

## Decision of the Discipline Interpretation and Enforcement Board

November 8, 2000

5pm, 424 SUB

**Members present:** Heather Smillie, Vincent Tong, Nadine Arendt, Sean Doherty, Chris Liobing

**Appellant:** Greg Harlow, VP Operations and Finance

**Respondent:** Council of Faculty Association, represented by Chris Samuel, VP Academic

### **Issue:**

Should Bylaw 2000 (Student Faculty Funds) be struck down on the basis that it allows faculties to raise funds under the authority of the Students' Union, an authority that the Students' Union cannot constitutionally offer to faculty associations according to the University of Alberta Students' Union Constitution and the provincial *Universities Act, RSA 1980*?

### **Decision:**

Bylaw 2000 is valid and should not be struck down for the following reasons:

According to the *Universities Act*, the Students' Union has the authority to make bylaws governing the "maintenance of the student organization by the levy of membership fees" (section 44(1)(e)). As the faculty associations (**a**) are composed of members of the student organization who each individually hold the rights conferred by that status under the University of Alberta Students' Union Constitution, (**b**) are not incorporated as legal entities on their own, (**c**) are required to register with the Students' Union (Bylaw 1600, section 8) in order to be subject to the applicable rights and responsibilities, Bylaw 2000 among them, and thus falling under the jurisdiction of the Students' Union in that sense, and (**d**) are subject to the Students' Union Constitution and Bylaws (as stated explicitly in Bylaw 1600, sections 9, 7 and 12, and implicitly throughout), the faculty associations are effectively members of the student organization. Thus, taxation powers granted under the *Universities Act* to the Students' Union may be legally exercised in relation to the faculty associations.

The fees collected by the faculty associations are to be levied only after a referendum is held with respect to the fee in question. It is the opinion of this Board that the meaning of "referendum" in Bylaw 350 may be read to include the implied definition in Bylaw 2000. The latter implies "referendum" held within a faculty, and voted on by the members of that faculty. Bylaw 350 refers to "referendum" as an "informed democratic decision by the members of the Students' Union..." but not necessarily by ALL of the said members. Since these documents are both Bylaws and neither is subordinate to the other, they must be read together with the presumed (reasonable) intentions of the framers in mind. It is the opinion of this Board that the framers of Bylaw 2000 could not possibly have contemplated a campus-wide referendum for each fee applied by a faculty to its own

members. Rather, they must have intended that the referendum be held among the relevant and affected members of the Students' Union in each instance.

Further, Article 8 of the Constitution requires that fees administered by the Students' Union be one of those listed in that article, including fees imposed by valid referendum. As it has been shown that the existing faculty funds were imposed after valid faculty referendum, they should have been added to this list by way of Constitutional amendment as apparently occurred with other campus-wide referendum fees. The omissions of the responsible member(s) of the Students' Union in failing to amend this Article to include the faculty funds cannot affect their validity up and including this point in time. Thus it is the opinion of this Board that the existing funds are valid and must be added to the listed fees administered by the Students' Union under Article 8.

The procedure of amending Article 8 of the Constitution whenever new faculty funds are created by valid faculty referenda should be applied in the future.

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**Reference brought by:** Greg Harlow, VP Operations and Finance

**Issue:**

Is Bylaw 700 constitutional (under the University of Alberta Students' Union Constitution) in that it allows the Students' Council to transfer dedicated referendum fee reserves to other reserves at the Council's discretion?

**Decision:**

This Board has set the matter over, pending confirmation and receipt of the updated version of Article 8 of the Constitution from the Executive Assistant of the Students' Union. A re-hearing of the matter will be scheduled as soon as possible.