

**NUS Students' Union
Adjudication Committee**

Re Yale-NUS College Students

[2014] NUSSU AC 2

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Request Date: 25 January 2014

Decision Date: 17 February 2014

Panel: Messrs Soh Yi Da (Chairman), Law Zhe Wen, Ong Kah Han Shermon, Janson Chan, Koh Zhixun, Sim Kern Cheh and Miss Emmeliene Ong Su-Min

1 Majority Opinion (by Mr Ong, with Messrs Soh, Law and Chan concurring)

1. On 25 January 2014, Mr Tan Zi Tong (“the Requestor”), a Year 4 Political Science student from the Faculty of Arts and Social Sciences, submitted the following question to the Adjudication Committee on behalf of a group of interested Union members:

Are Yale-NUS students considered to be members of the NUS Students' Union, as are all regular NUS students?

2. As the question is seeking to clarify the Union membership status of students from the Yale-NUS College (“YNC students”), the fundamental issue undergirding this question is the issue of Union membership. To answer the question raised by the Requestor, the following steps will be taken. First, the requirements for Union membership will be ascertained. Second, we will examine if YNC students fulfill the requirements. Third, we will examine the consequences arising from the Union membership or non-Union membership of YNC students.

1.1 Requirements of Union Membership

1.1.1 Whether the Adjudication Committee is empowered to interpret NUS Statutes and Regulations

3. The requirements of Union membership can be found in two sources – NUS Regulation 9 and the Union Constitution. As stated in *Constitutional Reference Case No. 1*¹ at [86], the Adjudication Committee may interpret laws defined under Article 1.2 of the Union Constitution as Article 2.1 requires substantive determination of such laws.
4. In a similar vein, Article 2.1A of the Union Constitution states:

2.1A Notwithstanding Article 2.1, NUS Statutes and Regulations shall prevail over this Constitution to the extent of any inconsistency.

Hence, the Adjudication Committee should be able interpret NUS Statutes and Regulations in order to determine whether provisions of the Union Constitution or other Union laws are inconsistent with the NUS Statutes and Regulation.

¹ [2014] NUSSU AC 1

1.1.2 Full-time matriculated undergraduates

5. The starting point for determining Union membership requirements can be found in NUS Regulation 9. Clause 3 of the NUS Regulation 9 states that:

Membership of the Union and its constituent bodies shall be confined to registered full-time undergraduate students of the University for whom membership shall be compulsory.

In a similar vein, Article 1.7 of the Union Constitution states that:

Membership of the Union and its constituent bodies shall be confined to registered full-time undergraduate students of the University for whom membership shall be compulsory.

6. Looking at these two provisions, one can discern the following requirements for Union membership First, the person must be an undergraduate student of the University. Second, the person must be a full-time undergraduate. Third, the person must be a registered student of the University. Fourth, membership is compulsory.

1.1.3 Are all full-time undergraduate matriculated NUS students necessarily Union members?

7. From Clause 3 of NUS Regulation 9 and Article 1.7 of the Union Constitution, it may not be without merit to suggest that **all** NUS full-time matriculated undergraduates are Union members. To put it from another angle, Union members and NUS full-time matriculated undergraduates are one and the same group.
8. However, such a view should not be adopted as the entire NUS Regulation 9 is to be read together. In addition to Clause 3, Clause 5 of NUS Regulation 9 states:

Members of the Union shall be members of the constituent body relevant to the Faculty in which they are registered students...

It is necessary to read Clause 5 together with Clause 3. Does Clause 5 serve to merely dictate how members are to be allocated among the Constituent Bodies or it is an additional requirement to Union membership? In other words, does Clause 5 allow a full-time matriculated NUS undergraduate to be a Union member despite not being a member of any Constituent Body? The answer should be in the negative.

9. Firstly, it is to be noted that Clause 5 states “Members of the Union **shall be** members of the constituent body relevant to the Faculty...”, not “... **shall also be** ...” From a construction of the plain and ordinary meaning of the words, the lack of the word “also” indicates that membership of a faculty Constituent Body is not merely an accessory to Union membership

but rather something that is integral to Union membership. In other words, Clause 5 imposes an additional requirement, in addition to those in Clause 3, that the Union member must be a member of the relevant faculty Constituent Body. Otherwise, the person is not a Union member because he/she is not a member of any faculty Constituent Body.

10. Secondly, membership in a faculty Constituent Body is seen as an integral part of Union membership for every Union member has a non-zero portion of his/her subscription fees allocated to his/her faculty Constituent Club. This is seen from section 14 of the Finance Regulations:

14. A non-zero amount of subscription fees shall be allocated to the following entities:

*(1) The Union Member's **faculty Constituent Club**,*

(a) For the avoidance of doubt, the Union Member's faculty shall be construed as his home faculty or, if the Union Member is a member of the University Scholars Programme, the University Scholars Programme.

(2) The four (4) non-faculty Constituent Clubs stated under Articles 2.5(11), 2.5(12), 2.5(13) and 2.5(14) of the NUSSU Constitution, and

(3) The Executive Committee of the Union.

[emphasis added]

11. If a Union member is not a member of any faculty Constituent Club, such a distribution of subscription fees would necessarily be inoperative. The fact that a non-zero amount of subscription fees is allocated to faculty Constituent Club shows that being a member of a faculty Constituent Club is an integral part of Union membership.
12. Hence, Clause 5 of Regulation 9 should be read to include an additional requirement to Union membership that the student must be a member of his/her relevant faculty Constituent Club ("Clause 5 requirement"). Despite the lack of such a provision in the Union Constitution, Article 2.1A of the Union Constitution gives primacy to NUS Regulation 9 for it states:

2.1A Notwithstanding Article 2.1, NUS Statutes and Regulations shall prevail over this Constitution to the extent of any inconsistency.

Thus, Clause 5 of NUS Regulation 9 is to be given effect notwithstanding the absence of a similar provision under the Union Constitution.

1.2 Union Membership Status of YNC Students

1.2.1 Are YNC students full-time registered undergraduate students of NUS?

13. Yale-NUS College (“YNC”), pursuant to Clause 3 of NUS Statute 3, is a Special Constituent School of the University and it is governed by its own charter (“Yale-NUS Charter”). Other Special Constituent Schools include Duke-NUS Graduate Medical School Singapore, the Lee Kuan Yew School of Public Policy and the Yong Siew Toh Conservatory of Music. It is undeniable that students of these schools are considered NUS students. By the same line of logic, YNC students are, despite their status as a student of Special Constituent School, NUS students too.
14. Another factor reinforcing the fact that YNC students are NUS students is the fact that their degrees are awarded by NUS. It is also noteworthy that YNC students receive matriculation cards that are similar in shape, design and format to that received by NUS students. The only difference is that they have an additional “Yale-NUS College” sticker on their cards. Next, they also receive matriculation numbers similar to that of NUS students. Last but not least, YNC students are listed in the NUS Undergraduate Statistics, together with students from Yong Siew Toh Conservatory of Music. As such, it is uncontroversial that YNC students, according to the factors listed above, are students of NUS.
15. Given that YNC students do matriculate and their courses are considered full-time undergraduate courses, they are thus full-time undergraduate registered students of the NUS according to the meaning given under NUS Regulation 9 and the Union Constitution.

1.2.2 Are YNC students Union members in light of the Clause 5 requirement?

16. In order for YNC students to be considered Union members in light of the Clause 5 requirement, they necessarily need to be able to prove that they are a member of a relevant faculty Constituent Club. However, it is established that YNC students, in general, are not members of any NUS faculty listed under Clause 2 of NUS Statute 3. Hence, YNC students cannot be said to be members of any faculty Constituent Club. The logical consequence is that they are thus not Union members.
17. However, the fact that YNC students are not Union members is subject to a qualification. If the YNC student is a member of any double-degree programme where the YNC student reads a degree of an NUS faculty, they will be considered Union members **only because** they are a member of that faculty’s Constituent Body/Club. In the current context, only YNC students in the YNC-Law Double Degree Programme are Union members because they acquired their Union membership in their capacities as members of NUS Students’ Law Club.

1.3 Consequences of Non-Union Membership for YNC Students

18. In general, Union membership confers three forms of privileges. First, there is the right to stand for election as well as the right to vote in elections (“electoral rights”). Second, there is the right to participate and speak in General Meetings (“meeting rights”). Third, there is the

right to participate in activities. Each of them will be answered separately (“participatory rights”).

1.3.1 Electoral rights

19. Electoral rights are integral to Union membership as well as Constituent Clubs’ membership. They are something that cannot be extended to non-members of the Union and Constituent Clubs respectively. It is not difficult to find that even in Constituent Clubs which allow non-members to participate in their activities, such non-members do not have electoral rights. Hence, YNC students shall, pursuant to their lack of Union membership, not be allowed to run for office, nominate or second candidates or vote in Union and Constituent Clubs’ elections.

1.3.2 Meeting rights

20. Meeting rights are member rights that can be subdivided into two types – right to speak and right to vote in meetings. At the Union level, only Union members have voting rights during General Meetings of the Union. At the Union Council level, only Council Representatives have voting rights during Union Council Meetings. Hence, the lack of Union membership precludes YNC students from possessing voting rights at any Union meeting, be it General Meetings of the Union, Council Meetings or meetings of any other Union entities.
21. On the other hand, the right to speak is conferred more liberally. The Meetings Regulations allow members with voting rights in a meeting to decide if non-voting meeting participants may be given the right to speak. Hence, YNC students may have the right to speak at Union meetings or even Club meetings if they have been conferred the right to speak in that meeting by the members with voting rights. That being said, it is to be reiterated that the right to vote in meetings cannot be extended to non-Union members as Union membership is an integral prerequisite to possessing voting rights in a meeting.

1.3.3 Participatory rights

22. In general, only Union members have the right to participate in the activities of the Union. Similarly, only members have the right of participation in the relevant faculty Constituent Club as well as the four non-faculty Constituent Clubs. Since YNC students are not Union members, by default, they do not have the right to participate in any activities of the Union or Constituent Clubs. However, Constituent Clubs may provide, through provisions in their laws, for participation by non-members in their activities. YNC students may thus participate in the activities of Clubs which confer a participatory right for non-members.
23. According to the latest available Constitutions of the various Clubs, only Dentistry Society, Community Service Club and Sports Club allow non-Union members to participate in their

activities. Arts and Social Sciences Club, Bizad Club, Design and Environment Club, Engineering Club, Medical Society, Science Club, University Scholars' Club, Cultural Activities Club and Political Association do not allow non-members participatory rights. Computing Club and Law Club allow only postgraduate non-members participatory rights. Hence, YNC students, by virtue of their status as non-Union members, may only participate in the activities of Dentistry Society, Community Service Club and Sports Club.

24. Also, it is important to draw a distinction between participation and organisation. Participatory rights only confer the right to participate, not the right to organise. This is a fine distinction, but nonetheless one that should be drawn. For example, for Clubs which provide for non-members to participate in their activities, such participatory rights do not extend to the right to be in the organising committee. The reason for this distinction is that organisation of activities entails taking into account the interests of members for whom the activity is ostensibly organised. Hence, only members have the right to decide what is in the interests of other members, thus only members may have the right to organise, notwithstanding participatory rights conferred upon non-members.
25. Lastly, such participatory rights are circumscribed by limits prescribed by the University. Clause 4 of NUS Statute 5 states:

4. The Union and its constituent bodies shall each organise activities consistent with the objectives defined in their respective constitutions.

...

(b) No person, other than members of the Union, shall participate in any activity of the Union and its constituent bodies without the prior approval of the Board of Trustees. This shall not apply to activities of a social nature or to activities jointly organised by the Union and/or its constituent bodies with external bodies, which have been approved by the Dean of Students.

Hence, the participatory right of non-Union members, even though it may be granted by laws promulgated by the Union or Constituent Club(s), such participatory rights are limited to activities of a social nature or activities, approved by the University, jointly organised by the Union and/or its Constituent Clubs with external bodies. Given that NUS Statute 5 overrides the Union Constitution and all other legal provisions of the Union and/or Constituent Clubs, this necessarily circumscribes the extent of participatory rights that may be conferred upon non-Union members.

1.3.4 Finance matters

26. It has been contended because YNC students pay Union subscription fees, they should be deemed to be Union members. Such a contention premises Union membership on payment of fees. This is not in line with the Clause 5 requirement enunciated above. The Office of Finance Services ("OFS") has also indicated that although subscription fees are collected

from YNC students, they have remained untouched and unallocated pending further clarification of their status vis-à-vis the Union.

27. Even if the funds have been touched and/or allocated, the Union will be deemed to be a trustee of such funds and to be redirected accordingly (with the necessary restitution) upon clarification of YNC students' status. Hence, in light of YNC students' non-membership in the Union, the subscription fees collected from them are to be untouched and unallocated until they have been constituted as a Constituent Body of the Union.

1.3.5 General principle

28. To aid the Union membership body in determining whether a certain action is something that YNC students have despite their non-membership in the Union, a guiding question is to ask whether a member of other student governments, such as Singapore Management University Student Association or the Nanyang Technological University Students' Union, has a right to undertake that certain action. If no, then YNC students, also being non-Union members, are thus not entitled to undertake that certain action. The discriminating factor is not whether the person is from NUS, but rather whether the person is a Union member. They are not one and the same.

1.4 Consequences of YNC Students' Non-Union Membership for Union Entities

29. If a Union entity confers rights upon YNC students or other non-Union members that are not allowed under any law of the Union or that Union entity, that Union entity can be considered to be acting *ultra vires* and thus any member of that Union entity has a cause of action against that Union entity under Article 5.5 of the Union Constitution. Also, if the office-holders of that Union entity insists on conferring rights upon YNC students or other non-Union members that are not allowed by any Union law, he/she risks contravening the Union objects and being exposed to disciplinary action by the Union Council for such contravention.
30. Also, the Union Council has Council Funding, a funding scheme apportioned from the Union Executive Committee's budget, for any deserving projects initiated by Union members. The organisers of these projects can apply for Council Funding. Two salient points are to be noted. First, the fact that these projects may have YNC students participating is not a bar to application for funds under Council Funding, but the Council Finance Standing Committee is to take into account the fact that YNC students are not Union members and accordingly evaluate whether such projects serve Union members' interests. Next, as the projects must be initiated by Union members, any projects initiated, whether solely or non-insignificantly, by YNC students are therefore ineligible for Council Funding.
31. Thirdly, in the Fifth Council Meeting of the 34th NUSSU Council, it was passed as a resolution by the Union Council that YNC shall be considered as an Associate Body of the Union. The

result from this Panel's adjudication does not conflict with such a resolution. As mentioned in *Constitutional Reference Case No. 1*, a resolution that does not result in a Union Regulation is not binding on the Union, hence such a resolution remains what it is, a resolution non-binding on the Union.

1.5 Future Direction

32. The YNC administration has indicated that the student body is forming their own student government and they do not wish to be admitted as an Associate Body of the Union if they are not constituted as a Constituent Body of the Union. The right of YNC students to self-determination is to be respected by the Union. Hence, if the YNC student government is formed, relations are to be conducted similarly to how the Union conducts relations with other universities' student governments.
33. Also, due to the lack of Union membership among YNC students, it is impossible, even if they desire to, for YNC student government to be admitted as an Associate Body of the Union. This is because Associate Bodies are recognised groups of **Union members** who are deemed sufficiently significant to be given representation on the Union Council. As all Associate Bodies are comprised entirely of Union members, YNC, comprising of mostly, if not entirely, non-Union members, cannot be an Associate Body of the Union.

1.5.1 Can YNC students ever be Union members?

34. If YNC students wish to be Union members, or wish to be conferred the rights enjoyed by Union members, they have to ensure that they satisfy the Clause 5 requirement, which is that YNC students must be members of a Constituent Body relevant to the Faculty they are registered to. As contended by our brother Panel member, Mr Koh Zhixun, there are two sub-requirements to the Clause 5 requirement. Firstly, YNC must be constituted as a Constituent Body. Secondly, even if YNC is constituted as a Constituent Body, YNC students must be registered students of a Faculty and the Constituent Body must be relevant to that Faculty.
35. The implication of this contention is clear. Under Clause 3 of NUS Statute 3, YNC is Special Constituent School of the University, not a Faculty. Hence, it is not without merit to suggest that even if YNC is constituted as a Constituent Body under NUS Regulation 9, the Clause 5 requirement is not fulfilled since YNC itself is not a Faculty but Special Constituent School. Besides, Clause 7 of NUS Statute 1 states that in the event of any inconsistency between a NUS Regulation and an NUS Statute, the NUS Statute shall prevail to the extent of the inconsistency. In this case, if YNC is a Constituent Body but is not a Faculty, using Mr Koh's contention, the status of YNC in Statute 3 shall prevail. It will never be a Faculty and thus never be able to fulfill the Clause 5 requirement.

36. As much as such a contention is not without merit, we will respectfully disagree with Mr Koh's interpretation. We are of the opinion that Mr Koh did not give sufficient weight to two other provisions in NUS Statute 1, which governs interpretation of NUS Statutes and Regulations. These provisions are:

1. In all Statutes (defined below) and Regulations (defined below), capitalised terms not defined herein shall have the same meaning as in the Articles of Association (defined below). Unless the context shall otherwise require, the following words shall have the following meanings:

...

*"Faculty" or "School" means **a faculty or school of the University as set out in Statute 3** from time to time. References to "Faculty" shall include "School" and references to "Faculties" shall include "Schools";*

*4. In construing any Statute or Regulation, regard shall be had to **the spirit and intention** of the Statute or Regulation and to the purpose for which it was made*

[emphasis added]

37. Firstly, we are of the opinion that the word "Faculty" in the Clause 5 requirement refers to faculties and schools in NUS Statute 3. The meaning of "schools" in NUS Statute 3 not only refers to schools defined under Clause 2 of NUS Statute 3 but also Clause 3 of NUS Statute 3 where Special Constituent Schools, like YNC, are defined. Secondly, we are of the view that a wider reading of the meaning of Faculty in Regulation 9 will give effect to the intention of the University, which is that YNC is a school/faculty of NUS, except that it is governed by its own charter.

38. Hence, we will respectfully disagree with Mr Koh. We are of the view that YNC students will be able to fulfill the Clause 5 requirement when YNC is constituted as a Constituent Body of the Union under NUS Regulation 9. However, it must be noted that this is an action that only the University Board of Trustees is capable of undertaking and rightly out of the jurisdiction of the Union as a whole. Any YNC student who desires to be a Union member while remaining a YNC student has to persuade the University to effect that change through the NUS Statutes and Regulations. Until that day comes, YNC students (except for those under the YNC-Law Double Degree Programme) will remain as non-Union members with all the attendant consequences iterated above.

1.6 Summary

39. In summary, YNC students are not Union members because they are not part of any Constituent Body under NUS Regulation 9, thus failing to fulfil the Clause 5 requirement. As a result, they do not have electoral rights, meeting rights or participatory rights in activities of the Union, Constituent Clubs or Union entities unless such rights have been explicitly conferred upon them, whether through laws of the Union or Union entities or meeting

members voting to confer such rights for that meeting. Any office-holder of Union entities who contravene this principle risks exposing that entity to dispute that can be raised to the Adjudication Committee and/or disciplinary action(s) by the Union Council.

40. Moving forward, the YNC student government is to be treated by the Union according to how it conducts relations with student governments from other universities. Also, any impetus to change the current lack of Union membership for YNC students must come from the University Board of Trustees for YNC must be constituted as a Constituent Body of the Union so that the Clause 5 requirement is satisfied, thus fulfilling the requirements for Union membership by YNC students.

2 Concurring Opinion (by Mr Koh, concurring with Mr Ong with regard to the conclusion but dissenting with regard to the reasons)

41. I agree with the opinions of the majority and am of the opinion that YNC students are not Union members. However, I reached this conclusion through a different interpretation of Clauses 3 and 5 of NUS Regulation 9.
42. It is my opinion that YNC students are **NOT** registered full-time undergraduate students of the University for the purpose of Clause 3 of NUS Regulation 9. It is necessary at this juncture to compare Clauses 3 and 5 of NUS Regulation 9:

*3. Membership of the Union and its constituent bodies shall be confined to **registered full-time undergraduate students** of the University for whom membership shall be compulsory.*

*5. Members of the Union shall be members of **the constituent body relevant to the Faculty in which they are registered students...***

[emphasis added]

43. The requirements for Clause 3 should be read in harmony with Clause 5. To determine what constitutes an undergraduate to be “registered” for the very purpose of Union membership, it is necessary to read the following in Clause 5: “Members of the Union shall be members of the constituent body *relevant to the Faculty in which they are registered students.*”
44. From the wording of Clause 5, it seems that Clause 5 is defining the requirements of the word “registered” in Clause 3. In order to be considered a “registered” student, you need to be registered to a faculty, and the faculties in the University are listed in Clause 2 of NUS Statute 3. The relevant clause of NUS Statute 3 is as follows:

2. The Faculties of the University shall be the Faculty of Arts and Social Sciences, the School of Business, the School of Computing, the Faculty of Dentistry, the School of Design and Environment, the Faculty of Engineering, the NUS Graduate School for Integrative Sciences and Engineering, the

Faculty of Law, the Yong Loo Lin School of Medicine, the Saw Swee Hock School of Public Health, the Faculty of Science and the University Scholars Programme. The Academic Units within these Faculties shall be as set out in the Regulations.

45. Given that YNC is being conferred the status as a “Special Constituent Schools” under Clause 3 of NUS Statute 3, YNC students cannot be said to be “registered” under the provisions provided by Clause 5 of NUS Regulation 9 since they do not belong to any “Faculty” as stated in Clause 2 of NUS Statute 3. Given that they are not “registered” within the meaning of Clause 5, they would also not qualify to be “members of the NUS Students’ Union” by virtue of Clause 3 of NUS Regulation 9.

2.1 Is it still necessary to incorporate the additional “Clause 5 requirement” given this alternative interpretation?

46. From the reasoning as set out in the majority decision, I am of the opinion that the “Clause 5 requirement” for Union membership should still stand.

3 Dissenting Opinion (by Mr Sim)

47. I believe that YNC students should be integrated into the Union so as to prevent segregation of the student populace, therefore YNC students should be considered as Union members.

4 Dissenting Opinion (by Ms Ong)

48. My general view is that YNC students **should** be considered as part of the Union as they are NUS students. In the Union Constitution, it is stated that that all students matriculated into NUS are considered to be part of the Union. As such, even though YNC students follow a different academic programme from the rest of NUS, given that they are matriculated into NUS, they should be considered as part of the Union.