



Judgment of the USC Appeals Board in the matter of:

## ***Hasan Ahmed v Elections Governance Committee, 2019:2 Election***

**Hearing Date:** February 13, 2019

**Judgment Date:** February 14, 2019

**Panel:** Andrew Beney (Chair), Joseph Wright, Maxwell Joseph Gill, Swapnil Sharma, Alyssa Zhe Sha Yan

**Reasons for Judgment:** Beney (Wright, Gill, Sharma, and Yan concurring)

### **PART I: OVERVIEW**

1. This is an appeal by Hasan Ahmed (“Ahmed”) in response to the decision of the USC Elections Governance Committee (“EGC”) to not find Victoria Barroso (“Barroso”) in violation of s. 12.1 of By-Law #2 of the USC. For the reasons that are set out below, this appeal is dismissed.

### **PART II: FACTS**

2. On February 4, 2019, Ahmed submitted a violation allegation to the EGC alleging Barroso had committed a violation of s. 12.1 of By-Law #2. The submission alleged Barroso had

posted campaign material on her Instagram story that included a logo from Western Women's football team in violation of s. 12.1.

3. On February 6, 2019, Barroso attended a hearing with the EGC. In the hearing, Barroso provided evidence that the Women's Football logo is not a copyrighted logo. At the end of the hearing, the EGC reached out to another member of the women's football team. This member confirmed that the logo was made by a member of the Women's football team, and additionally not a University copyrighted image.
4. In the emailed response to Ahmed's allegation, the EGC indicated they were not moving forward with a violation. In their reasoning, they stated that Western University did not allow the Women's Football team to use the Western logo, prompting a member to create a logo, which was not copyrighted.

### **PART III: ISSUES**

5. There are 3 issues in this appeal:
  1. What is the appropriate standard of review?
  2. Was the EGC's finding, that Barroso did not violate section 12.1 of By-Law #2, reasonable?
  3. Is there a conflict of interest that makes the EGC decision unreasonable?

## **PART IV: ANALYSIS**

### ***What is the appropriate standard of review?***

6. Currently under Canadian administrative law, there are two standards of review upon which administrative decisions are reviewed: reasonableness and correctness. To determine whether the EGC's decision should be upheld, the appropriate standard of review must first be determined. This Board has elaborated on these two standards in past decisions, including in relation to decisions of the EGC: see *Team DiBrina v Elections Governance Committee*, 2017:2 at paras 17-20.
  
7. In the present case, the EGC is interpreting its home statute. The EGC is considered an expert body on the interpretation of By-Law #2, as it is the EGC's statutory duty under s. 3.1 of the By-Law to administer it and uphold its visions and principles. The EGC also has the sole authority to enforce the provisions of the By-Law. As the expert on By-Law #2, a considerable level of deference should be granted to the EGC's interpretation and enforcement of By-Law #2. The standard of reasonableness achieves the necessary level of deference and the decisions of the EGC will therefore be evaluated under this standard. The standard of reasonableness requires deference to the decision-maker.
  
8. The standard of reasonableness requires the Appeals Board to determine whether the EGC reached a decision that falls within a range of acceptable and defensible outcomes (*Dunsmuir v New Brunswick*, [2008] SCR 190). The standard of reasonableness also looks

to the existence of justification, transparency and intelligibility within the decision-making process. (*Dunsmuir*).

***Was the EGC's finding, that Barroso did not violate section 12.1 of By-Law #2, reasonable?***

9. Section 12.1 of By-Law #2 states:

Candidates in all elections shall refrain from the use of the USC or University logo and other USC or University copyrighted material or image when producing materials printed, written, or otherwise produced for the purposes of campaigning. for the purposes of campaigning.

In the initial hearing with the EGC and Barroso, the focus was on whether the logo was a “University logo” or “University copyrighted” material. It was confirmed during this hearing it was not. This made the EGC conclude, because it was not a “University logo” or “University copyrighted” material, there could not be a violation of section 12.1. This is a reasonable conclusion.

10. Interpreting the By-Law narrowly and finding no violation of s. 12.1 is a decision that falls within a range of acceptable and defensible outcomes (*Dunsmuir*). In their written statement to the Appeals Board, the EGC stated the goal of updating the “USC Elections Framework”, which was available at the all candidates meeting, was to remove subjectivity during violation deliberations. With this reasoning in mind, it is reasonable that when looking at the current violation allegation, the EGC viewed it narrowly as a yes or no question.

11. During the oral hearing, Ahmed submitted that the EGC was incorrect in viewing the violation this way and should use the “Spirit of the By-law” when making their decision.

He argued that because the logo of the Western Women's Football team could confuse voters, it should be considered a violation of s. 12.1. He further submitted that the EGC themselves initially thought this was a University team when looking at the photo during the EGC hearing.

12. When reviewing the evidence submitted to the Appeals Board, it is true this logo bears very close resemblance to the University of Western brand, the team promotes themselves as Western Women's football, and uses University facilities for their practices. However, under the reasonableness standard, this Board cannot substitute a decision just because it may have reached a different conclusion than the decision maker. The reasonableness standard requires the Board to look at if the decision-making body made a decision that is within a range of acceptable and defensible outcomes. And, did there exist justification, transparency, and intelligibility within the decision-making process.

13. It is entirely reasonable for the EGC to conclude that because it not a University logo, or University material, there was no violation of s. 12.1. Having a strict interpretation of their By-Laws removes subjectivity in their decision making. Because of the reasons outlined above, this Board finds this decision to be reasonable.

***Is there a conflict of interest that makes this decision unreasonable?***

14. Section 4.02 of the USC Conflict of Interest policy requires any individual who has or may have a conflict of interest, to disclose the circumstances in writing to their immediate

supervisor. Further, s. 4.04 requires the supervisor, in this case, the CRO to provide written directions by which to remove or avoid the conflict. Different ways a supervisor can remove the conflict is listed under s. 4.05(4) and includes requiring the individual to withdraw entirely from the situation in which the conflict arises.

15. As part of the appeal, Ahmed alleged there to be a conflict of interest with the DRO and candidate Barroso, and because the DRO is in a position to influence the EGC, this decision was biased. In their written submission, the EGC confirmed the presence of the conflict of interest. The submission stated the DRO disclosed to the CRO this conflict at the beginning of the election cycle and did not take part in any deliberations regarding Barroso. This was further confirmed during post-hearing submissions with the CRO.

16. While Ahmed provided evidence that the DRO may have been involved in a previous EGC hearing with Barroso, no evidence was provided in regard to this specific violation decision. The CRO confirmed the DRO did not attend this violation hearing. No other evidence about the conflict of interest was submitted to the Board. This conflict of interest allegation alone would not be enough to make the decision by the EGC unreasonable.

## **PART V: DISPOSITION**

17. The appeal is dismissed, and the original EGC decision upheld.