



Judgment of the USC Appeals Board in the matter of:

***Bicycle Safety Awareness Club v Clubs Governance  
Committee (CGC); Western Ski and Snowboard Club v CGC,  
2017:3***

**Judgment Date:** April 7, 2017

**Panel:** Laura Lepine (Chair), Kevin Spykerman, Leah Gale

**Reasons for Judgment:** Lepine (Spykerman and Gale concurring)

**PART I: OVERVIEW**

1. This decision is in response to two appeals received, both in response to decisions made by the Clubs Governance Committee (CGC). Both the Bicycle Safety Awareness Club (hereinafter “BSAC”) and Western Ski and Snowboard Club (hereinafter “WSSC”) applied to the CGC for ratification as USC clubs. Both applications were rejected, and requests for reconsideration brought by both clubs were rejected. The clubs appealed to the USC Appeals Board as per s. 6.01 of the Ratification Procedure, in accordance with By-Law #6.
2. While the two clubs were denied ratification for different reasons, the Board applied the same review framework to both appeals.
3. The Board determined that both appeals should be allowed. The matters are remitted to the CGC for reconsideration in accordance with the reasons that follow.

## **PART II: FACTS**

### *BSAC*

4. The BSAC was proposed to educate, promote, and advocate for bicycle safety among the student population at Western. The CGC initially denied ratification of this club on February 15, 2017, on four grounds: possible overlap with the Purple Bikes; the funding for road safety consistently provided by the provincial and federal governments; the availability of other services; and the potential risk to students with respect to a proposed bike-a-thon.

5. On February 21, 2017, the club responded to these concerns in submitting a request for reconsideration to the CGC. With respect to potential overlap with the Purple Bikes, the BSAC differentiated the clubs on the basis of their respective focuses: while Purple Bikes is concerned with mechanical aspects of bicycling (bike maintenance, bicycle locks), BSAC would focus on psychosocial aspects, particularly the mindset of cyclists and safe cycling practices. BSAC agreed that federal and provincial funding was consistently provided for road safety, but submitted that this was overall insufficient and that better advocacy could improve conditions. BSAC further submitted that the presently available services such as the Purple Bikes could not expand to include the focus of BSAC, particularly as the Purple Bikes do not operate during the winter. Finally, BSAC acknowledged the risks associated with the proposed Bike-a-thon, and described how such risks would be mitigated. It submitted that, if the bike-a-thon was ultimately unfeasible, its resources could be redirected elsewhere.

6. BSAC's request for reconsideration was denied. The CGC identified three reasons for this: first, that the focus of bicycle safety was too narrow; second, that the city and schools already provide many bike safety tips and programs for school children; and third, that the charitable donation listed in the club's proposed budget was "questioned". In the second denial for ratification, the CGC suggested that the club could be restructured from a bike safety club to a club for bike enthusiasts with bike safety being one aspect of the club. The CGC's submitted meeting minutes also indicate that such a "social club" would be approved.

## WSSC

7. The WSSC was proposed as a social forum for students with a passion for skiing and/or snowboarding. The club proposed regular social events as well as regular ski and snowboard trips during the season. On February 10, 2017, the CGC denied ratification for one reason: that the USC insurers do not cover these high risk activities.

8. In response, on February 18, 2017, the WSSC submitted a request for reconsideration. It restructured its mandate, limiting the club's activities to social events on campus for students with a passion for skiing and/or snowboarding. Though the CGC did not specify which activities may be considered high risk for insurance purposes, the WSSC suggested four possible areas: hotel and lift ticket booking, transportation, injury, and underage drinking. The club intends to address these issues by refraining from selling any hotel or lift tickets. The club also would not provide any transportation. The club submitted that, as students would purchase their lift tickets independently, the ski hill would "assume the liability for injuries". Finally, the club submitted that it would operate with a strict dry event policy.

9. The CGC responded to the request for reconsideration on March 27, 2017. The request was denied, for "the reasons provided previously. The USC would not be able to provide insurance for your high risk activities." The CGC's submitted meeting minutes indicate that the Compliance Coordinator contacted the USC's insurance agent to confirm that the club's activities would not be covered. They further indicate that "if the USC cannot provide insurance they would not be able to physically ski/snowboard".

## **PART II: ISSUES**

10. The Board considered four issues in the course of this decision:

1. What is the appropriate standard of review?
2. What is the scope of the CGC's discretion in approving or denying USC club ratifications?
3. Should the CGC's decision not to ratify BSAC be upheld?
4. Should the CGC's decision not to ratify WSSC be upheld?

### **PART III: ANALYSIS**

*What is the appropriate standard of review?*

11. There are currently two general standards of review in Canadian administrative law under which administrative decisions are reviewed: the standard of reasonableness and the standard of correctness. These two standards were extensively laid out recently by the Appeals Board in *Team DiBrina v Elections Governance Committee*, 2017:2 at paras 17-20. It is sufficient to note here only that the CGC, in the impugned decisions, was interpreting its home statute as well as procedures for which it should be considered an expert (particularly, the CGC Terms of Reference and the Ratification Procedure). As such, the Board should show considerable deference to the CGC in its interpretation of these policies. The appropriate standard of review is therefore reasonableness.

*What is the scope of the CGC's discretion in approving or denying USC club ratifications?*

12. The CGC's jurisdiction to grant ratification to clubs is found in s 4.01(1) of the CGC Terms of Reference, which states:

4.01 The CGC shall:

(1) ratify qualified organizations as USC clubs

13. The language of this section is important. The CGC is not "permitted" to ratify qualified organizations, nor is it allowed "discretion" to ratify. Rather, the CGC "shall" ratify. Under a plain text interpretation of this section, the CGC does not have discretion to deny ratification to organizations seeking ratification – unless these organizations do not meet the definition of "qualified organizations".

14. There are three policies outlining what constitutes a "qualified organization" with respect to club ratification: the Ratification Procedure, the Clubs Operating Policy, and the Club Financial Procedure. The Ratification procedure is the most instructive in this regard, and so the relevant sections are reproduced in full below:

## 2.00 Requirements for Ratification

2.01 To be considered for ratification, an organization must submit an application package consisting of the following:

- i. Cover Letter: A typed cover letter stating the organization's desire to be ratified along with the names and email addresses of two (2) representatives of the organization.
- ii. External Affiliation Form: If the proposed student organization has any affiliation with an external organization as defined in the External Affiliation provisions of Clubs Policy: Clubs Operating Policy, then the applicant must submit a form describing the nature of the relationship, which will be provided by the Student Organizations Support Staff, and submit any supporting documentation requested by the Student Organizations Support Staff. This form will be made available on the USC website.
- iii. Written Statement: A written statement, up to a maximum of three (3) pages, that answers the following questions:
  - a. What is the objective or mandate of the club?
  - b. Explain why your organization wishes to be ratified as a club under the purview of the USC.
  - c. How is this club unique and distinct from existing clubs?
  - d. Explain the physical, financial and other risks associated with the club.
- iv. Constitution: A proposed club constitution that is drafted in accordance with the Club Constitution Guideline, and is formatted the same or similar to the Club Constitution Template.
- v. Membership List: A membership list containing at least twenty-five (25) current undergraduate student names, and contact information for those prepared to join the organization once ratified.
- vi. Budget: A proposed club budget that gives a plan for the spending of club membership fees. The club fee that is being charged must be indicated in the submitted budget. The budget should also list any anticipated revenue streams and how these monies will be spent. The budget must include insurance and

administrative deductions that will be taken from the club account Budget templates shall be made available by the Clubs Finance Coordinator or the USC AVP Clubs.

- vii. Description and Schedule of Events/Activities: A detailed itinerary of at least three (3) proposed club events/activities planned for the academic year. The itinerary should include:
  - a. a description of the proposed events,
  - b. potential venues,
  - c. marketing strategies for these events and
  - d. A brief explanation of how the event/activity will contribute to the mandate of the proposed student organization.

2.02 The application package must be submitted online as an electronic file to the Clubs Policy Coordinator.

2.03 An organization may meet with the Clubs Policy Coordinator, or, Clubs AVP to ensure that all application requirements have been met. Any assistance from the Clubs Policy Coordinator, or Clubs AVP, does not guarantee that the organization will be ratified.

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;
- ii. Significant student interest; and,
- 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.

15. These requirements for ratification may be split broadly into procedural, or administrative requirements (ss 2.01-2.03) and substantive requirements under s. 2.04. These substantive obligations will be referred to as “uniqueness” (s. 2.04(i)), “significant interest” (s. 2.04(ii)), and “autonomy” (s. 2.04(iii)) respectively. The uniqueness requirement is also found in the Clubs Operating Policy s. 2.02. The

autonomy argument is also included under s. 6.01 of the Clubs Operating Policy, which requires clubs to disclose in detail relationships with organizations other than the USC. Section 2.03 of the Clubs Operating Policy also requires that a USC Club not have participation in athletic activities as part of its mandate.

16. Finally, the Club Financial Procedure lays out several requirements involving club budgets: specifically, ss. 3.01, 4.01(1), 4.02, 4.03(1), 4.03(2), and 4.04. Of particular importance are both subsections under s. 4.03, which state:

4.03 All Club budgets must reflect the amount of insurance and administrative fees paid to the USC in a given academic year to cover any possible liability incurred by club events.

(1) The insurance and administrative costs accredited to a club will be taken out of the club's financial account automatically in each academic year.

(2) All Clubs are required to have USC insurance.

16. Considering again the wording of s. 4.01(1) of the CGC Terms of Reference, the CGC *shall* ratify qualified organizations – that is, organizations that meet all of the above requirements. Where the CGC determines that ratification will not be granted, and when the CGC denies a reconsideration request for ratification, it must be on the basis that a club is not a “qualified organization” within the meaning of these requirements, as assessed on a standard of reasonableness.

*Should the CGC's decision not to ratify BSAC be upheld?*

17. As noted above, the CGC gave four reasons for denying BSAC's initial ratification request: (1) possible overlap with the Purple Bikes; (2) the funding for road safety consistently provided by the provincial and federal governments; (3) the availability of other services; and (4) the potential risk to students with respect to a proposed bike-a-thon. Following re-submissions by the club, the CGC denied the request for reconsideration for three reasons: (5) that the focus of bicycle safety was too narrow; (6) that the city and schools already provide many bike safety tips and programs for school children; and (7) that the charitable donation listed in the club's proposed budget was “questioned”.

18. Of the reasons given for the first denial, (1), (3), and (4) may be reasonably found within the requirements for ratification. Specifically, (1) and (3) – possible overlap with the Purple Bikes and the

availability of other services – could speak to uniqueness. (4), with respect to risk to students, may reasonably be considered to fall within the requirement that the club be covered by USC insurance. The Board finds only that the second reason – provincial and federal government funding for road safety – is alien to the requirements the CGC may consider. This reason could not be reasonably linked to any of the grounds within the CGC’s jurisdiction to consider. However, eliminating only this second justification, the initial denial of ratification was reasonable.

19. The Board then considered the BSAC’s request for reconsideration and the CGC’s subsequent denial of this request. The Board determined that none of the three reasons provided fall reasonably within the CGC’s permissible grounds to deny ratification. Reason 5 – the focus of bicycle safety as too narrow – cannot fit within the uniqueness requirement. A narrow club focus would seem to actually meet the uniqueness requirement more readily than a broader, social club as proposed by the CGC. The BSAC addressed the concern with respect to possible overlap with the Purple Bikes, and that no longer seemed to be a concern of the CGC with respect to narrowness. It is possible that “narrowness” could also speak to significant interest under s.2.04(ii) of the Ratification Procedure. However, the Board also determined that a denial on the basis of narrowness was not reasonably found within this ground. Section 2.01(v) of the Ratification Procedure requires a club to submit a membership list of at least 25 undergraduate students along with its application. This provision should be read with the requirement for student interest. As the BSAC provided a membership featuring 38 individuals outside of club executives. The CGC has provided no reason as to why “narrowness” is still a concern outside of this membership list. As such, the narrowness justification in the CGC’s denial for reconsideration was unreasonable and cannot be upheld.

20. Ground (6) was dismissed for the same reasons as ground (2). There are no requirements for being considered a “qualified club” that could be reasonably linked to this ground (bike safety tips and programs provided by the city and local schools).

21. The final ground the CGC identified was (7) – that the charitable donation listed in the club’s proposed budget was “questioned”. The CGC may consider issues with respect to a proposed club’s budget, as laid out in s. 2.01(vi) of the Ratification Procedure and the Club Financial Procedure more broadly. It was reasonable therefore for the CGC to consider issues with respect to the proposed budget. However, the reason actually given by the CGC, specifically “The committee also questioned the charitable donation listed in your budget” does not speak to any particular requirement in either policy.



This statement was vague and did not reasonably demonstrate that a ratification requirement had not been met.

22. As a result, the Board determined that, while the CGC's initial decision to deny ratification was both reasonable and within its jurisdiction, the denial of the request for reconsideration was not. The CGC did not raise the issues the Board has identified as reasonable in its second denial, and relied on two impermissible grounds. The CGC did rely on one permissible ground with respect to budget, but the specific reason given was unreasonable. The Board therefore finds this second decision to be unreasonable.

*Should the CGC's decision not to ratify WSSC be upheld?*

23. In both denials of the WSSC's applications, the CGC cited only one ground for denial: that the USC would not be able to provide insurance for the club's high risk activities. The question of providing insurance is certainly within the CGC's jurisdiction, as found in s. 4.03 of the Club Financial Procedure. The Board thus only considered the reasonableness of this decision with respect to the club itself.

24. The initial denial for ratification was reasonable. The CGC was entitled to consider the insurance requirements, and the club as formulated contained several activities that could reasonably be considered high risk. While it would have been preferable for the CGC to have identified specific high risk activities at this early stage, the Board, in adopting a deferential approach under the standard of reasonableness, would not overturn the decision at this stage.

25. The issue arises with respect to the denial of the request for reconsideration. In response to the CGC's concern with insurance, the club restructured its mandate and identified four possible high risk activities. The club then explained how these risks would be eliminated or mitigated.

26. The CGC in its subsequent denial did not speak to any of these changes. It reiterated only that insurance could not be provided for high risk activities. The Board considers this unreasonable. There is no indication as to why the changes proposed by the club were insufficient to address this concern. The CGC may have permissibly denied ratification still on the grounds of insurance – but the reasons provided were inadequate. In effect, the CGC provided no justification for why the insurance ground was

still an issue. For this reason, the Board finds the denial of the request for reconsideration to be unreasonable.

### **PART III: DISPOSITION**

*The appeal of BSAC is allowed. The CGC denied ratification by relying on grounds it was not permitted to consider. BSAC's application for ratification (as amended in its request for reconsideration) is remitted to the CGC for reconsideration in accordance with these reasons.*

*The appeal of WSSC is allowed. The CGC denied ratification by relying on a permissible ground, but failed to provide adequate reasons. WSSC's application for ratification (as amended in its request for reconsideration) is remitted to the CGC for reconsideration in accordance with these reasons.*