaws are written and structured. I refer again to the proposition that I quoted earlier from the *Bector* case, specifically para. 9, as follows:

> In *Erickson v. Luggi*, 2004 BCCA 52, Madam Justice Southin noted that the powers of the court under s. 85 [now s. 105 of the *Societies Act*] do not extend to permit a court to alter or impose bylaws on a society, or to fill what appears to be a gap in the society's bylaws (see also: *Re Gitxsan Treaty Society*, 2012 BCSC 452).

[54] Therefore if the bylaws are written in such a way that the AMS may have to struggle with how to implement a referendum question, that must be left as a natural consequence of their scheme and structure. It is not for the court to fill gaps or in some sense to attempt to improve upon the bylaws.

[55] I recognize that the Proposed Question is a loaded one, as Mr. Presch contends. In fact, during the Council discussions in 2015 the AMS ombudsperson recognized that the question is seemingly intended to lead to a "yes" answer. In effect the question states that there are, in fact, Israeli war crimes, illegal occupation, and oppression of Palestinians, and also that there are companies that support these things in some way. In consequence it may be that any person of good conscience would tend to feel that they ought to vote "yes." It may also be that the form of the question makes it difficult for those who wish to oppose the referendum to vote "no," because they might be thought of as supporting war crimes, illegal occupation, and oppression.

[56] Clearly the content of the question is highly controversial. I accept that the debate could lead to strife of some sort on the campus. It is of course the responsibility of the AMS and the university to ensure the safety and security of students and to ensure respectful debate by all means necessary.

[57] It is true as well that the intention of a member of the AMS in voting "yes" or "no" may be unclear. For example, whether the voter agrees with one or more of the premises of the question would not be clear.

[58] However, the AMS bylaws and Code do not require that the referendum question be fair, and I have rejected the argument that the question must lead to a clear and unambiguous interpretation or result.

[59] In other words, the AMS bylaws and Code do no prohibit a loaded question as I have described it. Nor, in my view, do the bylaws require that the intent of the voter or the consequences of implementing the bylaw be clear. The bylaws and Code simply do not so state. Moreover, the context of referenda such as this one does not support such an interpretation. I conclude, then, that the conduct of the AMS Council and the president did not violate the bylaws or Code as contended.

[60] The petitioner's next argument relies on Section IX, Article 4(2)(c) of the Code, which again for convenience is as follows:

> In cases where the proposed question would break a contract, the intent to break the contract must be specifically stated and the penalty for breaking the contract must be included as part of the question.

[61] In my view this is a narrow limitation. It may be said that it is not drafted with great clarity. One interpretation is that it applies where the purpose of a referendum is to bring about the breach or breaking of a contract. Another interpretation is that it applies where implementation of the referendum would result in a breach of contract, or perhaps "break" a contract in the sense of discontinuing some service or supply contract. I do not need to decide these questions. In either case the purpose of the section is quite clear; that is, to provide the voter with the relevant information.

[62] On behalf of SPHR, Mr. Buffie denies that the referendum would oblige the AMS to terminate dealings with particular companies, at least at present. He is frank, however, in deposing as follows:

> … We kept the question general so that it would act as a general guide to how the AMS might respond to student opinion. We wanted the question to

> be permissive of a broad range of possible responses -- a guide for political action. If we wanted the AMS to boycott a list of specific companies, we would have included such a list in our proposed question. The phrasing of the question was designed to catalyze discussion and turn future AMS purchasing decisions into political opportunities.

[63] So in other words Mr. Buffie is saying that there are no contracts of which he is currently aware that would have to be broken should the AMS be required to act upon the referendum. However, if passed and enforceable the referendum would at least arguably compel the AMS to abide by it in some way in the future. At this juncture those issues remain hypothetical.

[64] I have already referred to the single comment of the AMS president. She deposed:

> In the opinion of the AMS, the Proposed Question does not require the AMS to break any current contracts.

[65] Although the form of that evidence is unsatisfactory, I interpret that to mean that the president is not aware of any particular contract that would be affected at this juncture. The simple answer to the petitioner's second argument is that there is no evidence before me that the implementation of the referendum would result in the breach or breaking of any contract. On the evidence before me I am unable to conclude that the Code has not been complied with in respect of Section IX, Article 4(2)(c). Therefore I reject the argument that allowing the question to proceed is a breach of the society's bylaws or Code.

[66] The petitioner's submissions focused primarily on s. 105 of the *Societies Act*. The petitioner also relied on s. 104 for the injunctive relief sought. That section is new, having been in effect only for a few months. The petitioner relied upon s. 104(1)(a), which applies where a person contravenes or is about to contravene a society's bylaws, among other situations. For reasons I have already given, that section does not apply in these circumstances. It is therefore not necessary that I address the question of whether the AMS or its president fall within the definition of a "person" within s. 104(1)(a).

Conclusion

[67] I do not find that there is an irregularity in the conduct of the affairs of the AMS within the meaning of s. 105 of the *Societies Act* and the case authorities that I referred to. Therefore there is no basis for this Court to interfere in the affairs of the AMS as they relate to the referendum.

[68] I wish to emphasize a comment of Justice Hall in the *Garcha* case referred to earlier, as quoted in *Bector*. That comment was as follows:

> The court is always reluctant to interfere in the internal affairs of any corporate body. The respondent society should be left to govern itself in a democratic fashion and make its own decisions, including what may be seen by some of its members to be mistakes…

[69] It seems to me that that comment is nowhere more apt than in the circumstances of this case, where an order of the Court could be seen as interfering in the free and democratic processes of the AMS, and could be seen as intruding into or even taking sides on political issues. A great deal of caution is therefore required on the part of the Court in these circumstances. Nonetheless in a proper case, if illegality is shown, the Court must not hesitate to enforce the law, notwithstanding any concerns about optics. However, as I have said, I do not find that to be the case here. As a result the petition is dismissed.

(SUBMISSIONS ON COSTS)

[70] THE COURT: All right. I am content with that, so there will be no order for costs.

"Verhoeven J."