

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: Langstone v. Students' Council (re. Pint Petition)

Ruling # 9

Date heard: Dec. 7 2005.

Appearing for the D.I.E. Board:

Presiding Chair: Alex Ragan

Tribunes: Catherine Lepine, Alan Cliff

Appearing for the Applicant: Andrew Langstone

Interveners present:

Jason Tobias, Vice President (Operations and Finance)

Stephen Kirkham, Councillor

Rachel Woynorowski, Chief Returning Officer

M. Mustafa Hirji

Amicus Curiae:

M. Mustafa Hirji

Stephen Kirkham

Case summary:

Mr. Langstone's petition question was denied approval by Students' Council because of allegations that, if implemented, it would breach the "fiduciary obligations" of Council. The panel finds that Council must have reasonable evidentiary grounds to believe that a question violates specific provision or federal statutes or regulations before it can deny approval under bylaw 2400. Council is ordered to reconsider the petition question at its next meeting, and Mr. Langstone is given leave to collect signatures in the interim.

SUMMARY OF ALLEGATIONS

Mr. Langstone alleges that his petition question drafted by the bylaw committee pursuant to *Bylaw 2400* s.(5) was wrongfully denied approval by Students' Council. Langstone questions the authority of Council to dismiss petition questions outside of the criteria specified in *2400* s.(4), and asks that his petition question be approved in accordance with s.(5).

FACTS

The applicant submitted a petition question the bylaw committee on October 24th. The Bylaw committee drafted a question, and submitted it to Students' Council at its November 1st meeting. However, as Mr. Langstone did not feel that the question met his intent, he revised his original intent and resubmitted it. Bylaw committee re-drafted the question, and submitted it to Council on November 15th. At that meeting, the question was ruled out of order by the Speaker based on *Bylaw 2400* s.(4)(b), on the basis that it ostensibly violated Alberta Gaming and Liquor Commission guidelines. The petition

question was further revised, and considered at the Students' Council meeting of the 29th of November. At that meeting, Students' Council voted that the revised question did not breach the ALGC guidelines in a manner that would require non-approval under the violation criteria of s.4(b). The question was then, however, ruled out of order by the Speaker on the basis of a possible transgression of the Students' Council's "fiduciary obligation" to the Students' Union. The ruling of the chair was appealed, and Council voted to uphold the ruling.

Vice President Tobias asserted that a legal opinion has been sought, but that the timeline on receiving the brief is uncertain.

While there was no respondent appearing specifically authorized to speak for Council, none of the interveners contested the facts as presented.

RELEVANT LEGAL PROVISIONS

Bylaw 2400 s.5 states that "Students' Council shall [...] approve a question which meets the criteria set out in Section 4."

Under s.6, Students' Council is excused from approving questions which do not meet the criteria under s.4(a) that a question "fully [reflect] the intent" and s.4(b) "not violate any Students' Union law or any federal or provincial statute or regulation."

Bylaw 1500 s.4 limits the Board to interpreting, and considering infractions of "Students' Union Legislation," which is defined in *Bylaw 400*.

The question submitted by bylaw committee to Students' Council on November 29th read:

Do you support that Students' Union bars charge \$2.00 for all pints* of draught beer effective May 1, 2006 through April 30, 2007 subject to the following conditions?

1. Draught beer will be sold in pint* volumes whenever alcohol is served.
2. Other volumes of draught beer may be sold at any price.
3. The existing selection of draught beer will continue to be carried.
4. Where the wholesale cost of a pint* of draught beer is in excess of \$2.00, its price will be set at wholesale cost rounded up to the nearest dollar.

*A pint is 16 fluid ounces (473 mL).

ANALYSIS

While Vice-President Tobias presented arguments to the effect that implementing the plebiscite question would be massively deleterious to the students' union, there was no compelling reason given to believe that this would in fact violate any specific "federal or provincial statute or regulation". While the Board respects the desire of Council to maintain its "fiduciary obligations," those obligations can only justify non-approval of

petition questions when they are sufficiently grievous to constitute a violation of *Bylaw 2400* s.4(b).

It is worth noting that s.4(b) explicitly refers to federal and provincial “statutes and regulation”, necessarily excluding the common law. For a question to be discarded under that criterion, it must be shown that the question violates a specific statute or regulation. “Common law ideas” are insufficient.

It is entirely possible that there exists a provincial or federal statute or regulation reflecting the idea of fiduciary obligation, or otherwise importing the concept. However, neither Council nor the D.I.E. Board is legally qualified to determine definitively whether or not this is the case. Further, ascertaining whether or not this particular question would in fact violate such a restriction is beyond the capabilities of either body.

When Council determines whether or not a question is illegitimate under s.4(b), it must act reasonably. There must be firm grounds on which to believe that the Question, if implemented, would violate SU bylaws or Federal or Provincial statute or regulation, before that question can be denied approval. The standard for acceptable grounds for dismissal are ones of reasonableness: could a reasonable student have come to the same conclusion that the petition question violated federal or provincial statutes or regulations? Questions of straightforward illegality (e.g., a question proposing the execution of a member of the Students’ Union) should not require legal counsel to deny approval. Questions of highly uncertain legality, though, probably will. It is not acceptable that Council deny approval merely on the unsubstantiated suspicion of violation of s.4(b).

While several interveners questioned the procedural justification of the Speaker of Students’ Council in ruling the question out of order, that matter was not addressed directly by the applicant. Insufficient argumentation was heard to rule definitively on the issue.

DISPOSITION AND REMEDY IMPOSED

As Council did not have sufficiently reasonable grounds to believe that the petition question necessarily violated the criterion of s.4(b), it acted wrongly in denying approval to the question.

Council’s failure to approve the question in the timeframe specified by *Bylaw 2400* has caused material harm to the applicant; the time remaining to collect signatures has been depleted. To mitigate this damage, the board grants interim approval to the question submitted on November 29th. Mr. Langstone may, if he so chooses, begin collecting signatures on that question immediately. However, the question will not go on the ballot unless and until it receives the approval of Students’ Council, as well as the requisite number of signatures. In the event that Students’ Council justly denies approval to the question as written, the previously collected signatures will be void.

The Board rules that Students’ Council must reconsider the petition question at its meeting on 11 January 2006. If Council wishes to deny approval on the grounds of

breach of fiduciary obligation, it must have reasonable evidence to suggest that such a breach constitutes a violation of “Students’ Union law or any federal or provincial statute or regulation.” In this case, reasonable grounds would most likely constitute a legal brief indicating that implementing the proposed question would necessarily result in a breach of a particular federal or provincial statute or regulation.

The decision of Students’ Council is, of course, subject to appeal to the D.I.E. Board under *Bylaw 1500* s.4(a).

The Board would further remind Students’ Council that it has control over its own bylaws. If the bylaws lead to breaches of fiduciary obligations, or other Bad Things, the correct response is to change the bylaws, rather than ignore them.

RECOMMENDATIONS

The lack of a clearly defined respondent present at the hearing was regrettable. While Councilor Kirkham and Vice President Tobias were able to provide perspective as sitting members of council, neither was designated to speak *for* Council. Council ought to appoint an individual to represent it before hearings of the Board. The panel would remind Council that under *D.I.E. Board Protocols* s.7(b), the board is entitled to “summarily rule against the Respondent where that party or his agent does not appear.”

If Students’ Council does not wish to approve questions that, if acted upon, would breach common law principles or otherwise subject the Students’ Union to liability, it ought to modify the bylaw to include these as grounds for dismissal under *Bylaw 2400* s.6.

When Students’ Council is unable to reasonably reach a definitive conclusion about a question’s compliance with s.4(b), it need not immediately deny that question approval. Instead, interim approval could be granted, pending legal counsel. If Council determines after the fact that the question was, in fact, a violation of s.4(b), it retains its power to reconsider the motion to approve the question.

The panel was surprised that no provision exists in SU bylaws to clarify the “fiduciary obligations” of Council relating both to petition questions and other orders. If Council wishes to refer to such a principle in the future, it should be enunciated clearly in bylaw.

Students’ Council is strongly encouraged to record more rigorous documentation of its meetings. It is not logistically feasible to expect applicants, interveners, and members of the board to go through MP3 minutes to seek background information for rulings on points of order and the like. While Orders and Procedures are certainly useful at times, it is imperative that the D.I.E. board have access to them in a timely manner.

The Discipline, Interpretation And Enforcement (D.I.E.) Board functions as the judicial branch of the Student's Union, and is responsible for interpreting and enforcing all Students' 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 .