

NO. S089144
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**CANADIAN FEDERATION OF STUDENTS and
CANADIAN FEDERATION OF STUDENTS – SERVICES**

PLAINTIFFS

AND:

SIMON FRASER STUDENT SOCIETY

DEFENDANT

REPLY TO THE STATEMENT OF DEFENCE

1. The Plaintiffs join issue with each and every allegation contained in the Statement of Defence.
2. In reply to paragraphs 4 and 7 of the Statement of Defence, the Plaintiffs deny that any of the contractual terms alleged were express or could be implied contractual terms.
3. In reply to paragraphs 4 and 5, the Plaintiffs say that the alleged 1982 agreement was not entered into and is of no force and effect. Alternatively, the proper interpretation of the alleged 1982 agreement is that it called for the Defendant to use the Defendant's referendum procedure with respect to matters relating to the Plaintiff, the Canadian Federation of Students ("CFS"), but only until the bylaws of the CFS were amended to require the use of an alternative procedure. In the further alternative, and in any event, the alleged 1982 agreement was rescinded or superseded by an agreement (the "1987 Agreement") dated July 20, 1987 entered into by the Canadian Federation of Students – Pacific Region (now Canadian Federation of Students – British Columbia Component), CFS, Canadian Federation of Students – Services ("CFS-S")

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and the Defendant and by May, 1995 amendments to the defederation process in the CFS Bylaws which require an oversight committee model to be used for referenda in relation to membership in the Canadian Federation of Students.

4. In reply to paragraphs 4, 5 and 7, the Plaintiffs say that nothing in the constitution and bylaws of the Defendant would require the Defendant to utilize the referenda process set out in such bylaws in relation to a Canadian Federation of Students defederation referendum. In the alternative, if the Defendant's constitution and bylaws are so interpreted, the Plaintiffs say that, nevertheless, the bylaws of the Plaintiffs (the "CFS Bylaws"), as amended, are binding on the Defendant.

5. In reply to paragraph 5, the Plaintiffs say that there are three agreements in place:

- (a) the 1987 Agreement;
- (b) the bylaws of the CFS, as amended, which are contractually binding on the Defendant; and
- (c) the bylaws of the Plaintiff, CFS-S, as amended, which are substantively similar to the bylaws of the CFS and which are contractually binding on the Defendant.

6. In reply to paragraph 6, the CFS Bylaw set out at paragraph 6 is bylaw I(3)(a)(i).

7. In reply to paragraphs 4 - 5, 7 - 8 and 11 - 18, the Plaintiffs say that the CFS Bylaws, as amended, bind the Defendant and govern the manner in which a member local association, including the Defendant, can defederate and in order for a referendum on defederation to be valid and legally effective it must be conducted in accordance with the CFS Bylaws, as amended.

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8. In reply to paragraphs 14(a) and 15, the Plaintiffs say that CFS Bylaws I(6) and I(7) (the "Defederation Bylaws") are valid and in force and effect and were passed at a properly constituted meeting of the CFS and the CFS - S.

9. In reply to paragraphs 4 - 5, 7 - 8 and 11 - 18, the Plaintiffs say that at all material times the Defendant represented, expressly or impliedly by its actions, that the Defederation Bylaws were valid and in effect and were binding on the Defendant and that defederation had to be carried out in accordance with the Defederation Bylaws. As a result, the Defendant is now estopped from taking the position that the Defederation Bylaws are not valid, binding or applicable to the Defendant. Alternatively, the Defendant is prevented from challenging the validity and application of the Defederation Bylaws by having acquiesced with respect to such matters and by the doctrine of laches.

10. In additional reply to paragraphs 4 - 5, 7 - 8 and 11 - 18, the Defederation Bylaws were enacted in May, 1995. Representatives of the Defendant attended the general meeting of the Plaintiffs where the Defederation Bylaws were made and at all times were well aware of any alleged issues with respect to the validity of the Defederation Bylaws. The Defendant is therefore statute-barred from attacking the validity of the Defederation Bylaws and the Plaintiffs plead and rely on the provisions of the *Limitation Act* (British Columbia).


11. In reply to paragraphs 16 and 17, the Plaintiffs say:

- (a) CFS Bylaw I(7) does not provide an alternative process for withdrawing from the Plaintiffs. Rather, CFS Bylaw I(7) provides the final step for defederation which can only occur following a valid defederation referendum carried out in accordance with the CFS Bylaws; and
- (b) the Plaintiffs deny any "anticipated breach", as alleged or at all, and deny that there was ever any acceptance by the Defendant of any alleged breach.

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12. In reply to paragraph 18, the Plaintiffs say that section 85 of the *Society Act* (British Columbia) has no application to either the Plaintiffs or to the issues in the case at bar.

Dated: January 13, 2009


Solicitor for the Plaintiffs

This REPLY TO THE STATEMENT OF DEFENCE is made by Martin L. Palleson of the law firm of Gowling Lafleur Henderson LLP, address for delivery and place of business is PO Box 30, 2300 – 550 Burrard Street, Vancouver, BC V6C 2B5 (Telephone: 604-683-6498).