

COURT FILE NO. S1-GS-22959

**SUPREME COURT OF PRINCE EDWARD ISLAND  
(TRIAL DIVISION)**

**BETWEEN:**

**CANADIAN FEDERATION OF STUDENTS/FÉDÉRATION CANADIENNE DES  
ETUDIANT(E)S and CANADIAN FÉDÉRATION OF STUDENTS-SERVICES**

**Plaintiffs**

**AND:**

**UNIVERSITY OF PRINCE EDWARD ISLAND STUDENT UNION**

**Defendant**

**AND BETWEEN:**

**UNIVERSITY OF PRINCE EDWARD ISLAND STUDENT UNION**

**Plaintiff by Counterclaim**

**AND:**

**CANADIAN FEDERATION OF STUDENTS/FÉDÉRATION CANADIENNE DES  
ETUDIANT(E)S and CANADIAN FÉDÉRATION OF STUDENTS-SERVICES**

**Defendants by Counterclaim**

**STATEMENT OF DEFENCE and COUNTERCLAIM**

1. The Defendant admits the allegations contained in paragraphs 3, 4, 21, and 2 of the Statement of Claim but has no knowledge of how many students the Canadian Federation of Students/Federation Canadienne Des Etudiants(e)s ("CFS") represents.
2. The Defendant denies the allegations contained in paragraphs 1, 9, 11-20 inclusive of the Statement of Claim.

3. The Defendant has no knowledge in respect of the allegations contained in paragraphs 5, 6, 7, 8, and 9 of the Statement of Claim.
4. In this action Canadian Federation of Students and the Canadian Federation of Students-Services ("CFS/CFS-S") rely entirely and exclusively on their respective by-laws alleging them to be binding, contractual terms between CFS/CFS-S and its members. The University of Prince Edward Island Student Union ("UPEISU") puts the CFS/CFS-S to the strict proof of those contractual terms and their faithful discharge of the obligations of CFS/CFS-S under said bylaws.
5. UPEISU was incorporated on April 8, 1970 under the laws of Prince Edward Island as a body corporate and politic, without share capital, to act as the official organization of the students at the University of Prince Edward Island
6. UPEISU was empowered in its incorporating charter "to make, alter, and repeal rules, regulations or by-laws for the conduct and management of the University of Prince Edward Island Student Union".
7. UPEISU has been recognized since its inception by the University of Prince Edward Island ("UPEI") as the official organization of the students of UPEI.
8. UPEISU passed by-laws that dealt with, *inter alia*, the procedure to be followed in its conduct of referendum votes of its members.
9. The by-laws of UPEISU provided that in order for a referendum result to be binding two-thirds of the members of Council had to vote in favour holding the proposed referendum and such vote was not conducted.

10. On February 8, 1984, a referendum was held by the UPEISU regarding UPEISU becoming a member in CFS/CFS-S and of the members of the UPEISU that voted, 56.5% voted in support of the resolution for UPEISU to become a member of CFS/CFS-S.
11. UPEISU did not have the authority to conduct the referendum to enter into membership with CFS/CFS-S. Council of UPEISU never resolved to enter into a membership with CFS/CFS-S.
12. UPEISU did subsequently have representation at CFS/CFS-S meetings and UPEI collected and UPEISU remitted fees to CFS/CFS-S.
13. On January 23 - 26, 1996, UPEISU conducted a referendum in accordance with its own by-laws and in accordance with those of CFS/CFS-S to de-federate from CFS/CFS-S. Three hundred Fifty-two (352) members of the UPEI student body, representing 14.5% of the student body, voted in the referendum and two hundred sixty-one (261) or 74% of those voting voted in favour of UPEISU severing its ties with CFS/CFS-S.
14. The council of UPEISU confirmed the referendum result by resolution effectively terminating the legal relationship, if any, between CFS/CFS-S and UPEISU.
15. CFS/CFS-S refused to recognize the referendum results and on February 16, 1996, threatened legal action to challenge the referendum result.
16. From 1996 until the academic year 2003/2004 UPEI continued to collect CFS/CFS-S fees through tuition fees charged to students of UPEI and those funds were turned over to UPEISU which continued to remit those fees to CFS/CFS-S.

17. In 2002 CFS/CFS-S entered into an agreement with UPEISU whereby CFS/CFS-S paid to UPEISU 45% of the CFS/CFS-S fee collected by UPEISU and remitted by UPEISU to CFS/CFS-S in consideration of the failure of CFS/CFS-S to provide the services to the students of UPEI that CFS/CFS-S was obliged to provide, which services were being provided by UPEISU at its expense.
18. In the academic year 2004/2005 UPEI stopped remitting fees to CFS/CFS-S on behalf of students at UPEI as a result of the fundamental breach of the contractual obligations of CFS/CFS-S to provide services to students of UPEI.
19. In April 2005, Council of UPEISU resolved to sever all relations with CFS/CFS-S.
20. UPEISU states that it was never properly a member of CFS/CFS-S and, hence, has no contractual relationship with CFS/CFS-S upon which the claims herein are premised.
21. In the alternative, the UPEISU terminated its contractual relationship, if any, by relinquishing its membership, if any, as a result of the referendum of UPEI student body in 1996.
22. In the further alternative, UPEISU claims that if UPEISU had a contractual relationship as alleged by CFS/CFS-S, which is not admitted but denied, said contract was terminated in 2002 by UPEISU as a result of the fundamental breaches of the alleged contractual relationship as a result of the failure of CFS/CFS-S to comply with its obligations under its own bylaws to provide services to the students of UPEI.
23. UPEI asks that this action be dismissed with costs to UPEISU on a substantial indemnity basis plus Goods and Services Tax and Provincial Sales Tax thereon.

COUNTERCLAIM

24. The Defendant, UPEISU, claims:

- a) damages for unpaid fees for services provided to the Plaintiff CFS/CFS-S at the request of CFS/CFS-S in the amount of \$10,180.80;
- b) pre-judgment interest pursuant to the provisions of the *Supreme Court Act* R.S.P.E.I. 1988, Cap.S-10;
- c) costs of this action; and
- d) such further and other relief this Honourable Court may deem just and expedient.

25. On or about April 26, 2002, CFS/CFS-S committed to pay UPEISU 45% of the total dues collected by UPEI on behalf of CFS/CFS-S to UPEISU to pay for provincial campaign work of CFS that was being performed by UPEISU, said arrangement to begin in the 2002-2003 fiscal year.

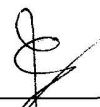
26. Subsequent to said agreement UPEISU continued to remit the CFS/CFS-S membership fees collected by UPEI and the UPEISU invoiced CFS on or about April 30, 2003, in the amount of \$9,326.34 representing 45% of the CFS fees for 2002/2003 collected by UPEI and remitted by UPEISU which invoice was paid by CFS/CFS-S on or about July 14, 2003.

27. UPEISU continued to honour the contract with CFS/CFS-S remitting the CFS/CFS-S membership fees collected by UPEI and remitted by UPEISU for the 2003/2004 fiscal year and invoicing CFS on or about April 30, 2004, in the amount of \$10,180.80 representing 45% of the CFS fees for the years 2003/2004 to compensate UPEISU for services it performed on behalf of CFS/CFS-S which invoice has not been paid and remains outstanding in breach of

the agreement entered into by UPEISU with CFS/CFS-S on or about April 26, 2002, as aforesaid.

28. Whereof the Plaintiff by Counterclaim, UPEISU seeks the relief outlined in paragraph 23 above.

DATE: December 11, 2008

  
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PROCEEDING COMMENCED AT  
Charlottetown, Prince Edward Island

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STATEMENT OF DEFENCE  
AND COUNTERCLAIM

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MESSAGE: Canadian Federation of Students/Federation Canadienne Des Etudiant(E)s  
and Canadian Federation of Students-Services v. University of Prince Edward Island  
Student Union

Attached for service on you as legal counsel for the captioned CFS is a Statement of  
Defence and Counterclaim which we will file on behalf of UPEISU.

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