

FEB 22 2017

No. S-171611
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LOGAN PRESCH

PETITIONER

AND:

ALMA MATER SOCIETY OF THE UNIVERSITY OF BRITISH COLUMBIA

RESPONDENT

PETITION TO THE COURT

Logan Presch, c/o Gudmundseth Mickelson LLP, Suite 2525 – 1075 West Georgia Street,
Vancouver, B.C. V6E 3C9

Alma Mater Society of the University of British Columbia at 6133 University Boulevard,
Vancouver, B.C. V6T 1Z1

This proceeding is brought for the relief set out in Part 1 below, by:

- the person named as petitioner in the style of proceedings above
 name(s) (the petitioner(s))

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
(b) serve on the petitioner
(i) 2 copies of the filed response to petition, and
(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

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- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition in the United States of America, within 35 days after that service,
- (c) if you were served with the petitioner anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is: 800 Smithe Street, Vancouver, B.C.
(2) The ADDRESS FOR SERVICE of the petitioner is: Gudmundseth Mickelson LLP 2525 – 1075 West Georgia Street, Vancouver, B.C. V6E 3C9 Fax number for service (if any) of the petitioner: 604-685-8434 E-mail address for service (if any) of the petitioner: N/A
(3) The name and office address of the petitioner's lawyer is: Howard A. Mickelson, Q.C. Gudmundseth Mickelson LLP 2525 – 1075 West Georgia Street Vancouver, B.C. V6E 3C9

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. That the Alma Mater Society (the "AMS") of the University of British Columbia ("UBC") be enjoined from putting forward the following proposed referendum question to the members of the AMS for a vote:

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?

(the "Proposed Question").

Part 2: FACTUAL BASIS

Overview

1. The Proposed Question is advanced in support of what is known as the Boycott, Divestment, Sanctions Movement (“BDS”).
2. The BDS Movement, which is responsible for putting forward questions like the Proposed Question on various campuses across North America has been condemned by the Parliament of Canada as follows:

That, given Canada and Israel share a long history of friendship as well as economic and diplomatic relations, the House reject the Boycott, Divestment and Sanctions (BDS) movement, which promotes the demonization and delegitimization of the State of Israel, and call upon the government to condemn any and all attempts by Canadian organizations, groups or individuals to promote the BDS movement, both here at home and abroad.

(Vote No. 14, 42nd Parliament, 1st Session, Sitting No. 22 - Monday, February 22, 2016)

3. The Proposed Question in its identical form was put before the AMS in the spring of 2015. Although the referendum received more “yes” votes than “no” votes, it was not adopted as a necessary quorum for a vote was not obtained (the “First Referendum”).
4. The Proposed Question is divisive, creates a toxic atmosphere for students supportive of the state of Israel, and is destructive of open and respectful debate on an important issue. Indeed, the AMS student council recognizes that the very placing of the Proposed Question on a referendum ballot will raise “safety concerns” for certain groups on campus.
5. In addition, the Proposed Question is ambiguous, and embeds within it, assumptions which are, at best, controversial. The Proposed Question does not allow for a meaningful “yes” or “no” response because of its ambiguous and incendiary content.

6. The purpose of this petition is not in any way to stifle or inhibit free, open, respectful, and constructive debate on a University campus concerning the sensitive issue of the Israeli-Palestinian conflict.
7. Indeed, earlier this year, an organization known as the Peace Factory, run by an Israeli and a Palestinian who founded the “LOVE” campaign to combat the language of hate, held an event on UBC campus. This campus event, designed to encourage constructive political discussion, was an initiative of what is known as the Active Community Dialogue (“ACD”) approach.
8. The Proposed Question violates the constitution and by-laws of the AMS, including the AMS Code of Procedure, Section IX Code Procedures, A: Electoral Procedures (the “AMS Code”) in three specific ways:
 - (1) It violates the AMS Constitution section 2(e) which is “to promote unity and goodwill amongst its members” (AMS Code Article 4(1));
 - (2) The Proposed Question is not capable of a meaningful “yes or no” answer as required by AMS Code Article 4(2)(a); and,
 - (3) The Proposed Question could result in the AMS breaking a contract with one or more of its service providers, contrary to AMS Code Article 4(2)(c).

The Proposed Question is inconsistent with the Objectives of the AMS Constitution

9. It is a foundational requirement that the election committee will conduct the AMS referenda in accordance with rules and regulations which are “consistent with the constitution, bylaws and code of the Society” (Article 4(1)).
10. The AMS constitution Section 2(e) provides that the object of the AMS is to:

“promote unity and good will among its members”.
11. Consistent with those objectives, the Mission Statement of the AMS provides that:

“it will cultivate unity and goodwill among its members, but will also encourage free and open debate, as well as respect for differing views. It will solve problems constructively.”

12. The AMS has first-hand experience with the destructive nature of the Proposed Question as a result of its experience with the First Referendum.
13. In fact, in mid-January 2017 the AMS Vice-President of Administration was anxious to arrange a meeting between a representative of the Solidarity for Palestinian Human Rights (“SPHR”) and the President of the Jewish Students Association (the “JSA”) in order to set expectations in respect to the “BDS Referendum” and “ensuring everyone feels safe during the voting period.”
14. The concern for safety arises in part from the experiences occurring in response to the First Referendum in the spring of 2015.
15. Rather than the First Referendum engendering respectful and constructive debate, the Proposed Question drove a wedge between religious groups on campus who had previously enjoyed inter-faith outreach and collaboration on important charitable events. For example, for several years prior to 2015, the JSA as part of its inter-faith outreach, particularly with Muslim groups on campus, had put on a collaborative charity event where Jewish and Muslim UBC students would make sandwiches for the homeless at the “Union Gospel Mission” facility in the Downtown Eastside.
16. In the 3 or 4 years prior to 2015, the JSA had partnered in this charity collaboration with the Ishmali Students Association.
17. Unfortunately, in 2015, in direct response to the toxic and divisive nature of the First Referendum question, the Ishmali Students Association cancelled their participation with the JSA on this charity event because the toxic environment created by the BDS question and therefore their organization could not be seen to be associated with the JSA at that time.
18. In addition, students outwardly opposed to the First Referendum question encountered a hostile reaction and there were reported acts of anti-Semitism on campus.

19. Posters opposing the First Referendum question with the slogan “It’s About Hate – Vote no” were defaced and lawn signs were kicked down.
20. The negative and marginalizing experiences encountered by students opposed to the referendum at the UBC campus have been replicated in other campuses across North America.
21. The Proposed Question itself, containing incendiary language and deliberately creating an ambiguous scope, is not designed to foster free and open debate and to discuss this issue constructively.
22. However, such a constructive approach to debating the Israeli-Palestinian conflict is available on campus through various ACD projects, including the recent “LOVE” campaign. In a series of talks, the Peace Factory on campus aimed to bring political discussions to a new constructive level helping students understand the dynamics of the Israeli-Palestinian conflict and show them different and unique ways of non-violent communication, person-to-person peace building, and creative techniques of non-violent political activism. Part of the goal of the “LOVE” campaign is to help participants understand the narratives, needs and trauma on both sides of the conflict and how a constructive mode of communication can play a vital role in conflict resolution.
23. In short, there exists a number of constructive platforms on which this issue can be fully and vigorously debated on campus. However, the Proposed Question, which has as its intention the demonization of the state of Israel and, in turn, the marginalization of those members of the AMS who oppose the BDS Movement, is antithetical to the purposes and objects of the AMS constitution.

The Proposed Question is not capable of a meaningful “yes” or “no” answer

24. The Proposed Question on its face also violates the AMS Code requirement (Article 4(2)(a)) that “the question shall be phrased in such a way that it can be answered ‘yes’ ‘no’.”

25. Objectively viewed, it is impossible to know what a “yes” answer to the Proposed Question means.
26. Leaving aside the built-in assumption that Israel is committing “war crimes,” the Proposed Question leaves entirely ambiguous what constitutes “support” for the alleged “war crimes” and how far that concept would extend.
27. For example, is Air Canada, which operates a daily non-stop flight from Toronto to Tel Aviv, supporting “Israeli war crimes”?
28. In short, the Proposed Question, as framed, makes it difficult for a student who may disapprove of some policies and actions of the Israeli Government, but does not endorse the view that Israel is committing war crimes, to understand the significance of a “yes” vote.
29. This ambiguity, in turn, creates a practical problem as to the legal implications of the Proposed Question passing by way of a referendum. For example, depending on how one would interpret the ambiguous Proposed Question, it is likely that the AMS would have to terminate existing agreements with various companies providing goods and services to students on campus.

The Question could result in the AMS breaking contracts with its service providers

30. The AMS Code Article 4(2)(c) requires that:

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 a part of the question.

31. As a result of the ambiguous nature of the Proposed Question, and its potential breadth, the AMS may be required to cease doing business with a wide variety of companies that could otherwise come within this boycott resolution. For example, the SPHR is targeting Starbucks. There are a number of Starbucks outlets located on campus. It is not clear what implications this resolution would have on any contractual relationships (if any) that exist between the AMS and Starbucks.

32. Likewise, MasterCard is also an apparent target of the boycott. MasterCard is used widely by students on campus, including at "The Pit" pub in the student union building.
33. In addition, the MasterCard Foundation has been partnering with UBC to provide spaces for 112 academically talented, yet economically disadvantaged, students from Sub-Saharan Africa with access to quality and relevant university education at UBC.
34. By way of letter dated February, 10 2017, counsel for the petitioner specifically requested of the AMS student council that, to ensure compliance with this specific provision of the AMS Code of Procedure, that the AMS provide a listing of all companies with whom the AMS has contracts so that it can be determined whether the Proposed Question must refer to one or more of these contracts.
35. The AMS has not responded to this request from counsel.

Urgency of the Petition

36. The annual student council elections are schedule to take place this year between March 6 and March 10, 2017. The AMS student council has received the Proposed Question from the SPHR, apparently with the requisite signatures necessary to compel a referendum on the Proposed Question.
37. A resolution was put forward to have the Proposed Question reviewed by the student court. That vote was deadlocked.
38. In a letter dated February 15, 2017, counsel for the petitioner requested that the President of AMS student council confirm whether or not it was the intention of the AMS student council to put the Proposed Question before the student body as part of the scheduled student council elections.
39. The AMS has now responded that pending the successful verification of signature, the Proposed Question will be on the March 6, 2017 ballot.

Part 3: LEGAL BASIS

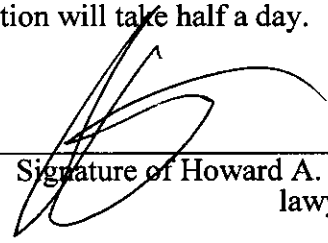
1. *Societies Act*, SBC 2015, c 18, ss. 102 and 104.
2. If a person is about to contravene the regulations or the bylaws of a society, section 104(2)(b) of the *Societies Act*, SBC 2015, c 18 allows a member of the society to apply to the Court for an Order directing the person who is about to contravene the regulations or by-laws of a society to refrain from doing so.

Part 4: MATERIAL TO BE RELIED UPON

1. Affidavit #1 of Logan Presch, sworn February 17, 2017;
2. Affidavit #1 of Noah Kussin-Bordo, sworn February 17, 2017;
3. Affidavit #1 of Sam Heller, sworn February 21, 2017;
4. Affidavit #1 of Jana Thompson, sworn February 21, 2017.

The petitioner estimates that the hearing of the petition will take half a day.

Date: February 21, 2017



 Signature of Howard A. Mickelson, Q.C.
 lawyer for petitioner

Logan Presch

[Redacted text]	
<p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this petition</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Date:[dd/mmm/yyyy].....</p> <p style="text-align: right;">Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p>	