



Judgment of the USC Appeals Board in the matter of:

***Western Fantasy Sports Club v Clubs Governance Committee,
2019:4 Club***

Hearing Date: April 1, 2019

Judgment Date: April 5, 2019

Panel: Joseph Wright (Chair), Andrew Beney, Swapnil Sharma

Reasons for Judgment: Wright (Beney and Sharma concurring)

PART I: OVERVIEW

1. This is an appeal by the Western Fantasy Sports Club (“WFSC”) in response to the decision of the USC Clubs Governance Committee (“CGC”) to deny ratification of the WFSC. For the reasons outlined below, this appeal is dismissed.

PART II: FACTS

2. On January 30, 2019, the WFSC applied to the CGC for ratification as a USC club. On March 9, 2019, the CGC denied ratification to the WFSC, on the basis that “clubs cannot teach gambling” and that a club’s mandate “cannot be gambling focused.”
3. The WFSC revised its mandate and requested reconsideration pursuant to s.5 of the USC *Club Ratification Procedure*. On March 19, 2019, the CGC once again denied ratification of the WFSC, due to the risk that gambling activities might occur and could cause legal and reputational harm to the USC.

PART III: ISSUES

4. There are two issues on appeal:
 1. What is the appropriate standard of review?
 2. Was the CGC's decision to deny ratification of the WFSC reasonable?

PART IV: ANALYSIS

5. Currently under Canadian administrative law, there are two standards of review upon which administrative decisions are reviewed: reasonableness and correctness. To determine whether the CGC's decision should be upheld, the appropriate standard of review must first be determined.
6. 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 *Club Ratification Procedure*, a document concerning which the CGC should be considered an expert. Based on this, the appropriate standard of review for the CGC's decision is reasonableness.
7. The standard of reasonableness requires the Appeals Board to determine whether the CGC 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.
8. The CGC is granted a broad discretion by the USC to make decisions concerning club ratification. This discretion is not, however, without limits. The standard of reasonableness requires justification, transparency and intelligibility in the decision-making process. Section 2 of the *Appeals Board Policy* requires our Board to follow the principles of natural justice, including fairness and good conscience. This means that the procedural rights of parties must be respected during decision-making, and during the appeals process. When the CGC makes decisions concerning club ratification, it must do so in accordance with provisions of the *Club Ratification Procedure*. It must also respect all existing By-Laws and Policies of the USC.

9. In this case, the decision of the CGC was reasonable. The CGC's initial decision expressed concern that the WFSC's proposed mandate was focused on gambling. When the WFSC submitted its request for reconsideration, it made changes to the proposed mandate, and emphasized that it wished to create a club which had no affiliation with gambling activities. Rather, the WFSC wished to create a community for those with a passion for sports, and to inform members about statistics in the sports world. Despite these changes, the CGC felt that the risk of gambling-related activities taking place within the WFSC was too high to permit ratification.
10. No club has an inherent right to be ratified by the USC, or to the corresponding support services provided by the USC. The *Club Ratification Procedure* recognizes a potential shortage of USC resources as a result of the club ratification process. The CGC must work within these practical confines and use its discretion to make the club-ratification decisions it feels are best for the USC.
11. This does not mean the Appeals Board must give blind deference to the CGC in their decision making. While no club has an inherent right to be ratified, the CGC must ensure their decisions are transparent, justified, and intelligible. This ensures the CGC follows their own goals of being honest and open in their decisions to deny clubs ratification.
12. This decision is neither unjustifiable, nor unintelligible. There is, generally, a tangible connection between fantasy sports and gambling. The two activities often go hand-in-hand. While it is possible for fantasy sports to be played without gambling being involved, it is not unreasonable for the CGC to be concerned about the risk of a WFSC member engaging in independent gambling. I am not questioning the sincerity of the WFSC's intention to take a zero-tolerance approach to gambling within their proposed club. However, there is a possibility that gambling might take place within the club despite this approach. It is not the role of the Appeals Board to determine the degree to which risks should be taken in the club-ratification process. It is plausible that this could happen, and that it might cause legal

and reputational damage to the USC. The fact that the CGC's decision was grounded in this legitimate risk makes that decision reasonable.

PART V: DISPOSITION

13. This appeal is dismissed and the decision of the CGC is upheld.