

January 22, 2006

Steven H. Lee

[REDACTED]

[REDACTED]

Paul Browning, Ombudsperson
Kwantlen Student Association
12666 – 72nd Avenue
Surrey, BC V3W 2M8

Phone: (604) 599-2303

Re: KSA Elections – Validity of Elections - APPEAL TO OMBUDSPERSON

Dear Mr. Browning,

This letter may serve as an addendum to complaints number 12 and 13, as well as an addendum to complaint number 1 regarding the validity of the Fall 2005 KSA Special General Meeting, held on September 29, 2005.

Contentions

I would argue that the election is not valid based on the following arguments:

1. That because the Fall 2005 KSA Special General Meeting held on September 29, 2005 the Spring 2006 General Election, as currently being run is not valid due to the invalidity of the September 29, 2005 Bylaws;
2. That the "RAF2K5" Bylaws violate the spirit of the KSA constitution in terms of:
 - a. How one is elected to campus council positions; *and*
 - b. How one votes for campus council positions.
3. That the "RAF 2K5" Regulations that were adopted in January, 2006 do not specify or give definition for the number of Campus Council "Member-at-Large" positions that each campus is to have;
4. That the \$500 per candidate spending limit is unfair to economically disadvantaged students, especially those students running as independent candidates;
5. That there were insufficient rules regarding campaigning;
6. That little to nothing was done to ensure the integrity of the polling stations on each campus;
7. That the availability of funding for a yes / no campaign in the referendum was not advertised as per the Regulations; *and*
8. That contact information for the Ombudsperson is not easily found, as there is no information currently posted on the KSA website – which would be the main form of communication when the institution is closed on weekends.

Proof of Contentions

1. That because the Fall 2005 KSA Special General Meeting held on September 29, 2005 the Spring 2006 General Election, as currently being run is not valid due to the invalidity of the September 29, 2005 Bylaws;

The recommendations in the October 28, 2005 Report of the Ombudsperson (Attachment 1) into the Special General Meeting of September 29, 2005 noted that:

“Recommendations:

In light of my conclusions above, I recommend that the following actions be taken to both uphold the rights of the KSA membership and to ensure that the KSA does not subject itself to legal liability.

- 1) *The Chairperson of the Executive Board notify the British Columbia Registrar of Societies that the motion was invalid and ask that the request for approval of the Special Resolution. If the Chairperson of the Executive Board refuses to take such action, I recommend that Council pass a motion to send such a notification to the Registrar, with the responsibility to send such a letter delegated to such individual as Council sees fit. Furthermore, I recommend that in either case, a copy of this report be attached to any such communication with the Registrar.*
- 2) *All parties within the Kwantlen University College Student Association (General Membership, Council, Executive Board of Directors, Liaisons, Staff etc) do not act to implement this Special Resolution due to its invalidity.*

To clarify:

- 1) *The old bylaws are still in effect until approved by the Registrar of Societies. Therefore, even if the motion was valid, the new bylaws should not have been implemented at this point.*
- 3) *With regards to the motion to expel members from the society, Section 66 [3] of the Society Act states that,*

“A special resolution, other than one changing the number of directors or removing a director, does not take effect until it is filed with the registrar.”

While it is true that Laura Anderson and Steven Lee are indeed directors of the society, the Special Resolution was to remove them (along with Rigel Vincent and Kristina Kearley) as members of the society, and not specifically as directors. As such, the motion implies that the members are to be stripped of all membership rights (such as voting at Annual General Meetings and at society elections) rather than simply removing them from the Board of Directors. This distinction is clearly laid out in the KSA bylaws where Article 2 (9) deals with expulsion of members, while Article 9 deals with removal of elected officials.

As such, since the Special Resolution referred to an expulsion of members, as opposed to a removal of directors, Section 66 [3] of the Society Act indicates that the resolution dealing with the expulsion of members does not take effect until filed with the registrar.

Therefore, all parties within the Kwantlen University College Student Association should not take any action to implement the motion to expel certain members due to both its invalidity and the necessity of it being filed with registrar.

Furthermore, any action that may have been already taken to implement such expulsion (such as withholding of pay cheques and demands to vacate offices) should be rescinded.

- 4) *In conducting future General Meetings of the Society, the Executive and Council should ensure that the procedures for properly conducting meetings as laid out in the Society Act, KSA Bylaws, and Robert’s Rules of Order should be properly adhered to. In particular, proper notice of meetings and motions should be given, members present must be allowed to debate in accordance with parliamentary procedure, and votes must be conducted in a proper fashion with members present being made clear of what is happening.”*

Specifically recommendation number 2 clearly noted that all parties were not to act on the on the Special Resolutions of the September 29, 2005 Special General Meeting because those resolutions were invalid. As such, it seems reasonable to conclude that the Spring 2005 General Election should be run as per the old KSA Bylaws and Regulations that were in effect as of the morning of September 29, 2005, before the Special General Meeting was even held.

- 2. That the “RAF2K5” Bylaws violate the spirit of the KSA constitution in terms of:**
- a. How one is elected to campus council positions; and**
 - b. How one votes for campus council positions.**

Specifically, the KSA Constitution states:

1. *The name of the society is Kwantlen University College Student Association.*
 - a. *To promote, direct and administer the affairs to the Student Body of Kwantlen University College for the benefit of the Student Body.*
 - b. *To promote public awareness and understanding of Kwantlen University College and its student activities.*
 - c. *To promote and advance the cause of Universal Accessibility to all forms of post-secondary education in the province of British Columbia.*
 - d. *To promote the principle and practice of student representation at all levels of decision-making at the college and all agencies or other bodies which deliberate on the affairs of the society's members.*
 - e. *To provide and co-ordinate a balanced program of extra-curricular and co-curricular activities.*
 - f. *To advance and defend student rights and interests within Kwantlen University College and other post-secondary educational institutions where Kwantlen University College students may transfer.*
 - g. *To erect on such lands any buildings or improvements necessary for the proper use and occupation of same by the Association.*
 - h. *Subject to the provision contained under Section 35 of the Society Act to borrow, raise and secure the payment of money in such a manner as the Association sees fit.*
 - i. *To take or otherwise acquire and hold shares or stock debentures, debenture stock bonds, obligations and securities issued by any association or company within the province of British Columbia or elsewhere.*
 - j. *To promote the cause of supplying services to the members of the Kwantlen University College Student Association, due to deficiencies or non-existence, which the Student Multi-Campus government may deem necessary or beneficial as a student representative organization.*
 - k. *To preserve, protect, and enhance the concept of a multi-campus institution.”*

Specifically, both the old Bylaws and the new “RAF 2K5” Bylaws give definition to what Campus Councils are, as presented on the following pages.

CURRENT KSA BY-LAWS	BY-LAW CHANGES – “RAF2K5”
<p><u>Article 1 Interpretation</u></p> <p>1. Within these Bylaws, unless the context otherwise requires:</p> <p style="padding-left: 40px;">"Campus Council" shall mean a democratically elected constituency of the Society at an individual campus of the Kwantlen University College, and shall have those powers and duties as stipulated in these Bylaws and the Regulations;</p> <p style="padding-left: 40px;">"Campus Council Officer" shall mean an elected member of a Campus Council;</p> <p style="padding-left: 40px;">"Campus Director" shall mean the campus director of a Campus Council, who shall also serve on the Council of the Society;</p> <p style="padding-left: 40px;">"Campus Representative" shall mean an elected member of a Campus Council, who also serves on the Council of the Society;</p>	<p><u>Article 1 Interpretation</u></p> <p>1. Within these Bylaws, unless the context otherwise requires:</p> <p style="padding-left: 40px;">"Campus Council" shall mean a democratically elected constituency of the Society at an individual campus of the Kwantlen University College, and shall have those powers and duties as stipulated in these Bylaws and the Regulations;</p> <p style="padding-left: 40px;">"Campus Council Officer" shall mean an elected member of a Campus Council;</p> <p style="padding-left: 40px;">"Campus Director" shall mean the campus director of a Campus Council, who shall also serve on the Council Board of the Society;</p> <p style="padding-left: 40px;"><i>"Member-at-Large" shall mean the elected, or by 2/3 resolution the appointed non-voting members of the Board. At Large Members are permitted to vote on their respective Campus Councils whether elected or appointed by the Board but may never hold a voting seat on the Board.</i></p> <p style="padding-left: 40px;">"Campus Representative" shall mean an elected member of a Campus Council, who also serves on the Council of the Society;</p>
<p><u>Article 7 Campus Councils</u></p> <p>1. Each campus of Kwantlen University College shall have a Campus Council, elected by and from the Members enrolled at that campus in a general election which shall be held in the month of February in each calendar year as determined by Council, and in no case less than fourteen (14) days prior to the Annual General Meeting.</p> <p>2. Campus Councils shall consist of:</p> <p style="padding-left: 20px;">i. the Campus Director;</p> <p style="padding-left: 20px;">ii. one (1) or more Campus Representatives, the number of which to be determined in accordance with Article 5(3); and</p> <p style="padding-left: 20px;">iii. three (3) or more Campus Council Officers, the number of which to be determined in the Regulations of the Society.</p> <p>3. Campus Councils shall:</p> <p style="padding-left: 20px;">i. coordinate, under the direction of the Director of Events and Student Life, all Society events on their campus;</p>	<p><u>Article 7.6 Campus Councils</u></p> <p>1. Each campus of Kwantlen University College shall have a Campus Council, elected by and from the Members enrolled at that campus in a general election which shall be held in the month of February in each calendar year as determined by Council <i>no later than 31 January every other calendar year as determined by the Board</i>, and in no case less than fourteen (14) days prior to the Annual General Meeting.</p> <p>2. Campus Councils shall consist of:</p> <p style="padding-left: 20px;">i. the Campus Director;</p> <p style="padding-left: 20px;">ii. <i>At-Large Members, the number of which shall be set out in the regulations</i></p> <p style="padding-left: 20px;">iii. one (1) or more Campus Representatives, the number of which to be determined in accordance with Article 5(3); and</p> <p style="padding-left: 20px;">iv. three (3) or more Campus Council Officers, the number of which to be determined in the Regulations of the Society.</p>

<ul style="list-style-type: none"> ii. submit an annual budget request to the Director of Finance, such budget request approved by a Two-thirds (2/3) Resolution of the Campus Council; iii. maintain records and other information relating to their campus; iv. represent the concerns and issues of their campus to the Council; and v. have such other powers and duties as are set out in the Regulations. <p>4. Campus Councils shall hold at least one (1) meeting in every calendar month.</p> <p>5. Meetings of Campus Councils shall be open to all members of the Society, unless the Campus Council decides to go <i>In Camera</i> by a Two-thirds (2/3) Resolution. An <i>In Camera</i> session is ended, and the meeting again becomes open to all members, upon a Resolution of the Campus Council. Under no circumstances shall a Campus Council have the authority to exclude voting members of that Campus Council from any meeting of that council at any time.</p> <p>6. Further powers and duties of Campus Councils, Campus Directors and campus representatives shall be set out in the Regulations.</p>	<p>3. Campus Councils shall:</p> <ul style="list-style-type: none"> i. coordinate, under the direction of the Director of Events and Student Life <u>campus Director and VP-Events & Student Life</u>, all Society events on their campus; ii. submit an annual budget request to the Director of Finance <u>Treasurer</u>, such budget request approved by a Two-thirds (2/3) Resolution of the Campus Council; iii. maintain records and other information relating to their campus; iv. represent the concerns and issues of their campus to the Council <u>the Board</u>; and v. have such other powers and duties as are set out in the Regulations. <p>4. <u>Each elected or appointed member of a Campus Council shall be permitted one (1) vote at their respective Campus meeting only</u></p> <p>5. Campus Councils shall hold at least one (1) meeting in every calendar month.</p> <p>6. Meetings of Campus Councils shall be open to all members of the Society, unless the Campus Council decides to go <i>In Camera</i> by a Two-thirds (2/3) Resolution. An <i>In Camera</i> session is ended, and the meeting again becomes open to all members, upon a Resolution of the Campus Council. Under no circumstances shall a Campus Council have the authority to exclude voting members of that Campus Council from any meeting of that council at any time.</p> <p>7. Further powers and duties of Campus Councils, Campus Directors and campus representatives shall be set out in the Regulations.</p>
---	--

From what I have learned, people on every campus were allowed to vote for all Campus Directors and Member at Large positions of the Kwantlen Student Association.

I believe this is contrary to most parts of the Constitution, but specifically point (k), which states that the KSA exists to

It also appears to be contrary to the definition provided in both the old and new Bylaws for what a Campus Council is:

*“**Campus Council** shall mean a democratically elected constituency of the Society at an individual campus of the Kwantlen University College, and shall have those powers and duties as stipulated in these Bylaws and the Regulations;”*

Furthermore, if a Campus Council is defined as a “*constituency of the Society at an individual campus,*” and whereas Merriam-Webster defines a constituency (Attachment 2) as:

“Main Entry: **con·stit·u·en·cy** 

Pronunciation: *k&n-'stich-w&n(t)-sE, -'sti-ch&-*

Function: *noun*

Inflected Form(s): *plural -cies*

1 a : *a body of citizens entitled to elect a representative (as to a legislative or executive position)* **b** : *the residents in an electoral district* **c** : *an electoral district*

2 a : *a group or body that patronizes, supports, or offers representation <creating... a grass-roots constituency for continuing the project -- Fred Reed>* **b** : *the people involved in or served by an organization (as a business or institution)”*

Then it seems clear that in spite of the removal of the words “*by and from the Members enrolled at that campus*” from Article 7 (1) would not be enough to allow all students the ability to vote for all campus council officials.

Among other things, this lead to:

- Slates being able to concentrate their resources by having all their candidates campaign only on campuses with more students (such as Surrey and Richmond) to ensure higher voter turnout;
- Independent candidates not being able to compete on their home campuses against the slates who were able to campaign on only one or two larger campuses;
- Not all candidates being informed that this would be the case. In an e-mail received from Mat Huff (Attachment 3), he noted that he did not realize this would be the case for campaigning and voting;
- no way to guarantee that Campus Councils are able to fulfill their defined role under the Bylaws (specifically, this was seen this year on the Newton Campus, where a number of appointed members of Newton Campus Council were not from the Newton Campus and failed to fulfill many of their duties as Newton Campus Council officials).
- a highly disproportionate amount of votes being cast for candidates at the Newton Campus (Attachment 4).

It is my understanding that the provision to have Campus Councils be elected “*by and from the Members enrolled at that campus*” was removed by Aaron Takhar, who was blocked from obtaining all voting seats on Council when his candidates from Newton Campus were exposed as not being Newton students.

As such, it seems very unfair to members of the various Campus Councils to allow Campus Councils to be elected by all of the Members of the KSA.

Allowing for anything else would appear to be a severe form of maladministration on the part of the current KSA.

3. That the “RAF 2K5” Regulations that were adopted in January, 2006 do not specify or give definition for the number of Campus Council “Member-at-Large” positions that each campus is to have;

Article 6 (2) (ii) of the “RAF 2K5” Bylaws note that campus council shall consist of “*At-Large Members, the number of which shall be set out in the regulations.*”

The regulations as posted online as of January 9, 2006 do not give definition to the number of at-large positions on each campus, nor do they define how those numbers are arrived at; whereas the previous Bylaws and Regulations did give definition and had the number of positions based on the size of a campus’s head count population size.

As such, how did the CRO know how to define the number of positions? Were these number arbitrarily decided on by Council, perhaps in a separate resolution that did not include a Regulation change? Or were they decided on by the CRO? Or did an individual, such as the Chairperson of the Executive Board, decide on the numbers? If any of these cases were true, they would be a contravention of “RAF 2K5” which says the number “shall be set out in the regulations.”

Furthermore, the Ombudsperson is already in receipt of two complaints from myself regarding the validity of the December 16, 2005 and January 6, 2006 meetings of the KSA Board of Directors due to insufficient notice, a failure to widely distribute an agenda, as well as a failure to produce and publicize minutes for those meetings. As such, I would argue that even if the At-Large Members were given definition at either of these meetings, that the motions to do so would be out of order due to insufficient notice for past Council meetings.

4. That the \$500 per candidate spending limit is unfair to economically disadvantaged student candidates;

No record has been provided by the CRO in regards to when this limit was set. The Elections Committee has the power to set these levels but it appears that it did not do so, or at least, no proof has been provided to date that it did so (Attachment 5). If the Elections Committee did not set these limits, who did, and what reasoning went into setting them this way?

It seems to allow a clear advantage to slates with candidates running in all positions, allowing them to spend more than \$11,000 on the election. Given the further changes to how campus council positions are elected, this gives a very clear and very unfair material advantage to slates over individual independent candidates; no matter what position they are running for and this seems to be clear given the results of the election.

5. That there were insufficient rules regarding campaigning given to candidates;

In the past, specific rules governed how candidates could campaign during KSA elections and these were removed from the current KSA Regulations last fall. Furthermore, the CRO did not provide any further definition on his own during the all-candidates meeting (see video of all-candidates meeting).

This failure resulted in a number of campaign violations as illustrated in the next section.

6. That little to nothing was done to ensure the integrity of the polling stations on each campus;

As witnessed by students Johnny Woo, Cassandra Dieudonne, Christine McLellan, Robert Evans and Lisa Coan; as well as by video footage and photographs as taken by Mr. Woo and Ms. Dieudonne, it is clear that the integrity of the polling stations and the ballot boxes was not maintained during this election.

A number of inconsistencies occurred, such as but not limited to:

- Voters having no place to actually privately sit and cast their ballot in secrecy – no cardboard voting booths were provided for use on either day of the election (at least in Richmond). Students were observed walking away from the main elections table, ballots in hand, to talk to candidates in both Richmond and Surrey – asking, ok, who do I vote for?
- RAF Candidates campaigning to candidates within the 5 meter buffer zone;
- In Richmond, the election workers left the ballot box open for an indeterminate amount of time. During past elections, no election worker was given access to being able to open the election boxes, other than the metal flap on top of the boxes that covered the ballot slot of the boxes;
- RAF Candidates in Richmond were seen loitering around the poll booth throughout the day, and seemed very friendly with the elections workers – this is a violation of both the old and new KSA Electoral Regulations. In Richmond, they were all seen leaving together from the campus. When confronted about where they were going by other candidates, they said they were taking the box to an undisclosed location (which would have been to the CRO, as shown by Attachment 6); *and*
- RAF Candidate Kulvir Gill storing campaign materials in his office (this complaint has still not been resolved by the elections

Committee, even though more than 72 hours have passed since it was submitted – Attachment 7).

As such, it is clear that due to these violations, as well as the ruling party's inability to advertise the holding of an election at any point during this electoral process, that a material effect on the election did occur in favour of the RAF Party.

7. That the availability of funding for a yes / no campaign in the referendum was not advertised as per the Regulations; and

The regulations that provide for the funding of yes / no campaigns was not advertised in any way to the electorate.

8. That contact information for the Ombudsperson is not easily found, as there is no information currently posted on the KSA website – which would be the main form of communication when the institution is closed on weekends.

The phone number is available at most Campus Council offices for the Ombudsperson, and on some campuses, an Ombudsperson's brochure advertises the Ombudsperson's e-mail address (although it could very well be the old "yourksa" e-mail address, which from my understanding no longer works).

Finally, no contact information is present online, when in the past, on the old KSA website, the information was present (Attachment 8). This, in spite of the fact that students are encouraged to submit complaints to the Ombudsperson within a certain timeframe. As such, a student's ability to contact the Ombudsperson could result in complaints not being received by the Ombudsperson.

As such, given the severity of the various complaints already submitted to the Ombudsperson, regarding various electoral issues, I call into question the validity of the entire Spring 2006 General Election.

I hope the Ombudsperson will be able to rule on this as well as all other complaints regarding the Spring 2006 General Election in a full formal report available to all students covering the issues and investigations behind all submitted complaints – both macro and micro (that is those that deal with the validity of the entire election on a macro level, as well as with various specific incidents that have occurred on a micro level).

Respectfully submitted,

Steven H. Lee, 100-025-323

Witnesses / Persons Privy to the Incident:

Student Name of Witness No. 1 (Please Print)

Student Number of Witness No. 1 (Please Print)

Signature of Witness No. 1

Student Name of Witness No. 2 (Please Print)

Student Number of Witness No. 2 (Please Print)

Signature of Witness No. 2

Student Name of Witness No. 3 (Please Print)

Student Number of Witness No. 3 (Please Print)

Signature of Witness No. 3

Student Name of Witness No. 4 (Please Print)

Student Number of Witness No. 4 (Please Print)

Signature of Witness No. 4

Student Name of Witness No. 5 (Please Print)

Student Number of Witness No. 5 (Please Print)

Signature of Witness No. 5

Student Name of Witness No. 6 (Please Print)

Student Number of Witness No. 6 (Please Print)

Signature of Witness No. 6