

***Discipline, Interpretation and Enforcement (D.I.E.) Board
Ruling of the Board***

Style of Cause: Reference re: Bylaw 2000 (Ruling #6, 2007/2008)

Date Heard: March 14, 2008

Appearing for the D.I.E. Board:

Presiding Chair: Jason Morris, Assistant Chief Tribune

Tribunes: Alexander Witt, Tribune
Brandon Mewhort, Tribune

Appearing for the Applicant: Craig Turner, CRO

Case Summary:

The CRO requested a clarification of the meaning of ss. 48(2-4) of Bylaw 2000, which govern the financing of slate campaigns in General Faculties Council and Students' Council elections. Specifically, Mr. Turner submitted that Bylaw 48(4) contradicts itself, and has no clear meaning.

The Board held that for the purpose of ensuring clarity:

1. The words "slate or" should be read out of ss. 47(4) and 48(4); and
2. In the phrase "including both slate and slate campaign expenses" the word "campaign" should be read as "candidate" in ss. 47(4) and 48(4); and
3. The words "be spend" should be read as "be spent" in s. 48(3).

SUMMARY OF REFERENCE

The CRO asked DIE Board to interpret Bylaw 2000 to determine definitively how much a slate may accrue in campaign expenses, and whether individual candidates of that slate may accrue additional expenses, and in what amount.

RELEVANT LEGAL PROVISIONS

Bylaw 2000 s.2(o) states:

"slate" shall be any two (2) or more candidates each running for a different position who choose to run under the guidelines for slates as opposed to the guidelines for individual candidates;

Bylaw 2000 s.47(3) states:

At least 10% of campaign expenses must be spent on both slate and slate candidate campaigns.

Bylaw 2000 s.47(4) states:

No slate or slate candidate's campaign budget shall accrue more than five hundred and fifty dollars (\$550) in expenses, including both slate and slate campaign expenses, all of which shall be paid by the Students' Union.

Bylaw 2000 s.48(3) states:

At least 10% of campaign expenses must be spend on both slate and slate candidate campaigns.

Bylaw 2000 s.48(4) states:

No slate or slate candidate's campaign budget shall accrue more than thirty dollars (\$30.00), plus six dollars (\$6.00) for every one thousand (1,000) students' in his or her faculty beyond three thousand (3,000) in campaign expenses, including both slate and slate campaign expenses, all of which shall be paid by the Students' Union.

ANALYSIS

Section 48(4) is Unclear

DIE Board concurs with the CRO that the meaning of these bylaws is very unclear. In particular, the CRO submitted that Bylaw 2000 s.48(4) has no obvious intent whatsoever. DIE Board is inclined to agree that in its current form s.48(4) is virtually unintelligible. Given that, DIE Board sought to examine the literal meaning, and the contextual clues of the Bylaw, and attempted to ascertain the reasonable intent of the drafters. It then sought to instruct on the reading of this bylaw that would give effect to that reasonable intent with the least derivation from the existing text.

Section 48(4) Sets Out Expenditure Limits for Slate Candidates Exclusively

There were a number of contextual clues that DIE Board considered. First among them was the definition of "slate" in Bylaw 2000 s.2(o) which reads in part, "candidates ... who choose to run under the guidelines for slates as opposed to the guidelines for individual candidates." Another contextual clue was a historical draft of the election bylaw of the Students' Union, specifically Bylaw 2100 as it was at the time of DIE Board ruling #5 of 2004. In that bylaw, two sections with different marginal notes set out "Campaign Expense Limits (Individuals)" and "Campaign Expense Limits (Members of Slates)".

It was the opinion of the Board supported by the submission of the CRO that these clues indicate that s.48(1) of Bylaw 2000 does not apply to members of slates, and that s.48(4) was intended exclusively to set the expenditure limits for individual members of slates.

Intent of the Bylaw is to Limit the Monetary Advantage from Slates

Based on his research and reading of the matter, the CRO submitted that the intent of the bylaw was to monetarily disadvantage slates in compensation for the advantage gained by operating as a slate, and thereby increase the likelihood of the election of independent candidates for SU offices.

The Board disagrees slightly. In the Board's reading of the current Bylaw, the intent seems to be to limit the monetary advantage gained by operating as a slate. The distinction is slight, but real. These Bylaws do not provide a monetary penalty for operating as a slate. By way of comparison, the Bylaw 2100 referred to above gave two independent candidates \$1000 total, where two candidates running as a slate received only \$625. That is a clear monetary penalty. There is no equivalently clear provision in the existing Bylaw.

The Board believes that the intent of these Bylaws is to limit the monetary advantage that might be gained from candidates on a slate who were running unopposed transferring a large portion of their expense limit to a slate campaign in assistance of candidates on the same slate who were running for a contested position.

The Board notes that the bylaws as written do not seem to achieve that objective very well. Indeed, for the vast majority of individuals to whom this bylaw would apply, they would be required to spend only \$3 on their own campaigns. However, the effectiveness of a legislative measure does not go to its purpose. To suggest otherwise is to suggest there are no ineffective legislative measures, only legislative measures with the purpose of ineffectiveness.

Meaning of Bylaw 2000 s.48(3)

With regard to literal meaning, the Board examined s.48(3), which states “At least 10% of campaign expenses must be spent on both slate and slate candidate campaigns.” Specifically, the Board considered the difference between “slate and slate candidate campaigns.” The Board came to the conclusion that in order for the difference between the two to be meaningful, “slate candidate campaigns” would have to be understood as “individual slate candidate campaigns.” Were that not the case, 10% of the slate’s budget would have to be spent on each individual’s campaign, which would artificially limit the number of candidates in a slate to 9. The Board can see no reason for implying that intent in the bylaw, and so interprets the bylaw as meaning that individual candidates receive funding first, and then that funding is distributed between the individual candidate and that candidate’s slate, where between 10% and 90% of the funding may be assigned to the slate.

Meaning of Bylaw 2000 s.48(4)

The literal meaning of s.48(4) was more difficult to ascertain. First, it contains the words “both slate and slate campaign”. The Board with the agreement of the CRO believes that this is a typographical error, and that the phrase was intended to read “slate and slate candidate”.

That, however, creates another problem. Section 48(4) begins by suggesting that its limitations apply to both slate’s and slate candidates’ budgets separately, but closes by saying that both the slate and slate candidate’s expenses should be counted in each application of the rule. Furthermore, slates and slate candidates are collectively referred to with the words “his or her faculty” later in the bylaw. Slates do not have gender, nor do they necessarily have a faculty.

Furthermore, as written, 48(4) purports to place a maximum limit on the expenditures of a slate, while setting a minimum limit on the amount of the individual candidates’ expenditures that must be transferred to the slate. In the case of slates of 11 or more people, it would become impossible for candidates to comply with both bylaws. Transferring the entire 10% would put the slate above its maximum, and transferring less than 10% would violate the 10% requirement. Again, the Board did not feel that the intent of the legislation was to by deep implication limit the sizes of slates to 10. Nor did the Board feel that the intent of the legislation was to ensure

that for slates of more than 10 individuals the effective total campaign limit per candidate would drop.

Those issues are resolved by reading the words “slate or” out of the start of s.48(4). This seems to meet the minimum objective clear from the contextual clues, that s.48(4) is intended to at a minimum provide funding to individuals, and the implication from s.48(3) that the allocation to individuals was intended to happen first. With the reading out of the words “slate or”, the bylaws would operate as follows:

1. There is a set limit on the campaign expenditures of a slate candidate, determined by the size of that candidate’s faculty, and which includes both the money spent on their own campaign and the portion of that limit transferred to the slate for expenditure on the slate’s campaign.
2. The candidate must indicate to the CRO in advance what portion of that money is being transferred to the slate. That amount must be between 10% and 90% of the total.

For greater clarity, in this reading of the Bylaw, the slate receives no funding directly, and the only absolute limit on slate expenditures is 90% of the spending limits of all of its members.

Additional Typographical Error

For completeness, the Board also holds that the word “spend” in s.48(3) should read “spent” as it does in the equivalent s.47(3).

Applicability of Analysis to s.47

The Board, with the CRO’s agreement, believes that many of the issues raised by the inadequate drafting of s.48 are raised equally in the equivalent sections of s.47, which deals with Executive Elections. The Board therefore has decided to make recommendations with regards to both sections of the Bylaw.

ANSWER TO REFERENCE QUESTION

Bylaw 2000 s.47(4) should have the words “slate or” read out, and in that section the words “slate campaign expenses” should be read as “slate candidate expenses.”

Bylaw 2000 s.48(3) should have the word “spend” read as “spent.”

Bylaw 2000 s.48(4) should have the words “slate or” read out, and in that section the words “slate campaign expenses” should be read as “slate candidate expenses.”

Bylaw s.48(4) and s.47(4) set an expenditure limit only on individual slate candidates based on the given formulae. Bylaw 2000 s.47(3) and s.48(3) require slate candidates to transfer between 10% and 90% of that expenditure limit to their slate.

RECOMMENDATIONS

The Board highly recommends that greater care be taken in the drafting of bylaws, specifically bylaws that are so likely to be adjudicated in a contentious election environment. The Board has reason to believe that these problems were created by an injudicious use of “cut and paste.”

The Board notes that while the purpose of the Bylaw seems clear, the Bylaw seems unlikely to achieve or even significantly promote that purpose given its current configuration. The Board recommends that the Students’ Council consider redrafting the Bylaw if that impression is shared.

The Discipline, Interpretation, and Enforcement (D.I.E.) Board functions as the judicial branch of the Students’ 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 Chief Tribune, Guillaume Laroche at ea@su.ualberta.ca.