CARLETON UNIVERSITY STUDENTS' ASSOCIATION

CLUBS OVERSIGHT COMMISSION

CITATION: CU Shotgun *v.* CUSA (Clubs Oversight Committee) 2022 COC 1

APPEAL HEARD: 15 September 2022
JUDGEMENT RENDERED: 3 Nov. 2022

BETWEEN:

Carleton University Trap & Skeet Team, operating as CU Shotgun
Appellant

and

the Carleton University Students' Association
(Clubs Oversight Committee [Term of 2021-2022])
Respondent

Panel: Whale, H. Chair; Al-Saady, A., Caratao, D., and De Jesus, E

Reasons for Judgment: Whale, Chair; and Caratao (Al-Saady and De Jesus concurring) (paras. 1 to 64)

ON APPEAL AT THE CLUBS OVERSIGHT COMMISSION

Clubs — Competitive Clubs — Overlapping mandates — Standards of review and evidence — Test for clubs overlap.

PART I. Summary

Held: the Appeal by the Carleton University Trap and Skeet Team, operating as CU Shotgun, is allowed.

Also held: CU Shotgun is encouraged to apply again for certification.

Also held: the Commission should designate CU Shotgun as a Competitive Club, when such time arises that the Commission consider their application for certification.

[1] *Per* a unanimous Commission: the decision of the past Clubs Oversight Committee in *in re CU Shotgun* 2021 should be overturned, and the Carleton University Trap and Skeet Team, operating as CU Shotgun (hereinafter, "CU Shotgun"), should be certified as a Competitive Club as soon as the Commission is able.

PART II. Facts and Jurisdictional History

[2] CU Shotgun applied to certification to the Clubs Oversight Committee (as it was then known) on or about the 31st of August, 2021. They were rejected preliminarily for cause of not having ten members.

[3] CU Shotgun then clarified to the Student Groups Administrator., then one Samuel Kilgour, that the organization did in fact have ten members. On or about the 10th of September, 2021, Clubs Oversight denied their application for cause of similarity to the pre-existing Carleton University Firearms Association.

[4] Gabe Paraskevopulos, then a student-at-large member on the Clubs Oversight Committee, spoke for the majority in that opinion. In a written submission filed before this Commission, he cited Section 3.2(k) of the old *Bylaw IX*:

> 3.2 The Clubs Oversight Committee shall be empowered to:
>
> k. Make and enforce community standards, regulations, and procedures with regard to Clubs, including in the jurisdictions of (...) Mandate Overlap

where he thus levelled the claim that the Committee was well within their authority to regulate overlapping mandates.

[5] Additionally, a valid and relevant section of the *Bylaw* that is applicable is section 4.4, reading thus:

4.4 The Clubs Oversight Committee may, subject to appeal to the Constitutional Board, deny the certification or recertification of a Club that:

a. Appears to replicate the mandate or mission and / or function of another Club (…)

b. Appears to exist for the sole purpose of collaborating on events with current Clubs that extends beyond the usual collaboration between distinct Clubs

c. Attempts to replace a currently certified club or society

d. Attempts to create a second club for the same sport unless one club is solely recreational and the other is solely competitive

Mr. Paraskevopulos noted during oral testimony that he would justify the non-certification under paragraphs (a), (c), and (d).

[6] Mr. Paraskevopulos claimed that the mandate of CU Shotgun overlaps with that of the Carleton University Firearms Association, operating as the CFA (hereinafter, "CFA"), and that certification of CU Shotgun would be improper, as, in his opinion, the CFA would subsume any supposedly-unique elements of CU Shotgun.

PART III. Issues

[7] The issues in this case are:

A. Whether the certification of CU Shotgun can be denied due to overlapping mandates with the CFA, thus contravening ss. 4.4 (a), (b), (c), or (d) of old *Bylaw IX*; and
B. Whether CU Shotgun can be, if certified, categorized as a Competitive Club, athletic or otherwise.

Per Curiam Opinion

The reasons of Whale, Chair; Al-Saady, Caratao, and Peixoto were delivered by

THE CHAIR AND CARATAO, D. —

PART IV. Analysis

A. Introduction

[8] In the first, main, issue before this Commission, there are three principal questions, based on the corresponding provisions of *Bylaw IX*. A positive answer on any one question would lead to non-certification. They are:

A. Does CU Shotgun seem to replicate the mandate, mission, or function of the CFA?
B. Does CU Shotgun collaborate an inordinate amount with the CFA, so much so that it seems to exist *only* to collaborate with the CFA? and,
C. Assuming that CU Shotgun and the CFA both concern firearms and sport shooting, is it doubtful that one is recreational and the other, competitive?

[9] The answer to each of these questions is an emphatic, "no."

[10] The second issue, of course, lends us to consider whether a certified CU Shotgun ought to be classified as a competitive club. We hold that it should.

B. Mandate Replication and Duplicate Clubs

[11] This Case requires us to first analyze how the duplicate clubs prohibitions in the *Bylaws* should operate. There are three provisions, paras. (a). (b), and (c) that govern this. The Appellants have raised this appeal on the basis of a mistake of fact and mistake of law by the previous Committee. We first seek to analyze the new facts that would lead to a reapplication of the law.

i. Applying paragraph (a)

[12] Paragraph (a) of s. 4.4 notes that "[appearing] to replicate the mandate or mission and / or function of another Club" is grounds for non-certification or decertification.

[13] In this provision, there are two clear prongs: replicating the mandate or mission, the stated goals or aims of a Club; and/or replicating the function, the practical implementation of the Club.

[14] On an application of law, neither prong is satisfied.

[15] The mandates for CU Shotgun and the CFA are distinctly different, with CU Shotgun proclaiming themselves as "developing skills, confidence and knowledge about the sports of Trap Shooting and Skeet Shooting" and the CFA claiming to operate, more generally, to "educate people about firearms and the community that surrounds them." (*Constitution of the Carleton University Trap and Skeet Team* at art. II; *Constitution of the Carleton University Firearms Association* at art. II).

[16] Notably, the CFA Constitution notes that their Club has "an emphasis on pistol and rifle target shooting" (*CFA Constitution supra* at art. II). This indiates a focus on the usage of rifles and handguns, not on shotgun shooting. The appellants in their oral statements testified that one will "hardly even see" a shotgun at CFA events, let alone their use in competitive sport shooting.

[17] Clearly, the mandates of each are separate, with CU Shotgun being a competitive club specifically for shotgun sport shooting, and the CFA being for firearm enthusiast students more generally.

[18] Also of importance is the second prong relating to "function," which would prohibit a club that purports to be separate, but is in fact, a duplicate of another. This distinction is useful for where a Club, in their Consitution, claims to do one thing, but acts differently.

[19] The Committee last year failed to consider the fact that CU Shotgun, in the seven years they have existed with or without certification, and the CFA, have never operated an event of the same type, for the same audience. This can be proven, again, through the promotional posts on their appropriate social media (Instagram Account of CU Shotgun; Instagram Account of the CFA). The appellants, in their oral submissions, noted that their events are specific to competitive sport shotgun shooting, while those of the CFA focus mostly on beginner-level introduction to firearm enthusiasm.

[20] The actual function of these two clubs is as disctinct as their stated mandates.

[21] Thus, CU Shotgun has not breached either prong of paragraph (a).

ii. Applying paragraph (b)

[22] The submissions of the respondent rely almost entirely on paragraph (b). Mr. Paraskevopulos for the old Committee alleges that the level of collaboration between CU Shotgun and the CFA is such that the two Clubs fail to be truly distinct.

[23] The question when applying and analyzing this section is ascertaining whether the level of collaboration is to such a level that it constitutes:

A. More than the usual collaboration between distinct clubs, and;
B. Is tantamount to the sole purpose of this club.

[24] This is a high standard to reach. A purposive reading of the text would suggest that not only must two clubs collaborate more than usual, but to be non-certified under para. (b), collaboration with another Club must be the *sole* purpose of one of the two. Not a primary or even outsized purpose, but the *only* purpose in aim or effect.

[25] Under this standard, we are not convinced that CU Shotgun exists solely to collaborate with the CFA.

[26] The Appellants, in their oral submission, have testified that they collaborate minimally with the CFA. While the membership overlaps — an estimate approximating 60% — their leadership and publicly-announced activities show no indication of collaboration (Instagram Account of CU Shotgun; Instagram Account of the CFA). No collaboration is obvious except occasional acknowledgement of the CFA as a "sister club" in the bio and one post of CU

Shotgun, a reference too minimal to cast the collaboration as either unusually high or the sole purpose of CU Shotgun (Written Submission of the Respondent).

[27] The Appellants further claim that collaboration would be unfruitful and purposeless due to the distinction of their mandates that has already been found by this Commission. A cursory glance of their social and competitive events show no overlap nor collaboration (Instagram Account of CU Shotgun; Instagram Account of the CFA).

[28] Still, the issue exists that the standard required is that the *sole* purpose of the Club is to collaborate with another. Even if the level of cooperation is equal to that of the Respondent's claim, this still does not meet the "sole purpose" threshold.

[29] The CFA does not often collaborate with CU Shotgun at all, especially not to an extent that it might be described as its sole purpose. They are not financially dependent on the CFA, nor do they subsidize the CFA—their events are separate both in purpose and execution, and their leadership seems to be unconnected, at least this year, and any connection that may exist is certainly not to the level of its sole purpose.

[30] The new facts given by the Appellants clearly demonstrates the separate nature of the two Clubs. An analysis on the misapplication of fact and law by the previous Committee will follow in this decision, but it is clear on the facts given before this Commission at present, that the paragraph (c) standard is not met here by CU Shotgun.

[31] Thus, CU Shotgun has not breached paragraph (b).

iii. Applying paragraph (c)

[32] Paragraph (c) of s. 4.4 notes that "[attempting to] replace a currently certified club or society" is grounds for non-certification or decertification.

[33] This implies a higher threshold that is is harder to meet, as unlike paragraph (a), the Club must not only be perceived as replicating another's mission/mandate and/or function, but must actively attempt to replace another.

[34] Judging any Club by the standard it sets would be unreasonable and requiring a degree of speculation as to be divorced from factual analysis and the law of evidence. The definition of attempting to replace is highly subjective, and barring a direct admission that one Club seeks to supplant another, cannot be definitively proven.

[35] In fact, when asked if their Club has attempted, or acted in any way that would appear alike an attempt to supplant or replace the CFA, the appellants replied in oral testimony that they never did and would not. No evidence given by the respondent would allude to an intentional campaign from CU Shotgun to replace the CFA, as the majority of the respondent's testimony focused on the undue collaboration between the two.

[36] As a result, CU Shotgun does not meet the threshold according to the proof available, and it is more likely than not that they do not seek to supplant the CFA.

[37] As also affirmed by their Executive, CU Shotgun has never attempted to poach the membership of the CFA, run competing events of the same character at the same time, nor market themselves as representing the same group of people.

[38] No intention can be inferred on the part of the CU Shotggu. executive in whatever similarity their Club might share with the CBSF, and thus this provision cannot be applied to their case.

C. The Competitive Nature of a Club

i. Applying paragraph (d)

[39] Paragraph (d) of s. 4.4 notes that "[attempting] to create a second club for the same sport unless one club is solely recreational and the other is solely competitive" is grounds for non-certification or decertification.

[40] There are three types of relevant Clubs: Competitive Athletic Clubs, currently defined on the basis of a partnership between the Association and Carleton Athletics; Competitive Clubs, otherwise normal Clubs with an exemption to allow restricted membership for the purpose of fulfilling its mandate; and Clubs, the standard class of student group certified by this Association. CU Shotgun cannot be of the first class, since Athletics refuses to accept sport shooting as under the Athletics umbrella. The Appellants' contention is that they are a Competitive Club under s. 1.4 (b) of old *Bylaw IX* (old CUSA *Bylaw IX*)

[41] In paragraph (d), there is both a restriction and an exemption. No Club may attempt to become a second club for the same sport, but if one Club is competitive and the other recreational, and exemption may be found.

[42] Assuming, of course, that shooting is or can be considered a sport, we are convinced, on the presentation of new facts, that CU Shotgun operates akin to a Competitive Club, and the CFA is a purely recreational body. To this effect, the Appellants claim in their written submission:

> Our club participates in weekly practices and we participate in Trap & Skeet competitions/tournaments against other Universities. We also work directly with a Skeet coach. The Carleton University Firearms Association does not do this.

(Written Submission of the Appellants)

[43] The Appellants in their oral submissions mentioned again, that the events hosted and held by the CFA do not reach the level of competitive athleticism as CU Shotgun events, which includes a short list of regular tournament participation.

[44] The definition of "sport" is tenuous. It could be defined as specifically as "Competitive Athletic Club" is defined, or more broadly, say, to delineate a Chess Enthusiasts' Club from a Competitive Chess Club. Even if sport shooting cannot be considered a sport because of the lack of certification by Carleton Athletics, CU Shotgun would be saved on the analysis and application of paragraph (a), because paragraph (d) would simply fail to be applicable and neither the prohibition nor the exemption would apply for CU Shotgun.

[45] We find that CU Shotgun is a competitive club within the realm of sport shooting, and that the CFA is purely recreational. Thus, we would instruct the Commission, on review of their certification application, to designate CU Shotgun as a competitive club should they be certified, notwithstanding any decision by Carleton Athletics to designate CU Shotgun as a competitive *athletic* club or not.

PART V. Decision of the Former Committee

[46] As the Commission is here acting as an appellate body in addition to its regular responsibilities as a trial body at first instance, it is helpful for us to act as an appellate body normally would. While we have reviewed new facts in the above portion of this decision, it is now worthy to analyze the decision-making of the previous Committee and to determine whether a mistake of law was present in their analysis.

[47] We hold that the methodology used by the previous Committee in their analysis of the fact situation was flawed and not reasonably founded. In their written submission, the Respondents mentioned how the initial justification for the non-certification of CU Shotgun was based in proof on their Instagram account that Executives of CU Shotgun were photographed wearing sweaters with the CFA marques and branding, which was referred to as a mistake in a tongue-in-cheek fashion (Written Submission, Respondents).

[48] The Respondents alleged that this indicated an overly close collaboration between the two organizations. Indeed, the bio of CU Shotgun once noted that the two are "sister organizations" (Written Submission, Respondents). However, we are not convinced, on the evidence presented now before this Commission, that such a fact situation ought to be made out.

[49] The previous Committee made this inference based in logic, not based in fact or law. What may be a rational deduction based on incomplete facts fails on the balance of probabilities to constitute clear circumstantial evidence. It may be possible that the two Clubs had a close relationship, indeed, by the Appellants' own admission, their membership overlaps

broadly. However, there is no clear proof that this Instagram post can establish with confidence on a balance of probabilities, that the collaboration between the two was undue and subsidiary.

[50] Given the high s. 4.4 (b) standard for clubs, to make a conclusion based on this tenuous logical inference is legally unsound and does not satisfy the threshold set in the *Bylaw*.

[51] The judicial bodies of this Association ought to make decisions based on a reasonable review of the facts and relevant law, not on the basis of a spurious and transient personal relationship between the Executives of any number of clubs at one time. No connection, however logical, ought to be assumed by a fact-finding body that is not based in clear evidence, especially when affirmed testimony and obvious evidence establishes a contradictory or significantly dissimilar fact situation.

PART VI. Policy Considerations

[52] The misapplication of the paragraph (b) test by the previous Committee, recounted in the Part above, likely lies in the high standard the provision sets for its "level of collaboration" test. While paragraph (b) notes that Clubs that collaborate with others "beyond the usual level" should not be certified, it also provides that Clubs must have this extraordinary collaboration as the *sole purpose* of the Club.

[53] Evaluating Clubs on whether collaboration with another Club is its "sole purpose" is, in practice, too high a standard to include any but the most subsidiary and Potemkin-esque Clubs. It would not, in our view, actually be accurate to include the collaboration between the CFA and CU Shotgun in this case, nor even be applicable in *in re Carleton Moot Team* 2021 or [other case].

[54] This Commission makes regulations only in the practical, not the political. However, if it is Council's desire to bar from certification any Club whose purpose is mainly to prop up or be propped up by another, Council should rather craft legislation prescribing a lower standard. To find this effect, Council could implement a "principal purpose" standard, or an even lower reversion to a purer "beyond the usual level" standard.

PART VII. General Test for Clubs Overlap

[55] The four first paragraphs of section 4.4 can be summarized with clarity in a two-point test for determining whether a Club is distinct from another Club that resembles it. Finding a Club to be non-duplicative requires that:

1. The pith and substance or essential character of the Club must be clearly and substantially distinct from every Club that resembles it.
2. The effect or actual function of the Club must be separate and unique from every Club that resembles it.

A. First Prong: Essential Character

[56] An analysis of the first requirement should include these additional considerations:

A. What is the purpose of the Club? What unique niche do they fill at Carleton, and what is their stated and effective place in the ecosystem? And;
B. Is this character replicated or resembled in any other Certified Club?

[57] An essential character of a Club is a facet of its identity or mandate that is inseparable from its existence, and such essential facets must be inherent, distinguishing, and non-trivial. If any of these factors are not met, then the separation of pith and substance cannot reasonably be made out.

[58] To this second consideration, a Club may be counted as substantially distinct from a resemblant Club if its target membership represents an interest or identity group with needs and interests more focused than the general population, or the population of the resemblant Club; if it concerns itself with any specific part of a broader category or class, where the resemblant Club lacks such specificity; or if it in every meaningful way is different from the resemblant Club.

B. Second Prong: Actual Function

[59] This prong is highly similar to the first, but deals instead with the effect and action of the club as opposed to its orientation and purpose.

[60] Here there are two requirements: a Club must be not only distinct and discrete from others in its actions (uniqueness), but it must not, in its actions, associate unnecessarily with other Clubs for the same purposes or programming initiatives (seperateness).

[61] Here, the standard for collaboration comes into play. As the *Bylaw* is currently written, its standard for undue collaboration is the “sole purpose” standard. This test should be read-in to include whatever the prevailing standard of the day is, or becomes.

C. Test Summary

[62] A failure under either of these prongs, or the additional considerations thereof is a failure to distinguish the Club from the resemblant club.

[63] We hold that this two-pronged test can serve as an adequate measure for whether Clubs are distinct enough from each other.

PART VIII. Conclusion

[64] For these reasons, we would allow the Appeal.