

and applied to have those groups officially recognized by their student unions or associations. In each case, the Applicants were refused. In each of the three cases the Applicants apply for judicial review of their student unions' decisions and seek orders quashing the decisions of the student unions or associations.

[3] The law and the legal analysis to be applied to the facts of the three cases is identical. In the circumstances of the three cases, with some exceptions, the law that applies is the private law of groups. Under this law, a court has only a limited jurisdiction to review the conduct and decisions of an association, and the court will only do so if a significant private law right or interest is involved. The court has its jurisdiction associated with the enforcement of contracts and a limited judicial review jurisdiction over the decisions of the association. The court does not review the merits of the association's conduct or decision but reviews whether the association made its decision in accordance with the association's own rules and with the principles of natural justice, and without *mala fides*. The court may decline to exercise its judicial review jurisdiction when the internal dispute resolution mechanisms of the association have not been exhausted.

[4] In this application, the Applicants Kevin Arriola and Alexandra Godlewski sue Ryerson Students' Union ("RSU").

[5] Mr. Arriola and Ms. Godlewski organized a group known as "the Men's Issues Awareness Society ("MIAS")," and they applied for their student group to be officially recognized as a "Student Group". RSU refused the application.

[6] In this application, Mr. Arriola and Ms. Godlewski seek declarations that: RSU's decision to deny MIAS Student Group Status is *ultra vires* because RSU exceeded its jurisdiction and the decision was contrary to RSU's own policies and rules; the decision was made contrary to the principles of natural justice and in bad faith; the decision was unreasonable and contrary to the *Canadian Charter of Rights of Freedoms*¹ by failing to respect Ryerson students' freedom of association and freedom of expression. Further, the Applicants seek an order prohibiting RSU from limiting access to services on account of a student's beliefs, opinions, expressions, or associations and directing RSU to recognize MIAS as a Student Group. In the alternative, the Applicants seek an order referring its application back to RSU for reconsideration in accordance with the principles of procedural fairness, natural justice, and good faith.

[7] For the reasons that follow, this application is dismissed.

B. Facts

1. Ryerson Students' Union

[8] RSU was incorporated in 1967 under the Ontario *Corporations Act*.² It is an independent, autonomous corporation without share capital. It is separate and independent from Ryerson University. The University exercises no statutory, governmental, managerial, electoral, procedural, political, or ideological control over RSU.

¹ Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c 11.

² R.S.O. 1990, c. C.38.

[9] RSU represents all full-time undergraduate students and all graduate students at the University. It acts as the representative of students in matters related to the University. Ryerson students are “members” of the RSU so long as they have paid the mandatory student activity fee for the current term of study (approximately \$123 annually).

[10] RSU Members have the right to vote in elections and referenda, the right to run for election for the Executive, the right to attend regular and special meetings of the Board of Directors, the right to lobby the University, the right to obtain health and dental benefits, and the right to apply for Student Group status.

[11] RSU’s By-Laws, which are passed under the *Corporations Act*, set out the governance structure and the membership requirements. RSU manages the affairs of the student body and is governed by a Board of Directors that is elected each year by the members of RSU.

[12] RSU has a strong ideological and political orientation. It has a Policy Manual that includes both operational and issues-based policies. It has enacted policies for: accessibility; anti-racism; bottled water; non-academic codes of conduct; ethical investments; federal, provincial and municipal elections; multiculturalism; originality detection software (Turn-it-in.com); policing and military actions; prison – industrial complex and criminalization; privatization of universities and colleges; public pride funding; religious, cultural and spiritual freedom; tuition; and women’s issues.

[13] In its *Policy Manual*, RSU declares its commitment to support the fundamental freedoms in the *Canadian Charter of Rights and Freedoms*, including freedom of conscience, freedom of religion, freedom of belief, opinion, and expression and freedom of association.

[14] RSU is a pro-feminist organization. Issues Policy #15 – Women’s Issues was passed by the Board of Directors in March 2012; the policy states:

Preamble

15.1 Although women have achieved formal legal equality in Canada, gender-based discrimination occurs structurally, individually and institutionally, which directly impacts women’s access to post-secondary education and their experience as students. Despite some advancement in the participation of women in post-secondary education, women remain underrepresented in many areas of study including science, engineering and business. The inequality and socio-economic barriers faced by women are evident in the disproportionately high rates of poverty among women; lower wages of women relative to men; the higher rates of gender-based violence faced by women, particularly on university and college campuses; and the underrepresentation of women in all levels of government. The Ryerson Students’ Union recognizes that women are entitled to equal access, freedoms and initiatives that strive to empower women. The Ryerson Students’ Union also recognizes that the promotion of women’s rights is integral to a fully accessible post-secondary education system.

Policy

15.2 The Ryerson Students’ Union Supports a Woman’s Right To:

- i. freedom of choice of lifestyle, employment, and education as full and equal participants in Canadian society;
- ii. equitable access to post-secondary education;
- iii. employment, and the right to equal opportunity of employment with equal pay for work of equal value;
- iv. access to full, government subsidized quality daycare

- v. financial student assistance programs
- vi. concrete programs for re-entry of women into post-secondary education ...
- vii. academic counselling ...
- viii. women's right to organize ...
- ix. organizations that recognize, promote and fund a women's organization on campus to facilitate involvement in women's rights.
- x. an education through non-sexist instruction
- xi. an educational environment free of advertisements, entertainment programming and/or materials that promote violence against women, sexual stereotyping and/or discrimination.
- xii. government funded women's studies courses ...
- xiii. womens' right to control their own bodies, including but not limited to;
- xiv. freedom of expression of sexual orientation;
- xv. freedom of reproductive choice, including access to publicly-funded reproductive health services;
- xvi. freedom from sexual assault and all other forms of violence; and
- xvii. the right to an educational environment free of sexual harassment;
- xviii. effective, legal, and academic grievance procedures recognized by students, faculty and support staff; and
- xix. the celebration of International Women's Day on campus.

15.3 The Ryerson Students' Union Opposes:

- i. the exclusion, exploitation and marginalization of women, whether directly or indirectly within patriarchal societies;
- ii. any government legislation, act or designation that directly or indirectly contravenes women's reproductive rights;
- iii. any government legislation, act or designation that implies or suggests directly or indirectly that women in Canada have achieved equality, equality, or fairness and no longer need to advocate for the development of women's rights;
- iv. sexism and discrimination against women, including structural, cultural, institutional and individual manifestations;
- v. violence against women in all forms, including but not limited to physical, verbal and economic violence, and violent representations of women in media;
- vi. cuts to women's and gender studies courses ...
- vii. cuts to grants, scholarships or bursaries dedicated to the support of women's studies ...
- viii. cuts to government funding allocated for women's advocacy ...
- ix. differential wages for women and the segregation, stereotyping and undervaluing of work traditionally performed by women; and,
- x. privatization of public service including childcare, health care, education, and social services.

2. RSU's Student Group Policies

[15] Any group of students can form a club or student group at the University. The club or student group can meet on campus and organize its own events. It can communicate with students through social media and other forms of media such as the University newspapers and by handing out flyers and pamphlets.

[16] One of the functions of RSU is to recognize official Student Groups for which it offers meeting facilities, space on bulletin boards, event approval, and financial support. The RSU expends between \$60,000 to \$70,000 per year in funding for Student Groups, an average of about \$1,200 per group. Additional grant funding is also available to official Student Groups, based on application and merit, totaling an additional \$120,000 to \$130,000 per year.

[17] Pursuant to RSU's By-Laws, the Groups Committee is a committee comprised of directors and student representatives. The Committee reviews matters relating to the planning and implementation of Student Group summits, workshops and other Student Group events, and the Committee has the responsibility to consider and recommend to the Board of Directors all matters relating to the expenditure of funds.

[18] In 2016, RSU recognized over 80 different Student Groups, which promoted a broad range of diverse and divergent religions, cultures, activities, ideologies and views. For example, it recognized both "Students for Justice Palestine" and "Students Supporting Israel," two student groups supporting opposing geo-political positions.

[19] Any student club or student group can apply to RSU to be recognized as a Student Group. The Club must submit an application to the Student Groups Committee in accordance with Operational Policy #36 - Student Group Policy and in accordance with the *Policy on New Student Groups*.

[20] In accordance with the Student Group Policy, the Groups Committee reviews applications for compliance with the Ontario *Human Rights Code*, RSU policies, and University policies. The review is followed by a recommendation to the Board about whether the student club or group should be approved for Student Group status. The Student Group Policy states:

Scope

36.1 This Policy applies to all RSU Student Groups.

....

Policy

36.2 The Student Group's actions must not be contrary to the Ontario *Human Rights Code*, RSU or the University's policies.

....

Restrictions

- i. RSU groups may not proselytize;
- ii. Groups may not be affiliated with Provincial or Federal politics.

[21] The *Policy on New Student Groups* states:

1. Before a new group applies for ratification to the Board of Directors the following must be submitted to the Campus Groups Administrator for review and recommendation by the Student Groups Committee:

- An Executive list ...
- Valid constitution,
- Members list ...
- A list of a minimum of five proposed activities, that indicate goal(s) and objective(s) of each event.

2. All new groups are subject to all RSU policies and criteria established for existing groups.

3. The Board of Directors has the right to recognize new groups or withdraw recognition of any group that does not uphold/respect the RSU policy.

....

6. Social, political issue, or non-academic special interest groups may be formed and subsequently recognized by RSU if the group can prove its viability and can act in accordance with RSU and University criteria, policies, and procedures.

....

9. Groups may not duplicate services offered by a currently existing group. Groups which share similar country or origin or religion must prove that they are unique and not offering services of an existing group.

10. Upon approval by the Board of Directors, all groups shall have access to base funding. ...

....

[22] If the Student Groups Committee rejects an application for Student Group status, an appeal can be made to the Executive Committee and then to the Board of Directors under Operational Policy #35 - Student Group Appeal Policy. The Student Group Appeal Policy requires that written reasons from the Committee be provided upon request. The Student Group Appeal Policy (Operational Policy #35) states:

Preamble

35.1 Applicants seeking status as a RSU student group must first fulfill requirements as outlined in RSU Student Groups Policy. Should the Student Groups Committee reject the application, the following guidelines apply. For the purposes of this policy, the student or students making an appeal are herein referred to as the appellant.

Protocol

35.2 Notification

Upon denying Student Groups status to any applicant, the Student Groups Committee will provide a copy of the policy to the applicant within one business day.

Appeals

35.3

i. Upon receiving a request from the appellant, the Vice President Student Life and Events shall draft a letter detailing the reasons for denial by the Student Groups Committee, within 10 days of receiving such a request.

....

iv. Upon hearing a presentation by the appellant, the Executive Committee, within 10 business days of such decision by the Students Group Committee may,

- a. Present the appellant to the Board of Directors for a final determination on the application in question at the next regularly scheduled Board of Directors meeting. A group without endorsement by the Student

Groups Committee will require a two-thirds majority vote to be ratified; or

- b. Require the appellant to return to the Student Groups Committee for further discussion and amendment where deemed necessary.

....

3. MIAS's Application to be Recognized as a Student Group

[23] In 2015, with the assistance of the Canadian Association for Equality ("CAFE"), Mr. Arriola and Ms. Godlewski, who were undergraduate students at Ryerson University, founded MIAS. Mr. Arriola was the President and Ms. Godlewski was the Social Media Executive. The purpose of MIAS is to bring social awareness to issues that disproportionately affect men and boys, such as higher rates of suicide, homelessness, workplace injuries and failure in school.

[24] On October 19, 2015, with the substantial assistance of RSU's Campus Groups Administrator, Leatrice O'Neill, Mr. Arriola submitted MIAS's application for Student Group recognition.

[25] The RSU's Groups Committee scheduled a meeting with MIAS for October 26, 2015 and requested that MIAS's representative explain the nature of MIAS, including planned events and activities during the year ahead.

[26] On October 26, 2015, the Groups Committee held a meeting to discuss, among other things, the MIAS application for Student Group status. Mr. Arriola and Ms. Godlewski attended the meeting and made a presentation. The members of the Groups Committee questioned Mr. Arriola and Ms. Godlewski about MIAS's purpose as a group, what kinds of issues the group would discuss, and what initiatives it would support.

[27] Mr. Arriola told the Committee that MIAS's goal was to raise awareness on issues that affect men and boys, especially disenfranchised men and boys, and that MIAS's events would "be focused on men's issues."

[28] The Groups Committee's members raised various concerns during this meeting. One of the concerns was that the projects proposed by MIAS were already being done through the Equity Services Centres. Another concern was that MIAS could legitimize anti-women sentiments on campus and could lead to women feeling unsafe on campus. Mr. Arriola responded that he did not understand why MIAS would make students feel unsafe, because he did not feel unsafe when women held events on campus. He said that feelings of unsafety were out of his control and that it was RSU's responsibility to ensure that and a Student Group did not violate RSU's policies.

[29] When asked about MIAS's affiliation to A Voice for Men, which was described by the Groups Committee as an "inherently violent hate group against women and women's rights," Mr. Arriola said: "We won't have anyone from A Voice for Men due to our budget."

[30] After discussing MIAS's application, the Group Committee members denied the motion to approve MIAS as a Student Group. The Committee's main concerns were that MIAS's mandate violated RSU's policies, including Issues Policy #15 – Women's Issues, and that MIAS replicated existing services of the Equity Services Centre.

[31] On October 27, 2015, Ms. O'Neill emailed Mr. Arriola to inform him of the Group

Committee's decision to deny MIAS's application for Student Group status. Ms. O'Neill encouraged Mr. Arriola to reach out to Andrea Bartlett, the President of RSU at the time, to see how the group could move forward.

[32] Mr. Arriola requested reasons for the Group Committee's refusal, and on October 28, 2015, Ms. O'Neill acknowledged receipt of Mr. Arriola's request and informed him that she would provide reasons.

[33] Mr. Arriola also requested a meeting with Ms. Bartlett, and she agreed to meet with him on October 30, 2015. At that meeting, Mr. Arriola was given written reasons for the Committee's decision to deny MIAS's application. The document stated:

Men's Issues Awareness Society at Ryerson – Committee Concerns

1. Safety

The group was not aware that having certain speakers and events could cause an unsafe learning environment for women-identified students. The group was not taking all the proper safety measures from spinning out of control and lack of knowledge of the possible dangers this group could have on the Ryerson community.

2. Associations with External Organizations

There are no parameters set in the event that spokespeople from the Canadian Association for Equality (CAFE), which is an organization closely associated with a Voice for Men, would come on campus and create an unsafe learning environment. These groups have a history of hate against both women and feminists on campus who spoke out against Men's Rights groups affiliated with CAFE on and off campus.

3. Systemic Privilege

It was not clear whether the acknowledgement of the systematic privilege that men have would be made at any event or from this group. It was unclear if the group was assembling as a response to systemic discrimination against men or a social issue. The question was asked and whether the group was assembled as a response to a social issue however did not receive supplement backing of the social issues happening due to a socially perpetual issue from a specific source or sources (e.g. an organization, a group of powerful people, etc.). The Committee was just not told of the symptoms that men face. Due to this, there was no action item. MIAS seems to have a lack of understanding of the issue. Men having less access to services than women is actually due to the fact women face discrimination and prejudice daily.

4. Constitution

There was a lack of regulation in constitution for safety concerns & associations with external groups.

5. Non-Compliance with RSU Policies

The RSU Operational Policy #36 Student Groups Policy states that "Student Group's actions must not be contrary to the Ontario Human Rights Code, RSU or the University's Policies." Given the concerns outlined above around MIAS' association with CAFE and similar groups, we take the view that MIA is in violation of RSU's Issues Policy #14. [sic #15]

The Ryerson Student Union Opposes:

1. The exclusion, exploitation and marginalization of women, whether directly or indirectly within patriarchal societies;
2. Sexism and discrimination against women, including structural, cultural, institutional and individual manifestations;
3. Violence against women in all forms, including but not limited to physical, verbal, and

economic violence and violent representations of women in the media.

RECOMMENDATION

The Student Groups Committee has voted to reject the application; however, you are able to appeal the decision as per the RSU policy manual and address the concerns outlined above in your appeal.

[34] At the meeting, Ms. Bartlett suggested that the members of MIAS reach out to the Equity Services Centre, who could assist with changes to MIAS' constitution so that MIAS could achieve Student Group status. Ms. Bartlett also informed Mr. Arriola about the process to appeal the Committee's decision.

[35] MIAS appealed the Committee's decision to the Executive Committee. The appeal was originally scheduled to be heard on November 17, 2015, but to accommodate Mr. Arriola, who was not available on this date, the Executive Committee adjourned the appeal to December 1, 2015.

[36] Before the December appeal hearing, Mr. Arriola sent a revised copy of MIAS's constitution and a copy of the appeal presentation that he, and other members of MIAS, planned to give to the Executive Committee to Ms. O'Neill. She responded and suggested that MIAS's constitution be amended to state that the group would not host activities using members of external organizations. Ms. O'Neill explained people associated with CAFE were also associated with A Voice for Men and that was a problem.

[37] While MIAS's appeal was pending Ms. Bartlett received over a dozen phone calls and voicemail messages, some of them threatening, from various people, many of whom were not students from the University, demanding that RSU grant MIAS Student Group status. Some of the callers referred to a newsletter that had been sent to CAFE members that have provided Ms. Bartlett's email and personal and business phone numbers.

[38] On December 1, 2015, Mr. Arriola made a presentation to the Executive Committee about MIAS's mandate, the Revised Constitution, and MIAS's association with external organizations. With respect to the Committee's concerns about MIAS not recognizing systemic privilege and being in contradiction with RSU policy, Mr. Arriola said that privilege "applies to non-feminists and feminists alike". With respect to MIAS's stance on education, Mr. Arriola described how the University should change how it teaches men to learn because it is not tailored to their type of learning. Mr. Arriola told the Executive Committee that men suffer gender discrimination and have less access to services due to discrimination.

[39] At the appeal hearing, Ms. Bartlett told Mr. Arriola that she had received threatening telephone calls from people insisting that the RSU grant MIAS Student Group status. In response, Mr. Arriola stated that MIAS was against hate and harassment, that he could not control other people, and that it was an issue for the police.

[40] The Executive Committee decided that it would not make a decision and resolved that MIAS's appeal be heard by RSU's Board of Directors.

[41] On December 8, 2015, Casey Chu Cheong, RSU Internal Coordinator, wrote to Mr. Arriola to inform him of the Executive Committee's decision and to invite him to present at the next Board of Directors meeting, which was scheduled for January 2016. On January 12, 2016, Ms. Cheong emailed Mr. Arriola and advised that the Board of Directors meeting would be held on January 25, 2016.

[42] On January 25, 2016, the Board of Directors heard the appeal of the Committee's decision to deny MIAS Student Group status. Mr. Arriola made another presentation and answered the Board of Directors' questions. There was a lengthy discussion and the Board of Directors voted to uphold the decision of the Groups Committee.

[43] Following the Board Meeting, Mr. Arriola wrote to Ms. Bartlett and requested a written statement about the reasons for the rejection. On February 29, 2016 Ms. Bartlett provided Mr. Arriola with a letter containing reasons for the decision to deny MIAS Student Group status. The letter stated:

To Whom It May Concern

The Men's Issues Awareness Society applied for student group status with the Ryerson Students' Union (RSU). The RSU Student Groups Committee denied the application on October 26, 2015. The Student Groups Committee resolved that the application did not meet the criteria required for Student Group status within the RSU.

The Committee felt is [sic] was a violation of the Student Group Policy #6 which reads, "Social, political issue, or non-academic special interest groups may be formed and subsequently recognized by RSU if the group can prove its viability and can act in accordance with RSU and University criteria, policies and procedures."

The Men's Issues Awareness Society appealed the decision of the RSU Student Groups Committee

The Board of Directors reviewed the appeal of the decision of the RSU Student Groups Committee and the Men's Issues Awareness Society. After deliberations, the Board of Directors voted on Motion 2016-01-25: C03 -

WHEREAS the Student Groups Committee has met and reviewed the Application of Men's Issues Awareness Society at Ryerson seeking group status; and

WHEREAS the Student Groups Committee resolved to deny student group status based on concerns regarding the ability to create safe(r) spaces on campus; and

WHEREAS Men's Issues Awareness Society at Ryerson appealed this decision and the appeal was heard by the Ryerson Students' Union Executive; and

WHEREAS the Ryerson Students Union Executive Committee resolved to forward this application to the Board of Directors as outlined in the Student Groups Appeals Policy; therefore

BE IT RESOLVED THAT the student group "Men's Issues Awareness Society at Ryerson" be ratified as an RSU group with full rights as defined by the Student Groups Policy.

RESULT – Defeated

Result of a vote of the Board of Directors

- For – 0
- Against – 12
- Abstain – 7
- Spoiled – 1

Due to the fact the board put a motion to move the discussion *in camera*, the reasons cannot be discussed as to why the appeal was denied.

Sincerely,

Andrea Bartlett, President.

[44] On April 8, 2016, Mr. Arriola and Ms. Godlewski commenced this Application.

[45] Notwithstanding the absence of Student Group status, MIAS continues to have an active presence on the University campus. It continues to recruit members, hold meetings, host events and communicate to the University student body and the larger Toronto community.

C. Discussion

1. The Position of the Parties

[46] Mr. Arriola's and Ms. Godlewski's position is that RSU refused to permit MIAS members access to an integral part of student life because RSU's Student Groups Committee, the RSU Executive, and the RSU Board of Directors disagreed with MIAS's beliefs. The Applicants submit that judicial intervention is required to protect students from ideological coercion at the hands of student politicians seeking to enforce their own views as to what is acceptable speech on campus. Mr. Arriola and Ms. Godlewski submit that: the RSU's decision was discriminatory and contrary to RSU's own rules and policies; violated freedom of association; and violated freedom of thought, belief, opinion and expression.

[47] They submit that, as a result of the important public element of students' unions, this Court should exercise its jurisdiction to hold RSU accountable for overstepping its lawful authority and violating the Applicants' right to freedom of expression and association, as well as their right to equal treatment and benefits as RSU members. They submit that the court has jurisdiction to review the decision of the RSU and that RSU's actions were illegal, contrary to the *Canadian Charter of Rights and Freedoms* and in violation of the principles of natural justice.

[48] The RSU's position is that public law does not apply and that in the circumstances of this case the court does not have any jurisdiction over RSU's decision to deny MIAS's application for Student Group status. If, however, the court has jurisdiction, it is a very limited jurisdiction and is only to review whether RSU acted within its jurisdiction and in accordance with the principles of natural justice. In this regard, RSU submits that it acted lawfully, fairly, and in accordance with the principles of natural justice. Further RSU submits that pursuant to its Policy on New Student Groups, a group must act in accordance with RSU policies and procedures and the Board of Directors had the discretion to recognize or not recognize new Student Groups. It submits that it had the authority to consider and decide for itself whether MIAS's actions contravened or might contravene its policies.

2. The Law of Groups

[49] Unless they are sufficiently infused with a public element, the activities and decisions of associations be they incorporated or unincorporated voluntary associations, including charities, social clubs, fraternities, sororities, yacht, golf, tennis, curling clubs, etc., athletic organizations, schools, religious societies, trade unions, professional guilds, political parties, or NGOs (non-governmental organizations), are governed by private not public law.³

[50] Where the decisions or activities of an association are challenged in court, to

³ *Air Canada v. Toronto Port Authority*, 2011 FCA 347; *Setia v. Appleby College*, 2013 ONCA 753.

determine whether the matter is within the purview of public law, the court should examine a variety of factors in the particular circumstances of the case, including: the character of the matter for which review is sought; the nature of the decision-maker and its responsibilities; the extent to which a decision is founded in and shaped by law as opposed to private discretion; the association's relationship to statutory schemes or governments or public authorities; the extent to which the association is an agent of government or is directed, controlled or significantly influenced by a public entity; the suitability of public law remedies; the existence of a compulsory power; and whether the activities or decisions of the association has a significant public dimension.⁴

[51] In *Setia v. Appleby College*,⁵ a private school regulated by the *Education Act*, expelled a student for smoking marijuana contrary to the school's Code of Conduct that his parents, in signing a contract with the school, acknowledged would govern his school enrollment. Reversing the Divisional Court, the Court of Appeal held that expulsion decision was governed by private not public law. In *West Toronto United Football Club v. Ontario Soccer Assn.*,⁶ the Ontario Soccer Association, which governed the playing of competitive soccer in Ontario and which had control over 500,000 players was held to have very public responsibilities and a very large public dimension such that it was amenable to public law scrutiny.

[52] The *Canadian Charter of Rights and Freedoms* applies to an association's activities if the association is government or if the association's activity is governmental action.⁷ In *McKinney v. University of Guelph*,⁸ the Supreme Court of Canada stated universities are not organs of the government, even though they are subject to government regulation and depend on government funds. In *Grant v. Ryerson Students' Union*,⁹ Justice Stewart held that a student association as a non-profit corporation was not subject to the *Charter*.

[53] Where the affairs of an association are governed by private law, a court has only a limited jurisdiction to review the conduct and decisions of associations, and the court will only do so if a significant private law right or interest is involved.¹⁰ If a significant private law right or interest is involved; for example if a member of the association has been expelled or lost his or her membership status, been deprived of his or her membership privileges, or his or her ability to pursue vocations and avocations associated with the association, the court does not review the merits of the association's conduct or decision but reviews whether the purported expulsion or loss of membership or of membership privileges was carried out according to the applicable rules

⁴ *Air Canada v. Toronto Port Authority*, 2011 FCA 347; *Setia v. Appleby College*, 2013 ONCA 753; *West Toronto United Football Club v. Ontario Soccer Assn.*, 2014 ONSC 5881; *Association for the Protection of Amherst Island v. Ontario (Director of Environmental Approvals)*, 2014 ONSC 4574; *Courchene v. Carleton University Students' Association*, 2016 ONSC 3500; *Grant v. Ryerson Students' Union*, 2016 ONSC 5519.

⁵ 2013 ONCA 753.

⁶ 2014 ONSC 5881.

⁷ *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229; *Eldridge v. British Columbia*, [1997] 3 SCR 624; *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2009 SCC 31.

⁸ [1990] 3 S.C.R. 229. See also *Lobo v. Carleton University*, 2012 ONSC 254.

⁹ 2016 ONSC 5519.

¹⁰ *Street v. B.C. School Sports*, 2005 BCSC 958; *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 (C.A.).

of the association and with the principles of natural justice, and without *mala fides*.¹¹

[54] The court may get involved in the affairs of an association when the matter is of sufficient importance to deserve the intervention of the court and where the remedy sought is susceptible of enforcement by the court.¹² The court retains a limited jurisdiction to review the procedural integrity of the association's action even if the constitution or rules of the association purport to oust any jurisdiction in the court.¹³ The court may decline its jurisdiction and treat the court proceeding as premature where it is shown that internal procedures and remedies of the association have not been exhausted.¹⁴

[55] The court has the jurisdiction to enforce the contractual rights between an association and its members and the contractual rights of the members between or among themselves.¹⁵ The court has the jurisdiction to interpret the contracts that define the rights of the members in respect of the association's operations.¹⁶ The relationship between national associations and their incorporated local units is contractual and the members of the local association are taken to have accepted the national constitution as a contract binding on them and all the members both of the local and national organization.¹⁷ A provision in a local unit's constitution that the national constitution governs in cases of inconsistency means that a provision in the local unit's constitution would be invalid if inconsistent with the national constitution.¹⁸

[56] To determine whether the association has acted in accordance with its rules, the principles of natural justice and without *mala fides*, the court must understand the institutional framework of the association and the sources of its rules, which depending on the association

¹¹ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 10 -11; *Berry v. Pulley*, 2002 SCC 40; *Changoor v. IBEW, Local 353*, 2014 ONSC 4558 (S.C.J.), aff'd 2015 ONSC 2472 (Div. Ct.); *Pal v. Chatterjee*, 2013 ONSC 1329; *Farren v. Pacific Coast Amateur Hockey Association* 2013 BCSC 498; *Lee v. Yeung*, 2012 ABQB 40; *University of Victoria Students' Society v. Canadian Federation of Students*, 2011 BCSC 122; *Garcia v. Kelowna Minor Hockey Association*, 2009 BCSC 200; *Association of Part-Time Undergraduate Students of the University of Toronto v University of Toronto Mississauga Students Union*, [2008] O.J. No. 3344 (S.C.J.); *Barrie v. Royal Colwood Golf Club*, 2001 BCSC 1181; *Falk v. Calgary Real Estate Board Co-operative Ltd.*, 2000 ABQB 297; *Clark v. Gilbert*, [1996] O.J. No. 4415 (S.C.J.); *Peerless (Guardian ad litem of) v. B.C. School Sports* (1998), 157 D.L.R. (4th) 345 (B.C.C.A.); *Vancouver Hockey Club Ltd. v. 8 Hockey Ventures Inc.* (1987), 18 B.C.L.R. (2d) 372 (S.C.); *Warkenkin v. Sault Ste. Marie Board of Education* (1985), 49 C.P.C. 31 (Ont. Dist. Ct.); *Baird v. Wells* (1890), 44 Ch. D. 661 at p. 670.

¹² *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at para. 9; *Woloshyn v. Association of United Ukrainian Canadians*, 2013 ABQB 262.

¹³ *Street v. B. C. School Sports*, 2005 BCSC 958.

¹⁴ *Ukrainian Greek Orthodox of Canada v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] S.C.R. 586; *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165; *Lee v. Yeung*, 2012 ABQB 40; *Hart v. Roman Catholic Episcopal Corporation of the Diocese of Kingston*, 2011 ONCA 728, aff'g 2010 ONSC 4709; *Alberta Soccer Assn. v. Charpentier*, 2010 ABQB 715; *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 (C.A.).

¹⁵ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165; *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 (C.A.).

¹⁶ *Kwantlen University College Student Assn. v. Canadian Federation of Students*, 2011 BCCA 133, aff'g 2010 BCSC 1951.

¹⁷ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 45-46; *Polish Veterans Second Corps v. Army, Navy & Air Force Veterans in Canada* (1978), 20 O.R. (2d) 321 at p. 341 (C.A.); *Canadian Union of Public Employees v. Deveau* (1977), 19 N.S.R. (2d) 24.

¹⁸ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 45-46.

may have a variety of sources including contract, statute, and custom and tradition.¹⁹

[57] The content of the principles of natural justice are flexible and depend on the particular circumstances of the association, but the minimum requirements are: (a) adequate notice of what is to be determined and the consequences;²⁰ (b) an opportunity to make representations; and (c) an unbiased tribunal.²¹ The scope of the requirements of natural justice depend on the subject-matter that is being dealt with, the particular legislative or administrative context, the circumstances of the case, the nature of the inquiry, and the rules under which the tribunal is acting, and the ultimate question is whether the procedures adopted were fair in all the circumstances.²²

[58] The rules which require a tribunal to maintain an open mind and to be free of bias, actual or perceived, are part of the *audi alteram partem* principle which applies to decision-makers.²³ In the context of associations, an unbiased tribunal in accordance with the principles of natural justice is one that has not prejudged the matter and is opened-minded to being persuaded.²⁴ In *Old St. Boniface Residents Association Inc v. Winnipeg (City)*,²⁵ the Supreme Court of Canada was called on to consider the application of the rules of natural justice or fairness where members of an organization, in that case elected municipal councillors, would be expected to have a view (but not a direct or indirect personal interest), in making a decision about a matter within the organization's mandate, in that case a zoning application. In deciding that a councillor did not have to recuse himself from participating in the hearing of the zoning application on the grounds that he had prejudged the matter, Justice Sopinka stated at para. 94:

In my opinion, the test that is consistent with the functions of a municipal councillor and enables him or her to carry out the political and legislative duties entrusted to the councillor is one which requires that the objectors or supporters be heard by members of council who are capable of being persuaded. The legislature could not have intended to have a hearing before a body who has already made a decision which is irreversible. The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile. Statements by individual members of council, while they may very well give rise to an appearance of bias, will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged. In this regard it is important to keep in mind that support in favour of a measure before a committee and a vote in favour will not constitute disqualifying bias in the absence of some

¹⁹ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165.

²⁰ *Cohen v. Hazen Avenue Synagogue* (1920), 47 N.B.R. 400 (S.C.); *Young v. Ladies' Imperial Club*, [1920] 2 K.B. 523 (C.A.)

²¹ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 80-86; *McLachlan v. Burrard Yacht Club*, 2008 BCCA 271.

²² *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165; *Martineau v. Matsqui Institution*, [1980] 1 S.C.R. 602 at pp. 630-31; *Syndicat des employés de production du Qué. et de l'Acadie v. Can. (Can. Human Rights Comm.)*, [1989] 2 S.C.R. 879 at pp. 895-96; *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643; *Russell v. Duke of Norfolk*, [1949] 1 All E.R. 109 at p. 110 (C.A.); *Polish National Union of Canada v. Branch 1 the Polish National Union of Canada*, 2014 ONSC 3134.

²³ *Old St. Boniface Residents Association Inc v. Winnipeg (City)*, [1990] 3 S.C.R. 1170.

²⁴ *McLachlan v. Burrard Yacht Club*, 2008 BCCA 271; *Old St. Boniface Residents Association Inc v. Winnipeg (City)*, [1990] 3 S.C.R. 1170.

²⁵ [1990] 3 S.C.R. 1170.

indication that the position taken is incapable of change. The contrary conclusion would result in the disqualification of a majority of council in respect of all matters that are decided at public meetings at which objectors are entitled to be heard.

[59] Although the public law remedies of *certiorari*, *mandamus*, and prohibition are not available for the judicial review of the activities of an association, courts use the private law remedies of injunctions and declarations instead.²⁶ If a member of an association is expelled by the association in breach of contract, the court will grant a declaration that the association's action is *ultra vires* and it will grant an injunction if necessary to protect the contractual, employment, or proprietary rights of the member.²⁷

[60] To conclude this discussion of the law of groups, the above survey of the case law about the law of groups reveals that courts tend to employ an analytical framework that progresses through a series of five issues.

[61] First, the court determines whether the association that is before the court has a public stature or importance that exposes it to scrutiny in accordance with the principles of public administrative law, in which case the court judicially reviews the decision of the association in accordance with the principles of public law. Depending on the nature of the association, public law may include the application of the *Canadian Charter of Rights and Freedoms*.

[62] Second, if the court concludes that public law does not apply, the court determines whether the group is the type of group in which the members of the group would not have envisioned that the members had a contractual relationship one to another, in which case, the court will decline to exercise its jurisdiction. For examples, the members of an informal book club, an informal social club, or a family tree club would not envision that their promises were legally enforceable because they would have no intention to contract. In other words, the second question for the court to decide is whether any private law applies to the association before the court.

[63] Third, if the court concludes that private law applies, then the court determines whether there is some reason for the court to decline or postpone the exercise of its jurisdiction. For example, the court may decline to exercise its private law (or its public law) jurisdiction where the dispute resolution mechanisms of the association have not been exhausted.

[64] Fourth, if the court concludes that private law applies and there is no reason to decline to exercise the court's jurisdiction, the court determines whether the members of the group have breached the contract among the group and the members of the group.

[65] Fifth, if the court concludes that private law applies and there is no reason to decline to exercise the court's jurisdiction, the court determines whether there has been any violation of the principles of natural justice.

3. Analysis

[66] Applying the above analytical framework to the facts of the case at bar, in my opinion,

²⁶ *Lee v. Yeung*, 2012 ABQB 40; *Knox v. Conservative Party of Canada*, 2007 ABCA 295, leave to appeal to the S.C.C. ref'd [2007] SCCA No. 567; *Kaplan v. Canadian Institute of Actuaries*, [1994] A.J. No. 868 (Q.B.).

²⁷ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 9-11.

public law does not apply. The RSU is a private student organization on a university campus. It is not a government actor and insofar as the federal, provincial, and municipal governments are concerned, it is a lobbyist not a legislator. It does not have the public stature or credentials that would expose it the scrutiny of the principles of administrative law, and its activities are not subject to compliance with the *Canadian Charter of Rights and Freedoms*, which in any event was not breached on the facts of the case at bar.

[67] Turning to the second issue, I disagree with RSU that the court does not have jurisdiction to review its activities in accordance with the principles of the law of groups, discussed above.

[68] In my opinion, the court has the jurisdiction to review RSU's decision and the fairness of its decision-making process, and there is no reason to postpone the exercise of the court's jurisdiction. Mr. Arriola and Ms. Godlewski have exhausted all their internal remedies and their only recourse is to the court.

[69] Turning then to the merits of Mr. Arriola's and Ms. Godlewski's case against RSU, there is no merit to it. The RSU did not violate its own rules and regulations. The rights of Mr. Arriola and Ms. Godlewski, and of the group of Ryerson students they represent, to association and expression have not been violated. Mr. Arriola and Ms. Godlewski have no right nor entitlement to official Student Group status, which is a discretionary matter for the RSU to decide in accordance with its published policies and procedures.

[70] The policies and procedures of the RSU undoubtedly are very favourable to the RSU in the sense that they provide the RSU with a wide discretion and impose the burden on applicants to prove that they qualify for official status and that they will abide by the RSU's policies, which have been enacted by the duly elected officers and directors of RSU.

[71] In my opinion, treating the policies and procedures as manifesting contractual rights between the RSU and the student members, there has been no breach of contract.

[72] There also have been no breaches of natural justice. As the survey of the case law above notes, the principles of natural justice as they apply to associations are flexible and the scope of what is required for due and fair process depends upon the nature of the association and the nature of what is in issue.

[73] In the case at bar, there has been no interference with Mr. Arriola's and Ms. Godlewski's freedom of association or freedom of expression and thus those rights are not an issue.

[74] Putting the matters of esteem and the \$1,200 of base funding aside, truth be told, official Student Group Status is actually not a significant issue, and RSU's procedures for applications and appeals are more than adequate to fairly deal with what amounts to a request for a privilege.

[75] There is no entitlement to Student Group status, and a very modest procedure is all that is required to satisfy the requirements of natural justice. In the case at bar, RSU's procedures were ample and perhaps by comparison more fulsome than the procedures in the companion cases to this judgment.

[76] I see no bias or *mala fides*. It is unfortunate that Ms. Bartlett received threatening calls while Mr. Arriola's and Ms. Godlewski's appeal was pending, but the issues that concerned the RSU were already out in the open and being debated between Mr. Arriola and the RSU officials before the threats.

[77] The evidence does not support any suggestion of *mala fides* or arbitrary, capricious

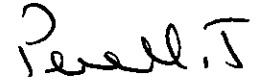
decision-making. RSU had policies and procedures, and it was entitled to question Mr. Arriola and Ms. Godlewski about their plans for MIAS on campus. The RSU officers were not satisfied by the answers, and they were entitled to make up their own mind without being second-guessed by the court.

[78] In my opinion, there was no breach or violation of the private law principles that govern the relationships among associations like the RSU and its members.

D. Conclusion

[79] For the above reasons, the application is dismissed.

[80] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with RSU's submissions within 20 days from the release of these Reasons for Decision followed by the Applicants' submissions within a further 20 days.



Perell, J.

Released: February 26, 2018

CITATION: Arriola v. Ryerson Students' Union, 2018 ONSC 1246
COURT FILE NO.: CV-16-550599
DATE: 20180226

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN ARRIOLA and ALEXANDRA GODLEWSKI

Applicants

– and –

RYERSON STUDENTS' UNION

Respondent

REASONS FOR DECISION

PERELL J.

Released: February 26, 2018