



Judgment of the USC Appeals Board in the matter of:

Mustangs Bhangra Association v Clubs Governance Board, 2024:12 Clubs

Hearing Date: April 7, 2024

Judgment Released: April 11, 2024

Panel: William Fawcett (Chair), Lydia Tzianias, Ann Sony

Reasons: Fawcett (Tzianias, 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 the Mustangs Bhangra Association (“**MBA**”).
2. For the reasons detailed below, this appeal is denied, and the original decision of the CGB is upheld.

PART II: FACTS

3. The MBA submitted an application for ratification during the most recent application window.
4. As part of the application process, the MBA was required to submit a draft constitution.
5. Articles 2 and 10 of the draft constitution submitted by the MBA read as follows (underlining added).

Article 2 – Club Mandate

1. Detailed list of objectives and goals of the club
2. Strategies for attaining the objectives and goals of the club
3. A vision statement articulating how the club will benefit the student experience of students at Western University

Article 10 – Refund Policy

1. Refunds of membership fees are permitted until October 31st of the current academic year. Requests for a refund can be made to the Student Organization Support staff.
2. Clubs refund process.

6. As will be addressed more fully below, the underlined portions are instances of placeholder text, which is highlighted in purple in the *Club Constitution Template* (the “**Template**”).

7. On March 5, 2024, the CGB informed the MBA that its application for ratification was denied. The CGB’s decision was based on two alleged breaches of the *Clubs Ratification Procedure* (the “**Procedure**”):

- a. first, an alleged breach of section 2.1.3 of the *Procedure*, which requires the submission of a draft constitution that is formatted in accordance with the *Template*, and
- b. second, an alleged breach of section 2.1.4 of the *Procedure*, which requires the submission of a membership list comprised of at least fifty current students.

8. It is from this decision that the MBA appeals.

PART III: ISSUE

9. The issue on this appeal is whether the CGB’s decision not to ratify the MBA based on section 2.1.3 of the *Procedure* was reasonable.

10. By the time of this appeal, the issue related to section 2.1.4 of the *Procedure* had become moot. As part of its application for ratification, the MBA had submitted two membership lists, which, when combined, exceeded the fifty current student requirement. At the time it reached its decision, the CGB was only aware of one of the two lists. Having acknowledged that both lists were indeed submitted as part of the application process, the CGB accepted that its decision not to ratify could not be supported by section 2.1.4 of the *Procedure*.

PART IV: SUBMISSIONS

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

12. The MBA submitted that it followed the *Template* in preparing its draft constitution. Specifically, it submits that it “did follow the template provided on the Western USC website” and the “only deviation made was the removal of the italicized description under each article.”

13. The CGB submitted that the following elements were missing from the MBA’s draft constitution:

- Article 1, subarticle 1 (objectives and goals),
- Article 1, subarticle 2 (strategies),
- Article 1, subarticle 3 (vision statement),
- Article 10, subarticle 2 (clubs refund process), and
- Article 13 (external affiliation).

14. It would appear that the reference to article 1 in the CGB’s written submissions is a typo, which presumably is intended to refer to article 2. At least, article 1 of the *Template* has no

subarticles, and the subarticles of article 2 of the *Template* match the description provided by the CGB. Notwithstanding the typo, the correct reference is clear.

PART V: ANALYSIS

15. 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).

16. 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).

17. 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).

18. As highlighted in *UWO World Vision v Clubs Governance Board*, 2024:3 Clubs, a deficient draft club constitution is a reasonable ground on which the CGB may deny ratification. A club may not submit a revised constitution on an appeal before the Appeals Board (*UWO World Vision*,

para 16). What is in issue on an appeal is whether there were deficiencies in the draft club constitution as originally submitted as part of the application for ratification.

19. On the written submissions received, it is unclear as to whether the MBA's failure to include article 13 in its draft constitution has any import. In light of its wording, article 13 of the *Template* is to be included when a club is affiliated with an external organization. On the evidence before the Appeals Board, it is unclear as to whether the MBA has an affiliation with any external organization. Accordingly, this decision focuses on articles 2 and 10, where the deficiencies are clear.

20. Articles 2 and 10 of the MBA's draft constitution have been quoted above. The deficiency in issue is not the removal of italicized sections from the *Template*, as suggested by the MBA's written submissions.

21. Rather, the deficiency in issue arises from the fact that the *Template* includes placeholder text that a prospective club is intended to replace with specifics related to the club. This may be seen in the following screenshot of the *Template* available at <https://westernusc.ca/clubs/>.

CONSTITUTION OF **INSERT OFFICIAL NAME**

Ratified on **dd/mm/year**

Article 1 – Name

The club's official name will be "**INSERT OFFICIAL NAME**", and may be referred to as "**INSERT ACRONYM WHERE DESIRED**". No other name will be used in the advertisement or representation of the club.

Article 2 – Club Mandate

Your club mandate must illustrate the primary function and objective(s) of the club.

Do not define your club too narrowly or too broadly. It is important to note that your club will be held to its mandate and purpose. The activities of your club must reflect your mandate.

The club's mandate will be as follows:

1. A detailed list of objectives and goals of the club;
2. Strategies for attaining the objectives and goals of the club; and,
3. A vision statement articulating how the club will benefit the student experience of students at Western University.

22. The text highlighted in purple is to be replaced by the prospective club. Although it replaced the highlighted text in the heading and in article 1, the MBA did not replace the highlighted text in article 2. The result is that the draft constitution submitted by the MBA as part of its application for ratification did not contain a detailed list of objectives and goals of the MBA, did not identify the strategies by which the MBA intended to attain those objectives and goals, and did not contain a vision statement.

23. For similar reasons, the MBA's draft constitution did not contain a description of its proposed refund process in article 10.

24. Instead, the MBA's draft constitution included text in articles 2 and 10 that identified where particulars regarding these items should be inserted. These are the portions underlined in the quotations above. Without those particulars, the MBA's draft constitution was incomplete. The CGB's decision to deny ratification based on a deficient draft constitution was reasonable, and for this reason the appeal is dismissed.

25. Of course, having identified the deficiencies with the draft constitution, nothing prevents the MBA from correcting these deficiencies should it wish to reapply for ratification in upcoming academic year. That said, it is during the ratification cycle that such revisions are to be made, as neither the *Procedure* nor the *Appeals Board Terms of Reference* provide an opportunity for a club to be reconsidered for ratification based on revised documents submitted as part of an appeal.

W. Fawcett

L. Tzianias

A. Sony