

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Reference Re: Bylaw 8451 and Bylaw 2400

Ruling # 2005/2006-03

Date heard: October 26, 2005

Appearing for the D.I.E. Board:

Presiding Chair: Jaimie Gruman

Tribunes: Justyna Herman, Catherine Lepine

Appearing for the Applicant:

Mat Johnson, VP Academic
Rachel Woynorowski, CRO

Case summary:

The questions referred to D.I.E. Board deal with the interpretation of Bylaw 8451 and Bylaw 2400. The referendum that is required in order to create a Faculty Association Membership Fee under Bylaw 8451 is not subject to Bylaw 2400. Bylaw 2400 is created with the purpose of governing the initiation, organization and interpretation of any referendum or plebiscite held by the Students' Union. Bylaw 8451 gives the right to Faculty Associations to hold referenda and not to the Students' Union. If Bylaw 2400 governed the initiation, organization and interpretation of a referendum held by a Faculty Association, it would lead to unreasonable result. Specifically, it would entitle all members of the Students' Union to vote in such a referendum. This could not have been intended by the legislators. As such, D.I.E. Board recommends that Students' Council review Bylaw 8451 in light of Bylaw 2400.

REQUEST FOR INTERPRETATION

1. Does the steps of creation outlined in section 6 of Bylaw 8451 need to be done in order (a) through (e)?
2. Does the phrase "the vote shall adhere to the relevant Students' Union bylaws" mean that it must follow the SU referendum process including prior approval of the question?
3. How must the vote and voting procedure be conducted to be in compliance with relevant Students' Union bylaws?
 - a. Must the approved question be voted on during any election conducted by the Students' Union?
 - b. Must the question appear on a Students' Union produced ballot?
 - c. Must the ballots be counted by the Students' Union, or must the Students' Union verify the result of the referenda?
4. Who is eligible to vote in a faculty fee referenda?
 - a. Are all students enrolled in the faculty as defined by bylaw 8451 eligible to vote (excluding all other faculties)?
 - b. Or in compliance with relevant election bylaws (bylaw 2400) are all members of the Students' Union as defined in bylaw 2400 eligible to vote on a referenda in question?

RELEVANT LEGAL PROVISIONS

Bylaw 2400

2. For the purposes of this bylaw:
 - a. a "member" shall be a member of the Students' Union as defined by Article 1 of the Students' Union Constitution;
 - e. a "referendum" shall be a vote, open to all members except the C.R.O., held on a given question and whose result is legally binding upon the Students' Union;
3. This bylaw shall govern the initiation, organization, and interpretation of any plebiscite or referendum held by the Students' Union.

Bylaw 8451

2. The purpose of the "Faculty Association Membership Fees" is to provide financial support for student activities and the creation of opportunities for student involvement.
3. For the purposes of this Bylaw:
 - b. "Faculty Association Membership Fee" means a fee created specifically for a designated faculty, administered according to the provisions set out in this bylaw.
4. A Faculty Association Membership Fee will only be collected if approved by a 50% +1 majority of the voting **students in that Faculty**, and a minimum voter turnout of 15%. Each student must be given the

opportunity to vote in a referendum, **subject to this and other relevant Students' Union bylaws**, and to the bylaws of the Faculty Association.

6. The following steps must be followed in order to create a Faculty Association Membership Fee:

- a. The Faculty Association shall consult with its departmental associations to identify purposes to which the funds collected would be applied.
- b. Notice of the intent to create a Faculty Association Membership Fee must be forwarded to the Students' Union and the Office of the Registrar by January 15 of the year in which the fee is to be included as a part of the overall fee assessment.
- c. A proposal outlining the amount, lifetime, scope, allocation, refund mechanism and distribution of the proposed Faculty Association Membership Fee must be submitted to and approved by Students' Council. This proposal, as approved, governs the implementation and operation of the Faculty Association Membership Fee. The proposal must also address financial oversight over the funds raised by the Faculty Association Membership Fee.
- d. The implementation of the fee will be decided by a referendum, in which **all students in the Faculty** must be given the opportunity to vote. **The vote shall adhere to the relevant Students' Union bylaws.**
- e. A formal request to include the Faculty Association Membership Fee assessment for all students within the Faculty must be forwarded to the Office of the Registrar by 1 April, of the year in which the fee is to be initiated. The request must include:
 - i. A Short description of the proposed fee;
 - ii. Dollar amount to be charged per student, per term;
 - iii. Start date to begin collecting the fee;
 - iv. End date to cease collecting the fee;
 - v. Confirmation of the referendum results;
 - vi. Endorsement of the fee by the responsible body of the Faculty Association;
 - vii. Endorsement of the fee by Students' Council

ANALYSIS

Question #1

Mr. Johnson and Ms. Woynorowski submit that section 6 of Bylaw 8451 is ambiguous as it can be understood as having two meanings. Section 6 states: *The following steps must be followed in order to create a Faculty Association Membership Fee*. On the first reading, the section requires that the steps listed in subsection (a) to (e) of section 6 must be taken *with the purpose of creating* a Faculty Association Membership Fee. On the other hand, section 6 can be understood as requiring that the steps listed in subsection (a) to (e) of section 6 be followed *in sequence* to create a Faculty Association Membership Fee. Mr. Johnson and Ms. Woynorowski submit that the second reading of the section is correct.

D.I.E. Board agrees with the submission of Mr. Johnson and Ms. Woynorowski and holds that it was the intent of legislators to create a list of events that have to be followed in specified order so that a Membership Association Membership Fee can be created. Section 6 read as a whole, confirms that this is, in fact, the correct interpretation. Specifically, section 6(e) as the last step of the process, lists all the documentation that

has to be delivered to the Office of the Registrar; the documentation includes, among other, the confirmation of the referendum (s.6(e)(v)) and endorsement of the fee by Students' Council (s.6(e)(vii)). Clearly, this step has to be taken after the referendum takes place and after Students' Council accepts the fee, which are both steps in section 6. Similar analysis can be applied to the remaining steps.

Question #2

Mr. Johnson and Ms. Woynorowski ask for interpretation of section 6(d) which says: *The implementation of the fee will be decided by a referendum, in which all students in the Faculty must be given the opportunity to vote. **The vote shall adhere to the relevant Students' Union bylaws.*** Specifically, the question asked focuses on the last sentence of the section. D.I.E Board feels that the last sentence should not be read in isolation and should be read together with the rest of s.6(d). The section clearly states that *all students in the Faculty must be given the opportunity to vote.* The next sentence simply qualifies the word *vote*. Bylaw 8451, s.6(d) stipulates that *the vote*, and not the referendum, *shall adhere to the relevant Students' Union bylaws.* Accordingly, s.6(d) does not require the referendum process to adhere to the relevant Students' Union bylaws, Bylaw 2400 in particular. This holding is further supported by section 3 of Bylaw 2400, which states: *This bylaw shall govern the initiation, organization, and interpretation of any plebiscite or referendum held by the Students' Union.* Clearly, in order for Bylaw 2400 to govern a referendum, that referendum has to be held by the Students' Union. In the case of a referendum under Bylaw 8451, it is a Faculty Association that holds the referendum, and not the Students' Union. This is stated in s.5 and s.6(d) of Bylaw 8451.

Question #3

Section 6(d) of Bylaw 8451 states: *The implementation of the fee will be decided by a referendum, in which all students in the Faculty must be given the opportunity to vote. **The vote shall adhere to the relevant Students' Union bylaws.*** As determined above, section 6(d) requires that the vote and voting procedure comply with all relevant Students' Union bylaws. The bylaw that governs plebiscites and referenda is Bylaw 2400. The relevant sections on voting are sections 61 onward. These are the sections that set out the procedure that is to be followed when casting a vote. Some of the sections pose a problem for Faculty Associations that wish to implement a fee by way of a referendum because they require the C.R.O to make certain decisions. The C.R.O.'s functions are outlined in Bylaw 2500, s.10 and they do not include overseeing the implementation of Bylaw 8451 nor making any decisions under Bylaw 8451. As such, questions 3(a) to (c) are answered in the negative.

D.I.E. Board recommends that the Students' Council review Bylaw 8451 in the context of Bylaw 2400 and 2500.

Question #4

The relevant sections in Bylaw 8451 that are determinative in answering this question are:

*Section 4: A Faculty Association Membership Fee will only be collected if approved by a 50% +1 majority of **the voting students in that Faculty**, and a minimum voter turnout of 15%. Each student must be given the opportunity to vote in a referendum, subject to this and other relevant Students' Union bylaws, and to the bylaws of the Faculty Association.*

*Section 6(d): The implementation of the fee will be decided by a referendum, in which **all students in the Faculty** must be given the opportunity to vote. The vote shall adhere to the relevant Students' Union bylaws.*

*Section 3(b) "Faculty Association Membership Fee" means **a fee created specifically for a designated faculty**, administered according to the provisions set out in this bylaw.*

Bylaw 8451 was created in order to govern the establishment of Faculty Association Membership Fees. Sections 4 and 6(d) clearly state that the referendum is to be voted on by the students **in the Faculty**. D.I.E. Board feels that it is the intention of Bylaw 8451 that only the students that will be affected by the establishment of a new fee should be allowed to vote. It is not reasonable to conclude that Bylaw 8451 is subject to Bylaw 2400 in that respect. If Bylaw 2400 governed the referendum, then pursuant to s.61, all members of the Students' Union would be entitled to vote in that referendum. Clearly, this was not intended by the legislators.

RECOMMENDATIONS

If it is the intention of Students' Council to have Bylaw 2400 govern the referendum process that a Faculty Association must conduct in order to create a Faculty Association Membership Fee, they should do so in plain and direct language and redraft section 6 of Bylaw 8451. Should it be the intention of Students' Council that Bylaw 2400 *not* govern the referendum process mentioned above, they should amend Bylaw 8451 and add a section that deals with the administration of the referendum.

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 .