

January 4, 2006

Mr. Evan Whitehead, President BCOQ
and the Board, BCOQ

Dear Friends,

I was pleased, along with David Partridge (also from FBC), to meet with Dr. Ken Bellous and Nancy Bell at the BCOQ offices on December 2, 2005. This meeting was arranged to discuss certain issues relating to the Constatng Documents and related By-Laws which were presented at Assembly 2005 in June.

David and I found this meeting to be very helpful and productive, and are very thankful for the 2 ½ hours that Ken and Nancy spent with us. The points I wished to raise with them were issues of process. From our meeting, I believe that we all have clearer understanding of these matters. There were two specific requests which I made of Ken and Nancy, and there were two requests which they made of me. This letter is to confirm and follow up on all these requests.

I requested of them, and they agreed:

1. To present to the Board my objections to the processes used in presentation of the Constatng Documents and related By-Laws to Assembly 2005, and the process used at that Assembly.
2. The Board could engage, at BCOQ expense, a lawyer or certified specialist in Canadian Parliamentary procedure to review and give an opinion on the validity of the process used, and the validity of my claim of improper process. This legal expert must be someone who is totally independent of the present Constatng Document and related By-Law process. And I am entitled to receive advance notice of the name and qualification of the person to be engaged.

I contend that because of at least two serious violations of due process, the business transacted is null and void, and that it is ultra vires in law to the extent that a civil court *could* order the reversal of all submissions made to Government of Canada agencies regarding the Continuance, etc. Please be assured, I am not in any way threatening legal action. However, I contend that it is appropriate, even imperative that the opinion of a disinterested professional be sought and that his ruling be accepted by the Board (and myself) as sufficient reason for it to make a public declaration that the actions and votes at Assembly 2005 do obey all the

relevant rules of order and fulfill all legal requirements, or else to declare publicly that they accept and endorse my claim that these actions and votes are null and void, and that they will take all necessary corrective action at the earliest possible date.

Ken and Nancy requested of me, and I agreed:

1. To write a full and complete statement of complaint regarding the issues of process, which document they would present to the BCOQ Board at its next meeting, and that this same document would be submitted to the independent lawyer for review and opinion. This document begins on page 3 of this letter and is entitled "Challenge to Assembly 2005 Process In the Matter of Constatng Documents and related By-Laws – Dan Gibson".

2. I also agreed to their invitation that I be invited to serve as a member of a select committee which may be set up by the BCOQ Board in the new year to study the By-Laws from a historic/theological point of view, and make proposals for amendment or rewriting of certain sections with the hope of finding a way to eliminate the unhappiness which some individuals, churches, and Associations have with the By-Laws as they presently stand. It was agreed by all four of us at the December 2 meeting, that an ideal solution would be to have By-laws which were then so acceptable that Affiliation Agreements may actually become unnecessary. I will gladly serve on such a committee, if the Board chooses to go that route.

Personally, and also with the full support of the Special Committee of FBC Brantford, I assure you that I (we) desire the happy resolution to these issues. We recognize the time and effort put into these matters by all the members of the Board, and we are convinced that if mistakes were made, they were made by well-meaning and sincere people who are offering their very best to the Kingdom. Our intent remains to strengthen our Convention family, not to divide it. Thank you for your time in considering these matters.

Yours sincerely,

A handwritten signature in cursive script that reads "J. Daniel Gibson". The signature is written in black ink and includes a long, sweeping horizontal line extending to the right.

(Rev. Dr.) J. Daniel Gibson

Challenge to Assembly 2005 Process
In the matter of Constating Documents and related By-Laws
Dan Gibson

I was duly appointed by FBC Brantford to be a registered delegate at the BCOQ Assembly in June of 2005 in the city of London, Ontario. I attended and registered as a Delegate, as did another member of FBC, Debra Duce. Ten days before Assembly, we each received the Delegate's package by mail which included considerable information, and the entire text of the Constating Documents and related By-laws, which in due course were presented at Assembly for consideration and vote.

I contend that the Board, its officers, and its employees have wrongfully denied me (and other Delegates) the rights and privileges I am guaranteed under the By-Laws of the BCOQ, its published Rules of Order, and the requirement of Canadian Parliamentary Procedure.

I contend that if either of the following complaints is deemed valid in law, then the entire process used by the Board in the introduction of the Constating Documents becomes in fact illegal, and any decisions made under that process on this specific item of business are therefore invalid and ultra vires.

I further contend that simply because others at Assembly passively accepted the abrogation of their rights, this does not remove the legal responsibility of the Board, its officers and its employees to protect and honour the rights, whether requested or not, of every Delegate and delegating Church, whether present or not.

These are my specific complaints and challenges:

Complaint # 1.

Proper 'Notice of Motion' was not given to the constituent Churches in a timely and accurate manner. I am fully aware that in recent years, revisions were made to the BCOQ By-Laws including the reduction from 1 year to 30 days requirement for 'Notice of Motion', and also the inclusion of wording so as to require only that full text be 'made available upon request'.

BCOQ is bound by its By-Laws, its own rules of order (called Delegate Procedures) and by what the Treasurer/Business Manager refers to as "normal business meeting procedures" which should cover all things not specifically referred to in the By-Laws or Delegate Procedures (this would include such things as which motions are debatable, etc.).

I regularly refer to four different books (old and new) on Parliamentary Procedure, and have made it my business to become knowledgeable in this area. At previous Assemblies *I have been requested from the Chair* to aid the Assembly in sorting out complicated matters of procedure.

The Treasurer/Business Manager believes that BCOQ had at one time chosen to refer to a Parliamentary Procedure authority named 'Stoddard', but is unaware when this may have happened. At present, there is no record of any authority by that name in the Government of Canada or Parliament of Canada websites. However, in the full page of resources listed at Parliament's website, the authority cited most often is Beauchesne, A., *Beauchesne's Rules and*

Forms of the House of Commons of Canada. Beauchesne is one of the four books I possess. Though there are minor differences among the authors, they all have substantive agreement on the main items. For convenience, I am quoting from *Roberts Rules of Order, 10th Edition* (which I will refer to simply as *Roberts*). If you prefer a different authority, I am confident that whatever one you choose will give the same ruling, though with acceptable differences in wording.

Having read all of the relevant Board Minutes (from the BCOQ website) and all of the BCOQ Board Summary postings by the Executive Minister, and the printed materials sent out to Pastors from time to time, it is shocking to note that the term ‘Notice of Motion’ or even ‘Notice’ does not appear even once in any official document. Instead, there were communications which the BCOQ President calls “memos” which will be referred to later.. While I agree that this by itself may not be a fatal flaw, it is an unacceptable standard of communication.

Far more serious is the fact that the announcements made about forthcoming proposals did not meet the legal requirements of ‘Notice of Motion’. The invitation to search a website in no way fulfills the legal requirement for due Notice. Quoting *Roberts*, [my underline]

A requirement of *previous notice* (or *notice*) means that announcement of the motion will be introduced – indicating its exact content... [Roberts, p. 116]

Unless the rules require the full text of the motion, resolution or bylaw amendment to be submitted in the notice, only the purport need be indicated, but such a statement of purport must be accurate and complete. [Roberts, p. 117]

The notice should fairly inform the members of the changes contemplated. Showing the existing bylaw and the bylaw with the proposed changes in parallel columns is a good device, so long as the exact amendment, stated in a formal manner is set out at the top across both columns. [Roberts, p. 578]

The notice becomes invalid if the motion is amended beyond the scope of the notice. [Roberts, p. 116]

The following are the exact communications sent out by the Executive Minister (presumably as the agent of the Board).

**BCOQ Board Summary, January 24, 2005
Ken Bellous**

Incorporation and Bylaws

The Board has begun work on making necessary adjustments to our Incorporation and Bylaw documents to comply with upcoming requirements by Industry Canada for Not-for-Profit Corporations. Our documents will need to fit the categories and definitions being asked for. We also need to make some changes (such as changing “summer camps” to “camps” since we now engage in winter activities as well), or adding activities that we have chosen to affirm in Assembly, but haven’t adequately reflected in our documents (such as the Certificate Loan Program). Proposed drafts will be available to distribute once the Board has completed their work on revisions.

**BCOQ Board Summary, April 11, 2005
Ken Bellous**

Assembly Recommendations

As previously noted, new Bylaws will come to Assembly for approval, to bring us into compliance with the new legislation for not-for-profit corporations currently under development. (The new Bylaws can be downloaded from the BCOQ website, www.baptist.ca. In addition, the Board approved an Affiliation Agreement that describes the relationship between each church and the BCOQ. It is a companion document to the

Bylaws that will help to clarify our connection together. (For example, you may recall from recent annual reports that BCOQ was named in a legal action resulting from a church van accident, even though the church had already written to withdraw from BCOQ membership. While we have now been excluded from the legal action, the Affiliation Agreement will help to define more clearly the mutual responsibilities in such legal cases). The Affiliation Agreement will be available in the upcoming church mailing, as well as on our web site once final revisions have been made.

In addition, there is the memo and chart entitled *New Constating Documents – Outline of Substantive Changes* sent out with the Church mailings in late Spring, which states “There are two substantive changes in this document”. The substantive changes reported are (1) “The first is with regard to the Objects of the Corporation”; and, (2) “The second substantive change provides for a broader range of investment powers...” Far from there being only two substantive changes, the full 88 page documents contain numerous changes that are not only substantive, but are reversals on fundamental matters of Baptist of policy and practice regarding Churches and Associations. The memo does not meet the standards required for due legal notice, because it does not give any indication of the ‘full purport’ of the proposed amendments. Below are listed just a few of the many deficiencies and omissions.

a) There was no indication in the memo and chart entitled *New Constating Documents – Outline of Substantive Changes* where the full 88 page documents could be found. There was no ‘link’ given.

b) In the memo and chart entitled *New Constating Documents – Outline of Substantive Changes*, the first subtitle is “Application for Continuance of a Corporation without Share Capital.” The use of the word *continuance* is a legal term, which is commonly misunderstood. The Board should have given further explanation of the legal process they were recommending, as this term does not mean that the present corporation will *continue* under its present Charter; but actually means the exact opposite – the BCOQ will be required to abandon its present Charter. Most delegates, myself included, do not have legal training and had no way of knowing what was being proposed by the Board. Even the full 88 page document does not make this clear to the lay (non-legal) reader. It was not until a verbal explanation was given at Assembly that the full requirement of abandoning our Charter forever was heard for the first time. The onus is on the Board, in giving *Notice*, to ensure that the Churches and delegates are fully informed in advance of the implications of proposed legal actions.

b) In reference to By-Law changes, the memo and chart entitled *New Constating Documents – Outline of Substantive Changes* states that “The General Operating By-Law reflects the contents of the By-Law approved at the 2004 Assembly, but in an expanded format to meet the requirements of the *Canada Corporations Act*.” This simply is not true! The new By-laws reflect some of the content of the 2004 By-Laws, but make substantive changes to some of the 2004 By-Laws. This fact is not mentioned. The 2004 By-Law is 13 pages in length, while the new By-Law is 59 pages. The ‘memo’ gives no indication whatever that the new By-Law has been expanded to this extent. Considering the original length, the inference in the ‘memo’ is that the expansion by 46 pages is all new items which are required by the *Canada Corporations Act*. I have read every word of the *Canada Corporations Act*, and have found that it allows considerable scope and options for the details of governance in religious and charitable organizations. Many of the numerous changes between the old and new By-Laws have nothing to do with requirements of the *Act*, but are radical changes in polity and process which can be (and have already been!) changed in the Board’s consideration of amendments for Assembly 2006, with no problem from the *Act*. This means that the statement in the ‘memo’ seriously misrepresents the proposed changes, and makes the ‘memo’ entirely invalid as ‘Notice’.

c) The BCOQ President, in an official letter to FBC Brantford (November 17, 2005) states that “*Changes to the By-Law appear to be more substantive, but in actual fact represent the Board’s best attempt to describe how we have actually operated for many years. Any areas that were specifically different from the current By-Laws were identified in the memo.*” It is clearly understood from his letter, that (A) either the changes were simple reflections of accomplished fact, or (B) the changes were specifically identified in the ‘memo’, which does not meet the legal requirement for ‘Notice of Motion’.

In my December 2, 2005 meeting with the Executive Minister and the Treasurer/Business Manager, it was freely conceded by them that the **following items are indeed substantive, and that they were not ‘how we have actually operated for many years’, and that they were not identified in any communication from the Board or its agents.**

i. While references are made to “*adjustments*” to our Incorporation and By-Law Documents, there is no indication whatever that BCOQ will be required to abandon our existing Federal Charter of Incorporation, passed by the Parliament of Canada.

ii. While references are made to such housekeeping items as changing “summer camps” to “camps”, there is no mention whatever that the new By-Laws will fundamentally change the relationship of Member Churches with their Convention, nor the requirements for Churches to “submit to” and “comply with” the Convention and its Board in matters of standards – including even doctrine!

iii. There was no mention of the fact that the new By-Laws remove entirely the right of a local Church or its Delegate to propose a By-Law amendment to Assembly. From now on, only those amendments submitted to the Board in advance, and **approved by the Board, in advance, by a 2/3rds majority can ever even get to Assembly.** This is a major change, and reversal of polity.

iv. There is not even a hint of the wording which would be presented to Assembly as actual motions. This is first seen in the gold-coloured sheet entitled “*Resolutions Of The Members Of The Baptist Convention Of Ontario and Quebec At The Annual Meeting of Members Held On June 10, 2005.*” This sheet of legally required motions was not even written at the time of the supposed notice, as the fine print at the bottom of the gold page states that it was composed on 2005 06 06. **This sheet was never on the website, so was not available as part of due notice. It was handed out at Assembly, with no notice.** Detail of *wording* may change between the time of *Notice* and the time of action, *but the exact purpose must both be announced, and remain constant. This did not happen.*

While it is agreed that the existing By-Laws did not require the full text to be mailed to every Church, **it is abundantly clear to me that the statements were not “accurate and complete” as required by Roberts (and all other Parliamentary Procedure authorities). Proper, clear, fair, exact reporting of the ‘full purport’ of the so-called Notice never took place. The actions required of the Assembly were far, far “beyond the scope of the notice” and are therefore invalid.**

(Incidentally, during that same Assembly week, the Baptist Ministers’ Fellowship found itself in exactly the same predicament. An emergency meeting had to be called so that the Chair could announce that *improper notice* had been given to the BMF, so their previous actions were deemed null and void as a result. He announced the absolute cancellation of their ultra vires

actions, and then, proper notice was given for the first time. Proper, legal decisions will now come at a later meeting of the BMF.)

Complaint # 2.

An Illegal ruling was made by an employee of the BCOQ; the Board was responsible for the illegal ruling; and the Officers of the Board abrogated the rights of the Delegates by enforcing that ruling. At the beginning of the presentation of the Constating Documents to Assembly, the Treasurer/Business Manager spoke from the official podium (presumably on behalf of the Board). She said “*One other word about procedure this afternoon, because these are legal documents and many of the sections are closely intertwined, we are not going to actually entertain motions to amend the documents during the plenary session. What we would like to do is to take very specific notes of the sections or words that are problematic. We will review those with legal counsel after Assembly.*” [quoted from the official transcript of the audio tapes, underline mine]

First, the fact that an employee was used to deliver such a fundamental ruling is highly irregular and improper. We *elect* Officers to guide our deliberations, and provide fair and accurate procedure under our By-Laws. Employees report to Assembly on areas of their own mandate and employment. It is never the place of an employee to instruct the Assembly on what the Assembly may or may not do. Only elected Officers have that responsibility.

The ‘ruling’ was immediately objected to by a speaker from the floor, but the manner in which the presenting Officer had made the ruling made it very clear that this was a legal ruling over which Assembly had no control; thus normal parliamentary procedure would not apply. In effect, we were told, or words to this effect, that legal opinion had already determined that Assembly was not qualified to amend legal terminology, which the Constating Documents and By-Laws most assuredly are. However, the Board was prepared to listen to our concerns, and make such amendments themselves, on our behalf, as they saw fit. After Assembly, in retrospect, and having access to authorities on Rules of Order, it became obvious that the illegal ruling could have been challenged. **But having been intimidated by supposed legal opinion, Delegates including myself, who wished to protest were effectively silenced on this issue.**

At the December 2, 2005 meeting, it was acknowledged by the Treasurer/Business Manager that there was, in fact, *no* legal reason why that ruling had to be made. Rather, the ruling was made for the convenience of the Board and their lawyer. It was admitted that Assembly *could* have made amendments, and the amendments could then have been submitted to the lawyer for rewording to meet legal requirements. This would have been cumbersome and slow, ***so the Board made the decision to refuse amendments in order to save time and effort and speed up the process of preparing applications. There was no legal requirement, only the convenience of the Board.***

Second, and this is by far the most serious matter in my entire presentation, **this ruling was a direct violation of BCOQ By-Laws, our Rules of Order, and Canadian Parliamentary Procedure.**

Every Delegate package included a sheet entitled “*Assembly Delegate Procedures For Business Sessions.*” Under the section “*Procedures For Discussion*” the largest single item is “*#4 About Amendments*”. In this section it is not only stated that amendments are always acceptable, but that amendments actually take precedence over main motions. Examples are given to assist the Delegates in framing proper amendments. **These are our Rules of Order.**

This is the first and only time in the history of the BCOQ that duly appointed Delegates have been denied their right to make motions of amendment to the business at hand.

By what authority did the Board, its Officers, and its employee make the decision that Assembly was not competent to amend legal language? The Board is the servant of the Assembly, not its master. The lesser body has no authority whatever to remove the rights of the greater body. In fact, the Board's suspension of the Rules of Order was arbitrary and improper. All authorities will agree:

The rules of order of a society... are rules of parliamentary procedure, the suspension of which requires a two-thirds vote. Some societies call their rules "standing rules." But by whatever name a rule is called, if it relates to parliamentary procedure, it requires either (a) previous notice and a two-thirds vote or (b) a vote of the majority of the entire membership; hence, it requires a two-thirds vote for its suspension. [Roberts, p. 256]

Beauchesne is even more emphatic:

Rules are designed to safeguard the rights of members, particularly those of minorities. They should only be altered with the greatest care and after adequate notice. Unimportant regulations may sometimes be temporarily suspended by unanimous consent in order to expedite business, but meetings ought to be chary in waiving substantial rules... Serious consequences may follow and even lead to prolonged legal action. [Beauchesne, p.65]

The glossary of Procedure of the Parliament of Canada gives a more stringent requirement:

The consent of all Members present in the House is required when the House wishes to set aside its rules or usual practices without notice.

[<http://www.parl.gc.ca/information/about/process/house/glossary/glossary2004-e.htm#sectS>]

The fact that there were objections from the floor of course precludes any chance of unanimous consent. So, the only legitimate way for the Board to have *requested* that the Assembly not propose amendments would have been for the Board to have brought a resolution to Assembly (*with notice*) asking Assembly to vote for the suspension of that particular right and rule. If Assembly had voted by two-thirds to do that, the result would be binding on all the players. But the Board even denied the right of Assembly to make its own decision.

At our December 2, 2005 meeting, it was confirmed that the Board had made the decision not to allow amendments at its previous meeting, *so there would have been adequate time for proper notice of that intention to be delivered to the churches had the Board chosen to do so.*

(It is interesting to speculate whether Assembly would have followed such a recommendation had it come from the Board. I suspect that Assembly would have refused to suspend the rule, but we will never know – **because the Board usurped the power and rights of the Assembly to make its own decision.**)

There is now no legitimate way in which the Board can, in retrospect, make any claim that the intimidated silence of those whose protest was ineffective (on the basis of supposed prior legal opinion) is in any way an endorsement or ratification of the Board's ruling or action. I believe the ruling and action are clearly improper, and are serious enough that they could probably be challenged in civil court.

I personally went to Assembly prepared to make at least ten important amendments to the documents – about Baptist heritage, doctrine of the Church, and the real purpose of a Convention existing – and was robbed of my rights as a duly appointed Delegate. Others to whom I have spoken were also prepared to make amendments and were similarly denied their rights. The

offer of the Board to listen to my concerns, and make amendments on my behalf (if they agree, of course!) simply adds insult to legal injury.

In closing, I contend that both of these challenges have merit, but especially #2 (ruling on amendments) which is so clear cut. I call upon the Board to admit their error (well meant as it may have been) and immediately declare null and void all subsequent votes on the adoption of the Documents and By-Laws; and further, to halt, reverse, and undo the entire 'continuance' process which I and many others believe has been improperly instituted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Daniel Gibson". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

(Rev. Dr.) J. Daniel Gibson