

NO. S090331
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**CANADIAN FEDERATION OF STUDENTS –
BRITISH COLUMBIA COMPONENT**

PLAINTIFF

AND:

SIMON FRASER STUDENT SOCIETY

DEFENDANT

OUTLINE

(Plaintiff's Motion dated January 15, 2009 re Unremitted Fees)

PART I

The following orders and declarations will be sought at the hearing:

1. Unremitted Fees, as that term is defined in paragraph 12 of the Statement of Claim herein, be forthwith paid into Court pending further order of this Court;
2. Pending further order of this Court, the Defendant continue to collect Fees, as that term is defined in paragraph 10 of the Statement of Claim herein, from Simon Fraser University ("SFU") students, either directly or indirectly through SFU and, as such Fees are collected, forthwith pay such Fees into Court; and
3. Costs of this application.

PART II

Basis for seeking relief:

1. The Canadian Federation of Students – British Columbia Component ("CFS-BC") is a society incorporated under the *Society Act*, R.S.B.C. 1996, c. 433.

2. The Defendant, Simon Fraser Student Society ("SFSS") is a society incorporated under the *Society Act*, and a local student association that represents undergraduate students at SFU.

Affidavit #1 of J. Lalande, sworn January 15, 2009 (Lalande Affidavit #1), Ex. "A",
Affidavit of L. Watson, sworn December 30, 2008, at para. 3

3. The SFSS was a founding member of the CFS-BC in 1981, and the members of the SFSS have been individual members and the SFSS has been a voting member of the CFS-BC continuously ever since.
4. As a voting member of the CFS-BC, the SFSS is bound by the bylaws (the "Bylaws") of the CFS-BC.

J. Lalande Affidavit #1, Ex. "B"

5. As of July 20, 1987, the CFS-BC and the SFSS entered into a fee agreement (the "Fee Agreement") which remains in force.

J. Lalande Affidavit #1, Ex.. A", paras. 4, 6

6. Pursuant to the *College and Institute Act*, Bylaws and the Fee Agreement, the CFS-BC submits that the SFSS is currently obliged to collect and remit to the CFS-BC membership fees from SFU students as follows:

- a. per full-time student per semester - \$3.90;
- b. per part-time and continuous intake students per semester - \$3.90 (pro-rated in accordance with the practice of the SFSS with respect to the pro-rating of its own membership fee).

College and Institute Act, R.S.B.C. 1996, c. 52 at s. 21

7. From 1982 until the SFU 2008 summer session, SFU collected Fees from SFU students and remitted such Fees to the SFSS and the SFSS had, in turn, remitted such Fees to the CFS-BC, all in accordance with the Bylaws, the Fee Agreement and the *College and Institute Act*. Most recently, Fees paid to the CFS-BC have been approximately \$215,000 per annum, depending on enrolment.

8. In breach of the Bylaws and the Fee Agreement, and despite demands, the SFSS has not remitted Fees to the CFS-BC with respect to the SFU 2008 summer or fall sessions.

J. Lalande Affidavit #1, Ex. "A", para. 8

9. The Unremitted Fees have always been and remain trust funds, held in trust by the SFSS for the benefit of the CFS-BC.

10. There is a serious risk that, unless the Unremitted Fees are preserved by Court Order, the monies may be spent, comingled with other assets of the SFSS or otherwise dissipated pending a decision of the Court regarding entitlement to the Unremitted Fees, and the SFSS will not be in a position to pay to the CFS-BC an amount equivalent to the Unremitted Fees should the Court decide this action in their favour.

J. Lalande Affidavit #1, Ex. "A", para. 13

11. On or about March 18-20, 2008, the SFSS organized and held a vote (the "Vote") of SFU students regarding membership in the CFS-BC and the related national organizations, Canadian Federation of Students ("CFS") and Canadian Federation of Students-Services ("CFS-S").

J. Lalande Affidavit #1, Ex. "A", para. 4

12. The Vote was not effective to remove the SFSS from the CFS-BC because the Vote was not held in accordance with the Bylaws and, in any event, was carried out in an unfair manner, contrary to the rules and principles of natural justice. In any event, the Bylaws provide that in the event of a valid vote to defederate, fees are owing to the CFS-BC until the end of its fiscal year, being August 31st.

J. Lalande Affidavit #1, Ex. "A", paras. 2-4, Ex. "B"


13. Rule 46 of the Supreme Court Rules provides authority for the Court to make an Order for the detention, custody or preservation of property.

Supreme Court Rules, B.C. Reg. 221/90, Rule 46(1) and (2)

14. An Order made under Rule 46 is a discretionary Order. Factors relevant to the exercise of that discretion are:

- a. evidence that there is property or a fund that is the subject of the dispute;
 - b. fair question to be tried that the applicant has a right to that property or fund; and
 - c. evidence that the property or fund is in jeopardy.
15. There is also some authority for the proposition that the relief available pursuant to Rule 46 is comparable to that of an interlocutory injunction. The test for an interlocutory injunction also involves a consideration of whether there a fair question to be tried and the balance of convenience.
 16. It is submitted that the Unremitted Fees constitute property or a fund that is the subject matter of this Action.
 17. With respect to the second factor, there is a fair question to be tried as to the entitlement of the CFS-BC to the Unremitted Fees as well as future Fees collected from SFU students by SFU and remitted to the SFSS.
 18. With respect to the third factor, there is a serious risk that, unless the Unremitted Fees are preserved by Court Order, this fund may be spent, comingled with other assets of the SFSS or otherwise dissipated pending a decision of the Court regarding entitlement to the Unremitted Fees and future Fees.
 19. Despite requests from counsel, the SFSS has declined to remit the Unremitted Fees and has failed to provide details or assurances with respect to the security or use of those fees.
 20. It is submitted that preserving the fund will maintain the status quo and will not result in any prejudice to the SFSS.

DATED: January 22, 2009



Solicitor for the Plaintiff

This OUTLINE is filed and delivered by Mark G. Underhill, solicitor for the Plaintiff, whose place of business and address for service is Suite 1640 – 401 West Georgia Street, Vancouver, BC V6B 5A1. Tel. (604) 696-9828 – Fax (604) 632-9950. File No. 10170.