



Judgment of the USC Appeals Board in the matter of:

Backpacks N' Care Packs v Clubs Governance Committee, **2018:3**

Judgment Date: April 26, 2018

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

Reasons for Judgment: Spykerman (Wright and Collins concurring)

PART I: OVERVIEW

1. This is an appeal by Backpacks N' Care Packs ("BNCP") in response to the decision of the USC Clubs Governance Committee ("CGC") to deny ratification of BNCP 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. Due to the requirements of the *Procedure for Ratification*, the discretionary authority of the CGC to determine which clubs are appropriate for ratification, and the considerable deference given to decisions of the CGC pertaining to issues within its area of expertise, the Appeals Board dismisses this appeal.

PART II: FACTS

3. BNCP applied for USC club ratification. At the time of its initial application for ratification, BNCP's purpose was as follows:

- Educate the members of the club and the London community (i.e. schools) on the issues homeless people face and to give perspective/insight on the topic of homelessness through presentations
- Create care packages containing non-food essential items for the homeless
- Personally donate the care packages to the homeless
- Provide a networking opportunity for members interested in philanthropy

In addition, BNCP planned to fundraise money through various events, including bake sales, bottle drives and bar nights.

4. Upon reviewing BNCP's application for ratification, the CGC had concerns regarding potential USC liability stemming from the activities of BNCP and the sole purpose of events being charity-based. Specifically, the CGC was concerned for the safety of members of BNCP due to the potential danger involved in approaching strangers and donating care packages. Further, the CGC was concerned about BNCP's sole purpose of donating to charity.
5. On March 12, 2018, the CGC ultimately decided to deny BNCP's application for ratification for the aforementioned concerns. In its decision, the CGC informed BNCP that it could submit a Request for Reconsideration of the CGC's decision.
6. After receiving the CGC's decision, BNCP revised its club constitution. Rather than personally donate care packages to homeless individuals, the Revised Club Constitution stated that members would donate care packages to a homeless shelter. Specifically, care packages would be donated to Mission Services of London, a local charity. BNCP did not, however, make any changes with regard to the fundraising/charity nature of its events and purpose.
7. Upon revising its Club Constitution, BNCP 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 BNCP was still not suited for ratification due to safety still being an issue.

8. Upon receiving this decision, BNCP submitted an appeal to this Board. Submissions by both BNCP and the CGC were provided to this Board and have been considered in rendering this decision. The April 11, 2018 decision is the subject of this appeal.

PART III: ISSUES

9. 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 BNCP reasonable?

These issues will each be dealt with in turn.

PART IV: ANALYSIS

What is the appropriate standard of review?

10. 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.
11. 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.

12. In determining the appropriate standard of review, it is sufficient to note that the CGC, in arriving at the impugned decision, was interpreting and applying the *Procedure for Ratification* and the *New Clubs Application Mandate*, two procedures/documents for which the CGC should be considered an expert. 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 to deny ratification of BNCP reasonable?

14. As noted above, in its initial response to BNCP’s club ratification application, the CGC noted that it had concerns regarding the charity-based nature of BNCP’s events. In addition, correspondence submitted to this Board between the CGC and BNCP indicates that the CGC informed BNCP that a sole purpose of donating to a charity contravenes the *New Clubs Application Mandate*. The CGC advised BNCP against such a purpose prior to BNCP submitting its Request for Reconsideration.
15. In reviewing the *New Clubs Application Mandate*, a policy that provides the CGC with discretionary authority in determining which clubs are appropriate for ratification, it states the following:

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

...

3. FUNDRAISING/CHARITY

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

- A club’s sole mandate or purpose should not be to fundraise and/or support a specific charity

While not a strict requirement, the CGC does possess the discretionary authority to deny ratification of a club if the club contravenes one or more of the subjects listed under the *New Clubs Application Mandate*. Further, the CGC’s discretion is not limited to these subjects as potential reasons for denial, as stated in the *New Clubs Application Mandate*.

16. It is also of significance to note the purpose of the *New Clubs Application Mandate*. The Proposed Mandate states, in part, the following:

The CGC looks forward in decision-making processes to ensure that the future of the clubs department is stable and must enact particular guidelines in reviewing club applications that limits the number of clubs that are accepted each year. A rapid increase in the number of new clubs can create dilution in club memberships for all clubs and an inability to host a functioning clubs week in the space provided. The CGC will continue to use its discretion with regards to the ratification procedure and will adhere to the guidelines that are used and outlined each year.

The purpose, therefore, is to limit the number of new ratified clubs to stabilize the future of the clubs department while maintaining sufficient resources and space on campus. The CGC retains significant discretion in deciding whether ratification of a club is suitable not only with regards to the ratification procedure but also with regards to the stability of the clubs department and its resources.

17. In its submissions, the CGC noted that it had informed BNCP of the charity issue in its e-mail correspondence with BNCP. As noted above, the CGC specifically advised BNCP against BNCP’s sole purpose of donating to charity. The CGC also noted that BNCP failed to make any necessary changes with regard to the charity purpose prior to submitting its Request for Reconsideration.

18. Of particular significance, the CGC noted in its submissions that the Revised Club Constitution of BNCP changed its purpose to donating care packages to Mission Services of London. Based on this fact, the CGC submitted that BNCP became a fundraising club that has as its main focus fundraising and charity, contrary to the *New Clubs Application*

Mandate. It is, in part, upon this basis that the CGC denied BNCP's Request for Reconsideration.

19. Upon reviewing BNCP's Revised Club Constitution, it is evident that its main purpose is to support a charity – Mission Services of London. While BNCP does list other purposes, such as education regarding the issue of homelessness and networking, its primary functioning seems to be dedicated to the donation of care packages/backpacks to Mission Services of London. In fact, BNCP states, in its Revised Club Constitution, that backpack/care package donation is the “essential activity of the club.”
20. While not, perhaps, its *sole* purpose, the primary purpose of BNCP is to donate to charity. Further, and as mentioned prior, the CGC retains significant discretion in deciding whether ratification of a club is suitable. Considerable discretion must be given to the CGC's decision to deny ratification.
21. Upon a reading of BNCP's Revised Club Constitution, the *New Clubs Application Mandate*, the submissions of both parties and e-mail correspondence between the CGC and BNCP, it is the opinion of this Board that the CGC's decision to deny ratification of BNCP falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law/policy. The CGC's decision is, therefore, reasonable.

PART V: DISPOSITION

22. The appeal is dismissed.