



Judgment of the USC Appeals Board in the matter of:

Muslim Students Association v Elections Governance Committee, 2025:2 Election

Hearing Date: January 22, 2025

Judgment Released: January 23, 2025

Panel: William Fawcett (Chair), Ann Sony, Anjali Kupchand

Reasons: Fawcett (Sony, Kupchand)

PART I: INTRODUCTION

1. The Elections Governance Committee (“EGC”) passed a motion that is entitled Guidelines for Club Involvement in Elections (the “Guidelines”). These Guidelines purport to restrict USC-ratified clubs from endorsing candidates in elections administered by the EGC.
2. Initially, candidates in elections administered by the EGC were informed that the Guidelines were official and binding and therefore enforceable against candidates during the ongoing elections. Since the commencement of this appeal, the EGC has sent a letter to candidates to indicate that the EGC “will not be enforcing the [G]uidelines” but that the Guidelines “will serve as general guidelines that the EGC recommends candidates adhere to.”
3. The Muslim Students Association (“MSA”) has commenced this appeal, alleging that the decision to pass the motion creating the Guidelines was not reasonable.
4. For the reasons detailed below, the appeal is upheld, at least in part.

PART II: FACTS

5. The facts necessary to understand and to decide this appeal are straightforward and not in dispute.

6. On January 12, 2025, the EGC passed a motion confirming the Guidelines. The Guidelines impose a number of rules restricting the ability of USC-ratified clubs from endorsing candidates in elections administered by the EGC. As emphasized by the MSA in its submissions, this changes the *status quo* under which USC-ratified clubs have been able to endorse candidates.

7. Nominations opened in the current elections period on January 13, 2025. The EGC did not provide notice of the Guidelines to prospective candidates prior to this.

8. Notice of the Guidelines was first provided to candidates at the all-candidates' meeting on January 17, 2025.

9. At that meeting, the Guidelines were said to be official and binding. The EGC, through the deputy chief returning officer, indicate that the EGC would enforce the Guidelines against candidates.

10. On January 21, 2025, the EGC sent a letter to candidates clarifying that the Guidelines would not be enforced against candidates. The most relevant portion is quoted here.

For greater clarity, the Elections Governance Committee will not be enforcing the guidelines relating to clubs presented at the All Candidates' meeting. However, the following will serve as general guidelines that the EGC recommends candidates adhere to. Again, these are not enforceable but are intended to promote fair and ethical campaigning practices.

11. Following the passage just quoted, the letter continued by reproducing the operative portion of the Guidelines.

12. During the hearing of this appeal, this Board heard evidence regarding the background leading up to the motion passing the Guidelines. While this background is of assistance in

understanding the EGC's motivation in the creation of the Guidelines, the EGC's motivation is not in issue in this appeal.

13. During the hearing of this appeal, this Board also heard speculation that the EGC's creation of the Guidelines was motivated by events during the last by-election cycle. Again, the EGC's motivation is not in issue in this appeal.

PART III: ISSUE

14. There are two issues on this appeal. The first is whether this Board has the jurisdiction to hear this appeal. The second may be framed loosely as whether the EGC's decision in creating the Guidelines was reasonable.

PART IV: SUBMISSIONS

15. On the issue of jurisdiction, the MSA submits that the passing of the motion creating the Guidelines was a decision, and this Board has the jurisdiction to review decisions of the EGC.

16. On the substantive issue, the MSA's submissions may be grouped under four main headings: (i) the EGC violated section 1.1.4 of the *Elections Governance Committee Terms of Reference* (the "**EGCToR**") by not making the Guidelines available at the start of the nomination period, (ii) clubs should have been consulted prior to the creation of the Guidelines, (iii) the Guidelines have a negative impact on both club advocacy and the representation of the individuals clubs represent, and (iv) the Guidelines set a troubling precedent for future policy.

17. On the issue of jurisdiction, the EGC submits that the comments regarding the Guidelines at the all-candidates' meeting were an error, which it corrected in the January 21, 2025 letter. It

submits that erroneous comments are not a decision and are therefore not reviewable by this Board. Alternatively, it submits that the correction of the error renders any appeal moot.

18. On the substantive issue, the EGC submits that the Guidelines are simply guidelines, not a regulation passed under section 1.1.4 of the *EGCToR*, and they were consistent with USC policies and procedures.

PART V: ANALYSIS

i. This Board has Jurisdiction

19. Section 11.1 of the *Appeals Board Terms of Reference* provides this Board with its jurisdiction.

11. The Appeals Board has the authority to adjudicate all appeals that pertain to the Clubs Governance Board or the Elections Governance Committee decisions.

20. In *Science Students' Council v Elections Governance Committee*, 2023:1 Election, this Board held that it had the jurisdiction to hear appeals arising from a decision of the EGC to enact regulations under section 1.1.4 of the *EGCToR*.

21. In this case, although the parties focussed on the decision made by the EGC in passing the motion creating the Guidelines as a discrete consideration, section 11.1 of the *Appeals Board Terms of Reference* does not restrict the jurisdiction of this Board simply to reviewing decisions of the EGC or the Clubs Governance Board (the “**CGB**”). While an appeal must arise in connection to a decision made by the EGC or the CGB, the jurisdiction of this Board extends to all appeals that “pertain” to such a decision.

22. In this case, the decision to create the Guidelines must be considered in the broader context of what the creation of the Guidelines were intended to do. As admitted by the EGC at the hearing, and as is amply supported by the evidence in any event, the creation of the Guidelines were part of an attempt to create a regulation under section 1.1.4 of the *EGCToR*. As this appeal pertains to the decision to create the Guidelines within that broader context, this Board has the jurisdiction to hear this appeal.

ii. The EGC Failed to Comply with the Criteria Established in Section 1.1.4 of the EGCToR

23. Section 1.1.4 of the *EGCToR* provides that part of the EGC's mandate is to create regulations in accordance with certain criteria.

1.1.4. Release regulations detailing the interpretation and application of Bylaw #2 and the Elections Rules and Violations Policy during an election period. Regulations shall be binding as though they were a part of the bylaws, provided that:

1. Regulations are strictly consistent with the bylaws and any provisions therein;
2. Regulations are openly available to candidates at the start of nominations;
- and
3. The Committee recommends to the Board of Directors any bylaw amendments related to Regulations issued as soon as possible following the end of the polling period.

24. The EGC's mandate extends to the creation of regulations interpreting and applying *Bylaw #2*, which is the USC's elections bylaw, and the *Elections Rules and Violations Policy*. It is clear from the evidence before this Board, including the testimony of the deputy chief returning officer,

that the EGC was attempting to create a regulation when it passed the motion creating the Guidelines. The EGC *prima facie* has the authority to release such a regulation.¹

25. However, it is an agreed fact that the Guidelines were not made available to candidates at the start of nominations. Instead, they were first made available to the candidates at the all-candidates' meeting five days later. The second criterion was not met of section 1.1.4 of the *EGCToR*, and the Guidelines are therefore not a regulation.

iii. The EGC does not have the Authority to Create Non-binding Guidelines, and the Guideline are of no Force or Effect

26. Before this Board, the EGC submitted that it did not discover that it had not complied with the requirements of section 1.1.4 of the *EGCToR* until after the all-candidates' meeting. This Board accepts that submission.

27. Before this Board, the EGC submitted that the January 21, 2025 letter was an attempt to correct its error by clarifying that the Guidelines were not binding. This Board accepts that submission as well.

28. However, this Board finds that the contents of the January 21, 2025 letter were unreasonable insofar as the EGC adopted the position that the Guidelines were not enforceable but were "general guidelines that the EGC recommends candidates adhere to." The EGC's mandate as

¹ The contents of the Guidelines were not argued before this Board, and this Board makes no findings as to whether the Guidelines were strictly consistent with the bylaws and any provisions therein. In other words, this Board finds that the EGC has the authority to release a regulation like the Guidelines without making any finding as to whether the Guidelines themselves met the requirements of the first criterion of section 1.1.4 of the *EGCToR*.

framed in section 1.1 of the *EGCToR* does not grant it the authority to recommend non-binding general guidelines to candidates.

29. So that there is no confusion, this Board finds that the EGC's attempt to release the Guidelines as a regulation failed because it did not comply with the second criterion of section 1.1.4 of the *EGCToR*. The result of that failure is that the Guidelines have no force or effect upon the candidates in the elections that began on January 13, 2023. The Guidelines are of no force or effect on those candidates, full stop.

iv. This Board Declines to Decide any of the Grounds Submitted by the MSA

30. As the narrow grounds addressed above are sufficient to decide this appeal, it is not necessary to decide any of the other grounds advanced by the MSA.

31. To make this even more explicit, this Board makes no findings as to whether there is any obligation on the EGC to consult with USC-ratified clubs prior to releasing regulations that may have an impact on such clubs.

32. This Board makes no findings as to whether the EGC has any obligation to consider any potential negative impact on club advocacy and the representation of the individuals clubs represent before releasing regulations.

33. This Board makes no findings as to whether the EGC, the CGB, or the USC more broadly may enact future policies consistent with the purpose or vision of the Guidelines. If such policies are enacted, any appeal that may arise pertaining to the enactment of such policies would need to be considered on its own facts, and only if such an appeal were commenced. Of course, this Board

recognizes, as it must, that its jurisdiction does not extend to reviewing policies enacted by the USC itself.

PART VI: OUTCOME

34. For the reasons outlined above, this Board finds that the Guidelines have no force or effect upon candidates in the elections overseen by the EGC that with the opening of the nomination period on January 13, 2025.

W. Fawcett

A. Sony

A. Kupchand