



Judgment of the USC Appeals Board in the matter of:

Macedonian Students Association Western v Clubs Governance Committee, 2018:1

Hearing Date: March 22, 2018

Judgment Date: April 4, 2018

Panel: Danielle D'Alonzo (Chair), Catherine Phelps, and Christian Hall

Reasons for Judgment: D'Alonzo (Phelps concurring); Hall (dissenting)

D'Alonzo (Phelps concurring):

PART I: OVERVIEW

1. This is an appeal by Macedonian Students Association Western ("MSAW") in response to the decision by the USC Clubs Governance Committee ("CGC") to de-ratify MSAW for failing to meet the 25-member requirement. For the reasons set out below, the appeal is dismissed.

PART II: FACTS

2. On November 22, 2017, the CGC sent a letter to MSAW warning of potential de-ratification because the club did not meet the membership requirements to remain a USC-ratified club, namely to have 25 members. The club was given until the January 31, 2018 deadline to reach 25 members.
3. As of February 1, 2018, MSAW had nine members. On February 15, 2018, a Notice of De-Ratification was sent to the club. The decision to de-ratify the club was made pursuant to Section 4.06(2) of the *Club Hearings and Sanctions Procedure* and Section 3.01(11) of the *Club Executive Terms of Reference*, which require that USC clubs must have at least 25 members (not

including the Executive, in the case of the *Club Executive Terms of Reference*). This decision of the CGC forms the basis of the appeal.

4. MSAW argues that the 25-member requirement is arbitrary and negatively affects cultural clubs whose membership is limited by the small number of people who share that heritage.
5. The CGC is in agreement that the 25-member requirement can be a barrier to cultural clubs. As a result, the CGC and Clubs Policy Review Committee have been “working on” an amendment to the *Clubs Hearing and Sanctions Procedure* that would allow clubs under 25 members to not be de-ratified under certain conditions. If enacted, this amendment would not take effect until the 2018-2019 academic year. However, the amendment is not a certainty.
6. The CGC contemplated this potential amendment to the 25-member requirement when deciding whether to de-ratify MSAW.

PART III: ISSUES

7. Was the CGC’s decision to de-ratify MSAW pursuant to s. 4.06 of the *Club Hearings and Sanctions Procedure* reasonable?

PART IV: ANALYSIS

Was the CGC’s decision to de-ratify MSAW reasonable?

8. Section 4.04 of the *Club Hearings and Sanctions Procedure* reads in part:

The Clubs Governance Committee may, at its sole discretion, sanction a club. Sanctions may include, but are not limited to the following:

(6) De-ratification of the club.

9. Section 4.06 of the *Club Hearings and Sanctions Procedure* reads in part:

Circumstances where de-ratification may be considered include, but are not limited to:

(2) the club does not have twenty-five (25) members.

10. In deciding this appeal, I would refer to the Board’s previous decision of *Armenian Students’ Association v Clubs Governance Committee*, 2016:5 Clubs De-Ratification Appeal, which considers the same issue of a cultural club facing de-ratification for failing to meet the membership requirements.
11. It is also valuable to refer to the decision in *Filmmakers and Performance Club; Hip Hop Heads; Net Impact; United Way Student Association of Western University v USC Clubs Governance Committee*, 2015:3 Club Ratification Appeals Part I. Paragraph 1 of the decision makes an important observation about the role of the Appeals Board in making a decision such as the one at bar:

Whether any of the proposed clubs deserve ratification is an all-together different matter outside the scope of these appeals. The role of the Appeals Board is to ensure the presence of fairness in USC decision-making and adherence to stated policies and by-laws. The discretionary power to determine whether a proposed club should or should not become a part of the USC community is ultimately within the purview of elected USC officials. To hold otherwise would be to ignore the democratic mandate of elected members on committees such as the CGC.

12. The value that MSAW brings to the Western University student community is not contested and is not the issue of this appeal. The central focus is the membership requirement for all USC-ratified clubs, and whether the decision to de-ratify MSAW for falling below the threshold was reasonable.
13. MSAW was given an advance warning that they did not meet the requisite threshold for club membership, and an opportunity to increase membership to an acceptable level. It did not do so.
14. I am sympathetic to the position of MSAW as representing a minority group within the University, and its argument that the 25-member requirement is arbitrary and detrimental to cultural clubs. However, Section 4.06(2) of the *Club Hearing and Sanctions Procedure* is clear and the CGC has the sole discretion to de-ratify a club for failure to meet the 25-member requirement.
15. The fact that the 25-member requirement in the *Club Hearing and Sanctions Procedure* may be amended in the upcoming academic year does not make the decision to de-ratify MSAW unreasonable. The CGC took the possible amendment into consideration when deciding whether to de-ratify MSAW. That the CGC decided not to exercise its discretion in favour of MSAW does not make the decision unreasonable.
16. Accordingly, I would uphold the CGC's decision to de-ratify MSAW.

Should de-ratification be delayed until the end of the academic year?

17. The Petitioner requested that, if it were to be de-ratified, the de-ratification be delayed until the end of the academic year because individuals have already paid for experiences that MSAW intended to offer this year.
18. The notice given to the MSAW on February 15, 2018 stated that de-ratification would be "effective immediately." However, during the oral hearing, the CGC indicated that it would be content if de-ratification took place at the end of the academic year.
19. Accordingly, in the circumstances, it would be most fair to delay de-ratification until the end of the academic year.

PART V: DISPOSITION

20. The appeal is dismissed, but de-ratification will not take effect until the end of the current academic year.

Hall (dissenting):

Was the CGC's Decision to De-ratify MSAW Reasonable?

21. Section 4.06 of the *Club Hearings and Sanctions Procedure* reads in part:

Circumstances where de-ratification may be considered include, but are not limited to:
(2) the club does not have twenty-five (25) members.

22. Though it has yet to be decided, the CGC informed the Appeals board that this section (4.06) of the *Club Hearings and Sanctions Procedure* may be unfair, specifically to cultural clubs such as MSAW.
23. It is important to note that excluded from the warning described in section 13 of the analysis was a note that could have advised the MSAW of additional resources which the CGC's makes available for clubs struggling to reach the 25-member requirement which their de-ratification is hinged upon. Given the importance of cultural clubs on campus this omission ought not reflect poorly on the MSAW for not reaching out, but rather on the CGC for not being forthcoming.
24. The *Armenian Students' Association v Clubs Governance Committee* decision took place before the CGC called into question the integrity of section 4.06 (2) and therefore was decided under different circumstances and bares no relevance to the decision handed upon the MSAW.
25. Due to the unique benefit of the MSAW to a marginalized ethnic minority, and given that the CGC withheld knowledge of the availability of resources in addition to the unique timing of the appeal as it relates to the reassessment of section 4.06 (2), the CGC exercised poor and unfair judgment when coming to their decision
26. Therefore, I would allow MSAW's appeal.