

November 30, 2005

Steven H. Lee, Student-at-Large / Richmond Campus Director
Kwantlen University College Student Association

[REDACTED]

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

Re: Legitimacy of KSA Special General Meeting on September 29, 2005

Dear Mr. Browning,

This is an official request for a formal investigation into the legitimacy of removing membership rights of Kwantlen Students at the September 29, 2005 Special General Meeting.

In my original request for an investigation into the conduct of the September 29, 2005 Special General Meeting, I asked the Ombudsperson to look at this issue from the point of view of a number of issues, including:

1. Improper Notice of Motion to Remove Membership Rights;
2. Improper Conduct of Meeting as per Parliamentary Authority given under the KSA Bylaws that existed at that time, including the fact that:
 - a. No debate was allowed; *and*
 - b. There was an improper taking of the vote.

Since the time of writing that letter a number of new issues have arisen, and I would specifically like the Ombudsperson to investigate the following issues:

1. Whether removing membership rights is legitimate or not.

- A. I have reason to believe that it is not. Under the definition of a “Student Society” given under the College & Institute Act of British Columbia, it states that a Student Society means:

“an organization incorporated as a society under the Society Act whose purpose is to represent the interests of the

general student body, but does not include a provincial or national student organization;”

Depriving someone of their membership rights does not represent the interests of the “general student body,” since it fails to represent the students whose membership is taken away from them. The Society Act does allow Societies to have mechanisms for removing members, but the College & Institute Act may be a case of the specific overruling the general.

- B. Furthermore, a vote to remove members of the Society may be in violation of Chapter 20 of Robert’s Rules of Order, which prescribes a clear policy in regards to discipline of members. Under the Bylaws that governed the September 29, 2005 Special General Meeting, the KSA was bound to operate under Parliamentary Authority as prescribed by Article 25 of the Bylaws that existed at that time.
- C. Finally, even if it is legal, as far as I know, most democracies do not remove the citizenship rights of their members simply because they break the law or speak out against those who may be breaking the law.

I believe the only other Student Union in BC that allows for expulsion of members is UBC Alma-Matter Society. The SFSS (Simon Fraser Student Society) prohibits the expulsion of members. Furthermore, many societies only allow members to be placed in “bad standing” on very limited grounds such as but not limited to:

1. the member owes a fee or debt to the Society and some Societies limit the amount that this debt can be; *and*
2. Special Resolution of the Members at a General Meeting.

2. Whether or not the Special Resolution to remove Membership Rights was filed with the Registrar of Societies and if not, how does that affect the situation.

Section 66 of the Society Act states:

“Special resolutions

66 (1) A society must file with the registrar an original and one copy of each special resolution, which special resolutions must be in the form established by the registrar.

(2) After a special resolution is filed under subsection (1), the registrar must retain one copy of the special resolution and must return the other copy to the society, certified as having been filed with the registrar.

(3) 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.”

Normally, as per Government of Canada’s Corporate Registry website, “Form 10” is used to file copy of Resolutions to the Registrar of Societies, as is shown on the following website:

<http://www.fin.gov.bc.ca/registries/corppg/crforms.htm#soc>

At a KSA Council meeting in October, at which the membership rights issue was being discussed, Aaron Takhar noted that the Special Resolution to remove membership rights *had not* been filed with the Registrar of Societies. He noted that there was no form online to use for removing membership rights, only forms to send in Bylaw changes and to change directors of the Society.

This is interesting because the site also further notes:

“Important information on the Form 10, Copy of Resolution:

- Check one box only. **Special resolution** to change constitution or bylaws; borrowing; for removal of or to change number of directors; for amalgamation of societies; for accountability; for subsidiaries; or to expel a member. **Ordinary resolution** for voluntary dissolution; to appoint a director; for remuneration of an auditor; or for removal of an auditor. **Directors’ resolution** to permit some of the society documents to be kept at places in B.C. other than the address of the society; application to be or not to be a reporting society; or to apply for Occupational Title Protection.
- Provide a brief statement describing the reason for the resolution. **Note: a directors’ resolution regarding location of documents must describe the documents to which it applies and the place they are to be kept.**

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

What is important here is that it specifically states “or to expel a member.”

As such, I would like the Ombudsperson to:

1. find out whether or not the Resolution to expel members was filed; *and*
 2. if it was not filed, what affect this has on the entire situation regarding the rights of those members affected, and the rights of those members who were also directors of the Society at the time that the motion to remove their rights was supposedly moved and adopted.
- 3. Whether or not the definition of “members” and “directors” are one and the same.**

In a letter obtained by Aaron Takhar from Don Crane (Attachment 1), legal counsel for Aaron Takhar, Mr. Crane noted that the removal of directors is immediate. However the motion moved at the September 29, 2005 Special General Meeting was specific to removing membership rights, and not specific as to removing people as Directors of the Society.

In October, Aaron Takhar noted that the definition of “members” or “directors” was one and the same and he noted that he had received legal advice from Mr. Crane that this was the case (however, at that time nothing was in writing). I would argue that they are not.

The definitions section of the Bylaws that were in effect at the time of the September 29, 2005 Special General Meeting provide clear and distinct definitions for members and directors of the Society as follows:

“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;

“Campus Council Officer” shall mean an elected member of a Campus Council;

“Campus Director” shall mean the campus director of a Campus Council, who shall also serve on the Council of the Society;

“Campus Representative” shall mean an elected member of a Campus Council, who also serves on the Council of the Society;

“Council” shall mean the board of directors of the Society;

“Honourary Member” shall mean a member of the Society with full speaking rights at General Meetings but no voting rights, such

members shall neither vote for, or run for, office, and shall have such other rights and limitations as adopted by the Society from time to time;

"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;

"Student At Large" shall mean a Member who does not currently hold an elected or appointed position within the Society;”

I would like the Ombudsperson’s opinion on whether or not these definitions are one and the same – that if you remove membership rights, you are immediately taking away someone’s ability to serve as a Director of the Society.

To me, the definitions do not appear to be one and the same. And as such, it seems clear that as per the Section 66 (3) of the Society Act, the resolution to remove Membership rights is not in effect until it is filed with the Registrar of Societies.

And if Aaron Takhar did not file the motion to remove membership rights, then Laura Anderson and myself would still be members and directors of the Society, with the right to have been paid, to have been allowed a voice and vote at all previous Council meetings since the Special General Meeting.

Based on the above three (3) issues, I would like the Ombudsperson to:

1. an official written report, summarizing all information gathered as a result of your investigations, to be published and distributed to all appropriate persons as soon as possible; and
2. a statement within the official written report on whether or not the motion to remove membership rights was in order, and if it was, whether or not it was filed with the Registrar of Societies by Mr. Takhar or his designate, and if it was not filed, what affect that has on this situation.

Respectfully submitted,

Steven H. Lee, [REDACTED]