

**Ombudsperson
Final Report
Investigation into the Expulsion of Members from the Kwantlen
University College Student Association by way of a Special Resolution
at the Special General Meeting held on September 29, 2005.**

June 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) since it concerns an action taken at a General Meeting, a meeting that was open to all members of the society. 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 removing membership rights of Kwantlen University College students at the Special General Meeting (SGM) held by the Kwantlen University College Student Association (KSA) on Thursday, September 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

- Removing Membership rights is in and of itself improper due to a combination of British Columbia law, parliamentary authority, and basic democratic rights. Improper Action taken in removing members as per the Society Act [RSBC 1996].
- The motion to remove the membership rights of certain individuals may not have been filed with the British Columbia Registrar of Societies and, if this is indeed the case, may be of no force and effect until it is filed
- The definition of ”members” and “directors” in the Society Act is not one and the same and therefore a motion to remove membership rights is different than a motion to remove directors

Investigation

My investigation was conducted by way of reviewing the College and Institute Act [RSBC 1996], Society Act [RSBC 1996], Kwantlen University College Student Association (KSA Bylaws), and my previous report on the Special General Meeting which I issued on October 28, 2005. Regarding the four specific allegations, my findings were as follows:

Please note that, unless otherwise mentioned, that when I refer to the “KSA Bylaws,” I am referring to the bylaws that were undeniably in effect at the time of the SGM, prior to any filing of “RAF2K5” with the British Columbia Registrar of Societies. (the registrar)

1) Removing Membership rights is in and of itself improper due to a combination of British Columbia law, parliamentary authority, and basic democratic rights

Under this general category, three specific contentions are made:

- i) Under the BC College & Institute Act, “Student Society” is defined as:

“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 association.”

Based on this definition, the complainant argues that the removal of membership rights is an act that does not represent the interests of the general student body since it does not represent the interests of the students whose membership rights are removed.

I am unable to conclude that this definition of Student Society in the College & Institute Act precludes the taking away of membership rights. Indeed, it may be claimed by the proponents of the removal of membership rights that such action is sometimes necessary in the interests of the student body as a whole. Indeed, in society at large, often actions are taken by authorities such as fines or imprisonment that may not be in the interests of those that such penalties are imposed upon but that are considered to be in the greater public good. I am in no way making a judgment as to whether or not this particular action of removing membership rights is the appropriate or correct action to take in representing the interests of the general student body. Indeed, that is a subjective judgement. Rather, given the possibility that such a situation may foreseeably exist, I must conclude that this definition of Student Society does not act as a prohibition on the removal of membership rights from students.

- ii) **Under the current version of Roberts Rules of Order, the Parliamentary Authority of which the KSA was bound to operate under the bylaws in effect at the time of the meeting, a specific procedure exists for discipline of**

members in Chapter 20. The motion to remove membership rights may have been in violation of this procedure.

Article 25 of the KSA Bylaws (the version that was clearly in effect at the time of the SGM and at all times prior to it) 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.”

A key part of this section is the wording of “to the extent of their consistency with the Act, these Bylaws and the Regulations.”

The bylaws specifically lay out how a member can be expelled from the society in Article 2 (9). This states that,

“A Member may be expelled or placed in bad standing by a Special Resolution of the Members passed at a General Meeting. The notice of a Special Resolution for expulsion or banding standing must be accompanied by a brief statement of the reasons for the proposed expulsion or bad standing. The member who is the subject of the proposed resolution for expulsion or bad standing must be given an opportunity to be heard at the General Meeting before the Special Resolution is put to a vote. Further rules addressing expulsion and bad standing shall be placed in the Regulations.”

In my opinion, the bylaws specifically give the membership the power to expel members from the society by means of a Special Resolution, subject to appropriate notice requirements being met, a statement of reasons given for expulsion, and an opportunity given to the person subject to the proposed resolution for expulsion to be heard at the General Meeting before a vote is taken. In addition, as I mentioned in my reported on October 28th, 2005, the Society Act also has specific rules for Special Resolutions.

Therefore, I conclude that the specificities of the KSA Bylaws, and Society Act take precedence over the general provisions of Robert’s Rules of Order. As long as the requirements for a Special Resolution as required by the BC Society Act and the KSA Bylaws, coupled with the extra requirements in the KSA Bylaws for a resolution to expel member(s) are followed, a motion to expel members is valid.

Nonetheless, this conclusion does not negate my previous conclusions on October 28th, 2005 that requirements for such a resolution to be valid such as notice requirements, and the proper conduct of the meeting at which it was adopted were not properly followed and that the extent of such violations made the motion to adopt “Bill RAF2K5,” which attempted to amend the bylaws, and expel certain members of the society invalid.

- iii) **Regardless of whether or not the removal of membership rights is legal, 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. Furthermore, it is rare in Student Society bylaws to have provisions for expelling members, as opposed to simply placing members in bad standing.**

It is indeed an uncommon practice in democratic systems to remove the democratic rights of citizens (i.e. voting in elections.) Indeed, I would argue strongly against taking this type of action and believe that while, in certain cases actions such as removing directors from office or placing members in bad standing may be justifiable, totally expelling people from a universal, mandatory membership society such as a student society is inappropriate. After all, all students are required by law to be members of their local student society, if students at their institution are organized in accordance with provincial legislation. Furthermore, all students must pay student society fees as a condition of enrollment at the institution. In light of this situation, I do not consider expelling members to be appropriate.

Nonetheless, despite my feeling that it is inappropriate to take such action, the KSA Bylaws and Society Act do specifically allow the expulsion of members. Therefore, while I do not consider it to be a desirable course of action, it is not expressly prohibited.

2) The resolution may not have been filed with the Registrar of Societies and this may affect its applicability.

Under this general category, several specific inquiries are made.

- i) The complainant points to Section 66 of the Society Act, which specifically requires Special Resolutions to be filed with the registrar before they can take effect.

Specifically, Section 66 (3) reads as follows:

(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.

In light of this, it is my understanding that the resolution to remove membership rights that was part of “Bill RAF2K5” at the September 29th, 2005 SGM must be filed with the registrar of societies for it to take effect.

I have checked with the Registrar of Societies to see if any resolution to remove the membership rights of Laura Anderson, Kristina Kearley, Steven Lee, and Rigel Vincent was filed and have discovered that no such resolution was filed.

The complainant mentions that the then Chairperson of the Executive Board mentioned at a KSA Council meeting in October that no resolution to remove membership rights had been filed at that indeed, no official form existed for filing such a resolution.

However, the complainant points out that on the official BC government website, information is given regarding “Form 10,” the form used to file resolutions from Societies.

It reads as follows:

“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.”¹

A number of things in this excerpt are clear. Firstly, the expulsion of a member is clearly placed in the category of special resolution, of which this form is to be used to file said resolution. Secondly, it affirms that, other than the removal of directors, a resolution **“does not take effect until it is filed with the registrar.”**

While two of the individuals in the motion to expel members were indeed directors of the society, the purpose of this resolution was not simply to remove directors, but to expel them from the society entirely.

While two of the individuals subject to the motion to expel members were indeed directors of the society, the purpose of this resolution was not simply to remove directors, but to expel them from the society entirely. In the description of a Special resolution in the excerpt above, removal of directors, and expulsion of a member are mentioned separately. This was not a motion to remove directors but rather, a motion to expel members.

Therefore, I conclude that as the resolution to expel members has not, at this time been filed with the registrar, it is currently of no force or effect.

¹ <http://www.fin.gov.bc.ca/registries/forms.htm#soc>, Accessed June 14, 2006.

While ordinarily, the logical course of action to remedy this situation would be for the society to proceed to file the resolution so that it may take effect, in light of my conclusions in my report on October 28th, 2005 as to the invalidity of this resolution for a variety of reasons, filing this resolution would in my opinion be a further improper action.

3) It was claimed by the then Chairperson of the Executive Board that a motion to remove directors and to expel members from the society was one and the same and that he received legal advice to this effect.

Here the complainant points out that Mr. Takhar noted in October that he had received legal advice that the definition of “directors” and “members” was one and the same and that therefore, the motion to expel members did not need to be filed with the registrar.

As mentioned above, this is, in my view certainly not the case. Membership in a society and being a member of the Board of Directors, are two clearly differing roles. The KSA bylaws clearly have different definitions for the two roles, and a member of the society is not necessarily a director. Indeed, given the size of the membership of the KSA (the student population at Kwantlen University College), most members are not directors.

Furthermore, the Society Act also clearly defines “member” and “director” separately as follows:

"director" includes a trustee, officer, member of an executive committee and a person occupying any such position by whatever name;

“member” means

- (a) an applicant for incorporation of a society who has not ceased to be a member, and
- (b) every other person who becomes and remains a member in accordance with the bylaws;

As part of the complaint, I was given a copy of a letter from lawyer Donald Crane, dated October 20th, 2005 that states that the removal of a director takes effect immediately and does not need to be first filed with the registrar. This is true. However, as I mentioned above, the motion was not to remove directors but to expel members. The fact that some of those members may have also been directors is irrelevant. The written legal opinion dated October 20th, 2005 makes no reference whatsoever to expulsion of members but specifically concerns removal of directors.

I have not seen any written legal documentation to indicate that an expulsion of members can take effect before being filed with the registrar.

Final Conclusion

In light of the fact that the motion to remove membership rights was not filed with the registrar, it is my conclusion that Laura Anderson, Kristina Kearley, Steven Lee, and Rigel Vincent are still members of the society. Furthermore, I would consider filing this resolution to be improper given the improper nature of how the September 29th, 2005 Special General Meeting was conducted as mentioned in my report on October 28th, 2005.

Recommendations:

In light of my conclusion 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 Kwantlen University College Student Association recognize the membership rights of Laura Anderson, Kristina Kearley, Steven Lee, and Rigel Vincent and acknowledge that, since the resolution has not been filed with the registrar of societies that they never ceased to be members of the society. (Assuming that other membership requirements such as student status at Kwantlen University College were and/or are met).
- 2) The Kwantlen University College Student Association do not file the resolution to the improper nature of how the September 29th, 2005 Special General Meeting was conducted as mentioned in my report on October 28th, 2005.
- 3) Furthermore, I wish to reiterate my recommendation #4 made in my report dated October 28th, 2005 which stated that,

“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