

DIE BOARD RULING 2012-07

HEARING DETAILS:

Style of Cause: Bromsgrove (GSJS) v. Council

Hearing Date: January 23rd, 2013

Hearing Number: Ruling #07 2012/2013

DIE Board Panel Members: Cian Hackett, Associate Chief Tribune, Chair
Rebecca Gormley, Tribune
Roy Ho, Tribune

Appearing for the Applicant: Ryan Bromsgrove, Editor-in-Chief and Publisher of The Gateway
Scott Fenwick

Appearing for the Respondent(s):

Andy Cheema, Vice President (Operations & Finance) of the Students' Union

Dustin Chelen, Vice President (Academic) of the Students' Union

Navneet Khinda, Students' Union Councillor

Intervener(s): Farid Iskandar, Chief Returning Officer of the Students' Union

Others: Colten Yamigishi, President of the Students' Union

Justin Williams, Director of Research and Political Affairs of the Students' Union

BACKGROUND:

In mid-December, Mr. Ryan Bromsgrove, Editor-in-Chief and Publisher of The Gateway, submitted two submissions for referendum questions to Mr. Farid Iskandar, Chief Returning Officer (CRO) of the

Students' Union. These intent of the questions (Intent 1 and Intent 2) were submitted separately and subsequently forwarded to the Bylaw Committee as follows:

- (1) A victory for the yes side would result in the establishment of a new DFU: The Gateway Online and Multimedia Fund, which would carry a \$2.83 fee per student per semester, full or part time. The fund would be used to assist The Gateway with its online, multimedia and otherwise digital content, strategies and staff.
- (2) A victory for the yes side would result in a \$2.83 per student per semester increase in the current Gateway Student Journalism Fund fee.

At a meeting of the Bylaw Committee on January 2, two potential referendum questions were drafted to reflect the intent of these submissions. This was done in consultation over the phone with Mr. Bromsgrove, who was satisfied that Question 1 reflected Intent 1 and that Question 2 reflected Intent 2. The questions were as follows:

- (1) Do you support the establishment of The Gateway Online and Multimedia Fund, subject to the following conditions:
 - a. The fee shall be assessed to both full and part time students at a rate of \$2.83 per term*;
 - b. The fee shall be initiated in the Fall 2013 term*;
 - c. The fee shall only apply to full and part time students in the Fall and Winter terms*;
 - d. The fee shall increase annually at a rate equal to the Alberta Consumer Price Index;
 - e. The fee shall expire on April 30, 2018, or at such a time that a successful referendum is conducted to rescind the fee;
 - f. The fee will be used to assist The Gateway with its online, multimedia and otherwise digital content, strategies and staff; and
 - g. Students may opt out of this fee online and unconditionally. The opt out deadline will be advertised.

*As defined by the 2012/2013 University of Alberta academic calendar.

- (2) Do you support a single increase of \$2.83 to the existing fee* for The Gateway Student Journalism Fund, subject to the following conditions:
 - a. a) The fee shall be increased for both full and part time students in the Fall and Winter terms**;
 - b. The increased fee shall:
 - i. be initiated in the Fall 2013 term;
 - ii. increase annually at a rate equal to the Alberta Consumer Price Index;
 - iii. expire on April 30, 2018, or at such a time that a successful referendum is conducted to rescind the fee;
 - c. Students may opt out of this fee online and unconditionally. The opt out deadline will be advertised.

*The existing fee is \$3.22 for the Fall and Winter terms and \$0.41 for the Spring and Summer terms.

**As defined by the 2012/2013 University of Alberta academic calendar.

Question 1 and Question 2 were brought to Students' Union Students' Council on January 8 as part of the late additions to the agenda. Mr. Dustin Chelen and Ms. Navneet Khinda moved to table Question 1 to the following meeting of Students' Council, to occur on January 15. This motion was passed by Students' Council with an amendment to also table Question 2 until January 15. Mr. Chelen and Ms. Khinda indicated to the panel that they believed that Students' Council required more time to determine if approving the questions would breach Students' Council's fiduciary responsibility to the Students' Union.

At the meeting of Students' Council on January 15, Students' Council failed the motion to approve referendum Question 1, and passed the motion to approve referendum Question 2. Mr. Andy Cheema argued to the panel that it was within reason to fail Question 1 because the question was ambiguous and could have resulted in Students' Council breaching its fiduciary responsibility to the Students' Union by passing the motion to approve it.

Under Section 6(4) of Bylaw 2200, Students' Council is required to approve a question which meets the criteria in Section 6(3) at the meeting following the drafting of the petition question by the Bylaw Committee. The only exception to this approval is if the Students' Council was of the opinion that the question would cause a breach of its fiduciary responsibility. It was the opinion of Mr. Bromsgrove that approving Question 1 would not have been a breach of Students' Council's fiduciary responsibility to the Students' Union, and that Students' Council violated section 6(4) on January 8 by tabling the motions in question and again on January 15 by failing the motion on Question 1.

Mr. Bromsgrove further argued that even if approving Question 1 was a breach of fiduciary responsibility, then the Bylaw Committee should not have drafted such a question, as indicated in Section 6(5) of Bylaw 2200.

Mr. Bromsgrove asked the panel to consider three remedies: (1) to allow Question 1 to go directly to the ballot of the Executive Committee and Undergraduate Board of Governors Representative elections, bypassing the requirement to collect signatures, (2) to allow a deadline extension for submitting petition signatures to the CRO, and (3) to allow the referendum question to be placed on the ballot for Students' Council and General Faculties Council councillors on March 21 and 22.

Mr. Iskandar provided a written submission to the panel as an intervener. This letter stated that the last day where a valid petition with signatures could be submitted for the elections occurring on March 6th and 7th would be February 3rd, with a meeting to register sides to occur on February 15th in concurrence with the Executive and Board of Governors Representative candidates meeting. Mr. Iskandar expressed that a deadline extension would shorten the number of days the Elections Office had to advertise the question to potential campaigners from 12 days, which he believed to be a barrier to

running a free and fair election. He also expressed opposition to placing the referendum question on the March 21 and 22 election, given that this would be a violation of Bylaw 2200 Section 5 and that these elections typically have one half the voter turnout than that of Executive Committee and Undergraduate Board of Governors Representative elections. Mr. Iskandar viewed it as more democratic to have referendum questions on the March 6 and 7 ballot. Mr. Bromsgrove countered that the Students' Council and General Faculties Council councillors on March 21 and 22 elected valid student representatives and thus were still free and fair elections available to the Students' Union membership.

Mr. Cheema also provided a confidential written piece of evidence to the panel. The panel reviewed this piece of evidence but it was not relied on by the panel in rendering its decision.

ISSUES:

- [1] Can a single organization receive multiple dedicated fee units?
- [2] If an organization with a pre-existing Class B fee wins a referendum to also have a Class D fee, does the original Class B fee remain a Class B fee?
- [3] What are the obligations of a Students' Union member submitting a referendum question?
- [4] Did the Bylaw Committee violate Students' Union Bylaw on January 2?
- [5] Did Students' Council violate Students' Union Bylaw on January 8 by tabling the two motions to approve referendum questions referring to The Gateway?
- [6] Did Students' Council violate Students' Union Bylaw on January 15 by failing Question 1? Was there a reasonable concern that approving the referendum Question 1 would cause Students' Council to breach its fiduciary responsibility to the Students' Union?
- [7] If Students' Council did not have reasonable grounds to fail Question 1, what remedy will the panel enforce upon the Students' Union?

RELEVANT BYLAWS:

- [8] **From Bylaw 2200, section 6(1):**

(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.

[9] **From Bylaw 2200, section 6(2):**

(2) Upon receipt of a submission meeting the requirements set out in Section 6(1), the C.R.O. shall immediately forward the intent of the question to the Bylaw Committee.

[10] **From Bylaw 2200, section 6(3):**

(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;

[11] **From Bylaw 2200, section 6(4):**

(4) Students' Council shall, at the meeting following the drafting of the petition question by the Bylaw Committee as set out in Section 6(3), approve a question which meets the criteria set out in Section 6(3) unless the question would cause Students' Council to breach its fiduciary responsibility to the Students' Union.

[12] **From Bylaw 2200, section 6(5):**

(5) Sections 6(2) and 6(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 6(4), neither the Bylaw Committee or Students' Council shall approve such a question.

[13] **From Bylaw 3000, section 3(15):**

(15) The Gateway Student Journalism Fund shall be used for the support of the Gateway Student Journalism Society

[14] **From Bylaw 3000, section 7(6):**

- (6) Class B Fees may be amended or abolished only by
- (a) a joint resolution of Students' Council and one other body, specified in the schedule; or
 - (b) referendum.

[15] **From Bylaw 3000, section 7(8):**

(8) Class D Fees

(a) shall include fees established after September 2009 and may only be amended or abolished by

i. a joint resolution of Students' Council and one other body, specified in the schedule; or

ii. referendum; and

(b) shall include Class B fees that are being increased beyond its current rate of change as per the schedule;

[16] **From Bylaw 3000, section 7(9):**

(9) Class C Fees and Class D Fees shall

(a) implement an unconditional online opt-out for the total amount of the fee;

(b) be reaffirmed by majority support for the total amount of their fee by campus-wide referendum at least once every five (5) years.

[17] **From Bylaw 3000, section 7(13):**

(13) (a) The Students' Union will not allow for the implementation of a dedicated fee unit that, or

i. would cause the Students' Union to breach its fiduciary responsibility to the Students' Union; or

ii. supports activities that are beyond the scope and mandate of the Students' Union as outlined in the Post Secondary Learning act §93(3)

[18] **From Bylaw 2200, section 5:**

5. Dates - Plebiscites and Referenda

Where the C.R.O. receives a valid petition or where Students' Council initiates a plebiscite or referendum, then the plebiscite or referendum in question shall be held on the dates of the next general election of the Executive Committee and Undergraduate Board of Governors not occurring within thirty (30) days of receipt of the valid petition or initiation by Students' Council of the plebiscite or referendum in question.

[19] **From Bylaw 2200, section 7(1):**

(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 6, provided that the names, signatures, and student identification numbers were all collected within ninety (90) days of submission of the petition.

[20] **From Bylaw 2200, section 8(1):**

(1) At least twenty-eight (28) days in advance of the plebiscite or referendum, the C.R.O. shall schedule and announce a meeting for the registration of sides, such meeting to take place not more than twenty-one (21) and not fewer than fourteen (14) days in advance of the plebiscite or referendum in conjunction with the candidates meeting;

DECISION:

The decision below was made unanimously by the panel:

- [21] The panel finds that the Bylaws of the Students' Union are silent on whether one organization can receive multiple dedicated fee units. Because bylaws are silent on this issue, there is no reason that an organization should not be able to receive multiple dedicated fee units, so long as they satisfy all the requirements stipulated in the Bylaws.
- [22] The panel finds that organizations with a pre-existing Class B fee may also have one or more Class D fees. The panel would like to stress that this only applies if the Class D fee cannot be construed as an increase to a pre-existing Class B fee. For a Class D fee to not be construed as an increase to a pre-existing Class B fee, it would have to be proposed for purposes outside the scope of the pre-existing fee, simply because the organization already collects a Class B fee and any addition to it must necessarily be construed as an increase.
- [23] Bylaw 3000 Section 7(8)(b) states that Class B fees that are increased beyond their current rate of change are classified as Class D fees. Although it may not be the intent of the Bylaw, the panel interprets this bylaw to indicate that Class B fees that are increased beyond their current rate of change are classified as Class D fees in addition to their classification as Class B fees. This subjects them to the conditions imposed on Class D fees in Bylaw 3000 Section 7(9).
- [24] The obligations of Mr. Bromsgrove as a Students' Union member submitting a referendum question were fulfilled. It is clear that the only obligation to the member is to submit the intent of the referendum question, and that the responsibility of drafting the question lies with the Bylaw Committee, and the responsibility for approval with Students' Council.
- [25] Under Bylaw 2200 section 6(3), the Bylaw Committee is to approve within 14 days from receiving the intent of the question from the CRO a petition question which fully reflects the intent submitted by the member, and if carried and acted upon, would not violate any Students' Union bylaws or any federal or provincial laws. This includes not violating the Students' Union fiduciary responsibility to the Student Union. The panel finds that the Bylaw Committee did not

violate Students' Union Bylaw on January 2. The committee drafted a referendum question for each intent that satisfied the intent of Mr. Bromsgrove. This was confirmed during the committee's meeting in discussion with Mr. Bromsgrove. The panel finds that the committee can be of the opinion that a drafted referendum question is not a breach of Students' Union fiduciary responsibility, and would not be at fault for unknowingly submitting a question that, if approved, may breach Students' Council's fiduciary responsibility to the Students' Union. The panel is satisfied that the Bylaw Committee forwarded two questions to Students' Council that each reflected their respective intents and that the Bylaw Committee reasonably thought would satisfy Bylaw 2200 Sections 6(3)-(5).

- [26] The panel finds that Students' Council did not violate Students' Union Bylaw on January 8 by tabling the two motions to approve referendum questions referring to The Gateway. The motions were tabled to allow Students' Council more time to consider whether or not approving them would constitute a breach of fiduciary responsibility. This is reasonable, given that the items were on the late additions to the agenda and given that there was concern expressed at the meeting that the motions in question may constitute a breach of fiduciary responsibility.
- [27] The panel finds that Students' Council did not violate Students' Union Bylaw on January 15 by failing Question 1. The question, as worded, would have established a fee "to assist The Gateway with its online, multimedia and otherwise digital content, strategies and staff". This implies that the fee could fund an extension of the activities of The Gateway Student Journalism Society, which already publishes online content and levies a fee as defined in Bylaw 3000 Section 3(15). The panel agrees that if Students' Council had approved the question, it is within reason that the use of the fee may have breached Students' Council's fiduciary responsibility to the Students' Union, since the fee may be considered an increase to the pre-existing Class B fee of The Gateway Student Journalism Society, as indicated above in paragraph 23. The fact that the Bylaw Committee did not view this as fiduciary breach does not preclude the Students' Council from determining it as such, as they have final approval of all referendum questions.
- [28] In summary, the question that failed at Students' Council on January 15, if passed, may have caused a breach of fiduciary responsibility. It was reasonable of Students' Council to table such a motion to give each member of Students' Council more time to consider the motion. Bylaw Committee did draft a question which reflected the intent accurately and was later determined by Students' Council to constitute a possible breach of fiduciary responsibility. This potential breach stems from the submitted intent, which indicates that "the fund would be used to assist The Gateway with its online, multimedia and otherwise digital content, strategies and staff", activities which can reasonably be considered to be funded with the pre-existing Class B fee. The panel in carrying out its duty is not to second guess Students' Council decisions or to make value judgements on proper policy choices.
- [29] Because the panel has determined that the decision of Students' Council will stand, the remedies sought by the applicant are dismissed.