

DECISION OF THE DISCIPLINE, INTERPRETATION,
AND ENFORCEMENT BOARD

JONES vs. HARLOW, REIKIE, and STUDENTS' COUNCIL

DATE:

Thursday October 30, 2003

D.I.E. BOARD MEMBERS PRESENT:

Christopher Samuel, Chair

Ben Aberant

TJ Adhietty

Kyle Kawanami

Michelle Kelly

APPEAL DETAILS:

Appellant: Chris Jones

Respondents: Gregory Harlow, Speaker of Students' Council;
Paul Reikie, Student Councillor for the Faculty of Agriculture, Forestry,
and Home Economics; and
Students' Council

SUMMARY OF ALLEGATION AND RESPONSE:

Paul Reikie was elected as a Student Councillor for the Faculty of Agriculture, Forestry, and Home Economics for the 2003 – 2004 year. Due to his summer job, Reikie was unable to attend the Students' Council meetings during the summer, and, as such, he appointed a proxy to attend in his stead. Unfortunately, Reikie's proxy failed to attend three consecutive meetings of Council.

Bylaw 100 Section 11 mandates that any Councillor who fails to attend (or have their proxy attend) three consecutive meetings is immediately suspended from Council. At the meeting immediately following their suspension, the (suspended) Councillor is expelled from Council unless Council moves to reinstate the (suspended) Councillor following a presentation by the (suspended) Councillor or a delegate.

Reikie was suspended from Council at the meeting of June 24, 2003. He failed to present (or have a delegate present) at the next meeting (July 8, 2003), and thus was automatically expelled from Council. Bylaw 100 Section 11e further provides that no expelled member of Council is eligible to be re-elected, appointed, or serve as a proxy to Council in the year in which they were removed.

Reikie attempted to run in the September 23 – 24, 2003 by-election held to fill the vacant seat in the Faculty of Agriculture, Forestry, and Home Economics. His attempt was refused by the Chief Returning Officer (C.R.O.) on the basis of Bylaw 100 Section 11 (as explained earlier). Reikie then appealed to the Discipline, Interpretation, and Enforcement (D.I.E.) Board to grant him an exemption to Bylaw 100 Section 11. Since

this request was beyond the authority of the D.I.E. Board, the Board declined to act on his appeal.

On the basis that he believed the D.I.E. Board did not issue its ruling within its one week time limit, Reikie appealed the Board's decision to the Students' Council Appeal Advisory Board (S.C.A.A.B.). S.C.A.A.B., agreeing with Reikie's assertion that the D.I.E. Board committed a procedural error, then forwarded Reikie's original case to Council to deliberate. At the Council meeting of September 23, 2003, Reikie asked Council to overturn the ruling of the D.I.E. Board that he was ineligible (and, in effect, to grant him an exemption to Bylaw 100 Section 11). Council overturned the ruling of the D.I.E. Board, provided Reikie with an opportunity to ask for his reinstatement, and then appointed Reikie to fill the vacant Student Councillor seat for the Faculty of Agriculture, Forestry, and Home Economics.

DECISION:

Unquestionably, the circumstances and issues involved in this particular case are very complex. The D.I.E. Board, however, has crystallized the pertinent details as follows:

1. S.C.A.A.B. erred when it allowed Reikie's case to be forwarded to Students' Council for deliberation. Reikie based his appeal on the belief that the D.I.E. Board committed a procedural error by not issuing its ruling within its one week time limit as specified in Bylaw 1200 Section 6h. Although Reikie did submit his appeal to the C.R.O. on Friday September 12, 2003, it was not submitted, for whatever reason, to the Chair of the D.I.E. Board until Wednesday September 17, 2003. Bylaw 1200 Section 6e clearly states that in order for a case to be initiated, it must be submitted, in writing, to the D.I.E. Board Chair. Consequently, the D.I.E. Board had until Wednesday September 24, 2003 to issue its ruling, and since it issued its ruling on Friday September 19, 2003, the Board was fully compliant with Bylaw 1200 Section 6h. Bylaw 1300 Section 11 states that S.C.A.A.B. may only forward a case to Council for deliberation if there has been a miscarriage of justice, if the D.I.E. Board committed a procedural error, or if new evidence has emerged. Since Reikie's case failed to satisfy even one of these criteria, S.C.A.A.B. had no grounds to forward his case to Council for deliberation.
2. Students' Council erred when it granted Reikie an exemption to Bylaw 100 Section 11, or when it struck down Bylaw 100 Section 11 (to date, it is still unclear what specific course of action Council took in order to reappoint Reikie as the Student Councillor for the Faculty of Agriculture, Forestry, and Home Economics). Despite Council not acting as the legislative branch of the Students' Union but as the "judicial branch" while it deliberated Reikie's case, Council still does not have the ability to grant any exemption to anyone from any of the Students' Union's constitution articles, bylaws or policies, nor does it have the ability to strike down any of the Students' Union's constitution articles, bylaws or policies outside of the parameters set out in Articles V and VI of the Constitution. While it is true that certain courts may, under certain circumstances, strike down

legislative acts, it must be clear that no body within the Students' Union (not the D.I.E. Board, S.C.A.A.B. or Students' Council) possesses such power. In fact, the Students' Union does not, yet, have an official, independent judicial branch. The most that the Students' Union has are administrative tribunals restricted to only interpreting and enforcing legislation, not granting exemptions or striking down legislation. The only circumstance where such an act may be permitted by the D.I.E. Board or Students' Council is if secondary legislation (i.e. a bylaw) conflicts with primary legislation (i.e. the constitution).

3. The D.I.E. Board's ability to rule on this case is questionable due to Bylaw 1200 Section 6fii, which prohibits a complaint being laid against Students' Council. However, this provision is in conflict with Bylaw 1200 Section 3cvi, which allows the D.I.E. Board to require Students' Council to reconsider its motions that are found to be in conflict with or outside the terms of the constitution, bylaws or policies, and Article VI Section 2c of the Constitution, which empowers the D.I.E. Board to interpret and enforce the constitution and all legislation passed under its authority.
4. The D.I.E. Board's ability to rule on this case is questionable also due to Article XV Section 3bi of the Constitution, which states that when Students' Council considers an appeal, its decision will be final.

Dealing with point 3 first, the D.I.E. Board believes that Bylaw 1200 Section 6ii (specifically "with the exception of Students' Council") is in clear conflict with Article VI Section 2c of the Constitution. Since the bylaw is subordinate to the Constitution, the D.I.E. Board officially removes the conflicting line. However, since the D.I.E. Board is interpreting its own bylaw, this interpretation must be ratified by Students' Council, pursuant to Bylaw 1200 Section 3b.

The D.I.E. Board reaffirms point 4 with certain exceptions; that is, when an appeal from a D.I.E. Board decision is before Students' Council, its decision will be final and there will be no mechanism under which that decision can be appealed unless it is clearly shown that Council has violated the Students' Union's constitution, bylaws or policies, pursuant to Bylaw 1200 Section 6fii (no body within the Students' Union, including Council, can violate the Students' Union's constitution, bylaws or policies). Under these circumstances, the D.I.E. Board will be empowered to hear the case regarding how Council has violated its own constitution, bylaws or policies and then, if necessary, require Council to reconsider its motion, pursuant to Bylaw 1200 Section 3cvi. The D.I.E. Board cannot, however, nullify a motion by Council.

Nonetheless, S.C.A.A.B. is nothing more than just another Students' Union board, and, under Bylaw 1200 Section 6fii, the D.I.E. Board thus has full jurisdiction over S.C.A.A.B. If S.C.A.A.B. violates the Students' Union's constitution, bylaws or policies, the D.I.E. Board is empowered to nullify that decision pursuant to Bylaw 1200 Section 3civ. As detailed in point 1, the D.I.E. Board believes that S.C.A.A.B. erred when it forwarded Reikie's case to Students' Council for deliberation. As a result, the D.I.E.

Board officially nullifies S.C.A.A.B.'s decision. The consequences of this nullification are twofold. First, Paul Reikie is hereby removed as the Student Councillor for the Faculty of Agriculture, Forestry, and Home Economics and this seat will be declared vacant. Whatever mechanism Council chooses to fill this now vacant seat, Reikie, unfortunately, will not be eligible to participate. Second, Bylaw 100 Section 11 is interpreted according to its text to wit; that is, that a suspended member of Students' Council may only present his or her case for reinstatement at the Council meeting immediately following their suspension. Furthermore, the D.I.E. Board urges S.C.A.A.B. to be more diligent in the execution of its duties, especially as it pertains to evidence gathering since this whole ordeal could have easily been avoided if S.C.A.A.B. had only contacted the Chair of the D.I.E. Board to corroborate the timelines in question.

Point 2 will stand as the official interpretation of the D.I.E. Board; that is, no body within the Students' Union (not the D.I.E. Board or Students' Council) has the ability to grant any exemption to anyone from any of the Students' Union's constitution articles, bylaws and policies, or the ability to strike down, or violate, any of the Students' Union's constitution articles, bylaws and policies outside of the parameters set out in Articles V and VI of the Constitution.

The Discipline, Interpretation and Enforcement (D.I.E.) Board functions as the judicial branch of the Students' Union, and is responsible for interpreting and enforcing all Students' Union legislation. If anyone has any questions regarding the D.I.E. Board, feel free to contact the Chair, Chris Samuel, at dieboard@su.ualberta.ca