



Judgment of the USC Appeals Board in the matter of:

## ***Trek for Teens v Clubs Governance Committee, 2018:4***

**Judgment Date:** April 26, 2018

**Panel:** Kevin Spykerman (Chair), Joseph Wright, Ryleigh Collins

**Reasons for Judgment:** Spykerman (Collins concurring); Wright (dissenting)

**Spykerman (Collins concurring):**

### **PART I: OVERVIEW**

1. This is an appeal by Trek for Teens (“TFT”) in response to the decision of the USC Clubs Governance Committee (“CGC”) to deny ratification of TFT pursuant to the requirements of the USC’s *Procedure for Ratification* and the discretionary authority administered to the CGC under the *New Clubs Application Mandate*.
2. In denying ratification of TFT, in response to TFT’s Request for Reconsideration, the CGC stated, essentially, that TFT contravened both the *Procedure for Ratification* and the *New Clubs Application Mandate* due to its duplication of services. While the CGC denied ratification by relying on a permissible ground, the CGC’s reasons for doing so are unreasonable. Consequently, the Appeals Board accepts this appeal.

### **PART II: FACTS**

3. TFT is a proposed USC club. At the time of its initial Club Ratification application, TFT's mandate was as follows:
  - (1) To raise funds and awareness for youth homelessness, with a particular emphasis on the organizations supported by Trek for Teens Western.
  - (2) To run Trek for Teens events, campaigns and activities.
  - (3) To provide students with an immersive experience and the opportunity to volunteer and help achieve the Trek for Teens mission.
  - (4) To help students grow through the organization of awareness and fundraising campaigns, activities and events.
  - (5) To enable students to reach out to the community, to act in leadership positions and to develop their public speaking skills. This will be accomplished primarily through workshops and presentations.
4. TFT applied for USC club ratification. This initial Club Ratification application was denied by the CGC on March 29, 2018. The CGC denied ratification for the following reasons:
  - Violates New Clubs Mandate Sec. 3 for fundraising/charity – a club's main purpose cannot be to fundraise
  - Duplication of services with London affiliation
  - Events submitted are not relevant to the mandate of the club

In its decision, the CGC informed TFT that it could submit a Request for Reconsideration of the CGC's decision.

5. After receiving the CGC's decision, TFT revised its club constitution. The mandate was revised to read as follows:

Trek for Teens Western strives to raise awareness for, destigmatize, encourage conversation on, and contribute to solving the issue of youth homelessness, specifically in London, Ontario. It is also our aim to inform Western students who may be at risk of homelessness about relevant services that are available to them.
6. Upon revising its Club Constitution, TFT submitted a Request for Reconsideration of the CGC's decision to deny ratification. This request, however, was also denied by the CGC. On April 11, 2018, the CGC released its decision regarding the Request for Reconsideration. In this decision, the CGC stated that TFT was still not suited for

ratification due to duplication of services still being an issue. The CGC, however, did not inform TFT of how, exactly, TFT duplicated a service in this decision.

7. Upon receiving this decision, TFT submitted an appeal to this Board. Submissions by both TFT and the CGC were provided to this Board, along with e-mail correspondence, and have been considered in rendering this decision. While initially unclear, the CGC eventually clarified how, according to the CGC, TFT duplicated a particular service.
8. On April 24, 2018, the CGC stated, in e-mail correspondence, that the duplication of services for TFT was based on the opinion of the CGC that TFT has a chapter in London, contrary to the *New Clubs Application Mandate* and s. 2.04 of the *Procedure for Ratification*. Specifically, it is the opinion of the CGC that TFT is a chapter of the Rotary Club of Etobicoke, a club that is currently USC ratified. It is on this basis that the CGC denied ratification of TFT.
9. The April 11, 2018 decision is the subject of this appeal.

### **PART III: ISSUES**

10. There are two issues in this appeal. They are as follows:
  1. What is the appropriate standard of review?
  2. Was the CGC's decision, on April 11, 2018, to deny ratification of TFT reasonable?

These issues will each be dealt with in turn.

### **PART IV: ANALYSIS**

#### ***What is the appropriate standard of review?***

11. Under Canadian administrative law, there are currently two general standards of review upon which administrative decisions are reviewed: reasonableness and correctness. To determine whether the CGC's decision must be upheld, the appropriate standard of review must first be determined.

12. This Board has recently elaborated on these two standards in past decisions: see, in particular, *Backpacks N' Care Packs v Clubs Governance Committee*, 2018:3 at paras 10-13 and *Team DiBrina v Elections Governance Committee*, 2017:2 at paras 17-20. It is, therefore, not necessary for me to provide an extensive framework for determining the appropriate standard of review.
13. For the same reasons as expressed in *Backpacks N' Care Packs v Clubs Governance Committee*, 2018:3, the appropriate standard of review is reasonableness. The Board must, therefore, show considerable deference to the CGC in its interpretation of these policies and determine whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).
14. While it was noted in *Backpacks N' Care Packs* that a deferential standard requires “not submission but a respectful attention to the reasons offered or which could be offered in support of a decision” (see *Backpacks N' Care Packs v Clubs Governance Committee*, 2018:3 at para 13; “The Politics of Deference: Judicial Review and Democracy”, in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286, quoted with approval in *Dunsmuir* at para 48), this does not give this Board “free rein to dive into the record before the administrative decision-maker to save the decision” (*Serrano Lemus v Canada (Minister of Citizenship & Immigration)*, 2014 FCA 114 at para 29, citing *A.T.A. v Alberta (Information & Privacy Commissioner)*, 2011 SCC 61). Thus, it would be inappropriate for this Board “to reformulate a [particular] decision in a way that casts aside an unreasonable chain of analysis in favour of the [Board’s] own rationale for the result” (*A.T.A.* at para 54).

***Was the CGC’s decision to deny ratification of TFT reasonable?***

15. As stated above, the CGC denied ratification to TFT on the basis that TFT contravened the *New Clubs Application Mandate* and s. 2.04 of the *Procedure for Ratification*. The relevant parts of these policies read as follows:

### ***New Clubs Application Mandate***

The CGC will use its discretion [with regards to the ratification procedure] with the following subjects:

...

#### **1. DUPLICATION OF SERVICES**

Re: Procedure for Ratification, 2.04 i. Uniqueness and Distinctiveness

Re: Procedure for Ratification, 2.04 iii. Autonomy

- As per the procedure for ratification, duplication of services is a component taken very seriously in this process
  
- Duplications of services with groups and/or services that exist in some capacity on Western University's campus or in the city of London, Ontario will be critically reviewed

### ***Procedure for Ratification***

2.04 An organization must be able to demonstrate:

i. Uniqueness and Distinctiveness – the organization must not have the same or a similar mandate to other existing clubs and must be readily distinguishable from all other clubs and services;

...

iii. Autonomy – the organization must not be directed by any external organization(s), as outlined in the External Affiliations Policy, in such a way that the organization's conduct will conflict with USC and University policies and procedures. This does not prevent the club from having a relationship with an external organization, and/or receiving resources from an external organization.

16. The CGC submitted that TFT is, essentially, a chapter of the Rotary Club of Etobicoke due to the fact that the Trek for Teens Foundation's website states that it was "[i]nitiating in 2007 with leadership and guidance from the Rotary Club of Etobicoke." It is unclear whether the Rotary Club of Etobicoke is a USC ratified club as it is not listed on the USC's club list, yet Rotaract is listed as a USC ratified club. The Board has insufficient information to determine whether Rotaract is a chapter of the Rotary Club of Etobicoke. Nevertheless, the CGC concluded that the Rotary Club was a USC ratified club. On this basis, the CGC submitted that TFT duplicated a service.

17. TFT, however, argued that it is not affiliated with the Rotary Club of Etobicoke. Rather, The Rotary Club merely provided initial funding and business mentorship to kick start the Trek for Teens Foundation in 2007. TFT argues that it is distinct from the Rotary Club and no longer receives leadership or guidance from the Rotary Club. Further, TFT submits that it and the Rotary Club have distinct missions. Whereas the Rotary Club focuses on general welfare of the community, TFT focuses specifically on youth homelessness.
18. Based on the evidence before the Board, I cannot conclude that the Rotary Club referred to by the CGC is a USC ratified club. Even if Rotaract is a chapter of the Rotary Club, it is also my conclusion that, based on the facts before me, TFT does not have the same or similar mandate as Rotaract/the Rotary Club. Therefore, TFT is not in contravention of s. 2.04(i) of the *Procedure for Ratification*. Further, the evidence does not establish that TFT is being directed by an external organization contrary to s. 2.04(iii) of the *Procedure for Ratification*. These facts, therefore, do not support the conclusion reached by the CGC. The CGC's analysis is, in my opinion, unreasonable.
19. That being said, further evidence was brought to the attention of the Board by TFT regarding the Trek for Teens Foundation. This is an existing foundation that has a branch in London. TFT stated that the Trek for Teens Foundation is run by the same group of people as TFT. On this basis, it would seem that TFT duplicates the services provided by an existing group in the city of London, contrary to the *New Clubs Application Mandate* and s. 2.04(i) of the *Procedure for Ratification*.
20. Nevertheless, and as stated previously, the deferential standard of reasonableness does not give this Board free rein to dive into the record before the administrative decision-maker to save the decision. In my opinion, it would be inappropriate for this Board to reformulate the CGC's decision in a way that casts aside its unreasonable chain of analysis in favour of the Board's own rationale for the result. Quite simply, the CGC denied ratification via an unreasonable chain of analysis. The fact that there may exist other reasons that could support its decision, which were wholly unmentioned by the

CGC, does not require this Board to reformulate the CGC's reasoning to save its decision.

21. Thus, on the basis of the facts and the law, the CGC's conclusion cannot be said to fall within a range of possible, acceptable outcomes which are defensible with respect to the facts and law/policy. The CGC's decision to deny ratification to TFT is, therefore, unreasonable.

#### **PART V: DISPOSITION**

22. The appeal is allowed. TFT's application for ratification (as amended in its Request for Reconsideration) is remitted to the CGC for reconsideration in accordance with these reasons.

**Wright (dissenting):**

#### **PART VI: ANALYSIS**

23. According to the *New Clubs Application Mandate* and s. 2.04 of the *Procedure for Ratification*, duplication of services with a London affiliation is a valid reason for the CGC to deny a club ratification. The existence of a London chapter of TFT would certainly be a reasonable basis for the CGC to deny TFT ratification. Since the CGC's decision was made based in part of the existence of a London chapter of TFT, this decision is reasonable.
24. The CGC denied TFT's application for ratification and, upon request for reconsideration, determined again that TFT should not be ratified as a USC club. In both of these decisions, duplication of services with a London affiliation was cited as one of the reasons for the denial of ratification. These decisions did not specify which services were duplicated by TFT.
25. With respect to my colleagues, I am not of the opinion that the CGC's submissions to this panel indicate that their determination of a duplication of services was based solely on the connection between TFT and the Rotary Club. The CGC stated that the duplication of

services was “based on the fact that they have a chapter here in the London community.” This indicates that the CGC felt the London chapter of TFT was a bar to USC club ratification for TFT.

26. TFT responded to these concerns by e-mail, stating that the London chapter of TFT was started by the same group of people applying for USC club status, in order to make a change in the London community as soon as possible. While I sympathize with the group’s enthusiasm to address the issue of youth homelessness, the existence of this London chapter constitutes a reasonable ground for the CGC to find a duplication of services.

27. I agree with my colleagues that there is insufficient evidence of an affiliation between TFT and the Rotary Club of Etobicoke to find a duplication of services. However, since the duplication of services based on the London chapter of TFT is independent from the affiliation with the Rotary Club, the CGC’s decision to deny TFT’s application for ratification on the basis of duplication of services falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

28. For these reasons, this appeal should be dismissed.