

**OCT 30 2015**



**S- 1589 81**

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**LAWRENCE REDA AND MARK NYKOLAICHUK**

**PETITIONERS**

**AND:**

**BRITISH COLUMBIA AMATEUR FOOTBALL ASSOCIATION,  
FRANK NASO and STEVE FIGNER**

**RESPONDENTS**

**PETITION TO THE COURT**

**This proceeding has been started by the Petitioner for the relief set out in Part 1 below.**

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

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

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

**Time for response to petition**

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

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	Vancouver Law Courts 800 Smithe Street, Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the Petitioner is:  Fax number address for service: Email address for service:	c/o MW Law Offices, Barristers 1000-543 Granville Street, Vancouver, B.C. V6C 1X8  604-605-4301 jjmcintyre@telus.net
(3)	Name and office address of Petitioner's lawyer is:	J. J. McIntyre, Esq. MW Law Offices, Barristers 1000-543 Granville Street, Vancouver, BC V6C 1X8

### CLAIM OF THE PETITIONER

#### Part 1: ORDERS SOUGHT

1. That the purported election of Frank Naso as President and Steve Figner as Vice-President of Finance of the British Columbia Amateur Football Association (the "BCAFA") at the Annual General Meeting ("AGM") of the BCAFA held on October 4, 2015 be declared a nullity.
2. That the Petitioner Lawrence Reda be declared the President of the BCAFA for the ensuing years until the 2017 AGM of the BCAFA.
3. That the Petitioner Mark Nykolaichuk be declared the Vice-President of Finance of the BCAFA for the ensuing years until the 2017 AGM of the BCAFA.
4. That until this Petition is heard there be no change in the signing officers of the BCAFA.
5. Costs of the Petitioners to be paid by the Respondents on a full indemnity basis..

#### Part 2: FACTUAL BASIS

1. The BCAFA is a non-profit society, which was incorporated in 1970 under the *Societies Act*, R.S.B.C 1960, c. 362
2. The current bylaws of the BCAFA were adopted on January 19, 1992 ("the Bylaws").
3. The Bylaws contain the following relevant provisions relating to membership, the board of directors, executive committee, general meetings and voting.

ARTICLE I - MEMBERSHIP

1. The ordinary members of the association, whom shall be considered charter members, shall be:
  - (a) The Junior Football Association of B.C.  
The British Columbia Secondary Schools Football Association  
Simon Fraser University  
University of British Columbia  
The BC Minor Football Conference  
The Pacific Football Officials Association  
Touch Football B.C.  
The Adult Flag Football Association of B.C.
- ...
- 1.2 Associate membership may be conferred by the Board of Directors upon any person, group, organization...having an interest in the further promotion and development of amateur football. **Associate members have no voting rights but may attend all general meetings.**
- 1.3 Any member may withdraw from the Association at any time by notice ....
2. Each ordinary member shall appoint one (1) representative to the Association and shall file a certified copy of such appointment with the Association prior to the start of the Annual General Meeting.

ARTICLE II - BOARD OF DIRECTORS

- 2.1 **The affairs of the Association shall be managed by the Board of Directors which shall consist of the President of each member association, or his appointed representative, and a five person Executive Committee elected by the membership of the Association at the Annual General Meeting.**
- 2.2 **Each director shall have one vote at all general meetings.**

ARTICLE III - EXECUTIVE COMMITTEE

- 3..1 The Executive Committee of the Association shall consist of the following five officers.
  - a) A President
  - b) A Vice President Program Development
  - c) A Vice President Communications and Marketing
  - d) A Vice President Administration and Finance
  - e) A Vice President without Portfolio or the Immediate Past President
- 3..2 **The Officers who compose the Executive Committee...shall be elected for a term of two (2) years by a majority vote of the Board of Directors and the Executive Committee at the Annual General Meeting of the Association.**

- ...
- 3.4 Officers shall take office immediately upon their election at the Annual General Meeting....
- 3.5 **Officers retiring from office at the Annual General Meeting shall be deemed to hold office until elections of new Officers filling their positions.**
- ...
- 3.7 Nominations for Executive Committee positions may come from the floor of the Annual General Meeting and/or by recommendation of a Nominating Committee...

#### ARTICLE 1V

##### 4.1 General Meetings

- a) The Annual General Meeting of the Association shall be held during the first quarter of each year on a date to be fixed by the Directors. A General Meeting of the Association shall be held at least four times each year....and said General Meetings shall be composed of the Board of Directors and the Executive Committee.
- ...
- e) **A simple majority, personally present, of the Executive Committee and the Directors shall constitute a quorum** for the purpose of a General Meeting of the Association.
- ...
- g) **Any associate member shall be entitled to be represented at and participate in any general meeting** of the Association **but shall not be entitled to vote** thereat.

#### ARTICLE X

##### VOTING

- 10.1 **Each ordinary member shall have one vote** at all Annual General and other General Meetings of the Associations **and each Executive Committee member shall have one vote at all Annual and other General Meetings** of the Association.
- 10.2 Proxy votes shall be permitted at all general meetings of the Association... At all General or Board meetings, Roberts Rules of Order shall determine conduct.
4. The 2015 AGM for the BCAFA was set for and held on October 4, 2015. One of the items on the Agenda was the election of Officers for the ensuing two year period.

5. As of the October 4, 2015 there were six ordinary members of the Association, as Touch Football B.C. and The Adult Flag Football Association of B.C. had retired as members in years past.
6. As of October 4, 2015, the incumbent members of the Executive Committee consisted of Lawrence ("Larry") Reda - President, Mark Nykolaichuk - VP Finance, Roy Anderson - VP Communications, Brian Olthuis - VP Programs and Brian Carrigan - VP Risk Management.
7. On October 4, 2015 a quorum was present for the AGM as all members of the Executive Committee were present in person and 4 of the 6 Presidents of the ordinary members (SFU and University of BC did not attend). Also present were 16 other persons including the Respondents, Frank Naso and Steve Figner.
8. When it came time to vote for the new Executive four members of the incumbent executive agreed to stand for re-election. Roy Anderson indicated that he would not. After nominations were called for, Brian Olthuis was the only nominee for VP programs; David Sullivan the only nominee for VP Communications; and Brian Carrigan the only nominee for VP Risk Management. The Petitioner, Larry Reda and the Respondent Frank Naso were both nominated for the position of President. The Petitioner, Mark Nykolaichuk and Dave Coutts were nominated for the position of VP - Finance. The nominations then closed.
9. Brian Olthuis, David Sullivan, Brian Carrigan were acclaimed to the Executive for 2015 - 2017.
10. A heated discussion took place as to who was entitled to vote for the contested positions for the new Executive Committee. It was insisted by the ordinary members representatives on the Board of Directors that only they were entitled to vote/have their votes counted for the new Executive and that despite the wording of the bylaws only their votes would count in any election. During the course of the discussion David Coutts, texted the Executive Director that he would remove his name from nomination for VP - Finance in favour of Mark Nykolaichuk. The ordinary members then insisted on re-opening nominations for VP - Finance and over the objections of the Executive Committee nominated the Respondent Steve Figner.
11. As a result of a failure on the part of the ordinary members to allow the existing Executive Committee members their right to vote, the votes counted for President were: 3 votes for Frank Naso and 1 vote for Larry Reda; and the votes for VP - Finance were: 3 votes for Steve Figner and 1 vote for Mark Nykolaichuk.
12. The incumbent Executive Committee members if allowed to vote/have their vote counted would have cast their votes for President: 4 for Larry Reda and 1 for Frank Naso; and for VP - Finance: 5 votes for Mark Nykolaichuk which would have resulted in both of those persons being elected to their respective offices.

- 13. Never, in the prior history of the BCAFA, have the incumbent members of the Executive Committee been denied their right to vote at an AGM in an election for the new executive officers of the BCAFA.

**Part 3: LEGAL BASIS**

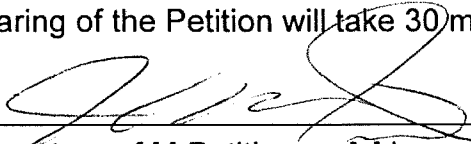
- 1. Section 85, *Society Act*, R.S.B.C. c. 433.
- 2. Robert's Rules of Order, re Motions Relating to Nominations
- 3. Rule 14-1 of the Supreme Court Civil Rules.

**Part 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Lawrence Reda sworn October 29, 2015
- 2. Affidavit #1 of Mark Nykolaichuk sworn October 28, 2015
- 3. Affidavit #1 of Roy Anderson sworn October 29, 2015
- 4. Affidavit #1 of Brian Carrigan made October 23, 2015
- 5. Affidavit #1 of Brian Olthuis sworn October 29, 2015
- 6. Affidavit #1 of Pat Waslen sworn October 29, 2015
- 7. Affidavit #1 of Ron Turner sworn October 30, 2015

The Petitioner estimates that the hearing of the Petition will take 30 minutes.

Date: 30/OCT/2015

  
 Signature of  Petitioners  lawyer for Petitioners  
 J.J. McIntyre

**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

Date:

\_\_\_\_\_  
 Signature of  Judge  Master