

Judgment of the USC Appeals Board in the matter of:

## ***Smiling Over Sickness v Clubs Governance Committee, 2019:5***

**Hearing Date:** June 1st, 2019

**Judgment Date:** June 3rd, 2019

**Panel:** Maxwell Gill (Chair), Andrew Beney, and Swapnil Sharma

**Reasons for Judgment:** Maxwell Gill (Beney and Sharma concurring)

**Gill (Beney and Sharma concurring):**

### PART I: OVERVIEW

1. This is an appeal by Smiling Over Sickness (“SOS”) in response to the decision by the USC Clubs Governance Committee (“CGC”) not to ratify the club. While on the request for reconsideration to the CGC, the reasons for denying ratification were not provided, they are outlined in the CGC’s submission threefold: liability, external affiliation, and the prohibition on clubs whose sole purpose is fundraising. For the reasons set out below, the appeal is dismissed.
2. As this appeal was unable to proceed with an oral hearing, all information is based upon written evidence submitted by both parties involved to the appeals board.

### PART II: FACTS

3. SOS submitted a request for the ratification of the SOS club.
4. On March 5th, CGC decided that the request for ratification would be denied based on three principle factors; that the club had a fundraising focus, that the main goal of the club was mobilizing volunteers for an external organization, and that the clubs activities represented an unacceptable liability to the University Student Council (“USC”).
5. In response, SOS reworked their constitution and planned events. They then submitted a request for reconsideration under s. 2.00, “Request for Reconsideration” of the *Club Ratification Procedure* on March 12, 2019.

6. On May 1st, 2019, the CGC informed SOS that the request for ratification was denied, without providing rationale.

### PART III: ISSUES

7. There are two issues within this appeal:
8. What is the appropriate standard of review?
  - a. Was the CGC's decision not to ratify SOS reasonable?

### PART IV: ANALYSIS

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

9. Under Canadian administrative law, there are two standards of review upon which administrative decisions are reviewed: reasonableness and correctness. To determine whether the EGC's decision should be upheld, the appropriate standard of review must first be determined.
10. This Board has elaborated on these two standards in past decisions: see, in particular, *Team DiBrina v Elections Governance Committee*, 2017:2 at paras 17-20. In addition, this Board has dealt extensively with the review of decisions of the CGC involving interpretation of the CGC's home statute and, in particular, the Procedure for Ratification. This Board has, as far as can be seen, applied the standard of reasonableness for reviewing decisions of the CGC that interpret its home statutes and the Procedure for Ratification. It is, therefore, not necessary for me to provide an extensive framework for determining the appropriate standard of review.
11. The standard of reasonableness requires the Appeals Board to determine whether the EGC reached a decision that falls within a range of acceptable and defensible outcomes (*Dunsmuir v New Brunswick*, [2008] SCR 190). The standard of reasonableness requires deference to the decision-maker.
12. In determining the appropriate standard of review, it is sufficient to note that the CGC is interpreting and applying the Procedure for Ratification and the New Clubs Application Mandate. The CGC should be considered an expert on these procedures, as they are the sole body charged with conducting these activities. Based on this, 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).
13. It is also important to note that this deferential standard requires "not submission but a respectful attention to the reasons offered or which could be offered in support of a

decision” (see “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).

***Was the CGC’s decision not to ratify SOS reasonable***

14. The CGC perceived two main issues with the SOS organization, however these were only noted in the written response to the appeal, and not the second notice provided to SOS by CGC that the club was denied its request for ratification.
  - a. In future cases, the CGC is heavily urged to outline clearly to the clubs requesting ratification the reasons and rationale for denying them. As the CGC is denying these clubs, the responsibility is on the CGC to provide the rationale, not on these clubs to search for the rationale from them.
15. The reasons for refusing ratification outlined by the CGC in the written response to the appeal are the liability SOS exposes to the USC and their focus on fundraising.
16. The CGC makes a convincing argument on the liability that SOS would expose the USC to. It also outlines that an intent to mitigate this liability does not fully mitigate it as a risk.
17. SOS provided CGC with evidence from the McMaster chapter of SOS that they would experience a low level of liability. However, McMaster is not an expert on the level of liability the USC is acceptable with, so that message should be left to the interpretation of the CGC and not the Appeals Board.
18. As the CGC is the expert in this matter, their expertise should receive considerable deference. As such, this rationale is observed by the Board to be reasonable.
19. SOS expressed that their main focus is not on fundraising, as they believe they undertake a range of activities beyond this. However, CGC posited that they continued to rely heavily on fund-raising as events, which violates the Club Ratification Procedure.
20. It would appear that, while SOS does have events existing beyond solely fundraising, these events are intensely connected to fundraising. This reliance on fundraising for events is a violation of CGC policy, and is supported in ***Backpacks N’ Care Packs v Clubs Governance Committee, 2018:3 paras. 18-20***. Here it is outlined that even if the sole purpose of the club is not fundraising, if it appears as the principal focus of the club, it is reasonable for CGC to deny its ratification.

**PART V: DISPOSITION**

21. The appeal is denied.