



Judgment of the USC Appeals Board in the matter of:

***Bangladeshi Student Association v Clubs Governance Board, 2024:11 Clubs***

**Hearing Date:** April 7, 2024 (in-writing)

**Judgment Released:** April 9, 2024

**Panel:** William Fawcett (Chair), Lydia Tzianas, Ann Sony

**Reasons:** Fawcett (Tzianas, Sony)

**PART I: INTRODUCTION**

1. This is an appeal of a decision by the Clubs Governance Board (“CGB”) to deny the application for ratification submitted by Bangladeshi Student Association (“BSA”).
2. For the reasons detailed below, this appeal is denied, and the original decision of the CGB is upheld.

**PART II: FACTS**

3. On March 12, 2023, the CGB de-ratified the Bangladeshi Students’ Association for the reason that the club did not meet the minimum number of members.
4. During this academic year’s application window, the BSA applied for ratification.
5. The materials submitted as part of the BSA’s application for ratification variously describe the club as “The Bengali Student Association of Western” (written statement), “The Bangladeshi-Students Association” (cover letter and list of monthly events), and “Purple Bangladesh” (list of

monthly events and draft constitution). In its written submissions to the Appeals Board, the club identifies itself as the Bangladeshi Student Association. Notwithstanding the various names used in the various documents, the club shall be referred to as the BSA in this decision.

6. On March 5, 2024, the CGB notified the BSA that its application for ratification was denied. The reason given was that the BSA had the same name or mandate as a club that had been de-ratified in the previous twelve months, contrary to section 2.4.5 of the *Clubs Ratification Procedure* (the “**Procedure**”).

7. It is from this decision that the BSA appeals.

### **PART III: ISSUE**

8. The issue on this appeal is whether the CGB’s decision not to ratify the BSA pursuant to section 2.4.5 of the *Clubs Ratification Procedure* was reasonable.

### **PART IV: SUBMISSIONS**

9. With the consent of both parties, this appeal proceeded by way of written submissions alone.

10. In its written submissions, the BSA requested a reconsideration of the CGB’s decision not to ratify. It asked for a review of the process to ensure fairness and adherence to USC regulations. As the BSA put it, it sought to provide “clarification”, specifically that the original de-ratification was a result of a temporary shortfall in membership, that the membership has grown since that time, and changing the name or mandate of the club would strip the club of its established identity and diminish the ability of the club to serve its community. The BSA also indicate that it played an important role in serving the Bangladeshi student community and had made positive contributions to student experience.

11. In its submissions, the CGB referred to section 2.4.5 of the *Procedure*, indicating that it was bound by this policy.

## **PART V: ANALYSIS**

12. The CGB has significant discretion with respect to the ratification of proposed student clubs (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 20).

13. In an appeal of a decision by the CGB not to ratify a club, the role of the Appeals Board is to ensure both the presence of fairness in the decision making process and the adherence to the relevant 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 the CGB. The Appeals Board does not determine whether any proposed club deserves ratification, as this lies beyond the scope of an appeal to the Appeals Board (*Western Clay Club v Clubs Governance Board*, 2023:6 Clubs, para 14).

14. Regarding the merits of a decision by the CGB not to ratify a club, the Appeals Board will look to see whether the CGB's decision was reasonable based on the material that was before it at the time that the decision was reached (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 32). The Board must determine if the CGB's decision was transparent, justified, and intelligible and fell within a range of acceptable and defensible outcomes (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 25).

15. In short, the task of the Appeals Board is not to make a decision as to whether the club seeking ratification would provide benefit to its members or to the Western student community.

The task of the Appeals Board is to decide whether the CGB's decision to deny ratification was reasonable based on the information available to the CGB at the time of its decision.

16. Accordingly, it is not for the Appeals Board to inquire into the positive contributions that the BSA would make if ratified. That is not a factor to be considered on an appeal.

17. Additionally, it is not for the Appeals Board to look into the de-ratification of the club in March 2023. The time to commence an appeal with respect to that decision has long since lapsed.

18. Finally, it is not for the Appeals Board to conduct a full review of the process by which the CGB reached its decision. Should there be specific concerns raised by a petitioner regarding the process followed by the CGB, this may be grounds for an appeal. See, for example, *University of Western Ontario Ski and Snowboard Club v Clubs Governance Board*, 2023:5 Clubs. However, it is incumbent upon a petitioner to raise specific concerns in its submissions to the Appeals Board – the Appeals Board is not an investigative body that conducts a general investigation and review of the processes followed by either the CGB or the Elections Governance Committee. The BSA raised no specific concerns regarding the CGB's process on this appeal.

19. Having addressed what is not in issue on this appeal, it is time to turn to what is in issue. In short, the question to be determined is whether the CGB properly interpreted and applied section 2.4.5 of the *Procedure* in denying the BSA's application for ratification.

20. Section 2.4.5 of the *Procedure* provides as follows.

2.4 The CGB shall not ratify a club with any of the following conditions:

[...]

2.4.5 The Club has the same name or mandate as a club that has been de-ratified over the past twelve (12) months).

21. This section of the *Procedure* serves to act as a sort of ‘time out’ for clubs that are de-ratified. A de-ratified club may reapply for ratification, but it must wait at least twelve months before doing so.

22. There is no dispute here that the BSA had the same (or very similar) name and mandate as the club that was de-ratified on March 12, 2023. In particular, the BSA indicated in its written submissions to the Appeals Board as follows.

Our mandate, therefore, remains consistent with our initial establishment and is deeply rooted in representing the voices and culture of a minority group at Western University.

[...]

The recent denial of our ratification application by the CGB due to our unchanged mandate and name poses a significant challenge for us. While we understand the importance of compliance with university regulations, changing our club’s name would strip us of our established identity and ability to effectively serve our community.

23. As is evidenced by the date of the CGB’s decision to deny the ratification application – March 5, 2023 – the BSA had not yet waited the entire twelve month period of the ‘time out’ before reapplying for ratification. Accordingly, the CGB’s decision to deny ratification was supported by section 2.4.5 of the *Procedure*. The CGB’s interpretation and application of section 2.4.5 of the *Procedure* was reasonable. For this reason, the BSA’s appeal is dismissed.

24. Based on the BSA’s written submissions, it appears that there may be some confusion on the part of the BSA as to whether it is required to change its mandate or its name in order to be ratified, as the BSA focussed in its written submissions on the harm it would suffer if it were required to make such changes. To address that confusion, section 2.4.5 of the *Procedure* does not entail that a club with a similar name or mandate as a de-ratified club must change its name or

mandate in order to be considered for ratification. It is only in the twelve month period following de-ratification that this restriction applies. Should the BSA wish to seek ratification during the next application window during the upcoming academic year (or at any other future time), it would have then served the full one-year 'time out', and section 2.4.5 of the *Procedure* would no longer be applicable.

W. Fawcett

L. Tzianias

A. Sony