

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: Jones vs. Student Council

Ruling # 7

Date heard: November 7 2005

Appearing for the D.I.E. Board:

Presiding Chair: Alex Ragan

Tribunes: Justyna Herman, Guillaume Laroche

Appearing for the Applicant: Chris Jones

Appearing for the Respondent: Gregory Harlow, Speaker of Students' Council

Intervenors present:

Stephen Kirkham, Councillor

Jason Tobias, VP Operations/Finance

Rachel Woynoroski, CRO

Case summary:

Mr. Jones alleges petition questions he submitted and had drafted by the Bylaw Committee were unduly rejected by Students' Council as per Sections 4 and 5 of Bylaw 2400. The Board finds that while Council contravened the letter of Bylaw 2400, it also recognizes that members acting in bad faith should not be allowed to abuse the processes of the Students' Union. SUMMARY OF ALLEGATIONS

Mr. Jones alleges that Students' Council contravened Bylaw 2400, subsections 4a) and 4b) by refusing to accept petition questions brought forward by the Bylaw committee. Effectively, Mr. Jones seeks to know if Council can reject questions on grounds other than those presented in the quoted sections of Bylaw 2400. Mr. Jones seeks that the DIE Board either approve the questions or that it order Council to consider them individually.

FACTS

Member Chris Jones, following the procedures established in Bylaw 2400, submitted a total of twelve questions to the Bylaw Committee for drafting. These twelve questions were drafted over two meetings of the Bylaw Committee and forwarded to Council for their November 1st meeting. Jason Tobias, VP Operations/Finance, moved during that meeting of Students' Council to strike all twelve of Mr. Jones previously approved questions. The motion was eventually carried by Council after several challenges to the Chair.

The facts presented by the appellant are not contested by the respondent.

RELEVANT LEGAL PROVISIONS

Bylaw 2400:

4. Where a member wishes to circulate a petition, that member shall submit to the Bylaw Committee the intent of the question, and the Bylaw Committee shall approve, within seven (7) days, a question which:
 - a. fully reflects the intent submitted by the member; and
 - b. if carried and acted upon, would not violate any Students' Union law or any federal or provincial statute or regulation.

5. Students' Council shall, at meeting following the drafting of the question by the Bylaw Committee as set out in Section 4, approve a question which meets the criteria set out in Section 4.

ANALYSIS

This case reflects the tension between the literal interpretation of a statute and the implied term in all Students' Union statutes that the processes enshrined in the bylaws are to be used exclusively in good faith. Mr. Jones' submission of numerous petition questions, some of a rather absurd nature, clearly constitute bad faith and an abuse of the processes of the Students' Union. The Board finds that Mr. Jones' actions breached the implied term of good faith in Bylaw 2400 and that Students' Council has the inherent right to reject those submissions attached where *mala fides* can be established. However, the Board feels that a *wholesale* rejection of *all* of Mr. Jones' petition questions was inappropriate. Bad faith must be determined on a case to case basis, and it would be more appropriate for the Students' Council to consider the bad faith of each petition question individually.

Governing institutions do not design their laws to include flaws to be exploited. The continuing functioning of the Students' Union is placed ahead of actions that could cripple the organization when taken to extremes. The Board cites the 2004-5 "U-pass #2" ruling as a precedent for this principle, where the Board previously ruled that where the will of the students, as represented by the result of a referendum, would cause the eventual implosion of the organization, Council is authorized to not pursue the directive any further. Similarly, if questions submitted (ie, the intent of a member) in bad faith either by result or by sheer number were to hinder Council or its subcommittees in their efforts to go about their ordinary business, Council will have the right to reject such questions.

DISPOSITION AND REMEDY IMPOSED

- a. The Board orders that Students' Council reconsider all of Mr. Jones questions on an individual basis. The Board authorizes Students' Council to reject by simple majority any question that could reasonably be determined to have been submitted in bad faith by any member.

Furthermore, if Council grants approval to any of the submitted petition questions, Mr. Jones will have 90 days from the date of approval to collect and submit his signatures for the approved petition questions.

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 .