
Report: Suspension of Kaveh Bazargan as TUG President

TUG Board of Directors

Until the completion of all steps specified in its bylaws, the TUG Board has, on legal advice, released to the membership only limited information regarding the process by which Kaveh Bazargan was suspended as TUG President. The following is the Board's report on the matter.

Summary

Before filing as a candidate for the TUG presidency, Kaveh Bazargan had instituted a legal suit against another TUG member (not on the Board). He did not inform the Board or the elections committee of such litigation. After the announcement of the election results was posted on the TUG website, Kaveh submitted that document to the court in support of his suit, again not informing the Board or the other candidates, whose information was included in the announcement. (The results of the election were announced on 23 May 2015, and the news about their inclusion in the court papers arrived on 21 August.)

When asked by the Board to either withdraw the announcement from the court records, or submit a notice stating that the TUG Board had requested that it be withdrawn, Kaveh did not acknowledge this request or take any steps to act on it after repeated attempts by the Board to obtain a definitive response.

This action does not, in the Board's opinion, demonstrate the duty of loyalty to the organization, in that Kaveh was holding his own interests above those of the organization.

It was on these grounds that the TUG Board acted to suspend Kaveh as TUG President.

Since the creation of TUG, the TUG Board has consistently held to the principle that Board members should be free from conflict of interest. This principle was perhaps best expressed by Pierre MacKay as part of his valedictory comments on stepping down as TUG President, in *TUGboat* 6:3, page 114, "Statement of Principles" [<http://tug.org/TUGboat/tb06-3/tb13gendel.pdf>]:

To avoid any real or apparent conflict of interest, all members of the TUG Steering Committee undertake that they shall make no use of their position on that committee for personal advancement and shall make no private use of information acquired by the Steering Committee unless and until such information has been published to the general membership of TUG.

This principle is consistent with the legal underpinnings of TUG's incorporation under the Rhode Island Non-Profit Corporation Act (RINCA) [<http://webserver.rilin.state.ri.us/Statutes/TITLE7/7-6/INDEX.HTM>].

Section 7-6-34.(4)(i) of RINCA states [<http://webserver.rilin.state.ri.us/Statutes/TITLE7/7-6/7-6-34.HTM>]:

(4)(i) Any provisions, not inconsistent with the law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including a provision eliminating or limiting the personal liability of a director to the corporation or to its members for monetary damages for breach of the director's duty as a director. However, the provision does not eliminate or limit the liability of a director:

(A) For any breach of the director's duty or loyalty to the corporation or its members;

Loyalty is well defined in corporate law as the duty of an individual to hold the interests of the organization above personal interests.

Kaveh Bazargan submitted papers for his candidacy for TUG President in January 2015. At that time he was already involved in a legal dispute in India, which began no later than 2014, with another TUG member (not on the Board); however, this was not made known to either the TUG Board or to the Board members charged with setting up the election. On 21 August 2015, the TUG member who was the target of the suit sent a message to the Board containing the information that the TUG election announcement [<http://tug.org/election/2015/candidates.html>] had been presented by Kaveh to the court as part of the documents supporting his (Kaveh's) case. The relevant part of this message reads:

4. Kaveh has used the results of the recent TUG elections as well as the names and statements of other members of the board to back his claims by including these as part of the documents filed in court on behalf of the Plaintiff, which is himself.

Is this being done with the concurrence of the TUG Board?

This was indeed done without Kaveh having notified the Board, or asking the other individuals involved in the election for permission to place their information and pictures in court filings in a legal suit; although the election announcement had been publicly posted on the TUG website, Kaveh should have notified the Board of this action, and requested permission.

The Board acknowledged receipt of this message to its sender, but had no other correspondence with that TUG member on the subject.

We note that use of the position of TUG President for personal benefit would clearly be a conflict of interest. However, we do not know that this was stated directly to the court, only that the election announcement was submitted as part of Kaveh's evidence.

The question asking whether the notice had been submitted with the concurrence of the TUG Board was forwarded in a message to Kaveh, on 27 August 2015, along with the following request from the Board:

The answer to this is "no". None of the candidates whose material was submitted had any knowledge of this action until well after the documents were submitted, and, had they been asked for permission, their responses would have been "no". It is our request to you that the election statements be withdrawn from the court filings, if possible; if not possible, a note should be added that the TUG Board has made such a request for removal.

This direct request was never acknowledged by Kaveh; instead, his responses skirted the issue. On 28 August he replied:

It's suddenly becoming clear to me!! There has been a misunderstanding. Allow me to explain. [...]

Let me reiterate: TUG and TUG Board members are **not** involved in this case. They are not accused of anything and not endorsing anyone. My only intention is to prove I have been elected as the president of TUG. How else could I have done that?

[...]

The Board did not accept this as a reasonable explanation, and thus sent the following note on 3 September:

Kaveh - in your response, you neither affirmed nor denied our request (copied below). Please respond directly. Thanks.

[forwarded copy of the full message dated 27 August]

On 16 September, the following request was received by the Board from Kaveh:

I really want to put the matter of the ‘grievances’ to rest so that I can start contributing to TUG without distraction. I replied to your concern again last week. Please confirm that the grievance issue is now closed. In case the board believes it is not, then in the interests of TUG, I look forward to receiving the precise points as soon as possible so I can address them and we can all get on with our main task, namely making TUG even better than it is.

This was clear evidence that a serious disagreement existed, with no recognition by Kaveh that, in the Board’s opinion, a line had been crossed. The Board waited, without communication with Kaveh regarding the matter, for a direct reply, which was never forthcoming. Board members discussed the matter in private email, and on 17 September the following notice (included here in full) was sent to Kaveh:

Date: Thu, 17 Sep 2015 19:30:45 -0400

From: TUG Board

Dear Kaveh,

Over the last several weeks the Board of Directors has deliberated intensely over the current situation. Here is our consensus opinion.

A lawsuit between TUG members concerning \TeX -related activities is in itself a very unfortunate matter for the user group. Any such involvement by a TUG officer compromises TUG’s standing in the community. As you know, the \TeX Users Group is not a party in this suit. We cannot even give the appearance of having taken sides. The situation of the position of TUG President having been used for private matters in any manner is unacceptable to the Board. It is important for the community to keep their trust in TUG as an impartial organization representing all its members.

Thus, we think that your involvement in a lawsuit with another TUG member, while you are TUG president, concerning \TeX -related activities is a conflict of interest. Recent events have shown that this conflict cannot be mitigated.

We do not see any way to resolve this situation while you are TUG President. Thus we think it would be in the best interests of TUG for you to take a leave of absence until the lawsuit and all related legal matters are settled, or to resign.

Please understand that this recommendation does not imply any judgement about you and your skills. We recognize the valuable contributions that you have made to TUG over the years. The Board is concerned only with the welfare of TUG and what it represents as an organization.

This decision has been very difficult for us all, and we hope you understand that we think this is the best route for the benefit of TUG.

TUG Board of Directors

As of 24 September, no response had been received from Kaveh, and this reminder was sent:

Kaveh — we sent our message a week ago. Can you please provide an ETA as to when you will reply? Thanks.

Another reminder was sent on 28 September, with this warning:

We would like to hear from you before this Thursday, October 1. Otherwise we will need to consider possible next steps, including those in Article IV section 5 of the TUG bylaws.

Kaveh responded the same day, but made no acknowledgment of the Board's initial request regarding withdrawal of the election notice from the court documents. A motion for suspension was proposed, subject to a more congenial resolution. The next message from the Board to Kaveh was sent on 6 October:

Date: Tue, 6 Oct 2015 18:59:58 -0400

From: TUG Board

Kaveh,

The conflict is as already stated: 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. Any decision made or initiative undertaken by a TUG president while pursuing a lawsuit against another TUG member would, at the very least, appear to be tainted.

From your messages, apparently you do not agree that this is a problem. Nevertheless, after lengthy and careful deliberation, including taking your responses into account, the required majority of the board has concluded that your presidency must be suspended because of this.

We think it would be better both for TUG and for you if this outcome was announced as your decision. If you agree, we could announce that after a discussion with the board you generously decided to step down to avoid the distraction of a pending lawsuit from interfering with TUG business.

However, if you disagree, we will publish this decision as ours after Thursday, October 8.

Sincerely,
TUG directors

On 10 October, Board member Steve Grathwohl had a Skype conversation with Kaveh, urging him to voluntarily step aside. Kaveh refused. (Originally, two other Board members had agreed to participate in the Skype call, but at the only time Kaveh was available, they were not.) The Board voted without dissent for suspension, concluding that further discussion could not lead to a less severe outcome.

On 13 October, the Board wrote to Kaveh:

[A]s we previously wrote to you, the required majority of the board has concluded that your presidency must be suspended because of the conflict of interest that we see, due to your pending legal actions. Since our attempts at mitigation have not been successful, the suspension is now effective. We greatly regret this outcome.

The Board, on the same day, also notified all members by email:

[...] We believe that TUG should not take sides, or even appear to take sides, in a lawsuit to which it is not a party. [...]

Thus, we asked Kaveh to voluntarily suspend his presidency for the duration of the lawsuit and any related legal matters. We were not successful in convincing him that this would be best for TUG. Further, he neither made an explanation as to why he did not reveal the existence of the lawsuit at the time of the election, nor made any offer to mitigate its effects now. [...]

The suspension became effective with this notification, 13 October 2015.

After several messages from Kaveh to the Board requesting an explanation, this message was sent on 21 October:

Date: Wed, 21 Oct 2015 17:14:44 -0400
From: TUG Board

Kaveh,

Since originally becoming aware of the issue, over several emails to you the Board has communicated, in detail, its concerns about the conflict of interest posed by having the TUG President embroiled in a lawsuit with another TUG member. The Board also expressed, very early on, its view regarding the difficulty of TUG being seen as impartial when the member statements for the election are entered as part of court documents supporting one side or the other. You did not accept those concerns.

We also conveyed to you, in writing, that we felt a voluntary resignation or leave of absence, initiated by you, would be the best course of action for TUG. When that effort also failed, a phone call was sought. This call was extended as a courtesy to you. Unfortunately for all of us, this didn't work in the way we hoped for.

Sincerely,
TUG directors

According to Bylaws Section IV.5, a suspended Director "shall have an automatic right of appeal, which must be exercised within 60 days of delivery of notification of suspension." (Sixty days from 13 October is 12 December.) If the appeal is rejected, the suspended Director has the right to appeal to the members in the Annual General Meeting.

Kaveh sent a letter of appeal by email on 10 December. Owing to the size of attachments to the message, it was delayed for several days; however, the original timestamp was accepted as the effective date.

As with previous communications, the appeal did not acknowledge the Board's initial request of 27 August; it also implied that the suspension was invalid. This is the final item in the letter:

[...] I trust and hope that legal proceedings between us can be avoided by the Board rescinding the purported notice and reinstating me as President of TUG with immediate effect. The Board should be aware that if this does not occur the only conclusion that I can draw is that there is a Board agenda to damage my interests. Accordingly, in that scenario, I will have no option but bring claims for defamation, damages for loss of reputation, breach of statutory duty and tortious interference. The Board is reminded that its members are personally liable for any expenses incurred in connection with the defence or reasonable settlement of any action to which a person is made party by reason of being a director by virtue of Article 10 of the Bylaws

and, like every member placed in this situation, I shall have no option but to defend my business interests.

In light of Kaveh's appeal letter, the Board believed it prudent to engage legal advice.

With the advice of counsel, the Board concluded that the appeal did not contain any substantive new information, and unanimously affirmed its prior vote. The affirmation of suspension was conveyed to Kaveh by TUG's lawyer on 10 February 2016. A notice to all members was sent on 17 February.

With the suspension, Jim Hefferon, as Vice President, assumed the role of acting President, effective until the issue was resolved.

In accordance with Section IV.5 of the Bylaws, a suspended Board member is provided the right of final appeal at the next Annual General Meeting (AGM). The onus is on the suspended member to register that appeal so that it can be included on the agenda for the AGM. When no such appeal request was received, on 8 July, as a courtesy, the TUG lawyer sent a message to Kaveh asking whether he intended to appeal, and requesting a response no later than 15 July. This date was chosen as it was the last date on which a notice could be sent to members announcing the business to be taken up at the AGM, scheduled for 26 July at 4:15 p.m.; Section III.5 of the Bylaws requires that notice of a meeting be sent no less than ten days before the meeting.

On 15 July, a reply was received from Kaveh, stating "This is to let you know that I have not yet decided on the matter."

On 15 July, a notice was sent to all members announcing the date and time of the AGM, with (in the absence of a decision from Kaveh) the stated purpose "to discuss normal business, including but not limited to, developing and implementing strategies designed to increase TUG membership." This notice was not required, as the date and time of the meeting had already been posted for several weeks as part of the conference schedule on the TUG website, but the formality was observed in deference to agitation on public non-TUG websites and other T_EX forums.

At the conference early on the day of the AGM (26 July), Kaveh distributed a document entitled "Recent events in TUG" in which he set forth his point of view, and announced his resignation as President of TUG. He requested, and was granted, time at the AGM to make a brief personal statement. In this statement, he reiterated his resignation, with the reason being that even if he were reinstated, he would be faced with a Board that he could not work with.

Had the suspension come to a vote by the assembled TUG members, the two possibilities would have been: to uphold the suspension or to reinstate. Kaveh's decision to avoid the vote and leave the Board through resignation was recognized and accepted.

No mention is made in Kaveh's document "Recent events in TUG" regarding withdrawal of threats to sue the Board as a whole or its members as individuals. Therefore, the Board still believes that this is an active possibility, and must conduct the business of TUG accordingly.

The document distributed by Kaveh at the AGM is reproduced in full from the original, following this report. The Board does not agree with the points made in Kaveh's statement in the section "The TUG Board", but believes that every member is entitled to reach their own conclusions.

Recent events in TUG

My background with TeX

I started using TeX in April 1983, just in time to write my PhD dissertation at Imperial College. I am officially the first TeX user at Imperial, and possibly first in UK. I attended my first TUG meeting exactly 30 years ago in Strasbourg. From the first time I used TeX I fell in love with it and my love has not diminished.

I started my business in 1988 in the UK, with TeX at the centre of the operation. After years of hard work the business is now established, with multiple offices, and major publishers as clients. TeX remains at the core of my business.

Giving back

I feel a strong sense of gratitude to TeX and friends, their authors and the TeX community that shares my commitment to this marvellous technology. In recent years I have done what I could to “give back” to the TeX community, including presenting at TUG conferences, hosting two TUG meetings and sponsoring several, and recording no less than 14 TeX conferences, including the Toronto conference, free of charge. Last year, a few days before the 2015 TUG board elections, I had an epiphany – why not run for the presidency of TUG? I was aware of many opportunities for developing a stronger awareness of TeX in the publishing industry, and attracting funding for TeX projects and for this Group. What better way to give back than to use my influence in the publishing industry to raise the profile of TUG to where it deserves to be?

The law suit

In 2014 I started proceeding that asked a court in India to resolve a dispute with a former business associate, over ownership of proprietary software. The details are probably not of interest to TUG members, but they are not a secret and I am happy to give more details if people are really interested. The dispute is unconnected with TUG.

Election as President

I was nominated by TUG board member, Arthur Reuternauer, and threw my name in the ring just before the nomination deadline, with a clear agenda for change. When I was elected President by 307 votes to 110, I immediately made plans to deliver what I had promised.

The TUG Board

The members of TUG already know that the Board suspended me as President because of the lawsuit in India. Here are some facts that trouble and concern me about the Board's conduct.

1. They did not tell the TUG members that the other party in the lawsuit asked the Board to remove me as President.
2. They did not get legal advice before acting, and they have not published the legal advice TUG has since received.
3. The Board knew, when they suspended me, that I was addressing their concern about

TUG references in court papers. Their concern was that I had submitted as evidence the public TUG website page that announced the result of the 2015 election.

4. They did not follow the TUG bylaws regarding conducting meetings by email.
5. There are no minutes available relating to the suspension.
6. The principal ground for the suspension was the fact that the other party in the dispute over ownership happened to be a member of TUG.
7. In their response to my appeal, the previous principal ground stated at the outset was replaced by a lesser matter, namely concerns about court papers.
8. The Board's pressure on me to change my court evidence amounts to taking sides in the lawsuit, and may be legally improper.

Resignation

Earlier today, I formally resigned as President of TUG.

I have asked the Board to allow me to make a brief personal statement explaining why at the TUG Annual Meeting, which is at 4.15pm today.

Kaveh Bazargan
Former President of TUG
26 July 2016

Response to Kaveh Bazargan's message

While Kaveh Bazargan certainly has the right to insist on his interpretation of the recent events, we feel that some statements in his letter are not accurate and deserve to be explained from the Board's point of view.

The numbers below correspond to the numbers in his text.

1. It is correct that the Board did not tell the membership about the request to remove Kaveh as a President. What is not correct is the implication that this removal was done as a consequence of the other party's request.

We considered that request improper and did not discuss it further. Our aim was to avoid any involvement of TUG in the lawsuit and any appearance of such involvement. Only the repeated refusal of Kaveh to do anything towards this aim led us to the difficult decision to suspend his presidency.

2. It is correct that the Board sought legal advice only after the removal was done. What is not correct is the implication that such legal advice is routine in TUG business.

The decision to hire a lawyer was unprecedented, except for handling TUG's incorporation and application for non-profit status, over the several decades of TUG's existence. The Board took this step only after receiving an explicit threat of lawsuits against the Board as a whole *and* against its individual directors. While we felt a natural aversion to spend TUG funds on lawyers, we felt it was necessary for the organization itself.

In light of this threat, Kaveh's request to make the legal advice received by the Board public is nonsensical. The lawyer who has been advising TUG has told us that communications between his firm and the TUG Board should not be disclosed as they are subject to the attorney-client privilege, which we will honor.

3. It is incorrect that, at the moment of suspension, Kaveh "was addressing their concern about TUG references in court papers". In fact our repeated requests to delete, remove, and/or file a notice regarding the TUG court references were not met with any understanding at all. We strongly felt at that time — and strongly feel now — that this failure to act violates the duty of loyalty/conflict of interest obligation that Kaveh owed.

4. The statement that our decision did not follow TUG bylaws has no grounds whatsoever and is incorrect.

5. It is correct that there are no minutes for this decision. What is incorrect is the implication that keeping minutes is either required by our bylaws or the law in general — or that it is customary for TUG except for formal in-person meetings and at the AGM.

When TUG became an international organization with a diverse Board, such in-person meetings became rare. Section 9 was thus added to the TUG Bylaws which allows Directors' consent voting by e-mail following e-mail discussion. However, there is no requirement to keep formal minutes of such Board discussions, and this has never been done.

6. It is incorrect that "[t]he principal ground for the suspension was the fact that the other party in the dispute over ownership happened to be a member of TUG." The grounds of the suspension were the conflict of interest, the failure to disclose it and the failure to eliminate this conflict of interest and involvement of TUG in the lawsuit — which demonstrated the lack of loyalty to the organization.

7. It is incorrect that the grounds for removal were changed between the suspension and appeal. The grounds, listed above, were the same.

8. It is incorrect that the Board's request to eliminate the involvement of TUG in papers supporting a lawsuit amounts to taking sides in the lawsuit. We are emphatically *not* taking sides there. Moreover, Kaveh's statement suggests that the TUG connection is important evidence in the lawsuit, and confirms the existence of the conflict of interest and impropriety of the situation.