

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: *Kyle Kawanami and Stephen Kirkham v. Speaker of Students' Council*

Ruling # 8

Date heard: Wednesday, November 23, 2005

Appearing for the D.I.E. Board:

Presiding Chair: Jaimie Gruman

Tribunes: Justyna Herman, Chris Stolfa

Intervenors present:

Case summary:

At the commencement of the hearing the Board's jurisdiction to hear the complaint was challenged on the ground that in *Jones v. Student Council* (D.I.E. Decision #7) the D.I.E. Board had previously rendered a decision in this regard and in so doing had effectively taken sole jurisdiction over the matter. Thus if this proposition was accepted, the current Board had no residual jurisdiction to hear the matter. The D.I.E. Board after submissions from the parties and private deliberation on point concluded that it lacked jurisdiction to proceed, as the portion of the November 1, 2005 Student Council (SC) Meeting regarding the petition questions and any consequences arising therefrom are vested in the aforementioned Board and its decision. However, given the unfortunate nature in which these two matters came before D.I.E. Board (the Kirkham/Kawanami complaint was submitted prior in time to the Jones complain but scheduled later in time being one instance thereof) the D.I.E. Board agreed to approach the portions of the complaint which were amenable to reference analysis on this basis with the consent of the parties.

In terms of a reference analysis, the only question that was appropriate to consider was question 1(c) as questions 1(a) and (b) dealt with the very facts at issue in D.I.E. Decision # 7 and for the above reasons could not be deliberated on by this panel. Question 1(c) dealt with the source of the authority of the Speaker to interpret bylaws in the course of Students' Council (SC) meetings, the restrictions if any placed on this authority, and a list of the necessary findings of fact to constitute an abuse of process. The Board finds that: the source of the Speaker's authority to interpret statutes is derived from and incidental to the execution of the Speaker's duty to chair SC meetings. The limitations or restrictions as to the scope of this authority will depend on the nature of the office or position held. The many mechanisms provided to appeal either the interpretation of the Speaker or the authority to make such an interpretation also provide a restriction on the scope of this authority. Finally, in regards to abuse of process and the necessary findings of fact, the Board declines to speculate on this point, as the evolution of this concept is best determined in the instance of actual facts and should not be defined in absence of this context.

QUESTIONS

1. Did the Speaker act outside his authority in ruling the petition questions out of order?
 - (a) Does the Speaker have the authority to find implied terms in Students' Union legislation?
 - (b) Does the Speaker have the authority to throw out petitions submitted by a member of the Students' Union based on a perceived "abuse of process"?
 - (c) If so, from where is that authority derived, what restrictions are placed on it, and what findings of fact are required to show an "abuse of process"?

RELEVANT LEGAL PROVISIONS

Bylaw 100

Section 16(a). The Speaker is responsible for chairing meetings of Council.

Section 18. The Speaker will report to Council and may be dismissed by a simple majority vote of Council which must be entered on the Order Paper with due notice.

Section 26. *Roberts Rules of Order (Roberts Rules)* will be observed at all meetings of Council, as well as any special rules/additional standing orders adopted by Council.

Bylaw 1500

Section 2. The Board (D.I.E. Board) is the organ of the Students' Union responsible for the interpretation and enforcement of Students' Union legislation.

ANALYSIS

1. Source of the Speaker's authority to interpret legislation.

The source of the Speaker's authority is derived from and ancillary to the responsibility and duties of the Speaker's office. Bylaw 100 section 16(a) dictates that one of the Speaker's duties is to chair meetings of Council and that at all meetings *Roberts Rules* be observed (as per section 26). *Roberts Rules* sets out many responsibilities of a chair,

which include making rulings on Points of Order and on Parliamentary Inquiries. In order that SC meetings do not come to a stand still, the chair must be allowed some interpretive authority as he or she often is required to make between 15 to 20 rulings per meeting. The real issue seems to be whether in exercising this authority to interpret legislation as required in ruling on a Point of Order the Speaker may approach the matter in a purposive manner or whether he or she is bound to a strict interpretive approach. The Board finds that in the absence of legislation providing otherwise, the exact interpretive approach taken is best left to the discretion of the Speaker, providing of course that the approach adopted is reasonable. Students' Council could have legislated that a strict interpretive approach be taken to statutory interpretation but it has chosen not to do so.

2. Restrictions if any placed on a Speaker's ability to interpret legislation.

The first restriction on this authority is extreme and one that is inherent in any position or office, that being, the right to be removed. In the case of the Speaker, such a provision is found in Bylaw 100 s. 18, which allows the Speaker to be removed by a simple majority vote of SC. Such a remedy would of course only be appropriate where a majority of SC found that the interpretations or other actions of the Speaker are unwarranted to the point where such an extreme response is required.

The other restriction over this interpretive authority is the relative weight of such an interpretation and the reviewable nature not only of the interpretation but also of the authority to make the decision. The Speaker as chair is there to facilitate SC meetings. In this regard he or she may, from time to time, be required to make interpretations of SU Bylaws. These interpretations are valid so long as they remain unchallenged. It is noteworthy that the Speaker does not have any authority or power to bind D.I.E. Board to any interpretation it has made, because under section 2 of Bylaw 1500, the Board is "the organ of the Students' Union responsible for the interpretation and enforcement of Students' Union legislation." D.I.E. Board decisions and interpretations are final subject only to any of them being expressly overruled by SC or possibly subsequent D.I.E. Board

decisions. In general, an officer may have the authority to make Bylaw interpretations if this authority is ancillary or necessary to carry out other expressed duties of an officer's office and the interpretation will remain valid so long as the decision or interpretation remains unchallenged (until it is brought before the Board).

3. Findings of fact necessary to conclude abuse of process.

The D.I.E. Board declines to indicate the specific findings of fact necessary to constitute an abuse of process as the evolution of this concept and its associated meaning is best left to cases where a factual analysis is required. That being said, an abuse of process will usually involve egregious conduct or an absence of good faith.

DISPOSITION AND REMEDY IMPOSED

1. Question: Does the Speaker have authority to interpret legislation when the nature of its office requires it to make such interpretations?

Answer: Yes

2. Question: What are the restrictions if any placed on this authority?

Answer: The restrictions include the ability to remove an officer as provided for in the case of the Speaker is s. 18 of Bylaw 100. The other most notable restriction on this authority is the supremacy of the D.I.E. Board to interpret Student Union legislation.

3. Question: What necessary findings of fact constitute an abuse of process?

Answer: The Board declines to list instances of facts, which would or could lead to an abuse of process as the evolution of this concept is best left to cases where an actual allegation of abuse of process has occurred.

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 .