

L. Watson #1
May 26, 2008
NO. S082674
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SIMON FRASER STUDENT SOCIETY

PETITIONER.

AND:

**CANADIAN FEDERATION OF STUDENTS,
CANADIAN FEDERATION OF STUDENTS – SERVICES and
CANADIAN FEDERATION OF STUDENT – BRITISH COLUMBIA COMPONENT**

RESPONDENTS

AFFIDAVIT

I, Lucy Watson, Director of Organising, Canadian Federation of Students ("CFS") and Canadian Federation of Students – Services ("CFS – S"), of #500 – 170 Metcalfe Street, Ottawa, Ontario, K2P 1P3, MAKE OATH AND SAY AS FOLLOWS THAT:

Background

1. I am the Director of Organising with the CFS and CFS – S and have been closely involved with the efforts of the Simon Fraser Student Society (the "SFSS") to defederate from the Canadian Federation of Students and as such have personal knowledge of the matters and facts hereinafter deposed to, save and except where stated to be based on information and belief and where so stated I verily believe the same to be true.

2. I have been Director of Organising for four years. In addition, prior to being Director of Organising, I was with the CFS and CFS – S in the capacity of Internal Coordinator for six years and Ontario National Executive Representative for one year. As Director of Organising, I am involved in initiatives across Canada by student associations to either join the Canadian Federation of Students or to defederate. As

such, I have a great deal of knowledge and experience with the custom and practice in dealing with such initiatives.

3. The CFS is a Canadian non-profit corporation incorporated under what was part 2 of the *Canada Corporations Act* (Canada). The CFS, together with member local associations, are a national association of local student associations and students called the Canadian Federation of Students. The CFS is an extra-provincially registered society in British Columbia.

4. Now produced and shown to me and marked as Exhibit "A" to this my Affidavit is a true copy of the current Constitution and Bylaws (the "CFS Bylaws") of the Canadian Federation of Students.

5. The SFSS was incorporated on March 3, 1967 pursuant to the *Society Act* (British Columbia). Now produced and shown to me and marked as Exhibit "B" to this my Affidavit is a true copy of a recent corporate search of the SFSS.

6. The SFSS was a founding member of the Canadian Federation of Students as of October, 1981. The student members of the SFSS approved by referendum full membership in 1982. The SFSS has been a member ever since.

7. Now produced and shown to me and marked as Exhibit "C" to this my Affidavit is a true copy of the Rules of the SFSS.

8. I have read the Affidavit of Derrick Harder #1 sworn herein (the "Harder Affidavit #1"). Mr. Harder attaches as Exhibit "C" to this affidavit a copy of an agreement of December 22, 1982 between the Canadian Federation of Students and Simon Fraser Student Society. I note that this document is unsigned by the Canadian Federation of Students. I have been unable to locate a copy of this agreement, signed or unsigned.

9. As of December, 1982, the Canadian Federation of Students was a new organisation and its bylaws did not contain a process for holding referenda. Thus, the practice was for member local associations to conduct referenda which related to the Canadian Federation of Students in accordance with that local organisation's rules and

procedures. However, once the CFS Bylaws were amended so as to include a mandatory referenda process as of May, 1995, the clear and invariable practice became and has been since for local associations to conduct such referenda in accordance with the CFS Bylaws under the authority and jurisdiction of an Oversight Committee, as described below. Local association practices are no longer followed. The further practise of the Canadian Federation of Students and its members is that in order for a referendum to be valid, effective and binding on the Canadian Federation of Students it must be conducted in accordance with the CFS Bylaws.

10. Now produced and shown to me and marked as Exhibit "D" to this my Affidavit is a true copy of an agreement dated July 20, 1987 entered into between the CFS, the CFS – S and the SFSS.

11. The July 20, 1987 agreement superseded the earlier December, 1982 agreement and incorporates the CFS Bylaws referenda rules and procedures pursuant to paragraph 6:

"6. In all other matters the Member Local Association agrees to be bound by the by-laws of the Federations as duly amended from time to time."

12. The current membership fees received by the Canadian Federation of Students (inclusive of fees to the Canadian Federation of Students – British Columbia Component ("CFS – British Columbia"), a separate and distinct British Columbia society associated with the CFS) as a result of the continued membership of the SFSS is approximately \$470,000 per annum.

13. In March, 1997, the SFSS polled its members with respect to whether the members wished to stay in the Canadian Federation of Students. The CFS records indicate that the unofficial results were 1,859 students voting to continue with 1,176 voting against. At the time of the 1997 vote, the CFS took the position that had a majority of Simon Fraser University students voted in favour of withdrawing, in order to depart the SFSS would have had to then deliver a petition and hold a referendum in accordance with the CFS Bylaws.

14. Now produced and shown to me and marked as Exhibits "E" through "G" to this my Affidavit are true copies of the following correspondence:

- (a) letter dated April 18, 2007 from SFSS to the CFS;
- (b) letter dated May 8, 2007 from the SFSS to the CFS; and
- (c) letter dated May 18, 2007 from the CFS to the SFSS, in response.

15. In August, 2007, pursuant to the CFS Bylaws, a petition (the "Petition") of members of the SFSS was delivered to the National Executive of the CFS requisitioning a defederation referendum (the "Referendum") pursuant to the CFS Bylaws. No date for the Referendum was set out in the Petition.

16. Now produced and shown to me and marked as Exhibit "H" to this my Affidavit is a true copy of the Petition.

17. Now produced and shown to me and marked as Exhibits "I" and "J" to this my Affidavit are true copies of the following correspondence:

- (a) letter dated September 21, 2007 from the SFSS to the CFS; and
- (b) letter dated October 12, 2007 from the CFS to the SFSS, in response.

18. Now produced and shown to me and marked as Exhibits "K" and "L" to this my Affidavit are true copies of the following correspondence:

- (a) letter dated November 5, 2007 from the SFSS to the CFS; and
- (b) letter dated December 3, 2007 from the CFS to the SFSS, in response.

The Oversight Committee

19. As required by the CFS Bylaws, after the receipt of the Petition by the CFS, an oversight committee (the "Oversight Committee") was established pursuant to the CFS Bylaws to take responsibility for and authority over the Referendum. The Oversight Committee consists of:

- (a) Kyall Glennie, SFSS representative;
- (b) Michael Letourneau, SFSS representative;
- (c) Ben Lewis, CFS representative; and
- (d) myself, as a CFS representative.

20. As recorded in Exhibit "L", at its fall meeting the CFS national executive did select CFS's representatives for the Oversight Committee being Ben Lewis and myself. As of December 3, 2007, the CFS was waiting for the SFSS to select its representatives for the Oversight Committee. The CFS was told of the identity of the SFSS representatives by way of correspondence on January 22, 2008.

21. After the letter from the SFSS to the CFS dated November 5, 2007 and the CFS's response of December 3, 2007 (Exhibits "K" and "L" herein), the SFSS and its representatives appeared to accept and acted as though the Referendum was to be conducted in accordance with the CFS Bylaws and, in particular, that the Oversight Committee had responsibility for and authority over the Referendum, until the involvement of the SFSS's Independent Electoral Commission ("IEC"), described below.

Referendum Date

22. Because the Petition did not specify a date for the Referendum, in accordance with the CFS Bylaws and the longstanding practice and custom of the Canadian Federation of Students, setting the date for the Referendum is a matter for the Oversight Committee. No date was ever agreed to by the Oversight Committee.

23. The SFSS proposed that the Referendum take place on March 18-20, 2008. This is the same date that the general elections for the SFSS took place. At the first meeting of the Oversight Committee, which took place by telephone conference on February 3, 2008, the CFS representatives took the position that the Referendum and the SFSS's general elections could not take place on the same dates. The reason for this, expressed by the CFS representatives to the SFSS's representatives at that first meeting, was that the issue of the CFS membership was to play a significant role in the

SFSS elections and the campaign leading up to such elections. As a result, having the elections and the Referendum on the same day undoubtedly confused the two issues such that the question of membership in the Canadian Federation of Students became caught up with the question of who the members of the SFSS wished to elect for 2008-2009. Also, attempting to hold a referendum pursuant to the CFS Bylaws and a SFSS general election at the same time led to confusion over who was in charge – the Oversight Committee or the IEC, which runs SFSS general elections.

24. The Oversight Committee CFS representatives offered to hold the Referendum on dates other than March 18-20, 2008 but the SFSS refused to change its position regarding the dates.

25. As set out in Harder Affidavit #1, the SFSS and the IEC held a vote (the "Vote") of Simon Fraser University students of March 18 – 20, 2008 regarding membership in the Canadian Federation of Students.

Oversight Committee Meetings

26. At the time of the Vote there remained a number of critical unresolved issues at the Oversight Committee with respect to the Referendum, including:

- (a) the date that the Referendum was to be held, including campaign and voting dates;
- (b) how polling was to be conducted;
- (c) polling station locations (including polling at campuses other than the Burnaby campus);
- (d) complaints regarding alleged violation of Referendum rules, including process and penalties; and
- (e) what to do about early campaigning by the SFSS.

27. Now produced and shown to me and marked as Exhibit "M" to this my Affidavit is a true copy of the minutes for the Oversight Committee which have been finalized to date.

28. The minutes for the February 3, 2008 meeting read in part:

"2. Other Business:

Watson registered serious concern about the pre-campaigning in which the Simon Fraser Student Society had been engaged since the early fall. It was agreed that the Committee would first establish the criteria for campaign materials before discussing the issue of pre-campaigning."

29. Although as can be seen from Exhibit "M" decisions were made with respect to campaign materials, the issue of early campaigning, which is discussed further below, was not resolved.

30. Some of the decisions with respect to campaign materials which were agreed upon by the Oversight Committee are set out in the Oversight Committee minutes dated February 11, 2008, which read in part as follows:

"Decisions – Campaign Materials:

The Committee shall approve all campaign-specific materials prior to distribution.

The Committee will not approve materials that are defamatory, libellous or factually incorrect. The onus is on the author of the proposed campaign materials to demonstrate the contents are correct in the event they are challenged or questioned. The Committee shall not engage in fact checking unless requested to do so. Campaigners may challenge the facts on campaign materials should they believe them to be incorrect, and may submit complaints to that effect to the Committee.

Materials that have not received Committee approval cannot be distributed.

...
Decisions – Campaign (General)

In order to participate in the referendum, individuals and campaign teams must register with the Oversight Committee."

31. The minutes for the February 19, 2008 Oversight Committee meeting read, in part:

"Question – Decision:

The referendum question shall read:
'Are you in favour of maintaining membership in the Canadian Federation of Students?
Yes or No'"

32. The minutes for the February 28, 2008 Oversight Committee meeting read, in part:

"Campaign Materials – Decisions:

...

Where the Oversight Committee determines that campaign materials which have not been approved by the Committee are being distributed, displayed or used by a campaign, then the Committee shall order the materials immediately withdrawn or removed.

Campaigning – Decision:

...

In order to participate in the referendum, individuals or campaign sides must register with the Oversight Committee. A registration form shall be available from the Referendum Oversight Committee."

33. The minutes for the March 11, 2008 Oversight Committee meeting read, in part:

"Materials – Decisions:

The Committee may assign an additional penalty, which may include destruction of the material or a restriction on campaigning provided that the penalty is balanced against the volume of the materials distributed or its effect, and that no destruction shall take place until the appeal period has expired."

34. The custom and practice of the CFS is that all discussions and deliberations of oversight committees are to be confidential. This was agreed to by all representatives

of the Oversight Committee at the first meeting of the Oversight Committee. However, the SFSS representatives did not maintain that confidentiality.

35. Positions being taken by the CFS representatives during in camera Oversight Committee meetings were reported in the Simon Fraser student newspaper, The Peak.

36. Now produced and shown to me and marked as Exhibit "N" to this my Affidavit is a true copy of an excerpt from the February 18, 2008 edition of The Peak.

37. I also understand that open SFSS board meetings occurred where, again, the positions of CFS Oversight Committee representatives were reported to the public.

Early Campaigning

38. One of the objectives of the CFS Bylaws which deal with defederation procedure is to provide for a fair and balanced campaign of an agreed-upon duration preceding a referendum. Oversight committees are to govern such campaigns to ensure that such campaigns are conducted in accordance with the rules by all participants.

39. Unfortunately, since at least August, 2007, the SFSS actively campaigned to convince Simon Fraser University students to vote against continued membership in the Canadian Federation of Students.

40. The SFSS produced inaccurate materials denouncing the Canadian Federation of Students and widely distributed such materials online and at Simon Fraser University campuses.

41. Now produced and shown to me and marked as Exhibit "O" to this my Affidavit is a true copy of excerpts from the SFSS webpage as of February 26, 2008. The webpage contains the link entitled:

"We Want Out! Learn more about the SFSS campaign to cease membership in the Canadian Federation of Students (CFS)".

42. Clicking on that link led one to the "We Want Out" SFSS page which in turns led by links to other materials which denounce the Canadian Federation of Students.

43. Much of this material has been included with Exhibit "O".
44. The campaign of the SFSS prior to March, 2008 included "I Want Out" posters which were put up at Simon Fraser University campuses. Now produced and shown to me and marked as Exhibit "P" to this my Affidavit are true copies of such posters. As is evident from Exhibit "P", these "messages" are from the SFSS.
45. Now produced and shown to me and marked as Exhibit "Q" to this my Affidavit are true copies of further "We Want Out" posters which were put up at Simon Fraser University campuses prior to March, 2008 by the SFSS. These posters contain pictures of then current officers and directors of the board of the SFSS.
46. Now produced and shown to me and marked as Exhibit "R" to this my Affidavit are true copies of other SFSS campaign posters which were put up at Simon Fraser University campuses prior to March, 2008.
47. The "I Want Out" campaign was also publicized by use of handbills. Now produced and shown to me and marked as Exhibit "S" to this my Affidavit is a true copy of a handbill which was distributed at Simon Fraser University campuses prior to March, 2008.
48. Now produced and shown to me and marked as Exhibit "T" to this my Affidavit is a true copy of another example of a handbill which was distributed at Simon Fraser University campuses prior to March, 2008.
49. Now produced and shown to me and marked as Exhibit "U" to this my Affidavit is a true copy of a one-half page ad which was placed in The Peak student newspaper in the February 18, 2008 edition.
50. Now produced and shown to me and marked as Exhibit "V" to this my Affidavit is a true copy of signs which were affixed to Canadian Federation of Students posters unrelated to the Referendum located at the Simon Fraser University campuses prior to March, 2008.

51. As well, SFSS executive officers and directors set up and participated in internet Facebook groups which had as a theme of defederation from the Canadian Federation of Students. Now produced and shown to me and marked as Exhibit "W" to this my Affidavit is a true copy of printouts from such Facebook websites as of February, 2008.

52. There are many concerns with the materials produced and distributed by the SFSS prior to March, 2008. Some examples are as follows:

- (a) with respect to the poster marked as Exhibit "P" entitled "I Want Out of the CFS Because it is Unaccountable", the Canadian Federation of Students does not avoid or obfuscate accountability as suggested in the poster and, further, correspondence sent by SFSS representatives to the Canadian Federation of Students has been replied to;
- (b) with respect to the poster marked as Exhibit "P" entitled "I Want Out of the CFS Because it is Anti-Democratic", contrary to what is suggested, the Canadian Federation of Students does not involve itself in the affairs of member local associations, including elections;
- (c) with respect to the poster marked as Exhibit "R" entitled "The CFS: SFU's Bad Room-mate", the statements "cult-like atmosphere", "string of scandals" and "cloudy budgets" are false and defamatory. The CFS has an unblemished financial record having always received unqualified audits. Further, CFS budgets are established and reviewed by members at twice-yearly general meetings. The statement "collective resources used to interfere in local elections" is also false as the Canadian Federation of Students does not involve itself in the affairs of local member associations, including elections. As well, the statement "dodgy promotions and hiring" is false and defamatory as all hirings are conducted pursuant to collective agreements negotiated by the employer and the union. Further, the CFS workplace is non-hierarchical in that all positions are considered equal and are paid the same. Individuals employed by the Canadian Federation of Students who wish to secure a

different position within the organisation are obliged to apply for the position internally and are evaluated by a hiring committee;

- (d) with respect to the poster marked as Exhibit "R" entitled "\$430,000.", neither the CFS nor the CFS – S gave "unauthorized loans to organizations with disastrous financial problems (like Douglas SU)". What did happen was after the Douglas Students' Union failed to pay certain bills, CFS – S was informed by a health insurance company that, without immediate payment, all health and dental claims by Douglas College students would be rejected. To avoid students being left without coverage, CFS – S paid the insurer the bulk of the money owed to ensure that coverage was maintained for CFS – S members attending Douglas College. With respect to "influence the outcomes of elections and hirings at independent student unions", the Canadian Federation of Students does not involve itself in the affairs of individual member local associations, including elections;
- (e) with respect to the attachments marked as Exhibit "V", and the reference to "CFS = posters (and not much else)", this is misleading as the Canadian Federation of Students offers various money-saving services to both individual students and student unions and, as well, undertakes comprehensive campaigns and advocacy work; and
- (f) with respect to the "The Peak" ad marked as Exhibit "U", this ad states that student members are kept "at armslength from its [CFS] spending decisions" which is false. The members of the Canadian Federation of Students establish and review the budgets of the organisation at twice-yearly meetings. Further, representatives of member local associations develop the campaigns and other activities of the Canadian Federation of Students.

53. The examples given in this Affidavit of early defederation campaigning by the SFSS and the inaccuracies contained in the material produced are not intended to be

exhaustive. There may well be a lot of other material which I am not aware of which was produced and distributed by the SFSS through its officers and directors.

54. As can be seen by the CFS Bylaws and the decisions by the Oversight Committee referred to above regarding campaigning, the objective is that all campaign material be reviewed by the Oversight Committee and approved prior to distribution in an effort to make sure that standards of fairness and accuracy are met with respect to such material. This did not occur with respect to any of the SFSS early campaigning material.

55. The fact that the SFSS campaigned for defederation since August, 2007 using the materials described above made it impossible to have a balanced and fair Vote on March 18-20, 2008.

March 18 – 20, 2008 Vote

56. On February 25, 2008, the board of the SFSS held a meeting at which it decided to independently present the following two questions to voters on March 18-20, 2008 outside of the mandate of the Oversight Committee and the CFS Bylaws:

- (a) "Are you in favour of maintaining membership in the Canadian Federation of Students?"; and
- (b) "If the Simon Fraser Student Society ceases to be a member of the Canadian Federation of Students, do you agree that the former CFS semesterly membership fee would be redirected into a Society Development Fund which will result in no overall fee increase for students?"

(the "Two Questions")

57. Pursuant to the CFS Bylaws, it is the Oversight Committee which has the exclusive jurisdiction and authority to decide the question for the Referendum. By attempting to unilaterally impose questions for the Referendum, the SFSS acted contrary to the CFS Bylaws. In fact, to the extent that the Vote was intended to be the

Referendum, using the Two Questions was contrary to the agreement reached by the Oversight Committee regarding the question to be put forward, set out above. In addition, combining the Two Questions in this way biased the result against continued membership with the Canadian Federation of Students.

58. Now produced and shown to me and marked as Exhibit "X" to this my Affidavit are true copies of letters from counsel for the CFS (Gowlings) to the SFSS dated February 27 and 29, 2008, respectively, which set out the CFS's concerns with respect to the proposed Vote. These letter accurately set out the facts and CFS positions.

59. Despite the concerns raised by the CFS, the SFSS unilaterally decided to proceed with the Vote and in order to do that engaged the IEC to deal with all aspects of the Vote to the exclusion of the Oversight Committee, in effect, wrongly usurping the authority and jurisdiction of the Oversight Committee.

60. Now produced and shown to me and marked as Exhibit "Y" to this my Affidavit is a true copy of a Notice of Referendum for the 2008 Simon Fraser Student Society general election which was posted at Simon Fraser University campuses.

61. Because of the involvement of the IEC and the resulting confusion over the jurisdiction and authority of the Oversight Committee, campaign materials in the two weeks preceding the Vote were not properly reviewed or approved.

62. Now produced and shown to me and marked as Exhibit "Z" to this my Affidavit is a string of e-mails between myself and Kyall Glennie, an SFSS representative on the Oversight Committee, on March 8, 2008. On that date I sent Kyall Glennie an e-mail which read, in part:

"Hello everyone,

I think we need to meet this weekend in order to review materials submitted by the "yes" side and those submitted by Garth Yule. I am concerned that our failure to meet will unfairly prejudice the "yes" side which is following the referendum rules while the "We Want Out" / "Vote No" campaign is distributing unapproved materials on campus."

Kyall Glennie wrote back saying, in part:

"I hear your concerns Lucy but we have never determined a "pre-campaign" period, nor deemed a campaign period, for any referendum dates that we have proposed. Thus, the referendum rules we have set to date have been in effect followed, in my view."

My response, in part, was:

"Garth Yule (presumably acting for the as yet unregistered "no" side) has also submitted materials for the Committee to review. However, these materials are in circulation despite not being approved by the Referendum Oversight Committee."

63. Now produced and shown to me and marked as Exhibit "AA" to this my Affidavit is a true copy of a string of e-mails between Paul Browning, a member of the SFSS, and J.J. McCullough, the Chief Electoral Officer at the IEC responsible for overseeing the Vote of March 8 and 9, 2008. As is evident, Paul Browning raises concerns and questions as to how the Vote is being conducted. Mr. McCullough writes back saying, in part:

"Sometime last month, the Board of Directors voted to suspend AP-27 for the purposes of the CFS referendum. AP-27 is the policy which outlines all normal rules governing referendums at the Society. This means that I am not conducting the CFS referendum according to normal rules, and am instead allowing both sides to campaign fairly freely, without spending limits, etc.

I've never registered formal "sides" either, largely because a) the only real reason to register sides is to impose spending limits, and b) because it's very obvious who the "sides" in this feud already are.

Nevertheless, the board has recently started to submit materials to the IEC for approval anyway. I am not sure of what practical relevance this is, and I doubt the CFS will start doing that for their materials, but I'm not really too concerned either way."

64. Now produced and shown to me and marked as Exhibit "BB" to this my Affidavit is a true copy of a letter dated March 10, 2008 from CFS's counsel to the SFSS with respect to problems with campaign materials. Again the facts and CFS positions set out in this letter are accurate.

65. The Vote occurred, in effect, without any of the rules, control or supervision that would normally occur under the CFS Bylaws Oversight Committee process.

66. Now produced and shown to me and marked as Exhibit "CC" to this my Affidavit are true copies of the following correspondence:

- (a) letter dated March 12, 2008 from Mr. McCullough to the Oversight Committee, enclosing a letter dated March 11, 2008 from Mr. McCullough to the CFS; and
- (b) letter dated March 18, 2008 from CFS's counsel to Mr. McCullough, in response. The facts and CFS positions in this latter letter are accurate.

67. Now produced and shown to me and marked as Exhibit "DD" to this my Affidavit are true copies of the following correspondence:

- (a) letter dated March 12, 2008 (faxed March 18, 2008) from the SFSS to the CFS's counsel; and
- (b) letter dated March 31, 2008 from Gowlings to SFSS in response. The facts and CFS positions in this latter letter are also accurate.

68. In particular, the CFS representatives on the Oversight Committee did object to materials being used by the SFSS in the two weeks prior to the Vote as set out in Gowlings March 31, 2008 letter but none of the concerns raised by the CFS representatives were ever addressed.

69. Now produced and shown to me and marked as Exhibit "EE" to this my Affidavit is a true copy of material which was used by the SFSS in its campaign two weeks prior to the Vote.

70. With respect to the material at Exhibit "EE":

- (a) the poster entitled "Compare and Contrast":

- (i) item 1 which states "Ontario-centered bureaucracy that won't let you leave" is false as the Canadian Federation of Students is a national organisation with members in every province and the CFS Bylaws set out a process by which members can and do leave;
 - (ii) item 3 which states "stalls out students' attempts to affect change" is false as member local associations can propose amendments for consideration at twice-yearly general meetings and, in addition, members are encouraged to propose ideas and motions for campaigns, services and policies of the organisation. The campaigns and government relations strategy, official documents and financial documents (including budgets), are established and/or reviewed by the membership at the Canadian Federation of Students' general meetings;
 - (iii) item 4 which states "throws lawyers at student journalists, refuses to work with other student groups", is false and defamatory as the Canadian Federation of Students does not refuse to work with other student groups and in fact has close working relationships with many such groups such as the Sierra Youth Coalition;
 - (iv) item 5 which states "prefers conformity, obedience and yesmanship" is false and defamatory;
- (b) the cartoon entitled "Vote: March 18, 19 & 20" is defamatory;
 - (c) the "CFS 'Advocacy' Flowcharts" inaccurately portrays decision making within the Canadian Federation of Students;
 - (d) at the poster entitled "The CFS: Strong Words, Weak Actions":
 - (i) the reference to the CFS National Office conveniently "taking credit for work they didn't do themselves" is false as the Canadian Federation of Students is the only national student organisation that

- lobbied for a national system of grants (and has done so since its inception in 1981) and, in addition, four political parties did not support a national system of grants;
- (ii) the statement that the CFS Bylaws "are intentionally designed to make it very difficult to leave" is false. The CFS Bylaws provide a transparent process for student members to decide to join or leave the Canadian Federation of Students by way of a referendum. The CFS Bylaws were proposed and adopted by the member local associations, including the SFSS;
 - (iii) the reference to the CFS treating "non-member schools like hostile enemies" is false as the Canadian Federation of Students enjoys a good working relationship with many student unions and schools that are not members;
 - (iv) the statement that "loyal CFS staff members shut down dissenting student voices" is false as the CFS staff does not have the ability to "shut down voices". CFS staff do not exercise a vote at meetings of the Canadian Federation of Students and are the lowest in priority in the speaking-list hierarchy;
 - (v) the reference to the "unauthorized secret loans to the Douglas Students' Union" is false as explained above;
- (e) the cartoon entitled "The CFS: Wasting Our Money" is misleading. It is the membership of the Canadian Federation of Students (which includes the SFSS) which makes budgetary decisions and sets priorities. As well, the Canadian Federation of Students provides various money-saving services to both individual student members and member local associations as well as undertaking comprehensive campaigns and advocacy work, contrary to the suggestion in the cartoon;

- (f) the poster entitled "I Want Out of the CFS Because There's a Better Way" states that "it's too bad the CFS won't work with anyone that criticizes them" which is false. The Canadian Federation of Students works with many individuals and groups and does not avoid doing so because such persons have levelled criticism at the organisation;
- (g) the poster entitled "I Want Out of the CFS Because Something Smells Bad" is defamatory; and
- (h) the cartoon entitled "CFS Lemons" is defamatory.

71. Now produced and shown to me and marked as Exhibit "FF" to this my Affidavit is a true copy of an e-mail dated April 3, 2008 sent to the Oversight Committee by an SFSS Hafeez. I can confirm that the IEC website was as described in this e-mail.

72. Now produced and shown to me and marked as Exhibit "GG" to this my Affidavit is a true copy of an excerpt from the website of the IEC as of March 2, 2008 which describes the IEC's position on the jurisdiction and authority of the Oversight Committee with respect to the Referendum.

73. During and following the Vote, a number of written complaints were made by SFSS members of voting and polling infractions to the IEC. The complaints were dismissed with no investigation or explanation. These complaints include:

- (a) SFSS representatives campaigning within the 15-foot "no-campaigning zone" at polling stations and influencing the electoral process and voting at polling stations;
- (b) SFSS scrutineers campaigning and influencing the electoral process and voting at polling stations;
- (c) SFSS poll clerks campaigning and influencing the electoral process and voting at polling stations;

- (d) IEC officers campaigning and influencing the electoral process voting at polling stations;
- (e) unsupervised ballots taken outside of the polling area and completed outside of the polling area;
- (f) improper, unsupervised sealing, transportation and disposal of ballots and ballot boxes;
- (g) lack of the requisite two poll clerks at polling stations during voting;
- (h) SFSS members being turned away although presenting the requisite valid student numbers and identification;
- (i) tampering with completed ballots by poll clerks;
- (j) closure of polling stations during voting hours; and
- (k) polling stations running out of ballots during voting hours.

(the "Infractions")

74. Now produced and shown to me and marked as Exhibit "HH" to this my Affidavit is a true copy of an e-mail of March 20, 2008 from Andrew Ferguson, an SFSS member, to the IEC setting out the Infractions. I am informed by Mr. Ferguson and others noted in his e-mail of March 20, 2008 and I verily believe that the Infractions did occur.

75. Now produced and shown to me and marked as Exhibit "II" to this my Affidavit is a true copy of an e-mail dated March 28, 2008 from Andrew Ferguson to Mr. McCullough with respect to the IEC's decision to do nothing about the Infractions.

76. On or about March 26, 2008 it came to my attention that Mr. McCullough, the Chief Electoral Officer at the IEC responsible for overseeing the Vote, holds an anti-CFS bias. This has been made clear by certain correspondence from Mr. McCullough. Now produced and shown to me and marked as Exhibit "JJ" to this my Affidavit is a true

copy of a transcript of an MSN message between Jeremy David Peters and Mr. McCullough on or about April 10, 2007.

Lack of Participation of Simon Fraser University Kamloops Campus

77. Now produced and shown to me and marked as Exhibit "KK" to this my Affidavit is a true copy of an e-mail sent to me by Michael Letourneau, an SFSS representative on the Oversight Committee, dated March 24, 2008. This e-mail and the attached compilation of votes demonstrates that no Simon Fraser University students at the Kamloops campus participated in the Vote as there was no polling station at that campus. As indicated above, the location of polling stations was one of the issues outstanding at the Oversight Committee when the SFSS decided to hold the Vote without the Oversight Committee and, instead, engaged the IEC to carry out the Vote.

78. Now produced and shown to me and marked as Exhibit "LL" to this my Affidavit is a true copy of an e-mail of May 22, 2008 from Yvonne Cote, President of the student council at the Simon Fraser University at Kamloops to the CFS raising concerns about the lack of participation of the Kamloops campus in the Vote.

Participation of Simon Fraser University Graduate Students

79. As noted in Exhibit "II", Andrew Ferguson, a student at Simon Fraser University, raised with the IEC on more than one occasion the issue of the participation of graduate students in the Vote.

80. I have reviewed materials found at the website of The Graduate Student Society at Simon Fraser University (the "Graduate Society") as well as CFS records on the formation of this society.

81. From this information, I believe that the following chronology respecting the formation of the Graduate Society is accurate:

- (a) at a referendum of SFSS members which took place March 20 – 22, 2007, the following referenda questions were passed:

- (i) "Do you agree that a separate and independent graduate student society should be created to represent the interests of the graduate students at SFU?";
 - (ii) "If the graduate students' society is created, do you agree that graduate students should no longer be represented by the SFSS?";
and
 - (iii) "If the graduate students' society is created, do you agree that the unrestricted fee graduate students pay the SFSS should instead be remitted to the graduate students' society once incorporated?"
- (b) The constitution and bylaws of the Graduate Society are dated July 11, 2007.
 - (c) The Graduate Society was incorporated July 26, 2007.
 - (d) On October 10, 2007, at an annual general meeting of the SFSS the constitution and bylaws of the SFSS were amended to "reflect a solely undergraduate student society".
 - (e) On October 31, 2007, the Graduate Society held referenda with respect to student fees.
 - (f) Also in October, 2007, referenda were passed by the members of the SFSS to remit student fees collected by the SFSS from graduate students to the new Graduate Society.
 - (g) As of February 6, 2008, the Graduate Society opened a bank account at Scotia Bank and funds were transferred into the account as part of the Benefit Plan Reserve Fund.
 - (h) As of February 7, 2008, the Student Society Designation Regulation pursuant to the *University Act* (British Columbia) with respect to the Graduate Society was enacted.

- (i) In March, 2008, there was an election process for the Graduate Society and, afterwards, the acclaimed representatives assumed positions as of May 1, 2008, taking over from an initial graduate counsel and executive committee established pursuant to the Graduate Society's constitution and bylaws.
 - (j) On February 21, 2008, the inaugural annual general meeting of the Graduate Society was held. As well, an annual report for the Graduate Society of that date was filed.
 - (k) On February 26, 2008, the Graduate Society filed a tax return.
82. There are approximately 4,200 graduate students at Simon Fraser University.
83. Now produced and shown to me and marked as Exhibits "MM" – "SS" to this my affidavit are true copies of the following:
- (a) Exhibit "MM" – recent corporate search of the Graduate Society at Simon Fraser University indicating an incorporation date of July 26, 2007 and a last annual report date of February 21, 2008;
 - (b) Exhibit "NN" – the Student Society Designation Regulation pursuant to the *University Act* (British Columbia), February 7, 2008;
 - (c) Exhibit "OO" – constitution and bylaws of the Graduate Society dated July 11, 2007;
 - (d) Exhibit "PP" – the Graduate Society webpage dated May 14, 2008;
 - (e) Exhibit "QQ" – excerpt from the SFSS independent electoral commission webpage printed May 14, 2008, with respect to the SFSS referenda questions of March, 2007;
 - (f) Exhibit "RR" – Graduate Society graduate counsel meeting minutes; and
 - (g) Exhibit "SS" – Graduate Society executive committee minutes.

84. Despite the foregoing, graduate students participated in the Vote.

Post Vote

85. Now produced and shown to me and marked as Exhibit "TT" to this my Affidavit is a true copy of the letter from counsel for the CFS to counsel for the SFSS dated April 28, 2008. The facts and CFS positions in this letter are accurate.

86. The last Oversight Committee meeting occurred on March 28, 2008. As indicated by Exhibit "M", in that meeting I reiterated CFS's position that the Vote was not a binding or effective Referendum and offered to continue to meet in order to implement a Referendum in accordance with the CFS Bylaws.

87. The Canadian Federation of Students would suffer significant harm should the SFSS leave. Not only would the departure of the SFSS mean a loss of membership fees but also the withdrawal of the SFSS would weaken the Canadian Federation of Students in British Columbia and across Canada and could have adverse consequences with respect to the continued participation of other British Columbia student associations.

Affidavit of Titus Gregory

88. I have read Affidavit #1 of Titus Gregory sworn herein including Exhibit "A" which is an Affidavit sworn in another proceeding.

89. I do not agree with Mr. Gregory's description of what was decided by Mr. Justice McEwan on March 14 and 20, 2008. The transcripts of the proceedings will have to speak for themselves.

90. With respect to Exhibit "A" to Mr. Gregory's Affidavit (the "KSA Gregory Affidavit"), I make the following statements in reply.

91. In response to paragraphs 5 – 15 of the KSA Gregory Affidavit, it is most often member local associations who propose changes to the CFS Bylaws. Only member local associations can vote on proposed changes to the CFS Bylaws. Although the

National Executive can propose CFS Bylaw changes, it does so rarely and did not propose any of the changes to the defederation rules and procedures. My understanding of the reason given for these CFS Bylaw changes, expressed by the member local organisations who proposed the changes, was that if one member local association wished to withdraw from the national association, other member local associations needed to have the ability to participate in the defederation referendum and therefore needed to have sufficient notice so as to allow for such participation to occur.

92. In response to paragraph 16 of the KSA Gregory Affidavit, the dispute referred to has now been resolved between the CFS and the Acadia Students Union as of December, 2007. The CFS Bylaws are intact.

93. In response to paragraph 20 of the KSA Gregory Affidavit, I note that of the 35 referenda referred to in paragraphs 18 and 19 of the KSA Gregory Affidavit, Mr. Gregory only points to two examples of what he calls "significant difficulties" with the referendum oversight committee model. In each of these two cases, what is reported is not that the referendum was disrupted or unable to go ahead but, rather, that a particular student was unhappy. In my experience, the oversight committee process can and will work, given sufficient time and effort.

94. There was a defederation referendum with respect to the University of Victoria Graduate Students' Society on March 18 – 20, 2008. There was an oversight committee for this referendum and I was on that committee. In that situation, although the executive and board of the Society supported defederation and appointed two representatives to this oversight committee, the oversight committee functioned smoothly and there were no procedural difficulties.

95. In response to paragraphs 23 - 26 of the KSA Gregory Affidavit, the "I am CFS" program referred to was developed to raise the profile of the CFS – British Columbia on post-secondary campuses province-wide. The program was not focused on the Lower Mainland. The use of advertising space in Skytrain stations and Skytrain buses was, of course, confined to the Lower Mainland because that is where such locations are.

96. The "I am CFS" program has been in place long before the members of the SFSS petitioned the National Executive of the CFS to conduct a referendum on continued membership with the Canadian Federation of Students. This program is meant to raise awareness of the CFS – British Columbia amongst post-secondary students across British Columbia. The materials associated with it are meant to outline what the CFS – British Columbia is, what it does and what services are offered by the CFS – British Columbia to members. The critical difference is that none of this CFS – British Columbia material directly addresses the Referendum. On the other hand, the campaign material distributed by the SFSS since August 2007 clearly focused on the Referendum.

97. The CFS is obliged by the members of Canadian Federation of Students to keep students of member local associations informed about the CFS and its activities. The communication referred to here is a central part of being a member of the Canadian Federation of Students. The CFS is obliged to provide information with respect to services it offers to member students. So for example the posters reproduced as Exhibit "O" to the KSA Gregory Affidavit describe CFS projects such as environmental sustainability, CFS services that come with membership and CFS lobbying efforts done on behalf of post-secondary students across Canada. Again, none of these materials refer to the Referendum.

98. In reply to paragraph 27(a) of the KSA Gregory Affidavit, the motion referred to was defeated by votes of member local associations. The National Executive of the CFS does not vote.

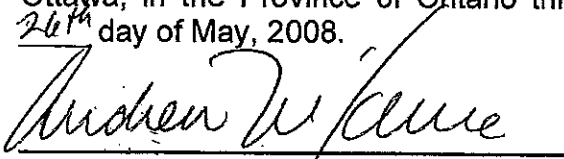
99. In reply to paragraph 27(b) of the KSA Gregory Affidavit, while student journalists do not attend committee meetings or working group meetings, they do attend plenary sessions. There is a process to apply to attend CFS general meetings and most student journalists who apply are invited to attend by the National Executive of the CFS.

100. In response to paragraphs 29 and 30 of the KSA Gregory Affidavit, all of the money at issue lent by CFS – British Columbia to the Douglas Students' Union has now been re-paid and, as well, all obligations owed to the CFS – S have been met.

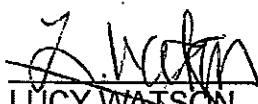
101. The Douglas Students' Union, while a member local association of the Canadian Federation of Students, is of course a separate legal entity and the CFS does not have control over the financial affairs of the Douglas Students Union. The Douglas Students' Union did run into financial difficulties but such difficulties are outside of the control of the CFS, the CFS – British Columbia or the CFS – S.

102. In reply to paragraph 31 of the KSA Gregory Affidavit, what the CFS takes issue with is not anti-CFS sentiments or opinions but, rather, inaccuracies in reporting with respect to the Canadian Federation of Students.

SWORN BEFORE ME in the City of)
Ottawa, in the Province of Ontario this)
26th day of May, 2008.)



A Commissioner for taking Affidavits for)
the Province of Ontario)
Andrew McKenna)



LUCY WATSON