

## **DIE Board Ruling 2012-8**

Hearing Details:

Style of Cause: Appeal of Ruling 2012-7

Hearing Date: February 8<sup>th</sup>, 2013

Hearing Number: Ruling # 08 2012/2013

DIE Board Panel Members: Sean Wallace, Chief Tribune

Eve Coppinger, Tribune

Timothy Mallett, Tribune

Drew-Jordan Maharaj, Tribune

Mary McPhail, Tribune

### **Issues:**

[1] Did the Panel in Hearing 2012-7 err in not overruling the decision made by Students' Council on January 15, 2013, to fail the referendum question establishing "The Gateway Online and Multimedia Fund?"

[2] Did the Panel in Hearing 2012-7 err in not finding a violation of Bylaw 2200(6) from either the Bylaw Committee or Students' Council?

### **Relevant Legislation:**

[3] From Bylaw 2200(6)

- . (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 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.***

[4] From DIE Board Ruling 2012-7 at para 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.”

**Decision:**

The Panel made the decision below unanimously.

[5] The Appeal Panel finds that the initial Hearing Panel in 2012-7 did not err in upholding the Students’ Council’s decision to fail the referendum question. With respect to Bylaw 2200(6) at point 4, Students’ Council can refute a referendum question that if passed would cause them to breach their fiduciary responsibility to the Students’ Union.

[6] The Panel is not commenting on whether or not the referendum question did in fact violate the Students’ Council’s fiduciary responsibility to the Students’ Union. The DIE Board is a judicial body that exists to interpret and enforce the Students’ Union’s bylaws. To restate the ruling in 2012-7, the DIE Board does not make value judgments on proper policy choices for the Students’ Union. However, contrary to the ruling in 2012-7, the DIE Board may second-guess and even overrule Students’ Council decisions in instances where there is a violation of bylaw.

[7] The Panel finds that the assessment of fiduciary responsibility in Bylaw 2200 is not based on a standard of correctness, but rather, a standard of reasonableness. That is to say, Students’ Council needs only to be reasonable in finding a breach of fiduciary responsibility to remain pursuant with Bylaw 2200(6). Based on the evidence provided at the appeal the Panel finds that Students’ Council was reasonable in their assertion that passing the referendum question had a substantial risk of breaching its fiduciary responsibility to the Students’ Union.

[8] The Panel also upholds Ruling 2012-7 in finding that neither the Bylaw Committee nor the Students' Council violated Bylaw 2200(6) with respect to this issue.

[9] The Panel acknowledges that Students' Council does indeed have a fiduciary responsibility to the Students' Union, and such an obligation is not fulfilled by passing every referendum question onto the ballot. The average voting student is not aware of Class B and D dedicated fee unit structures, and presumes that everything is in legal order when they vote. The Students' Council has a fiduciary responsibility to ensure that all referendum questions follow appropriate legislation, and that all financial ambiguities are resolved prior to being passed onto the ballot. Their actions must be reasonable with respect to the circumstances.

[10] The Panel agrees that the wording of Bylaw 2200(6) appears to bias the Appellant, as he had full reason to believe that his referendum question was valid since it was approved by the Bylaw Committee. Bylaw 2200(6) can be read to imply that both the Bylaw Committee and Students' Council must both be correct and be of the same opinion on whether or not a referendum question will breach the Students' Council's fiduciary responsibility to the Students' Union. This would set an unreasonable standard for the Bylaw Committee, and we find that such an interpretation is untenable.

[11] The Panel upholds the ruling in 2012-7 that both the Bylaw Committee and Students' Council can reach separate conclusions on whether a referendum question causes them to breach their fiduciary obligation to the Students' Union, ***so long as both parties are held to a standard of reasonableness.***

[12] There was no evidence to suggest that the Bylaw committee was being unreasonable in approving the referendum question to Students' Council, despite their approval implying that they found the question would not cause Students' Council to breach its fiduciary responsibility to the Students' Union. With no evidence of unreasonableness, the Panel finds that the Bylaw Committee did not violate Bylaw 2200(6).

[13] Similarly, the Panel finds that Students' Council did not violate Bylaw 2200(6) as there was evidence to suggest they were reasonable in their assertion that passing the referendum question had a substantial risk of breaching their fiduciary responsibility to the Students' Union.

[14] The Appellant contended that Bylaw 2200(6) gives Bylaw Committee and Students' Council the power to veto any referendum question on frivolous or malicious bases, which is contrary to Bylaw 2200(6). The Panel disagrees with this assertion; any member of the Students' Union may raise a challenge to DIE Board if they feel that either Bylaw Committee or Students' Council is being *unreasonable* with respect to Bylaw 2200(6), and will need to provide evidence of unreasonableness should a hearing occur.