

**Parliament of Canada**

**House of Commons**

**Petition in Opposition to Bill S-1001**

Whereas the Boy Scouts of Canada did place before the Senate of Canada by petition a Private Act in the form of Bill S-1001, The Scouts Canada Act;

And Whereas the said Bill was on the 7<sup>th</sup> Day of December 2006 passed by the Senate of Canada on Third Reading;

And Whereas the said Bill was received in the House of Commons on the 7<sup>th</sup> Day of December 2006 and is deemed by the Rules of the House of Commons to have been read a First Time;

And Whereas the existing rights and privileges of the members will be materially and adversely affected by:

- Revision of the Objects without membership approval,
- Redefinition to the Purposes without membership approval,
- Fundamental changes to the character of the Body Corporate without membership approval,
- Inequitable curtailment of remedies affected by repeal of the existing statute,

- Failing to incorporate fundamental principles of Scouting including the Mission of Scouting and Democratic Governance.

**Therefore, We** Michael Reid, of Montreal, Quebec; and Edward W. Claxton of Kitchener, Ontario; and Donald Connors of Halifax, Nova Scotia,

a) as individual members of the Boy Scouts of Canada whose rights and privileges will be affected by the Bill, and

b) as duly elected officers of the Scouts Canada Ordinary-member Unity Taskforce Association (SCOUT eh!):

for ourselves, as members of the Boy Scouts of Canada, and

as officers representing the interest of the members of the Scouts Canada Ordinary-member Unity Taskforce Association (SCOUT eh!),

and on behalf of other members of The Boy Scouts of Canada being persons who have a direct interest in and will be directly affected by Bill S-1001, The Scouts Canada Act:

Do hereby petition the House of Commons in objection and opposition to the passage of the aforesaid Bill in the form and terms presented;

**The Grounds for the Petition in Objection are that:**

1. The Membership of Scouts Canada has not been given an opportunity to vote upon whether this Bill should be presented. The request for a repeal of the existing legislation and passing a new Act comes not from the members but from a management team that has no mandate to seek fundamental change in the organization.
2. Scouts Canada's management has not made available to the membership any pertinent information. Save and except for some small advertisements of the mere fact that a Petition was to be made to Parliament, the whole process has been confined to discussion among management insiders. The only publicly available information of any significance that has been made available and accessible has been through the efforts individual members of the Scouts Canada at large and particularly by those who belong to the Scouts Canada Ordinary-member Unity Taskforce Association.
3. The Bill will make fundamental that are changes contrary to the underlying principles governing Scouting and will adversely affect the rights heretofore enjoyed by members of the Boy Scouts of Canada and will be to the detriment of the membership.

**The particulars of the objections include the following:**

4. **Objects Clause**, Paragraph 2;

- a. Under the Boy Scouts of Canada Act the objects and purpose of the body corporate are that the Corporation shall “**promote and carry out the objects of the Association**”. This is to be done according to specified purposes namely, instruction in stated fields of endeavor, promote extension of the organization, publish and distribute materials in furtherance of the objects, and provide and maintain an efficient support organization.
- b. The wording in Bill S-1001 has been altered to the undefined and indefinite assertion: “to promote the mission of scouting.”
- c. This is a fundamental alteration of the objects because.
  - i. The Imperial Royal Charter, specifically in Section 1, used the word “Association” to mean the body corporate under the name 'the Boy Scouts Association'. Scouting has been carried on in the form of an Association since its inception, albeit with a corporate status originally granted by Imperial Royal Charter of 1912. All reference to the functional basis of the organization as an Association has been dropped. Taken together with Paragraph 3 of Bill S-1001, the nature of the body corporate as an association of members will be

abolished and replaced by a Corporation with the status of an individual. Instead of the body corporate being a vehicle for the development and governance of an Association it will become a body corporate unto itself. This is contrary to the conception of Scouting which is a Movement. This is neither a mere housekeeping matter nor a technical or incidental change; and

- ii. Furthermore, the actual object of Scouting is not defined. Bill S-1001 merely sets out that it is to promote the mission of Scouting without reference to what the Mission might be. The Statute is not a mere piece of legislation of corporate convenience. This Statute acts as the constitution of the Association. The Imperial Royal Charter of 1912 and the 1914 Canadian Statute that adopted that Charter by reference had the function of a Constitution for the organization. Without any reference in the Bill S-1001 to the Principles of Scouting as set down by the World Organization of the Scout Movement or without the Mission being defined, as it is in the Boy Scouts of Canada Act Section 2(a), there is

unchallengeable corporate power to redefine the Mission by By-law. The Mission will now be left open to redefinition in a manner that could be contrary to the principles of Scouting. It is contrary to the fundamental conception of a movement that its principles and objects could be overthrown by the amendment of corporate By-laws. This likewise demonstrates that the Bill is neither a mere housekeeping matter nor a technical or incidental change.

**5. Corporate Powers Clause – Paragraph 3**

- a. The Act of 1914 that created the body corporate for the Association, now called the Boy Scouts of Canada, does not directly state the corporate powers. Those powers are incorporated by reference to the Imperial Royal Charter which sets out the fundamental aspects of incorporation, namely, protection of individuals from claims or debts on the Association, perpetual succession of the Association, and an extensive list of items enumerated in Paragraph 2(i) to (xvi). Being a corporation incorporated under federal statute it also has the powers of a body corporate as defined by section 21 of the Interpretation Act.

b. The provision in Paragraph 3 of Bill S-1001 goes beyond the wording in the Royal Charter and the Interpretation Act by creating the body corporate with “the capacity of a natural person.” The only purpose for adoption of such language is to create a separate corporate identity and existence. This language is generally reserved for business corporations that have an identity separate from the shareholders. Use of this terminology is not appropriate for a not-for-profit corporation without share capital. Taken together with the removal from the operative portions of Bill S-1001 of any mention of the Association the effect will be to eliminate the character of the body corporate as an Association of Members and will transform the body corporate into an entity unto itself. This is a fundamental and far reaching change that directly affects all members of the Association. This likewise is neither a mere housekeeping matter nor a technical or incidental change.

6. **Requirement for Annual Meeting** - Paragraph 5 and 12

a. The Corporations Act provides by section 158 that Part III Corporations (Special Act corporations, as is the Boy Scouts of Canada) are subject to Section 102 which provides a mandatory requirement for holding of an

Annual General Meeting. Being read *mutatis mutandis* the requirement is for an annual meeting of the members.

- b. Section 12 of Bill S-1001 purports to exempt the Corporation from that requirement. No such exemption exists in the Boy Scouts of Canada Act, 1914. Section 5 of the Boy Scouts of Canada Act is subject to the mandatory requirement of Section 102 of the Corporations Act. Furthermore, Section 6 of the Boy Scouts of Canada Act makes only the procedure to be followed for election of the executive committee at an annual meeting subject to regulation by by-law. Under the Scouts Canada Act Bill S-1001 the whole of the Annual Meeting will be subject to regulation by By-law.
- c. The actual holding of the annual meeting would, under Bill S-1001, be subject to regulation by by-law, effectively giving the corporation unbridled authority as regards the Annual Meeting of members. The corporation has already made a practice of prohibiting the Ordinary-members from speaking or asking questions of management. It would effectively hand to the body corporate the ability by by-law to regulate or to restrict who may attend such meeting, and regulate or restrict the rights of members in attendance at such meeting.



d. The provisions under Section 102 of the Corporations Act allow any member of a corporation to apply to a court to obtain an order where there is default in holding an annual meeting. The members would be deprived of such statutory remedy as no provision is made in Bill S-1001 for default by the body corporate in calling an annual meeting. This provision is not only contrary to the best interest of the membership of the Association it is contrary to the public interest that falls upon any corporation granted special status by Parliament and even more so in view of the charitable or eleemosynary character of the corporation. The granting of this exemption cannot reasonably be regarded as a mere housekeeping matter nor a technical or incidental change.

7. **Repeal** – Effect of Repeal – Section 13

a. The effect of a Repeal of a statute is to wipe away the previous statute, subject only to pre-established rights. The Repeal of the prior statutes will effectively abolish the concept of an Association, marginalize the powers of the membership, and, because of the circular system for selection of the Board of Governors, will entrench the current undemocratic structure of Scouts Canada that was put in place by an *ultra vires* amendment to the by-laws. That unauthorized exercise of corporate authority purported to

change the fundamental rights and status of the members in the guise of an exercise of administrative authority.

- b. No vote of the membership was held to authorize those changes as is required by terms of Section 21(c) of the Interpretation Act under which the members, as among themselves, can only be bound by majority vote. Statutes are deemed in law to be ever speaking. The repeal of the Boy Scouts of Canada Act, and the passage of Bill S-1001 will give legal effect to the by-laws now in place and will prevent any legal action for a declaration of nullity pertaining to the creation of the classification “Ordinary-member” - read 'non-voting' member.

## **8. Substantial Changes made without authority**

- a. Scouts Canada's management claims that Bill S-1001 will effect a modernization of the Statute for the 21st Century. However, most of the bill is the same as what is in force now. The changes that have been introduced affect matters of substance that will only serve to further disenfranchise the membership. The 'modifications' are not mere housekeeping.
- b. A mere amendment does not have any collateral effect, only the words or paragraphs actually amended need to be considered. Since a Statute is

deemed to be ever speaking, the collateral effect of a repeal, as opposed to the effect of an amendment, is that the old statute is gone and the new statute takes its place. This will work an inequity upon the vast majority of members who have been disenfranchised by an *ultra vires* exercise and abuse of corporate powers because the granting of a repeal and making a new enactment under Bill S-1001 will have the collateral result of entrenching the disenfranchisement by the pretense that the corporation is merely seeking to affect some minor administrative matters and a consolidation of amendments that are within the authority of the corporation. Scouts Canada's management will, in the result, succeed in circumventing the legal requirements for majority approval of changes in membership status. The granting of this repeal cannot reasonably be regarded as a mere housekeeping matter nor a technical or incidental change.

9. **Principles of Scouting** – No provisions made to protect those principles;
  - a. Scouts Canada is a member of the World Organization of the Scout Movement and subscribes to the principles laid down by that Organization;

- b. The World Organization of the Scout Movement (WOSM) states that: “***A voluntary movement depends upon participation of all its members, male and female, young as well as older, at all levels, in the decision-making process. As part-owners, or ‘stakeholders’ in the Movement, they must be actively involved in managing its affairs in a democratic manner.***”
- c. WOSM states that there are four pillars of the non-formal education provided by the Scouting Movement. It emphasizes that one of these pillars is the promotion of: “***an adherence to the values of democracy, mutual respect and understanding, peace and justice.***”
- d. The By-laws of Scouts Canada were amended by the *ultra vires* and therefore nugatory action of the then National Council and subsequently by Board of Governors that purported to create a class of non-voting members, designated in the By-law as Ordinary-members. This class comprises approximately 103,000. A separate class was purportedly created that consists of 100 so called Voting Members. These so called Voting Members are selected by fewer than 400 persons who are, either directly or indirectly, appointees of the CEO, the top staff member. This was done in contravention of the provisions of the Interpretation Act that provides, as among themselves, members cannot be bound except by

majority vote. It is also in contravention of the aforesaid 'Principles of Scouting' as defined by the WOSM and subscribed to by Scouts Canada. Updating the statutory provisions to “reflect more accurately [the] current status [of the corporation] in Canada,” would perforce require that effect be given to the Principles enunciated by WOSM and the protection of the members democratic rights as defined by the Interpretation Act. Failure to do so is harmful to the best interest of the vast majority of the members. In the result, the project of Bill S-1001 cannot be regarded as fulfilling the object of reflecting more accurately the current status of the corporation in Canada. On the contrary, the Bill S-1001 reflects the worst aspects of 19<sup>th</sup> century paternalism. The Bill therefore cannot reasonably be regarded as a mere housekeeping matter nor a technical or incidental change which more accurately reflects the current status of the body corporate in Canada..

## **10. Objections - Relief Requested**

Based on the foregoing objections the Petitioners, as individuals on their own behalf being Members of the Boy Scouts of Canada, and as officers of the Scouts Canada Ordinary-member Unity Taskforce Association representing the interests of those members, and on behalf of all persons

who may be affected by this Bill, pray that the Bill not be passed and, if passed, only be passed with such amendments that will afforded the members of the Boy Scouts of Canada all of the rights, protections and privileges heretofore afforded by the Boy Scouts of Canada Act, The Corporations Act, The Interpretation Act, and the Imperial Royal Charter establishing the Boy Scouts Association as a body corporate and that the Objects be defined so that they are in concert with the Principles laid down by the World Organization of the Scout Movement.

#### **11. Alternative Acceptable to Objectors**

The petitioners do not object to a name change by a further amendment to the 1914 Act, the Canadian General Council of the Boy Scouts Association S.C 1914, c.130 as amended, which name was subsequently amended to Boy Scouts of Canada / Les Boy Scouts du Canada, by effecting amendments to Section No.1 to designate the name of the body corporate as “Scouts Canada”, by changing the word “boys” in sub-section 2.a to the word “youth”, and adding a provision that the Act be known by the Short Title, “Scouts Canada Act”.