

Ruling #8a. Appeal of ruling #8

Ruling of the Discipline, Interpretation, and Enforcement Board (Appeal Panel)

Smith v. Students' Union Executive Committee (Operation of "Juicy")

Date Heard:

March 30, 2005

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

Alex Ragan, Chairman

Guillaume Laroche

Alan Cliff

Catherine Lepine

Mark Rogers

Appearing For the Appellant:

Steve Smith

Appearing For the Respondents:

Jordan Blatz, President, Students' Union

Amicus Curiae:

M. Mustafa Hirji

Facts

The principal facts of the case are set out in *S. Smith v. The Executive Committee of the Students' Union*, which was heard by a D.I.E. Board Panel of First Instance on March 14, 2005.

Several additional facts came to light in the process of the appeal. First, the total budgeted expenditures for the first four months of "Juicy"'s operations are quoted at some \$22,198 in the budgetary document attached to the Late Additions of the Students' Council Meeting of March 22, 2005. Further, Mr. Smith drew the attention of the Panel of Appeal to the fact that "Juicy" was opened on March 7, one day before a regularly scheduled meeting of Students' Council on March 8. Waiting for proper approval of Students' Council would therefore have resulted in a delay of two days to "Juicy's" opening. It was also brought to the attention of the Panel that the Executive Committee did not exercise its power to call an emergency meeting under Students' Council Standing Order #7 at any time between March 2, the eviction date of "Juice to Go", and March 7, on which date "Juicy" was opened.

Relevant Legal Provisions

Under s.4(c) of Bylaw 1100, the executive committee has the authority to deal with financial matters "subject to the provisions of Bylaw 3100". One such provision,

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s.8(b)(ii), is that the committee may approve fund transfers up to one thousand dollars. s.8(b)(iv), however, limits transfers over \$2500 to those approved by Students' Council.

While s.22 of Bylaw 3100 accords the Executive Committee the responsibility "for all aspects of the operation of the Students' Union not provided for in bylaw", s.(23) stresses that this authority is "subject to the limits of Students' Union Legislation."

Students' Council Standing Order #7 provides that "The Speaker, Executive Committee or Students' Council may call, or cancel meetings of Council."

According to s.6(h) of Bylaw 1100, the President of the Students' Union is responsible for ensuring "that programs are implemented in accordance with the direction of Students' Council and accepted policy of the Students' Union."

Knisely v. Law (2004-2005, #2) found that "it is the responsibility of the Vice President (Operations and Finance) to be well versed" in the bylaws relevant to his portfolio, and criticized him for failures in that regard.

In *Smith vs. Executive* (2003-2004, #8), the DIE Board stated that it "strongly believes that violating financial rules is one of the worst crimes that can be committed and harshly criticizes all parties involved that allowed such a careless mistake to be made—especially the executive committee."

Finding Below

D.I.E. Board held that the SU Executive owes a duty to the student population to ensure that the SU is run in a diligent manner, while operating in the best interests of the students. Included in this duty is a requirement to mitigate losses suffered by the SU. D.I.E Board held that taking over “Juice-To-Go” was prudent both legally and financially. Yet the SU Executive (in dealing with expenditures) should have sought approval of Students’ Council. The issue is whether or not the Executive, has the ability to act in a manner that contravenes SU bylaws; where the situation necessitates reacting quickly to unforeseen circumstances. D.I.E Board held that the SU Executive requires an ability to respond to unforeseeable circumstances in order for the Executive to fulfill their daily duties as part of the SU. Given the ramifications of a delay in getting Students’ Council approval, the Executive was justified in making the decision without such approval. Yet, the Executive should have gotten Students’ Council approval as soon as it was possible to do so. Formal approval constitutes an amendment to the budget, and if not feasible at the time to amend the budget, then the Executive should have sought approval from the Students’ Council to run “Juicy” on an interim basis. Where there was a failure to get Students’ Council approval at the next meeting, from the date in which ownership transferred, this was a breach of its obligation. D.I.E. Board ordered that the Executive must get approval as soon as possible, or at the latest the next scheduled SU meeting.

Issue

The Appellant submits that the Panel of First Instance erred in finding that the executive acted within its authority in creating "Juicy" as a business within the Students’ Union. He contends that there is no statutory basis for the contention that the Executive Committee may legally overstep its usual authority to deal with pressing circumstances, and that even if there were, the opening of Juicy was not sufficiently urgent to merit such an extension of executive power.

Analysis

The mandate of the DIE Board is to interpret and enforce Students’ Union bylaws (Bylaw 1500, s.2). Though the temptation to depart from the bylaws for the sake of justice or practicability may be great, DIE Board should restrain itself from such forays. It is in the interests of certainty and stability, and in keeping with the sovereignty of the Students’ Council to make laws respecting the Students’ Union that that DIE Board refrain from such detours.

In the present case, it was alleged that the Students’ Union Executive made expenditures that were outside of their powers to make. Section 8(a) of Bylaw 3100 is clear that, outside of some enumerated exceptions, “an organization or budget area may not spend

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more than has been budgeted unless specifically authorized to do so by Students' Council." When pressed, the Respondent was unable to cite any statutory authority that gave the Executive the ability to make expenditures in the manner which it did.

It should be noted that Bylaw provisions, which would appear to allow the Executive to take very similar actions to the impugned expenditure, do exist (for example, Bylaw 3100, s.14, Contingency Reserve). However, the Executive did not avail itself of these provisions in this case.

The DIE Board panel of first instance was incorrect to suggest that the Executive's actions in this case were legal. While the expenditures may have been defensible from a business perspective, that is not the concern of this tribunal. From a strictly legal perspective, the actions of the Executive were outside of the law established by Students' Council and therefore contrary to law.

To be clear, it is the position of DIE Board that there is no basis for Executive action taken outside of the mandate established by Students' Council bylaws, even where exigent circumstances exist. Under the current bylaw regime, the Executive is behooved to consult Students' Council on any matter that falls outside of the Executive's statutory mandate.

Remedy

It is clear that some form of remedy is appropriate. The appellant failed to demonstrate to the satisfaction of DIE Board that there was an 'ongoing culture of disrespect for Student Union legislation' within the executive structure, and as such, the appellant's remedies are rejected. Instead, DIE Board orders that the Executive Committee submit a public acknowledgement of wrongdoing, accompanied by an apology, at the next meeting of 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.