

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Re Bylaw Retroactivity

Ruling: #10

Date heard: January 12, 2006

Appearing for the D.I.E. Board:

Presiding Chair: Alex Ragan

Tribunes: Alan Cliff, Kanchana Fernando

Referring Party:

Chris Jones - Student

Intervenors present:

Gregory Harlow – Speaker, Students’ Council

Case summary:

The referring party queries whether Students’ Council has the ability to make retroactive bylaws and, if so, what restrictions exist on this power. The DIE panel finds that Students’ Council has the authority to make retroactive bylaws. No limitations within DIE Board’s purview restrict Council’s ability to make such bylaws. In the absence of such restrictions, Students’ Council is assumed to have plenary power to pass legislation respecting Students’ Union affairs, including the power to create retroactive legislation.

REFERRED QUESTIONS AND SHORT ANSWERS

Question1: May Students’ Council adopt legislation having retroactive effect?

Short Answer: Yes.

Question 2: If so, from where does this power derive?

Short Answer: Students’ Council’s ability to create retroactive legislation is not traceable to a specific grant of powers that is within the purview of DIE Board (i.e. the Post Secondary Learning Act). Rather, Students’ Council is assumed to have plenary power to pass legislation respecting Students’ Union affairs. In the absence of any specific derogation from these powers, Students’ Council has the ability to make retroactive bylaws.

Question 3: Are there any restrictions on Students' Council's ability to adopt legislation with retroactive effect?

Short Answer: No. See answer to Question 2.

Question 4: (1) May council adopt legislation that would retrospectively alter procedures set out by legislation that was in force at a previous time, and (2) if so, for an activity commenced under the previous legislation, which legislation would govern after Council's adoption of legislation with retroactive effect?

Short Answer: (1) Yes, (2) The legislation with retroactive effect would govern. See answer to Question 2.

SUPPLEMENTARY ANALYSIS

The underlying concern respecting retroactive legislation is that it may lead to unfairness whose legitimate expectations have been undermined by a retroactive bylaw. Such concerns can be valid. In spite of this, the DIE Board panel was offered no basis on which to restrict the power to create retroactive legislation. The DIE panel declines to construct a rule restricting retroactive bylaws simply out of the ether.

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.