DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Reference re Amendment of Plebiscite Questions, 2020-02

REQUESTED BY:

Christian Fotang, SU Councillor

Applicant

SECTION 3.1(d) DECISION
BYLAW 1500

Panel Members:	**Christian Zukowski, Chief Tribune (Chair)** **Kienna Shkopich-Hunter, Tribune** **Darren Choi, Tribune**
Hearing Date:	**January 30, 2021**
Witnesses for the Applicant:	**None**

The reasons of the Board are delivered by Zukowski CT and Shkopich-Hunter T:

REFERENCE QUESTION

[1] The question to this Board, as submitted by Councillor Christian Fotang ["the Applicant"], is whether Students' Council can amend a plebiscite question that renews a Dedicated Fee Unit ["DFU"] once that question has already been approved.

[2] At hearing, the Applicant further specified that the requested amendment relates to adjusting the fee for inflation.

LEGISLATION

[3] Students' Council has created a legislative scheme to regulate the process for the creation and renewal of Dedicated Fee Units. Such a scheme is found primarily in Bylaws 2250 and 6100,

but also, to a lesser extent, in Bylaws 6200 and 6300. Bylaws 6200 and 6300 dictate which entities are eligible to create operational and granting DFUs, respectively. As eligibility is not at issue in this matter, these bylaws will not be considered.

Bylaw 2250: Plebiscites and Referenda of the Students' Union

[4] Bylaw 2250 governs the electoral process for all plebiscites and referenda. In particular, Bylaw 2250 at s. 4(1), reproduced below, sets the minimum amount of time required between the initiation of, or receipt of a petition for, a plebiscite or referendum and the dates of the general election in which it is intended to occur:

Section 4: Dates - Plebiscites and Referenda

> *1. Where the C.R.O received a valid petition or where Students' Council initiates a plebiscite or referendum, then the plebiscite or referendum in question shall be held on the dates of the next general election of the Executive Committee and Undergraduate Board of GOvernors not occurring within thirty (30) days of receipt of the valid petition or initiation by Students' Council of the plebiscite or referendum in question.*

Bylaw 6100: A Bylaw Respecting Dedicated Fee Units

[5] Bylaw 6100, in contrast, governs DFUs specifically. Section 3 provides the process for the creation and approval of DFUs. Subsection 5 dictates that Bylaw Committee must review and approve a petition question within a set time frame and ensure that the petition question meets the criteria set in subsection 5. If Bylaw Committee is perceived to have failed in doing so, the entity proposing the DFU may bring the issue to the Board for review under subsection 6:

Section 3: Creation

> *5. The Bylaw Committee shall approve within thirty (30) days from receiving the proposal, a petition question that reflects the original intent of the proposal…*
>
> *6. If the Bylaw Committee is perceived to have failed in this matter, the issue may be brought to the Disciplinary Interpretation and Enforcement (D.I.E.) Board of the University of Alberta Students' Union by the entity proposing the question.*

[6] Bylaw 6100 s. 4 sets the process and criteria for the renewal of a DFU. Subsection 2 requires a plebiscite question for the renewal of a DFU to be drafted in the same manner of the original petition question. A DFU may, in accordance with subsection 6, be amended or abolished by way of a joint resolution or referendum:

Section 4: Review

> *2. The plebiscite question shall be drafted in the same manner as the original petition question, as outlined in Section 3.5 of this bylaw.*
>
> *6. Dedicated Fee Units may be amended or abolished only by:*
>
> *a. A joint resolution of Students' Council and one other body, specified in the schedule; or*

b. Referendum

SUMMARY OF FACTS

[7] On January 28th, 2021, the Applicant referred to this Board a question arising from Students' Union Bylaw 6100. The Applicant is seeking guidance from this Board on whether Students' Council can amend a Dedicated Fee Unit ["DFU'] plebiscite question after it has been approved.

[8] On December 15th, 2020, Students' Council approved the plebiscite question for the DFU concerned in this matter. A few days before the application for this reference question was made, the Applicant was informed by the entity wishing to renew their DFU that the approved fee was not adjusted for inflation at a rate equal to the Consumer Price Index ["CPI"].

[9] The Applicant submitted that this error was the result of a miscommunication between Bylaw Committee and the entity governing the DFU.

[10] As a result, this application was made to determine Students' Council's ability to rectify this error.

ANALYSIS

[11] The Applicant refers this question to the Board under s. 3(1)(d) of Bylaw 1500. Under this section, the task of the Board is to provide an opinion on "policies, actions, decisions and events" of the Students' Union.

[12] In this instance, the Board is asked to consider a proposed action of Students' Council that would amend an already approved plebiscite question. Though the Applicant did not specify which DFU is concerned or which election this plebiscite is intended to run in, it is the assumption of this Board that the plebiscite is intended to run in the general election of the Executive Committee and Board of Governors Representative of this year, occurring on March 3rd and 4th.

[13] The Board, in providing an opinion on this proposed action, must answer whether Students' Council would be operating within its powers in amending a plebiscite question once it had already been approved. Additionally, if Students' Council is found to have such a power, this Board must then consider whether Students' Council's power to amend a previously approved plebiscite question is limited by bylaw.

[14] On a plain reading of Bylaw 6100, the answer to this first question is rather straightforward: Bylaw 6100 contains no provision restricting Students' Council from amending

an already approved plebiscite question. As the legislative body of the Students' Union, Students' Council is generally not bound by past legislation. This is not to say that Students' Council can disobey past decisions at will but, rather, Students' Council may amend or repeal previous decisions through established processes.

[15] Indeed, any argument that would have Students' Council unable to amend or repeal previous decisions would lead to an absurd result. A legislative body that cannot amend or repeal legislation (or other decisions) is not much of a legislature. It is for these reasons that we find that Students' Council can amend plebiscite questions.

[16] If, as we have demonstrated, Students' Council has the ability to amend or repeal past decisions, the question becomes whether this power is limited in any way. As already indicated at para. 14, the power to amend or repeal past decisions is not absolute: Students' Council must exercise its power to amend or repeal in accordance with existing processes.

[17] To determine what limitations may be placed on Students' Council's ability to amend (or repeal) plebiscite questions, we turn to Bylaws 6100 and 2250.

[18] Limitations placed on Students' Council by Bylaw 6100 are generally concerned with the content of a question to be proposed to the Students' Union membership. This understanding of limitations is congruent with the intent of Bylaw 6100: to regulate the creation and renewal of fees collected by the Students' Union on behalf of another entity.

[19] However, it is true that Bylaw 6100 is concerned with more than the content of petition of plebiscite questions. Bylaw 6100 also regulates the timelines by which DFUs are created or renewed as well as their oversight. The latter provisions legislating oversight are not relevant to the amendment of a plebiscite question. The provisions that legislate timelines are relevant to the development of a petition or plebiscite question, but have no impact on the amending of an approved petition or plebiscite question by Students' Council. This leaves us with the question of content.

[20] In the case of referenda, section 3(5) of Bylaw 6100, reproduced in part at para. 5, stipulates the required content of a petition question. Such a petition question, drafted and approved by Bylaw Committee and subsequently ratified by Students' Council, must reflect the intent of the original proposal made by the entity wishing to collect a fee.

[21] Similarly, in the case of a renewal plebiscite, Bylaw 6100 s. 4(2), reproduced at para. 6, stipulates that the plebiscite question must be drafted in the same manner as the original petition question. This Board provided a more detailed account of how this provision might limit Students' Council's ability to amend a plebiscite question in *Reference re The Landing*, 2019-02.

[22] In this context, while Students' Council may amend a plebiscite question, such an amendment must respect the content requirements of the sections of Bylaw 6100 cited above. In this regard, this Board reiterates the reasoning in *Reference re The Landing* regarding what changes may be made to a DFU that do not require a new referendum.

[23] Bylaw 2250, as opposed to Bylaw 6100, sets out a timeline beyond the creation of petition questions. The timeline contemplated in Bylaw 2250 relates to the broader election process set out in itself and Bylaw 2200.

[24] Bylaw 2250, unlike Bylaw 6100, therefore provides a deadline by which Council must initiate a referendum or plebiscite or, alternatively, a valid petition must be received by the Chief Returning Officer. Bylaw 2250 sets the deadline at s. 4(1), as reproduced above at para. 4, as not occurring within 30 days of the next general election of the Executive Committee and Board of Governors.

[25] In considering whether the deadline applies to Students' Council's initiation or the receipt of a petition, a plain reading of Bylaw 6100 suggests that there are differing processes of initiation for DFU referenda and plebiscites.

[26] Section 3(9) of Bylaw 6100 indicates that, for referenda, a valid and signed petition must be submitted to the Chief Returning Officer. In the case of a referendum, for a question to be amended, the petition question must be amended by Students' Council and subsequently (re-)meet the petition requirements under s. 6 of Bylaw 2250 by the deadline set out in Bylaw 2500 s. 4(1)

[27] In the case of a renewal plebiscite, no such requirement for a signed and valid petition exists in Bylaw 6100. It therefore stands to reason that Council must initiate the plebiscite by the deadline set out in Bylaw 2500 s. 4(1).

[28] Finally, one might argue that so long as Council *initiates* a plebiscite question by the deadline set out in Bylaw 2250, *amendments* may be made to that plebiscite question beyond that deadline. This issue cannot be resolved on a plain reading of Bylaw. Since *Scott v. Chief Returning Officer*, 2016-01, this Board has approached the interpretation of bylaw by reading the words of Bylaw "in their entire context and in the grammatical and ordinary sense harmoniously with the scheme of the Bylaws, the object of the Bylaws, and the intention of the Student's Union," cited at para. 28.

[29] The plain and ordinary meaning of 'initiate' is generally taken as the beginning or commencement of an act, event, or process. Taken alone, this does not necessarily preclude the

amendment of a plebiscite question once initiated. However, these words must be read in their entire context as well as the scheme of Bylaws, the object of Bylaws, and the intention of the Students' Union.

[30] Although the Applicant did not make submissions regarding the intent of Bylaw 2250, the general intent of that Bylaw can be deduced from its content: to protect the integrity of the broader election process, in general, and the process of integrating referenda and plebiscites into that election process, in particular. In conjunction with Bylaw 6100, Bylaw 2250 can be said to form a legislative scheme that regulates the creation and renewal of Dedicated Fee Units through a process that includes both Students' Council and the student body as a whole. Taken together, the intent of Bylaw 2250, and the broader legislative scheme in which it exists, suggests that the object of Bylaw 2250 is to prohibit actions that may threaten the integrity of the election process.

[31] We therefore reject this argument on the grounds that a narrow reading of Bylaw 2250, one that would allow for amendments beyond the deadline set out in s. 4(1), would inevitably conflict with the object of Bylaw 2250. If amendments were to be allowed past this deadline, there would be no legislated stop to amendments other than the dates of the election itself.

CONCLUSION

[32] The Board finds that Students' Council may amend plebiscite questions so long as the legislative scheme that regulates the creation and renewal of Dedicated Fee Units is respected.

[33] Specifically, this means that the content requirements of Bylaw 6100 must be satisfied and that, in accordance with s. 4(1) of Bylaw 2250, a Dedicated Fee Unit's renewal plebiscite cannot be initiated (or amended) by Students' Council if that act occurs within 30 days of the next general election of the Executive Committee and Board of Governors Representative. If such an act were to occur within 30 days of the next general election, that plebiscite would be deemed ineligible to be considered in that election. For the amended plebiscite question to be included in the 2021 general election, Students' Council would have to make its amendment no later than February 1st, 2021.

[34] Amending a fee to account for inflation in the plebiscite question at issue would not violate the legislative scheme and, in particular, Bylaw 6100 s. 4(7).

[35] In addition to this opinion, the Board would like to make two additional comments regarding this matter. First, the legislative scheme regulating the creation and renewal of Dedicated Fee Units is needlessly complicated and, at times, inconsistent. The Board suggests that Bylaw Committee review Bylaws 2250 and 6100 to determine how it might be simplified and made more consistent.

[36] The second concerns the events that precipitated this hearing. The purpose of this Board, under Bylaw 1500 s. 3(1)(d) is to provide an advisory opinion, not to solve a dispute. However, as we noted at para. 9, the error in the plebiscite question was the result of a miscommunication between Bylaw Committee and the entity governing the DFU.

[37] If, within the miscommunication described by the Applicant, the entity governing the DFU perceives Bylaw Committee to have failed in the creation of a plebiscite question that reflects the original intent of the proposal or has been perceived to contravene bylaw in any way, the entity may make an application to this Board for a remedy under either Bylaw 1500 or Bylaw 6100 s. 3(6).