



Judgment of the USC Appeals Board in the matter of:

Unload Western v Clubs Governance Board, 2020:1 Clubs

Hearing Date: By Written Submission

Judgment Date: April 17, 2020

Panel: Andrew Beney (Chair), Zohaib Ahmed, Natalie Duboc

Reasons for Judgment: Beney (Ahmed and Duboc concurring)

PART I: OVERVIEW

1. This is an appeal by Unload Western (“Unload”) in response to the decision of the USC Clubs Governance Board (“CGB”) to deny Unload club ratification. The CGB found there to be a duplication of services that existed between Unload and Active Minds Western, a current ratified USC club. This appeal was heard by written submissions from both parties.

PART II: FACTS

2. The Clubs Policy Coordinator received Unload’s request for ratification on December 1, 2019. The CGB heard the request on March 5, 2020. A decision was finalized on March 9, 2020. The CGB found that there existed a duplication of services between Unload and Active Minds Western and denied ratification. Unload made a request for reconsideration

under s. 5 of the *Club Ratification Procedure*. A hearing was held and the CGC denied their request for reconsideration. Unload appealed the decision to this board.

PART III: ISSUES

3. There are two issues in this appeal:
 1. What is the appropriate standard of review?
 2. Was the CGB decision to deny Unload ratification reasonable?

PART IV: ANALYSIS

What is the appropriate standard of review?

4. I note that the Western University Students' Council (USC), and by extension, the CGB and the Appeals Board, do not fall squarely into administrative law. The University of Western Ontario is a product of a legislative statute – namely, *The University of Western Ontario Act*. Thus, the university's actions fall directly under administrative law and must be reviewed under the leading administrative law framework(s). On the other hand, the USC is a private corporate entity. Thus, the USC and its component parts – including the CGB and the Appeals Board – sit, at least in part, outside of administrative law and are not bound by its framework(s). That being said, historically, the Appeals Board has turned to administrative law to guide its analysis when adjudicating appeals. Thus, the Appeals Board should generally apply Canada's administrative law framework(s).
5. In the case at bar, there are insufficient reasons to depart from the established practice of applying administrative law frameworks when evaluating an appeal. Therefore, the CGB's decision will be reviewed with an eye toward Canadian administrative law.

6. Currently under Canadian administrative law, there are two standards of review upon which administrative decisions are reviewed: reasonableness and correctness. To determine whether the EGC's decision should be upheld, the appropriate standard of review must first be determined. In *Canada v Vavilov*, 2019 SCC 65 (Vavilov), it was clarified that there is a presumption of reasonable as the standard of review. Additionally, the role of the Appeals Board is to ensure decisions made was justified and follows the principles of natural justice.
7. The standard of reasonableness requires the Appeals Board to determine that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the required degree of justification, intelligibility and transparency. A decision can be unreasonable when there is a failure of rationality internal to the decision process, or the decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. (*Vavilov at paras 100-101*). In other words, the decision reached cannot follow from the analysis undertaken or reasons provided fail to reveal a rational chain of analysis.

Was the CGB's finding, to deny Unload ratification reasonable?

8. The USC clubs' system is at capacity and is limited in their ability to incorporate new clubs into the clubs' community. Because of this, the CGB has determined the 'uniqueness and distinctiveness' is crucial in decisions pertaining to applications for ratification. In their reasons for denying ratification, the CGB gave Unload a written decision denying ratification for 'duplication of services'. In the follow up decision denying their request for reconsideration, the club Active Minds was included in what service was duplicated.

9. Unload focused their submissions on the benefits of what the club would bring to the Western Community, and how their mandate does not duplicate with Active Minds. The Appeals Board agrees wholeheartedly of the benefits Unload would have on the Western Community. However the role of the Appeals Board is ensuring the CGB's decisions are reasonable, follows their by-laws, and that they are transparent in their decisions.
10. Any shortcomings must be more than superficial or peripheral to the merits of the decision (*Vavilov*). So, while the **Appeals Board considers the omission of Active Minds in the original decision to deny ratification unreasonable**, in looking at the totality of the decision, this alone is not enough to fundamentally flaw the decision.
11. In submissions to the Appeals Board, Unload makes reference to the fact they differentiate themselves from Active Minds by focusing on prevention and intervention, not advocacy. They also mention that Unload is part of a larger organization, *Unload Canada*, where they would have access to all necessary resources.
12. In response, the CGB made note that historically the reason clubs focus on advocacy and not prevention and intervention is because of liability concerns, and that the USC would not approve such events. Additionally, the CGB brought up the fact that Unload failed to submit an External Affiliation form that is required by section 2.01(2) of the Club Ratification Procedure. These decisions make CGB's decision to deny ratification justified.
13. When looking at the CGB decision process in its entirety, for the reasons outlined above this decision is reasonable.

PART V: DISPOSITION

14. The appeal is dismissed, and the original decision by the CGB is upheld.