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The Legal Regulation of University Student Associations in Canada

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Although university student associations are key actors in Canadian political and social life, and although they engage in a significant amount of litigation, there is very little published research on their legal regulation. This article seeks to address this gap in the literature by providing a broad overview of the state of the law governing student associations across Canada. The applicable legal regimes are divided into three models: the state control model (Alberta), the state support model (Quebec), and the minimalist model (all other jurisdictions). Special attention is paid to the jurisprudence arising from the 2012 Quebec student strike, which may have a significant impact on future developments in this area.

Bien que les associations étudiantes universitaires soient des acteurs clés au sein de la vie politique et sociale au Canada, et bien qu’elles participent à de nombreux litiges, très peu de recherche a été publiée sur leur encadrement juridique. Les auteurs de cet article cherchent à combler ce vide en fournissant un aperçu général de l’état du droit qui gouverne les associations étudiantes partout au Canada. Les régimes juridiques applicables sont divisés en trois modèles : le modèle du contrôle étatique (l’Alberta), le modèle du soutien étatique (le Québec) et le modèle minimaliste (toutes les autres provinces et tous les autres territoires). Les auteurs portent une attention particulière à la jurisprudence liée à la grève étudiante au Québec en 2012, car elle pourrait avoir un impact important sur les développements futurs dans ce domaine.

1. INTRODUCTION

University student associations have long been key actors in political and social life in many countries. For instance, in the 1960s in the United States, Students for a Democratic Society was a major force in organizing protests against the Vietnam war, supporting the civil rights movement, and challenging the political status quo more generally. In France, the political upheaval of May 1968 began with a

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student uprising organized largely by student associations. More recently, students have been at the forefront of movements for political change in Eastern Europe, starting with the Serbian association *Otpor* ("Resistance"), which was instrumental in bringing down the government of Slobodan Milosevic in 2000. Closer to home, the Quebec "Maple Spring" of 2012 — which saw student associations force an election that toppled the provincial government — demonstrated that Canadian student associations are also capable of wielding significant political power.

However, student associations are relatively understudied, with most research focused on student protest as a social movement rather than as an institutionalized form of student politics. A corollary is that the legal framework governing student associations has received virtually no attention. In keeping with this trend, there is very little scholarly literature on student associations in Canada and, until the Maple Spring, no published discussion of student associations and the law.

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7. The expression is a translation of the "printemps érable," which is virtually homophonic with "printemps arabe" and references the revolutionary uprisings in the Middle East and North Africa that started in 2010. Quebec is the world’s largest exporter of maple syrup, which is formed by the repeated freezing and thawing that occurs in the spring.


12. Four studies have recently come out on the legal regulation of student strikes in Quebec: Christian Brunelle, Louis-Philippe Lampron, and Myriam Roussel, "La liberté
The central purpose of this article is to palliate this lack of scholarly work on the legal regulation of student associations in Canada by providing a broad overview of the state of the law across the country. Our aim is to establish a foundation from which to engage in — and hopefully stimulate — further research. We also hope that our findings may be useful for practitioners who act as counsel for student associations or universities. Finally, we expect that the discussion of the litigation surrounding the Quebec student strike may clarify some issues for readers who are unable to engage with the existing literature — which is almost entirely in French — because of language barriers. This is important because the jurisprudence generated by the strike will likely affect the development of the law in relation to students’ freedom of association.

We have chosen to limit our study to the legal regulation of university student associations. We are aware that college student associations also play an important role in political and social life and that even high school student associations raise their share of interesting questions. However, they also raise other issues that we believe are tangential, such as the legal capacity of minors. Furthermore, the legislative framework governing colleges varies much more across provinces than does the framework governing universities, which often benefit from much more autonomy from the state than colleges do.

We have also avoided any discussion of labour unions that represent graduate students engaged in teaching and research as paid employment. There is much overlap between graduate student associations and unions representing teaching and research assistants, both in terms of membership and in terms of organizational structure. Indeed, in Alberta, the applicable legislation mandates that graduate student associations must represent their members both as students and as employees, including engaging in collective bargaining. There is much to be said about the dual role of graduate student employees of universities, and indeed much has been said about it. As with high-school and college student associations, however, we

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13 Post-secondary Learning Act, S.A. 2003, c. P-19.5 [PSLA], s. 96(1) (“The graduate students association of a university has the exclusive authority, on behalf of the graduate students, to negotiate and enter into an agreement with respect to the employment of graduate students with the board of the university.”).

14 See, e.g., Charlie Eaton, “Student Unionism and Sustaining Student Power” (2002) 20:1 Social Text 52; Debora M. Zinni, Parbudyal Singh, and Anne F. MacLennan, “An Exploratory Study of Graduate Student Unions in Canada” (2005) 60:1 Relations in-
believe that including graduate student employees’ unions in our analysis would add unneeded complexity by importing issues best dealt with on their own terms.

In addition to limiting our study to university student associations, we have chosen to limit the scope of our analysis to the statutory regimes that govern them in their roles as representatives of students. In focussing on legislation and other explicit normative instruments adopted, interpreted, and enforced by institutions of the political state, we exclude many phenomena that might be included in a more pluralist conception of law.15 We only tangentially discuss the private instruments such as contracts, memoranda of understanding, association bylaws, and so forth that might be construed as more accurate indicators of the “living law” than the “law on the books” found in statutes and case-law.16

We recognize that by limiting ourselves to the “law on the books” there are aspects of the regulation of student associations that will escape our analysis. As with our other choices relative to scope, however, this has the advantage of leaving us with a circumscribed and manageable set of data with which to work. Furthermore, statutes and case-law are much more readily available than private normative instruments and easily amenable to juridical, rather than empirical, analysis. Nevertheless, we are convinced that a comparative analysis of non-state normative instruments would be a rich source of knowledge and understanding of the regulation of student associations and hope that such research will be done in the future.

2. THE HISTORICAL ORIGINS OF STUDENT ASSOCIATIONS

The first European universities were organized as associations of masters and pupils. Their institutionalization in the high middle ages was achieved by the constitution of private corporations, which then petitioned the ecclesiastical or secular authorities for formal recognition and attendant privileges.17

The relationship between students and the university was structured as one of status, which was defined by membership in the university corporation. Students


16 This latter view is most closely associated with Eugen Ehrlich, Fundamental Principles of the Sociology of Law, translated by Walter L. Moll (New Brunswick: Transaction Publishers, 2002).

were subject to university norms and the corporation was recognized as the competent authority for their interpretation and enforcement. Indeed, in pre-Westphalian Europe, university norms trumped state norms in that the universities were generally independent from royal control. 18

Students were not initially understood as a polity within the university having their own interests; rather, students determined the interests of the university. Although its extent varied among universities, student authority was at the centre of university governance during this period. This authority was organized according to student “nations” modelled on guilds. As the name suggests, membership in a student nation was determined by place of origin. Nations were responsible for arranging lodgings for new students as well as for hiring and disciplining professors, determining curriculum, and mediating conflicts between students and the local population. 19

Student power was eroded over the centuries and by the beginning of the 16th century, faculty had achieved control over Oxford and Cambridge, and to a lesser extent, the University of Paris. This trend continued, and even at the University of Bologna — famed as the archetype of the student-controlled university — power eventually was ceded to faculty. 20 By the time the first universities were established in North America in the seventeenth century, 21 a high degree of faculty control was the hallmark of the English institutions upon which they were modelled.

However, the early “nations” did not simply disappear. Rather, they continued to exist — and to evolve — as institutions organized by students to govern their own affairs and to represent their collective interests, that is, as student associa-

18 For instance, the *Authentica Habita* issued by Emperor Frederick I Barbarossa in favour of the University of Bologna granted the professors and their students protection against prosecution and gave the masters presumptive and prerogatory jurisdiction *ratione personam* over both their colleagues and students. A similar result was achieved in Oxford through the law of *mortmain*, which denied the ordinary courts jurisdiction *ratione materiae* over matters of university governance in favour of the “University Visitor,” who was vested with superintending and reforming power over all university decisions: see Lawrence M. Bezeau, “The University Visitor: Medieval Anachronism or Modern Adjudicator” (1992) 4 *E.L.J.* 243.


21 There is some debate regarding what can be considered the “first university” in North America, and according to what standards. See, e.g., Calvin Grieder, “The University in American Life” (1938) 20:8 *Phi Delta Kappan* 260 at 260 (mentioning that though Harvard College was founded in 1636 and began using the name “University” in 1780, it did not attain “true university status” until after the founding of John Hopkins in 1876). Compare, W. G. McCabe, “The First University in America, 1619–1622” (1922) 30:2 *Virginia Magazine of Hist. and Biography* 133–156 (arguing that the College of William and Mary was founded much earlier than the conventional date of 1693, which was when its letters patent were issued). The first English-speaking university on the English model in Canada was the University of New Brunswick, which was founded in 1785 (University of New Brunswick, *The Founder's Petition of 1785*, online: UNB <http://www.lib.unb.ca/225/petition.html>).
tions. Though both universities and student associations have undergone enormous changes since medieval times, contemporary Canadian student associations still engage in many of the same types of activities as medieval student nations. They organize many of the internal affairs of the student community, they represent students both in matters of curriculum and university policy, and they operate as representatives of students' interests towards the wider community.

3. STUDENT ASSOCIATIONS AS INSTITUTIONS OF COLLECTIVE ACTION

An important aspect of the constitutional protection of the freedom of association is the recognition that — within reasonable limits — the forms and purposes of collective action are to be self-determined, rather than imposed by the public power. Furthermore, because in Canada both post-secondary education and private associations are presumptively under provincial jurisdiction, the rights and obligations imparted to and imposed upon student associations are subject to variation across provinces. Given these two variables (that is, the space for self-determination afforded by the freedom of association and the possibility of variation across provinces), one should not expect to find, either as a matter of law or as a matter of social fact, a single model of student collective action in Canada.

Our research supports this hypothesis. There is no single legislative model for the constitution and recognition of student associations in Canada. Nor does provincial legislation — with the notable exception of Alberta and one act in Manitoba — impose particular forms on student associations, although in British Columbia and Quebec the recognition of their representativeness is dependent on meeting legislated conditions. There is also significant variation in the organizational forms that students adopt, the collective action in which they engage, and the purposes to which that action is directed.

There is doubtless a complex interaction between the legal recognition of student associations, their forms of organization, and the actions in which they engage. For instance, student associations may lobby or otherwise pressure legislatures or governments to adopt measures granting them particular entitlements or privileges. Conversely, the legislative and regulatory landscape in which student associations find themselves may condition both their actions and their organizational forms. Finally, both student associations and their legal environments are certainly affected by, and inseparable from, social, historical, and cultural contexts.

It is not our intention to disentangle these interactions here, supposing it was even possible to do so. Our focus is on the legislative and regulatory environment. Nevertheless, it is useful to have an idea of the kind of organizations that operate in this environment. To this end, we suggest that it is helpful to understand students'
collective action by appealing to different kinds of student organizations conceived of as ideal-types.\textsuperscript{25} We propose four ideal-types: “government,” “co-op,” “union,” and “movement.” Although each of these ideal-types is defined and discussed below, our emphasis is on the last two, since the primary focus of this article is on the statutory frameworks that apply to student associations in their dealings with universities and governments.

We have chosen to use “student association” and “student organization” as generic terms, reserving “student union,” “student government,” and “student movement” for the particular forms we describe as ideal-types. Although we believe that our terminology is apposite and consonant with the connotations of general usage, we recognize that they may not precisely track the way in which individual organizations describe themselves.\textsuperscript{26}

(a) Student Government: Governing Intra-Student Affairs

As the name suggests, the ideal type of student government is concerned primarily with the self-governance of the student body conceived of as a polity. Here, the student association is modelled on the liberal democratic state: a neutral arbiter of the divergent interests of different constituencies. For example, departments (and sometimes faculties) function as electoral districts and representatives thereof sit as delegates to a student council. Interest groups organize as student clubs and the student association fulfils a coordinating function. The following description from the website of the University of Windsor Students’ Alliance captures this ideal-type:

Student Government

There are over 100 student clubs, organizations, academic societies and Greek societies [i.e. fraternities and sororities] at the University of Windsor. There’s literally something for everyone: Pro Bono Students Canada, Hip Hop Club, Engineers Without Borders, Music Society, the Concrete Canoe Team, Gamers’ Republic — the list goes on (and on).

The University of Windsor Students’ Alliance is the engine behind student life at UWindsor. It oversees all student organizations — and the creation of new ones — and makes sure than no decisions are made at the university without the direct input of full-time students.\textsuperscript{27}

\textsuperscript{25} For similar typologies, see Ian Weinberg and Kenneth N. Walker, “Student Politics and Political Systems: Towards a Typology” (1969) 75:1 Am. J. of Soc. 77 (arguing that “university student government” is likely to be the dominant form of student organization where financing and control of higher education is decentralized and where universities are correspondingly more autonomous, whereas “national student unions” are more likely to be found where there are centralized government financing and correspondingly structured control of higher education) and Klemenčič above, note 9 at 7–10 (using the ideal-types of “social movement organizations” and “interest groups” to classify different national student associations in Europe).

\textsuperscript{26} In any event, ideal types are not meant to be empirical descriptions of actual entities; see text accompanying note 41 below.

\textsuperscript{27} University of Windsor, “Student Government”, online: University of Windsor <http://www.uwindsor.ca/student-government>. 
What distinguishes student government from other forms of student associations is the purpose towards which the associational activity is directed. Student government is not outward looking, but inward looking. It exists primarily for students to regulate their internal affairs as a community, rather than to represent their interests to the wider community, whether it is conceived of as the university or as the state.

(b) Student Co-Ops: Providing Goods and Services

The second ideal-type is the student cooperative, the purpose of which is to offer an alternative to the commercial sector in the provision of goods and services to the student population. Several reasons might justify this form of student organization. For instance, students are often on a limited budget and the provision of goods and services on a non-profit basis may reduce costs. Furthermore, students may consider themselves either as a market segment with specific needs that are not adequately met by commercial providers28 or as a demographic with particular social and health needs that are not met adequately by services offered to the general population.29 Finally, besides instrumental reasons, students may seek to organize the cooperative provision of goods and services on a non-profit basis for ideological reasons, such as a commitment to creating alternatives to a market economy perceived as unjust or unsustainable.30

On this model, many student associations run bookstores, cafés, and pubs that cater to the campus population.31 At a national level, student federations offer

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28 See the Declaration of Student Rights adopted by the Canadian Federation of Students (CFS), which contains a section on the right to services that includes the right to “take part in the formation of, and have control in the management of student services to accommodate the needs of students.” Canadian Federation of Students, Minutes, 3rd Annual General Meeting, GM31 (13–19 May 1984). See also the Canadian Federation of Students-Services, which states, “The Canadian Federation of Students offers a number of programs and services in order to meet the unique needs of students and to help students save money.” CFS, “Programmes to Meet the Needs of Students”, online: CFS <http://www.cfs-fcee.ca/html/english/programmes>.

29 See, e.g., Zuo and Ratsey above, note 11 at 11-12 (stating that much of the budget of the Alberta student associations studied was devoted to providing services such as “information sharing, financial aid, peer counselling, problem solving in both academic and non-academic aspects, study facilities and services, provision of voluntary opportunities, and services and facilities for recreational and social purposes.”).

30 For example, the Students Society of McGill University operates a non-profit, volunteer and worker-run food collective called “Midnight Kitchen,” which was “born out of a desire to make affordable and healthy food accessible to as many people as possible outside of the mainstream capitalist food system.” The Midnight Kitchen, “A Brief History”, online: Midnight Kitchen <http://themidnightkitchen.wordpress.com/a-brief-history>.

31 Note that, in Quebec, student coops often exist as entities distinct from student associations and identify themselves more directly with the cooperative movement than with students per se. This is particularly true of student bookstores, which are organized as a provincial federation of cooperatives independent from the student movement. See Fédération québécoise des coopératives en milieu scolaire (FQCMS), online: <http://www.fqcms.com/>.
health insurance\textsuperscript{32} and travel services adapted to student needs.\textsuperscript{33} They also partner with commercial providers to offer services such as electronic tax filing\textsuperscript{34} and discounts on a variety of consumer goods and services.\textsuperscript{35} As with student government, the student co-op ideal-type is also inward looking rather than outward looking, inasmuch as the focus is on self-organization to meet collective needs rather than on the representation of collective interests to the wider community.

(c) Student Unions: Representing Students’ Interests vis-à-vis the University

The third ideal-type is the student union. Modelled on the labour union, the student union holds itself out to be the legitimate representative of all its members in their relationship with the university administration.\textsuperscript{36} Rather than negotiating

\textsuperscript{32} The National Student Health Network, established in 1985, is operated by the Canadian Federation of Students-Services in partnership with Green Shield Canada on a non-profit basis. It offers campus health and dental plans to participating student associations. See CFS, “Programmes to Meet the Needs of Students: National Student Health Network”, online: CFS <http://www.cfs-fece.ca/html/english/programmes/health_network.php> and <http://www.nshn.ca>.

\textsuperscript{33} TravelCUTS (CUTS stands for Canadian University Travel Service) is wholly owned by the Canadian Federation of Students-Services. See CFS, “Programmes to Meet the Needs of Students: TravelCUTS”, online: CFS <http://www.cfs-fece.ca/html/english/programmes/Travel_CUTS.php> and TravelCUTS <http://www.travellcuts.com>. For a discussion on the corporate history of TravelCUTS and its relationship to Canadian student associations, see University Students’ Council of the University of Western Ontario v. Assn. of Student Councils (Canada), 2001 Can-LII 28373 (ON SC).

\textsuperscript{34} “The Canadian Federation of Students and UFile ONLINE have joined together to provide free online tax preparation and filing for all Canadian post-secondary students.” UFile, “UFile Free”, online: DrTax <http://www.drtax.ca/en/UFile/tips-and-tools/UFilefreecfiling.aspx>.


\textsuperscript{36} Student unionism — as it is sometimes called, student syndicalism — has its roots in post-war France. Its basic principles are set out in the Charte de Grenoble, which was adopted in 1946 by the Union nationale des étudiants de France and which grounds the parallel between labour unions and student unions on the premise that students are young intellectual workers. See Jean-Pierre Worms, “The French Student Movement” (1966) 10:2 Comp. Ed. Rev. 359. See also Frank A. Pinner, “Student Trade-Uniorism in France, Belgium and Holland: Anticipatory Socialization and Role-Seeking” (1964) 37:2 Sociology of Ed. 177. The principles of English Canadian student unionism were set out in the 1966 Declaration of the Canadian Student adopted by the Canadian Union of Students (Canadian Union of Students, Resolutions of the Thirtieth Congress, EA-1 (3–9 September 1966)) and reaffirmed in the Declaration of Student Rights above, note 28. In Quebec, the Charte de Grenoble served as the model for the Charte de l’étudiant universitaire adopted by the Association Générale Étudiante de
working conditions, as a labour union does with an employer, the student union negotiates the conditions of study with the university administration.\textsuperscript{37}

As with labour unions, student unions may be more or less corporatist and more or less militant. Corporatist student unions will consider the university as an organic community in which students, professors, and administrators all have their proper place. Corporatist student unions thus conceive of their role as being limited to ensuring that students are represented, or at least adequately considered, in university decision making without challenging the distribution of power reflected in and operated by university governance structures.\textsuperscript{38} More militant student unions are more likely to understand themselves as the representatives of a group that is both necessary to the university and disenfranchised or disempowered.\textsuperscript{39} Consequently, their claims may be directed at attenuating or dissolving hierarchical power structures in the university or at resisting decisions taken within those power structures.\textsuperscript{40} As with labour unions, this logic of diverging interests is linked to collective action, designed to put pressure on the other party. It may include tactics such as demonstrations, sit-ins, and strikes. In this ideal-type, contrary to student government and student co-ops, the organization is outward looking and the focus is on the representation or advancement of collective interests rather than on the self-management of the student community.

**d) Student Movements: Representing Students’ Interests vis-à-vis the State**

Although students may organize as a relatively autonomous community, as a collection of market actors, or as an interest group within the university, they may also organize as an interest group within the wider community. The model for this kind of organization may be that of a social movement, a lobby group, or both.


\textsuperscript{37} Some even go so far as to suggest that students should benefit from full-fledged collective bargaining rights. See Eaton above, note 14. See also Rousseau, Àlarie, and Danylo above, note 12 (outlining how collective bargaining rights could be extended to student associations).

\textsuperscript{38} See the description of student association participation in Zuo and Ratsoy above, note 11.


\textsuperscript{40} See, e.g., Eaton above, note 14; James Harding, “From the Midst of a Crisis: Student Power in English Canada” in Gerald F. McGuigan, ed., *Student Protest* (Toronto: Methuen, 1968) 90.
Unsurprisingly, the privileged interlocutor of the student movement is the state. Historically, universities were seen as separate communities outside of the legitimate reach of state control. More recently, the state has played an increasingly important role in the creation and maintenance of universities, and higher education policy is a key part of any government platform. In both cases, students found it necessary to organize collectively so as to engage with both the wider community and the state.41

Furthermore, at various points in history, university students have held themselves out as generational representatives.42 The student movement is thus a social actor whose interventions go far beyond higher education matters.43

(e) Ideal Types and Legal Regimes

We stress that these ideal-types are an analytical construct44 devised to aid us in situating forms of collective action within legal regimes. We are confident that a systematic empirical investigation would reveal that the majority of student associations demonstrate some of the characteristics of each of the ideal-types and that no student association corresponds in all respects to any one type.45

One of the advantages of the construct is that it allows us to distinguish legal regimes that are particular to student associations from those that have broader application. A brief look at the applicable legislation and the case-law shows that the regulation of the activities associated with the first two ideal-types is generally effected through legal regimes of general application.

Student associations _qua_ student governments are subject either to the law of unincorporated associations or the corporate law, which regulates such questions as determination of membership and the application of associations’ bylaws. With the exception of Quebec, the lion’s share of litigation involving student associations is

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41 Weinberg and Walker above, note 25; Coulter above, note 11. A particularly striking example of this is the creation of the _Union générale des étudiants du Québec_ (UGEQ) in 1963-1964, just months after the creation of the province’s first ministry of education: see Leduc above, note 36 at 63–67. See also Robert Favreau, “The Quandary of l’Union Générale des Étudiants du Québec” in Dimitrios I. Roussopoulos, ed., _Québec and Radical Social Change_ (Montreal: Black Rose, 1974) 82.

42 For example, the _Port Huron Statement_, published in Hayden above, note 4, drafted by Students for a Democratic Society in 1964, begins with the phrase “we are people of this generation, bred in at least modest comfort, housed now in universities, looking uncomfortably to the world we inherit.”


45 The published empirical data, though scant, supports this. See Jones above, note 11 and Zuo and Ratsoy above, note 11. See also Klemenčič above, note 9 at 2 (claiming that all member organizations of the European Students’ Union “are similar in that they organize, aggregate and intermediate student interests, provide services for students and organize student activities.”).
concerned with questions of this type. Some litigation also concerns student associations \textit{qua} student coops or in their capacity as employers. Again, it is general principles of corporate or commercial law that apply.

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Conversely, the legal rules governing the collective action of students qua student unions or qua social movements are often of specific application. The central question posed by these rules is the recognition of student associations as the legitimate representatives of student interests' vis-à-vis the university.

4. LEGISLATIVE RECOGNITION OF STUDENT ASSOCIATIONS

The legislative regimes governing state and/or university recognition of student associations vary considerably across jurisdictions. We have chosen to analyze the regimes in terms of their compatibility with the constitutionally protected freedom of association. This leads us to place the provincial legislation governing student associations on a continuum going from state interference with students' freedom of association on one end (Alberta) to positive state support for their freedom of association on the other (Quebec). Between these two poles lie what we call "minimalist" regimes that are essentially laissez-faire, characterized either by provincial legislation that places very little constraint on student associations but grants them very few positive rights or by a total absence of legislation specifically pertaining to student associations.

(a) State Control

(i) The Alberta Model

Universities in Alberta are established by and subject to a single integrated legislative scheme: the Post-Secondary Learning Act. The PSLA also provides for the establishment and governance of student associations. As we demonstrate in this section, Alberta law does not provide for independent student associations free from government and university interference. On the contrary, student associations in Alberta are created by the state and both the scope of their activities and their structures of governance are prescribed by law. Furthermore, they are subject to oversight and control both by universities and by the minister responsible for post-secondary learning.

Student associations in Alberta are created by provincial statute, not by the collective will of students to self-organize. Section 93(1) of the PSLA directs the provincial cabinet to establish a student association for each university and to "give

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Above, note 13.
the students association a name consisting of the words "The Students Association of" followed by the name of the university." The envisaged form of organization corresponds to the ideal-type of student government; the PSLA stipulates as follows:

The students association of a public post-secondary institution shall provide for the administration of student affairs at the public post-secondary institution, including the development and management of student committees, the development and enforcement of rules relating to student affairs and the promotion of the general welfare of the students consistent with the purposes of the public post-secondary institution.49

Unlike the Societies Act, which imposes relatively few limits on the organizational form that societies can choose to take under their bylaws,50 the PSLA requires student associations to have a "council" and vests the power to make and amend bylaws in that entity.51 The bylaws must provide for petitions and in the absence of such a bylaw, the PSLA mandates that a petition signed by ten percent of the members is sufficient to "require the council of the student organization to conduct a vote on and implement any resolution pertaining to the affairs of the student organization."52 By granting ultimate decisional authority to the council and relegating the membership's power to a right of petition rather than vesting it in a general assembly capable of binding the council, the PSLA implicitly precludes alternative governance structures such as the "direct democracy" model chosen by some more militant student unions.53 Furthermore, the specification that the student associations must conduct their activities in a way that is "consistent with the purposes" of their university may constrain the forms of (otherwise legal) action that they may take.

In addition to these restrictions on their form of governance, student associations in Alberta are subject to oversight and potential interference by both universities and government. For instance, student associations must have permission from the university in which they operate to purchase or lease real property.54 Student associations must also provide annually the university with copies of their audited

49 Ibid., s. 93(3). Section 31(1)(c) of the Act also allows general faculties councils to "give to a student organization of the university the powers to govern the conduct of students it represents. . . ."

50 Societies Act, R.S.A. 2000, c. S-14, s. 9.
51 PSLA above, note 13, ss. 95(1) and (2).
52 Ibid., ss. 98(1) and (2).
54 PSLA above, note 13, s. 94(4). No such restrictions apply to incorporated associations other than student associations. Section 17(1) of the Societies Act above, note 50, specifically provides that "[a] society may acquire and take by purchase, donation, devise or otherwise all kinds of real estate and personal property, and may sell, exchange, mortgage, lease, let, improve and develop it, and may erect and maintain any necessary buildings."
financial statements. Finally, the minister responsible for the application of the PSLA may appoint an investigator to "examine and inspect" the financial condition of student associations. 55 If the appointed investigator finds "financial irregularities," he or she may suspend or terminate the term of office of members of the student association's council 56 and appoint an administrator to exercise the powers and duties of the council until a new council is elected. 57 The powers set out in the investigation and administration provisions are extraordinary and no other incorpo-
rated associations are subject to such control under Alberta law. 58 Because the PSLA provides that student associations established under it are corporations, 59 it is not possible for students who wish to organize their collective affairs free from the constraints of the PSLA to do so using a separate incorporated entity. This constraint also results from the operation of the provincial Societies Act, which withholds the right of incorporation from any society that has the same purpose as one incorporated under another law that "provides for the incorporation of persons for a special purpose." 60 The incorporation of student associations by cabinet under the PSLA therefore precludes their incorporation under the Societies Act.

The restrictions on corporate form are not, however, the most significant impediment to the organization of independent student associations unfettered by the government and university oversight and control imposed by the PSLA. An alternative student association would be unable to fulfill any representative functions inasmuch as the PSLA provides that the council of the student association established by cabinet is "the official channel of communication" between the university and its students. 61 This monopoly of representation is similar to the exclusive bargaining rights afforded to trade unions by labour relations legislation in relation to certified bargaining units 62 and can also be found in the Quebec legislation governing

55 PSLA ibid., s. 99(1)(b).
56 Ibid., s. 97(2)(a).
57 Ibid., s. 97(2)(b).
58 Though universities themselves are. See the PSLA, ibid., ss. 99–101.
59 PSLA ibid., s. 93(2).
60 Societies Act above, note 50 at s. 3(2). Arguably, incorporation under Part 9 ("Provisions Applying to Companies with Objects other than the Acquisition of Gain") of the Companies Act, R.S.A. 2000, c. C-21 may still be possible, because the Companies Act does not have the same restriction as s. 3(2) of the Societies Act, although it should be noted that s. 200(1) of the Companies Act makes it clear that the registrar’s power to incorporate non-profit associations is discretionay. Because the registrar under the Societies Act and the registrar under the Companies Act are the same entity, it would be surprising if the registrar were to refuse incorporation of a student association under s. 3(2) of the Societies Act only to exercise the discretion conferred by s. 200(1) of the Companies Act.
61 PSLA above, note 13, s. 95(4).
the recognition of student associations. However, unlike the Quebec legislation applicable to student associations and unlike labour relations legislation, the PSLA provides for no democratic mechanism of certification to ensure that the students want to be represented by the student association in question or, indeed, by any student association at all.

Not only are students essentially barred from forming independent associations of their own choosing, but the PSLA obliges them to be members of the association established by cabinet and does not allow for resignation from the association. Students are therefore also obliged to pay the membership fees that the PSLA allows student associations to levy on their members.

The provisions of the PSLA governing student associations have yet to be interpreted by the courts. Our view is that, at least in some respects, the scheme violates the freedom of association guaranteed by s. 2(d) of the Charter.

First, students in Alberta are — by the combined effect of the PSLA and s. 3(2) of the Societies Act — prohibited from establishing associations with the governance structure of their choosing. Although limiting the number of interlocutors that a university may consider to be the legitimate representatives of its students is entirely justifiable in a free and democratic society, we can think of no objective

63 An Act Respecting the Accreditation and Financing of Students’ Associations, R.S.Q., c. A-3.01 [“Student Associations Accreditation Act” or “Accreditation Act”], ss. 8 and 28.
64 We note that, under the PSLA, the same applies to academic staff, who are excluded from the application of the Labour Relations Code above, note 62 by virtue of s. 90 of the PSLA. The PSIA labour relations regime obliges staff to be members of the staff association and grants the staff association exclusive bargaining rights without imposing a corresponding duty of fair representation; see Johnson v. Grant MacEwan College Faculty Association, 2010 CanLII 13583 (AB LRB). The doubts that we express about the constitutionality of the student association regime apply a fortiori to the labour relations regime under the PSLA, but the question is beyond the scope of this article.
65 PSLA above, note 13, s. 93(2).
66 Compare the Quebec Student Associations Accreditation Act above, note 63, s. 4 (giving every student the right to belong to a student association of their choice) and s. 26 (granting students deemed to be represented by an accredited student association the right to refuse to be a member).
67 PSLA above, note 13, s. 95(2)(c).
69 Provided that the association is independent and protected from interference by the university, which is not the case under the PSLA. Though the Charter may not protect an activity (here, the collective representation of students’ interests) solely on the ground that the activity is a foundational or essential purpose of an association, exclusive representation by a dependant or dominated association does violate the Charter. See P.I.P.S. v. Northwest Territories (Commissioner), 1990 CarswellNWT 50, 1990 CarswellNWT 48, [1990] 2 S.C.R. 367 (S.C.C.); Delisle c. Canada (Sous-procureur général), 1999 CarswellQue 2840, 1999 CarswellQue 2841, [1999] 2 S.C.R. 989 (S.C.C.).
so pressing and substantial that it requires the imposition of a student council as the organizational form. Certainly there are solutions that infringe less on the freedom of association, notably simply allowing students to adopt governance structures available to other non-profit associations.

Second, the imposition of membership on individual students without any means of resignation or withdrawal clearly constitutes a *prima facie* infringement on their right not to associate. Given the rapid rate of turnover in the student population, especially at the undergraduate level, the requirement that students pay the fees levied by their association, regardless of membership status, is no doubt justified. Without mandatory fees, student associations would be in a constant state of financial insecurity and insufficiently stable to act as vehicles for student self-organization and collective representation. Likewise, the exclusive representation of a defined group of students by a single association may be justified to the extent that there is a real opportunity for students to democratically choose the association and to participate in its functioning. Indeed, these two characteristics — mandatory union dues and exclusivity of representation — are core features of the North American labour relations system and they have withstood constitutional scrutiny.\(^70\) However, state-mandated membership in an association without the opportunity to resign or withdraw is not necessary to meet the objectives served by mandatory dues and exclusive representation. State-mandated membership in an association is a *prima facie* violation of citizens’ freedom of association and must be justified.\(^71\) We see no reason that would justify imposing on all Alberta students membership in the student associations established by cabinet.

In conclusion, the constitution and recognition regime applicable to student associations in Alberta is one characterized by a high degree of state control and which allows for significant interference in students’ freedom of association.

(ii) University of Manitoba Students’ Union

The University of Manitoba Students’ Union (“UMSU”) is unique. It is not governed by a comprehensive regime like student associations in Alberta, but nevertheless does not benefit from the level of independence afforded to other student associations in Canada (including other student associations in the province of Manitoba). This is the result of the *University of Manitoba Students’ Union Act*, which is, to our knowledge, the only special legislation in Canada that incorporates an individual student association.\(^72\)

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71 *R. c. Advance Cutting & Coring Ltd.*, 2001 CarswellQue 2199, 2001 CarswellQue 2200, [2001] 3 S.C.R. 209 (S.C.C.). We are aware that, in its current state, the scope afforded by the jurisprudence to the freedom not to associate is somewhat unclear. However, our view is that, whatever its precise scope, compelled membership in an association subject to significant state interference and control runs afoul of s. 2(d).

72 *University of Manitoba Students’ Union Act*, R.S.M. 1990, c. 203 ["UMSU Act"].
Prior to the adoption of the *UMSU Act* in 1975, the UMSU was an unincorporated body created by a bylaw of the University of Manitoba. The *UMSU Act* deems the association that it incorporates to be the successor to that unincorporated body. It also creates a *sui generis* incorporation regime that excludes the UMSU from application of the *Corporations Act*.

The *UMSU Act* sets out the objects of the student association in terms similar to those used in s. 93(3) of the Alberta *Post-secondary Education Act*. Section 4 of the *UMSU Act* states,

4. The objects of the corporation are

(a) to promote the welfare and interests of students of the University of Manitoba, hereinafter referred to as “the University”, in all matters respecting their common interests;

(b) to act as the official representative of the members of the corporation;

(c) to promote and maintain responsible student government at the University;

(d) to promote and encourage student participation in cultural, athletic, intellectual and social activities;

(e) to promote and maintain communication between the student body and the various authorities of the University, and to assist in the maintaining of good conduct of the students of the University.

Like the Alberta *Post-secondary Learning Act*, the *UMSU Act* imposes an organizational structure on the association. Also, as in Alberta, the imposed structure includes a council that has “full power and authority” and precludes a direct-democracy model that would vest ultimate sovereignty in the general assembly of the members.

Ultimate decision making over membership in the UMSU is not vested in the association itself but in the Board of Governors of the University of Manitoba, which has the sole authority to include or exempt classes of students from membership. The default position is that “[a]ll persons enrolled as students at the University . . . shall be required to be members of the corporation during the term of their

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74 *UMSU Act* above, note 72, s.10.


77 No powers are specifically attributed to meetings of the members under the *UMSU Act* and the Act does not require any such meetings.

78 *UMSU Act* above, note 72, s. 6(1). Note that the board may exercise these powers only “after consultation with” or “upon the request of” the association. The University has in fact exercised these powers and has exempted classes of students, including graduate students and correspondence students from membership in UMSU. See the University
enrolment.” There is no possibility of resignation. For the reasons discussed above in relation to the Alberta regime, we consider this forced membership to be an unjustified infringement on the freedom not to associate protected by s. 2(d) of the Charter.

University oversight and control of the UMSU are not limited to the power to determine its membership. The Board of Governors of the University of Manitoba must approve any UMSU bylaw providing for the amount of annual membership fees and must give its consent before the UMSU may incur any liability in an amount greater than the sum of its available funds and the projected membership fees for the following eight months.

In conclusion, the UMSU Act allows for significant interference with the freedom of association of students at the University of Manitoba.

(b) Minimalist Regime: The Dominant Model

Outside of Alberta and Quebec (and with the exception of the UMSU Act), the dominant model of legislative recognition of student associations in Canada is what we call a minimalist regime. Under the minimalist regime, student associations are either entirely free to choose their governance structures or they are required to incorporate under acts of general application in order to be recognized as representatives of students. There is little or no legislation that specifically governs student associations, and the recognition of student associations as the legitimate representatives of students for institutional purposes is accomplished piecemeal by the statutes constituting or governing individual universities.

The most comprehensive of the minimalist regimes is found in the British Columbia University Act, which governs many, but not all, of the province’s universities. The Act defines a “student society” as “an organization incorporated as a society under the Society Act, whose purpose is to represent the interests of the

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of Manitoba, Student Organizations Bylaw, s. 1.00, online: University of Manitoba http://www.umanitoba.ca/admin/governance/governing_documents/students/273.html. 79

UMSU Act, ibid., s. 8(f). See also the University of Manitoba, Student Organizations Bylaw, ibid. 80

Ibid., s. 17. Note that eight months generally represent two university semesters. 81

University Act, R.S.B.C. 1996, c. 468 [B.C. University Act]. Section 3(1) of the Act continues the University of British Columbia, the University of Victoria, Simon Fraser University and the University of Northern British Columbia. Sections 3(1.1) and 71(3)(a) of the Act bring “special purpose, teaching universities” designated by regulation within the Act’s ambit. The Designation of Special Purpose Teaching Universities Regulation, B.C. Reg. 220/2008 designates Capilano University, the Emily Carr University of Art and Design, Kwantlen Polytechnic University, Vancouver Island University, and University of the Fraser Valley. Thompson Rivers University is governed by the Thompson Rivers University Act, S.B.C. 2005, c. 17, but the provisions of the University Act relative to student societies apply to it by virtue of s. 4. Royal Roads University is governed by the Royal Roads University Act, R.S.B.C. 1996, c. 409. Private universities, such as Trinity Western University, which were recognized by the now repealed Private Post-Secondary Education Act, R.S.B.C. 1996, c. 375, are still entitled to grant degrees and to use the term “university” under s. 4 of the Degree Authorization Act, S.B.C. 2002, c. 24, but are not considered universities under any other act.
general undergraduate or graduate student body, or both, but does not include a provincial or national student organization.”82 Under the Act, student representatives to the Board of Governors are “elected from students who are members . . . of a student society”83 and student societies are entitled to have their membership fees collected by the university.84 No specific recognition procedure is set out other than with regard to the right of student societies to collect fees, which is dependent on either their historical recognition or their designation by regulation.85 No law other than the provisions of the Society Act applicable to all incorporated non-profit associations restricts the form or governance structure of student associations. Universities have almost no oversight; their only power over student associations is to temporarily suspend the collection or remittance of fees in the event the association fails to comply with the Society Act, notably with regard to the provisions requiring the distribution of audited financial statements to members.86

The legal regimes governing student associations in other provinces are very minimalist indeed. Except in British Columbia and Alberta, no provincial legislation of general application governing post-secondary learning or universities mentions student associations or sets out the conditions under which they can or must be recognized by universities. Students are left to organize in the way they see fit, either under the incorporation regime applicable to non-profit associations, such as the various Society Acts, or as unincorporated associations. Provisions for student representation within university governance structures are found piecemeal in the constituting acts or charters of individual institutions, which sometimes, but not

82 B.C. University Act, ibid., s. 1.
83 Ibid., s. 19(1)(c).
84 Ibid., s. 27.1.
85 Section 27.1(3)(a) of the BC University Act, ibid., “grandfathers” student societies for whom fees were collected between 1 June 1998 and 1 June 1999, and s. 27.1(3)(b) allows for designation by regulation. The Student Society Designation Regulation, B.C. Reg 25/2008 contains a single section, which reads, “The Simon Fraser University Graduate Student Society is a designated student society under the University Act for the graduate student body of Simon Fraser University.”
86 BC University Act, ibid., s. 27.1(4); Society Act, R.S.B.C. 1996, c. 433, ss. 40–54.
always, reference the association by name or by a generic designation. Collection and remittance of student association fees by the university, as well as access to and use of university facilities, is left to the parties to establish by contract.

In conclusion, most provinces have little or no legislation that pertains specifically to student associations; insofar as such legislation exists, it is very limited. On one hand, there is very little interference in student self-organization, either by the *ex ante* imposition of governance regimes, by the restriction on powers, privileges, and immunities granted to other non-profit associations, or by the creation of reporting mechanisms. On the other hand, state support for student associations is also limited and there are no provisions obliging universities to recognize student associations as the legitimate representatives of students.

(c) State Support: The Quebec Model

Quebec’s student association recognition regime is characterized by a comparatively high level of state support for students to exercise their freedom of association and by relatively little state and university interference in the formation and activities of student associations. Quebec is the only province that has a specific law applicable only to student associations and that sets out a comprehensive re-

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87 See, e.g., the *Royal Roads University Act* above, note 81, s. 5(d) (board of governors includes “a student elected by the students”); *Royal Charter Establishing Queen’s University*, as amended by S.C. 2011, c. 27, s. 14 (board of trustees includes two students elected by the students in accordance with board bylaws); *Algoma University Act*, 2008, S.O. 2008, c. 1.3, s. 8(1)(5) (board includes student “elected by the students of the University from among themselves”); *University of Toronto Act*, S.O. 1971, c. 56 as amended by S.O. 1978, c. 88, s. 2(2)(e) (governing council includes students elected “by and from among” students); the *University of New Brunswick Act*, R.S.N.B. c. 40, s. 23(1)(n) (board includes students “elected or appointed by the students”); *Cape Breton University Act*, R.S.N.S. 1989, c. 484, s. 6(1)(e) (board includes four students appointed in a manner prescribed by bylaw adopted by the board).

88 See, e.g., the *Brandon University Act*, C.C.S.M. c. B90, s. 5(2)(e) (board includes “two students appointed by the council of Brandon University Students’ Union who are members of that council”); the *University of Manitoba Act*, C.C.S.M. c. U60, s. 8(c.1) (board includes “three students of the university appointed by The University of Manitoba Students’ Union”); the *University of Winnipeg Act*, C.C.S.M. c. U70, s. 5(2)(i) (board includes “three other students appointed or elected by The University of Winnipeg Students’ Association”); *Act for the Regulation and Support of Dalhousie College*, S.N.S. 1863, c. 24, s. 1(1)(f) (board to include students “nominated from time to time by the Dalhousie Student Union and approved and appointed by the Board”); *Memorial University Act*, R.S.N.L. 1990, c. M-7, s. 22(d) (board includes four students appointed by cabinet following recommendation by the Memorial University of Newfoundland Students’ Union, the Graduate Students’ Union, the Marine Institute Students’ Union, and the Grenfell College Student Union).

89 See, e.g., the *University of Saskatchewan Act*, 1995, S.S. 1995, c. U-6.1, ss. 42(a)(iii) and the *University of Regina Act*, R.S.S. 1978, c. U-5, s. 56(2)(c) (president of the student’s union is member of the board but student union not named); *University Act*, R.S.P.E.I. 1988, c. U-4, s. 8(1)(g) (board includes “two members elected by and from the student body of the University by such democratic procedures as shall be specified in a student body constitution”).
gime for their recognition by universities. The Student Associations Accreditation Act\textsuperscript{90} was consciously patterned on the Quebec Labour Code,\textsuperscript{91} and many of its provisions are almost identical to their Labour Code analogues.\textsuperscript{92} The Quebec model of student association recognition is thus clearly based on the student union ideal-type, which is reflected in the definition of student association in the Accreditation Act:

[\text{An organization whose main purposes are to represent students... and to promote their interests, particularly respecting teaching, educational methods, student services and the administration of the educational institution.}\textsuperscript{93}]

The Accreditation Act provides for the accreditation\textsuperscript{94} of a defined group of students by a state agency whose mandate is to verify that the petitioning association represents the majority of students who are members of the group. The accreditation procedure requires the petitioning association to hold a referendum among the group of students it wishes to represent and to obtain support from a qualified majority equal to both a majority of those voting and at least 25 per cent of those eligible to vote.\textsuperscript{95} The university is required to facilitate the holding of the referendum, including by providing the list of students eligible to vote and access to bulletin boards and display stands.\textsuperscript{96} This initial vote is overseen by an accreditation agent,\textsuperscript{97} but disputes regarding accreditation are adjudicated by a quasi-judicial tribunal protected by a privative clause.\textsuperscript{98}

As under industrial relations legislation inspired by the Wagner Act, accreditation gives the association exclusive representation rights and imposes a number of corresponding duties on the university. For example, in addition to the general obligation to “recognize an accredited student’s association... as the representative... of all the students... at the institution,”\textsuperscript{99} the university must provide the accredited student association with a room, furniture, and bulletin boards,\textsuperscript{100} as well

\begin{footnotes}
90 Above, note 63.
92 For a detailed comparison and a discussion of the limits of the analogy, see Brunelle, Lampron, & Roussell above, note 12 at 840–48.
93 Student Associations Accreditation Act above, note 63 at s. 3.
94 In the Labour Code above, note 91, the French word “accréditation” is translated into English as “certification,” as it is in the Canada Labour Code above, note 62. There is no reason to believe that this is anything other than an oversight and that a difference in meaning was intended.
95 Student Associations Accreditation Act above, note 63, s. 10.1(2).
96 Ibid., s. 49.
97 Ibid., s. 12.
98 Ibid., ss. 33–48.
99 Ibid., s. 28.
100 Ibid., s. 29.
\end{footnotes}
as a list of students and their contact information.\textsuperscript{101} Furthermore, the accredited student association has the sole authority to "appoint students who, under an Act, regulation, by-law, charter or agreement, are called upon to sit or participate as student representatives on various councils, committees or other bodies in the institution."\textsuperscript{102} The university is also required to collect and remit the membership fees set by the student association.\textsuperscript{103}

In some ways, the Accreditation Act goes further than the Labour Code in establishing a collective representation regime.\textsuperscript{104} For example, the Labour Code requires all employees in a bargaining unit represented by a certified association to pay union dues but does not impose union membership,\textsuperscript{105} whereas the Accreditation Act deems all students at a university represented by a student association to be members of that association.\textsuperscript{106} This is a logical provision, given the relatively rapid turnover of a student population compared to the typical unionized workplace. Note, however, that although students are presumptively members of their student associations, they may opt out from the representation.\textsuperscript{107} In our view, this possibility to exercise the freedom not to associate prevents the Quebec Accreditation Act from running afoul of s. 2(d) of the Charter, unlike the Alberta Post-secondary learning Act and the Manitoba UMSU Act. Indeed, the Accreditation Act specifically recognizes that "[e]very student at an educational institution has a right to belong to the students' association of his [sic] choice."\textsuperscript{108}

As one would expect, given the tight analogy between the Accreditation Act and the Labour Code, resignation from the accredited association does not give dissident students interlocutor status with the university. On the contrary, the accredited association's monopoly on representation is unaffected by members' resignation, as a close reading of the relevant provisions shows.\textsuperscript{109} Consistent with this arrangement — and, again, as with the Labour Code — resignation from the student association does not entail exemption from the obligation to pay fees, though the bylaws of an association may so provide.\textsuperscript{110}

Unlike in Alberta, student associations in Quebec are free to choose the governance structure that suits them. However, as in British Columbia, student associa-

\textsuperscript{101} Ibid., s. 31.
\textsuperscript{102} Ibid.
\textsuperscript{103} Ibid., ss. 53 and 55.
\textsuperscript{104} See Brunelle, Lampron and Roussel above, note 12 at 840 ("À certains égards, la LAFAE va plus loin que le Code du travail dans la reconnaissance de droits collectifs aux associations accréditées.").
\textsuperscript{105} Labour Code above, note 91, s. 47.
\textsuperscript{106} Student Associations Accreditation Act above, note 63, s. 26.
\textsuperscript{107} Ibid., s. 26.
\textsuperscript{108} Ibid., s. 4.
\textsuperscript{109} Section 26 of the Accreditation Act, \textit{ibid.}, clearly makes the distinction between a student \textit{represented} by a student association and a student who is a \textit{member} of the association, just as Canadian industrial relations legislation makes the distinction between employees included in a bargaining unit represented by a union and employees who are members of the union.
\textsuperscript{110} Ibid., s. 52.
tions must incorporate under the incorporation regime applicable to non-profit associations (which, in the case of Quebec, is set out in Part III of the *Companies Act*\(^\text{111}\)) if they wish to be recognized under the *Accreditation Act*.\(^\text{112}\) Associations incorporated under the *Companies Act* are also subject to the provisions of the *Civil Code of Quebec* governing legal persons,\(^\text{113}\) and, as a rule, the general meeting of an incorporated body is the highest decision-making body.\(^\text{114}\) This principle, combined with a general policy of recognizing the autonomy of legal persons in Quebec with regard to their internal structures,\(^\text{115}\) ensures that student associations have wide latitude to determine their mode of governance. Nevertheless, the *Companies Act* may be considered ill-suited to a “direct democracy” model of governance because of the wide powers it affords to the directors of the association between general meetings. At least one association has chosen to incorporate under the *Professional Syndicates Act* as an alternative.\(^\text{116}\)

As noted above, the *Accreditation Act* contemplates student associations as the student union ideal-type. In addition to individual student associations, the *Accreditation Act* allows for the accreditation of “student association alliances.”\(^\text{117}\) These alliances must be composed of student associations representing students enrolled in a “faculty, school, department, centre or institute”\(^\text{118}\) of a single university,\(^\text{119}\) and their accreditation is not achieved by referendum, but rather by the affiliation of the majority of the associations at the university.\(^\text{120}\) The next step of association — the accreditation of alliances of student associations from different universities — is specifically prohibited by the Act.\(^\text{121}\) The exclusion of multi-university student alliances from the accreditation regime makes sense: the whole purpose of the regime is to identify the legitimate student association for the purposes of repre-

\(^{111}\) *Companies Act*, R.S.Q., c. C-38, Part III.

\(^{112}\) Student Associations *Accreditation Act* above, note 63, s. 10.1(1). Note that the Act also provides (at s. 50) that the university is required to lend the association the funds necessary for its incorporation.

\(^{113}\) Art. 334 *Civil Code of Québec*, L.Q. 1991 c. 64 (“C.c.Q.”).

\(^{114}\) See, e.g., the *Companies Act* above, note 111, ss. 91(3) and 224; Art. 335 C.c.Q. (requiring approval of the general meeting prior to the coming into force of bylaws enacted by the board of directors).

\(^{115}\) Art. 310 C.c.Q.; *Companies Act*, *ibid.*, ss. 91(2) and 224.

\(^{116}\) The *Professional Syndicates Act*, R.S.Q., c. S-40 provides for a simplified incorporation regime available to people “engaged in the same profession, the same employment or in similar trades, or doing correlated work having for object the establishing of a determined product.” On the use of the *Professional Syndicates Act* by student associations, see Québec, Comité d’accréditation, *Rapport du comité d’accréditation. Ajuster la Loi au réel*, (Québec: Directeur général du financement et de l’équipement supérieur, 2004) at 69 (Chair: Philippe-André Tessier).

\(^{117}\) Student Associations *Accreditation Act* above, note 63, ss. 5, 9, and 10.2.

\(^{118}\) *Ibid.*, s. 2(6).

\(^{119}\) *Ibid.*, s. 10.

\(^{120}\) *Ibid.*, s. 10.2(2).

\(^{121}\) *Ibid.*, s. 10.
senting students to the university. An entirely different regime would be required if the state were to recognize student associations for other purposes.\footnote{122}

This does not mean that provincial student associations cannot exist; there are in fact four such associations.\footnote{123} Nor does it mean that there is absolutely no legal recognition of their existence. For instance, the legislation governing the Quebec student loan system provides specifically for the creation of a committee with student members appointed by the minister “after consultation with groups representing . . . the students.”\footnote{124} However, no legislation allows for the determination of the legitimate representatives of students vis-à-vis the state. De facto recognition is left to the realm of politics unfettered by legislated constraints, and the provincial government has used this discretion to its advantage, granting and withholding recognition on the basis of political expediency.\footnote{125}

In conclusion, the Quebec student association recognition regime provides a clear framework for establishing the democratic legitimacy of student associations. Insofar as the regime imposes positive duties on universities aimed at ensuring the financial survival and organizational capacities of student associations, the regime can be characterized as one of state support for student associations. Governmental and university interference with student associations is limited and the regime respects both students’ freedom of association and the right of dissident students not to associate.

5. FORMS AND LIMITS OF COLLECTIVE ACTION

Many of the forms of collective action engaged in by student associations are also engaged in by other actors and the legislated limits on those forms of action

\footnote{122} Such a regime is instituted in Austria, for example, where the Bundesgesetz über die Vertretung der Studierenden — HSG 1998 (“Federal Law on the Representation of Students”) provides for the establishment and recognition of Österreichische Hochschülerinnen- und Hochschülerschaft (“Austrian National Union of Students”). This problem was discussed in Comité d’accréditation above, note 116 at 30-31 and 67–77. The committee charged with reviewing the law proposed a model law based on the Professional Syndicates Act, which would allow for multi-institution student federations to benefit from a determinate juridical form without granting them official state recognition.

\footnote{123} The Fédération étudiante universitaire du Québec (FEUQ), the Fédération étudiante collégiale du Québec (FECC), the Association pour une solidarité syndicale étudiante (ASSE), and the Table de concertation étudiante du Québec (TaCEQ).


\footnote{125} See, e.g., Lisa-Marie Gervais, “Line Beauchamp lance un ultimatum aux étudiants: La CLASSE refuse l’ultimatum” Le Devoir (18 April 2012) (provincial education minister refuses to meet with student groups unless they denounce violence) and Bonenfant, Glinier, and Lapointe above, note 8 at 161 (government refuses to meet with FECQ and FEUQ because the delegation from the latter includes members of another student association, which refuses to denounce violence). See also Lacoursière, Le mouvement étudiant au Québec above, note 11 at 152–154 (governments in Quebec have tended to recognize corporatist student federations at the expense of more militant groups thereby creating a de facto monopoly of representation).
are not specific to student associations. For instance, student associations — chiefly those with a high correspondence to the student movement ideal-type — engage in lobbying governments, especially in relation to education policy. There are no restrictions on lobbying that are particular to students: the general legislation applies.126

Student associations often engage in strategic litigation as a method of advancing their particular vision of education policy,127 the interests of students,128 or the aims and values of the organization more generally.129 They also engage in litigation to enforce their bylaws or defend their legality.130 Of course, in all of these cases, student associations are bound by general rules of procedure, such those rela-

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126 See, e.g., *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.) (student associations covered by the definition of “organization” in s. 2(1) and therefore obliged to file a return under s. 7(1). But see *Lobbying Transparency and Ethics Act*, R.S.Q., c. T-11.011 and the *Lobbying Transparency and Ethics Act Exclusions Regulation*, R.R.Q., c.T-11.011, r. 1 (student association staff and representatives excluded from the application of the Act by s.1(11) of the Regulation, because they fall under the exception “association or other non-profit group not constituted to serve management, union or professional interests, nor composed of a majority of members that are profit-seeking enterprises or representatives of profit-seeking enterprises”).

127 See, e.g., *Students’ Union, University of Alberta v. University of Alberta*, 1988 CarswellAlta 161 (Alta. Q.B.); affirmed 1990 CarswellAlta 118 (Alta. C.A.) (student association seeking to have a $30.00 per semester computer fee declared a “tuition fee” and thereby declared contrary to law because not adopted according to the procedure applicable to tuition fees); *Graduate Students’ Assn. of the University of Alberta v. University of Alberta*, 1991 CarswellAlta 89, 80 Alta. L.R. (2d) 280, 82 D.L.R. (4th) 271 (Alta. C.A.) (student association seeking to have an increase in “post-program” fees declared a “fee for instruction” and thereby contrary to law because not adopted according the applicable procedure); *Fédération des médecins résidents du Québec c. Université de Montréal*, 1997 CarswellQue 497 (Que. C.A.) (medical students’ association seeking to have university decision to triple tuition fees in a single year declared contrary to contract of enrolment); *Ruel c. Marois*, 2001 CarswellQue 2681 (Que. C.A.) (student association seeking to have regulation providing for additional tuition fees from students from Canadian provinces outside of Quebec declared unconstitutional).

128 See, e.g., *Chénier v. Canada (Attorney General)*, 2005 CarswellOnt 2816 (Ont. S.C.J.) (plaintiff seeking to have provisions of the *Bankruptcy and Insolvency Act* that exclude student loans from discharge declared unconstitutional). Note that the record does not show that a student association was a party to this case, but the plaintiff was in fact a representative chosen and supported by the Canadian Federation of Students: see CFS, “Campaigns & Lobbying: Student Loan Bankruptcy”, online: CFS <http://www.cfsfcee.ca/html/english/campaigns/bankruptcy_charter.php>.


130 See above, note 46. See also *Jourdain c. Assoc. générale des étudiants de l’Université du Québec à Rimouski (AGECAR)*, 2012 QCCS 3558, 2012 CarswellQue 7995 (Que. S.C.) (manda manus procedures seeking to force a student association to hold a meeting and a vote rejected because the petitioner had not followed process set out in bylaws).
tive to standing and the obligation not to abuse the legal process, but not by particular rules specific to student associations.

Student associations also engage in various forms of public protest and demonstration as well as "direct action" such as sit-ins, occupations, and other forms of civil disobedience. With the exception of the student strike in Quebec, which we discuss below, no legislation specific to student associations governs this activity. Rather it is regulated by trespass, the legal principles governing picketing.

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131 University of Manitoba Students’ Union Inc. v. Manitoba (Attorney General), 1979 CarswellMan 94, [1979] M.J. No. 229 (Man. Q.B.) (student association denied standing to challenge regulations made under the social assistance legislation that may affect some of its members); Students’ Union, University of Alberta v. University of Alberta (August 17, 1984), Doc. 8403-25065, 8403-25066, [1984] A.J. No. 505 (student association granted standing to challenge admissions policy because it collects fees from each student and therefore has a direct financial interest in the number of students admitted); Canadian Federation of Students v. Natural Sciences & Engineering Research Council of Canada, 2008 FC 493, 2008 CarswellNat 1151, 2008 CarswellNat 6528 (F.C.) (CFS granted public interest standing in order to seek judicial review of a decision by NSERC rejecting the complaint by a student to the effect that professors at his institution violated rules of research ethics during a study funded by NSERC).

132 See, e.g., Post-Graduate Students’ Society of McGill University Inc. v. Canadian Federation of Students, 2013 QCCS 2171, 2013 CarswellQue 4624 (Que. S.C.) (CFS awarded damages equal to legal fees incurred to answer PGSSMU’s abusive use of legal procedure).

133 Compare, e.g., art. 60 para. 2 of the Code of Civil Procedure, R.S.Q., LRQ, c. C-25 (requiring unions to file a certificate issued by the provincial labour board attesting to their status as “associations of employees” prior to being permitted to institute legal proceedings before the courts).


135 Carrier c. Université de Sherbrooke, 2012 QCCS 1612, 2012 CarswellQue 3482 (Que. S.C.) (preliminary injunction restraining students from protesting on campus granted on the grounds that such protest would constitute trespass). [Disclosure: one of the authors (Finn Makela) represented the defendant student association in Carrier.] But see R. v. Whatcott, 2012 ABQB 231, 2012 CarswellAlta 729 (Alta. Q.B.) (University of Calgary could not rely on provincial trespass legislation to curtail leafleting on campus — even by non-students — because to do so would violate s. 2 (b) of the Charter). See generally Harrison v. Carswell (1975), 1975 CarswellMan 58, 1975 CarswellMan 84, [1976] 2 S.C.R. 200 (S.C.C.) (setting out the general law on trespass in the context of protest).

highway traffic legislation, municipal bylaws regulating parades and other public gatherings, and the provisions of the Criminal Code applicable to unlawful assembly and riot.

We conclude that, in Canada, there are no statutory instruments specific to student associations outside of the recognition regimes discussed in the previous section. We hasten to add, however, that students’ collective action is regulated by a host of norms other than those promulgated by the state. Individual institutions may adopt detailed policies dealing with student protest and such policies may be seen by the members of the university community as binding norms, breaches of which justify sanctions. University regulations may also be seen as a form of delegated legislation. Furthermore, university regulations or policies on protest interface with state law in that they may determine whether the police are called to

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See, e.g., the Quebec Highway Safety Code, R.S.Q., c. C-24.2 at s. 500.1, which prohibits obstructing traffic “during a concerted action” unless “previously authorized by the person responsible for the maintenance of the public highway.” This provision, which is the subject of a constitutional challenge as of the time of writing, was the basis for over 650 charges laid during the Quebec student protests between 15 March 2011 and 19 April 2012 (data collected by the Collective Opposed to Police Brutality, online: COBP <http://cobp.resist.ca>.)

See, e.g., City of Montreal, revised bylaw No. P-6, By-law concerning the prevention of breaches of the peace, public order and safety, and the use of public property (19 May 2012). The bylaw was amended in the context of the protests surrounding the 2012 student strike. For an analysis of the amendments and their effect on the freedoms of association and expression and the right to peaceful assembly, see Sibel Ataogul et al., “Freedom to Protest Does Exist, but Bylaw P-6 Should Not”, online: Association des juristes progressistes <http://ajpquebec.org/?p=500>; Olivier Roy, Sibel Ataogul, and Finn Makela, “I Wasn’t Born a Panda, but I Have the Right to Become One! P-6 and the Right to Anonymity”, online: Association des juristes progressistes <http://ajpquebec.org/?p=538>. The predecessor bylaw was declared constitutional in Canada (Attorney General) v. Dupond, 1978 CarswellQue 77, 1978 CarswellQue 120, (sub nom. Canada (Procureur général) c. Montréal (Ville)) [1978] 2 S.C.R. 770 (S.C.C.). See also Villeneuve c. Montréal (Ville), 2012 QCCS 2861, 2012 CarswellQue 6660 (Que. S.C.) (rejecting a safeguard order suspending the application of the by-law until a decision on the merits is rendered regarding its constitutionality).

Criminal Code, R.S.C. 1985, c. C-46, ss. 63–69. We are unaware of any published decisions in which the accused was charged with unlawful assembly or for riot in the specific context of a demonstration organized by a student association. However, we are aware that such charges are often laid in this context. See, e.g., Nelson Wyatt, “50 arrested as police break up Montreal tuition fee protest” The Globe & Mail (5 March 2012). The use of s. 63 of the Criminal Code by the Montreal police to justify mass arrests at political demonstrations was cited as a “concern” of the Human Rights Committee of the United Nations in its 2005 observations on Canada’s periodic report under article 40 of the International Covenant on Civil and Political Rights: see UN Committee for Civil and Political Rights, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee (UN Doc, No. CCPR/C/CAN/CO/5, 20 April 2006).
intervene on campus\textsuperscript{140} and the courts may be called upon to judicially review the actions and decisions of university disciplinary panels.\textsuperscript{141} As we previously mentioned, these forms of regulation are outside the scope of this article, although we remain convinced that they offer a potentially rich area for further research.

\textbf{(a) The Peculiar Case of the Quebec Student Strike}

In keeping with their syndicalist origins, Quebec student associations have a long history of engaging in strikes.\textsuperscript{142} Strikes may target individual universities, faculties, or even courses, in order to pressure universities on particular issues, or they may be mass walk-outs intended to pressure governments. From the 1960s until 2012 a social consensus recognized the moral legitimacy of student strikes and the correlative duty of the targeted institution (whether university administration or government) to engage in negotiations with representatives of striking students in order to respond to their claims.\textsuperscript{143} However, the student strike was conceived of as a political weapon and not the exercise of a legal right.\textsuperscript{144}

During the 2012 strike against proposed tuition hikes — which was unprecedented in duration and in terms of the number of students involved, their militancy, and the frequency with which they engaged in protests and direct actions — that social consensus was broken. Rather, the provincial government insisted on mobilizing a discourse centred on the strike’s legality, rather than its political legitimacy.\textsuperscript{145} The government followed the media’s lead\textsuperscript{146} in labelling the strike a

\textsuperscript{140} See, e.g., McGill University, \textit{Report of the Internal Investigation into the Events of November 10, 2011}, online: McGill University <http://www.mcgill.ca/dean-jutras-report> (report produced by the Dean of the Faculty of Law after holding an independent investigation into the University’s decision to call riot police to forcibly expel students peacefully occupying the principal’s office and formulating recommendations as to future policy on campus protest).

\textsuperscript{141} See, e.g., \textit{Engler c. Université Concordia}, 2005 CarswellQue 5656 (Que. S.C.); leave to appeal refused (23 mars 2005), no C.A.. Montréal 500-09-015418-056 (Que. C.A.); leave to appeal refused 2005 CarswellQue 8585, 2005 CarswellQue 8586 (S.C.C.) (plaintiff student seeking injunction allowing him to reenrol after his expulsion for participating in a “riot” during a student protest against a speaking engagement by former Israeli prime minister Benjamin Netanyahu).


\textsuperscript{143} \textit{Ibid.} See also Ataogul, Makela, \textit{et al.} above, note 12; Brunelle, Lampron, and Roussel above, note 12.

\textsuperscript{144} See, e.g., Sévigny above, note 134.

\textsuperscript{145} Brunelle, Lampron, and Roussel above, note 12. See also, Lemay and Laperrière above, note 12.

consumer “boycott” that did not benefit from any legal protection.\textsuperscript{147} The syllogism advanced by the government was as follows: the concept of a strike is limited to the definition set out in the \textit{Labour Code}, which applies only to employees\textsuperscript{149}; students are not employees of the university; \textit{ergo} their collective decision to refuse to go to class cannot be a strike.

This logic was taken up by dissenting students who began seeking injunctions to force student associations to dismantle picket lines and allow them to attend classes. Upon initial success,\textsuperscript{150} a veritable tsunami of litigation was initiated by dissident students,\textsuperscript{151} often acting as unrepresented litigants aided by an “injunction

\begin{footnotesize}
\begin{enumerate}
\item Langlois \textit{ibid.}; Félix L. Deslauriers, “Boycott”, in Mariève Isabel and Laurence-Aurélie Théroux-Marcotte, \textit{Dictionnaire de la révolte étudiante: Du carré rouge au printemps érable} (Montreal: Tête première, 2012) 27 and Alain Farah, “Grève”, in \textit{Dictionnaire, ibid.}, at 89. Note that prior to its use as an alternative to “strike,” the word “boycott” was also occasionally used to describe students’ collective decision to not attend classes. See, e.g., Harding above, note 40 at 90; John H. Simpson and Walter Phillips, “Understanding Student Protest in Canada: The University of Toronto Strike Vote” (1976) \textit{6:1 Cdn. J. of Higher Ed.} 59 at 60. In Quebec, the term “boycott” (or “boycottage”), which is the correct French term was generally distinguished from strike (“grève”) and used to describe collective refusal to pay fees: see, e.g., Lacoursière, \textit{Le mouvement étudiant au Québec} above, note 11 at 90 (boycott of tuition fees) and 167 (boycott of fees levied on students for failed classes); but see Sévigny above, note 134 at 160-161 (using the shudder quotes around the word “grève” and describing “boycottage” of classrooms as part of a strike).

\item By letter dated 16 February 2012, the assistant deputy minister informed college administrations that the student strike did not benefit from the protection afforded by the \textit{Labour Code} and that they could therefore continue to offer classes despite the strike mandate. Radio-Canada, “Grève étudiante: Québec ordonne aux cégeps de continuer l’enseignement” (18 February 2012), online: Radio-Canada <http://www.radio-canada.ca/nouvelles/societe/2012/02/18/001-greve-cegep-enseignement.shtml>.

\item The \textit{Labour Code} above, note 91, s. 1(g), defines “strike” as “the concerted cessation of work by a group of employees.”

\item Proulx \textit{c. Université Laval}, 2012 QCCS 1384, 2012 CarswellQue 3304 (Que. S.C.).

kit” distributed on the Internet by a group calling themselves the “Movement of Socially Responsible Students.”

The jurisprudence that emerged was, with respect, confused. For the most part, the courts simply repeated the analysis of the strike/boycott distinction that was advanced by the government and subsequently taken up by plaintiffs in their arguments. Having accepted that the student strike was not a legal strike within the meaning of the Labour Code, the courts did not seriously entertain arguments based on the Student Associations Accreditation Act or on the Companies Act to the effect that decisions made in accordance with the bylaws of the association were binding on all of its members, although these arguments were pled. In the one decision that squarely addressed this argument, the judge found that the Accreditation Act does not include anti-strike-breaker provisions analogous to those found in the Quebec Labour Code and then concluded that dissenting members of a student association therefore were not bound by the majority decision to strike. This is an


153 In nine of the decisions, the chief justice of the Superior Court specifically referenced the assistant deputy minister’s letter discussed in note 148 above. Beausoleil v. Cégep régional de Lanaudière à Terrebonne above, note 150; Breton-Supper v. Cégep Marie-Victorin, supra note 150; Carignan v. Collège Lionel-Groulx, supra note 151; Doyon v. Cégep de Saint-Hyacinthe, supra note 136, El Madi v. Collège de Rosemont, supra note 151 and Mahseredjian v. Collège Montmorency, supra note 151.

154 See, Combey v. Cégep de Saint-Laurent, supra note 151 at paras. 14–20 and 31–32 (student association argued that members were bound by decisions made in accordance with the bylaws but judge dismissed the argument without analysis).

155 Morasse c. Université Laval, 2012 QCCS 1859, 2012 CarswellQue 4264 (Que. S.C.) at paras. 30–32. These passages were cited with approval but without further comment in Doyon v. Cégep de Saint-Hyacinthe, supra note 136 and Mahseredjian v. Collège Montmorency, supra note 151. After the strike, this reasoning was applied by the small claims division of the Court of Quebec in Dumas c. Assoc. des étudiantes et étudiants
erroneous conclusion because the anti-strike-breaker provisions of the Labour Code apply to employers, not employees. The provision provides that

109.1 For the duration of a strike declared in accordance with this Code or a lock-out, every employer is prohibited from . . .

(c) utilizing, in an establishment where a strike or lock-out has been declared, the services of an employee who is a member of the bargaining unit then on strike or locked out . . .

Because nobody was arguing that universities were bound by a student association strike vote, the anti-strike-breaker provisions were simply not relevant to the debate.\(^\text{156}\)

Although s. 109.1 of the Labour Code has the effect of requiring employees to respect picket lines (because the employer may not use their services once inside) nowhere in the Labour Code does it say that they must do so. In the labour relations context, whether a strike vote taken in accordance with the Labour Code and the union bylaws creates specific duties for union members is a question entirely separate from the duties that such a vote creates for employers. The labour jurisprudence seems to indicate that union members are bound by the constitution and bylaws of their union. In Berry v. Pulley, the Supreme Court stated, “[T]he time has come to recognize formally that when a member joins a union, a relationship in the nature of a contract arises between the member and the trade union as a legal entity. By the act of membership, both the union and the member agree to be bound by the terms of the union constitution, and an action may be brought by a member against the union for its breach . . .”\(^\text{157}\) Furthermore, provisions in union constitutions providing for fines or penalties for those who choose to cross picket lines are enforceable, even in the absence of anti-strike-breaker legislation.\(^\text{158}\) To be clear, the en-

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\(^\text{156}\) It is, however, possible to make such an argument, given the accredited student association’s monopoly on representation. On this view, s. 26 of the Accreditation Act, supra note 63 would prohibit universities from taking into consideration the desires of dissenting members that classes be offered. A true analogy with the Labour Code’s anti-strike-breaker provisions would entail restricting universities’ ability to accept new students to “replace” the students on strike.


\(^\text{158}\) Canadian Forest Products Ltd. v. H.E.U., 2006 CarswellBC 3318 (B.C. L.R.B.) at para. 272 (such clauses enable more effective exercise of collective power than leaving the choice of respecting picket lines to individual workers based on their views of the merits of the cause). But see T.W.U., Local 202 v. MacMillan, 2008 ABQB 657, 2008 CarswellAlta 1614 (Alta. Q.B.); leave to appeal refused 2009 CarswellAlta 664, 2009 CarswellAlta 665 (S.C.C.) (fines imposed by union on members for crossing picket lines not “debts” within the meaning of Provincial Courts Act and therefore provincial court does not have jurisdiction to enforce them) and Birch v. Union of Taxation Employees, Local 70030, 2008 ONCA 809, 2008 CarswellOnt 7219 (Ont. C.A.); leave to appeal refused 2009 CarswellOnt 2410, 2009 CarswellOnt 2411 (S.C.C.) (though unions may fine their members for crossing picket lines in breach of the union constitution, a penalty equal to the salary earned as a consequence is unconscionable).
forceability of such clauses is determined by the law of associations and not the law governing collective labour relations.\textsuperscript{159}

There is therefore no reason that members of other incorporated associations, including student associations accredited under the Accreditation Act, should not be legally bound by the applicable constitution and bylaws. Indeed, the jurisprudence pertaining to the obligations of members of an association incorporated under Part III of the Quebec Companies Act is clear to the effect that members are bound by the association’s constitution and bylaws and that the association can impose penalties for their breach.\textsuperscript{160} One could take this argument one step further and claim that if a student association’s constitution or bylaws prohibit the crossing of association picket lines then dissenting members would not have a right to cross a picket line (because to do so would be to breach a legal duty owed to the association) and that therefore no such right can be enforced by injunction. It is doubtful, however, if this would apply to students who had availed themselves of their right to resign from the association.\textsuperscript{161}

Once the courts found that dissident members were not bound by the decision of their student association, the outcome of the litigation was all but inevitable. Under Quebec law, students’ legal relationships with their universities are contractual.\textsuperscript{162} Therefore any picketing interfering with dissident students’ desire to pursue classes was an unlawful interference in their contractual rights and therefore not protected activity under the Charter.\textsuperscript{163}

As the decisions accumulated, the courts faced the problem of students massively violating injunctions, often with the tacit support of their professors\textsuperscript{164} and other members of the community. Evidently, this had serious consequences for the authority of the courts and the rule of law.\textsuperscript{165} After having taken the extraordinary step of issuing court orders requiring a university to call police to break picket


\textsuperscript{160} Letellier c. Bourse de Montréal, 1999 CarswellQue 3524, [1999] R.Q. 2839 (Que. C.A.) (members not only bound by penalty clause but cannot avoid payment by withdrawal or expulsion from the association). See, generally, Paul Martel and Georges A. Lebel, La Corporation sans but lucratif au Québec, looseleaf (Montreal: Wilson & Lafleur, 2007) at 8-34.3 to 8-58.

\textsuperscript{161} Accreditation Act above, note 63, s. 26.


\textsuperscript{163} Carrier v. Université de Sherbrooke above, note 135.


lines, the chief justice of the Superior Court asked the Attorney General to take action to ensure respect for public order. The legislature responded by adopting the Act to enable students to receive instruction from the postsecondary institutions they attend.

The Back to Classes Act was a draconian piece of legislation widely decried by members of the legal community, including the Quebec Bar, and was almost immediately subjected to a constitutional challenge. Among other provisions, it prohibited public gatherings of over 50 people without police consent and all but prohibited any form of protest within 50 metres of a university campus. It also created an offence of denying students “by act or omission . . . their right to receive instruction from the institution they attend.” The Act was essentially repealed by cabinet after the election caused by the student strike and the social protest movement it sparked, and is therefore mostly of merely historical interest. We will simply point out that the student protests had a rather ironic consequence in law: a positive right to university education, which Quebec student associations have long lobbied for, was briefly enshrined in legislation.

Because the Back to Classes Act has ceased to have legal effect, the question of the exact status of the student strike as a matter of law remains unresolved. The decisions rendered by the Superior Court were all either provisional or interlocutory and therefore have little precedential value. It remains to be seen whether they

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166 Béchard c. Université du Québec à Montréal (UQAM) above, note 151 at para. 40. See also Doyon v. Cégep de Saint-Hyacinthe above, note 136 at para. 50.


168 An Act to enable students to receive instruction from the postsecondary institutions they attend, S.Q., 2012, c. 12 [Back to Classes Act].


171 Back to Classes Act above, note 168 at s. 16.

172 Ibid., s. 14.

173 Ibid., s. 13.

174 This was possible since s. 36 of the Act provided that its provisions “cease to have effect on 1 July 2013 or on any earlier date or dates set by the Government.” See Lemay and Laperrière above, note 12.
will be followed as standing for the proposition that student associations in Quebec cannot bind their members by resolutions made in accordance with their bylaws.176

6. CONCLUSION

Our research has demonstrated that there is a wide range of approaches to the legal regulation of students’ collective action in Canada. Although many of the provinces have left the regulation of this area of political and social life to legal mechanisms of private ordering, such as contract and the law of associations, Alberta and Quebec stand out as having adopted comprehensive regimes. We believe Alberta’s regime violates s. 2(d) of the Charter. Ironically, it is Quebec’s regime, which we see as the most protective of students’ associational rights, that is currently the subject of a Charter challenge.

The 2012 Quebec tuition strike, and the jurisprudence that it engendered, squarely raised the question of the extent to which the law regulates or should regulate the activity of student associations in Canada. We are convinced that, for better or for worse, there is no going back: there has been a juridification of the social conflicts in which students collectively participate and, in the future, the legitimacy of student protests will be measured by their legality.177

Student associations — and their regulation by the state — thus provide an interesting source of reflection for the scope of the protections afforded to the freedom of association by s. 2(d) of the Charter, an area largely dominated by labour relations jurisprudence.

176 As of the time of writing, a suit challenging the constitutionality of the Accreditation Act above, note 63 is in the initial stages before the Superior Court. See Proulx c. Québec (Procureur général), 2013 QCCS 2034, 2013 CarswellQue 4586 (Que. S.C.) (provincial labour federation denied intervenor status). For commentary on the legal status of student strikes, see Brunelle, Lampron, and Roussel above, note 12 and Ataogul, Makela, et al. above, note 12.