

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

(1) HEARING DETAILS

Style of Cause:	Reference re: Plebiscite/Referendum Pre-Campaigning
Hearing Number:	Ruling #1, 2008/2009
Hearing Date:	November 24, 2008
DIE Board Panel Members:	Paul Chiswell (chair), Chris Le, and Amy Sanderson
Appearing for the Applicant:	Patrick Wisheu (CRO)
Appearing for the Respondent:	N/A
Intervener(s):	N/A

(2) ALLEGED CONTRAVENTION / INTERPRETATION QUESTIONS

The Applicant, Patrick Wisheu, the Chief Returning Officer (CRO), has submitted the following question for interpretation to the Die Board:

“Bylaw 2000 Section 28 discusses the Prohibition on Pre-Campaigning. Pre-campaigning is defined as “campaign activities between the nomination deadline or Students’ Council initiation of a plebiscite/referenda and the commencement of the campaign”. This definition in relation to plebiscites and referenda is unclear as to when the pre-campaigning period begins, as the bylaw does not specify “Students’ Council initiation” for a plebiscite or referenda via petition.”

(3) FACTS

The question is submitted pursuant to s. 4(b)(iii) of Bylaw 1500, which provides the CRO with standing to request an interpretation of the SU’s Bylaws from the DIE Board. Likewise, this panel is hearing this request for interpretation pursuant to s. 3(b) of Bylaw 1500.

The CRO’s request for interpretation essentially comes down to when does the pre-campaigning period begin for a plebiscite or referendum which is initiated by an SU member?

Additionally, the CRO has proposed three possibilities/options:

- 1) upon approval of the plebiscite by Students’ Council,
- 2) upon submission of a valid petition, or
- 3) 30 days prior to election day.

The CRO’s preference, for reasons indicated below, was for the third option.

During the hearing, the CRO also put the following question to the panel:

“If the Bylaw was interpreted as being the first option, and if the Bylaw was amended after plebiscites were approved to reflect the third option, what would the effect be on ongoing campaigning by sides of a plebiscite or referendum?”

(4) RELEVANT LEGISLATIVE PROVISIONS

Section 28 of Bylaw 2000 states:

28. Prohibition on Pre-campaigning

No campaign manager, volunteer, or candidate shall engage in campaign activities between the nomination deadline or Students' Council initiation of a plebiscite/referenda and the commencement of the campaign.

Section 13 of Bylaw 2000 states:

13. Plebiscite and Referendum Initiation

(1) Where a member wishes to initiate a plebiscite or referendum via petition, that member shall submit to the C.R.O.:

- a. the intent of the question;
- b. whether the question is a plebiscite or a referendum;
- c. the name, faculty, and student identification of that member;
- d. a twenty-five dollar (\$25.00) deposit in the form of cash or a certified cheque or money order payable to the Students' Union.

(2) Upon receipt of a submission meeting the requirements set out in Section 13(1), the C.R.O. shall immediately forward the intent of the question to the Bylaw Committee.

(3) The Bylaw Committee shall approve within fourteen (14) days from receiving the intent of the question from the C.R.O., a petition question which:

- a. fully reflects the intent submitted by the member;
- b. if carried and acted upon, would not violate any Students' Union bylaws or any federal or provincial law;
- c. where the plebiscite or referendum is to approve the collection of a University non-academic fee, provides for the formation of a permanent committee to oversee and direct the expenditure of this fee, such committee to have Students' Union members in voting positions proportional to the contribution of Students' Union members;
- d. where the plebiscite or referendum is to approve the collection of a fee for a University facility or service, provides access by any Students' Union member to that facility or service.

(4) Students' Council shall, at the meeting following the drafting of the petition question by the Bylaw Committee as set out in Section 13(3), approve a question which meets the criteria set out in Section 13(3) unless the question would cause Students' Council to breach its fiduciary responsibility to the Students' Union.

(5) Sections 13(2) and 13(3) notwithstanding, where it is not possible for the Bylaw Committee or Students' Council to approve a petition question which meets the criteria set out in Section 13(4), neither the Bylaw Committee or Students' Council shall approve such a question.

(6) Students' Council shall have the authority to call a plebiscite or referendum without a petition.

(7) Prior to being approved by Council all plebiscite and referendum questions must be drafted by the Bylaw Committee.

Section 14 of Bylaw 2000 states:

14. Acceptance of Plebiscite and Referenda Petitions

(1) Where a valid petition bearing the names, signatures, and student identification numbers of at least five percent (5%) of the total membership of the Students' Union as of February 1 of that academic year requesting a plebiscite on a given Students' Council approved question is submitted to the C.R.O., then a plebiscite shall be held on that question as set out in Section 13, provided that the names, signatures, and student identification numbers were all collected within ninety (90) days of submission of the petition.

...[Subsection (2) provides for the same procedure to be followed for referenda petitions; however requiring 15% instead of 5% support. It is not relevant to this request for interpretation.]...

(3) Where a valid petition is submitted to the C.R.O., that member's deposit shall be refunded.

(5) ANALYSIS

For simplicity, the following analysis applies to both plebiscites and referenda despite making reference only to plebiscites.

Section 28 is a general prohibition on pre-campaigning. Students' Council's intent in passing Bylaw 2000 and s. 28 was to create fair elections and to ensure that each candidate or side has an equal opportunity to campaign. An example of the Bylaw demonstrating this intent would be the limiting of campaign funds provided to each candidate and side during the official election campaign, and the prohibition from using additional funds as outlined in s. 47. Likewise, a pre-campaigning period is imposed to prevent a candidate or side from using additional funds, time, publicity, etc, to gain an advantage over the other candidates or sides prior to the commencement of the election campaign.

Due to the prohibition on pre-campaigning, it is important for a particular side to a plebiscite to know when pre-campaigning for a plebiscite begins. To determine this, it is important to review how a plebiscite may occur. Students' Council through s. 13 of Bylaw 1500 has created two ways by which a plebiscite may appear on the election ballot in a general election.

The first method is pursuant to s. 13(6) and is done solely on Students' Council's own motion. Students' Council would follow its own standing orders and internal procedures in proposing a question to be put on the ballot. The Bylaw Committee would draft the question pursuant to s. 13(7) and would submit the question back to Students' Council for a vote. This would serve as direction to the CRO to put the question on the ballot. Although the issue of when pre-campaigning would begin under this method is not currently before the Board, we proceeded under the assumption that it would begin when Students' Council approved the plebiscite pursuant to s. 13(6) and s.13(7).

The second method is pursuant to ss. 13(1)-(5), 14(1), and is commenced by any member of the Students' Union as that word is defined in s. 2(a). To start it off, the member submits to the CRO the intent of the question and complies with the other requirements of s. 13(1). The natural sequence of s. 13 has the CRO forward the intent of the question to the Bylaw Committee, who in turn forwards it to Students' Council for approval. The matter is then left in the hands of the proponents of the plebiscite to collect sufficient signatures and to submit a valid petition to the CRO pursuant to s. 14. The issue currently before the Board surrounds this second method.

The only meaning that can reasonably be interpreted from the Bylaw is the first option proposed by the CRO: pre-campaigning begins when Students' Council has approved the plebiscite pursuant to s. 13(4).

This is the case for many reasons. First, Students' Council cannot be assumed to have left a gap for plebiscites initiated by members. Therefore, the words "...Students' Council initiation of a

plebiscite...” in s. 28 must be interpreted as applying to both methods of getting a plebiscite on the ballot. This is the most consistent and simple interpretation of the Bylaw. Without doubt, consistency and simplicity were goals Students’ Council had in mind when designing a bylaw intended to encourage student participation in the political process.

Second, interpreting the Bylaw in this fashion also accords with the other purposes of the Bylaw: to ensure fair and equal campaigns. The Board was cognizant of the fact that it would be difficult to pre-campaign prior to Students’ Council approval because neither side would know what the official wording of the plebiscite question would be, or for that matter, whether there was even going to be a plebiscite. Likewise, it would certainly be difficult for the CRO to determine if any activity could be defined as pre-campaigning and thereby merit a reprimand before there was even a plebiscite or a specific question. However, the official question will be known once the plebiscite is approved by Students’ Council. Further, it will be known not only to the proponents of the plebiscite or the member who proposed the question in the first place, but to all members, as Students’ Council is a public forum and its minutes a matter of public record. This interpretation achieves fairness and consistency by putting those interested in participating to a side on notice that a plebiscite will occur and allows them a grace period to prepare a campaign without losing ground to the other side, which may have had additional time to prepare.

The Board wants to be clear that sides to a plebiscite should be cognizant of the ramifications of this interpretation. Pre-campaigning will begin as soon as Students’ Council approves the question. Sides should thus make themselves aware of when Students’ Council is expected to approve it and when Students’ Council does approve it in order to govern their side’s campaigning accordingly. As the CRO correctly pointed out, this prohibits campaigning by both sides while signatures for the petition are being collected.

While the Board understands that the CRO’s third option (that is, that pre-campaigning starts 30 days before the election) would reduce difficulties in monitoring pre-campaigning, the Board could not interpret the Bylaw to fit that option.

Further, as the CRO correctly pointed out to the Board, Students’ Council is free to amend the Bylaw. If the Bylaw was in fact amended to reflect this third option, the new bylaw would be the governing legislation as soon as it is approved by Students’ Council. It would be binding on both sides of the plebiscite who would have to govern their campaigns accordingly. There would only be a problem if Students’ Council passed the hypothetical bylaw in such a manner as to extend the pre-campaigning period without reasonable notice or if the hypothetical bylaw somehow extended the pre-campaigning period by applying it retroactively such as to catch the sides off guard. The Board chooses not to decide all the various hypothetical outcomes that would stem from a hypothetical bylaw being passed at various hypothetical times. Additionally, the Board trusts that Students’ Council would not intend such a disastrous result.

(6) DECISION

Pre-campaigning, as the word is used in s. 28 of Bylaw 2000, of a side of a plebiscite or referendum initiated by a member of the Students' Union, begins when Students' Council has approved the question pursuant to s. 13(4) of the same Bylaw.

The Discipline, Interpretation, and Enforcement (DIE) Board functions as the judicial branch of the Students' Union, and is responsible for interpreting and enforcing all Students' Union legislation. Please direct all inquiries regarding the DIE Board or this decision to the Chief Tribune at: <ea@su.ualberta.ca>.