

**Ombudsperson  
Final Report  
Investigation into Special General Meeting held n September 29, 2005.**

**October 28, 2005**

**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 the Kwantlen University College Student Association (KSA) on Thursday, September 29, 2005.

***Allegations***

- Improper Notice of Meeting – as per Article 3(7) the KSA By-laws
- Improper Conduct of Meeting as per the Parliamentary Authority given under the KSA Bylaws
- Improper Notice of Motion to Remove Membership Rights
- Unavailability of “Bill RAF2K5” to those in attendance

***Investigation***

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

Regarding the four specific allegations, my findings were as follows:

**1) Improper Notice of Meeting**

Article 3(7) of the KSA Bylaws states that,

7. Notice of a General Meeting shall be given to the members of the Society by:
  - i. 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
- ii. the placement of an advertisement, no less than fourteen (14) clear days before the date of the General Meeting, within the student newspaper or such other recognized campus media as determined by Council.

From interviewing the various parties involved with the SGM, there is a difference of opinion as to the level of advertising for the meeting

The Chairperson of the Executive Board, Aaron Takhar claims that the meeting was well advertised on all campuses. However, from interviewing multiple individuals, including the KSA Campus Directors for Langley, Newton, and Richmond, it is reasonable to conclude that, on a balance of probabilities, sufficient notice was not given on the Newton and Langley Campuses.

With regard to Richmond Campus, posters advertising the Special General Meeting were indeed put up around the Richmond Campus. Based on my interviews however, serious doubt was cast on whether the required twenty-five (25) posters were placed. However, given the fact that the Bulletin Boards were quite cluttered and posters may have been removed after posting, I am unable to conclude that a definitive violation existed with respect to Richmond Campus.

However, with regard to the Newton Campus, the evidence indicates that few, if indeed any, posters advertising the meeting were put up thereby indicating a direct violation of Article 3 (7) (i) of the KSA Bylaws. Likewise, on the Langley Campus, the evidence also indicates the existence of few, if indeed any, posters, thus resulting in a similar violation.

While it is true that other methods of advertising were used on the various campuses, such as distribution of leaflets, and the placing of flyers in the agenda day timers, the use of such other methods of advertising does not negate the need for twenty-five (25) posters per campus as laid out in Article 3 (7) (i) of the KSA Bylaws.

Moving on to Article 3 (7) (ii) of the KSA Bylaws, from examination of editions of the Kwantlen Chronicle from September 2005 onwards (the Chronicle does not print during the summer months), no KSA advertisement of the meeting is present. As the complainant, does admit, there was a journalistic article concerning the SGM in the September 26<sup>th</sup> issue, but he claims that this does not meet the requirement of the Bylaws for the placement of an “advertisement.” I concur in that the language in the bylaws clearly points to some sort of official KSA advertisement giving notice of the meeting as opposed to the chance occurrence of a journalistic article that may happen to talk about an upcoming general meeting.

The above evidence indicates that Article 3 (7) of the KSA bylaws was indeed violated in a way that likely invalidates the proceedings of the SGM. Nevertheless, I must also point out Article 3 (8) which states that,

“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.”

I realize that it may be argued that the omission to give notice in the case of this General Meeting was accidental and that therefore, the proceedings are not invalidated. However, given the nature of the violations involving postering on multiple campuses, as well as the lack of a newspaper advertisement, the omissions in this case appear to be of such a systemic nature, that it is doubtful that they are due to pure accident.

## **2) Improper Conduct of Meeting as per the Parliamentary Authority given Under the KSA Bylaws**

Article 25 (1) of the KSA Bylaws states that, “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.”

Specifically, the complaint alleges a violation of this Bylaw by way of debate not being allowed, and by way of improper taking of the vote.

With regard to the first allegation, the video evidence, along with my interviews of individuals present at the meeting indicate that at various times, members of the society attempted to raise points of debate with regard to the business of the SGM. The Chair of the meeting (Aaron Takhar) refused to recognize any of these attempts at debate. In interviewing Mr. Takhar, he indicated that his reason for not recognizing debate was due to the inappropriate conduct of the members attempting to speak and that if they had requested to be added to the speakers list in a professional manner, he would have been forced to allow them to speak.

My conclusion is that, while the proceedings of the SGM were indeed heated, this in no way justifies the complete refusal to recognize the members seeking to enter into debate. In maintaining order in the meeting, the Chair does indeed have the power to ensure that decorum is upheld. However, in this setting, this could have been achieved by the Chair clearly stating that he was taking a speakers list and that all members should adhere to such a list (with the exception of Points of Order, Points of Privilege, and Points of Information). In Robert’s Rules of Order, it is not within the power of the Chair to arbitrarily decide to prohibit debate, especially on an issue of such serious gravity as Bylaw amendments, and removal of membership privileges. This failure to properly follow Robert’s Rules of Order and allow debate on the motion is a serious violation of the KSA Bylaws, and, in my opinion, invalidates the proceedings of the SGM.

Furthermore, the complainant alleges that the proposed motion for the SGM (Bill RAF2K5) highlights an intention to not allow debate or amendments by stating that, “The approval or defeat of this *bill* shall be deemed to be in its **entirety** as intended by its creators. In no way shall it be altered or amended”. While, in my opinion, no mention is made of prohibiting debate, it does clearly indicate an intention to prohibit amendment. This, in and of itself, is not permitted under Robert’s Rules of Order since once a motion is moved and seconded, it becomes the property of the assembly, and it is not within the powers of the movers or “creators” of the motion to prohibit the assembly from duly amending the original motion as per parliamentary procedure. Once again, I consider this failure to follow Roberts’s Rules of Order and permit the assembly to make amendments to be a violation of the KSA Bylaws.

The second key allegation with regard to improper conduct of the meeting concerns the taking of the vote. It is alleged that the Chair misled the membership with regards to the vote that was conducted.

From reviewing the video evidence, it is clear that the meeting was quite chaotic with a high level of noise in the room. A motion was moved and seconded to adopt the package, “Bill RAF2K5”. Subsequently, any and all attempts to debate the motion and/or ask what the motion was about were not recognized by the Chair. The Chair subsequently asked the assembly if they wanted to move on to prizes, and then asked “Can we have in favour of the motion – can we get straight to the prizes of I-pods, and DVD’s, a trip to Mexico.” It is, in my opinion, very clear, both from reviewing the video, interviewing various people who were in attendance at the meeting, and from my own experience in observing the meeting that many students were very confused, and believed that they were merely voting on whether to move on to the prize draw, and NOT on whether to adopt the main motion adopting the package “Bill RAF2K5.” Clearly, the actions of the Chair in attempting to rally mass support for moving on to prizes, while at the same time not permitting any discussion on the main motion resulted in a large portion of the membership not being aware of what was truly occurring. Indeed, I further conclude that some members were lead to believe that there would be further discussion after the prize draw, due to the fact that the Chair stated that “Before we get to what this is about, we have a lot of people here who have come here for one reason, which is to win prizes, so why don’t we take a show of hands.”

Furthermore, when the vote was conducted, the Chair did not ask for the negative vote, as required by Robert’s Rules of Order. [RONR (10<sup>th</sup> ed.) p.43, I. 8-25] which states that, “The chair must always call for the negative vote, no matter how nearly unanimous the affirmative vote may appear.”

Secondly, the motion under consideration is considered under the KSA Bylaws to be a Special Resolution. (both the bylaw amendments and removal of members). This is specified in Article 22 (2) and Article 2 (9) of the KSA Bylaws. Furthermore, Section 23 of the Society Act [RSBC 1996] requires Bylaw amendments to be made by Special Resolution.

Section 1 of the Society Act defines Special Resolution as follows:

**"special resolution"** means

(a) a resolution passed in a general meeting by a majority of not less than 75% of the votes of those members of a society who, being entitled to do so, vote in person or, if proxies are allowed, by proxy

(i) of which the notice that the bylaws provide, and not being less than 14 days' notice, specifying the intention to propose the resolution as a special resolution has been given, or

(ii) if every member entitled to attend and vote at the meeting agrees, at a meeting of which less than 14 days' notice has been given,

(b) a resolution consented to in writing by every member of a society who would have been entitled to vote on it in person or, if proxies are allowed, by proxy at a general meeting of the society, and a resolution so consented to is deemed to be a special resolution passed at a general meeting of the society,

(c) if a society has adopted a system of indirect or delegate voting or voting by mail, a resolution passed by at least 75% of the votes cast in respect of the resolution, or

(d) an extraordinary resolution passed before January 5, 1978;

Therefore, a 75% vote is required by the Society Act to adopt a Special Resolution. From the video evidence, and from the observations of witnesses, no counting of the votes to determine that a 75% majority did in fact vote in favour of the motion was taken. The Chair of the meeting contends that there was such an obvious majority that there was no need to take a count. However, the video evidence and eyewitness observations indicate that there was a substantial number of individuals who did not raise their hands when the Chair asked for "all those in favour." Given the substantial majority required for a Special Resolution, and the general confusion in the room, I contend that the failure to take a proper account was a serious omission on the part of the Chair, and calls into question whether the motion did indeed receive the required majority.

The combination of irregularities with regard to the taking of the vote, including the confusion over what people were voting on, the failure to ask for a negative vote, and the failure to properly count the vote seriously undermine the legitimacy of the passage of the motion, and in my opinion, render the results of the vote null and void.

### **3) Improper Notice of Motion to Remove Membership Rights**

Article 3 (8) of the KSA Bylaws states that,

“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 complainant alleges that the posters that were distributed giving notice of the General Meeting within the required time frame only made reference to Bylaw amendments and not to any motion to expel members from the Society. I find that this allegation is substantiated and that insufficient notice of the motion to expel members from the society was given.

Of course, the complainant does recognize the accidental omission qualifier in the Bylaw article but goes on to subsequently reference Article 2 (9) which states that,

“A Member may be expelled by a Special Resolution of the Members passed at a General Meeting. The notice of a Special Resolution for expulsion must be accompanied by a brief statement of the reasons for the proposed expulsion. The member who is the subject of the proposed resolution for expulsion must be given an opportunity to be heard at the General Meeting before the Special Resolution is put to a vote.”

The complainant argues that this specific clause overrides the general nature of Article 3 (8). I am not convinced that a motion for expulsion of a member is exempt from the accidental omission clause in Article 3 (8).

However, I do consider the motion to expel the members to be invalid for a different reason. The complainant mentions that in Robert’s Rules of order, it is stated that, “...only business mentioned in the call of a special meeting can be transacted at such a meeting.” [RONR (10<sup>th</sup> ed.) p.90, I. 16-19] The original call of the meeting was done by way of a motion during an August, 2005 meeting of Council. This motion referred only to Bylaw changes and not to any expulsion of members.

Furthermore, even with the accidental omission clause in Article 3 (8), I conclude that it is highly unlikely that the omission of notice with regard to the expulsion of members was accidental. Indeed, it was alleged by one source that the expulsion of members was only added to the “Bill RAF2K5” on the day of the meeting. Therefore, in this case, the accidental omission clause does not apply due to the omission, not, in all likelihood being accidental.

The complainant also alleges that insufficient reason was given for the motion to expel certain members. On this, I would argue that in a motion for expulsion, the reasons are a point of debate, and their validity a matter for the voting membership at the meeting to

decide. As such, the determination of whether the reasons are valid or invalid is properly made by the membership by way of deciding to approve or defeat the expulsion.

Finally, the complainant argues that Article 2 (9), which gives any member subject to a resolution for expulsion the opportunity to be heard before the matter is put to a vote. Here, I concur with the complainant in that no opportunity was given for any of the members subject to the expulsion resolution to be heard. Indeed, the Chair specifically refused to let one of the members subject to expulsion, Laura Anderson, speak at any point during the motion on “Bill RAF2K5.” This I believe is a serious violation of the KSA bylaws and to the general principles of due process.

Based on the combination of improper and insufficient notice of the motion to expel members, and the lack of an opportunity for those subject to the expulsion resolution to be heard, I conclude that the resolution to expel certain members of the society was improper, and therefore is null and void.

#### **4) Unavailability of “Bill RAF2K5” to those in attendance**

Here the complainant alleges that there were limited copies of “Bill RAF2K5” available to those attending the meeting. I concur in that there were indeed not sufficient copies for all of the membership in attendance. In and of itself, this likely does not invalidate the meeting since it is common in large gatherings to run out of materials.

The complainant also mentions that Aaron Takhar mentions in the meeting that the large package was available in the KSA office for several weeks. Here, I conclude that a version of the package was available in the week prior to the meeting at the Surrey Campus. However, I believe that even this version was constantly being amended in the run up to the meeting.

Furthermore, it is my conclusion that this document was not available on the Richmond, Surrey, or Langley Campuses, with KSA elected officials from those campuses informing me that they had seen the document for the first time just prior to the AGM. (At the Surrey Campus on September 29, 2005)

In the course of my investigation, it was alleged that the failure to give more detail in the notice of the meeting other than “Bylaw Changes” was a violation of the notice requirements. I concur and would argue that while it is sometimes the practice in societies to give a general notice of the specific bylaw changes (i.e. amendments to the elections bylaws, amendments to the powers of council etc), a total lack of specificity of what the bylaw changes will entail violates the spirit, if not the exact letter of the notice requirements. Furthermore, this level of vague notice may very well be open to legal challenge.

#### **Final Conclusions:**

In light of my overall findings regarding the conduct of the Special General meeting, both before, and during the meeting, I conclude that for numerous reasons the motion to adopt “Bill RAF2K5,” which attempted to amend the bylaws, and expel certain members of the society is null and void. To summarize,

- 1) Insufficient notice was given for the Special General Meeting in terms of required postering and newspaper advertising as laid out in the bylaws.
- 2) The procedures of Robert’s Rules of Order with respect to both the general conduct of the meeting and the taking of the vote were not adhered to. In particular, debate was not allowed, and the vote was taken improperly. The chaotic situation in the room, coupled by the actions of the Chair made the membership largely unaware that they were not just merely moving on to prizes, but instead voting on the main motion to adopt “Bill RAF2K5.”
- 3) The proper procedure as laid out in the bylaws for expulsion of members was not adhered to in terms of proper notification and allowing those subject to the proposed expulsion to be heard.

### **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.

Sincerely,

Paul Browning  
Ombudsperson, Kwantlen University College Student Association