

Report into the December 18, 2013 Allegation of Mark Pitcher

Committee of Inquiry Report
Kwartzlab Society Inc.
Kitchener, Ontario

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1 Summary

On December 18, 2013, Kwartzlab Society Inc. Director Mark Pitcher submitted the following statements, which were entered into the minutes for Board Meeting 114¹:

1. Mark Pitcher removes all approvals for minutes due to a history of deception and purposeful misinformation during board meetings by several board members.
2. During BOD meeting #105 *name redacted* deceived the board about the Tool Committee leading to a misinformed vote by other board members.
3. BOD meeting #105 was moved to a time that excluded Mark Pitcher so other board members could be misled during voting.
4. BOD meeting #113 was called with no notice to Mark Pitcher, and set at a time to exclude Mark.
5. *name redacted* deceived board members about discussing dues payments with Mark Pitcher, and did not attempt to contact Mark as per Charter.
6. Board Meetings and internal board discussions are carried out public and on a public forum contrary to law.

Mr. Pitcher retracted all statements without comment on January 26, 2014². Given the gravity of the statements, this Committee is asked to provide comment on the original allegations.

Based on the record of the Board meeting minutes and mailing list discussion, this committee finds all of the statements to be spurious and unsupported by any facts.

¹http://www.kwartzlab.ca/wiki/Board_Meeting_114#Statement_from_Mark_Pitcher

²http://kwartzlab.ca/mailman/private/bod_kwartzlab.ca/Week-of-Mon-20140120/004832.html

2 Recommendations

1. Provide Directors with written instructions, by way of a Board Procedure or a Director's Handbook, regarding how meeting minutes may be disputed and corrected, and how absent directors may record their dissent to resolutions passed.
2. Amend Board Meeting #85 minutes to read "Tool fund has been created" instead of the incorrect "Tool committee and fund have been created".
3. Update the Board Procedure Regarding the Date and Frequency of Board Meetings to reflect the current meeting schedule & method of announcement.
4. Provide formal notice of Board Meetings via a new email message with a subject line which clearly indicates that it is a meeting announcement.
5. Send meeting announcements to a consistent mailing list. `announce@kwartzlab.ca` is recommended for all corporate announcements.
6. Update the corporation bylaws regarding director vacancies per section 172 of the Ontario Corporations Act 1990³. Specifically, if any director is absent without previous leave of the directors from three successive regular meetings, that director will be considered to have vacated their position.

³http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c38_e.htm#BK183

3 Commentary on Statements

3.1 Mark Pitcher removes all approvals for minutes due to a history of deception and purposeful misinformation during board meetings by several board members.

The exact meaning of this statement is ambiguous, and with Mr. Pitcher's retraction, it is difficult to comment on. However, it does call into question how, and in what manner a Director may dispute the record of the minutes or record their dissent to specific resolutions.

The Ontario Corporations Act states that while the veracity of minutes is determined by the signature of the chair of the meeting⁴, all Directors have a legal duty to ensure that they are accurate and complete. Any Director who has knowledge that minutes are incorrect has a legal duty to correct them, and may be held criminally liable for failing to do so⁵.

However, dissenting to resolutions made at a meeting is not the same as declaring the minutes to be false. Neither the Ontario Corporations Act nor the Canada Corporations Act detail the methods by which a Director may record their dissent to a resolution after the resolution has passed. The Canada Not-for-profit Corporations Act will provide the following, once it comes into force:

Dissent 147. (1) A director who is present at a meeting of directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless

- (a) the director requests a dissent to be entered in the minutes of the meeting;
- (b) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned; or
- (c) the director sends a dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned.

(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless, within the prescribed period after becoming aware of the resolution or action, the director

- (a) causes a dissent to be placed with the minutes of the meeting; or
- (b) sends a dissent by registered mail or delivers it to the registered office of the corporation.⁶

The Board may choose to adopt a procedure which is in line with this upcoming legislation. Industry Canada's Framework Paper for the Not-for-profit Corporations Act suggests that the prescribed period for an absent director to make their dissent known be 7 days⁷.

⁴http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c38_e.htm#s299s2

⁵http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c38_e.htm#BK310

⁶<http://laws-lois.justice.gc.ca/eng/acts/C-7.75/page-36.html?texthighlight=dissent#s-147>.

⁷<http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/c100255.html#p5>

3.2 During BOD meeting #105 *name redacted* deceived the board about the Tool Committee leading to a misinformed vote by other board members.

Per Meeting #105 minutes⁸, the sole discussion regarding the Tool Committee was to acknowledge that the committee had never been formed, and that tool purchases were being made outside of committee.

The corporate record supports both these statements – although the intent to create a tool committee was recorded in Meeting #84 minutes⁹, no resolution was passed at any subsequent meeting. Meeting #85 contains a reference to a tool committee having been created¹⁰, but this statement appears to be incorrect. Further, this committee found no committee activity reported in any board meeting minutes.

Absent a working committee, any tool purchases would necessarily have been made outside of committee.

Mr. Pitcher’s statement doesn’t indicate which vote was influenced by this discussion. Two resolutions were passed regarding tool purchases¹¹:

- To dissolve the tool fund
- To create a \$200 money float for smaller purchases

This committee can find nothing of concern regarding either of these resolutions.

3.3 BOD meeting #105 was moved to a time that excluded Mark Pitcher so other board members could be misled during voting.

The Board has a procedure which says that meetings will be held every third Monday, that Directors will be given at least 24 hours notice of a meeting, and that notice will be provided via the BoD mailing list¹².

A review of past meeting schedules and the mailing list archives demonstrates that this procedure has never been in effect for the current board. Board meeting announcements have historically been posted to either the members@kwartzlab.ca list or the admin@kwartzlab.ca. To the best of this committee’s knowledge, no Director (including Mr. Pitcher) has raised any objection to using either list to announce meetings.

Meeting #105 was normally scheduled for June 26 at 7:30. On June 24, at 16:50, an announcement was posted to admin@kwartzlab.ca postponing the start time by 1 hour¹³. This scheduling change was made more than 28 hours before the meeting’s scheduled time. Mr. Pitcher acknowledged the announcement, but did not request that the meeting be rescheduled for another time¹⁴.

This committee finds nothing of concern in how the meeting was scheduled or announced.

⁸See Appendix 4.1

⁹See Appendix 4.2

¹⁰See Appendix 4.3

¹¹See Appendix 4.1

¹²See Appendix 4.4

¹³See Appendix 4.5

¹⁴See Appendix 4.6

3.4 BOD meeting #113 was called with no notice to Mark Pitcher, and set at a time to exclude Mark.

Meeting #113 was announced on members@kwardzlab.ca on Dec 3, at 11:40, approximately 33 hours before the meeting was held¹⁵. The announcement for this meeting is buried in an email thread with a subject line which indicated it pertained to Board Meetings, but did not indicate that it was an actual meeting announcement. For this reason, this committee finds it reasonable, though unlikely, for a director to have missed the announcement.

At the time of this announcement, Mr. Pitcher had been absent from the previous two Board meetings¹⁶, and was known to not be responding to kwardzlab-related business. This committee finds it reasonable for the directors to have concluded that Mr. Pitcher had temporarily abandoned his duties as Director.

3.5 *name redacted* deceived board members about discussing dues payments with Mr. Pitcher, and did not attempt to contact Mr. Pitcher as per Charter.

Both of these statements are contradicted by the record. No Board meeting minutes contain any discussion of Mr. Pitcher's dues payments. Further, the Treasurer has provided this committee with a record of email correspondence sent to Mr. Pitcher regarding his overdue account¹⁷.

3.6 Board Meetings and internal board discussions are carried out public and on a public forum contrary to law.

Neither the Canada Corporations Act, the Ontario Corporations Act, nor Kwardzlab Society Inc. bylaws require that board meetings or discussions be held in camera, or that the record of same be kept private.

¹⁵See Appendix 4.7

¹⁶See Appendix 4.8 & 4.9

¹⁷See Appendix 4.10 & 4.11

4 Appendices

4.1 Board Meeting 105#Tool Fund

- Discuss/clarify purchasing procedure
- The action item to form the committee never occurred
- Some members have been buying items for the lab without prior approvals from the board in the absence of a tool committee
- Ben recommends setting the float money limit to \$200, and individual purchases to \$50 based on purchasing history/experience
- Anything more than \$50 per individual purchase, request must be made to board for approval for the purchase (can be done in email)
- Motion: Ben made a motion to dissolve the tool fund
- Seconded: James
- Discussion: Issues with tool purchases can be time sensitive. The board can be responsive to these requests to hopefully not miss out on deals that come up.
- All in favour: unanimous
- Motion: To create a \$200 money float for smaller purchases - Ben
- Seconded: James
- Discussion: none
- All in favour: unanimous
- The cash box will have keys provided to signing authority board members only to handle these transactions. All money coming out the float box will require receipts.¹⁸

4.2 Board Meeting 84#Small Tool Acquisitions

- It's been held for a period of time. We have money to start buying tools again.
- Tool Committee: Karl Williams (Chair) and two non-board members (max. 7 members)
- James doesn't feel we need a board member on the committee, but we're continuing current procedure for now
- Karl to put out email to membership to get additional committee members
- To be voted on next board meeting ¹⁹

¹⁸http://www.kwartzlab.ca/wiki/Board_Meeting_105#Tool_Fund

¹⁹http://www.kwartzlab.ca/wiki/Board_Meeting_084#Small_Tool_Acquisitions

4.3 Board Meeting 85#Small Tool Acquisitions

- Karl to put out email to membership to get additional committee members
- To be voted on next board meeting
- Tool committee and fund have been created - to work on priorities and communicate to the board ²⁰

4.4 Regarding the Date and Frequency of Board Meetings

The Board of Directors shall meet every three weeks on Mondays.

Be it resolved that board members shall be notified at least 24 hours in advance of board meetings via the BOD mailing list, for those board meetings that require advance notification as per the bylaws.²¹

4.5 Board Meeting on June 26th @8:30pm

Date: Mon, 24 Jun 2013 16:50:40 -0400
From: doug moen <doug@moens.org>
To: Administrative discussions <admin@kwartzlab.ca>
Subject: [Admin] Board Meeting on June 26th @8:30pm

On the assumption that we are moving the board meeting to 8:30pm, I will update the Kwartzlab calendar. See discussion thread below.

On 19 June 2013 14:20, Darcy Casselman <dscassel@gmail.com>wrote:

>That is a board meeting night. A lame duck board meeting admittedly, but
>still... We could push it back to 8:30. I'd like it to be short anyway.²²

4.6 Board Meeting on June 26th @8:30pm

Date: Tue, 25 Jun 2013 07:18:38 -0400
From: Mark Pitcher <markpitcher@gmail.com>
To: Administrative discussions <admin@kwartzlab.ca>
Subject: Re: [Admin] Board Meeting on June 26th @8:30pm

...assuming you survive initiation...²³

4.7 Speaking of formal board meetings...

Date: Tue, 3 Dec 2013 11:40:27 -0500
From: doug moen <doug@moens.org>
To: Kwartzlab Members List <members@kwartzlab.ca>
Subject: Re: [Members] Speaking of formal board meetings...

²⁰http://www.kwartzlab.ca/wiki/Board_Meeting_085#Small_Tool_Acquisitions

²¹<http://www.kwartzlab.ca/corporation-procedure/>

²²http://kwartzlab.ca/mailman/private/admin_kwartzlab.ca/2013-June/002867.html

²³http://kwartzlab.ca/mailman/private/admin_kwartzlab.ca/2013-June/002877.html

That's 4 directors voting in favour, so it's quorum, and I'll update the calendar.²⁴

4.8 Board Meeting 112#Attending

Attending

- Jonathan
- Ben
- James
- Jaymis
- Darcy
- Doug

Absent

- Mark²⁵

4.9 Board Meeting 111#Attending

Attending

- Jaymis
- Ben
- Darcy
- Doug
- James
- Special Guest, Joe Mancini and Martin from The Working Centre

Absent

- Jonathan
- Mark²⁶

²⁴http://kwartzlab.ca/mailman/private/members_kwartzlab.ca/2013-December/015981.html

²⁵http://www.kwartzlab.ca/wiki/Board_Meeting_112#Attending

²⁶http://www.kwartzlab.ca/wiki/Board_Meeting_111#Attending

4.10 Re: Dues

Date: Fri, 30 Aug 2013 10:38:31 -0400
From: Ben Brown <ben@generik.ca>
To: Mark Pitcher <markpitcher@gmail.com>
Subject: Re: Dues

Hey Mark, I hope things are well. Haven't seen you around the lab lately. Just wanted to remind your credit from the last cheque has run out, currently you're two months behind (July and August). Next week will be three months (which is bad). Let me know if you can drop off another cheque or do a digital payment ASAP.
Thanks! Ben

4.11 Fwd: Re: Dues

Date: Wed, 13 Nov 2013 22:21:52 -0500
From: Ben Brown <ben@generik.ca>
To: Mark Pitcher <markpitcher@gmail.com>
CC: bod@kwartzlab.ca
Subject: Fwd: Re: Dues

CCing BoD)

Hey Mark, I never heard back about this email, though now I know why. I hope things are working out better for you as of late.

Anyway, you're probably already aware that you're three months behind on dues (nearing four). I know there's been some personal strife, but we need to figure this out now before it gets worse. Your membership will likely be suspended at the next board meeting (and possibly worse shortly thereafter). Board meeting is next Wednesday.

I can see three options – get current ASAP, pay two months now and the other two in December, or go on hiatus (we can make it retroactive so you're not on the line for the late payments). Downside with hiatus is you would probably have to step down as director as well.

Let me know how you'd like to proceed.

Thanks,
Ben²⁷

²⁷http://kwartzlab.ca/mailman/private/bod_kwartzlab.ca/Week-of-Mon-20131111/004715.html