

**DISCIPLINE, INTERPRETATION, AND ENFORCEMENT (DIE) BOARD
RULING # 2017-01**

Sunday v Students' Union (SU) Council

Hearing Date: August 18th, 2017

DIE Board Panel Members: Alin Florea, Chief Tribune

Landon Haynes, Tribune

Karamveer Lalh, Tribune

Appearing for the Applicant: Nathan Sunday

Appearing for the Respondent: Delane Howie (on behalf of Brandon Christensen)

The DIE Board is unanimous in the following decision.

[1] After reviewing the submitted materials and hearing the oral arguments, the Panel has unanimously concluded that the application is outside the jurisdiction of DIE Board. Therefore, the Panel cannot currently comment on the content and substance of the Students' Union motion, nor any hypothetical scenarios arising from it.

[2] Bylaw 1500 *Judiciary of the Students' Union Bylaw* states at section 2 "Mandate" that the "Board is the organ of the Students' Union responsible for the interpretation and enforcement of Students' Union legislation." Section 3 "Scope of Cases", further clarifies that "[t]he scope of the Board shall be limited to actions and appeals brought before it that: (a) initiate a complaint about a contravention of Students' Union legislation; (b) request an interpretation of Students' Union legislation or; (c) appeal rulings made by the Chief Returning Officer during the Students' Union's general elections."

[3] The current application before the Board involves Students' Council motion SC-2017-06/8a. "Legislation" is defined in Bylaw 100 at section 1(e) as including only "(i) Students' Union bylaws, (ii) Student's Union political policies, (iii) Students' Council standing orders, and (iv) general orders of Students' Council." It is this Board's opinion that a Students' Council motion is not a bylaw, political policy, standing order, or general order. Since DIE Board is currently limited to actions and appeals that directly involve Students' Union legislation or rulings made by the Chief Returning Officer, and since Students' Union Council motions are not considered to be legislation, commenting on the motion falls outside the current jurisdiction of DIE Board.

[4] If Students' Union Council intends for DIE Board to be able to provide opinions on the hypothetical results of motions which are not yet legislation, then Bylaw 1500 would have to be amended and such specific functions be explicitly added to section 2

“Mandate” and section 3 “Scope of Cases”. Considering the plain meaning of the phrase “the scope of the Board shall be limited to” in section 3 “Scope of Cases”, and without any other explicit statutory authorization, DIE Board at this time can only provide interpretations, rulings, and decisions on the specific types of items explicitly listed under sections 2 and 3 of Bylaw 1500.

[5] At this stage, it may be useful to explain the Canadian federal and provincial approach to issues of this kind. In Canadian law, a “reference question” (also called “abstract review”) is a submission by either the Federal or a provincial government to the Supreme Court of Canada or appellate court, asking for an advisory opinion on a major legal issue, usually involving the constitutionality (legality) of legislation, *including proposed legislation*. An example of a specific statutory authorization section that allows a court to answer such a question is section 53 “Special Jurisdiction -- References by Governor in Council -- Referring certain questions for opinion” of the *Supreme Court Act*.¹ The relevant excerpt of section 53 of the *Supreme Court Act* is attached at the end of this decision in Appendix I, in order to exemplify in explicit detail how such an enabling provision might be worded in order to allow a future special jurisdiction to exist in terms of referring certain questions for opinion. An example when a reference question was put to the Supreme Court of Canada was *Reference Re Same-Sex Marriage*² where the Supreme Court of Canada was asked to consider the constitutional validity of the Federal Government’s **proposal** for an Act “respecting certain aspects of legal capacity for marriage for civil purpose.” Even though the proposed Act had not yet received Royal Assent, the Supreme Court of Canada still had the authority to discuss and comment on the constitutional validity of the proposed Act.

[6] Allowing a court, administrative tribunal, or a students’ union judiciary to comment on proposed legislation has many advantages. Most importantly, reference questions can save significant time and effort in the legislative process. If a decision-making board can comment on a legislation-creating organization’s proposed legislation, then that board can help ensure that the organization does not waste time and effort trying to pass what will eventually be considered unlawful legislation. In effect, a reference question can save perhaps months or years of work if it is determined that a legislation-creating organization is trying to pass illegal legislation – and such proposed legislation could then be amended or discarded before continuing through the legislative process. Thus, the legislation-creating organization can be given fair and early warning of the opinion of the decision-making board if the legislation came to pass – months, if not years – before that legislation actually comes to pass.

Application dismissed.

¹ *Supreme Court Act*, RSC 1985, c S-26, s 53.

² *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 SCR 698.

Appendix I -- *Supreme Court Act* -- Section 53 Excerpt

Special Jurisdiction

References by Governor in Council

Referring certain questions for opinion

53 (1) The Governor in Council may refer to the Court for hearing and consideration important questions of law or fact concerning

- (a) the interpretation of the *Constitution Acts*;
- (b) the constitutionality or interpretation of any federal or provincial legislation;
- (c) the appellate jurisdiction respecting educational matters, by the *Constitution Act, 1867*, or by any other Act or law vested in the Governor in Council; or
- (d) the powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be exercised.

Other questions

(2) The Governor in Council may refer to the Court for hearing and consideration important questions of law or fact concerning any matter, whether or not in the opinion of the Court *ejusdem generis* with the enumerations contained in subsection (1), with reference to which the Governor in Council sees fit to submit any such question.

Questions deemed important

(3) Any question concerning any of the matters mentioned in subsections (1) and (2), and referred to the Court by the Governor in Council, shall be conclusively deemed to be an important question.

Opinion of Court

(4) Where a reference is made to the Court under subsection (1) or (2), it is the duty of the Court to hear and consider it and to answer each question so referred, and the Court shall certify to the Governor in Council, for his information, its opinion on each question, with the reasons for each answer, and the opinion shall be pronounced in like manner as in the case of a judgment on an appeal to the Court, and any judges who differ from the opinion of the majority shall in like manner certify their opinions and their reasons.