

DIE BOARD RULING 2018-03

Hearing Details: Application for Leave to Appeal

Style of Cause: *Flaman (Governor) v Sunday*

Decision Rendered: June 28, 2018

DIE Board Panel Members: Karamveer Lalh, Chief Tribune (Acting)

Brittany Boyko

Nina Fourie

Gil Miciak

Tor Potter

The DIE Board is unanimous in the following decision:

DIE Board Procedures

[1] Section 14: Circumstances Where Panel Can Reject Application Without Hearing:

Upon review of the application, the panel may unanimously vote to dismiss an application for a Hearing or Appeal without meeting in person to hear evidence or oral submissions if the panel concludes the application is frivolous, vexatious, or has no possibility of success...The panel must give written reasons for its decision to dismiss the application

Summary of Appellant Position

[2]_____The application recites SU Bylaw 100 11(1b) which states:

Students' Union Bylaws are adopted, amended, or rescinded by two (2) simple majority votes or readings of Students' Council occurring not less than seven (7) days apart.

As well, it states the sections of the bylaw under question

Bylaw 600 Section 5 — Delay of Implementation:

1. Implementation of this Bylaw shall be delayed until the following is accomplished:

- a. a sustainable method of translation is established; and
- b. an initial translation of Bylaw and Political Policy is performed.

2. The sustainable method of translation shall be established, and an initial translation of Bylaws and Political Policies shall be performed by no later than April 30, 2018.

- [3] The applicant then states that since the Students' Union has failed to accomplish section 2 by the date indicated, the bylaw is not in effect, and therefore is not binding.

Decision

- [4] This Board believes that the interpretation of the bylaw presented by the Board in *Sunday v Students' Union (Speaker)* DIE Board 2018-02 is correct.
- [5] To reiterate the relevant paragraph, while "the SU can legislate changes to its bylaws under its usual frameworks to eliminate any contravention on a go-forward basis...this does not mean the contravention did not occur." (*ibid* at para 29)
- [6] The organizing principle of statutory interpretation, which appeared in Professor Elmer Driedger of the University of Ottawa's *The Construction of Statutes*, was affirmed in the Supreme Court of Canada's decision *Stuart Investments Ltd v The Queen* [1984] 1 SCR 417. The principle is reproduced below:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

(Elmer Driedger, *The Construction of Statutes*, Toronto, Butterworths, 1983, p 87)

- [7] Applying the above principle to bylaw 600, it is apparent that the intent of the bylaw was for the Students' Union to undertake to perform a "sustainable method of translation" as well as an "initial translation of bylaws...no later than April 30, 2018."
- [8] This bylaw was clearly intended to be binding.
- [9] The interpretation suggested by the applicant is vexatious, as we have no reason to believe that the Students' Union intended for section 5b of the bylaw to serve as an "escape hatch".
- [10] The provision, when read in light of its entire context, is intended to be an instructive provision.
- [11] The applicant is attempting to use a technicality based on what they believe is uncertain wording to attempt to dismiss the ruling made by the previous tribunal.
- [12] While a strict reading of the bylaw may support other conclusions, the intent of the Students' Union by adopting this bylaw was for the bylaw to be binding. No other interpretation of the bylaw is applicable in this sense.
- [13] Therefore, on substance, this appeal is frivolous and vexatious and amounts to an attempt to use technicalities to void the ruling of the previous Tribunal.

- [14] Procedurally, this argument should have been presented at first instance. The Appeal Board is concerned with review of any potential errors in applying bylaw and procedures.
- [15] To conclude, simply because the Students' Union drafted a bylaw with unclear English, does not absolve them of the responsibility to draft their bylaws in French. Until such a time that the Students' Union decides to repeal bylaw 600, the ruling in DIE Board 2018-02 remains in effect.

Application denied.