

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

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***Ruling of the Board***

**Style of Cause:** Interpretation

**Ruling #**      5

**Date heard:** March 28, 2007

**Appearing for the D.I.E. Board:**

Presiding Chair: Guillaume Laroche, Chief Tribune

Tribunes:      Kanchana Fernando, Associate Chief Tribune  
                 Vincent Kurata

**Appearing for the Applicant:**

Amanda Henry, Students' Union Vice-President (Academic)

Matthew Létourneau, President, AUFSJ

**Appearing for the Respondent:** N/A

**Interveners present:**

Rachel Woynorowski, CRO

Scott Kohlert, AUFSJ election candidate

Brittney Bugler, SU Councillor to FSJ

**Point of Procedure:**

Kanchana Fernando moves that submissions be allowed in both French and English for this ruling due to its nature. Vincent Kurata seconds. Carried.

**Case summary:**

The DIE Board rules that Faculty Associations are free to determine their membership. The membership of a Faculty Association's is not limited by the Registrar's determination of who is registered in the faculty in question. Depending on how Faculty Associations determine their membership, it is possible that an individual could be eligible for membership in two separate Faculty Associations at the same time, and could be eligible to vote in two separate Faculty Association elections in the same year.

## FACTS

- 1) Voting for the elections of l'Association des universitaires de la Faculté Saint-Jean (AUFSJ) took place on March 22 & 23, 2007.
- 2) The nomination deadline for AUFSJ candidates was March 14, 2007. Every position was contested.
- 3) Nomination packages were submitted to Matthew Létourneau, current President of the AUFSJ and the Faculty Association Deputy Returning Officer (FADRO).
- 4) All candidate nomination packages submitted were accepted and all candidates were deemed eligible to run for office by the FADRO in accordance with the AUFSJ constitution.
- 5) Voting for the election was conducted by the SU Elections Office.
- 6) The SU Elections Office only issued AUFSJ ballots to students currently registered as students of the Faculté Saint-Jean according to the Registrar's Office.
- 7) The official voter list used was obtained from the Registrar's Office by the SU Elections Office under the Information Sharing Agreement currently in place between the University and the Students' Union.
- 8) According to the Registrar's Office, students may only be registered in one faculty at a time (not including Extension or the equivalent unit at Augustana).
- 9) On the morning of the first day of voting, March 22, 2007, an AUFSJ candidate attempted to vote in the AUFSJ election and was not issued a ballot because the SU poll clerks could not find her / his name on the voter list. They determined this person was not registered at the Faculté Saint-Jean according to the list they had.
- 10) SU poll clerks contacted the SU Chief Returning Officer (CRO) on the morning of March 22, 2007 to inquire about this student's eligibility to vote in the AUFSJ elections.
- 11) The SU CRO stated that only students registered at the Faculté Saint-Jean according to the Registrar's list (which was being used as a list of eligible voters) were eligible to receive AUFSJ ballots.
- 12) Campus St. Jean students contacted AUFSJ and Campus St. Jean staff, who contacted the AUFSJ FADRO about the eligibility of the student in question.
- 13) The AUFSJ FADRO consulted the AUFSJ constitution and determined that the student in question fell within the definition of an AUFSJ member according to the AUFSJ constitution.
- 14) The AUFSJ FADRO communicated this information to the SU CRO. The SU CRO indicated she had no way to identify students who were members of the AUFSJ according to the AUFSJ constitution, but who were not on the Registrar's list of students registered at the Faculté Saint-Jean. The SU CRO and the AUFSJ resolved to contact the SU VP (Academic) pursuant to the VP's authority under SU Bylaw 8350, s. 8.
- 15) The AUFSJ FADRO instructed affected students to return to the polls on the second day of voting (March 23) in the event that the SU and the AUFSJ could find a satisfactory resolution to the question of voter eligibility.
- 16) Campus St. Jean staff, SU CRO and the AUFSJ FADRO contacted the SU VP (Academic). The SU VPA affirmed the CRO's judgment that there was no reasonable

way to identify the students in question and therefore no mechanism by which to issue them a ballot; however, the SU VPA also indicated that the candidate in question was, by her interpretation, eligible to run under the AUFSJ constitution despite being barred from voting.

- 17) The SU VPA undertook to contact the Registrar's Office to attempt to clarify the situation. She did so on March 23, 2007, but was unable to resolve the issue of voter eligibility.
- 18) By the CRO's own admission, on March 23, poll clerks allowed at least 2 students who were not on the Registrar's list of students registered at the Faculté Saint-Jean to vote in the AUFSJ elections. There is no way to identify their ballots, and no way to know if, according to the AUFSJ constitution, they were even members of the AUFSJ.
- 19) Students falling under the AUFSJ's definition of "member" but not on the Registrar's list of students registered at the Faculté Saint-Jean were barred from voting on both March 22 & 23

## **RELEVANT LEGAL PROVISIONS**

### **Bylaw 8350: A Bylaw Regarding Faculty Associations**

1. A Faculty Association is an organization which
  - a) provides services and representation for its members;
  - b) acts as a student advocate to its Faculty on Faculty-related issues; and
  - c) aspires to represent student concerns in a transparent, open, accountable, democratic, credible, and fiscally-prudent manner.
  
3. The Students' Union shall annually determine which student groups constitute Faculty Associations within this bylaw, on the basis of the following principles:
  - a) a Faculty Association represents exactly one Faculty;
  - b) no Faculty shall be represented by more than one Faculty Association, except where the Faculty consists of multiple distinct programs having little academic commonality in which case a Faculty may be represented by exactly one Faculty Association for each such program.
  - c) a Faculty Association's membership includes each student that it represents, including special and visiting students; and

- d) a student group which has been recognized as a Faculty Association for a Faculty or for programs within a Faculty shall be presumed to continue being the Faculty Association for the Faculty or the programs within the Faculty.

6. A student ceases to be a member of a Faculty Association upon ceasing to be a student enrolled in a program represented by the Faculty Association.

8. All determinations by the Students' Union required by this bylaw shall be made by the Vice President (Academic) in consultation with the person responsible for registration of student groups

### **Constitution de l'Association des Universitaires de la Faculté Saint-Jean (A.U.F.S.J.)**

#### 1.1 A.U.F.S.J.:

Par convention, le mot « association » et le signe A.U.F.S.J. désignent l'Association des universitaires du Campus Saint-Jean.

#### 1.2 Membres:

Tout étudiant inscrit au Camus Saint-Jean, y compris les étudiants des programmes bilingues, ayant payé sa cotisation, est considéré membre de l'A.U.F.S.J.

#### 1.4 Membres de l'exécutif:

Par membre de l'exécutif, nous entendons les membres ayant été désignés comme tels par une ou plusieurs instances de l'Association et ayant le devoir d'exercer certaines fonctions définies par celle(s)-ci.

#### 2.1 F.S.J.

Par convention, les mots Faculté et Campus et les signes FSJ et CSJ désignent la Faculté Saint-Jean et/ou Campus Saint-Jean mais il est entendu que le nom légal reste Faculté Saint-Jean.

#### 8.5 Droit de vote:

Tout membre de l'AUFJSJ a le droit de vote lors des élections.

## ANALYSIS

*In the text that follows, the interpretation questions, as asked, will be set out one at a time, with the appropriate analysis following each question.*

**1) Is the membership of a Faculty Association restricted to students currently registered in that faculty as defined by the Registrar's office?**

Membership in any particular Faculty Association is governed by that Faculty Association's legislative provisions for membership, not by the Registrar's office. A Faculty Association is free to define its membership as narrowly or as broadly as it wishes. Imprudent changes to the definition of membership will informally be policed by the democratic processes by which Association executives are elected, and are subject to the overriding authority of the VP Academic as provided for in Bylaw 8350.

**2) Are students in inter-faculty programs (i.e. bilingual programs) eligible to be members and / or vote in the elections of more than one faculty association in a given year?**

If students in inter-faculty programs are considered to be members of two different Faculty Associations at the same time (i.e. pursuant to how those Associations' legislative provisions define membership), then there is nothing prohibiting inter-faculty students from voting in the elections of the two separate Faculty Associations.

**2 (a) In the event that students have voted in multiple Faculty Association elections in a given year, will this invalidate the results of one or more of the Faculty Association elections?**

In this circumstance, an election would only be invalidated if a relevant Faculty Association had a legislative provision stipulating that election results are invalid in the event that a member votes in the Faculty Association election of a separate Faculty. Absent a provision to this effect, no election would be invalidated in the above hypothetical situation.

**3) In cases where the Registrar's voter list and relevant legislation disagree or where the legislation is silent, which takes precedence?**

The voter list provided by the Registrar is not determinative of who is entitled to vote in Faculty Association elections. The Registrar's list of persons enrolled in a particular Faculty may frequently be used for the sake of expediency, but nothing makes it "official." Again, Faculty Associations are free to define their membership. If a Faculty Association's membership, as defined in the Association's legislation, consists of persons who do not appear on the Registrar's list, then it will be the responsibility of the Faculty Association to formulate its own list of eligible voters.

- 4) In the event that either**
- a) one or more of the candidates was not eligible to run for office and yet their name appeared on the ballot; or**
  - b) the voter list wrongly barred members from voting;**
- should the AUFSJ elections be declared invalid in their entirety or can such a declaration (if needed) be restricted to voting?**

Given the factual situation at hand, the Board rules that voting for the AUFSJ elections is invalid, but other election processes (nominations, particularly) remain valid. Votes cast on March 22 & 23 are invalid for two main reasons:

- I) On March 22 & 23, 2007, many members of the AUFSJ (as defined in s. 1.2 of the Constitution de l'Association des Universitaires de la Faculté Saint-Jean) were prohibited from voting in the AUFSJ elections. Section 8.5 of the Constitution de l'Association des Universitaires de la Faculté Saint-Jean entitles all members to vote. It was incumbent on the AUFSJ to provide poll clerks with an accurate list of persons eligible to vote. The AUFSJ provided poll clerks with the Registrar's list of persons enrolled at the Faculté Saint-Jean rather than an accurate list of AUFSJ members. The resulting disenfranchisement of many AUFSJ members is contrary to section 8.5 of the AUFSJ Constitution. The Board rules that this infringement of some members' basic voting rights invalidates the voting in this election.
- II) The CRO acknowledged that at least two persons who were not on the list of voters used for voting were allowed to cast ballots over the course of March 22 & 23, 2007. There is no way to determine who these people were or if they were members of the AUFSJ as defined by the AUFSJ. It follows that there is no way of determining whether these people were entitled to vote, and there is no way to distinguish their ballots from other ballots cast. On this basis alone, the vote conducted is found to be illegitimate, and the DIE Board therefore rejects it.

## **DISPOSITION AND REMEDY IMPOSED**

The Board rules that the votes cast on March 22 & 23, 2007, in the AUFSJ elections are invalid. At minimum, the voting process must be carried out anew; in this scenario, all nominated candidates for the election in question remain valid candidates and are not required to go through the nomination process again. If the AUFSJ, either through a motion of its executive or otherwise, decides that it would prefer to conduct the entire election anew, thereby reopening nominations, the DIE Board finds this is acceptable as well. The DIE Board leaves the final decision on which path to pursue to the discretion of the AUFSJ.

## **RECOMMENDATIONS**

To avoid confusion in the future, the Board recommends that Faculty Associations develop a mechanism by which they can accurately determine their membership. Faculty Associations should similarly ensure that poll clerks hold an accurate list of their members for electoral purposes.

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) .