

***Discipline, Interpretation, and Enforcement (DIE) Board***  

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***Ruling of the Board***

**Style of Cause and Ruling Number**

*Access Fund Reference* (Ruling #2, 2006/2007)

**Hearing Date**

Thursday, November 02, 2006

**Appearing for DIE Board**

Kanchana Fernando (Associate Chief Tribune and Chair), Joel David, Dane Bullerwell

**Appearing for Applicant**

Omer Yusuf, Sylvia Shamanna

**Case Summary**

The Access Fund Committee requested an interpretation of SU legislation to determine:

- a) Whether the AFC could recommend changes to the administration of the Access Fund (in particular, abolishing the endowment fund of the Access Fund); and
- b) Whether Students' Council has the authority to make changes to the administration of the Access Fund, or whether changes must be approved by voters in a referendum.

With respect to the first question, s. 16(1)(d) of Bylaw 100 gives the AFC the authority to recommend changes to Students' Council.

With respect to the second question, s. 7(5) of Bylaw 3000 gives Students' Council the authority to make changes to Class A fees, including the Access Fund. The provisions of the bylaw "attached" to the referendum question may be changed by Council.

## **Facts**

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The Access Fund is a Students' Union Dedicated Fee Unit (DFU) that provides bursaries to students in financial need. The Fund is financed by a fee charged to students and collected under the aegis the Students' Union. Approximately one million dollars is paid out in bursaries annually, and the Fund also maintains an endowment fund, established with the intention that the Fund would eventually become self-sustaining. The Fund was established in 1995 after being approved by the members of the Students' Union in a referendum. The referendum question read:

Do you support the University of Alberta Students' Union's (SU) establishment of an ACCESS FUND to provide financial need-based bursaries subject to the following to the following four (4) conditions:

1. An increase in the SU fee of:
  - \$10.00/term for Fall/Winter semesters, and
  - \$5.00/term for Spring/Summer (Intersession) semesters.
2. Students shall be able to opt out of this fee after the fact, for philosophical or financial reasons.
3. The fee shall be indexed to the percentage increase in tuition and non-tuition fees charged by the University of Alberta.
4. The attached bylaw shall be adopted by the SU to regulate the administration of the Access Fund.

The “attached bylaw” was adopted by the Students' Union as Bylaw 1900, which has since been repealed and superseded by provisions contained in Bylaws 100 and 6000. Many of the operational aspects of the Fund that had been described in Bylaw 1900 are now set out in the Standing Orders of the Access Fund Committee (AFC).

## **Interpretation Questions**

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The applicants, members of the Access Fund Committee that oversees the Fund, seek an interpretation by the Board to answer the following questions:

1. Can AFC make a recommendation to Students' Council to change the operation of the Access Fund, and in particular, recommend the abolishment of the endowment fund?
2. Can Students' Council pass legislation altering material aspects of the operation of the Access Fund, or must it put any such changes to a referendum of the SU membership?

## **Relevant Legal Provisions**

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### **Bylaw 100, s. 16(1)**

The Access Fund Committee

(a) has authority to set and implement policy regarding the disbursement of the Access Fund;

...

(d) shall recommend to Students' Council changes to legislation affecting the Access Fund as it considers appropriate or as required by Students' Council.

**Bylaw 6000, s. 4(2)**

There shall be an Access Fund endowment, consisting of  
(a) ten percent of the funds allocated to the Access Fund each year; and  
(b) all revenues generated from the investment of the Access Fund endowment.

**Bylaw 1900 (Repealed), s. 3**

For the purposes of this Bylaw: ...  
(d) The "retention rate" is the percentage of net funds held aside to be put in an endowment fund.  
...  
(h) The "endowment fund" is the accumulated surpluses of the annually retained amount.

**Bylaw 1900 (Repealed), s. 6**

The retention rate will be set at ten (10%) percent.

**Bylaw 3000, s. 7(5):**

Class A Fees may be amended or abolished only by  
(a) Students' Council, or  
(b) referendum.

**Schedule to Bylaw 3000:**

Class A Fees			
Reserve	Level	Indexing	Augustana
...			
Access Fund	F: \$15.75 P: \$15.75 S: \$6.92	Tuition	Yes

**Analysis**

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**Question #1**

The applicants' first question is straightforward. AFC can make any recommendation it sees fit to Students' Council. This is explicitly defined as an power of AFC in s. 16(1)(d) of Bylaw 100, which states that the committee may recommend changes to legislation (which includes bylaws).

**Question #2**

The second question is rooted in the applicants' concern about the propriety of Students' Council making changes to a dedicated fee approved by students in a referendum. The applicants feel that the endowment fund portion of the Access Fund may have outlived its usefulness, and now ask about the appropriate process to make changes to the administration of the Fund.

Nowhere in current SU legislation does it state that changes to provisions of the Access Fund must be approved in a referendum. On the contrary, s. 7(5) of Bylaw 3000 states that Class A fees, including the Access Fund, may be abolished or amended by a referendum *or* by Students' Council.

The applicants pointed to s. 4 of the 1995 referendum question, which referred to an "attached bylaw" (that would later become Bylaw 1900). This bylaw set out the general principles of the endowment fund portion of the Access Fund. The applicants suggested that, because the bylaw contained specific provisions regarding the endowment fund, any changes to the administration of the endowment fund might need to be approved by a similar referendum. In essence, they suggested that the reference to the bylaw in the referendum question had the effect of including the bylaw in the binding question.

We do not believe the content of the bylaw was intended to be perpetually binding on Students' Council. Even if it were binding at the time of the referendum, a "reasonable student" (see *U-Pass Reference #1* (Ruling #1, 2004/2005)) would expect Students' Council to be able to change the bylaw as circumstances changed. In fact, Council has already done so. Students' Council has repealed the bylaw "attached" to the 1995 referendum question (Bylaw 1900) and replaced it with other bylaws (Bylaws 100 and 6000). It has also delegated much of what was contained in Bylaw 1900 to AFC.

In their submission to the Board, the applicants asserted:

At one time, Students' Council and the AFC had the power to change the percentage of money put into the endowment fund, but that responsibility has been lost in legislated responsibilities.

We disagree. First, as noted, Bylaw 3000 explicitly gives Council this authority. Second, even without Bylaw 3000, absent a legislative provision to the contrary, Students' Council retains the inherent authority to make changes it sees fit to the administration of the Access Fund. Students' Council would not "lose" the authority to amend its bylaws simply because its bylaws contained no explicit provision providing it with such authority. This authority to amend bylaws is assumed. As this Board put it in *Re Bylaw Retroactivity* (Ruling #10, 2005/2006), "Students' Council is assumed to have plenary power to pass legislation respecting Students' Union affairs."

Finally, the applicants raised the question of whether it is fair to students to make substantial changes to the administration of the Access Fund without returning the issue to students in another referendum. This is a political question to be decided by AFC and Students' Council, not the DIE Board.

## **Decision**

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1. The Access Fund Committee may "recommend to Students' Council changes to legislation affecting the Access Fund as it considers appropriate" (Bylaw 100, s. 16(1)(d)), including recommending changes to the endowment fund.
2. Students' Council has the authority to change the operation of the Access Fund by amending its bylaws, including the authority to modify or abolish the endowment

fund. The Access Fund Committee has the authority, as delegated to it by Students' Council, to change the operation of the Access Fund by amending its Standing Orders. Since Students' Council does not delegate authority to change the terms of the endowment fund, this question must be taken up by Students' Council itself.

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 Chief Tribune, Guillaume Laroche, at [ea@su.ualberta.ca](mailto:ea@su.ualberta.ca) .