

**Supreme Court of Nova Scotia**

JUSTICE GREGORY M. WARNER



NOVA SCOTIA

The Law Courts  
87 Cornwallis Street  
Kentville, Nova Scotia  
B4N 2E5

(902) 679-6259  
FAX: (902) 679-6190

January 30, 2007

Waterbury Newton  
Barristers and Solicitors  
Attention: Lynn Connors  
P.O. Box 98  
Kentville, N.S.  
B4N 3V9

Muttart Tufts Dewolfe & Coyle  
Barristers and Solicitors  
Attention: Michael V. Coyle  
P.O. Box 515  
Kentville, N.S.  
B4N 3X3

Dear Counsel,

Re: Canadian Federation of Students v. Acadia Students Union, S.K. No. 10,711

This is my record of our DAC telephone conference call at 8:30 a.m. January 30, 2007.

1. Legal Issues

All of the issues in the pleadings are outstanding. These include the plaintiff's claim that the defendant remained a member of the plaintiff from the 1995/96 academic year to the date of the originating notice and owes membership fees for that period together with prejudgment interest and costs, and the defendant's counterclaim for general and punitive damages for harassment and intimidation and the defendant's counterclaim for a remedy pursuant to s. 24 of the Charter.

2. Pleadings and Relevant Matters

The defendant says that pleadings are complete and no amendments are required. Plaintiff's counsel said she had not reviewed the pleadings recently and reserved. I would ask her to provide the Court with a written letter within ten days advising whether or not she says her pleadings are complete and whether amendments are required.

The statutes relied upon include the Charter of Rights cited in the pleadings together with the provincial legislation and bylaws of the defendant and the Charter and bylaws of the plaintiff. No other statutes are relied upon.

No advance motions are outstanding, however, the defendant advised that he intended to make an application pursuant to Civil Procedure Rule 25.01 to determine an issue primarily of law, the resolution of which, in his view, would negate the requirement for a trial. Specifically, the application appears to be for a determination of whether any contract as alleged by the plaintiff was (if a contract existed and if it was breached by the defendant) void as being contrary to public policy. Defence counsel is to forthwith write to plaintiff's counsel supplementing his oral advice during the DAC so that plaintiff's counsel can consider her position and respond to defendant's proposed procedure. Of course the plaintiff is free at any time to make any application that he believes is in his client's best interests. If an application is made it will be set down.

Both counsel advise that production is complete. With respect to discoveries, the plaintiff has completed discoveries it requires and transcripts will be available for any discovery it intends to use. The defendant has conducted no discoveries and has no intention to do so.

### 3. Admissions or Agreements

There are none of any consequence.

### 4. Expert Witnesses

Neither party intends to call expert witnesses.

### 5. Documents

Both parties have complied with Civil Procedure Rule 20.01. Counsel advise that a joint exhibit book is feasible. They further agree that each will within thirty days provide to the other a list of what documents they would like included in the exhibit book. They further agree to share the actual up front disbursements related to the preparation of the joint exhibit book and sufficient copies for each party and two copies for the Court. Any sharing of the out of pocket expenses for preparation of the joint exhibit book would, of course, be subject to an order for costs at the end of the trial.

### 6. Damages

The plaintiff confirmed that its claim is for membership fees based on enrollment at Acadia University for the academic year commencing 1995 to the date of the action. There are no other claims for damages (other than prejudgment interest and costs). The defendant confirmed that it has no special damage claim. Its claim is for general and

punitive damages for harassment and intimidation. Counsel advise that based on the Acadia University enrollment and the known membership fee that the quantum of the plaintiff's claim will not be in dispute. It will be set forth in the pretrial memorandums.

7. Other Matters

Counsel have no other problems not discussed above.

8. Trial Date

The plaintiff intends to call three lay witnesses and no expert witnesses and estimates that its case will take one day. The defendant advises it intends to call three lay witnesses and no expert witnesses, but it estimates that the evidence of the plaintiff and defendants will take four days. If oral argument follows the trial, the trial will require five days. After discussion the Court advised that it would likely require written as opposed to oral submissions at the end of the trial if it extended four days. **By agreement, the trial was set down for the Courthouse at Kentville Nova Scotia commencing on December 10, 2007 and continuing to December 13, 2007.** The trial time begins at 9:30 a.m. Counsel are reminded that pretrial briefs must be filed with the Court at least fourteen days in advance of the trial. ✓

9. Settlement

Counsel for the defendant submitted that a court assisted settlement process would be helpful. Counsel for the defendant advised that until the legal issue raised earlier in this DAC is resolved that settlement proceedings are unlikely to be helpful. On the basis of these representations the Court leaves in abeyance the issue of settlement. Counsel may approach the Court again on this issue if circumstances change.

I would ask either counsel if they believe that I have misunderstood the results of the date assignment conference to forthwith write the Court with a copy to the other counsel setting forth any correction.

Yours very truly,



Gregory M. Warner, J.

/sp