



Judgment of the USC Appeals Board in the matter of:

## ***Western Poker Society v Clubs Governance Committee, 2017:5***

**Judgment Date:** April 28th, 2017

**Panel:** Danielle D'Alonzo (Chair), Ryan Wolfe, and Adrita Shah Noor

**Reasons for Judgment:** Wolfe (D'Alonzo and Shah Noor concurring)

### **PART I: The Claim**

1. The Western Poker Society ("WPS") has appealed on the basis that the Clubs Governance Committee's ("CGC") decision to deny the ratification of their club was unreasonable. The Appeals Board used the well-established judicial review standard of reasonableness in reaching its final decision in respect of this appeal.

### **PART II: Reasons for Disposing of an Oral Hearing**

2. By-Law #6 grants the Appeals Board discretion to dispense of an oral hearing where it is not possible or clearly not necessary. Typically, oral hearings are reserved for elections appeals and a subset of clubs appeals where questions of fact must be ascertained for the Board to reach its final decision. In this case, the Board found the written submissions of the parties sufficient to resolve the factual dispute that forms the basis of the appellant's request for an oral hearing.
3. The appellant claims that the CGC erred in its finding that the WPS condones gambling. The appellant submits that the transferability of skills learned through playing poker to non-gambling scenarios should result in a finding that the WPS does not condone gambling. With respect, the Board disagrees. The usefulness of mathematical and reasoning skills learned through poker in non-gambling contexts does not diminish the fact that these skills are likely to be used in a gambling context. The Board accepts that the founders' intention in forming this club is not to

teach individuals to become better gamblers, however, it is reasonable to conclude that an individual who joins the WPS may use the club for this purpose.

4. Ultimately, the question of whether or not the WPS condones gambling is not answered with reference to the subjective intent of the founders, but rather the objective viewpoint of a reasonable person who considers joining the club. Therefore, the Board finds that the CGC's characterization of the WPS as condoning gambling was reasonable.
5. Based on the resolution of this factual dispute, the Board exercised the discretion granted to it under By-Law #6 in dispensing of an oral hearing.

### **PART III: Clubs Governance Committee's Reasons for Denying Ratification**

6. The CGC provided two separate reasons for denying the appellant's ratification application. The two reasons are as follows:
  - 1) The USC and Western University do not approve of gambling activities.
  - 2) Western and the USC do not permit clubs to participate in gambling activities.
7. With regard to the second reason, the CGC added that the USC is in no position to obtain a gambling license for the WPS.

### **PART IV: Analysis of Reason #1**

8. Two implications can be drawn from the CGC's first reason for denying ratification. The first is that the CGC is making a policy statement regarding the position of the USC and Western University on gambling activities. The second is that the CGC believes the WPS's activities have a sufficient nexus with gambling to undermine this policy statement.
9. The CGC's policy statement is entitled to deference by the Board, as the CGC is in a better position than the Board to ascertain the USC's position on this issue. Accordingly, the Board took this statement at face value.
10. The Board then turned to the second implication. Having concluded that the CGC's finding that the WPS condones gambling was reasonable, the Board found that the CGC's second implication was reasonable.
11. Thus, the Board finds CGC's first reason for denying ratification to be reasonable.

### **PART V: Analysis of Reason #2**

12. The Board interpreted the CGC's second reason for denying ratification as demonstrating concern about the risk of gambling activities being undertaken by the WPS and its members. This interpretation is supported by the CGC's further statement that the USC is in no position to obtain a gambling license for the WPS (something that would need to be done if it were to participate in gambling activities).

13. The WPS has maintained throughout that it does not intend to engage in gambling activities during its meetings and the Board does not doubt the sincerity of these submissions. However, the CGC's administrative discretion entitles it to assess the risk that a proposed club may participate in activities contrary to USC policies or the law. Consequently, it is reasonable for the CGC to consider this risk when making ratification decisions.
14. Western clubs represent the USC and the Western community, and the CGC, as the "gatekeeper" to the club's community, plays an important role in upholding the reputation of these stakeholders. The reasonableness of the CGC's second reason for denying ratification is therefore determined using a two-step analysis.
  - 1) Was it reasonable for the CGC to conclude that there is a risk of the WPS and its members participating in gambling activities?
  - 2) If so, was the magnitude of the risk such that the reputation of the USC or the Western community would be damaged if these activities occurred?
15. Regarding the first step, the Board found the CGC's conclusion that there exists a risk of the WPS and its members participating in gambling activities to be reasonable. There is a legitimate risk that a club that teaches students how to play poker, and how to use mathematical and reasoning skills to win at poker, will be conducive to actual gambling by its members. While the Board confidently relied on the WPS's representations that no gambling will occur at its meetings, concerns were raised regarding the WPS becoming a "training ground" where individuals could improve their poker skills, and of greater concern, meet individuals with which to gamble on poker.
16. The Board also recognized that the CGC, as well as the WPS itself, would have considerable difficulty monitoring club members to ensure this type of behaviour does not occur. Regarding the second step, the Board found that the magnitude of the risk is sufficient to cause reputational damage to the USC and the Western community if the WPS or its members participate in gambling activities. Gambling without a license is prohibited by provincial law, and therefore, any illegal gambling undertaken by the WPS or its members poses a considerable reputational risk to the USC and the Western Community.
17. The Board concludes that the CGC taking action to prevent this risk was a reasonable use of its administrative discretion. Thus, the Board finds the CGC's second reason for denying ratification to be reasonable.

## **PART VI: Disposition**

*The appeal is dismissed.*