

***Discipline, Interpretation and Enforcement (DIE) Board***

***Ruling of the Board***

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*Reference Re: Bylaw 4000, section 12(c)*

Ruling # 2005/2006-02

Date heard: October 26, 2005

Appearing for the D.I.E. Board:

Presiding Chair: Jamie Gruman

Tribunes: Justyna Herman, Catherine Lepine

Appearing for the Applicant:

Stephen Kirkham

Appearing for the Respondent:

Greg Harlow (The Speaker)

Rachel Woynorowski (CRO)

Interveners present:

Mustafa Hirji

Case summary:

Statutory interpretation should be done using existing interpretive aids. In statutory interpretation the intention of the legislators is only one aspect to examine, and not meant to be utterly determinative. Legislative intent should impute our understanding of the statute. D.I.E. Board should try to use the literal approach in making a statutory interpretation, as a means of giving effect to the specific wording of the statute. If after employing the literal approach, ambiguity still exists, then other statutory interpretive aids should be employed. With respect to “oversee”, in the context of the section it takes on a passive meaning, without directory powers being afforded to CAC.

## **REQUEST FOR INTERPRETATION**

- 1) What is the distinction between the terms “oversee” and “report”?
- 2) What is the interpretation of the words “shall oversee” in Bylaw 4000(12)(c)?
  - a) What is the scope of the duties, responsibilities, and power of the Council Administration Committee (CAC) with respect to the Speaker of Student’s Council (The Speaker) and the Chief Returning Officer (CRO)?
  - b) How do the duties, responsibilities, and power held by CAC and The Speaker and CRO “report” to Students’ Council, but are “oversee[n]” by the CAC?

## **RELEVANT LEGAL PROVISIONS**

Bylaw 4000, Section 12(c)

## **ANALYSIS**

The questions proposed to D.I.E. Board are ones based purely on statutory interpretation. D.I.E. Board does agree with The Speaker’s assertion that, when making an interpretation of legislation, D.I.E. Board should err on the side of caution, as opposed to making a strict and concise meaning. The true question of all parties to the request for interpretation was whether the duties and responsibilities of CAC are procedural or substantive in nature.

D.I.E Board was encouraged to take an originalist construction of the section in order to determine the meaning of “oversee”. Originalist construction means making a determination as to the intention of the legislative drafters. In this instance, The Speaker and CRO, agreed that the intention of the legislators was to create a mechanism to encourage the flow of information within smaller groups of the CAC to higher levels within the Students’ Council. While the Amicus Curiae stated that this is irrelevant to statutory interpretation, rather we should apply a student’s interpretation of the bylaw. D.I.E. Board in this instance feels it important to consider the purpose and aim of a statute in making a statutory interpretation. The D.I.E. rejects this argument, and accepts that of The Speaker. Statutory interpretation should be grounded in reason, and well founded interpretive aids. Doing so will lead to more consistent decisions and interpretations.

It is true that the intention of the legislature drafters cannot always be ascertained with absolute certainty, having read the statute and the relevant section, it does have some bearing on the interpretation of “oversee”. Intention of the legislators is only one aspect to examine, and not meant to be utterly determinative. In this instance, the goal of the

legislators was to increase the flow of information, and should impute our understanding of the Bylaw.

The first interpretative approach to determine the meaning of “oversee”, is to use the plain and ordinary meaning, otherwise known as the literal approach. Here the aim is to interpret the words of a statute according to their plain, ordinary, and literal sense, regardless of any hardship, inconvenience, or absurdity caused. In this instance, “oversee” would be the colloquial meaning of the word- to watch or direct. In this instance, this is the ultimate question, does it mean to passively watch (procedural), or to actively direct (substantive). Where the meaning cannot be derived from the literal approach, then other interpretative aids must be employed.

Perhaps one of the most useful tools in statutory interpretation for this reference is the maxim *noscitur a sociis*, meaning to know a thing is to know its associates. The maxim works by comparing the debatable word with other words or phrases in the section being interpreted. Unclear words should be given whatever meaning makes the most sense given the context in which the relevant word resides. Looking to section 12 of Bylaw 4000 (disregarding 12(a) with respect to standing orders), the rest of the subsections refer to “shall oversee”, or “shall recommend”. Employing the maxim, you would read oversee with respect to recommend. In this instance, recommend is a passive and non binding action. Thus, oversee would be read in that context. Considering the two meanings of “oversee”, it can only mean to passively watch, given that recommend is also passive.

Having determined that the use of “oversee” is passive and therefore procedural, this seems consistent with the objectives of the legislative drafters. D.I.E. Board accepts the argument, that had Students’ Council wanted the CAC to be directive, it would have done so in a plain and direct fashion.

#### Question 1:

“Oversee” in the context of section 12 connotes a meaning of a passive observer. This is not to say that the CAC may only observe and nothing more. They are fully capable of making recommendations as to the actions of the Speaker, and the CRO, but this is the extent of their power. “Oversee” in this context does not mean that any recommendations are binding. Having read Bylaw 4000, and Bylaw 100, the use of “report” appears to be a more active, and applying to those positions with the delegated authority to make binding decisions, like Standing Committees. In this instance, if report were applied to CAC, it would have a passive meaning related to recommend. Since Students’ Council clearly did not delegate power to CAC to make binding decisions (outside of section 12(a) of Bylaw 4000), “report” cannot be applied to all bodies within the Students’ Council with one strict meaning.

Question 2:

a) Looking to section 12 in its entirety, the duties, responsibilities and powers of CAC, are procedural. With respect to The Speaker and CRO, CAC is entitled to:

- 1) Observe the procedure of The Speaker, and CRO
- 2) Recommend a candidate for the position of CRO

b) Reading the relevant bylaws it seems clear that CAC is a reporting body to the Students' Council for the purpose of expediting communication between all bodies of the Students' Council. Having read the relevant bylaws, it seems clear that the mandate of the CAC is to report procedural errors and make recommendations to the Students' Council. One role of CAC is to oversee and assess the procedure of The Speaker and CRO. The recommendations to Students' Council are not necessarily binding. While both bodies "report" to the Students' Council, this does not necessarily connote the same meaning, given that The Speaker and CRO have active decision making functions. Given that the role of CAC is to increase communication, this does mean that the CRO and The Speaker do have a responsibility to make themselves available to the CAC.

## **RECOMMENDATIONS**

If it is the intention of Students' Council that CAC is to have greater delegated decision making authority, they should do so in plain and direct language and redraft section 12(c) of Bylaw 4000. If not, nothing further is needed under section 12(c).

The Discipline, Interpretation And Enforcement (D.I.E.) Board functions as the judiciary branch of the Student's Union, and is responsible for interpreting and enforcing all Student's Union legislation. If anyone has any questions regarding the D.I.E. Board, feel free to contact the Chair, Alex Ragan, at [ea@su.ualberta.ca](mailto:ea@su.ualberta.ca).