

## **DIE BOARD RULING 2019-01**

Hearing Details:

Style of Cause: *Reference re Students' Union Bylaws*

Hearing Date: Application Rejected Without Hearing

DIE Board Panel Members: Christian Zukowski, Tribune (Chair)

Karamveer Lalh, Chief Tribune

Shridhar Patel, Tribune

Applicant: Levi Flaman

Intervenors: None

**The reasons of the Board are delivered by Tribune C. Zukowski.**

### **FACTS**

[1] On May 1st, 2019, Levi Flaman ["the Applicant"] requested this Board to conduct an interpretation of Students' Union bylaws as a whole. In his application, he makes a number of arguments for this Board to conduct such a review. The Applicant cites the large number of hearings heard by this Board in the 2018 year and suggests that there are flaws and unnecessary complexities in the bylaws. To demonstrate this, the Applicant references *Cutarm v Students' Council*.

[2] On the basis of these reasons, the Applicant requests this Board to conduct an interpretation of the bylaws as a whole. While the review and amending of bylaws usually rests with the aptly named Bylaw Committee, the Applicant contends that the committee only initiates legislative changes as a result of individual Councillors' "pet projects" or in response to a ruling by this Board.

[3] The Applicant further suggests that in the course of this review, that he expects no need for this Board to make any remedial orders.

[4] The Applicant currently does not hold any position with the University of Alberta Students' Union.

## ISSUES

[5] The issues before this Board are as follows:

1. *Does the Applicant possess the standing required by Bylaw 1500 to make this application?*
2. *Does this application fall within this Board's scope under Bylaw 1500?*
3. *The Applicant's request for interpretation.*

## ANALYSIS

[6] Concerning the first issue before this Board, it is my determination that the Applicant does not have standing to bring forward a request for interpretation under Bylaw 1500 s. 3(1)(c).

[7] This conclusion follows a plain reading of Bylaw 1500, which explicitly restricts standing in cases of interpretation to Students' Council, the members of Council, and the Chief Returning Officer, at s. 4(2). As the Applicant is neither a member of Council nor the Chief Returning Officer, this Board must inevitably rule that the Applicant lacks standing.

[8] As a result, this Board summarily denies this application under s. 14 of the DIE Board Protocols as it possesses no possibility of success due to the Applicant's lack of standing.

[9] Though this conclusion makes it unnecessary to consider the other two issues before this Board, I would like to make some comments regarding the nature of the application as a matter completeness in this ruling.

[10] On a review of issues heard by this Board, there does not seem to be a case indistinguishable to the one presently being considered. Simply stated, it appears that this Board has not had to grapple with the scope of interpretations under Bylaw 1500 s. 3(1)(b). In conducting a purposive reading of the Bylaw, one would generally consider the words of the legislation within its context, the scheme and object of the legislation, and the intention of the enacting body in creating the legislation, see *Scott v Chief Returning Officer* at para. 28 quoting Elmer Driedger's *Construction of Statutes*. The question of central importance regarding the scope of this Board in interpreting Students' Union legislation is then what did Council intend in conferring the power of interpretation to the Board? Unfortunately, there exists no available digital record relating to the drafting of the clause in question.

[11] In light of the absence of any indication in Bylaw 1500 or the digital record of what Council intended to be the scope of this Board's power to interpret legislation, I turn to Black's Law Dictionary which defines interpretation as: "[t]he art or process of discovering and expounding the intended signification of the language used in a statute, will, contract, or any

other written document, that is, the meaning which the author designed it to convey to others.” The Applicant in this case is not concerned with the intended signification of language in the bylaws but rather the discovering of flaws and superfluous complexities in the bylaws. Even if this was not the case, a request to interpret the entire body of bylaws, or even a single bylaw for that matter, is problematic. Questions of interpretation must, generally, relate to a specific question of law or fact that this Board can consider in the context of the Student Union’s legislative scheme.

[12] Further, Council has explicitly delegated some of the statutory powers granted to it under the *Post Secondary Learning Act* to various bodies. While Council retains the statutory power of enacting bylaws under s. 95(2) of the *Act*, Council has delegated the authority *and the responsibility* to draft and review bylaws to the Bylaw Committee. This is clearly articulated in Bylaw 100 at s. 17(2). In this application, the Applicant is inviting this Board to intrude on the role of Bylaw Committee by conducting a review of and suggesting revisions to the entire body of bylaws. Even if the Applicant’s claims that Bylaw Committee is dysfunctional and not fulfilling its mandate are substantiated, it is not the desire of this Board to step outside of its purpose under Bylaw 1500: to enforce and interpret the legislation of the Students’ Union.

[13] For the reasons above, I would hold that such a general request of interpretation, with a primary intention not of interpretation but of review, would not be within the scope of this Board’s powers under Bylaw 1500 s. 3(1)(b).

[14] This Board, however, does sympathize with the intentions of the Applicant. As I noted in *Cutarm v Students’ Council* at paragraph 4 (of the attached concurring opinion), a third of panels of first instance that occurred in 2018 concerned contraventions of legislation by Council, a member of Council, or a body under the authority of Council. This is troubling for obvious reasons.

[15] As a new Council has recently been elected, I take this opportunity to remind Council that the Students’ Union can only operate as well as our legislation allows. Bylaw Committee has been given an important role in this organization and must ensure that our legislation is functional and can be interpreted and enforced in a way that reflects Council’s intentions. A failure to do so will undoubtedly impact the functioning of this organization, as demonstrated by the influx of cases in the 2018 year.

## **DISPOSITION**

[16] The issues before this Board, and the answers to those issues, are as follows:

1. *Does the Applicant possess the standing required by Bylaw 1500 to make this application?*

The Applicant does not have standing to bring forward this application.

2. *Does this application fall within this Board's scope under Bylaw 1500?*

As the pith and substance of the application does not concern interpretation and there is no question of fact or law to consider, it does not.

3. *The Applicant's request for interpretation.*

It is not necessary to respond to this.

*Application denied.*