CITATION: Zettel v. University of Toronto Mississauga Students' Union, 2018 ONSC 1240
COURT FILE NO.: CV-16-544546
DATE: 20180226

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
DIANE ZETTEL, CAMERON GRANT and CHAD HAGEL	)	*Marty Moore* for the Applicants
	)	
Applicants	)	
	)	
– and –	)	
	)	*Alexi Wood and Jennifer Saville* for the Respondent
UNIVERSITY OF TORONTO MISSISSAUGA STUDENTS' UNION	)	
	)	
Respondent	)	
	)	
	)	**HEARD**: January 24, 2018

APPLICATION UNDER section 97 of the *Courts of Justice Act* and rule 14.05 of the *Rules of Civil Procedure*

PERELL, J.

REASONS FOR DECISION

A. Introduction

[1] This judgment is one of three judgments in three Applications that were argued together. The judgments are being released simultaneously. The judgments are: *Arriola v. Ryerson Students' Union*, 2018 ONSC 1246; *Naggar v. The Student Association at Durham College and UOIT*, 2018 ONSC 1247; and *Zettel v. University of Toronto Mississauga Students' Union*, 2018 ONSC 1240.

[2] The facts of the three cases are similar but not identical. The common factual features of the three cases are that the Applicants in each case are students at a publicly-funded university. The Applicants are conscripted (non-voluntary) members of their respective university's student unions or associations, which are non-profit corporations independent and autonomous from the

university. In each of the three cases, the Applicants organized student groups (campus clubs) and applied to have those groups or clubs officially recognized by their student unions or associations. In each case, the Applicants were refused. In each of the three cases the Applicants apply for judicial review of their student unions' decisions and seek orders quashing the decisions of the student unions or associations.

[3] The law and the legal analysis to be applied to the facts of the three cases is identical. In the circumstances of the three cases, with some exceptions, the law that applies is the private law of groups. Under this law, a court has only a limited jurisdiction to review the conduct and decisions of an association, and the court will only do so if a significant private law right or interest is involved. The court has its jurisdiction associated with the enforcement of contracts and a limited judicial review jurisdiction over the decisions of the association. The court does not review the merits of the association's conduct or decision but reviews whether the association made its decision in accordance with the association's own rules and with the principles of natural justice, and without *mala fides*. The court may decline to exercise its judicial review jurisdiction when the internal dispute resolution mechanisms of the association have not been exhausted.

[4] In this application Diane Zettel, Cameron Grant, and Chad Hagel sue the University of Toronto Mississauga Students' Union (the "SU").

[5] Ms. Zettel, Mr. Grant, and Mr. Hagel, who are students at the University of Toronto, Mississauga campus, organized a club known as "UTM Students for Life," ("SFL") a pro-life group, and they applied to have the club's recognition as an official Union Club renewed. The SU refused the Renewal Application.

[6] In this application, Ms. Zettel, Mr. Grant, and Mr. Hagel seek the following relief:

- a declaration that the decision of the SU to deny the renewal application of SFL for club recognition and the subsequent conduct of the SU while SFL attempted to appeal the decision were (i) contrary to the principles of natural justice and procedural fairness, (ii) were tainted by a closed mind; and (iii) were not made in good faith;
- a declaration that the SU's decision is *ultra vires* by exceeding the SU's jurisdiction and by violating the SU's own policies and rules;
- a declaration that the SU's decision is contrary to the fundamental common law values and the values of the *Canadian Charter of Rights and Freedoms*[1] by failing to respect the Applicants' freedom of expression and freedom of association;
- a declaration that the SU's decision is void;
- an order prohibiting the SU from limiting access to services, research, information, materials and other resources of the SU on account of students' and student groups' personal or political beliefs;
- an order directing the SU to give SFL club recognition;
- alternatively, an order that the SU reconsider SFL's application for club recognition in

[1] Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c 11.

accordance with natural justice, in good faith, and in accordance with any further directions from the court;

- costs; and
- such further and other relief as to the court may seem just.

[7] For the reasons that follow, this application is dismissed. As I shall explain below, in bringing this application, Ms. Zettel, Mr. Grant, and Mr. Hagel have overreacted to the incompetence of the SU.

B. Facts

1. The University of Toronto Mississauga Students' Union (the "SU")

[8] The University of Toronto, which is established pursuant to *The University of Toronto Act, 1971*, has a branch located in Mississauga, Ontario, formerly known as Erindale College.

[9] Pursuant to the *Corporations Act*,[2] on August 2, 1983, the University of Toronto Mississauga Students' Union (the "SU"), then known as the Erindale College Student Union, was incorporated. The SU is an independent, autonomous corporation without share capital and is an entity separate and apart from the University of Toronto. The University has no control over the SU's activities.

[10] The SU's Letters Patent sets out the following objects, which are repeated in the SU's Mission Statement:

> 1. To safeguard the individual rights of the student, regardless of race, colour, creed, sex, nationality, place of origin, or personal or political beliefs;
>
> 2. To foster the intellectual growth and moral awareness of the student in order to benefit him or her, the University of Toronto Mississauga Student Community, and society;
>
> ....

[11] The SU represents all full-time undergraduate students at the University of Toronto Mississauga and acts as the representative of these students in matters related to the University. It represents approximately 13,000 students. The students are members of the SU so long as they have paid the student activity fee for the current term of study. In the 2015-2016 school year, the membership fee, which is mandatory for students, was $14.11 per term.

2. The SU Endorses the Women Students' Issues Policy

[12] The SU is a local of the Canadian Federation of Students ("CFS"). As such, every full-time undergraduate member of the SU is also a CFS member.

[13] CFS is a pro-choice organization. Its operational policy "Women Students' Issues", which was adopted in 1993 and amended in 1995, has been endorsed and adopted by SU. The *Women Students' Issues* policy states:

---

[2] *Corporations Act*, R.S.O. 1990, c. C.38.

> The Federation declares that women students have the right to:
>
> 1. freedom of choice of lifestyle, employment and education as full and equal participants in Canadian society;
>
> ....
>
> 11. an educational environment free of advertisements, entertainment programing and/or materials which promote violence against women, sexual stereotyping and/or discrimination;
>
> ....
>
> 13. control their own bodies including but not limited to:
>
> - access to safe, reliable birth control and family planning information and the right of choice in the method;
> - access to quality health services and counselling which meets the needs of women students and respect a woman's control of her body;
> - access to a full range of options and to be able to freely exercise whatever decision she makes in case of pregnancy;
> - freedom of expression in sexual orientation;
> - freedom from sexual assault and all other forms of violence; and
> - the right to an educational environment free of sexual harassment.

3. The SU Clubs at the University of Toronto Mississauga

[14] Any group of students can form a club at the University of Toronto Mississauga, and the club may apply to the SU to be recognized as a "Union Club".

[15] Recognized Union Clubs receive funding from the SU. For the 2015-2016 school year, a Union Club received $350 in operational funding, and a Union Club may apply for further funding. Union Clubs may book and use space in the Student Centre free of charge, but non-Union Clubs must pay a fee to book and use the Centre. Union Clubs receive an official SU email account. Union Clubs can put up posters, free of charge, on the SU bulletin boards while non-Union clubs must pay an administrative fee of $0.50. The University also has poster boards available both for non-Union Clubs and Union Clubs.

[16] To become a Union Club, the club must submit an application to the SU's Clubs Committee. If the application is approved, the new Union Club is granted probationary status for one-year. All Union Clubs must reapply for recognition every year. That a Union Club was previously recognized does not guarantee that its status will be renewed. During the re-recognition process, the Clubs Committee undertakes an in-depth review of the Student Group's finances and activities from the prior year.

[17] The Clubs Committee is, under the By-Laws, a committee of the SU's Board of Directors and is comprised of members from the SU's Executive and three other members. The Clubs Committee is responsible for recognizing, withdrawing recognition, assisting and otherwise dealing with Union Clubs. The Clubs Committee makes recommendations to the Board of Directors on all matters relating to Union Clubs.

[18] The SU's operational policy on Union Clubs states:

> **Union Clubs' Policy**
>
> The Union must maintain a policy and mechanism for the recognition of campus organizations.
>
> ....
>
> **Recognition Guidelines**
>
> Recognized campus groups shall abide by all of the conditions and restrictions enumerated in the Clubs Handbook. Responsibility for the implementation of this policy is delegated to the Clubs Committee and Vice-President Campus Life, or designate. In the case of denial or withdrawal of recognition, a statement of reasons will be provided. All administrative decisions to grant, deny, or withdraw recognition will be reported regularly to the Board of Directors for ratification.
>
> ....
>
> Recognition of campus groups shall be assessed annually against the following constitutional criteria:
>
> 1. The objectives and activities of groups seeking recognition should be seen as attempting to contribute to the educational, recreational, social or cultural values of the University of Toronto at Mississauga community.
>
> 2. Recognized campus groups may not engage in activities that are essentially commercial in nature. ....
>
> 3. Recognized groups must be comprised of at least 51% Union members. Union recognized groups must have a minimum of 15 Union members.
>
> 4. The Union requires a club's contribution to have a:
>
> - mandate
> - organizational structure
> - membership
> - financial and administrative procedures
>
> ....
>
> 9. Union Club Recognition can be renewed between August 1 and September 30 of any given year and requires an updated membership list, a copy of the club's constitution (with or without any constitutional changes) and a completed Clubs Recognition form.
>
> 10. Club members are required to affirm their membership annually.
>
> ....

[19] The SU Clubs' Policy requires that clubs abide by all the conditions and restrictions enumerated in the University of Toronto Student Code of Conduct, the SU Constitution, and the Clubs Handbook. The Clubs Handbook states:

> REQUIREMENTS FOR UTMSU [University of Toronto Mississauga Student Union] RECOGNIZED CLUBS
>
> 1. All Union recognized clubs must have a constitution on file with UTMSU that meets all of UTMSU's constitutional guidelines. ....
>
> 2. All Union recognized clubs must adhere to UTMSU's club-related policies as stipulated in this handbook, the UTMSU Constitution, and the University of Toronto Student Code of Conduct at the discretion of the Clubs Committee of UTMSU.
>
> ....

5. All Union recognized clubs must be open to UTMSU members regardless of race, religion, gender, academic inclination, age, and sexual orientation. This non-exclusionary policy is all encompassing and is to be reflected on every aspect of club policy.

....

7. The VP Campus Life, VP Campus Life Associate, and Clubs' Coordinator are recognized as honorary members of all Union recognized clubs .... Consequently, the Clubs' Coordinator and VP Campus Life must receive a copy of each e-mail sent out to members of the club with regards to large events that can be accommodated by the UTMSU Calendar.

....

15. Re-recognition at the end of each academic year will be dependent upon submission of a renewal package including ....

....

CLUB RECOGNITION PROCEDURE

The procedure for applying for recognition as a new club is as follows:

1. A completed application for recognition must be submitted to the VP Campus Life. ....

....

3. A constitution for the club as outlined on Page six (6) of this handbook must be submitted as well. ...

4. If after the submission of the above items the Clubs Committee ascertains that the club has the potential to be accepted, the club recognition package will be presented and reviewed by the Clubs Committee.

All new clubs will undergo a one-year probationary period during which only partial benefit of club recognition will be granted. During the said probationary period, clubs shall not apply for office space.

....

Any modification in a club's constitution should be approved by unanimous consent of the executives or by a majority of the membership. The VP Campus Life, Clubs Coordinator or Associate must be involved in the modification process. For modification a general meeting must occur where all members of the club are informed and invited through mass e-mail. ....

All clubs recognized by UTMSU must adhere to the following constitutional guidelines. .....

....

Article III: Membership

Membership must be open to all UTMSU members.

....

[20] The SU does not have a formal policy of appeals from a decision by the Clubs Committee to the Board of Directors. The SU's standard practice is to allow a club to ask the Clubs Committee to reconsider any decision. However, the Board of Directors may "externalize" any decision, which is a practice whereby any Board member can request that the Board of Directors review the decision of the Committee and make a decision in the Committee's place.

4. UTM Students for Life's Application to be a Student Group

[21] In 2014, with the help of an association known as the National Campus Life Network, a group of students formed SFL, which was a group established to encourage discussion on topics important to their belief-system, including respect for the value of human life at all stages. Ms. Zettel was president of SFL, and Mr. Grant and Mr. Hagel were members of the group.

[22] In April 2014, SFL applied for Student Group (Union Club) status for the first time. This application was granted, and SFL was placed on probation for the 2014-2015 school year.

[23] In July 2015, SFL applied for renewal as a Union Club, and its application was reviewed by the Clubs Committee at its July 20, 2015 meeting.

[24] During the meeting, members of the Clubs Committee discussed complaints from SU members about events hosted and materials distributed by SFL, including flyers and leaflets with graphic images of fetuses. Some SU members found these materials to be offensive. The Clubs Committee concluded that SFL's actions in the 2014-2015 year were not in accordance with the SU's pro-choice policies, including the *Women Students' Issues* policy it endorsed as a CFS local union.

[25] The members of the Clubs Committee were concerned about renewing SFL's status, but felt this issue needed to be addressed and explored more fully. The Clubs Committee adjourned SFL's Application for Renewal to be considered at a later meeting.

[26] On August 17, 2015, the Clubs Committee met, and its members again decided to adjourn the discussion of SFL's Application for Renewal to the next meeting, which was scheduled for August 19, 2015.

[27] On August 19, 2015, the Clubs Committee discussed SFL's Application for Renewal. Some members of the Committee were concerned that approving the application would adversely affect the SU's membership, be contrary to the SU's policies, and would have implications for the SU's relation with its sister unions in the CFS. The Clubs Committee decided not to approve SFL's Application for Renewal. The decision was reported to the Board of Directors in the Clubs Committee's Report to the Board as follows:

> Students for Life, which has been recognized by UTMSU in the past, was not recognized for the up-coming school year due to their stance on Abortion, in terms of being Pro-Life and using their platform to tell women what they should do in those situations.

[28] Following the Clubs Committee's decision, Russ Adade, the SU's Vice President Campus Life, wrote to the executives of SFL to inform them that their Application for Renewal had been denied, and provided the following reasons:

> Following a review by the Clubs Committee of your application for club recognition by the University of Toronto Mississauga Students Union, the decision has been made to deny your request.
>
> This action was executed following a review of the core documentation of the UTMSU, and a total review of the nature and status of "Students for Life". The ruling to find the mandate of your organization in direct conflict with the mission statement of the UTMSU was made by the chair of the Clubs Committee and was ratified by the Board of Directors for the UTMSU.
>
> If you wish to contest this ruling, please contact the V.P. Internal to be made aware of the next scheduled board meeting, at which point you can request the Board of Directors re-vote on this matter.

[29] In September 2015, in response to requests from members of SFL, Mr. Adade provided additional reasons for the Clubs Committee's denial of SFL's Application for Renewal, as follows:

> The reason why Students For Life was not renewed for the 2015/2016 Academic school year under UTMSU because [sic, is that] the club's constitution is a direct conflict with the ITMSU mission statement because you are telling folks especially women what to do with their bodies. Regardless of the situation, every individual (Man or Woman) has the right to make their own decision when it comes to their body and you folks can't put them down for making a decision that doesn't fit with your mandate.
>
> Your club can still appeal this decision made by the Clubs Committee. If you wish to contest this ruling, please contact the V.P. Internal to be made aware of the next scheduled board meeting, at which point you can request the Board of Directors re-vote on this matter.

[30] After receiving the correspondence from Mr. Adade, SFL's executives emailed Mr. Otello-DeLuca, who is V.P. Internal, to ask when the next Board of Directors meeting was going to be held so that the decision could be reviewed.

[31] Mr. Otello-DeLuca responded and informed SFL's executives of the date of the next Board of Directors meeting. However, he advised that the Board of Directors was possibly not the proper place for a reconsideration of the Clubs Committee's decision because the longstanding practice was that it was for the Clubs Committee to reconsider a decision to deny Union Club status if and when requested to do so.

[32] On October 19, 2015, Ms. Zettel's and Messrs. Grant's and Hagel's counsel wrote the Board of Directors. The letter stated:

> Dear Board Members,
>
> **Re Illegal censorship directed against UTM Students for Life.**
>
> We act for Diane Zettel, Cameron Grant, Chad Hagel and the club UTM Students for Life ("Students for Life"). Students for Life was a recognized campus club throughout the 2014-2015 academic year. However, on August 26, 2015, the Clubs Committee denied Students for Life's application for recognition (the "Decision").
>
> ....
>
> .... The Decision not to recognize Students for Life on account of their personal or political beliefs directly conflicts with the legal duty that UTMSU owes to Students for Life.
>
> The Decision also directly conflicts with UTMSU's "fundamental beliefs, which include the power of representation, and strength in diverse voices and opinion." The Decision attacks rather than supports diversity of opinions, evidencing an attempt to silence the minority voice and opinion of Students for Life.
>
> ....
>
> It is a fundamental principle of law that administrative decision makers, such as UTMSU's Clubs Committee cannot make decisions based on their own personal likes or dislikes. Rather administrative decisions must be based upon relevant considerations and made in accordance with applicable legislation and the rule of law.
>
> ....
>
> In the present situation, the relevant considerations and context for UTMSU's Decision is determined by the language of UTMSU's Letters Patent, made pursuant to provincial legislation. As noted above, UTMSU is legally required to defend students' rights regardless of personal or political beliefs and to provide a framework within which students can share their diverse views and opinions.

> Rather than fulfill these duties, the Decision to deny Students for Life their application for recognition evidences discrimination against Students for Life on account of their personal or political beliefs, namely their advocacy for the right to life of all persons and at all stages of a person's growth and development.
>
> This discriminatory Decision also exceeds UTMSU's authority. UTMSU is not authorized to censor students on the basis of their views or opinions, by denying club status to a group that UTMSU leaders disagree with. If the Board of Directors allows this decision to stand, a court will find the Decision to be *ultra vires* and an abuse of UTMSU's discretion.
>
> ....
>
> In regard to Students for Life, UTMSU must respect freedom of expression and association, which are fundamental values in Canadian society. ...
>
> ....
>
> **Conclusion**
>
> When you meet to review the Decision, we trust that you will honour your legal obligations as set out above, rather than acting on the basis of personal likes and dislikes, or differing political beliefs. Basing your reasoning upon relevant considerations in accordance with the Rule of law, we trust that you will reverse the Decision, which unlawfully discriminates against Students for Life on the basis of personal and political belief.
>
> Should you fail to fulfill your legal duties to respect students' rights, Students for Life will have no reasonable alternative but to commence legal proceedings against the University of Toronto Mississauga Students' Union.

[33] On October 26, 2015, Mr. Adade wrote to SFL's executives and invited them to a meeting of the Clubs Committee, which was prepared to hear SFL's submissions that the Clubs Committee reconsider its decision.

[34] Prior to the meeting, the Clubs Committee again reviewed SFL's Application for Renewal. The Clubs Committee noted various deficiencies with SFL's constitution and Mr. Adade advised SFL's executives of these discrepancies by way of an email dated November 3, 2015. Mr. Adade reiterated that the reason for the rejection of the Application for Renewal were problems with SFL's constitution and non-compliance with the SU's Clubs' Policy. Mr. Adade's email stated:

> Dear Executive of Students for Life,
>
> Your appeal at the clubs committee meeting will be held on Friday November 6 at 2 pm in the UTMSU office ....
>
> ....
>
> I have attached the violations that were identified by the Clubs coordinator for your review. Please note that all clubs must abide by the expectations set in the Clubs handbook and operational policy of UTMSU. The reasoning behind the decision of the clubs committee to revoke club status for your club is due to the violations and discrepancies we found within your constitution in relation to the clubs handbook and UTMSU operational policy as it pertains to clubs.
>
> The club committee will make the appropriate recommendation and decision of weather [sic] to adjudicate on your appeal or refer the decision to the Board of Directors.
>
> If you have any questions or concerns, please do not hesitate to contact me directly.

[35] On November 4, 2015, SFL's executives agreed to make some, but not all, of the changes suggested by Mr. Adade and emailed him a copy of the revised constitution. On November 5, 2015, Mr. Adade was advised that SFL's executives had voted unanimously on the amendments to SFL's constitution.

[36] On November 6, 2015, there was a meeting of the Clubs Committee. Ms. Zettel and Mr. Grant were in attendance. The Clubs Committee advised them that regardless of any issues with respect to SFL's mandate, the deficiencies in its Application for Renewal, including the remaining deficiencies in its Constitution, had to be remedied before the Clubs Committee could reconsider the Application for Renewal. The Clubs Committee told Ms. Zettel and Mr. Grant that SFL was required to hold another meeting, elect a fourth executive and ratify the necessary changes to its Constitution.

[37] Following the meeting of the Clubs Committee, SFL's executives advised the Committee that there would be a general meeting on November 16, 2015 to elect a fourth executive member as required for compliance with the SU's standards for Union Clubs.

[38] The general meeting was rescheduled to November 23, 2015, because the person nominated as SFL's fourth executive could not attend. On November 23, 2015, SFL's executives held the general meeting for the purpose of electing a fourth executive and to make various changes to SFL's Constitution. However, contrary to the Clubs Committee's instructions, and the Clubs Handbook, notice of the meeting was not widely publicized, and there was no email sent to club members.

[39] The attendance at the general meeting was sparse. SFL had 75 members listed on its Club Office Space Request Form, but only 4 listed members were in attendance at the November 23rd meeting; *i.e.*, SFL's three executives and Marigrace Noronho, whom SFL's executives nominated as SFL's fourth executive.

[40] Mr. Adade attended the November 23rd meeting to oversee the amendments to SFL's constitution. Five other people were present, namely: Taman Khalaf, Ariana Serapigia, Nyasha Chikowor, Hashim Yussuf (Associate to VP University Affairs and Academics) and Salma Fakhry (Associate to VP University Affairs and Academics). These persons opposed SFL and after learning about the general meeting and speaking to Mr. Adade about it, he told them that if they had concerns, they could attend the meeting and raise any concerns directly with SFL's members.

[41] At the November 23, 2015 meeting, Mr. Grant nominated Ms. Noronho to be Vice President of SFL, which was supported by Ms. Zettel and Mr. Hagel. A vote was then taken by secret ballot and the motion to elect Ms. Noronho as Vice President of SFL failed by a vote of 5-negative; 4 affirmative. Mr. Adade did not vote on the motion. Under SU's Student Group Policy, a Student Group must be open to all SU members, and it may be deduced that Mses. Khalaf, Serapigia, Chikowor Yussuf, and Fakhry voted against Ms. Noronho's election.

[42] Following these events, Counsel for the Applicants sent another letter to the Board of Directors on 24 November 2015, again threatening legal action. The letter stated:

> Dear Board Members,
>
> ....
>
> On November 23, 2015, at a Students for Life meeting conducted in the presence of Mr. Adade for the purpose of amending the club's constitution, five individuals who are not members of Students for Life also attended, apparently at the behest of Mr. Adade. These five individuals prevented Students for Life from making the very changes Mr. Adade and the Clubs Committee had requested. This shocking display of bad faith by Mr. Adade, in his position on the Clubs Committee and as VP of Campus Life, has compromised any integrity in the Clubs Committee's review of the Decision against Students for Life.

> We request that you, the Board of Directors of UTMSU, exercise your authority and act immediately to recognize Students for Life as a campus club no later than Monday, November 30, 2015. Failure to correct the shameful and duplicitous treatment of Students for Life will leave them no reasonable alternative but to commence a court action against the UTMSU.
>
> ....

[43] On December 1, 2015, Mr. Adade wrote to SFL's executives and suggested that SFL's members call for a general meeting in the winter semester to seek a resolution to have an election for a fourth executive member.

[44] Mr. Adade's suggestions were rejected, and the Application now before the court was commenced on January 15, 2016.

[45] The denial of SFL's application to become a Student Group has not stopped SFL from having an active presence on the University campus. SFL receives funding and resources from third-parties and continues to hold meetings, host events and communicate to the University student body.

C. Discussion

1. The Position of the Parties

[46] The Applicants submit that the SU intentionally obstructed SFL from acquiring Union Club Status because the members of the executive disagreed with their pro-life beliefs and opinions. They submit that there is no provision in the SU's Letters Patent, Constitution of Bylaws or policies that grants it the authority to withhold club recognition based on a student groups ideology, political or moral orientation and that the SU: breached its duty to safeguard the students' right to freedom of association and expression; discriminated against the Applicants; and used the alleged deficiencies in SFL's Constitution as a pretence for an illegal and *ultra vires* decision. They submit that the decision deprived the SU membership with authentic diversity and freedom of expression, the most crucial of human rights and necessary for an academic community to flourish.

[47] Further, the Applicants submit that the court, as a matter of public law or as a matter of private law, has the jurisdiction to judicially review and set aside the SU's decision. They submit that the SU's decision violated the SU's Constitution, rules, and policies, violated principles of natural justice and violated the SU's duty of good faith.

[48] The SU's position is that it is prepared to reconsider SFL's application for renewal but SFL's constitution and governance structure must comply with the requirements of the SU Clubs' Policy. It submits that the court does not have jurisdiction to review the SU's decision to deny SFL's renewal application for Union Club status. Further, it submits that if the court has jurisdiction it ought not to exercise its jurisdiction. The SU also submits that it was not required to take into account *Charter* values when it considered SFL's Application for Renewal.

2. The Law of Groups

[49] Unless they are sufficiently infused with a public element, the activities and decisions of associations be they incorporated or unincorporated voluntary associations, including charities, social clubs, fraternities, sororities, yacht, golf, tennis, curling clubs, etc., athletic organizations,

schools, religious societies, trade unions, professional guilds, political parties, or NGOs (non-governmental organizations), are governed by private not public law.[3]

[50] Where the decisions or activities of an association are challenged in court, to determine whether the matter is within the purview of public law, the court should examine a variety of factors in the particular circumstances of the case, including: the character of the matter for which review is sought; the nature of the decision-maker and its responsibilities; the extent to which a decision is founded in and shaped by law as opposed to private discretion; the association's relationship to statutory schemes or governments or public authorities; the extent to which the association is an agent of government or is directed, controlled or significantly influenced by a public entity; the suitability of public law remedies; the existence of a compulsory power; and whether the activities or decisions of the association has a significant public dimension.[4]

[51] In *Setia v. Appleby College*,[5] a private school regulated by the *Education Act*, expelled a student for smoking marijuana contrary to the school's Code of Conduct that his parents, in signing a contract with the school, acknowledged would govern his school enrollment. Reversing the Divisional Court, the Court of Appeal held that expulsion decision was governed by private not public law. In *West Toronto United Football Club v. Ontario Soccer Assn.*,[6] the Ontario Soccer Association, which governed the playing of competitive soccer in Ontario and which had control over 500,000 players was held to have very public responsibilities and a very large public dimension such that it was amenable to public law scrutiny.

[52] The *Canadian Charter of Rights and Freedoms* applies to an association's activities if the association is government or if the association's activity is governmental action.[7] In *McKinney v. University of Guelph*,[8] the Supreme Court of Canada stated universities are not organs of the government, even though they are subject to government regulation and depend on government funds. In *Grant v. Ryerson Students' Union*,[9] Justice Stewart held that a student association as a non-profit corporation was not subject to the *Charter*.

[53] Where the affairs of an association are governed by private law, a court has only a limited jurisdiction to review the conduct and decisions of associations, and the court will only do so if a significant private law right or interest is involved.[10] If a significant private law right or interest is involved; for example if a member of the association has been expelled or lost his or her membership status, been deprived of his or her membership privileges, or his or her ability to pursue vocations and avocations associated with the association, the court does not review the

---

[3] *Air Canada v. Toronto Port Authority*, 2011 FCA 347; *Setia v. Appleby College*, 2013 ONCA 753.
[4] *Air Canada v. Toronto Port Authority*, 2011 FCA 347; *Setia v. Appleby College*, 2013 ONCA 753; *West Toronto United Football Club v. Ontario Soccer Assn.*, 2014 ONSC 5881; *Association for the Protection of Amherst Island v. Ontario (Director of Environmental Approvals)*, 2014 ONSC 4574; *Courchene v. Carleton University Students' Association*, 2016 ONSC 3500; *Grant v. Ryerson Students' Union*, 2016 ONSC 5519.
[5] 2013 ONCA 753.
[6] 2014 ONSC 5881.
[7] *McKinney v University of Guelph*, [1990] 3 S.C.R. 229; *Eldridge v. British Columbia*, [1997] 3 SCR 624; *Canadian Federation of Students v Greater Vancouver Transportation Authority*, 2009 SCC 31.
[8] [1990] 3 S.C.R. 229. See also *Lobo v. Carleton University*, 2012 ONSC 254.
[9] 2016 ONSC 5519.
[10] *Street v. B.C. School Sports*, 2005 BCSC 958; *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 (C.A.).

merits of the association's conduct or decision but reviews whether the purported expulsion or loss of membership or of membership privileges was carried out according to the applicable rules of the association and with the principles of natural justice, and without *mala fides*.[11]

[54] The court may get involved in the affairs of an association when the matter is of sufficient importance to deserve the intervention of the court and where the remedy sought is susceptible of enforcement by the court.[12] The court retains a limited jurisdiction to review the procedural integrity of the association's action even if the constitution or rules of the association purport to oust any jurisdiction in the court.[13] The court may decline its jurisdiction and treat the court proceeding as premature where it is shown that internal procedures and remedies of the association have not been exhausted.[14]

[55] The court has the jurisdiction to enforce the contractual rights between an association and it members and the contractual rights of the members between or among themselves.[15] The court has the jurisdiction to interpret the contracts that define the rights of the members in respect of the association's operations.[16] The relationship between national associations and their incorporated local units is contractual and the members of the local association are taken to have accepted the national constitution as a contract binding on them and all the members both of the local and national organization.[17] A provision in a local unit's constitution that the national constitution governs in cases of inconsistency means that a provision in the local unit's constitution would be invalid if inconsistent with the national constitution.[18]

---

[11] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 10 -11; *Berry v. Pulley*, 2002 SCC 40; *Changoor v. IBEW, Local 353,* 2014 ONSC 4558 (S.C.J.), aff'd 2015 ONSC 2472 (Div. Ct.); *Pal v. Chatterjee*, 2013 ONSC 1329; *Farren v. Pacific Coast Amateur Hockey Association* 2013 BCSC 498; *Lee v. Yeung,* 2012 ABQB 40; *University of Victoria Students' Society v. Canadian Federation of Students*, 2011 BCSC 122; *Garcia v. Kelowna Minor Hockey Association,* 2009 BCSC 200; *Association of Part-Time Undergraduate Students of the University of Toronto v University of Toronto Mississauga Students Union,* [2008] O.J. No. 3344 (S.C.J.); *Barrie v. Royal Colwood Golf Club*, 2001 BCSC 1181; *Falk v. Calgary Real Estate Board Co-operative Ltd.*, 2000 ABQB 297; *Clark v. Gilbert*, [1996] O.J. No. 4415 (S.C.J.); *Peerless (Guardian ad litem of) v. B.C. School Sports* (1998), 157 D.L.R. (4th) 345 (B.C.C.A.); *Vancouver Hockey Club Ltd. v. 8 Hockey Ventures Inc.* (1987), 18 B.C.L.R. (2d) 372 (S.C.); *Warkenkin v. Sault Ste. Marie Board of Education* (1985), 49 C.P.C. 31 (Ont. Dist. Ct.); *Baird v. Wells* (1890), 44 Ch. D. 661 at p. 670.

[12] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at para. 9; *Woloshyn v. Association of United Ukrainian Canadians*, 2013 ABQB 262.

[13] *Street v. B. C. School Sports,* 2005 BCSC 958.

[14] *Ukrainian Greek Orthodox of Canada v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] S.C.R. 586; *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165; *Lee v. Yeung,* 2012 ABQB 40; *Hart v. Roman Catholic Episcopal Corporation of the Diocese of Kingston*, 2011 ONCA 728, aff'g 2010 ONSC 4709; *Alberta Soccer Assn. v. Charpentier*, 2010 ABQB 715; *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 (C.A.).

[15] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165; *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 (C.A.).

[16] *Kwantlen University College Student Assn. v. Canadian Federation of Students*, 2011 BCCA 133, aff'g 2010 BCSC 1951.

[17] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 45-46; *Polish Veterans Second Corps v. Army, Navy & Air Force Veterans in Canada* (1978), 20 O.R. (2d) 321 at p. 341 (C.A.); *Canadian Union of Public Employees. v. Deveau* (1977), 19 N.S.R. (2d) 24.

[18] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 45-46.

[56] To determine whether the association has acted in accordance with its rules, the principles of natural justice and without *mala fides*, the court must understand the institutional framework of the association and the sources of its rules, which depending on the association may have a variety of sources including contract, statute, and custom and tradition.[19]

[57] The content of the principles of natural justice are flexible and depend on the particular circumstances of the association, but the minimum requirements are: (a) adequate notice of what is to be determined and the consequences;[20] (b) an opportunity to make representations; and (c) an unbiased tribunal.[21] The scope of the requirements of natural justice depend on the subject-matter that is being dealt with, the particular legislative or administrative context, the circumstances of the case, the nature of the inquiry, and the rules under which the tribunal is acting, and the ultimate question is whether the procedures adopted were fair in all the circumstances.[22]

[58] The rules which require a tribunal to maintain an open mind and to be free of bias, actual or perceived, are part of the *audi alteram partem* principle which applies to decision-makers.[23] In the context of associations, an unbiased tribunal in accordance with the principles of natural justice is one that has not prejudged the matter and is opened-minded to being persuaded.[24] In *Old St. Boniface Residents Association Inc. v. Winnipeg (City),*[25] the Supreme Court of Canada was called on to consider the application of the rules of natural justice or fairness where members of an organization, in that case elected municipal councillors, would be expected to have a view (but not a direct or indirect personal interest), in making a decision about a matter within the organization's mandate, in that case a zoning application. In deciding that a councillor did not have to recuse himself from participating in the hearing of the zoning application on the grounds that he had prejudged the matter, Justice Sopinka stated at para. 94:

> In my opinion, the test that is consistent with the functions of a municipal councillor and enables him or her to carry out the political and legislative duties entrusted to the councillor is one which requires that the objectors or supporters be heard by members of council who are capable of being persuaded. The legislature could not have intended to have a hearing before a body who has already made a decision which is irreversible. The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile. Statements by individual members of council, while they may very well give rise to an appearance of bias, will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be

---

[19] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165.
[20] *Cohen v. Hazen Avenue Synagogue* (1920), 47 N.B.R. 400 (S.C.); *Young v. Ladies' Imperial Club*, [1920] 2 K.B. 523 (C.A.)
[21] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 80-86; *McLachlan v. Burrard Yacht Club*, 2008 BCCA 271.
[22] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165; *Martineau v. Matsqui Institution*, [1980] 1 S.C.R. 602 at pp. 630-31; *Syndicat des employés de production du Qué. et de l'Acadie v. Can. (Can. Human Rights Comm.)*, [1989] 2 S.C.R. 879 at pp. 895-96; *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643; *Russell v. Duke of Norfolk*, [1949] 1 All E.R. 109 at p. 110 (C.A.); *Polish National Union of Canada v. Branch 1 the Polish National Union of Canada*, 2014 ONSC 3134.
[23] *Old St. Boniface Residents Association Inc. v. Winnipeg (City),* [1990] 3 S.C.R. 1170.
[24] *McLachlan v. Burrard Yacht Club*, 2008 BCCA 271; *Old St. Boniface Residents Association Inc. v. Winnipeg (City),* [1990] 3 S.C.R. 1170.
[25] [1990] 3 S.C.R. 1170.

> dislodged. In this regard it is important to keep in mind that support in favour of a measure before a committee and a vote in favour will not constitute disqualifying bias in the absence of some indication that the position taken is incapable of change. The contrary conclusion would result in the disqualification of a majority of council in respect of all matters that are decided at public meetings at which objectors are entitled to be heard.

[59] Although the public law remedies of *certiorari*, *mandamus,* and prohibition are not available for the judicial review of the activities of an association, courts use the private law remedies of injunctions and declarations instead.[26] If a member of an association is expelled by the association in breach of contract, the court will grant a declaration that the associations action is *ultra vires* and it will grant an injunction if necessary to protect the contractual, employment, or proprietary rights of the member.[27]

[60] To conclude this discussion of the law of groups, the above survey of the case law about the law of groups reveals that courts tend to employ an analytical framework that progresses through a series of five issues.

[61] First, the court determines whether the association that is before the court has a public stature or importance that exposes it to scrutiny in accordance with the principles of public administrative law, in which case the court judicially reviews the decision of the association in accordance with the principles of public law. Depending on the nature of the association, public law may include the application of the *Canadian Charter of Rights and Freedoms*.

[62] Second, if the court concludes that public law does not apply, the court determines whether the group is the type of group in which the members of the group would not have envisioned that the members had a contractual relationship one to another, in which case, the court will decline to exercise its jurisdiction. For examples, the members of an informal book club, an informal social club, or a family tree club would not envision that their promises were legally enforceable because they would have no intention to contract. In other words, the second question for the court to decide is whether any private law applies to the association before the court.

[63] Third, if the court concludes that private law applies, then the court determines whether there is some reason for the court to decline or postpone the exercise of its jurisdiction. For example, the court may decline to exercise its private law (or its public law) jurisdiction where the dispute resolution mechanisms of the association have not been exhausted.

[64] Fourth, if the court concludes that private law applies and there is no reason to decline to exercise the court's jurisdiction, the court determines whether the members of the group have breached the contract among the group and the members of the group.

[65] Fifth, if the court concludes that private law applies and there is no reason to decline to exercise the court's jurisdiction, the court determines whether there has been any violation of the principles of natural justice.

---

[26] *Lee v. Yeung*, 2012 ABQB 40; *Knox v. Conservative Party of Canada*, 2007 ABCA 295, leave to appeal to the S.C.C. ref'd [2007] SCCA No. 567; *Kaplan v. Canadian Institute of Actuaries*, [1994] A.J. No. 868 (Q.B.).
[27] *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 at paras. 9-11.

3. Analysis

[66] It is understandable that Ms. Zettel, Mr. Grant, and Mr. Hagel would be all of disappointed, aggrieved, offended, and angry at how the SU handled SFL's Renewal Application; however, Ms. Zettel, and Messrs. Grant and Hagel have attributed to discrimination, censorship, banishment, and bad faith what is more aptly attributable to SU's incompetence.

[67] SU mismanaged SFL's original application to be a Union Club. The circumstance that all Union Clubs are granted an initial probationary status and must reapply to renew their status as an official club means that the initial application should not be treated in a perfunctory way, as was the practice of the SU. Rather, the initial application should have been scrutinized in the same manner as it would be subsequently scrutinized. To do otherwise is to send a mixed message and has the appearance but not the reality of unfairness and bad faith.

[68] The objections that the Clubs Committee had to SFL's Renewal Application should have been made at the time of the initial application. It is understandable that an applicant granted official club status would feel unfairly treated if he or she is subsequently refused renewal when nothing has changed between the initial and the renewal application.

[69] The Clubs Committee's reasons for refusing SFL's Renewal Application have nothing to do what may have occurred during the probationary period and are reasons that existed at the time of the initial application. Ms. Zettel, Mr. Grant, and Mr. Hagel were forthright and candid in making their initial application about what their club stood for and the time of the initial application was the time when they should have been told the reasons why their club would be denied official club status. It is understandable that Ms. Zettel, Mr. Grant, and Mr. Hagel would be angry and suspicious about how their Renewal Application was being treated when their club had initially been approved.

[70] It is also understandable that Ms. Zettel, Mr. Grant, and Mr. Hagel would be angry and suspicious that deficiencies in their Constitution was a pretense and a cover-up for the real reasons why their Renewal Application was refused. The problems with the Constitution existed at the time of the initial application and throughout the probationary period. With competent management and administration, these deficiencies ought to have been resolved before and not after official club status was granted for a probationary period.

[71] The SU's supervisory involvement in SFL's general meeting to elect an executive to fill a new position and to vote to approve the required amendments to SFL's Constitution was grossly incompetent. If there had not been proper email notice of the general meeting as Mr. Adade believed, then the meeting should have been cancelled and rescheduled.

[72] With the meeting improperly proceeding despite the faulty notice, it was improper for Mses. Khalaf, Serapigia, Chikowor, Yussuf, and Fakhry to vote. They were not SFL members. They did not believe in SFL's values, and it would have been deceitful for them to apply to be SFL members, which they did not do. Rather, without being a member, they voted at a general meeting that should have been cancelled and rescheduled. Proper notice should have been given to the genuine members of SFL and they should have had the opportunity to vote and support their club.

[73] However, Mr. Adade was acting in good faith and Ms. Zettel, Mr. Grant, and Mr. Hagel are wrong to attribute to conspiracy what should better be attributed to the SU's incompetence in its role supervising the activities of student clubs.

[74] This all said, Ms. Zettel's, Mr. Grant's, and Mr. Hagel's reaction to the SU's incompetence while understandable was an overreaction and a misdirected one. The matter of fixing the constitution could and can still be resolved by a properly constituted general meeting.

[75] Ms. Zettel's, Mr. Grant's, and Mr. Hagel's reaction, however, was not directed at any problem that could and should be fixed without court intervention. Rather, they protested about discrimination, censorship, violations of their rights of association and expression, and violations of the principles of natural justice. The problem for them is that these protests were and are without either factual or legal substance.

[76] There has been no interference with freedom of association or freedom of expression. Ms. Zettel, Mr. Grant, and Mr. Hagel associated to form SFL and the members of SFL continue to associate, continue to be active on the campus, and continue to express their ideological and political views to their fellow students at the University.

[77] As associations, both SFL and also SU are entitled to have ideologies, political beliefs, and policies. It is not the case that the SU intentionally obstructed SFL from acquiring Union Club status because the members of the Executive disagreed with its pro-life beliefs and opinions. Rather, the Clubs Handbook sets out the requirements for official club status and indicated that applicants had to accept the SU policies. SFL always knew what was required for a successful application to be a Union Club.

[78] In truth, apart from $350 and the lost opportunity of asking for more than the base funding, SFL has lost very little, if anything, from not being an official club on campus. It is somewhat odd that SFL even wants to be a Union Club having regard to its own pro-life orientation and to the SU's publically declared pro-choice orientation. SFL has probably gained more publicity and support for its cause by the denial of official club status than it would garner by being a Union Club. The main point is that there has been no loss or interference with freedom of association and freedom of expression by the absence of official club status.

[79] It is because there is so little harm or loss involved that the SU submits that there is neither public law nor private law jurisdiction for the court to become involved in the dispute between SFL and the SU. I agree with the SU's submission that the substance of the dispute in the immediate case is not elevated to the level where public law or any public interest is involved.

[80] I, however, disagree with the SU's submission that the court has no private law jurisdiction in the immediate case, which as the above survey of the law reveals is a limited or restricted jurisdiction to judicially review the activities of an association.

[81] In the immediate case, the incompetent treatment of SFL's Renewal Application, for which the SU never apologized and staunchly defended and attempted to justify, merits the court's judicial review of the SU's practices and procedures and an examination of whether the SU was discriminatory or biased and whether it complied with its own rules and regulations, the principles of natural justice, and the principles of good faith.

[82] Thus, judicial review is warranted in the immediate case. However, in my opinion, Ms. Zettel, Mr. Grant and Mr. Hagel have again overreacted and would ascribe a standard of natural justice far beyond what is needed for the circumstances of students applying to have their group officially recognized as a campus club.

[83] There is no entitlement to Union Club status, and official club status has nothing to do with freedom to associate or freedom of expression. It is not as if Ms. Zettel, Mr. Grant, and Mr. Hagel could not form their club, recruit like-minded students, meet on (or off) campus, express, disseminate, or proselytize their views without Union Club status. If entitlement to assemble and speak were dependent upon a SU's decision, then a high standard of natural justice and due process would be required. But assembly and free speech were not dependent on any decision by the SU.

[84] In the case at bar, Union Club status was not an entitlement; rather, it was a discretionary privilege conferred by the SU, which had given adequate notice of the pre-conditions for Union Club status, including both the technical requirements of a constitution that was compliant with the SU's standards and also the substantive requirement that the club comply with the policies of the SU, of which all applicants had notice.

[85] The requirements of natural justice are malleable and ultimately turn on what is fair and appropriate having regard to what is in issue. In this case, in truth not much was in issue and a very low standard of due process was required.

[86] The requirements of natural justice were more than satisfied in the immediate case by the directives of the Clubs Handbook and by the traditions and practices of the SU. As I have described above, how the requirements for obtaining Union Club status were administered for the initial application of a club was ham-fisted at best, but it does not follow that there was any violation of the principles of natural justice in the immediate case. Ms. Zettel, Mr. Grant and Mr. Hagel would set the standard at the public law standard of judicial review of an administrative tribunal but very much less was required.

[87] It is unfortunate that the SU has a practice of rubber-stamping first applications, which practice has the danger of sending mixed-messages, as it did in the immediate case, but there was no denial of natural justice in its practice for renewal applications, which is the matter before the court. The SU's practices and procedures for renewal applications were appropriate and fair.

[88] As a matter of due process and the principles of natural justice, there is nothing *per se* wrong in a decision-maker: reviewing an application; coming to a decision, advising the applicant of the decision and the reasons for it; and providing the applicant with an opportunity to change the mind of the decision-maker. This is an approach that even superior courts and administrative tribunals use for some decisions. In the immediate case, Ms. Zettel's, Mr. Grant's and Mr. Hagel's renewal application was processed in this way, and they might have continued the process had the technical matter of the constitution been resolved and they had not resorted to suing the SU. Once the rhetoric is removed, there was no bias or denial of natural justice in the circumstances of the immediate case.

D. Conclusion

[89] For the above reasons, this application is dismissed.

[90] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with the SU's submissions within 20 days from the release of these Reasons for Decision followed by the Applicants' submissions within a further 20 days. I advise the parties that my present inclination is that there should be no costs for this Application.

Perell, J.

Released: February 26, 2018

CITATION: Zettel v. University of Toronto Mississauga Students' Union, 2018 ONSC 1240
COURT FILE NO.: CV-16-544546
DATE: 20180226

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DIANE ZETTEL, CAMERON GRANT and CHAD HAGEL

Applicants

– and –

UNIVERSITY OF TORONTO MISSISSAUGA STUDENTS' UNION

Respondent

REASONS FOR DECISION

PERELL J.

Released: February 26, 2018