

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

PLAINTIFF

AND:

SHARYN SIGURDUR, KELSEY SIGURDUR,  
JOHN DOE AND JANE DOE, carrying on business under the firm name and style of  
MEMBERS FOR DEMOCRACY, AND THE SAID MEMBERS FOR DEMOCRACY

DEFENDANTS

**STATEMENT OF DEFENCE**

1. Save and except as may be expressly admitted herein, the Defendant Sharyn Sigurdur denies each and every allegation set out in the Statement of Claim herein and put the Plaintiff to strict proof thereof.
2. In answer to the allegations of fact set out in Paragraph 1 of the Statement of Claim, the Defendant Sharyn Sigurdur disputes that United Food And Commercial Workers' International Union (UFCW International) is a trade union as defined by the *British Columbia Labour Code*. That code defines a trade union as follows:

**"trade union"** means a local or Provincial organization or association of employees, or a local or Provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes the regulation in British Columbia of relations between employers and employees through collective bargaining, and includes an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer;
3. Further in answer to the allegations of fact set out in Paragraph 1 of the Statement of Claim, the Defendant Sharyn Sigurdur claims that the United Food And Commercial Workers' International Union Canada (UFCW Canada), a body chartered to and affiliated with the UFCW International, rather than the UFCW International has as its registered office 61 International Boulevard, Suite 300, Rexdale Ontario and the UFCW.

4. Further in answer to the allegations of fact set out in Paragraph 1 of the Statement of Claim, the Defendant Sharyn Sigurdur asserts that both UFCW Canada and UFCW International may be a unions within the province of Ontario where that province provides that a “trade union includes a provincial, national or international organization as well as a certified council of trade unions.”

5. Further, in answer to the allegations of fact set out in Paragraph 1 of the Statement of Claim, the Defendant Sharyn Sigurdur claims that the UFCW International’s ordinary place of business is 1775 K Street N.W., Washington D.C. The Constitution of the United Food and Commercial Workers International Unions stipulates in Article 1:

Name and Headquarters

(A) This International Union shall be known as the United Food and Commercial Workers International Union and shall be comprised of all persons who are members and consist of an unlimited number of Local Unions and other chartered bodies, all of which shall bear the name United Food and Commercial Workers or Travailleurs et Travailleuses Unis de l'Alimentation et du Commerce and shall be subject to this Constitution and any laws enacted pursuant to it. The International Union shall not be dissolved while there are three dissenting Local Unions.

(B) The International Headquarters of the United Food and Commercial Workers International Union shall be located in the metropolitan Washington, D.C. area unless otherwise determined by the International Executive Board.

3. In answer to the allegations of fact set out in Paragraph 3 of the Statement of Claim, the Defendant Sharyn Sigurdur disputes that she is a "businesswoman" inasmuch as she denies that she is a person engaged in a commercial or industrial business. The Defendant Sharyn Sigurdur states that she is a member in good standing of the United Food and Commercial Workers, Local Union No. 1518.

4. In answer to the allegations of fact set out in Paragraph 5 of the Statement of Claim, the Defendant Sharyn Sigurdur disputes that she carries on business under the firm name and style of the Defendant Members for Democracy (“MFD”)

5. In answer to the allegations of fact set out in Paragraph 6 of the Statement of Claim, the Defendant disputes that the Plaintiff UFCW International carries on business throughout the United States of America, and in particular in the Province of British Columbia. The defendant Sharyn Sigurdur claims that while the UFCW International has chartered and affiliated organizations known as Local Unions registered in Canada and in particular British Columbia, the UFCW International does not carry on business in the Province of British Columbia.

6. In answer to the allegations of fact set out in Paragraph 7 of the Statement of Claim, the Defendant Sharyn Sigurdur admits that the Plaintiff UFCW International has

approximately 738 affiliated local unions throughout North America, which represent approximately 1,400,000 workers. However, the Defendant Sharyn Sigurdur disputes the Plaintiff's list of local unions, which it claims are certified to represent workers in BC. The Defendant Sharyn Sigurdur claims that UFCW locals, 1518, 247, 120-8 and 190G are certified to represent workers in the Province of British Columbia.

7. In answer to the allegations of fact set out in Paragraph 8 of the Statement of Claim, the Defendant Sharyn Sigurdur disputes that the UFCW International both directly and through its affiliated locals, provides numerous services and benefits to its members, listed (a), (b) and (c) in the Plaintiff's Statement of Claim. The Defendant Sharyn Sigurdur claims that in Canada, UFCW Canada rather than the Plaintiff UFCW International and local unions affiliated with the Plaintiff UFCW International provide said numerous services and benefits to UFCW local union members in Canada.

8. The Defendant Sharyn Sigurdur admits the allegations set out in Paragraph 9 of the Statement of Claim.

9. The Defendant Sharyn Sigurdur admits the allegations set out in Paragraph 10 of the Statement of Claim.

10. The Defendant Sharyn Sigurdur admits the allegations set out in Paragraph 11 of the Statement of Claim excepting that the Defendant acknowledges that in addition the Plaintiff also utilizes, among others, the following URLs:

- (a) [www.ufcwsucks.org](http://www.ufcwsucks.org)
- (b) [www.ufcwsucks.com](http://www.ufcwsucks.com)
- (c) [www.walmartyrs.com](http://www.walmartyrs.com)
- (d) [www.walmartwatch.org](http://www.walmartwatch.org)

11. The Defendant Sharyn Sigurdur admits the allegations set out in Paragraph 12 of the Statement of Claim.

12. The Defendant Sharyn Sigurdur denies the allegations of fact set out in Paragraph 13 of the Statement of Claim. The Defendant Sharyn Sigurdur denies that [www.ufcw.net](http://www.ufcw.net) began operations in November 1999, as alleged by the Plaintiff. The Defendant Sharyn Sigurdur admits that [www.ufcw.net](http://www.ufcw.net) began operations in March 2000. The Defendant Sharyn Sigurdur denies that the META Tags for [www.ufcw.net](http://www.ufcw.net) have ever contained the phrase "UFCW Local 1518 Members for Democracy" as is alleged by the Plaintiff. The Defendant Sharyn Sigurdur admits that the META Tags for [www.ufcw.net](http://www.ufcw.net) have at all material times, contained the following "keywords":

CONTENT="UFCW,MFD,Democracy,activism,1518,Local,Overwaitea,Save-On , IGA,Union,777,Safeway,Members,Collective Agreement, IWA,Contract,Negotiations,Grass,Roots,Reform,Issues,News,Collective Bargaining,Labour,Labor,United Food & Commercial Workers

Union, Canada, Organizing, Contracts, Pension, IGA, Job Security, Labor movement, Health Care, Social Justice, Women's Equality, Strike, Lock-Out, Retail Clerks, Membership, Corporate Greed, Wages, Union Shop, Workers Rights, Benefits, WCB, Sexual Harassment, Legal Assistance, Counselling, Business Agents, Shop Steward, Arbitration, Grievances, Education,"

The MFD web site META tags contain a variety of keywords of which "UFCW" is but one. The acronym of at least one other union is included in the META TAG. The Defendant Sharyn Sigurdur further states that Meta tags are not indicative of the affiliation of a web site and are not understood in law or otherwise to be such.

13. The Defendant Sharyn Sigurdur denies the allegations of fact set out in Paragraph 14 of the Statement of Claim, inasmuch as the Defendant Sharyn Sigurdur denies that the META Tags for [www.ufcw.net](http://www.ufcw.net) have ever contained the phrase "UFCW Local 1518 Members for Democracy" as is alleged by the Plaintiff. Furthermore, the Defendant Sharyn Sigurdur asserts that in July 2001 the web site at [www.ufcw.net](http://www.ufcw.net) adopted a broader and more expansive focus. References to the UFCW and Local 1518 were removed to reflect this. The acronym "UFCW" now appears in the URL only. The current web site at [www.ufcw.net](http://www.ufcw.net) is now titled simply "Members for Democracy" (MFD).

14. The Defendant Sharyn Sigurdur admits the allegations set out in Paragraph 15 of the Statement of Claim.

15. The Defendant Sharyn Sigurdur admits the allegations set out in Paragraph 16 of the Statement of Claim excepting as follows. The Defendant Sharyn Sigurdur asserts that the Plaintiff and its Agent Attorney Nick Clark of Washington DC have engaged in negotiations with persons known to the Defendant Sharyn Sigurdur regarding the transfer of ownership for the URL [www.ufcw.net](http://www.ufcw.net) from the Defendant Kelsey Sigurdur to the Plaintiff.

16. The Defendant Sharyn Sigurdur admits that she has not obtained the consent or authorization of the UFCW, or any local of the UFCW, to use the UFCW's name or acronym in connection with the MFD Web site. It is the Defendant Sharyn Sigurdur's position that such consent or authorization is unnecessary. Similarly, The Defendant Sharyn Sigurdur has not sought the Plaintiff's permission for the use of the acronym UFCW in it's URL as is the Defendant Sharyn Sigurdur's position that such permission is unnecessary.

17. The Defendant Sharyn Sigurdur maintains that she is the billing contact only for the URL [www.ufcw.net](http://www.ufcw.net). The Defendant Sharyn Sigurdur, as a UFCW member in good standing, nonetheless retains an interest in defending the right of the Defendant Kelsey Sigurdur to retain the URL [www.ufcw.net](http://www.ufcw.net). The Defendant Sharyn Sigurdur's interest flows from the origins of the web site in a protest movement within a UFCW local union.

Further, the Defendant Sharyn Sigurdur maintains that the use of any organization's name or acronym including the Plaintiff's name or acronym in the URL of a web site that takes issue with its activities is not uncommon. The Plaintiff itself engages in this practice in a number of web sites, which it operates to protest the actions of certain other organizations (i.e., [www.walmartyrs.com](http://www.walmartyrs.com), [www.walmartyrs.net](http://www.walmartyrs.net), [www.walmartyrs.org](http://www.walmartyrs.org), [www.walmartwatch.org](http://www.walmartwatch.org) URLs for sites concerned solely with the criticism of Wal-Mart, an employer which is an organizing target for the Plaintiff).

18. The Defendant Sharyn Sigurdur claims that the Plaintiff has not filed any complaint pursuant to the UFCW Constitution and have not availed themselves of the Dispute Resolution provisions of Internet URL registration regulatory agencies in either Canada or the U.S.

19. The Defendant Sharyn Sigurdur denies the allegations of fact set out in Paragraph 17 of the Statement of Claim. The Defendant Sharyn Sigurdur asserts that the MFD Website is pro-union, pro-democracy in its content and purpose. The Defendant Sharyn Sigurdur admits that the MFD Website contains content critical of union officials from a variety of unions who are viewed as participants in undemocratic or corrupt practices and activities. For example, the MFD Website has criticized union officials found guilty in the courts for activities such as embezzlement or sexual assault.

20. The Defendant Sharyn Sigurdur denies the allegations of fact set out in Paragraph 18 of the Statement of Claim.

21. The Defendant Sharyn Sigurdur admits the allegations set out in Paragraph 19 of the Statement of Claim.

22. The Defendant Sharyn Sigurdur denies the allegations of fact set out in Paragraph 20 of the Statement of Claim excepting that the URL for the MFD Website remains [www.ufcw.net](http://www.ufcw.net). The Defendant Sharyn Sigurdur asserts that a written response was made, by Kelsey Sigurdur, owner of the URL [www.ufcw.net](http://www.ufcw.net), to the August 1, 2002 letter mentioned in Paragraph 19 of the Statement of Claim as follows:

August 7, 2001  
Walsh & Company  
Barristers  
1000 – 885 West Georgia Street,  
Vancouver, British Columbia  
V6C 3E8

Attention: Robert W. Taylor

**Without Prejudice**

Dear Sirs:

Your letter of August 1, 2001 addressed to Sharyn Sigurdur has been forwarded to me for reply. Take note that I am the administrator of the Web pages located at [www.ufcw.net](http://www.ufcw.net) (a fact of which your clients have been aware for some two years now) and, in addition, I am also the registered owner of the trademark "ufcw.net".

Firstly, be advised that I am unable to meet your arbitrary deadline of August 7, 2001 for a response. I received your letter on August 4, (through Ms. Sigurdur) and given the nature and complexity of the issues you have raised, I cannot reasonably formulate a thorough and complete response over a weekend. I will, however, respond fully in due course.

In addition, so that I am able to respond fully, I will need particulars and clarification with respect to a number of matters raised in your August 1, 2001 letter.

You advise that Walsh and Company acts on behalf of the United Food and Commercial Workers International Union. As issues regarding the "ufcw.net" trademark and [www.ufcw.net](http://www.ufcw.net) domain address have been the subject of negotiations with UFCW attorney Nick Clark for several months and up to the present and that I have had no indication from Mr. Clark that he has withdrawn from this matter, I am somewhat confused by your sudden appearance in connection with this issue. This is especially so as the position that you appear to be taking is somewhat contradictory to that which has been conveyed on behalf of your client by Mr. Clark. I request confirmation that Attorney Clark has withdrawn from this case, including issues relating to the sale and transfer of the aforementioned trademark and domain address. Likewise, I require confirmation of the status of any offers made by Mr. Clark in regard to the trademark and domain address issues.

In the fifth paragraph of your August 1, 2001 letter, you appear to speak on behalf of the law firm Farris Vaughn Wills and Murphy. You claim that representatives of UFCW locals, including Locals 777, 2000 and 1518 are disturbed by the MFD Web site's "misuse" of the name United Food and Commercial Workers Union and its well-known acronym UFCW. Your blending of client protests confuses the issues at hand. If Farris Vaughn Wills and Murphy's clients are indeed "disturbed" would it not be more appropriate for that law firm to speak on behalf of its own clients? Furthermore, I would suggest that your clients and Mr. Macintosh's clients are no more disturbed than Wal-Mart Corporation is about the UFCW-owned domain addresses [www.walmartys.org](http://www.walmartys.org) or [www.walmartys.com](http://www.walmartys.com) or <http://www.walmartys.net>. If I am incorrect in this assumption, I would ask that you respond to the following question: In the event that the Wal-Mart Corporation demanded that the UFCW relinquish its ownership of these domains, cease its use of the term "WAL-MARTys" and cease any publication of materials critical of the Wal-Mart Corporation, would the UFCW immediately comply with such request? Why or why not?

You allege that statements by Mr. Finnamore made on a February 11, 2001 Peter Warren radio show are a prime example of defamation of your client. You will have to be more specific as to exactly which of his words or phrases have defamed your client (over six months ago). Further, I request that you advise me if you have protested to Corus Entertainment Inc., CKNW, or Peter Warren about the Finnamore interview which you state defamed your clients over six months ago? Further, please advise whether you have protested to Workplace Strategies Inc. in regard to Mr. Finnamore's words of six months ago? I would hope that you haven't singled out a small group of union reformers to bully, while leaving those with greater resources in peace. Furthermore, it is presumptuous to assume that just because you and your clients can't access materials on the MFD site that such materials are "no longer on the site."

In the 10th paragraph of your letter, you again speak on behalf of the law firm Farris Vaughn Wills and Murphy inasmuch as you write "on behalf of our client, the UFCW, and Mr. Macintosh's clients, and specifically Locals 777, 2000 and 1518...." Again, the matter is confused because your statement seems to imply that the law firm Farris Vaughn Wills and Murphy may have more clients than Locals 777, 2000 and 1518 relating to the matters which you have outlined in your August 1, 2001 letter. If there are more clients, I request that they be identified along with any specific protests that they have in regard to the [www.ufcw.net](http://www.ufcw.net) site.

As well, I understand that UFCW Local 777 has retained the services of Edgar & Shore, Barristers & Solicitors to deal with matters similar to what you claim Farris Vaughn Wills and Murphy is retained to pursue. Likewise, your protests are similar to those put forth in a threatening letter written by Victory Square Law Office, which claims to represent your client as well, in May of this year. Evans Law Firm, claiming to represent your clients sent letters to this effect as well, in the fall of last year. The numbers of Barristers, Solicitors and Attorneys employed by the UFCW to threaten legal action against union activists who oppose wasteful and corrupt practices is beginning to take on the specter of a SLAP lawsuit, a legal maneuver to intimidate and silence free speech.

Certainly, one could easily come to this conclusion considering that your blanket instructions, if followed, would infringe on rights provided under the Charter of Rights and Freedoms, available to all Canadians. Your instructions would have the effect of prohibiting any person or organization from publishing any material whatsoever containing "United Food and Commercial Workers International Union" or UFCW in the text. Your instructions and threats of legal action are, in my view, an attempt to infringe upon my right to Freedom of Expression as provided under the Charter.

In order to give full consideration to your client's concerns, I will need detailed particulars of how the words and phrases contained in material

published at [www.ufcw.net](http://www.ufcw.net), which when taken in their ordinary sense, would defame your client. Likewise, I request that Farris Vaughn Wills and Murphy detail their protests, if indeed they have any to make, as well. Your prompt response to these questions would be appreciated. I stress that your letter is quite confusing and that answers to these questions are essential to my preparing a full and complete reply.

Sincerely,

Kelsey Sigurdur

Cc: Corus Entertainment  
Peter Warren  
CKNW  
Workplace Strategies Inc.  
BC Civil Liberties Association  
Farris Vaughn Wills and Murphy  
Douglas Dority  
Canadian Labour Congress

23. Notwithstanding that the Defendant Sharyn Sigurdur is the billing contact only for the URL [www.ufcw.net](http://www.ufcw.net), the Defendant denies the allegations of fact set out in Paragraph 21 of the Statement of Claim, inasmuch as the Defendant denies that the use of the URL [www.ufcw.net](http://www.ufcw.net) is calculated to cause and is likely to cause confusion between the MFD Web site and the web sites operated by the UFCW and its affiliated locals and that the Defendant is passing off on the goodwill of the UFCW and its affiliated locals, and is passing off the MFD Web site as and for a web site operated by the UFCW and its affiliated locals.

24. The Defendant Sharyn Sigurdur claims that the MFD web site could not reasonably be confused with official web sites of the UFCW. The MFD web site bears no resemblance to any official UFCW site in appearance, content or concept. There is nothing in the appearance, content or concept of the MFD site that could reasonably be construed as an attempt by the Defendant to imitate an official UFCW web site or to imply that the MFD web site is affiliated with or approved by the UFCW International union.

25. Further, the Defendant Sharyn Sigurdur denies any allegation that she has acted in bad faith in relation to the use by the MFD Web site of the URL [www.ufcw.net](http://www.ufcw.net). This domain has not been registered for purposes of selling or transferring it to the Plaintiff or to a competitor of the Plaintiff, nor to prevent the Plaintiff from doing so, nor has it been registered for the purpose of gaining a competitive advantage over the Plaintiff. The

Defendant Sharyn Sigurdur and the Plaintiff are not engaged in competing commercial enterprise therefore, the Defendant Sharyn Sigurdur claims that there is no “goodwill” to pass off.

26. The Defendant Sharyn Sigurdur denies the allegations of fact set out in Paragraph 22 of the Statement of Claim.
27. Furthermore, the Defendant asserts that the matters brought forward by the Plaintiff are internal union matters, which are required to be processed by procedures set out in the Constitution of the United Food and Commercial Workers’ International Union. That Constitution bars access to the Courts without first “exhausting all remedies provided by the Local Union bylaws and rules and the Constitution and laws of the International Union.” The internal process is as follows:

## ARTICLE 25

### Duties and Obligations

(A) Every member of this International Union agrees, in consideration of the rights and benefits conferred pursuant to the terms of this Constitution, to comply with the duties and obligations stated in this Article and that termination of membership shall not terminate liability for violations of such duties and obligations occurring during the period of his or her membership.

(B) No member may be disciplined, except for violating his or her duties and obligations by committing any one or more of the following offenses:

1. Violating any provisions of the Constitution or laws of the International Union or the approved bylaws or established rules of the member's Local Union;
2. Failing to pay dues, fines, assessments, fees, and other financial obligations in a timely manner;
3. Obtaining membership through fraudulent means or by misrepresentation;
4. Advocating or attempting to bring about the withdrawal from the International Union of any Local Union or any member or group of members;
5. Working in the interest of or accepting membership in any organization dual to the International Union;

6. Unreasonably, unlawfully, or improperly disturbing the conduct of any meeting of the International Union or any chartered body, or the operations of any of their offices;

7. Embezzling, misappropriating, fraudulently receiving, wrongfully handling, or failing to account for the funds of the International Union, a Local Union, or any employee benefit fund;

8. Using the name of any Local Union or the International Union for soliciting funds or advertising or similar activities except as provided in Article 32(B);

9. Furnishing a complete or partial list of the membership of the International Union or of any Local Union to any person other than those whose governmental position or International or Local Union office or employee benefit fund position entitles them to have a list, without specific authorization in writing from the International President;

10. Deliberately and improperly interfering with any officer or representative of the International Union or any Local Union in the discharge of his or her duties;

11. Deliberately engaging in conduct in violation of the responsibility of members toward the Union as an institution;

12. Crossing or working behind a legal picket line established by a United Food and Commercial Workers Local Union and sanctioned by the United Food and Commercial Workers International Union;

13. Crossing or working behind a legal picket line established by a union other than the United Food and Commercial Workers International Union, provided such picket line has the sanction of the Executive Board of the United Food and Commercial Workers Local Union in whose jurisdiction it is established, and, provided further, the United Food and Commercial Workers Local Union has notified its membership of such sanction;

14. Deliberately interfering with the performance of the legal or contractual rights or obligations of the International Union or any of its Local Unions;

15. In the case of any officer or representative of the International Union or of any Local Union, failing to faithfully perform the duties of his or her office or position or accepting dual compensation or expenses for the performance of duties related to his or her office or position.

(C) Any member may be charged, tried, and disciplined for violation of any of the above offenses, or for offenses set forth in the Local Union bylaws, in accordance with the procedures provided for in this Constitution.

(D) Elected and appointed representatives of the International Union and its Local Unions serve in a position of trust and responsibility and obtain information and confidences and develop abilities which should not be employed in a manner injurious to the best interests of the International Union or its Local Unions; therefore, all such representatives, in the event of termination for any reason whatsoever, assume the obligation not to seek or obtain employment or position or work with, or in, any dual or other organization antagonistic to or in conflict with the objectives, activities, policies, or jurisdiction of the International Union or any of its Local Unions. This obligation shall continue for a period of one year from termination and extends to such geographical areas as may be necessary to protect the International Union or any of its Local Unions. This provision shall in no respect be applied in derogation or limitation of any rights provided for under the United Food and Commercial Workers International Union Pension Plan for Employees or the United Food and Commercial Workers Health Insurance Plan for Retirees.

**(E) 1. Every dispute relating to the interpretation or application of the Local Union bylaws or rules or the Constitution or laws of the International Union shall be exclusively resolved through the remedial procedures provided therein. Resolution of any such dispute pursuant to such procedures shall be final and binding. *[emphasis added]***

**2. No member shall institute an action outside the Union against the International Union, Local Union, or any of their officers or representatives without first exhausting all remedies provided by the Local Union bylaws and rules and the Constitution and laws of the International Union. *[emphasis added]***

(F) "Local Union" as used in this Article shall apply, where appropriate, to intermediate chartered bodies.

## ARTICLE 26

### Disciplinary Proceedings and Appeals

(A) 1. A member shall be charged and tried in the Local Union through which he or she is a member at the time the charges are filed, except as otherwise provided in this Constitution. Any person no longer a member may be charged and tried in the Local Union through which he or she last held membership for actions committed while he or she was a member.

2. Charges may be filed by an active member of the Local Union through which the accused is a member, or, where the accused is no longer a member, by an active member of the Local Union through which the accused was a member at the time of the alleged violation, or by a representative of the International Union.

3. More than one charging party may join in the same set of charges, but the charges must name one of the charging parties as the representative of the others to be responsible for filing papers, receiving papers, and trying the case. Where the charges fail to designate such representative, then the first charging member named in the charge shall be considered the representative of the others.

4. Charges and other formal documents referred to in Article 26 sent by mail or submitted in another generally accepted manner other than in person shall be considered filed as of the date of postmark or other indicia of transmission. Charges and other formal documents referred to in Article 26 delivered in person shall be considered filed as of the date of delivery.

**5. Charges shall be filed with the Local Union Executive Board within six months after the basis for the alleged violation has been discovered or should have been discovered. *[emphasis added]***

6. The charges shall specify the Article or Articles of the International Constitution or laws or the Local Union bylaws or rules allegedly violated and shall also set forth a short and plain factual statement of the act or acts considered to be in violation, including available information as to dates and places, in such a manner as to fairly inform the accused of the specific acts which are alleged to constitute violations of the International Constitution or laws or the Local Union bylaws or rules. Either upon motion by the charged parties or the Local Union Executive Board, charges failing to comply with this requirement shall be dismissed by the Local Union Executive Board, without prejudice to the refiling of charges within ten days which do comply with this requirement. Dismissal of refilled charges shall constitute final action, subject to appeal as provided in Article 26(C).

7. A true and correct copy of the charges and a copy of the Constitution and Local Union bylaws shall, without delay, be served upon the accused party by the Local Union Executive Board by certified mail, return receipt requested, or in person. The accused shall be afforded a reasonable opportunity to reply in writing to the charges, if he or she so desires.

8. On motion of the accused before trial, or upon its own motion, the Local Union Executive Board may dismiss without trial any charges which, after assuming the charging party's facts are true, fail to allege actions which would constitute violations of the International Constitution or laws or the Local Union bylaws or rules. Such dismissal shall be subject to appeal as provided in Article 26(C).

9. On motion of the accused before trial, or upon its own motion, the Local Union Executive Board may dismiss without trial any charges it finds are of such a nature that the interest of the Local Union does not justify the expenditure of time, money, and other resources necessary for

the conduct of a disciplinary proceeding or where it finds that the undisputed material facts warrant dismissal of the charges. Such dismissal shall be subject to appeal as provided in Article 26(C).

10. Except for charges processed pursuant to Article 26(A) 16, the trial on the charges shall be held as soon as practicable, but no later than 60 days following the date on which the charges are filed. However, upon request of either party, for good cause shown, an adjournment to a later date, not to exceed 100 days from the date the charges are filed, may be granted by the Local Union Executive Board. The Local Union Executive Board shall have the power, upon its own motion, to postpone any scheduled trial, provided such postponement shall not be beyond 100 days from the date the charges are filed. Any such Executive Board decision to postpone the trial beyond the scheduled date or to set a trial for 60 days beyond the date of the charges being filed must be served upon all parties immediately. Every effort shall be made to schedule the trial so that it does not conflict with the working schedule of the parties, and at least 14 days' notice of the trial date shall be given in writing. The written notice to the charging and accused parties shall state that the parties have the right to have other members of the Local Union attend the trial, subject to reasonable accommodations of space. Any request for the postponement of the trial date must be received by the Executive Board at least three days before the scheduled trial date unless a satisfactory showing is made of inability to comply with this requirement. The request must include good cause for such a postponement. In the event the accused fails to appear for a duly noticed trial, it shall nevertheless proceed.

11. The trial shall take place before the Local Union Executive Board, which for purposes of Article 26 shall mean those members of the Local Union Executive Board serving for purposes of trial. The President of the Local Union shall be the chairperson of the Executive Board for purposes of the trial proceeding. No charging party or accused member or a witness may serve on the Executive Board in the conduct of disciplinary proceedings. Where the chairperson is unable to serve for any reason, the remaining members of the Local Union Executive Board shall designate one of their number to act as chairperson. On motion filed with the Local Union Executive Board, prior to trial, either party may ask that a particular Board member be excused from participating in the proceeding if he or she thinks that he or she cannot receive a fair trial before that Board member. The Executive Board shall give precedence to consideration of such motion. For purposes of trial, a quorum of the Executive Board shall consist of three of its members, and a quorum is necessary throughout the trial. If an Executive Board member is absent during any portion of the trial, he or she may not participate further in the proceeding. All questions of order, procedure, and admissibility of evidence shall be decided by the chairperson, subject to being overruled by a majority vote of the Board upon motion by a member of the Board.

12. The accused and charging parties shall have a fair and impartial trial and shall have the right to present witnesses and other evidence in their behalf and to examine any witnesses. The accused shall have the right to refuse to testify. A charging or accused member may be assisted, advised, or represented by another member of the Local Union. At the commencement of the trial, the chairperson of the Board shall advise the parties of their rights as set forth above in this Article, and shall read the charges to the accused. The accused shall then plead guilty or not guilty to each charge. In the event the accused elects not to appear or to respond, he or she shall be deemed to have entered a plea of not guilty and the trial shall proceed. Throughout the trial, there shall be a presumption of innocence in favor of the accused. The charging party shall present his or her case first and shall have the burden of proving the allegations contained in the charge. At the close of the charging party's case, either the accused or a member of the Executive Board shall have the right to move to dismiss the charges because the charging party has failed to present record evidence that establishes a violation of the International Constitution or laws or the Local Union bylaws or rules.

13. A detailed written record of the trial proceedings shall be made and preserved and shall constitute the trial record, provided that no fine, nor loss of membership rights or Union office, shall be imposed unless a stenographic record and transcript are kept of the trial proceedings.

14. Upon the completion of the trial proceedings, the Executive Board shall, within 45 days, determine the innocence or guilt of the accused, based solely on the record evidence. The parties shall be advised of the decision in person or by certified mail. A verdict of guilty shall require a two-thirds majority vote of the Executive Board. If the decision is that of guilty, the Executive Board shall affix appropriate penalties in accordance with the provisions of the Constitution. Any member found guilty of any one or more of the charges against him or her may be censured, fined, suspended, and/or expelled, provided that such discipline shall be reasonable and fair, and, provided further, that no discipline shall be imposed without stating with specificity what the discipline is being imposed for. If any officer or representative of the International Union or any of its chartered bodies is found guilty, he or she may be disciplined as provided in this paragraph and, in addition, may be suspended or removed from office or position, subject to the conditions above; provided that, if the Local Union Executive Board's decision is to remove an officer of the Local Union, the officer may appeal the decision to the membership within 15 days from the date the adverse ruling is delivered to the officer, in which case, the membership shall be sent not less than 15 days' written notice of a membership meeting, which shall be held within 40 days of the Executive Board's decision and at which the members shall vote by secret ballot whether to remove the officer, subject to appeal pursuant to the applicable provisions of Article 26(C). If charges alleging serious

misconduct have been filed against an officer of the Local Union and, following trial by the Local Union Executive Board, the officer is found innocent, or the officer is found guilty but removal from office is not imposed as discipline, the Executive Board shall announce the decision at the next membership meeting following the exhaustion of appeal rights or, within 30 days following said exhaustion, provide other reasonable notice to the membership indicating that charges were filed against the officer and giving the date of the trial and the Executive Board's verdict.

15. The decision of the Executive Board shall become immediately operative unless stayed by the Local Union Executive Board or unless a stay is directed by the International President following an appeal as set forth in Article 26(C).

16. Where it appears to the International President that a fair and impartial trial cannot be held before the Local Union Executive Board, the International President is authorized to appoint not more than six members from outside the Local Union to conduct the trial. The trial board so selected shall hear the matter within 150 days from the filing of the charge in accordance with the provisions of this Constitution as far as they are applicable and render judgment thereon as soon as practicable. The parties shall be advised of the decision by certified mail.

17. Decisions rendered pursuant to Article 26(A) 16 shall become immediately operative unless a stay is directed by the International President following an appeal as set forth in Article 26(C).

(B) 1. All charges against International officers in their capacity as representatives of the International Union shall be filed with and tried by the International Executive Board in accordance with procedures set forth in Article 26(A) as far as they are applicable, and all decisions of the International Executive Board shall be immediately effective, unless a stay is directed by the International Executive Board following an appeal to the next regular International Convention as set forth in Article 26(B)2. The International President shall be empowered to direct that all charges filed against International representatives be tried by the International Executive Board in the same manner. In case of such charges, the International Executive Committee shall have the power to suspend the charged officer or International representative prior to trial.

2. An International officer or representative who has been found guilty of any offense pursuant to a trial by the International Executive Board, or the charging party when the accused has been acquitted, may appeal to the next regular International Convention for redress. Any such appeal to the Convention shall be filed with the International Secretary-Treasurer within 30 days from the date the adverse ruling is delivered to the appealing party.

(C) 1. A member who has been found guilty of any offense as herein set forth or the charging party when the accused has been acquitted, may appeal to the International President for redress, subject to a further appeal to the International Executive Board.

2. A notice of appeal to the International President shall be filed no later than 15 days from the date the adverse ruling is delivered to the appealing party; however, the International President, for good cause shown, may extend the time within which a notice of appeal may be filed. A notice of appeal must briefly state why the party believes the decision should be reversed.

3. When an appeal is taken, the International President shall send a copy of the notice of appeal to the Local Union Executive Board involved and to the other party. Thereafter, the Local Union Executive Board shall immediately transmit a full and complete copy of the trial record and charges, together with all other pertinent documents, to the International President, and it shall immediately transmit a full and complete copy of the trial record to the appealing party and the other party in the case.

4. The appealing party may file a written statement in support of his or her appeal with the International President, stating wherein the decision being appealed is erroneous, within 40 days from the date the trial record is sent to the appealing party by the Local Union. The International President shall mail a copy of any such written statement to the other party. The other party may, within 30 days after such written statement has been sent to him or her, file a responsive statement. A request for an extension of the time limit set out herein must be filed with the International President before the expiration of the time limit in question, and the International President can, for good cause shown, extend the time limits.

5. The International President shall have authority to obtain any additional information in such form as he or she may prescribe from all parties concerned, in the event he or she believes such additional information is necessary in order to give full consideration to the appeal.

6. Upon failure of any party to comply with the foregoing requirements, the International President shall have the power to decide the appeal on the papers before him or her, and the party failing to discharge its obligations as set forth above shall forfeit all further right of appeal from the action of the International President. After all statements have been or could have been filed, the International President shall consider the appeal and render a decision within three months of the date that all statements have been or could have been filed, unless the International President determines that the issues are

of such complexity or the appeals pending are so numerous as to warrant an extension to four months, or unless both the charging and accused parties agree to an extension of time. The International President shall give his or her reasons for the decision in writing, a copy of which shall be mailed to each party and the Local Union Executive Board.

7. Either party may appeal from the decision of the International President to the International Executive Board by filing a written notice of appeal with the International Secretary-Treasurer within 30 days of the date the decision has been mailed. The notice of appeal must briefly state why the party believes the International President's decision should be reversed, and it may also contain a more complete statement setting out wherein said decision is erroneous.

8. The International Secretary-Treasurer shall immediately acknowledge receipt of the appeal and shall make available the charges, together with the trial record and all other records pertinent to the appeal, to the International Executive Board for review. The International Secretary-Treasurer shall immediately send a copy of the appeal to the involved Local Union Executive Board and the other parties.

9. The other party may, within 30 days after the appealing party's notice of appeal has been sent to him or her by the International Secretary-Treasurer, file a responsive statement. It shall be the duty of the International Secretary-Treasurer to send a copy of any statement so filed to the appealing party and the Local Union Executive Board immediately after it has been filed in his or her office.

10. After the statements have been or could have been filed, the International Executive Board shall proceed to consider such appeal at its next regular meeting, unless both the charging and accused parties agree to an extension of time, and either affirm or reverse the decision of the International President. The International Executive Board shall give its reasons for the decision in writing, a copy of which shall be sent to each party and the Local Union Executive Board involved. Issues which were not raised before the International President may be considered by the International Executive Board in its sole discretion.

28. The Defendant says that at the present time, no proceedings have been initiated against the Defendant by the Plaintiffs, nor the Parent body, the United Food and Commercial Workers International Union in accordance with the terms of its Constitution. The Defendant says that the Defendant continues to be a member in good standing of the United Food and Commercial Workers International Union, the Plaintiff, United Food and Commercial Workers Canada through the Plaintiff, the affiliated United Food and Commercial Workers Local Union No. 1518.

29. The Defendant Sharyn Sigurdur claims that the Plaintiff has exceeded its six-month limit on filing charges against the Defendant Sharyn Sigurdur in accordance with the terms and conditions of the Plaintiff's own Constitution. Therefore, the Defendant Sharyn Sigurdur claims that the Plaintiff should be estopped from proceeding with this action and/or that she be released as a Defendant from this action with cost awarded to her because the Plaintiff failed to exercise its rights under its Constitution and it failed to exhaust internal remedies before proceeding to the Supreme Court of British Columbia.

WHEREFORE THE DEFENDANT SUBMITS that the Plaintiff's claims be dismissed with costs.

DATED at the City of Vancouver, in the Province of British Columbia, the 6<sup>th</sup> day of March, 2002.

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Sharyn Sigurdur, Defendant

THIS STATEMENT OF DEFENCE is filed by Sharyn Sigurdur

No. S021009  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION

PLAINTIFF

AND:

SHARYN SIGURDUR

DEFENDANT

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**STATEMENT OF DEFENCE**

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