

## **DIE BOARD RULING 2019-04**

Hearing Details: Interpretation of Bylaw 2200 and Bylaw 6100 pertaining to waiver of sections of bylaw for the benefit of *The Gateway* in their pursuit of a DFU referendum.

Style of Cause: *Reference Re The Gateway 2019-04*

Hearing Date: December 9, 2019

DIE Board Panel Members: Karamveer Lalh, Chief Tribune (Chair)  
Shridhar Patel  
Krishen Singh

Applicants: Andrew McWhinney (Editor in Chief, *The Gateway*)

Witnesses: Pia Co  
David Draper

Reasons *per curiam*, delivered by Lalh CT:

### **Reference Question One as Submitted:**

In Bylaw 2200, section 6.6, it is stated that “Students’ Council shall have the authority to call a plebiscite or referendum without a petition.” However, in Bylaw 6100, section 3.10, states that "Students’ Union services or operations may request that Council consider their proposed question for a Referendum..." There is confusion around where [*The Gateway* falls] under, and if Council has the power to waive our petition process, especially given the situation with the ASC DFU proposal last year.

### **Legislation**

#### Bylaw 2200

#### A Bylaw Respecting the Executive Committee and Board of Governors Representative Elections, Plebiscites and Referenda of the Students’ Union

##### *6. Plebiscite and Referendum Initiation*

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.*
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.*
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;*
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.*
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.*
6. *Students' Council shall have the authority to call a plebiscite or referendum without a petition.*
7. *Prior to being approved by Council all plebiscite and referendum questions must be drafted by the Bylaw Committee.*

#### *7. Acceptance of Plebiscite and Referenda Petitions*

...

2. *Where a valid petition bearing the names, signatures, and student identification numbers of at least fifteen percent (15%) of the total membership of the Students' Union as of February 1 of that academic year requesting a referendum on a given Students' Council-approved question is submitted to the C.R.O., then a referendum 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.*

#### Bylaw 6100

#### A Bylaw Respecting Dedicated Fee Units

##### *3. Creation*

1. *Dedicated Fee Units shall only be created after a successful Referendum.*

2. *Entities that wish to establish a Dedicated Fee Unit shall submit a proposal to the main office of the Students' Union by November 15th, of the year before the fee is to be implemented.*
3. *The proposal must outline at minimum:*
  - a. *The purpose of the fee;*
  - b. *The amount, per student, per term, of the fee;*
  - c. *Whether students are able to opt out of the fee;*
  - d. *How the fee is administered to part time students, Augustana and off-campus students;*
  - e. *Whether or not the fee applies to the Spring and Summer terms;*
  - f. *Any other requirements specific to the type of fee being proposed.*
4. *Upon receipt, the proposal shall be immediately forwarded to the Bylaw Committee.*
5. *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*
6. *If the Bylaw Committee is perceived to have failed in this matter, the issue may be brought to the Disciplinary Interpretation and Enforcement (D.I.E.) Board of the University of Alberta Students' Union by the entity proposing the question.*
7. *Students' Council will not allow for the implementation of a Dedicated Fee Unit that:*

- a. *would cause the Students' Council to breach its fiduciary responsibility to the Students' Union; or*
  - b. *supports activities that are beyond the scope and mandate of the Students' Union as outlined in the Post Secondary Learning Act.*
8. *For the purposes of determining the scope and mandate of the Students' Union, Students' Council will consider whether the activities that are in questions would*
  - a. *provide services that directly benefit the University of Alberta campus community, including students in their pursuit of a post secondary education; or*
  - b. *eliminate obstacles for students in their pursuit of a post secondary education at the University of Alberta.*
9. *The entity wishing to establish a fee must return a signed, valid petition to the Chief Returning Officer of the Students' Union as per Bylaw 2200 in order to initiate a Referendum.*
10. *Students' Union services or operations may request that Council consider their proposed question for a Referendum on a Dedicated Fee Unit without conducting the petition subject to the following conditions:*
  - a. *the question has been drafted by Bylaw Committee;*
  - b. *the question satisfies all conditions outlined under section 3.5 of this bylaw; and*
  - c. *if the referendum is successful, the service or operation ceases to be provided by the Students' Union*
11. *Except as otherwise stipulated in this bylaw, any Referendum shall be conducted in accordance with Bylaw 2200.*

#### 4. Review

...

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] The first question of this bylaw interpretation application is about the necessity of *The Gateway* to conduct a petition prior to conducting a referendum. *The Gateway* wishes to increase their fee beyond CPI. They have had their referendum question approved in advance by Students' Council. None of the facts are in dispute.

[2] The clauses cited above outline the rules and procedures required when a Dedicated Fee Unit is to be initiated or modified.

[3] *The Gateway* is the University of Alberta's student journalism society. It is a registered society under the *Societies Act, RSA 2000, s-14*. It operates independently of the Students' Union.

[4] *The Gateway* has requested DIE Board to determine whether Students' Council has the ability to waive the requirement for a petition. Students' Council has not indicated whether or not they would grant the waiver citing this uncertainty about their ability to waive the requirement.

[5] In their submission, *The Gateway* references "...the situation with the [Aboriginal Students' Council Dedicated Fee Unit] proposal...". This case was heard by this Board in *Cutarm v Students' Council (Speaker)* 2018-10 [*Cutarm*].

[6] The case in *Cutarm* was about an improperly approved referendum where the Students' Union mistakenly waived the petition requirement for the Aboriginal Students' Council.

[7] The DIE Board is not strictly bound by precedent or by common law but may refer to either as persuasive sources.

### **Analysis**

[8] In order to conduct a referendum to create or modify a Dedicated Fee Unit, Students' Union bylaw outlines the procedure for doing so in Bylaw 6100.

[9] Bylaw 6100 section 4.7 states that a referendum must be held if a DFU is to be raised beyond CPI. As cited above, that referendum shall follow the rules outlined in section 3 of Bylaw 6100.

[10] Section 3 of Bylaw 6100 states at subsection 9 that "*The entity wishing to establish a fee must return a signed, valid petition to the Chief Returning Officer of the Students' Union as per Bylaw 2200 in order to initiate a Referendum*"

[11] Bylaw 2200 states the criteria for a valid petition at section 7.2, reproduced above.

[12] The question as to whether the Students' Union can rely on Bylaw 2200 section 6.6 to waive the requirement for a petition for an entity other than Students' Council was addressed in *Cutarm*:

[28] Bylaw 6100 section 3.1 is clear that a Dedicated Fee Unit may only be created with a successful referendum. A referendum may be held in one of two ways. The first is provided by Bylaw 2200 section 6.6: "Students' Council shall have the authority to call a plebiscite or referendum without a petition." The second is a more complex process that only applies to entities other than the Students' Council. That process is governed by Bylaw 6100 section 3.

[29] The central issue in this application is whether these routes are mutually exclusive, or whether they are options that Students' Council can access at their leisure. In our case, the process under Bylaw 6100 section 3 was abandoned partway through, and Students' Council relied on the general procedure under Bylaw 2200 to hold a referendum without following the remainder of Bylaw 6100 section 3. In our view, this was impermissible.

[30] The statutory interpretation question here is straightforward. *Scott v Chief Returning Officer DIE Board Ruling 2016-01*, although not binding on us, lays out the proper test for statutory interpretation. In this case, the following principles are at play: first, the provisions have to be read in context of the entire body of rules; second, each provision should be given meaning, the Bylaws should not be read in a way that makes some provisions meaningless; and third, the specific overrides the general.

[31] Context of the provisions is important. A referendum held by Students' Council is quite different than a referendum held at the urging of another group with the goal of creating a Dedicated Fee Unit. Bylaw 6100 section 3 sets out a process that is more stringent in the second case because the referendum impacts fees that are not administered by the Students' Council. More protections are needed against mismanagement or the misdirection of fees. Students' Council has an obligation to ensure those funds are used properly, and Bylaw 6100 is designed to help them ensure they fulfill this obligation. The arm's length nature of a Dedicated Fee Unit needs more scrutiny under the Bylaws, and that is what Bylaw 6100 is set up to provide.

[32] Bylaw 6100 must be given full meaning. For this panel to decide that Students' Council can simply hold a referendum despite non-compliance with the Bylaw, relegates it to the status of a mere suggestion. The specific requirements in section 3.2 and 3.3 would be made meaningless.

[33] Finally, the specific overrides the general. Although Bylaw 2200 creates a general ability for Student's Council to hold a referendum at their behest, in the specific case where an outside entity wants to create a Dedicated Fee Unit, the more specific Procedure in Bylaw 6100 section 3 must apply.

[34] Applying these concepts, although Students' Council can hold a referendum on their own volition and with no other specific procedure, if an outside entity wishes to create a Dedicated Fee Unit, they must follow Bylaw 6100 section 3. Student's Council cannot step in part way through that process and decide that they are going to hold the referendum despite the process. It is clear to this panel that this is what happened here.

[13] Applying the above to this current scenario, the Students' Union cannot waive the petition requirement for an outside student group that is not part of the Students' Union.

[14] In *Cutarm*, this panel concluded that the referendum conducted for the Aboriginal Students' Council was conducted improperly. However, this panel decided that nullifying the result of that referendum due to improper procedure would unfairly harm the ASC when the Students' Union had made representations to the ASC that the referendum was indeed valid.

[15] In this case, *The Gateway* still has several weeks to collect the signatures necessary to satisfy the February 1<sup>st</sup> deadline stipulated in bylaw.

[16] Specifically addressing Bylaw 6100 3.10, this clause as written serves a specific function. It is intended to allow Students' Union services or operations to conduct a referendum in the event that the Students' Union is no longer wishing to provide a service, but that service is instead to be continued under an independent group. This allows a service or operation to hold a referendum without a petition. This lower threshold is intended to avoid disruption of a SU service if the petition threshold cannot be met. The bylaw is not intended to allow already independent student groups to bypass the petition process.

[17] Therefore, if *The Gateway* wishes to submit a valid referendum question, they must satisfy the petition requirement outlined in Bylaw 2200 section 7.2.

### **Conclusion**

[18] Current bylaw does not permit the Students' Union to extend its ability to waive the petition requirements for referenda to groups independent of the SU. Therefore, *The Gateway* must submit signatures to the SU per Bylaw 2200 section 7.2 in order to submit a valid referendum.

[19] The DIE Board has issued a ruling on the interpretation of this statute recently, and it is not apparent that deviating from that prior interpretation would result in an injustice to *The Gateway* or the student body as a whole, so there is no reason at this time to deviate from that interpretation.

[20] If the Students' Union believes that they should retain the ability to extend a waiver of some part of the Dedicated Fee Unit procedure to an independent student group, they must explicitly say so in the bylaw.

### **Reference Question Two as Submitted:**

Is there a way that if *The Gateway* were to circulate a petition that it could be done digitally?

### **Facts**

[21] *The Gateway* is concerned about the logistics required to conduct a petition that requires 15% of the student body to sign in order to be valid.

[22] Bylaw 2200 section 7 does not define what constitutes a signature.

[23] In the past, valid petitions and signatures were conducted on paper.

[24] Bylaw 2200 section 7 states that valid petitions are to be submitted to the Chief Returning Officer.

### **Analysis**

[25] Bylaw is silent on what constitutes a valid signature.

[26] Therefore, it is up to the decisionmaker that determines the validity of the petition to decide what constitutes a valid signature.

[27] The Chief Returning Officer is the decisionmaker who determines compliance with elections bylaws. Presumably, the CRO would determine what constitutes a valid signature.

### **Conclusion**

[28] The Students' Union bylaw is silent on what constitutes a valid signature. It is the responsibility of the Chief Returning Officer to assess whether a petition is valid.

[29] I recommend that *The Gateway* consult with the CRO to determine these details. The Students' Union retains the right to clarify the definition of a signature via bylaw amendment.