IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Altman v. Faculty Association of Simon Fraser University,* 2025 BCSC 1690

Date: 20250829
Docket: S245137
Registry: Vancouver

Between:

Rachel Altman, Paul Garfinkel, David Freeman, Michael Silverman, Shafik Bhalloo, Alexandra Lysova, Richard Frank, John Craig, Kay Wiese, Rochelle Tucker, Rina Zazkis, Steven Kates, and Mark Collard

Petitioners

And

Faculty Association of Simon Fraser University

Respondent

Before: The Honourable Justice Marzari

Reasons for Judgment

Counsel for the Petitioners:	C. Hunter, K.C. A. Calvert
Counsel for the Respondent:	K. Phipps S. Mayor B. Park
Place and Date of Hearing:	Vancouver, B.C. February 28, 2025
Place and Date of Judgment:	Vancouver, B.C. August 29, 2025

Table of Contents

Introduction

[1] The petitioners, who are members of the Faculty Association of Simon Fraser University (the "Faculty Association"), have brought a petition under s. 104 of the *Societies Act*, S.B.C. 2015, c. 18, asking this Court to order that the Faculty Association refrain from acting on two resolutions passed by its membership in June 2024, and declaring those resolutions void or invalid on the basis that they are inconsistent with the Faculty Association's stated purposes.

[2] This issue arises in the context of two resolutions adopted following a vote of the Faculty Association membership in June 2024:

a) A resolution directing that the Faculty Association call on Simon Fraser University (the "University") to take certain positions and commit to taking specified actions related to the conflict in Gaza (the "Gaza Motion"); and

b) A resolution directing that the Faculty Association call on the University to divest from corporations engaged in military arms production and make corresponding amendments to the University's ethical investment policy (the "Divestment Resolution").

(Collectively, the "Resolutions").

[3] The evidence establishes that the executive of the Faculty Association submitted the text of each resolution to the University shortly thereafter, calling upon the University administration to act on the Resolutions. There is no further action of the Faculty Association for this Court to restrain, as the Resolutions do not call for any further action by the Faculty Association or its Executive. Nevertheless, the Faculty Association concedes that the petition is not moot, agreeing that the Resolutions continue to express an adopted position of the Faculty Association.

[4] The parties are also agreed, correctly, that s. 104 of the *Societies Act* does not allow for a remedy whereby the actions of the Faculty Association may be found to be *ultra vires* the powers of the Faculty Association, and void or invalid in that

sense. With the introduction of the current *Societies Act* in 2016, societies such as the Faculty Association have the powers of a natural person and the *ultra vires* doctrine has no further application to their actions. Nevertheless, s. 104 allows for the restraint of action that is contrary to or inconsistent with a society's purposes, and the parties are agreed that ancillary or consequential declaratory relief is available pursuant to that provision. The petitioners no longer seek to establish that the Resolutions are "contrary to" the Faculty Association's purposes but argued this petition on the basis that they are nevertheless "inconsistent with" those purposes.

[5] I have therefore approached this petition on the basis that the remedy at issue is a declaration that the Resolutions are inconsistent with the Faculty Association's purposes, and are invalid in the sense that they cannot be allowed to speak for the Faculty Association.

[6] The petitioner has the persuasive burden of establishing that the Resolutions are inconsistent with the purposes of the Faculty Association.

Issues

[7] Fundamentally, the petitioners argue that the taking of stances on divisive geopolitical issues and the advancement of political causes—which they say is the "essence" of the impugned Resolutions—is inconsistent with the Faculty Association's purposes.

[8] The petitioners argue that the Faculty Association's purposes should be interpreted strictly, and that a geographic limitation to the University campus or region should be read into those purposes.

[9] The petitioners further argue that members of the University community wishing to advocate for the political stances reflected in the Resolutions are free to do so on their own or through other groups and organizations, but that they cannot permissibly do so through the Faculty Association, whose actions and activities are properly constrained by its stated purposes.

[10] The Faculty Association disagrees that the Resolutions are inconsistent with its purposes. It argues that the context in which the Resolutions were passed is particularly important, including that the Faculty Association is a trade union for University faculty members, and operates within the context of the University where one of its purposes is to promote academia and higher education.

[11] The Faculty Association also argues that it is for the members of a society, not the Court, to determine the best way of advancing its purposes. In this regard, the Faculty Association says that its members vigorously debated whether passing the Resolutions was an appropriate way of fulfilling the Faculty Association's purposes, including whether the society should take political positions, whether and to what extent the Resolutions would advance or defend academic freedom and integrity, and how best to show solidarity with faculty internationally. The members then voted and passed the Resolutions.

[12] The Faculty Association says that this justifies the Court adopting a posture of restraint and liberally interpreting the society's purposes. The Court should only interfere where the Court is of the view that there is no relationship at all between the society's purposes and its actions.

[13] There is a stark difference between the strict interpretation of the society's purposes by the Court advanced by the petitioners, and the liberal interpretation urged by the Faculty Association. Nevertheless, the parties agreed on many of the legal issues raised by this petition, including that:

a) the Court's task is to assess whether the impugned motions are "inconsistent" with the Faculty Association's purposes;

b) the Resolutions need not be shown to be in conflict with the Faculty Association's purposes in order to be found inconsistent with those purposes;

c) this raises a justiciable question;

d) the *ultra vires* doctrine does not play a role; and

e) ascertaining whether the motions fall "outside the scope" of the society's purposes is primarily a matter of contractual interpretation.

[14] The parties also agree that it is not the Court's role to intervene in members' political disputes, weigh into the merits of the members' decision, or substitute its judgment for that of the society on a matter of substance within the society's authority. Those issues are agreed to be non-justiciable in this Court.

[15] As the petitioners succinctly argue: "The law of justiciability recognizes that 'justiciable questions and political questions lie at opposing ends of a jurisdictional spectrum', with questions of pure legality at one end and questions involving moral, social, or policy considerations at the other", citing Lorne Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 2nd ed. (Toronto: Thomson Reuters Canada Limited, 2012), at 29. However, the mere presence of a "political" or "policy" dimension does not render a question non-justiciable, provided there is "a sufficient legal component to warrant the intervention of the judicial branch:" *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525 at 545, 1991 CanLII 74.

[16] The parties agree that both a society's constitution and bylaws operate as constraints on a society's actions. Provided the society operates consistently with its stated purposes and does not contravene the *Societies Act* or its bylaws, societies have all the powers of a natural person and are unconstrained in the manner in which they go about their activities: *Societies Act ss.* 6–7.

[17] In this case, both the parties agree that whether the Resolutions are inconsistent with the Faculty Association's purposes is a justiciable issue but that the Court has no role in determining the correctness of the content of those Resolutions. I agree, and I proceed on that basis.

[18] The justiciable issues raised by this petition are as follows:

a) The meaning of s. 104(1)(b) of the *Societies Act*, and specifically what it means for a society to carry on activities that are "inconsistent with" its purposes;

b) The meaning of the Faculty Association's purposes themselves, and whether they should be read strictly and with a geographical limitation, as argued by the petitioners, or broadly and purposively, as argued by the Faculty Association;

c) Having determined the meaning of "inconsistent with" and the proper approach to interpreting the purposes of the Faculty Association:

   i. Is the Divestment Resolution inconsistent with the Faculty Association's purposes?

   ii. Is the Gaza Resolution inconsistent with the Faculty Association's purposes?

[19] For the reasons that follow, I find that a purposive approach to the interpretation of the Faculty Association's purposes is required, and that the Divestment Resolution and the Gaza Resolution are not inconsistent with those broadly worded purposes pursuant to s. 104(1)(b) of the *Societies Act*.

Factual Background

[20] The petitioners are faculty members at the University, and members of the Faculty Association.

[21] The respondent Faculty Association was established in 1965 as a non-unionized professional association registered as a society and continued under the *Societies Act*. Until 2014, the Faculty Association conducted collective bargaining under a framework agreement with the University. In 2014, the Faculty Association was certified as a bargaining agent and trade union under the *Labour Relations Code*, R.S.B.C. 1996, c. 244. The Faculty Association is therefore both a society and a trade union.

[22] Membership in the Faculty Association is mandatory for anyone who is eligible for membership, which includes 1,200 faculty, librarians and other academic staff at the University.

[23] The Faculty Association's constitution sets out its purposes, which are to:

a) Assert the integrity of the academic profession;

b) Defend academic freedom in teaching and research;

c) Promote the welfare of all faculty members;

d) Foster high standards of excellence in teaching and scholarship; and

e) Act as the sole bargaining agent of all faculty members employed by the University and to regulate relations between faculty members and the University through collective bargaining.

[24] Both parties agree that the Faculty Association's purposes are interrelated and should not be interpreted in isolation from one another. However, they strongly differ on what such an analysis means for the scope of the Faculty Association's purposes, and what actions are consistent with them.

[25] The Faculty Association's Bylaws also provide for the establishment of an elected executive committee, which exercises the powers of the Association. Among the powers of the executive is the power to submit a resolution for referendum. Such referenda may be conducted by electronic ballot open for at least one week, and passed by a majority of those voting, provided at least one-fifth of the members eligible to vote have cast ballots.

[26] In or about April 2024, the Faculty Association executive received two proposed motions from members, requesting that they be debated at the Faculty Association annual general meeting ("AGM"), which ultimately took place on May 8, 2024. The executive further determined that the two motions would be put to a referendum by electronic vote after the AGM to allow the greatest number of members to participate.

[27] The motion which, upon adoption, became the Gaza Resolution provides as follows:

Motion on Israel/Palestine

1. Whereas since October 2023, Israel's unrelenting assault on Gaza has resulted in more than 110,000 Palestinians dead and wounded, including over 231 teachers, 95 university professors, and three university presidents.
2. Whereas Israel has destroyed 396 educational facilities, including all 12 of Gaza's universities, as well as libraries, archives, museums, and other cultural sites through targeted bombardment and controlled demolitions.
3. Whereas the systematic assault on the educational sector in Palestine is part of a historic and ongoing project of ethnic cleansing and scholasticide.
4. Whereas since their founding, Israeli universities have been complicit in the occupation and subjugation of the Palestinian people, as documented in Dr. Maya Wind's Towers of Ivory and Steel: How Israeli Universities Deny Palestinian Freedom.
5. Whereas Canadian universities, including SFU, are complicit in the Israeli project of occupation and apartheid through their partnerships with Israeli universities.
6. Whereas the Palestinian Campaign for the Academic and Cultural Boycott of Israel (PACBI) has, since 2004, called for a boycott of Israeli institutions for these reasons, and Palestinian Higher Education institutions have more recently issued a Unified Call for Justice and Freedom appealing to their international counterparts to take action in support and defense of academic freedom.
7. And whereas education is a fundamental human right, enshrined in international law and a crucial pillar for a people denied their inalienable right to self-determination.

Therefore, faculty members of Simon Fraser University urge our administration to commit to the following*:*

1. Condemn Israel's destruction of the education system in the Gaza Strip and call for an immediate and permanent ceasefire and an end to scholasticide in Palestine.
2. Suspend all institutional partnerships with Israeli academic institutions and divest from Israeli commercial interests until such time that Israel ends its policies of military occupation and apartheid.
3. Work with partners to actively support Palestinian universities and the Palestinian educational sector more broadly through inter-institutional cooperation, including virtual instruction, exchanges, library sharing, and infrastructural support.
4. Commit to setting up placements, fellowships, and scholarships for new students from Palestine, as well as hardship funds for students affected by the war on Gaza.

[28] The Divestment Resolution reads as follows:

Motion to Divest from Corporations Engaged in Military Arms Production

1. Whereas SFU's most recent Custodial Statement of Endowment Investments indicates that Simon Fraser University owns shares of BAE Systems, Booze Allen Hamilton, and CAE Inc.
2. Whereas BAE is the sixth largest war contractor globally, with 97% of its revenue coming from military equipment, Booze Allen Hamilton derives 64% of its revenue from war-related products, and CAE is Canada's fourth largest war contractor, with 44% of its revenue from war-related products.
3. Whereas these investments are not anomalies, given SFU's record of past investments in other military arms producers, including Lockheed Martin, Boeing, and others.
4. Whereas the weapons and services of these corporations have collectively facilitated the killing, maiming, or displacement of millions of individuals, primarily in the Global South.
5. Whereas these investments are antithetical to the values of the University, and in contradiction with the stated commitments of the SFU administration.
6. And whereas SFU has a Responsible Investment Policy (B10.16) that does not screen for arms producers and military services companies in its environmental, social, and corporate governance (ESG) criteria.

Therefore, faculty members of Simon Fraser University urge our administration to divest from corporations engaged in military arms production and anchor this commitment in SFU's Responsible Investment Policy (B10.16).

[29] Both motions were vigorously debated at the Faculty Association AGM in May 2024. After some difficulties were encountered, voting on the motions took place from June 3, 2024, to June 7, 2024.

[30] The Gaza Resolution passed, with a total of 700 members casting ballots. The results of the vote were:

In Favour: 333

Opposed: 326

Abstained: 41

[31] The Divestment Resolution passed, with a total of 700 members casting ballots. The results of the vote were:

In Favour:	423
Opposed:	244
Abstained:	33

[32] On June 14, 2024, the Executive submitted the texts of the motions to the University, calling upon the University administration to take action in accordance with the Resolutions.

[33] In addition to the above background facts upon which the parties are agreed, the Faculty Association has adduced a number of affidavits providing further information about the context leading up to the promulgation of the Resolutions and their intended purposes by those who tabled them. The petitioners object to much of this evidence.

[34] In this regard, I agree with the petitioners that the motives of those who put the Resolutions forward, their subjective understanding of the scope of the Faculty Association's purposes, and their personal beliefs that the Resolutions were in furtherance of those purposes are not particularly relevant to my task. I assume that the members putting forward the Resolutions did so in good faith. However, the Court's task is to assess the purposes of the Faculty Association, and the extent to which the Resolutions are consistent with those purposes, on an objective basis.

[35] The petitioners also object to the consideration of evidence regarding a number of other faculty associations in the Lower Mainland that have passed similar motions in relation to the conflict in Gaza. I agree that this evidence is not directly relevant to the consistency of the Resolutions before me to the Faculty Association's stated purposes. In particular, I agree that the constraints to which those other faculty associations are subject, including the wording of their own respective purposes, may differ from those applicable to this Faculty Association.

[36] However, I do accept that unchallenged previous resolutions passed by the Faculty Association membership itself in the past may have some bearing on the reasonable expectations of the Faculty Association's members as to the role of their Faculty Association. The reasonable expectations of the membership is a factor identified by both parties, the *Societies Act*, and case law as relevant to the Court's intervention with society conduct.

[37] For example, in *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at 190–192, 1992 CanLII 37, the Court found that it would be inappropriate to have regard only to the written legislation and rules of the association, and that long-standing traditions provide notice to the members of what rules the association will follow. More recently, this Court has taken into account a society's past practice of passing political motions in finding that the bylaws of the society envision members using the society as a forum for political expression: *Presch v. Alma Mater Society of the University of British Columbia*, 2017 BCSC 963 at paras. 40–41. In addition, s. 102 of the *Societies Act* provides for an oppression remedy to members that directly engages their reasonable expectations, and I do not consider that s. 104 of the *Societies Act* can be considered in isolation from this related remedy. Finally, I do not see a significant legal difference between the Faculty Association's reference to its member's reasonable expectations and the petitioners' arguments about their stated "legitimate expectations."

[38] The evidence establishes that the Faculty Association has a past and legally unchallenged practice of debating political issues and considering motions on political and social topics of interest to its membership, including matters with an international component, including motions with respect to:

a) an international campaign to protest the arrest and torture of a professor in Uruguay for his political affiliations;

b) an international campaign to bring an end to all torture, abduction and oppression by agents of the Pinochet regime in Chile;

c) a trust fund to assist academics subject to psychiatric abuse in the USSR;

d) opposition to the Trans Mountain Pipeline by Kinder Morgan; and

e) divestment from fossil fuels by the University in light of the climate crisis.

Interpretation of s. 104(1)(b) of the *Societies Act*

The Societies Act

[39] The first issue that must be addressed is the proper approach to the interpretation of the *Societies Act*, and in particular, the meaning of the restriction on a society carrying on activities that are "inconsistent with" its purposes.

[40] Section 104 of the *Societies Act* provides 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.
>
> [Emphasis added.]

[41] Section 104 is essentially a remedy provision that addresses contraventions of the regulations or bylaws of a society, as well as contraventions of the *Societies Act*. With respect to actions of the society itself, s. 104(1)(b) provides a remedy where the society is carrying on activities that are inconsistent with or contrary to the society's stated purposes.

[42] The modern approach to statutory interpretation is well established in the jurisprudence and uncontroversial between the parties. As explained by the Court of Appeal in *British Columbia (Assessor of Area #14 – Surrey/White Rock) v. Fraser Park Realty Ltd.*, 2025 BCCA 186 at para. 14, the court must, in every case, apply the rules of statutory interpretation described in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 at para. 21, namely that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense

harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament".

[43] The statutory context of s. 104 includes Part 2, Division 1 of the *Societies Act,* which addresses the nature of societies more generally. Section 2 authorizes the formation of a society for "one or more lawful purposes, including, without limitation…educational…political…[and] professional…purposes", provided that none of the purposes is "the carrying on of a business for profit or gain." Pursuant to s. 10, every society must have a constitution that sets out its purposes. Section 7(1) of the *Societies Act* provides the following substantive limitation:

> **Restricted activities and powers**
>
> 7 (1) A society must not
>
> (a) carry on any activity or exercise any power that the society is restricted by its bylaws from carrying on or exercising or that is contrary to its purposes, or
>
> (b) exercise any of the society's powers in a manner inconsistent with those restrictions or purposes.
>
> (2) An act of a society, including a transfer of property to or by the society, is not invalid merely because the act is contrary to subsection (1).
>
> [Emphasis added.]

[44] Although the petitioners initially plead that the Resolutions were also "contrary to" the stated purposes of the Faculty Association, before me they did not advance that argument, and instead argued that the term "inconsistent with" in s. 104(1)(b) must have a different meaning from "contrary to" under that same provision, or it would be redundant. I agree, in part because the distinction is made clear in the listing of two separate prohibitions in this regard in ss. 7(1)(a) and (b). However, I also consider that the reference to "contrary to" in the same provision as "inconsistent with" indicates that a similar interpretive approach is mandated for both these terms. Just as the term "contrary to" does not import a jurisdictional analysis into s. 104(1)(b), I do not consider that the term "inconsistent with" is an attempt by the legislature to introduce this type of analysis into s. 104(1)(b), particularly in the 2016 Societies Act, which did away with the search for jurisdiction in relation to *ultra vires* actions.

[45] There appears to be more caselaw regarding the meaning of “contrary to” in s. 104(1)(b), which is often considered in the context of contraventions of society bylaws by various actors. Able counsel for both parties were unable to find caselaw that directly considers what it means for a society to act “inconsistent with” its purposes, but they suggested various analogies to me, from the now obsolete approach to considering whether subordinate legislation is consistent with its authorizing legislation pursuant to the Supreme Court of Canada’s decision in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64 [*Katz*], to the more recent decision of the Supreme Court of Canada in *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 [*Wastech*], considering the limits of contractual discretion, which must be exercised in good faith and consistent with the purposes of the contract.

Petitioners’ Position

[46] The petitioners argue that the words “inconsistent with” must be given a meaning other than “in conflict with” or “negatively infringing”, because “contrary to” already captures those types of problems. They say that “inconsistent with” instead captures activities that fall outside the “scope” of the society’s purposes.

[47] In their initial submissions, written before the Supreme Court of Canada released its decision in *Auer v. Auer*, 2024 SCC 36, the petitioners argued that an analogy could properly be made to the administrative law context, where the inconsistency of subordinate legislation with its statutory purpose might be established by showing that it is “‘irrelevant’, ‘extraneous’ or ‘completely unrelated’ to the statutory purpose”, relying on *Katz* at para. 28. However, the petitioners argued that the language of deference used in *Katz* should not be applied by the Court in the context of interpreting the consistency of a society’s actions with its purposes, emphasizing instead that inconsistency with purpose encompasses the idea of stepping *outside of* purposes.

[48] After the release of *Auer* by the Supreme Court of Canada last year, which did away with the *Katz* approach to determining the validity of subordinate legislation

in favour of a reasonableness approach consistent with *Canada (Minister of Citizenship and Immigration v. Vavilov*, 2019 SCC 65 [*Vavilov*], the petitioners argued that the administrative law analogy could no longer be maintained in the *Societies Act* context. They argue now that a court applying s. 104 of the *Societies Act* is not engaged in a judicial review of the society's own assessment of whether its actions are consistent with its purposes. Further, they argue that even if one were to use the administrative law analogy, it would now be to *Auer*, not *Katz*.

[49] However, instead of moving away from a jurisdictional type of analysis, as the Supreme Court did in *Auer,* the petitioners suggest that, post-*Auer*, "'consistency of purpose' is a question of scope of authority, not a question of 'relatedness' or 'relevance'". Further they argue that societies ought not be entitled to greater deference on questions about the scope of their own authority than tribunals are. Instead, they argue that: "If anything, it would be the opposite: societies do not enjoy the protection of privative clauses designed to limit the role of the court."

[50] The petitioners also urge an interpretive analogy to the contract law context developed in *Wastech* because the contractual "duty of good faith requires contracting parties to exercise a discretion consistently with the purpose for which it was granted." Again, however, they incorporate a jurisdictional scope type of analysis into this argument arguing that the duty of a society may be violated by an exercise of contractual discretion that "stands outside the compass set by contractual purpose".

[51] Drawing from the language of the law of corporations and the oppression remedy, the petitioners also argue that a society's stated purposes are the focal point for the members' "legitimate expectations" and should be regarded as constraining the manner in which the society's powers may be exercised and the activities it may carry on.

[52] Regardless of the various analogous legal frameworks urged by the petitioners, they are consistent in advocating for an approach to the interpretation of s. 104(1)(b) that requires the Court to define the outer boundaries of permissible

society conduct based on a societies' stated purposes, and then consider whether the impugned actions fall inside or outside of the scope of those purposes. For the reasons I set out below, I consider that this interpretive approach is no longer endorsed for the determination of consistency with purpose in either the administrative law or contractual law arenas. Furthermore, it retains elements of the *ultra vires* analysis which was formally abandoned when societies were granted the powers of a natural person, and the validity of their actions ceased to depend on the scope of their powers and purposes.

Faculty Association Position

[53] The Faculty Association also originally relied upon *Katz* in its written submission but acknowledged in its oral submissions to the Court that the *Katz* analysis has been overtaken by *Auer* in the context of the judicial review of subordinate legislation. Nevertheless, the Faculty Association argues that the meaning of "inconsistent with" in s. 104 of the *Societies Act* may still be informed by *Katz*. In this regard, they suggest that "inconsistent with" in the *Societies Act* may still be understood to mean activity that is "'irrelevant', 'extraneous' or 'completely unrelated' to" a society's purpose.

[54] Although not suggesting that the deference afforded to tribunals on the interpretation of subordinate legislation is directly applicable, the Faculty Association argues that judicial restraint is still appropriate in relation to a society's own determination of its purposes, and what is, or is not, inconsistent with those purposes. They argue that, especially where that determination is made democratically by the membership, as it was here, deference should be given to that determination by the Court. Unlike the petitioners, who argue that there is no decision to defer to, the Faculty Association argues that a decision interpreting the scope of the Faculty Association's purposes is implicit in the adoption of the impugned provisions, much as it was found to be in *Auer*.

[55] The Faculty Association strongly disagrees with the petitioners that less deference is owed by the courts to the conduct of private societies than to the

decisions of tribunals exercising delegated governmental power. The Association argues that the courts are generally far more "hands-off" with societies than they are with governmental decision makers. However, to distinguish between the language of "deference" afforded by the courts to administrative decision makers pursuant to *Vavilov* or *Auer,* the Faculty Association instead suggests that the appropriate language is one of "restraint" when a court is asked to interfere with the conduct of a society pursuant to s. 104 of the *Societies Act*.

[56] While recognizing that s. 104 provides for the court to review the consistency of society actions with the societies' purposes, they also argue that the court's authority to intervene pursuant to s. 104 is not a broad one because the Court must find irregularities or errors before it has jurisdiction under s. 104 (or the former s. 85 of the *Society Act*, R.S.B.C. 1996, c. 433). For example, the Faculty Association argues that a court "does not have the authority to intervene in the affairs of a society by substituting its own judgment for that of the society on a matter of substance within the society's authority". In support of these propositions, the Faculty Association relies on the Court of Appeal's decision in *Farrish v. Delta Hospice Society*, 2020 BCCA 312 at paras. 49–50, and this Court's decision in *North Shore Independent School Society v. B.C. School Sports Society*, [1999] B.C.J. No. 143, 1999 CanLII 6539 (S.C.) at para. 37.

[57] Like the petitioners, the Faculty Association also endorses an analogy to the review of discretionary contractual actions described in *Wastech*, which it suggests also entails a degree of deference by the court to the contracting party in considering whether the exercise of discretion was consistent with the purpose of the discretion provided for under the contract. In particular, the Faculty Association relies on para. 77 of *Wastech*, in which the Court notes that the language of the contract is important, and that where the language "is not readily susceptible [to] objective measurement … the range of reasonable outcomes will be relatively larger."

[58] Ultimately, the Faculty Association argues that applying "a highly deferential standard that requires a society's actions to be irrelevant, extraneous or completely

unrelated to the society's purpose before a court intervenes ensures the court remains in its proper lane with respect to societies".

Determination

[59] Most cases regarding a societies' compliance with its bylaws relate to specific actions that have an effect on a member or group of members, like the conducting of votes or the disciplining or expulsion of members. These cases generally require the interpretation by the court of specific clauses with a direct bearing on an individual member's participation rights. They tend to deal with alleged contraventions of bylaws, rather than consistency with purposes.

[60] The history of the current *Societies Act*, and the Court's interpretive approach to the actions of societies subject to the *Societies Act*, were helpfully canvassed by Justice Newbury in *Farrish*. I consider it helpful to set out the Court of Appeal's observations and analysis with respect to the genesis of the *Societies Act* at length:

> [44] As the Attorney General points out in his factum, the enactment of the Act was preceded by the circulation of a *White Paper* by the Ministry of Finance in August 2014. (See also the earlier *Consultation Paper on Proposals for a New Societies Act* by the British Columbia Law Institute dated August 2007.) The *White Paper* proposed a new statute that would maintain the basic framework of the then *Society Act,* but "update and supplement that law with new corporate rules and procedures from the Business Corporations Act [S.B.C. 2002, c. 57], and other corporate legislation (such as … a broad palette of court remedies.)" (At p. 1). The Paper continued:
>
> > …the legislation should ensure protection of the rights of members of societies, in particular the fundamental right to set the direction of the society. Members must have access to information, and the ability to collectively act to maintain control. Going to court may be a last resort, but modern legal remedies should be available. [At p. 2.]
>
> New proceedings such as oppression actions, derivative actions, and court-ordered investigations into the affairs of societies, were proposed consistent with the corporate model.
>
> [45] As finally enacted*,* the *Society Act* retained a structure that resembles corporate legislation in its large outlines: a society is incorporated and given the powers and capacities of a natural person; incorporation is carried out by the filing of a constitution and bylaws with the Registrar of Societies; directors are generally elected by members annually and are required to act in the best interests of the society; general meetings of members are required *inter alia* for the election of directors and for the passing of special resolutions (usually requiring approval by two-thirds of those voting); and as already mentioned,

court orders may be sought to prevent or correct contraventions of the Act. Sections 104 and 108 were added, mirroring ss. 228 and 230, respectively, of the Business Corporations Act.

[46] Like the relationship between a company and its shareholders, the relationship between a society and its members is generally described as a contractual one, or at least as resembling a contractual one. In *Kwantlen University College Student Association v. Canadian Federation of Students – British Columbia Component*, 2011 BCCA 133, this court approved the comments of Bouck J. in Ireland v. Victoria Real Estate Board (1987), 13 B.C.L.R. (2d) 97, who stated:

> One question which arises is whether the relationship between the members and an incorporated society such as the board is converted from one based on contract to one founded on statute. In my view, the rights and obligations remain essentially contractual in nature notwithstanding incorporation. All the Society Act does is compel inclusion of provisions governing membership and the like in the bylaws and regulations, but it does not specifically define the rights to membership nor the conditions under which it may be revoked. In that sense it contrasts with professional organizations, which are governed by statute. They spell out how a person may become a member and in what instances he or she may be expelled or disciplined.
>
> By-laws of a society incorporated under the Society Act are much like the articles of association of a company. Articles of association of a company "constitute a contract between the company and the shareholders which every shareholder is entitled to insist upon being carried out": *Theatre Amusement Co. v. Stone* (1914), 50 S.C.R. 32 at 37, 6 W.W.R. 1438, 16 D.L.R. 855 [Alta.]. [At paras. 15-6; emphasis added.]

[47] Similarly, in *Bhandal v. Khalsa Diwan Society of Victoria*, 2014 BCCA 291, the bylaws of a society were said to be "essentially contractual in nature". The Court emphasized that one of the "cardinal rules" of contractual construction is that the various parts of an agreement are to be interpreted "in the context of the intentions of the parties as evident from the contract as a whole". (Citing *BG Checo International Ltd. v. British Columbia Hydro & Power Authority*, [1993] 1 S.C.R. 12 at 23–24; see also *Samra v. Guru Nanak Gurdwara Society*, 2008 BCCA 202 at paras. 53–61; and *Sarjit Singh Gill v. Khalsa Diwan Society* (S.C.B.C., Vancouver Registry No. A993150), dated December 3, 1999; *Garcha v. Khalsa Diwan Society – New Westminster,* 2006 BCCA 140 at para. 9; and *Sandhu v. Siri Guru Nanak Sikh Gurdwara of Alberta* 2015 ABCA 101 at paras. 67–71.) Another cardinal rule of contractual interpretation is that the meaning of the contract is not determined according to the subjective views of the parties, but according to the ordinary and grammatical meaning of the words used, consistent with the circumstances known to the parties: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 47–9.

[48] Of course, the contract between a society and its members is an unusual one in that members may come and go and the "context" is subject to change. (Here, for example, medically assisted dying was decriminalized.)

> In this regard, membership resembles to some extent adherence to a standard form contract, as discussed in *Ledcor Construction Ltd. v. Northbridge Indemnity Ins. Co.* 2016 SCC 37 at paras. 22–24. In addition, the terms of the contract are supplemented and restricted by the Act: s. 44(3) provides, for example, that a person is not "qualified" to be a director if he is undischarged, bankrupt or has been convicted of certain offences. (Additional qualifications may be specified in the bylaws.) It is also worth noting that the contractual relationship exists only between the society in question and its *members. Applicants* for membership may not invoke contractual rights: see *Re London Humane Society*, 2010 ONSC 5775 at para. 30, *Yukon Government* at para. 19, and *Sandhu v. Siri Guru Nanak Sikh Gurdwara* at para. 71.
>
> [Emphasis added.]

[61] The Court of Appeal in *Farrish* also found that the proper role of the court in reviewing and interfering with the acts of private societies as described in cases considering the predecessor to the *Societies Act*, including *Kwantlen University College Student Association v. Canadian Federation of Students – British Columbia Component*, 2011 BCCA 133 [*Kwantlen*], have ongoing relevance:

> [49] Both before and after the new Act came into effect, this court has affirmed that although a court must not "intervene by substituting [its own] judgment for the judgment of the tribunal on a matter of substance within the tribunal's jurisdiction", it *does* have the (statutory) jurisdiction to intervene on questions of the construction of the bylaws of societies. Thus in *Kwantlen*, the Court reasoned:
>
> > It is true, as contended by the CFS-BC, that the courts have said that they will not generally intervene to construe the policies of voluntary organizations, nor will they interfere with discretionary decisions taken by them. We accept the summary of the law given by Brenner J. (as he then was) in *North Shore Independent School Society v. B.C. School Sports Society*, [1999] B.C.J. No. 143 at para. 37 (S.C.), as accurate:
> >
> > > These cases show that the courts are prepared to interfere with the decision of a domestic tribunal where it can be shown that the tribunal exceeded its jurisdiction or failed to comply with the rules of natural justice or otherwise acted in bad faith. What these cases also demonstrate is the reluctance of the courts to intervene by substituting the court's judgment for the judgment of the tribunal on a matter of substance within the tribunal's jurisdiction.
> >
> > Section 85 of the Society Act specifically contemplates the courts making orders to ensure that the rights of society members under the society's bylaws are not transgressed. Where the matter brought before the court is an issue of the construction of provisions of the bylaws that define the fundamental rights of members in respect of

> the society's operations, it is clear that the court has jurisdiction to intervene, and need not defer to the bylaw interpretations espoused by the society. [Paras. 31–2; emphasis added.]

(The "domestic tribunal" referred to in *B.C. School Sports* was the governing body of the defendant society.)

[50] British Columbia courts have found it necessary and appropriate on many occasions to "interfere in the internal affairs" of societies where and *to the extent that* the bylaws or the Act are being contravened. This includes societies that have express religious purposes. As the Attorney General observed in his factum, none of these societies is exempt from compliance with the provisions of their bylaws or the *Act*. The Court's ability to remedy a contravention was not regarded as a broad jurisdiction, at least under the previous legislation: see *Sarjit Singh Gill v. Khalsa Diwan Society*, decided under s. 85 of the previous S*ociety Act.* In that instance, Low J., as he then was, reasoned:

> 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 this section is to correct the problem and make necessary ancillary and consequential directions. The scope of this section is not very broad and the court's discretion is not unfettered. [At para. 20; emphasis added.]

(See also *Re Khalsa Diwan Society of Victoria* at para. 10; *De Guzman* at paras. 22–6; *Kaila v. Khalsa Diwan Society* at para. 36; *Garcha v. Khalsa Diwan Society* at para. 19; *Hara v. Khalsa Diwan Society*, 1999 BCCA 409 at paras. 1, 10–1.) The new sections 104 and 108 of the Act may be seen as broadening the remedial jurisdiction of the Court to some extent.

[51] The Society did not refer us to any authorities that have disagreed with or doubted the foregoing line of cases, and I have not located any.

[Emphasis added].

[62] The above history provides some helpful guidance in my task of interpreting the requirement that societies not act "inconsistently with" their purposes under s. 104 of the current *Societies Act*. It suggests that the court's approach to the conduct and decisions of societies is most analogous to the court's approach to corporate decision making, including respect for the reasonable expectations of its members, and that "the relationship between a society and its members is generally described as a contractual one, or at least as resembling a contractual one": *Farrish* at para. 46. Furthermore, the court is "not required to defer to the bylaw interpretations espoused by the society:" *Kwantlen* at para. 32.

[63] The Court's role in intervening in the actions of a society are thus, in my view, not to be treated as some form of judicial review of administrative decision making, or quasi-constitutional *vires* or jurisdictional consideration. The defining of a delineated "scope" of power outside of which a society cannot act has been dispensed with in the context of the *Societies Act* and is not even used for the consideration of subordinate legislation anymore. As such, I find the analogies to *Katz,* and now to *Auer*, are not particularly helpful. Nor is the language of deference, at least as it is applied in the administrative law context.

[64] Nevertheless, I agree with the Faculty Association that the court generally takes a more restrained approach to interfering with the decisions of a private society, which are not empowered or constrained by the powers of government (or their delegation), and do not act in relation to the public, but only their members. In my view, the absence of a privative clause (as noted by the petitioners) does not indicate less deference to the decisions of private societies, but rather that such a clause would be entirely unnecessary. There is no need for a privative clause to signal deference where the conduct at issue is essentially private in nature, and there is no constitutional right to judicial review.

[65] I prefer the analogy made by both parties to the exercise of discretion in contract law, as defined by the Supreme Court of Canada in *Wastech*. That analysis requires the Court to consider whether the exercise of one parties' contractual discretion is consistent with the purpose of that contractual discretion.

[66] The issue in *Wastech* was whether the defendant had exercised its contractual discretion in bad faith, in breach of the contract between the parties. The Supreme Court of Canada considered this issue in relation to the purposes of the contract, stating at para. 63: "the duty to exercise contractual discretion in good faith requires the parties to exercise their discretion in a manner consistent with the purpose for which it was granted in the contract" [emphasis added.] *Wastech* also comments on reasonable contractual expectations, and how those expectations relate to their consistency with the purpose of the contract, stating, for example:

> [92] … In my view, those minimum constraints include the expectation that the parties will not exercise their discretion in a manner unconnected to the purposes for which it was granted, for example in a capricious or arbitrary manner.
>
> [Emphasis added.]

[67] Courts must ensure parties have not exercised their discretion in ways unconnected to the purposes for which the parties themselves grant that power. In a contractual context, these choices are ascertained principally by reference to the contract, interpreted as a whole: *Wastech* at para. 75. Further, the role of the court is to intervene where the the exercise of the power is "arbitrary or capricious in light of its purpose" as set by the parties, but not to ask whether the discretion was exercised in a morally opportune or wise fashion: para. 71.

[68] In addition, the language of the grant of discretion is important. Where the grant is narrow or specific or "readily susceptible of objective measurement" the range of conduct consistent with that discretion will be more limited. Conversely, for contracts that grant discretionary power in which the matter to be decided or approved is not readily susceptible to objective measurement, the range of reasonable outcomes will be relatively larger: para. 77.

[69] Although the Court considers the "reasonableness" of discretionary contractual conduct, it is careful to distinguish this from a review of reasonableness in the administrative law context. Rather, in the contractual context, Justice Kasirer for the majority states at para. 68 that "reasonableness for this good faith duty is understood by reference to purpose" further agreeing that "where discretionary powers are conferred by agreement, it is implicitly understood that the powers are to be exercised reasonably. The concept of reasonableness in this context implies a duty to exercise the discretion honestly and in light of the purposes for which it was conferred".

[70] Overall, the language of the Court in *Wastech* suggests that, in the contractual context, consistency with contractual purpose can be understood in terms of whether conduct is "unconnected" to the purpose of the contractual power,

or “arbitrary” or “capricious”: paras. 69, 74, 87–89, 92. It also indicates a contextual understanding of the contractual purpose of the discretion giving rise to the activity in question: paras. 72, 76.

[71] Generally, the Court indicates a non-interventionist approach to a contract between the private parties: paras. 73–75, 93. It also places the duty of good faith, and the requirement to exercise contractual discretion in a manner not “unconnected with its underlying purposes”, not as an implied term of a contract, but “a general doctrine of contract law that operates irrespective of the intentions of the parties”: para. 94.

[72] I recognize that *Wastech* does not provide direct instruction on the interpretation of what it means for a society’s actions to be inconsistent with their stated purposes under s. 104(1)(b) of the *Societies Act*. The relationship between societies and their members has been “described as a contractual one, or at least as resembling a contractual one”: *Farrish* at para. 46. However, there are obvious differences between private contracts and those of a society and its members, and there are additional legal obligations imposed on societies, who have been granted natural person powers under the *Societies Act*, including the statutory obligation to act consistently with their stated purposes.

[73] Nevertheless, I consider that the guidance in *Wastech*, urged on me by both parties, is helpful in these largely uncharted waters. The statutory obligation of a society to act consistently with its stated purposes in relation to its members, who are in a contract-like relationship with their society, is not far from the common law requirements of parties to exercise contractual discretion in good faith, consistently with the purposes of the contract they have both entered. Both are rooted in the contractual nature of the relationship between the parties.

[74] Stated purposes in society constitutions and bylaws are, like discretionary clauses in contracts, open to greater and lesser variability in terms of the conduct that may be consistent with those purposes, based on the breadth of their language, their context, and the extent to which they contain quantitative or qualitative

constraints. Finally, while no court has read into the obligations of a society under the *Societies Act* a duty of good faith, the *Societies Act* itself contains the requirement for consistency with stated purposes.

[75] Overall, I am satisfied that it is not necessary for the court to define a set of actions that are within the scope or authority of a society according to its purposes, and then ask if the conduct at issue is within or outside of that scope, in considering consistency with a society's purposes under s. 104(1)(b). Rather, I find that it is necessary to look at the particular conduct at issue, and consider whether it is reasonably (in the contractual sense) connected with the purposes of the society.

[76] In short, in order to determine if the Resolutions are inconsistent with the Faculty Association's purposes pursuant to s. 104(1)(b), I must consider whether the Resolutions are unconnected to the Association's purposes.

Interpretive Approach to the Faculty Association's Purposes

[77] With the above in mind, and at the urging of both parties, the approach I take to the interpretation of the Faculty Association's purposes is also rooted in the law of contract. Contracts are read "as a whole, giving words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties", with consideration to contextual factors including "the purpose of the agreement and the nature of the relationship created by the agreement": *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 at paras. 47–48.

[78] However, the parties disagree about how these interpretive principles apply to this case, and in particular to the statement and interpretation of a society's constitutional purposes, where those purposes have a unique statutory role under the *Societies Act* that is unique to societies and distinct from ordinary contracts.

Petitioners' Position

[79] Based primarily on the obiter in *Farrish* at para. 48 underlined above, the petitioners argue for a strict interpretation of the Faculty Association's constitution on the basis that it is more akin to a standard form contract, as described in *Ledcor*

Construction Ltd. v. Northbridge Indemnity Insurance Co., 2016 SCC 37 [*Ledcor*]. Pursuant to *Ledcor* at paras. 30–32, the petitioners argue that in such contracts, the surrounding circumstances generally play less of a role in the interpretation process and, when they are relevant, they tend not to be specific to the particular parties. The petitioners concede, however, that certain factors still remain important, including "the purpose of the contract, the nature of the relationship it creates, and the market or industry in which it operates": *Ledcor* at para. 31.

[80] The petitioners accept that the context in which the Faculty Association constitution operates is that of labour relations in a university setting. The contractual relationship it creates is in the nature both of a society, governed by the *Societies Act*, and of a union, with powers and responsibilities under both the *Labour Relations Code* and the collective agreement between the Faculty Association and the University.

[81] The petitioners emphasize, however, that membership is a mandatory condition of employment for University faculty and academic staff. They argue that the mandatory aspect of the contractual relationship favours a strict approach to construing the scope of the Faculty Association's purposes, and that doubts about whether a particular activity falls within the scope of a mandatory society's purposes should be resolved against the society.

[82] The petitioners also argue that the fact that a society's constitution may be amended by special resolution reinforces a strict interpretation, because two-thirds of members can broaden the purposes if they find them too restrictive.

[83] On these grounds, the petitioners argue that the purposes set out in the Faculty Association constitution should be read restrictively. For example, they argue that the stated purposes of asserting "the integrity of the academic profession" and defending academic freedom in teaching and research, should be read to relate only to the integrity of the academic profession at the University itself, and defence of academic freedom and teaching and research conducted at the University. The same is true of fostering high standards of excellence in teaching and scholarship.

[84] With respect to the promotion of the welfare of all faculty members, the petitioners note that “faculty members” is a defined term in the constitution and relates only to faculty members at the University. The role of the Faculty Association to act as the sole bargaining agent of faculty members and to conduct collective bargaining on their behalf is also clearly related only to faculty members of the University.

Faculty Association Position

[85] The Faculty Association says that its purposes, read together, provide a broad platform for the Faculty Association to act collectively in shaping the academy and higher education to ensure it maintains its central role in society, while improving the working conditions for faculty.

[86] The Faculty Association argues that it’s purposes, properly interpreted, provide a broad basis for the Faculty Association to do two things: seek to improve the working conditions of members, and to promote academia and higher education. In this respect, they argue that all five of its listed purposes are interrelated and should not be interpreted in isolation from one another.

[87] The Faculty Association emphasizes that it is a trade union operating in a University setting. In that context, it argues that it is entirely appropriate for the Faculty Association to take positions on social and political issues. It relies on case law that indicates that taking political positions on matters of importance to the labour movement is what unions do as part of their work improving conditions of employment. It argues that an interpretation of the Faculty Association’s purposes that precludes it from doing so would be contrary to the principles applicable to the interpretation of union constitutions, and must be rejected.

[88] The Faculty Association also argues that its ability to promote academia and higher education must be interpreted in the context of the role played by university faculty in preserving the status of academia and higher education as core institutions at the centre of our society. Passing motions that directly impugn threats to

institutions of higher education are one means of expressing solidarity with faculty internationally and advocating for academia and higher education.

[89] The Faculty Association also argues that universities, as institutions, are sites where healthy debate about all matters must be encouraged, and relies particularly on *Presch* at para. 42 for the proposition that university student society referendums on political issues have been interpreted as being "part of the robust and vigorous political debate that is often seen on university campuses."

[90] The Faculty Association rejects any geographic limitation on its purposes.

Determination

[91] I am not convinced by the petitioners' arguments that a strict approach to interpreting the Faculty Association's purposes is warranted pursuant to the principles of contractual interpretation or the interpretation of a union constitution with mandatory membership.

[92] The Court in *Farrish* observed that, given a society's members and context change, "membership resembles to some extent adherence to a standard form contract". However, the Court in *Farrish* did not go on to apply the principles applicable to contracts of adhesion to the interpretation of the society's bylaws, or even to describe them. The Court in *Farrish* also observed that unlike typical commercial contracts, the context in which the parties operate is not static and will change as the membership changes. Unlike a standard form contract or contract of adhesion, a society's bylaws are living documents that can be amended by the membership as circumstances change. In my view, neither the ability to amend the constitution by special resolution or the observations at para. 48 of *Farrish* support the strict or geographically limited interpretation of the Faculty Association's purposes advanced by the petitioners.

[93] Nor does the fact that the Faculty Association is also a union, and membership in the Faculty Association is mandatory, support the petitioners' argument that the purposes should be read restrictively or strictly. To the contrary,

the caselaw with respect to the interpretation of union constitutions with mandatory membership requirements suggests a broad interpretation of those purposes.

[94] In *Speckling v. Local 76 of the Communications, Energy, and Paperworkers' Union of Canada,* 2023 BCSC 1446, Justice Iyer considered the interpretation of a union constitution in a disciplinary context. Iyer J. found that while the usual rules of contractual interpretation apply to a union's constitution, a purposive interpretation is required that specifically recognizes the limited role of the courts in the labour relations context: paras. 84–89. The Court relied on a number of cases of other courts in this regard, concluding:

> [84] A union constitution is a contract between the union and its members: *Berry v. Pulley*, 2002 SCC 40 at para. 24. The usual rules of contract interpretation apply. The court should read the relevant provisions in the context of the contract as a whole and the parties' mutual intent at the time of contract formation, giving the words their ordinary meaning. However, the court should reject a literal interpretation that would make the provision or contract, "ineffective, superfluous, absurd, unjust, commercially unreasonable, or destructive of the commercial objective of the agreement": *Ali v. Datta*, 2011 ONSC 2496 at paras. 40–43.
>
> [85] Purposive interpretation of a union constitution requires the court to keep in mind the labour relations context: *Williams v. Telecommunications Workers Union*, 2011 ABQB 314, aff'd 2012 ABCA 284, leave to appeal to SCC ref'd 35114 (28 March 2013):
>
> > [68] Interpretation of a union constitution may be likened to the interpretation according to labour law principles of a collective agreement. In *Bradburn*, Estey J. at pp. 9 to 12 considered the manner in which a collective agreement should be interpreted. He held that a court should not be quick to place a meaning on a term of a collective agreement which would put that clause in conflict with the general philosophy of labour relations as established under the applicable statute. Such should be the case only where the contract by its clearest intent and provisions dictates otherwise. The conflicting interests must be weighed realistically and fairly, having regard to the social policy behind the relevant labour relations statute.
>
> [86] In *Williams*, the court declined to interpret the words of a union constitution literally because that would have led to an outcome that was unreasonable from a labour relations perspective: paras. 83, 88. (See generally *Brown v. Hanley*, 2019 ONCA 395 at paras. 34, 40–43).
>
> [Emphasis added.]

[95] Overall, I consider that *Speckling* supports a purposive interpretation of union constitutions in light of their labour relations context, notwithstanding the

requirements of mandatory membership. *Speckling* does not support a strict or literal interpretation that would not support labour relations principles.

[96] Although in the context of a constitutional challenge, the words of Justice La Forest, writing for a plurality in *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211 at 338, 1991 CanLII 68, also suggests that the scope of a union's purposes, and particularly their role in collective bargaining, are not conducive to a strict or restrictive definition by the courts:

> … Just as importantly, I would draw attention to what I have already said about the difficulty of determining whether a particular cause is or is not related to the collective bargaining process. The appellant complains of what he deems to be glaring examples, but as I have tried to illustrate, many activities, be they concerned with the environment, tax policy, day-care or feminism, can be construed as related to the larger environment in which unions must represent their members. Where one chooses to draw the line will depend on one's political and philosophical predilections, as well as one's understanding of how society works. A legislature may at some point, as apparently was the case in Ontario in the past and continues to be the case in other jurisdictions, decide that it will draw lines between proper and improper use of union dues. In the meantime, I think it would be highly unfortunate if the courts involved themselves in drawing such lines on a case-by-case basis. Such a result would ensue if the Court were to conclude that the limits on the appellant's s. 2(d) rights in this case are not "demonstrably justified in a free and democratic society".
>
> [Emphasis added.]

[97] Adopting the strict construction to the Faculty Association's constitution urged by the petitioners would be a departure from the principles generally applicable to the interpretation of a union constitution. Instead, I consider that a non-technical and purposive approach is required, both because the Faculty Association is a union, but also because it is a society whose relationship with its members under the *Societies Act* is akin to a contractual one, and not one in which that the court plays a constitutional or other significant oversight role.

[98] While I am not convinced that it is necessary to read the Faculty Association's purposes thematically, as suggested by the Faculty Association, I find that ordinary and grammatical meaning of the words used to express the enumerated purposes, within their University and labour relations context, are broadly stated. They are not,

for example, “readily susceptible to objective measurement,” suggesting that the range of reasonable conduct that they contemplate is also broad.

[99] The language of the Faculty Association’s purposes are stated expansively in its constitution, and relate to concepts such as defending academic freedom and the integrity of the “academic profession” that are open to a wide variety of societal and philosophical interpretations. The purpose of promoting the welfare of faculty members, although limited to the University’s faculty members, is otherwise also broadly worded, and may reasonably encompass everything from direct working conditions to addressing morale and the engagement of faculty members with their University.

[100] In my view, a purposive, rather than restrictive, approach should be taken by the courts to the interpretation of a society’s purposes. There are many reasons for this, including in this case the context of this society representing faculty at a university, both generally and as their collective bargaining unit. More generally, it is important that the interpretation of a society’s purposes affords societies the flexibility that they need to achieve their objects. Implying restrictions into generally-worded purposes risks frustrating societies’ ability to act in furtherance of their objects as their membership determines to be appropriate in the changing circumstances in which the society operates.

[101] Nor is it this Court’s role, in my view, to attempt to definitively interpret the meaning of stated purposes or to determine the outer limits or boundaries of them. For the reasons stated above, s. 104 does not ask or require the Court to undertake a quasi-jurisdictional analysis of the scope of these purposes. The Court (and the parties) cannot anticipate all the different ways that the Faculty Association may act that engages its purposes. My task is limited to the issues before me—to determine whether the specific Resolutions challenged in this petition, are inconsistent with those stated purposes.

[102] I turn then to a consideration of each of the Resolutions, in light of the words of the Faculty Association's constitution and purposes, within the University and labour relations context.

The Divestment Resolution

[103] I will begin with the Divestment Resolution. The Faculty Association primarily relies on its labour-relations related purposes as the basis for this motion.

[104] Although the petitioners have the burden of establishing the breach, I will first set out the Faculty Association's position as to how this Resolution is connected to the Faculty Association's purposes.

Faculty Association Position

[105] The Faculty Association argues that the Divestment Resolution is connected to the Faculty Association's thematic purpose of improving the working conditions of members. Besides its role as the sole bargaining agent for the Faculty Association, the Faculty Association includes within this thematic purpose, its defined purpose of promoting the welfare of all faculty members.

[106] The Faculty Association argues that the Resolution itself, and in particular its recitals, provides salient evidence of the link between the society's purposes and the impugned resolution. It notes that the majority of the Court in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 at 277, 1994 CanLII 115 [*Shell Canada*], in determining the purpose of the resolution, relied on the recitals of a divestment motion passed by the City of Vancouver when it resolved to cease purchasing gas from Shell Oil during the apartheid regime in South Africa.

[107] The Faculty Association argues that the Resolution, as framed, attempts to influence the University's policies, namely the University's existing Responsible Investment Policy, to remedy what some members interpreted as a discrepancy between that policy and the University's stated values. Further, the Faculty Association says that the University's policies are part of the broader context in which Faculty Association members perform their jobs. Advocating for amendments to

employer policies is one way that faculty members influence their work environment and promote their own welfare.

[108] Beyond that, the Faculty Association argues that taking political positions with respect to an employers' policies is one way that a union can go about shifting public sentiment and fostering buy-in among union members. Doing so affects the balance of power between management and labour and is thus relevant to the union's role in collective bargaining.

[109] More broadly, the Faculty Association argues that how it exercises its purpose to improve the working conditions of members should be understood within the wider context of the Faculty Association operating as a union and forming part of a university culture where vigorous debate about political issues should be encouraged. For unions like the Faculty Association, providing a forum for political debate, taking up political causes and advocating for the University to take certain positions is all part and parcel of improving working conditions for faculty.

[110] The Faculty Association, citing *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 at para. 38, also argues that, by contributing to political debate and expressing solidarity through political positions, unions push the political, social and economic environment in a direction favourable to unions and their members. It says that it is not for this Court to interfere with decisions made by a union about when and how to advance those political positions. Instead, as La Forest J. emphasized in *Lavigne*, that is something for unions to consider democratically, which they say the Faculty Association has done in this case.

Petitioners' Position

[111] The petitioners say that the Divestment Resolution does not come within the scope of the Faculty Association "act[ing] as the sole bargaining agent of all faculty members employed by Simon Fraser University and regulat[ing] relations between the faculty members and the University through collective bargaining", because in passing and acting on both of the Resolutions, the Faculty Association was not

acting as a bargaining agent, nor was it regulating relations between faculty members and the University through collective bargaining.

[112] The petitioners argue that the mere fact that a society is a union, and it has a corresponding "collective bargaining" purpose, "is not a licence to engage in unlimited political advocacy" and that the scope of permissible political advocacy is still limited by the society's constitution. For those same reasons, it is not an affront to principles of unionism to find that, on a proper construction, the members themselves have bound their union to a more limited scope of political advocacy through adopting more limited purposes. Furthermore, the petitioners argue that it is "extravagant to suggest that a union will be unable to perform its role if its ability to engage in political advocacy is in any way limited."

[113] The petitioners disagree with the Faculty Association regarding the import of both *Lavigne* and *Dunmore* in this context. Even those cases suggest that trade unions may properly engage in a broad range of political advocacy, the petitioners say that the Faculty Association is in the more unique position of being both a union *and* a society, and that the Faculty Association is therefore subject to statutory constraints that differ from those of ordinary unions, including a more judicially enforceable obligation to adhere to the purposes stated in its constitution. The petitioners agree that the labour relations setting in which the Faculty Association operates may be relevant context to the interpretation of its constitution, but they say the analysis must begin with the words of the constitution.

[114] The petitioners further argue that even a more modest formulation of the Faculty Association's purposes, that it may engage in political debate where it forms part of the political, economic and social context in which labour relations in the university context takes place, still goes too far. The commentary in *Lavigne*, they say, was directed at the specific *Charter* issues in that case but is not applicable here. Furthermore, the Court's statements about unions "shaping the political, economic, and social context within which particular collective agreements and labour relations

disputes will be negotiated or resolved" is not a statement about the "objects of all trade unions."

[115] The Faculty Association's mandate, they argue, is much narrower than that in *Lavigne*, where the union had a mandate to advance "the common interests, economic, social and political, of the members and of all public employees, wherever possible, by all appropriate means": *Lavigne* at 223, 306.

[116] In any event, they argue that La Forest J.'s commentary in *Lavigne* does not go far enough to support the validity of the Resolutions. They say that following the logic of *Lavigne*, the "context" at which the Faculty Association's efforts may properly be directed are "limited to policy and other structural conditions" at the University itself "that affect what [the Faculty Association] can achieve for its members."

[117] The petitioners also argue that the Faculty Association's position on the scope of its labour-oriented purposes rests on the flawed premise that the "political environment" in which faculty carry out their work is a "working condition", the "improvement" of which is a legitimate target for union advocacy.

[118] The petitioners argue that the improvement of working conditions is not a free-standing purpose, but rather an impermissible conflation of two independently stated purposes. They say that outside the specific context of collective bargaining, the Faculty Association's efforts to improve working conditions must operate within the boundaries set by the purpose of promoting the "welfare of *all* faculty." This cannot mean promoting views that a plurality (or even a majority) of members endorse, that do not reflect the views and welfare of *all* faculty. Instead, the Resolution introduces political divisions in the workplace, and it is especially deleterious for those who find themselves in the minority position. Therefore, the Faculty Association's mandate to "promote the welfare of all faculty" cannot be construed to encompass "shaping the political environment" at the University.

Determination

[119] I agree with the petitioners that, notwithstanding the difficulty of drawing a line between political advocacy and collective bargaining noted in *Lavigne,* the two are not the same thing. While the ability to engage in some political advocacy may be rationally connected to the objectives of collective bargaining, including by virtue of its ability to affect the balance of power and shape the terrain on which collective bargaining plays out (*Lavigne* at 334), a mandate to engage in collective bargaining is not in itself a mandate to engage in all types of political advocacy. I also agree that the language of the Faculty Association's constitution is considerably more constrained than that of the Ontario Public Service Employees' Union in *Lavigne*.

[120] However, I am not convinced that the mandatory nature of union membership, or other factors relied upon by the petitioners, detracts from the range of ways that members may seek to influence their employer's policies through their union and faculty association. My reading of both *Lavigne* and *Speckling* do not support such a narrow view.

[121] Nor am I convinced that the language of the constitution defining the Faculty Association's purposes as promoting the welfare of "all" faculty members invokes a requirement for consensus when the membership passes resolutions about their collective welfare. The mandate of unions to act on behalf of the collective while abiding by their duty of fair representation is one manner in which this concern might be addressed.

[122] Instead, I agree with the Faculty Association that there is no requirement that the Faculty Association influence working conditions and promote member welfare only through grievance procedures as the members' collective bargaining unit, and that the Faculty Association may seek to improve working conditions and promote the welfare of faculty members in more diverse ways.

[123] One of those ways may be to seek to influence the policies of the University where the Faculty Association's members' work, even if that policy relates to the

University's ethics, investments or role in the broader community, and not strictly the human resources policies of the University.

[124] In the context of the university and labour-relations setting, I find that policies related to the University's ethical positions and investments are reasonably connected to workplace culture and may legitimately be something that University staff seek to promote their workplace welfare. I also accept the arguments of the Faculty Association that allowing its members to engage in discussions and resolutions about the policies of the University engenders buy-in from union members and may be a part of how unions broadly improve the working conditions of members.

[125] With respect to the Divestment Resolution, the University already has a policy around its investments that addresses ethical issues, to which the Resolution addresses itself. In my view, this existing policy grounds the Divestment Resolution in the business of the University itself and provides a clear connection between the members' desire to influence University's policy through the Divestment Resolution and the Faculty Association's purposes of promoting the welfare of the faculty of the University by collectively exercising that influence over a policy of their employer.

[126] I also consider that the Divestment Resolution is consistent with the reasonable expectations of the Faculty Association's members and follows a history of the Faculty Association related to motions the Faculty Association has considered, debated and adopted, including an earlier motion related to the University's divestment from fossil fuels. This is part of the known context of the Faculty Association's stated purposes.

[127] Overall, I find that the Divestment Resolution is connected to, and not inconsistent with, the stated purposes of the Faculty Association to promote the welfare of its faculty members and as the union of those members.

[128] I find some comfort for my conclusions in the eventual endorsement by the Supreme Court of Canada in the dissenting judgment in *Shell Canada*. That case

also considered a divestment resolution, passed by a municipality not a society, which the majority of the Supreme Court of Canada found to primarily relate to “matters in another part of the world" and not to the welfare of the City’s citizens, and therefore not within municipal purposes.

[129] The dissenting decision, written by Justice McLachlin, would have found that the City’s divestment resolution properly fell within municipal purposes, when broadly and purposively considered. That dissent, and its approach to the interpretation of municipal purposes, received widespread approval, and was formally adopted by a unanimous Supreme Court of Canada ten years later in *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19 at para. 6.

[130] In relation to that divestment resolution, McLachlin J. expressed the view that a broad and purposive approach to the interpretation of municipal purposes was preferable to a strict construction for several reasons, including that it respects and upholds the functioning of democracy at the municipal level, and it aids the efficient functioning of municipal bodies by avoiding the costs and uncertainties of excessive litigation. Such an approach was also said to be fundamentally more aligned with the nature of modern municipalities, as well as with the broader, more deferential approach of judicial intervention with respect to administrative agencies more generally. While not directly applicable to a private entity like a society, the principles of respecting democratic decision-making within a private entity like a society and a union have some application here. Furthermore, in my view the desirability of avoiding excessive litigation and intervention by the court in internal decision making in the context of a private society is more pronounced than it is in the municipal context.

[131] Although the approach to the interpretation of municipal purposes in *Shell Canada* is still broader than the purposive approach endorsed for the interpretation of the constitution of societies and unions under the current case law, I find many of the principles apposite. More significantly for this case, McLachlin J.’s now widely

endorsed dissent in *Shell Canada* supports a fairly expansive interpretation of citizen or member welfare as it relates to such divestment resolutions.

The Gaza Resolution

[132] I turn then to the Gaza Resolution, which the evidentiary record shows was a more divisive one within the membership.

Faculty Association Position

[133] As with the Divestment Resolution, the Faculty Association relies on its role in promoting the welfare of its members, and the role of unions as political actors more broadly, detailed above.

[134] In addition, the Faculty Association relies on its stated purposes of asserting the integrity of the academic profession, defending academic freedom in teaching and research, and fostering high standards of excellence in teaching and scholarship in relation to the Gaza Resolution.

[135] The Faculty Association argues that the Resolution, and its preamble, need to be understood in their university context. That context, they say, includes international instruments that speak to the importance of defending the integrity of higher education generally, and academic freedom specifically, at the international level and the role of university faculty in doing so.

[136] The Faculty Association relies in particular on the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, UNESCO, 29th Sess., 1997 (the "UNESCO *Recommendation*"), which includes the following statements:

> **Preamble**
>
> …
>
> *Conscious* that higher education and research are instrumental in the pursuit, advancement and transfer of knowledge and constitute an exceptionally rich cultural and scientific asset,

Also conscious that governments and important social groups, such as students, industry and labour, are vitally interested in and benefit from the services and outputs of the higher education systems,

Recognizing the decisive role of higher-education teaching personnel in the advancement of higher education, and the importance of their contribution to the development of humanity and modern society,

…

Expressing concern regarding the vulnerability of the academic community to untoward political pressures which could undermine academic freedom,

Considering that the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom and autonomy for institutions of higher education and that the open communication of findings, hypotheses and opinions lies at the very heart of higher education and provides the strongest guarantee of the accuracy and objectivity of scholarship and research,

Concerned to ensure that higher-education teaching personnel enjoy the status commensurate with this role,

Recognizing the diversity of cultures in the world,

Taking into account the great diversity of the laws, regulations, practices and traditions which, in different countries, determine the patterns and organization of higher education,

Mindful of the diversity of arrangements which apply to higher-education teaching personnel in different countries, in particular according to whether the regulations concerning the public service apply to them,

Convinced nevertheless that similar questions arise in all countries with regard to the status of higher education teaching personnel and that these questions call for the adoption of common approaches and so far as practicable the application of common standards which it is the purpose of this Recommendation to set out,

…

27. The maintaining of the above international standards should be upheld in the interest of higher education internationally and within the country. To do so, the principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source. Higher-education teaching personnel can effectively do justice to this principle if the environment in which they operate is

> conducive, which requires a democratic atmosphere; hence the challenge for all of developing a democratic society.
>
> …
>
> 44. There should be provisions to allow for solidarity with other institutions of higher education and with their higher-education teaching personnel when they are subject to persecution. Such solidarity may be material as well as moral and should, where possible, include refuge and employment or education for victims of persecution.
>
> [Emphasis added.]

[137] The Faculty Association also point to the policies of the Canadian Association of University Teachers ("CAUT") that define academic freedom as having a number of elements, including the freedom to express one's opinion about an institution, its administration and the system in which academics work.

[138] The Faculty Association argues that its purposes must be understood in this broader context, and that the University faculty play a crucial role as defenders of academic freedom, academia and higher education, not just at the University, but more broadly. Showing solidarity internationally is an important way of fulfilling that role. The Faculty Association says that a threat to academic freedom anywhere is a threat to academic freedom everywhere.

Petitioners' Position

[139] The petitioners say that the Gaza Resolution does not come within the scope of defending academic freedom in teaching and research. Specifically, they argue that this purpose is geographically constrained to the University, and that it relates only to threats to or impingements of academic freedom that relate in some way to what is being taught and researched at the University.

[140] The petitioners argue that it cannot be that the Faculty Association's purpose is to defend academic freedom wherever in the world it is threatened. They argue that the Faculty Association's mandate with respect to academic freedom is not "at large," but rather arises in the context of its responsibility to represent faculty members in their dealings with the University. They argue that this purpose cannot

be extended to geopolitical events that only incidentally affect the ability to exercise academic freedom.

[141] The existence of other entities devoted to the promotion of academic freedom at a broader level, such as CAUT—and the Faculty Association's membership in those entities—reinforces that conclusion.

[142] The petitioners also argue that the purpose of "defending academic freedom in teaching and research", as set out in the Faculty Association's constitution, should be understood as protecting against restrictions or reprisals relating in some way to the content of teaching and research. They say that this is more consistent with CAUT's "Four Pillars of Academic Freedom", which emphasizes the exercise of judgment about how and what to teach, the ability to carry out research activities without outside influence or pressure, and the public expression of views without reprisal or censorship. The petitioners also rely on the FAQ section of CAUT's paper on Academic Freedom and Equity, which describes defending academic freedom in teaching and research as "a type of freedom *from"* in that it protects "the right to teach, conduct research and publish, and engage in intra-mural and extra-mural speech free of orthodoxy or the threat of institutional reprisal and discrimination."

[143] The petitioners say that the collective agreement negotiated by the Faculty Association on behalf of its members likewise focuses on safeguarding teaching, research, and expression against institutional interference. The petitioners argue that the CAUT documents and the collective agreement provide the factual matrix in which the reference to "academic freedom in teaching and research" in the Faculty Association's constitution must be understood.

[144] Nor, they say, does the UNESCO *Recommendation* assist the Faculty Association. The petitioners say that the UNESCO *Recommendation* deals with a multitude of issues, not all of which concern "academic freedom." Nobody is disputing the value of higher education for the development of humanity and modern society, and the essential role that higher-education teaching personnel play in that. However, that does not mean that anything and everything pertaining to higher

education and academia is a matter of “academic freedom”, nor does the UNESCO *Recommendation* support that view. To the contrary, the petitioners say that it reflects a recognition that academic freedom is only *one aspect* of the advancement of humanity through higher education. The petitioners note that Article 44 of the UNESCO *Recommendation*, excerpted above, which deals with material and moral solidarity with institutions and personnel subject to persecution, is not expressed in terms of academic freedom.

[145] The petitioners say that the fact that the Gaza Resolution is “couched” in terms of the impact of the conflict in Gaza on academics and academic infrastructure does not bring it within the scope of this purpose.

[146] With respect to the Faculty Association’s purposes of fostering high standards of excellence in teaching and research, and asserting the integrity of the academic profession, the petitioners say that the Faculty Association “makes no attempt to articulate the scope of either, apart from contending that they can be combined with the defence of academic freedom to form the meta-purpose of ‘promoting academia and higher education’”.

[147] Fundamentally, the petitioners argue that the threats to academic freedom contemplated in the Faculty Association’s constitution do not encompass anything and everything that harms academic personnel and educational infrastructure, anywhere in the world.

Determination

[148] For the reasons stated above, I do not accept the petitioners’ arguments that the Faculty Association’s purposes are geographically bounded to the University itself, other than for its labour relations and faculty welfare purposes, which are expressly stated to be related to the faculty members of the University.

[149] Nor am I convinced that the Faculty Association’s stated purpose of defending academic freedom in teaching in research can only relate to a “freedom from” interference, or only related to threats to those freedoms from the University

itself. The ordinary and grammatical meaning of the words used does not support such a narrow interpretation of academic freedom, nor does the university or labour relations context of the Faculty Association support such a narrow view. The past practices of the Faculty Association, in terms of the types of resolutions debated and adopted previously, also indicates a broader historical understanding and meaning of these provisions.

[150] The fact that the parties are able to point to different aspects of the UNESCO *Recommendations*, and CAUT's various publications does not assist the Court to define the boundaries of these purposes, but rather demonstrates that the purpose of defending academic freedom, which describes a broad societal concept, does not have a singular definition or precise scope.

[151] Asserting the integrity of the academic profession and fostering high standards of excellence in teaching and scholarship are also broad concepts, expressed with broad language.

[152] The Resolution itself seeks action by the University, the employer of the Faculty Association members. It is constrained to the University in that sense and does not act more broadly.

[153] Overall, I am satisfied that the wording of the Gaza Resolution sufficiently connects the subject matter of the Resolution—including the asserted loss of educational institutions in Gaza, calls for inter-institutional co-operation, and the provision of opportunities for displaced students and faculty at the University—with the Faculty Association's purposes of asserting the integrity of the academic profession, the defence of academic freedom in teaching, and the fostering of high standards in teaching and scholarship.

[154] The correctness or advisability of that resolution, including the contents of the preamble and the views expressed therein, are not the justiciable aspect of this petition.

Conclusion

[155] The petitioners have not convinced me that the Resolutions are inconsistent with the Faculty Association's stated purposes, which are worded broadly and without the limitations asserted by the petitioners.

[156] I would dismiss the petition.

"Marzari J."