



**CARLETON UNIVERSITY STUDENTS' ASSOCIATION
CLUBS OVERSIGHT COMMISSION**

CITATION: *in re* Chinese Students' Association
2022 COC 2

CASE HEARD: 15 September 2022
WRITTEN JUDGEMENT: 23 Jan. 2022

IN THE MATTER OF:

an application made by the
Carleton University Chinese Students' Association
pursuant to s. 4.3 of the old *Bylaw IX*

Panel (Sep. 2022): Whale, H. Chair; Al-Saady, A., Caratao, D., Paraskevopoulos, G, and Peixoto, E.

Panel (Jan. 2023): Whale, H. Chair; Al-Saady, A., Caratao, D., Cruz, S., Peixoto, E, Mansour, S. and Singh, J.

Reasons for Judgment: Caratao, D, for a unanimous Commission
(paras. 1 to 56)

AT FIRST INSTANCE AT THE CLUBS OVERSIGHT COMMISSION

PART I. Summary

Held: the application for Certification by the Carleton University Chinese Students' Association, is denied.

Also held: The Carleton University Chinese Students' Association shall be able to withdraw their funds from the CUSA-overseen Scotiabank account, and if funds are not vacated by the 1st of May, 2023, they shall be deemed to be returned to CUSA.

Also held: The Carleton University Chinese Students' Association shall not be certified in future years unless the issues identified herein are addressed to completion.

[1] *Per* a unanimous Commission: the Carleton University Chinese Students' Association (hereinafter, "Chinese Students' Association" or "CSA"), shall be denied certification in the 2022-2023 year, under paragraphs (f) and (h) of old *Bylaw IX*, s. 4.4 and a fundamental failure under paragraph (b) of s. 1.1 of the same.

PART II. Facts and Jurisdictional History

[2] The Chinese Students' Association applied to certification to the Clubs Oversight Committee (as it was then known) on or about the 25th of August, 2021. They were rejected preliminarily for cause of not having rendered a membership list. ([Agenda and Minutes of the Clubs Oversight Committee, 2021-2022](#))

[3] The Committee further specified their suspicions of the CSA's ties to unknown external organizations, due to the large deposits in their account, many of them coming from vague and unclarified sources, in uncommonly large amounts ([Bank Statements of the Chinese Student Association, 2021](#)).

[4] The Student Groups Administrator, then one Samuel Kilgour, was directed by the Committee to contact the University regarding the CSA. Following his discussion with University administration, the Committee did not change their stance.

PART III. Issues

[5] The issues in this case are:

- A. What the proper standard of review is for the consideration of Certification and for administrative decisions generally within the Association; and
- B. If there is a reasonable suspicion of illicit activity, contravening any of ss. 1.1, 4.4 (f), (h), or (j) of old *Bylaw IX*, that can justify non-certification

Per Curiam Opinion

The reasons of Whale, Chair; Al-Saady, Caratao, Paraskevopoulos, and Peixoto were delivered by

CARATAO, D. —

PART IV. Analysis

A. Introduction

[6] Three paragraphs of old *Bylaw IX* section 4.4 might be applied to the case of the CSA. The Clubs Oversight Commission has grounds to not certify a Club if the Club:

- f. could reasonably be understood to condone unsafe or illegal activities...
- h. leadership could conceivably be subverted by non-Carleton community members...
- j. has broken municipal, provincial, federal, or international law, including law of the sea.

[7] Additionally, s. 1.1 (b) of the old *Bylaw* might be applied, and to fail on this provision would constitute a fundamental inadequacy for a Certified Club. The paragraph reads:

- b. all Clubs shall be open to all fee-paying Members of the Association.

[8] Proof is best made out here for a contravention of paragraph (h), or, failing it, paragraph (f), and s. 1.1 (b).

B. Canadian Administrative Law and the Proper Standard of Proof

[9] Section 4 of the Association's *Judicial Policy* states that the judicial bodies of this Association ought to follow, generally, the standards laid down in Canadian administrative law ([Judicial Policy s. 4](#)).

[10] The prevailing standard for review of administrative decisions in Canada is reasonableness, a principle affirmed by other student courts, including the Western University Students' Council Appeals Board, in whose image this Association's judicial branch was remodelled ([Unload Western v Clubs Governance Board, 2020:1 Clubs](#) at para. 6; [Craft Lover Club v Clubs Governance Board, 2020:2 Clubs](#) at para. 3).

[11] Under Canadian administrative law, the prevailing legal burden of proof for cases like these is reasonableness, as in *Canada v. Vavilov (Canada (Minister of Citizenship and Immigration) v. Vavilov* at para. 99). There is a competing standard, correctness, that would arise in questions of law, or mixed fact and law.

[12] Reasonableness is further defined in *Canada v. Mugesera* as "something more than mere suspicion, but less than the [civil standard] of proof on the balance of probabilities"

(*Mugesera v. Canada (Minister of Citizenship and Immigration)* at para. 114).

[13] The burden of proof this Commission faces is reasonableness, which manifests itself in a standard of strong possibility. This, combined with the explicit allusions to decision-making based “reasonably” or “conceivably” in paras. (f) and (h), grounds the view that reasonableness is the appropriate standard.

[14] Of note is the use of the term “has” in para. (j). This represents a higher standard, with the word itself indicating a surety in the past or present. This higher standard from reasonableness can appear when clearly delineated in Policy: see the “sole purpose” standard found by this Commission in *CU Shotgun* ([*CU Shotgun v. CUSA \(Clubs Oversight Committee\) I COC 2022 at paras. 24-28*](#))

[15] In general, when concerning the provisions of old *Bylaw IX*, and any other Policies that govern Clubs for the purposes of this Commission, those provisions should be interpreted under the “reasonableness” standard to inform the Commission’s decision-making, unless the words of the Policy indicate a different standard of review.

[16] Thus, s. 1.1 (b) and s. 4.4 paragraphs (f) and (h) should be interpreted as being judged on a reasonableness standard, by both implicit default and explicit explanation; and paragraph (j) operates under a higher standard of certainty, which might be founded beyond a reasonable doubt, in accordance with the burdens of proof for the crimes it cross-references.

C. *Review of Facts and Application of Law*

[17] I will now analyze the relevant *Bylaw* provisions in order of applicability to ground the case of this Commission.

i. Applying paragraph (h)

[18] Paragraph (h) of s. 4.4 notes that when a Club’s leadership might “conceivably be subverted by non-Carleton community members,” non-certification or decertification might be justified. Besides the potential fundamental s.1.1 failure, this is the strongest argument for non-certification of the CSA.

[19] I hold that there is a reasonable possibility that the leadership of this Club might be subverted by non-Carleton community members. Carleton community members include students, graduate students, Carleton staff, CUSA staff, and others closely associated with this Association or the University.

[20] Many of the bank statements the CSA has shown the Commission demonstrate large influxes of monies from unknown and unspecified sources. In 2021, the CSA seemed to regularly receive between \$1000 and, on two occasions, \$4000, from unidentified sources,

totalling over the course of the Summer semester that year, \$12 800. This amount is approximate to 10% of all CUSA clubs funding for the year, and the CSA acquired that amount over the course of the academic year's least busy semester, all from unknown and unlisted sources. It was the holding of the past Committee, one I would uphold, that these sources were an unknown government or corporate subsidy of the Club ([Bank Statements of the Chinese Student Association, 2021](#); [Agenda and Minutes of the Clubs Oversight Committee, 2021-2022](#)).

[21] In this year's application for certification, the CSA showed the Commission its bank statements for the fiscal year-to-date, which only built reasonable suspicion against them. In 2022, the CSA received numerous high-value transfers listed as "sponsorships" from corporations, namely \$2985 from Top Offer, a Canadian service seemingly tailored for Chinese-speaking high schoolers seeking University admission; \$1500 from OEIC, which matches no known organization and merely stands for "Open-Ended Investment Company," a British legal term referring to a mutual fund; \$500 labelled merely "sponsorship fee"; and an unlabelled \$297.97 deposit. Most concerningly, the CSA received \$2000 from SDIC human resources, where the SDIC is the State Development Investment Corporation, the largest state-owned investment holding company in China. No visible posts on CSA social media allude to such sponsorships or collaborations. Explanations for previous transfers in 2021 have not been explained. ([Ledger of the Chinese Student Association, 2021](#)).

[22] The volume and magnitude of these transfers grounds the belief that the CSA's leadership is being influenced or subverted by members outside the Carleton community, most likely Government or Corporate influence from Mainland China. If well and reasonably founded, this undue influence ought to be treated by this Commission with the dispassionate punity as if a Club were unduly influenced by a corporation or openly hostile government.

[23] I hold that it is "conceivable," and indeed, more than conceivable, that the CSA or its leadership has been subverted by non-Carleton community members. It would be outlandish to suggest that organizations that deliver to a Club financial aid in this amount, more than twenty times the CUSA funding amount for the same time frame, has no influence at all over the Club, and that its leaders are free from outside persuasion. There is no such thing as a free lunch, and when outside funding comes: (1) in such numbers, (2) in such frequency, (3) from unknown sources, and (4) with doubtful motivations, this Commission must be prepared to assume possibilities other than the most conciliatory and optimistic. Thus, I would hold the CSA responsible under paragraph (h), for cause of undue external financial control.

ii. Applying paragraph (f)

[24] Paragraph (f) of s. 4.4 notes that being reasonably believed to "condone unsafe or illegal activities" is grounds for non-certification or decertification.

[25] I would hold that there is a reasonable belief that the CSA condones unsafe or illegal activities. The Club notes a strong connection with the Chinese Embassy, stating in their certification application that they “[maintain] a good cooperative relationship with the Chinese Embassy in Canada” and their financial records seem to indicate a fiscal reliance on Chinese state entities. While close relationships with embassies are commonplace from cultural clubs, and this Commission should remain careful to not ascribe to a club or a people the sins of its government, from a public policy point of view, to maintain and endorse a Club that may be a mouthpiece of an authoritarian government is an undesirable course of action for this Association (Minutes of the Clubs Oversight Commission, 2022-2023; [25 April 2020 CSA Weibo Post](#)).

[26] I will also note that there should be no blanket assumption by this Commission that collaboration with an Embassy or equivalent office of the Country matching any cultural club is equivalent to a blanket endorsement of that State’s or Authority’s policies and actions. The CSA is not culpable, *prima facie*, for the malfeasance of the Government of China simply because they have a good relationship with the embassy. However, the revenue streams that seem to originate from State-owned entities is what can break this good-faith assumption.

[27] It is altogether likely that the CSA either (1) has obtained mass sums of money through means that are legally grey by way of foreign money transfer into Canada, or (2) endorses without clarification or reservation, the various policies of the Chinese central government that can be classified as illegal or unsafe under international law.

[28] While more tenuous than the para (h) violation, there exists a reasonable belief that the CSA condones unsafe or illegal activities.

iii. Applying paragraph (j)

[29] Paragraph (j) of s. 4.4 notes that having “broken municipal, provincial, federal, or international law, including law of the sea” is grounds for non-certification or decertification.

[30] None of the Commission’s suspicions that the monies obtained or used by the CSA were used or acquired fraudulently can fulfil a “certainty” standard (para 16 above). The CSA is thus not liable for non-certification under this provision.

iv. Applying s.1.1 paragraph (b)

[31] Paragraph (b) of s. 1.1 notes that every club must be “open to all fee-paying Members of the Association,” and as a consequence, any Club that fails to reach this standard is grounds for non-certification or decertification.

[32] The Application by the CSA to the Commission indicated, through strong implication, that its mandate serves International Students of Chinese nationality, and excludes other students, in flagrant violation of this provision. I am convinced of this interpretation.

[33] First, the Constitution of the CSA states that its mandate is, emphasis added, to “[help] *Chinese* students to adapt to the life of studying abroad. Let them find a home in Carleton.” They use the same phrase in their certification application, that they plan to “help Chinese students at Carleton University better adapt to the study environment.” Without an otherwise clearer qualifier, and interpreted purposively in the context of its adjacent words, I take the term “Chinese students” to mean “International Students of Chinese nationality.” Without this interpretation, the references to adapting to study abroad, and finding a home in Carleton, make far less sense. But alone, this evidence is not enough to prove an exclusionary position of the CSA ([*Constitution of the Carleton University Chinese Students' Association*](#)).

[34] Further, the certification application of the CSA notes that the Club’s members “are all from China and have a deep understanding of Chinese culture.” This is clear that all CSA members are from the country of China (People’s Republic of) but is not clear on whether this is coincidence or deliberate. However, their stated mandate of “[helping Chinese Students] transition from China to Canada...[providing] a good exchange platform for Chinese students and international students who love Chinese culture,” seems to indicate a focus on transitioning Chinese International students to Canada. Their application may somewhat loosen their restricted membership, but not much — even most generously construed, the CSA is still restricted to international students, not domestic Carleton students.

[35] More than restricting membership to (Chinese) International students, the CSA seems to have an application-and-offer system for club membership, perhaps on top of this nationality-based filtering. The details of this offer system are unclear, but it is obvious that one exists. At least two posts on the official CSA Weibo account, a popular social media site of Chinese origin, seem to indicate a process of restricted membership whereby certain students will be granted “offers” to join the CSA.

[36] The first dates to the 26th of March, 2022, and reads, in part and in Simplified Chinese, “为了防止闲杂人等进入新生群，我们会在进群前要求同学们出示自己的offer。” Roughly translated, this would mean, emphasis added, “[in] order to prevent random people from entering the freshman group, we will ask students to show their *offers* before entering the group.” This reference to an “offer” being required before joining the groupchat by which Club members can communicate, implies a restrictive and exclusionary policy of membership.

[37] This is further alluded to in the second post, from the 13th of July, 2022. The post is attached to a QR code and reads, “卡尔顿大学中国学生会在这里哦！22新生同学可以带着offer找我们的官微小姐姐进群哦~” which can be roughly translated as, “Carleton University Chinese Student [Association] is here! 22 freshmen students can find our official sisters to join

the group with the offer~” Whether “22” refers to the year or the number of admitted club members is unclear, as is the meaning of “sisters” in this context. But this post also shows that new members of the club require an offer to “join the group.” Again, whether this refers to the Club itself or to some social media group where the Club is organized is not clear, but either interpretation implies an unacceptable circumstance ([13 July 2022 CSA Weibo Post](#)).

[38] Restriction from some online space where a Club conducts most of its business, communicates with its members, and facilitates meetings of and between its members, must be considered the same as restriction from a Club itself. To have, in any form, a Club that is “open,” and an online space that is “closed” for no *bona fide* reason (like membership fee payment) is a dubious and dishonest legal fiction that holds no water with this Commission.

[39] In both posts, the word “offer” is written in English, which compensates for the ambiguity resultant from the translation. No Club, with perhaps the most limited exception for competitive clubs in certain circumstances, should be in the business of “offering” membership to one student or another. Clubs should be open to all, or be subject only to such *bona fide* requirements as all people can meet equally, or with assistance (one of those few being a membership fee).

[40] As the CSA is not and has never been a competitive club, and their mandate positions them as a standard Club with a cultural bent, this would be an unreasonable violation of the s.1.1 (b) requirement to open the Club to all.

[41] Additionally, the Vice President Internal, myself, testified to the Commission that non-International students of Chinese ethnicity had been barred from membership in the CSA because they are not Chinese International Students. This restrictive membership, for instance, was part of the impetus of the mandate for the Asian Canadian Association at Carleton (ACAC), which adopted a non-exclusionary position in accordance with CUSA Policy. A brief investigation from Commissioner Al-Saady saw a failure of the CSA to respond to a request for general membership from himself, where he expressly identified himself as a non-Chinese, non-International student. While difficult to prove definitively, as is the nature of such allegations, I consider this anecdote alongside the hard evidence as an interpretive aid.

[42] While difficult to prove the allegation of restricted membership as a whole, enough circumstantial evidence exists to prove three factors that logically build this conclusion on the balance of probabilities: (1) that the CSA employs a selective membership process; (2) that the CSA may base this selective process on discriminatory grounds, those being the selection of exclusively Chinese International students; and (3) that the end result of these unknown and unwritten practices is that “all” CSA members are Chinese International students.

PART V. Decision of the Former Committee

[43] This year, the Commission was tasked with the certification application of the Chinese Students' Association, under a similar fact circumstance as that of the year previous, under the old Committee. It is valuable therefore, though not necessary, to investigate the decision they laid down.

[44] This Commission has held, in *CU Shotgun*, that the previous Committee's reliance on tenuous logical inferences and assumptions in reviewing the worthiness of club certification is an undesirable standard for the review of certification applications ([*CU Shotgun v. CUSA \(Clubs Oversight Committee\) 1 COC 2022 at paras. 47-51*](#)).

[45] However, the subjectivity in their review of the CSA is better founded because of the potential severity of the violations and the lower standard provided in Association Policy, as the case of *CSA* concerns the s. 4.4 (g) "concievable" standard rather than the s. 4.4 (b) "sole purpose" standard in *CU Shotgun*. ([*old Bylaw IX at ss. 1.1 \(b\), 4.4 \(b\) and \(g\)*](#))

[46] It could, then, be unobjectionable to maintain the holding of the previous Committee in rejecting the new application of the CSA.

[47] I will, however, further maintain that a new application should, in most cases, wipe-clean the slate of bias on the part of the Commission. A new application is just that: a new application, not an appeal from a past rejection. A Club that for ten years submits an objectionable Constitution should not be rejected for cause of that history on its eleventh application with an unobjectionable one. However, the exception remains: if a Club does not, in one year, correct the failures that justified its non-certification in some previous year, the Commission should by *stare decisis*, maintain the justification of the elder Commission in its new review of that Club.

PART VI. Policy Considerations

[48] The fact that the case before this Commission concerns a Club so conceived and so dedicated to a certain cultural group (the broader Chinese culture), and indeed a certain subset of that group (International Students from the People's Republic of China, leads to some unique policy considerations.

[49] In handling a cultural club, it is important to balance both: (1) the peoplehood of any given culture, and the necessary understanding of this Commission in interpreting cultural practices that are foreign to the Commission's members, and (2) the necessity that this Association's policy applies to all Clubs, without prerogative or dispensation for any one Club on the basis of a mere cultural difference. Cultural clubs are, at Carleton, the face of the students of that culture and deserve respect and to be treated with wholehearted cultural acceptance — but that does not shield them from accountability for wrongdoing.

[50] In this case, it is clear that the illegal or dubious practices of the CSA outweigh the need for leniency in cultural understanding.

[51] It is not problematic, and indeed welcome, that Clubs are focused on a certain segment of the Carleton population. What becomes troublesome is when they are *restricted* to this segment. No hypothetical Spanish Student Association can restrict membership to citizens of the Kingdom of Spain; such a Club must be free, though not necessarily targeted, for Canadians of Spanish extraction, Hispanophiles, and mere passers-by to join. This Commission, and the Association as a whole, cannot permit discrimination at the hands of a cultural club in an effort to appear non-discriminatory against that culture.

PART VII. Sentencing

[52] While it is clear that the CSA merits non-certification, the purpose for this Commission at first instance is to determine the precise treatment of the Club that is accepted or rejected from certification.

[53] While it is likely that the obscured and questionable financial practices of the CSA are undesirable by this Association and in clear violation of Association policy, the Association cannot morally, and likely may not legally, seize the funds held by the CSA in its CUSA-overseen bank account. Thus, I would allow the CSA to empty the bank account by the end of CUSA's fiscal year. Any funds left over shall be treated as returned to CUSA. I would not, at this time, pursue any methods at the Commission's disposal to seize those resources or request back pay for former Clubs funding given to the CSA.

[54] As above, I would hold that this Commission, in the future, refuse to certify the CSA unless and until the Club has addressed each enumerated issue to the satisfaction of the future Commission under the same standards and benchmarks set in this decision (paras XX above).

[55] I further recommend that this Commission shall write to the Student Experience Office to inform them that references to the CSA should be removed from all Carleton University communications and promotional materials.

PART VIII. Conclusion

[56] For these reasons, we would dismiss the application and not allow the certification of the Carleton University Chinese Students' Association.