

DIE BOARD RULING 2018-02

Hearing Details:

Style of Cause: *Sunday v Students' Council (Speaker)*

Hearing Date: June 19, 2018

DIE Board Panel Members: Landon Haynes, Associate Chief Tribune (Chair)

Christian Zukowski, Tribune

Shridhar Patel, Tribune

Appearing for the Applicant: None

Appearing for the Respondent: Jonathan Barraclough, Students' Council Speaker

Reed Larsen, Students' Union President

Intervener(s): None

The DIE Board is unanimous in the following decision.

FACTS

[1] On June 11, 2018, Councilor Nathan Sunday of the University of Alberta Students' Union (SU) submitted a complaint under Bylaw 1500, section 3(1)(a), in regards to the contravention of Students' Union legislation by Students' Council. Specifically, it was alleged that Students' Council is currently in contravention of Bylaw 600, section 5(2) which states:

5 Delay of Implementation

1. Implementation of this Bylaw shall be delayed until the following is accomplished:
 - a. a sustainable method of translation is established; and
 - b. an initial translation of Bylaw and Political Policy is performed.
2. The sustainable method of translation shall be established and an initial translation of Bylaws and Political Policies shall be performed by no later than April 30, 2018.

[2] Mr. Sunday was absent from the hearing, but this Panel decided to proceed with the hearing on the basis that the respondent conceded that Students' Council is in violation of Bylaw 600, Section 5(2).

[3] In light of this concession, Speaker Barraclough and President Larsen presented ways in which Council might resolve this bylaw contravention, including the creation of an operational committee tasked with the continued translation of bylaws.

[4] It was stated that part of the cause for this Bylaw contravention might lie in the fact that responsibility for Bylaw translation was divided between multiple committees of Council, a finding that this Panel accepts.

ISSUES

[5] As per Section 5(2) of Bylaw 600, "[t]he sustainable method of translation shall be established and an initial translation of Bylaws and Political Policies shall be performed by no later than April 30, 2018." Mr. Sunday has argued that the Students' Council is in contravention of this Bylaw, as there has been no initial translation of either Bylaws or Political Policies. In this context, Councilor Sunday requested a remedy for this alleged contravention. We have identified the following issues as needing resolution:

- 1. Is the Students' Council in contravention of Section 5(2) of Bylaw 600 as alleged by Councilor Sunday?*
- 2. In the event that the Students' Union is in contravention of its own Bylaws, is there any enforcement mechanism to ensure compliance; and*
- 3. If the Students' Union is in contravention of its own Bylaws, does it have the power and authority to make changes to the Bylaw(s) to ensure it is no longer being contravened? Or must it resolve the contravention prior to any changes?*
- 4. If the Students' Council is in contravention of Section 5(2) of Bylaw 600, what should be the appropriate remedy?*

ANALYSIS

1. Is the Students' Council in contravention of Section 5(2) of Bylaw 600 as alleged by Councilor Sunday?

[6] The current date being June 19, 2018, and with there having been no evidence presented before us that a "sustainable method of translation" has been established and "an initial translation of Bylaws and Political Policies" has been performed, we conclude that Students' Council is in contravention of Section 5(2) of Bylaw 600. This contravention has been conceded by Speaker Barraclough and President Larsen.

2. In the event that the Students' Union is in contravention of its own Bylaws, is there any enforcement mechanism to ensure compliance?

[7] Within the relevant Bylaws that have been put forward to this Panel, there does not seem to be any general executive or legislative enforcement mechanism to ensure compliance. While individual Bylaws may contain their own enforcement mechanism, there does not seem to be a general procedure. Instead, it appears as if the general enforcement mechanism is judicial in nature. Specifically, Section 29 of Bylaw 1500 specifies that “[i]f the [Discipline, Interpretation, and Enforcement] Board finds that an application for action or application for appeal requires action, the Board may make any order proscribing or prescribing any remedy it considers appropriate and just in the circumstances.”

[8] In the enactment of Bylaw 1500, the SU has decided that the general enforcement of its Bylaws should rest in a separately instituted entity known as the “Discipline, Enforcement, and Interpretation Board.”

[9] The general powers of enforcement of this Board under Section 29 of Bylaw 1500 are plenary. Specifically, this Board “may make **any** order proscribing or prescribing **any** remedy it considered appropriate and just in the circumstances” (emphasis added). It is our opinion therefore that a broad range of remedies can be ordered, from the trivial to the unconventional, so long as the Board considers this remedy to be appropriate and just in the circumstances.

[10] Considering this broad plenary jurisdiction, it is this Panel’s opinion that the DIE Board can order **any** remedy it considers appropriate and just in the circumstances, regarding only those cases that are within the scope of the Board, as set out in Section 3 of Bylaw 1500 (limited only to actions and appeals that (a) initiate a complaint about a contravention of SU legislation; (b) request an interpretation of SU legislation; or (c) appeal rulings made by the Chief Returning Officer during the SU’s general elections). There is no limitation in the scope of the DIE Board as to who may be in contravention of SU Bylaws. Therefore, it is our opinion that the DIE Board can order **any** remedy it considers appropriate and just in the circumstances when Students’ Council itself has contravened the SU Bylaws, to ensure compliance.

[11] In the context of the current complaint, perhaps the most trivial remedy would be for the DIE Board to set a date by which the SU must comply with Bylaw 600. However, the SU set its own date in Section 5(2) of Bylaw 600 which was not abided by. Having the DIE Board set another date a short time into the future may not be very effective due to a proven acquiescence.

[12] Instead, we consider another possible remedy as including ordering the SU to set aside a certain amount of its operating income into a separate bank account where withdraws are to be made only to pay for the translation service. This remedy, in theory, operates to impair the SU’s budget and to enforce the bilingualism that it has otherwise legislated.

[13] Another possible remedy would be to order the Council of the SU to send an email to all members of the Union advertising their failure to comply with Bylaw 600. This remedy could also be ordered in the context of the SU failing to set up a separate bank account, or, indeed, any

other failure to comply with any order of the Board.

[14] In the most extreme of circumstances, it is this Panel's opinion that the DIE Board could order the immediate disbandment of the entire Students' Council and order a new election to be held forthwith, again, so long as it is in the opinion of the Board that this extreme remedy is appropriate and just in the circumstances. We do not comment on the degree that a contravention must be in order to attract such a remedy, only that the DIE Board's broad plenary powers theoretically allows for this remedy, assuming only that the requisite degree of contravention is achievable.

[15] However, all of these possible remedies are up to the Council to ignore, though they could hardly be called "remedies" at such a point. This Board does not have a police service, does not have a prosecutorial team, and does not have a jail in which to send contemptible Executives or Councilors. This Board further has no actual or tangible control over the finances of the SU. Therefore, if Students' Council decides to ignore orders of this Board, that is up to their contemptible conscience.

[16] In such situations, the power of enforcement naturally rests in democracy. It would be in the hands of the Union members to protest at the ballot box to remove a contemptible Students' Council.

[17] It is also important at this point to discuss the importance of media in a democratic society. As the Supreme Court of Canada has commented, the "freedom of the press and other media is vital to a free society. There can be no doubt, of course, that it comprises the right to disseminate news, information and beliefs" (*CBC v. Lessard*, [1991] 3 SCR 421). The University of Alberta has many media outlets that can, and should, report on contemptible actions (or inactions) of the Executive or Councilors of the SU. This accountability is important for the proper informance of the Union populace, who rightfully hold the democratic power to decide whether or not the Students' Council should be punished at the ballot box.

[18] Finally, to perhaps quell the minds of some that may be concerned about the broad plenary powers of this Board discussed in this ruling, it may be useful to talk briefly about the accountability of this Board.

[19] First, it is important to note that the DIE Board has an appeal process that is meant to rectify errors in fact-finding, interpretation, and/or analysis conducted by a panel. If it is clear and obvious that a DIE Board panel has made an order under Section 29 of Bylaw 1500 that is not appropriate or just in the circumstances, this order can and should be appealed to rectify this inappropriate or unjust order.

[20] Additionally, and while we make no determination on this point, it is possible that this Board is subject to judicial review, whereby decisions of this Board could be brought before the Court of Queen's Bench of Alberta for a determination as to the reasonableness of the Board's decision.

3. *If the Students' Union is in contravention of its own Bylaws, does it have the power and authority to make changes to the Bylaw(s) to ensure it is no longer being contravened? Or must it resolve the contravention prior to any changes?*

[21] As far as this Panel is aware, there is no supreme legislation enacted by the SU that would prevent the SU from legislating changes to the Bylaw(s) to eliminate a potential or reasoned contravention on a go-forward basis (though changes must still generally comply with provincial, federal, and constitutional legislation). Therefore, the SU can apply its usual legislative procedures to make these changes to eliminate any contravention. It is this Panel's opinion that there being a lack of legislation suggesting otherwise, the SU need not resolve a contravention prior to making any changes.

[22] However, *this does not mean that the contravention did not occur*. Even if the SU changed its Bylaws the day after a contravention, the contravention still occurred and it is fully within the right of a member to bring an application to the DIE Board to remedy this contravention, so long as that member has standing under Section 4 of Bylaw 1500. The Bylaws that apply to the contravention are the Bylaws that existed on the day that the contravention occurred. Hence, changing the Bylaws is not an escape from the plenary enforcement powers of the DIE Board.

[23] In the context of Bylaw 600, if Students' Council decided tomorrow to enact a change to its Bylaws such that a "sustainable method of translation shall be established and an initial translation of Bylaws and Political Policies shall be performed by no later than" a date far into the future rather than April 30, 2018, if there was a contravention *today*, then the DIE Board would have jurisdiction to hear an application brought against Students' Council for contravention of Bylaw 600 based on the Bylaws as they existed *today*. Even if a member argues there to have been a contravention far into the past, an application may still be brought, though a remedy ordered may be nominal.

4. *If the Students' Council is in contravention of Section 5(2) of Bylaw 600, what should be the appropriate remedy?*

[24] Having established that Students' Council has contravened Section 5(2) of Bylaw 600, and having described and expanded upon the DIE Board's broad plenary powers of enforcement, what remains to be determined is what this panel should actually decide with regards to the remedy of this contravention.

[25] While we heard from Speaker Barraclough and President Larsen that a plan has been developed on paper to have the initial translation done by the end of the 2018-2019 Academic Year (around April 2019), we find that due to the continued and proven acquiescence from Students' Council to adhere to the April 30, 2018 translation deadline, a further year to comply with Bylaw 600 would not be appropriate and would fly in the face of all Union members who have elected Students' Council to fulfill their legislated mandate. We therefore order that an initial translation of Bylaws and Political Policies shall be performed by no later than September 4, 2018, being the first day of the 2018-2019 Academic Term. The Bylaws that shall be

translated are as they existed on the date this judgment was released, or any such instance of the Bylaws from that date onward.

[26] With regards to the “sustainable method of translation” we order that such a method be established by September 4, 2019, being one year from the date that the initial translation must be completed. We make no ruling with regards to the form or procedure of this sustainable method of translation. However, based on the discussions had during the hearing, we do make the following recommendation.

[27] Regarding the delegation of responsibility for the translation of Bylaw and Political Policy, this Panel would advise Council to centralize the process of translation. As it currently stands, the duty to develop bylaws and political policy rests with the Bylaw and Policy Committees, respectively; the obligation to translate bylaws and policy with the Council Administration Committee; and the power to enlist translation services with the Executive Committee. This division of responsibility creates a lack of accountability and a disconnect in the translation process, which could ultimately contribute to subsequent bylaw contraventions.

CONCLUSION

[28] While robust and comprehensive frameworks have been set up to effectively allow for the collective bargaining of undergraduate students at the University of Alberta through the SU, enforcement of SU Bylaws is a somewhat nebulous concept. Enforcement hinges on a Council that is honest to the norms that guide the principles of democracy. If Students’ Council willfully contravenes SU Bylaws without cause for concern, then it is up to the media to report on this contravention, and it is up to the Union members to decide at the ballot box whether or not that contemptible behaviour is to be punished.

[29] Finally, the SU can legislate changes to its Bylaws under its usual frameworks to eliminate any contravention on a go-forward basis, but this does not mean that the contravention did not occur. If a contravention occurred at any point in time, it is fully within the right of a member with standing to bring an application to the DIE Board to remedy this contravention as the DIE Board considers appropriate and just under its plenary powers of enforcement.

[30] In terms of Bylaw 600 specifically, it is this Panel’s opinion that Students’ Council, being in contravention of this Bylaw, has the ability to change the Bylaw if it wishes. However, this does not mean that the contravention did not take place. By changing the Bylaw, Students’ Council is not able to negate the fact that a contravention did happen, and therefore, remain subject to the ruling written here.

[31] With regards to Bylaw 600, this Panel has found that Students’ Council of the SU is in contravention. This Panel has decided to exercise its broad plenary powers of enforcement to order that an initial translation of Bylaws and Political Policies shall be performed by no later than September 4, 2018, being the first day of the 2018-2019 Academic Term. The Bylaws that shall be translated are as they existed on the date this judgment was released, or any such instance of the Bylaws from that date onward. With regards to the “sustainable method of

translation” we order that such a method has to be established by September 4, 2019, being one year from the date the initial translation must be completed by. This Panel makes no specific ruling on how the sustainable method of translation should operate, but we have made some recommendations above that could be used as guidance by Students’ Council.

[32] It must also be noted that as this is Council’s first contravention in regards to Bylaw 600, this Panel has elected to make broad orders so that Council, a democratically elected body, may resolve this issue based upon the desires of its electorate. Notwithstanding, this Panel cautions Council that further contraventions of Bylaw 600, or of this ruling, may result in the DIE Board ordering more substantial and directed remedies in order to prevent further or continued contravention.