



Judgment of the USC Appeals Board in the matter of:

**Advocates for Allergy Awareness; ALPHA; Boys and Girls Club of Western; Foundation for International Relief of Children; Learn Better, Think Better; MISS v. USC Clubs Governance Committee, 2016:6 Club Ratification Appeals.**

**Judgment Date:** May 17, 2016

**Panel:** Brandt Chu (Chair), Tamara Kljakic, Rufina Ning

**Reasons for Judgment:** Chu and Ning

1. The applicants' claims concern two issues: whether the USC Clubs Governance Committee (CGC) came to reasonable decisions in deciding not to ratify each of the applicants and whether the CGC acted throughout the process in accordance with its stated policy and the general requirements of procedural fairness.
2. Whether any of the clubs *deserves* or *should* be ratified is not a concern of this Board. It is the CGC's mandate and responsibility to ultimately determine which clubs should become a part of the USC community. The role of the Board is simply to ensure that each proposed club was treated fairly. Proposed clubs are entitled to a fair process, not the outcomes that they would prefer.

**A - Reasonability of the Written Decisions**

1.1 - Advocates for Allergy Awareness

3. Advocates for Allergy Awareness (AAA) is a proposed club that aims to promote awareness of allergy issues. The proposed club would host events, bring in guest speakers, hold scheduled Epipen training sessions, and advocate for improved medical accommodation processes at Western for allergic students. AAA's original name was Advocates for Anaphylaxis.
4. In its initial letter rejecting AAA's application for ratification, the CGC stated that the proposed club was not suitable for ratification because it determined that (1) Epipen training sessions could not be carried out by students, (2) there was not sufficient interest for AAA to remain a club, and (3) local

organizations in London already supported allergy awareness issues. The CGC also suggested that the members of the proposed club approach SERT (Student Emergency Response Team) or Student Health Services to request an awareness campaign concerning the issues that the proposed club wanted to raise awareness of.

5. AAA then issued a request for reconsideration. In its request, AAA attempted to respond to a number of the CGC's concerns: it expanded its mandate from anaphylactic issues to all allergy issues, changed its name, and clarified that its proposed Epipen training sessions would be carried out by certified medical professionals rather than the club executives themselves. AAA's request for re-consideration was rejected on April 1, 2016. In its reasons, the CGC stated that the changes to AAA's application were not significant enough to change the CGC's decision.

## 1.2 - Analysis

6. The CGC's initial decision to reject AAA was reasonable. It provided reasons explaining its decision that were justifiable, transparent, and intelligible. CGC determined that it did not believe that AAA's mandate was sufficiently broad to sustain itself as a club and expressed concern with the possibility of students providing medical training. Its determination that other organizations in the London area already supported allergy awareness issues was also reasonable. It also provided AAA with suggestions of how it could advance allergy awareness issues using existing Western organizations.
7. The CGC's decision to reject AAA's request for reconsideration was also reasonable. Its letter dated April 1, 2016 sufficiently provides the basis upon which it determined not to grant AAA's request for reconsideration. The CGC in its letter demonstrates that it recognized that the AAA had made changes to its club ratification proposal, but in the end determined that the changes were not significant enough to overcome the issues that it noted in its initial decision. It should be noted that AAA's request for re-consideration actually supports some of the findings of the CGC. Specifically, AAA's reconsideration request supports the CGC's finding that local organizations in London already support allergy issues when it states that AAA would attempt to partner with "affiliated organizations" in London.
8. While the CGC could have responded more fully to the AAA's changes, for example recognizing that AAA had a large roster of potential club members that far exceeded the minimum for ratification consideration, in light of the fact that the decision to grant ratification is a discretionary one that is owed deference, the CGC's second decision as a whole was reasonable. The decisions of the CGC were reasonable.

## 2.1 - ALPHA

9. The Association of Learning and Preserving the History of WWII in Asia – Western University Chapter (ALPHA) is a proposed club that aims to raise awareness and teach a critical understanding of the Second World War in Asia in order to promote peace and reconciliation. In its materials that were submitted for its initial consideration for ratification, ALPHA had a roster of 25 individuals that included its 7-member executive.
10. In its initial decision rejecting the club, the CGC stated that it did not believe that ALPHA had sufficient potential to be a club and it suggested that ALPHA contact other Asian clubs on campus to incorporate some of its proposed awareness campaign activities into their programming. In its second

decision, the CGC did not provide any additional reasons for rejecting ALPHA's request for re-consideration. It stated that it continued to believe that ALPHA was still not currently suited for ratification.

## 2.2 – Analysis

11. The CGC's initial decision rejecting the club was reasonable. After reviewing the materials presented to it by ALPHA, the CGC rejected ALPHA's ratification application on the basis that it did not believe that the proposed club had sufficient potential to be a standalone club and that some or programming could be carried out by other Asian clubs at Western.
12. However the CGC's second decision was unreasonable. The CGC second letter simply states that it still did not believe that ALPHA was suited for ratification. The CGC's second letter does not respond to any of the arguments presented by ALPHA in its request for reconsideration: that other ratified clubs conduct analogous programming on other topics such as the Darfur conflict, that there are successful chapters of ALPHA at other universities, or that a an awareness program of the Second World War in Asia would be inappropriate addition to add to any of the existing Asian clubs as it would touch on issues such as the Dutch nationals who were the victims of sexual slavery.
13. While it was within the CGC's discretionary power to accept or reject ALPHA, the decision to reject ALPHA's request for reconsideration does not show sufficient evidence of transparency, justification, or intelligibility. Reading the CGC's letter, it is impossible to determine whether the CGC considered, at all, the arguments presented by ALPHA in its request for re-consideration. The CGC's second decision was unreasonable. The Board rules in favour of ALPHA.

## 3.1 - Boys and Girls Club - Western

14. The Boys and Girls Club – Western Affiliate (BGC) is a proposed club that aims to educate Western students about poverty in the London region, partner with students to encourage volunteerism, and engage in fundraising efforts. If ratified, BGC would be an affiliate or sister organization of the Boys and Girls Club of London.
15. CGC rejected BGC's initial application for ratification on February 1, 2016. It stated that BGC was not suitable for ratification because: (1) there is a Boys and Girls Club in London where students can volunteer directly, (2) the USC hosts a volunteer week where local organizations can come to solicit volunteers, and (3) many other clubs at Western already support the Boys and Girls Club of London. The CGC rejected BGC's on April 1, 2016 stating that after reviewing the BGC's materials, it continued to believe that BGC was still not suitable for ratification.

## 3.2 - Analysis

16. Both the CGC's initial and subsequent decision to reject BGC were reasonable. The decision to reject or accept a club is a discretionary one. While BGC may not like the outcome, it is undeniably the case that there is an existing Boys and Girls Club organization in London where students can volunteer. While a Boys and Girls Club at Western could very well enhance and supplement the existing local organizations activities – it was ultimately within the discretion of the BGC to reject a proposed club based on the existence of an affiliate local organization. The Board rules in favour of the CGC.

#### 4.1 – Foundation for International Medical Relief of Children – University of Western Ontario

17. The Foundation for International Medical Relief of Children – University of Western Ontario (FIMRC) is a proposed club that aims to address the issue of non-emergency medical care for children at the local, national, and global levels. The proposed club was rejected on February 8, 2016 because: (1) fundraising initiatives cannot be hosted for charities not registered in Canada according to USC Policy and the proposed club's parent organization was not a Canadian registered charity, (2) the mandate of the club was to raise funds for medical care, and (3) all the proposed club's initial proposed events were fundraisers.
18. After reviewing FIMRC's request for reconsideration, the CGC concluded that FIMRC was still not suitable for ratification on April 1, 2016. In addition to its previous reasons, the CGC added that it believed that many other USC clubs volunteer and fundraise for children health initiatives.

#### 4.2 – Analysis

19. The CGC's initial and subsequent decision to reject FIMRC were reasonable. USC policy (Clubs Event Planning and Risk Management Procedure – 6.01) prevents clubs from hosting fundraising activities that support non-registered Canadian charities. As FIMRC's parent organization is a non-registered charity, the CGC was reasonable to conclude that it should not ratify a club that, at its very onset, would risk contravening this policy if ratified. While FIMRC attempted to address some of these concerns in its re-consideration materials, it was reasonable for the CGC to conclude that given FIMRC's association with an unregistered charity, the CGC should still avoid ratifying the proposed club altogether to avoid any possible contravention of any USC policies. Furthermore, while FIMRC, if ratified, may address some unique issues related to healthcare for children, the CGC was reasonable to conclude that other USC clubs already volunteer and fundraise for children health initiatives.

#### 5.1 – Learn Better, Think Better (LBTB)

20. Learn Better, Think Better (LBTB) is a proposed club that aims to assist young children and adolescents in overcoming learning challenges. LBTB would have an association with the London Disabilities Association who would provide the volunteer opportunities promoted by LBTB. The CGC rejected LBTB's initial application (February 8, 2016) stating that (1) mental health awareness campaigns already exist on campus, (2) many other USC ratified clubs work with children, and (3) there is a local organization available for students to work with. The CGC suggested that the LBTB's proposed members join local organizations and host events on campus. On April 1, 2016, the CGC rejected the LBTB's re-consideration application.

#### 5.2 – Analysis

21. The decisions to reject LBTB were reasonable. In summary of its written reasons, the CGC's concluded reasonably that while the LBTB may enhance the work done by Western students to improve the learning outcomes of young children and adolescents, other organizations in London already in some way did the work proposed by the LBTB. The Board rules in favour of the CGC.

#### 6.1 – Makeup Inspiring Student Self-Esteem (MISS)

22. Makeup Inspiring Student Self-Esteem (MISS) is a proposed club that aims to empower Western students by using makeup as a way of improving self-esteem and promoting inclusion. In its initial application, one of MISS' primary goals was to fundraise for Plan Canada's Because I am Girl Fund. MISS revised its proposal, removing its fundraising mandate, to respond to the CGC's initial letter of rejection.
23. MISS' initial application for ratification was rejected on February 8, 2016. The CGC stated that: (1) the mandate of the club was to raise funds for local charities, (2) most events listed were fundraisers and not geared towards improving self-esteem, and (3) a local chapter of the organization existed that students could volunteer with. On April 1, 2016, the CGC determined after reviewing MISS' revised materials that the club was still not suitable for ratification.

## 6.2 – Analysis

24. Although the CGC's first decision to reject MISS was reasonable, the second decision to reject MISS was not. MISS request for re-consideration directly addressed the CGC's concerns. MISS altered its mandate, proposed alternative events, and removed any 3<sup>rd</sup> party connection to Plan Canada. The CGC's second decision did not acknowledge these changes nor did it provide additional reasons why MISS was not suitable for ratification. There was also no evidence in the CGC's written reasons that it addressed the positive aspects of MISS's applications, including its unique mandate and high initial membership list.
25. Furthermore, the CGC did not provide any evidence that a local organization existed with a similar mandate to MISS, despite stating that the existence of one was one of the reasons why MISS was unsuitable for ratification. While Plan Canada International allows individuals to start their own fundraising clubs, such clubs do not have a mandate similar to the one proposed by MISS.
26. As no evidence of a similar local organization was presented and since the CGC failed to provide reasons explaining why the changes made by MISS in its application for re-consideration were insufficient, the decision to reject MISS' application for re-consideration was unreasonable. The Board rules in favour of MISS.

## **B - Procedural Fairness**

27. Turning to the issue of procedural fairness, the CGC fulfilled its obligations to the applicants. It did not contravene clubs policy and provided each club with an opportunity for reconsideration. Reviewing the materials, the written correspondents of the CGC were well within the scope of its mandate and did not show evidence of any substantive breaches of stated policy.
28. Although 5.04 of the Procedure for Ratification states that the CGC must provide a CGC decision with respect to ratification within 5 business day of a decision being made, as no club was prejudiced by late e-mails and each were given additional time to submit appeals, the Board sees no need to quash any of the decisions regarding ratification on procedural fairness grounds. Given the realities and exigencies of the student experience, correctness with a degree of deference is the proper approach in matters concerning deadlines. On the issue of any potential breaches of procedural fairness, the Board rules in favour of the CGC.

***DISPOSITION SUMMARY:***

All appeals with the exceptions of those of ALPHA and MISS are dismissed.

The appeals of ALPHA and MISS are allowed in part: the CGC shall have an opportunity to apply for individual hearings in order to better explain their reasoning for denial of each proposed clubs reconsideration. In consideration of the ending of the current academic session, such hearings would not take place until September 2016. ALPHA and MISS should be awarded USC club ratification status on a **provisional basis** so as to not be unfairly disadvantaged by the timing of this process. ALPHA's and MISS' provisional club statuses shall become final for the 2015-2016 year in the event that (a) the CGC consents; or (b) the CGC does not apply for such hearings by September 30, 2016.