
The Board's suspension of the President

Jonathan Fine

1 The crisis

Kaveh Bazargan took office as President of TUG in May 2015. I was shocked to read the Board's announcement, on 13 October, that they had suspended him from office. This, if not reversed, would lead to his removal. I had many questions and some advice to offer.

On 13 December, I wrote to acting President Jim Hefferon (the defeated candidate for President) and the Board. My letter is the next section. I got no reply other than acknowledgement. The rest of the article discusses the situation.

By the way, I first joined TUG in about 1990, was on the TUG Board 2009–13, and am a former Chair of UK TUG. I rejoined TUG this year.

This article uses primary documents published by Kaveh, via a link on the comp.text.tex newsgroup. The Board has published no such documents.

2 My message to the TUG Board

Dear Jim

You are, while the elected President Kaveh Bazargan is suspended, acting President on the TeX Users Group. Please ask the TUG Board to think again about this suspension. First some background.

In May 2015 Bazargan was elected President of TUG, 307 votes to 110. It was the first contested election since 2005. He took office in July 2015. You were Bazargan's opponent in this election. The Board's decision has reversed the outcome of the election. This is a difficult situation. Also, you are potentially in a conflict of interest.

I do not know if Bazargan has exercised his right to ask the Board to reconsider. I hope he has, and that the Board treats this email as additional information they should consider.

Is the Board sure that it has behaved properly? Please ask the Board to carefully consider the following five issues. I know that they are somewhat procedural, and don't get to the heart of the matter. However, they raise real concern that the Board itself has not got to the heart of the matter.

1. On 20 October, on behalf of the Board, you told me that the Board voted on

whether Kaveh is "deemed to be no longer working in the interests of TUG" and thus should be suspended [...]

The TUG Bylaws require this decision be made on the basis of the Board members actions (or inactions). But the motion voted on gives no examples

of actions (or inactions) that justify the conclusion that Bazargan was not working in the interests of TUG. Is it fair and reasonable?

I'm not aware of any actions (or inactions) done by Bazargan, in his capacity as President of TUG, that would justify his being removed from office. The Board's statement, after the suspension, does not provide any.

2. Also on 20 October you wrote "FYI, per the TUG bylaws, this was a special vote, not a normal motion." The TUG Bylaws allow the Board to conduct business by email. The procedure is proposal of a motion, seconder, one-week discussion period, voting for up to a week. There is no provision for "a special vote".

It seems that the procedure in the Bylaws was not followed. If not followed then perhaps Bazargan was substantially disadvantaged, and the vote taken is null and void. If so, this would leave Bazargan as President.

3. A law-suit between Bazargan and CV Radhakrishnan (CVR) was central to the Board's case for suspension. This, like any other business interest, can give rise to a conflict of interest. According to <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>,

A conflict of interest policy should (a) require those with a conflict (or who think they may have a conflict) to disclose the conflict/potential conflict, and (b) prohibit interested board members from voting on any matter in which there is a conflict.

Did the Board attempt to apply such principles, to ensure that Bazargan's business interests did not conflict with his responsibilities to TUG? Again, the Board's statement does not give any examples of where it might.

4. It seems that CVR has a close relationship with at least one Board member, and that through that relationship CVR gave the Board information that was used to damage to Bazargan. Did any Board members disclose any potential conflict of interest relating to the suspension of Bazargan, and if so what action did the Board take in response?

5. TUG is US 501(c)(3) tax-exempt charitable organisation, which gives tax benefits for donations to TUG. It also means that TUG is not a 'members club', owned by and organised for the benefit of its members. The TUG Board, arguably, suspended the President to help protect a member of TUG from legal action. Did the Board take legal or other expert advice, particularly on conflict of interest, before suspending the President?

By the way, if the Board it did not take and follow such advice, then Board members individually might not be protected by any directors and officers liability insurance held by TUG, in respect to their suspending the President. In other words, they might be personally liable for any harm done.

Please ask the Board to consider carefully the five issues above. I intend to publish this letter, and I hope the Board will publish a response.

One final point. The Board's statement on the suspension of President said that it "potentially affects the entire TeX community". I am not a member of TUG (although I am a past Board member). Please do not use this as a reason to not communicate with me. I am affected by this, as are many other non-members of TUG.

3 The Board's case

On 6 October 2015 someone sent an email message from `board@tug.org` to Kaveh Bazargan, the President of TUG. It wrote:

As TUG president, you have a duty to represent all TUG members to the best of your ability (just as we do as TUG directors). It is not possible to fulfill this responsibility when you are involved in a lawsuit against another TUG member.

This is the basis for the Board's actions. The message closes by threatening suspension if Kaveh does not resign. It is signed 'TUG Directors'.

4 The duties of a TUG Board members

TUG is a USA 501(c)(3) tax-exempt non-profit organisation. Its articles of incorporation state that it "shall be operated *exclusively* for charitable, educational and scientific purposes" associated with technical typesetting, font design and so forth.

The US National Council of Nonprofits states that the legal duties of nonprofit Board members are (I summarize, and adapt for TUG):

- **Duty of due care** in use of TUG assets, overseeing its activities, and advancing TUG effectiveness and sustainability.
- **Duty of loyalty** to the best interests of TUG (rather than personal interests).
- **Duty of obedience** to laws, ethical practices, and promotion of typesetting, font design, etc.

There is no duty to avoid lawsuits with other members, unless it follows from these three duties.

5 The legal action

Kaveh and CVR were in business together. A falling out led to a dispute, which Kaveh has taken to court

for resolution. This is, as Kaveh's appeal says, a universal right. The Board's action interferes with this right. It may even bring TUG into the lawsuit.

Imagine the mischief that could be caused if a nonprofit organisation, such as the Linux Foundation, had as a Bylaw that a Board member involved a lawsuit with another member must resign.

6 Conflict of interest

When a Board member's personal interest conflicts with his duties as a Board member the conflicted party should report it, and the *rest of the Board* should remove that member from the decision. The lawsuit, like any other business relationship, could give rise to a conflict of interest.

Surely there is a better way to cure the lawsuit headache, than to cut off TUG's head, its President.

7 TUG Bylaws

The Board members have a duty of obedience to the Bylaws of TUG. They allow the Board to conduct business by email. The procedure is proposal of a motion, seconder, one-week discussion period, with voting for up to a week.

The Bylaws also provide every TUG member with access to Board minutes. On 6 October 2015 someone used `board@tug.org` to send a message, in the name of 'The Directors', threatening Kaveh with suspension. I would like to see the motion that authorised this cowardly action.

If there is none, then is the suspension be a legal action of the Board? Perhaps Kaveh never stopped being President of TUG.

8 Conclusion and questions

Kaveh Bazargan was elected 307 to 110 in the first contested election since 2005, and the acting President is now Kaveh's opponent Jim Hefferon. Did the Board represent to the best of their ability the roughly 25% of members who voted for Kaveh? Did CVR get special and preferential treatment?

Please think carefully as to whether the Board members followed their duties of due care, loyalty, and obedience. Put it another way, have they behaved properly? Did the suspension promote TUG's charitable, educational, and scientific purposes? Is TUG now more effective and sustainable, as a result of this decision?

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