

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CANADIAN FEDERATION OF STUDENTS –
BRITISH COLUMBIA COMPONENT

PLAINTIFF

AND:

SIMON FRASER STUDENT SOCIETY

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff, Canadian Federation of Students–British Columbia Component (“CFS-BC”), is a society incorporated under the Society Act, R.S.B.C. 1996, c. 433 (Society Act).
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 Simon Fraser University (“SFU”). The registered office of the SFSS under the Society Act is MBC 2250 SFU, 8888 University Drive, Burnaby, British Columbia, V5A 1S6.
3. The CFS-BC is a provincial student association whose membership is comprised of local student associations throughout the province of British Columbia.
4. The SFSS was a founding member of the CFS-BC when the CFS-BC was known as the Canadian Federation of Students-Pacific Region, as of October, 1981. Student members of the SFSS approved by majority vote in a referendum full membership in the CFS-BC in 1982. The members of the SFSS have been individual members and the SFSS has been a voting member of the CFS-BC continuously ever since.

5. As a voting member of the CFS-BC, the SFSS is bound by the bylaws (the "Bylaws") of the CFS-BC which are substantially similar to those of the national student association known as the Canadian Federation of Students ("CFS"). The CFS has commenced a similar proceeding under Vancouver Registry Action No. S-089144.

6. Bylaw II – Membership, reads in part:

"2.1 Full Membership

General Description: Full membership is a membership of unlimited duration and entails membership in the chartering organisation, Canadian Federation of Students.

...

- h. The BC Component full membership fee for each member local union shall be no less than \$3.00 per semester, or \$6.00 per academic year, per local union individual member, pro-rated as per the practice of the member local union with regard to the levying of its local union fee.
- i. Beginning in 1996, the BC Component membership fee shall increase for students registered in programs or courses commencing on or after September 1 each year by the rate of increase in the national Consumer Price Index during the previous calendar year.
- k. A local union's application for membership, once accepted by the Federation, shall constitute a binding contract to collect and remit to the Federation full membership fees for the duration of the membership.

7. As of July 20, 1987 the CFS-BC, then known as the Canadian Federation of Students-Pacific Region, and the SFSS entered into a fee agreement (the "Fee Agreement") which remains in force. The Fee Agreement reads as follows:

"Fee Agreement

THIS AGREEMENT, made and entered into at Burnaby, BC Canada, on the 20 day of July, 1987, by and between the Canadian Federation of Students, Canadian Federation of Students – Pacific Region, Canadian Federation of Students – Services, Canadian

companies without share capital, hereinafter referred to as "the Federations" and Simon Fraser Student Society hereinafter called the "Member Local Association".

WHEREAS the Federations are a national student organization which provide a framework for advancing student interests; and

WHEREAS the Member Local Association became a duly admitted voting member of the Federations on the 19th day of January 1982 and thereby agreed to collect and remit Federation membership fees of the full and part-time students it represents at Simon Fraser University and

WHEREAS the Member Local Association and the Federations wish to set out the method by which fees will be collected and paid to the Federations pursuant to the constitutions of the Federations;

NOW THEREFORE the parties hereto covenant and agree as follows:

1. The Member Local Association agrees to collect, either directly, or by agreement with Simon Fraser University membership fees of the Federations from students represented by the Member Local Association as follows:
 - a) Full-time students
per semester \$3.75
 - b) Part-time and continuous intake students
per semester \$3.75

or to be pro-rated as per the policy of the member local association in the collection of its own fee.
2. All membership fees of the Federations collected shall be held in trust by the Member Local Association for the Federations until paid over.
3. The Member Local Association shall pay the membership fees of the Federations for each membership year within thirty (30) days from the date on which the Member Local Association receives the membership fees of the Federations.
4. Membership fees of the Federations not paid in accordance with the above, shall bear interest at a rate of 10% per annum.

5. The parties agree that if the membership fees of the Federations or the default interest rate is amended by the Federations in accordance with their bylaws, then the amount per student to be collected and paid under this Agreement shall be amended to reflect such charge and fees, as shall the interest rate on outstanding accounts.
6. In all other matters the Member Local Association agrees to be bound by the by-laws of the Federations as duly amended from time to time.
7. This Agreement is in force so long as the Member Local Association is a member of the Federations.”
8. Pursuant to the *College and Institute Act* (British Columbia):
 - (a) SFU is a “university” and, therefore, an “institution”;
 - (b) SFSS is a “student society”; and
 - (c) the CFS-BC is a provincial student organization.
9. Section 21(3) of the *College and Institute Act* (British Columbia) reads:

“Student society fees

...

 - (3) On annual notice from a student society, the board must direct the institution to collect fees on behalf of a provincial or national student organization and remit them to the student society or directly to the provincial or national student organization as may be agreed by the board and the student society if
 - (a) the institution collected fees on behalf of the provincial or national student organization between June 1, 1998 and June 1, 1999, or
 - (b) the student society has held a referendum and the majority of the members of the student society voting in that referendum voted in favour of joining the provincial or national student organization.”
10. Pursuant to the Bylaws and the Fee Agreement, the SFSS is currently obliged to collect and remit to the CFS -BC membership fees (“the 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).

11. 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* (British Columbia). Most recently, Fees paid to the CFS-BC have been approximately \$215,000, varying with enrolment.

12. In breach of the Bylaws and the Fee Agreement, the SFSS has not remitted Fees to the CFS-BC with respect to the SFU 2008 summer or fall sessions (the "Unremitted Fees").

13. The Unremitted Fees were collected by SFU and remitted to the SFSS. The Unremitted Fees have always been and remain trust funds, held in trust by the SFSS for the benefit of the CFS-BC.

14. The failure to remit the Unremitted Fees to the CFS-BC is a breach of trust and the SFSS is liable for this breach of trust as a trustee or, alternatively, as a trustee de son tort or for knowingly assisting with this breach of trust.

15. The CFS-BC has demanded the payment of the Unremitted Fees but such Fees have not been paid.

16. On or about March 18 – 20, 2008, the SFSS organized and held a vote (the "Vote") of SFU students regarding membership in the Canadian Federation of Students.

17. 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, the particulars of which are set out below:

- (a) pursuant to section e of Bylaw 2.4 of the Bylaws, an Oversight Committee is to have full jurisdiction and authority over a defederation referendum. Despite recognizing and acknowledging the jurisdiction and authority of a validly constituted Oversight Committee, the SFSS nevertheless decided to at least partially engage the SFSS's independent electoral commission (the "IEC") to run the Vote, usurping the jurisdiction of the Oversight Committee [reword];
- (b) the SFSS commenced a campaign to withdraw from the CFS-BC in August, 2007 without authority or approval from the Oversight Committee and contrary to the Bylaws. The early campaigning by the SFSS resulted in an unfair Vote;
- (c) the SFSS produced inaccurate and defamatory campaign materials and widely distributed such materials again without any authority or approval of the Oversight Committee and contrary to the Bylaws. The use of inaccurate and defamatory campaign materials by the SFSS resulted in an unfair Vote;
- (d) the SFSS insisted that the Vote be held March 18 – 20, 2008, the same date as the SFSS's general elections, again without the authority or approval of the Oversight Committee and contrary to the Bylaws. The holding of the Vote on the same date as the SFSS's general elections resulted in an unfair Vote;
- (e) in addition to a question being put to SFU students about Canadian Federation of Students membership, a second question was put to SFU students about what to do with the "former CFS semesterly membership fee". The addition of this second question was without approval or authority and, in fact, in breach of a decision reached by the Oversight Committee and was, again, contrary to the Bylaws. The second question resulted in a biased and unfair Vote;
- (f) contrary to an agreement and ruling by the Oversight Committee that discussions and deliberations of the Oversight Committee were to remain confidential, the SFSS representatives on the Oversight Committee did not maintain confidentiality and this breach of confidentiality resulted in an unfair Vote;
- (g) at the time of the Vote, the Chief Returning Officer of the IEC, Mr. J.J. McCullough, held an anti-CFS bias which resulted in a biased and unfair Vote or, in the alternative, gave the appearance of a biased and unfair Vote;
- (h) at the time of the Vote, there were approximately 4,200 graduate students at SFU. Despite the fact that a separate society for graduate students at SFU was incorporated July 26, 2007 and was up and running from that date, the graduate students participated in the Vote. This was contrary to the Bylaws and resulted in an unfair Vote;
- (i) although SFU has a facility and students attending this facility in Kamloops, British Columbia, no polling station was set up in Kamloops, the Kamloops students at SFU were not made aware of the Vote, no steps were taken to enable such students to vote and no Kamloops students participated in the Vote. This resulted in an unfair Vote; and

- (j) the process by which the Vote was held by the IEC was contrary to the Bylaws and the practice of the CFS-BC as well as the rules and principles of fairness and natural justice because there were many voting and polling violations including:
- (i) poll clerks and others who ran the Vote took direction regarding process and procedure from the SFSS, one of the proponents;
 - (ii) there was extensive campaigning against the Canadian Federation of Students within the "no-campaigning zone" at polling stations as well as other efforts to influence voters at polling stations and poll clerks and others running the Vote did nothing to attempt to prevent or end such campaigning;
 - (iii) SFSS scrutineers and poll clerks campaigned against the Canadian Federation of Students and attempted to influence voters at polling stations and the poll clerks or others running the Vote did nothing to attempt to prevent or end such campaigning;
 - (iv) IEC representatives campaigned against the Canadian Federation of Students and attempted to influence voters at polling stations and the poll clerks or others running the Vote did nothing to attempt to prevent or end such campaigning;
 - (v) polling stations and areas had individuals loitering in such areas and the poll clerks or others running the Vote did nothing to attempt to have such individuals leave the polling stations;
 - (vi) copies of ballots were openly displayed at polling stations and, in several cases, taken outside of polling areas, completed outside of polling areas and then returned;
 - (vii) there was improper and unsupervised sealing, transportation, storage and disposal of ballots and ballot boxes;
 - (viii) there were many incidences of failure to have the requisite two poll clerks at polling stations during voting hours. Further, polling stations closed or ran out of ballots during voting hours;
 - (ix) SFU students were turned away although presenting valid student identification;
 - (x) there was not a privacy screen at all polling stations at all times so as to ensure secrecy of voting and, further, where there was a privacy screen, not all voters used the privacy screen. In addition, where voters were using a privacy screen on several instances poll clerks, scrutineers or other persons went behind the voting screen with the voters as they were voting. In other cases, more than one voter went behind a privacy screen at one time; and

- (xi) despite complaints of the above matters by SFSS members the IEC did not act on the complaints and provided no investigation or explanation for the failure to act;
- (k) such further and other particulars which the CFS-BC may discover and put before the Court.

18. Pursuant to section b of Bylaw 2.5 of the Bylaws, a local student union which holds a valid vote to defederate under Bylaw 2.4 remains liable for CFS-BC membership dues owed from the date of membership to the end of the CFS-BC's fiscal year in which the said members local union voted to defederate. The end of the CFS-BC's fiscal year is August 31st.

WHEREFORE the Plaintiff claims as follows:

- a) a declaration that the Vote does not constitute a "referendum" pursuant to the Bylaws or was otherwise invalid and ineffective to cause the SFSS to defederate and that the SFSS remains a voting member of the CFS-BC;
- b) an accounting with respect to the amount and whereabouts of the Unremitted Fees and any other unremitted Fees, a declaration that the Unremitted Fees and any other unremitted Fees have always been and remain trust funds held in trust for the benefit of the CFS-BC and an Order that the Unremitted Fees and any other unremitted Fees be forthwith paid to the CFS-BC;
- c) judgment against the SFSS in the amount of the Unremitted Fees and any other unremitted fees together with interest pursuant to section 5 of the Fee Agreement;
- d) judgment against the SFSS for breach of trust or, alternatively, as a trustee de son tort or for knowingly assisting with a breach of trust;
- e) judgment against the SFSS for damages for breach of the Fee Agreement and Bylaws and together with interest pursuant to section 5 of the Fee Agreement;
- f) in the alternative, interest pursuant to the *Court Order Interest Act*;
- g) with respect to the Unremitted Fees and any other unremitted Fees, the equitable remedy of tracing and a constructive trust over any property that such Fees can be traced into or otherwise substituted for;
- h) an interim, interlocutory and permanent injunction restraining the SFSS from doing anything with the Unremitted Fees or any other unremitted Fees other than paying such Fees into Court or to the Plaintiff;
- i) an interim and interlocutory Order for the retention, custody and preservation of the Unremitted Fees and other unremitted Fees and, in particular, for an Order


that such Fees be paid to the Plaintiff or, in the alternative, into Court or, in the further alternative, held in trust pending further Order of Court or agreement of the parties;

j) costs; and

k) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Vancouver, B.C.

DATED: January 15, 2009



Solicitor for the Plaintiff

THIS WRIT AND STATEMENT OF CLAIM were prepared by Mark G. Underhill, of the firm of Underhill, Boies Parker Law Corporation, solicitors for the Plaintiff, whose place of business and address for service is #1640 – 401 West Georgia Street, Vancouver, B.C., V6B 5A1. Tel. 604-696-9828 (File 10170).