



NO. S-090331
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 DEFENCE

1. The Defendant, Simon Fraser Student Society (“the SFSS”) admits paragraphs 1 and 2 of the Statement of Claim.
2. The Defendant admits that it is a society incorporated under the *Society Act* and a local student association. At all relevant times, its individual membership consisted of both the undergraduate and graduate students at Simon Fraser University (“the Individual Members”). At certain relevant times prior to March 2008, the Individual Members at Simon Fraser University (“SFU”) were members of the plaintiff Canadian Federation of Students – British Columbia Component (“CFS-BC”), and also members of the Canadian Federation of Students (“CFS”) and the Canadian Federation of Students – Services (“CFS-S”) (the CFS-BC, the CFS and the CFS-S collectively referred to herein as the “CFS Entities”).

3. The Defendant denies all other statements of fact and law in the Statement of Claim and puts the Plaintiffs to the strict proof thereof.
4. In specific response to paragraph 7 of the Statement of Claim:
 - a. When the Defendant became a member of the CFS Entities in 1982, the Defendant did not delegate or cede to the CFS Entities the power to amend or override the SFSS Constitution or Bylaws in electoral matters including, in particular, the Bylaws governing SFSS elections and referenda. It was an express or implied term of the Defendant's membership in the CFS Entities that the Defendant would abide by the bylaws of CFS Entities as they may be amended from time to time, but only insofar as such amendments did not conflict with the SFSS Bylaws and Constitution.
 - b. The CFS Entities and the Defendant entered into a membership agreement in 1982 which stated, in part, that the Defendant must conduct all referenda required under the CFS Entities' Bylaws in the same manner as any other referenda the Defendant may conduct ("the 1982 Agreement").
 - c. The 1987 Fee Agreement did not supersede the provision in the 1982 Agreement that stated that the Defendant would conduct all referenda required under the CFS Entities Bylaws in the same manner as any other referenda the Defendant may conduct. The Defendant's signatories to the 1987 Fee Agreement did not intend to and did not have the capacity to enter into an agreement that would conflict with the SFSS Bylaws or Constitution, or delegate or cede to the CFS Entities the power to amend or override the SFSS Bylaws and Constitution on electoral matters, including, without limitation, the conduct of referenda.
5. The Defendant says that the 1982 Agreement, 1987 Fee Agreement, the Constitution and validly enacted Bylaws of the CFS Entities and the SFSS collectively set out the contractual agreement between the CFS Entities and Defendant ("the Agreement").
6. Bylaw I (2)(a)(i) of the CFS Bylaws, which is a term of the Agreement, sets out the fundamental principle that individual members of the CFS Entities have the authority

to make decisions concerning their membership in the CFS Entities by way of referendum:

- i. The individual members of the Federation collectively belonging to a member local association will have sole authority to make decisions through referendum on all questions of membership in the Federation, subject to other provisions of this Bylaw.

7. The Defendant says that the following were express or implied terms of the Agreement :
 - a. that the Individual Members had the right to decide whether they wanted to remain members of the CFS Entities and that they could terminate their membership in the CFS Entities if a majority voted in favour of doing so in a referendum;
 - b. that the CFS Entities would respect the right of the Individual Members to decide the issue of membership and would respond to a membership referendum initiated by the Individual Members, in good faith, in accordance with principles of democracy, the CFS Entities Bylaws and the SFSS Bylaws and Constitution;
 - c. that the CFS Entities would not unreasonably interfere with or prevent the Individual Members from exercising their right to vote on membership in the CFS Entities;
 - d. that the CFS Entities would interpret the CFS Entities' Bylaws governing referenda in a manner that was consist with the Individual Members' right to decide on issues of membership and the principles of democracy;
 - e. that the CFS Entities would respect the Defendant's Bylaws and practices concerning defederation referenda and interpret the CFS Entities' Bylaws in a manner that did not conflict with the Defendant's Bylaws; and
 - f. that the CFS Entities would either respect the outcome of any referendum held on membership or seek a Court ruling setting aside the results with all dispatch.

8. There was no express or implied term of the Agreement that permitted the CFS Entities to unilaterally determine whether the results of a referendum was valid and/or binding on the CFS Entities.
9. In response to paragraph 8 of the Statement of Claim, the Defendant's obligation to remit fees under the Agreement was contingent upon the Defendant and its Individual Members remaining members of the CFS Entities.
10. In response to paragraph 9 and 10 of the Statement of Claim, the Defendant does not have the authority to collect fees on behalf of the CFS Entities or any other provincial or national organization under the *College and Institute Act*, or otherwise. That authority rests with SFU. The Defendant is only obligated to remit fees to the provincial or national organization once they have been collected on by SFU on behalf of that provincial or national organization and only authorized to do so if a majority of students at SFU voted in favour of membership in the CFS Entities.
11. On 18-20 March 2008, a referendum was held at SFU in which the Individual Members at SFU voted on whether they were in favour of remaining members of the CFS Entities. 66.97% of the Individual Members who participated in the referendum voted in favour of leaving the CFS Entities ("the Defederation Referendum"). As a result, the Defendant and its Individual Members ceased being members of the CFS Entities and the Defendant's obligation and authority to remit fees collected by SFU to the CFS Entities ended.
12. In response to paragraphs 12 -15 of the Statement of Claim, the Defendant denies that it owes any fees to the CFS Entities or holds any fees on trust for the CFS Entities.
13. In response to paragraph 17 of the Statement of Claim, the Defendant says that the Defederation Referendum was a fair and valid referendum held in accordance with the applicable Bylaws. The Defendant denies the allegations set out in paragraph 17 and puts the CFS Entities to the strict proof thereof.
14. In further response to paragraph 17, the Defendant says that:

- a. Bylaw I(6) of the CFS Entities Bylaws, which the CFS Entities rely on as the Bylaw governing the Defederation Referendum, is of no force and effect because it was not passed at a properly constituted meeting of the CFS Entities and is therefore not a term of the Agreement.
 - b. In the alternative, the Defendant did comply with Bylaw I(6) and all other applicable Bylaws.
 - c. In the further alternative, if there was a breach of the Agreement, it was not a fundamental breach that invalidated the results of the Defederation Referendum.
15. In response to paragraph 18(k) of the Statement of Claim, the Defendant says that Bylaw I(7) is of no force and effect because it was not enacted at a properly constituted meeting of the CFS Entities and is not a term of the Agreement.
 16. In the alternative, the Plaintiff says that Bylaw I(7) provides a process for withdrawing from the CFS Entities that is alternative to the Defederation Referendum process set out in Bylaw I(6) and not in addition to that process. Having elected to proceed by way of the Defederation Referendum, the Defendant was not required to comply with Bylaw I(7).
 17. In the further alternative, the CFS Entities had already unequivocally informed the Defendant that it would not respect the results of the Defederation Referendum. The only reasonable conclusion was that the CFS Entities had breached their contractual obligation of good faith under the Agreement, and would further breach their obligation of good faith when considering any application under Bylaw I(7) and that any such application would inevitably be rejected. The Defendant therefore chose to accept the CFS Entities's anticipated breach of the Agreement and to terminate the Agreement in anticipation of the CFS Entities' breach.
 18. In addition or in the further alternative, if there was any omission, defect, error or irregularity in the Defederation Referendum that resulted in any default in compliance with the CFS Entities or SFSS Bylaws, the Defendant asks that the Court make an

order pursuant to section 85 of the *Society Act* rectifying that omission, defect, error or irregularity and validating the Defederation Referendum.

19. In response to paragraph 18 of the Statement of Claim, the Defendant says that the provision described by CFS-BC as "section b of Bylaw 2.5" was not validly adopted by CFS-BC, and puts the CFS-BC to the strict proof thereof. In the alternative, if such a provision was made part of the bylaws of CFS-BC, and therefore part of the agreement among the parties, the conduct of CFS-BC prior to, during, and subsequent to the election constitutes a fundamental breach of the agreement, including the component regarding fees. The defendant elects to accept the fundamental breach effective 20 March 2008, and is therefore released from any obligation it might otherwise have had to remit such fees.

Wherefore the Defendant submits that the whole of the Statement of Claim should be dismissed, with costs.

Dated this 16th day of January, 2009.



Solicitor for the Defendant

THIS STATEMENT OF DEFENCE is prepared and delivered by Susan M. Coristine of Coristine Woodall, Barristers and Solicitors, whose place of business and address for service is 660 - 220 Cambie Street., Vancouver, British Columbia, V6B 2M9, Phone: (604) 689-3242, Fax: (604) 689-3292.