

STUDENTS' COUNCIL LATE ADDITIONS

Tuesday November 1, 2005
Council Chambers 2-1 University Hall

2005-14/2

SPEAKER'S BUSINESS

2005-14/2a (ii)

Announcements – If you are looking for a place to rent there are fellow Councillors looking for roommates. If you are interested let Jenn know.

2005-14/6

REPORTS

2005-14/6d

Justin Kehoe, Vice President (Student Life)

Please see document LA 05-14.01

2005-14/6e

Jason Tobias, Vice President (Operations and Finance)

Please see document LA 05-14.02

2005-14/7

BOARD AND COMMITTEE REPORTS

2005-14/7b (i)

Bill #12 – Administrative Assistant to Council Reporting Structure (drafting)

Please see document LA 05-14.03

2005-14/7b (ii)

Bill #3 – Members of Council Legitimacy (drafting)

Please see document LA 05-14.04

2005-14/7e

Budget and Finance Committee – October 31, 2005

Please see document LA 05-14.05

2005-14/7e (i)

The Budget and Finance Committee recommends that Bill # 17 **be read a first time.**

Bill #17 – Student Involvement Endowment Fund Fee Repeal (sponsor; LEWIS)

Principles (first reading)

1. That the Students' Union cease collection of the Eugene L. Brody and Student Involvement Endowment Fund fees.

2005-14/7f

Discipline, Interpretation, and Enforcement Board – October 26, 2005

Decision 2-Meaning of Oversee
Decision 3-Faculty membership fees
Decision 4-Bylaw 2400
Decision 5- Law -bylaw 2400

Please see document LA 05-14.06

2005-14/10

INFORMATION ITEMS

2005-14/10b

Rules of Order relating to Main Motions That Are Not in Order.

Please see document LA 05-14.07

Justin Kehoe, Vice President (Student Life)
Report to Students' Council
November 1, 2005

Submitted: October 31, 2005

Good Evening Council,

Revolutionary Speakers Series: the Thomas Homer-Dixon event was great, and although we had a last-minute surge of attendance, it was not as high as we were aiming. We are currently looking at immediate strengthening of our ground level promotions, and hopefully some analysis of longer-term solutions. Our next event will be on November 30.

A main priority over the last couple weeks has been the health and wellness review that was deferred to the Executive Committee by Students' Council. Working with Vice President Tobias, we are well on course towards an extensive analysis, and are by no means limiting ourselves to specific areas. The Senate Task Force on Student Engagement will also be a prime focus: we are aiming to provide as much valuable student input into this process as possible.

While I'm sure many of you have seen it in the Gateway, after going through the research and numerous calls between our legal counsel, the Dean of Students Office, and our tech department, the SU Webboard will be returning. An announcement should be posted on the main SU webpage once tech has completed everything.

Meeting with Service Directors is ongoing, and I had a recap of Waste Awareness Week and eco-discount discussions with the ECOS Director. There have been some sponsorship discussions and I am working out an improved distribution of sponsorship materials as volunteer appreciation. I've been investigating making reforms to one of our other services, the SU Handbook, specifically spring/summer months and the faculty association sections. Along with the Student Distress Centre Director and Campus Food Bank Executive Director, I met with a visitor from South Africa to explore the similarities and differences between health-related student services offered here and at the University of Johannesburg.

I recently attended the Campus Law Review Committee, and presented to the Council of Faculty Associations on alcoholic events, bar security and other related issues. Pete (AVPSL) and I attended our first official University Athletics Board meeting and are looking at mutually beneficial relations between the SU and our varsity athletes. We have been involved in planning for a variety of events, including AntiFreeze, the Casino, the Drag Show, and LHSA Ship Night.

The Campus Food Bank's annual Trick or Eat was a great time last night. The weather was great, the neighbourhood was generous, and fun times were had. At the end of the night, over 8,000 pounds of food and toiletries were collected, and it looks like they will break last year's record.

Justin Kehoe, Vice President (Student Life)
Report to Students' Council
November 1, 2005

Upcoming:

- November 2: Ridley Bent @ SUBstage, 12:00pm
Ridley Bent @ Powerplant
The Dewey's Project @ Dewey's
Karaoke @ RATT
- November 3: Meeting with LHSA President
- November 4: Electronic Security Systems w/ Facilities Management
Exclaim! Tour @ Powerplant
- November 5: Exclaim! Tour @ Powerplant
- November 7: Residence Services meeting
Bar Security Meeting @ City Hall
- November 8: SUB Movie Night: Ferris Bueller, Sixteen Candles
- November 9: Workplace Health Promotions Advisory Committee
Campus Food Bank Board meeting
SLAC, PC, AFPC meetings
The Dewey's Project @ Dewey's
Karaoke @ RATT
- November 10: Marble Engine, Deep Fine Grind @ Horowitz
- November 12: Moonbox @ Powerplant
- November 14: Council on Student Affairs
- November 15: SUB Movie Night: This is Spinal Tap, Fubar

REPORT OF THE VICE PRESIDENT OPERATIONS AND FINANCE

November 1, 2005

Clarification: Last meeting I reported that RATT was \$4,000 behind budget for the month of September. This is a slightly misleading number as RATT is \$1,471 ahead of budget for the year.

Microwaves: There are another three microwaves being installed in SUB. Let us speak no more of it.

BFC has now met twice and I'm looking forward to more productive discussion as we move closer to budget season. We are also beginning preliminary discussions on fees, capital allocations and operating priorities. Suffice to say, I'm totally stoked.

Health and Wellness: Kehoe and I are working on this. I've asked Jerry Daley to prepare some notes on pricing and menu selection, which will be compared to the data from our last major survey.

Bylaw 1100
A Bylaw Respecting the Executive Committee of the Students' Union

President

6. The responsibilities of the President will be to:
 - a. Act as the official Students' Union spokesperson on all student issues;
 - b. Coordinate the Students' Union involvement with all external media, in conjunction with the Vice President (External);
 - c. Dedicate time to work with all of the Vice Presidents and in each of their portfolios;
 - d. Coordinate the Students' Union campus outreach activities;
 - e. Staff Management;
 - f. Provide long-term strategic direction for the Students' Union.
 - g. Supervise the affairs of the Students' Union at the direction of the Executive Committee;
 - h. Ensure that programs are implemented in accordance with the direction of Students' Council and accepted policy of the Students' Union;
 - i. Further and maintain good external relations and representation with student, University, government bodies, and the general public;
 - j. Provide administrative direction to the General Manager of the Students' Union, at the direction of the Executive Committee;
 - k. Represent the interests of students as a member of General Faculties Council;
 - l. Serve as a Students' Union nominee to the Board of Governors, and present a student point of view to the Board of Governors;
 - m. Serve as Chair of the Executive Committee;
 - n. Report to the Speaker of Students' Council for the purpose of all Council business.

Bylaw 100
A Bylaw Respecting The Students' Council

Eligibility Requirements

7. Each voting member of Council referred to in Section 5 will be:
- a. a member of the Students' Union within the meaning of Article VIII of the Constitution; and
 - b. registered as either:
 - i. an undergraduate student in the Faculty, School, or College they represent; or,
 - ii. the registered student group that they represent.

7.1 The Speaker will request a report from the Office of the Registrar and Student Awards each term to confirm that all individuals occupying positions that require them to be undergraduate students meet all requirements set out in Bylaw.

MINUTES

2005-03

Budget and Finance Committee

Monday October 31, 2005

ATTENDANCE: Graham Lettner Cameron Lewis
 Jason Tobias Brian Ceelen

CALL TO ORDER: 5:13 p.m.

APPROVAL OF
AGENDA: Agenda was amended as follows:
 a. Levy
 b. Eugene L. Brody/SIEF
 c. Fees

OLD BUSINESS: There was no old business

NEW BUSINESS:

a. Levy

BFC considered the Gateways request for a change in its fee structure. Lewis pointed out that although the request was not strictly under the purview of BFC, BFC was in a position to make a judgment on whether or not the submission should go to Council. Motion was tabled until next meeting.

b. ELB/SIEF

Tobias reported that when SIEF was created it was intended to be self sustaining within four years. Sixteen years later, the fee is still being collected and there is currently a reserve built up of ~\$290,000. This is almost enough to be truly self sustaining. Eugene L. Brody fund represents an additional ~\$38,000 of funds. BFC felt that collection of the ELB fee was well outside the mandate of the SU.

Lewis/Ceelen moved that BFC recommend that the Students' Union cease collection of the Eugene L. Brody and Student Involvement Endowment Fund fees.

BFC is waiting for further information on the state of the SUs long term investments before making a recommendation on the placement of the remaining funds.

c. Fees

BFC discussed the Students' Unions' current fee structure.

NEXT MEETING: Monday November 7, 2005 at 5:00 p.m. in the Lower Level Mtg. Room

ADJOURNMENT: 6:05 p.m.

D.I.E. Report to Students' Council November 1, 2005

The Discipline, Interpretation, and Enforcement Board have made the following rulings:

Ruling # 2005/2006-02

Reference Re: Bylaw 4000, section 12(c)

Date heard: October 26, 2005

Appearing for the D.I.E. Board: Presiding Chair: Jamie Gruman Tribunes: Justyna Herman, Catherine Lepine

Appearing for the Applicant: Stephen Kirkham

Appearing for the Respondent: Greg Harlow (The Speaker) Rachel Woynorowski (CRO)

Interveners present: Mustafa Hirji

Case summary:

Statutory interpretation should be done using existing interpretive aids. In statutory interpretation the intention of the legislators is only one aspect to examine, and not meant to be utterly determinative. Legislative intent should impute our understanding of the statute. D.I.E. Board should try to use the literal approach in making a statutory interpretation, as a means of giving effect to the specific wording of the statute. If after employing the literal approach, ambiguity still exists, then other statutory interpretive aids should be employed. With respect to "oversee", in the context of the section it takes on a passive meaning, without directory powers being afforded to CAC.

REQUEST FOR INTERPRETATION

- 1) What is the distinction between the terms "oversee" and "report"?
- 2) What is the interpretation of the words "shall oversee" in Bylaw 4000(12)(c)?
 - a) What is the scope of the duties, responsibilities, and power of the Council Administration Committee (CAC) with respect to the Speaker of Student's Council (The Speaker) and the Chief Returning Officer (CRO)?
 - b) How do the duties, responsibilities, and power held by CAC and The Speaker and CRO "report" to Students' Council, but are "oversee[n]" by the CAC?

RELEVANT LEGAL PROVISIONS

Bylaw 4000, Section 12(c)

ANALYSIS

The questions proposed to D.I.E. Board are ones based purely on statutory interpretation. D.I.E. Board does agree with The Speaker's assertion that, when making an interpretation of legislation, D.I.E. Board should err on the side of caution, as opposed to making a strict and concise meaning. The true question of all parties to the request for interpretation was whether the duties and responsibilities of CAC are procedural or substantive in nature.

D.I.E Board was encouraged to take an originalist construction of the section in order to determine the meaning of "oversee". Originalist construction means making a determination as to the intention of the legislative drafters. In this instance, The Speaker and CRO, agreed that the intention of the legislators was to create a mechanism to encourage the flow of information within smaller groups of the CAC to higher levels within the Students' Council. While the Amicus Curiae stated that this is irrelevant to statutory interpretation, rather we should apply a student's interpretation of the bylaw. D.I.E. Board in this instance feels it important to consider the purpose and aim of a statute in making a statutory interpretation. The D.I.E. rejects this argument, and accepts that of The Speaker. Statutory interpretation should be grounded in reason, and well founded interpretive aids. Doing so will lead to more consistent decisions and interpretations.

It is true that the intention of the legislature drafters cannot always be ascertained with absolute certainty, having read the statute and the relevant section, it does have some bearing on the interpretation of "oversee". Intention of the legislators is only one aspect to examine, and not meant to be utterly determinative. In this instance, the goal of the legislators was to increase the flow of information, and should impute our understanding of the Bylaw.

The first interpretative approach to determine the meaning of "oversee", is to use the plain and ordinary meaning, otherwise known as the literal approach. Here the aim is to interpret the words of a statute according to their plain, ordinary, and literal sense, regardless of any hardship, inconvenience, or absurdity caused. In this instance, "oversee" would be the colloquial meaning of the word- to watch or direct. In this instance, this is the ultimate question, does it mean to passively watch (procedural), or to actively direct (substantive). Where the meaning cannot be derived from the literal approach, then other interpretative aids must be employed.

Perhaps one of the most useful tools in statutory interpretation for this reference is the maxim *noscitur a sociis*, meaning to know a thing is to know its associates. The maxim works by comparing the debatable word with other words or phrases in the section being interpreted. Unclear words should be given whatever meaning makes the most sense given the context in which the relevant word resides. Looking to section 12 of Bylaw 4000 (disregarding 12(a) with respect to standing orders), the rest of the subsections refer to "shall oversee", or "shall recommend". Employing the maxim, you would read oversee with respect to recommend. In this instance, recommend is a passive and non binding action. Thus, oversee would be read in that context. Considering the two

meanings of “oversee”, it can only mean to passively watch, given that recommend is also passive.

Having determined that the use of “oversee” is passive and therefore procedural, this seems consistent with the objectives of the legislative drafters. D.I.E. Board accepts the argument, that had Students’ Council wanted the CAC to be directive, it would have done so in a plain and direct fashion.

Question 1:

“Oversee” in the context of section 12 connotes a meaning of a passive observer. This is not to say that the CAC may only observe and nothing more. They are fully capable of making recommendations as to the actions of the Speaker, and the CRO, but this is the extent of their power. “Oversee” in this context does not mean that any recommendations are binding. Having read Bylaw 4000, and Bylaw 100, the use of “report” appears to be a more active, and applying to those positions with the delegated authority to make binding decisions, like Standing Committees. In this instance, if report were applied to CAC, it would have a passive meaning related to recommend. Since Students’ Council clearly did not delegate power to CAC to make binding decisions (outside of section 12(a) of Bylaw 4000), “report” cannot be applied to all bodies within the Students’ Council with one strict meaning.

Question 2:

a) Looking to section 12 in its entirety, the duties, responsibilities and powers of CAC, are procedural. With respect to The Speaker and CRO, CAC is entitled to:

- 1) Observe the procedure of The Speaker, and CRO
- 2) Recommend a candidate for the position of CRO

b) Reading the relevant bylaws it seems clear that CAC is a reporting body to the Students’ Council for the purpose of expediting communication between all bodies of the Students’ Council. Having read the relevant bylaws, it seems clear that the mandate of the CAC is to report procedural errors and make recommendations to the Students’ Council. One role of CAC is to oversee and assess the procedure of The Speaker and CRO. The recommendations to Students’ Council are not necessarily binding. While both bodies “report” to the Students’ Council, this does not necessarily connote the same meaning, given that The Speaker and CRO have active decision making functions. Given that the role of CAC is to increase communication, this does mean that the CRO and The Speaker do have a responsibility to make themselves available to the CAC.

RECOMMENDATIONS

If it is the intention of Students’ Council that CAC is to have greater delegated decision making authority, they should do so in plain and direct language and redraft section 12(c) of Bylaw 4000. If not, nothing further is needed under section 12(c).

Ruling # 2005/2006-03

Reference Re: Bylaw 8451 and Bylaw 2400

Date heard: October 26, 2005

Appearing for the D.I.E. Board: Presiding Chair: Jaimie Gruman, Tribunes: Justyna Herman, Catherine Lepine

Appearing for the Applicant: Mat Johnson, VP Academic, Rachel Woynorowski, CRO

Case summary:

The questions referred to D.I.E. Board deal with the interpretation of Bylaw 8451 and Bylaw 2400. The referendum that is required in order to create a Faculty Association Membership Fee under Bylaw 8451 is not subject to Bylaw 2400. Bylaw 2400 is created with the purpose of governing the initiation, organization and interpretation of any referendum or plebiscite held by the Students' Union. Bylaw 8451 gives the right to Faculty Associations to hold referenda and not to the Students' Union. If Bylaw 2400 governed the initiation, organization and interpretation of a referendum held by a Faculty Association, it would lead to unreasonable result. Specifically, it would entitle all members of the Students' Union to vote in such a referendum. This could not have been intended by the legislators. As such, D.I.E. Board recommends that Students' Council review Bylaw 8451 in light of Bylaw 2400.

REQUEST FOR INTERPRETATION

1. Does the steps of creation outlined in section 6 of Bylaw 8451 need to be done in order (a) through (e)?
2. Does the phrase "the vote shall adhere to the relevant Students' Union bylaws" mean that it must follow the SU referendum process including prior approval of the question?
3. How must the vote and voting procedure be conducted to be in compliance with relevant Students' Union bylaws?
 - a. Must the approved question be voted on during any election conducted by the Students' Union?
 - b. Must the question appear on a Students' Union produced ballot?
 - c. Must the ballots be counted by the Students' Union, or must the Students' Union verify the result of the referenda?
4. Who is eligible to vote in a faculty fee referenda?
 - a. Are all students enrolled in the faculty as defined by bylaw 8451 eligible to vote (excluding all other faculties)?

b. Or in compliance with relevant election bylaws (bylaw 2400) are all members of the Students' Union as defined in bylaw 2400 eligible to vote on a referenda in question?

RELEVANT LEGAL PROVISIONS

Bylaw 2400

2. For the purposes of this bylaw:
 - a. a "member" shall be a member of the Students' Union as defined by Article 1 of the Students' Union Constitution;
 - e. a "referendum" shall be a vote, open to all members except the C.R.O., held on a given question and whose result is legally binding upon the Students' Union;
3. This bylaw shall govern the initiation, organization, and interpretation of any plebiscite or referendum held by the Students' Union.

Bylaw 8451

2. The purpose of the "Faculty Association Membership Fees" is to provide financial support for student activities and the creation of opportunities for student involvement.
3. For the purposes of this Bylaw:
 - b. "Faculty Association Membership Fee" means a fee created specifically for a designated faculty, administered according to the provisions set out in this bylaw.
4. A Faculty Association Membership Fee will only be collected if approved by a 50% +1 majority of the voting **students in that Faculty**, and a minimum voter turnout of 15%. Each student must be given the opportunity to vote in a referendum, **subject to this and other relevant Students' Union bylaws**, and to the bylaws of the Faculty Association.
6. **The following steps must be followed in order to create a Faculty Association Membership Fee:**
 - a. The Faculty Association shall consult with its departmental associations to identify purposes to which the funds collected would be applied.
 - b. Notice of the intent to create a Faculty Association Membership Fee must be forwarded to the Students' Union and the Office of the Registrar by January 15 of the year in which the fee is to be included as a part of the overall fee assessment.
 - c. A proposal outlining the amount, lifetime, scope, allocation, refund mechanism and distribution of the proposed Faculty Association Membership Fee must be submitted to and approved by Students' Council. This proposal, as approved, governs the implementation and operation of the Faculty Association Membership Fee. The proposal must also address financial oversight over the funds raised by

the Faculty Association Membership Fee.

d. The implementation of the fee will be decided by a referendum, in which **all students in the Faculty** must be given the opportunity to vote. **The vote shall adhere to the relevant Students' Union bylaws.**

e. A formal request to include the Faculty Association Membership Fee assessment for all students within the Faculty must be forwarded to the Office of the Registrar by 1 April, of the year in which the fee is to be initiated. The request must include:

- i. A Short description of the proposed fee;
- ii. Dollar amount to be charged per student, per term;
- iii. Start date to begin collecting the fee;
- iv. End date to cease collecting the fee;
- v. Confirmation of the referendum results;
- vi. Endorsement of the fee by the responsible body of the Faculty Association;
- vii. Endorsement of the fee by Students' Council

ANALYSIS

Question #1

Mr. Johnson and Ms. Woynorowski submit that section 6 of Bylaw 8451 is ambiguous as it can be understood as having two meanings. Section 6 states: *The following steps must be followed in order to create a Faculty Association Membership Fee.* On the first reading, the section requires that the steps listed in subsection (a) to (e) of section 6 must be taken *with the purpose of creating* a Faculty Association Membership Fee. On the other hand, section 6 can be understood as requiring that the steps listed in subsection (a) to (e) of section 6 be followed *in sequence* to create a Faculty Association Membership Fee. Mr. Johnson and Ms. Woynorowski submit that the second reading of the section is correct.

D.I.E. Board agrees with the submission of Mr. Johnson and Ms. Woynorowski and holds that it was the intent of legislators to create a list of events that have to be followed in specified order so that a Membership Association Membership Fee can be created. Section 6 read as a whole, confirms that this is, in fact, the correct interpretation. Specifically, section 6(e) as the last step of the process, lists all the documentation that has to be delivered to the Office of the Registrar; the documentation includes, among other, the confirmation of the referendum (s.6(e)(v)) and endorsement of the fee by Students' Council (s.6(e)(vii)). Clearly, this step has to be taken after the referendum takes place and after Students' Council accepts the fee, which are both steps in section 6. Similar analysis can be applied to the remaining steps.

Question #2

Mr. Johnson and Ms. Woynorowski ask for interpretation of section 6(d) which says: *The implementation of the fee will be decided by a referendum, in which all students*

*in the Faculty must be given the opportunity to vote. **The vote shall adhere to the relevant Students' Union bylaws.*** Specifically, the question asked focuses on the last sentence of the section. D.I.E Board feels that the last sentence should not be read in isolation and should be read together with the rest of s.6(d). The section clearly states that *all students in the Faculty must be given the opportunity to vote.* The next sentence simply qualifies the word *vote.* Bylaw 8451, s.6(d) stipulates that *the vote,* and not the referendum, *shall adhere to the relevant Students' Union bylaws.* Accordingly, s.6(d) does not require the referendum process to adhere to the relevant Students' Union bylaws, Bylaw 2400 in particular. This holding is further supported by section 3 of Bylaw 2400, which states: *This bylaw shall govern the initiation, organization, and interpretation of any plebiscite or referendum held by the Students' Union.* Clearly, in order for Bylaw 2400 to govern a referendum, that referendum has to be held by the Students' Union. In the case of a referendum under Bylaw 8451, it is a Faculty Association that holds the referendum, and not the Students' Union. This is stated in s.5 and s.6(d) of Bylaw 8451.

Question #3

Section 6(d) of Bylaw 8451 states: *The implementation of the fee will be decided by a referendum, in which all students in the Faculty must be given the opportunity to vote. **The vote shall adhere to the relevant Students' Union bylaws.*** As determined above, section 6(d) requires that the vote and voting procedure comply with all relevant Students' Union bylaws. The bylaw that governs plebiscites and referenda is Bylaw 2400. The relevant sections on voting are sections 61 onward. These are the sections that set out the procedure that is to be followed when casting a vote. Some of the sections pose a problem for Faculty Associations that wish to implement a fee by way of a referendum because they require the C.R.O to make certain decisions. The C.R.O.'s functions are outlined in Bylaw 2500, s.10 and they do not include overseeing the implementation of Bylaw 8451 nor making any decisions under Bylaw 8451. As such, questions 3(a) to (c) are answered in the negative.

D.I.E. Board recommends that the Students' Council review Bylaw 8451 in the context of Bylaw 2400 and 2500.

Question #4

The relevant sections in Bylaw 8451 that are determinative in answering this question are:

*Section 4: A Faculty Association Membership Fee will only be collected if approved by a 50% +1 majority of **the voting students in that Faculty,** and a minimum voter turnout of 15%. Each student must be given the opportunity to vote in a referendum, subject to this and other relevant Students' Union bylaws, and to the bylaws of the Faculty Association.*

*Section 6(d): The implementation of the fee will be decided by a referendum, in which **all students in the Faculty** must be given the opportunity to vote. The vote shall adhere to the relevant Students' Union bylaws.*

Section 3(b) "*Faculty Association Membership Fee*" means *a fee created specifically for a designated faculty, administered according to the provisions set out in this bylaw.*

Bylaw 8451 was created in order to govern the establishment of Faculty Association Membership Fees. Sections 4 and 6(d) clearly state that the referendum is to be voted on by the students *in the Faculty*. D.I.E. Board feels that it is the intention of Bylaw 8451 that only the students that will be affected by the establishment of a new fee should be allowed to vote. It is not reasonable to conclude that Bylaw 8451 is subject to Bylaw 2400 in that respect. If Bylaw 2400 governed the referendum, then pursuant to s.61, all members of the Students' Union would be entitled to vote in that referendum. Clearly, this was not intended by the legislators.

RECOMMENDATIONS

If it is the intention of Students' Council to have Bylaw 2400 govern the referendum process that a Faculty Association must conduct in order to create a Faculty Association Membership Fee, they should do so in plain and direct language and redraft section 6 of Bylaw 8451. Should it be the intention of Students' Council that Bylaw 2400 *not* govern the referendum process mentioned above, they should amend Bylaw 8451 and add a section that deals with the administration of the referendum.

Style of Cause: *Re Bylaw 2400 s.7*

Ruling # 4

Date heard: October 27, 2005

Appearing for the D.I.E. Board

Presiding Chair: Alex Ragan

Tribunes: Chris Stolfa, Alan Cliff

Appearing for the referring party: Stephen Kirkham

Interveners present: Rachel Woynorowski, Chief Returning Officer

Case summary:

This case interprets the wording of bylaw 2400, section 7, which concerns petitions for plebiscites. D.I.E. found:

1. The 'following February 1' in section 7 of bylaw 2400 refers to the next February 1 occurring after the C.R.O. has received a petition conforming to the bylaw.
2. The 90 day period in section 7 of bylaw 2400 refers to the 90 days preceding the C.R.O.'s receipt of the petition.

SUMMARY OF ALLEGATIONS

1. What is the interpretation of the words “as of the following February 1” in bylaw 2400(7)?
2. What is the interpretation of the words “within ninety (90) days of submission of the petition” in bylaw 2400(7)?

RELEVANT LEGAL PROVISIONS

Bylaw 2400 (7)

Where a petition bearing the names, signatures, and student identification numbers of at least five percent (5%) of the total membership of the Students’ Union as of the following February 1 requesting a plebiscite on a given Students’ Council-approved question is submitted to the C.R.O., then a plebiscite shall be held on that question, provided that the names, signatures, and student identification numbers were all collected within ninety (90) days of submission of the petition.

ANALYSIS

1. What is the interpretation of the words “as of the following February 1” in bylaw 2400(7)?

The words “as of the following February 1” refer to the next February 1 after the C.R.O. has received a petition conforming to all the requirements set out in the bylaw. For example, a petition submitted before or on January 31, 2006 must bear the signatures of at least five percent of the total SU membership as of February 1, 2006. Petitions submitted from February 1, 2006 until January 31 2007 must conform to the SU membership as of February 1, 2007. Given the clear language of the provision, i.e. ‘the following’, this is the only possible grammatical interpretation. There is no language in section 7, or anywhere else in bylaw 2400, that suggests that ‘the following’ refers in any way to an academic year as suggested.

The date of February 1 was likely chosen because January 31 is the deadline for tuition fee payment. By counting SU membership on February 1 the total student population will not be inflated by students who drop out within the first month of winter term. The February 1 date creates a fair total number of SU members from which five percent may be calculated. However the date of February 1 creates some technical difficulties for the C.R.O. and petitioners.

Creating a benchmark for the total number of signatories that can only be ascertained in the future means that petitioners will not know if they truly have enough signatures until February 1. Yet, petitioners cannot wait until February 1 to submit their petition because signatures submitted on or after February 1 must be tallied according to the SU membership as of the following February 1.

Section 10 of bylaw 2400 states that a valid petition submitted at least 30 days before a general election will cause the referendum or plebiscite in question to occur at that election. This section in conjunction with section 7 is a trap for the unwary. A petition may only be valid if it conforms to SU membership on the following February 1. Specifically, a petition submitted after January 31 but at least 30 days before elections

cannot be a valid petition until the following February 1 and the plebiscite cannot be held until the next general election after the following February 1.

We would like to add that because section 8 of bylaw 2400 contains similar wording to that found in section 7 the preceding analysis applies equally to section 8.

2. What is the interpretation of the words “within ninety (90) days of submission of the petition” in bylaw 2400(7)?

The words “within ninety days” means the 90 day prior to the C.R.O. receiving the petition. In other words, all the signatures on a petition must have been obtained within the 90 days prior to the petition being submitted to the C.R.O. The word ‘submission’ in this provision refers to the submission by the petitioners to the C.R.O. The petition must be submitted to several bodies prior to submission to the C.R.O., specifically the Bylaw Committee and Students’ Council. However, because the provision in question only deals with a submission to the C.R.O. and does not refer to any other submissions, it would be nonsensical to interpret ‘submission’ in reference to any other body other than the C.R.O.

As well, all the signatures on the petition must be obtained after the Students’ Council has approved the question. Petitioners should also beware, Students’ Council approval is considered a ‘miscellaneous motion’ of the Council, so approval will expire the following April 30 pursuant to bylaw 400 section 4(b).

We would like to add that because section 8 of bylaw 2400 contains similar wording to that found in section 7 the preceding analysis applies equally to section 8.

DISPOSITION AND REMEDY IMPOSED

1. The ‘following February 1’ in section 7 of bylaw 2400 refers to the next February 1 occurring after the C.R.O. has received a petition conforming to the bylaw.

2. The 90 day period in section 7 of bylaw 2400 refers to the 90 days preceding the C.R.O.’s receipt of the petition.

RECOMMENDATIONS

Students’ Council should reconsider the wording and meaning of bylaw 2400 and consider a revision.

Style of Cause: *Re Bylaw 2400 “law”*

Ruling: # 5

Date heard: October 27, 2005

Appearing for the D.I.E. Board:

Presiding Chair: Alex Ragan
Tribunes: Chris Stolfa, Alan Cliff
Appearing for the Applicant: Stephen Kirkham
Interveners present: Rachel Woynorowski, Chief Returning Officer

Case summary:

The referring party queries what the definition of the term “law” is as used in s. 4(b) of bylaw 2400. The Board finds that the term is not synonymous with the term “legislation” as defined in bylaw 400. Rather, within this context, the term “law” indicates only bylaws passed by Students’ Council.

SUMMARY OF ALLEGATIONS

The referring party queries:

What is the interpretation of the term “law” in Bylaw 2400(4)(b)?

- (a) Is the term synonymous with “legislation” as defined by Bylaw 400(1)?
- (b) If not, how does the term “law” differ?

RELEVANT LEGAL PROVISIONS

Bylaw 2400

- 4. Where a member wishes to circulate a petition, that member shall submit to the Bylaw Committee the intent of the question, and the Bylaw Committee shall approve, within seven (7) days, a question which:
 - a. fully reflects the intent submitted by the member; and
 - b. if carried and acted upon, would not violate any Students’ Union law or any federal or provincial statute or regulation.

Bylaw 400

- 1. Students' Union legislation is
 - a. Students’ Union Bylaws;
 - b. Students' Union Political Policy; and
 - c. miscellaneous motions of Students’ Council.

ANALYSIS

The DIE Board panel finds that the term “law” as used in the context of Bylaw 2400 s.4 (b) refers only to those bylaws passed by the Students’ Council.

The parties present at the hearing emphasized two possible interpretations of the term “law” within this statutory context. First, it was argued that the term could be synonymous with the term “legislation” as defined in Bylaw 400. This definition includes

all Students' Union Bylaws, Students' Union political policy, and miscellaneous motions of the Students' Council. The second possible interpretation argued before the panel was that the term "law" refers only to those bylaws passed by the Students' Council.

The panel prefers the latter interpretation over the former for two reasons. First, there are no reasonable grounds for importing the strained definition of "legislation" into the context of Bylaw 2400 s. 4(b). The term "legislation" in Bylaw 400 – which is to apply to all uses of that term within Students' Union Bylaws – is not used by s. 4(b) of Bylaw 2400. Accordingly, it is not legally necessary to import this definition into the meaning of "law" within s. 4(b). Rather, the fact that Students' Council did not use the term "legislation" in this context may be a strong indication that it did not intend to import the statutory definition into s. 4(b). Moreover, adopting such a definition for the term "law" would likely be unwise. The definition of "legislation" in s. 400 is a very strained conception of what legislation, in the ordinary sense, means. Adopting this statutory definition as a definition for the term "law" could be the cause of serious mischief within the Bylaws.

Second, the panel believes for policy reasons that interpretation of "law" should be restrained to Students' Council bylaws. The spirit behind s. 4(b) of Bylaw 2400 – which deals with student referenda – is to give students the power to change some aspect of the governance of their student association. By adopting an expansive interpretation of the term "law" the ability of students to affect this end would be adversely impacted. For example, if political policy and miscellaneous motions are included in the definition of "law" then students would be precluded from making many changes dealing with the Students' Union expenditures or political perspective. The ability to make any meaningful change through referenda would be far more limited

For these reasons, the panel finds it appropriate to give the term "law" within s. 4(b) of Bylaw 2400 the restrictive interpretation of simply meaning Students' Union bylaws.

DISPOSITION AND REMEDY IMPOSED

The DIE Board panel finds that the term "law" as used in the context of Bylaw 2400 s.4 (b) refers only to those bylaws passed by the Students' Council.