

July 29, 2006

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Paul Browning, Ombudsperson
Kwantlen Student Association
12666 – 72nd Avenue
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Phone: (604) 599-2303

Re: Appointment of Stafford Richter as VP Events and Student Life

Dear Mr. Browning,

This letter was originally going to ask you to conduct an official investigation into the removal and appointment of elected officials that have occurred since February 2006, with specific reference to the July 28 Appointment of Stafford Richter as VP Events and Student Life.

Because of the recent Petition to the Supreme Court of British Columbia by the Concerned Students of Kwantlen, I cannot ask you to look at all removals and appointments, as they are made reference to in my own affidavit to the court. However, this petition will not be formally presented to a judge until August 21, 2006. As such, I would argue that any items in any Petition are not technically before the Courts until the people are in Court, standing before a judge and making their arguments.

So, for the sake of clarity, this complaint will simply ask you to examine the question of the legitimacy of Stafford Richter's Appointment, which is not referenced in any way in my affidavit or in the Petition as filed by the Concerned Students of Kwantlen.

I first want to start out by stating clearly that I have no qualms against Mr. Richter personally, nor do I question his ability to effectively carry out the duties of this position. Quite the opposite, I feel he is an excellent candidate for this type of position. My concern here is strictly in regards to the processes that allow for appointments and elections to seats on the Society Board of Directors. **This is why I ask that the Ombudsperson make this investigation a priority, before any formal decisions can be made by the KSA with Mr. Richter holding a voting seat.**

This will also ask you to set aside the consideration that the removal of directors is in fact *ultra vires* to Section 31 of the Society Act, which states:

Removal of directors

31 A director may be removed from office by special resolution and another director may be elected, or appointed by ordinary resolution, to serve during the balance of the term.

And it will also ask you to set aside the consideration of previous findings by you regarding the Special General Meetings held in 2005, as well as regarding the Spring 2006 KSA General Election, which essentially found those events to be null and void. The simple case is that we currently have a group of individuals in power at the KSA that have been ignoring those findings and continuing to act under possibly illegitimate and illegal Bylaws, which I have referred to in the past as the RAF 2K5 Bylaws.

On July 28, 2006, the apparently duly elected official, Bikram Gill was removed from his position of Vice-President, Events and Student Life, as per Article 8 of the "RAF 2K5" Bylaws. Subsequently, Member Stafford Richter was appointed in his place as the Vice-President Events and Student Life, and also given a vote on the Society's Board of Directors.

It is my contention that Stafford's appointment is *ultra vires* to the Board of Director's powers granted to them under the both the old Bylaws and the "RAF2K5" Bylaws. The definition of the Board of Directors under the RAF 2K5 Bylaws states:

"Board" shall mean the board of directors of the Society, voting and non-voting. This shall include the President, Vice-President Internal Affairs, Vice-President External Affairs, Vice-President Events & Student Life, Treasurer, the four (4) Campus Directors and all Members-At-Large

Specifically, Article 8(6) under the RAF 2K5 Bylaws states:

Upon the removal of a member of the Board, the Board shall appoint one of its members to fulfill the duties of the removed member until such time as the position is filled by election. Any member appointed by a Two-thirds (2/3) resolution may also be permitted one vote if the Board sees fit. However, once an appointed member has been permitted a vote it is binding and may not be taken away at any time for any reason.

A similar provision was in the old Bylaws. What is in question here is the definition of *member*. It is my contention that it does not refer to the definition of *Member* as laid out in Article 1(1), the definitions section, which states:

"Member" shall mean a member of the Society with full voting rights at General Meetings and in elections, the right to run for and hold office, and such other rights as are stipulated in the Act, these Bylaws or adopted by the Society from time to time;

All references throughout the old Bylaws to *Member* as defined by Article 1(1) are capitalized. The same seems to hold true for the RAF 2K5 Bylaws, as can be seen by other articles, even in Article 8, as illustrated by Article 8(3) and Article 8(7):

3. The Members may, by Special Resolution, remove the President, Treasurer, any of the Vice-Presidents or Campus Director(s), before the expiration of her term of office.

7. Any Member may run in a by-election, even a Member previously removed from the position.

Furthermore, Article 8(1) seems to explicitly set out a definition for *Board member* in this section, as it states:

1. Any Board member may be removed from office in accordance with this section of the Bylaws.

As such, since Article 8(6) does not refer to *Members* as per the definition for *Member*, it is reasonable to conclude that it only has the power to appoint a person who was previously elected to the Board of Directors by the membership, or appointed as a non-voting member (such as a liaison or under the RAF Bylaws, a *Member-at-Large*).

However, it is questionable however that a *Member-at-Large* could be appointed by the Board of Directors, as the definition for *Member-at-Large* under Article 1(1) of the RAF 2K5 Bylaws does not state which body has the authority to move such a resolution:

"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.

Furthermore, the definition clearly states that such a *Member-at-Large* *may never hold a voting seat on the Board*.

Therefore, it seems clear that although Mr. Richter may be hired by the Society to fulfill the staff duties of the Vice-President Events and Student Life, he may not be appointed to hold a voting seat on the Board of Directors unless he:

- a. held a seat on the University-College Board of Governors or Education Council, which would give him a non-voting seat on the Society's Board of Directors;
- b. was appointed or elected as a liaison; or
- c. if he was a currently elected voting member of the Board of Directors.

To my understanding, Mr. Richter does not and cannot fit into any of the above requirements, and therefore he cannot hold the position of Vice-President Events and Student Life.

Furthermore, the continued vacancy of the Vice-President, External Affairs would appear to be a violation of Article 8(6) which states:

Upon the removal of a member of the Board, the Board shall appoint one of its members to fulfill the duties of the removed member until such time as the position is filled by election.

The definition of shall, as per my previous understanding of it, is an imperative command, as defined in part by the law.com Dictionary (<http://dictionary.law.com/>), which states:

shall

v. 1) an imperative command as in "you shall not kill." 2) in some statutes, "shall" is a direction but does not mean mandatory, depending on the context.

may

v. a choice to act or not, or a promise of a possibility, as distinguished from "shall," which makes it imperative. 2) in statutes, and sometimes in contracts, the word "may" must be read in context to determine if it means an act is optional or mandatory, for it may be an imperative. The same careful analysis must be made of the word "shall." Non-lawyers tend to see the word "may" and think they have a choice or are excused from complying with some statutory provision or regulation.

As such, the KSA must fill the position through a 2/3rd resolution from one of its members, provided that said Member:

- a. holds a seat on the University-College Board of Governors or Education Council, which would give him a non-voting seat on the Society's Board of Directors;
- b. was appointed or elected as a liaison; or
- c. was a currently elected voting member of the Board of Directors.

In short, the KSA does not have a choice about whether or not a position may remain vacant. This was the case under the old Bylaws, and essentially it appears that this is still the case under the RAF2K5 Bylaws.

To summarize, I would like the Ombudsperson to:

- conduct an immediate formal investigation into whether or not the appointment of Stafford Richter is valid;
- provide clarity as to who the Society may appoint to voting positions on the Board of Directors when someone is removed or resigns;
- provide a formal written report summarizing his investigation and findings as well as presenting any relevant recommendations regarding this process;
- ensure his formal written report is open to all members of the Society;
- have his report completed on this situation distributed by no later than August 4, 2006.

The membership pays a lot of fees each term and deserves to know that their money is being well spent and they deserve to know if a properly constituted Board of Directors is representing them. Anything less could be severe form of maladministration.

Respectfully submitted,

Steven H. Lee