



This is the 3<sup>rd</sup> affidavit of  
J. Coccola in this case and was  
made on February 14, 2011  
No. 10 4638  
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 #3 OF JAMES COCCOLA**

I, James Coccola, Student, care of 3800 Finnerty Road, Student Union Building, PO Box 3035 in the District of Saanich, 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 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. On February 2, 2011, I wrote a letter to David Molenhuis, the current Chairperson of the Canadian Federation of Students ("CFS"), proposing that the referendum on continued membership in the CFS be held at the University of Victoria (the "Referendum") on March 9, 10, and 11, 2011. The UVSS proposed these dates because they coincide with the UVSS Board of Directors elections and, therefore, holding a Referendum on these dates would be most efficient from a financial and administrative point of view. My letter also attached a proposed protocol for the Referendum and the names of the UVSS's appointments to the Referendum

Oversight Committee ("ROC"). Attached hereto and marked as **Exhibit "A"** is a copy of my letter of February 2, 2011 to Mr. Molenhuis. Attached hereto and marked as **Exhibit "B"** is a copy of the proposed Referendum protocol enclosed with my letter of February 2, 2011 to Mr. Molenhuis.

3. On February 3, 2011, I received a letter from Mr. Molenhuis responding to my letter of February 2, 2011. In this letter, Mr. Molenhuis advised that the CFS rejects the UVSS's proposed dates of March 9, 10, and 11, 2011 for a Referendum and states that the CFS is considering March 29, 30, and 31, 2011 as Referendum dates. Mr. Molenhuis advised of the names of the CFS's appointments to the ROC. Mr. Molenhuis concluded his letter by indicating that the Referendum could not proceed unless the UVSS paid \$6,489.00 owing from 2008-2009, \$122,569.00 owing from 2009-2010 and approximately \$50,000 owing from 2010-2011. Attached hereto and marked as **Exhibit "C"** is a copy of the letter I received from Mr. Molenhuis dated February 3, 2011.
4. On February 3, 2011, the UVSS made a payment of \$100,533.94 to the CFS representing all CFS membership fees collected for the fall 2010.
5. On February 4, 2011, I responded to Mr. Molenhuis's letter of February 3, 2011. In this letter, I advised Mr. Molenhuis that while it would save money and be more efficient to hold the Referendum during the UVSS council elections, the UVSS is agreeable to the dates that the CFS suggested: March 29, 30, and 31, 2011. I further advised that the UVSS had made a payment on February 3, 2011 of \$100,533.94 representing all CFS membership fees collected for the fall 2010. I confirmed that the UVSS had reviewed its records and confirmed that payment of all CFS membership fees is completely up to date. Finally, I reminded Mr. Molenhuis that the Court had already ruled that the CFS's evidence on this point is inadmissible and thus, the CFS was effectively prevented from continuing to advance their position regarding the alleged outstanding fees at this late time. I advised Mr. Molenhuis that should the CFS persist in advancing its claim that a referendum will not be held prior to payment of the alleged fees, the UVSS would apply to court for further ancillary and consequential relief. Attached hereto and marked as **Exhibit "D"** is a copy of my letter of February 4, 2011 to Mr. Molenhuis.
6. By close of business on February 8, 2011, I still had not received any reply from the CFS in connection with my letter of February 4, 2011. I wrote Mr. Molenhuis an email advising him that if the CFS did not confirm the March 29, 30, and 31, 2011 as voting dates for the Referendum on an unconditional basis by 5:00 pm Pacific Standard Time the next day, the UVSS would be taking steps to appear before the Court to seek relief. Attached hereto and marked as **Exhibit "E"** is a copy of my email of February 8, 2011 to Mr. Molenhuis.
7. On February 9, 2011, I received a letter from Mr. Molenhuis confirming the March 29, 30, and 31, 2011 as voting dates for the Referendum *contingent* on

payment of \$6,489.00 in connection with 2008-2009 and \$122,569.00 in connection with 2009-2010, for a total of \$129,058.00. Attached hereto and marked as **Exhibit "F"** is a copy of the letter I received from Mr. Molenhuis dated February 9, 2011.

8. On February 10, 2011, I wrote to Mr. Molenhuis advising that since the CFS had refused to unconditionally confirm voting dates for the Referendum, the petitioners would be returning to Court to seek an order that the voting days for the Referendum shall be held on March 29, 30, and 31, 2011. Attached hereto and marked as **Exhibit "G"** is a copy of my letter of February 10, 2011 to Mr. Molenhuis.

9. At no point prior to January 4, 2011 was the UVSS advised of the CFS membership fee payment amounts that the CFS now claims are due and owing. The first time that the UVSS became aware of the CFS membership fee amounts that the CFS is now claiming when the petitioners' legal counsel, David Borins, forwarded an email from the CFS' legal counsel attaching an unfiled affidavit sworn by Lucy Watson. Attached hereto and marked as **Exhibit "H"** is a copy of the forwarded email I received from Mr. Borins on January 4, 2011.

10. I have reviewed the UVSS's records. According to the UVSS's records, all CFS membership fees of any type ever collected from undergraduate students at the University of Victoria have been remitted to the CFS.

SWORN BEFORE ME AT THE City of )  
Victoria, in the Province of British )  
Columbia, this 14<sup>th</sup> day of February 2011 )

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

  
\_\_\_\_\_  
**JAMES COCCOLA**

**JOHN S. HEANEY**  
Barrister & Solicitor  
**HEENAN BLAIKIE LLP**  
737 Yates St. - Ste 514  
Victoria BC  
V8W 1L6



BY COURIER & EMAIL (chair@cfs-fcee.ca)

URGENT – TIME SENSITIVE MATTER

February 2, 2011

David Molenhuis  
Chairperson  
Canadian Federation of Students  
National Office  
338 rue Somerset Street Ouest/West  
Ottawa, Ontario K2P 0J9

This is Exhibit "A"  
referred to in the Affidavit # 3  
of JAMES COCCO 4/1/11  
sworn before me this 1/9/11 day  
of FEBRUARY 20 11  
A Commissioner for taking Affidavits  
for British Columbia

Dear Mr. Molenhuis,

**Re: Referendum at University of Victoria on Continuing Membership in the CFS**

Further to Mr. Justice Macaulay’s decision yesterday morning declaring that the petition Jose Barrios delivered to the Canadian Federation of Students (“CFS”) in the fall of 2009 is valid, I write to ask the CFS to immediately take the necessary steps to work with the University of Victoria Student Society (“UVSS”) to provide students at University of Victoria (“UVIC”) their democratic right to vote on their membership in the CFS. On behalf of University of Victoria (“UVIC”) undergraduate students, I urge that the CFS cooperate fully with the UVSS in good faith to immediately commence planning for a referendum without delay. Given the failure of the CFS to take steps to schedule a referendum last academic year when it ought to have, it is all the more imperative that a referendum be held prior to the end of this academic year.

In the spirit of attempting to ensure that students at UVIC may vote on their CFS membership without delay, the UVSS makes the following proposals with respect to the organization of the referendum.

First, the UVSS proposes that the referendum be held on March 9<sup>th</sup> to 11<sup>th</sup> 2011 which would correspond with the UVSS Board of Directors elections. This period is proposed because not only will it provide adequate time for the Referendum Oversight Committee (“ROC”) to plan the referendum, but also the dates fall before the end of classes at UVIC on April 1<sup>st</sup>. The UVSS proposes that campaigning would take place for the 10 weekdays before and during the voting period between February 28<sup>th</sup> and March 11<sup>th</sup>.

Second, the UVSS has carefully considered the appropriate rules and protocol that it believes ought to govern the conduct of the upcoming referendum. The UVSS attaches a proposed protocol that relies heavily on two recent judicially endorsed CFS referendum

protocols,<sup>1</sup> both of which were ordered after submissions of the parties were made, including the submissions of the CFS. You will be further familiar with this protocol as it was provided to you by our lawyers on December 9, 2010 in an effort to engage the CFS in planning of a referendum; however, no response to Mr. Borins' letter was forthcoming.

Much of the content in the attached proposed protocol was, in fact, proposed by the CFS to Mr. Justice O'Connor in the matter involving the Central Student Association of University of Guelph, including the appointment of a neutral third party to break deadlocks on the ROC. Your lawyers have since acknowledged in filed submissions before the court that the third party arbitrator "played an important role in resolving issues that the parties themselves were unable to resolve".

In our lawyers' letter of December 9, 2010, we advised you of our appointments to the Referendum Oversight Committee ("ROC"): Mr. James Coccola and Ms. Rajpreet Sall. The UVSS continues to await the names and contact information for the CFS's representatives to the ROC and requests that you provide them without delay.

Given the relatively short time available, there is no time to spare in organizing the referendum and the UVSS requests that the CFS treats this matter as urgent and acts without delay. Accordingly, I seek your response no later than February 7, 2011 after which time, per the decision of Mr. Justice Macaulay (para. 62), we reserve our right to apply for consequential or ancillary relief.

We look forward working with you collaboratively on the planning of a democratic and fairly held referendum for the students of UVIC.

Yours Truly



James Coccola  
Chairperson

cc: UVSS Board of Directors  
Heenan, Blaikie LLP, Attn: David Borins,  
Gowlings Lafleur Henderson LLP, Attn: Todd Burke & Martin Palleson

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<sup>1</sup> The protocol that was endorsed by Justice McEwan of the British Columbia Supreme Court in March 2008 for use in connection with the court ordered referendum on the question of membership in the CFS at Kwantlen Polytechnic University and the protocol that was endorsed by Justice O'Connor of the Ontario Superior Court of Justice in March 2010 for use in connection with the court ordered referendum on the question of membership in the CFS at the University of Guelph.

### REFERENDUM RULES

These Rules are designed to apply to a referendum (the "Referendum") which will be held at The University of Victoria ("UVic") on the issue of whether the individual CFS members the University of Victoria Students' Society the ("UVSS") wish to withdraw as members of the Canadian Federation of Students (the "CFS")

#### Referendum Oversight Committee

1. The Referendum will be administered by a four person Referendum Oversight Committee ("ROC") comprised of two members appointed by the CFS and two members appointed by the UVSS.
2. In accordance with these Referendum Rules, the ROC shall be responsible for:
  - a. approving campaign materials
  - b. overseeing all aspects of voting;
  - c. overseeing all aspects of tabulating the votes cast;
  - d. adjudicating all appeals; and
  - e. establishing other rules and regulations for the vote as necessary.
3. In the event that the ROC cannot reach agreement on any particular issue within the deadlines set out in the protocol, it shall delegate the decision to a third party, [INDIVIDUAL TO BE DETERMINED], for a final determination.

#### Referendum Date:

4. The Referendum shall take place on, March 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> 2011 (the "Polling Days").

#### Referendum Question:

5. The Referendum question shall be:

"Are you in favour of continued membership in the Canadian Federation of Students?"

#### Eligibility:

6. Eligible voters will be those University of Victoria ("University") full and part-time undergraduate students who are members of the UVSS as of January 31, 2011 ("Eligible Voters").

This is Exhibit "B"  
 referred to in the Affidavit # 3  
 of JAMES COCCOUB  
 sworn before me this 4 day  
 of FEBRUARY 20 11  
 A Commissioner for taking Affidavits  
 for British Columbia

7. Each eligible voter shall be entitled to cast one vote.

**Referendum Website:**

- 8. A Referendum website will be established by the ROC. The Referendum website will provide as follows:
  - a. Notice of Referendum;
  - b. Campaign Period;
  - c. Polling days;
  - d. Poll station locations;
  - e. Copy of the referendum protocol;
  - f. Complaint form; and
  - g. Email link for inquiries about the Referendum process.

**Referendum Expenses**

9. The fees and expenses with respect to the Referendum shall be paid for by the CFS and UVSS and shall be apportioned one half to each.

**Campaign Period**

- 10. In these rules, "Campaign Period" shall mean the period beginning at 8:00 a.m. on February 28<sup>th</sup> and ending at 8:00 p.m. on March 11<sup>th</sup>, 2011.
- 11. There shall be no campaigning prior to the commencement of the Campaign Period or after conclusion of the Campaign Period.

**Campaigning**

- 12. In order to participate in the referendum campaign, campaign sides must register with the ROC. There shall be a maximum of one "yes side" and one "no side" ("Registered Party"). A registration form shall be available from the ROC.
- 13. Campaigning shall be conducted reasonably, responsibly, and in good faith. Each Registered Party shall:
  - a. ensure that all campaigners are aware of, understand, and comply with the relevant referendum rules and rulings of the ROC; and

- b. adhere to all applicable policies and procedures of the UVic.

**Campaign Materials**

- 14. In these rules, "Campaign Materials" shall mean any materials used by any Registered Party during the Campaign Period to promote its position on the Referendum.
- 15. All Campaign Materials for use by a Registered Party must be submitted to the ROC for approval or refusal prior to use by any Registered Party.
- 16. The ROC shall provide a written approval or refusal of Campaign Materials within 24 hours of the materials being submitted.
- 17. The ROC shall not unreasonably withhold approval of Campaign Materials.
- 11. The ROC shall not approve Campaign Materials which in its opinion are offensive to basic community standards, including materials that are racist, sexist, homophobic or profane.
- 12. Campaign Materials that cannot be removed at the conclusion of the Campaign Period, or that are likely to damage property, including paint applied to building surfaces, shall not be used.
- 13. The ROC shall maintain a copy of all materials submitted to it and a written record of the decisions made regarding the approval of Campaign Materials.
- 14. No Campaign Materials may be removed, defaced, damaged or destroyed without the prior authorization of the ROC.
- 15. Campaign Materials which have not been approved by the ROC shall be removed at the direction of the ROC.
- 16. All Campaign Materials shall be removed by 9:00 a.m. on March 13, 2011.

**Quorum**

- 18. The ROC shall determine enrollment at the UVic of Eligible Voters as of January 31, 2011.
- 19. The quorum for the referendum shall be 5% of Eligible Voters, failing which the referendum is a nullity.



20. Spoiled ballots (e.g. ballots that have no indicated response or more than one response) shall count for the purposes of establishing the total number of voters participating in the Referendum.

**Chief Election Officer**

21. By March 1, 2011, the ROC shall appoint a neutral Chief Electoral Officer.

22. The Chief Electoral Officer shall carry out the following administrative functions of the referendum:

- a. hire and train poll clerks;
- b. ensure the organization of poll stations and ballot boxes;
- c. ensure that only Eligible Voters are permitted to vote;
- d. ensure that each Eligible Voter is only permitted to vote once;
- e. conduct a training session for all poll clerks;
- f. provide a list of poll clerks to the ROC;
- g. prepare the ballots;
- h. ensure the security of ballots (both cast and unused);
- i. ensure the security of ballot boxes;
- j. tabulate the ballots;
- k. secure and preserve the ballots after they have been tabulated; and
- l. prepare a written report indicating the number of yes votes and no votes and release the report to the CFS and UVSS as soon as possible after tabulation of the ballots.

**Polling**

23. All polling shall take place by paper ballot.

24. There shall be at least six poll stations to be located at the following locations:

- a. Student Union Building;

- b. Library;
- c. Clearihue Building;
- d. Engineering Lab Wing Building;
- e. McLaurin Building; and
- f. David Strong Building

- 25. On each of the Polling Days, poll stations shall be open continuously between 8:00 am and 4:30 pm.
- 26. Should a stipulated poll station location become unavailable, the Chief Election Officer shall select an alternate location and post reasonable notice of the alternate location.
- 27. At each polling station there shall be two (2) poll clerks in attendance.
- 28. Poll clerks shall be strictly neutral and shall not:
  - a. campaign;
  - b. instruct a voter as to which option on the ballot to select; or
  - c. attempt to influence the decision of a voter as to which option on the ballot to select.
- 29. No employee, officer, or director of the UVSS or CFS shall serve as a poll clerk.
- 30. The Chief Electoral officer shall ensure that a system is in place to verify the eligibility status of each Eligible Voter according to current UVic registration data as of January 30, 2011.

**Tabulation**

- 31. Votes shall be tabulated as soon as possible following the conclusion of voting.
- 32. The Chief Election Officer shall prepare a written report indicating the number of yes votes and no votes and release the report to the CFS and UVSS as soon as possible after tabulation has been completed.

**Scrutineers**

- 33. The CFS and UVSS may each appoint one scrutineer for each polling station to observe the polling procedure at each of the poll stations.
- 34. The CFS and UVSS may each appoint one scrutineer to observe the tabulation of the votes.
- 35. The CFS and UVSS shall provide to the Chief Electoral Officer the names of any scrutineers they appoint.
- 36. The Chief Electoral Officer may expel a scrutineer who attempts to disrupt the polling procedure or vote counting process.

**Violations and Complaints**

- 37. Complaints alleging violations of these rules shall be investigated and ruled upon by the ROC.
- 38. Complaints submitted to the ROC must include the following:
  - a. the specific referendum rule that is alleged to have been violated;
  - b. the specific individual or Registered Party that is alleged to be in violation;
  - c. the specific facts which constitute the violation;
  - d. evidence of these facts; and
  - e. the complainant's name and contact information including e-mail address and telephone number.
- 39. No complaint will be considered by the ROC unless made in writing and received by the ROC within 24 hours of the alleged violation.
- 40. Where a complaint that is submitted complies with the requirements set out herein, the ROC shall investigate the complaint and make a ruling on the complaint within 24 hours of receiving the complaint.
- 41. Where a violation by a Registered Party has occurred, regardless of cause or intent of the parties involved, and that violation has provided an unfair advantage to a campaign, the ROC may assign a penalty that is proportionate and offsets the unfair advantage gained.
- 42. Penalties available to the ROC include but are not limited to:
  - a. the confiscation or destruction of campaign materials;

- b. limitations, restrictions and prohibitions on any type of campaigning, for a specific period of time; and
- c. disqualification.



CANADIAN FEDERATION OF STUDENTS  
FÉDÉRATION CANADIENNE DES ÉTUDIANT-E-S

February 3, 2011

James Coccola, Chairperson  
University of Victoria Students' Society  
PO Box 3035  
Student Union Building  
3800 Finnerty Road  
Victoria BC V8W 3P3

This is Exhibit "C"  
referred to in the Affidavit # 31  
of JAMES COCCOLA  
sworn before me this 14 day  
of FEBRUARY 20 11  
A Commissioner for taking Affidavits  
for British Columbia

Dear Mr. Coccola,

I am in receipt of your letter dated February 2, 2011. As you are undoubtedly aware, the University of Victoria Student Society does not have any role in the referendum under the Canadian Federation of Students bylaws with the exception of nominating individuals to serve on the Federation's Oversight Committee. The authority to administer the referendum rests with the Federation's Oversight Committee and all steps taken in the referendum process can only be taken through the processes set out in the Federation's bylaws and the referendum protocol established by the Oversight Committee. However, I would be happy to forward your suggestions with regard to the referendum protocol to the Federation's nominees to the Oversight Committee for their consideration. I assume you will do the same with the University of Victoria Students' Society's nominees to the Committee.

Further to Mr. Justice McCauley's decision released February 1, 2011 and pursuant to Bylaw I, article 6.b.i, the dates of any membership referendum are set by the Federation's National Executive in consultation with the applicable union.

The National Executive will be meeting by teleconference to set the dates of the referendum shortly and your proposed dates will be taken into consideration. However, you should be advised that referenda on membership in the Federation are not conducted in conjunction with local elections as it diverts attention from the elections themselves. As you will recall, the UVSS advocated in its Application that the vote not be conducted during that period. The National Executive will be considering the voting period March 29, 30 and 31 which immediately follows your local elections and as such, we wish to determine whether there are any dates or events that would conflict with a referendum during this general time frame or the preceding campaigning period of approximately two weeks.

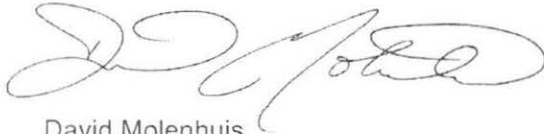
The Federation's bylaws set out that any membership referendum is conducted by a committee consisting of four members, two of whom are nominated by the Federation. In addition, the Federation invites the UVSS to nominate two members to serve on the committee. The National Executive has appointed two members to the Committee, Director of Organising Lucy Watson and Internal Coordinator Brent Farrington.

Please provide the contact information for the UVSS' nominees and Ms. Watson and Mr. Farrington will contact them immediately to establish a first meeting.

Finally, please be advised that pursuant to Bylaw I, article 6.j in order for a vote on decertification to proceed, a member local union must remit all outstanding membership fees not less than six (6) weeks prior to the first day of voting. Our records show that the fees owing are as follows: \$6,489.00 (2008-2009), \$122,569.00 (2009-2010) and approximately \$50,000 (2010-2011). These fees are due and payable on or prior to the six-week deadline. Please advise when the Federation can expect to receive the membership fees collected in trust by the UVSS.

If you have any questions, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read 'D. Molenhuis', written in a cursive style.

David Molenhuis  
National Chairperson



February 4<sup>th</sup>, 2011

David Molenhuis, Chairperson  
Canadian Federation of Students  
338 rue Somerset Ouest/West  
Ottawa, Ontario K2P 1J9

(12)

This is Exhibit "D"  
referred to in the Affidavit # 3  
of JAMES COCCOLA  
sworn before me this 4<sup>th</sup> day  
of FEBRUARY 20 11  
A Commissioner for taking Affidavits  
for British Columbia

Dear Mr. Molenhuis

Thank you for your reply to my letter of February 2, 2011.

In light of the identical membership we share at the University of Victoria, the UVSS fully intends to continue to remain involved in the referendum to ensure, as it has done to date, that the CFS respects the rights of the individual members at UVIC as set out under the CFS bylaws. Our members have every expectation that they will be able to vote to on their membership in the CFS this academic year and the UVSS will continue to make sure that their rights are respected.

As has already been indicated to you on two occasions, the UVSS' appointees to the Referendum Oversight Committee are James Coccola and Rajpreet Sall. I can be contacted by email at [jcoccola@gmail.com](mailto:jcoccola@gmail.com) and by phone 1-250-721-8370. Rajpreet can be contacted by email at [academic@uvss.ca](mailto:academic@uvss.ca) and by phone at 1-250-709-2698.

We ask that you immediately forward our proposed referendum protocol to Lucy Watson and Brent Farrington and provide us with their contact information without delay.

With respect to dates, while it would save money and, in our view, be more efficient to hold the referendum concurrently with the UVSS Board of Directors elections, we are agreeable to the voting dates you have suggested: March 29, 30 and 31, 2011. We confirm that there are no dates or events that conflict with these dates. We look forward to the CFS's immediate confirmation of those dates.

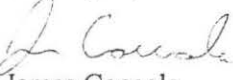
I confirm that the UVSS made payment of \$100,533.94 yesterday representing all CFS membership fees collected for the Fall 2010 semester.

You are claiming that "your records show that the fees owing are as follows: \$6,489.00 (2008-2009), \$122,569.00 (2009-2010) and approximately \$50,000 (2010-2011)" and that the referendum cannot go ahead without payment thereof. The CFS made claim to these amounts for the first time on January 6, 2011. We have carefully reviewed our records and confirm that payment of CFS membership fees are completely up-to-date. We strongly dispute the CFS'

claim that any fees are outstanding. The UVSS views the CFS's claim as a last minute attempt to either delay or deny the individual CFS members at UVIC of their right to vote on continuing membership in the CFS, a right that I note is completely separate from the UVSS's remission of membership fees to the CFS.

Furthermore, the court has already dealt with this matter. As you are aware, Mr. Justice Macaulay ruled on January 6, 2010 that, in light of the late timing of the CFS's claim, a claim that could have been made much earlier, and the extreme prejudice that would be suffered to Mr. Barrios and the UVSS, the CFS is now estopped from advancing such claim.

The UVSS sincerely hopes that Mr. Justice Macaulay was correct in his view that there "is no reason to anticipate that the CFS will refuse to take the necessary steps under the bylaws to ensure that the referendum is held as quickly as possible". However, should the CFS continue to advance its position that a referendum will not be held prior to payment of the fees you claim, the UVSS will not hesitate to apply to Mr. Justice Macaulay for necessary further consequential and ancillary relief.

Thank you,  
  
James Coccola  
UVSS Chairperson



(14)

**From:** uvsschr [chair@uvss.ca]  
**Sent:** Tuesday, February 08, 2011 6:38 PM  
**To:** 'Molenhuis, Dave'  
**Cc:** 'todd.burke@gowlings.com'; 'martin.palleson@gowlings.com'  
**Subject:** Re: Letter from the UVSS

Dear Mr. Molenhuis,

On February 3, 2011, in response to the UVSS's suggestion to hold the referendum during the UVSS Board of Directors elections, the CFS proposed to the UVSS that the referendum voting dates take place on March 29, 30, and 31, 2011. I immediately responded (see my letter of February 4, 2011), advising that the UVSS is agreeable to those dates.

Unfortunately, I have not received any response to my letter of February 4, 2011. As you know, time is of the essence in this matter, yet over a week has passed since Mr. Justice Macauley issued his decision and the CFS has still not scheduled dates for the referendum.

The UVSS requires immediate confirmation that:

- i) the referendum is scheduled to take place on March 29, 30, and 31, 2011; and
- ii) the CFS will cease to pursue its position that the referendum cannot go ahead in the absence of payment of those fees that the CFS claims are outstanding.

Should the UVSS not have your confirmation of the above by 5:00 pm Pacific Standard Time tomorrow, Wednesday February 9, 2011, I will be instructing our lawyers to take steps to reappear before Mr. Justice Macaulay to seek an order that the referendum be held on March 29, 30, and 31st, 2011.

Regards,

James Coccola  
 UVSS Chairperson  
 (P) 250-721-8370  
 (F) 250-472-4379

This is Exhibit "E"  
 referred to in the Affidavit # 31  
 of JAMES COCCOLA  
 sworn before me this 11 day  
 of FEBRUARY 20 11  
 A Commissioner for taking Affidavits  
 for British Columbia



February 9, 2011

James Coccola, Chairperson  
University of Victoria Students' Society  
PO Box 3035 Student Union Building  
3800 Finnerty Road  
Victoria, BC V8W 3P3

This is Exhibit "F"  
referred to in the Affidavit # 3  
of JAMES COCCOLA  
sworn before me this 17 day  
of FEBRUARY 20 11  
A Commissioner for taking Affidavits  
for British Columbia

Dear Mr. Coccola:

Thank you for your letter of February 4, 2011.

We confirm the voting dates for the referendum are March 29, 30 and 31, 2011, subject of course to compliance with applicable CFS Bylaws, as discussed further below.

As requested, the contact information for Lucy Watson and Brent Farrington is as follows:

- (a) Lucy Watson: email – [organiser@cfs-fcee.ca](mailto:organiser@cfs-fcee.ca) and phone number - 613.232.7394; and
- (b) Brent Farrington: email – [b.farrington@cfs-fcee.ca](mailto:b.farrington@cfs-fcee.ca) and phone number - 613.232.7394.

We confirm that we have forwarded your suggestions for a proposed referendum protocol to Lucy Watson and Brent Farrington.

We understand and appreciate that the University of Victoria Students' Society ("UVSS") is committed to seeing that the referendum takes place. However, having selected representatives to the oversight committee (the "Oversight Committee") and been in consultation with respect to referendum scheduling, the direct involvement of the UVSS is, with respect, over. It is the Oversight Committee, now constituted, which, under Article 6.c. of Bylaw 1 of the CFS Bylaws, must administer the referendum. We expect that the four members of the Oversight Committee will make contact and begin to work towards a referendum shortly.

We also confirm receipt of a UVSS issued cheque in the amount of \$100,533.94.

In recent years it has been the practice of the UVSS to combine the membership fees it collects in trust on behalf of the CFS, with the membership fees it collects on behalf of two other organisations, the Canadian Federation of Students-Services ("CFSS") and Canadian Federation of Students-British Columbia ("CFSBC"), into a single cheque that it sends to the CFS. We assume, therefore, in the absence of any accompanying

documentation that the \$100,533.94 amount, along with the payment of \$2,089.85 in December, constitutes membership dues collected in trust on behalf of all three of these organisations. Furthermore, we assume that only \$38,483.92 of the total amount received is fees collected in trust on behalf of the CFS, and that \$12,827.97 and \$51,311.90 are fees that were collected in trust on behalf of the CFSS and the CFSBC, respectively, which the UVSS would expect the CFS to distribute to those organisations. Please confirm whether or not these assumptions are correct. .

As referenced in your letter, and taking in account the payment of \$38,483.92, the CFS does maintain that it is still owed membership fees (the "Outstanding Fees") as follows:

- (a) \$6,489.00 for 2008 – 2009; and
- (b) \$122,569.00 for 2009 – 2010.

Total: \$129,058.00

The origin of the Outstanding Fees is set out in Ms. Watson's third Affidavit sworn January 4, 2011 in the proceeding (the "Proceeding") University of Victoria Students' Society et al v. Canadian Federation of Students, S.C.B.C., Victoria Registry, No. S104638. We expect you have reviewed this Affidavit.

We also expect that you are aware that Article 6.j. of Bylaw 1 of the CFS Bylaws reads:

"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 date of voting."

As is evident from Ms. Watson's Affidavit #3, the issue of the Outstanding Fees has a lengthy history and the UVSS has been aware of this for many years. In fact, in 1995 Michael Gardiner, then a UVSS elected official, commented on this matter in the campus newspaper, The Martlet.

We certainly reject the statement in your letter that the CFS, by raising the Outstanding Fees, is engaged in a "last minute attempt to either delay or deny the individual CFS members at UVic of the right to vote on continuing membership in the CFS". Rather, the CFS simply wants to be paid the Outstanding Fees which are owing to it and needs to ensure that the CFS Bylaws are complied with. We don't see why payment of the Outstanding Fees by the UVSS should delay the referendum.

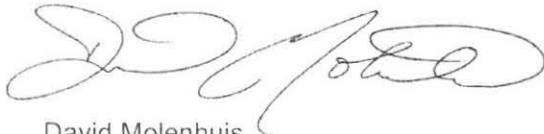
You state in your letter that the right of individual members to vote on continuing membership in the CFS is "completely separate from the UVSS's remission of membership fees to the CFS". With respect, we do not see how this could be so. The right to vote you refer to is provided by the CFS Bylaws. As set out above, the CFS Bylaws expressly make this right subject to prior payment of all outstanding membership fees.

It is also our view that the Court has not made any decision in the Proceeding which would prevent the CFS from asserting a claim to Outstanding Fees in relation to the referendum. We agree that Mr. Justice Macaulay ruled on January 6, 2011 that Ms. Watson's third Affidavit would not be admitted as of that date with respect to the hearing of the Petition as it ought to have been provided earlier pursuant to the Supreme Court Civil Rules. However, in our view, nothing in that ruling affects the ability of the CFS to maintain a claim for the Outstanding Fees at this time.

We do ask that if the UVSS has evidence to suggest that the CFS is incorrect in its calculation of the Outstanding Fees, to please let us see such evidence so that we can consider it.

We would like to hear from you further with respect to the Outstanding Fees.

Regards,



David Molenhuis  
National Chairperson



February 10<sup>th</sup>, 2011

David Molenhuis, Chairperson  
Canadian Federation of Students  
338 rue Somerset Ouest/West  
Ottawa, Ontario K2P 1J9

This is Exhibit "G"  
referred to in the Affidavit #31  
of JAMES CUCCOLA/A  
sworn before me this 11 day  
of FEBRUARY 20 11  
A Commissioner for taking Affidavits  
for British Columbia

Dear Mr. Molenhuis

I am in receipt of your letter of February 9, 2011.

Unfortunately your letter only confirms the dates of the referendum *contingent* on the CFS's continuing allegation that the UVSS somehow owes the CFS fees from 2008-2009 and 2009-2010.

You ask for proof of payment of fees. I will state the obvious. The CFS was served with our application to the BC Supreme Court in mid November 2010. In the petition, the UVSS set out that it paid CFS membership fees of \$232,629 in 2008-2009 and \$242,222.02 in 2009-2010. My first affidavit sworn on November 12, 2010 contains evidence at exhibits "C" and "D" of CFS membership fee payments in 2008-2009 and 2009-2010. In its response to the petition, the CFS did not contest that any CFS membership fees were unpaid. The CFS has not provided a single document demonstrating that the UVSS's membership fees payments to the CFS are deficient. The UVSS did not even learn of the amounts that the CFS was claiming until the first day of the hearing on January 6, 2011.

The CFS has taken the position that the "University of Victoria Students Society does not have any role in the referendum ..." <sup>1</sup> and that "the Federation's Bylaws set out that membership is determined directly by the individual members through on-campus referenda" <sup>2</sup>. In light of these statements and the "sole authority" that the individual members have with respect to membership issues as set out under bylaw 1.3.a, we ask how can the CFS take the position that alleged non-payment of fees by the UVSS stemming back to over a decade ago can somehow deny the current individual members their right to a referendum? If the CFS were correct in its interpretation, then even a debt of only \$1 to the CFS from over a decade ago could deny current individual members

<sup>1</sup> CFS letter to UVSS dated February 3, 2011  
<sup>2</sup> CFS letter to UVSS dated January 14, 2010

their right to vote to leave the CFS. That simply cannot be the correct interpretation of the CFS bylaws and, if it were, that would be unconscionable.

With respect to the issue you raise with respect to how the CFS allocates its fees internally, we have never been apprised of the CFS's practices and, therefore, we are in no position to confirm whether your internal accounting is correct. We are, however, certain that every cent of CFS membership fees of any type ever collected from University of Victoria students has been remitted to the CFS.

Since the CFS has persisted in its position that the referendum dates are only *contingent*, the UVSS has instructed its counsel to schedule a hearing before Mr. Justice Macaulay on an urgent basis to seek an order that the referendum shall be held on March 29, 30, and 31, 2011.

Regards,



James Coccola  
UVSS Chairperson

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**From:** Palleson, Martin [Martin.Palleson@gowlings.com]  
**Sent:** Tuesday, January 04, 2011 10:49 AM  
**To:** Borins, David (Heenan Blaikie)  
**Subject:** UVSS et al v. CFS, SCBC, Van. registry, #10-4638  
**Attachments:** Affidavit #3 - Lucy Watson-OTT\_LAW-2676567-v1.PDF

David,

It became apparent to us yesterday that there is an issue with outstanding fees between the CFS and the UVSS.

As such a 3rd affidavit of Lucy Watson was put together. I attach a copy.

We do think that this is an issue the court ought to be made aware of. In my view, the issue does not affect the validity of the Referendum Petition but it may affect the relief being sought by the petitioners.

If it is not too late, I ask that this affidavit as well be included in the Chambers Record.

Thank you.

**Martin Palleson**  
 Partner  
 604-443-7622  
 gowlings.com

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This is Exhibit "H"  
 referred to in the Affidavit # 3  
 of JAMES COCOPOLA  
 sworn before me this \_\_\_\_\_ day  
 of FEBRUARY 20 11  
 \_\_\_\_\_  
 A Commissioner for taking Affidavits  
 for British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**UNIVERSITY OF VICTORIA STUDENTS' SOCIETY**

**and**

**JOSÉ BARRIOS**

PETITIONERS

AND:

**CANADIAN FEDERATION OF STUDENTS**

RESPONDENT

---

**AFFIDAVIT #3 OF JAMES COCCOLA**

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**DAVID BORINS**  
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