

Ruling #5

Ruling of the Discipline, Interpretation, and Enforcement Board

Re Bylaw 2400

Date Heard:

January 18, 2005

Members of the D.I.E. Board Present:

Alex Ragan, Chairman

Guillaume Laroche

Alan Cliff

Appearing For the Referring Party:

Chris Jones

Other Parties Present:

Steve Smith

Gregory Harlow

Question Posed:

Given that the incorrect version of Students' Union bylaw 2400 has been repeatedly amended and cited as lawful authority for nearly two years, what is the law in effect over the past two years, at present, and in the future?

Facts

In this case, the integrity of bylaw 2400 is called into question. This is the result of a clerical error following an amendment to the bill on April 30th, 2003. At a Students' Council meeting on that day, a bill was proposed that struck the 'old' version of 2400 and replaced it with a 'new' version. This bill passed. Included with Council minutes was the proposed 'new' version. For reasons unknown, these changes were not officially recorded. Rather, a new version of bylaw 2400 was published which incorporated sections of the old and new bylaw 2400. This will be referred to as the "corrupted" version of bylaw 2400. The corrupted bylaw 2400 was subsequently amended on several occasions. Amendments were made on February 3rd, 2004 by Students' Council; August 17, 2004 by the Internal Review Board; and January 11, 2005 by Council (changes effective May 1st, 2005). Around January 11th, 2005, it was recognized by members of Students' Council that the original changes proposed on April 30th, 2003, were not entirely reflected in the current bylaw. Mr. Jones asks the DIE Board to determine which parts or versions of the law were in effect in the past, present, and future.

Response

The facts of this case require the DIE Board to make a difficult decision. On one hand, there are parties who have relied on what is clearly a corrupted version of a bylaw. Declaring that version to have been of no force and effect retroactively would visit injustice on those parties. On the other hand, it is clear that the bylaw, which had been used for nearly two years before the discovery of its corruption, is not valid. To declare it

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as being lawful either in the past or present simply by virtue of some parties' reliance on it would set a poor precedent and would have far reaching and undesirable consequences.

The DIE Board feels that there are three possible solutions:

1. Declare the corrupted version of the bylaw as being in effect in the past and present.
2. Declare that the only law in force was the last uncorrupted version of the bylaw passed by Students Council (April 30th, 2003).
3. Declare that a reconstructed version of the bylaw to be in effect both at present and retroactively. A reconstructed version of the bylaw would be made by taking the last uncorrupted version of the bylaw and incorporating the amendments that can reasonably be taken as not being affected by the corruption of the bylaw.

The first option, though attractive because of the reliance of parties, is an inappropriate solution to the present problem. Reasonable reliance, though it should find equitable relief, does not have and should not be given the power of changing statutory law. Allowing reasonable reliance to change the law would throw the law into chaos.

The second option is also appealing. A strong case can be made that once Council started amending something different than what they thought they were amending (the corrupted versus uncorrupted bylaws) the entire amendment process was invalid from the start and void. Unfortunately, this result ignores the fact that Council and IRB have amended sections of the bylaw that were identical in the corrupted and uncorrupted versions and were otherwise unaffected by the corruptions. To ignore Council's will in this respect would not give lawful effect to Council's legitimate intentions, a result the DIE Board is hesitant to accept.

The final option is adopted by the DIE Board. A reconstruction of the bylaw will best represent the will of the Students' Council by using the last uncorrupted version of the bylaw passed by Council and incorporating those amendments that can be taken as not being compromised by the presence of the corrupted bylaw in Council's materials.

The DIE Board has found a sufficient evidentiary basis for adopting the Bylaw 2400 passed by Council on April 30th 2003 along with those changes of August 17th, 2004 of the Internal Review Board (IRB) and the changes of January 11th, 2005 recommended by IRB and passed by Council in Bill 16. The DIE Board has found an *insufficient* evidentiary basis to adopt those changes of February 3rd, 2004. Simply put, there is no documentary evidence in the Students' Council meeting records of the content of changes passed by Council on that date, and the D.I.E. board is loath to accept any potentially unreliable oral testimony of what those changes may have entailed.

The resulting reconstructed bylaw is attached to these decisions. It is the decision of DIE Board that this bylaw is in effect prospectively and was in effect in the past subject to the timeline upon which changes and amendments were made (i.e. the amendments made on January 11th, 2005 are not retroactive to before that date).

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It should be noted that this decision *will* prejudice the legitimate interests of those parties who in good faith relied on the corrupted version of the bylaw. The DIE Board welcomes the applications of these parties to the Board so as to grant them relief, where reasonable, in accordance with fundamental fairness.

Recommendations

1. An authoritative master copy of bylaws should be kept by Council – The DIE Board was dismayed to find that there is no authoritative copy of bylaws which can be referred to. Such a simple administrative endeavor is a basic responsibility of any lawful authority. Council, in not requiring such a resource, has been grossly irresponsible.
2. Proper records of Council meetings should be kept in an official record of meetings – The fact that DIE Board had great difficulty in reconstructing a proper version of bylaw 2400 is more a commentary on the lamentable state of some Council records than on the intelligence of the DIE Board panel that heard this reference. The fact that Council records contain *no* evidence of some amendments is alarming. Though it seems members of the Students' Union administrative staff have made great strides in remedying this problem, Council should show more initiative in protecting its own legacy.
3. Students' Council ought to amend its standing orders to assign one of its officers (perhaps a member of the Executive, or the Speaker of Students' Council) the task of verifying the accurate updating of Students' Union Legislation in accordance with motions passed in Council. This officer should report the progress of any clerical modifications to the bylaws at the subsequent meeting of the Students' Council.

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. For any questions please contact dieboard@su.ualberta.ca.