

DIE BOARD RULING 2019-02

Hearing Details: Interpretation of Bylaw 6100 section 4.2. Can *The Landing* run a plebiscite instead of a referendum despite a change in their internal governing structure? Is it possible for the Plebiscite to run as a part of the Students' Union?

Style of Cause: *Reference Re The Landing* DIE Board 2019-02

Hearing Date: November 22, 2019

DIE Board Panel Members: Karamveer Lalh, Chief Tribune (Chair)
Shridhar Patel
Christian Zukowski

Applicants: Jared Larsen (VP Student Life)

Witnesses: Akanksha Bhatnagar (President),
Eric Kother (Manager of Student Services),
Katie Ring (Program Lead, The Landing)

Reasons *per curiam*. Written by Lalh CT:

Reference Question One as Submitted:

The Landing is up for a Plebiscite Review this upcoming year and we are requesting an interpretation of Bylaw 6100 section 4.2.

Specifically, can we [the Students' Union] alter the upcoming Plebiscite question from the original question to reflect the new structure of the Landing under the Students' Union?

Legislation

Bylaw 6100

A Bylaw Respecting Dedicated Fee Units

4. Review

- 1. Dedicated Fee Units shall be re-evaluated by plebiscite at least every five (5) years.*
- 2. The plebiscite question shall be drafted in the same manner as the original petition question, as outlined in Section 3.5 of this bylaw*
- 3. If a Dedicated Fee Unit fails to submit the proposed question by November 15, Bylaw committee will assume responsibility for drafting the plebiscite question.*
- 4. Bylaw Committee shall submit an approved plebiscite question to Students' Council for ratification by December 1.*

5. *Upon ratification by Students' Council, the chair of Bylaw Committee shall notify the Chief Returning Officer of the approved plebiscite question.*
 - a. *A representative from the board of the Dedicated Fee Unit, or designate, as outlined in the Bylaw 6000 Schedule shall be required to fulfill the role of side manager for the yes side of the plebiscite.*
 - b. *The Chief Returning Officer shall put out a call for the side manager of the no side of the plebiscite in accordance with Bylaw 2200.*
6. *Dedicated Fee Units 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.*
7. *Dedicated Fee Units that wish to raise their fee beyond CPI must first hold a Referendum as per Section 3 of this bylaw.*

Summary of Facts

[1] This application is an interpretation case about the necessity of *The Landing* to abide by the requirements of Bylaw 6100 section 4.2, reproduced above. None of the facts are in dispute.

[2] Where a successful referendum on a *Dedicated Fee Unit* is due for renewal, it can be renewed via a plebiscite. The procedure for a plebiscite is less stringent than that of a referendum. In 2018, after the referendum was successfully passed in 2014, the SU moved to bring *The Landing* under its direct administration by joint resolution. The change in administration impacted the Board composition as described in the following paragraph.

[3] In the original referendum question, *The Landing* specified the following question:

Do you support a \$1.50 fee per student per semester to fund The Landing, a student space for gender and sexual diversity located in the lower level of the Students' Union Building, open to all undergraduate students? If the referendum passes, The Landing's governance structure will become independent of the Student's (sic) Union. The Landing provides programming such as drop-in hours, peer mentorship groups, resources and referrals, events, education sessions, and volunteer opportunities.

The fee will be collected from full-time and part-time undergraduate students in the Fall and Winter semester; Augustana and Off-Campus students will be exempt.

Students will have the option to opt out online from the fee.

Funding areas:

- *Operating costs (staff wages and supplies)*
- *Programming, events, outreach and awareness*
- *Grants for projects supporting gender and sexual diversity*
- *Volunteer program*

Funding areas are determined and prioritized by The Landing's staff and Board. The Board will consists (sic) of 12 members from the following categories:

- *Three students at large*
- *One Students' Union Council member (selected by Students' Council)*
- *One Students' Union staff member*
- *One University staff member*
- *Three representatives from LGBTQ* serving organizations*
- *Two community members*
- *Program Manager of The Landing (non-voting member)*

Composition of the board may be changed by a joint resolution of the Board and Students' Council

The DIE Board notes that *The Landing's* original petition question has effectively been amended under paragraph 4.6(a) of Bylaw 6100 when Students' Council adopted the following general order at motion 2018-14/8a:

WHEREAS students agreed by referendum to pay a dedicated fee to fund certain programs and services by The Landing;

AND WHEREAS, the governance of The Landing is no longer functional;

AND WHEREAS The Landing is no longer able to fulfill its reporting requirements or carry out its mandate;

AND WHEREAS the membership of The Landing have passed a resolution asking the Students' Union to step in and integrate the programs and services offered by The Landing into Students' Union operations;

The Landing Board and Students' Council jointly resolve to amend the DFU so that The Landing is no longer required to have a governance structure that is independent from the Students' Union so that the Students' Union can carry out the mandate of The Landing until The Landing is subject to review under Bylaw 6100.

[4] The new plebiscite question proposed is reproduced below:

“The Landing is a student space for gender and sexual diversity located in the lower level of the Students' Union Building, open to all undergraduate students. The Landing provides programming such as drop-in hours, peer mentorship groups, resources and referrals, events, education sessions, and volunteer opportunities. A \$1.61 fee is collected from full-time and part-time undergraduate students in the Fall and Winter semester; Augustana and Off-Campus students are exempt. Students have the option to opt out online from the fee.

The fee pays for:

- *Operating costs (staff wages and supplies)*
- *Programming, events, outreach and awareness*
- *Grants for projects supporting gender and sexual diversity*
- *Volunteer program*

Administration of the fee is overseen by the Students' Union in conjunction with the LGBTQ2SPIA+ Student Advisory Committee. At least one member of Students' Council shall also sit on this board.

Do you support the continuation of the Landing's fee?"

[5] As the governance structure has changed between the time of the original referendum and the plebiscite, *The Landing* and Students' Union are consulting with DIE Board to determine if their plebiscite question is compliant with bylaw. We note that the \$1.61 fee is inflation adjusted according to CPI from the original \$1.50 levy.

[6] The oral submissions from the Applicant and Witnesses were helpful in determining the outcome of this reference, and this Board thanks them for their contributions.

[7] From the statements made by the Applicant and the Witnesses, this Board is satisfied that the operations, fee structure, opt out procedure, and services are the same as what was contemplated in the original referendum question and the renewal plebiscite. All agree that the substantial change was because of the changes in governance structure to reflect that the Students' Union was more involved in their day to day operations. This change to *The Landing's* governance structure was as a result of the realities of operating *The Landing* and was agreed upon by all parties.

Analysis

[8] The question before this board is whether *The Landing* can pursue a plebiscite instead of a referendum.

[9] Bylaw 6100 specifies one instance where a dedicated fee unit slated for renewal should be conducted via a referendum, and that is where the Dedicated Fee Unit wishes to raise their fee beyond CPI. It also states that the plebiscite question *shall be drafted in the same manner as the original petition question, as outlined in Section 3.5 of this bylaw.*

[10] Section 3.5 of the bylaw outlines the procedure a successful referendum question must take before it can be voted on. Section 3.5 is reproduced below:

The Bylaw Committee shall approve within thirty (30) days from receiving the proposal, a petition question that reflects the original intent of the proposal and outlines the following:

- a. The purpose of the fee;*
- b. The amount, per student, per term, of the fee;*
- c. The composition of the committee or board overseeing administration of the fee;*
- d. A provision for the appointment of minimum one Students' Council member by Students' Council to the board or committee overseeing administration of the fee, as a voting member;*
- e. How the fee is administered to part time, Augustana, and off campus students;*
- f. Whether or not the fee applies to the Spring and Summer terms;*

- g. *If any portion of the fee is for a University facility or service, a provision to guarantee access by any Students' Union member to that facility or service; and*
- h. *If students may opt out of paying the fee, a provision for them to do so online, provided by the Students' Union*

[11] The new question, freestanding, satisfies the criteria outlined in Section 3.5.

[12] The question then becomes, if the new question satisfies the criteria outlined in Section 3.5, then does it also satisfy section 4.2?

[13] As above, the purpose of section 4.2 is to ensure that the plebiscite is conducted in the same manner as the original referendum question: to ensure that the plebiscite outlines a number of details about the purpose of the fee that are of direct relevance to students. It does not say that the plebiscite question shall be the same as the original referendum question, only that it should be drafted in the same manner as Section 3.5.

[14] We believe if the Students' Union intended for the same question to be recycled from the referendum to the plebiscite, they would have stated as such.

[15] Section 4 of Bylaw 6100 outlines a procedure for the approval of a new question. This suggests that the Students' Union contemplated a change in question to be possible, if not expected. Dedicated Fee Units are a typical way for a group on campus to be granted a substantial amount of money.

[16] For groups that just succeeded in their first referendum, it is unsurprising that they could realize that the exact proposal approved by their referendum question does not represent a realistic way to govern their student group. The Students' Union specifically stated that referenda are to only be conducted for a Dedicated Fee Unit up for renewal when the Dedicated Fee Unit is to be increased. In all circumstances, a Dedicated Fee Unit must satisfy Section 3.5 which provides for an opportunity for the student group to inform students how their money is being spent. *The Landing* also have amended their internal governance as described in paragraph 4 reflecting this allowance for changes post referendum.

[17] As a result, the plebiscite question reflects their new reality and still satisfies the requirements of the bylaw.

Conclusion

[18] The process for conducting a referendum is a higher burden than that of a plebiscite. The Students' Union explicitly stated that there is one circumstance where the referendum process must be used, and that is for a fee increase.

[19] The DIE Board rules that the proposed question satisfies section 4.2.

[20] If the Students' Union believes that there are other circumstances where a student group with an existing Dedicated Fee Unit must use the referendum procedure instead of the plebiscite procedure, they must explicitly state this in the bylaw.

Reference Question Two as Submitted:

Can we run this Plebiscite while the Landing exists under the Students' Union or does it have to be an independent body?

Facts

[21] As above in paragraphs 3 and 7, the Board is satisfied that the internal operations of *The Landing* have not changed save for *The Landing's* oversight board.

[22] There is no bylaw that specifically names who can a Dedicated Fee Unit. Simply that a proposal for a Dedicated Fee Unit satisfies the provisions in Bylaw 6100. Bylaw 6100 Section 3 specifies an "Entity" that wishes to establish a Dedicated Fee Unit needs to submit a proposal to the Students' Union.

[23] "Entity" is not defined in the definition section of Bylaw 6100, so there is nothing to limit its typical broad meaning.

[24] The definition section does refer to "Registered Student Group", but "Registered Student Group" is not referred to again in any place other than section 2.2.

Analysis

[25] There is no reason in bylaw suggesting that there is a restriction on who can submit a proposal for a Dedicated Fee Unit.

[26] *The Landing* is maintaining its day to day operations independently of the Students' Union, the main change being that the Students' Union has a greater oversight role with the organization. The Dedicated Fee Unit is still paid out to *The Landing* and there is no mixing with other Students' Union finances.

[27] As there are no restrictions on who can propose a Dedicated Fee Unit, it does not matter if *The Landing* is independent or not. It follows that if anyone can propose a referendum on a Dedicated Fee Unit, then that same person/group can also conduct a plebiscite to renew it. There is no provision specified in bylaw to exclude the Students' Union itself from the Dedicated Fee Unit process.

[28] The Bylaw makes reference to a "Registered Student Group" in its definitions. If only Registered Student Groups can use the Dedicated Fee Unit Process, then this may be an issue. However, the Bylaw merely states "Entity," so this definition cannot be given this effect.

Conclusion

[29] As anyone can initiate the process for a Dedicated Fee Unit referendum, it does not make sense for the process to be restricted at the time for a renewal plebiscite. Therefore, the Students' Union can run this plebiscite while *The Landing* exists under the Students' Union.

[30] We recommend that the Students' Union review Bylaw 6100 and clarify the definitions. Including "Registered Student Group" in the definition section adds confusion as it is not ever referenced in the subsequent sections of that bylaw.