

## ***Discipline, Interpretation, and Enforcement (DIE) Board Ruling of the Board***

<b>(1) HEARING DETAILS Style of Cause:</b>	Request from CRO to specify campaign manager restrictions
<b>Hearing Number:</b>	Ruling #1, 2009/2010
<b>Hearing Date:</b>	January 21, 2010
<b>DIE Board Panel Members:</b>	Paul Chiswell, Associate Chief Tribune, Chair; Amy Sanderson, Tribune Kurtis Streeper, Tribune
<b>Appearing for the Applicant:</b>	Jennifer Huygen, Chief Returning Officer, Students' Union
<b>Appearing for the Respondent:</b>	N/A
<b>Intervener(s):</b>	N/A

### **(2) Question for Interpretation**

The Chief Returning Officer of the Students' Union (CRO) made an application to the D.I.E. Board pursuant to Bylaw 1500 sections 3(b), 4(b)(iii) for a hearing requesting an interpretation of Bylaw 2000, *Elections, Plebiscites and Referenda Bylaw*.

The CRO asked the following question:

“Under Bylaw 2000, if a student councillor wants to serve as a campaign manager for a referendum/plebiscite side, is he/she required to take a leave of absence from Students' Council?”

During the CRO's brief oral presentation to the Board, it was further requested that the Board also provide an interpretation to determine whether the Undergraduate Board of Governors Representative must take a leave of absence from Students' Council in order to serve as a campaign manager for a referendum/plebiscite side (hereinafter we refer solely to “referendum side” but this applies equally to plebiscites as well).

### **(3) DECISION**

The CRO suggested that “the spirit of [Bylaw 2000]” was that the word “candidate” in many provisions included the term “campaign manager” and that this could result in an interpretation where a leave of absence would be required for Students' Councillors serving as campaign managers. The CRO also suggested that section 16 of Bylaw 2000, which indicates that a

member of the Students' Union Executive Committee is eligible to serve as a campaign manager without taking a leave of absence from their position, implies that a leave of absence is not required of Students' Councillors.

The CRO also made reference to the decision of another panel of the D.I.E. Board (*Ruling #3, 2008/2009*). In that ruling, the Board dismissed a reference regarding section 16 of Bylaw 2000 on the grounds that the Board lacked jurisdiction to answer an interpretation question which could not be answered based on the current wording of the bylaw. However, it is our opinion that the question posed by the CRO here can be answered.

The question the CRO asks can be broken down into two questions.

- Who is eligible to serve as a campaign manager for a referendum side?
- Are there any classes of persons who are eligible to serve as a campaign manager for a referendum side but who need to take a leave of absence?
  
- **Who may be a campaign manager for a referendum side?**

The Students' Union occasionally holds referendums. During a referendum, there may only be two campaigns advocating for a particular side - there shall be a "yes" side and a "no side" - per section 15(2). In order to join a side, members must register and attend the meeting for registering sides per section 15(3).

The word "member" is defined in section 2(a):

- (a) "member" shall be anyone who is an undergraduate student currently enrolled in at least one course for credit at the University of Alberta;

Section 15(4) provides the criteria a member must meet to be registered for a side:

- (4) A member's registration for a side shall be accepted when the member
  - a. attends the meeting for registering sides;
  - b. announces his/her intention to register for a side;
  - c. provides the C.R.O. with his/her name, student identification number, and contact information; and
  - d. the C.R.O. is satisfied that that member does not aim to falsely represent that side by registering for it.

Section 15(5) adds the additional requirement that a member can register for only one side of a referendum.

Each referendum side must pick a campaign manager per section 15(6). The only restriction is that the campaign manager of a referendum side must be chosen from among the members registered for that referendum side. Section 15(6) reads:

- (6) Each side shall select, from among the members registered to it, one (1) campaign manager.

There are no further restrictions on who may be a campaign manager within the definition of

“campaign manager” in section 2(1):

(1) “campaign manager” shall be a person registered as part of a plebiscite or referendum side who has been selected by those members of that side to serve as campaign manager for the purposes of this bylaw;

Therefore a campaign manager can be any undergraduate student currently enrolled in at least one course for credit at the University of Alberta who has registered for a side, attended the meeting for registering sides, and has been selected from amongst the other undergraduate students currently enrolled in at least one course for credit at the University of Alberta who have registered for the same side.

- **Are there any classes of persons who are eligible to serve as a campaign manager for a referendum side but who need to take a leave of absence?**

Section 16 provides that members of Students’ Union Executive Committee can serve as a campaign manager of a referendum side without taking a leave of absence. It states:

Any member of the Students’ Union Executive Committee is eligible to serve as a campaign manager of a referenda/plebiscite sides without taking a leave of absence from their position as an executive.

The main issue for the Board in this case was to decide Students’ Council’s intention in passing section 16. There are two possible meanings which are reasonable. The first possible meaning is that the section 16 was to provide greater certainty that those on Executive Committee need not take a leave of absence to serve as a campaign manager. Or, the second possible meaning is that by explicitly mentioning those on Executive Committee, Students’ Council intended to exclude others from serving as campaign managers unless they take a leave of absence.

We believe that Students’ Council intended the first meaning for the following reasons. First, the first meaning conforms to the plain and ordinary reading of the Bylaw. Second, the first meaning makes sense from the legislative history of Bylaw 2000, which has previously and still does require candidates to take leaves of absence in some situations - creating an impetus for additional clarification for those on Executive Committee since they have often served as campaign managers for referendum sides. Third, the second meaning requires asking the additional question of who is excluded, and this would require pure speculation.

The only other provision in Bylaw 2000 which mentions leaves of absence is section 19(3). Subsection (3) personifies the worst of collaborative legislative drafting. It provides:

(3) Members of Students’ Council and its standing committees, in order for their nomination papers to be valid are required to take a leave of absence from their duties for the period beginning with the nomination deadline and ceasing with the conclusion of voting of the election in which they are contesting a position. The following exceptions apply:

- a) Any member of Students' Council contesting an executive position when the race is uncontested,
- b) An executive contesting a Councillor position when the race is uncontested,
- c) Any member of Students’ Council, excluding members of the Executive, contesting a Councillor position.

For the purpose of this section, any race solely contested by a joke candidate shall be considered uncontested.

It is in our opinion that section 19(3) applies solely to individual candidates and not to campaign managers for referendum sides.

### **(3) Conclusion**

Members of Students' Council and the Undergraduate Board of Governors Representative may serve as campaign managers for referendum sides without taking a leave of absence from Students' Council. They must of course meet the other requirements of Bylaw 2000.