

October 10, 2005

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Re: Bylaw Changes presented at the September 29, 2005 SGM

Dear Mr. Browning,

This is a request for a formal investigation into the legality of the Bylaw changes as put forward by the Kwantlen University College Student Association (KSA)'s Executive Board of Directors. Furthermore, I would like to request an official written report, summarizing all information gathered as a result of your investigations, as well as statement to whether or not the proposed Bylaw changes are in order and in line with the requirements as laid out under the Society Act of BC [RSBC 1996]. Finally, it is requested that you give your opinion on whether or not the new changes are fair and whether or not they will lend to maladministration within the Society.

In general, I have concern that the new Bylaws gut the checks and balances that were in place to ensure that the Society was run in a fair and ethical manner, free of maladministration or at the very least, at the perception of maladministration. More specifically, I am concerned that some of the changes may be ultra vires to the Society Act of BC [RSBC 1996] as well as to the Canadian Institute of Chartered Accountants (CICA, the regulatory body that conducts research into current business issues and sets accounting and auditing standards for business, not-for-profit organizations and government) Handbook.

From a very basic review of each newly proposed section and the changes that have been brought forward, here are some of the questions that have arose in my mind, as presented on the following pages. This is merely a summary of what I have found to be questionable, and in no way is my list meant to limit the

questions or issues with the new bylaws that you may discover as a result of your own investigations.

Article	Issue / Concern
Article 1. Interpretation	<p>It appears that “Members at Large,” which replace Campus Representatives and Officers can be voted or appointed to campus councils by the Board. Their numbers are now set by regulations so in a way could the Board chose not to have anyone working on the various campuses OR if people are elected that they do not like, does it not seem easier to remove them? What does this do for accountability of elected officials?</p> <p>The definition of Council / Board of Directors has been changed, essentially giving the Executive Board power over the KSA and significantly reducing the influence of Campus Councils which were the heart of the KSA, being the front line elected officials who worked the most closely to students. How are other student unions structured in terms of representation from across the institution on their Board?</p> <p>Does the Society Act allow the Board of Directors to set and change the dates of the FISCAL YEAR? This has been changed in the definitions, and from what I have learned it may also violate the CICA Handbook.</p> <p>The use of Roberts Rules can be struck down by the Board of Directors... can this be done at other student unions?</p>
Article 2. Membership	<p>Members can be expelled by the Board of Directors; whereas before they could only be expelled at a General Meeting with quorum. Can other student unions do this? Is this fair for students? Technically, a board could be elected and if they do not like the old board, could move to remove their rights as members of the Society. Does this not seem almost as bad or worse than being able to remove any elected official from the Board of Directors?</p>
Article 3. Annual General and Special General Meetings	<p>One of the duties of the Membership at General Meetings was to appoint auditors under the old system and this seems to be removed in the new proposed system. I believe that this is a requirement of the Society Act that auditors are appointed by the General Membership and not by the Board of Directors. Specifically, Part 5 – Audit, 41 (3) and (4) seem applicable – that auditors are appointed at AGMs and can only be changed by Board of Directors if the auditor dies or if say their auditing firm were to go bankrupt. They would not be able to change firms if they simply do not like the auditors.</p>

	<p>Petitions for general meetings may no longer specify the meeting places and times – the Board of Directors can now set these at their will. Does this not disenfranchise the members right to assemble and organize a general meeting? For example, if Langley students are upset about the direction of the KSA and have started a grass roots movement in Langley to impeach the KSA members, the KSA can now interfere with that process by voting to have the meeting in Richmond, where there could be little chance of the Langley students making it out to do what they want to do. Is this fair? How does it work at other multi-campus institutions?</p> <p>Less posters are required for calling a general meeting. 17,000 students are not guaranteed to see at least 8 posters on campus.</p>
<p>Article 4. Referendums</p>	<p>Notice has been changed to 7 days with 8 posters per campus. It seems unfair to that 17,000 Kwantlen students will be given even less time to be educated about issues that affect them and could allow</p> <p>The procedure for the drafting of referendums has been changed. If people don't like a referendum question, then it could be changed at anytime, even by the ombudsperson, who could possibly be students with no experience in drafting such questions. Before the auditors would reword it and their rewording would be final. This is important, especially in situations regarding finances – if the Board has the power to amend questions as they see fit, thereby seemingly gutting the power of the membership to bring forward questions for the membership (especially in regards to fees, etc.).</p> <p>They are now allowing referendums to be held in the summer. In the past, it has been practice not to allow referendums to occur in the summer mainly because the summer term is the term when Kwantlen has the most students, with Surrey / Richmond / Newton at half capacity and Langley traditionally shut down. How is this fair to the majority of students who attend and fully populate all four semesters in the fall / spring?</p> <p>They've shortened the time allowed for referendums in terms of the number of days in duration – meaning they could ram them through very quickly, and any breadth for having polling open longer is gone.</p>
<p>Article 5. The Board of Directors</p>	<p>The biggest concern here is that they know have the authority to change the dates of the fiscal year for the budget. This could violate the act as by having the power to change the fiscal year could ensure that the</p>

	<p>KSA cannot properly prepare comparative financial statements as required under 65(2) of the Society Act. This may also be in violation of the CICA handbook.</p> <p>The new board has its power vested in the Executive Board (President / VP) and the power of the campuses and programs of those campuses has been gutted.</p> <p>The timeframe for elections seems very sketchy. Do other societies allow elections every 2 years?</p>
<p>Article 6. Campus Councils</p>	<p>What used to be article 6, the Executive board has been struck. There is no more formal executive board, but their positions seem to be kept as there are now Presidents and Vice Presidents.</p> <p>The stipulation that members of campus councils be elected “from” the members enrolled at that campus has been removed, meaning that people say from Langley could run for campus council in Richmond even if they don’t go to that campus. How is this representative of the needs of a campus and the programs and identity of that campus? This seems contradictory to what is laid out in the Constitution? Do other schools allow for this (for example say for a science student to run as a fine arts rep as opposed to the science rep)?</p> <p>Campus Councils seem to have been gutted, with no assurance that campuses will even have council members working on them. In the past you had at least a campus director, one representative (based on population size of a campus) and at least 3 officers. The board of directors now has the power to appoint people to these positions so they have full voting rights in these positions once appointed (which seems good in the event of resignation – a change like this could be good if it were until a by-election could be held) but they can also remove people from them as well.</p>
<p>Article 7. Elections</p>	<p>As mentioned above, the dates have been changed for elections.</p> <p>There does not seem to be time provided to ensure that elections are run fairly and properly.</p> <p>Notice of nomination period has been shortened and now includes weekdays and holidays. So they could technically open nominations during the Christmas holiday break and close them the first week of January.</p>

	<p>This does not seem fair. Notice is also shortened, to 6 days before the opening of nominations, with again less posters being required on each campus, as if the KSA didn't have a copier.</p> <p>Polling notice has been shortened and again, number of posters required has been decreased.</p> <p>The time allowed to hold the election has been shortened, which does not seem fair. A Board should be able to have it open to allow the highest number of student involvement possible, at least 6 consecutive days, to allow for voting on every day that classes could be held on (Monday through Saturday, and in the future possibly even on Sundays).</p>
Article 8. Removal of Elected Officials	<p>This has been gutted. The Board can now remove anyone at their will very easily, and the Board can chose NOT to have a by-election upon a vacancy. This seems to be very unfair, as it could allow a Board to remove anyone it doesn't agree with – say a situation like this year comes up again, where a majority party takes power but a small opposition is elected – the majority party could remove them no problem. This doesn't seem doable at other institutions from what I know of, and we know it's not doable at any other form of government in Canada (municipal, provincial or federal). Imagine if the Liberals could have removed Jenny Kwan and Joy MacPhail – there would have been an uproar!</p>
Article 9. Duties	<p>Many of the duties of the old executive board and Campus Councils seem to be in the new structure, just under different positions.</p> <p>A hiring committee exists now within the bylaws under duties of the President. Is this in line with the new union being setup? Before such committee existed in an executive procedure.</p> <p>More power now exists with elected officials who seem to now be able to overrule all staff members at any time. In the past a system of checks and balances seemed to exist to ensure the separation of duties and to ensure some stability. Now, no stability seems likely to exist in the new KSA structure at all, with Boards able to change things at their whim whenever they want. How can this be conducive to a healthy workplace environment for staff people who work at the Society?</p>
Article 10. Meetings of Council	<p>The Executive have a 5-4 hold over campus councils, meaning that no accountability of the President or the VPs can be had in the new structure. Is this the case at</p>

	<p>other institutions?</p> <p>The speaker of council position is gone, replaced by Chair. Notice of meetings is reduced to 24 hours in advance from 72 hours, which seems unfair to students. They don't have to ensure minutes are posted anymore.</p>
Article 11. Policy Statements	No changes of importance.
Article 12. Orientation of Council	No changes of importance.
	<p>What was Article 16. Ombudsperson has been struck. Is this fair? What does this do to the position of the Ombudsperson? Will they have any kind of power? Since no rules are now laid out for appointing people to this position, does this not mean that anyone can be put into the position at anytime by the Board of Directors? Technically, could they not also be an elected position or staff person? The rule under this section allowing them to attend any meeting as they see fit is gone – the only one that remains is under Article 18 (8) which allows the Ombudsperson unfettered access to Society documents. Is this how the office of the ombudsperson is run at other institutions? Doesn't it make for a token position if the bylaws do not lay any real firm grounding for the position?</p>
Article 13. Senior Staff Duties	<p>This seems to replace the general manager section that used to be under Article 17. One is defined as "Operations Supervisor" and the other is undefined and may be determined by the Board of Directors. It also states that people have to be in for no less than 3 years, which means that you no longer have any probationary period for people in these positions. Is this good? How would the Union feel about this?</p> <p>Majority vote of Board can overrule the senior staff member on any issue. This could allow for no protection of society assets, etc.</p> <p>They cannot take part in their own employment evaluations or salary adjustments which seems fair to a degree but what about self assessment? It could be argued that this bylaw will not allow for even that as part of any other process (360 degree review or whatever). Also why bother having this if they have to be in the roll for at least 3 years?</p>
Article 14. Fees	The only significant change is that referendum can be done in any semester.
	Article 19 of the old bylaws provided for a Seal. There

	is no more seal. Don't know if this is good or not.
Article 15. Borrowing	No major changes.
Article 16. Auditor	Again, removing of the auditor by the Board may be ultra vires to the Society Act. The way they can remove the auditor is also questionable – it says you must have the agreement of one staff person and the ombudsperson, but in other areas it says that the opinion of a senior staff person can be overruled by a majority vote of the Board of Directors, and no real protection of the ombudsperson as an independent, arms length and truly authoritative entity is provided for under these new bylaws.
Article 22. Bylaws	No significant changes other than reduction in quorum requirements for GMs. \$5 is now required to obtain a copy of the Constitution and Bylaws of the Society. This is against Part 6, 69 of the Society Act which states that it cannot be more than \$1.
Article 18. Records of Society	No major changes.
Article 19. Liability of the Society	No major changes.
Article 19. Parliamentary Authority	The Board can move not to use Roberts Rules of Order at anytime.

As you may know, the KSA's current Bylaws were shaped to help prevent maladministration that had been rampantly occurring in the Society throughout the 1990s. I am deeply concerned that the proposed changes will turn the clock back to that period of the 1990s that resulted in the misappropriation of student funds, as well as lots of in-fighting, corruption, scandal, impeachment(s), bad long term contracts / leases being signed into effect and much more.

Further, I have been told by members of the current Executive Board (specifically by the Director of Finance), that the changes to the Bylaws as put forward did receive input from KSA legal counsel. Specifically, I would like to know

- if that input was sought;
- when the input was sought;
- from whom the input was sought;
- what form that input took and if it was in writing, then copy of such input should be acquired for inclusion in your report; *as well as*
- what the input consisted of (they just said they received input, they did not say if the input was good or bad, or if it resulted in any significant changes to what was put forward in anyway).

Again, your investigation and input as the Society's Ombudsperson into these changes as presented in the form of a formal written report would be greatly appreciated.

Respectfully submitted,

Steven H. Lee, 100-025-323