

**Ombudsperson  
Final Report  
Investigation into Special General Meeting held on November 29, 2005.**

**July 14, 2006**

**Note re: Availability of Report:**

Section III, (3) of the KSA Regulations states that a report of the Ombudsperson shall be made available to all interested parties. In the case of this report, I have concluded that “all interested parties,” in this case means all members of the Kwantlen University College Student Association (KSA). As such, this report shall be made available to all members.

***Summary***

This final report is based upon a request for a formal investigation into the legitimacy of the Special General Meeting (SGM) held by a group of members of the Kwantlen University College Student Association (KSA) on Thursday, November 29, 2005.

***Important Disclaimer***

Prior to continuing, I would also like to make a disclaimer that **I am not a lawyer, and in making this report, do not purport to be practicing law.** Therefore, this report should not be considered as legal advice. I am acting in the role of Ombudsperson as laid out in the Bylaws and Regulations of the KSA.

***Allegations***

- Proper Notice of Meeting Given
- Meeting conducted properly according to KSA Bylaws and Robert’s Rules of Order

***Investigation***

My investigation was conducted by way of interviewing several parties involved with the SGM and through a review of written documentation submitted to me in the course of my investigation.

In detailing my findings, it is necessary to first address the issue of which bylaws were the correct bylaws in force at the KSA at the time of the SGM.

As per my report, dated October 28<sup>th</sup>, 2005, concerning the legitimacy of the SGM held on Thursday September 29<sup>th</sup>, 2005, I concluded that the correct bylaws that should remain in force in force are those in effect before the September SGM.

I realize that at the October 28<sup>th</sup>, 2005 meeting of the KSA Council (Board of Directors), a motion to accept my report was defeated. It is indeed true that Council is not obligated to accept any report and/or recommendations made by the Ombudsperson as was delineated in a judicial ruling on May 12<sup>th</sup>, 2005. However, such an action by Council, does not absolve me from my responsibility to give an impartial report, on what I believe to be the correct interpretation of the matter under investigation.

However, it has subsequently come to my attention that on October 28<sup>th</sup>, 2005, the Bylaw changes were received and approved by the British Columbia Registrar of Societies. Therefore, according to BC law, the bylaws in effect on November 29<sup>th</sup>, the date of the meeting in question, are the new bylaws that have been filed with the registrar.

Nevertheless, given that there is contention over the validity of the September 29<sup>th</sup>, 2005 AGM, I will be analyzing the November 29<sup>th</sup>, 2005 SGM using both the original and new bylaws. (Those in effect at the time of the September 29<sup>th</sup>, 2005 SGM and those in effect afterwards). This is so that, should at any point in the future a body such as a court were to rule the new bylaws invalid, the KSA could look to my analysis based on the original bylaws

In the request for investigation, I was asked to look into the legitimacy of the SGM by way of several categories and subcategories. These were:

- I. Notice of Meeting
  - a. SGM called by petition served on KSA
  - b. Issue of whether or not petition can specify location / time of Special General Meeting
  - c. Serving of Notice
  
- II. Conduct of November 29<sup>th</sup> SGM

I will examine these matters sequentially in the order that they were laid out in the request for investigation.

- I. Notice of Meeting
  - a. SGM called by petition served on KSA

Analysis based on original KSA Bylaws:

The original set of KSA bylaws (those undisputedly in effect before the September 29<sup>th</sup>, 2005 SGM) provide for an SGM to be called by way of a petition served on the KSA. Specifically, Article 3 (5) (b) reads as follows:

**5. The Director of Operations shall, within forty-five (45) days, call a Special General Meeting of the Society upon:**

**1. a Two-thirds (2/3) Resolution of Council; or**

**2. being served a petition stating the purpose of the General Meeting, duly signed by two hundred and fifty (250) Members or ten percent (10%) of the Members, whichever is less.**

Here, I am convinced, based on the evidence provided, that Christine McLellan, a member of the society, did indeed submit a petition signed by at least two hundred and fifty members of the society.

It is also clear that upon receiving the petition, the Director of Operations, Mat Huff proceeded to book a room on campus for the purpose of holding an SGM on November 29<sup>th</sup>, 2005.

At a meeting of the Board of Directors on November 18<sup>th</sup>, 2005, a motion was passed ordering the cancellation of the above room booking. Given the requirement for the Director of Operations to call an SGM upon receipt of the above petition, I conclude that The Board of Directors should not have taken this action and that by doing so, violated the bylaws of the society. It is indeed true that under Article 5 (vi) of the bylaws that Council,

“may, upon a Two-thirds (2/3) Resolution, overrule, alter, or amend any action performed by another body or individual of the Society;”

However, in my opinion, this power to overrule does not give The Board of Directors the power to make a decision that would violate the bylaws. In this situation, the society is required to hold an SGM so, by overruling the actions of the Director of Operations, without establishing an alternative date and time for the SGM, within forty-five days of the service of the petition, The Board of Directors acted in violation of the bylaws.

In the motion ordering the cancellation of the SGM, the reason given for the cancellation is that the proper procedure was not followed and that the petition to call the meeting was not received by the Vice-President External Affairs.

Under the original KSA bylaws, there is no such position as Vice-President External Affairs. There are five Executive members of The Board of Directors. The equivalent to the Vice-President External Affairs position would appear to be the Director of External Affairs. However, this is moot,

since in the original bylaws a petition calling for an SGM is to be served on the Director of Operations.

Therefore, the reason stated in the motion was not a valid reason for ordering the cancellation of the meeting and The Board of Directors should have allowed the meeting to proceed. However, Article 3 (5) (b) of the bylaws specifically requires that the Director of Operations call the SGM and that such a meeting be called within forty-five days. These bylaws do not have any provision for members of the society to hold their own SGM in the event that the society does not call an SGM within forty-five days. As such, while the petition was correctly served, the holding of an SGM not called by the Director of Operations (or called by The Board of Directors by way of overruling the Director Of Operations) is not permitted under the bylaws.

However, it should also be noted that Section 58 of the Society Act [RSBC 1996] does give petitioners the power under certain circumstances to convene their own general meeting. This section reads as follows:

**58 (1) In this section, "requisitionists" means the voting members who requisition a general meeting of the society under subsection (2).**

**(2) The directors of a society, on the requisition of 10% or more of the voting members of the society must convene a general meeting of the society without delay.**

**(3) The requisition may consist of several documents in similar form each signed by one or more requisitionists and must**

**(a) state the purpose of the general meeting,**

**(b) be signed by the requisitionists, and**

**(c) be delivered or sent by registered mail to the address of the society.**

**(4) If, within 21 days after the date of the delivery of the requisition, the directors do not convene a general meeting, the requisitionists, or a majority of them, may themselves convene a general meeting to be held within 4 months after the date of the delivery of the requisition.**

**(5) A general meeting convened by the requisitionists must be convened in the same manner, as nearly as possible, as general meetings are convened by the directors.**

**(6) In the case of a reporting society, unless the members otherwise resolve at a general meeting called by the requisitionists,**

**(a) the society must reimburse the requisitionists for the expenses actually and reasonably incurred by them in requisitioning, calling and holding the meeting, and**

**(b) each director, who was in default in not calling the meeting as required under subsection (2), must pay the society his or her prorated share of the amount paid by the society to reimburse the requisitionists under paragraph (a).**

**(7) For the purposes of this section, a member who has the right to vote, whether at a general meeting or in a system of delegate or indirect voting or voting by mail allowed under this Act, is a voting member.**

Based on this section, the requisitionists of a general meeting may force the directors to hold a general meeting by way of a petition signed by 10% or more of the voting members of a society. If the directors have failed to convene a meeting within 21 days, the requisitionists may convene a general meeting.

However, since this petition did not contain the signatures of at least 10% of the voting members of the society, this section does not apply to this case. Furthermore, even if this petition had met the 10% threshold, the directors would then have 21 days to hold a meeting. Since the petition was served on November 14<sup>th</sup>, 2005, the requisitionists would not have been able to hold their own meeting until after December 5<sup>th</sup>, 2005.

Therefore, for both these reasons, no authority existed for the petitioners to hold their own SGM.

Analysis based on new set of KSA bylaws

The new set of bylaws (those claimed to have been passed at the September 29<sup>th</sup>, 2005 SGM) also provide for an SGM to be called by way of a petition served on the KSA. Specifically, Article 3 (5) reads as follows:

**The VP-External, within thirty (30) days, shall call a Special General Meeting of the Society upon:**

**1. a Two-thirds (2/3) Resolution of the Board; or**

**2. being served a petition stating the purpose of the General Meeting, duly signed by two hundred and fifty (250) Members or ten percent (10%) of the Members, whichever is less.**

As mentioned in my above analysis based on the original bylaws, I am convinced, based on the evidence provided, that Christine McLellan, a

member of the society, did indeed submit a petition signed by at least two hundred and fifty members of the society. This petition was served on Mat Huff, Director of Operations.

As also mentioned above, the Director of Operations, Mat Huff proceeded to book a room on campus for the purpose of holding an SGM on November 29<sup>th</sup>, 2005.

At a meeting of The Board of Directors on November 18<sup>th</sup>, 2005, a motion was passed ordering the cancellation of the above room booking. The reason given for this cancellation was that the proper procedure was not followed and that the petition to call the meeting was not received by the Vice-President External Affairs.

On first glance, this rationale appears to be correct, since the petition was indeed given to the Director of Operations. However, several factors cast doubt upon the assertion that this action invalidated the petition.

Firstly, since the September 29<sup>th</sup>, 2005 SGM, the current directors of the society have used, and continue to use, their existing titles as laid out in the original bylaws (i.e. Director of Operations, Director of Finance etc). No mention is made in the new bylaws, or in the motion used to pass them at the September 29<sup>th</sup>, 2005 SGM of how the transition to the new positions would take place. Since the directors continued to use their existing titles, it makes sense that the Board of Directors (Council) was *de facto* operating under the existing titles, until the election of new directors in the next society election. Therefore, at the time the petition was served, no individual could be said to have held the position of VP-External Affairs. One could indeed make the logical assumption that the Director of External Affairs would be the VP-External Affairs. However, the new bylaws make major changes to the positions and responsibilities of board members, that such an assumption cannot automatically be made. Furthermore, since the old titles were being used, it is quite reasonable that the petitioner would have assumed that such a petition should be served on the Director of Operations, as was the practice in the society when the bylaws referred to said titles. Given this confusion as to whom was the correct individual to serve the petition to, the appropriate thing for the Board to have done would have been to recognize the petition as valid and ensure that it was passed on to whichever Director the Board determined to be the most appropriate individual to fulfill the duties of the Vice-President External Affairs in the transition period.

Secondly, the complainant make reference to Section 12 of the Society Act which states that,

**A document may be served on a society by**

**(a) leaving it at, or mailing it by registered mail to, the address of the society as filed under this Act, or**

**(b) personally serving a director, officer, receiver manager or liquidator of the society, or, in the case of an extraprovincial society, the attorney.**

Based on this section, the complainant argued that, as a Director of the society, Mat Huff was indeed allowed to receive the petition. I concur and conclude that, the petition was indeed properly served on the society, thus requiring it to be acted upon in accordance with the society bylaws requiring a special general meeting to be called. The bylaws do state that the VP-External must be served with such a petition, but this is contradicted by the higher authority of the Society Act, which allows a document to be served on any director of the society. It is then logically that directors duty to pass the petition on to the director responsible to act on the petition. As mentioned above, in this situation, that would be whichever Director the Board determined to be the most appropriate individual to fulfill the duties of the Vice-President External Affairs in the transition period.

Given the confusion over whose responsibility it was in the transition period to call an SGM upon receipt of the above position, I conclude that it was quite reasonable for the Director of Operations to act on the petition and have a room booked for the meeting. However, in this transition period, it is also quite reasonable for the Board to subsequently determine that the responsibility for acting on the petition should properly be assigned to another Director, such as the Director of External Affairs.

As for the motion ordering the cancellation of the meeting, I conclude that, given the particular intent of The Board of Directors in this instance, they acted in violation of the bylaws. For the reasons above, I do not agree with the assertion that the service of the petition on the Director of Operations invalidated the petition. Therefore, in determining that the responsibility for handling such a petition rested with the Director of External Affairs, the board could have quite correctly cancelled the meeting on the understanding that it was now that Director's duty to call a meeting within thirty days. Likewise, given the board's power to override the actions of other bodies or individuals within the society, they could have chosen to cancel the meeting, and hold it on a different date and time, along as this complied with the bylaws. However, given the fact that the intent of the motion was to order the cancellation of the meeting due to the petition itself being viewed as invalid, I maintain that the board acted in violation of the bylaws.

However, Article 3 (5) of the bylaws specifically requires that the VP External call the SGM and that such a meeting be called within thirty days. These bylaws do not have any provision for members of the society to hold their own SGM in the event that the society does not call an SGM within thirty. As

such, while the petition was correctly served, the holding of an SGM not called by the VP External (or called by the Board of Directors by way of overruling the VP External) is not permitted under the bylaws.

In addition, as mentioned in my above analysis based upon the existing bylaws, Section 58 of the Society Act which does give petitioners the power under certain circumstances to convene their own general meeting does not apply due to the fact that the petition did not contain the signatures of at least ten percent of the society membership and that less than twenty one days had elapsed since the petition was served on the society.

Therefore, with the new bylaws, as with the existing bylaws, no authority existed for the petitioners to hold their own SGM.

b. Issue of Whether or Not Petition Can Specify Location / Time of Special General Meeting

Analysis based on original KSA Bylaws:

Article 3 (6) of the original KSA bylaws state that,

**6. A petition requisitioning a General Meeting pursuant to Article 3(5) above may specify the location for such a meeting. If the petition does not so specify, Council shall, by Resolution, decide the location of the General Meeting. Regardless of whether or not the requisitionists stipulated a date and time for the General Meeting, Director of Operations shall have the authority to set the date and time of a General Meeting, provided however that such date and time:**

**a. are within the regular business hours of the Societys main office; and**

**b. occur on a day in which Kwantlen University College is holding regularly scheduled classes.**

The complainant asks for a ruling on the issue of the effect of petitions specifying the location and date/time of Special General Meetings.

Based on the above section, it is clear that in these bylaws, a statement in a petition requisitioning an SGM that specifies a location for the meeting is binding on the society and must be followed. A statement in a petition requisitioning an SGM that specifies a date and time for the meeting is not binding on the society, and the Director of Operations has the authority to determine the time given the two provisos listed under that clause in the bylaws.

Secondly, I also conclude that regardless of whether such parts of a petition are binding or not, the existence or non-existence of statements in such a petition specifying the location and/or date/time of SGM's do not serve to render the main objective of the petition (requiring that an SGM be held) invalid.

Analysis based on new KSA Bylaws:

Article 3 (6) of the new KSA bylaws state that,

**6. A petition requisitioning a General Meeting pursuant to Article 3(5) above may not specify the location for such a meeting. The Board shall, by Resolution, decide the location of the General Meeting. Regardless of whether or not the requisitionists stipulated a date and time for the General Meeting, the VP- External shall have the authority to set the date and time of a General Meeting, provided however that such date and time:**

- a. are within the regular business hours of the Societys main office; and**
- b. occur on a day in which Kwantlen University College is holding regularly scheduled classes.**

Based on the above section, it is clear that in these bylaws, a statement in a petition requisitioning an SGM that specifies a location and/or a date and time for the meeting for the meeting is not binding on the society. The authority to set the location for the meeting is vested in the Board while, the VP- External has the authority to determine the time given the two provisos listed under that clause in the bylaws.

Secondly, I also conclude that regardless of whether such parts of a petition are binding or not, the existence or non-existence of statements in such a petition specifying the location and/or date/time of SGM's do not serve to render the main objective of the petition (requiring that an SGM be held) invalid. Even though, in the case of location, it is stated that the petition "may not specify the location for such a meeting," I interpret this section to mean that a clause in a petition specifying a location is of no force and effect, and not that such a clause renders the entire petition invalid.

c. Serving of Notice

Analysis based on original KSA Bylaws:

**Article 3 (8) and (9) of the bylaws state that,**

**8. Notice of a General Meeting shall be given to the members of the Society by:**

**1. affixing posters, no less than fourteen (14) clear days before the date of the General Meeting, no smaller than 8 by 11 inches, on each of the Kwantlen University College campuses, provided however that each such campus shall receive no less than twenty-five (25) such posters which must be affixed in conspicuous places around the campus; and**

**2. the placement of an advertisement, no less than seven (7) clear days before the date of the General Meeting, within the student newspaper or such other recognized campus media as determined by the Board.**

**9. Notice of a General Meeting must specify the place, day and hour of the General Meeting, and, in the case of special business, the general nature of that business. The accidental omission to give notice of a General Meeting to, or the non-receipt of a notice by, any of the members entitled to receive notice does not invalidate proceedings at that General Meeting.**

The complaint submitted several different pieces of evidence in order to establish that the requisitionists complied with these notice requirements.

With regard to the postering requirements, they submitted evidence in the form of a poster tracking sheet and photographs of each poster, that in my opinion does indeed establish that the requirement for twenty-five posters to be posted on each campus no less than fourteen days before the SGM. The complaint does concede however that, over the two week period, some posters disappeared from the bulletin boards for unknown reasons. However, I conclude that in posting the required twenty-five posters on each campus, the requisitionists were indeed in compliance with this requirement. It is absurd to conclude that due to either acts of vandalism or accidental removal, the act of compliance with the postering requirement which was undertaken in good faith and scrupulously recorded, should be considered invalid. Furthermore, Article 3 (9) further emphasizes this point in that accidental omission or non-receipt of notice does not invalidate the proceedings.

Concerning the requirement to advertise within the student newspaper, or other recognized campus media, the complainants point out that the requisitionists did indeed attempt to have the *Kwantlen Chronicle* print a notice of the meeting. No such notice was printed in the Chronicle but the complainant does point out that an article on the meeting appeared in the November 28<sup>th</sup>, 2005 issue.

Here I conclude that no advertisement that would comply with this article appeared in the Chronicle. The article while providing information about the meeting did not appear at least seven days before the meeting and so does not

qualify as compliance with the article. However, I believe that the requisitionists acted in good faith by attempting to submit an advertisement to the Chronicle to appear within the requisite time period. I am also aware that the requisitionists used other methods of advertising including a notice on the Kwantlen University College First Year Experience website, leaflets, on-campus information tables, and material on Steven Lee's personal website. Documentary proof of the notice on the First Year Experience website, the content of the leaflets, and the material on Steven Lee's personal website was submitted to me. The requisitionists cannot be held responsible for both the editorial decisions and/or the publishing schedule of the Chronicle. Furthermore, I would once again consider Article 3 (9) which deals with the issue of accidental omission to be in effect here. Therefore, I conclude that the attempt by the requisitionists to comply with the requirements was sufficient to the extent that, given the circumstances, the requisitionists were in compliance with the requirement to advertise in the student newspaper, or other such recognized campus media.

Furthermore, in examining copies of the posters used to advertise the meeting, I conclude that all of the requirements of Article 3 (9) have been complied with, namely those of the notice specifying the place, day, and hour of the meeting and the general nature of the special business to be conducted at the meeting.

I am also aware that there was a change in meeting location from the Richmond Campus Conference Centre (Kwantlen University College property) to the Richmond Kwantlen Student Association Lounge (KSA property). This was due to the cancellation of the room booking as mentioned earlier in my report. Since the cancellation was beyond the control of the requisitionists, I consider it entirely appropriate to move the meeting to another convenient location given the circumstances. Furthermore, I have been informed that notices were placed at several locations on campus, including the conference centre doors, informing students of the new location. Given these circumstances, I do not consider the change of the meeting location from what was specified in the original notice to have invalidated the meeting.

Analysis based on new KSA Bylaws:

Article 3 (7) and (8) of the new KSA bylaws state that,

**7. Notice of a General Meeting shall be given to the members of the Society by:**

**1. affixing posters, no less than fourteen (14) clear days before the date of the General Meeting, no smaller than 8 by 11 inches, on each of the Kwantlen University College campuses, provided however that each such**

**campus shall receive no less than eight (8) such posters which must be affixed in conspicuous places around the campus; and**

**2. the placement of an advertisement, no less than seven (7) clear days before the date of the General Meeting, within the student newspaper or such other recognized campus media as determined by the Board.**

**8. Notice of a General Meeting must specify the place, day and hour of the General Meeting, and, in the case of special business, the general nature of that business. The accidental omission to give notice of a General Meeting to, or the non-receipt of a notice by, any of the members entitled to receive notice does not invalidate proceedings at that General Meeting.**

With regard to the postering requirements, these are identical to those in the original bylaws, with the exception that there is a lesser requirement of eight (8) posters per campus in the new bylaws as opposed to twenty-five (25) posters per campus in the original bylaws. Therefore, as I concluded above that the requirement of twenty-five posters was complied with, I also conclude that the lesser requirement of eight posters has also been complied with. As such, I reach the same conclusion as above that the requisitionists were in compliance with the postering requirement.

Concerning the requirement to advertise within the student newspaper, or other recognized campus media, as this requirement is identical in both the original and new bylaws, I reach the same conclusion as above that, given the circumstances, the requisitionists were in compliance with the requirement to advertise in the student newspaper, or other such recognized campus media.

Furthermore, as Article 3 (8) of the new bylaws is identical to article 3 (9) of the original bylaws, I conclude that that all of the requirements of Article 3 (8) have been complied with, namely those of the notice specifying the place, day, and hour of the meeting and the general nature of the special business to be conducted at the meeting.

I also make the same conclusion as to the change of meeting location in that, given the circumstances, I do not consider the change of the meeting location from what was specified in the original notice to have invalidated the meeting.

## II. Conduct of November 29<sup>th</sup> SGM

Here, the requisitionists make reference to Article 20 (1) of the new bylaws that mandates the use of Robert's Rules of order. This reads as follows:

**1. The rules of order prescribed in the latest edition of Roberts Rules of Order shall apply at all meetings of the Society, to the extent of their**

**consistency with the Act, these Bylaws and the Regulations. At any time, however, a Two-thirds (2/3) resolution of the Board may suspend use of these rules of order for a specified length of time. At any time a Two-thirds (2/3) resolution of any other body within the society may also choose to suspend these rules for a specific length of time for their respective meeting only.**

Based on this, several contentions are made in the request for investigation which claim that Robert's Rules of Order was scrupulously followed in the conduct of the November 29<sup>th</sup>, 2005 meeting. These claims are based on the following actions occurring at the meeting and afterwards.

- a) Ensuring that quorum was present throughout the meeting
- b) The selection of Titus Gregory to Chair the meeting
- c) The conduct of the Chair in terms of explaining the proceedings and allowing for proper debate include allowing Kulvir Gill, a subject of removal proceedings who was present at the meeting an opportunity to speak and defend himself.
- d) The proper taking of the vote by the Chairperson
- e) The only motions being discussed being those included in the original petition
- f) The minutes being typed up later that day and posted online
- g) The special resolutions passed at the meeting being typed up afterwards and mailed to the BC Registrar of Societies.

I have also received a brief video clip which contains part of the meeting and is used to demonstrate some of these claims.

Analysis based on original KSA Bylaws:

The original KSA bylaws have a shorter version of the clause mandating Robert's Rules of Order that is Article 25 (1) of the original bylaws. This reads as follows:

**1. The rules of order prescribed in the latest edition of Roberts Rules of Order shall apply at all meetings of the Society, to the extent of their consistency with the Act, these Bylaws and the Regulations.**

Based on this section, I will briefly examine the specific claims made regarding the meeting in an attempt to ascertain compliance.

- a. Ensuring that quorum was present throughout the meeting

Article 3 (9) of the KSA bylaws reads as follows:

**9. A quorum for a General Meeting of the Society is achieved where the number of Members present at such a meeting is equal to or greater than ten percent (10%) of the total Members of the Society, or two-hundred and fifty (250) Members, whichever is lesser. Under no circumstances shall quorum be less than three (3) Members.**

Based on the video evidence that I have seen of the meeting, it is clear that this requirement was not met. The video shows a vote take place that passes by a margin of 69-3. This, combined with a basic visual observance of the number of people in the room, clearly shows that the quorum requirement was not met. Therefore, the proceedings of the meeting are to the best of my knowledge null and void.

b. The selection of Titus Gregory to Chair the meeting

Article 3 (3) of the KSA bylaws reads as follows:

**3. The Chairperson of the Executive Board, or such other individual as chosen by a Resolution of Council, shall preside as chair for all General Meetings of the Society. Notwithstanding this clause, the membership may appoint a chair from among the Members present, by an Ordinary Resolution.**

This section seems to indicate that it is a requirement for a member of the society to chair the meeting. Titus Gregory is not a member of the society.

This is indeed true. However, it is also true that the society has a long precedent of having external individuals chair general meetings of the society. For example, Summer McFadyen, and Desmond Rodenbour have previously chaired meetings.

Titus Gregory argues in a submission on this issue that the bylaw requirement to have a member Chair the meeting is merely a “rule of order” that under parliamentary procedure can be suspended by the assembly. I have my doubts as to this argument since, the bylaws clearly state that Robert’s Rules of Order is in effect **“to the extent of their consistency with the Act, these Bylaws and the Regulations.”** Therefore, since the bylaws are binding under the rules of the Society Act, which is clearly a higher authority than Robert’s Rules of Order, I do consider the bylaw to preclude a non-member from chairing a meeting.

That said, given the fact that this has been a long established practice of the KSA, I do not consider this to have the effect of invalidating the meeting. A meeting, properly conducted according to procedure, but with the minor violation of having a non-member Chair the meeting should still be considered valid.

c. The conduct of the Chair in terms of explaining the proceedings and allowing for proper debate include allowing Kulvir Gill, a subject of removal proceedings who was present at the meeting an opportunity to speak and defend himself.

Here, it is argued that the Chair of the meeting did a god job of explaining the proceedings and allowed for proper debate on all matters before the meeting. Furthermore, of the people subject to removal from office proceedings, Kulvir Gill, the only one present was given an opportunity to speak and defend himself but declined to do so.

From the short video evidence submitted to me, it is indeed true that the Chair properly explained the procedures of the meeting so that all present could understand it. The specific case of the removal of Kulvir Gill was not shown on the video, so there is no empirical evidence of this. However, based on conversations with those present at the meeting, I am convinced that this did indeed occur and that the Chair was also clear in explaining the proceedings in other parts of the meeting that were not present on the video.

d. The proper taking of the vote by the Chairperson

Here, reference is made to the taking of votes by the Chairperson. Specifically, it is claimed that “YES” and “NO” cards were used and that a proper count of each vote was taken by the Chair.

Based on the video evidence, coupled with interviews with individuals present at the meeting, I am convinced that this did indeed occur and that votes were properly taken during this meeting.

e. The only motions being discussed being those included in the original petition

Here, it is claimed that the only motions discussed were those included in the original petition, namely those of:

- i. Motion to adopt new bylaws;
- ii. Motion to remove directors of the society; and;
- iii. Motion to restore membership rights of anyone who had rights taken away from them.

These motions were indeed discussed, however additional motions were indeed discussed, namely those to appoint Directors of the Society to replace those that have been removed.

Here, however, I would like to refer back to Article 3 (8) of the bylaws, which mandates that notice of a general meeting must contain, in the case of special business, the general nature of that business. Therefore, motions that are not explicitly specified in the notice are permitted as long as they conform to the “general nature.” I would argue that along with the removal of directors, the appointment of replacements is within the “general nature” of business to remove directors, should such removal succeed.

Therefore, I conclude that all of the motions discussed were properly on the agenda.

f. The minutes being typed up later that day and posted online

After the meeting, the minutes were quickly typed up and posted online to the Steven Lee’s personal website.

It is good practice to produce meeting minutes within a reasonable time period after the meeting. However, it should also be noted that minutes are not official until they have been approved. Therefore, the minutes on Mr. Lee’s personal website should be seen as unofficial and for information purposes only.

g. The special resolutions passed at the meeting being typed up afterwards and mailed to the BC Registrar of Societies.

After the meeting, the Special Resolutions passed at the meeting were filed with the BC Registrar of Societies. In the case of a properly constituted Special General Meeting, it would indeed be appropriate to file the resolutions passed.

However, given the invalidity of the meeting due to the petitioners not having the authority to hold their own general meeting on November 29<sup>th</sup>, 2005 as I have outlined in the earlier part of my report, coupled with the absence of quorum, the filing of these resolutions was clearly inappropriate and should not have taken place. Special Resolutions should only be filed with the Registrar of Societies if they have been properly adopted.

Analysis based on new KSA Bylaws:

As mentioned earlier, Article 20 (1) of the new bylaws reads as follows:

**1. The rules of order prescribed in the latest edition of Roberts Rules of Order shall apply at all meetings of the Society, to the extent of their consistency with the Act, these Bylaws and the Regulations. At any time, however, a Two-thirds (2/3) resolution of the Board may suspend use of these rules of order for a specified length of time. At any time a Two-thirds (2/3) resolution of any other body within the society may also choose to suspend these rules for a specific length of time for their respective meeting only.**

Since such a suspension of the rules as mentioned above did not occur, the new bylaw can be treated as equivalent to the section in the original bylaws regarding the use of Robert's Rules of Order.

Based on this section, I will briefly examine the specific claims made regarding the meeting in an attempt to ascertain compliance.

a. Ensuring that quorum was present throughout the meeting

Article 3 (9) of the KSA bylaws reads as follows:

**9. A quorum for a General Meeting of the Society is achieved where the number of Members present at such a meeting is equal to or greater than ten percent (10%) of the total Members of the Society, or fifty (50) Members, whichever is lesser. Under no circumstances shall quorum be less than three (3) Members.**

Based on the video evidence that I have seen of the meeting, coupled with the unofficial minutes, and interviews with individuals present at the meeting, it is clear that quorum was met. The video shows a vote take place that passes by a margin of 69-2. The unofficial minutes point to the meeting being called to order with fifty-nine members in attendance. Furthermore, a basic visual observance of the number of people in the room, coupled with interviews with individuals present clearly shows that the quorum requirement was met. Therefore, the meeting can be said to have properly achieved and maintained quorum.

It was pointed out that for a portion of the meeting, quorum was lost but then a recess was called, and quorum was attained again. Robert's Rules of Order [RONR (10<sup>th</sup> ed.) p.336, XI. 336] states that, "The only action that can legally be taken in the absence of a quorum is to fix the time to which to adjourn (22), adjourn (21), recess (20), or take measures to obtain a quorum. Therefore, this recess and subsequent regaining of quorum was legitimate, given that there is no internal KSA Bylaw, Regulation, or Policy that refers to quorum being lost at a general meeting.

b. The selection of Titus Gregory to Chair the meeting

Article 3 (3) of the KSA bylaws reads as follows:

**3. The President, or such other individual as chosen by a Resolution of the Board, shall preside as chair for all General Meetings of the Society. Notwithstanding this clause, the membership may appoint a chair from among the Members present, by an Ordinary Resolution.**

This section seems to indicate that it is a requirement for a member of the society to chair the meeting. Titus Gregory is not a member of the society.

This is indeed true. However, it is also true that the society has a long precedent of having external individuals chair general meetings of the society. For example, Summer McFadyen, and Desmond Rodenbour have previously chaired meetings.

Titus Gregory argues in a submission on this issue that the bylaw requirement to have a member Chair the meeting is merely a “rule of order” that under parliamentary procedure can be suspended by the assembly. I have my doubts as to this argument since, the bylaws clearly state that Robert’s Rules of Order is in effect **“to the extent of their consistency with the Act, these Bylaws and the Regulations.”** Therefore, since the bylaws are binding under the rules of the Society Act, which is clearly a higher authority than Robert’s Rules of Order, I do consider the bylaw to preclude a non-member from chairing a meeting.

That said, given the fact that this has been a long established practice of the KSA, I do not consider this to have the effect of invalidating the meeting. A meeting, properly conducted according to procedure, but with the minor violation of having a non-member Chair the meeting should still be considered valid.

c. The conduct of the Chair in terms of explaining the proceedings and allowing for proper debate include allowing Kulvir Gill, a subject of removal proceedings who was present at the meeting an opportunity to speak and defend himself.

Here, my analysis and conclusions are exactly the same as referred to under my analysis based on the original bylaws. Therefore, please refer to that analysis.

d. The proper taking of the vote by the Chairperson

Here, my analysis and conclusions are exactly the same as referred to under my analysis based on the original bylaws. Therefore, please refer to that analysis.

e. The only motions being discussed being those included in the original petition

Here, my analysis and conclusions are exactly the same as referred to under my analysis based on the original bylaws. Therefore, please refer to that analysis.

f. The minutes being typed up later that day and posted online

Here, my analysis and conclusions are exactly the same as referred to under my analysis based on the original bylaws. Therefore, please refer to that analysis.

g. The special resolutions passed at the meeting being typed up afterwards and mailed to the BC Registrar of Societies.

After the meeting, the Special Resolutions passed at the meeting were filed with the BC Registrar of Societies. In the case of a properly constituted Special General Meeting, it would indeed be appropriate to file the resolutions passed.

However, given the invalidity of the meeting due to the petitioners not having the authority to hold their own general meeting on November 29<sup>th</sup>, 2005 as I have outlined in the earlier part of my report, the filing of these resolutions was clearly inappropriate and should not have taken place. Special Resolutions should only be filed with the Registrar of Societies if they have been properly adopted.

### **Final Conclusions:**

In light of my overall findings regarding the Special General meeting, both before, and during the meeting, I conclude that the Special General meeting is null and void.

To summarize,

- 1) Both the original and new bylaws do not allow for requisitionists to convene their own Special General Meeting. While the Board of Directors must deal with a properly submitted petition in accordance with the bylaws and/or Society Act, failure to do so does not give the petitioners the authority to convene their own meeting. The Society Act, on the other hand does allow requisitionists to convene their own Special General Meeting but, this requires a petition with the signatures of at least ten percent of the voting members of the society, a requirement which was not met. Furthermore, the Society Act only allows the requisitionists to convene their own meeting if the directors of the society have convened the meeting within twenty one days of the serving of the petition. Therefore, since the petition was served on November 14<sup>th</sup>, 2005, a meeting could not have taken place until December 6<sup>th</sup>, 2005 at the earliest.
- 2) Based on the original bylaws being in effect, quorum was not achieved at the meeting. With the new bylaws in effect, quorum was achieved but this does not negate my conclusion in 1) above.
- 3) Regarding the question of the validity of the new KSA Bylaws (those passed at the September 29<sup>th</sup>, 2005 meeting, I have already released my report dated October 28th, 2005. I continue to concur with my conclusions in that report but recognize that the new bylaws were filed with the BC Registrar of Societies and that my report was not adopted by the Board of Directors. Therefore, according to BC law, the new bylaws were in effect on November 29<sup>th</sup>, 2005.

### **Recommendations:**

In light of my conclusions above, based on analyses of the November 29<sup>th</sup>, 2005 Special General Meeting based on both the original and new KSA bylaws, 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 filers of the Special Resolutions passed at the November 29<sup>th</sup>, 2005 General Meeting notify the Registrar of Societies that such resolutions were incorrectly filed due to an improper meeting being held and that the filing should be made null and void. Failing that, the Board of Directors of the KSA should notify the registrar of Societies that the meeting was invalid and that the resolutions filed on November 29<sup>th</sup>, 2005 should be declared null and void.
- 2) The Kwantlen Student Association Board of Directors ensure that in all future cases of dealing with petitions calling for a Special General Meeting, the petitions are properly dealt with according to the bylaws. In cases of ambiguity in situations of transition between bylaws in matters such as which Director holds which position, common sense should be used, such as petitions being submitted to the wrong director being forwarded to the appropriate director, if that director is judged responsible for fulfilling the obligation to deal with the petition. Furthermore, it should be recognized that while, in the case of the new bylaws, a petition cannot bind the association to holding a meeting at a specific location, the inclusion of a location should not nullify the entire petition.
- 3) Future requisitionists of Special General Meeting should ensure that they closely follow the requirements of the KSA Bylaws and Society Act [RSBC 1996] if they wish to hold a properly constituted valid meeting.

Sincerely,

Paul Browning  
Ombudsperson, Kwantlen University College Student Association