

J. Coccola #1
November 2, 2010
No. _____
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

UNIVERSITY OF VICTORIA STUDENTS' SOCIETY

and

JOSÉ BARRIOS

PETITIONERS

AND:

CANADIAN FEDERATION OF STUDENTS

RESPONDENT

AFFIDAVIT #1 OF JAMES COCCOLA

I, James Coccola, Student, care of 3800 Finnerty Road, Student Union Building, PO Box 3035 in the City of Victoria, in the Province of British Columbia, make oath and say as follows:

1. I have been an undergraduate student at the University of Victoria ("UVIC") since September 2005 and currently hold the elected position of Chairperson on the executive committee of the petitioner, University of Victoria Students' Society ("UVSS"). As such, I have personal knowledge of the matters and facts set out herein, except where stated to be based on information and belief, in which case I believe those matters to be true.
2. Where I have used defined terms in my affidavit, I adopt the definitions set out in the petition to this matter.
3. As a UVIC undergraduate student, I am member in good standing of the Petitioner, the University of Victoria Students' Society ("UVSS") and have been a member in good standing since September 2005.
4. I am also an Individual Member of the Respondent, Canadian Federation of Students ("CFS").

5. In May 2009, I commenced my first elected term as a director to the UVSS Board of Directors and completed my first term on the Board of Directors and on May 1, 2010 I became Chairperson of the UVSS.

The Role and Structure of the UVSS

6. The UVSS is a registered society under the *Society Act* and acts as the official student association for all UVIC undergraduate students. Its membership is comprised of all undergraduate students currently enrolled at UVIC. Students enrolled as undergraduates at the UVIC are automatically members of the UVSS.
7. The UVSS's mandate is to represent the interests of its members on a variety of issues and offer services to, and advocate on behalf of, its student members.
8. The UVSS's leadership consists of four executive members, eleven directors at large, and five advocacy representatives, who collectively comprise the twenty voting members on the UVSS board of directors. All representatives are elected by the undergraduate student body.
9. As the Chairperson of the UVSS, part of my duties are to be responsible for the UVSS's interactions with other organizations, such as the Respondent CFS.

The Role of the CFS

10. The CFS is a registered non-profit corporation under Part II of the *Canada Corporations Act (Canada)*, 1970, c. C-32 and is an extra-provincially registered society in British Columbia.
11. According to its website, the CFS is a student lobby group that seeks to advance the interests of its members on a national scale.

The CFS Bylaws

12. On or around November 25, 2009, I attended a general meeting of the CFS Voting Members. At that meeting, the membership voted to amend the CFS bylaws, including altering the conditions and process concerning defederation. The changes to the defederation related bylaws of the CFS made at that meeting include:
 - a. A petition calling for a referendum on continued membership in the CFS must contain the signatures of at least 20% of the student association's members (an increase from 10%);

- b. No more than two referenda on continued membership may be held at a member institution in any three-month period across Canada (a new limitation); and
 - c. No referendum on continued membership can occur if there has been any referendum on the question of that student association's membership in the previous sixty months (an increase of thirty-six months).
13. Attached hereto as **Exhibit "A"** to my affidavit is a copy of the CFS bylaws as amended at November 25, 2009 annual general assembly meeting.
14. Between May 22 and May 25, 2010, I attended a general meeting of the CFS Voting Members. At that meeting further amendments to the CFS bylaws respecting defederation were put forward to the Voting Members and approved. The amendments included:
- a. throughout the bylaws, replacing the term "continued membership" with the term "decertification";
 - b. throughout the bylaws deleting the word "referendum" or replacing it with the word "vote" throughout;
 - c. changing the wording on petitions seeking a referendum on continued membership to: "We, the undersigned, petition the National Executive of the Canadian Federation of Students to conduct a vote on the issue of decertifying the name of the member local student association of the Canadian Federation of Students";
 - d. changing the name of the "Referendum Oversight Committee" to the "Oversight Committee";
 - e. changing the quorum level for referendums to leave the CFS from 5% to 10%;
 - f. requiring that the original, unaltered petition be delivered to the CFS National Executive instead of a copy;
 - g. requiring that the petition must be delivered by registered mail;
 - h. requiring that the petition must not bear any images or words, except those required by the CFS bylaws;
 - i. requiring that names on the petition must be "reasonably legible", include the "proper full name", and be accompanied by "a valid and corresponding student number", and a "unique signature";

- j. specifying that the National Executive has the “sole authority” to determine whether a petition is in order; rather the obligation “to review the petition and determine if it is in order”;
 - k. amending CFS bylaw 1.6.a to include a new bylaw stating “An individual member may request that her name be removed from a petition. If the National Executive receives such a request in writing, before the conclusion of the verification process of the petition, the name must be struck from the petition. The name shall not be included in the total number of names on the petition”;
 - l. amending the bylaws to clarify that the campaign period includes the days that the National Executive schedules for campaigning and each day on which the vote is scheduled to occur; and
 - m. requiring that the Voting Member provide to the CFS no later than seven days before a referendum a full copy of the list of individual members in the Federation eligible to vote and, if that is not possible, requiring that a double envelope system be used for voting whereby the ballot is placed in an envelope that is then placed in a second envelope and on which the voter writes their full name and student number and which is then compared to a list of individual members entitled to vote in the referendum.
15. As far as I am aware, the changes to CFS bylaws have not yet been consolidated into an updated version of the bylaws.
16. If the CFS bylaws have been consolidated since the May 2010 general meeting, the CFS has not provided me or the UVSS with an updated copy. I do, however, have a copy of the agenda from the CFS general meeting of May 22–25, 2010. Each bylaw change put forward in the agenda with respect to the referendum rules was adopted except for the amendment that would have required that a “complete physical mailing address” be provided by Individual Members signing a petition for a referendum vote. Attached hereto as **Exhibit “B”** to my affidavit is a copy of the agenda for the CFS general meeting of May 22 – 25, 2010.

Membership in the CFS and Membership Fees

17. According to the CFS bylaws, the CFS has two types of members: post secondary student associations (“Voting Members”) and the individual students attending at each post-secondary institution where the student association is a member of the CFS (“Individual Members”).
18. According to the CFS bylaws, as a result of UVIC students voting in 1985 to join the CFS, the UVSS is a Voting Member of the CFS and has been since 1985.

19. According to the CFS bylaws, since the UVSS is a Voting Member, every undergraduate student attending UVIC is an Individual Member of the CFS.
20. The CFS receives membership fees from its Individual Members at UVIC. Under the CFS bylaws, Individual Members of the CFS at UVIC do not have the discretion to individually opt-out of their membership with the CFS. Individual Members are automatically assessed a CFS membership fee by UVIC with their tuition fees. As a result, every undergraduate student at UVIC pays an annual membership fee to the CFS. During the 2008/2009 and 2009/2010 academic years, each UVIC undergraduate student paid a \$7.80 and \$7.98 membership fee respectively to the CFS.
21. In 2008/2009, CFS membership fees were collected directly by UVIC from each UVIC undergraduate student and paid directly to the CFS. Attached hereto as **Exhibit "C"** to my affidavit are documents setting out the total CFS membership fees paid by UVIC students to the CFS in 2008/2009.
22. In 2009/2010, CFS membership fees were collected directly by UVIC from each UVIC undergraduate student and paid directly to the CFS. Attached hereto as **Exhibit "D"** to my affidavit are documents setting out the total CFS membership fees paid by UVIC students to the CFS in 2009/2010.

Terminating Membership in the CFS

23. Among other things, the CFS bylaws outline the process through which Individual Members and Voting Members may discontinue their membership with the CFS.
24. According to the CFS bylaws, the process for terminating membership of both Individual Members and that of a Voting Member in the CFS is a collective decision of the Individual Members at a given post-secondary institution. The CFS bylaws provide that if the Individual Members vote collectively to end their membership in the CFS, both their membership and the membership of their student association, the Voting Member, will terminate.
25. According to the CFS bylaws, the Individual Members have the "sole authority" to initiate a referendum on the issue of defederation by submitting a petition signed by at least ten percent of the Individual Members attending the respective Voting Member school.
26. According to the CFS bylaws, within 90 days of submission of a petition, the CFS National Executive must review the petition and, if it is in order, schedule a referendum.

A Petition for Defederation was prepared by an individual member of the UVSS

27. On or around October 23, 2009, an undergraduate student enrolled at UVIC, Mr. José Barrios, advised me that he had circulated a petition and obtained the signatures of over ten percent of UVIC undergraduate students requesting that a referendum be held on the question of their and UVSS' continued membership in CFS (the "Petition").
28. I was not involved in the circulation, verification, or delivery of the Petition, nor did I provide any funds to cover the cost of the verification process or otherwise.
29. The UVSS was not involved in the circulation, verification, or delivery of the Petition, nor did it provide any funds to cover the cost of the verification process or otherwise.

UVSS has taken no position on CFS membership

30. I attended all of the regularly scheduled Board of Directors meetings between September 2009 to present, except for the Board of Directors meeting of December 14, 2009 for which I have reviewed the minutes.
31. At the meeting of October 19, 2010, the UVSS declared itself officially neutral on petitioning for a referendum on the question of continuing membership in the CFS. Attached hereto as **Exhibit "E"** to my affidavit is a copy of the UVSS Board of Director minutes of October 19, 2010.
32. At no time has the UVSS taken any position with respect to ongoing membership in the CFS.

CFS refuses to schedule a referendum

33. In my capacity as a member of the Board of Directors I have been provided with two letters from the CFS:
 - a. In late January or early February 2010, the Chair of the Board of Directors at the time, Veronica Harrison, provided the Board of Directors of the UVSS with a copy of a letter dated January 14, 2010 from the CFS to the UVSS acknowledging that the CFS had received the Petition from Mr. Barrios. A copy of this letter is attached and marked as **Exhibit "F"** to my affidavit.
 - b. On or about March 24, 2010, Ms. Harrison provided me and other members of the Board of Directors of the UVSS with a letter dated March 24, 2010. A copy of this letter is attached and marked as **Exhibit "G"** to my affidavit.
34. It was clear to me from these two letters that the CFS was not planning to engage in the steps necessary for a referendum to be held at UVIC on the question of continuing membership.

35. I am disappointed that the CFS did not schedule a referendum in accordance with the CFS bylaws after having received the Petition. I believe that Individual Members of the CFS at UVIC clearly met all of the requirements under the CFS bylaws and should have the opportunity to vote on their continuing membership in the CFS.

UVSS takes steps to obtain referendum

36. Since commencing as Chairperson of the UVSS in May 2010, I have advocated to the UVSS Board of Directors that UVSS should assist the Individual Members of the CFS at UVIC to ensure that a democratic referendum on the issue of continued membership in CFS takes place.
37. I attended and chaired the June 14, 2010 UVSS Board of Directors meeting. At that meeting, the UVSS Board of Directors debated whether to retain legal counsel to take appropriate steps to assure that a referendum on continued membership in the CFS is held at the University of Victoria before the end of the 2010-2011 academic year.
38. The UVSS is under substantial fiscal restraint this year. Last year, the UVSS ran a deficit of \$100,339.
39. At the June 14, 2010 UVSS Board of Directors meeting, some directors took the position that the UVSS simply could not afford to fight the CFS' decision not to hold a referendum. After a lengthy debate, the UVSS Board of Directors voted to retain legal counsel to take appropriate steps to assist in obtaining a referendum on continued membership in the CFS is held at the University of Victoria before the end of the 2010-2011 academic year. Attached hereto as **Exhibit "H"** to my affidavit are minutes of the UVSS Board of Directors meeting of June 14, 2010.

Counter-Petition

40. I attempted to obtain a copy of the Counter-Petition while it was being circulated on campus in October and November 2009; however, the campaigners circulating the petition would not allow me to have a copy and I was only permitted to view the Counter-Petition for about 30 seconds.
41. I eventually saw a copy of the form of the Counter-Petition posted on the internet. The copy of the Counter-Petition posted on the internet is the same as the copy of the Counter-Petition that I saw while it was being circulated on campus. Attached hereto as **Exhibit "I"** to my affidavit is a copy of the Counter-Petition. I note that the Counter-Petition calls on the UVSS to fight for students rights through membership in the CFS. Specifically, it states, "Therefore, I call on the board of the UVic Students' Society to defend student unity and to continue to fight for students rights through membership in the Canadian Federation of Students".

Despite the Counter-Petition being directed to the UVSS, the UVSS was never presented with a copy of the Counter-Petition.

UVSS seeks a resolution with CFS

42. In July 2010, I directed the UVSS' legal counsel to attempt to seek a settlement with the CFS. On July 23, 2010, counsel for the UVSS delivered a letter to the CFS urging the CFS to settle this matter out of court. Attached hereto as **Exhibit "J"** to my affidavit is a letter dated July 23, 2010 from Mr. David Borins, counsel to the UVSS, in which an offer to reach a settlement is made.
43. On August 14, 2010, I received a copy of the CFS counsel's reply to Mr. Borins' letter. The CFS' counsel insisted that the Petition is not in order because of the receipt of the Counter-Petition. The CFS' counsel advised that the CFS would not schedule a referendum. Other than the CFS' reliance on the Counter-Petition, the CFS' counsel did not provide any other reason to substantiate the CFS' position for refusing to find the Petition in order or refusing to scheduling a referendum. Attached hereto as **Exhibit "K"** to my affidavit is a letter dated August 14, 2010 from Mr. Todd Burke, counsel to the CFS.
44. As a result, the UVSS has been required to turn to the courts to resolve this matter.

Referendum Oversight Committee

45. The CFS bylaws require that the referendum be overseen by a Referendum Oversight Committee ("ROC") comprised of four members; two appointed by the UVSS and two appointed by the CFS.
46. In light of the CFS' decision that the Petition is invalid, the CFS has refused to make appointments to the ROC.
47. If a referendum is ordered by this court, I am concerned that as a result of the structure of the ROC, deadlocks may occur. For example, in 2008, I am aware that the ROC for a CFS defederation vote held at Kwantlen Polytechnic University, encountered considerable difficulties due to deadlocks on the ROC that the courts were required to resolve. Attached hereto as **Exhibits "L"** and **"M"** to my affidavit are the court transcripts in that matter.

Dates for Referendum

48. In light of the CFS' refusal to schedule dates in the referendum last year within the timeframe stipulated under the CFS bylaws, the UVSS is seeking an order that the referendum be held on January 31, February 1, and February 2, 2011.

- 49. The CFS has requested these dates because the CFS bylaws do not permit for a referendum after April 15 in a given year. There is already a UVSS election scheduled in early March. There is a two week reading break prior to the March elections.
- 50. The referendum cannot be held in April after classes are over because classes end on April 1, 2011 and students will no longer be on campus except for exams.
- 51. I am concerned that if the referendum is scheduled after the March election and there are any problems with decision making at the ROC, there will not be adequate time to apply to court prior to the April 15 deadline. This is why I believe the referendum should be scheduled as early in the new year as possible.
- 52. Should the referendum not occur prior to April 15, then it will have to be held in the next academic year, two full years after students signed the Petition. If the referendum is not held until the fall of 2011, many of the students who signed the Petition will no longer be undergraduate students at UVIC.

Conclusion

- 53. The advancement of this legal application represents a significant expenditure of the UVSS's resources. The UVSS Board of Directors considered this matter carefully and engaged in a substantive debate before deciding to retain counsel to advance a legal action against CFS. The UVSS also attempted to reach an agreement concerning a referendum with the CFS before proceeding with any legal steps.
- 54. The UVSS has decided to pursue this matter given the fundamental democratic rights of our members, all of whom are Individual Members of the CFS at UVIC, which are at stake. Individual Members of CFS at UVIC are required to pay membership fees to the CFS, but have very few rights under the CFS bylaws. In fact, one of the only rights they have is to initiate a referendum to vote on continued membership. If they stripped of that right, Individual Members are left with no voice as to their membership in the CFS. In bringing this action, the UVSS is only seeking to allow Individual Members a voice on their membership in the CFS.

SWORN BEFORE ME AT THE City of)
 Victoria, in the Province of British)
 Columbia, this 12th day of November 2010)

_____)
 A Commissioner for taking Affidavits in)
 and for The Province of British Columbia)

JOHN S. HEANE
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RESPONDENT

AFFIDAVIT #1 OF JAMES COCCOLA

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CONSTITUTION AND BYLAWS

Canadian Federation of Students

As amended at the November 2009 national general meeting

STATUTS ET RÈGLEMENTS

Fédération canadienne des étudiantes et étudiants

Tels que modifiés lors de l'assemblée générale nationale de novembre 2009

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PREAMBLE

We, the students of Canada, recognizing the need to speak with one voice in asserting our legitimate needs and concerns, wish to express our support for one national student organization whose basic aims will be as follows:

1. to organize students on a democratic, cooperative basis in advancing our own interests, and in advancing the interests of our community;
2. to provide a common framework within which students can communicate, exchange information, and share experience, skills and ideas;
3. to ensure the effective use and distribution of the resources of the student movement, while maintaining a balanced growth and development of student organisations that respond to students needs and desires;
4. to bring students together to discuss and cooperatively achieve necessary educational administrative, or legislative change wherever decision-making affects students;
5. to facilitate cooperation among students in organising services which supplement our academic experience, provide for our human needs, and which develop a sense of community with our peers and other members of society;
6. to articulate the real desire of students to fulfil the duties, and be accorded the rights of citizens in our society and in the international community;
7. to achieve our ultimate goal — a system of post-secondary education which is accessible to all, which is of high quality, which is nationally planned, which recognizes the legitimacy of student representation, and validity of student rights, and whose role in society is clearly recognized and appreciated.

In consideration to these needs, students from throughout Canada met in October, 1981, to found the Canadian Federation of Students/Fédération canadienne des étudiantes et étudiants.

The organisations that founded the Canadian Federation of Students were:

The National Union of Students/Union nationale des étudiant(e)s
The Association of Student Councils (Canada)/Association des conseils étudiants (Canada)
The Federation of Alberta Students
The British Columbia Students Federation
The Students Union of Nova Scotia
The Ontario Federation of Students/Fédération des étudiant(e)s de l'Ontario
The Saskatchewan Federation of Students

STATEMENT OF PURPOSE

The Canadian Federation of Students/Fédération canadienne des étudiantes et étudiants exists to perform the following functions:

1. to further the goals of the Canadian Federation of Students/Fédération canadienne des étudiantes et étudiants as outlined in the Preamble;
2. to represent, promote and defend the common interests of students studying at Canadian post-secondary institutions;
3. to promote and support the interests and activities of democratic student organisations in all provinces and at all educational institutions in Canada;
4. to bring together post-secondary students from all parts of Canada to discuss and take common, democratic positions on questions affecting students;
5. to represent Canadian students in the federal level of decision-making and to do so by speaking on their behalf with one united voice;
6. to formulate a national programme that will serve as a framework for coordinating the efforts of representative post-secondary student organisations throughout Canada. This programme will summarize a long-term strategy for achieving the objectives of students in post-secondary education; will describe general ways of reaching those objectives; and will be revised periodically as new objectives and approaches become appropriate;
7. to do all other things that are incidental or conducive to these purposes.

DEFINITIONS

1. The Canadian Federation of Students/Fédération canadienne des étudiantes et étudiants will hereafter be referred to as the Federation.
2. A provincial component will be taken for all purposes as an organisation within the Canadian Federation of Students comprised of all member local associations within a particular province.
3. A local student association will be taken for all purposes of these By-laws to mean an organisation of students which satisfies the following criteria:
 - it is locally and democratically-controlled;
 - it is autonomous from other organizations;
 - it represents students at only one post-secondary institution.or, the graduate students belonging to an organisation that fulfills these criteria and is comprised of both graduate and undergraduate members, not belonging to the Federation, provided that the graduate students have an identifiable infrastructure and a legal structure enabling it to enter into contracts .
4. For all purposes of these By-laws, a referendum will be taken to mean a general vote of the members of a local student association, whether conducted at balloting locations or at a formal general meeting of the local students association.
5. For all purposes of these By-laws, a semester shall be taken to mean a period of time approximately four months in duration. An academic year shall be defined as per the policy of the member local.
6. For all purposes of these By-laws, a delegate shall be any individual member or staff member of a member local association having paid the applicable general meeting delegates fee.

BYLAW I - MEMBERSHIP

1. Types of Memberships

General Description: There are two types of members of the Federation, individual members and voting members. Students, or individual members, are represented through the local student association to which they belong. Local student associations representing individual members are called voting members.

- a. Local student associations are eligible to receive the status of voting members in the Federation as provided for in Bylaw I, Section 2, and 3;
- b. Individual members of the Federation will be all students in local student associations that are voting members.

2. Types of Voting Membership Status

a. Full Membership

General Description: Full membership is the standard form of membership in the Federation.

- i. A local association is eligible to apply for full membership in the Federation if its members have approved by referendum membership in the Canadian Federation of Students, the Canadian Federation of Students-Services, and the applicable provincial component as described in Bylaw VII-Provincial Components;
- ii. A written application for full membership submitted by an eligible local student association will be considered as a binding contract to accept the rights and responsibilities of full membership in the Canadian Federation of Students, the Canadian Federation of Students-Services, and the applicable provincial component.
- iii. Within 90 days of the receipt by the National Executive of a written application for membership, the National Executive will examine the application to determine whether it is in order, and will make a recommendation to the voting members of the Federation concerning the application.
- iv. At the next general meeting of the Federation, the full membership application shall be put to a vote and shall require a majority of at least two-thirds of the votes cast to be accepted.
- v. A local association'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 membership.
- vi. Notwithstanding Section 2.a.vii. of this Bylaw, the fees for full member local associations shall be:
 - \$3.00 per semester, or \$6.00 per academic year, per local association individual member of the Canadian Federation of Students/Canadian Federation of Students-Services, pro-rated as per the policy of the member local association; and
 - the applicable provincial component fee.
- vii. Beginning in 1996, the Federation membership fee shall increase on August 1 each year by the rate of increase in the national Consumer Price Index during the previous calendar year.

b. Prospective Membership

General Description: Prospective membership is a trial membership of limited duration.

- i. A local student association is eligible to apply for prospective membership if it has passed a motion of its members, executive, council or equivalent representative body to apply for prospective membership in the Federation and its applicable provincial component as described in Bylaw VII-Provincial Components;
- ii. A written application for prospective membership submitted by an eligible local student association will be considered as a binding contract to accept the rights and responsibilities of prospective membership in the Canadian Federation of Students, the Canadian Federation of Students-Services, and the applicable provincial component.
- iii. Within 90 days of the receipt by the National Executive of a written application for prospective membership, the National Executive will examine the application to determine whether it is in order, and will make a recommendation to the voting members of the Federation concerning the application.
- iv. At the next general meeting of the Federation, the prospective membership application shall be put to a vote and shall require a majority of at least two-thirds of the votes cast to be accepted.
- v. A local student association's application for prospective membership, once accepted by the Federation, shall constitute a binding contract to pay prospective membership fees, as described in

Bylaw I

- Section 2 b-vi, and conduct a full membership referendum, as described in Section 2 b-viii;
- vi. The fee for prospective membership in the Federation shall be five per cent (5%) of the regular Federation membership fee, notwithstanding that the fee may be reduced or waived by a majority vote of a national general meeting or the National Executive;
 - vii. A prospective member association shall have full voting rights in Federation national general meetings, but shall not be permitted to designate a proxy to vote on its behalf, and shall have the same access to Federation resources and materials, except the International Student Identity Card, that a full member has;
 - viii. A prospective member association must hold a referendum on full membership in the Federation, in accordance with Section 5 of this Bylaw, within twelve (12) months following its acceptance as a prospective member unless an extension is granted by the National Executive of the Federation;
 - ix. In the event that the majority of those voting in the referendum support full membership in the Federation, full membership will be granted at the subsequent national general meeting, at which point prospective membership shall cease;
 - x. In the event that the majority of those voting in the referendum oppose full membership in the Federation, prospective membership will immediately cease;
 - xi. In the event that the referendum fails to achieve quorum, prospective membership will be automatically extended and another referendum on full membership will be held within the subsequent six (6) months in accordance with Section 5 of this Bylaw; and
 - xii. In the event that a prospective member fails to conduct a referendum on full membership as required by this Bylaw, the Federation shall have the option to either cancel or extend, by majority vote of a national general meeting, the prospective membership until a referendum on full membership is conducted.

3. Membership Rights and Responsibilities

a. Rights of Individual Members

- 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 the other provisions of this Bylaw.
- ii. The individual members of the Federation collectively belonging to a member local association will have sole authority to initiate, by petition signed by not less than ten percent (10%) of the individual members and delivered to the National Executive, a referendum to federate as described in Article 4 of this Bylaw.
- iii. The individual members of the Federation collectively belonging to a member local association will have sole authority to initiate a referendum on continued membership, as described in Section 6 of this Bylaw, by submitting to the National Executive of the Federation a petition, signed by not less than twenty percent (20%) of the individual members of the association, calling for the referendum.
- iv. Individual members of the Federation have the right to have their interests represented collectively in the Federation through their local student association, but will not have voting rights at the Federation general meetings.
- v. The Federation will attempt to ensure that a Federation membership card is issued to each individual member of the Federation who is a member of a full voting member of the Federation.

b. Rights of Voting Members

- i. Each voting member of the Federation will have one vote at and participate in general meetings of the Federation provided all outstanding delegate fees for past meetings have been paid in full. This is subject to review by the National Executive on a case by case basis upon request.
- ii. Voting members of the Federation have the right to be represented collectively to the federal government and to other national organisations.
- iii. Each voting member of the Federation is entitled to the protection and support of the Federation in accordance with the objectives of the Federation.
- iv. Each voting member of the Federation is entitled to have access to Federation research, information, materials, staff, and other resources.
- v. Each voting member of the Federation is entitled to have access to all information and official documents concerning the operations and activities of the Federation and of the National Executive.

Bylaw I

- vi. Delegates sent by voting members to general meetings of the Federation will have the right to stand for election to any vacant position on a committee of the Federation subject to such other conditions as may be specified at the time of formation of the committee.

c. Responsibilities of Voting Members

Although Federation staff and executive members will handle many day-to-day operations, the structures of the Federation can only function if there is full cooperation among Federation voting members. The achievement of the work and goals of the Federation depends on the active participation of students and student associations.

- i. Each voting member of the Federation is responsible for supporting the objectives of the Federation and will abide by all provisions of these By-laws.
- ii. Each voting member will ensure that Federation fees are collected each year at its institution and forwarded to the Federation, according to the contract of membership and the fee agreement if applicable, signed when the member joined.
- iii. The voting member will not represent the membership fees collected on behalf of the Federation as an expense and/or revenue of the member in its budgets, its financial statements, its audits or any other documents of the voting member.
- iv. Each voting member will be responsible for representing the interests and concerns of its member students at general meetings of the Federation.
- v. Each voting member is responsible for contributing to the formulation of Federation policy and where possible and by resolution of the local council for supporting and implementing that policy.
- vi. Each voting member will be responsible for communicating information from the Federation and the provincial Federation components to its students.
- vii. Each member local association will communicate and work cooperatively with Federation staff and members of the National Executive.

4. Vote to Federate

In accordance with Section 2 of this Bylaw, the following shall be the rules and procedures for a referendum, in which the individual members of a prospective member local association may vote on full membership in the Federation:

a. Scheduling of the Referendum

The referendum will be scheduled by the prospective member association in consultation with the Federation.

b. Referendum Oversight Committee

The referendum shall be overseen by a committee composed of two (2) members appointed by the prospective local association and two (2) members appointed by the Federation, that shall be responsible for:

- i. establishing the notice requirement for the referendum in accordance with Section 4-c of this Bylaw and ensuring that notice is posted.
- ii. establishing the campaign period in accordance with Section 4-d of this Bylaw.
- iii. approving all campaign materials in accordance with Section 4-e of this Bylaw and removing campaign materials that have not been approved.
- iv. deciding the number and location of polling stations.
- v. setting the hours of voting in accordance with Section 4-f of this Bylaw.
- vi. overseeing all aspects of the voting.
- vii. counting the ballots following the vote.
- viii. establishing all other rules and regulations for the vote.

c. Notice of Referendum

Notice of the referendum, that includes the referendum question and voting dates, shall be provided to the individual members of the prospective member association no less than two (2) weeks prior to voting in the referendum.

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d. Campaigning

- i. There shall be no less than ten (10) days on which campaigning is permitted, during which classes are in session, immediately preceding and during voting; and
- ii. Only individual members and representatives of the prospective member association, representatives of the Federation and representatives of the Federation member local associations shall be permitted to participate in the campaign.

e. Campaign Materials

- i. Campaign materials shall include all materials developed specifically for the referendum campaign.
- ii. Materials produced by Federation that promote campaigns and services of the Federation shall not be considered as campaign materials unless they include specific content about the referendum.
- iii. The Federation website shall not be considered a campaign material unless it includes specific content about the referendum.
- iv. The Federation's annual report, financial statements, research and submissions to government shall not be considered a campaign material.
- iv. Campaign materials shall not be misleading, potentially libelous or false.

f. Voting and Tabulation

- i. Voting shall be conducted at voting stations or, subject to the agreement between the prospective member association and the Federation, at a general meeting of the prospective member association or by a mail-out ballot.
- ii. There shall be no less than sixteen (16) hours of polling over no less than two (2) days, except in the case of voting being conducted at a general meeting.
- iii. Unless mutually agreed otherwise by the prospective member association and the Federation, the referendum question shall be: "Are you in favour of membership in the Canadian Federation of Students?"
- iv. In the event that polling is conducted at a general meeting, representatives of the Federation and Federation member local associations shall be extended full speaking rights in the meeting.
- v. The prospective member association and the Federation shall each be permitted to appoint one poll clerk for each polling station.
- vi. The prospective member local association and the Federation shall each be permitted to appoint one poll scrutineer to oversee the counting of ballots.

g. Quorum

Quorum for any referendum vote on full membership shall be that of the member local association or five percent (5%) of the individual members of the local association, whichever is higher.

h. Appeals

Any appeals of the referendum results or rulings by the Referendum Oversight Committee shall be adjudicated by an Appeals Committee composed of one (1) member appointed by the prospective member association and one (1) member appointed by the Federation, who were not members of the Referendum Oversight Committee.

5. Suspension and Expulsion of Members

A member local association may have its voting privileges suspended or may be expelled for violating its responsibilities as outlined in Bylaw I, Section 3 (c), subject to the following procedure:

a. Process for Initiating the Procedure of Suspension or Expulsion

The procedure for suspending the voting privileges or expelling a member local association may be initiated by:

- i. resolution of the National Executive; or
- ii. a petition, submitted to the National Executive, signed by not less than one-third (1/3) of the voting member locals associations and listing the reasons for the proposed suspension of voting privileges or expulsion.

b. Notice of the Suspension or Expulsion Procedure

Upon resolution of the National Executive or receipt of a petition by the National Executive, initiating the process for suspending or expelling a member local association, the National Executive will:

- i. place the matter on the agenda for the next regularly scheduled national general meeting for which no less than four (4) week notice can be given; and
- ii. inform, by registered mail, the member local association against which the suspension or expulsion procedure has been initiated no less than four (4) weeks prior to the national general meeting at which the matter of suspension or expulsion will be considered.

c. Required Majority

A two-thirds vote of a national general meeting shall be required in order to suspend the voting privileges or expel a member local association.

d. Appeal of Suspension or Expulsion

Any student association, which has had its voting privileges suspended or has been expelled, may appeal the decision to the next world congress of the International Union of Students.

e. Reinstatement of Voting Privileges

A member local association, which has had its voting privileges suspended, may have its voting privileges reinstated subject to the following procedure:

- i. Upon receipt of a written application from a member local association requesting reinstatement of voting privileges, the National Executive will assess the merits of the application and make a recommendation to the voting member local associations at the next regularly-scheduled national general meeting.
- ii. A two-thirds majority vote shall be required to reinstate a member local association's voting privileges.

6. Referendum on Continued Membership

The individual members of the Federation belonging to a member local association may vote on continued membership, subject to the following rules and procedures:

a. Petition

As per Bylaw I, Section 3.a.iii a petition calling for a referendum shall be signed by no less than twenty percent (20%) of the individual members of the member local association and delivered to the National Executive of the Federation.

The petition shall be worded as follows: "We, the undersigned, petition the National Executive of the Canadian Federation of Students to conduct a referendum on the issue of continued membership in the Canadian Federation of Students."

b. Schedule

- i. Within 90 days of receipt of the petition described in Bylaw I, Section 6.a, the National Executive will review the petition to determine if it is in order and, if it is, in consultation with the member local, will schedule a referendum that is not less than 60 days and not more than 90 days following, notwithstanding the provisions in Section 6.b.ii and 6.b.iii, and subject to the following conditions:
 - there shall be no fewer than two (2) and no greater than five (5) days of voting; and
 - there shall be no less than seven (7) days and no greater than 21 days for campaigning, during which classes are in session, immediately preceding and during voting.
- ii. No vote on continuing membership may be held between:
 - April 15 and September 15; and
 - December 15 and January 15.
- iii. There shall be no more than two (2) referendums on continued membership in any three-month period.
- iv. No referendum on continuing membership shall take place without compliance with Sections 6.b.i, 6.b.ii and 6.b.iii.

c. Referendum Oversight Committee

The referendum will be administered by a four (4) person Referendum Oversight Committee composed of two (2) members appointed by the National Executive and two (2) members appointed by the applicable

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member local association. Within fourteen (14) days following the scheduling of the referendum, the National Executive will appoint two (2) representatives to serve on the Committee and request in writing from the member local association the appointment of two (2) representative to serve on the Committee. The Referendum Oversight Committee shall be responsible for:

- i. establishing the notice requirement for the referendum in accordance with Section 6.d of this Bylaw and ensuring that notice is posted;
- ii. approving all campaign materials in accordance with Section 6.f of this Bylaw and removing campaign materials that have not been approved;
- iii. deciding the number and location of polling stations;
- iv. setting the hours of voting in accordance with Section 6.g.ii of this Bylaw;
- v. overseeing all aspects of the voting;
- vi. tabulating the votes cast;
- vii. adjudicating all appeals; and
- viii. establishing all other rules and regulations for the vote.

d. Notice of Referendum

Notice of the referendum, that includes the referendum question and voting dates, shall be provided to the individual members of the member local association no less than two (2) weeks prior to the first voting date of the referendum.

e. Campaigning

- i. The member local association, the individual members from the member local association and the Federation not shall engage in any campaigning outside of the campaign period.
- ii. Only individual members and representatives of the member local association, representatives of the Federation and individual members and representatives of Federation member local associations shall be permitted to participate in the campaign.

f. Campaign Materials

- i. Campaign materials shall include all materials developed specifically for the referendum campaign.
- ii. Materials produced by the Federation that promote campaigns and services of the Federation shall not be considered as campaign materials unless they include specific content about the referendum.
- iii. The Federation website shall not be considered a campaign material unless it includes specific content about the referendum.
- iv. The Federation's annual report, financial statements, research and submissions to government shall not be considered a campaign material.
- v. Campaign materials shall not be misleading, defamatory or false.

g. Voting and Tabulation

- i. Voting shall be conducted at voting stations or, subject to the agreement of the Referendum Oversight Committee, by mail-out ballot.
- ii. There shall be no less than sixteen (16) hours of polling over no less than two (2) and no more than five (5) days, except in the case of voting being conducted at a general meeting. In the event that voting is conducted at a general meeting, representatives of the Federation and Federation member local associations shall be extended full speaking rights in the meeting.
- iii. Unless mutually agreed otherwise by the member local association and the Federation, the referendum question shall be: "Are you in favour of continued membership in the Canadian Federation of Students?"
- iv. The member local association and the Federation shall each be permitted to appoint one (1) poll clerk for each polling station.
- v. The member local association and the Federation shall each be permitted to appoint one (1) poll scrutineer to oversee the counting of ballots.

h. Quorum

Quorum for any referendum vote on continuing membership shall be that of the member local association or five percent (5%) of the individual members of the local association, whichever is higher.

i. Appeals

Any appeals of the referendum results or rulings by the referendum Oversight Committee shall be adjudicated by an appeals committee (the "Appeals Committee") composed of one (1) member appointed by the member local association and one (1) member appointed by the Federation, neither of whom are members of the Oversight Committee.

j. Advance Remittance of Outstanding Membership Fees

In addition to required compliance with Sections 6a. to i. and k. to l, in order for a referendum on continued membership to proceed, a member local association must remit all outstanding Federation membership fees not less than six (6) weeks prior to the first day of voting.

k. Minimum Period Between Continued Membership Votes

In addition to required compliance with Sections 6 a. to 6 j. and 6 l., in order for a referendum on continued membership to take place, no referendum on continued membership may have been held within the previous sixty (60) months for voting members comprised of university students and thirty-six (36) months for voting members comprised of college students, unless waived, by a two-thirds (2/3rds) majority vote of the National Executive.

l. Minimum Period Between Vote to Federate and Vote on Continued Membership

In addition to required compliance with Sections 6 a. to 6 k., in order for a referendum on continued membership to proceed, a referendum to join the Federation may not have been held within the previous sixty (60) months for voting members comprised of university students and thirty-six (36) months for voting members comprised of college students, unless waived, by a two-thirds (2/3rds) majority vote of the National Executive.

7. Procedure for Application for Withdrawal

- a. Following the holding of a referendum in accordance with Bylaw 1, Section 6 pursuant to which it is determined that the relevant membership shall not continue, the applicable member local association may provide a letter in writing notifying the Federation of its intention to withdraw from the Federation. Within ninety (90) days of the receipt of such letter, the National Executive will examine the notification to determine whether it is in order, and will make a recommendation to the voting members of the Federation concerning the withdrawal.
- b. At the opening plenary of the next general meeting of the Federation, ratification of the withdrawal shall be put to a vote.
- c. The withdrawal shall take effect on June 30 following the ratification of the withdrawal provided that all outstanding membership fees payable to such date shall have then been received by the Federation.

BYLAW II - GENERAL MEETINGS

General Descriptions: There are three types of General Meetings: Annual General Meetings, Semi-Annual General Meetings, and Special General Meetings.

1. Regular General Meetings

- a. The Semi-Annual General Meeting of the Federation will be held between April 30 and May 31 of each year.
- b. The Annual General Meeting of the Federation will be held between October 15 and November 30 of each year.

2. Notice of General Meetings

- a. Notice of each General Meeting will be sent to each voting member of the Federation at least nine weeks prior to the date of the meeting.
- b. Each voting member will be asked to indicate its intention to attend or not to attend each General Meeting. If one-half or more of the voting members indicate that they will not attend, the National Executive will cancel the meeting.
- c. The Notice will include all positions that are to be elected at the general meeting.

3. Location of General Meetings

- a. Each general meeting of the Federation will be held in the greater Ottawa/Hull/Nepean area. In extenuating circumstances the National Executive may select an alternative meeting location.
- b. The cost of travel to a general meeting for delegates of each voting member will be equalized, taking into account members ability to pay, by such a system of pooling travel costs as may be determined from time to time by the National Executive.

4. Quorum at General Meetings

A quorum for the transaction of business at any meeting of voting members shall consist of not less than one-half of the members of the Federation having voting rights at the time in person or by proxy.

5. Procedure at General Meetings

- a. The rules of procedure at general meetings will be those described in the most recent edition of *Robert's Rules of Order*, supplemented or modified by rules of procedure which may from time to time be established by standing resolutions.
- b. Voting by Proxy
A voting member may appoint another member to act as its proxy for all or portions of any national general meeting, subject to the following restrictions:
 - i. A voting member that wishes to appoint a proxy must adopt a motion of its executive, council or other equivalent representative body stating the member appointed to serve as its proxy;
 - ii. Written notice, that is signed by a representative of the voting member appointing the proxy and includes the text of the motion described in Section b-i, must be delivered to the National Chairperson of the Federation prior to the commencement of the opening plenary of the general meeting; and
 - iii. A voting member may serve as proxy for no more than three other members at any national general meeting.

6. Travel Pool

Each member local association having representation in a general meeting will participate in the general meeting travel pool.

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7. Authority of the National Plenary

- a. The national plenary is the final and absolute decision-making authority in the organisation. Its authority is only detracted from by explicit constitutional provision.
- b. The national plenary may overturn any National Executive decision, except where such a decision has been implemented and has resulted in a legal contract.

BYLAW III - POLICY AND RESOLUTIONS

1. Policy and Resolutions

- a. There shall be four (4) classes of resolutions recognised by the Federation:
 - Issues Policy;
 - Operational Policy;
 - Standing Resolutions; and
 - Simple Resolutions
- b. Policy shall consist of:
 - All statements of long-term goals specific to the Federation;
 - The Federation's objectives and fundamental principles; and
 - The considered views of the Federation with respect to any issues of limited or temporal reference.

Policy must be enacted, amended or repealed by a two-thirds vote at a general meeting, provided sufficient notice has been given as per Bylaw III.3.
- c. Standing Resolutions shall prescribe the rules and regulations pertaining to the conduct of the Federation, including but not limited to, its Standing Committees, Caucuses, Constituency Groups, Provincial Components, and the National Executive Committee, subject to Bylaws. Standing Resolutions shall be considered of unlimited temporal reference unless otherwise specifically defined in the motion.
- d. A Simple Resolution shall include but not be limited to, procedural motions, directives to the National Executive Committee, and all allocations of Federation resources.
- e. Only the operative clause shall be considered a Policy or Resolution of the Federation.
- f. The Federation recognises the authority of each provincial component to establish policy on matters affecting only its province. The Federation will not establish policy that lies only within those areas unless requested by a provincial component.

2. Policy and Standing Resolutions Manuals

- a. All Federation policy statements will be compiled in a policy manual. The manual will be updated after each general meeting.
- b. All Federation Standing Resolutions will be compiled in a Standing Resolutions manual. The manual will be updated after each general meeting.
- c. The updated policy and standing resolutions manuals will be distributed to member local associations no later than twelve (12) weeks following each national general meeting.

3. Notice

- a. All motions seeking the enactment, amendment or repeal of a policy or standing resolution, or to propose any action, excluding procedural motions, must be received by the National Executive Committee at least six (6) weeks before the general meeting at which the proposal is to be considered. Notice provisions exist in order to allow for all motions to be translated and distributed to member local associations in advance of the meeting so that:
 - member local associations may conduct research, survey their membership, and/or develop positions on motions for consideration prior to the meeting; and
 - member local associations that are unable to send delegates to the meeting may give adequate instruction to their proxy.

A simple resolution can be considered as an "emergency motion" and will be exempt from notice provisions in the event that the motion meets the following criteria:

 - i. The motion pertains to an event or issue that has arisen subsequent to the notice deadline for motions; and
 - ii. The motion pertains to an imminent and urgent event or issue that requires a resolution prior to the next scheduled general meeting.
- b. Policy proposals and resolutions may be submitted by member local associations, provincial components/ caucuses, constituency groups and the National Executive Committee.

BYLAW IV - NATIONAL EXECUTIVE

The affairs of the Federation will be managed by the board of directors, known as the National Executive.

1. Composition

The National Executive will be comprised of:

- a. The following at-large positions elected by the national plenary:
 - i. National Chairperson
 - ii. National Deputy-Chairperson
 - iii. National Treasurer
- b. The following representatives elected by its respective provincial components or caucuses:
 - i. Alberta Representative
 - ii. British Columbia Representative
 - iii. Manitoba Representative
 - iv. New Brunswick Representative
 - v. Newfoundland-Labrador Representative
 - vi. Nova Scotia Representative
 - vii. Ontario Representative
 - viii. Prince Edward Island Representative
 - ix. Québec Representative
 - x. Saskatchewan Representative
 - xi. Graduate Student Representative
 - xii. Aboriginal Student Representative
 - xiii. Francophone Students Representative
 - xiv. Racialised Students Commissioner
 - xv. Women's Representative

2. Powers and Responsibilities of the National Executive

The National Executive:

- a. shall observe and uphold the objectives of the Federation;
- b. shall be responsible for the execution and implementation of all Federation decisions;
- c. will co-ordinate work of Federation members and of the staff of the Federation, as well as any work undertaken in conjunction with provincial components or with local associations;
- d. is responsible for the management of the office(s) and staff of the Federation;
- e. will prepare the agenda for each national general meeting of the Federation and will distribute the agenda to all member local associations no later than four (4) weeks prior to the start of the national general meeting;
- f. will present a written report to each national general meeting that will include a review of:
 - i. the activities undertaken on its authority since the previous general meeting; and
 - ii. the disposition of all directives given the National Executive by the national plenary of the previous general meeting;
- g. will administer the affairs of the Federation in all things and make or cause to be made for the Federation in its name, any kind of contract into which the Federation may lawfully enter, subject to the direction of the national plenary;
- h. will be bound and guided by the policy established by the Federation in all decisions made and positions taken;
- i. is expressly empowered to purchase, lease, acquire, sell, exchange, or otherwise dispose from time to time, of shares, stocks, rights, warrants, options, and other securities: lands, buildings or other property, moveable or immovable, real or personal; or of any right or interest therein owned by the Federation, for such consideration and upon such terms as the Executive deems advisable;

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- j. may from time to time delegate such of its collective or individual duties and powers, excepting the casting of votes and signing authority, as it deems fit;
- k. shall comply with the will of the national plenary unless in the opinion of the National Executive:
 - i. significant new facts have been discovered; and
 - ii. the interest of the Federation would be adversely affected by acting in accordance with the national plenary's will.

In the event that the National Executive acts contrary to the will of the national plenary, it will immediately inform the member local associations in writing of its decision and the reasons for the decision, and include the matter on the agenda of the next national general meeting.

3. Duties and Powers of the National Chairperson

The National Chairperson shall:

- a. be a full-time salaried position;
- b. act as chief spokesperson and representative of the Federation; and
- c. perform all duties as described in the National Chairperson job description established as a Standing Resolution.

4. Duties and Powers of the National Deputy Chairperson

The National Deputy Chairperson shall:

- a. be a full-time salaried position;
- b. assume the duties and powers of the National Chairperson in the event that the National Chairperson is unable or unwilling to fulfil her duties and powers;
- c. serve as a signing authority for cheques of the Federation; and
- d. shall perform all duties as described in the Deputy Chairperson job description established as a Standing Resolution.

5. Duties and Powers of the National Treasurer

The National Treasurer shall:

- a. be a full-time salaried position;
- b. disburse the funds of the Federation under the direction of the National Executive and will report at each National Executive and national general meeting on her transactions as National Treasurer and on the financial position of the Federation; and
- c. perform all duties as described in the National Treasurer job description established as a Standing Resolution.

6. Duties and Powers of Provincial Component Representatives

The Provincial Component Representative shall:

- a. be expected to hold a portfolio position as assigned by the National Executive;
- b. communicate the views and perspectives of their respective provincial components at National Executive meetings;
- c. perform all duties as established by a Standing Resolution.

7. Duties and Powers of the Graduate Student Representative

The Graduate Student Representative shall perform all duties as established by Standing Resolution.

8. Duties and Powers of the Aboriginal Student Representative

The Aboriginal Students Representative shall perform all duties as established by Standing Resolution.

9. Duties and Powers of the Francophone Students Representative

The Francophone Students Representative shall perform all duties as established by Standing Resolution.

10. Duties and Powers of the Racialised Students Commissioner

The Racialised Students Commissioner shall perform all duties and have such powers as established by Standing Resolution.

11. Duties and Powers of the Women's Representative

The Women's Representative shall perform all duties and such powers as established by Standing Resolution.

12. Calling of National Executive Meetings

- a. The National Executive will meet at least four (4) times between each semi-annual general meeting.
- b. Except as otherwise required by law, the National Executive may hold its meetings at such places it may from time to time determine.
- c. Notice of meetings of the National Executive must be:
 - i. received orally or in writing by each member of the National Executive and each member local association not less than seven (7) days prior to the start of the meeting; or
 - ii. sent for delivery to each member of the National Executive and each member local association not less than fourteen (14) days prior to the start of the meeting.
- d. Emergency National Executive Meetings
The National Executive shall have the authority to convene a National Executive meeting by teleconference.
 - i. teleconference meetings of the Executive may be formally called upon written request by the National Chairperson, National Deputy Chairperson and/or National Treasurer; and
 - ii. notice of such meeting must be sent orally or in writing to each member of the National Executive not less than three (3) days prior to the start of the meeting and, if notice is provided orally, notice of the meeting shall also be transmitted electronically or via facsimile that same day."
- e. No formal notice of a meeting of the National Executive is required provided:
 - i. all National Executive Members are present; or
 - ii. those absent have signified their consent to hold a meeting.
- f. Meetings of the Executive may be formally called upon written request of quorum by any member of the National Executive.

13. Procedure at National Executive Meetings

- a. The Quorum for the transaction of business at meetings of the National Executive will be at least one-half of the members of the National Executive.
- b. The most recent edition of *Robert's Rules of Order* shall govern the conduct of all meetings of the National Executive.

14. National Executive Remuneration

Any remuneration paid to members of the National Executive shall be determined by the national plenary except as otherwise provided for in this Bylaw.

BY-LAW V - ELECTION OF THE NATIONAL EXECUTIVE

1. Eligibility of Nominees for the National Executive

- a. A nominee for the National Executive must have been an individual member of the Federation within the previous six (6) months, or a full-time salaried executive member of the Federation or of a provincial component of the Federation and must simultaneously come from a member local association.
- b. In addition to subsection (a), nominees for National Chairperson, National Deputy Chairperson, and National Treasurer must be a delegate of a member local association or provincial component, or a member of the National Executive at the general meeting in which the election is being conducted.
- c. In addition to Subsections (a) and (b) but not withstanding Section (d), a nominee for National Chairperson shall be able to comprehend and speak:
 - i. French and English, except where a documented disability prevents learning a second language; or
 - ii. French or English, and a First Nations language, except where a documented disability prevents learning a second language.
- d. In the event that a nominee for National Chairperson fails to demonstrate second language proficiency, as described in the Standing Resolutions, the nominee shall be eligible to stand for election provided that she declares her intention to be able to comprehend and speak a second language by no later than five (5) weeks prior to assuming the position of National Chairperson.

2. Timing of Elections for National Executive Members

a. Timing of Elections of At-Large Members

- i. The election of the National Chairperson shall be conducted at the annual general meeting.
- ii. The election of the National Deputy Chairperson shall be conducted at the annual general meeting.
- iii. The election of the National Treasurer shall be conducted at the Annual General Meeting.

b. Timing of Elections for Provincial Component Representatives

- i. The election of Provincial Component Representatives shall be conducted at such times as set out in the bylaws of the applicable provincial components; or
- ii. In the event that a provincial component does not have a functioning set of bylaws, as determined by the National Executive, the election of the Provincial Component Representative shall be conducted at a meeting of the component member local associations convened by the National Executive at the semi-annual general meeting.

c. Timing of Elections for the Graduate Student Representative

The election for Graduate Student Representative shall be conducted at such times as established by Standing Resolution.

d. Timing of Elections of the Aboriginal Student Representative

The election for the Aboriginal Student Representative shall be conducted at such times as established by Standing Resolution.

e. Timing of Elections of the Racialised Students Commissioner

The election for the Racialised Students Commissioner shall be conducted at such times as established by Standing Resolution.

f. Timing of Election of the Francophone Students Representative

The election for the Francophone Students Representative shall be conducted at such times as established by Standing Resolution.

g. Timing of Elections of the Women's Representative

The election for the Women's Representative shall be conducted at such times as established by Standing Resolution.

3. Procedures for Election of National Executive Members

a. Procedure for the Election of At-Large Members

Elections for National Chairperson, National Deputy-Chairperson and National Treasurer shall be conducted at national general meetings subject to the following rules and procedures:

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- i. elections shall be conducted by secret ballot;
- ii. each member local association present at the general meeting will be permitted one (1) vote in each election;
- iii. a nominee must receive a majority of the votes cast in order to be elected;
- iv. Prior to voting, a nominees' forum will be conducted by the Chief Returning Officer(s) in which:
 - nominees shall be allotted up to four (4) minutes to present opening statements;
 - the delegates shall be allotted up to fifteen (15) minutes to ask questions of candidates for each position:
 - questions shall be directed to all nominees;
 - questions shall be no more than forty five (45) seconds in length and shall not include preamble or commentary;
 - nominees shall have up to ninety (90) seconds in which to respond to questions.
 - nominees shall be allotted up to two (2) minutes to present closing remarks;
 - nominees shall have access to interpretation throughout the nominees' forum.

b. Procedure for the Election of Provincial Component Representatives

- i. The procedure for the election of Provincial Component Representatives shall be as set out in the bylaws of the applicable provincial components; or
- ii. In the event that a provincial component does not have a functioning set of bylaws, as determined by the National Executive, the procedure for election of the Provincial Component Representative shall be determined by the National Executive, notwithstanding that the election will be conducted by secret ballot and a nominee must receive a majority of the votes cast in order to be elected.

c. Procedure for the Election for the Graduate Student Representative

The election for the Graduate Student Representative shall be as established by Standing Resolution.

d. Procedure for the Election for the Aboriginal Student Representative

The election for the Aboriginal Student Representative shall be as established by Standing Resolution.

e. Procedure for the Election for the Racialised Students Commissioner

The election for the Racialised Students Commissioner shall be as established by Standing Resolution.

f. Procedure for the Election of the Francophone Students' Representative

The election for the Francophone Students' Representative shall be as established by Standing Resolution.

g. Procedure for the Election of the Women's Representative

The election for the Women's Representative shall be as established by Standing Resolution.

4. Term of Office for National Executive Members

a. Term of Office for At-Large Members

The term of office of the National Chairperson, National Deputy Chairperson and National Treasurer shall commence at the end of the closing plenary of the semi-annual general meeting immediately following the annual general meeting at which they were elected and shall expire at the end of the closing plenary of the following semi-annual general meeting.

b. Term of Office for the Provincial Component Representatives

- i. Provincial Component Representatives shall hold office for a term as set out in the Bylaws of the applicable provincial components; or
- ii. In the event that a provincial component does not have a functioning set of bylaws, as determined by the National Executive, the Provincial Component Representative shall hold office from the adjournment of the semi-annual general meeting at which the Representative is elected until the adjournment of the following semi-annual general meeting.

c. Term of Office for the Graduate Student Representative

The Graduate Student representative shall hold office for a term as established by Standing Resolution.

d. Term of Office for the Aboriginal Student Representative

The Aboriginal Student Representative shall hold office for a term as established by Standing Resolution.

e. Term of Office for the Racialised Students Commissioner

The Term of Office for the Racialised Students Commissioner shall be as established by Standing Resolution.

f. Term of Office for the Francophone Students' Representative

The Term of Office for the Francophone Students' Representative shall be as established by Standing Resolution.

g. Term of Office for the Women's Representative

The Term of Office for the Women's Representative shall be as established by Standing Resolution.

5. Removal from Office of National Executive Members**a. Removal of At-Large Members**

The National Chairperson, National Deputy-Chairperson and National Treasurer may be removed from office by a two-thirds vote at a national general meeting or by mail-out vote.

b. Removal of Provincial Component Representatives

- i. Provincial Component representatives may be removed from office as set out in the bylaws of the applicable provincial components; or
- ii. In the event that a provincial component does not have a functioning set of bylaws, as determined by the National Executive, the Provincial Component Representative may be removed from office by a two-thirds vote:
 - at a meeting of the component member local associations convened by the National Executive at a national general meeting;
 - at a meeting of the component member local associations convened by the National Executive outside of an national general meeting; or
 - by a vote-by-mail conducted by the National Executive;
 - following receipt by the National Executive of a petition signed by not less than one-half of the member local associations, belonging to the component, requesting such a vote.

c. Removal of the Graduate Student Representative

The Graduate Student Representative may be removed from office as established by Standing Resolution.

d. Removal of the Aboriginal Student Representative

The Aboriginal student representative may be removed from office as established by Standing Resolution.

e. Removal of the Racialised Students Commissioner

The Racialised Students Commissioner may be removed from office as established by Standing Resolution

f. Removal of the Francophone Students' Representative

The Francophone Students' Representative may be removed from office as established by Standing Resolution.

g. Removal of the Women's Representative

The Women's Representative may be removed from office as established by Standing Resolution.

h. Initiation of Removal from Office Proceedings

Removal from Office Proceedings against an at-large member of the National Executive may be initiated by:

- i. a two-thirds vote of the National Executive; or
- ii. a petition signed by no less than three member local associations presented to the National Executive.

i. Removal of National Chair for Failure to Achieve Second Language Proficiency

In the event that a member elected to the position of National Chairperson fails to achieve second language proficiency, as described in the Standing Resolutions, by no later than five (5) weeks prior to the general meeting at which the member is to assume the position of National Chairperson, the position will be declared vacant.

j. Attendance at National Executive Meetings

A member of the National Executive who, without authorisation of the National Executive, is absent from two (2) consecutive, regularly-scheduled meetings of the National Executive shall be deemed to have resigned her position on the National Executive.

Bylaw V

6. Replacement of National Executive Members

a. Vacancy in an At-large National Executive Position

In the event of a vacancy in the position of National Chairperson, National Deputy-Chairperson, or National Treasurer:

- i. the National Executive shall have the authority to appoint a member of the National Executive to fill the position, until the next national general meeting; and
- ii. an election for the position shall be conducted at the next national general meeting as per the election procedures set out in the Bylaws.

b. Vacancy in the Position of Provincial Component Representatives

- i. The procedure for filling a vacancy in a position of Provincial Component Representative shall be as set out in the bylaws of the applicable provincial component; or
- ii. In the event that a provincial component does not have a functioning set of bylaws, as determined by the National Executive, the procedure for filling a vacancy in the position of Provincial Component Representative shall be determined by the National Executive, notwithstanding that the vote will be conducted by secret ballot, a nominee must receive a majority of the votes cast in order to be elected and that the vote shall be conducted:
 - at a meeting of the component member local associations convened by the National Executive at a national general meeting;
 - at a meeting of the component member local associations convened by the National Executive outside of an national general meeting; or
 - by a vote-by-mail conducted by the National Executive.

c. Vacancy in the Position of Graduate Student Representative

A vacancy in a position of Graduate Student Representative shall be filled in a manner as established by Standing Resolution.

d. Vacancy in the Position of Aboriginal Student Representative

A vacancy in a position of Aboriginal Student representative shall be filled in a manner as established by Standing Resolution.

e. Vacancy in the Position of Racialised Students Commissioner

A vacancy in the position of Racialised Students Commissioner shall be filled in a manner as established by Standing Resolution.

f. Vacancy in the Position of Francophone Students Representative

A vacancy in the position of Francophone Students Representative shall be filled in a manner as established by Standing Resolution.

g. Vacancy in the Position of Women's Representative

A vacancy in the position of Women's Representative shall be filled in a manner as established by Standing Resolution.

7. Appointment of a Chief Returning Officer

The National Executive will appoint one member of the staff of the Federation to act as Chief Returning Officer for any National Executive election conducted at a national general meeting.

8. Notice of Elections for National Executive Positions

Information to be posted to member locals that includes, but is not limited to:

- a. rate of remuneration
- b. outline of duties and responsibilities
- c. outline travel obligations and/or necessary relocation.

9. Announcement of Election Results

Following the tabulation of votes for at-large positions, the Chief Returning Officers will announce to the plenary:

- a. the nominees elected;

- b. the process for additional balloting in the event that no nominees for a particular position receives a majority of the votes cast; and
- c. the vote count for each candidate if directed to do so by a two-thirds majority vote of the plenary.

BYLAW VI - PROVINCIAL COMPONENTS

1. General Description

A provincial component shall be comprised of all member local associations within a particular province.

2. Current Provincial Components

The current provincial components of the Federation are:

- a. Canadian Federation of Students - Alberta Component
- b. Canadian Federation of Students - British Columbia Component
- c. Canadian Federation of Students - Manitoba Component
- d. Canadian Federation of Students - New Brunswick Component
- e. Canadian Federation of Students - Newfoundland and Labrador Component
- f. Canadian Federation of Students - Nova Scotia Component
- g. Canadian Federation of Students - Ontario Component
- h. Canadian Federation of Students - Prince Edward Island Component
- i. Canadian Federation of Students - Québec Component
- j. Canadian Federation of Students - Saskatchewan Component

3. Funding of Provincial Components

A provincial component shall have the right to automatically receive a minimum level of funding established by a standing resolution.

4. Rights of Provincial Components

a. Appointment of Representatives to General Meeting Committees

A provincial component shall have the right to appoint representatives to committees at all Federation national general meetings.

b. Establishment of Committees

A provincial component may establish steering committees or other standing committees.

c. Policy

A provincial component may establish policy in its own name provided the policy does not contradict policy of the Federation.

5. Automatic Membership in a Provincial Component

A member local association automatically belongs to the particular provincial component corresponding to the province in which said member is located.

6. Voting in Provincial Component Meetings

Each member local association belonging to a Federation provincial component shall have one vote in meetings of the provincial component at national general meetings.

7. Designating of Provincial Components

Upon the request of the member local associations located within a particular province, the member local associations within that province shall comprise a provincial component, subject to a ratification vote by the national plenary and provided that the provincial component includes in its Constitution the national preamble and statement of purpose.

BYLAW VII - CONSTITUENCY GROUPS

1. General Description

A constituency group shall be comprised of individual delegates attending Federation national general meetings who share a common characteristic as recognized by the national plenary, except as provided for by the relevant Standing Resolutions.

2. Establishment of Constituency Group

A constituency group may be established subject to the following procedure:

- a. a group of delegates, wishing to be established as a constituency group, shall apply in writing to the national plenary for recognition;
- b. upon receipt of an application by a prospective constituency group, the National Plenary shall strike a review committee, comprised of at least one representative of the proposed constituency group and such other persons as selected by the national plenary, to review and make a recommendation concerning the application;
- c. in the event that the review committee recommends the establishment of the constituency group, its report to the national plenary must consist of a draft standing resolution outlining the goals, membership and general constitutional provisions of the constituency group; and
- d. a constituency group must, as a stated goal, support the Statement of Purpose of the Federation.

3. Current Constituency Groups

The current Constituency Groups are:

- Student Artists Constituency Group
- Students with Disabilities Constituency Group
- Francophone Students Constituency Group
- International Students Constituency Group
- Part-Time and Mature Students Constituency Group
- Queer Students' Constituency Group
- Racialised Students Constituency Group
- Women's Constituency Group

4. Constituency Groups Rights

a. Funding

A constituency group shall have the right to automatically receive a minimum level of funding established by a Standing Resolution.

b. Appointment of representatives to General Meeting Committees

A constituency group shall have the right to appoint representatives to committees at all Federation general meetings.

c. Establishment of Committees

A constituency group may establish steering committees or other standing committees.

d. Policy

A constituency group may establish policy in its own name provided the policy does not contradict policy of the Federation.

5. Meetings of Constituency Group

Meetings of constituency group shall be held during Federation general meetings.

6. Voting in Constituency Group Meetings

Each delegate belonging to a Federation constituency group shall have one vote in meetings of the constituency group, except where provided for by the relevant Standing Resolutions.

Bylaw VII

7. Reporting Structure

- a. Commissioners shall make reports to their respective constituency groups when requested by the constituency group. The reports shall be made available to the membership.
- b. National Executive Representatives and Commissioners with a vote on the National Executive must be ratified by plenary.
- c. Constituency groups are not otherwise obligated to report to plenary.

BYLAW VIII - CAUCUSES

1. General Description

A caucus shall be comprised of Federation member local associations with a common interest or concern.

2. Establishment of Caucuses

A caucus may be established subject to the following procedure:

- a. a group of member local associations, wishing to be established as a caucus, shall apply in writing to the national plenary for recognition;
- b. upon receipt of an application by a prospective caucus, the national plenary shall strike a review committee comprised of at least one representative of the proposed caucus and such other persons as selected by the national plenary, to review and make a recommendation concerning the application;
- c. in the event that the review committee recommends the establishment of a caucus, its report to the national plenary must consist of a draft standing resolution outlining the goals, membership and general constitutional provisions of the caucus; and
- d. a caucus must, as a stated goal, support the Statement of the Purpose of the Federation.

3. Designated Caucuses

The designated caucuses of the Federation are:

- National Aboriginal Caucus
- Caucus of College and Institute Associations
- Caucus of Large Institute Associations
- Caucus of Small University Associations
- National Graduate Caucus

4. Caucuses Rights

a. Appointment of Representatives to General Meeting Committees

A caucus shall have the right to appoint representatives to committees at all Federation national general meetings.

b. Establishment of Committees

A caucus may establish steering committees or other standing committees.

c. Policy

A caucus may establish policy in its own name provided the policy does not contradict policy of the Federation.

5. Scheduling of Meetings

Meetings of caucuses shall be held during Federation general meetings.

6. Voting in Caucus Meetings

Each member local association belonging to a Federation caucus shall have one vote in meetings of the caucus, except as provided for by the relevant Standing Resolutions.

BYLAW IX - FINANCES

1. Financial Year

The Fiscal year of the Federation will end on June 30th.

2. Cheques

- a. All cheques, bills of exchange, or other notes for the payment of money issued in the name of the Federation must be signed by the Chairperson, the Treasurer and/or such officers or agents of the Federation and in such manner as will from time to time be determined by the National Executive.
- b. The Treasurer or any such officer or agent may alone endorse notes, drafts for collection by, or deposit with the financial institutions which hold the accounts of the Federation and may alone arrange, settle, balance, and certify all accounts with those institutions.

3. Borrowing

The National Executive shall be empowered to:

- a. borrow money on the credit of the Federation;
- b. limit or increase the amount to be borrowed;
- c. issue or sell debentures or other securities of the Federation and set the sums and prices thereof;
- d. secure each securities, or any other legal liability of the Federation, by mortgages or pledge of any or all present or future property, undertaking, or rights of the Federation; and
- e. delegate to any of the officers or members of the Executive any of the powers conferred by the previous clauses of this Section (Bylaw XI, Section 3) and set the extent or terms of such delegation.

4. Auditors

- a. The voting members shall appoint the auditors of the Federation at each Semi-Annual General Meeting of members, to audit the financial statements of the Federation for the subsequent fiscal year.
- b. In the event of a vacancy in the position of auditors, the National Executive shall have the authority to fill the vacancy and fix the remuneration.
- c. The audited financial statements for the preceding fiscal year shall be presented to the voting members at each Semi-Annual General Meeting.

BYLAW X - OFFICERS

1. For official purposes, the Officers of the Federation will be the Chairperson, the Deputy Chairperson, the Treasurer and such other persons as the National Executive may from time to time determine.
2. The remuneration and conditions of employment of all officers will be settled from time to time by the National Executive subject to confirmation of remuneration by the voting members at the next general meeting of the Federation.

BYLAW XI - SEAL, DOCUMENTS, AND RECORDS

1. Custodian of the Seal and Records

The National Executive will appoint one member of the staff of the Federation to be the custodian of the seal of the Federation and of all books, papers, records, correspondence, contracts and other documents belonging to the Federation.

2. Execution of Documents

- a. Deeds, transfers, licenses, contracts, and engagements on behalf of the Federation will be signed by two Officers of the Federation and, where required, have the seal of the Federation affixed.
- b. The Treasurer or any other person appointed by the National Executive for that purpose may transfer or accept the transfer of any and all shares, bonds, or other securities in the name of the Federation; may affix the seal and deliver under the seal of the Federation all documents necessary for such purposes, including the appointment of attorneys.
- c. Notwithstanding any other provision of these Bylaws, the National Executive may at any time direct the manner in which any contract, obligation, or instrument of the Federation is executed.

3. Books and Records

The National Executive is responsible for ensuring that all books and records required by law or by these Bylaws are regularly and properly kept.

BYLAW XII - HEAD OFFICE

The head office of the Federation will be in the City of Ottawa, in the Province of Ontario, and at such locations as may be determined from time to time by the National Executive.

BYLAW XIII - OFFICIAL LANGUAGES

The official languages of the Federation shall be French, English, and Aboriginal Languages. The working languages of the Federation shall be French and English.

BYLAW XIV - AMENDMENT OF CONSTITUTION AND BYLAWS

1. Procedure for Amendment

The Constitution and Bylaws of the Federation may only be repealed or amended by the vote of at least two-thirds of the voting members present at a general meeting.

2. Notice

Notice of the substance of an amendment to this Constitution and Bylaws must be received by the National Executive at least six weeks before the general meeting at which it is to be considered. The National Executive shall mail notice of all proposed amendments to the voting members not less than four weeks before the general meeting at which they are to be considered. All said proposed amendments shall be made available simultaneously in both working languages of the Federation. The declaration of the National Executive that due notice has or has not been served will be held to be necessary proof of notice or of the lack thereof, unless evidence to the contrary is presented.

3. Amendment of Preamble

It is understood that the Preamble is a fundamental document and should not be amended except after extensive consultation amongst the Provincial Components and member local associations of the Federation.

4. Implementation of Constitution and By-law Amendments

The repeal or amendment of this Constitution and Bylaws will not be enforced or acted upon until the approval of the Minister of Consumer and Corporate Affairs has been obtained.

BYLAW XV - WINDING UP

Upon the winding up of the Federation, all assets of the Federation will be left to another non-profit organisation promoting the interests of students in Canada at a national level, which has policies, aims and goals congruent with those of the Federation.

BYLAW XVI - INTERPRETATION

1. Number and Gender of Words

Unless the context requires otherwise, all pronouns and possessive adjectives used in these Bylaws refer to persons of either gender, and all singular or plural meanings.

57th semi-annual national

GENERAL MEETING

Canadian Federation of Students(-Services)
Ottawa, Ontario • May 22 - 25, 2010

Travelling via Highway 40:

From Highway 40 take Highway 417.

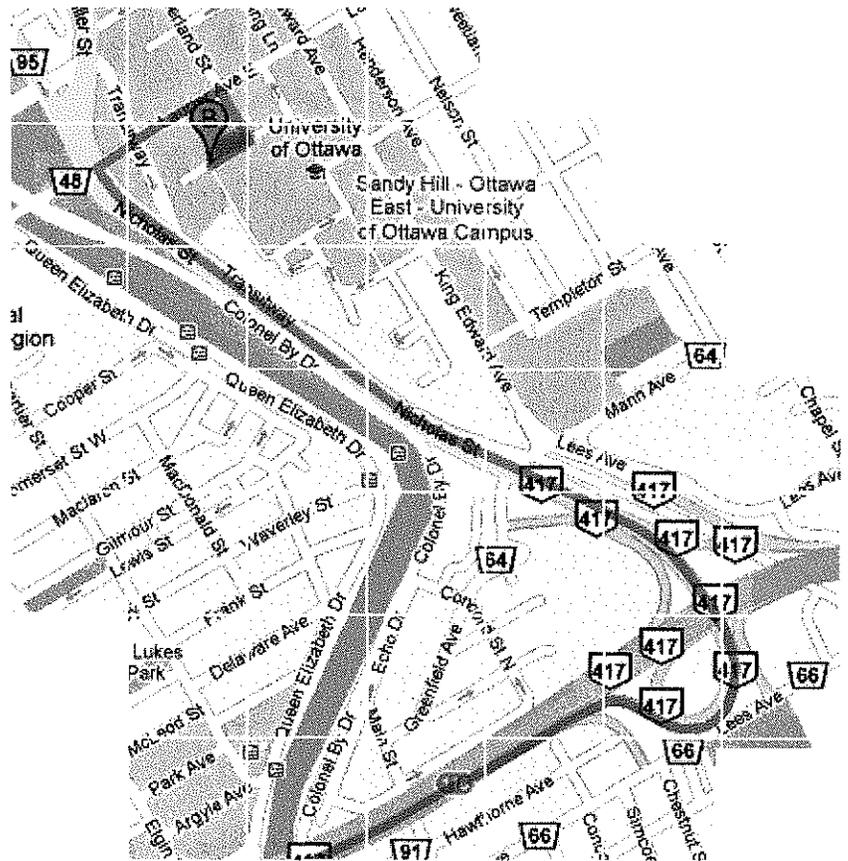
Travelling via Highway 401:

From Highway 401 take Exit 416.

Follow Highway 416 to Ottawa and exit onto Highway 417 East (Queensway East).

Once on highway 417

- From Highway 417 to Ottawa, take the Nicholas Street Exit 118
- Continue along Nicholas Street heading toward Autoroute 5
- At the 1st set of lights, turn right on Laurier Street East
- At the 2nd set of lights, turn right on Cumberland Street
- At the end of Cumberland Street, turn right on University Street
- The Residential Complex is located at 90 University



BUDGET - First Draft

Canadian Federation of Students/Canadian Federation of Students-Services

July 1, 2010 to June 30, 2011

	2008-2009 COMBINED STATEMENTS (Audited)	2009-2010 COMBINED BUDGET	2010-2011 COMBINED BUDGET (First Draft)
REVENUE ITEMS			
Membership Fees	3,715,684.13	3,252,000.00	3,200,000.00
Interest and Investments	73,327.41	20,000.00	25,000.00
National Student Health Network	301,091.45	71,200.00	50,000.00
Student Work Abroad Programme	221,414.10	218,157.00	150,000.00
Revenue from Travel CUTS	349,980.00	55,000.00	70,000.00
Other	81,202.83	4,500.00	5,000.00
TOTAL NET REVENUE	4,742,699.92	3,620,857.00	3,500,000.00
EXPENSE ITEMS			
Administration and Office	222,967.25	199,310.00	225,000.00
Allocations	755,262.17	892,613.34	850,000.00
Amortization	87,346.97	162,220.00	165,000.00
Audit	88,078.57	65,000.00	65,000.00
Bulk Buying Service: Handbook Printing	77,915.66	118,250.00	110,000.00
Bulk Buying Service: Orientation	79,095.68	61,000.00	65,000.00
Bulk Buying Service: Website	33,456.42	38,800.00	50,000.00
Building	18,950.95	25,320.00	25,000.00
Campaigns and Government Relations	526,915.35	668,000.00	625,000.00
Campaigns and Government Relations - Research	42,746.75	121,000.00	125,000.00
Communications	31,672.53	48,450.00	50,000.00
General Meetings - Annual	124,942.56	145,000.00	140,000.00
General Meetings - Semi-annual	99,407.88	138,800.00	125,000.00
ISIC/Studentsaver Net Expenses	303,001.37	287,450.00	300,000.00
Legal	313,527.48	125,000.00	125,000.00
Membership Development and Outreach	64,910.73	89,500.00	90,000.00
National Executive Meetings	53,287.83	58,500.00	60,000.00
National Executive Salaries	140,546.09	149,055.46	152,000.00
Office Rent and Related Costs	131,301.64	27,500.00	0.00
Other	9,914.54	32,500.00	30,000.00
Students' Union Directory	26,502.99	23,750.00	20,000.00
Contingency	0.00	97,560.00	96,000.00
TOTAL EXPENSES	3,231,751.41	3,574,578.80	3,493,000.00
SURPLUS/(DEFICIT)	1,510,948.51	46,278.20	7,000.00

AGENDA

Opening Plenary

May 2010 National General Meeting

1. ATTENDANCE ROLL CALL

The Federation's Bylaws require that no less than one-half of the voting members of the Federation having voting rights be present in-person or by-proxy at the general meeting for business to be conducted. A roll call of the voting members will be taken to determine attendance and to confirm that a quorum of voting members is present.

2. ANNOUNCEMENT OF PROXIES

The Federation's Bylaws enable a voting member that is unable to attend all or portions of a general meeting to appoint another member to act as its proxy for all or portions of the meeting. Notification of proxy appointments received in accordance with Bylaw II, Section 5-b, will be announced at this time.

3. RATIFICATION OF PLENARY SPEAKER

The plenary is the formal decision-making assembly at the general meeting. In order to facilitate the decision-making process, a Plenary Speaker is appointed to chair general meeting plenary sessions.

4. WELCOMING REMARKS AND INTRODUCTIONS

5. ADOPTION OF THE PLENARY AGENDA

The plenary will consider the plenary agenda prepared by the National Executive. Any changes to the agenda may be proposed at this time.

6. ADOPTION OF THE NATIONAL GENERAL MEETING AGENDA

The plenary will consider the proposed schedule for the four days of the general meeting. Any changes to the agenda may be proposed at this time.

7. ADOPTION OF THE NATIONAL GENERAL MEETING MINUTES

The plenary will consider the minutes of the previous national general meeting.

8. OVERVIEW OF PROCEDURES

- a. **Rules of Order and Plenary Procedures**
- b. **Anti-Harassment Procedures for the General Meeting**
- c. **Presentation by the Federation's Staff Relations Officer**

9. PREPARATIONS FOR ELECTIONS

- a. **Introduction of Electoral Officers**
- b. **Overview of Election Schedule and Procedures**

The Electoral Officers will provide an overview of the election schedule and procedures at this time.

PAGE 2 – OPENING PLENARY AGENDA

57th Semi-Annual National General Meeting of the Canadian Federation of Students(-Services)
Saturday, May 22 to Tuesday, May 25, 2010

10. ADOPTION OF STANDING PLENARY SUB-COMMITTEE AND FORUM AGENDA

As per Standing Resolution 1, Section 1, the following plenary sub-committees and forum are automatically struck:

- Budget Committee;
- Campaigns and Government Relations Forum;
- Organisational and Services Development Committee; and
- Policy Review and Development Committee.

The plenary will consider the plenary sub-committee and forum agendas prepared by the National Executive. Any changes or additions to the agendas may be proposed at this time.

11. CONSIDERATION OF MOTIONS SERVED WITH DUE NOTICE

The Federation Bylaws require that all motions except those of an emergency or procedural nature be submitted no fewer than six weeks prior to the general meeting at which they are to be considered.

a. Motions Served with Notice by the Previous General Meeting

The following motion was referred to the National Executive by the November 2009 national general meeting:

2009/11:039

MOTION

Local 75/Local 41

Whereas an online presence and institutional independent email is both an expectation and necessity in this day and age; and

Whereas one of the purposes of the Federation is to provide services for members; and

Whereas the Federation has developed an easy to use web interface and provides hosting to member locals at a charge; and

Whereas Facebook and other web mediums provide direct competition and Federation web hosting pricing is not currently competitive; therefore

Be it resolved that a free basic web hosting and email package be provided to all member locals;

Be it further resolved that the current web hosting pricing structure be reviewed with the aim of reflecting current market prices and bandwidth allowances; and

Be it further resolved that sufficient financial resources be allocated to ensure the technological stability of its hosting services.

The National Executive recommends the adoption of Motion 2009/11:039.

The following motion was referred to the National Executive by the November 2009 national general meeting.

2009/11:066

MOTION

Local 97/Local 41

Whereas the International Student Identity Card (ISIC) often referred to as the "student lifestyle card", is available to all full-time high school, college and university students above the age of 12; and

Whereas the ISIC Card acts as the only internationally recognized student ID card for over 4.5 million full-time students from 120 countries around the world, who utilize the card to take advantage of offers on travel, shopping, museums and more; and

Whereas the ISIC card is unavailable to part-time students, many of whom choose to study part time for a variety of reasons such as disability, family and childcare responsibilities, financial hardships etc as well as the effects of long-term systemic oppression on the basis of race, gender, age etc; and

Whereas the International Youth Travel Card (IYTC) is available to part-time students below the age of 25 (as a substitute for the ISIC Card), this still openly discriminates against mature students; and

Whereas the Canadian Federation of Students has included in its preamble a mandate of non-discrimination based on course load (and status as part-time students); therefore

Be it resolved that a national campaign be implemented to secure the ISIC Card for part-time students; and

Be it further resolved that the International Students Travel Services be lobbied to start issuing ISIC cards to part-time students; and

Be it further resolved that a working group be struck comprising members of various part-time unions to guide this work over the long run and lobby the Student Travel Service.

The National Executive recommends the adoption of Motion 2009/11:066 with subsequent amendment:

2010/05:N01 MOTION TO AMEND

Be it resolved that Motion-2009/11:137 be amended to read:

"Be it resolved that the ISIC Association of the World Youth Student Educational Travel Confederation be lobbied to allow for International Student Identity Cards to be issued to part-time students."

The following motion was referred to the National Executive by the November 2009 national general meeting:

2009/11:N81 MOTION
Local 79/Local 26

Whereas the Holland College Student Union is not an independent student union; and

Whereas the Holland College student union does not currently pay fees to the CFS; and

Whereas the CFS bylaws require that a member be both independent and obligated to pay fees to the national organization; therefore

Be it resolved that the Canadian Federation of Students immediately recognize that Holland College is not a member of the Federation.

The National Executive recommends defeat of Motion 2009/11:N81

The following motion was referred to the National Executive by the November 2009 national general meeting:

2009/11:088 MOTION
Local 21/ Local 41

Whereas the membership of the Federation has only manual access to records of the Federation through their student union; and

Whereas with association executive turnaround, it has become increasingly difficult for some student locals to obtain manual records of the Federation; and

Whereas the membership is more likely to visit the Federation's website for Federation records; and

Whereas it is in the best interest of the Federation to make its records as accessible as possible to encourage membership involvement in the Federation; and

Whereas National Executive meeting minutes, annual and semi-annual general meeting minutes and Caucus meeting minutes often contain time sensitive information; therefore

Be it resolved that all National Executive minutes, all annual general meeting minutes, all Caucus meeting minutes be posted on the Federation's website within thirty (30) days after the completion of each meeting.

The National Executive has no recommendation for Motion 2009/11:088.

The following motion was referred to the National Executive by the November 2009 national general meeting:

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57th Semi-Annual National General Meeting of the Canadian Federation of Students(-Services)
Saturday, May 22 to Tuesday, May 25, 2010

2009/11:158 MOTION TO ADOPT POLICY Local 71/Local 41

Be it resolved that the Issues Policy on "Public Transportation" be amended to add:

2. Universal Transit Pass (U-Pass) Programs

Preamble

Transit systems should be designed to provide affordable public transit to all citizens and should focus on creating systems that are equally accessible to all citizens. As a means of working toward this, bulk purchasing programs known as Universal Transit Passes (U-Pass) have been developed by transit authorities and universities and colleges across Canada. Depending on service and funding levels, U-Pass programs can either be progressive instruments that increase transit access to members, or regressive tax shifts that use students to subsidise under-funded transit systems.

Policy Statement

The Federation supports U-Pass programs as a means of providing increased accessibility to public transit to members at a reduced cost, with the following guiding principles:

a. Democratic Decision-Making

The terms and conditions, including price, should be set through negotiations between governments/transit authorities and students' unions and subject to ratification by union membership.

U-Pass contracts with governments/transit authorities should include a clause stipulating that all proposed increases to the U-Pass fee shall require membership approval via a referendum conducted by the students' union—notwithstanding the right of faculty, staff, and administrators to conduct their own democratic vote to participate in and raise fees for the U-Pass program.

b. System Input

U-Pass agreements should include mechanisms for students, through their students' unions, to have input into transit system operations, funding, design and planning as they relate to campus-specific transit services.

c. Institutional Support

In constructing U-Pass agreements, students' unions should endeavour to include their respective university or college as sponsors of the U-Pass such that any savings realized by institutions from reduced parking facilities and increased parking fees are passed on to students in the form of a subsidy to the U-Pass program. Institutional subsidies should be on a percentage basis.

d. Access

U-Pass agreements should prioritize affordable access to transit services and should identify free public transit in all of BC as a long-term goal of U-Pass programs.

U-Pass agreements should have opt-out clauses for members who live and work outside the transit service region and who have a minimal on-campus course-load.

e. Universality

U-Pass programs should be campus-wide and include agreements with all faculty, staff, students and administrators. Additionally, programs in the same region/area should not discriminate in price, service, or contractual obligations of the program based upon which institution one attends.

f. Collective Bargaining

In relation to universality, the Federation supports students' unions working together to collectively bargaining universal U-Pass agreements for their members in a given region/area. The Federation believes solidarity in collective bargaining is the only way to support the needs of all members.

g. Portability

Transit systems hosting a U-Pass program should provide free access to U-Pass holders of other transit systems in BC to create a network of access to public transit for all U-Pass holders in the province.

h. Long-Term Goal

Notwithstanding the existence of U-Pass agreements, the Federation will continue to campaign for a fully funded, public, province-wide system of transit provided to all citizens at no cost. Funding for transit should be provided through a progressive taxation system as opposed to user fees or private advertising, which are regressive forms of funding for a public service. U-Pass programs are not systems of taxation. As funding through taxation increases for public transit, U-Pass fees should be reduced along with all other forms of user fees.

The National Executive recommends the adoption of Motion 2009/11:158 with subsequent amendment:

2010/05:N02 MOTION TO AMEND

Be it resolved that Motion 2009/11:164, Issues Policy "Public Transportation", be amended to read as follows:

2. Universal Transit Pass (U-Pass) Programs

Preamble

Transit systems should be designed to provide affordable public transit to all citizens and should focus on creating systems that are equally accessible to all citizens. As a means of working toward this, bulk purchasing programs known as Universal Transit Passes (U-Pass) have been developed by transit authorities and universities and colleges across Canada. U-Pass programs can be progressive instruments that make transit more affordable for students and build life long ridership. However, U-Pass programs can also be used by under funded transit systems to download the costs onto the backs of students.

Policy Statement

The Federation supports U-Pass programs as a means of providing increased affordability of public transit for students, with the following guiding principles:

a. Democratic Decision-Making

The terms and conditions, including price, should be set through negotiations between governments/transit authorities and students' unions and subject to ratification by the union's membership through a democratic process conducted by the students' union.

U-Pass contracts with governments/transit authorities should include a clause stipulating that all proposed increases to the U-Pass fee shall require ratification by the union's membership through a democratic process conducted by the students' union –notwithstanding non-student members of the campus community who are participating in the process conducting their own democratic vote to participate in and raise fees for the U-Pass program.

b. System Input

U-Pass agreements should include mechanisms for students, through their students' unions, to have input into transit system operations, funding, design and planning as they relate to campus-specific transit services.

c. Institutional Support

in constructing U-Pass agreements, students' unions should endeavour to include their respective university or college as sponsors of the U-Pass such that any savings realised by institutions from reduced parking facilities and increased parking fees are passed on to students in the form of a subsidy to the U-Pass program.

d. Affordability

U-Pass agreements should make transit services more affordable and should identify free public transit as a long-term goal.

U-Pass agreements should have opt-out clauses for extenuating circumstances such as for students who are not serviced by the transit system.

e. Universality

U-Pass programs should be campus-wide and include agreements with all faculty, staff, students and administrators. Additionally, programs in the same region/area should not

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discriminate in price, service, or contractual obligations of the program based upon which institution one attends.

f. Collective Bargaining

In relation to universality, the Federation supports students' unions working together to collectively bargain U-Pass agreements for their members in a given region. The Federation believes solidarity in collective bargaining is the only way to support the needs of all members.

g. Portability

Transit systems hosting a U-Pass program should provide free access to U-Pass holders of other transit systems in Canada to create a network of access to public transit for all U-Pass holders in the province.

h. Long-Term Goal

Notwithstanding the existence of U-Pass agreements, the ultimate goal is a fully funded, public, system of transit provided to all citizens at no cost. Funding for transit should be provided through a progressive taxation system as opposed to regressive forms of funding such as user fees and private advertising. As funding for transit increases U-Pass fees should be reduced along with all other forms of user fees.

The following motion and the proposed amendment to it were referred to the National Executive by the November 2009 national general meeting:

2009/11:164 MOTION TO ADOPT POLICY
Local 71/Local 41

Be it resolved that the Issues Policy "Technology" be amended to read as follows:

Technology

Preamble

The Federation recognizes that technology plays a vital role in students academic and personal lives and has the ability to have both a positive and negative effect on the academic experience.

Policy

The Federation supports:

- the use of open source and free software at post-secondary institutions

The Federation opposes:

- the use of technology to censor access to the Internet;
- the purchase of hardware and software that lock the institution into long-term contracts with proprietary vendors to the exclusion of alternatives;
- additional student fees charged for technology;
- the use of technology to replace teachers and teaching assistants' labour; and
- forcing students to purchase technology in order to participate in an academic program.

The National Executive recommends the adoption of Motion 2009/11:164 with subsequent amendment:

2010/05:N03 MOTION TO AMEND

Be it resolved that Motion 2009/11:164, Issues Policy "Technology", be amended to read as follows:

Technology

Preamble

The Federation recognizes that technology plays a vital role in students academic and personal lives and has the ability to have both a positive and negative effect on the academic experience.

Policy

The Federation supports:

- the use of open source and free software at post-secondary institutions;

- the use of technology to make academic courses more accessible to students, so long as this does not compromise the quality of education; and
- access to adaptive technology and software for students living with disabilities.

The Federation opposes:

- the use of technology to censor access to the Internet;
- the purchase of hardware and software that lock the institution into long-term contracts with proprietary vendors to the exclusion of alternatives;
- additional student fees charged for technology;
- the use of technology to replace teachers and teaching assistants' labour, particularly where it has a negative effect on students' academic experience; and
- forcing students to purchase technology in order to participate in an academic program.

b. New Motions Served with Notice

The following motions were served with notice and shall be considered at the meeting.

2010/05:N04 MOTION TO ADOPT POLICY
 Local 11/

Be it resolved that the Post-Secondary Issues Policy on Rationalisation, be struck and replaced with the following:

Post-Secondary Issues Policy on Rationalisation

Preamble

Rationalisation is the amalgamation, re-distribution or re-structuring of post-secondary institutions by provincial governments which often results in the loss of programs, departments, schools, colleges and whole institutions. Chronic federal government underfunding and the unwillingness of provincial governments to prioritize post-secondary education spending has resulted in a turn by provincial governments to Rationalisation as a means to reduce spending in the post-secondary education sector.

In provinces where Rationalisation has been implemented, such as Nova Scotia where a review of post-secondary education in the 1990's resulted in the absorption of the Technical University of Nova Scotia into Dalhousie and the consolidation of Education programs at Acadia, Mount Saint Vincent, St Francis Xavier, and Sainte-Anne, there has not been a notable improvement of the quality or cost-effectiveness of the system.

When considering Rationalisation governments often assume that by replacing several small bureaucracies by one-or-more larger ones there will be reductions in cost and improvements in efficiencies. There is however, no evidence to suggest that large bureaucracies are actually more efficient than small ones, while the damage to the quality of education is likely to be out of proportion to whatever savings, real or imagined, might accrue.

Rationalisation can also compromise the unique quality of each individual institution's academic offerings as well as campus cultures. The unique nature of each institution's academic programs and campus culture not only enhances the student experience but also helps to recruit students and renowned faculty. Rationalisation can in turn damage the reputations of individual institutions.

Rationalisation is more likely to result in closures of and cuts to smaller and/or underfunded institutions and smaller and/or underfunded and "niche" programs that are seen as less profitable by university administrators and government.

Rationalisation can also reduce access to post-secondary education, especially for students from rural or distant communities. The closure of an institution or cutting of a specific program in these communities could reduce access for current or potential students who may not be able to afford to move away from home and attend an institution in another community.

Policy

The Federation supports:

- A post-secondary education system that promotes a variety of university experiences created by a diverse pool of institutions in a given province, both academically and culturally.

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- A post-secondary education system that promotes distinct approaches to curriculum, even in traditional disciplines, amongst institutions.
- Enhanced co-operation between various institutions not motivated by the need to reduce spending within the system and where it enhances the student experience.
- Policies designed to encourage further co-operation between institutions to the extent that they make the admissions and registration processes simpler and more user-friendly for students.
- The prioritization of post-secondary education funding by provincial governments in lieu of the amalgamation, re-distribution or re-structuring of post-secondary institutions resulting in the loss of programs, departments, schools, colleges and whole institutions in an attempt to cut costs.

The Federation opposes:

- The closure of institutions or amalgamation, re-distribution or re-structuring of post-secondary institutions resulting in the loss of programs, departments, schools, colleges as a means to avoid increasing provincial funding to post-secondary education.
- Rationalisation that results in a reduction of access, lessening of quality and loss of distinct campus culture.
- Rationalisation that targets small and/or underfunded institutions and small and/or underfunded or "niche" departments and programs.

2010/05:N05 MOTION TO AMEND POLICY Local 98/

Whereas the Federation's vision for the structure of Canada's post-secondary is currently divided between four policies; and

Whereas it would be more clear to include this vision in one policy; therefore

Be it resolved that the policies on Canadian Constitution, Post-Secondary Education Agreement and Principles, Post-Secondary Education and Research Department and National Advisory Council on Post-Secondary Education and Research, be repealed and replaced with the following policy titled Structure and Responsibility for Post-Secondary Education in Canada:

Structure and Responsibility of Post-Secondary Education in Canada:

Preamble

In Canada post-secondary education is an area of shared responsibility between the provincial and the federal governments. While the Constitution assigns jurisdictional authority for education to provincial governments, the federal government is the biggest single funder of post-secondary research and education in the country through transfer payments to the provinces and the funding by the federal government of programs, which it sponsors;

Despite the federal government's central role in post-secondary education, Canada remains the only major industrial country without national oversight over higher education.

Policy

The Federation supports:

- post-secondary education and research as constitutionally a shared responsibility of the provincial governments and the federal government;
- continued transfer payments from the federal government to the provinces and funding by the federal government of programs which including student assistance, Aboriginal education, vocational training, post-secondary student summer employment and official languages;
- the funding of post-secondary education and research, student assistance, and vocational training for the Province of Québec, subject to negotiations between the Québec and the Federal Government; and
- post-secondary education funding be enshrined in the constitution, subject to negotiations to take account of the uniqueness of Quebec and of Aboriginal peoples.
- the legislation of a federal Post-Secondary Education Act which would guarantee that funding of Post-secondary Education ultimately be the responsibility of the federal government;

- the appointment of a federal Minister for Post-Secondary Education and Research responsible for presenting an annual report to the House of Commons detailing federal, provincial and territorial educational expenditures;
- the establishment of a National Advisory Council on Higher Education and Research.
- the reformulation of federal transfer payments to the province's for post-secondary education by resuming the taxing power transferred to the provinces and thereafter exclusively transferring cash payments to the provinces;
- the calculation of the funding formula based on a given province's student population rather than provincial population;
- the abolition of tuition fees;
- Dedicating a portion of income and corporate taxes to contribute to post-secondary education and research funding; and

Post-Secondary Education Act, Agreement and Principles

Preamble

After years of federal funding cuts throughout the 1990s, the quality and accessibility of universities and colleges are at risk. Skyrocketing tuition fees, fewer instructors, larger classes, fewer course offerings, reduced library holdings, and the commercialisation of research are all symptomatic of the continuing and chronic public under-funding of post-secondary education.

There is an urgent need for a pan-Canadian strategy on both the level of funding and the mechanism and rules by which the federal government provides support for post-secondary institutions and students.

Legislation is needed to establish a long-term and predictable funding commitment from the federal government, and to create common standards and principles governing the delivery of post-secondary education across the country.

Policy

The Federation supports the legislation of a federal Post-Secondary Education Act and the creation of a Post-Secondary Education Agreement between the provincial and territorial governments and the federal government that includes the participation of Aboriginal leadership that would:

- delineate the respective mandates of the federal and provincial/territorial governments;
- establish the standards based on pan-Canadian principles;
- establish mechanisms to enforce the principles; and
- outline funding and access formulas.
- guarantee Quebec the right to opt-out.

The Federation supports provincial/territorial governments also establishing their own legislation with respect to the principles.

The Federation supports the inclusion of Pan-Canadian Principles in the post-secondary education act, which would ensure a high quality, publicly funded and administered, fully accessible, comprehensive and accountable system of post-secondary education in Canada.

These principles should be:

- **Public Administration:** Post-secondary education programs must be administered and operated on a non-profit basis by a public authority appointed or designated by the government of the province, which is responsible to the provincial government. The public authority must be open and transparent and be subject to audit of its accounts and financial transactions;
- **Comprehensiveness:** Post-secondary education institutions of a province must provide a reasonable range of programs and curricula in order to ensure that students have access to a variety of education options, including community colleges, professional and vocational training, distance education and continuing and adult education;
- **Accessibility:** Post-Secondary education programs must be open to all persons with the desire and capacity to be educated, on uniform terms and conditions, irrespective of their background. Institutions must develop policies and programs that remove barriers to post-secondary education due to socio-economic status or membership in groups or classes of

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- persons that are not fully served by existing post-secondary programs, including the elimination of all user fees. A national system of grants must be available to students in need, and students must be able to transfer credits between institutions without barriers;
- Collegial Governance: Post-secondary education institutions must be governed in a collegial manner that includes meaningful and effective representation on governing bodies from faculty and students; and
 - Academic Freedom: Post-secondary education institutions must assure protection of the principle of free and independent academic inquiry and the government of the province must assure the academic and intellectual autonomy of post-secondary institutions.

Minister and Department of Post-Secondary Education and Research

The Federation supports the creation of a federal department of Post-secondary Education and Research to co-ordinate:

- funding for post-secondary education and research;
- the Canada Student Loan Program and Canada Student Grant Program;
- student summer employment programs;
- admission of international students (with the department of Immigration);
- collection of statistics pertaining to post-secondary education; and
- collection of data on science and technology.

The department of Post-secondary Education and Research would be accountable, with the provinces and territories, for the shared funding of the operation of universities and colleges. The department would be headed by a federal Minister for Post-secondary Education and Research.

The Minister would be obliged to present an annual report to the House of Commons and the Advisory Council on Post-secondary Education, detailing federal, provincial and territorial educational expenditures. The Minister would be responsible for ensuring a level of accessibility and quality of post-secondary education system as encompassed by the principles outlined in the Federation's preamble and in the Federation's Declaration of Students' Rights.

National Advisory Council on Post-Secondary Education and Research

The Federation supports the creation of a National Advisory Council on Post-secondary Education and Research headed by the federal Minister for Post-secondary Education and Research which would:

- bring together representatives from the education and research communities, with students, constituency group representatives, faculty, support staff, administration and government;
- ensure that higher education, student assistance, and research continue to promote the broader public good;
- ensure that federal and provincial policies on post-secondary education are harmonised;
- meet regularly with the provincial and territorial Ministers of Advanced Education;
- examine the equity of access to programs and the quality of the education;
- ensure that the pan-Canadian principles are not reduced to a race to the bottom, to the lowest provincial or territorial standard; and
- be elected democratically by a group of their peers.

The Federation supports the existence of the Council of Ministers of Education Canada and supports the Council being adequately funded to allow for its equal participation with the federal department of Post-secondary Education and Research.

2010/05:N06

MOTION

Local 98/

Whereas the quality and affordability of public transit is a daily concern that affects the ability of students to travel to class and work; and

Whereas Canada is the only country in the Organisation for Economic Co-operation and Development (OECD) without a national transit strategy and associated government financial commitments; and

Whereas the Federation's We Ride campaign has led to important transit victories in cities and towns across Canada, including securing discounted student pricing for transit,

expanded service to and from colleges and universities, and the removal of age-caps for student fares; and

Whereas many member local representatives have been working at the municipal level to improve transit and secure discounts and have found local transit systems to be underfunded and incapable of effectively addressing student concerns; therefore

Be it resolved that the work be undertaken with labour unions and environmental and community groups that share a commitment to affordable public transit to call on the Government of Canada to provide stable funding for public transportation and adopt a national strategy for public transportation that guarantees its accessibility, affordability and sustainability.

2010/05:N07 MOTION TO AMEND BYLAWS

Local 98/

Whereas there has been some discussion regarding the use of electronic voting for membership referenda;

Whereas in the past year there have been at least three students' union elections in Canada where the security of electronic voting systems was breached; and

Whereas there are a myriad of concerns with online voting and the Federation's Bylaws were never intended to allow such voting; therefore

Be it resolved that Bylaw 1, Article 4.f.i. be amended to read:

f Voting and Tabulation

- i. Voting must be conducted by paper ballot and cannot be conducted in any other manner. Voting must take place at voting stations or, subject to the agreement between the prospective member association and the Federation, at a general meeting of the prospective member association or by a mail-out ballot.

Be it further resolved that Bylaw 1, Article 6.g.i be amended to read:

g. Voting and Tabulation

- i. Voting must be conducted by paper ballot and cannot be conducted in any other manner. Voting must be conducted at voting stations or, subject to the agreement of the Referendum Oversight Committee, by mail-out ballot.

2010/05:N08 MOTION

Local 98/

Whereas students have historically shaped broader social and political change through promoting and advocating for a more equitable society; and

Whereas the Federation's founding principle, that education is a right, enshrines universal accessibility of education, free from any barrier; and

Whereas inequities based on, but not limited to, race, gender, sex, (dis)ability, sexual orientation, age or citizenship status affect students' capacity to access education and to do so in an environment free from discrimination; and

Whereas students' unions are advocates for the rights of all students to be free of discrimination and inequities and are charged with promoting this right; and

Whereas the issues associated with the promotion of equity and with marginalised constituencies may not be apparent to all student representatives or students' unions; and

Whereas many students' unions may not have the resources or experience to undertake equity campaigns on their own; therefore

Be it resolved that member locals be encouraged to undertake equity campaigns and promote equity at their respective college or university; and

Be it further resolved that research be undertaken into how students' unions around the world have worked to promote equity on- and off-campus; and

Be it further resolved that materials be produced promoting equity for local students' unions; and

Be it further resolved that an equity handbook be developed based on this research and made available online for members' and general use.

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2010/05:N09 MOTION TO ADOPT POLICY

Local 98/

Whereas there has been no conflict of interest demonstrated by any member of the Federation's National Executive; and

Whereas it is nonetheless desirable to have a code of ethics to prevent both the actual occurrence of a conflict of interest, as well as the perception of such a conflict; and

Whereas it is desirable for the Federation to serve as a model of transparency and accountability; and

Whereas the code of ethics below was developed with reference to numerous similar codes that are used in the public and private sectors; therefore

Be it resolved that the Operational Policy titled "Executive Committee Code of Ethics" be adopted:

National Executive Code of Ethics

Preamble

It is the Federation's desire that members of the National Executive conduct themselves with integrity that is beyond reproach and in a manner that:

- avoids any conflicts of interest;
- protects confidential information, in accordance with the Freedom of Information and Protection of Privacy Act;
- complies with all applicable governmental laws, regulations, and rules; and
- adheres to good disclosure practices, in accordance with all applicable legal and regulatory requirements.

Conflicts of Interest

Conflicts of interest can occur when a member of the National Executive jeopardises her position of trust by having a private interest in the outcome of a decision. The Federation can suffer damage by the perception as well as the reality of the conflict itself. The boundaries defining what constitutes a conflict are not static but shift as the goals and mandates of the Federation evolve.

To avoid involvement in a conflict of interest, members of the National Executive shall not:

- engage in any business or transaction or have a financial or other personal interest that may improperly impact upon the performance of their official duties, including:
 - i. having a material interest in any business organisation that has dealings with the Federation; and
 - ii. having immediate relatives who have a material interest in a business organisation that has dealings with the Federation.
- demand, accept or offer, or agree to accept from a person or company having dealings with the Federation, a commission, reward, advantage or benefit of any kind, directly or indirectly; and
- engage in any business undertaking that interferes with the performance of their duties as members of the National Executive.

Members of the National Executive shall disclose any business, commercial, financial or other interest where such interest might be construed as being in actual or potential conflict with their official duties. Members who do not declare their interests and who are subsequently found to be in a conflict of interest situation, will have breached this policy.

Confidentiality

In order to adhere to principles of integrity and privacy, to avoid breach of confidentiality, members of the National Executive shall:

- not disclose to any member of the public, either orally or in writing, any confidential information acquired by virtue of their position in the Federation;
- not use any confidential information acquired by virtue of their position at the Federation for their personal and private financial benefit or for that of their friends or relatives; and
- not permit any unauthorised person to inspect or have access to any confidential documents or other information.

Compliance with Laws

Members of the National Executive, in the course of their position with the Federation, shall comply with all applicable government laws, rules and regulations, including without limitation:

- Federation Bylaws, Standing Resolutions and policy;
- Canada Corporations Act;
- Privacy Act;
- Collective Agreements and all employment related laws and policies.

Commitment to the Code of Ethics

Members of the National Executive shall be provided with an orientation to the Code of Ethics upon the commencement of their position. Members shall be required to sign a declaration of commitment to the Federation's Code of Ethics in order to be ratified to the National Executive.

2010/05:N10 MOTION TO AMEND POLICY

Local 98/

Whereas the policy on Civil Liberties and Human Rights actually refers to a policy on Black History/African Liberation Month; therefore

Be it resolved that the title of the policy on Civil Liberties and Human Rights be changed to Black History/African Liberation Month.

2010/05:N11 MOTION

Local 73/

Whereas as the Federation supports strong sustainable and environmental policy and tanker traffic will inevitably end in an oil spill causing extreme environmental devastation; and

Whereas as the Federation supports the rights of the first nations people to their land and autonomous first nations governments; and

Whereas Costal First Nations have issued a declaration banning crude oil tankers from their territories and an immediate stop to the Enbridge Pipeline Project; therefore

Be it resolved that the ban on crude oil tankers on the coasts of Canada be supported; and

Be it further resolved that the call for an immediate halt to the Enbridge Pipeline Project be supported.

2010/05:N12 MOTION TO ADOPT POLICY

Local 73/

Whereas the Federation's anti-harassment policy is currently divided between two policies; and

Whereas this policy should be as clear as possible so that members of the Federation are fully aware of the organisation's position and policy on harassment; therefore

Be it resolved that the section entitled Anti-Harassment in the Operations Policy on National General Meetings be removed; and

Be it further resolved that the Student Issues policy on Sexual Harassment be repealed; and

Be it resolved that the following Operations Policy be adopted:

Anti-Harassment

Preamble

Harassment is the abusive or demeaning treatment of a person that has the effect of creating a hostile or intimidating environment for that person, Harassment may occur in the following situations:

- through the abuse of power that one person holds over another, or through the misuse of authority;
- through offending or demeaning a person on the basis of their race, colour, ancestry, place of origin, nationality, religion or religious beliefs, family or marital status, physical or mental

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disability, age, gender, sexual orientation, or gender orientation, whether these be actual or perceived;
and/or

- through abusive treatment which leaves a person feeling threatened or intimidated.

Sexual harassment is a display, by word or deed, of sexual attentions towards another person of a nature which may be reasonably considered to be vexatious, abusive, or threatening. Without limiting the generality of that definition, sexual attention shall be deemed to be "vexatious, abusive, or threatening" if the harasser, directly or indirectly, offers the harassee an advantage or opportunity, real or perceived, in return for sexual favours, or directly or indirectly threatens or imposes on the harassed any denial of advantages or opportunity.

Sexual harassment may include unwanted sexual attention or solicitation which has the effect of interfering with an individual's work or participation, or which creates a negative emotional or psychological environment for work or participation within the Federation. For example: remarks, jokes or innuendoes about a person's body, attire, age, marital status, gender, sexuality, sexual orientation, perceived sexual orientation or perceived gender orientation;

Although sexual harassment typically involves a person in a superior position as the initiator, it is recognised that people in subordinate or equal positions may also be initiators. Although sexual harassment is generally directed towards women, both men and women can be harassed by members of either sex.

Policy

The Federation will not tolerate harassment or sexual harassment of any form. The Federation shall employ the following procedure for dealing with incidents of harassment which may occur at any Federation event. Throughout this process the principles of confidentiality and due process shall be strictly adhered to:

Advisor

The Federation shall retain for the duration of all general meetings the services of a Harassment Advisor who will be available on a 24-hour basis. The Advisor shall be experienced in dealing with incidents of harassment and sexual harassment, shall possess training in peer support, advocacy and active listening, and a minimum of three (3) years of demonstrable employment experience in a related field. The Advisor shall be bilingual.

Orientation

Time will be allocated for a presentation on harassment policy during the opening plenary at every national general meeting.

Complaints

Any participant at a Federation event who believes that she or he has been subjected to harassment is encouraged to utilise the Federation's process for dealing with incidents of harassment. If the person would like to make a direct request of the harasser in an attempt to prevent further incidents of objectionable behaviour, that person is encouraged to do so. Should the complainant wish to have the incident dealt with through the available process, the complainant may approach the Harassment Advisor, who shall hear the complaint and counsel the complainant.

With the consent of the complainant, the Advisor may attempt to find an amicable resolution to the incident by speaking with the alleged harasser and by acting as an intermediary between the two parties.

At any time, the complainant may launch a formal complaint. The Advisor may assist in the formulation of the complaint, and shall remain available to advise the complainant throughout the process.

The Harassment and Grievance Committee

For each formal complaint brought forward, a committee shall be struck composed of the Harassment Advisor, one member of the National Executive, and one delegate from the meeting at which the alleged harassment took place. Both the delegate and

the National Executive member must be satisfactory to both the complainant and the respondent. Committee members cannot have been involved in the case previously.

The Advisor on the committee shall advise both the complainant and the respondent of the nature of the allegation, the process to be followed, and their rights within that process.

The committee shall be empowered to undertake a confidential and independent investigation of the complaint. The committee may call witnesses who may prove useful in determining the nature of the incident. At all times the committee shall be cognisant of and respect the right of each party to know and respond to all allegations, as well as the principles of natural justice.

The complainant shall reserve the right to discontinue proceedings at any time.

All proceedings and records of the committee shall remain strictly confidential.

Remedies

Should the Grievance Committee determine that the incident(s) did constitute harassment, it may provide for a remedy. Any remedy should take into account such factors as the severity and frequency of the harassment, whether the harassment was deliberate or inadvertent, and any circumstances that either aggravated or mitigated the situation.

Remedies may include but shall not be limited to the following: an apology from the harasser to the harassed, recommendations for outside counselling for the harasser, and prevention of contact between the parties, which may be brought about by banning the harasser from all selected Federation activities.

A simple majority shall determine the Grievance Committee decision. Reprisals constitute further harassment. An appeal must be made in writing, stating the grounds of the appeal, to one of the harassment advisors or one of the At-large Members of the National Executive.

Appeals

An appeal may be launched within 30 days of the grievance committee's decision if either party wishes to question the findings, remedies or process of the committee. An appeal must be made in writing, stating the alleged breach(es), to one of the harassment advisors, or one of the At-Large members of the National Executive.

The Appeals Committee shall consist of one Harassment Advisor, one representative chosen by the appellant, and one representative appointed by the Grievance Committee, both of whom must have been a participant in the meeting at which the alleged harassment took place, as a delegate, a national or component elected representative, or as a national or component staff member. No member of the appeals committee shall have any previous involvement with the case. The appeals committee shall hear submissions from both the respondent and the appellant regarding the legitimacy of the process followed, the suitability of the remedy, or the finding(s) in question, and shall render their decision on a majority vote.

Records

Records of all cases shall be confidentially maintained by the National Chairperson, at the Federation, and only active committee members shall have access to these files, on a need-to-know basis, based on the relevancy of the file to the case they are currently working on.

The Harassment Advisors will submit, within six (6) weeks after the conclusion of each general meeting, a non-identifying report which will include the number of complaints, nature of complaints, number of cases resolved, number of cases not resolved.

2010/05:N13

MOTION TO AMEND BYLAWS

Local 73/

Whereas the Federation has adopted an organizing model based roughly on the Canadian labour movements;

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Whereas the terms “Federate” and “De-federate” are obscure phrases; and

Whereas using more common language would help clear up misunderstandings about the process and impact of strengthening the student movement and, conversely, attempts to weaken it; therefore

Be it resolved that the Bylaw 1.2.a.i, Bylaw 1.2.b.viii through xii, Bylaw 1.3.a.i and ii, Bylaw 1.4 and Bylaw 1.6 be amended to read:

2. Types of Voting Membership Status

a. Full Membership

General Description: Full membership is the standard form of membership in the Federation.

- i. A local association is eligible to apply for full membership in the Federation if its members have approved by a vote on certification, their membership in the Canadian Federation of Students, the Canadian Federation of Students-Services, and the applicable provincial component as described in Bylaw VII-Provincial Components;

b. Prospective Membership

- viii. A prospective member association must hold a vote on certification in the Federation, in accordance with Section 5 of this Bylaw, within twelve (12) months following its acceptance as a prospective member unless an extension is granted by the National Executive of the Federation;
- ix. In the event that the majority of those voting support full membership in the Federation, full membership will be granted at the subsequent national general meeting, at which point prospective membership shall cease;
- x. In the event that the majority of those voting oppose full membership in the Federation, prospective membership will immediately cease;
- xi. In the event that the vote fails to achieve quorum, prospective membership will be automatically extended and another vote on certification will be held within the subsequent six (6) months in accordance with Section 5 of this Bylaw; and
- xii. In the event that a prospective member fails to conduct a vote on certification as required by this Bylaw, the Federation shall have the option to either cancel or extend, by majority vote of a national general meeting, the prospective membership until a vote on certification is conducted.

3. Membership Rights and Responsibilities

a. Rights of Individual Members

- i. The individual members of the Federation collectively belonging to a member local association will have sole authority to make decisions through a vote all questions of membership in the Federation, subject to the other provisions of this Bylaw.
- ii. The individual members of the Federation collectively belonging to a member local association will have sole authority to initiate, by petition signed by not less than ten percent (10%) of the individual members and delivered to the National Executive, a vote to certify as described in Article 4 of this Bylaw.
- iii. The individual members of the Federation collectively belonging to a member local association will have sole authority to initiate a vote on decertification, as described in Section 6 of this Bylaw, by submitting to the National Executive of the Federation a petition, signed by not less than twenty percent (20%) of the individual members of the association, calling for the vote.

4. Vote to Certify

In accordance with Section 2 of this Bylaw, the following shall be the rules and procedures for a vote, in which the individual members of a prospective member local association may vote on full membership in the Federation:

a. Scheduling of the Vote

The vote will be scheduled by the prospective member association in consultation with the Federation.

b. Oversight Committee

The vote will be overseen by a committee composed of two (2) members appointed by the prospective local association and two (2) members appointed by the Federation, that will be responsible for:

- i. establishing the notice requirement for the vote in accordance with Section 4-c of this Bylaw and ensuring that notice is posted.
- ii. establishing the campaign period in accordance with Section 4-d of this Bylaw.
- iii. approving all campaign materials in accordance with Section 4-e of this Bylaw and removing campaign materials that have not been approved.
- iv. deciding the number and location of polling stations.
- v. setting the hours of voting in accordance with Section 4-f of this Bylaw.
- vi. overseeing all aspects of the voting.
- vii. counting the ballots following the vote.
- viii. establishing all other rules and regulations for the vote.

c. Notice of Vote

Notice of the Vote, that includes the question and voting dates, shall be provided to the individual members of the prospective member no less than two (2) weeks prior to the first day of voting.

d. Campaigning

- i. There must be no less than ten (10) days on which campaigning is permitted, during which classes are in session, immediately preceding and during voting; and
- ii. Only individual members and representatives of the prospective member association, representatives of the Federation and representatives of the Federation member local associations shall be permitted to participate in the campaign.

e. Campaign Materials

- i. Campaign materials shall include all materials developed specifically for campaign.
- ii. Materials produced by Federation that promote campaigns and services of the Federation shall not be considered as campaign materials unless they include specific content about the vote.
- iii. The Federation website shall not be considered a campaign material unless it includes specific content about the vote.
- iv. The Federation's annual report, financial statements, research and submissions to government shall not be considered a campaign material.
- iv. Campaign materials shall not be misleading, potentially libelous or false.

f. Voting and Tabulation

- i. Voting must be conducted at voting stations or, subject to the agreement between the prospective member association and the Federation, at a general meeting of the prospective member association or by a mail-out ballot.
- ii. There must be no less than sixteen (16) hours of polling over no less than two (2) days, except in the case of voting being conducted at a general meeting.
- iii. Unless mutually agreed otherwise by the prospective member association and the Federation, the question shall be: "Are you in favour of membership in the Canadian Federation of Students?"

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- iv. In the event that polling is conducted at a general meeting, representatives of the Federation and Federation member local associations shall be extended full speaking rights in the meeting.
- v. The prospective member association and the Federation shall each be permitted to appoint one poll clerk for each polling station.
- vi. The prospective member local association and the Federation shall each be permitted to appoint one poll scrutineer to oversee the counting of ballots.

g. Quorum

Quorum for any vote to certify shall be that of the member local association or five percent (5%) of the individual members of the local association, whichever is higher.

g. Appeals

Any appeals of the results or rulings by the Oversight Committee shall be adjudicated by an Appeals Committee composed of one (1) member appointed by the prospective member association and one (1) member appointed by the Federation, who were not members of the Oversight Committee.

6. Vote to Decertify

The individual members of the Federation belonging to a member local association may vote on continuing their membership, subject to the following rules and procedures:

a. Petition

As per Bylaw I, Section 3.a.iii a petition calling for a vote on decertification shall be signed by no less than twenty percent (20%) of the individual members of the member local association and delivered to the National Executive of the Federation.

The petition shall be worded as follows: "We, the undersigned, petition the National Executive of the Canadian Federation of Students to conduct a vote on the issue of decertifying the name of member local student association of the Canadian Federation of Students."

b. Schedule

i. Within 90 days of receipt of the petition described in Bylaw I, Section 6.a, the National Executive will review the petition to determine if it is in order and, if it is, in consultation with the member local, will schedule a vote that is not less than 60 days and not more than 90 days following, notwithstanding the provisions in Section 6.b.ii and 6.b.iii, and subject to the following conditions:

- there shall be no fewer than two (2) and no greater than five (5) days of voting; and
- there shall be no less than seven (7) days and no greater than 21 days for campaigning, during which classes are in session, immediately preceding and during voting.

ii. No vote on decertification may be held between:

- April 15 and September 15; and
- December 15 and January 15.

iii. There shall be no more than two (2) votes on decertification in any three-month period.

iv. No vote on decertification shall take place without compliance with Sections 6.b.i, 6.b.ii and 6.b.iii.

c. Oversight Committee

The vote will be administered by a four (4) person Oversight Committee composed of two (2) members appointed by the National Executive and two (2) members appointed by the applicable member local association. Within fourteen (14) days following the scheduling of the vote, the National Executive will appoint two (2) representatives to serve on the Committee and request in writing from the member local association the appointment of two (2) representative to serve on the Committee. The Oversight Committee shall be responsible for:

- i. establishing the notice requirement for the vote in accordance with Section 6.d of this Bylaw and ensuring that notice is posted;
- ii. approving all campaign materials in accordance with Section 6.f of this Bylaw and removing campaign materials that have not been approved;
- iii. deciding the number and location of polling stations;
- iv. setting the hours of voting in accordance with Section 6.g.ii of this Bylaw;
- v. overseeing all aspects of the voting;
- vi. tabulating the votes cast;
- vii. adjudicating all appeals; and
- viii. establishing all other rules and regulations for the vote.

d. Notice of Vote

Notice of the Vote, that includes the question and voting dates, shall be provided to the individual members of the member local association no less than two (2) weeks prior to the first day of voting.

e. Campaigning

- i. The member local association, the individual members from the member local association and the Federation not shall engage in any campaigning outside of the campaign period.
- ii. Only individual members and representatives of the member local association, representatives of the Federation and individual members and representatives of Federation member local associations shall be permitted to participate in the campaign.

f. Campaign Materials

- i. Campaign materials shall include all materials developed specifically for the campaign.
- ii. Materials produced by the Federation that promote campaigns and services of the Federation shall not be considered as campaign materials unless they include specific content about the vote.
- iii. The Federation website shall not be considered a campaign material unless it includes specific content about the vote.
- iv. The Federation's annual report, financial statements, research and submissions to government shall not be considered a campaign material.
- v. Campaign materials shall not be misleading, defamatory or false.

g. Voting and Tabulation

- i. Voting shall be conducted at voting stations or, subject to the agreement of the Oversight Committee, by mail-out ballot.
- ii. There shall be no less than sixteen (16) hours of polling over no less than two (2) and no more than five (5) days, except in the case of voting being conducted at a general meeting. In the event that voting is conducted at a general meeting, representatives of the Federation and Federation member local associations shall be extended full speaking rights in the meeting.
- iii. Unless mutually agreed otherwise by the member local association and the Federation, the question shall be: "Are you in favour of continued membership in the Canadian Federation of Students?"
- iv. The member local association and the Federation shall each be permitted to appoint one (1) poll clerk for each polling station.
- v. The member local association and the Federation shall each be permitted to appoint one (1) poll scrutineer to oversee the counting of ballots.

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h. Quorum

Quorum for any vote on decertification shall be that of the member local association or five percent (5%) of the individual members of the local association, whichever is higher.

i. Appeals

Any appeals of the results or rulings by the Oversight Committee shall be adjudicated by an appeals committee (the "Appeals Committee") composed of one (1) member appointed by the member local association and one (1) member appointed by the Federation, neither of whom are members of the Oversight Committee.

j. Advance Remittance of Outstanding Membership Fees

In addition to required compliance with Sections 6a. to i. and k. to l, in order for a vote on decertification to proceed, a member local association must remit all outstanding Federation membership fees not less than six (6) weeks prior to the first day of voting.

k. Minimum Period Between Votes on Decertification

In addition to required compliance with Sections 6 a. to 6 j. and 6 l., in order for a vote on decertification to take place, no vote on certification may have been held amongst the members who submitted the petition referred to in Bylaw I, Section 3.a.iii., within the previous sixty (60) months for voting members comprised of university students and thirty-six (36) months for voting members comprised of college students, unless waived, by a two-thirds (2/3rds) majority vote of the National Executive.

l. Minimum Period Between Vote to Certify and Vote to Decertify

In addition to required compliance with Sections 6 a. to 6 k., in order for a vote on decertification to proceed, a vote to certify may not have been held amongst the members who submitted the petition referred to in Bylaw I, Section 3.a.iii., within the previous sixty (60) months for voting members comprised of university students and thirty-six (36) months for voting members comprised of college students, unless waived, by a two-thirds (2/3rds) majority vote of the National Executive.

2010/05:N14 MOTION TO REPEAL POLICY

Local 73/

Whereas following the Supreme Court's 1991 decision to strike the Rape Shield law, new legislation was passed in 1992 to reintroduce the protections that had been offered into the Criminal Code; and

Whereas this legislation was upheld by the Supreme Court in 2000; and

Whereas the policy on Sexual Assault is out of date; therefore

Be it resolved that the Related Student Issues Policy on Sexual Assault be repealed.

2010/05:N15 MOTION TO AMEND BYLAWS

Local 5/

Whereas voting members require more time to consider motions and plan for general meetings; and

Whereas members seeking the enactment, amendment, or repeal of a policy or standing resolution, or to propose any action must have it be received by the National Executive Committee at least six weeks before the general meeting at which the proposal is to be considered; therefore

Be it resolved that By-Law II 2.a be amended to read as follows;

2. Notice of General Meetings

- a. Notice of each General Meeting will be sent to each voting member of the Federation at least twelve (12) weeks prior to the date of the meeting

2010/05:N16 MOTION TO AMEND BYLAWS

Local 5/

Whereas for general meetings locals have not had enough time to meet with their Board of Directors to discuss potential motions; and

Whereas postal service is not always time-efficient and it could take up to a week for meeting notice to reach some locals; and

Whereas the general meeting occurs around the same time every month and giving more notice would not be too difficult; therefore

Be it resolved that Bylaw III.3.a be amended to read:

3. Notice

- a. All motions seeking the enactment, amendment, or repeal of a policy or standing resolution, or to propose any action, excluding procedural motions, must be received by the National Executive Committee at least six weeks before the general meeting which the proposal is to be considered. Members must receive a minimum of six (6) weeks notice of the motion submission deadline in order to allow locals adequate time to discuss bylaw amendments, policy resolutions, and national campaign motions for proposal. Notice provisions exist in order to allow for all motions to be translated and distributed to member local associations in advance of the meeting so that:
- member local associations may conduct research, survey their membership, and/or develop positions on motions for consideration prior to the meeting; and
 - member local associations that are unable to send delegates to the meeting may give adequate instruction to their proxy.

2010/05:N17

MOTION

Local 78/

Whereas university libraries are incurring increased costs to provide timely access to academic publications; and

Whereas increased cost to university libraries are being passed on to students in increased tuition fees and ancillary fees; and

Whereas the Open Access publishing model allows new works to be distributed in a timely manner free to the academic community and the public via the web; and

Whereas the Open Access movement supports a no user-fee model for accessing publicly-funded research publications; and

Whereas the Federation has produced factsheets and other materials supporting Open Access as a sustainable alternative to the current and costly monopoly of the print publishing industry; and

Whereas the National Graduate Caucus has an ongoing campaign to support Open Access initiatives for scholarly publishing; therefore

Be it resolved that the worldwide Open Access Week from October 18 to 24, 2010 be endorsed; and

Be it further resolved that members locals be encouraged to host events supporting the adoption and support of Open Access publishing by universities, research funding agencies and the broader academic community.

2010/05:N18

MOTION TO AMEND POLICY

Local 103/

Whereas for a decade the Federation campaigned to replace the failed Millennium Scholarship Foundation with a national system of grants; and

Whereas during the course of this campaign the Federation adopted a policy on the Foundation; and

Whereas the Federation's campaign was successful and the failed Foundation has now been replaced with Canada's first national system of grants; therefore

Be it resolved that the policy on the Millennium Scholarship Foundation be repealed.

2010/05:N19

MOTION TO AMEND POLICY

Local 103/

Whereas students in Canada no longer participate in National Students' Day; therefore

Be it resolved that the policy on National Students' Day be repealed.

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2010/05:N20 MOTION TO AMEND POLICY

Local 103/

Whereas the Federation's policy on Publications refers to a proposed "Budget Youth Guide to Canada"; and

Whereas this proposal was made almost 20 years ago and is no longer relevant today; therefore

Be it resolved that the Operations Policy on Publications be repealed.

2010/05:N21 MOTION TO AMEND POLICY

Local 103/

Whereas the Federation's policy on Communications is out of date; therefore

Be it resolved that the Post-Secondary Education Policy on Communications be repealed.

2010/05:N22 MOTION TO AMEND BYLAWS

Local 85/

Whereas Bylaw II, Section 3.a states: "Each general meeting of the Federation will be held in the greater Ottawa/Hull/Nepean area. In extenuating circumstances the National Executive may select an alternative location."

Whereas the City of Nepean, Ontario ceased to exist after being amalgamated with the City of Ottawa, Ontario in 2001;

Whereas the City of Hull, Quebec ceased to exist after being amalgamated with the City of Gatineau, Quebec in 2002;

Be it resolved that Bylaw II, section 3.a, be amended to read:

"Each general meeting of the Federation will be held in the greater Ottawa/Gatineau area. In extenuating circumstances the National Executive may select an alternative location."

2010/05:N23 MOTION

Local 24/

Whereas working to ensure that campuses are fully accessible and barrier-free is an important aspect of ensuring inclusive space for all students, faculty and staff in colleges and universities; and

Whereas accessibility audits allow students, professors and administrators to identify a comprehensive list of improvements that are needed to remove physical barriers on campus; and

Whereas sharing practices on how to conduct accessibility audits can enable students' unions to help identify barriers and potential improvements regardless of available resources; therefore

Be it resolved that member locals be encouraged to submit best practices from their own campuses that include measures implemented to help eliminate barriers on campus for students, staff and faculty with disabilities, to the National Executive; and

Be it further resolved that these submissions be utilised in order to develop a toolkit for undertaking accessibility audits on college and university campuses.

2010/05:N24 MOTION

Local 24/

Whereas First Nations University of Canada (FNUniv) has been a leader in Indigenous education for over 30 years and has experienced continued enrolment growth, signifying the demand for its programmes; and

Whereas FNUniv is the only institution of its kind in Canada and has the highest concentration of indigenous programming in the world; and

Whereas withdrawing funding will prevent thousands of students from across the country from accessing an education that is rooted in Indigenous knowledge; and

Whereas fewer Aboriginal learners will benefit from post-secondary education and the existing gap between Aboriginal and non-Aboriginal higher education rates will continue to grow; and

Whereas funding from the federal government has been guaranteed annually under the Indian Studies Support Program for funding First Nations post-secondary institutions and the federal government must honour this obligation to fund the FNUiv; therefore

Be it resolved that the federal government's recent decision to cut its \$7.2 million in annual funding to the First Nations University of Canada be condemned; and

Be it further resolved that the Government of Canada be called upon to immediately reverse the decision to withdraw core funding and provide extended, stable and permanent funding for the First Nations University of Canada; and

Be it further resolved that member locals be encouraged to write similar letters.

2010/05:N25

MOTION

Local 24/

Whereas a recent report from the MacDonald-Laurier Institute entitled *Free to Learn: Giving Aboriginal Youth Control over Their Post-Secondary Education* recommended that the Post-Secondary Student Support Program (PSSSP) be entirely replaced with a bank account opened by the government for every First Nations child in Canada that would accumulate interest to help fund higher education when they are ready to access it; and

Whereas the National Aboriginal Caucus has condemned the report for normalising the continued underfunding of post-secondary education funding for First Nations people; and

Whereas there has been little to no consultation with Aboriginal organisations on how to improve the PSSSP; and

Whereas the recommendations from the MacDonald-Laurier Institute is one in a string of reports that have sought to remove the responsibility to determine how to allocate PSSSP funds from First Nations control; and

Whereas the federal government has indicated it is looking to reform Aboriginal education, including the possible of Aboriginal control of the Post-Secondary Student Support Program (PSSSP); therefore

Be it resolved that the Macdonald-Laurier report *Free to Learn: Giving Aboriginal Youth Control over Their Post-Secondary Education* be condemned; and

Be it further resolved the federal government be called upon to work with Aboriginal organisations including the National Aboriginal Caucus to improve the PSSSP.

2010/05:N26

MOTION

Local 24/

Whereas in October, 2009, the Desautels Faculty of Management at McGill University announced its intention to privatize its Master's of Business Administration program by instituting a self-funded model; and

Whereas this decision has resulted in an increase in fees from \$1,500 to \$29,500 representing a 1,663 percent increase in tuition fees; and

Whereas this sharp increase in fees will pose a barrier to future students who enrol in McGill's MBA program; and

Whereas the privatisation of all programs in higher education should be opposed; therefore

Be it resolved that the self-funded model of education implemented for the Master's of Business Administration at McGill University be condemned; and

Be it further resolved that the Federation's position be communicated to the President of McGill University and the Dean of the Desautels Faculty of Management; and

Be it further resolved that the Government of Quebec be called upon to block the attempts of the Desautels Faculty of Management to implement a fully-funded fee structure, and all other efforts to offer private post-secondary education in Quebec; and

Be it further resolved that member locals be encouraged to write similar letters.

2010/05:N27

MOTION

Local 24/

Whereas water is essential to life, and the right to it is enshrined in two human rights; and

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Whereas Canada has an abundance of fresh water and most Canadians take the safety of their tap water for granted, yet many First Nations communities must haul and/or boil their water, drink bottled water, and accept water rations; and

Whereas 109 First Nation communities in Canada are without safe drinking water; some for longer than a decade; and

Whereas waters are being poisoned by industry, contaminated with uranium, and can contain harmful chemicals and bacteria such as E. Coli; and

Whereas many children get sores and boils on their bodies from water due to an inadequate sanitation infrastructure resulting in illness and disease in later life; and

Whereas the Chiefs of Ontario, a co-ordinating body for 134 First Nation communities in the province, have declared that decision-making processes related to the use and care of waters is a right maintained by First Nations and was not handed over with the making of treaties; therefore

Be it resolved that the Empty Glass for Water Campaign, asserting that access to clean, safe water is a human right, be endorsed; and

Be it further resolved that a letter be written to Prime Minister Stephen Harper condemning the water crisis facing Canada's First Nations communities and encouraging the Government of Canada and the provinces to immediately provide resources to high risk communities to implement their plans to provide safe, potable water for their communities; and

Be it further resolved that member locals be encouraged to endorse, support and promote the Empty Glass for Water Campaign, including but not limited to, donations, writing letters of support and encouraging their membership to actively participate in the campaign.

2010/05:N28 MOTION TO AMEND BYLAWS AND POLICY

Local 1/

Whereas a reasonable quorum is essential to ensuring that a referendum on membership in the Canadian Federation of Students and Canadian Federation of Students-Services reflects the will of the students on a given campus; and

Whereas referenda generally achieve well over ten percent voter turnout; and

Whereas the regulations governing membership referenda give more than enough flexibility to the oversight committee to develop a process that will ensure that all students are able to participate; therefore

Be it resolved that the references to quorum in Bylaw 1, Articles 4.g. and 6.h, be amended from five (5) percent to ten (10) percent.

2010/05:N29 MOTION TO AMEND BYLAWS AND POLICY

Local 1/

Whereas the Bylaws vest solely in the individual members the ability to initiate a referendum on continued membership; and

Whereas the Federation must be able to ensure that the rights of individual members are maintained and protected; and

Whereas to do this the Federation must ensure that petitions are in fact genuine and represent the will of the individual members collectively belonging to a member local association; and

Whereas although it is common sense and logical that petitions received by the National Executive must be original copies and unaltered, the Bylaws do not currently explicitly state this; and

Whereas the three at-large members of the National Executive are charged with overseeing the day to day work of the Federation, and should thus be the individuals authorised to receive a petition on its behalf; and

Whereas in recent years there have been allegations that names on petitions to initiate referenda on continued membership have been collected under false pretences, while students were under the influence of alcohol and by other subversive means; and

Whereas without contact information it is impossible to verify names and prevent such behaviour; therefore

Be it resolved that Bylaw 1, Article 6.a be amended to include the following:

The original, unaltered petition must be delivered in its entirety to the National Chairperson, National Deputy Chairperson or National Treasurer, by registered mail. Petitions received that are not original copies, have been altered in any manner, or have been received by any means other than registered mail are not valid.

The petition may not contain any words or images, with the exception of those required by Bylaw 1.a and those required to indicate which fields a signatory must complete.

In order to be valid, a name on a petition must be reasonably legible, include the proper full name, be accompanied by a valid and corresponding student identification number, a unique signature and a complete physical mailing address.

Be it resolved that Bylaw 1, Article 6.b.i be amended to read:

- i The National Executive will have the sole authority to determine whether the petition described in Bylaw 1, Section 6.a is in order. Within 90 days of receipt of the petition, the National Executive will review the petition to determine if it is in order and, if it is, in consultation with the member local, will schedule a referendum. The National Executive will endeavour to schedule the referendum between 60 days and 90 days following its determination that the petition is in order. The scheduling of the referendum shall be subject to the following conditions:
 - there shall be no fewer than two (2) and no greater than five (5) days of voting; and
 - there shall be no less than seven (7) days and no greater than 21 days for campaigning, during which classes are in session, immediately preceding and during voting.

2010/05:N30 MOTION TO AMEND BYLAWS AND POLICY

Local 1/

Whereas students who sign a petition, must also have the ability to ask for their name to be removed from said document;

Whereas given allegations in recent years that names on petitions to initiate referenda on continued membership have been collected under false pretences, while students were under the influence of alcohol and by other subversive means, it is especially important that individual members are explicitly empowered to remove their names from a petition; and

Whereas this is common sense and the practice of the Federation but is not currently specifically set out in the Federations' Bylaws; therefore

Be it resolved that Bylaw 1, Article 6.a be amended to include the following:

An individual member may request that her name be removed from a petition. If the National Executive receives such a request in writing, before the conclusion of the verification process of the petition, the name must be struck from the petition. The name shall not be included in the total number of names on the petition.

2010/05:N31 MOTION TO AMEND BYLAWS AND POLICY

Local 1/

Whereas the language currently in the Bylaws with regards to the campaigning period could be made more clear; and

Whereas the practice of the Federation has been to allow campaigning throughout the voting period, so that the members of the Federation and in the case of a vote to federate, the members of the prospective member local association may fully present their case; therefore

Be it resolved that Bylaw 1, Articles 4.d and 6.e both be amended to include the following:

The campaign period is defined as the days the National Executive schedules for campaigning under Bylaw 6.b.i, and each and every day on which voting is to occur.

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2010/05:N32 MOTION TO AMEND BYLAWS AND POLICY

Local 1/

Whereas the Federation needs to have access to a student list in order to verify voter eligibility; and

Whereas in some cases campus administrations have refused to give the Federation access to such a list; and

Whereas it is important that there is a clear procedure to follow in such a circumstance; therefore; therefore

Be it resolved that Bylaw 1, Article 4.f.i. and 6.g.i, be amended to include the following:

It shall be the responsibility of the voting member local to obtain and provide to the Federation, no later than seven (7) days in advance of the referendum, a list of all of the individual members of the Federation eligible to vote in the referendum. If the voting member locals is unable to obtain or provide such a list, voting shall be conducted through a double envelope system, whereby the ballot is placed in an unmarked envelope, which is placed in a second envelope, on which the voter writes their full name and student identification number. After voting ends the envelopes will be compared to a list of the individual members who are eligible to vote in the referendum. Duplicate ballots and ballots cast by ineligible voters shall be discarded. Once the validity of the votes has been verified, the outer envelopes will then be separated from the unmarked inner envelopes and tabulated.

2010/05:N33 MOTION TO AMEND BYLAWS AND POLICY

Local 44/

Whereas the Federation's Bylaws currently deny individual members the right to conduct a referendum on continued membership if their member local association has outstanding membership fees owed to the Federation; and

Whereas the Federation's Bylaws provide a direct mechanism for the disenfranchisement of individual members should the individuals' student union fail to remit their Federation membership fees in a timely manner; and

Whereas after individual student members initiated a referendum on continued membership at Concordia University, Local 91 and Local 83 were informed that they owed the Federation outstanding membership fees totalling in excess of one million dollars; and

Whereas some member locals, including Local 91 and Local 83 from Concordia, have unknowingly accumulated massive debt to the Federation; and

Whereas allowing member locals to unknowingly accrue significant levels of debt to the Federation may put a local student association in serious financial jeopardy; and

Whereas without a procedure to notify member locals of outstanding debts, member locals have no established mechanism for knowing whether or not they have outstanding debts to the Federation, potentially disenfranchising future individual student members who attempt to initiate a democratic referendum on continued membership without knowing about the debt their member local holds; and

Whereas periodically providing notification of outstanding debts to member locals will increase the financial stability of both the Federation and the member locals who have outstanding membership fees; therefore

Be it resolved that the Operational Policy "Financial Policy Relating to the Collection of Membership Fees" be amended to add the following to the end of the policy:

The Federation shall send a registered letter to each member local association before the end of every fiscal year with a statement of financial position detailing all outstanding membership and delegate fees owed to the Federation by that member local association.

Be it further resolved that Bylaw I, section 3, subsection b, "Rights of Voting Members" be amended to add the following:

- vii. Each voting member is entitled to request, and must receive within 30 days of receipt of the request, an updated statement of financial position detailing all outstanding membership and delegate fees owed by the member local association to the Federation.

2010/05:N34 MOTION TO AMEND BYLAWS

Local 44/

Whereas Federation's Bylaws have denied some member locals the right to conduct a democratic referendum on continued membership due to outstanding membership fees; and

Whereas some student associations have unknowingly accumulated massive debt to the Federation; and

Whereas forcing a local student association with outstanding membership fees to pay off all debt to the Federation before granting individual members the right to conduct a referendum on continued membership may result in a cycle of continually increasing debt for that local student association, especially for smaller local student associations who may go through periods of inactivity while they still accumulate debts to the Federation; therefore

Be it resolved that Bylaw I, Section 6: Referendum on Continued Membership, subsection j titled "Advance Remittance of Outstanding Membership Fees", which prevents a member local association from holding a vote on continued membership if they hold outstanding debts, be struck in its entirety; and

Be it further resolved that Bylaw I, Section 7: Procedure for Application for Withdrawal, subsection c be amended by removing the following words:

"provided that all outstanding membership fees payable to such date shall have then been received by the Federation"

2010/05:N35 MOTION TO AMEND BYLAWS AND STANDING RESOLUTIONS

Local 44/

Whereas the Students with a Disability constituency group has been inactive between general meetings; and

Whereas the group is not currently represented at the National Executive; therefore

Be it further resolved that Bylaw IV, section 1, subsection b be amended to read:

- b. The following representatives elected by its respective provincial components or caucuses:
 - i. Alberta Representative
 - ii. British Columbia Representative
 - iii. Manitoba Representative
 - iv. New Brunswick Representative
 - v. Newfoundland-Labrador Representative
 - vi. Nova Scotia Representative
 - vii. Ontario Representative
 - viii. Prince Edward Island Representative
 - ix. Québec Representative
 - x. Saskatchewan Representative
 - xi. Graduate Student Representative
 - xii. Aboriginal Student Representative
 - xiii. Francophone Students Representative
 - xiv. Racialised Students Commissioner
 - xv. Women's Representative
 - xvi. Students with Disability Representative

Be it further resolved that Bylaw IV, a new section 12 be added to read:

12. Duties and Powers of the Students with Disability Representative

The Students with Disability Representative shall perform all duties and such powers as established by Standing Resolution.

Be it further resolved that Bylaw IV be renumbered accordingly;

Be it further resolved that Standing Resolution 10 is amended to include:

9. Students with Disability National Executive Representative

The authority, role and responsibilities of the Students with a Disability National Executive representative shall be:

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- a. to sit on the National Executive of the Federation;
- b. to be empowered to make decisions on behalf of the Students with a Disability Constituency Group between general meetings;
- c. to be responsible for representing the best interests of the constituency group between general meetings;
- d. to take the direction of the constituency group during constituency group meetings during general meeting;
- e. to facilitate constituency group meetings during general meetings;
- f. to carry out the duties as do other National Executive members as outlined in Bylaw V in the Constitution and Bylaws; and
- g. to be elected at a meeting of the Students with a Disability Constituency Group during the semi-annual general meeting of the Federation: the members of the constituency group shall elect a Students with a Disability National Executive Representative.

2010/05:N36

MOTION

Local 68/

Whereas tuition fees pose the most significant barrier to accessing post-secondary education; and

Whereas student financial assistance has been used by the federal and provincial governments as a justification for high tuition fees; and

Whereas forcing students to borrow money to be able to pay for more of the cost of their own education facilitates privatisation and pushes the individual costs to the after-study period when students must pay more through compound interest on their student loans; and

Whereas a comprehensive analysis of the cost of administering financial aid through institutional departments, provincial bureaucracies and the federal bureaucracy does not currently exist; and

Whereas directing the costs of loans, grants and student loan bureaucracies toward the upfront reduction of the costs of tuition fees could be a more effective strategy to promote access and fund post-secondary education; therefore

Be it resolved that research be gathered on the total costs of administering the National Student Loans Program, including the costs dedicated at every provincial loan program to offer student loans and the costs to cover the in-study period of student loans; and

Be it further resolved that member locals be encouraged to investigate the costs of administering financial aid offices locally and that these costs be communicated to the National Executive; and

Be it further resolved that the results of this research be used to lobby for reform of the current system of student financial assistance that has been put in place to mitigate the impact of high tuition fees.

2010/05:N37

MOTION

Local 68/

Whereas Navitas is a private, for-profit Australian company that recruits and teaches international students who have not passed TOEFL exams and who often need more assistance in meeting entrance requirements of universities and colleges in Canada; and

Whereas Navitas currently operates at the University of Manitoba, where there have been problems of facility usage and in some cases has actually bumped University of Manitoba classes so that Navitas classes can use the best facilities; and

Whereas the faculty association at Dalhousie University was highly critical of a proposed partnership with Navitas at their school; and

Whereas a partnership at the University of Windsor's business school with another international recruitment agency, Study Group International, was rejected in February; and

Whereas international companies that offer education to international students at public Canadian post-secondary institutions often set their own admissions criteria and offer

direct admittance into a college or university, raising concerning ethical questions about the privatisation of post-secondary education; therefore

Be it resolved that the practice of private, for-profit education companies offering instruction through public post-secondary education institutions be condemned; and

Be it further resolved that the Government of Canada and provincial governments be called upon to prohibit the operation of these private education companies within public post-secondary institutions; and

Be it further resolved that member locals be encouraged to oppose partnerships that are presented on campus with for-profit international education recruiting and training companies such as Navitas, Kaplan and Study Group International.

2010/05:N38

MOTION

Local 68/

Whereas the occurrence of sexual assault on college and university campuses compromises the safety of all members of the campus community; and

Whereas the vast majority of victims of sexual assault self-identify as women; and

Whereas incidents of sexual assault require immediate and urgent response on the part of institutional administrations to ensure the safety of all members of the campus community, particularly those who self-identify as women; and

Whereas it is the right of all members of the campus community including students, staff, faculty and visitors, to be notified when a sexual assault has occurred on our campus; and

Whereas college and university administrations often delay reporting incidents of sexual assault to the campus community; and

Whereas it is the responsibility of the administration to take the necessary steps to ensure the safety of the campus community; therefore

Be it resolved that a campaign be adopted to establish sexual assault protocols on college and university campuses; and

Be it further resolved that member locals be encouraged to lobby their respective campus administrations for the creation of a notification policy and protocols for reporting sexual assault to the campus community in a timely manner.

2010/05:N39

MOTION

Local 68/

Whereas post-secondary education news is normally absent from mainstream newspapers unless there is a major announcement or event; and

Whereas student perspectives are often absent or minimized in mainstream press coverage on issues related to post-secondary education; and

Whereas there only exists one national magazine that focuses on post-secondary education and it is published by the Association of Universities and Colleges, Canada (AUCC); and

Whereas student voices must be part of the national dialogue on higher education; therefore

Be it resolved that work be undertaken to start a national magazine on higher education in Canada that focuses on trends and changes to educational policies, issues and events that have a national scope and other issues that are of importance to the college and university system; and

Be it further resolved that student journalists be sought to contribute to the magazine, including through discussions with the Canadian University Press.

2010/05:N40

MOTION

Local 68/

Whereas Abousifian Abdelrazik a Canadian citizen, visiting his native Sudan, was labelled a terrorist by the United States in July 2006 and detained by Sudanese authorities at the request of the Canadian government; and

Whereas despite being subsequently cleared by the Sudanese government, the Canadian Security Intelligence Service, and the Royal Canadian Mounted Police, the federal

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government refused to grant Abdelrazik travel papers and blocked his return to Canada following his imprisonment in Sudan; and

Whereas during Abdelrazik's 4 years detained in Sudan he was tortured and subjected to inhumane and degrading treatment;

Whereas in 2009 a Federal Court ruled that his Canadian Charter of Rights and Freedoms had been violated and ordered the Canadian government to facilitate his return;

Whereas despite being exonerated the federal government continues to impose sanctions on Abdelrazik that make it impossible for him to live an independent life, including prohibiting him from working;

Be it resolved that that the Federation condemn the federal government's violations of Abousfian Abdelrazik's basic human rights; and

Be it further resolved that the Federation write to the Prime Minister of Canada to demand that the government respect Abousfian Abdelrazik's basic human rights and lift all sanctions against him.

2010/05:N41

MOTION

Local 108/

Whereas this year the Federation partnered with the Sierra Youth Coalition and Polaris Institute to organise Bottled Water Free Day;

Whereas on this day events were held on over 60 campuses across the country;

Whereas the privatisation of public water resources continues to be a problem on university and college campuses across the country; therefore

Be it resolved that the Federation designate March 10, 2010 as the next Bottled Water Free Day; and

Be it further resolved materials promoting this day be produced and distributed to member locals; and

Be it further resolved that member locals be encouraged to pass resolutions of support for this day, and organize events on campus on and leading up to the day itself.

2010/05:N42

MOTION TO AMEND STANDING RESOLUTIONS

Local 26/

Whereas the media has historically been an integral watchdog of democratic societies; and

Whereas campus media is the main source for providing members with information about the Government, university administration, student unions and external organisations; and

Whereas it is important for campus media to be able to report student issues to the membership without fear of legal and political reprisal; therefore

Be it resolved that Standing Resolution 36 be amended to read:

All general meetings of the Canadian Federation of Students shall be open to media representatives.

Media representatives shall be excluded from constituency groups.

Members of the media shall not have speaking privileges in any of the sessions at which they are permitted to attend.

2010/05:N43

MOTION TO AMEND BYLAWS

Local 26/

Whereas openness and transparency is vital for building support and legitimacy in any membership-driven democratic organization; and

Whereas many member locals of the Federation have publicly accessible audited financial statements on their websites; and

Whereas the CFS is an organisation representing 500,000 students; and,

Whereas it is difficult for individual members to review financial documents of the CFS; and

Whereas many Federation documents are already scanned and placed online by bloggers and media representatives; and

Whereas the content of these "leaked" documents, which may sometimes reach wide distribution online to individual members, may sometimes be out of date, presented in a misleading manner or result in confusion among members about what the Federation represents; and

Whereas the Federation can respond to such activities by uploading authoritative copies of documents like audited financial statements; therefore

Be it resolved that Bylaw IX, section 4, subsection d be added:

- d. The Federation's budget and audited financial statements shall be posted publicly on the Federation's website within ten (1) business days after approval at a general meeting, and be maintained there for a minimum of five (5) years.

c. New Motions Served by the National Executive

2010/05:N44 MOTION

Be it resolved that McLarty and Company be reappointed as the Federations' auditor for the 2010-11 fiscal year.

2010/05:N45 MOTION TO AMEND BYLAWS, STANDING RESOLUTIONS AND POLICY

Whereas the Federation is no longer the owner of Canadian Universities Travel Service; therefore

Be it resolved that, where appropriate, references to Travel CUTS in the Federation's Standing Resolution and Policy Manual, be repealed.

2010/05:N46 MOTION TO POLICY

Whereas current policy on student financial assistance is outdated or inaccurate; therefore

Be it resolved that the preamble of section 1 of the Student Financial Aid Policy be amended to read:

Preamble

In the context of affordable post-secondary education, student financial assistance is an important mechanism for reducing social and economic inequalities in access to post-secondary education. In Canada, a strong majority of students require some financial assistance. The vast majority of those receiving student aid believe they would be unable to participate in higher education without this assistance.

Be it further resolved that the preamble of section 2 of the Student Financial Aid Policy be amended to read:

Preamble

Prior to the introduction of the Canada Student Grants Program in Fall 2009, Canada was one of only three industrialised countries without a national system of student grants. While this new program will provide hundreds of millions of dollars in non-repayable grants, the federal government still distributes billions of dollars in repayable loans each year. In order to reduce debt loads to the levels seen in the early nineties, a significant investment is needed in the Grants Program. In addition, for every dollar allocated in grants, savings will also be realised in reduced administrative costs, education tax credit claims and payments to service providers.

Be it further resolved that the preamble of section 4 of the Student Financial Aid Policy be amended to read:

Preamble

In recent years, private for-profit companies have attempted to negotiate agreements with post-secondary institutions to implement for-profit, institutionally administered private student loans programs, through direct ties to the institutional student information systems. By and large these programs intend to administer large loans at relatively high rates of interest, and these loans will be approved within minutes with minimal consideration of actual financial need.

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12. PRESENTATION OF THE REPORT OF THE NATIONAL EXECUTIVE

As per Bylaw V, Section 2-f., the National Executive will present a report to the plenary detailing the work of the Federation undertaken since the previous national general meeting.

13. OTHER BUSINESS

14. ANNOUNCEMENTS

15. RECESS



Minutes

University of Victoria Students' Society
Local 44 - Canadian Federation of Students
Monday October 19, 2009
SUB Upper Lounge 6:00 pm

ATTENDANCE

Directors:

Justin Levine, Kelsey Hannan, Nathan Warner, James Coccola, Rajpreet Sall, Christine Comrie, Nadim Adatia, Meaghan Kerr, Leah Staples, Remy Hall, Gabrielle Sutherland, Trish Palichuk, Heather McKenzie, Brodie Metcalfe, Meghan Shannon, Dylan Hardie, Tracy Ho

Staff:

Ben Johnson, Marne Jensen

USW Rep:

Melissa Pritchard

Guests:

Robyn Spilker, Sinead Charbonneau

1. CALL TO ORDER

Harrison called the meeting to order at 6:15pm.

2. ACKNOWLEDGEMENT OF TERRITORIES

3. ADOPTION OF AGENDA

a. Adoption of Agenda

i. Agenda of 2009-10-19

Motion to Adopt the Agenda of 2009-10-19 – Sutherland/Adatia

Motion to Amend – McKenzie/Pullman

BIRT the following motion is added to the end of New Business.

BIRT \$500 is allocated from the Clubs Special Project Grant to each of the following clubs:

- Amnesty International
- Solidarity for Palestinian Human Rights

Motion to Amend Carried

Motion to Amend – Kerr/Hall

BIRT Motion 2009/10/19: 07 is moved to the beginning of New Business.

Motion to Amend Carried

Motion to Amend – Harrison/Metcalfe

BIRT the following motion is added to the end of New Business:

BIRT nominations open to elect one UVSS member to sit on the President's Distinguished Service Awards committee.

Motion to Amend Carried

Agenda Carried as Amended

4. PRESENTATIONS

a. CanAssist; re: Room Booking

Elsa: I am the events coordinator at Canassist. Thanks for giving me the opportunity to speak. Canassist invents resources for people with disabilities that are not on the marketplace and we tailor materials to their requests. We also host community events for young people with disabilities. We receive funding from donations and the government. UVic provides office and lab space and access to machine shops, but not funding. There will be families, caregivers, funders, and community members at our event. We ask for your support. We will acknowledge the UVSS as a sponsor on our website and in promo materials.

Motion 2009/10/19: 01 - Harrison/Warner

BIRT CanAssist be allowed to book the Michelle Pujol Room on December 2, 2009 free of charge.

Harrison: The request is that the room rental fees for one day of a two day event are waived. We are in a deficit, so we suggested making only one day free of charge.

Hall: In favour. I work with individuals who utilize the services and equipment of Canassist. They also employ co-op students. They help make people's lives more accessible.

Ho: In favour. This is a cost that we can absorb. We have approved this booking in the past.

Motion Carried

b. Mike Large, GSS; re: New Athletics Facility

Large: The GSS has taken a strong position against the funding of this facility. We like the facility, but not the funding. This is a precedent setting proposal made on the backs of those who can afford it least. The GSS views the funding for programs differently – i.e. a new program established could be charged an arbitrary amount. UVic is interpreting it differently. The GSS asked the university how they could have a 75% increase on a fee when there is a 2% cap? UVic will go elsewhere for the money if students aren't charged. Analogy: rent control legislation – landlords can't increase more than a certain percent each year. This legislation is there to protect people who can't afford large increases. Why is the university asking us to fund this? It is because they want our support to work around the cap. The GSS exec this year is interested in cooperation with the UVSS and we recognize that our relationship has not been so harmonious in the past few years.

Hardie: If they are asking for this funding, it is likely that they are unable to find the funding elsewhere. At least for the time being. Ian Stewart is going to be condemned – the facilities need to be replaced.

Large: The concern is that UVic is taking the path of least resistance. Ian Stewart could be sold or leased. They could put it off a year or two. There are other options. Students count on their fees not being raised by more than 2%.

Warner: Did you guys suggest any alternatives for funding?

Large: No, but we would suggest fundraising etc.

Hannan: There is not a lot of notification on this. If there is opposition, then students need to have the opportunity to learn about this issue. The fairness of this process could be called into question. How do you feel about the process fairness so far?

Large: We sent an email to UVic and they didn't respond. It asked them to link to the GSS site for information. Athletics students have been receiving targeted emails. The speculation is that UVic is counting on people who use the facilities to vote. We predict a low turnout with high approval.

Comrie: If the university can't get funding because of the recession, then why are they turning to students? Jim Dunsdon has vocalized that he would come and present to the UVSS, but we haven't heard anything. This is a loud statement as to how they view the Society.

Harrison: We didn't set up a time for Jim to present. Some info has been provided to the UVSS, but not sure if it's more than anyone else would have. This is not a referendum – it is a consultative ballot.

Hall: This is fair speculation. I'm in athletics and we've known about this forever. We are more willing to pass something like this as we use the facilities for our courses. I've seen the proof of your statement.

Large: Even with consultation, there isn't an exemption for fee increases by referendum.

5. REPORTS

a. Committee Reports

- i. **Advocacy Council** – Has not met.
- ii. **Armed with Understanding** – Met. Talked about potential keynotes for the new year.
- iii. **Clubs Council** – Has not met.
- iv. **Communications Committee** – Met. Created marketing working group. Worked on an information campaign for SUB services.
- v. **Course Union Council** – Has not met.
- vi. **Electoral Committee** – Has not met.
- vii. **Environmental Responsibility Committee** – Has not met.
- viii. **Finance Committee** – Met. Two capital motions on this agenda.
- ix. **Organisational Development Committee** – Met. Divided up a lot of tasks.
- x. **Political Action Committee** – Met. Students for Choice made a presentation regarding Stephanie Gray's visit. Worked on button template for pop culture student debt buttons.
- xi. **Special Events Committee** – Has not met.
- xii. **Students Services Committee** – Has not met.

b. **Director and Staff Reports**

Ho: SOCC is hosting a movie night at the SOCC office. This is going to be for members and allies. Holding our AGM next Thursday the 29th at 11am in the SOCC office. SOCC will be tabling at the Students for Choice event.

Hardie: Pass.

Shannon: Helped with events and the AGM. Went to meetings. Thought I got swine but really got strep throat.

Metcalfe: Worked on Futurefest. Attended the Women's Studies Chair Search Committee, SCART meeting, and the Senate Committee on Learning and Teaching.

McKenzie: Attended Finance, PAC, and OD. Met with university executives. Worked on UVic Idol. Met with Atomic Vaudville – looking at doing an all ages show on November 5. Met with CFUV about the auditorium show. Attended the PAC volunteer meeting. Did AGM prep. Organised clubs stuff.

Pullman: Worked on AGM prep. Attended an operational relations meeting this afternoon. There is going to be a transit expansion in January as the current exchange is at capacity. The stop for the 14 is going to be located outside the SUB and there are longer term strategies for expanding bus service being looked at. Hired a new foodbank coordinator. Attended Communications, PAC, and Finance.

Trish: Getting NSU in order and connecting with other organisations. Attended AWU. Met with the Camosun First Nations Association. Attended the AGM.

Sutherland: The Pride AGM is scheduled for November 5, but this may be subject to change.

Hall: Worked on setting up the marketing working group. The 1st meeting is this week.

Staples: Worked on tasks for ERC, including taking photos of fountains. Attended AWU and worked on finding keynote speakers for next semester.

Kerr: Did AGM prep. I will be putting up 'No' side materials for the Athletics referendum.

Adatia: Pass.

Charbonneau: Organised a talk, held our open house, hired a workstudy, attended the indigenous child care research conference. The library committee met and will be acquiring some new zines.

Comrie: Attended the AGM. Helped with the debt sentence campaign. Attended Finance and PAC. As the BC Women's Liaison for CFS-BC, I have been networking with other locals on holding a 'No Means No' day.

Sall: Pass.

Coccola: Attended the AGM, Finance, and the debt sentence volunteer session.

Warner: Attended the AGM.

Hannan: Attended the AGM and helped with promo for it.

Levine: Worked on the S-Hut campaign. There is a workshop for best governing practices for boards on the 27th of October from 8:45am to 4pm.

Jensen: The document that I am passing around is the summary of department performance. The format of this document is a work in progress and I welcome any feedback. I have broken details down to the same level of detail received at the AGM. In the variance column there is more bad news than good news. We are working hard to achieve our budget over the coming year.

There is a bit more revenue than projected but the cost of sales is out of whack by 2%. There are inventory glitches due to a staff shortage in the main kitchen. Other businesses didn't benefit from the Bean There renovations closure.

Felicita's -- Labour is high and shifts can't be cut as business declines due to collective agreement stipulations.

Zap -- Didn't meet budget, but September looks good; we are predicting the best September ever. The expenses line item is up due to computer failures. The ad budget for Zap also needs to be looked at.

Subtext -- Didn't meet revenue targets. But it looks like there is approximately \$132,000 in revenue that Subtext will post for September.

Cinecenta -- This is our biggest challenge for the coming year. We are going to discount for later shows at \$2.50 for students.

Munchie Bar -- Here is some good news as Munchie beat its budget. The manager has controlled the cost of sales.

We are behind budget by \$51,000. The good news is that the contributing factors are costs which can be controlled. The Info Booth is on track even though we budgeted for bus pass sales, but these were moved to Subtext. The general office is on track. Building operations is good news but this is mainly because of lower costs during the summer. Grafix is on budget. Accounting is good. For Division Administration the costs of labour look good, but there have been some expenses for staff training. We are under a \$30,000 challenge for the rest of the year.

Harrison: Attended Finance and the ad hoc committee. Went to an Esquimalt council meeting and argued as to why they should legalize secondary suites. Organised a volunteer meeting for the debt sentence campaign. Attended an advocacy luncheon for the Equity and Human Rights office. Attended the Operational Relations Committee. Helped with UVic idol.

c. CFS Provincial Executive Report

Sall: Last weekend there was an executive committee meeting. We did a review of bulk buying. Tomorrow is the media launch for the debt sentence campaign at the Grand Pacific Hotel. There is a debt calculator on the debt website. The website will be launched tomorrow as well.

6. QUESTION PERIOD

Hall: [to Jensen] How often will the business update be given at board meetings?

Jensen: Monthly.

Hall: I'd like to request info directly related to Bean There in order to track the impact of the renovations.

Jensen: No problem. This detailed line by line analysis is brought to Finance. I can also meet in person.

Hardie: [to Comrie] How much is the vendor fee for the Greenstart Marketplace?

Comrie: This is yet to be determined. Likely \$30.

Hardie: [to Pullman] Why are the transit upgrades not being made to the old bus loop?

Pullman: They did modifications to the old bus loop when they made it into a parking lot. There are concerns around infrastructure costs. I agree that it would make sense.

Harrison: All they have to pay for now is for meters to be moved if they use the proposed spot.

Jensen: There would also be interference in pedestrian traffic if they used the old bus loop.

Slavin: If Edward and Veronica are circulating a counter-petition, what is their motivation in creating the petition, and how can they justify using paid working hours doing something that is not in their mandate?

Harrison: The petition was created not just by myself, but with a group of concerned students on campus. We came together and wanted to get the other side of view out there – we represent a group of many individuals. In terms of paid hours, I am the chair of PAC and I am also petitioning for the student debt campaign when I am away from my office. I was elected on the mandate of reducing tuition and therefore I support the work of the CFS. I did not hide this fact when I ran for office.

Coccola: Why are paper towel dispensers back in the SUB?

Jensen: They were originally removed by Facilities due to waste. Because of the H1N1 concern, towels can be used as barrier for opening doors.

Hannan: Since there is a counter-petition going around – we should be transparent. Will those who are circulating this petition show it to the Board?

Harrison: Hannan and Warner have already asked me this question in private. The petition is a private document between the people signing and the petitioners.

Pullman: Why did Hannan not inform the Board of his intention to circulate a petition to leave the CFS? Why didn't he utilize the means available to him to deal with the issues that he has with the CFS? Why is Hannan being non-transparent?

Hannan: I have showed the petition. I did raise my questions and concerns before when I brought up the partisanship of the Vote Education campaign. I went in front of the Biblio Cafe for all to see. I don't feel that I acted as a director during this campaign, but rather as a member. I wasn't here over the summer, and I slowly realized the need for this petition. There are a specific set of reforms that we would like to see. There is a package of 43 motions going to the CFS national AGM in November. This package would represent a change to CFS services, establish a board to settle disputes, create a mandatory question period, establish conflict of interest policies, and make the defederation procedure fair and localized. The CFS has a chance to reorganize itself before the vote occurs next spring. I encourage the delegation from the UVSS to support the package.

Coccola: The sign on the door of the Resource Centre says it is open from 9am – 5pm. A lot of my frustration is that AGM failed to meet quorum by 2 people. Executives were out campaigning for two petitions when they should have been promoting the AGM. Where did this petition start?

Harrison: I worked on the wording of the petition along with other members. There are members from other locals across Canada who are also circulating counter-petitions. It seems to be effective and so we decided to work on one as well.

Comrie: Did Hannan indicate to students that he was not acting as a representative of the UVSS when he approached them?

Hannan: I was not acting as board member and I pointed this out to students. I don't pick and choose when it is convenient.

Ho: Did any of the people who have concerns with the CFS approach any of the three CFS reps who are from this local? Did the thought even cross their minds?

Hannan: I had a gradual conversion. I wasn't there yet at Skills. There were some concerns that I had. Ultimately, students should have a vote. We haven't had one for twenty years. I have not approached anyone about my concerns other than my comments made on the Vote Education campaign.

Hardie: Is the petition to leave the CFS or to have a vote?

Hannan: The petition must be worded according to CFS bylaws, which we did. This is a neutral petition.

Warner: Have the directors working on the counter-petition presented what they are doing as the work of the UVSS?

Harrison: As I answered Warner already today, we say that we are members - not directors and it is not a board initiative.

McKenzie: When I talk to students, I am insistent that it is a second petition and I clarify that I work on it as a member.

Harrison: I have heard that it says 'drop CFS' on the petition. Is this true? If so, how is it neutral?

Hannan: People doing it want to leave. The petition does say 'drop CFS'. People sign it with the purpose of having a vote so that they can learn more.

Hardie: Why were non-UVSS individuals on campus helping with the counter-petition?

Comrie: As the CFS, we work together as a unit as a whole - a combined group. We work together in solidarity with members from other CFS locals. For instance, on campaigns such as the Stolen Sisters campaign, everyone comes together. We also go to other campuses to help each other.

Hannan: What is the process for appointing chairs for AGM's? Should the board make this decision?

Kerr: The process is that I realised we needed a chair and I asked Shamus Reid.

Harrison: We need an external chair, and we ask for someone to do it for free. The membership can approve or not approve of a chair at a general meeting.

Kerr: The choice of Reid seemed appropriate at the time.

**Motion to Recess for 5 Minutes - Harrison/Sutherland
Motion Carried**

The meeting recessed at 7:47pm.

Harrison called the meeting back to order at 7:57pm.

Motion to Amend the Agenda – Shannon/Warner

BIRT Motion 2009/10/19: 09 is moved to the beginning of New Business.

Shannon: I need to go because I have strep. I don't want to miss this motion.

Motion to Amend the Amendment - Comrie/Kerr

BIRT Motion 2009/10/19: 09 be the second item under New Business.

Motion to Amend the Amendment Carried

Motion to Amend the Agenda Carried

Motion to Amend the Agenda – Hannan/Coccola

BIRT the item 'Announcements' is before the in camera session.

Motion to Amend the Agenda Carried

7. MAIN MOTIONS

a. OLD BUSINESS

Motion 2009/05/11: 04 - Harrison/Comrie

BIRT nominations open to fill the following vacancies on the Armed With Understanding Speaker Series Committee:

One (1) Member as recommended by the Native Students' Union

One (1) Member as recommended by Pride

One (1) Member as recommended by the Students of Colour Collective

Ho nominated Andrew Fortune for SOCC.

Motion to Ratify Fortune – Ho/Hardie

Motion Carried

Motion 2009/05/11: 06 - Harrison/Comrie

BIRT nominations open to fill the following vacancies on the Educational Equity Committee:

One (1) Member as recommended by the Native Students' Union

One (1) Member as recommended by the Women's Centre

No nominations were put forward.

b. NEW BUSINESS

Motion 2009/10/19: 07 - Pullman/Sall

WHEREAS two of SUBtext's 3 computers have crashed and are no longer functional; and

WHEREAS two functioning computers and a server are required for the daily functioning of the store; and

WHEREAS the third SUBtext computer is over 8 years old and is the same model as one of the computers that has crashed; therefore

BIRT up to \$4600 be allocated from the capital fund for the purchase of three new computers for SUBtext, as recommended by Finance Committee.

Pullman: SUBtext has been relying on one computer to do everything. It's the same model as the other ones that died.

Sall: When do they arrive?

Pritchard: Two weeks is the approximate timeline.

Motion Carried

Motion 2009/10/19: 09 - Hannan/Warner

WHEREAS there is an active petition campaign on continuing membership occurring on campus; and

WHEREAS the CFS is currently afforded access to postering locations in the SUB that other political groups are not allowed to post on; and

WHEREAS in order to ensure a fair election on continuing membership, the UVSS must provide a fair environment for both sides to freely campaign; and
WHEREAS the UVSS has a legitimate interest in lobbying the government on political topics (e.g. We Ride Transit), and thus neutrality of campaign materials is only important for membership promotion material, not our political campaigns involving the CFS; therefore

BIRT the UVSS declares itself officially neutral on the question of continuing membership in the CFS, and distributes its resources on the question in a manner that is fair and accessible to both sides without favouritism; and

BIFRT CFS "membership development" material, including "I AM CFS" and other membership promotion material of the same nature, must comply with the postering regulations afforded to campus political clubs.

Hannan: A few other boards in Ontario have declared their neutrality. This is probably for the best. Some boards go pro and some go anti. With the make-up of this board, we don't have consensus. The Society would get to enjoy institutional neutrality from us and the fair distribution of neutrality. It is not fair for one side to get more resources than the other. This motion is not intended to restrict anyone's ability to campaign on either side. The motion deals with membership development. CFS membership materials blatantly promotes the CFS and it can be treated as campaign material. This would not restrict the campaigns of the CFS, such as reducing student debt or 'Where's the Justice?' which serve a good purpose. The motion requires that members act in good faith.

Motion to Amend - Comrie/Sutherland

BIRT the BIRT and BIFRT clauses are removed and replaced with:

BIRT all board members should act in good faith when discussing current membership development in the CFS.

Comrie: There is some wording that is not clear. This amendment addresses the concern that both parties have such as postering regulations. This would encompass the sentiment that Hannan's motion has but make it clearer.

Motion to Amend the Amendment - Sutherland/Ho

BIRT that 'should' is replaced with 'must'.

Sutherland: If it says 'should', it isn't binding.

Motion to Amend the Amendment Carried

Motion to Amend the Amendment – Warner/Hannan

BIRT instead of striking the BIRT and BIFRT clauses, that Comrie's BIRT clause is added to the first two BIRT clauses.

Jensen: I consider both amendments to be out of order. Fundamentally flipping a motion is out of order.

Harrison: Comrie's amendment is out of order.

Ho: Are the original motions themselves in order? It is worded like we're already in a referendum campaign. Why are we putting such a motion forward now? We implement campaigns and services etcetera as a part of the CFS. We are not neutral as we are part of the CFS and doing the work of the CFS. Providing services and campaigns requires that we inform students about these things. If we pass this motion, we wouldn't be able to promote the services that students already pay for. These are out of order altogether.

Warner: This motion isn't to stop the campaigns or services which many students benefit from. But, the Society as a whole will remain neutral.

Hardie: This doesn't say anything about current or ongoing campaigns. This just says that we're neutral on the referendum question or petition. It's not saying that we don't have membership development materials up, we just have to follow posting guidelines. It just says to respect our own rules. It seems benign.

Comrie: Against. I would rather see another one saying that we act in good faith. The problem is that this is not clear. You can't separate CFS campaigns from membership development – they are one and the same. If you support a campaign, you de facto support the CFS.

Hannan: Building support for a cause and building resources are two different things. Membership awareness tries to promote a social connection to an organization. That's campaign material and it should be subject to posting guidelines. I support the debt sentence campaign, but I don't necessarily support the CFS as a whole.

Motion to Divide - Kerr/Comrie

Kerr: The BIRT clauses are different and should be separated.

Motion to Divide Carried

Motion 2009/10/19: 09a - Hannan/Warner

BIRT the UVSS declares itself officially neutral on the question of continuing membership in the CFS, and distributes its resources on the question in a manner that is fair and accessible to both sides without favouritism.

Metcalfe: I think that this is coming too soon. No petitions have been submitted. Questions aren't on a ballot. If that's grounds for calling it out of order, then maybe we should. At this point, we are not 100% sure that the referendum is going forward. The UVSS is every undergrad student – how can we all remain neutral, member or director?

Harrison: The UVSS is our entire membership. This motion is problematic. I'd like to motivate against. There is the underlying issue of being unable to promote the services and resources of the CFS with this motion. It could lead to the snowball effect of not being able to inform our members of our services and resources.

Sall: My interpretation is that the Board can't declare itself pro- or anti-. There is a difference between campaigns and membership development.

Harrison: The UVSS is a member of the CFS and that means that we will be promoting membership etc. It is our mandate as a member local to do this work until such a time that our membership vote to leave.

Motion to Amend – Sall/Sutherland

BIRT the motion be amended to read:

BIRT the UVSS Board of Directors declares itself officially neutral on petitioning on the question of continuing membership in the CFS.

Sall: We should make the distinction between the Board and the Society.

Adatia: Will this mean that board members can't petition?

Sall: Either side could still petition.

Hannan: Could execs still petition on paid time?

Pullman: This is a good amendment and clears things up.

Ho: The Board takes stances all the time. This amendment is a good attempt to clarify. The Board can make a decision on behalf of its members.

Coccola: In favour. This removes the ambiguity.

Comrie: I am worried about the wording. It's saying that the Board is neutral. I'm an elected rep – it's not my choice to take a stance or not. My constituents have decided for me.

Metcalfe: In favour if along with this there is the idea that we stop as directors arbitrarily deciding what execs can do and when we think when their hours are or should be. They put in 40 - 50 hours per week. We can't say that they're petitioning on paid time. We could if they only worked 37 hours, but that's not the case. It's easy for us as DAL's to say when we are a member or a director. It is not so easy for execs.

Shannon: Can directors campaign if they are neutral?

Sall: My intent is that they can still petition.

Warner: The board would be officially neutral, individual directors could say whether they are personally in favour or not.

Motion to Amend the Amendment – Hannan/Warner

BIRT the following is added to the amendment:

“and the Board of Directors will not use society resources in a way that is not neutral to this subject”.

Hannan: Once we establish neutrality, we don't then start photocopying pro- and anti- materials. We shouldn't use the photocopier, scissors etc.

Sutherland: This is confusing the issue and getting to point of ridiculous. The authors of the original motion need to think about it more and rewrite it into language that is not confusing so that we don't need endless amendments.

Staples: Against idea of neutrality. This debate seems like waste of time. People have their own subjective idea of neutrality.

Slavin: As a whole, the Board is not taking a stance. That's all that the motion is saying. And, that the Society's resources are not used.

**Kerr called the question.
Carried**

Motion to Amend the Amendment Carried

The motion now reads:

BIRT the UVSS board of directors declares itself officially neutral on petitioning on the question of continuing membership in the CFS, and the Board of Directors will not use society resources in a way that is not neutral to this subject.

Comrie: Board meetings are not supposed to be like this. Our advocacy group reps don't want to be here when it goes on like this. If motions aren't concise, it wastes our time. Let's ask Hannan to redraft and bring back to the Board.

**Warner called the question.
Carried**

Motion Carried as Amended

Motion 2009/10/19: 09b - Hannan/Warner

BIFRT CFS "membership development" material, including "I AM CFS" and other membership promotion material of the same nature, must comply with the postering regulations afforded to campus political clubs.

Sutherland: These are part and parcel of the same thing. This should go back and be redrafted. Against.

Harrison: There is a problem with using the term 'campus political clubs' – the CFS is different from these clubs. Against.

**Kerr called the question.
Failed**

Hardie: This seems to me to be a basic respect to our own rules. We should be doing this anyways.

Motion to Amend - Ho/Sutherland

BIRT "must comply with the postering regulations afforded to campus political clubs" is removed and replaced with "must comply with the University of Victoria postering policy".

Ho: I agree with Dylan, but there are policies that we follow already. The CFS is not a campus political club. All students are members. Everyone is bound by the UVic postering policy.

Hannan: On our society billboard, we have 'I am CFS' materials. I want to get away from that.

**Sutherland called the question.
Carried**

Motion to Amend Carried

The motion now reads:

BIFRT CFS "membership development" material, including "I AM CFS" and other membership promotion material of the same nature, must comply with the University of Victoria postering policy.

Harrison: In terms of our UVSS boards, they are ours. They belong to the Board to promote its events, campaigns and services. We use the logo that says 'I am CFS' on our materials. Does this mean that we can't post those on our own boards?

Warner: The idea is not to move our campaign materials, just to move 'I am CFS' from any special privileges – our info boards are special.

Sutherland called the question.

Carried

Motion Carried as Amended

Motion 2009/10/19: 02 - Harrison/Sutherland

BIRT nominations be opened to elect one UVSS member to sit on the Gilian Sherwin Alumni Award for Excellence in Teaching.

Motion Carried

Nominations opened.

Pullman nominated himself.

Motion to Ratify Pullman – Comrie/Kerr

Motion Carried

Motion 2009/10/19: 03 - Harrison/Comrie

BIRT nominations be opened to elect one UVSS member to each of the following committees:

- Finance Committee
- Organisational Development Committee
- Political Action Committee

Motion to Amend - Kerr/Sall

BIRT Communications committee is added to the list of committees.

Hannan: We should advertise this to students.

Kerr: I did.

Motion to Amend Carried

Motion Carried as Amended

Nominations opened.

Kerr nominated Phil Livingstone for Communications.

Harrison nominated Razy Marmorstein for PAC.
Hannan nominated Sheldon Starette to Finance and OD.

**Motion to Ratify Livingstone, Marmorstein, and Starette – Hardie/Sutherland
Motion Carried**

Motion 2009/10/19: 04 - Harrison/Metcalfe

BIRT nominations be opened to elect one UVSS Director to sit on the President's Distinguished Lecture Series Committee.

Motion Carried

Nominations opened.

Pullman for Coccola. Accepted.
Staples for self.
Hardie for self.

All motivated.

Staples was elected by secret ballot.

**Motion to Ratify Staples - Ho/Pullman
Motion Carried**

Motion 2009/10/19: 05 - Kerr/Ho

BIRT nominations be opened to elect one UVSS member to sit on the Social Sciences Curriculum Committee for the 09/10 school term.

Motion Carried

Nominations opened.

Comrie for Mike Renaud. Accepted.

**Motion to Ratify Renaud – McKenzie/Metcalfe
Motion Carried**

Motion 2009/10/19: 06 - Kerr/Sall

BIRT nominations be opened to elect one UVSS director to sit on The Ring Advisory Board Committee for the 09/10 school term.

Motion Carried

Nominations opened.

Pullman for Coccola. Not accepted.
Coccola for Pullman. Not accepted.
Sall for herself.

**Motion to Ratify Sall - Kerr/Pullman
Motion Carried**

Motion 2009/10/19: 08 - Pullman/Metcalf

WHEREAS the shelving in the main walk-in fridge is over 10 years old and has become rusted; and

WHEREAS the UVSS has been directed by health authorities to replace these shelves; therefore

BIRT up to \$1500 be allocated from the capital fund for the purchase of new shelves for the main walk-in fridge, as recommended by Finance Committee.

Pullman provided a handout for review.

Hardie: Could we just refinish the shelves instead?

Harrison: They couldn't refinish them because it would have demolished them because they are so old.

Motion Carried

Motion 2009/10/19: 10 – McKenzie/Pullman

BIRT \$500 is allocated from the Clubs Special Project Grant to each of the following clubs:

- Amnesty International
- Solidarity for Palestinian Human Rights

McKenzie: This needs to be officially ratified by the Board.

Hardie: What are the projects?

McKenzie: A speaker for the Palestine club and a filmfest for Amnesty.

Motion Carried

Motion 2009/10/19: 11 – Harrison/Metcalf

BIRT nominations open to elect one UVSS member to sit on the President's Distinguished Service Awards committee.

Motion Carried

Nominations opened.

Coccola for Mike Renaud. Not accepted.

Hardie for Staples. Not accepted.

McKenzie for herself.

Motion to Ratify McKenzie – Coccola/Staples

Motion Carried

8. ANNOUNCEMENTS

Sall: The CFS campaign launch for the 'Education Shouldn't Be A Debt Sentence' campaign is tomorrow at the Grand Pacific Hotel.

Comrie: Futurefest is this Saturday at Centennial Square.

Hall: The Saanich Legacy Foundation is hosting a gala event on Tuesday. Proceeds go to the BC Children's Hospital .

Ho: The Students for Choice event is from 1pm – 2:30pm this Thursday in the small MPR.

Hardie: If anyone is into giving rabbits vasectomies, I'll put you in touch with a lady.

Pullman: Dean Fortin is speaking tomorrow in the SUB at 3:30pm in the small MPR.

9. IN CAMERA

a. Resource Centre Staffing

Motion to go in camera including staff – Hardie/Sall
Motion Carried

Motion to recess for 5 minutes - Kerr/Comrie
Motion Carried

The meeting recessed at 9:31pm.

The meeting moved back in camera at 9:35pm.

Motion to move out of camera – Comrie/Hardie
Motion Carried

The meeting moved out of camera at 10:00pm.

Motion 2009/10/19: 12 - Ho/Hardie
BIRT Meaghan Kerr be granted an indefinite leave of absence.
Motion Carried

10. NOTICE OF MOTION

11. MEETING TIMES

The next meeting scheduled by the Board of Directors is:
Monday November 2, 2009 in the SUB Upper Lounge at 6:00pm.

12. ADJOURNMENT

Motion to Adjourn – Comrie/Pullman
Motion Carried

The meeting adjourned at 10:00pm.

BJ/bj
USW 2009
CFS 44

January 14, 2010

Veronica Harrison, Chairperson
3800 Finnerty Road
Student Union Building
PO Box 3035
Victoria, BC
V8W 3P3

Dear Ms. Harrison,

The Canadian Federation of Students and its sister organisation, the Canadian Federation of Students-Services, were created to be national associations of individual post-secondary students. Within the Federations' structure, the individual student members are represented by their respective university and college student unions, through national assemblies employing a delegate voting system; however, the Federations' Bylaws set out that membership is determined directly by the individual members through on-campus referenda. In addition to setting out the process by which individual students vote on joining the Federations, the bylaws include a provision whereby the members can vote in a referendum on whether or not to continue their membership. To be initiated, such a vote requires a portion of the individual members belonging to a given student union to petition the Federations to conduct such a vote. Such a petition must be signed by at least ten percent of the individual students belonging to the union.

As you may already be aware, the Canadian Federation of Students' National Executive is in receipt of a petition submitted from individual members of the Federation belonging to the University of Victoria Students' Society seeking a referendum on the question of continued membership in the Federation. The petition appears to have been signed by at least ten percent of the Association's individual members and, therefore, appears to meet the minimum requirement set out in the Federation's bylaws.

In addition, the National Executive is in receipt of a second petition by individuals requesting that their names be removed from the initial petition seeking a referendum on the question of continued membership. The National Executive is requesting your assistance in verifying the authenticity of the names on the petition.

As a first step, the National Executive needs to verify if the petition has been signed by the required minimum number of individual Federation members belonging to the University of Victoria Students' Society. We are therefore requesting the assistance of the Students' Society in verifying the authenticity of the names appearing on the petition, including the enrolment status (or membership status, if different). Please ask that each name on the petition be marked as valid (or invalid) by the Registrar's office.

The Registrar must be able to confirm that the name of the individual and the student

number as they appear on the petition are legible and therefore verifiable. In addition, a sworn statement from the University of Victoria authenticating the names and confirming undergraduate enrolment numbers for the fall 2009 semester would likely suffice.

Please let me know at your earliest convenience whether the University of Victoria Students' Society will be able to assist with the verification. Please do not hesitate to contact me if you have any questions.

Regards,



Dave Molenhuis
National Treasurer



March 24, 2010

Jose Barrios
c/o University of Victoria Students' Society
3800 Finnerty Road
Student Union Building
PO Box 3035
Victoria, BC
V8W 3P3

Dear Mr. Barrios,

As you are aware, the Canadian Federation of Students' National Executive received a petition from individual members of the Federation belonging to the University of Victoria Students' Society seeking a referendum on the question of continued membership in the Federation. In addition, the National Executive received a second document signed by individuals requesting that their names be removed from that petition seeking a referendum on the question of continued membership in the Federation.

In accordance with Bylaw I, 6. bi, the National Executive has undertaken a review of the petition to determine whether it is in order. As a result of this process, it has determined that the number of signatories on the petition to initiate a referendum on the question of continued membership did not meet the ten percent (10%) threshold required by the Federation's Bylaws.

To state the obvious, in order for a vote on the question of continued membership in the Federation to be initiated, there must be adherence to the Bylaws. As described above, the petition did not meet the ten percent (10%) threshold set out in the Bylaws and, therefore, was deemed invalid.

Sincerely,

Katherine Giroux-Bougard
Chairperson

cc. Veronica Harrison, President, University of Victoria Students' Society



March 24, 2010

Veronica Harrison, Chairperson
University of Victoria Students' Society
3800 Finnerty Road
Student Union Building
PO Box 3035
Victoria, BC V8W 3P3

Dear Ms. Harrison,

As you are aware, the Canadian Federation of Students' National Executive received a petition from individual members of the Fédération belonging to the University of Victoria Students' Society seeking a referendum on the question of continued membership in the Federation.

Unfortunately, Jose Barrios, the individual who submitted the petition, failed to provide a return mailing address. As a result, I am unable to send the enclosed correspondence directly. I am hoping that you can forward the enclosed letter to Mr. Barrios at your earliest convenience.

Thank-you in advance for your assistance in this matter.

Sincerely,

Katherine Giroux-Bougard
Chairperson

Minutes

University of Victoria Students' Society
Local 44 - Canadian Federation of Students
Monday June 14, 2010 – SUB Upper Lounge 6:00 pm

ATTENDANCE

Directors:

Coccola, Hall, Hannan, Sall, Barrios, Bowie, MacLeod, Marani, McDonald, Mehra, Pal, Paterson, Sangha, Sherlock, Warner, Johnston, Sutherland, Humphries, Spilker

Staff:

Jensen

1. CALL TO ORDER

The meeting was called to order at 6:02pm.

2. ACKNOWLEDGEMENT OF TERRITORIES

Coccola acknowledged territories.

3. ADOPTION OF AGENDA

a. Adoption of Agenda

i. Agenda of 2010/06/14

Motion to adopt the agenda of 2010/06/14 - Sutherland/Paterson

Motion to amend - Mehra/Bowie

BIRT the following motion is added to the end of New Business:

BIRT Mehak Mehra is granted a leave of absence from June 21 to Sept 10.

Motion to amend carried.

Agenda adopted as amended.

4. PRESENTATIONS

a. Sorority – Ashley Slade (10 minutes)

Slade introduced herself and explained why a letter is needed. She said that they were not asking for housing or funding, just to be allowed on campus.

Paterson: Why do you want to establish this sorority?

Slade: A lot of the girls feel like there isn't anything for them to do that is social and provides a service.

Marani: What kind of screens are there to join?

Slade: We do not know until we get our charter.

Spilker: UVSS clubs are inclusive and cannot exclude – what is the membership criteria for your sorority?

Slade: For a sorority, the member needs to be a woman. We don't know if there will be grade requirements or a fee.

McDonald: How will getting a sorority be different from what you are doing now?

Slade: This is a way to get more support. To have the Greek letters helps support alumni and to get jobs from other alumni.

Paterson: UVSS Clubs policy cannot discriminate. How can you be based around a gender and still conform with this policy?

Hall: They are not asking to be a UVSS club.

Bowie: Are you planning on a sorority base on philanthropy or partying?

Slade: I was very active in high school extracurricular activities. The girls want to be a part of something big. The sorority will do charity work or do fundraising for good causes. There will be money for dues for girls who cannot afford it.

McDonald: What events have you held in the past?

Slade: We have 45 girls and one event planned this summer for girls paying dues this summer. We are not far enough in the process to know what the dues go to.

Motion 2010/06/14: 01 – Hall/Sangha (25 minutes)

BIRT The UVSS has no opposition to the formation of a Sorority by UVIC students.

BIFRT The Chairperson be instructed to write a letter to Jim Dunsdon communicating the above decision.

Hall: This is much more chopped down than last time. This is communicating what we have already said at our SAGM in February--- we are not opposed. The reality is that without this letter, we are inhibiting the ability of this group to organize. Perceptions from the past should not impede these students to form a new group. My research has found that workshops on alcohol and sexualized violence must be held once a year. They haven't done anything yet.

Bowie: In favour. They don't want to be part of the UVSS; therefore we would only be impeding them. This is an opportunity to see how they actually work.

Johnston: Why do we need a letter?

Hall: Jim Dunsdon is careful about his role and feels anything regarding students should consult the UVSS.

Motion to roll call vote - Barrios/Bowie

Motion carried.

Spilker: Would sororities be under UVic's harassment and discrimination policy?

Coccola: Yes.

Pal: If the letter goes and you are deciding what sorority to choose, does the board have a say on what sorority you choose?

Coccola: We can always write a letter calling for revocation - I am assuming.

Marani: I asked to table this so that we could see a presentation, but we still do not know what the specifics are.

Johnston: I am along the same lines in terms of the vagueness here. Maybe we could ask Jim to let them get more information about the sorority. It is important to decolonize governance. We will be involved if we do not oppose.

McDonald: I am not opposed to the group existing. We will be involved in the process and will have the ability to revoke.

Coccola: Fraternities exist and do not need our support.

Hall: Frats do not have such an extensive process. Jim and I are trying to find a way to have communication between the school, the sorority and the UVSS.

Spilker: Against. We have moved quickly from being opposed to supporting. But, there is not enough info about membership criteria or practices.

Motion to amend – Sherlock/Marani

BIRT the following is added to the letter:

“The UVSS wishes to be fully involved in the consultation process between any sororities, the Hellenic conference and student affairs.”

Sherlock: From what people have said, you do not have enough information. If we go to the next step, we should get more info. I don't want to stop you but have reservations.

Mehra: My only concern is that if we get involved – how detailed will that be? It would be ridiculous to have something on this at each board meeting.

Barrios: Opposed.

Sutherland called the question.

Failed

Hannan: We can't have it both ways. This is addressing freedom of association. It is not fair to insert ourselves in the parent role when they don't want our money and are independent.

Sherlock: It is silly that we have to make this decision. But, we have to and we are going to be making this decision without adequate information.

Marani: This is using us as a resource.

Motion to amend failed.

Motion to extend the time allotted for speeches by 10 minutes – Paterson/Mehra

Motion to extend carried.

Paterson: The University has a policy re: discrimination on gender so how can we pass this?

Coccola: It is not our job to police university policy.

Paterson: We are implicated. We keep discussing this as if there is potential for an incident. I believe sororities are inherently exclusive who go on to further protect privilege. There are lots of other opportunities for this group to do charitable work.

Barrios: This is ideological opposition. The issues of sex violence, alcohol abuse and discrimination have been addressed. It is not our job to restrict this group.

Sutherland: In favour. If they have to go through workshops and are not taking anything from us, we have no reason not to write this letter. Who are we to stop them?

Hannan: Slade has been friendly and cordial and deserves some recognition from us. It is not our role to have oversight with no UVSS money being provided.

Bowie: We are trying to deny them the right to associate the way they want to. There are other clubs with career connections as a benefit. They are being inclusive by fundraising for dues.

Warner: In favour. They are not asking for money. If they want to form a group and have fun, not a problem.

Spilker: This is our issue because it is our members and regards the climate on our campus. The Women's Centre opposes this based on the concerns of privilege and sexualized violence.

MacLeod – in favour
Johnston - opposed
Humphries - opposed
Spilker - opposed
Pal - abstain
Sall – in favour
McDonald - abstain
Barrios – in favour
Sutherland – in favour
Mehra - abstain
Bowie – in favour
Warner – in favour
Sangha – in favour
Paterson - opposed
Marani - opposed
Sherlock - abstain
Hall – in favour
Hannan – in favour

5. IN CAMERA

a. CFS legal presentation including David Borins (45 minutes)

Motion to move in camera - Sall/Sutherland
Motion carried.

The meeting moved in camera at 7:05 pm.

Motion to move out of camera - Sutherland/MacLeod
Motion carried.

The meeting moved out of camera at 7:34 pm.

Motion to recess for 5 minutes – MacLeod/Hall
Motion carried.

The meeting recessed at 7:35 pm.

Coccola called the meeting back to order at 7:42 pm.

Motion 2010/06/14: 02 – Hannan/Jose (25 minutes)

WHEREAS a registrar confirmed petition signed by 11.4% of UVSS members was delivered to the CFS demanding that a referendum on withdrawal of membership from the CFS be held; and

WHEREAS the CFS refused UVSS members' demand for a referendum on withdrawal of membership from the CFS; and

WHEREAS the UVSS wishes to protect the rights of its members to conduct a legally valid democratic referendum on whether to continue CFS membership;

WHEREAS the UVSS wishes to reduce the costs of any legal expenditures related to protecting the rights of its members to vote in a democratic and legally valid referendum on whether to continue their CFS membership; and

WHEREAS the potential legal costs for securing a legally valid referendum on CFS membership can be reduced by hiring legal counsel already familiar with other cases where CFS members required legal assistance to conduct legally valid referendums on CFS membership; and

WHEREAS other cases of legal action involving the CFS can involve considerable day to day legal requests, and a board-appointed liaison to handle daily affairs arising from the pursuit of a legally valid referendum will likely reduce potential costs; therefore

BIRT the UVSS take appropriate steps to assure that a legally valid referendum on whether to continue membership in the CFS is held at the University of Victoria before the end of the 2010 - 2011 academic year; and

BIFRT the UVSS retain David Borins of Heenan, Blaikie LLP as legal counsel to assist the UVSS to achieve that goal; and

BIFRT the UVSS appoint the current Director of Finance as a liaison to provide direction to David Borins and report to the Board of Directors at each meeting as to progress.

Hannan: A liaison would simply be the day to day administrator to secure a legal referendum. I have a similar role on contract negotiations as I take direction from the Finance Committee and do day to day work. I am committed to closely consulting with the Board, especially before big sums of money are spent. I want to keep costs down and don't want this to go to court. Regardless, CFS rules are different from ours and I want to uphold the intent of UVSS electoral policy.

Motion to limit speaking rights to 4 minutes – Bowie/Sall

Motion to limit speaking rights carried.

Motion to roll call vote - Sutherland/Bowie

Motion to roll call vote carried.

Motion to amend - Mehra/Sutherland

BIRT the chairperson is added as a liaison

Mehra: This is so that there are two eyes on all issues and a second person to fill in if necessary.

Bowie: In favour. This will give a broader view.

Hannan: I agree if James agrees. It makes sense when one is away.

Motion to amend carried.

Pal: This is not in the interests of students and only a fraction of students know what the CFS, but everyone knows that we have a 300,000 deficit. I cannot support spending so much money.

McDonald: Is there any cost to us retaining a lawyer until the Guelph decision is out?

Coccola: There would be some costs writing letters etc.

Borins: I would not advise suing until the Guelph decision is out. But, some research could be done in the meantime.

Bowie: In favour. We underestimate the intelligence of members to say they do not understand the CFS. The petition is to have a democratic referendum and we should give them that.

Barrios: The referendum will inform students what the CFS is. By having this process, we simply give students a choice in the matter.

Sutherland: In favour. I live in a democracy. I have the right to have my vote.

Marani: In favour, but we should hold off until the Guelph decision.

Paterson: Students asked for a referendum and I agree with directors' sentiments. Ideally we could do that and not spend money on legal options. We have a duty not to spend students' money. It is unfortunate that if we don't spend this money we are looking at five years. But, it is not worth the money to get a referendum through a court battle when we could initiate a new referendum under the new rules.

Sherlock: Opposed. I encourage directors to bring this back after the Guelph decision. The lawyer is an excellent choice with expertise. But, this will take us 100,000 further into debt. There are two ways to get a referendum - one costs a lot of money.

Bowie: This motion doesn't get us into a legal battle right away. This is just setting a process in motion to get a referendum.

Motion to amend – Marani/Sherlock

BIRT the Director of Finance is removed as a liaison.

Marani: We still don't have a budget and this is taking time. The Director of Finance should be working to save us money - not spend money.

Sherlock: In favour. The typical person responsible for being a liaison is the chair and they hold the in camera materials.

Motion to amend failed.

Pal: I am not questioning the intelligence of students; I am speaking solely on the fiscal sense of this issue. It is irrational to spend money when we know the CFS will play hard ball.

Hannan – in favour
Hall – in favour
Sherlock - opposed
Marani - opposed
Paterson - opposed

3. All promotional materials for the Society's ~~events and operations and events~~ **campaigns, services and events that are implemented locally** shall display the Society name or logo, ~~the Canadian Federation of Students name or logo~~, and, where appropriate, a mark indicating that unionised workers produced the materials.
4. All promotional materials for the Society's ~~events and operations and events~~ **campaigns, services and events that are implemented through the Society's membership in the Canadian Federation of Students'** shall display the Society name or logo, the Canadian Federation of Students name or logo, and, where appropriate, a mark indicating that unionised workers produced the materials.

BIFRT Board of Directors Operational Policy Manual Part H is renumbered accordingly.

Coccola motivated and explained that this motion came through 2 committees.

Motion carried.

Motion 2010/06/14: 03 – Coccola/Spilker (10 minutes)

BIRT donation of \$898.77 be allocated to the Women's' Centre from the Joint Advocacy account to help cover the cost of a coop student, as recommended by Advocacy Council.

Spilker: These funds are to help with the costs of a full-time position to do research for the women's center.

Coccola explained how the joint funds work.

Motion carried.

Motion 2010/06/14: 04 – Mehra/Barrios

BIRT Mehak Mehra is granted a leave of absence from June 21 to Sept 10.

Mehra: I have an international coop obligation.

Motion carried.

7. **OTHER BUSINESS**

8. **NOTICE OF MOTION**

9. **ANNOUNCEMENTS**

10. **MEETING TIMES**

The next meeting scheduled by the Board of Directors is:
Monday June 21, 2010 in the SUB Upper Lounge.

11. **ADJOURNMENT**

12. **APPENDIX**

a. **DIRECTOR & STAFF REPORTS**

SALL:

June 7-June11:

- prepared for and attended the Victoria Regional Transit Commission meeting on June 7th
- attended SCART
- held an AWU meeting on June 10th
- held a Communications meeting on June 10th
- attended Special Events
- met with Melissa, the manager of SUBtext
- reformed the Food Bank volunteer system and created a new info sheet for volunteers
- general office work

Coccola:

June 7-June11:

- Held advocacy council, PAC, and OD
- Answered media calls regarding YPY and late-night transit
- Sent out thank you letter to transit allies
- Sent out thank you letters to all members of the VRTC
- met with Melissa, the manager of SUBtext

Heenan Blaikie

VIA EMAIL AND COURIER

WITH PREJUDICE

Of Counsel

The Right Honourable Pierre Elliott Trudeau, P.C., C.C., C.H., Q.C., FRSC (1984 - 2000)

The Right Honourable Jean Chrétien, P.C., C.C., Q.C.

The Honourable Donald J. Johnston, P.C., O.C., Q.C.

Donald R. Munroe, Q.C.

Pierre Marc Johnson, G.O.Q., FRSC

The Honourable Michel Bastarache

The Honourable René Dussault, FRSC

Peter M. Blaikie, Q.C.

André Bureau, O.C.

July 23, 2010

Chairperson
Canadian Federation of Students
National Office
338 rue Somerset Street Ouest/West
Ottawa, Ontario K2P 0J9

Attention: Mr. David Molenhuis

Mr. Molenhuis,

We are counsel to the University of Victoria Student Society (“UVSS”). As you are aware, the UVSS’s mandate is to represent its members, the students who are enrolled at the University of Victoria (the “University”), on a variety of issues.

We are advised that on November 4, 2009 a petition calling for a referendum on the issue of continued UVSS membership in the Canadian Federation of Students (“CFS”) was served on the CFS National Executive in accordance with its bylaws (the “Petition”). In response to the Petition, the CFS failed to ensure that a referendum process commenced as it is required to do under the CFS bylaws.¹

In particular, we understand that all names on the Petition were verified by the University registrar and that the registrar certified that 11.4% of students signed the Petition. A copy of the registrar’s certification was provided to the CFS in late October 2009 and the certification was not challenged by the CFS. Instead of commencing referendum planning, in late March 2010, over four months after the Petition was served, the CFS advised that a “counter-petition” had been circulated and that any names on the counter-petition must be deducted from names on the Petition. The CFS further advised that the Petition is not in order because when the names from the counter-petition are counted against the names on the Petition, the Petition does not meet the 10% threshold required by the CFS bylaws.

¹ Where the CFS bylaws are referred, we refer to them as they were in the fall of 2009 at the time that the Petition was served on the CFS National Executive.

David Borins

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F 1 877 282.4654
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1055 West Hastings Street
Suite 2200
Vancouver, British Columbia
Canada V6E 2E9

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Neither the bylaws nor the policies of the CFS contemplate the existence of a counter-petition. There is no legal basis to consider the counter-petition in reference to the threshold required to trigger a referendum under the bylaws.

The Petition required the CFS to hold a referendum 60 to 90 days after its receipt. To date, the CFS has refused to confirm that the Petition is in order, to confirm the referendum dates, and to appoint representatives to the Referendum Oversight Committee ("ROC"). This is violation of the bylaws of the CFS and, moreover, a breach of the democratic rights of the members of the UVSS. The UVSS views the conduct of the CFS with respect to the Petition as amounting to bad faith and a breach of the rules of natural justice. The CFS should be working to ensure that its individual members' voices are given a forum for expression, not silenced by way of obstruction.

The UVSS seeks to assure that its members are given a fair opportunity to vote in a referendum on continued membership in the CFS. To that end, we require that the CFS to confirm that the Petition is in order, confirm that a referendum on continued membership in the CFS will be held, and provide the names of your appointments to the ROC.

While the UVSS would rather avoid litigation, should you fail to take the above set out steps by no later than August 5, 2010 the UVSS will be forced to consider taking this matter before the courts. To that end, we formally insist that all letters, notes, memoranda, records, messages, communications and other documents which may be relevant, including any of the foregoing that exist in electronic form, be preserved for the purposes of discharging your organizations' obligations under the *BC Supreme Court Civil Rules*.

We stress that the UVSS only wishes to assure that its members have an opportunity to vote on membership in the CFS in accordance with the CFS bylaws. We invite you to contact the undersigned should you have suggestions as to how the CFS and UVSS may resolve this matter without resort to the courts.

Yours truly,

Heenan Blaikie LLP



David Borins
Law Corporation

cc. Client

HBdocs - 8820333v1



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August 13, 2010

VIA EMAIL

Mr. David Borins
Heenan Blaikie LLP
Suite 2200, 1055 West Hastings Street
Vancouver, BC V6E 2E9

Dear Mr. Borins:

**Re: Canadian Federation of Students and University of Victoria Student Society
("UVSS")**

Todd J. Burke
Direct (613) 786-0226
Direct Fax (613) 788-3513
todd.burke@gowlings.com
File No. 03350237

As you are aware, I act as counsel for the Canadian Federation of Students ("CFS") with respect to this matter.

You are correct that my clients received a petition on November 4, 2009 requesting a referendum on continued membership in the CFS. You then suggest that my clients did not challenge the certification and that it was only in late March, 2010, that my clients advised that a counter-petition had been circulated and that any names on the counter-petition must be "deducted" from the names on the original petition. With respect, your recital of the facts is not complete.

In early January, the National Executive of CFS met to review the petition it received on November 4, 2009. This was in compliance with By-Law 1, section 6(b) which provides that the National Executive meet within 90 days of receipt of a petition to review the petition and determine if it is in order. At the time that the National Executive met, it was also in receipt of a second petition signed by individual members stating, among other things, that they did not want their name to be counted towards any petition to put to question continued membership in the CFS.

By letter dated January 14, 2010, my client advised your client of the receipt of both petitions. My client also requested UVSS' assistance in verifying the authenticity of the names of the student members who had signed the second petition (a copy of this letter is attached). By email dated February 4, 2010, Veronica Harrison responded to the letter from my client and advised that the person who was co-ordinating the second petition was going to submit it to the Registrar for verification. The second petition was subsequently verified, which resulted in my client's subsequent letter to your client dated March 24, 2010.

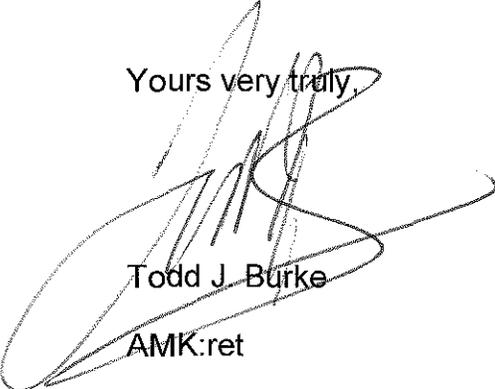
Please consider this letter as confirmation of my client's position that the petition delivered November 4, 2009 is not in order. Clearly, there were a significant number of students who specifically requested that their names be removed from the November 4, 2009 petition. My client takes the position that the intention of these students should be respected. The review carried out by my client with respect to both petitions led it to the conclusion that less than 10% of the individual members at University of Victoria had requested for a referendum.

It is my client's position that the fact that the by-laws of the CFS do not make any reference to a "counter-petition" is not determinative of this issue. Unlike your client, my client was not prepared to disregard the intention of the students who requested that their names be removed from the petition.

In light of the above, my client will not be proceeding with the scheduling of a referendum on the question of continued membership in the CFS.

I trust this makes my client's position clear.

Yours very truly,



Todd J. Burke

AMK:ret

March 14, 2008
Vancouver, B.C.

(CHAMBERS COMMENCED)

1
2
3
4
5
6 THE REGISTRAR: In the Supreme Court of British
7 Columbia in chambers, heard at Vancouver, this
8 Friday, the 14th of March of the year 2008.
9 Calling the matter of Canadian Federation of
10 Students and Kwantlen University College Student
11 Association, My Lord.

12 MR. PALLESON: My Lord, my name is Martin; my last name
13 is Palleson, it's P-a-l-l-e-s-o-n. And I'm here
14 on behalf of the petitioner, Canadian Federation
15 of Students.

16 MR. SIDDALL: My Lord, Siddall, initial K., and with me
17 is Borins, B-o-r-i-n-s, initial D., and we're
18 counsel for Kwantlen University College Student
19 Association.

20 MR. TATE: My Lord, it's James Tate, T-a-t-e. I'm
21 representing Schiffner Consultants Inc., My Lord.
22 We are a prospective intervenor. Effectively,
23 Schiffner Consultants Inc. is the chief returning
24 officer in the electoral process which is the
25 subject matter of today's petition.

26 THE COURT: When you say "a potential intervenor" --

27 MR. TATE: Well, My Lord, I've brought a motion and
28 brought it to my friends' attention. And, as I
29 understand it, the respondent, Kwantlen Student
30 Association, consents to having us appear as an
31 intervenor. And I -- if I have my friend
32 Mr. Palleson's position correctly, he's not
33 objecting to us appearing as an intervenor.

34 My Lord, effectively, the intent of my client
35 is to bring evidence to the court that may be of
36 assistance to Your Lordship in the determination
37 of questions before the court. My client is not
38 taking a position on the outcome of the petition
39 or the relief sought therein. However, there are
40 facts in evidence which, in my submission, only my
41 client can bring to the court, which may be in
42 issue as a result of some of the facts that have
43 been put forward in the petition. And I can be
44 specific if you want me to continue.

45 THE COURT: Well, I just want to know -- I don't want
46 to be careless about what we do. But if your
47 clients don't have an interest in the outcome,

1 then why would I make them an intervenor?

2 MR. TATE: Right.

3 THE COURT: I'm just thinking if they're only helpful,
4 well, they'll be helpful to one side or the other
5 who can call on your expertise, can't they?

6 MR. TATE: Right. That may be the case, My Lord, and,
7 you know, to that extent I leave it in your hands.

8 I'll draw your attention to the petition and
9 paragraphs 22 to 26 of the federation's petition
10 where some of my client's actions have been --
11 have been laid out.

12 THE COURT: All right. But your client's actions are
13 all on behalf of Kwantlen, aren't they?

14 MR. TATE: Well, My Lord, my client's contract is with
15 the Kwantlen Students Association --

16 THE COURT: Right.

17 MR. TATE: -- and pursuant to both a contract and a
18 resolution passed by the Kwantlen Students
19 Association. So to the extent that the issue
20 involves the validity of Kwantlen Students
21 Association giving my client a mandate to act,
22 that is the case.

23 My Lord, at paragraph 26 of the federation's
24 petition there's a question with respect to
25 competence in my client's ability to run the
26 referendum in a fair and competent manner. One of
27 my client's interests is in essentially bringing
28 evidence to the court that goes to that point:
29 the fairness of the process that's been run to
30 date. And so from that point of view, it may be
31 that my client has an interest in at least
32 maintaining the integrity and fairness of the
33 process.

34 It's an interest that I think is one of my
35 client's but also potentially the electorate; the
36 electorate being the Kwantlen student body. From
37 that point of view, there is a -- I guess what I
38 would call a "quasi public interest" dimension
39 that my client may have relevant material to bring
40 to the court's consideration.

41 THE COURT: Well, look, but the -- at bottom Schiffner
42 has the confidence of the Kwantlen Students --
43 what's the proper name of it? The college? Well,
44 I'm going to call it the "Kwantlen Student
45 Association." And isn't that basically the end of
46 it, whether CFS likes it or not? But that isn't
47 where this is going to be decided; this is going

1 to be decided on the basis of whether they're
2 entitled to do this or they're not entitled to do
3 this.

4 MR. TATE: Right. My Lord, if that -- I mean, if
5 that's your view, then I would agree that -- you
6 know, again, my client is, you know, joined, I
7 suppose, to the association in that respect.

8 However, if there -- if the court's decision
9 is going to be based in some way on what has
10 happened with respect to the process so far or,
11 for example, you know, based on an assessment or
12 review of fairness, competency as set out in
13 paragraph 26 of the federation, then again, my
14 client's -- my client's affidavit in evidence just
15 goes to what he's done so far, the basis of
16 setting the referendum question and to that
17 extent, we're here just to assist the court,
18 so ...

19 THE COURT: If this thing turned into whether Schiffner
20 can run an election or not, that would be another
21 question, wouldn't it? It would certainly be
22 entitled to standing. You'd probably have to be a
23 party.

24 MR. TATE: Right. That's true, My Lord. That's
25 correct.

26 THE COURT: But the way in which Schiffner's competence
27 is put in issue here is simply the CFS suggests it
28 doesn't have confidence. But that won't matter if
29 Kwantlen has confidence and Kwantlen can do what
30 it's doing, will it?

31 MR. TATE: No, I agree. Yes.

32 THE COURT: All right. Well, then it seems to me,
33 depending on your notions of what it's prudent for
34 you to do on behalf of Schiffner, you're certainly
35 welcome to stay to advise either of the lawyers
36 here as to whatever contribution you might be able
37 to make, if that helps to direct the -- the
38 questioning -- or the submissions in an
39 appropriate way. But it doesn't strike me at this
40 moment, unless there's more to this than I see,
41 that you have standing -- I should grant standing
42 at this point.

43 It seems to me it's a collateral inquiry
44 that --

45 MR. TATE: Right.

46 THE COURT: -- if we get into it, we'll have to
47 reassess.

1 MR. TATE: Right. That's fine, My Lord, and --
2 THE COURT: Does that make sense?
3 MR. TATE: It does, My Lord, and I take it that you --
4 you have my client's evidence in front of you and
5 obviously that can -- if there's a wish for the
6 court to have me speak to that, then I'm available
7 to do that.
8 THE COURT: Well, I don't want to fumble in the dark in
9 any sense so, I mean, if it becomes important to
10 know that material, we'll find a way for it to get
11 before the court, it seems to me.
12 MR. TATE: Right.
13 THE COURT: But the fact that paragraph 26, which may
14 or may not be a confident thing to say in the
15 petition in any event, puts your client's
16 competence in question doesn't strike me as
17 sufficient in the context of this, as I apprehend
18 it, to give you standing and lead to an inquiry
19 into whether your people can run an election.
20 MR. TATE: Right. And that certainly isn't what we
21 would want as the subject matter of the
22 proceeding, My Lord, obviously.
23 THE COURT: No. No, I'm sure you don't.
24 MR. TATE: Yes.
25 THE COURT: All right. Do either counsel have views on
26 my preliminary view of whether standing ought to
27 be granted?
28 MR. PALLESON: I'm certainly content with that,
29 My Lord.
30 THE COURT: Well -- all right. And Mr. Siddall?
31 MR. SIDDALL: My Lord, I have no comments with -- to
32 abrogate from the approach you've adopted.
33 THE COURT: If -- I mean, your clients have engaged
34 Schiffner to run their election, haven't they?
35 MR. SIDDALL: Yes.
36 THE COURT: That's how it is.
37 MR. SIDDALL: Well, subject to the direction from the
38 ROC.
39 THE COURT: All right. But it seems to me maybe
40 Schiffner has some -- some assistance to give us
41 at some point in this if there's some issue with
42 respect to how these things are done or how
43 they're managed fairly or whatever.
44 MR. SIDDALL: And to the extent that -- I mean, it
45 is -- I'm not sure if the paragraph reference was
46 what you reference in the petition, but to the
47 extent that there is an argument that my friend

1 makes that what's happening is somehow patently
2 unfair because of Schiffner's competence, I think
3 that does engage evidence.

4 THE COURT: Well, is that where this is likely to go?
5 I mean, look, I haven't mastered the material;
6 I've gone through it. But it seems to me this
7 case is placed pretty squarely on whether Kwantlen
8 has the right to do this in this manner or they
9 don't constitutionally within the society's
10 relationships, not whether what they propose to do
11 is competently -- is going to be competently done.
12 Isn't that right?

13 MR. PALLESON: Yes. That's certainly the main point --
14 the main --

15 THE COURT: I mean, by the way, you're not all that
16 confident in Schiffner for some reason, but that's
17 really --

18 MR. PALLESON: Yeah.

19 THE COURT: -- a "by the way."

20 MR. PALLESON: There really isn't going to be a focus
21 on the competence of Schiffner, I don't think, in
22 our material. You know, we'll go through my
23 argument and perhaps My Lord will say, well, geez,
24 maybe he is saying something about Schiffner.

25 I mean, in addition to complying with the
26 bylaws, there is an obligation to have a fair
27 process in accordance with the rules of natural
28 justice, but that -- I don't think there's going
29 to be a focus on Schiffner's competence. But
30 that's -- it will be tangential, if at all, so ...

31 THE COURT: Well, then I'm not going to complicate
32 matters by granting standing on an issue that it
33 seems to me is going to be subordinate to the main
34 issue.

35 MR. PALLESON: Certainly that would be the case.

36 THE COURT: All right.

37 MR. PALLESON: My Lord, I've got an argument and some
38 authorities. I'd like to hand those up to you.

39 THE COURT: Thank you. This election is proposed for
40 Tuesday, is it?

41 MR. PALLESON: Unfortunately, that's right. We have
42 short leave.

43
44 **SUBMISSIONS FOR THE PETITIONER BY MR. PALLESON:**

45
46 This all -- and I should maybe just say why
47 we're here today. This all came to a head on

1 February 28th, which is a couple weeks ago,
2 when -- you know, I'm content to call them the
3 "Kwantlen Student Association" as well or "the
4 society" we've called them in our material,
5 because they are a society, but ...

6 THE COURT: Well, I'll tell you, the material got a
7 little confusing to me because it seemed to me the
8 society -- what have you called yourselves then?

9 MR. PALLESON: "CFS."

10 THE COURT: Okay. So CFS -- and every time it says
11 "society" --

12 MR. PALLESON: Right.

13 THE COURT: I kept having to check myself, but that's
14 fine.

15 MR. PALLESON: Well, sorry. Right. Yeah, we might
16 have thought of that, but -- yeah.

17 In any event, that's when it came to a head,
18 when this -- you know, we were told -- the CFS
19 that is -- were told that the society or Kwantlen
20 Society had decided -- resolved -- their executive
21 council had resolved to hire Mr. Schiffner -- or
22 it's actually his company, Schiffner Consultants
23 Inc., and had done so. And at that point it was
24 obvious that the situation from our point of view
25 was no longer tenable, and so we moved as quickly
26 as we could to get before the court to deal with
27 this election. And so we brought on a short leave
28 application the following week -- the following
29 Tuesday, and this is the date the master decided
30 it should be heard given my friend's position of
31 wanting some time to prepare materials and so on
32 and so forth. So that's why we're here. I don't
33 think there's been any delay in that sense.

34 Now, My Lord, if I may, despite the fact that
35 I've given you an argument, as counsel often do,
36 I'd like to summarize the case as a whole from our
37 perspective and I'll maybe come back to that
38 written argument then.

39 Let me just introduce the parties. The
40 Canadian Federation of Students, it's a -- it's
41 actually a non-profit corporation under the **Canada**
42 **Corporation Act**. It's also, though, the same --
43 the same name -- Canadian Federation of Students,
44 it's a national association --

45 THE COURT: Yes.

46 MR. PALLESON: -- of local student societies. So they
47 belong to this national association which has the

1 same name, Canadian Federation of Students, and it
2 has, of course, bylaws.

3 We've already mentioned the Kwantlen Society
4 is a society that was founded -- or created in
5 1981. And it's -- it was a founding member of the
6 Canadian Federation of Students.

7 It's clear that the current executive of the
8 Kwantlen Society is unhappy with the CFS -- I'm
9 probably putting it rather mildly -- and wants to
10 leave the CFS.

11 I'd like to say from the start that this is a
12 very important issue to the CFS and, as I say, the
13 Kwantlen Society being a founding member for the
14 last 27 years, and it's -- there will be
15 significant damage, we say, to the CFS -- Canadian
16 Federation of Students -- should they in fact
17 leave. Of course, they are entitled to leave if
18 they did it in accordance with the bylaws and
19 fairly, but there will be significant damage if
20 they do leave, not to mention the \$150,000 a year
21 in student fees which the Kwantlen students, as
22 members as a whole, contribute to the CFS.

23 But more importantly than that, the CFS is a
24 national association, and the more students it has
25 behind it, the more relevance it has. And it's
26 critical for them to have a number of students.

27 So that's the type of -- of interest I guess,
28 which is rather incalculable in terms of dollars,
29 but it's very significant.

30 Now --

31 THE COURT: Does it have most of the colleges in Canada
32 so far?

33 MR. PALLESON: You know, My Lord, I don't -- it has a
34 lot, but whether it has most -- I can take
35 instructions on that and let you know. I'll let
36 you know exactly how many they have.

37 Now, of course, Your Lordship, having looked
38 at the materials, realizes under the CFS bylaws --
39 which it seems to be accepted are governing here,
40 but perhaps not -- my friends may take objection
41 to that -- I'm not sure -- but there must be a
42 referendum of Kwantlen students. And certainly
43 our position is that there has to be a referendum.
44 I mean, a referendum's been triggered. The CFS is
45 not trying to say, don't have a referendum.
46 There's going to be a referendum. The questions
47 are: when? Is it next Tuesday? Which we say it

1 can't go ahead for various reasons that I'll come
2 to in a second; and also what are the rules going
3 to be surrounding this referendum? Because, as I
4 say, I think the law is that it's meant to be --
5 has to be a fair proceeding. In fact, what we say
6 is that in order for the referendum to be valid,
7 it has to be in accordance with the CFS bylaws,
8 one, and it has to be in accordance with the rules
9 of natural justice.

10 Now, some of the cases talking about
11 elections they say, you know, they have to be
12 fair, they have to be on an equal footing, that
13 sort of thing. We say this can't happen if the
14 vote's held next Tuesday. And why do we say that?
15 Firstly, because there's been early aggressive
16 negative campaigning by the Kwantlen Society since
17 last September -- September of 2007, which
18 isn't -- contrary, we say, to the bylaw, and
19 there's been nothing like that by the CFS.

20 Now, Your Lordship will hear evidence about
21 some communication activities carried out by the
22 CFS, which they do as part of their general
23 business of being a national association of
24 students, but nothing like the kind of
25 referendum -- we call it -- the word seems to be
26 "defederation" the parties use.

27 THE COURT: Yes.

28 MR. PALLESON: Nothing like the defederation referendum
29 campaigning by the society, so that is a problem.

30 And secondly --

31 THE COURT: Well, is that a problem?

32 MR. PALLESON: Well, I think it is, yeah.

33 THE COURT: I mean -- no, but what I want to just focus
34 on for a second is if you've got a fair amount of
35 disaffection in a particular college, enough to
36 raise, say, 10 percent, then there's going to be
37 kind of ferment, isn't there? I mean, you
38 can't -- you can't expect people not to discuss
39 these things and to be, if they are being,
40 negative or to campaign in a sense. What you --
41 but don't you have to focus on -- once you've got
42 a referendum, then there is sort of a
43 restricted -- in the sense that there are rules
44 that apply to the campaigning that goes on for the
45 two weeks, but anything that goes on before that
46 is just -- isn't that just fair game? Isn't that
47 just democracy?

1 MR. PALLESON: No, in my submission, that's not --
2 that's not, with respect, correct.

3 I think obviously there is going to be
4 discussion. You can't say, you know, we're not
5 going to -- no negative comments. Right? And I
6 think that's what perhaps Your Lordship's looking
7 at, but this is not that.

8 What I'm going -- the materials will show
9 that this is a concerted campaign for defederation
10 starting in September 2007. It's not just, here
11 we don't like the CFS; it's we don't -- you know,
12 this is our defederation campaign; we're starting
13 it now -- starting it in September 2007. What the
14 bylaws call for is a discrete campaign period.

15 I think it's onside to have discussion --
16 even negative discussion -- criticism. But it's
17 not, in my submission, onside to have focussed --
18 a focussed defederation campaign with posters
19 and --

20 THE COURT: How could you govern that, though?
21 There's -- there's always going to be that kind of
22 energy as a preface to the 10 percent sign-up you
23 have to have in order to trigger the referendum
24 process at all.

25 MR. PALLESON: That's right. But then from the time
26 you've got the petition until the time you set the
27 actual discrete campaign, my submission is that
28 there ought not to be a focussed campaign.

29 THE COURT: Well, I don't -- I don't see how you -- is
30 there something that you could point to that would
31 say that's not allowed?

32 MR. PALLESON: Well, I think the bylaws -- they don't
33 say that specifically, but certainly the spirit of
34 the bylaws, which calls for a discrete campaign,
35 in my submission, that would -- that follows from
36 that. You can't -- how can you have a -- how can
37 it be a fair election when one party's having
38 it -- you know, and it's not just discussion.
39 Right? I mean, it's -- or -- or individual
40 discussion --

41 THE COURT: But that's what we do all the time. You
42 know, that's how elections work in this country in
43 all sorts of other contexts.

44 MR. PALLESON: Well, perhaps that's --

45 THE COURT: There are people conducting campaigns
46 full-time in Quebec for a certain outcome. And
47 then you have referendum campaigns where certain

1 rules apply. I mean, Kwantlen's your Quebec,
2 isn't it?

3 MR. PALLESON: That's an interesting analogy. I'll
4 have to get back to you on that one too, My Lord,
5 but I take your point.

6 But I guess -- I mean, you know -- and I
7 think the fact that this campaign is being run by
8 the council and not just by individuals -- I mean,
9 it's a concerted, focussed campaign that council's
10 running with all sorts of different media and --

11 THE COURT: So far my analogy is holding up well, as
12 far as I'm concerned.

13 MR. PALLESON: Well, but it's -- you know, the bylaws
14 call for -- and I don't -- I don't -- I mean, if
15 you look at the bylaws, which do call for a
16 discrete campaign period, I mean, the objective --
17 and I'm going to -- you know, I don't know. Maybe
18 I'm going to argue this now. It surely must be to
19 have a campaign period where both sides can
20 campaign. I mean --

21 THE COURT: Well, isn't that the point of the campaign
22 itself, though? You trigger it, and then
23 everybody has at it for two weeks or whatever the
24 period is? You just -- you say, you know, within
25 reasonable bounds, but within bounds that are
26 obviously restricted by the rules that have been
27 set down to govern them, you get to take your best
28 shot at persuading people.

29 MR. PALLESON: Right.

30 THE COURT: But before that there is just going to be
31 this ferment, and you can't --

32 MR. PALLESON: Well, there may be ferment, but my
33 submission is it ought not to be a -- called a
34 "campaign." It ought not to be called a
35 "defederation campaign," and it ought not to be
36 focussed and run by the society council in a
37 manner that gives them in effect an eight-month
38 campaign.

39 THE COURT: Well, whose fault is that?

40 MR. PALLESON: Well, my submission is that it's
41 contrary to the spirit and intent of the bylaws,
42 and the fault would be --

43 THE COURT: No, but didn't -- when was the
44 referendum -- when was the sign-up of the
45 10 percent?

46 MR. PALLESON: About August of 2007.

47 THE COURT: Okay. So August of 2007, and then it was

1 September sometime of 2007 that the CFS had
2 notice, isn't it?

3 MR. PALLESON: Well, yeah, we got -- we were given the
4 petition, that's right.

5 THE COURT: Okay. Why has it taken so long to organize
6 a referendum given that the 10 percent has been in
7 the bag for quite some time?

8 MR. PALLESON: Well, the date was a date that the --
9 well, under the bylaws, you know, there's an
10 oversight committee that's appointed.

11 THE COURT: I know, but, look, just reading through the
12 material -- and I could be completely -- you know,
13 don't let me head this off in the wrong direction.
14 It's just that I've got three black binders, and
15 I've got a day and I'm aware of it -- a March 18th
16 date.

17 MR. PALLESON: Right.

18 THE COURT: So my strong notion is that I've got to
19 focus this quickly --

20 MR. PALLESON: Yes.

21 THE COURT: -- and get to the bottom of it.

22 MR. PALLESON: Right.

23 THE COURT: And just reading through the material to
24 the extent I was able to do so in the time I had,
25 it seems to me that there are some process issues,
26 or there's been some trouble just getting
27 organized to even deal with this through the
28 appropriate channel, which was this committee --
29 this oversight committee.

30 I mean, it hasn't seemed -- on the face of it
31 there may be reasons, and you give them to me.
32 But looking at it from my perspective in reading
33 the material, it looks like from September 7th
34 until sometime in January a pile of time was just
35 blown off where nothing really happened. And then
36 since then there's been some difficulty getting
37 the oversight committee to just deal with the
38 thing. Is that fair?

39 MR. PALLESON: Well, I think -- I think the -- well,
40 you know, the oversight committee didn't meet
41 until January, so -- and whether or not --

42 THE COURT: Why would that be?

43 MR. PALLESON: Well, I think that the practice is that
44 that's usually sufficient time to get a campaign
45 organized.

46 The problem in this case is that the
47 oversight committee process hasn't worked very

1 well. But it certainly has worked, the evidence
2 is, a lot in a lot of different cases, and it
3 normally does work and -- but you're right,
4 My Lord, I mean, it hasn't worked that well and
5 there are a number of issues. But I think that
6 the expectation was when they met that they would
7 be able to deal with this all.

8 THE COURT: Well, for how long is the 10 percent
9 sign-up valid? Do they have to do it again?

10 MR. PALLESON: No.

11 THE COURT: So it's good forever?

12 MR. PALLESON: Yeah. There has to be a referendum.

13 THE COURT: I mean, one concern that would jump out at
14 me is just the idea that if you postpone it the
15 way you want to, it's into another academic year
16 with a whole different student body in some
17 ways -- or at least a quarter different student
18 body or whatever the fraction would be.

19 MR. PALLESON: Well, that's true. That's true, it
20 would be, but ...

21 THE COURT: I mean, as time goes by, the 10 percent is
22 delegitimized --

23 MR. PALLESON: Well, you know --

24 THE COURT: -- by the change there is in the student
25 body.

26 MR. PALLESON: My -- my answer to that is that -- you
27 know, say if you have the referendum in September,
28 it will be the students who are currently at
29 Kwantlen College who are deciding whether they
30 want to be a part of the Canadian Federation of
31 Students. And those are the students who will
32 be -- have the active interest and be an active
33 part of it. I mean, it's true that students may
34 have left Kwantlen College by that time, but then
35 they no longer have an interest in whether they --
36 whether that -- the Kwantlen Society remains a
37 member of the Canadian Federation of Students.

38 So I don't really see a negative from that
39 sense. I mean, it seems to me that when you have
40 the referendum, it's the students that are there
41 that should be deciding it, and it doesn't -- I
42 mean, you can't delay for 10 years, but I don't
43 see a negative from that point of view in having
44 it in September or whenever it is.

45 THE COURT: From the CFS point of view.

46 MR. PALLESON: Yeah, and from the students' point of
47 view too. Maybe from the executives' point of

1 view, but -- of the Kwantlen Society, if they
2 don't like the CFS, which seems to be certainly
3 the case. But from the members of the Kwantlen
4 Society -- the students, I mean, they're going --
5 in September there's going to be students, and
6 they can decide whether they want to be part of
7 the CFS or not.

8 THE COURT: Okay. But you're saying they're going
9 outside the process, but you're also acknowledging
10 that the process hasn't worked very well.

11 MR. PALLESON: It hasn't worked, that's -- it hasn't
12 worked yet very well. That's right. But I think
13 it -- you know, I mean, I think what ought to
14 happen -- and this is what we say is that -- we
15 say that the pre-campaigning or early campaigning
16 will lead to an unfair election at this point. It
17 certainly won't be a balanced election, it
18 certainly won't be on equal footing and they've
19 gone outside the process. So why -- it seems to
20 me that the better thing to do is to have a
21 cooling period, as we say, from now until a
22 subsequent date and not have campaigning -- not
23 have focussed referendum campaigning from now
24 until that date. And then in the interim put it
25 back on the oversight committee to --

26 THE COURT: Why do you call it a "cooling-off period"?

27 MR. PALLESON: In terms of campaigning.

28 THE COURT: I have a hard time with that. But in any
29 event, what hasn't happened is the oversight
30 committee hasn't got its act together to hold the
31 referendum in the terms that the CFS would like to
32 see it held in since September. I mean, isn't
33 that radically dysfunctional?

34 MR. PALLESON: Well, the oversight committee wasn't
35 appointed by either side until December. And so,
36 I mean, the Kwantlen Society didn't appoint their
37 members until December and then -- and then I
38 think a week later the -- they were notified that
39 the CFS had appointed members and so that's when
40 the oversight committee was created -- or formed.

41 THE COURT: So it's not either party's fault up until
42 that point; there's just -- time went by.

43 MR. PALLESON: That's right. And then we're in the
44 middle of December, and then Christmas comes, and
45 then we get into January and that's when they
46 meet. So I don't know that there's a great deal
47 of dysfunction, as you say, up to that point.

1 Then they meet and they have -- you know,
2 they have resolved certain issues, and there's a
3 list of them. We can get to them, but ...

4 THE COURT: Well, what still needs to be done from the
5 oversight committee's point of view?

6 MR. PALLESON: Well --

7 THE COURT: Within the existing process, what would
8 have to be done to have a timely referendum?

9 MR. PALLESON: They would need to decide on a
10 referendum question, first of all, about -- which
11 they are much closer to now -- now that Mr. -- I
12 assume now that Mr. Schiffner has proposed a
13 question.

14 THE COURT: That's been helpful to everyone?

15 MR. PALLESON: Well, it's a much -- I think it's a much
16 more balanced question than the question that the
17 society had wanted -- or the society
18 representatives on the oversight committee had put
19 forward.

20 THE COURT: All right. And what else needs to be done?

21 MR. PALLESON: They need to have some rules on campaign
22 materials and --

23 THE COURT: Those aren't spelled out anywhere?

24 MR. PALLESON: Well, not for a defederation referendum.
25 There is some rules on when you vote to join a
26 federation, there's something helpful in the
27 bylaws. But there's not much about the campaign
28 materials for a defederation.

29 I mean, you know, the -- the CFS
30 representatives, their normal rule is not to have
31 things which are -- there's a phrase and it's
32 three components, of which I can only think of
33 two, but libelous or inaccurate -- maybe it's
34 "defamatory." That's the general criteria, and
35 the society representatives wouldn't agree to
36 that. They didn't want to have that as a -- it
37 seemed like a pretty reasonable criteria to me, in
38 my submission, but they didn't want that criteria
39 and so -- so there are some issues about that.
40 And they have -- we'd have to resolve that.

41 Now, it may be that what actually I'm
42 proposing is -- well, what I would propose is
43 that, you know, the CFS has put together a
44 framework in the material, and I can take
45 Your Lordship to that. I had intended to do that.
46 Maybe I should do that right now.

47 THE COURT: A framework for what?

1 MR. PALLESON: For the referendum. The things that
2 need to be done.

3 THE COURT: Well, how fast can these things that need
4 to be done be done?

5 MR. PALLESON: Well --

6 THE COURT: I mean, I'm wondering, are these the kinds
7 of -- these aren't the questions that are posed to
8 me in this material, but I -- if it's difficult
9 to -- if it's endless wrangling to work out, for
10 instance, the question, can't the court impose a
11 question?

12 MR. PALLESON: I would say that if Your Lordship took
13 jurisdiction under the **Society Act**, Your Lordship
14 probably could -- under section 85 of the **Society**
15 **Act**, which is the point I think from my friend's
16 outline --

17 THE COURT: I mean, the court isn't frequently, but it
18 is sometimes called upon to do that very thing.

19 MR. PALLESON: Yes, yes.

20 THE COURT: Say this will be how you do this, this will
21 be how you do that.

22 MR. PALLESON: Yeah. And in fact --

23 THE COURT: And shouldn't there be some attempt then to
24 do that before the end of the April term?

25 MR. PALLESON: In fact, My Lord, I've asked for that
26 today. I mean -- but I don't know that today's
27 the right day for it; it might be the right day
28 for it. But we seek in our outline direction -- I
29 don't know if you've seen it -- if you've had a
30 chance to look at the outline in any detail, but
31 we -- but if you look at --

32 THE COURT: I'm sorry to be so peremptory.

33 MR. PALLESON: No, no. It's all right.

34 THE COURT: You understand I've got these -- as I say,
35 there's black binders everywhere.

36 MR. PALLESON: I know.

37 THE COURT: And I know March 18th isn't far away.

38 MR. PALLESON: No, no. I'm fine to deal with this, you
39 know. And at the end of it, I'll come back to the
40 written argument and see what I've missed and --

41 THE COURT: All right.

42 MR. PALLESON: -- I won't press --

43 THE COURT: So where are you taking me now?

44 MR. PALLESON: I thought I would take --

45 THE COURT: To the outline?

46 MR. PALLESON: Yeah. I thought I would take you to the
47 outline --

1 THE COURT: Yeah.
2 MR. PALLESON: -- section 9, where we in fact seek
3 directions from the court with respect to the
4 conduct of the referendum and namely that --
5 sorry, it's at tab 1 [indiscernible].
6 THE COURT: No, I've got it.
7 MR. PALLESON: The referendum take place on a date to
8 be agreed upon by the oversight committee in the
9 fall of 2008.
10 I don't know that we have to impose a date by
11 the court, but ...
12 THE COURT: Well, I'd have to hear from your friends --
13 MR. PALLESON: Right.
14 THE COURT: -- but I'm anticipating an argument that
15 the fall is too late.
16 MR. PALLESON: Oh, I would think so, yes.
17 THE COURT: So if I'm anticipating that argument, what
18 I'm going straight to, to be absolutely blunt with
19 you, is if March 18th is just a bit too quick
20 because the circumstances under which a campaign
21 will be conducted for two weeks need to be
22 outlined a little more -- more clearly, can we be
23 talking about a date like April 2nd?
24 MR. PALLESON: Well --
25 THE COURT: That's how I'm thinking is why don't I say,
26 well, the referendum will take place on this date,
27 there will be a two-week period for campaigning,
28 the campaigning will be structured as follows and
29 off you go? And Schiffner will have conduct of it
30 just because they're experts in it, unless you
31 think they don't know how to do it.
32 MR. PALLESON: The only thing is, I think that's
33 contrary to the bylaw. I don't -- I don't say
34 that Schiffner doesn't know how to do it, run a
35 campaign -- a referendum, not a campaign -- to run
36 a referendum, but I don't --
37 THE COURT: But don't they primarily provide technical
38 support for elections? Ballot boxes and things of
39 that nature?
40 MR. PALLESON: I would say that's what they do.
41 THE COURT: So does the CFS have a standing mechanism
42 for that sort of thing?
43 MR. PALLESON: Yeah, they do. And they run these
44 referenda frequently.
45 THE COURT: Do these things happen quite often?
46 MR. PALLESON: Well, they happen periodically. I mean,
47 but not just defederation, but also join --

1 there's lots of student associations and I think
2 the evidence is there's been -- I don't know -- 35
3 since -- in the last [indiscernible].
4 THE COURT: But is the CFS today in a position to say
5 they could conduct all by themselves an
6 election -- well, "all by themselves" -- through
7 something called an "oversight committee," I
8 suppose, but ...
9 MR. PALLESON: Yes, yes.
10 THE COURT: But it can conduct one this side of
11 April 30th? Bearing in mind I don't suppose an
12 exam [sic] should be held during exams -- an
13 election should be held during exams.
14 MR. PALLESON: Referendum -- well, that's true.
15 THE COURT: So isn't there just a window of April
16 Fool's to April 7th or 8th, something like that?
17 MR. PALLESON: The actual bylaws talk about no -- I
18 think it's the end -- they say no referendum
19 between April 15th and September 15th.
20 THE COURT: Okay. Yeah, that doesn't surprise me.
21 MR. PALLESON: No. That's right.
22 THE COURT: So -- but so what there is now, if you're
23 right and there shouldn't be a referendum on
24 March 18th because it's just too soon and just
25 doesn't give time to put this in the appropriate
26 frame --
27 MR. PALLESON: Right.
28 THE COURT: -- there still is time, isn't there,
29 between now and April 15th or so to conduct a
30 two-week campaign and to put together a
31 referendum? And my question then is, can it be
32 pulled off without the assistance of Schiffner, as
33 far as you're concerned?
34 MR. PALLESON: Yeah. I'd like to discuss that at the
35 break, perhaps, if I could.
36 THE COURT: Because if it can't, then I guess the
37 question is, then should -- should the task be
38 left with Schiffner to just conduct the election?
39 MR. PALLESON: Yeah. And obviously, my submission is
40 that it should not. That it should be put off, as
41 I say, longer than that. I mean --
42 THE COURT: Okay. But I'm not focussing on -- right
43 now I'm not focussing on what your best position
44 is; I'm really focussing on whether it's doable
45 from your perspective within your -- your own
46 parameters. If you're saying to me, for instance,
47 yes, it's possible we could pull it off using our

1 own resources, then that's something that's
2 helpful for me to know.

3 MR. PALLESON: Right.

4 THE COURT: If the answer is, no, we couldn't possibly
5 do it using our own resources until the fall,
6 that's a different answer that has different
7 implications.

8 MR. PALLESON: Yes.

9 THE COURT: And that's really what I'm asking you. I'm
10 not asking you to buy into the idea that it should
11 be held by April the 15th.

12 MR. PALLESON: No.

13 THE COURT: Your position is that it's just -- it
14 should be left until the fall.

15 MR. PALLESON: That's right. And -- all right.

16 THE COURT: So I mean, I'm not trying to pin you to a
17 version; I'm just asking you what the facts are
18 about what can be done.

19 MR. PALLESON: I think -- I think -- you know, I have
20 someone who's very well positioned to answer that
21 question in the courtroom, so I think what I would
22 do is at the break perhaps I could --

23 THE COURT: All right.

24 MR. PALLESON: -- ask her and come back to you on that.
25 But if you look at Exhibit A to the -- and
26 here I'm at tab 1, Exhibit A to the outline. This
27 is the framework that we've sort of -- that the
28 CFS is suggesting that we would go with.
29 And so here -- here's what they've --

30 THE COURT: I'm sorry, I'm at tab A, but what I've got
31 is the bylaws.

32 MR. PALLESON: Are you at tab 1 -- sorry, My Lord -- of
33 the chambers record? Tab 1 of the outline?

34 THE COURT: Volume 1 is your outline. You've got tab A
35 to the outline?

36 MR. PALLESON: Exhibit A, yeah. It's not tabbed.
37 Sorry.

38 THE COURT: All right. Now I see what you're saying.

39 MR. PALLESON: Yeah. Sorry. So this is the framework
40 that the CFS is in fact proposing the court
41 would -- or could give directions. And here are
42 some polling stations which -- I think these may
43 have been agreed to, but in any event, here's the
44 ballot question: are you in favour of continued
45 membership in the Canadian Federation of Students?

46 THE COURT: Is that an approved question?

47 MR. PALLESON: No, that's not an approved question.

1 THE COURT: Is that a problem? That question?

2 MR. PALLESON: It's not a problem with us. I think
3 my -- I think Mr. Schiffner has -- he's phrased it
4 in a different way, which -- I think he says
5 "would you like to withdraw" or something along
6 those lines.

7 THE COURT: All right.

8 MR. PALLESON: I come to that in my written argument,
9 but section 4 -- actually, maybe I should tell you
10 what Mr. Schiffner says the ballot question should
11 be. Why don't I do that?

12 THE COURT: Don't worry about it. I think I saw it.

13 MR. PALLESON: Okay. I'll come to it. Okay. You'll
14 see it eventually today.

15 THE COURT: Yeah.

16 MR. PALLESON: Section 4, "Materials" -- so:

17

18 [AS READ]

19 The committee shall approve all
20 campaign-specific materials prior to
21 distribution. The committee will not approve
22 materials that are defamatory, potentially
23 libelous or factually incorrect.

24

25 That's the -- that's the standard.

26

27 Materials that have not received committee
28 approval cannot be distributed.

29

30 And (c):

31

32 The committee will not approve materials that
33 cannot be removed at the conclusion of the
34 campaign.

35

36 I believe the oversight committee has agreed to
37 this. I mean, it just makes sense.

38 "What Happens" -- (d), deals with what
39 happens when the materials are inappropriate.
40 Well, this sets out, you know, that they were
41 taken down and maybe there's a penalty assigned.

42

43 (e):

44

45 Campaigners shall provide the oversight
46 committee with a written description of
47 proposed campaign materials.

1 And (f):

2
3
4
5
6

The committee shall be provided with a copy of all materials prior to its distribution. The committee shall retain a copy.

7 And then the rest of these I'll just -- I
8 won't read them in detail. If you could flip the
9 page, it's -- so then there's section 5,
10 "Materials, Posters and Banners" -- some rules on
11 those. Section 6, "Campaigning," and there's not
12 a date under (a) because, of course, it's just
13 kind of when the referendum is, but the rest of it
14 is who's going to campaign and it goes on to (i).
15 Section 7 is "Poll Clerks"; section 8 is "Security
16 of Ballot Boxes"; section 9, "Voting Procedure";
17 section 10, "The Electorate" -- it's got the form;
18 section 11, "Ballot Counting"; and section 12
19 [indiscernible].

20 So that's a framework -- that's a standard, I
21 suppose you might say, "framework." In my
22 submission, it's a -- it's imminently sensible.

23 Now, I suppose with that I'm finished what I
24 was pleased to call my introduction, but
25 [indiscernible], but ...

26 So let me turn, if I might, to the written
27 argument. Now, what I set out on the first page
28 is the relief sought, of course, and we do apply
29 for orders and declarations. First, the society
30 being a member of the -- the "society" being the
31 Kwantlen Society -- being a member of the national
32 association, which I think is not contested, the
33 current constitution and bylaws of the CFS --

34 THE COURT: Do you need a declaration to that effect?

35 MR. PALLESON: Well, I suppose if it's a -- if it's
36 acknowledged. I don't know if we do or not. I
37 mean --

38 THE COURT: But it's a fact, isn't it?

39 MR. PALLESON: I think it is a fact, unless it's
40 disputed.

41 THE COURT: It's just a fact. You don't need a
42 declaration. All right.

43 MR. PALLESON: Okay. The current constitution bylaws
44 constitute a binding contract between the CFS and
45 member local association.

46 THE COURT: Do you need that kind of declaration?

47 MR. PALLESON: Well, I think we do or I'm --

1 THE COURT: But they're members; they're bound and
2 they're playing by the rules to the extent that
3 they've taken part --

4 MR. PALLESON: They have taken part.

5 THE COURT: They've signed up 10 percent. They've
6 taken part in the oversight committee.

7 MR. PALLESON: Oversight committee, yes.

8 THE COURT: So that's a given. They accept that, don't
9 they?

10 MR. PALLESON: They may have in -- given the material.

11 THE COURT: All right.

12 MR. PALLESON: Yeah.

13 (c), if the society wishes to defederate, it
14 must comply with bylaw 1 in order for defederation
15 to be valid and effective. I don't know that they
16 would agree with that. I don't think that they
17 would given that they are trying to defederate in
18 a different way.

19 THE COURT: Well -- all right. How have they -- how
20 does what they propose infringe upon that?

21 MR. PALLESON: I say it does so in two ways: one, they
22 are -- and I'm going to come back to this -- the
23 early campaigning -- I think the fact that they've
24 done early campaigning infringes on the bylaws.

25 THE COURT: Where is bylaw 1, article 6?

26 MR. PALLESON: And maybe I can just finish. And also
27 the hiring of a -- basically, the decision by
28 them, if you like, to -- and I'll use the word
29 "repudiate" for lack of a better word, the
30 jurisdiction of the oversight committee, I think,
31 would be -- and to go on their own, as it were,
32 would be contrary to the bylaw.

33 But I'll take you now to article 6. It's at
34 page 5 of this written outline. Maybe I should --
35 actually, starting at page 3 -- why don't I go
36 through this section here on the bylaws --

37 THE COURT: Sure.

38 MR. PALLESON: -- the relevant bylaws. So starting at
39 paragraph 6, we point out -- as my friends out
40 point out, there's really two types of members in
41 the CFS. That's not really all that germane, but
42 the students themselves are members, as is the
43 local association. I think it may have some
44 relevance to questions of standing.

45 The next -- and maybe this is a given. The
46 next -- under section -- on page 4 it really --
47 I've highlighted things there which perhaps I'll

1 just leave with Your Lordship. Really that's just
2 to show that it's a contractual situation.

3 What you're interested in starts on page 5 --
4 6, "Vote on Defederation."

5 THE COURT: Yes.

6 MR. PALLESON: And so then (a) is the petition. (b) --
7 notice I've included the fact there's not supposed
8 to be a referendum between April 15th and
9 September 15th, and also December 15th to
10 January 15th. "Campaigning" it says:

11
12 There shall be no less than two weeks of
13 campaigning immediately preceding the voting
14 during which time classes are in session.

15
16 (f), "Administering the Campaign and Voting."
17 And -- go on to (f):

18
19 Within three months of receipt of notice a
20 committee composed of two members appointed
21 by the federation and two members appointed
22 by the member local shall be formed. The
23 committee shall be responsible for --

24
25 Sorry, I'm on page 6, My Lord.

26 THE COURT: Yeah.

27 MR. PALLESON: Okay. And here's what the committee is
28 supposed to do.

29
30 [AS READ]
31 ... decide the manner of voting by
32 referendum, general meeting or mail-out
33 ballot, decide on the number and locations of
34 polling, approving all material to be
35 distributed during the campaign, deciding the
36 ballot question, overseeing the voting,
37 counting the ballots, adjudicating appeals
38 and establishing all of the rules and
39 regulations for the vote.

40
41 So the -- certainly, in our submission, it's
42 the oversight committee that has to conduct the
43 referendum or at least according to the bylaws.

44 Now, I've included at the bottom here another
45 excerpt from the bylaws, and this is not -- and I
46 don't -- you know, on the vote to defederate, but
47 it is on the vote to federate -- to join. And

1 this outlines campaign materials, which I think
2 is -- by analogy ought to be applicable -- or
3 could be applicable -- in my submission,
4 implicitly ought to be applicable to campaign
5 materials to defederate as well. And it says:
6

7 Campaign materials shall include all
8 materials developed specifically for the
9 referendum campaign. Materials produced by
10 the federation that promote campaigns and
11 services of the federation shall not be
12 considered as campaign materials unless they
13 include specific content about the
14 referendum.
15

16 And that's because the CFS has all sorts of stuff
17 out there about its organization. But if you
18 consider those to be campaign materials, then, of
19 course, they'd always be campaigning. But they're
20 general; they're not focussed on the referendum.
21 They have a website that says here's the CFS, this
22 is what we do, so on and so forth.

23 Over the page. In fact, it says:
24

25 The federation website should not be
26 considered campaign materials unless it
27 includes specific content about the
28 referendum.

29 The federation's annual report ...
30

31 And so on and so forth.
32

33 ... is not campaign ...
34

35 And then:
36

37 Campaign materials shall not be misleading,
38 potentially libelous or false.
39

40 So it's my submission that the oversight
41 committee is meant to have jurisdiction over any
42 materials that focus on the referendum that say
43 there's going to be -- you know, that reference
44 the referendum -- that say there's going to be a
45 referendum on such and such a date, there's going
46 to be vote and, you know, here's what -- here's
47 how we want you to vote -- or whatever they go on

1 to say. And it's for that reason that I say that
2 early campaigning is offside if it references
3 specifically the referendum.

4 Now, if it doesn't reference the referendum
5 vote, it's probably -- it may -- well, it may not
6 be okay, but it's probably not a breach of this
7 particular bylaw. And that's the critical
8 distinction that we put forward -- that we say
9 supports our submission that early campaigning is
10 not allowed in the bylaws -- pursuant to the
11 bylaws and that makes sense to me.

12 I mean, yes, there's going to be ferment;
13 yes, there's going to be discussion; yes, there's
14 going to be people who publish things and say, I
15 hate the CFS because they did X, Y, Z, or I like
16 the CFS because they did X, Y, Z. But once you go
17 beyond that and you get to a point where you're
18 saying, there's going to be a referendum on such
19 and such date or at some point, and here's our
20 campaign and we're campaigning and -- then I think
21 that's offside. I don't think -- that's not what
22 these bylaws call for. These bylaws call for --
23 with respect to stuff directly focussed and
24 referencing the referendum, that that stuff is
25 supposed to be governed by the oversight
26 committee.

27 And once the oversight committee meets, it
28 can -- and is formed, I mean, then, you know, it
29 can govern that stuff, and they can agree to have
30 a campaign period as long as they want. Two weeks
31 is the minimum; it doesn't have to be two weeks.
32 But that's not what happened here.

33 And it -- it seems to me a matter of common
34 sense that it must -- it must result in unequal
35 footing to have eight months of this fairly
36 vituperative anti-CFS campaign where the CFS has
37 not been matching it. And then you have -- but
38 you have maybe two weeks of voting, although --
39 although the CFS hasn't actually campaigned
40 themselves -- you may hear something more about
41 that -- during these two weeks. It's obviously
42 not going to be, in my submission, a fair
43 election.

44 Now, you may say, well, maybe they should
45 have campaigned during these last two weeks,
46 but -- or you might say, My Lord, well, they could
47 have campaigned. I think that's what

1 Your Lordship was getting at -- they could have
2 campaigned too -- they could have had early
3 campaigning. But the thing is, their position is
4 that that's not proper under the bylaws. So I
5 guess they -- the point is, having reached this
6 point, I think it's just not going to be a fair
7 vote next Tuesday.

8 Anyway, so I was just -- perhaps I should go
9 back and just -- back on page 1 of this written
10 argument because there I was just going through
11 the relief sought and we'd gotten to (c) and then
12 skipped ahead, but that's fine. Sorry -- of the
13 written argument, My Lord.

14 THE COURT: Not the outline.

15 MR. PALLESON: No, not the outline.

16 THE COURT: Right.

17 MR. PALLESON: So just on (d), we say that any -- any
18 poll of society members on defederation we seek a
19 declaration, other than in accordance with the
20 bylaws, is not binding -- cannot constitute a
21 legally effective defederation.

22 And over the page we go further and say that
23 the poll planned -- and maybe -- maybe we don't
24 need all these declarations; they're a bit
25 incremental. But the poll planned by the society
26 is not in accordance with the bylaws and as such
27 will not be binding on the CFS. And then we ask
28 for -- that the society be enjoined from
29 proceeding with the poll and that they comply with
30 the bylaws with respect to attempts to defederate.

31 And then we seek a declaration that in the
32 circumstances the oversight committee formed
33 pursuant to the bylaw has responsibility and
34 authority to deal with the following issues
35 regarding the referendum. And these are from the
36 bylaws; we've gone over them.

37 And then at (f), we have directions and --
38 that we're seeking, and those I've already gone
39 over and Your Lordship has looked at those.

40 And so when we -- just to make it clear,
41 obviously, our -- we -- you know, when we say "no
42 campaigning," that doesn't mean no discussion; it
43 means no -- no -- no material which, you know,
44 focusses again -- directly references the
45 referendum.

46 So where I am now? I'm at page 3 of this
47 written argument, and much of this I've already

1 covered. I don't want to cover it again.

2 THE COURT: Just so that I'm clear what you're saying,
3 though. Suppose you get what you want, and you
4 have a date fixed for sometime in October or
5 whatever.

6 MR. PALLESON: Yes.

7 THE COURT: Then what's the end -- and there's a
8 two-week -- and the oversight committee comes up
9 with a two-week campaign period, what's everybody
10 supposed to do in the meantime?

11 MR. PALLESON: Well, I --

12 THE COURT: Not talk about it?

13 MR. PALLESON: They can talk about -- they can talk
14 about the CFS, but I don't think they ought to --
15 the materials that are produced ought to directly
16 reference the referendum until the campaign
17 period. Because then the -- well, let's put it
18 this way, that's not necessarily true, because the
19 oversight committee has jurisdiction over those
20 materials so the oversight committee -- actually,
21 what has to happen now that -- I was sort of
22 thinking of it in a normal situation. But once
23 the oversight committee's formed, which it already
24 is, then from that point on -- so the material has
25 to go to the oversight committee. And the
26 oversight committee looks at it and if it approves
27 it, then it can -- yeah, it can be disseminated.

28 THE COURT: Any material?

29 MR. PALLESON: Well, I mean, any campaign material.

30 THE COURT: But "campaign material" would have to be
31 defined by the material that's disseminated during
32 the period of the campaign, doesn't it?

33 MR. PALLESON: No, My Lord. I would say that it's
34 material which directly references the referendum.

35 THE COURT: But "campaign" has to mean a certain period
36 of time, doesn't it? Logically? I mean, you --
37 you declare there's going to be an election on
38 such and such a date, the campaign period is a
39 period fixed before that period of time. You say
40 it has to be a minimum of two weeks, so let's just
41 say two weeks.

42 MR. PALLESON: Right.

43 THE COURT: Then in terms of the materials that are at
44 that point disseminated, the oversight committee
45 has to approve them.

46 MR. PALLESON: I would say --

47 THE COURT: These things all have parallels in other

1 situations.

2 MR. PALLESON: Yes.

3 THE COURT: But before that happens, people can say
4 what they want; it's a free country.

5 MR. PALLESON: Well, it is. But I -- it would be my
6 submission that the bylaws, which, you know,
7 people have agreed to here, would call for the
8 oversight committee to look at people -- at
9 materials that are going to basically directly
10 reference the campaign -- sorry, the referendum
11 date. So if you've got a reference to the
12 referendum date and how to vote in the referendum,
13 you ought to send those materials to the
14 campaign -- to the oversight committee starting
15 now up until the date of the referendum.

16 And yes, there'll be a discrete campaign,
17 but ...

18 THE COURT: You mean, anything you want to say about
19 this you have to submit to the oversight
20 committee?

21 MR. PALLESON: Not anything you want to say about the
22 CFS or anything you want to say about the --

23 THE COURT: Well, anything like that could be -- could
24 be interpreted as campaigning one way or the
25 other.

26 MR. PALLESON: Well, I think it has to have a direct
27 reference to the referendum before it could be
28 campaign materials.

29 THE COURT: All right. So you can say anything you
30 want as long as you don't refer to the referendum?

31 MR. PALLESON: Correct. Well, I mean, there's limits,
32 you know, to the [indiscernible].

33 THE COURT: No, no. I'm not --

34 MR. PALLESON: Yeah, yeah. But in terms of the bylaws,
35 that would be right. There can be discussion
36 and -- you know, of what's happening and so on and
37 so forth. But in terms of dealing with -- yes,
38 the referendum, that you ought to -- that those
39 things ought to go to the oversight committee.

40 THE COURT: And they don't need to as long as you don't
41 reference the date.

42 MR. PALLESON: Right.

43 THE COURT: All right.

44 MR. PALLESON: So -- yeah, paragraph 5, we just note
45 that there was a fee agreement between these two
46 entities where, again, the society agreed to be
47 bound by the bylaws of the federation as amended

1 from time to time, which -- so in addition to just
2 as a matter of law -- and I'll come to that --
3 being contractually bound to obey the bylaws, they
4 actually signed a specific agreement where they
5 also agreed to do that -- did the Kwantlen Society
6 and, of course, the CFS too.

7 So over to page 7, we talk about the
8 petition. It's -- I might just refer to that.
9 I'm not going to refer to much material, but
10 perhaps, My Lord, if I could refer to the
11 petition, because it is -- it's at tab 5 of this
12 chambers record, which is an affidavit of Lucy
13 Watson.

14 THE COURT: Yes.

15 MR. PALLESON: And at page 43 is the petition. And --
16 so this is the -- they removed the -- sorry,
17 My Lord. Page 43 of the exhibits.

18 THE COURT: Lucy Watson, 43.

19 MR. PALLESON: It's Exhibit D. Do you have tabs,
20 My Lord, or no?

21 THE COURT: I have tab D. Is that what you're saying,
22 remove the CFS petition [indiscernible]?

23 MR. PALLESON: That's right. So this is the petition
24 that was done. It -- some of these facts are --
25 certainly would be disputed in 1, 2 and 3. You
26 know, CFS British Columbia, which is a separate
27 body from the CFS -- separate society, "has not
28 presented audited financial statements to members
29 for fiscal years ..." Well, we say that that has
30 been done.

31 They say "CFS Services":

32
33 [AS READ]

34 CFS BC quietly provided loans of
35 approximately 600,000 to Douglas Students
36 Union despite internal forensic audit.

37
38 That's a big story in itself which -- that
39 characterization of it the CFS will deny, but ...

40
41 Therefore, we call for a referendum to be
42 held by the Kwantlen Students Association to
43 abolish the mandatory CFS fee, up to 6.72 per
44 semester, and formally defederate from all
45 levels of Canadian Federation of Students.

46
47 We don't object -- the CFS that is -- to the

1 petition, but we point out that this form of
2 question is one which -- referring to having the
3 fee built into it -- was one that Mr. Schiffner
4 decided, after taking legal advice, was
5 inappropriate and is no longer. So it -- we just
6 point that out that perhaps the petition's results
7 are not -- I'm sure my friend will refer to that.
8 But the question that was put to the students in
9 the petition was a question -- was in itself a
10 questionable question.

11 Back to the written argument here,
12 paragraph 9, just the -- the formation of the
13 oversight committee. And over at page 10, as I
14 have mentioned -- so it was December 3rd that the
15 society notified CFS of the appointment of their
16 representatives, and here's the letter reproduced
17 at page 8. And certainly this is designed to show
18 that they certainly recognize the process, they
19 were going to proceed under the bylaws and
20 pursuant to the oversight committee appointment,
21 which I think Your Lordship has got.

22 And then paragraph 12. By letter dated
23 December 10th, 2007, the CFS notified the society
24 of the appointment of their representatives.

25 We say at paragraph 13 at no time did the
26 society or any of its representatives raise any
27 objections to either Ben Lewis or Lucy Watson
28 being on the oversight committee. And prior to
29 correspondence, which was received again
30 February 28th, where they did raise an objection,
31 they felt that it was wrong to have CFS people --
32 that they ought to be neutral people. But I don't
33 know that much turns on this, so I won't spend
34 much time on it.

35 Paragraph 14 deals with that, and -- it's
36 meant to be a balanced -- the oversight committee
37 is meant to be a balance; two representatives from
38 each side. Now, of course, that does lead to a
39 possibility that it might -- there might be
40 situations where they don't agree, but that's what
41 the bylaws call for. And it is meant -- you know,
42 it had -- on the other hand when it does work --
43 and it often does work; it has worked in the
44 past -- it's a good thing.

45 So at paragraph 15, we just reiterate that
46 everyone accepted that this referendum had to be
47 done in accordance with the bylaws and that the

1 oversight committee had responsibility and
2 authority for it.

3 We say at paragraph 19 -- now, the petition
4 doesn't call for a date on the referendum. That
5 is one other reason why I'm -- I meant to mention
6 when we looked at the petition. So CFS at least
7 takes the position that the date fell to the
8 oversight committee.

9 Now, a date as agreed to by the oversight
10 committee is March 18th, but it was certainly --
11 although, I don't -- I don't think there was
12 discussion about this at the oversight committee;
13 it was just sort of a matter of common sense, at
14 least from the CFS perspective, that if you can't
15 get the rest of the framework agreed to, you can't
16 have the referendum on that date. There's nothing
17 to -- sort of binding about that date.

18 And there's no particular magic in that date
19 either, except it happens to be the same date that
20 there's two other referenda happening, which I
21 think Your Lordship has probably become aware of.

22 THE COURT: M'mm-hmm.

23 MR. PALLESON: The critical issues on page 10 that are
24 unresolved -- Your Lordship, I think, asked me
25 this earlier, and we went through them and here
26 they are set out. I don't think I need to go
27 through them again.

28 Paragraph 22. I've made that point.

29 THE COURT: Well, what did they agree to at the
30 oversight committee? Nothing?

31 MR. PALLESON: No, they agreed to -- well, let me
32 see -- I'll give you some things.

33 THE COURT: They couldn't even agree on the question.

34 MR. PALLESON: They didn't agree on the question, but
35 they did agree on -- they've agreed on the, you
36 know, the polling stations, where the polling
37 should occur and that -- Kwantlen College being a
38 diverse campus, there's more than one polling
39 station.

40 THE COURT: Okay. But you say they didn't agree on how
41 polling is to be conducted. What's the
42 distinction?

43 MR. PALLESON: I don't know that they've got to the
44 point where they've had a disagreement about that.
45 I'd have to -- I may have to take --

46 THE COURT: Okay. Well -- okay. I'm reading the
47 argument. Then I read between the lines that

1 these have not been discussed or decided.

2 MR. PALLESON: I think that is right. Yeah, I don't
3 know that they got to the point --

4 THE COURT: But where did it stall? On the question?

5 MR. PALLESON: Well, no -- well, I mean, it wasn't just
6 that they got to the question, discussed it and
7 said, well, we can't decide on the question, we
8 can't decide on anything. They discussed a lot of
9 different matters. I think it did stall around
10 the question. It stalled around criteria for the
11 campaign materials. The committee representatives
12 from the Kwantlen Society did not want any sort
13 of -- well, they wouldn't accept -- let's put it
14 that way -- the CFS criteria of libelous -- not
15 libelous, misleading or factually incorrect. They
16 didn't want that.

17 There was a discussion, well, what are you
18 going to do with materials that are offside? And
19 they couldn't agree on that.

20 The issue of the early campaigning was
21 raised, but basically they couldn't agree on what
22 to do about that or -- and I don't think -- I
23 think Kwantlen's representatives did not accept
24 that there was any issue about that.

25 So those were, I think, the main points where
26 it stalled.

27 THE COURT: Was it primarily -- did it stall out
28 primarily about this early campaigning issue? Is
29 that where they got -- where they really fell out?

30 MR. PALLESON: Well, I would say that that -- well,
31 actually, you know what?

32 THE COURT: Because that would clearly affect the
33 timing. People who were -- thought that the early
34 campaigning was inappropriate would want a later
35 date so that there could be what you called a
36 "cooling-off period." And people who thought that
37 it was innocuous or within their rights would want
38 the early referendum.

39 MR. PALLESON: That certainly was a critical point, but
40 I wouldn't say that it -- it -- the minutes and my
41 understanding is that they didn't sort of come to
42 a point and cease talking; they would come to a
43 point and say, well, we can't agree on that right
44 now, let's move on to something else. So they
45 would have an agenda, and they would go through
46 all these items on the agenda. Some things they
47 would reach an agreement; some things they

1 wouldn't.

2 So I wouldn't say that it stalled out on any
3 particular topic. It stalled out on a number of
4 topics. One was the ballot question; one was this
5 early campaigning; one was the criteria for the
6 campaigning. And it got to a point and then the
7 society went and hired Mr. Schiffner, as we say,
8 on February 28th and then -- and I'm sure they'll
9 tell you because they felt that they -- the
10 oversight committee wasn't dealing with issues --
11 there wasn't -- but at any event, at that point
12 then that became another, you know, issue, that
13 the CFS didn't recognize the authority, as it
14 were, of Mr. Schiffner to conduct the referendum,
15 to sort of -- and it became a very awkward process
16 after that, because then Mr. Schiffner got
17 involved and so it became two sort of parallel
18 processes happening at once. And so it sort of --
19 it's become a bit of a quagmire, to be honest,
20 since -- particularly -- now, I'm not casting --
21 it's not Mr. Schiffner's fault. It's just
22 inserting another process into a process that was
23 going on makes for a pretty confused situation as
24 to who's doing what.

25 THE COURT: Well, aren't they just going to say the
26 oversight committee wasn't getting on with it, and
27 so we decided to take it into our own hands?

28 MR. PALLESON: I would expect that's something -- that
29 would be a good paraphrase of what they might say.

30 THE COURT: Isn't that kind of fair?

31 MR. PALLESON: My submission is --

32 THE COURT: I mean, how long can the oversight
33 committee wallow in the process? They're just
34 supposed to get on with supervising an election,
35 aren't they?

36 MR. PALLESON: Well --

37 THE COURT: I mean, it seems to me they'd been
38 distracted by some larger policy issues of some
39 kind or other than the job that they have to be
40 constituted to do, which is to supervise a fair
41 vote.

42 MR. PALLESON: Well, they have to do more than that. I
43 mean, they have to decide on the ballot question
44 and, I mean --

45 THE COURT: But the question can't be that complicated.
46 I mean, what's so hard about these guys want to
47 leave?

1 MR. PALLESON: Well, you know, certainly they made
2 progress, but --

3 THE COURT: They were setting a mandate to negotiate or
4 anything like that.

5 MR. PALLESON: No, no. My submission -- you know, the
6 bylaws I guess are what they are, and it's meant
7 to be done pursuant to the bylaws. And I don't --
8 I mean, my submission is that it's not appropriate
9 for one side to decide that we're not -- the
10 oversight committee process is not working and --

11 THE COURT: Well, the only thing is, if the oversight
12 committee takes a view of its responsibilities
13 that's too inclusive, you know -- I mean, if their
14 job really is to fix an election date, to fix a
15 period which is defined as the "campaign" and then
16 to supervise the materials that are dealt with
17 during the campaign, then what are they doing
18 asking questions about all this pre-campaign
19 period attempt to persuade people and so forth?
20 Is that their mandate at all?

21 MR. PALLESON: Well, my submission is, again, that it
22 would be, because they're meant to have
23 jurisdiction over all campaign material.

24 THE COURT: But do you see how circular that is? There
25 would have to be some form of campaign in order to
26 get the 10 percent signatures you'd need. So you
27 get the -- I mean, by definition to get across the
28 threshold with 10 percent of the signatures, you'd
29 have to already have breached the campaigning view
30 that some people are taking.

31 MR. PALLESON: Well, my submission --

32 THE COURT: It just can't be done.

33 MR. PALLESON: Well, my submission is that that would
34 not be -- obviously, the petition -- you're right.
35 And setting up the petition can't be a breach.
36 But once you --

37 THE COURT: But you've already said the petition itself
38 is unfair.

39 MR. PALLESON: We're not challenging the petition, and
40 we're not -- but I point it out that, yes, the --

41 THE COURT: Yeah. Well, look, isn't it -- don't we
42 have to have some kind of notion here that there's
43 such a thing as the rough and tumble of democracy
44 and that people just have the right to their
45 opinions or they've got the right to express their
46 opinions short of libel, slander and short of
47 lying outright?

1 MR. PALLESON: Well, in fact --
2 THE COURT: And --
3 MR. PALLESON: It's interesting that you choose those
4 criteria, because those are the same ones that the
5 CFS put forward.
6 THE COURT: Yeah, but the CFS hasn't invented those
7 criteria. Those are legal criteria anyway.
8 MR. PALLESON: Well, they are.
9 THE COURT: They don't have the right to do those
10 things. But you don't need the bylaws for that,
11 it's just it's nice that they throw them in. But
12 that's just the law.
13 MR. PALLESON: But that was the criteria that they
14 sought to have agreed upon. To --
15 THE COURT: No. But I mean, you don't -- honestly, I
16 just don't understand why people would get down to
17 arguing about whether they agree to those
18 criteria. Those bind them anyway. The law is
19 that you can't go about defaming people.
20 MR. PALLESON: Well, it may be inaccuracies then. I
21 mean --
22 THE COURT: Well, inaccuracies that -- things like that
23 are just -- they can't be enforced. I mean,
24 people are going to disagree about what's accurate
25 or not accurate.
26 MR. PALLESON: Well, but you have to have -- you have
27 to have -- in my submission, you have to have a
28 set of criteria in order to evaluate materials.
29 And it makes sense to set a guideline at the
30 start, and then you start to get material in.
31 THE COURT: Well, I'm just trying to -- I'm trying to
32 understand, if this process were working well,
33 what kinds of things they would say. Wouldn't
34 they say you can have -- I mean, I've seen some of
35 this -- you can have banners of such a size on so
36 many buildings in such and such places; you're not
37 to campaign actively the day of the election or
38 things like that.
39 MR. PALLESON: Right.
40 THE COURT: But within those parameters, you know,
41 they -- if you're going to post handbills of some
42 kind all over the campus, I see there's
43 regulations about they have to be removed within
44 so much time and so forth --
45 MR. PALLESON: Right.
46 THE COURT: -- which is sensible.
47 MR. PALLESON: Right.

1 THE COURT: And, you know, I can imagine that it would
2 reasonable to submit them beforehand for content
3 just to be sure that they didn't run afoul
4 somehow, but -- within the campaign period. But
5 before that, people can say whatever they want to
6 say and if they libel or slander people, there are
7 remedies of law for those things and that's all
8 there is. That's how the world works.

9 MR. PALLESON: Yeah. And we're not -- we don't seek
10 to -- to -- as I said before, but we don't seek to
11 suggest otherwise. But what we're saying is that
12 if you're going to -- if the material you're going
13 to put up is going to talk -- you know, reference
14 the voting date, then that's different. Then that
15 turns it into campaign materials, which is meant
16 to be reviewed by the oversight committee. Which
17 is, you know --

18 THE COURT: But that's actually governable by the
19 oversight committee itself, fixing an election
20 period and fixing a date within a reasonable
21 length of time so that there isn't that big gap
22 between a date that's anticipated and -- and the
23 publications that you're complaining about. Do
24 you see what I'm saying?

25 I mean, if the oversight committee gets
26 together and says, okay, here's a problem; the
27 problem is we've got a 10 percent vote from this
28 college, we've got to deal with this.

29 MR. PALLESON: Right.

30 THE COURT: The question should be, do they get to
31 leave? The criteria for the campaign will be the
32 following, and the campaign will commence such and
33 such a date, and the election will be such and
34 such a date. And if it's done in a timely
35 manner -- it's done within a short period of that
36 time, you don't have these issues. Unless you
37 want to go back and start ploughing up the ground
38 about who said what in order to even raise the
39 10 percent signatures. But as I've said to you
40 already, that's completely circular.

41 MR. PALLESON: No, no. No, we wouldn't say that. We
42 wouldn't say that on -- say what's raised -- the
43 10 percent is circular.

44 Well, what -- well, moving forward, I guess.
45 We have an oversight committee and so --

46 THE COURT: But it's not functional.

47 MR. PALLESON: Well, it has functioned to a certain

1 degree.

2 THE COURT: Look, I mean, just on your material and
3 your -- it doesn't appear to have come to grips
4 with almost everything that matters, including
5 what question. So I mean, it's functional in the
6 sense that it's had some meetings.

7 MR. PALLESON: Yes.

8 THE COURT: But that doesn't mean it's been working.

9 MR. PALLESON: Well, what --

10 THE COURT: I mean, clearly, there's some kind of --
11 there's some kind of deadlock here. Is that
12 what's happening? It is two votes to two when
13 they get down to it?

14 MR. PALLESON: Oh, I would say so. Yeah, I'm not going
15 to try to suggest otherwise.

16 THE COURT: All right. Well, then --

17 MR. PALLESON: But I don't know -- but I think that if
18 the -- if the direction we sought was given, I
19 think we might find that the oversight
20 committee -- I mean, I think -- I guess what I'm
21 saying is it deserves more time than it's had.

22 THE COURT: No. But the direction you seek -- I mean,
23 the thing I've got to be careful about -- and I'm
24 certainly -- in some respects I suppose I'm
25 anticipating the submission I might get. But, you
26 know, that may play into the hands of one side or
27 the other, the direction you seek. And my view of
28 it now is that, you know, tentatively, is that
29 really what you've got is the kind of situation
30 you'd be -- somebody should be seeking relief
31 under the **Society Act** for, because this is
32 obviously a deadlock situation with the oversight
33 committee.

34 MR. PALLESON: Well, we actually do seek relief under
35 the **Society Act**.

36 THE COURT: Yeah, but that's -- you know, rather
37 than -- what you seek is -- primarily is to have
38 the kind of end around that you think the college
39 has tried to do declared invalid. But the -- and
40 that may be -- it may be invalid. But the
41 appropriate way to ultimately resolve this is for
42 somebody to get a grip on having an election
43 quickly, setting the question and suggesting what
44 the criteria should be for the campaign period.
45 It's that simple, isn't it?

46 MR. PALLESON: Well, there has to be a referendum,
47 My Lord, and --

1 THE COURT: But if the oversight committee can't handle
2 the job, there's got to be some remedy.

3 MR. PALLESON: Yes.

4 THE COURT: You can't just wallow in indecisiveness and
5 let this thing die a slow death --

6 MR. PALLESON: No.

7 THE COURT: -- while the energy drains out of it. It's
8 got to be dealt with.

9 MR. PALLESON: It --

10 THE COURT: And I mean, there is one side of this case,
11 your side, that wouldn't mind seeing it die a slow
12 death, so I've got to -- you've got to be careful,
13 I mean, in terms of --

14 MR. PALLESON: I understand that.

15 THE COURT: -- focussing on the rights of both parties,
16 what should happen.

17 MR. PALLESON: I understand.

18 THE COURT: They got their 10 percent; they're entitled
19 to a vote.

20 MR. PALLESON: They are.

21 THE COURT: Got to happen sometime.

22 MR. PALLESON: It's got to happen sometime.

23 THE COURT: Sooner than later.

24 MR. PALLESON: But the question is -- you know, if it
25 was January, we'd -- you know, it might well be
26 doable in April, but I'm not sure that it's doable
27 in April.

28 THE COURT: What are the impediments to doing it in
29 April if a question can be established and if
30 certain parameters can be established for the
31 nature of the campaign?

32 MR. PALLESON: The principal impediment I guess is
33 just -- and I'm going to come back to my -- my
34 theme, which is that if we had a longer time
35 between -- where we don't have this sort of
36 campaigning -- what we call "early campaigning,"
37 some of that would dissipate and then we could
38 have our discrete campaign period go ahead. And
39 my submission is that that would result in a
40 fairer vote. The vote would be more on an equal
41 footing. If we took a break over the summer, as
42 it were, and came back in the fall, set a date and
43 have it -- and say, you know, under what I've --

44 THE COURT: Look, but if what we've got is a deadlocked
45 situation were two are voting -- or two are making
46 it awkward and two want to get on with it -- and
47 that's what I assume a deadlock means -- then

1 what's happening is they've managed to drag -- if
2 that's the resolution of this, then all it means
3 is they've managed to drag their feet to the point
4 where this thing is put off into a period where
5 they have a better chance. That's not necessarily
6 fair either.

7 MR. PALLESON: No. But the question is, why don't they
8 have a better -- they have a better chance because
9 the -- what I say is invalid early campaigning.
10 The effect of that may wear off. But I say that
11 that's -- that doesn't mean -- what I say is that
12 that makes it a fair --

13 THE COURT: I don't think that's a strong point for
14 you. I must say that it seems to me that there
15 are all sorts of other comparatives you could use
16 in other contexts and other elections. But that
17 saying whatever you want to say in a free country
18 up to a point isn't something some society can
19 tell you you're not entitled to do.

20 MR. PALLESON: No, I know. And I don't know -- and I
21 think you've got my point. That's not the intent
22 to do that. But what the intent is is to have
23 a -- to limit the campaigning to a discrete
24 period.

25 THE COURT: Well --

26 MR. PALLESON: The --

27 THE COURT: Well, that's fine. But within the discrete
28 period the rules apply.

29 MR. PALLESON: Yeah.

30 THE COURT: But outside that period people are free to
31 say what they want to persuade people to do what
32 they want and so forth. I mean, it has absolute
33 parallels to federal and provincial elections.
34 There are things you can -- you can spend all
35 sorts of money prior to a writ being drawn, and
36 there are strict limits on what you can spend
37 federally, for instance, on a campaign.
38 Everything is focussed and shaped down into a box
39 where then things are done according to a
40 four-square formula, and that's to ensure fairness
41 at the point at which people are being asked to
42 actually really focus on the vote. But before
43 that time in terms of just expressing opinions and
44 sharing general feelings about things, they're
45 free to say whatever they want.

46 MR. PALLESON: Well, I agree with that, and I'm not
47 saying anything different.

1 THE COURT: And the situation in this particular case,
2 because in order to comply with the society's
3 requirements they have to go out and in fact have
4 some form of something that could be called a
5 campaign to get the 10 percent of signatures, you
6 just -- you can't not have had pre-vote
7 campaigning.

8 MR. PALLESON: Well, let me -- what I should do, I
9 think, is show you what I've -- what we're
10 concerned about in -- a little bit more
11 specifically, if I can.

12 THE COURT: I'll tell you -- well, I mean, it should be
13 becoming obvious what I'm concerned about, and
14 that is that if it's possible within this term to
15 hold an election, that election should be held.

16 I mean, I may well turn to your friends and
17 say, what's this nonsense of going outside this
18 process instead of coming to court and getting
19 some kind of direction with respect to
20 substituting some other discretion for a
21 dysfunctional society? You know, I might well
22 take that approach.

23 But -- so maybe there's blame on both sides,
24 but isn't the answer to find a mechanism to get
25 this thing heard before the end of April so that
26 both parties have had what has to be done taken
27 care of? Then it can't be said that this
28 oversight committee, by being dysfunctional, has
29 managed to punt the thing over into a new school
30 year and -- but it can't be said either that the
31 student association was able to do an end around.

32 I mean, it just seems to me that's where each
33 party would have to see that a structure had been
34 created where fairness had been demonstrated.

35 MR. PALLESON: My Lord, maybe --

36 THE COURT: We'll take the break?

37 MR. PALLESON: Yeah, we should take a break, and we can
38 consider your comments.

39 THE COURT: All right.

40 THE REGISTRAR: Order in chambers. Chambers stands
41 adjourned for a brief recess.

42

43 (CHAMBERS ADJOURNED FOR MORNING RECESS)

44 (CHAMBERS RECONVENED)

45

46 SUBMISSIONS FOR THE PETITIONER BY MR. PALLESON

47 (continuing):

1
2 I have over the break had some discussions
3 about having a referendum before the end of the
4 academic year, and I think -- our position is that
5 it is doable -- it is doable. You could have a
6 referendum, say, I guess April 15th or April 14th;
7 I'm not sure what day of the week that is.

8 Now, there might be some issues, of course,
9 but one thing, though, that would be required
10 would be -- you know, I'm sure Your Lordship would
11 expect that there be equal access to the campus
12 for both sides during the -- from basically I
13 guess now until the -- until the date of the
14 referendum. There has to be equal access. I
15 mean, both sides have to be able to campaign
16 equally. And that's a problem for the CFS,
17 because they don't necessarily have access to the
18 campus the way that the student association does.

19 And there is some evidence too that right now
20 there's a negativity. Posters they put up are
21 being taken down. They're not campaigning, but
22 these are -- these are the CFS -- CFS had posters
23 up at the campus that don't refer to the
24 referendum, but they talk about things that CFS is
25 doing, like, they're lobbying for transit for all
26 students. Those type of posters are all being
27 torn down, so we have to have a -- some kind of
28 fairness that way. There can't -- they can't go
29 in and put up a poster and have it all torn down,
30 obviously. I mean, that -- and I don't think my
31 friend would suggest they should. But that -- so
32 they have to an equal -- they have to be on equal
33 footing, as it were, for the campaigning.

34 THE COURT: Yeah, but how can you deal -- I mean that's
35 electoral vandalism in a sense.

36 MR. PALLESON: M'mm-hmm.

37 THE COURT: It's regrettable, but it occurs. But it
38 has nothing to do with either of the parties, does
39 it?

40 MR. PALLESON: Well, hopefully not.

41 THE COURT: I mean, it should be prohibited during the
42 period of time to take down signs that are --

43 MR. PALLESON: Yeah, My Lord, that's all you can do.

44 But I think maybe if a message was sent by the
45 court to that effect, I think maybe this would
46 stop.

47 THE COURT: Yeah. All right. Well, I don't -- I mean,

1 I don't imagine this being a matter of messages
2 sent so much as -- if the actual nub of this legal
3 dilemma is that the steering -- or the oversight
4 committee is dysfunctional and what has to happen
5 is some substitution has to be made, I have to be
6 persuaded I can make those substitutions, first of
7 all. But if that would be fair to both parties,
8 then it would get around the issue of whether this
9 is an end around from your perspective.

10 MR. PALLESON: Yes.

11 THE COURT: It would put the thing back where it
12 belongs, as far as you're concerned. But it would
13 put, from the other side's perspective, the
14 referendum at least into this academic year, which
15 I think is important.

16 MR. PALLESON: Yes.

17 THE COURT: But, I mean, I'm still -- you know, I can
18 foresee a solution, it seems to me, but I'm not
19 sure that I've got either the authority or -- on
20 the material before me, or the authority of law to
21 do it.

22 MR. PALLESON: Yes.

23 THE COURT: Or I should put -- I'm sure I ultimately
24 have the authority of law; I'm not sure I have the
25 authority on the basis of what's been put before
26 me to do it.

27 MR. PALLESON: Well --

28 THE COURT: I'd have to hear from both parties on that
29 one.

30 MR. PALLESON: Let me say -- yeah.

31 THE COURT: Now, what about -- how would -- you say it
32 is doable. Is it doable if you -- without the use
33 of the consultants that have been engaged by the
34 Kwantlen Student Association?

35 MR. PALLESON: I think it is doable without them, but
36 it may be that, you know --

37 THE COURT: Might it be sensible to salvage their
38 efforts by simply, with some direction, putting it
39 in their hands and leaving it there?

40 MR. PALLESON: Yeah. I don't know that we would
41 consent to that because it would be contrary to
42 the bylaws. But on the other hand, if all they're
43 doing is just -- is counting the votes and that
44 sort of thing, it might be sensible.

45 THE COURT: All right.

46 MR. PALLESON: I should just make a couple of points,
47 which is -- one reason that the CFS hasn't been

1 engaged in early campaigning is they really don't
2 have access to the campuses the way that the
3 society does and, you know, they -- and that's a
4 point. They don't have tables; they can't
5 necessarily go on the campus. I mean, they're --
6 so it really does fall to the oversight committee
7 working with the campus -- the Kwantlen society
8 representatives to -- to develop the campaign.
9 And so I think that's a point. I mean,
10 Your Lordship had raised earlier, well, geez,
11 maybe they should have done some early
12 campaigning -- or I had the sense you were
13 suggesting perhaps they could have done some early
14 campaigning.

15 THE COURT: Who? The CFS?

16 MR. PALLESON: Yeah.

17 THE COURT: Well --

18 MR. PALLESON: I think it would difficult for them to
19 do it.

20 THE COURT: Those aren't really legal questions;
21 they're kind of almost philosophical questions of
22 whether -- how negative campaigns and so forth
23 always seem to have more energy than status quo
24 campaigns, you know. I don't know what you can do
25 about that.

26 MR. PALLESON: Well, no, but what I meant was the --

27 THE COURT: Aren't all these students as of this moment
28 members of the CFS?

29 MR. PALLESON: Yes, they are.

30 THE COURT: Then if the -- I mean, they have equal
31 access in the sense that all these CFS members, if
32 they want to staunchly stand up and defend the
33 CFS, are all there on the campus to do so.

34 MR. PALLESON: That's true, but often these things are
35 directed not by grassroots. For example, almost
36 all of the material that my friend's clients
37 have --

38 THE COURT: Well, when you say they have no access to
39 the campus, they have all their loyal foot
40 soldiers, which is 100 percent of the student body
41 at the moment, versus a fraction of the student
42 body, which is unknown at the moment, that wants
43 them out of there.

44 MR. PALLESON: Well, I don't think, with respect,
45 My Lord, that that's -- that's --

46 THE COURT: No, no. That's theoretically where they
47 stand.

1 MR. PALLESON: That's theoretically --

2 THE COURT: I mean, they are all over the campus in the
3 person of every student on the campus.

4 MR. PALLESON: Yes, they are, but practically
5 speaking --

6 THE COURT: If they've won the hearts and minds of some
7 of those people, then those people can campaign on
8 their behalf.

9 MR. PALLESON: Yes, they could. But practically
10 speaking, the -- you know, the executive of the
11 society is on campus. They obviously have a point
12 of view, and they're pushing forward and they have
13 been vigorously for eight months. Whereas, if the
14 CFS executive wants to campaign in a like fashion,
15 they have restricted access. It's true that maybe
16 they could -- a Kwantlen College student might
17 have some access, but that's different.

18 I should say too, you know, with respect to
19 early campaigning, I mean, it's just a question of
20 wanting an equal footing and a fair election. I
21 mean, that's all that CFS wants; they just want to
22 have, you know, an equal opportunity to try to
23 convince -- you know, to try to campaign and
24 convince people of their point of view.

25 THE COURT: But that would be answered on paper and in
26 terms of the bylaws by a fixed election date and a
27 fixed campaign period. And then once -- you get
28 to do what you get to do in accordance with
29 whatever the guidelines are handed down either by
30 the oversight committee or, it being
31 dysfunctional, by some substitution therefore
32 that's a legal substitution.

33 MR. PALLESON: Yeah, I would -- my submission would be
34 on that point that if Mr. -- and I don't know if
35 Mr. Schiffner's available -- my friend was -- to
36 do anything on this campaign if it's not the
37 dates. But my friend did approach us and
38 suggested that might be something that is
39 possible. But that his role would be not to
40 replace entirely the oversight committee, but
41 rather perhaps to carry out the nuts and bolts of
42 the election. If anything, that's what -- and the
43 oversight committee ought to still look at
44 campaign materials.

45 THE COURT: I'm not thinking in those terms. When I
46 say that, I'm saying if the oversight committee
47 can't come to terms with that sort of thing, maybe

1 something like the court has to intervene.

2 MR. PALLESON: I see.

3 THE COURT: That's what I'm saying.

4 MR. PALLESON: Yes, My Lord.

5 Perhaps I should -- you know, I'm sort of
6 trying to be, obviously, mindful of how much time
7 I'm going to have here. But at page 12 is where I
8 am. I had intended to refer to a lot of the early
9 campaign materials of the Kwantlen Society. I
10 don't know -- I have a sense that there's not a
11 great deal of need for that.

12 THE COURT: Well, no, I don't think so. I mean, my
13 attitude toward that would be, tell it to the
14 students.

15 MR. PALLESON: Yeah, right.

16 THE COURT: You know, that's part of the campaign.

17 MR. PALLESON: There are inaccuracies, we say, in those
18 early campaign materials, which we outline on
19 page 12 and are also in the materials.

20 THE COURT: But what possible legal remedy would come
21 of that? I mean, I would have to put people in
22 the box to --

23 MR. PALLESON: Yeah. Well, what would -- when you say
24 "what legal remedy would come of it," my
25 submission is it points out that there has been --
26 I mean, if people are saying inaccurate things,
27 and I know there's some debate about that, but --
28 suggests that not only then -- I guess in our
29 submission it exacerbates the fact that there has
30 been early campaigning. The fact that not only
31 has there been early negative campaigning but
32 also, we say, there's been inaccuracies in that
33 early campaigning. And as a result, you really
34 get an unfair situation with respect to this
35 proposed election for next Tuesday. So that --
36 and I think that --

37 THE COURT: All right. But a discrete campaign period
38 would be an opportunity to set those things right.

39 MR. PALLESON: Yes. It could [indiscernible].

40 And so, again, I don't -- I'm mindful of how
41 much time I have; I won't belabour these but -- or
42 go through them all. But here they are, and
43 perhaps Your Lordship could -- if you haven't
44 already --

45 THE COURT: Well, I'll certainly read them, but I --
46 you know my -- you're getting the drift at least
47 of my sense of what those things mean. It's --

1 MR. PALLESON: Yes.

2 THE COURT: That's a certain rough and tumble and
3 hyperbole that goes into electioneering and can be
4 dealt with during the campaign, it seems to me.

5 MR. PALLESON: I'm just -- in an effort to be
6 efficient -- I'm just thinking about where I am.
7 Yes, yes.

8 MR. SIDDALL: I think your last point was regarding --

9 MR. PALLESON: Yeah, that's right. I think I've --
10 sorry, My Lord. I've --

11 THE COURT: Go ahead. No, I'm waiting for you to say
12 something and reading while I --

13 MR. PALLESON: Oh, okay. Okay. I thought you were
14 taking me up on my offer to read the --

15 THE COURT: No, no.

16 MR. PALLESON: Okay. If I could take you to page 17 of
17 this written argument.

18 THE COURT: Yes.

19 MR. PALLESON: Is that where you happen to be, My Lord?

20 THE COURT: No.

21 MR. PALLESON: Okay. Sorry.

22 THE COURT: That's the beauty of not having to sit and
23 watch computer screens altogether, is I can read
24 ahead.

25 MR. PALLESON: Yes, yes. But this is where we start to
26 deal with Mr. Schiffner in this written argument.
27 We've already had a fair bit of discussion.
28 But -- so February 29th Mr. Schiffner puts forward
29 a question as set out in paragraph 46:

30

31 Do you agree to withdraw your membership in
32 the Canadian Federation of Students with the
33 current cost of membership being 64 cents per
34 student ...

35

36 And so on and so forth.

37 This is an e-mail which he sends out. This
38 was in fact the question that the society
39 representatives had wanted to put forward. But
40 two days later Mr. Schiffner puts forward a second
41 question. He repeats the e-mail verbatim, but the
42 second question is:

43

44 Do you wish to withdraw as members of the
45 Canadian Federation of Students?

46

47 And -- which is a question without the reference

1 to the monetary amounts.

2 And then what he says in paragraph -- set out
3 in paragraph 49, what he has to say about that is,
4 he says, why did he switch questions? Even
5 though -- he says that -- he says -- he says -- in
6 another e-mail he says:

7
8 I refer to the draft e-mail sent to each of
9 you dated February 29th, 2008. So there is
10 no confusion, this e-mail was a draft only
11 and was sent prior to obtaining independent
12 legal advice relating to the question.
13 Please disregard this e-mail.

14
15 He says some more in his own affidavit, but the
16 point is that the -- the only point there is in
17 terms of the deadlock on the committee, the
18 society's -- the question the society
19 representatives wanted and were insisting upon was
20 the one Mr. Schiffner first approved. Then he
21 apparently took legal advice and came back and
22 said, well, that question is not appropriate, and
23 he's gone to a second question.

24 So it suggests certainly that in terms of --
25 if there is deadlock on the committee, it
26 certainly, in our submission -- one being caused
27 more -- I guess more by the representatives from
28 the society as opposed to the representatives from
29 the CFS.

30 Now, you know, that doesn't mean there's not
31 deadlock, but it does suggest that, you know, CFS
32 is not, we say, to blame -- not to blame.

33 THE COURT: All right. But I don't have to get that
34 far down, do I?

35 MR. PALLESON: Right --

36 THE COURT: I don't have to find fault; I just have to
37 find that it isn't working.

38 MR. PALLESON: Right, My Lord.

39 Much of this I've covered. But at page 19,
40 we say that -- at paragraph 54, we refer to the
41 University of Victoria. There is a referendum
42 going on there that seems to be working fine.

43 There's an oversight committee --

44 THE COURT: What kind of terms did they agree to --

45 MR. PALLESON: I don't know the details.

46 THE COURT: -- for a length of campaign and the kind of
47 campaign materials that can be exchanged and so

1 forth?

2 MR. PALLESON: They've all -- that seems to all be
3 agreed to, and I don't know what the terms are.

4 But it just points out that the process --
5 THE COURT: Is there some guidance that could be
6 obtained from there?

7 MR. PALLESON: I don't know.

8 THE COURT: It seems to me if it's working well
9 there -- it's the same issue, isn't it?

10 MR. PALLESON: Yes.

11 THE COURT: They've worked out a protocol for how these
12 things work. Supposing I were to walk right in
13 under section 85 and do it for you, wouldn't that
14 be helpful to me to know where it worked -- how it
15 worked elsewhere?

16 MR. PALLESON: Again, that's something I can discuss.
17 It might be. What I was -- what my submission was
18 is that the -- Exhibit A to the outline, which was
19 the CFS proposed framework, was -- may well be --

20 THE COURT: Well, it may well be.

21 MR. PALLESON: It may well be and --

22 THE COURT: It's just that there's -- I mean, you're
23 still -- your position -- although you say a
24 referendum could be heard by the end of April,
25 your position is still essentially that the
26 oversight committee should be given time to do its
27 work.

28 MR. PALLESON: Yes, that's correct.

29 THE COURT: But it's right out of time, isn't it?

30 MR. PALLESON: Well, I don't see why it's right out of
31 time. There's no magic to the date of March 18th
32 [indiscernible].

33 THE COURT: Well, no, March 18th kind of usurped their
34 authority, didn't it? Setting a March 18th date
35 wasn't -- that wasn't the -- that was a date they
36 tentatively talked about, but they hadn't set it
37 up, had they?

38 MR. PALLESON: Well, I -- the oversight committee?

39 THE COURT: Yes.

40 MR. PALLESON: You know, I mean, they had picked that
41 date.

42 THE COURT: Yes.

43 MR. PALLESON: They had picked that date. But
44 obviously everything else had to be in place
45 before the thing could go ahead.

46 THE COURT: Well, did they announce that date? That
47 that would be the date for the referendum?

1 MR. PALLESON: I think so.
2 THE COURT: And so what happened is they didn't get the
3 housekeeping in order in time to get that done.
4 Is that it?
5 MR. PALLESON: I think it's more than housekeeping, but
6 essentially --
7 THE COURT: Oh, no, no. I do too -- I do too. But I
8 think when you announce there's going to be a
9 referendum, at the very same time you should be in
10 a position to say the campaign will be this long
11 and these will be the terms.
12 MR. SIDDALL: My Lord, I hesitate to rise. I just
13 don't want the court to belabour under -- under
14 possible misapprehension about the way the date
15 was set for the referendum.
16 THE COURT: Yeah.
17 MR. SIDDALL: The articles -- the bylaws clearly direct
18 that when the petition and notice goes in to the
19 CFS from the constituent body, it shall set out
20 the date of the referendum.
21 The notice that was sent in September along
22 with the requisition petition with the
23 signatures --
24 THE COURT: Yes.
25 MR. SIDDALL: -- had the date March 18th to March 20th
26 set out.
27 THE COURT: I see. So it's picked as of the submission
28 of the petition.
29 MR. SIDDALL: It's picked as of the date and as of the
30 members' right pursuant to the bylaws. So it's
31 not a question of the ROC saying, when we are
32 constituted, we will select a date. From the very
33 get-go the members select a date and that's
34 what -- in my submission, that is its absolute
35 right to have the referendum, subject, of
36 course --
37 THE COURT: On that date.
38 MR. SIDDALL: -- on that date.
39 MR. PALLESON: I have a different point of view. In my
40 submission --
41 THE COURT: No, but it clears up for me -- I'm
42 imagining that the oversight committee picks the
43 date.
44 MR. PALLESON: Well, I think -- our submission is that
45 it does. That is -- the bylaws are not as clear
46 as my friend would say in that -- because the
47 petition didn't set out a date, we say that -- and

1 it didn't -- so there was no -- had it set out a
2 date, then that would have a date -- the date that
3 people would work to.

4 Then what happens is rather -- there was no
5 date in the petition, and so the Kwantlen Society
6 then announced that it would be this date. But
7 our submission is that that is neither here nor
8 there; that it still fell to the oversight
9 committee to deal with the date and that the
10 oversight committee did. But they did meet and
11 they did agree on that date subject to the rest of
12 the framework, as I say.

13 So that brings me really to page 20 of this
14 written argument.

15 THE COURT: Yes.

16 MR. PALLESON: And I've set out some issues there
17 and -- the first being: are the bylaws with
18 respect to defederation binding on the society?
19 The second being: is the proposed poll by the
20 society of March 18th - 20th in violation of the
21 bylaws and natural justice? Third: application
22 of section 85 of the **Society Act**. Fourth: the
23 application of section 200 of the **Company Act**.
24 And five: the appropriate remedy -- which we've
25 already gone through the CFS's position on that.

26 So moving to the first issue: are the bylaws
27 binding on the society? Certainly -- and maybe
28 this is not a matter of great dispute, so ... I
29 think they clearly are binding on the society, not
30 just generally but also with respect to leaving
31 the national association -- the Canadian
32 Federation of Students. So, you know, there's the
33 contractual language in the bylaws. There's that
34 fee agreement, as I point out in paragraph 53.

35 And then paragraph 64 is a long excerpt from
36 the Supreme Court of Canada decision of **Lakeside
37 Colony of Hutterian Brethern v. Hofer**. And I
38 don't need to go to the case; I can just refer to
39 the excerpt I've included. And it just makes -- I
40 don't even think I need to read it. It just makes
41 it plain that when you join a national association
42 as a local association, you are then contractually
43 bound to comply with the bylaws of that national
44 association as they're amended from time to time.
45 And so they are clearly bound, I say, by those
46 bylaws.

47 Now, paragraph 8 in the reasons of

1 Mr. Justice Gonthier says -- this is on page 21:

2
3 From the point of view of the members of the
4 colony, these rights to remain are
5 contractual in nature, rather than property
6 rights. However, while contractual, the
7 rights in question are of great importance to
8 all concerned and are susceptible of
9 enforcement by the courts. As Lord Denning
10 said in **Lee v. Showmen's Guild of Great**
11 **Britain**, a contractual right which permits a
12 person to earn his livelihood is on the same
13 footing as a property right in the context of
14 jurisdiction over voluntary associations.

15
16 And they go on to say that the court will grant an
17 injunction to prevent expulsion if it is necessary
18 to protect a proprietary right.

19 And really I say that's analogous to this
20 case at bar in terms of departure. I mean, it is
21 a matter of great significance, as I said at the
22 start, and there is the membership fees that have
23 to be considered.

24 Now, My Lord, I see you're reading it and I'm
25 very -- I'm content to have you do that.

26 THE COURT: No, no. Go ahead.

27 MR. PALLESON: Okay.

28 THE COURT: Just make your submissions.

29 MR. PALLESON: Yes.

30 THE COURT: I can hear you.

31 MR. PALLESON: Yes. Okay.

32 THE COURT: All right.

33 MR. PALLESON: Very good.

34 Paragraph 45. Really at the bottom there the
35 supreme court, quoting with approval from
36 Mr. Justice Blair in an earlier case, makes it
37 clear that the relationship between national
38 organizations and their local units is
39 contractual, so ...

40 THE COURT: Yes.

41 MR. PALLESON: Over the page there's the -- at
42 paragraph 67 is the **Tsimshian Tribal Council v.**
43 **Metlakatla Indian Band** case, where the court again
44 makes -- the BC Supreme Court makes it clear that
45 when you want to leave an organization or
46 association, you must comply with the bylaws
47 dealing with departure if the departure is to be

1 binding on the association.

2 So there's -- there one goes and it -- and I
3 say in addition, in any event, it's clear that at
4 paragraph 68 that the bylaw -- you know, the
5 Kwantlen Society clearly accepted that the bylaws
6 were binding on it and got involved in this
7 process. So I say that they cannot now ignore the
8 requirements of the bylaws, and in particular the
9 jurisdiction, responsibility and authority of the
10 oversight committee by, as Your Lordship has said,
11 doing essentially an end run around it.

12 So I then repeat the declarations which
13 relate to that -- and I won't repeat them again --
14 at paragraph 69.

15 At paragraph 70 we say is the proposed poll
16 in violation of the bylaws. And here -- I think
17 I've made these points. I mean, it's our
18 submission that there have been breaches. The
19 first is the early campaigning, which we say is a
20 breach of the bylaws. And I make that point
21 really again through paragraphs 71 through 75.

22 And I do -- paragraph 76 on page 25,
23 My Lord --

24 THE COURT: Yes.

25 MR. PALLESON: -- it's I think worth noting that the
26 society regulations suggest -- this is not CFS
27 bylaws, but you understand that the society has
28 their own, of course, bylaws --

29 THE COURT: Yes.

30 MR. PALLESON: -- the Kwantlen Society, and that's what
31 we're talking about here. And they also suggest
32 that there ought not to be early campaigning if
33 they have a referendum, which is interesting. My
34 submission is that it's entirely appropriate and
35 it ought to be the case with the referendum we're
36 talking about here.

37 So what they say is -- under section 10,
38 article 4, they say "Campaigning":

39
40 There should be an official campaign period
41 beginning immediately after the conclusion of
42 the all-candidates until the end of the
43 voting in an election.

44
45 And then article 4:

46
47 Notwithstanding the prohibition on

1 campaigning outlined above, the following
2 activities shall be permitted even if engaged
3 in before the beginning of the official
4 campaign period.

5
6 So this is what you can do before the official
7 campaign period, but otherwise you're not supposed
8 to campaign. You can have private communications
9 concerning election plans, including but not
10 limited to private communications by means of
11 in-person conversations and so on and so forth.

12 And two, over the page --

13 THE COURT: Yes.

14 MR. PALLESON: -- you can have the circulation of
15 nomination forms and other reasonable measures
16 taken in order to fulfil nomination requirements.

17 So that's all you're supposed to do prior to
18 the official campaign period under the Kwantlen
19 Society bylaws. And really that's what we're
20 suggesting ought to have been the case with
21 respect to this referendum. These procedures, as
22 I say in paragraph 78, are made applicable to
23 society referenda.

24 And then I say at paragraph 79 the other
25 breach which is suggested is that the society has,
26 of course -- and I don't want to belabour this --
27 but hired Schiffner to do a so-called end run.

28 Most of these points I think I've made
29 already. At the bottom of page 26, if Schiffner
30 does -- takes the position itself that it doesn't
31 have the authority to approve campaign materials.

32 THE COURT: That's self-evident really, isn't it?

33 MR. PALLESON: I suppose it is. But that suggests that
34 we don't really have any rules then here at the
35 moment at least. So we're running a referendum
36 without rules of campaigning or what can be done.

37 At page 27, there's a couple of e-mails from
38 Mr. Schiffner that -- to Laura Anderson, who is --
39 of the executive of the Kwantlen Society where he
40 basically -- he makes the point that why -- I
41 don't have authority to approve campaign
42 materials, but given -- as he says:

43
44 I appreciate your dilemma, so I'll approve
45 these anyway.

46
47 But -- so he's in effect, I guess, usurping the

1 role of the oversight committee even though he's
2 acknowledging that he was never given authority to
3 do so.

4 Now -- and then there's some -- I think I've
5 gone through this before -- discussion of the
6 ballot question. And CFS's position, of course,
7 is that the ballot question set out at
8 paragraph 89 of the argument is the one which
9 ought to be used. It most closely resembles the
10 ballot question in the bylaw for joining --

11 THE COURT: Yes.

12 MR. PALLESON: -- the society, and that's set out at
13 the top of page 28.

14 Now we come to the **Society Act**, and it's
15 section 85, which I think is applicable -- most
16 applicable. The act -- I mean, the court -- once
17 you're in the act, the court has a broad
18 jurisdiction to deal with -- and perhaps

19 Your Lordship is familiar with the **Society Act**.

20 THE COURT: Yes.

21 MR. PALLESON: Okay. The question will be whether this
22 section applies. And there it is:

23
24 Despite anything in this act, if an omission,
25 defect, error or irregularity occurs in the
26 conduct of the affairs of a society --

27
28 Well, we say that there has been that here. The
29 breaches of the bylaws are the affairs of the
30 society. Now, by which -- and then:

31
32 -- by which:

- 33
34 (a) a breach of this act occurs,
35
36 (b) there is default in compliance with the
37 constitution or bylaws of the society,
38 or
39
40 (c) proceedings at, or in connection with, a
41 general meeting, a meeting of the
42 directors of the society or an assembly
43 purporting to be such a meeting are
44 rendered ineffective ...

45
46 Now, we say that -- my submission would be
47 that the proposed referendum is in effect -- ought

1 to be -- ought to fall within (c). That it's
2 certainly analogous to a general meeting -- maybe
3 it is a general meeting. This referendum actually
4 could take place. It -- one of the options is to
5 have it -- is to have a general meeting and -- "or
6 as an assembly purporting to be such a meeting."
7 And I say that in effect a referendum, in my
8 submission, ought to be considered an assembly
9 purported to be such a meeting.

10 Now, there's no authority on this question.
11 I don't think there's any cases that deal with
12 whether or not that is the case. But the courts
13 have been concerned to ensure that there's good
14 evidence of a potential defect before acting. My
15 submission is that in this case there's no
16 question that there's an effort to not comply with
17 the bylaws, essentially, and that would constitute
18 a defect and would satisfy that concern.

19 Starting at -- then -- now, I don't think I
20 need to say, once you -- you know, the court does
21 have a broad jurisdiction to deal with these
22 defects with respect to the society once
23 section 85 is applicable.

24 Now, I'm at paragraph 95 on page 29.

25 THE COURT: Right.

26 MR. PALLESON: And I've -- there's some -- the cases
27 which deal with societies are set out here;
28 Your Lordship may well be familiar with them.

29 The first one is **Garcha v. Khalsa Diwan**
30 **Society**, and what -- you know, there was an
31 election planned and the case went before the
32 supreme court, which had decided that it wasn't
33 going to be a fair election because the membership
34 list was not in order. So they halted the
35 election -- postponed it essentially, which is, of
36 course, what we're seeking here in general with
37 respect to this referendum. And there's a quote
38 from Mr. Justice Hall where he says that
39 essentially he felt that what Mr. Justice
40 Sigurdson did below in halting the election was
41 the only thing he could do because of the state of
42 affairs. The situation just didn't look like it
43 was going to be a fair election, and he halted
44 the, as I say, election and made some orders with
45 respect to remediating that situation.

46 Over the page at page 30. A similar
47 situation in the decision of **Hara v. Khalsa Diwan**

1 **Society.** Mr. Justice Preston in this case found
2 that there were, again, irregularities in a voter
3 list for an imminent election, so the court
4 cancelled the proposed election. And he says at
5 paragraph 13 -- Mr. Justice Preston:
6

7 I am satisfied that the defects, errors and
8 irregularities in the voter's list of the
9 society are such that a fair election of
10 officers of the society cannot be held.
11

12 Similarly, at paragraph 97, **Samra v. Guru**
13 **Nanak Gurdwara Society** -- a similar situation
14 perhaps. And, again, the court intervened in this
15 case, and Mr. Justice Smart said at paragraph 118
16 of that decision:
17

18 As I stated at the commencement of these
19 reasons, if the membership enrolment process
20 is not fair, how can the election be fair?
21

22 And later on in paragraph 119, the message --
23 these are the underlined portions:
24

25 The message should be clear to all members of
26 the executive and their supporters that
27 membership enrolment in elections must be
28 fair and proper and conducted according to
29 the society's bylaws; and if there are
30 material irregularities, a court will
31 intervene.
32

33 And over the page from paragraph 120. The
34 sentence, of which a portion is highlighted:
35

36 It seems to me therefore, that other than
37 those membership forms approved pursuant to
38 the transparent process, all others should be
39 invalidated so that everyone starts again on
40 an equal footing.
41

42 And that is clearly what the court seems to
43 be striving in these cases to seek is a fair
44 election in accordance really with the rules of
45 natural justice, which is required in order for an
46 election, or a referendum for that matter, to be
47 valid. It has to be in accordance with the bylaw

1 and in accordance with the rules of natural
2 justice.

3 I'm reminded that in that case from the
4 Supreme Court of Canada I referred to earlier, it
5 is -- at page 22, it does clearly say that not
6 only do you have to -- perhaps I should go back to
7 that -- the top of page 22. What the court says
8 is:
9

10 It is, however, called upon to determine
11 whether the purported expulsion was carried
12 out according to the applicable rules, with
13 regard to the principles of natural justice,
14 and without *mala fides*.

15
16 So it's not just in a national association
17 that you have to provide the bylaws, it's also
18 that you have to comply with natural justice.

19 Now, at page 31, "Application of Section 200
20 of the **Company Act**." Now, you might say, well,
21 what's the **Company Act** got to do with the
22 society -- or these -- the national association
23 called the Canadian Federation of Students? Well,
24 the -- Mr. Justice Goldie in the decision of
25 **Khangura v. Johal** perhaps picked up what certainly
26 counsel in that case had not, and that is that the
27 **Society Act** at section 71 incorporates and makes
28 applicable to societies part 9 of the **Company Act**,
29 which in turn references the oppression and unfair
30 prejudice remedy. I won't read that quote from
31 Mr. Justice Goldie, but that's in effect what is
32 said.

33 And so what is -- looking at section 200 of
34 the **Company Act** -- that is the oppression remedy
35 and the unfair prejudice remedy. Now, there's two
36 issues as to whether that -- here as to whether
37 that is applicable to this case. Once it is
38 applicable -- if it is applicable -- and in my
39 submission it is, of course. But if it is
40 applicable, then under section 200(a) and (b) the
41 court can:
42

- 43 (a) direct or prohibit any act or cancel or
44 vary any transaction or
45
46 (b) regulate the conduct of the company's
47 affairs in the future.

1
2 So the court again has a broad jurisdiction
3 there -- in some respects similar to the **Society**
4 **Act**, except, of course, there the court is dealing
5 with regulating the company's affairs in relation
6 to the oppression or unfair prejudice which has
7 been demonstrated.

8 The two issues are -- one is, can the CFS be
9 said to be a member of the society? And "member"
10 is defined -- and I'm at page 33 under
11 section 206:

12
13 For the purposes of this section "member"
14 includes:

15
16 (a) a beneficial owner of a share in a
17 company --

18
19 Well, obviously that's not the case, but:

20
21 (b) any other person who, in the discretion
22 of the court, is a proper person to make
23 an application under this section.

24
25 So there's a broad jurisdiction in the court there
26 to let people who it considers to be a proper
27 person -- perhaps not a lot of guidance there in
28 the statute, so -- make an application.

29 So now, you know, most of the cases -- well,
30 you know, deal with the question of, you know, a
31 company and so you're talking about shareholders
32 or people who were shareholders or maybe people
33 who have some other interest. That really doesn't
34 fit very well with a society, because there's no
35 people like that associated with a society. But
36 nevertheless, the section is there and it's
37 applicable to a society.

38 So who is a proper person then to make an
39 application for unfair prejudice? And here I'm at
40 page 34 now. I reference a couple of cases:
41 **Buckley v. British Columbia Teachers Federation**,
42 but that's really not that applicable to the
43 situation -- case at bar; and also **Ginther v.**
44 **Rainbow Management Ltd.** Again, not -- I don't
45 think the facts of that case make it all that
46 helpful to the courts.

47 There aren't really any cases that deal

1 with -- easily with who is a proper person in the
2 context of a society. Although, in **Buckley** that
3 was the issue and what Mr. Justice Maczko held was
4 that the petitioner, who had been a former member
5 of the respondent society, had a contingent
6 interest in the society's assets. But that's not
7 the situation here.

8 I say, though, that CFS can be considered a
9 proper person because -- just in the circumstances
10 of this case. I mean, society -- the Kwantlen
11 Society has been a founding member of the Canadian
12 Federation of Students in 1981 -- has been a
13 member since. As you pointed out, My Lord, all
14 the members of the Kwantlen University College are
15 members in the Canadian Federation of Students.
16 They have bylaws which are similar to articles of
17 association between them. I mean, articles of a
18 company after all are considered to be contracts
19 between the shareholders. A very analogous
20 situation to the situation, I say, at bar. And I
21 say indeed that since the creation of the
22 society -- maybe off and on -- not so much on now,
23 but there has been a working relationship between
24 the society and the CFS. So I say that there's
25 certainly a legitimate interest here in the CFS,
26 and they ought to be considered a member.

27 What about -- so if they are then, what about
28 the question of why is this then unfair? Why is
29 what is happening unfairly prejudicial to the CFS?
30 Which would be the next question. My submission
31 is -- and here I'm at page 35 -- that essentially
32 what the courts have held in dealing with what is
33 unfairly prejudicial -- it focusses on, well, what
34 was the understanding between the people here when
35 they went in? You know, obviously most of the
36 case -- maybe all the cases deal with a company,
37 but, again, the legislation makes this provision
38 applicable to societies. So what is the
39 understanding between the parties? What is the
40 agreement between the parties? Is the agreement
41 being breached? Is somebody doing something which
42 is contrary to the reasonable expectations of
43 the -- of somebody who is involved in this
44 situation?

45 And on page 36, I've got a quote from **Otawara**
46 **Co. Ltd. v. Masuda**, which is Mr. Justice Vickers'
47 decision of 1992. And basically he says, well,

1 there was a shareholders agreement, so that was
2 breached and so that's unfairly prejudicial,
3 because it's -- it's changing what was meant to be
4 equal interest in a company.

5 And at paragraph 109, Mr. Justice Lowry in
6 ***Urquhart v. Technovision Systems*** held that the
7 reasonable expectations of a petitioner are an
8 appropriate starting point in analyzing oppression
9 and unfair prejudice.

10 And so we say that the unfair prejudice here
11 is simply that -- again, that there has been a
12 breach of the bylaws, which is the fundamental
13 document between these parties, and so -- and that
14 that breach could well be unfairly prejudicial to
15 the interests of the CFS. And so that that then
16 provides jurisdiction for the court to intervene
17 and in some way try to cure what we say is an
18 unfair situation. And, obviously, you have my
19 submission on what -- how I say the court ought to
20 do that or what the remedy ought to be, but ...
21 And I -- I put it out there -- or I don't want to
22 go over that part again.

23 I would like to refer to just one authority.

24 I've handed you up --

25 THE COURT: Yes.

26 MR. PALLESON: Okay. I'm trying to do this before the
27 break. Of course, I mean to finish before the
28 break, My Lord, because obviously my friend needs
29 time too.

30 THE COURT: Yes.

31 MR. PALLESON: Just the last authority in here
32 Robert -- Mr. Sharpe's book on *Injunctions and*
33 *Specific Performance*. And what he says is that --
34 and this is, of course, with respect to the
35 poll -- whether it should go ahead on March 18th.
36 What he says is that:

37
38 Injunctions may also be awarded --

39
40 This is the first page in.

41
42 [AS READ]

43 -- to require officers and other members of
44 unincorporated associations and unions to
45 adhere to the constitution and rules of the
46 organization.

47 Several cases deal with the election of

1 officers where the courts have referred to
2 their common law jurisdiction to
3 [indiscernible] the conduct of political
4 elections and held that they also have
5 jurisdiction to intervene in non-political
6 elections.

7 Injunctive relief has also been granted
8 where a university failed to follow its
9 prescribed procedures in expelling a student.
10 In a British Columbia case dealing with the
11 rights of a high school student to play
12 inter-school basketball, Madam Justice Prowse
13 stated:

14
15 The courts have been moving gradually
16 from a policy of non-interference with
17 decisions of private bodies to relax its
18 willingness to exercise a limited
19 supervisory jurisdiction depending on
20 the nature of the rights or interests at
21 stake.

22
23 And so it's my submission that there would be
24 jurisdiction to make the order sought even outside
25 the **Society Act** or the unfair prejudice remedy in
26 the **Company Act**. The court would have
27 jurisdiction -- inherent jurisdiction over its
28 general jurisdiction with respect to bylaws, with
29 respect to contractual obligations to make -- to
30 intervene -- to make the order sought. So I say
31 that there is jurisdiction.

32 I say at paragraph 118 that -- well, I
33 reference the significant harm here, again, to the
34 CFS should an unfair referendum occur as set out
35 above. And I say it seems to me at least that
36 there's little or no prejudice to the society by
37 postponing the referendum. I mean, they have been
38 a member of this organization for some 27 years; a
39 founding member.

40 They -- in the materials there's -- one of
41 the executives, Ms. Anderson, she does say that
42 they like the date because it's the same date as
43 the referendum that's going to occur at the
44 University of Victoria and also one at Simon
45 Fraser, but in my submission, that's not a valid
46 reason for having the date on that date. Indeed,
47 that seems to suggest that there's, you know, an

1 effort to somehow hamstring the CFS, which I'm
2 sure is not in the interests of ascertaining
3 accurately the democratic will of the students of
4 Kwantlen University. I mean, if somebody can't
5 run a fair campaign because they're too --
6 logistically speaking they don't have the
7 resources, that's not what anyone should be trying
8 to seek. Everyone should be trying to seek -- and
9 I'm sure we would all agree with that -- that we
10 get an accurate assessment of the democratic will
11 of the students at Kwantlen College.

12 And those are my submissions, My Lord.

13 THE COURT: Thank you. Mr. Siddall.

14 MR. SIDDALL: Is it an appropriate time now to break?

15 Or I can give you an outline.

16 THE COURT: We'll take the break. I just want to know,
17 do you have a written outline?

18 MR. SIDDALL: I do. Sorry. I was going to ask; I
19 wasn't going to be presumptuous that you would
20 look at it, but I have it ready to hand up.

21 THE COURT: It might be helpful to me. I'm mindful of
22 the time. I'm mindful that this is Friday.

23 MR. SIDDALL: Yes. I could give you a five-minute
24 overview of my position as well.

25 THE COURT: That would be helpful. That's what I was
26 going to ask you.

27 MR. SIDDALL: Yeah. Okay.

28 THE COURT: Just to frame where we're going this
29 afternoon would be very useful to me.

30 MR. SIDDALL: Yeah. My Lord, I'll just do a
31 five-minute synopsis without reference to my
32 written submissions, but you have them and I will
33 refer to them after the lunch break.

34 THE COURT: Right.

35
36 **SUBMISSIONS FOR THE RESPONDENT BY MR. SIDDELL:**

37
38 But if -- I would start with this premise:
39 if you peel back all the layers of the onion, what
40 we're here today for really is my friend's
41 injunction application to stop the referendum from
42 going ahead on Tuesday; a referendum that has been
43 scheduled for six months pursuant to the bylaws of
44 the CFS.

45 I'll take you in a little bit more detail
46 after the break to my position, which is clearly
47 set out in the bylaws, that under the bylaws the

1 petition is gathered -- the signatures are
2 gathered. That, together with the notice of the
3 referendum, is sent in to the CFS -- and that was
4 done in this instance. From that point forward --
5 that was done in September 2007, so that date
6 crystalizes the date of the referendum occurring.
7 So we have from that point on a referendum date
8 set, and my overall submission, My Lord, is that
9 there is no justifiable reason to stop the
10 referendum from going ahead next Tuesday.

11 Nowhere in my friend's almost two-hour
12 submissions did he mention irreparable harm. That
13 is an obvious precondition to getting injunctive
14 relief. There's a complete absence of it here.
15 It's for my friend who is seeking the injunction
16 to establish that.

17 Of course, the court will look at both sides
18 of the ledger and say, well, what's the harm to
19 the KSA if an injunction is not given? Well,
20 first of all, some of these points were canvassed
21 by Your Lordship in my friend's submissions.
22 You're potentially disenfranchising at least half
23 of the petitioners on the basis that it's a
24 two-year program college. There was 2,000 people
25 who signed the petition. If you take a rough and
26 ready approach to that -- if half of those
27 disappear, they're disenfranchised. They ought to
28 be given the opportunity -- they had a reasonable
29 expectation to be able to vote in the academic
30 year when the referendum question came up.

31 I'll speak to that in a bit more detail, but
32 I say it's squarely on my friend's shoulders to
33 show irreparable harm, which it's failed to do,
34 and for that reason the injunction shouldn't go.

35 I also had some comments -- I'd like to meet
36 head-on the pre-campaign issue. I think it will
37 be illustrated after the break if I show you
38 exactly how the campaign period, quote/unquote,
39 was set under the bylaws. Well, I'll mention it
40 now. At the very first meeting of the ROC on
41 January 22nd, 2008, it was Ms. Watson's keen
42 interest, as set out in the minutes and as set out
43 in the affidavit of Ben West, who is one of the
44 ROC committee members that was appointed by the
45 KSA, it was very -- almost first on her agenda to
46 set the campaign period. She suggested two weeks,
47 which is the minimum campaign period set out under

1 the bylaws.

2 And I say this, if she was that concerned --
3 if the CFS was that concerned about all this
4 pre -- quote/unquote, pre-campaigning going on,
5 they could have deliberated and decided to start
6 the campaign period right from that first meeting
7 of the ROC. But they didn't, and they had full
8 knowledge, My Lord, at that point that the
9 so-called pre-campaigning had been going on since
10 September.

11 Dealing with the practicalities of whether
12 this can happen, it absolutely can happen.
13 Everything is in place. Mr. Schiffner has been
14 appointed, and we'll have a dialogue about that
15 and the circumstances of where we got to getting
16 there. But we're here; he's in place. There's no
17 allegations of bias or incompetence that my friend
18 expanded upon. There's a whiff of it in his
19 petition materials, but I don't think he's relying
20 on that. He has been previously appointed by the
21 court as a chief returning officer, so he has the
22 backing of the court. He -- there's affidavit
23 material before the court about what his rules and
24 procedures are. And we say everything is in
25 place.

26 Now, my friend complains, well, we haven't
27 had an opportunity to campaign during the two-week
28 period. Unfortunately, in my submission, for him
29 that is his -- at his client's peril. We
30 didn't -- nothing's stopping him from campaigning.
31 And, you know, there is correspondence very early
32 on after this -- this proceeding came into focus
33 that, look, we are proceeding with this
34 referendum; if you choose not to take -- you know,
35 do the campaigning, then that's at your peril.

36 And I think what brings all that into focus
37 is what's happening at SFU. My friend mentioned
38 there's a referendum going on at UVic. This is
39 not in the material before you, but I understand
40 that that -- what's happening at UVic is a little
41 bit distinguishable in that it's the graduate
42 students; a much small constituency, so much less
43 fervour over, you know, the issues, and I think
44 it's all basically -- all the campaigning has
45 essentially been done word of mouth. But that's
46 not in the materials before you.

47 But I think more in focus is what's happening

1 at SFU. Almost precisely the same issues are
2 going on at SFU with the ROC. The position that
3 the KSA -- sorry -- the CFS has taken is, we'll
4 let you go ahead with the referendum and we are
5 participating without prejudice in the
6 campaigning. That's what they're doing at SFU
7 right now. There's a referendum going on on
8 Tuesday. There's no application before the court
9 to stop it. CFS is participating on a without
10 prejudice basis in the campaign and that's going
11 to go ahead on Tuesday.

12 THE COURT: What do you mean "on a without prejudice
13 basis"?

14 MR. SIDDALL: Well, I paraphrase that because there's
15 correspondence from my friend who -- to our
16 firm -- not to our firm -- sorry -- in the
17 material that -- correspondence I believe from my
18 friend to the lawyers for -- or directly to I
19 guess the SFU student council equivalent of the
20 KSA saying, we have these issues about what's
21 going on --

22 THE COURT: Yes.

23 MR. SIDDALL: -- pre-campaigning since the beginning of
24 time, failure of the ROC to come to these
25 fundamental decisions, et cetera. And they take
26 the position the referendum is invalid -- that the
27 referendum will be held as invalid. That takes me
28 off to a different point, but sticking with the
29 third question --

30 THE COURT: So they're saying they'll go through with
31 it, but without prejudice to our right to claim
32 that it was invalid?

33 MR. SIDDALL: Right. Which is -- goes without
34 saying -- I mean, that is ultimately what I will
35 say -- develop further in my submissions. That's
36 ultimately the remedy here. This is --

37 THE COURT: To set it aside?

38 MR. SIDDALL: Yeah. This is a --

39 THE COURT: Isn't that embarrassing, though, to let
40 that happen? And isn't it -- wouldn't it be
41 better not to have -- or to postpone it briefly
42 than to let that happen? To have it ultimately
43 invalidated?

44 MR. SIDDALL: No, because I think what you're going to
45 anticipate if that happens is we are going to --
46 if - if -- I mean, all this presupposes that the
47 referendum will go the way of the CFS.

1 THE COURT: Yeah. No, that's right. It depends on how
2 it goes.

3 MR. SIDDALL: But if you get there, then it's open to
4 the KSA to apply under section 85 of the **Society**
5 **Act** for the court to remedy the irregularity, and
6 that is what section 85 is there for. All the
7 case law -- you have all these elections of
8 directors -- I don't think it's a referendum
9 case -- but you have all these acts which the
10 court is examining after the fact. It applied
11 section 85 for good policy reasons, I would
12 submit, because societies -- you know, how often
13 do they get their bylaws out? By in any event
14 it's curative; it's looking backwards, not
15 forwards. And furthermore, I think that the KSA
16 may have an oppression remedy of its own in the
17 way that the bylaws have been applied.

18 So I don't think it's offensive at all to let
19 this referendum go ahead. It's -- on a balance
20 of -- in the interests of justice -- and I'll
21 develop this further in my submissions this
22 afternoon -- all roads point to that this ought to
23 go ahead. There's nothing -- it's not an affront
24 to the court or to the process to examine it after
25 the fact and say, you know, there were these --

26 THE COURT: Because it's not taking place under the
27 authority and direction of the ROC, it's offside
28 already, isn't it?

29 MR. SIDDALL: I wouldn't concede that, My Lord, because
30 the ROC continues to function and continues to
31 meet. The --

32 THE COURT: But it has nothing to do with this
33 referendum, it's been --

34 MR. SIDDALL: Yes, it does.

35 THE COURT: Well, what does it have to do with it?

36 MR. SIDDALL: It's being -- it's met several times --

37 THE COURT: No. But it hasn't set the ground rules for
38 this thing; the ground rules are being set *ad hoc*
39 under the supervision of the college.

40 MR. SIDDALL: No. The CRO that was -- Mr. Schiffner is
41 filling a void. He is --

42 THE COURT: But it's still an *ad hoc* process; it's not
43 a process that's in accordance with the bylaws of
44 the federation.

45 MR. SIDDALL: Well, I'm not sure --

46 THE COURT: Is it? I mean --

47 MR. SIDDALL: -- what turns on it, but I take issue

1 with that as well because the bylaws -- and I was
2 going to develop this more this afternoon. But
3 the bylaws of the CFS contemplate that the
4 referendum shall be a referendum of the members of
5 the local branch or [indiscernible].

6 THE COURT: Does it contemplate that they have control
7 over how that's managed?

8 MR. SIDDALL: No, it doesn't. But it -- also it's
9 not -- I'm not conceding that it's offside for a
10 CRO to be appointed when the -- the ROC has
11 abdicated its responsibility and filled a void.

12 THE COURT: All right. But there's no provision
13 specifically for that to happen, so ...

14 MR. SIDDALL: No. That's a fair -- I mean, I have to
15 agree with that. There's no specific provision.

16 THE COURT: The fork in the road there is do you did it
17 yourselves, which is what's happened.

18 MR. SIDDALL: Right.

19 THE COURT: Or do you go to court and say, look, this
20 is dysfunctional and we need direction.

21 MR. SIDDALL: Right.

22 THE COURT: And they chose the one, not the other.

23 MR. SIDDALL: They chose the one, not the other. And I
24 say there's nothing wrong with that, because you
25 have in all these cases societies going on and
26 doing what that they do and then --

27 THE COURT: Well, there's nothing wrong with that. I
28 mean, the trouble is there's a -- there's no legal
29 sanction for it, and they've taken issue with the
30 fact that there's no legal sanction for exactly
31 how you've done it. It's a pragmatic solution,
32 but it has no legal sanction; isn't that right?

33 MR. SIDDALL: It doesn't have a legal sanction but
34 that's not to say it won't -- wouldn't be legally
35 sanctioned.

36 THE COURT: But should that be done before the fact or
37 after the fact?

38 MR. SIDDALL: Well, I think that an application brought
39 perhaps would meet the argument of being premature
40 because you don't even have, you know, the result
41 of the referendum. And at the end of the day what
42 the court will be most interested in is was there
43 a procedural irregularity or breach of natural
44 justice such that it really matters in the result.

45 THE COURT: But the --

46 MR. SIDDALL: I'm not saying that it --

47 THE COURT: -- problem before me sitting here today is

1 that it's conceivable that an election that was
2 unblemished in the sense that it was clearly laid
3 down in accordance with some sort of due process
4 as to how it would take place may be possible to
5 pull together in a month or so.

6 Why would I prefer some irregular process
7 that might be questioned later to a solution that
8 would create a process that would be
9 unimpeachable, except on appeal, I suppose?

10 MR. SIDDALL: I think you're there into -- framing this
11 whole exercise today is my friend's injunction
12 application, and he has to show --

13 THE COURT: Well, I think what I'm actually doing is
14 saying, look, wasn't this a situation where in
15 effect the body charged with organizing a proper
16 referendum, having representatives from both the
17 interested entities, has simply failed to come up
18 with a protocol in time to run a fair election?
19 And that something has to be done about that. Is
20 that really what happened?

21 I mean, I think your friend almost conceded
22 that the votes in these things turn out to be two
23 to two. And for reasons of their own, the
24 representatives of his faction on the ROC seem
25 determined to see that this matter gets punted
26 over to the fall.

27 MR. SIDDALL: I guess I would say this --

28 THE COURT: I would hate to see that happen if that was
29 a strategic thing that could be avoided. On the
30 other hand, because of that what's happened, it
31 appears to me, is that your clients have taken
32 matters into their hands because the ROC is
33 dysfunctional in their view and purport to hold a
34 referendum that is not technically at least in
35 compliance. You might say, well, substantively
36 it's going to be as good as, but it's not
37 technically in compliance with the procedure
38 that's set down; isn't that fair?

39 MR. SIDDALL: I think if you looked at -- took the
40 bylaws out and went through all of what -- you
41 know, the mandate of the ROC, that, you know, I'd
42 have a hard time disagreeing with that, but --

43 THE COURT: All right. Then shouldn't -- but then,
44 really -- I mean, I just want to focus on this
45 rather than characterize it in an inappropriate
46 way. Isn't the situation that if I were persuaded
47 that the ROC is dysfunctional and its processes

1 should be supplemented by the court, that the
2 appropriate resolution of this, it would seem to
3 me, would be to bring it back under the ROC
4 umbrella in the sense that the court then would be
5 the -- would take its place in terms of setting
6 down some rules and regulations? And then it
7 would simply be a question of under what
8 conditions would an election be held this side of
9 the spring. Isn't that the -- isn't that --
10 because the solution you --

11 MR. SIDDALL: I think once --

12 THE COURT: The solution you --

13 MR. SIDDALL: Because it's attractive and it's a very
14 practical approach, but I think if you -- taking
15 you to the facts of why we are where we are,
16 informs us as now we are where we are; what should
17 we be doing right now? And I think having all the
18 evidence in front of you will seem to persuade you
19 that --

20 THE COURT: All right. Well, maybe it will, but all I
21 hear you saying -- and this is -- I'll leave this
22 with you now. What I hear you saying is
23 basically -- of course, there's some percentage of
24 chance that the referendum will go a certain way
25 and nothing will ever matter anymore anyway. But
26 if it doesn't, what will happen -- what will then
27 ensue if I just let it happen is that all these
28 matters will be addressed on a -- on a petition
29 that has to do with the irregularities that went
30 into a referendum that's already been held. It
31 seems to me that is better avoided and a regular
32 referendum should be held. One that is at regular
33 in the sense that the things that the ROC would
34 have mandated are mandated by the court, if that
35 turns out to be necessary. Do you see what I'm
36 saying?

37 MR. SIDDALL: I do see what you're saying, but I think
38 that we're here because my friend's trying to
39 enjoin something, you know, the week before the
40 referendum occurs. And if it's the concern that
41 we'll be in court again, that doesn't lay at the
42 feet of the KSA, who want this referendum to
43 occur. And my friend's clients aren't going to
44 suffer any irreparable harm. That's the way I
45 view it.

46 THE COURT: Well, irreparable harm -- I mean,
47 irreparable harm would be an unfair ballot.

1 That's irreparable harm per se. I don't know if
2 it will be unfair in substance, but if the
3 appearance or the sense of one of the parties to
4 the election is that it's unfair going in and
5 there's a simple fix for it, shouldn't the court
6 go for the simple fix? They couldn't say it was
7 unfair if I said, this is what you're going to do
8 from now until April 15th.

9 MR. SIDDALL: That's right. And if -- no, I agree.
10 It's a practical and pragmatic approach, but I
11 think that given all the circumstances, the KSA is
12 entitled to assert that this referendum should go
13 ahead on Tuesday. And I can -- I mean, I'll
14 develop that in the factual background of the
15 case.

16 But the other point is -- I mean, it is open
17 to -- well, I'm retracing old ground perhaps.

18 THE COURT: No, no. I mean, what I want to hear from
19 you then in -- you know, you say it's open --

20 MR. SIDDALL: The other point, My Lord -- and I may be
21 able to persuade you of this this afternoon -- is
22 that, you know, under section 85 you can -- albeit
23 we're over here where we are now, section 85
24 allows you to remedy any alleged irregularities
25 now. I mean, I guess that's the same thing as you
26 setting up what's going to happen.

27 THE COURT: Isn't that what I'm saying?

28 MR. SIDDALL: Yeah. Except I guess where we're
29 differing is I'm saying it should -- it can happen
30 Tuesday. And then there's an issue of whether or
31 not it should take place a month from --

32 THE COURT: Well, then I think we should focus on that,
33 if it's possible, and not stand on ceremony.

34 It just seems to me this is too important.
35 It's -- you know, it's a fundamental issue of some
36 kind of democracy, and I -- I wouldn't disparage
37 it in any way by student politics. This is
38 important. No, I mean, it is; it's important to
39 the people involved, and it's an experience of a
40 kind of democracy that they'll carry with them
41 forward in their lives and it will resonate.

42 So it just seems to me if you say -- if the
43 focus should be on you can make a remedial order
44 that will allow it go ahead on Tuesday, then let's
45 talk about that. My sense of that is simply
46 that -- I mean, there may be a problem with
47 respect to a defined campaign period and the

1 approval of the materials that went before -- that
2 have gone out already and that sort of thing with
3 respect to that suggestion, but I'll hear it.
4 I think you can take for granted that I have
5 a hard time with the idea that all of the things
6 that have gone on since the referendum -- or, I'm
7 sorry -- since the petition was assembled, amount
8 to unlawful campaigning. On the other hand, if
9 there's been an undefined period before the
10 election which should have been defined as a
11 campaign period, that may strike me as a bit of a
12 fatal flaw in your argument that we can still have
13 this on March 18th.

14 MR. SIDDALL: But there was -- there was a campaign
15 period set.

16 THE COURT: Was there?

17 MR. SIDDALL: Yeah. It was March 3rd. They set that
18 date at the first meeting of the ROC,
19 January 22nd.

20 THE COURT: But they didn't set any conditions under
21 which things would be published and so forth?

22 MR. SIDDALL: No.

23 THE COURT: Or was that all done?

24 MR. SIDDALL: No, it's -- that's not done. But I was
25 focussing more on your comment about whether or
26 not there's been a campaign period set.

27 THE COURT: All right. So there's been a prescribed
28 campaign period.

29 MR. SIDDALL: Yes. And it's been --

30 THE COURT: They've known about it for a long time, but
31 the ROC never did get around to setting out
32 whatever the regulations would be as to what would
33 be published during that period.

34 MR. SIDDALL: Right.

35 THE COURT: That's all that's really wrong with this,
36 as far as you're concerned.

37 MR. SIDDALL: Right. And what's happened is
38 Mr. Schiffner stepped into the void and he is --
39 he has -- remember that his appointment is subject
40 to any direction of the ROC. He's filling a void.
41 He has been reviewing campaign materials and
42 applying a very measured community standard to --

43 THE COURT: Maybe I misunderstand, but was it your
44 client's right to engage him in the process? Or
45 was it -- that's something -- he should have been
46 supervised by the ROC, shouldn't it?

47 MR. SIDDALL: Well, that -- at the first meeting of the

1 ROC --
2 THE COURT: Yes.
3 MR. SIDDALL: -- it was discussed: let's appoint Fred
4 Schiffner as CRO --
5 THE COURT: That didn't happen. They didn't approve
6 that.
7 MR. SIDDALL: No.
8 THE COURT: And so what's happened is one side of the
9 equation has unilaterally decided to keep the
10 process on the rails by appointing someone.
11 MR. SIDDALL: Right. That's exactly what's happened
12 here.
13 THE COURT: But is that -- does that create the
14 conditions that suggest a fair election?
15 MR. SIDDALL: Well, what -- I think the onus is on my
16 friend, because -- I keep getting to use the I
17 word, but it's injunctive relief he's seeking.
18 And what is -- where is the breach of natural
19 justice? Where is the -- where is the breach --
20 where is the real harm here?
21 THE COURT: What are we worried about natural justice
22 if they're just in breach of the bylaws? I mean,
23 if that is not something authorized by the bylaws,
24 it's irregular per se.
25 MR. SIDDALL: That doesn't follow that you have to
26 enjoin the referendum from occurring, though.
27 THE COURT: It follows that it's irregular, and if the
28 irregularity is something that's material, I have
29 to consider that.
30 MR. SIDDALL: I would agree with that statement. It
31 has been material. I say -- maybe that's a better
32 way of phrasing it. I say there's no -- I started
33 my submissions by saying there's no reason this
34 can't go ahead, practical or otherwise.
35 I mean, he -- I take it what -- my friend is
36 saying there's been a breach of the bylaws.
37 THE COURT: Well, he's saying -- he'd be stronger than
38 that. I mean, he's basically saying your people
39 have usurped the process by unilaterally acting
40 and engaging somebody to run the election when
41 that's not how this is supposed to work.
42 MR. SIDDALL: Right.
43 THE COURT: But your strongest argument, it seems to
44 me, is that's all we could do because we had this
45 dysfunctional process.
46 MR. SIDDALL: Right. And the flavour of that, which
47 I'll develop this afternoon, is -- for example,

1 Exhibit A to my friend's outline, which is the
2 so-called proposal, that was never tabled at the
3 ROC, My Lord. It came for the first time in
4 Ms. Watson's affidavit material. I mean,
5 that's --

6 THE COURT: My question at this stage -- now that the
7 process that was set up to deal with this appears
8 to have been dysfunctional, that you've taken the
9 executive action of engaging somebody in
10 substitution for that process -- is why should an
11 election be held under that cloud that there is
12 some irregularity when it can be cured within a
13 month with some appropriate directions? It's as
14 simple as that.

15 MR. SIDDALL: Yeah. I'll consider that over lunch.
16 Thank you, My Lord.

17 THE COURT: At 2 o'clock -- at 2 o'clock there will be
18 about a 10-minute matter that I have to deal with.

19 THE REGISTRAR: 1:45, My Lord.

20 THE COURT: Oh, is it 1:45?

21 THE REGISTRAR: It's scheduled for 1:45, subject to
22 Your Lordship's [indiscernible].

23 THE COURT: Talking [indiscernible].

24 THE REGISTRAR: Order in chambers. Chambers stands
25 adjourned until 1:45 p.m.

26
27 **(CHAMBERS ADJOURNED FOR NOON RECESS)**

28 **(OTHER MATTER SPOKEN TO)**

29 **(CHAMBERS RECONVENED)**

30
31 MR. PALLESON: My Lord, we just have a little
32 housekeeping here. There's a couple of affidavits
33 which I don't -- which came late that we've agreed
34 that can go in. I don't know -- I didn't even
35 refer to them, but is it all right if we pass
36 those up to you?

37 THE COURT: Sure.

38 MR. PALLESON: Okay. My friends have agreed. My
39 friends have filed theirs already, so I'll hand
40 you that one as well.

41 THE COURT: Thank you.

42 MR. PALLESON: This may be a little over the top, but
43 I've actually got a new index for your chambers
44 record. If that would be something you'd like, I
45 can hand you that up.

46 THE COURT: Thank you.

47 MR. PALLESON: Thank you, My Lord.

1 MR. SIDDALL: My Lord, I handed up my written
2 submissions before the lunch hour. I think,
3 because of our dialogue before the break, I hope
4 to be a bit more focussed in what I cover in my
5 submissions.
6

7 **SUBMISSIONS FOR THE RESPONDENT BY MR. SIDDALL**
8 **(continuing):**
9

10 I think, though, that I'd like to start by
11 filling in a few more of the facts to give
12 Your Lordship a bit more of a background to how we
13 got here. And if I could jump in at paragraph 9,
14 My Lord, of the facts section of my argument on
15 page 4. Bylaw 1, article 3(a)(iii) sets out -- in
16 the CFS bylaws -- how individual members may
17 withdraw from the CFS, and that subsection states
18 that:

19
20 The individual members of the federation
21 collectively belonging to a member local
22 association will have sole authority to
23 initiate a defederation referendum as
24 described in article 7 of this bylaw by
25 submitting to the national executive a
26 petition signed by not less than 10 percent
27 of the individual members calling for the
28 referendum.
29

30 "Referendum" is defined in the CFS bylaws as
31 follows:
32

33 For all purposes of these bylaws a referendum
34 will be taken to mean a general vote of the
35 members of a local student association,
36 whether conducted at balloting locations or
37 at a formal general meeting of the local
38 student association.
39

40 Bylaw 1, article 7 -- which is referred to in
41 article 3(a)(iii), which I set out at paragraph 9.
42 Bylaw 1, article 7 is set out at paragraph 11, and
43 that sets out the procedure for the application
44 for withdrawal and it contemplates:
45

46 Within 90 days of the receipt of a letter
47 from a member local association notifying the

1 federation of its withdrawal from the
2 federation, the national executive will
3 examine the notification to determine whether
4 it is in order and will make a recommendation
5 to the voting members of the federation
6 concerning the application.
7

8 And then there's contemplated an opening
9 plenary of the next general meeting where
10 ratification will occur, and then the withdrawal
11 shall take effect on June 30th following the
12 ratification of the withdrawal.

13 Paragraph 12 sets out -- makes reference to
14 bylaw article -- bylaw 1, article 6, which we've
15 discussed this morning, including the contemplated
16 provision that there will be formed a committee
17 composed of two CFS appointees and two appointees
18 of the voting member that are defined as a
19 referendum oversight committee over the ROC within
20 three months' notice of the referendum.

21 At paragraph 13, I say that on
22 September 14th, 2007, Ms. Anderson, a KSA member
23 and by definition an individual member of the CFS,
24 sent a letter to the CFS enclosing a petition
25 signed by 2,577 individual members of the KSA,
26 which at the time was approximately 22 percent of
27 the total membership, calling for a referendum.
28 The letter also set out notice that the referendum
29 dates were March 18th, 19th and 20th, 2008,
30 from -- and it's got the hours set out on each day
31 that the referendum's to take place.

32 I'm going to stop there and take you to
33 bylaw 1, article 6 itself, because I think my
34 friend in his submissions took issue with my
35 submission, which is that that gives the members
36 of the KSA, I say, the right to hold the
37 referendum or certainly the reasonable expectation
38 to have the referendum on a date set out in the
39 notice.

40 I think my friend is suggesting that that is
41 something within the bailiwick of the ROC, which I
42 do take issue with. And for that reason I'll take
43 you to volume 1 of the chambers record, My Lord,
44 and the affidavit of Ms. Anderson -- sorry,
45 Ms. Watson, and tab A. If Your Lordship's bundle
46 is tabbed, it's Exhibit A.

47 THE COURT: Exhibit A.

1 MR. SIDDALL: Tab 5, Exhibit A. It should be --

2 THE COURT: Yes. It's ahead of it.

3 MR. SIDDALL: -- the bylaws. And then if you turn in to
4 page 9 of the exhibits -- numbered in the
5 right-hand corner -- sorry, page 7 -- sorry,
6 page 10, My Lord, of the exhibit and that's set --
7 you'll see article 6, "Vote on Defederating."

8 THE COURT: Yes.

9 MR. SIDDALL: And it states:

10

11 The individual members of the federation
12 belonging to a member local association may
13 vote on whether to defederate, subject to the
14 following rules and procedures ...

15

16 Subparagraph (a) sets out the procedure to put
17 together a petition calling for a referendum which
18 shall be signed by no less than 10 percent of the
19 individual members.

20

21 Then we have the notice provision in
22 paragraph (b), which is the material paragraph I
23 wish to take you to and, in particular (iii),
24 which sets out that:

24

25 Notice of the vote must include the exact
26 dates and times of voting.

27

28 I believe my friend took issue with the fact
29 that the dates were not set out in the actual
30 petition. But it's clear on the face -- I say on
31 the face of the bylaw that that's not what's
32 contemplated. You'll get the petition in -- the
33 relevant act is giving notice to the CFS that
34 you're going to have this referendum.

35

35 THE COURT: Right.

36

36 MR. SIDDALL: And that's what it's contemplating there,
37 and I don't believe there's any dispute that a
38 notice was sent to the CFS. And I've made
39 reference to it in my argument at paragraph 13 of
40 the exhibit references, which I don't believe I
41 need to take you to. But suffice it to say that
42 the dates and times were set out in the notice
43 that was sent to the CFS on September 14th, 2007.

44

45

45 THE COURT: Just one second. Mr. Clerk, do we have
46 some yellow stickers?

46

47

47 THE REGISTRAR: Yes, My Lord.

1 THE COURT: Go ahead.

2 MR. SIDDALL: I also wanted to point out for
3 Your Lordship the provision in 6(b)(iii), which is
4 that:

5
6 Notice of the vote on defederating must be
7 delivered by registered mail to the head
8 office at the federation not less than six
9 months prior to the vote.

10
11 THE COURT: Right.

12 MR. SIDDALL: So --

13 THE COURT: It's not a matter that the ROC does.

14 MR. SIDDALL: No. And I think that's quite a critical
15 point, My Lord, because once the notice goes in,
16 everybody's expectation is that this referendum
17 will occur.

18 Of course, I'm not disputing that the ROC has
19 a mandate to -- and has responsibility for various
20 points as given by the bylaws, but setting the
21 date isn't one of them.

22 THE COURT: Right.

23 MR. SIDDALL: So jumping back into some of the
24 chronology in my argument. At paragraph 14, I say
25 that on December 3rd, 2007, the KSA sent a letter
26 to the CFS advising the KSA's appointments to the
27 ROC were Ben West and Hildie Festerling
28 [phonetic]. And that was followed a week later on
29 December 10th by the CFS's letter advising that an
30 ROC had been "struck," and that the CFS had
31 selected Ben Lewis and their director of
32 organizing, Lucy Watson, to the ROC.

33 On January 9th, 2008, the KSA sent a letter
34 to the members of the ROC submitting the KSA's
35 views as to the procedures that the ROC ought to
36 adopt. And there -- I don't need to take
37 Your Lordship to the letter, but they're basically
38 in the form of recommendations. They're hoping
39 that this is something that the ROC will look at.
40 They're not expecting that, you know, their
41 representatives on the committee will necessarily
42 advocate for that or feel bound by that, and
43 that's set out quite clearly in the affidavit of
44 Ben West, who was one of the ROC representatives
45 appointed by the KSA. But needless to say, they
46 have some experience of their own with
47 referendums; they've come through several in the

1 past and brought to bear some of the issues that
2 they thought the ROC would have to grapple with
3 and set out their recommendations.

4 One of those, of course -- or not "of
5 course," but one of them I'm telling you is
6 that -- suggesting that a CRO be appointed, and
7 the named suggested was Mr. Schiffner. As I think
8 mentioned to Your Lordship earlier today, the --
9 Mr. Schiffner had previous experience with the KSA
10 and had in a previous year been appointed to --
11 court appointed to carry out a referendum
12 following a dispute over I believe it's elections
13 of council members of the KSA.

14 And the letter set out other suggestions as
15 well and hoped that that would be taken on board
16 by the ROC or at the very least considered.

17 Then at the top of page 6 of my argument, on
18 January 22nd the ROC met for the first time. And
19 at the meeting Ms. Watson, who is the CFS director
20 of -- I'm not quite sure what her title was, but
21 in any event, she's a CFS representative,
22 suggested that the campaign period be set to
23 commence March 3rd, 2008. Ms. Watson is the
24 director of organizing at the CFS. And further to
25 her suggestion, the ROC set -- which is within its
26 mandate -- the campaign period to start March 3rd,
27 2008.

28 I think I highlighted this point earlier,
29 My Lord, but I think that's a material fact in the
30 sense that what my friend seems to be complaining
31 of -- or is complaining of is that campaigning
32 took place prior to that March 3rd date and that
33 somehow offends the fairness of this whole
34 process. But the way to have mitigated by --
35 against that is for the ROC to have on
36 January 22nd said, the campaign period is going to
37 start tomorrow and we're going to gauge this
38 process and we're going to take ownership of it
39 and look at the material, if that truly was
40 something that the CFS thought ought to be
41 mitigated against.

42 I say at paragraph 18 at the same meeting
43 Ms. Watson raised the idea of pre-campaigning, but
44 there was very little discussion about the
45 meeting. This is all set out in the affidavit of
46 Ben West, and I've given you the affidavit
47 references there. Ms. Watson simply advised that

1 she wanted it noted for the record that CFS had
2 concerns about materials posted by the KSA on
3 campus regarding defederation.

4 And I note parenthetically, in her affidavit
5 in reply Ms. Watson says that she does not dispute
6 the issue of what she now describes as early
7 campaigning was raised at the first meeting. But
8 her recollection is that the issue was deferred
9 because it was felt necessary to establish rules
10 regarding what campaigning was acceptable before
11 the early campaigning could be fully discussed.

12 To be honest, I'm not quite sure I understand
13 that sentence, but I've set it out there for
14 Your Lordship's review.

15 But I say, notably, that the issue was not
16 brought again at the ROC until five weeks later on
17 February 29th, 2008, when Ms. Watson circulated an
18 e-mail attaching a copy of a letter from CFS
19 counsel to the ROC. And that's the letter in
20 which CFS counsel takes issue with -- brings to
21 the floor this -- this issue they have which has
22 been articulated by my friend this morning
23 regarding this notion of pre-campaigning.

24 And so as I've already stated, at the first
25 meeting Mr. West raised the possibility -- oh,
26 sorry -- I haven't said this to Your Lordship
27 before. But you'll recall the January 9th letter
28 from the KSA to the ROC and then we have the
29 January 22nd meeting. And at that meeting
30 Mr. West raised the possibility of engaging
31 Fred Schiffner to act as a third party chief
32 returning officer -- the CRO. Ms. Watson's
33 response was that she had no specific issue with
34 respect to Mr. Schiffner, but rather that CFS took
35 issue with the approach of using a CRO at all and
36 took the view that the ROC must -- must, I stress,
37 handle all aspects of the referendum process. I
38 don't have an affidavit cite for you, but that's
39 in Mr. West's affidavit.

40 And I should note that in reply material,
41 Ms. Watson -- the only comment she has about any
42 of the affidavit evidence of Mr. West is what I've
43 set out in paragraph 18. She takes no issue with
44 anything else in Mr. West's affidavit.

45 I say, notably, at paragraph 20 no
46 alternatives to this -- no alternative to the CRO
47 proposal was tabled by the CFS representatives on

1 the ROC until the fourth meeting of the ROC on
2 February 22nd, 2008, at which time -- it should
3 say "Ms. Watson," suggested that the ROC hire and
4 train polling clerks.

5 This is a full month into their mandate.
6 They've had silence pretty much with respect to
7 the CRO proposal, other than it's somehow offside
8 with the ROC's mandate even to go down that road.

9 Mr. West deposes that he had reservations
10 that he expressed at the February 22nd meeting
11 about the suggestion made by Ms. Watson regarding
12 the hiring of polling clerks not only because of
13 the logistics involved in finding and training
14 them and managing such an endeavour without a CRO
15 overseeing the process, but also because of the
16 potential problems and complaints that could arise
17 about the competence or bias of the polling clerks
18 employed or the process generally. And he
19 remained of the view that it was much more
20 efficient and fair to hire an impartial third
21 party such as Mr. Schiffner.

22 I'm jumping out of the chronology as set out
23 in the argument there to remind Your Lordship of
24 the submission I made earlier that my friend's
25 proposed referendum blueprint that was Exhibit A
26 to his outline was never put before the ROC. It
27 was for the first time set out in Ms. West's [sic]
28 affidavit. And I think, notably, My Lord, it
29 was -- Ms. Watson's affidavit -- sorry. Notably,
30 it was sworn the day after the issue of
31 Mr. Schiffner's appointment came up. Sorry, I'm
32 going to have check the exact chronology there.
33 But the point I'm making is that not until this
34 process is enjoined do we have any real cogent
35 blueprint of what the CFS representatives of the
36 ROC say should happen. There's this discussion
37 about hiring and training polling clerks, but
38 that's one piece of a bigger puzzle.

39 The CFS has professed themselves to be
40 experienced in running ROCs and getting these
41 referendums going, but as at February 22nd,
42 they're already a month into it and the best they
43 have is that, oh, we should hire some polling
44 clerks. And I say rhetorically, wouldn't it have
45 been helpful to have the kind of blueprint that's
46 now presented by my friends -- or in my friend's
47 client's affidavit material to be able to really

1 get to the meat of it.

2 I'm not saying that necessarily means that
3 everything would have been sorted out, but it sure
4 would have been nice to be able to see if they
5 could agree to the kinds of things set out in this
6 sort of blueprint in a timely way in order to
7 allow this referendum to occur on March 18th.

8 If I can just beg your indulgence for a
9 moment, My Lord.

10 I want to turn briefly to the issue of what
11 the referendum question is and how we got to where
12 we are. And I'm going to have to ask you to delve
13 into the affidavit material, and I'm just going to
14 make sure I have this reference right.

15 My Lord, If I could ask you to turn to the
16 West affidavit at chambers record volume 2.

17 THE COURT: Tab 9?

18 MR. SIDDALL: Yes, My Lord. It should be -- there's a
19 bunch of numbered tabs which are part of a
20 previous affidavit, which is a bit confusing. But
21 if you can find your way to the last nine, it's
22 about a third into the bundle. It should be the
23 affidavit of Mr. West and at tab B --

24 THE COURT: I've got it.

25 MR. SIDDALL: -- there's a proposed referendum
26 question. Do you have that, My Lord?

27 THE COURT: Tab B?

28 MR. SIDDALL: Tab B. It's Exhibit B to the West
29 affidavit at tab 9. So tab 9, tab B.

30 THE COURT: Yes.

31 MR. SIDDALL: And it says "proposed referendum
32 question."

33 THE COURT: Yes.

34 MR. SIDDALL: This was a referendum question tabled by
35 the CFS representatives at the January 29th
36 meeting of the ROC, which is the week after. And
37 it reads:

38
39 Are you in favour of --

40
41 This is the resolution -- this is the proposed
42 language of the resolution for the dereferendum
43 [sic] or for -- it says:

44
45 Are you in favour of maintaining formal
46 relations with the students who are members
47 of the following students' unions ...

1
2 And as you can see, it goes on to the end of
3 page 2 listing all of the -- what one assumes are
4 the students' unions that form part of the CFS.
5 And then it has "yes" or "no" at the end of it.
6 That is what the CFS came up with as a referendum
7 question on January 29th, 2008.

8 By this time the -- I should back up. In the
9 January 9th letter that I referenced sent by the
10 KSA to the ROC, they set out their own language
11 and that was essentially "are you in favour of
12 withdrawing from the CFS?" And it had an add-on
13 which referenced the membership fees that they
14 were paying. I can give you a cite for that, and
15 I'll do that in a moment just so you can see what
16 was proposed.

17 They clearly had a divergence of views on
18 January 29th about what the referendum question
19 would be.

20 The next iteration of the proposed referendum
21 question from the CFS representatives on the ROC
22 came through on the 22nd of February, and that's
23 set out in the following tab in the affidavit of
24 Mr. West. So if you go over to tab C -- perhaps
25 you're already there, I'm not sure.

26 THE COURT: Yes.

27 MR. SIDDALL: Setting out three different options: one
28 is the same one we've looked at, except it's got
29 the -- it's actually slightly different in the
30 sense that it sets out in its body all of the
31 member -- one assumes are the member local
32 branches and then it has the question:

33
34 Are you in favour of the Kwantlen student
35 body maintaining formal relations with
36 student bodies at the following institutions
37 through a democratic framework called the
38 Canadian Federation of Students?
39

40 Option 2 is:

41
42 Are you in favour of stopping the further
43 fragmentation of Canada's student movement
44 through a democratic framework called the
45 Canadian Federation of Students? Yes or no?
46

47 And then option 3 is:

1

2

Are you in favour of continued membership in
the Canadian Federation of Students?

3

4

5

THE COURT: Who came up with these?

6

MR. SIDDALL: The Canadian Federation of Students
representatives.

7

8

So just to be clear, on tab B that's
iteration number one of what they said the
question should be.

9

10

THE COURT: Yeah.

11

12

MR. SIDDALL: Tab C of the West affidavit is about a
week later, because they had discussed the first
one and, predictably -- you can imagine -- the
quite reasonable, in my submission, response of
the KSA appointees to the ROC when they saw the
question set out at B -- how can that possibly be
a fair or even clear question? It's not, you
know -- I mean, at its worst it's misleading, I
think -- or at its best it's misleading, I should
say.

13

14

15

16

17

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21

22

Anyway, they had debate about that and then
they came -- the CFS representatives came back
with what's at tab C and basically set out three
options. And, of course, we drill down to three,
and that's, I think, quite agreeable to what the
kind of referendum should look like.

23

24

25

26

27

Skipping forward to where we are right now.
Mr. Schiffner has -- Mr. Schiffner's question is
essentially the same as in 3, except it's got the
reverse. It says "are you in favour of
withdrawing membership?" rather than "are you in
favour of continuing membership?"

28

29

THE COURT: That's even more accurate.

30

MR. SIDDALL: Right. And so skipping forward to that,
I'm going to be asking Your Lordship --

31

32

THE COURT: The question that they -- that is intended
to be posed on March 18th, if this thing
continues, is that simple question --

33

34

MR. SIDDALL: Yes.

35

THE COURT: -- "are you in favour of withdrawing"?

36

MR. SIDDALL: Mr. Schiffner said that --

37

THE COURT: Does that include the 7.46 [sic]? Or the
numbers?

38

39

MR. SIDDALL: No, no. It doesn't -- it doesn't.

40

THE COURT: All right.

41

MR. SIDDALL: It's just that question.

42

43

44

45

46

47

1 My friend took you to -- it may be
2 instructive later on just to go to Mr. Schiffner's
3 affidavit and that will spell out that and the
4 other things that he's done which, in my
5 submission, make it -- make a March 18th
6 referendum absolutely possible and doable.

7 Right. I'll just read it to you, and I'll
8 take you to it later. But he says -- this is the
9 proposed -- not proposed, this is the question
10 that's going to be asked on March 18th if this
11 thing goes ahead:

12
13 Do you wish to withdraw as a member of the
14 Canadian Federation of Students?

15
16 That's it.

17 So I think whatever happens with respect -- I
18 know I digressed into the question, but I think --
19 I mean, in my submission, that's a completely
20 reasonable, logical question contemplated under
21 the bylaws and at the very least that ought to be
22 the question. I'm not sure what my friend will
23 say in reply to that, but ...

24 But I think it's instructive to show you the
25 path -- the path -- how we got to the question
26 ultimately through the CRO. And quite frankly,
27 My Lord, I think we have to ask the question:
28 what was the purpose setting out in the second
29 meeting of the ROC this horribly convoluted
30 two-tier question?

31 I think the answer is, My Lord, that status
32 quo favours the CFS. If this referendum doesn't
33 go ahead, they remain members, and thus the
34 deadlock on the ROC.

35 THE COURT: Is that what the deadlock was about
36 primarily?

37 MR. SIDDALL: I wouldn't say -- no -- primarily, no. I
38 mean, the deadlock -- I think things came to a
39 head, My Lord, quite simply because when it was
40 clear that we were simply running out of time to
41 get this referendum on the 18th, KSA retained the
42 services of Mr. Schiffner. And I think that's
43 what -- I mean, that's not answering your
44 question, which is what was the deadlock? But
45 that's when, you know, positions started being
46 taken, and my friend took out -- took proceedings
47 and saying this -- I'm not saying he did that

1 unreasonably, but I'm just saying that's when
2 things started coming to a head.

3 But it was as a result of the inability of
4 the ROC to, for example, agree on the question.
5 It's an example. Was it the nub? That's a --

6 THE COURT: Well, if you couldn't get past the
7 question, I don't suppose there was much sense
8 talking about much else, if they never did get
9 past the question.

10 MR. SIDDALL: Well, in fairness to the ROC, they had
11 agenda items and -- as reflected in the minutes.
12 They talked about -- for example, with the first
13 iteration of the CFS's question that was tabled,
14 they had discussion. It was agreed that they
15 would come back and propose other questions. Then
16 they would move on to the next thing. Well, what
17 about the CRO; we still think it's a good idea.

18 So in essence their response was the bylaws
19 don't provide -- don't allow the ROC to appoint a
20 CRO. And, you know, the best answer we had prior
21 to having my friend's blueprint for the
22 campaign -- for the referendum was that we should
23 hire a couple of polling clerks. How are you
24 going to get a referendum done making piecemeal
25 suggestions like that? That's the rhetorical
26 question I ask.

27 And so at the end of February, the KSA
28 retained the services of Schiffner to fill the
29 void. His services are -- or his mandate is
30 expressly -- I'm not sure how far we need to go
31 down this road because we had an exchange prior to
32 lunch and we -- when I said his mandate was
33 expressly subject to the direction of the ROC, you
34 said to me, well, it doesn't mean that the KSA
35 could still go out there and do that, so I take
36 your point.

37 But wrapping all of that up, we say that
38 this -- there's no reason why this referendum
39 can't proceed on the 18th.

40 THE COURT: Well, but there is -- there is a good
41 reason why it can't unless something happens, and
42 that is that it's not in accordance with the
43 bylaws.

44 MR. SIDDALL: Well, if it's not in accordance with the
45 bylaws --

46 THE COURT: What you need is at least a *mutatis*
47 *mutandis* kind of order, don't you?

1 MR. SIDDALL: I think --
2 THE COURT: To regularize that procedure.
3 MR. SIDDALL: Yeah, I accept that. And the court --
4 THE COURT: You absolutely need something to put you
5 back on the rails legally, because legally you are
6 offside right this minute.
7 MR. SIDDALL: If -- if you did not grant any relief
8 today --
9 THE COURT: Well, you see, I don't say -- I don't --
10 MR. SIDDALL: No. I know.
11 THE COURT: Yeah. I don't think I could say what I
12 thought you were saying, which is -- I couldn't
13 simply say, let it happen, because what's going to
14 happen is not going to be in accordance with the
15 bylaws.
16 MR. SIDDALL: Right.
17 THE COURT: If nothing is done.
18 MR. SIDDALL: No. Absolutely.
19 THE COURT: Something has to be done.
20 MR. SIDDALL: Yeah.
21 THE COURT: Like, this has to be brought into
22 regularity either *ex post facto* in a sense by some
23 *mutatis mutandis* order or by the reconstitution of
24 a referendum date with some direction.
25 MR. SIDDALL: I absolutely agree with that, and to the
26 extent that I may have -- we may have -- I may
27 have not made that clear, I apologize. But that's
28 absolutely correct.
29 THE COURT: Okay. So what you want is something
30 *mutatis mutandis*? You want an order that
31 regularizes what has been done already?
32 MR. SIDDALL: Right. But I'm saying that you don't
33 need to do that today because the referendum will
34 go ahead -- at least should go ahead and then --
35 THE COURT: The referendum will go ahead under auspices
36 that are not in accordance with the bylaws. I
37 can't let that happen now that it's been drawn to
38 my attention, can I? And just --
39 MR. SIDDALL: I think --
40 THE COURT: And hope all goes well?
41 MR. SIDDALL: Well, dealing with -- you have to look at
42 the quality, I think, of the alleged breaches of
43 the process.
44 THE COURT: No. But if I were sitting here right
45 now -- if everybody just sat down and I were to
46 make some declaration of the state of affairs, I'd
47 declare that the actions of the KSA are irregular.

1 MR. SIDDALL: Absolutely.
2 THE COURT: And so the whole process would take place
3 under a cloud, wouldn't they?
4 MR. SIDDALL: If you made that -- I'm contemplating in
5 the first instance you making an order.
6 THE COURT: Just pretending we didn't have this session
7 today.
8 MR. SIDDALL: That would be the effect of making an
9 order, yeah.
10 THE COURT: How can a court of law do that knowing that
11 there's a problem once it's been tabled in this
12 room? I mean, we don't go out looking for
13 trouble, but when people bring it to us, how can
14 I --
15 MR. SIDDALL: Well, I think that you can --
16 THE COURT: -- countenance that?
17 MR. SIDDALL: You can't enforce -- you can't -- well,
18 you have to look at the harm -- potential harm
19 suffered, if any; I say there is none. And you
20 also have to look at the --
21 THE COURT: No, no. Look, look, look, it just doesn't
22 matter. When you say there is none, there may
23 well be. And having even had this much of an
24 interchange in this courtroom, whoever votes in
25 that referendum will be voting in a referendum
26 that they know is irregular at best. What is the
27 point of that?
28 MR. SIDDALL: I think I can move on because I'm not
29 asking -- I have your point and you're not going
30 to do nothing and I didn't expect you to do
31 nothing. And so I think to get back to your
32 original question, if we go forward on the 18th, I
33 would have to have an order of the court
34 regularizing the conduct to date.
35 THE COURT: Right. And is there a way to do that?
36 MR. SIDDALL: Yes. And I'm saying that -- I'm sorry,
37 we got sidetracked.
38 THE COURT: No, no. It's just that, you know, I just
39 want to focus. You've got to be able to -- you've
40 got to be able to convince me that what's happened
41 is tantamount to what should have happened such
42 that I can simply say --
43 MR. SIDDALL: Right.
44 THE COURT: -- this is good enough and I sanction it.
45 And then it goes ahead as if it were regular --
46 MR. SIDDALL: Right.
47 THE COURT: -- or we've got to work out a fix. And

1 we've had -- the road map to that, I think, is
2 fairly clear.

3 MR. SIDDALL: Right.

4 Let me start with the first proposition that
5 what's happened ought to be regularized, and
6 there's every confidence the court will have that
7 if it goes ahead on the 18th and you regularize
8 the process, it will be fine. And I'm going to
9 start by looking at the Schiffner affidavit, which
10 sets out what he's basically done.

11 THE COURT: You mean what Schiffner has done in order
12 to ensure that the election is fair?

13 MR. SIDDALL: Right.

14 THE COURT: Yes.

15 MR. SIDDALL: Well, more than fair, but possible in
16 terms of -- well, yeah, fair -- fair.

17 THE COURT: Well, he says it is, doesn't he? I mean,
18 this can be done from the point of view of
19 somebody technically pulling off an election.

20 MR. SIDDALL: Well, that's what I was going to go to
21 the affidavit for.

22 THE COURT: No. I'm sure -- I take that as for
23 granted.

24 MR. SIDDALL: Oh, okay.

25 THE COURT: The concern is somewhere in the middle
26 there, isn't it? With whether or not there was
27 adequate direction with respect to the campaign
28 between March 3rd and March 18th? The kind of
29 things that the oversight committee was supposed
30 to do and never got around to because it never
31 even agreed on a question.

32 MR. SIDDALL: Right. So -- so --

33 THE COURT: I mean, was there a fair sort of campaign
34 period that was conducted under a fair set of
35 rules? Obviously, there were no rules, because
36 they never got around to setting any.

37 MR. SIDDALL: Well, Mr. Schiffner, again, filled that
38 void, and he reviewed material that was submitted
39 to it by the KSA. And he --

40 THE COURT: While saying that he didn't really have
41 authority to do this, but he did it anyway. I'm
42 not -- I'm not --

43 MR. SIDDALL: I mean, I think that was set out in one
44 of the e-mails. That was his first -- you know,
45 his retainer didn't say, you must review all
46 campaign materials; that's true. But he took on
47 that function and discharged that fairly. He --

1 THE COURT: Well --

2 MR. SIDDALL: And I think what -- distilling it down to
3 the nub might be to say that, well, is there some
4 injustice from my friend not being able to fairly
5 or at all campaign during this campaign period?
6 My answer to that is, he chose not to do that.

7 We invoked a process. We had Mr. Schiffner
8 involved in assisting us on a deadlocked -- you
9 know --

10 THE COURT: Well, we've got to be careful. When you
11 say you "invoked a process," you didn't invoke a
12 legal process; you created a makeshift solution
13 that you thought would work for you.

14 MR. SIDDALL: That's right. That I'm asking the court
15 to *ex post facto* --

16 THE COURT: Sanction now.

17 MR. SIDDALL: -- sanction, right.

18 THE COURT: But the problem with that is they were
19 entitled to take the position that that was an
20 illegal move, notwithstanding their behaviour -- I
21 mean, which strikes me on the face of what I've
22 looked at to not be without -- not to be above
23 criticism. But what you're saying is that all of
24 that -- you know, the election or choices they
25 made within a parabola that included the, from
26 their point of view, unlawful usurpation of the
27 role of the oversight committee -- I can't use
28 these acronyms; I get lost in them -- it didn't
29 happen so that they -- it just strikes me that the
30 problem with this is -- and I certainly am
31 beginning to form some views about what happened
32 on the oversight committee and whether there were
33 technical considerations that went into things
34 such as the selection of the question. I mean,
35 you know, those questions -- I have no hesitation
36 in saying this. The questions that list everybody
37 who's enrolled as a member are in fact -- it's a
38 question attached to an endorsement -- an implied
39 endorsement. It's not a fair question at all.

40 So the argument went on on a plane that it
41 should never have taken if these people were
42 paying attention to their responsibility, which
43 was to ensure from the point of view of each side
44 of this that a fair referendum question was put
45 and that a fair process was in place. They didn't
46 have any business taking positions implicitly as
47 to how the outcome should be decided.

1 But anyway, having got to the point they
2 did -- I return again -- it just seems to me
3 unanswerable that your client's position was to
4 come to this place and say, we need the assistance
5 of the court to give the directions necessary to
6 keep this thing on the rails, instead of going
7 outside the process and creating this situation
8 where now they're in a position to say you aren't
9 playing in accordance with the rules.

10 MR. SIDBALL: Well, I think my response -- one of my
11 responses to that would be it's convenient. I
12 mean, I think it's convenient for the CFS to now
13 be able to say, we were prevented from
14 campaigning, and that's why they can't go ahead on
15 the 18th.

16 THE COURT: I don't think that's -- if they're saying
17 that, that's not right. They weren't prevented
18 from doing anything. They could have weighed
19 their options and decided whether or not this made
20 sense or it didn't make sense. I mean, a lot
21 of -- there seem to be quite a few strategic
22 things done in this context.

23 It's just that at this stage my concern
24 looking down the road is, shouldn't any democratic
25 process take place in a completely transparent and
26 fair context? And anything you do at this stage
27 to reconstitute what's happened now, unless you
28 can establish that the breaches are trivial, is
29 tainted, isn't it?

30 I mean, because in doing what your clients
31 did, they gave them the argument that, well, we
32 knew that wasn't lawful, we knew that wasn't right
33 and so we dropped tools. We didn't think we had
34 to worry about that. Now, what can -- you know,
35 the court doesn't have to believe them, but
36 that -- you know, it's an irrefutable suggestion
37 in the sense that how can you -- you can't go into
38 the inchoate details of how people might have
39 behaved if they'd taken a different view if you
40 hadn't put them in the position by behaving as you
41 did -- that you did.

42 MR. SIDBALL: I guess looking at the broader picture, I
43 just find it problematic -- the inconsistency
44 between this case and what they're doing at SFU,
45 it just doesn't sit well -- sit well for me.

46 THE COURT: Well, what are they doing at SFU?

47 MR. SIDBALL: I think, as I thumbnail sketched earlier,

1 what's happening at SFU is there's a referendum
2 going on on Tuesday.
3 THE COURT: Yeah.
4 MR. SIDDALL: And there's similar issues engaged with
5 respect to what the ROC's doing --
6 pre-campaigning, those kinds of issues.
7 THE COURT: Yeah.
8 MR. SIDDALL: And there's no relief sought by the CFS
9 with respect to that referendum. They're not
10 petitioning the court for any relief to my
11 knowledge, anyway. They might have a different --
12 MR. PALLESON: I don't like to interrupt, but I didn't
13 address this. There's differences -- significant
14 differences at SFU, and I can --
15 THE COURT: Well, I mean, there might be differences in
16 terms of your own estimate of whether it makes
17 sense to do it or not. I just don't know, but ...
18 MR. PALLESON: Then there's -- yeah, and there's
19 other -- there's no Schiffner involved at SFU.
20 THE COURT: Does that make it better or worse?
21 MR. SIDDALL: A serious question.
22 MR. PALLESON: Can I -- well, that's a fundamental
23 breach of the bylaws, we say, to have usurped the
24 authority and then -- and hired someone to come in
25 and that --
26 THE COURT: Look -- I mean, look, what happened here is
27 they went and got somebody capable of pulling an
28 election off because the ROC wasn't going to pull
29 it off. What was wrong with that? I mean, except
30 from the fact that it's a breach. In a practical
31 sense, the ROC wasn't going to do the job either.
32 MR. PALLESON: It's -- well, we don't know that for
33 sure.
34 THE COURT: We certainly do. There's --
35 MR. PALLESON: Well --
36 THE COURT: Look, there's no question about it; it
37 wasn't going to happen.
38 MR. PALLESON: What I was -- you know, if
39 Your Lordship's -- I'm not going to -- while I may
40 not accept that, I may not --
41 THE COURT: I'm not asking you to buy it; I'm telling
42 you what I assess it as.
43 MR. PALLESON: What your decision is, and I understand
44 that. What I'm saying, though, is the situation
45 in terms of the breach of the bylaws -- whether
46 they're breached is different at SFU and --
47 yeah --

1 THE COURT: Well, all right. It doesn't help me
2 anyway. It's a paradigm that isn't going to be of
3 assistance.

4 MR. PALLESON: No, I think ...

5 MR. SIDDALL: My Lord, I wonder if it might be
6 instructive if we stood down for a few minutes
7 so --

8 THE COURT: Well, it's fine with me. Now, look, what
9 I'm going to say, though, is this, that it's
10 beginning to appear to me that a new date be set
11 before the middle of April, that the ROC be given
12 something like four or five days to pull its act
13 together and that if they don't come up with a
14 template for an election that makes sense, I'll do
15 it for them. And that in the meantime, it seems
16 to me that they would have to -- at this stage,
17 having done what they've done and having handled
18 things as they have, my suggestion -- I'm not
19 making an order yet, but I'm simply asking you to
20 consider very strongly --

21 MR. SIDDALL: Yes.

22 THE COURT: -- you particularly -- whether at this
23 stage leaving it in Schiffner's capable hands is
24 the right thing to do.

25 I'm prepared to refine an order, but I want
26 those -- I'm laying those things out in kind of a
27 rough form because I think that's the kind of
28 order that would be appropriate in this case.

29 This thing needs to be set up on a
30 transparent basis. There needs to be an obvious
31 two-week campaign period. There needs to be some
32 guidance with respect to what campaign materials
33 can be distributed in the campaign period, and the
34 body that's supposed to do that is four people who
35 haven't been able to do it so far. I don't say I
36 have a lot of confidence that they'll get better
37 at it in the next few days, but I think that the
38 one thing this court should do is give this back
39 with some directions to that group to come up with
40 those things. If they don't, then to come back to
41 the court, both of you, with some description as
42 to where they're apart, and the court will pick
43 the appropriate direction and solution and make it
44 so that this thing can be dealt with between
45 the -- it seems to me, the logical dates would be
46 somewhere around April 9th, 10th, 11th, and
47 setting a date two weeks back of that for the

1 campaign to begin.

2 Anyway, those are just suggestions, but I'm
3 known to telegraph where I'm going from time to
4 time.

5 We'll stand down then. How long do you need?

6 How about I come back at quarter after?

7 MR. SIDDALL: That would be great. Thank you, My Lord.

8 THE REGISTRAR: Order in chambers. Chambers will stand
9 down until 3:15 p.m.

10
11 **(CHAMBERS ADJOURNED FOR AFTERNOON RECESS)**

12 **(CHAMBERS RECONVENED)**

13
14 **SUBMISSIONS FOR THE RESPONDENT BY MR. SIDDALL**

15 **(continuing):**

16

17 My Lord, thank you for the extra time. We
18 used it wisely, but unfortunately I don't think
19 we're any further ahead in terms of consensus
20 building with my friend. But I thought I could
21 lay out perhaps some suggestions and think aloud,
22 and then we could see where that takes us.

23 THE COURT: All right.

24 MR. SIDDALL: To take up your suggestion regarding a
25 rescheduled referendum date, my clients would like
26 to see that rescheduled date happen as soon as
27 possible.

28 I should inform Your Lordship that the week
29 of Monday, April 14th, is when exams start at the
30 college.

31 THE COURT: Yes.

32 MR. SIDDALL: And there is grave concern that anything
33 in that week of the 7th will impair both the
34 ability to get voters out and to campaign. And so
35 the submission is that the -- the rescheduled
36 referendum occur on Tuesday, the 1st of April, the
37 2nd of April and the 3rd of April. And working
38 backwards from that, that would take us to a
39 campaign period starting, I guess, on Tuesday
40 next.

41 You may not be surprised to hear that my
42 clients don't have the confidence that the ROC
43 will be able to do anything useful, and it is
44 largely wasted energy going through the motions of
45 having them sit down again.

46 I would propose -- and this part of the
47 thinking out loud process -- that -- I'm in

1 Your Lordship's hands, but if we are able to
2 usefully use any court time today to resolve some
3 of the perhaps easier issues, and I would suggest
4 that those issues may include the question for
5 one. I think the campaign period's probably quite
6 easily agreed to and perhaps Schiffner as well.
7 And then the rest -- if we run out of time or if
8 it's useful, I would suggest that I would sit down
9 with my friend and try to work those out between
10 counsel, failing which we would come back on
11 Monday to resolve those outstanding issues.

12 But then I should say that all that is my
13 submission, it's not anything agreed with my
14 friend.

15 MR. PALLESON: My Lord, maybe I should respond to that.

16 THE COURT: Yes.

17
18 **REPLY FOR THE PETITIONER BY MR. PALLESON:**

19
20 We have a different perspective. We -- if we
21 want to -- obviously, if we want to try to have a
22 fair campaign and election -- or referendum, we
23 want to have as much time as we can but obviously
24 not go into exam week. So the dates we were
25 proposing were about a week later, which makes
26 them actually April 9th, 10th and 11th, which
27 would be a Wednesday, Thursday, Friday. And then
28 the campaign would start two weeks before that,
29 which I think probably starts on March 26th, I
30 think. I could have -- it could be out one day.
31 That was the date I -- they came up with.

32 And then in terms of -- in terms of what
33 else, my suggestion is that if -- I think today
34 has been a significant day in that the ROC
35 committee, as we're calling it, ought to have a
36 chance to sit down again. I think that it may
37 well be that more can be accomplished. That's --
38 but we can't let that drag on, so I would suggest
39 that we give them until the end of Tuesday. And
40 if we can -- if possible -- I'm in Your Lordship's
41 hands, and if we can't agree on anything, then we
42 should come back before you.

43 Certainly at issue for the committee will be
44 the role of Mr. Schiffner, and I've -- you know,
45 we've taken Your Lordship's comments on that. But
46 I don't think it should be -- I don't think
47 Mr. Schiffner should be imposed today, but I think

1 the ROC should have a chance to see if they can
2 either work things out without Mr. Schiffner or
3 see if they -- maybe the ROC will agree to have
4 Mr. Schiffner involved. But in any event, I think
5 they should have a chance to --

6 THE COURT: I'm of the view that they would have to
7 show why he shouldn't be involved at this stage.
8 It's only fair it seems to me. You can't have
9 people just thinking that -- not knowing whether
10 they're working or they're not working.

11 MR. PALLESON: Yeah, well, fair enough.

12 THE COURT: Shouldn't they have to show cause at this
13 stage? It's the way to get this done now. They
14 were still talking about who they might hire.

15 MR. PALLESON: Well, I -- let me put it this way, I
16 would agree with Your Lordship. If we come back
17 on Wednesday and Schiffner's not involved, we have
18 to have a pretty good -- and there's no agreement
19 between the committee as to what's going to
20 happen, then we'd have to have a pretty darn good
21 reason why -- why. You know, then maybe that's
22 the same as show cause, which maybe isn't the
23 legal technical term, but I -- so ... And --

24 THE COURT: I'm just telling you, I used that term so
25 that you know that the presumption's kind of
26 reversed almost.

27 MR. PALLESON: At this stage given the circumstances.

28 THE COURT: Yeah. Under the circumstances.

29 MR. PALLESON: I understand. And the --

30 THE COURT: I mean, because the ROC is it -- I mean,
31 let's be practical.

32 MR. PALLESON: Yeah.

33 THE COURT: In pragmatic terms, are they going to now
34 design and engage a series of people to pull this
35 job off in the time that they've got?

36 MR. PALLESON: My submission is that that is certainly
37 in a normal -- in a situation -- in other
38 referenda that that has certainly been done and
39 can be done and has been done. But whether this
40 committee, given their inability to reach
41 decisions to date, could do that, yeah, I think
42 that there's certainly a question there. But I --
43 and so it may well be that Mr. Schiffner will --
44 that there'll be --

45 THE COURT: But nobody's asking them whether they're
46 prepared to hang around on the contingent
47 possibility they might work or might not.

1 MR. PALLESON: Mr. Schiffner?

2 THE COURT: Yeah.

3 MR. PALLESON: Oh, well, we actually had that
4 discussion --

5 THE COURT: Well, nobody's told me that.

6 MR. PALLESON: No, no. You're right. Maybe my friend
7 should --

8 MR. TATE: My Lord, my client has advised me that he is
9 available on either of those proposed dates; he
10 and his team as well. He has hired at this point
11 returning officers -- three returning officers and
12 four independent poll clerks.

13 THE COURT: Right. So we're at the stage where the --
14 not surprisingly, where the Kwantlen Student
15 Association is into Mr. Schiffner anyway for some
16 money. There's a -- that shouldn't be thrown
17 away, should it?

18 MR. PALLESON: Well, it --

19 THE COURT: I mean, unless the -- I just wonder if
20 there's any utility in having -- leaving that on
21 the table to debate.

22 MR. PALLESON: Well, with respect, My Lord, I think
23 there is. I mean, it -- it ought to be the
24 oversight committee who engages Mr. Schiffner at
25 the -- under the bylaws. And so there's some
26 utility, I think, in having it go through that
27 route -- or having at least them decide on it.
28 And I don't think there's anything -- any harm in
29 doing it that way either. I mean, I don't think
30 there's any prejudice to anybody in having the
31 oversight committee deal with Mr. Schiffner.

32 THE COURT: All right.

33 MR. PALLESON: And really that's it then. I mean, I
34 think everything else we would -- because -- and
35 from our perspective -- or our submission. I
36 would say that while the CFS may not be ready to
37 do a campaign, I suppose given Your Lordship's
38 discussion -- I just want to let Your Lordship
39 know, the CFS they may start to do some
40 campaigning, if they can. I guess it would be
41 pre-campaigning.

42 I just want -- I don't want my friends to
43 complain about that and say -- come back and say,
44 well, look, they're up there; they've got posters
45 up. It seems to be that the decision of the court
46 has more or less been that that's okay.

47 THE COURT: Well, what kind of protocols -- who's going

1 to devise the protocols for things like what's
2 acceptable campaigning and so forth?

3 MR. PALLESON: Well, this is not going to be
4 campaigning; this is going to stuff that happens
5 before campaigning.

6 THE COURT: No, no. I mean within the period.

7 MR. PALLESON: Within the campaign period. Okay. I
8 just -- new topic, fair enough.

9 THE COURT: I mean, it might be clear to you by now,
10 whatever happens beforehand seems to me to be what
11 you do when you're trying to get organized.

12 MR. PALLESON: Right. I just thought I should make
13 that point that there might be some work done.

14 Well, I mean, you know, my friends and I have
15 had a -- I guess a without prejudice discussion,
16 but certainly the -- some of the protocols are to
17 be found in that Exhibit Q -- or the framework
18 that the CFS has put forward, which -- I mean,
19 they -- that's one thing that the ROC is going to
20 have to either decide in the next two working days
21 or it's going to have to be posed, either by
22 agreement of the parties or by the court or in
23 some other way. And I suppose if the court were
24 to say, Mr. Schiffner, I want you to do that, but
25 I want you to use the framework set out in
26 Exhibit Q or some other framework, then that would
27 be an imposed decision as to how that happens.
28 But it's going to have to happen one way or the
29 other, and it's going to have to happen quickly.

30 THE COURT: All right.

31 MR. SIDDALL: I don't know if I have reply rights to
32 that or not.

33

34 **REPLY OF THE RESPONDENT BY MR. SIDDALL:**

35

36 Again, I would just implore the court to
37 appreciate that week before exams is a heavy week
38 for students, and I think it's -- to ask them to
39 motivate themselves to vote and campaign at the
40 same time is onerous.

41 THE COURT: Well, what's the week of exams?

42 MR. SIDDALL: The 14th.

43 THE COURT: Voting's not that onerous. I mean, you
44 just show up at a polling station. Campaigning
45 would be ahead of that time.

46 What would be wrong with the 7th, 8th and
47 9th, with a campaign per se that starts the 24th?

1 MR. SIDDALL: 7th, 8th -- what days of the week is
2 that?
3 THE COURT: The 7th, 8th and 9th are a Monday, Tuesday,
4 Wednesday.
5 MR. SIDDALL: Okay.
6 THE COURT: The 24th is two weeks -- is Monday the two
7 weeks before. Now, the problem with that is that
8 it's the Easter week.
9 MR. SIDDALL: Right.
10 THE COURT: So I would have to say the 25th -- the 8th,
11 9th and 10th.
12 MR. SIDDALL: Well, I mean, I can only say that, you
13 know, it's certainly -- I think it's not
14 unreasonable to suggest that students' minds will
15 be focussed on their exams rather than a
16 referendum. And I think it is -- they're in
17 jeopardy of losing, you know, a good percentage of
18 the --
19 THE COURT: The alternative is to go over to the fall.
20 I thought that wasn't palatable.
21 MR. SIDDALL: I thought -- I guess -- going back to
22 what I suggested was the 1st, 2nd and 3rd of
23 April.
24 THE COURT: That just jams things so fast, and then
25 you're back right into next week -- Tuesday is
26 when the campaign has to start. How is the
27 guidance necessary to do that to be in place in
28 that time? You're saying just eliminate the ROC
29 altogether?
30 MR. SIDDALL: Right. And then --
31 THE COURT: Just tell them to get --
32 MR. SIDDALL: -- consensus build over the weekend and
33 if we can't sort it out Monday morning, then away
34 we go. What needs to be -- I guess I'm stalling a
35 bit on what actually needs to be done.
36 THE COURT: Well, maybe you have to -- your faith in
37 judges is too strong.
38 MR. SIDDALL: I think you're funny, My Lord.
39 THE COURT: No. I'm just saying, you know, isn't that
40 pushing it a little bit in case of unforeseen
41 things? So -- now, maybe -- I mean, the best --
42 is it a three-day polling period? Is that what it
43 has to be?
44 MR. PALLESON: Well, I mean, I think it may not have to
45 be that, but given -- there's a number of campuses
46 and I think that it sort of was decided that it
47 should be three days.

1 THE COURT: So what happens? Does the booth move from
2 place to place? I thought they were simultaneous,
3 but -- no?
4 MR. SIDDALL: They are simultaneous.
5 MR. PALLESON: They are simultaneous.
6 MR. SIDDALL: There's four locations.
7 MR. PALLESON: That's a good point. So why do we need
8 three days?
9 MR. BORINS: I mean -- if I could comment on that.
10 THE COURT: Is there a practical reason why it's three
11 days?
12 MR. BORINS: There is a practical reason. It's -- it's
13 a campus that's very dispersed. There's four
14 different campuses: Cloverdale, Langley,
15 Richmond, Newton, and many of the students only
16 attend --
17 THE COURT: Part-time some days. Fine.
18 MR. BORINS: Part-time. One day a week, you know, or
19 another day of the week.
20 THE COURT: Well, how about the 2nd, 3rd and 4th for
21 polling; campaign starts March 19th?
22 MR. PALLESON: My Lord, that does just --
23 THE COURT: That gives an extra day.
24 MR. PALLESON: It does. I just don't see why we can't
25 do it the date Your Lordship had originally
26 suggested.
27 THE COURT: Well, I'm concerned about backing it into
28 exams, to tell you the truth, but ...
29 MR. PALLESON: There's really not -- I don't understand
30 that. I mean, the polling itself is a very
31 limited -- it just takes a minute, I mean, for a
32 student to cast a vote. I just -- I don't
33 understand why it -- why we have to be jamming it
34 forward after -- like this.
35 MR. BORINS: The number of students that participate in
36 the campaign -- or excuse me -- in the vote is
37 very important, because there's a quorum
38 requirement. And the quorum requirement for the
39 KSA is usually 250, but under the CFS bylaws its
40 600. And perhaps the quorum requirement should
41 actually be lowered as well.
42 THE COURT: Well, I'm not sure that's doable.
43 MR. BORINS: And in the absence of lowering it then,
44 you want to have it in a period where the most
45 students are likely to vote because that's fairest
46 to the students who petitioned for the referendum.
47 THE COURT: Are classes still taking place in that

1 period?

2 MR. BORINS: Yes, My Lord.

3 THE COURT: 9th, 10th, 11th?

4 MR. BORINS: Yes.

5 THE COURT: So those are typical days on campus such as
6 they are.

7 MR. BORINS: They're not typical in that I've been
8 advised by my client that during those days often
9 students don't attend classes because they start
10 to prepare for exams. I mean, we've all been
11 students --

12 THE COURT: Okay. I can't refine it within that,
13 though, beyond -- I mean, the bylaws themselves
14 actually handle that, don't they? They say you
15 can't hold it between the 15th --

16 MR. BORINS: That's correct, My Lord.

17 THE COURT: -- and so forth. So anything in that gap
18 may be not optimal, but it makes sense, unless
19 both parties agree that going over to September is
20 no big deal. I mean, that's -- it's nothing to
21 me; I'm just trying to --

22 MR. BORINS: No. My -- we think that the fairness of
23 having it in the same school year is preferable to
24 holding the referendum over to the fall.

25 And with Mr. Schiffner already in place --
26 and his counsel has said that he has already hired
27 people -- the administration is practically done.
28 The only real issue is putting in campaign
29 materials, and CFS has known for six months that a
30 campaign was to happen in this period. Presumably
31 up until this petition was lodged when KSA engaged
32 Mr. Schiffner, it was ready to go with its
33 campaign, because it would have thought that the
34 campaign was going to go forward. So I don't see
35 any unfairness there.

36 MR. PALLESON: Well, yeah, but we do need some time. I
37 mean, to -- I mean, I think the 8th to the 10th is
38 reasonable, and then that puts it back to whenever
39 Your Lordship said. And in the meantime we try to
40 get it all done. It gives us -- you know, there
41 doesn't seem to be any need to try to jam it any
42 sooner. That gives the ROC a chance to meet one
43 last time to see if they can resolve things. It
44 just makes sense to me.

45 MR. BORINS: At the risk of being repetitive, the
46 problem is that these are students who are
47 campaigning, unlike the CFS, where many of their

1 campaigners are employees of the CFS, and they've
2 already been engaged in a campaign for several
3 weeks and they're getting concerned about their
4 final exams, which seems to me to be a reasonable
5 concern.

6 And then in terms of the votership, you have
7 students who are sporadically on campus and will
8 also be focussed on other issues other than exams,
9 with a fairly onerous quorum requirement double
10 what the -- more than double what the KSA's usual
11 quorum requirement is, which -- which the KSA --
12 this isn't on the record, but it has had
13 difficulty meeting that -- even the 250 quorum
14 requirement in the past.

15 THE COURT: Well, that's a matter that relates to how
16 much passion there is for this particular issue.

17 I don't see an issue there.

18 MR. BORINS: We don't purport to know what will happen,
19 you know, this time.

20 THE COURT: No. When it says "a minimum of two weeks,"
21 is setting it for the -- I'm thinking the 8th, 9th
22 and 10th and March 25th. I think anything sooner
23 than that just jams this in terms of what I
24 propose to do.

25 Is there any problem with setting it for
26 the -- does that violate anybody's concept of what
27 "two weeks" is? Is it two clear weeks? Is it --
28 do you not count the first day? Is there any
29 nonsense like that that I have to worry about?

30 MR. BORINS: Not that we're aware of.

31 MR. PALLESON: No, I don't think so. I don't have a
32 calendar in front of me, but --

33 THE COURT: No. But you both agree that the date two
34 calendar weeks ahead of the date set for the
35 election would be two weeks within the meaning of
36 the --

37 MR. PALLESON: Yes. We're fine with that, My Lord.

38 THE COURT: All right.

39 I'm not going to give reasons for judgment in
40 this matter in the conventional sense just because
41 of the time and the circumstances under which this
42 order is being made.

43 If there is any question later about what
44 reasoning went into the directions I'm about to
45 give, they may be found in the transcript in the
46 colloquy between counsel and the court, which I
47 think, without being expressed in terms of

1 reasons, will be of some assistance in underlining
2 what considerations went into what I have to say
3 now.

4 The situation in the briefest compass is that
5 the petitioner, the Canadian Federation of
6 Students, seeks to enjoin a referendum which has
7 been scheduled for March 18th to 20th, 2008, at
8 Kwantlen University College. The issue is whether
9 the Kwantlen University College Student
10 Association will withdraw or defederate from the
11 Canadian Federation of Students.

12 It appears in the background to this motion
13 that the Kwantlen Student Association garnered the
14 10 percent of signatures necessary pursuant to the
15 bylaws by which it is bound with the Canadian
16 Federation and that it gave notice of its
17 intention to hold a referendum on the dates I have
18 specified.

19 What happens then, in accordance with the
20 process set out in the bylaws, is that a committee
21 is appointed to oversee the referendum composed of
22 representatives of both the Canadian Federation of
23 Students and the Kwantlen Student Association.
24 This committee was constituted in January of 2008,
25 having received notice of the Kwantlen Student
26 Association's desire for a referendum and notice
27 of the requisite 10 percent of student signatures
28 in September of 2007.

29 There is a wealth of material on file which
30 this court has not mastered, but which has the
31 overall flavour of a deadlock between the two sets
32 of representatives at the oversight committee.
33 Something of the nature of the problem can be
34 gleaned from the fact that they could not even
35 agree on a referendum question.

36 Having had today to review the material and
37 recognizing the urgency with which the application
38 is brought, I can only say that the sense I get
39 from the material is that the Canadian Federation
40 of Students' representatives have displayed no
41 great alacrity in trying to bring this matter on
42 in time.

43 The response, when it became clear that the
44 oversight committee was not going to seemingly
45 come up with the requisite guidance for the
46 holding of the referendum, was that the Kwantlen
47 Student Association engaged a private firm to

1 oversee the referendum balloting. It was that
2 move, which is outside of the bylaws in terms of
3 the required procedure, that prompted the Canadian
4 Federation of Students to bring the motion it
5 brings.

6 The student association's position initially
7 was that the court should simply permit the
8 referendum to take place now that they have made
9 the arrangements for it. The petitioner, as I
10 have said, was seeking an injunction and
11 suggesting that the matter should go over to
12 sometime in the fall of this year.

13 This is a university or college setting and
14 the problems with that, it strikes me, are quite
15 obvious. Student bodies turn over quite quickly,
16 and there appears to be no good reason why this
17 matter wasn't brought on in time, except that the
18 oversight committee seems to have been distracted
19 by matters beyond its responsibilities, which were
20 to ensure that a fair referendum be held, not to
21 argue to the point where one couldn't be held.

22 Having said that, the Kwantlen Student
23 Association, by taking matters into its own hands,
24 put itself offside of the bylaws in a manner in
25 which it is difficult for the court to ignore once
26 it is brought to the court's attention.

27 My view of the best way to balance the
28 interests at stake in this matter is to postpone
29 the election to April 8th, 9th and 10th; to fix as
30 the date set for the beginning of the campaign the
31 25th of March, 2008; to comply with the bylaw
32 requirement that the campaign be no less than two
33 weeks; and to remit to the oversight committee the
34 responsibility to consider the terms under which
35 the campaign will be conducted, including the
36 review and oversight of materials that will be
37 distributed and matters of that nature; and to
38 come back to this court either with a protocol
39 that they have agreed to or with a summary of
40 their differences for the court to settle by
41 Thursday, March 20th at 10 o'clock a.m.

42 I will fix that time now for a review, if
43 necessary, and for directions of this court to
44 keep this matter on track. But I do think it
45 appropriate that the oversight committee be given
46 another opportunity in the context that I have
47 set, which is that there will be an election and

1 there will be a campaign period of two weeks, to
2 perform their other duties in accordance with the
3 mandate set out in the bylaws.

4 There is the issue of the Kwantlen Student
5 Association having hired a private firm to
6 supervise the election. This court will be most
7 interested to hear from the parties if they have
8 not found a way to salvage the money spent so far
9 in that direction by continuing the engagement of
10 this service given that it appears they had made
11 no progress at the oversight committee in setting
12 up an appropriate structure for the conduct of
13 this election.

14 I say the last as simply a matter of
15 observation and pragmatism. But I expect the
16 oversight committee to consider what I have had to
17 say and to do what is practical and sensible.

18 Is there anything else?

19 MR. SIDDALL: No. My Lord, one small footnote. If
20 there is a reason to communicate with
21 Your Lordship prior to the appearance on the 20th,
22 that we can assume do that through the registry.

23 THE COURT: I'll make myself available. If there's a
24 request to the registry, you simply have to tell
25 them that I said it was fine with me if you
26 communicated, and I want to be told about it. All
27 right?

28 I will seize myself of this, so that I'll be
29 the judge who's here on Thursday.

30 And counsel if -- I'll ask counsel to
31 consider this. The directions I have given and
32 the resolution to this matter that I have proposed
33 doesn't exactly answer the prayers for relief that
34 counsel have sought. If rulings on those matters
35 are required formally at some point, counsel will
36 have to let me know.

37 That's the best I can do at 4:15 on a Friday
38 with an election looming on Tuesday.

39 MR. SIDDALL: Thank you, My Lord.

40
41
42
43
44
45
46
47

1 THE REGISTRAR: Order in chambers. Chambers is now
2 adjourned.

3
4 (CHAMBERS ADJOURNED)

5
6 Reporter's Certification:

7
8 I, Christy L. Pratt, RCR, Official Reporter
9 in the Province of British Columbia, Canada, BCSRA
10 No. 535, do hereby certify:

11
12 That the proceedings were transcribed by me
13 from audiotapes provided of taped proceedings, and
14 the same is a true and correct and complete
15 transcript of said recording to the best of my
16 skill and ability.

17
18 IN WITNESS WHEREOF, I have hereunto
19 subscribed my name and seal this 27th day of
20 March, 2008.

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25 _____
26 Christy L. Pratt, RCR
27 Official Reporter
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No. S081553
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(Before the Honourable Mr. Justice McEwan)

Vancouver, B.C.
March 20, 2008

BETWEEN:

CANADIAN FEDERATION OF STUDENTS

Petitioner

AND:

KWANTLEN UNIVERSITY COLLEGE STUDENT ASSOCIATION

Respondent

PROCEEDINGS IN CHAMBERS

COPY

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Appearing on behalf of the Petitioner:

M. Palleson

Appearing on behalf of the Respondent:

**K. Siddall
E. Walker (A/S)**

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PROCEEDINGS IN CHAMBERS
OF
MARCH 20, 2008

PROCEEDINGS

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March 20, 2008
Vancouver, B.C.

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3
4 THE CLERK: In the Supreme Court of British Columbia in
5 chambers heard at Vancouver this Thursday, the
6 20th day of March of the year 2008, calling the
7 matter of Canadian Federation of Students and
8 Kwantlen University College Student Association,
9 My Lord.

10 MR. PALLESON: My Lord, it's Martin Palleson. I'm, as
11 you know, here on behalf of the Petitioner,
12 Canadian Federation of Students.

13 THE COURT: Yes.

14 MR. SIDDALL: My Lord, Kieran Siddall, counsel for
15 Kwantlen Student Association, and with me today is
16 Eli Walker and he's an article student. Mr. Barns
17 sends his regrets, he was called out of town on
18 business.

19 MR. PALLESON: Now, My Lord, the referendum oversight
20 committee has met, there's been some progress.
21 I've got a summary of issues remaining regarding
22 the referendum, there are some, which is
23 regrettable, but --

24 THE COURT: Yes.

25 MR. PALLESON: And if I could hand that up to you.

26 MR. SIDDALL: My Lord, if I may also rise and just in
27 terms of materials, hand what I've prepared up.

28 THE COURT: That's fine.

29 MR. SIDDALL: And the approach I've taken is the first
30 document is a stand-alone referendum rules
31 document which I've attempted to set out what I
32 believe should be all the rules governing the
33 referendum. The underlying portions are those
34 portions that have not been able to be agreed and
35 those are the submissions or the suggestions of
36 the KSA as to what should happen.

37 THE COURT: All right.

38 MR. SIDDALL: And I also have an affidavit of Mr. West
39 which summarizes what's happened since our last
40 appearance before the court.

41 MR. PALLESON: Yeah, I don't know that there's any
42 dispute on that affidavit. I didn't see it until
43 this morning, but I think it just attaches some
44 e-mails.

45 THE COURT: All right.

46 MR. PALLESON: So let me, if I may, My Lord, first of
47 all start with the good news which is, if you've

Submissions by Mr. Palleson

1 got this piece of paper, you'll see that Appendix
2 A, if you can flip to that, is what has been
3 agreed upon by the oversight committee at the
4 oversight committee and you'll see that this
5 document in fact is, at the end is prepared by Ben
6 West who is the representative of the KSA, so this
7 was sort of the final word which I understand sort
8 of came around at 11 last night after meetings
9 yesterday and so this is all agreed upon, and
10 maybe I can just take Your Lordship through this
11 document.

12 THE COURT: Now, is this document, just so that I'm
13 clear on what I'm looking at, Exhibit A is the
14 rules they've come up with and typed up?

15 MR. PALLESON: That's right.

16 THE COURT: That they've agreed to, it's not your
17 document saying --

18 MR. PALLESON: Right.

19 THE COURT: I see.

20 MR. PALLESON: In fact, it's their document.

21 THE COURT: This is what the committee came up with?

22 MR. PALLESON: Yeah, that's right, but what this is, I
23 should tell you, this is the Kwantlen Student
24 Association's response to what -- they had a
25 meeting, the CFS representative sent out a
26 document which they say was agreed upon and this
27 is the response of the Kwantlen Student
28 Association saying this is what we think was
29 agreed upon. We accept that this is what's agreed
30 upon. It may be that we thought more was agreed
31 upon, but obviously if they say not -- so this is
32 agreed upon.

33 THE COURT: All right.

34 MR. PALLESON: So this I think is what I call the
35 framework where we've got to, and then there's a
36 few issues to be resolved in addition to this, but
37 what this sets out is -- and it says the following
38 rules have been agreed upon by the oversight
39 committee regarding the conduct of the referendum.

40 Polling, so it has the polling sites and the
41 times. Materials, general, and it sets out, and I
42 don't have to read each one, (c) I'll refer to
43 though, under (c), no persons shall use any
44 campaign materials that are offensive to basic
45 community standards including materials that are
46 racist, sexist, homophobic or profane, and then
47 the rest I think is fine or doesn't need to be

1 highlighted.

2 Similarly, under campaigning, campaigning is
3 going to start at a certain time. There's some
4 rules about who is going to campaign and when they
5 are going to campaign and this sort of thing.

6 Over the page, the chief returning officer,
7 an issue of some moment, it's agreed that
8 Schiffner Consulting Inc. shall be engaged as the
9 chief returning officer, and then it is set out
10 under (b), the chief returning officer's role in
11 regards to the polling procedures shall be
12 executed in accordance with the following; (i),
13 any applicable federal and provincial bylaw, (ii),
14 the bylaws of the Canadian Federation of Students,
15 and (iii), any resolutions adopted by or
16 directions provided by the committee. So it's
17 obviously a Canadian Federation referendum and the
18 bylaws govern and the committee is able to give
19 directions. And then the chief returning officer
20 shall be responsible for the following, so he's
21 going to handle certainly the physical
22 administration of the vote, shall we say.

23 THE COURT: Yes.

24 MR. PALLESON: And similarly with the poll clerks, he's
25 going to hire the poll clerks and security of the
26 ballot boxes, voting procedure, and I don't think
27 I need to go through the rest in any detail, it's
28 more or less the same material that Your Lordship
29 saw last time that was certainly being proposed in
30 the affidavit of C. Watson, but there are some
31 issues, so let me come back to the issues, and if
32 you could flip back to the front, I've listed what
33 I say are the issues here.

34 The first, the committee was not able to
35 agree on the ballot question and so what the CFS
36 representatives support is, "Do you support
37 continued membership in the Canadian Federation of
38 Students?" The KSA representatives support, "Do
39 you wish to withdraw as a member of the Canadian
40 Federation of Students?" The position of the CFS,
41 in addition to always being in a position of
42 saying yes, do you want to be with the CFS, which
43 is their traditional position, the bylaws do, when
44 they talk about joining the Canadian Federation of
45 Students, and at the top of page 2, the question
46 which is actually set out in the bylaws, "Are you
47 in favour of membership in the Canadian Federation

Submissions by Mr. Palleson

1 of Students?" and it's submitted simply that the
2 question "continued membership" more closely
3 aligns with are you in favour of membership or,
4 "Are you in favour of continued membership in the
5 Canadian Federation of Students?" so that's the
6 issue.

7 THE COURT: All right.

8 MR. PALLESON: And actually Mr. Schiffner in his
9 affidavit, although he didn't pick the Canadian
10 Federation of Students' question, he did say that
11 it was important in his view to have a question
12 that was similar to the question -- as close as
13 possible to the question on whether, when you want
14 to join the federation. His view was you ought to
15 have a question as close as possible to that and
16 we say, or the CFS representatives say that their
17 question is closer.

18 Next, the agreement with Schiffner Consulting
19 Inc., Schiffner, the company, it ought in our view
20 to be retained by the ROC or its constituent
21 parts, the CFS and the KSA. Right now it's just
22 retained by the KSA. The KSA wishes the CFS to
23 pay for 50 percent of the costs which the CFS is
24 agreeable to, but they ought to be a party to the
25 agreement, I think that only follows in the manner
26 of common sense.

27 The current agreement is a little bit, it
28 deals with issues which really are issues I think
29 germane to the relationship between the KSA and
30 Mr. Schiffner and his company, it's got
31 indemnities and so on and so forth in there which
32 I don't think are appropriate, but it's a very
33 simple agreement we would propose. We would just
34 simply say that, you know, that Schiffner
35 Consulting Inc. is going to run this referendum in
36 accordance with this framework and the duties set
37 out therein and his fee will be split 50/50 by the
38 two parties, so I don't see any difficulty coming
39 up with an agreement, but I just -- I think that
40 he should be retained through the ROC since the
41 CFS is going to be paying for 50 percent of it.

42 The third issue, the campaign materials, I
43 set out what's agreed upon. The CFS
44 representatives would like the word defamatory
45 added to that, so defamatory materials should be
46 excluded as well. Now, I know they are excluded
47 as a matter of law, but I think they should also

Submissions by Mr. Palleson

1 be excluded pursuant to this process, that you
2 shouldn't have to sue, I mean, if you are defamed
3 you can sue, but you've got to be also that
4 there's a process within this referendum to
5 exclude defamatory materials in the first instance
6 in my submission, I think they are separate
7 things, so that's what we say, so it's simply the
8 word defamatory to be added we say.

9 Now, four, the continuing role of the
10 oversight committee, and it's submitted that the
11 committee should have a continuing role, it has to
12 have a continuing role in accordance with the
13 bylaws. As I say, they've now established a
14 framework. In fact, the framework itself calls
15 for them to direct Schiffner on issues from time
16 to time if they come up, if he seeks direction,
17 which he has in the past sought direction from
18 them.

19 Now, in terms of campaign materials, what the
20 CFS representatives compromised position is is
21 that the materials should be provided to the ROC,
22 they should have 12 hours to provide a response.
23 If they can't agree by a majority, then those
24 materials should then be referred to Schiffner for
25 a decision.

26 THE COURT: Why should we just leave them with
27 Schiffner?

28 MR. PALLESON: Well, because this process involves the
29 ROC which is intended to be, they are intended to
30 be involved by the bylaws and it more closely
31 accords with the process that they are operating
32 under. I mean, the ROC should have a look at the
33 materials and if they can't agree, then they can
34 go to Schiffner, and the only reason we think that
35 we should have Schiffner is because the past
36 record, maybe the last few days notwithstanding,
37 but the past record of the committee, as Your
38 Lordship knows, has been one of somewhat of a
39 deadlock, but my submission is that that's not the
40 case at the moment.

41 THE COURT: So why wouldn't we just turn this over to
42 Schiffner at this stage with appropriate direction
43 and leave it at that rather than have this
44 opportunity to have 12 hours to disagree and
45 complicate the matter at this stage given the
46 performance of that committee?

47 MR. PALLESON: Well, it's my submission that --

Submissions by Mr. Palleson

1 THE COURT: I mean, I just want to be pragmatic at this
2 stage.

3 MR. PALLESON: I understand, I understand, but the
4 committee --

5 THE COURT: And it just seems to me that just
6 introduces an element of debate that doesn't need
7 to be introduced.

8 MR. PALLESON: But it also -- but it also introduces an
9 element of participation by the committee which
10 the CFS -- I mean, the CFS wishes to be involved.
11 It's their referendum after all, it's meant to
12 be -- I mean, it's the referendum of the Kwantlen
13 students, but it's also meant to be done pursuant
14 to the CFS bylaws and the committee is an integral
15 part of that, of their bylaws, and --

16 THE COURT: But look, I mean, the evidence has been
17 that the reason this thing is being held at the
18 last minute up against the wall is largely due to
19 the dysfunction of that committee which was
20 supposed to get this together and organize it.
21 Now -- I mean, they wouldn't necessarily have had
22 to bring in professional assistance at all, but
23 now that there is professional assistance, why
24 should they be allowed to interfere with that?

25 MR. PALLESON: I don't think it's a question of
26 interfering, I think it's a question of working
27 with that professional assistance, and I think
28 they ought to continue to work with that
29 professional assistance. I mean, that Schiffner
30 is going to run, you know, the -- and that's all
31 he ever was going to do.

32 THE COURT: I know, but if you give them the job to do,
33 let them do the job, isn't that the way it should
34 work?

35 MR. PALLESON: But his view was that he didn't have
36 authority or instructions to deal with campaign
37 materials. I mean, that's not part of his normal
38 job, with respect, and that's what he -- it's not
39 in his contract, a standard contract, it's not
40 what he wanted to do particularly and, you know,
41 I'm sure he's willing to do it, but my submission
42 is that in the first instance the material should
43 go to the oversight committee and then they have
44 12 hours to respond. If they can't respond, they
45 go to Schiffner, so I don't see the great --

46 THE COURT: So it just creates a loop that has no
47 particular effect?

Submissions by Mr. Palleson

1 MR. PALLESON: Well, it depends.

2 THE COURT: If they agreed, it's nice that they agree.
3 If they don't agree, then Schiffner decides
4 anyway.

5 MR. PALLESON: Schiffner decides anyway, but my
6 submission is more than just nice, with respect,
7 but it's important for the CFS at least that they
8 have a continuing role in this referendum despite
9 the issues. I mean, that's an important issue to
10 them as an organization, that they have set up
11 these bylaws, they've set up a process for a
12 referendum in their bylaws and that it ought to be
13 followed to the extent possible, so, with respect,
14 it's more than just nice.

15 THE COURT: It appears what they ought to do is get on
16 with the job of revising the oversight committee
17 so that put on it people who are capable of
18 working together.

19 MR. PALLESON: Well, you know, and I'm happy to address
20 that. I'm not sure that it's germane to --

21 THE COURT: It has nothing to do with this.

22 MR. PALLESON: Right.

23 THE COURT: It's just that I'm not -- I don't see, you
24 know, all I want to do is create legally effective
25 mechanism, not make people feel good, and if the
26 mechanism is simply a 12 hour loop that gives the
27 oversight committee a chance to have what they
28 have to say but Schiffner has got the ultimate say
29 in any event, my only pragmatic question is why
30 don't we just say Schiffner do the job. I mean, I
31 just don't -- if they don't have any authority per
32 se except to talk about it, why bother.

33 MR. PALLESON: Well, they have authority to decide, but
34 if they can't decide it goes to Schiffner, that's
35 a little bit different. I mean, they have
36 authority to decide as a committee, to approve or
37 disprove materials, and it's only if they are
38 deadlocked that it goes to Schiffner, and yes,
39 that has been the experience on some issues in the
40 past, but as you can see, not by any means all,
41 and they will know, as a committee, that Schiffner
42 will have the final word and I suspect that most
43 materials will not go to Schiffner. Yes, maybe
44 the odd thing will, but --

45 THE COURT: But they'll start arguing about what
46 Schiffner gave them and didn't give them won't
47 they?

Submissions by Mr. Palleson

1 MR. PALLESON: Sorry?

2 THE COURT: I mean, it just seems to me it's fraught
3 with all sorts of difficulty that can be avoided
4 by simply saying this particular election reached
5 the point where somebody had to come in and do the
6 job. They've agreed to that, I mean, Schiffner
7 is, they've agreed that he will do it. That
8 question was left open last week wasn't it?

9 MR. PALLESON: It was, and they've agreed that he will
10 do what he was engaged to do, which was not to
11 review campaign materials and he made that clear.

12 THE COURT: But you are saying he has the ultimate say
13 if they can't agree, so that's circular isn't it?

14 MR. PALLESON: No, it's not circular. Well, I don't
15 see why it's circular, My Lord. I mean, sure,
16 it's more pragmatic to just have him run the whole
17 thing, I mean -- but is that right.

18 THE COURT: I'm not sure sitting here, but it just
19 seems to me there has been kind of a fertile field
20 here for misunderstandings and in ways that I
21 don't foresee I just imagine this mechanism
22 causing grief one way or another.

23 MR. PALLESON: Well, you know, my submission would be
24 that it doesn't seem on its face like a should,
25 that they've got 12 hours when they get materials,
26 they'll know what the situation is. I think most
27 of the materials will not go to Schiffner and that
28 will mean that he won't have to review them. I
29 mean, there's probably going to be a fair bulk of
30 material and why should he review stuff which is
31 straightforward and acceptable. A lot of it
32 probably will be.

33 THE COURT: Okay.

34 MR. PALLESON: The only other, I'm now down to five,
35 this is a small point, that the ROC, we say,
36 should be given a list of proposed polling clerks
37 by Schiffner so as to ensure no clerks have
38 engaged in the campaign. That seemed to be an
39 issue of some debate, I don't see why it should
40 be, but there seems to be an issue of some debate,
41 and item 6, this just came up this morning, this
42 is a different sort of point and I'm not sure that
43 what -- but I raise it because I'm asked to, but
44 the CFS, they can't seem to get a table on
45 compass. They've been trying to get a table, they
46 are being roadblocked, they are now told that they
47 should have booked a month in advance even though

Submissions by Mr. Siddall

1 they tried to book a month in advance. They go to
2 the institution that says well, really, we don't
3 want to get involved, you work that out with the
4 KSA, so -- and the KSA apparently has all sorts of
5 tables all throughout the campus where they've got
6 all their materials and handing stuff out, so
7 that's, I guess that's sort of typical of these
8 sorts of things, but that's -- any assistance I
9 suppose Your Lordship could give with respect to
10 that would be appreciated. I mean, they obviously
11 need to be able to go on campus and campaign
12 physically.

13 So those are my submissions or an outline.

14 MR. SIDDALL: My Lord, do you have in front of you the
15 document I handed up entitled referendum rules?

16 THE COURT: Yes.

17 MR. SIDDALL: I think -- this is not meant to be a
18 criticism of the oversight committee, but what
19 they've agreed to does go some way to assisting,
20 but one of the main differences, as you've gleaned
21 probably from my friend's submissions, is that
22 there's a question as to whom the various
23 responsibilities should fall to. As a blanket
24 statement, we can say that KSA's submission is
25 that it should all fall to the chief returning
26 officer and my comments basically reflect your
27 comments to my friend that an extra layer of
28 complexity will only be added at this stage and
29 it's clear from the record of the referendum
30 oversight committee to date that they haven't
31 unfortunately been able to be effective.

32 So what I've tried to do in the referendum
33 rules is synthesize what has been agreed at the
34 oversight committee level and in underlying
35 portions set out what further rules ought to be
36 included and these are of course the KSA's
37 submissions on those.

38 THE COURT: All right.

39 MR. SIDDALL: So if we could run through this document
40 first, the dates have been set by Your Lordship.
41 The referendum question set out at paragraph 2,
42 the referendum question shall be, "Do you wish to
43 withdraw as a member of the Canadian Federation of
44 Students?" It's a very straightforward question.
45 This is the question chosen by the chief returning
46 officer and in all the circumstances it's the most
47 logical question to ask and I can't think of --

1 THE COURT: What's the harm in asking it in the
2 positive sense, that the status quo is now they
3 are members, do you wish to continue?

4 MR. SIDDALL: Well, because the referendum is whether
5 or not there should be withdrawal, not whether or
6 not you should continue. The very question, the
7 very issue is whether or not there should be
8 withdrawal. They are not holding a referendum on
9 whether or not they should continue, they are
10 holding a referendum on whether they should
11 withdraw.

12 THE COURT: Well, I guess they are depending on how you
13 look at it.

14 MR. SIDDALL: Well, the bylaws require a referendum to
15 withdraw.

16 THE COURT: Is that what this says?

17 MR. SIDDALL: The bylaws?

18 THE COURT: Yeah.

19 MR. SIDDALL: Yeah.

20 THE COURT: It uses the term withdraw?

21 MR. SIDDALL: I'm just going to double-check that for
22 you.

23 MR. PALLESON: I think it may use the word to federate.

24 MR. SIDDALL: I can quickly find that reference. Yeah,
25 it's bylaw 1(6) of the bylaws, the individual
26 members of the federation may vote on whether to
27 defederate subject to the following rules and
28 procedures. I say that's tantamount to
29 withdrawing. Defederation is synonymous with
30 withdrawing in my submission and that's what the
31 bylaws require, the local student association to
32 hold a referendum on that question.

33 THE COURT: All right.

34 MR. SIDDALL: And I should also add, My Lord, that
35 everything, all the campaigning that's been taking
36 place or all of the, everything that was set up to
37 date has been based on that question, so I think
38 changing it now would cause confusion amongst the
39 electorate.

40 THE COURT: All right.

41 MR. SIDDALL: The next heading is the chief returning
42 officer and it's agreed that Schiffner Consultants
43 Inc. shall act as the chief returning officer for
44 the referendum. At paragraph 4 I submit a rule
45 should be that the chief returning officer shall
46 be responsible for overseeing and administering
47 all aspects of the referendum process in

1 accordance with these rules, and at paragraph 5,
2 where these rules are silent on a particular
3 aspect, the chief returning officer shall exercise
4 its discretion in making decisions relating
5 thereto, and paragraph 6 speaks to the fees and
6 expenses of Schiffner Consultants to be split
7 equally. I had understood that CFA's position was
8 that they should only pay a quarter, but I see now
9 that they are agreeing to pay half. I don't think
10 there's a problem with entering into a new
11 contract if that gives the CFS comfort, and I
12 think the original objection was, or the problem
13 was that can a committee legally enter, the
14 committee enter into a legal contract, but I don't
15 think there will be a problem with having the
16 chief returning officer enter into a contract with
17 the KSA and CFS as parties and it may be indeed a
18 very brief contract just exhibiting or annexing
19 whatever the rules document ultimately is saying.

20 THE COURT: Well, all right, but that's something that
21 I would have to leave to the parties, isn't it, I
22 can't --

23 MR. SIDBALL: That's right. I haven't dealt with it in
24 here, but I'm just giving the court some comfort
25 that I don't think that's going to be a bone of
26 contention.

27 THE COURT: It seems to me that while I might encourage
28 that that is the best possible mechanism, I
29 couldn't order that, but what I can simply order
30 is that the fees and expenses be split between the
31 KSA and the CFS and that any dispute respecting
32 those may be brought back to court if there's an
33 issue.

34 MR. SIDBALL: That's right, and that's substantially
35 what I have subject to your very helpful
36 suggestion that we add that language at the end.

37 THE COURT: It just seems to me there may be some issue
38 about whether things predated the --

39 MR. SIDBALL: Right.

40 THE COURT: And that would get around the fact that if
41 you don't come up with a new contract that still
42 imposes the obligation but makes it subject to
43 review on the fairness basis by the court, does
44 that make sense to you?

45 MR. PALLESON: Yeah. The only issue for us is we
46 want -- I know Mr. Schiffner may have been
47 involved in this litigation, we don't want to pay

Submissions by Mr. Siddall

1 his legal bill for that, or legal expenses, but
2 certainly his costs which are, you know, running
3 the referendum and --

4 THE COURT: Well, I can leave it to you both to come up
5 with a contract that works for you, but if it
6 doesn't, the order I would make is that the fees
7 will be split between the parties subject to
8 review by the court if necessary. That way you
9 can argue those issues about whether certain
10 things were outside of the ambit of what was
11 required to run the election and so forth.

12 MR. SIDDALL: Okay.

13 THE COURT: I'm not encouraging that, I'm simply
14 saying it.

15 MR. SIDDALL: Moving on, My Lord, campaign period, that
16 was set by Your Lordship. Campaign materials,
17 eight and nine, are agreed. 10, all campaign
18 materials must be approved by the chief returning
19 officer prior to use. This was an issue that the
20 oversight committee deadlocked on and I think it's
21 my friend's submission that -- well, you've heard
22 his submission that it should first go to the --

23 THE COURT: What you've done here is where it says
24 chief returning officer, they would say the
25 oversight committee?

26 MR. SIDDALL: Basically, yeah. They have agreed in
27 certain instances to what the CRO should do,
28 including, you know, the mechanical balloting
29 procedures.

30 THE COURT: Right.

31 MR. SIDDALL: But yeah, essentially yeah, in every
32 instance where it said chief returning officer,
33 they would say that falls, in the first instance
34 at least, to the oversight committee. And I
35 think, you know, my friend's submission is simply
36 just impractical asking for a 12 hour window for
37 the ROC to -- I mean, these people are meeting by
38 telephone conference, two of them are back east,
39 there's been difficulty as set out in the
40 affidavits even meeting on time and I just don't
41 see how it's workable.

42 THE COURT: Wouldn't you constantly be rolling 12 hours
43 for several different kinds of things as well?

44 MR. SIDDALL: I think that's just impractical and it
45 should be left to the chief returning officer.

46 Moving on to paragraph 11 at the top of page
47 2, again it's been agreed that the standard that

Submissions by Mr. Siddall

1 should be applied is that the chief returning
2 officer -- or the person approving the campaign
3 materials, which we say should be the chief
4 returning officer, shall not approve materials
5 that are offensive to basic community standards,
6 including materials that are racist, sexist,
7 homophobic or profane. My friend wants to include
8 in that defamatory, but I see the problem arising
9 there, when you have the chief returning officer
10 sitting there thinking, well, he's basically
11 trying to sit as a truth commissioner, how does it
12 figure out if something is true or not, so for
13 that reason I don't think it's appropriate to
14 include the word defamatory in the standard there.

15 Paragraph 12 is agreed. 13 is agreed subject
16 to whom the person is approving the campaign
17 materials. 14, same point, it's agreed subject to
18 who does it. 15, same thing, agreed to subject to
19 who does it, and 16, same thing, subject to who
20 does it. 17 goes into campaigning, paragraph 17
21 itself has been agreed. 18 and 19 and 20 has been
22 agreed except for the underlying portions at the
23 end of paragraph 20 where we tried to give the
24 chief returning officer some discretion if it
25 deems it necessary to increase the no campaign
26 zones on polling day. 21 is agreed. 22 -- I
27 should say that I've drafted this document based
28 on my review of the documents and in certain
29 instances you will see that my language doesn't
30 track exactly the exhibit to my friend's
31 submissions, but certainly where I've moved away
32 from it, it's only to add clarity and I think my
33 friend is sitting here reviewing it, so he can
34 perhaps respond if he has any points of contention
35 about the things that I'm telling Your Lordship
36 are agreed.

37 So moving on to polling at the top of page 3,
38 there's agreed. 23, if those stipulated polling
39 locations aren't available, then it's agreed that
40 there should be alternate locations and it's just
41 a matter of who selects those. In our submission
42 it should be the chief returning officer. 24, the
43 chief returning officer shall hire polling clerks.
44 It's agreed. I believe there was an issue over
45 whether or not the oversight committee should have
46 any role in the mechanical, I call it the
47 mechanical administration of the polling. For

1 example, I believe initially it was suggested that
2 the oversight committee may -- sorry, the CFS
3 representatives on the oversight committee may
4 wish to have a list of people selected as polling
5 clerks. I don't quite see how that's necessary.
6 I think all this mechanical stuff regarding the
7 polling should be left clearly to the
8 responsibility of the chief returning officer.

9 25, the oversight committee agree that there
10 should be a training session held before April
11 8th. I've just added language, if the chief
12 returning officer deems it necessary, and there's
13 certain prohibitions set out in 26 which are
14 agreed. 27 through 30 are agreed. 31 is agreed
15 subject to who is ensuring that the ballot boxes
16 are kept in a secure location and we say it should
17 be the CRO. I haven't defined that as a term, so
18 as a typo it should say the chief returning
19 officer in paragraph 31. 32 is agreed. And under
20 ballot counting, 33 is agreed, and actually all
21 those section 33 to 35 are all agreed. And
22 scrutineers have been agreed subject to 38 and 39,
23 to whom names in respect of paragraph 38, to whom
24 the names of the scrutineers should be given to,
25 and 39, whom the person is who determines whether
26 or not a scrutineer should be expelled. We say
27 that should fall to the chief returning officer.

28 Quorum is agreed at paragraph 40 and that's
29 subject to determining the number, and I've just
30 added that language for some degree of certainty
31 of what, you know, the number is, how you get
32 quorum, and I've said the chief returning officer
33 shall, by reference to the KSA enrolment data,
34 determine what the full, the total number of full
35 and part-time students is.

36 The referendum results, 41, is agreed, and
37 the complaints section is agreed, again subject to
38 whom shall administer that complaint process, and
39 in the submission of the KSA that ought to fall to
40 the chief returning officer. And at 46, the chief
41 returning officer is agreed and will prepare and
42 submit to both parties a final report on the
43 referendum process and that, in my submission, is
44 a stand-alone document that can be held up as the
45 referendum rules for this without any reference to
46 bylaws or references back to the ROC or anything
47 of that nature.

Reply by Mr. Palleson

1 THE COURT: All right.

2 MR. PALLESON: I do have a couple of things arising out
3 of that.

4 THE COURT: Yes.

5 MR. PALLESON: My submission is that this court ought
6 not to do anything different than what's been
7 agreed to date by the ROC; in other words, to
8 change what they've agreed to. They ought to, the
9 court ought to only supplement that and I haven't,
10 despite my friend's comments that I'm reading
11 along, been able to compare his work, which I just
12 got this morning of course, to Exhibit A, but one
13 thing I noticed for sure which was missing, which
14 is in Exhibit A which is agreed to between the
15 parties, it does say that generally speaking, on
16 page 2, the chief returning officer's role in
17 regards to polling procedures shall be executed in
18 accordance with the following; (i), any applicable
19 federal or provincial law, and if that's in here,
20 I'm sorry, I didn't see it.

21 MR. SIDDALL: I can speak to that. It's not in there,
22 but I can speak to that. That might be something
23 I can do now or I can wait.

24 MR. PALLESON: Well, I think you should wait, because
25 the parties have agreed to that and the court
26 ought not to throw that out. I don't know why my
27 friend has included it, he can speak to it, but --
28 so my submission is generally speaking that I
29 don't think the courts should interfere with what
30 the oversight committee has agreed to, they should
31 only, as it were, supplement that, and so this
32 document, which I have attached as Exhibit A to my
33 summary, should govern, and then there's some
34 outstanding issues. So the idea of my friend
35 having drafted helpfully rules for the court to
36 impose in my submission, to the extent they are
37 different than Exhibit A, they ought not to do
38 that. Rather, in my submission, Your Lordship
39 should deal with the issues which we've outlined
40 which I think I've covered in my summary and let
41 it go at that, and I just have, I don't have too
42 much to say about that.

43 One point my friend raised is that he said,
44 well, maybe there's been some campaigning based on
45 the question that Mr. Schiffner has discussed or
46 put forward, although he did put forward more than
47 one question you will recall, he had one and then

1 he changed it, but my submission is he didn't have
2 authority at that time to do that and that ought
3 not to influence the decision, that he has put
4 forward a question when he didn't have authority
5 to do so, and now they say, well now we've used
6 that question. So that seems to be pulling
7 yourself up by your boot straps, you can't create
8 authority for yourself essentially by going ahead
9 and then say, well, you know, those decisions,
10 especially when the other party has acted with
11 alacrity, which I think we have in terms of that,
12 coming into court as quickly as we possibly could,
13 so I don't think that that should influence the
14 question, and you've heard my submissions on that,
15 so that's what I have to say.

16 MR. SIDDALL: If I could briefly, I should have
17 amplified this perhaps in my submissions. What
18 I've done is the problem when I looked at all this
19 paperwork last night was we have helpfully what
20 the ROC said that's been able to be agreed upon,
21 but there's vast gaps in, for example, who should
22 be carrying it out. They agreed, for example, in
23 principle on what should happen with the standard
24 to apply the materials, but they didn't agree on
25 who should do it, so I've attempted to make a
26 comprehensive stand-alone document that can speak
27 to all the issues brought up, and the other thing
28 I should mention is if you are following along
29 this comparing it to the document that Ben West
30 prepared, I have tried to be helpful in breaking
31 out what I think is a logical order and headings
32 and they don't, in every instance, match up, but,
33 I mean, if my friend is concerned about stuff
34 that's omitted, I mean, we could, one suggestion
35 might be to stand down for 10 minutes and let him
36 look at it, but I've tried my level best to --

37 THE COURT: It just seems to me, I mean, it's a
38 mechanical job more than anything else, but once I
39 lay down the part of this that I have to deal
40 with, can't I leave it with a direction that a
41 merged set of the referendum rules will be
42 prepared that include anything that is not in
43 yours that is found in the Ben West document?
44 Just, for instance, things like what he suggests
45 is missing, all applicable federal and provincial
46 laws, whatever that means, just because that's
47 what they actually did agree to?

Reply by Mr. Siddall

1 MR. SIDDALL: Right.

2 THE COURT: I want to honour their agreement so far as
3 it goes.

4 MR. SIDDALL: And I think that's right, and I should
5 speak to that, if I may just take a brief moment
6 to speak to that.

7 In my view that's -- I mean, I accept that
8 they agreed to that, but I think that it's rather
9 superfluous if what we have is a set of
10 stand-alone rules. I mean, it contemplates the
11 ROC giving directions. I can't object based on
12 the fact that the oversight committee agreed that
13 if it should proffer further directions, the CRO
14 shall implement them, but this document,
15 referendum rules document doesn't contemplate any
16 further involvement because of --

17 THE COURT: Well, for instance, it would be
18 inconsistent with, if I went as far as you want me
19 to go, it would be inconsistent with a requirement
20 that he deal with resolutions adopted or provided
21 by the committee because the committee wouldn't
22 have anything to say about it at this stage.

23 MR. SIDDALL: Right, but -- well, I think that's right.
24 I mean, if you went, if you adopted these
25 referendum rules, that's not necessarily
26 inconsistent with the ROC issuing further
27 direction, but I suppose it is inconsistent with
28 the mandate I've set out in paragraph 4, for
29 example.

30 THE COURT: It is if you give the returning officer the
31 effective mandate.

32 MR. SIDDALL: Yes. The situation that needs to be
33 avoided is the ROC is just keeping going at its
34 dysfunctional rate that it's going at. I mean,
35 we've got to avoid that in my submission.

36 THE COURT: No, all right, but just to be absolutely
37 clear about this, what I think has to be
38 incorporated is to the extent, not inconsistent
39 with what I say based on what has been submitted
40 here, the rules that they did agree to should be
41 faithfully incorporated into the ultimate set of
42 rules because I did turn it back to them to do the
43 best they could. Having done the best they could
44 to the point where it doesn't require further
45 intervention by the court, the language they came
46 up with should be used even if it's a little bit
47 awkward to incorporate.

1 MR. SIDDALL: Right. I would suggest that could be
2 incorporated under the chief returning officer
3 heading that -- well, I can just probably
4 incorporate the whole, that whole paragraph in
5 there. It is awkward because the ROC doesn't have
6 anything else to do, but if they want to meet and
7 try to resolve something and give further
8 direction, they can.

9 THE COURT: It might be helpful to just address those
10 issues after I've made rulings on the things that
11 have to be incorporated, then it will be a little
12 clearer what's consistent and what isn't --

13 MR. SIDDALL: Okay.

14 THE COURT: -- it seems to me, but I do want to honour
15 the fact that I returned this to them for their
16 consideration and they did come up with some
17 consensus on some issues.

18 MR. SIDDALL: That's right, and I don't disagree with
19 that approach at all.

20 THE COURT: I think your friend is just suggesting
21 that, you know, having done so, I can't now start
22 driving a truck through the things they actually
23 did agree to and I agree with that.

24 MR. SIDDALL: Yeah, I agree with that too, and I guess
25 the only reason for its omission is that in my
26 view it would be superfluous, but I take your
27 point, My Lord, and we can put that, make that a
28 provision of the rules.

29 THE COURT: It may be superfluous, so it just seems to
30 me I should address the issues in controversy and
31 then give a direction that the rules that are
32 ultimately drafted in accordance with those
33 directions shall incorporate, to the extent they
34 are not inconsistent with my directions, what the
35 oversight committee was able to agree to. All
36 right?

37 Now, with respect to the referendum question
38 itself, is it the KSA that -- the members
39 individually vote, but it's the KSA that withdraws
40 from membership in the Canadian Federation of
41 Students is it, or is it individual students?

42 MR. PALLESON: It's both actually.

43 THE COURT: All right.

44 MR. PALLESON: There's a membership of the association
45 and then all the students, as a result of that
46 membership, are also members.

47 THE COURT: I remember you explaining that to me, but

Colloquy

1 you are satisfied that a question that asks the
2 individuals do you wish to continue or withdraw,
3 whatever verb is chosen, is an adequate question
4 for the sake of the referendum?

5 MR. PALLESON: Yes.

6 THE COURT: It doesn't need to be refined to do you
7 wish the KSA to withdraw or anything like that,
8 there's no -- they will be obliged to once -- if
9 the numbers are right?

10 MR. PALLESON: Yes.

11 THE COURT: And there won't be, this isn't a
12 recommendation kind of vote or anything like that?

13 MR. PALLESON: Right.

14 THE COURT: All right. So the question is simply
15 what's the -- you see, the individual students
16 wouldn't be defederating, it's the KSA that would
17 defederate?

18 MR. PALLESON: I would agree with that, but they are
19 directed as the process to ask the individuals
20 what their view is, so I take Your Lordship's
21 point, but no, I don't think there's any issue
22 over that.

23 THE COURT: You know, I mean, if the verb is
24 defederate, it's an awkward verb, but if I start
25 from the proposition that you ask exactly the
26 question that the bylaws talk about, then the
27 question would be do you wish the KSA to
28 defederate? Individual students don't defederate.

29 MR. PALLESON: Yes, I see Your Lordship's point. I
30 don't -- standing here, I don't see an objection
31 to including -- well, I guess I would have to take
32 instructions from --

33 THE COURT: I'm not trying to make this awkward, I'm
34 just saying the problem I foresee here is simply
35 if I go right back to basics and try to use the
36 very verb that appears in discussions of this in
37 the bylaws, then the verb is defederate, but it
38 doesn't make sense to ask individual students to
39 defederate, so you have to use a different verb;
40 is that fair?

41 MR. PALLESON: I see, but you could ask whether --
42 right, okay.

43 THE COURT: I mean, another way to ask the question,
44 I'm just asking this, whether there's a technical
45 objection or problem to it, is do you wish the KSA
46 to defederate as a member of the Canadian
47 Federation of Students. It's awkward because the

1 verb is awkward, but it has the attraction of the
2 verb corresponding to the verb used in the
3 foundation document.
4 MR. PALLESON: Yeah. Now, I won't take the time, can I
5 just take just 10 seconds to see whether --
6 THE COURT: Sure. I'm not even making a proposal.
7 MR. PALLESON: I know.
8 THE COURT: Do you know what I mean? If you start from
9 one verb and that's the verb, then maybe that's
10 the answer to this.
11 MR. PALLESON: Well, I guess now that it has been
12 explained to me a little more in a little more
13 detail, the idea behind actually, or one of the
14 ideas behind the question proposed by the CFS, are
15 you in favour of continued membership, covers both
16 the individuals, because they are members, but
17 also it also covers the association, so I guess
18 that's one advantage to that question, that's why
19 they ask are you in favour of continued membership
20 because it does cover, and I probably should have
21 told this or figured it out on my own before, but
22 it does cover both the individual nature of the
23 membership and the collective nature of the
24 membership, whereas you are right, and Your
25 Lordship sort of identified it, if you ask the
26 question do you wish to withdraw, then you have to
27 say, well, who is really withdrawing or do you
28 wish to defederate, because it's -- so I don't
29 know if that helps Your Lordship, but that's sort
30 of my answer. I think it is awkward to pose the
31 question using the withdrawal verb.
32 THE COURT: Well, although it's consonant with the
33 process as set out in the bylaws, it's not an
34 occasional affirmation, it's a vote to withdraw
35 given certain circumstances which includes a 10
36 percent referendum.
37 MR. PALLESON: Yeah. I suppose my response would be, I
38 guess it sort of depends how you look at it I
39 suppose, from whose perspective you are looking at
40 it, but I understand what Your Lordship is saying.
41 THE COURT: Well, I just -- you know, I would rather
42 have a resolution to that sort of issue that has a
43 foundation in the documents that bind the parties
44 than one that appears to have been just a random
45 selection because the court has the authority to
46 make a selection, so --
47 Well, all right, with respect to the

1 referendum rules that Mr. Siddall has drafted,
2 apart from questions where the exact language
3 hasn't been captured as to what the parties have
4 agreed to, do you have any further remarks to
5 make? Essentially what he has done is put chief
6 returning officer in for every management and
7 discretionary call that has to be made; isn't that
8 right?

9 MR. PALLESON: Unfortunately, My Lord, I really -- that
10 appears to me to be right. I mean, I haven't read
11 this for nuances which I'm a little bit nervous
12 about. I mean, I think if we're going to adopt
13 his rules, which I suggest we ought not to,
14 rather -- but if we are going to do that, I
15 certainly would like the opportunity to look at
16 them.

17 THE COURT: Well, look, the problem that I foresee is
18 just that there do seem to be a number of
19 different things that might be, might require some
20 form of direction or ruling by the chief returning
21 officer if that's who is appointed to do it. When
22 you say the oversight committee should be able to
23 consider these things for 12 hours, as these
24 things come to them that's going to create a
25 series of different 12 hour time limits isn't it?

26 MR. PALLESON: If we're getting --

27 THE COURT: It's not as if all these controversies are
28 going to arise all at once and there will be one
29 12 hour period to consider them in an organized
30 fashion, you'll have until one o'clock to think of
31 such and such and you'll have until 1:15 to think
32 of another thing and they'll have until -- isn't
33 it unmanageable just on that basis?

34 MR. PALLESON: My submission is no, with respect, and
35 here's my answer. The 12 hours is simply for
36 campaign materials and I would not foresee that,
37 at this stage, that -- I would imagine that the
38 campaign materials are probably going to come, or
39 there's no reason why they couldn't come in a lump
40 sum, they all seem to be all ready to go, so I
41 don't foresee that situation, and similarly, the
42 materials from the CFS. There might be more than
43 one 12 hour time limit, but I don't think there
44 are going to be a great number of issues. With
45 respect, I don't think that's going to happen.

46 THE COURT: Is there some problem with respect to the
47 provision of tables? I mean, is the KSA somehow

Directions by the Court

1 using its presence on the campus to frustrate
2 their getting --

3 MR. SIDDALL: The first time I saw that issue was in my
4 friend's submissions and I haven't spoken to my
5 client about that. I have no knowledge whatsoever
6 about that.

7 THE COURT: Does the KSA have control over the tables?

8 MR. SIDDALL: Well, I would suggest they don't.

9 THE COURT: Who does?

10 MR. SIDDALL: I would suggest that it would be the KUC,
11 the Kwantlen University College.

12 MR. PALLESON: With respect, I'm told that what the
13 situation is is that KSA does have control and
14 that Kwantlen University College, although maybe
15 having control, the law has said we're not going
16 to get involved, you must deal with the KSA on
17 this issue to the CFS.

18 THE COURT: So what, did the KSA sort of cop all the
19 available tables, is that what happened?

20 MR. PALLESON: Essentially that's right, and now they
21 are saying you have to book a month in advance, so
22 if you book today, we'll give you a table in a
23 month.

24 MR. SIDDALL: I would like the chance, I haven't talked
25 to my clients, I would like a chance to respond.

26 THE COURT: Can you take some instructions on that
27 because, I mean, we can't have that kind of games
28 played, where there's frustration for that reason.

29 MR. SIDDALL: I agree.

30 THE COURT: And I'll make a direction of some kind on
31 that, but I need to know who is doing what to whom
32 if there is any such thing happening.

33 MR. SIDDALL: I have those instructing me in the room,
34 so I can take instructions.

35 THE COURT: All right. Well, let me do the best I can
36 with what we have right now and then if there
37 remain outstanding issues with respect to drafting
38 or the merger of the two concepts, because I think
39 I made it clear, I think it important that, to the
40 extent possible, the exact, the actual things
41 agreed by the oversight committee should be
42 incorporated into the final directions to the
43 extent that they are not inconsistent with what I
44 have to say.

45 I will give these following directions right
46 now, of course subject to not further argument on
47 these subjects, but just to any issues that arise

Directions by the Court

1 with respect to the merger of what I've had to say
2 with what the ROC came up with.

3 Having heard what counsel have to say with
4 respect to the question, I do see the merit in
5 both forms of the question in some respects,
6 although given that the foundation document talks
7 about defederation and the fact that there is a
8 referendum process that must be engaged in as a
9 condition precedent, I think the appropriate form
10 of the wording, that colloquially but most closely
11 tracks the foundation document is that the
12 question shall be:

13
14 Do you wish to withdraw as a member of the
15 Canadian Federation of Students?
16

17 And I fix that as the question.

18 With respect to the responsibility for
19 management and running of the election, while I
20 think it has been clear as of the appearance last
21 week that my hope in setting out the guidelines I
22 attempted to last week was that the ROC could come
23 up with a set of understandings that would make it
24 unnecessary for this court to deal with this
25 matter further. That has not been the case,
26 although progress was made. There is a suggestion
27 that one of the difficulties remaining is that the
28 ROC wishes to maintain the ability, particularly
29 to review campaign materials which their proposal
30 is would be dealt with by them if the consensus
31 could not be achieved, or at least a majority
32 could not be achieved on the ROC, that they would
33 then return the question to the chief returning
34 officer for decision. The time frame suggested is
35 that they would have 12 hours to consider such
36 things.

37 Considerate of the fact that they have been
38 unable to agree on these matters, having had a
39 week or so to do so, leaves me with no really
40 pragmatic way to approach this other than to
41 generally vest in the chief returning officer the
42 responsibility for running the nuts and bolts of
43 the election. That would include, for greater
44 particularity, those particulars set out in the
45 draft referendum rules that have been submitted by
46 the KSA's counsel in paragraphs 3 through 6, would
47 include paragraphs 10 through 16. To the extent

Directions by the Court

1 that any of those are inconsistent in their
2 specific wording with the rules derived by the ROC
3 but otherwise not inconsistent with my ruling, the
4 words chosen by the ROC shall prevail.

5 I think the stipulation found in paragraph 20
6 under campaigning is a reasonable stipulation and
7 a power that the chief returning officer should
8 have. As well, I think that goes for paragraph 23
9 and paragraph 25. I think paragraph 31 is telling
10 a professional balloting organization more than it
11 needs to be told, but it should also be included.

12 The quorum shall be determined as set out in
13 paragraph 40 and the stipulations set out in
14 paragraphs 38 and 39 strike me as reasonable and
15 shall be included in the rules.

16 I think at first instance the violations and
17 complaints section is unobjectionable and should
18 be included in the rules as well.

19 The CFS has raised an issue with respect to
20 polling clerks and has asked that they be given a
21 list of the proposed polling clerks so as to
22 ensure that no clerks have been engaged in the
23 campaign. I'm not sure if that's covered in the
24 material that is before me from the KSA's counsel,
25 but if it is not, I think that that is a
26 reasonable stipulation and should be included.

27 There was also an issue raised with respect
28 to the provision of tables on the campus and there
29 is a suggestion that the KSA is in control of the
30 tables somehow which is going to inhibit CFS's
31 ability to campaign effectively on the campus. I
32 will hear further from counsel on that if I need
33 to, but it strikes me that it may be enough to
34 simply say that if there is any such interference,
35 it will not be permitted to continue, and if the
36 ultimate situation is that somehow the KSA has all
37 the available tables, some direction will be given
38 by this court on how to divide those tables.

39 In short, however, I think that beyond the
40 point of honouring the language that the ROC was
41 able to come up with in the last week, and they
42 did a fair amount, their continued role beyond
43 this point will be taken on, in terms of the
44 management of the election itself, by the chief
45 returning officer who shall have the discretion I
46 have outlined with respect to this election.

47 Do counsel wish to stand down to see whether

Additional submissions by Mr. Palleson

1 there are any other issues?

2 MR. SIDDALL: That might be useful, My Lord, thank you
3 for the opportunity.

4 THE COURT: We'll take the morning break. Do you need
5 longer than 15 minutes?

6 MR. SIDDALL: I don't think so.

7 THE COURT: All right. I'll be back in 15 minutes.

8 THE CLERK: Order in chambers? Chambers stands
9 adjourned for a 15 minute recess.

10
11 **(MORNING RECESS)**

12
13 THE COURT: Proceed, counsel.

14 MR. PALLESON: So what we thought we would do is
15 generally go away and we will look at, I'll look
16 at my friend's referendum rules and I shall look
17 at what was agreed upon by the committee and we
18 shall merge them as Your Lordship -- well, as we
19 all have suggested, and hopefully, given Your
20 Lordship's directions, we can come up with what is
21 going to run the referendum in terms of rules.

22 THE COURT: All right.

23 MR. PALLESON: Just a couple of points. One is we
24 never did decide whether defamation will be
25 included and --

26 THE COURT: No.

27 MR. PALLESON: No?

28 THE COURT: No.

29 MR. PALLESON: Okay.

30 THE COURT: Sorry, I should have said that.

31 MR. PALLESON: Okay, right. Secondly -- I'll make a
32 note of that.

33 THE COURT: Well, look, I should be a little bit -- I
34 just don't see how adding another layer of
35 adjudication, in effect, to the idea of what's
36 defamatory and isn't defamatory isn't going to, it
37 just won't be of assistance. I leave that to the
38 general law and the rest of it to the rough and
39 tumble of politics.

40 MR. PALLESON: And in terms of the fees and expenses of
41 Schiffner Consultants Inc., now, you indicated
42 that you agreed with six, but you had also said
43 earlier that subject to review of the courts.

44 THE COURT: Yes.

45 MR. PALLESON: What I would like this to, how this to
46 read is the fees and expenses of Schiffner
47 Consulting Inc. for the referendum shall be split

1 50/50 subject to review by the courts. The reason
2 I don't want a reference to the actual agreement
3 between the KSA and Schiffner is that that
4 agreement contemplates a \$15,000 retainer which
5 apparently has paid for Mr. Tait who was here last
6 time, he's not here today, and that's exactly what
7 we think ought not to be paid, so I think I would
8 rather have more generic language, the fees and
9 expenses of Schiffner Consulting for the
10 referendum shall be split 50/50 subject to review
11 by the courts.

12 THE COURT: Is that a problem?

13 MR. SIDDALL: Well, the reason I've referenced the
14 contract is simply because it states, I think it's
15 \$10,000 for the referendum itself and the fees are
16 set out therein, and if we have the referendum --
17 I just wanted to track that. My friend does raise
18 the issue of this indemnity provision which I
19 think we should just leave it to argue. I
20 can't -- you know, I can consider whether or
21 not --

22 THE COURT: Yeah, the reason I suggested that -- it
23 just seems to me simple, it's the same contract
24 that they are operating under, they've been given
25 authority by the court. The parties, it seems to
26 me, should be able to agree as to what part of the
27 bill is attributable to the referendum post my
28 appointment. There may be some part that's ahead
29 of that that is debatable in terms of whether it
30 was necessary because the ROC was dysfunctional
31 and something had to be done and so forth, so
32 because of that it seems to me what I should
33 simply say is that the fees will be split for
34 their services related to conducting the
35 referendum.

36 MR. SIDDALL: That's fine.

37 THE COURT: I won't be more explicit than that. If
38 there then become issues about whether certain
39 parts of this should be split and the parties
40 can't agree, that will be subject to further
41 direction by the court.

42 MR. SIDDALL: Okay. So we'll say the fees and expenses
43 of Schiffner Consultants Inc. relating to the
44 conduct of the referendum shall be split equally
45 between the CFS and the KSA subject to review of
46 the court if necessary?

47 THE COURT: Yes.

1 MR. SIDDALL: Okay.

2 THE COURT: Is that all right?

3 MR. PALLESON: That's fine.

4 THE COURT: I just think any issues then about whether
5 it started this day or this day, whether this was
6 advice to KSA as opposed to necessarily ancillary
7 to running the election can be aired at that kind
8 of an occasion.

9 MR. PALLESON: Very good.

10 THE COURT: All right.

11 MR. SIDDALL: I just wanted to briefly speak to the
12 issues of the tables. I've taken instructions and
13 I should say first of all that my client takes
14 issue with the suggestion there has been any
15 interference in CFS's ability to get tables. I'm
16 advised that the KSA has no tables of its own.
17 There's a procedure that's in place to apply to
18 the university to get tables. We're obviously in
19 favour of equal table time, however that's
20 implemented, but I do understand that it's, the
21 university itself is the one who determines the
22 allotment of tables and I think the problems might
23 have arisen in this case because there's a four
24 week, that applications must be received four
25 weeks in advance. It's not to say that the
26 university wouldn't abridge time and I think that,
27 you know, if we get a table, they get a table, if
28 they get a table, we get a table, there's no
29 problem in principle with equal table time, but to
30 suggest that, you know, the KSA has been somehow
31 hogging tables or interfering is --

32 THE COURT: So it's not that, it's just that the
33 process in place may not work very well given the
34 short time limit?

35 MR. SIDDALL: That's right, My Lord.

36 THE COURT: Is there anything that can be done to
37 remedy that? It just seems to me this should be
38 run fairly.

39 MR. SIDDALL: I agree with that. I'm just thinking
40 because it's the university itself that ultimately
41 decides, I mean, we could say that -- I don't
42 know, this might not be satisfactory, but best
43 efforts shall be used to -- I mean, you are going
44 to end up trying to direct the university to do
45 something.

46 THE COURT: If the university is a problem, that will
47 have to be dealt with by an application that

Additional submissions by Mr. Siddall

1 involves the university it seems to me.
2 MR. SIDBALL: Okay.
3 THE COURT: Regrettable as that may be.
4 MR. SIDBALL: Right. And I would hope that we could
5 sort it out.
6 The only other thing I was going to -- I
7 wouldn't know if Your Lordship would consider
8 remaining seized of the matter, not only between
9 now and the referendum, but thereafter in terms of
10 its validity, given Your Lordship's involvement
11 today?
12 THE COURT: I just hate to imagine that I would be
13 necessary. So just so that it's clear to me now,
14 you are going to go away. Are you confident you
15 can merge a set of rules that will work out or are
16 you anticipating that you will have to come back
17 for a stamp?
18 MR. PALLESON: No, I'm not anticipating we'll have to
19 come back, but I suppose if we did, we should come
20 back to Your Lordship obviously.
21 THE COURT: All right, I'll remain seized and I'll be
22 available on short notice if counsel deal with me
23 through the registry, either here or by speaking
24 to the Kelowna Registry, which is often a way to
25 get ahold of me if I leave town.
26 MR. PALLESON: If there's an issue with the tables, as
27 I say, hopefully we can work that out between us.
28 If we can't, then we may have to come back.
29 THE COURT: Well, tell either registry that you try to
30 deal with to find where I am or to deal with me,
31 that I've left you with a standing order that you
32 are entitled to talk to me, and tell them that I
33 indicated that I wished to be put, them to put the
34 request through immediately as soon as you make
35 it. All right?
36 MR. PALLESON: Would that include video or telephone
37 conferences?
38 THE COURT: Yes, I'll make myself available by whatever
39 means makes sense. It's just that I anticipate
40 being in the interior next week.
41 MR. SIDBALL: Thank you, My Lord, those are the issues
42 I had arising.
43 THE COURT: All right. Well, good luck everyone. Have
44 a good Easter too.
45 MR. PALLESON: Thank you, My Lord, you as well.
46 THE CLERK: Order in chambers. Chambers is now
47 adjourned.

1 (PROCEEDINGS ADJOURNED AT 11:31 A.M.)

2 I, Karen Hinz, Official Reporter,
3 in the Province of British Columbia,
4 Canada, do hereby certify:

5 That the proceedings were
6 transcribed by me from audiotapes provided of
7 taped proceedings, and the same is a true and
8 correct and complete transcript of said
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10 ability.

11 IN WITNESS WHEREOF, I have hereunto
12 subscribed my name and seal this 25th day of
13 March, 2008.

14 

15 _____
16 Karen Hinz
17 Official Reporter
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