Harry & Nikki go head to head

What follows is a bitter exchange between York president Harry Arthurs and York Federation of Students vice president Nikki Gershbain.

In January, Arthurs surprised the York community by announcing dramatic amendments to Presidential Regulation No. 2, the university's bylaw on student conduct and disciplinary procedures. The amendments, entitled "emergency orders," give Vice President Elizabeth Hopkins wide-ranging powers to discipline students at her own discretion.

In an accompanying letter, Arthurs explains that the amendments are temporary (lasting until April 30), and are intended to deal with "the problem of the highly disruptive, potentially or actually violent student."

This shocked many students, who foresaw the amendments being used against student activists or outspoken critics of the university. The orders soon became known as "the war measures act," since their punitive intent and broad scope gave Hopkins full authority to circumvent the usual tribunal process and act as a one-person judiciary body.

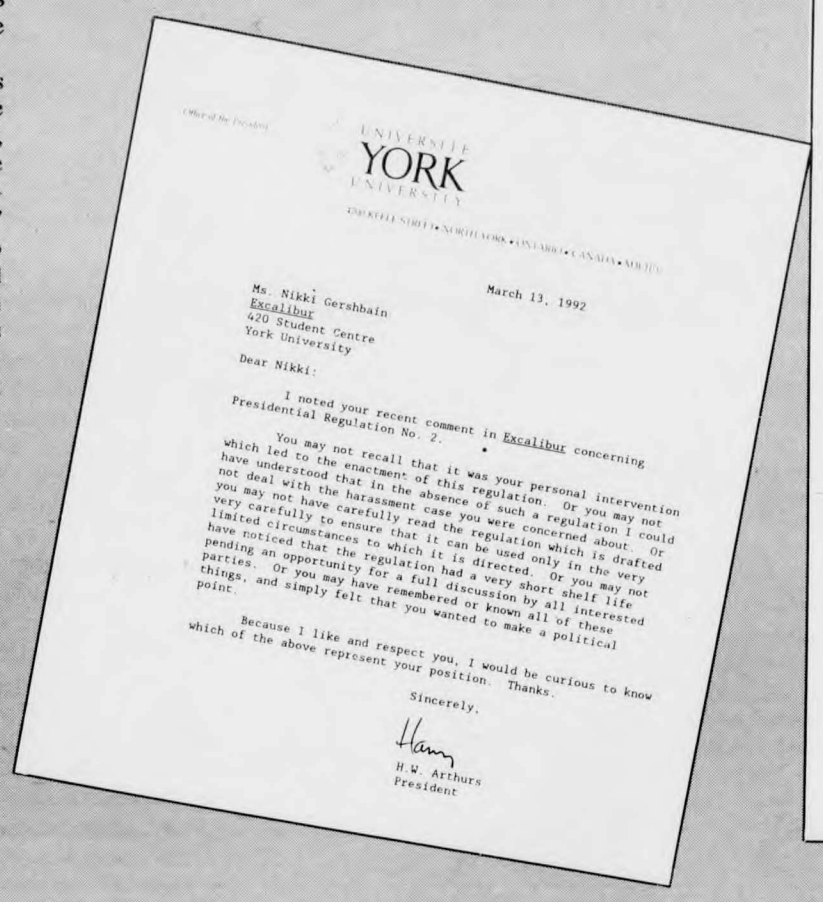
In fact, the amendments were Arthurs' response to a single student, a repeat sexual offender who allegedly was an immediate threat to the safety of many female students.

During her (successful) bid for the YFS presidency, Gershbain described the amendments as an abuse of Arthurs' power in an *Excalibur* interview.

Arthurs' response to Gershbain appears in the letter below, which he addressed to *Excalibur*'s offices. In it he infers that it was Gershbain who originally drew his attention to the harassment case and requested the amendments be made.

Gershbain acknowledges that it was the YFS who alerted Arthurs' office to the harassment case last year. But she claims the amendment is an unnecessarily draconian response, since Arthurs has always had the power to impose unilaterally any disciplinary act he wishes. She claims he made the amendment to "shift the onus away from [him]self" and onto Hopkins.

And, according to Gershbain, the amendment has not yet been used, since Arthurs ended up using his presidential powers to deal with the harassment case.



Office of the President

UNIVERSITÉ YORK UNIVERSITY

4700 KEELE STREET • NORTH YORK • ONTARIO • CANADA • M3J 1P3

March 13, 1992

Ms. Nikki Gershbain
Excalibur
420 Student Centre
York University

Dear Nikki:

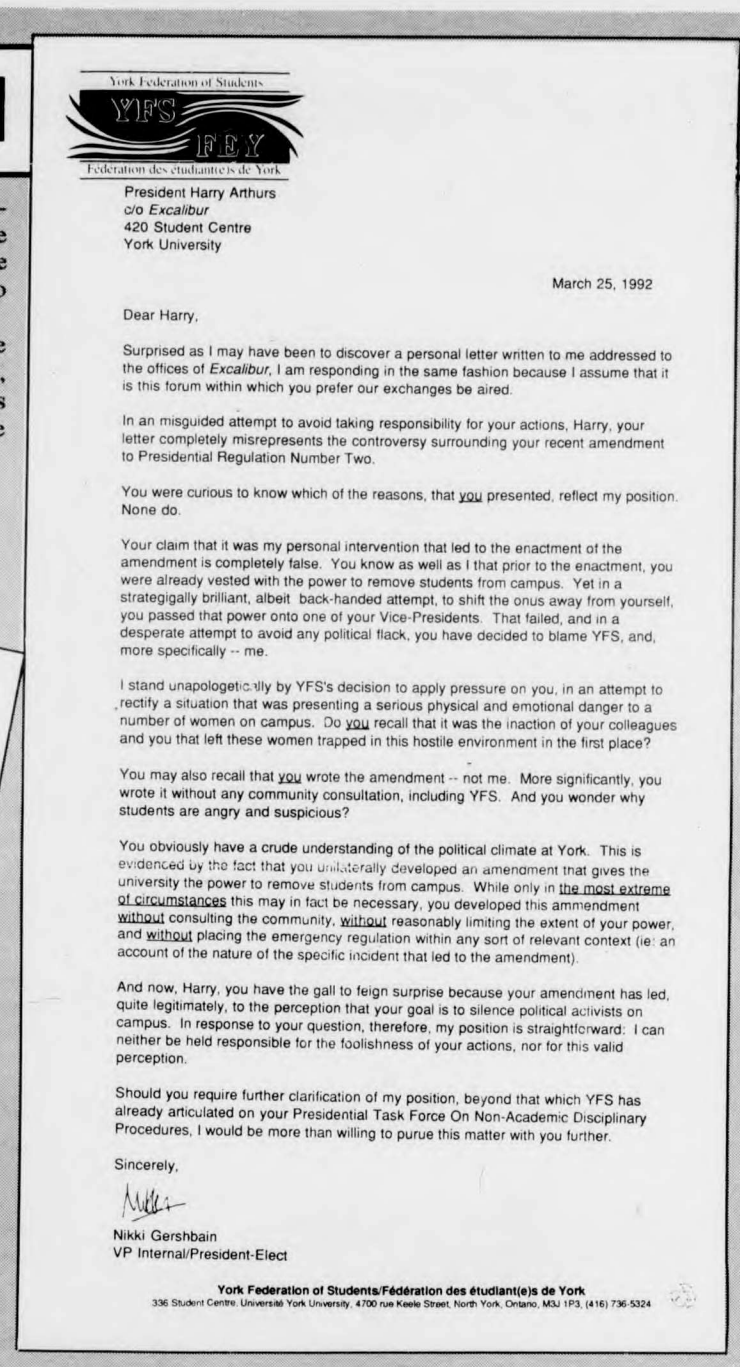
I noted your recent comment in Excalibur concerning Presidential Regulation No. 2.

You may not recall that it was your personal intervention which led to the enactment of this regulation. Or you may not have understood that in the absence of such a regulation I could not deal with the harassment case you were concerned about. Or you may not have carefully read the regulation which is drafted very carefully to ensure that it can be used only in the very limited circumstances to which it is directed. Or you may not have noticed that the regulation had a very short shelf life pending an opportunity for a full discussion by all interested parties. Or you may have remembered or known all of these things, and simply felt that you wanted to make a political point.

Because I like and respect you, I would be curious to know which of the above represent your position. Thanks.

Sincerely,

H.W. Arthurs
President



York Federation of Students
YFS FEY
Fédération des étudiant(e)s de York

President Harry Arthurs
c/o *Excalibur*
420 Student Centre
York University

March 25, 1992

Dear Harry,

Surprised as I may have been to discover a personal letter written to me addressed to the offices of *Excalibur*, I am responding in the same fashion because I assume that it is this forum within which you prefer our exchanges be aired.

In an misguided attempt to avoid taking responsibility for your actions, Harry, your letter completely misrepresents the controversy surrounding your recent amendment to Presidential Regulation Number Two.

You were curious to know which of the reasons, that you presented, reflect my position. None do.

Your claim that it was my personal intervention that led to the enactment of the amendment is completely false. You know as well as I that prior to the enactment, you were already vested with the power to remove students from campus. Yet in a strategigally brilliant, albeit back-handed attempt, to shift the onus away from yourself, you passed that power onto one of your Vice-Presidents. That failed, and in a desperate attempt to avoid any political flack, you have decided to blame YFS, and, more specifically -- me.

I stand unapologetically by YFS's decision to apply pressure on you, in an attempt to rectify a situation that was presenting a serious physical and emotional danger to a number of women on campus. Do you recall that it was the inaction of your colleagues and you that left these women trapped in this hostile environment in the first place?

You may also recall that you wrote the amendment -- not me. More significantly, you wrote it without any community consultation, including YFS. And you wonder why students are angry and suspicious?

You obviously have a crude understanding of the political climate at York. This is evidenced by the fact that you unilaterally developed an amendment that gives the university the power to remove students from campus. While only in the most extreme of circumstances this may in fact be necessary, you developed this ammendment without consulting the community, without reasonably limiting the extent of your power, and without placing the emergency regulation within any sort of relevant context (ie: an account of the nature of the specific incident that led to the amendment).

And now, Harry, you have the gall to feign surprise because your amendment has led, quite legitimately, to the perception that your goal is to silence political activists on campus. In response to your question, therefore, my position is straightforward: I can neither be held responsible for the foolishness of your actions, nor for this valid perception.

Should you require further clarification of my position, beyond that which YFS has already articulated on your Presidential Task Force On Non-Academic Disciplinary Procedures, I would be more than willing to purue this matter with you further.

Sincerely,

Nikki Gershbain
VP Internal/President-Elect

York Federation of Students/Fédération des étudiant(e)s de York
336 Student Centre, Université York University, 4700 rue Keele Street, North York, Ontario, M3J 1P3, (416) 736-5324

A not so fond farewell to Osgoode

For the past two years the Pan Afrikan Law Society has been an outspoken and controversial critic of the organization and curriculum of Osgoode Hall law school. Here one of the founding members of PALS offers a not-so-fond farewell to Osgoode and a summary of his observations and experiences as a student there.

by Livingston Wedderburn

It is with apprehension that I write what promises to be my last article for the York student press. It seems like I just arrived at Osgoode Hall law School. I am not lamenting the fact that this is hopefully my final year; instead, my sadness comes from the experience which I have had as an African law student.

When I started at Osgoode in September 1989, I did so with all the enthusiasm which most of us feel at being admitted to such a reputable institution. I recall putting on my application something to the effect of wanting to study law for the purpose of enhancing the cause of justice in our society. I was generally naive enough to believe that all one had to do was be a "good lawyer" or "honest judge" to further the cause of justice.

While a student here I have not only learned the law but I have learned about the law. That is to say, aside from learning what *stare decisis* or *ratio decidendi* is, or how to skillfully *shift the onus*, I have also come to the conclusion that law, as it is, is an instrument designed to further the aims of the traditionally advantaged in society.

Before you raise the question as to whether it *ever* serves the disadvantaged, I will answer by saying that my assertion is from a holistic perspective and I will answer, holistically no! That is to say that aside from token cases, when you look at the full picture, it does not.

It is not the *sentiments* of law but its *substance* which is the instrument of partiality. I will illustrate my point by bringing to mind the American Declaration of Independence, which bequeathed "equality" to all "men" during the days of enslavement.

Before anyone reacts by saying that that was then and we have grown up since then, let us reflect on the Charter of Rights in Canada's constitution and the enormous human rights transgressions that are still taking place right now, against any group which falls outside that same categorical clique of "men" which the Declaration of Independence declared equal *to each other*. By this, for those of you who do not get the point, I am referring to the law's systemic partiality to White men.

The law no longer discriminates overtly. Nowadays it's blind. That is to say that we can all go to court for justice if we want, or if we can afford to, or if the judge and/or the jury are not racist or sexist or ethnocentric. Everyone now has the right to a lawyer if they can afford one or if their legal aid certificate is granted and if the inexperienced lawyer they get can stand up to the other side. The law can be conveniently blind or comfortably dumb, whichever will further the cause of those who control it.

The issue of "affirmative action" has also come to the fore Let me begin by saying that affirmative action is as old as racism and was not devised to eradicate but to implement it. What we now call "affirmative action" is an insidious racist scheme which is devised to frustrate and confuse the hard won gains by the victims of oppression, and make the deserving benefactors of these gains feel guilty and thankful to the oppressor.

When we think "affirmative action" we are supposed to think of a scheme that did not exist before, that is a benign instrument devised to help the "disadvantaged." The fact is that affirmative action has always been inextricably linked to all institutions based on discrimination. These institutions are by their very nature selective of a "certain kind" of people and have a corresponding policy of exclusion.

Admitting "minorities" in order to change an institution's image and give it a liberal make-up job, is not going to end systemic discrimination based on race or gender or any other criterion. If upon admittance the institution does not change anything of its traditional racist infrastructure, then it is an added insult to those "minorities" who are allowed in, to be assaulted daily with the dogma of racism.

What is needed is for affirmative action to be done away with and for some anti-racist and anti-discrimination action to be taken. Institutions such as Osgoode have yet to take up this challenge.

As a member of the Pan Afrikan Law Society I have used some of my political energy to assist in influencing changes at the school which would better equip Afrikans and so-called "minorities" to understand our position in relation to the law. One of the causes which the Society has fought for is for the curriculum to be more truthfully representative of the development of law by including the contributions and relationship of those who have suffered from it and changed it through resistance.

I am still amazed by the fact that 400 years of "slave law," for example, are by omission deemed irrelevant by the administration. To me this is paralleled only by the fact that the piece of real estate that you are sitting on is "stolen property" and its owners have been murdered in the process — and this is also treated as trivial. These things must be taught — and not in exclusion of the mainstream curriculum so that they are isolated from most students, or presented as if they were not intrinsically linked to all areas of law.

One of the most important lessons I have learned from Osgoode is that the fight against systemic injustices entails penalties and persecution. Depending on how far you are willing to go, it could mean that you do not get a particular job or that you don't make it to the bar or that your career opportunities are limited. There is also the exacting price of peer pressure and isolation.

I think that if more people would transcend their cowardice they would find out that the price is well worth it.

On a final note, I would like to close by saying thank you to those who inspired me and stood with me and helped me cope with the oppressiveness at Osgoode. They are my peers from whom I learned courage, drew strength and who fired my imagination and enhanced my understanding. I would also like to thank the Ancestors for accompanying me here. In particular I would like to thank all those who have participated in the Pan Afrikan Law Society. Your support will be a lingering reminder that we ourselves are our greatest assets, the source of all that we are, and that which we will be.