



Judgment of the USC Appeals Board in the matter of:

***The Society of Serbian Students – Saint Sava v Clubs Governance Board, 2023:7 Clubs***

**Hearing Date:** July 5, 2023

**Judgment Released:** July 12, 2023

**Panel:** William Fawcett (Chair), Ann Sony, Stephen Warner

**Reasons:** Fawcett (Sony), Warner dissenting in part

**PART I: INTRODUCTION**

1. This is an appeal by The Society of Serbian Students – Saint Sava (the “**Club**”) in response to the decision of the Clubs Governance Board (“**CGB**”) to deny the Club ratification. The given reason by the CGB for its decision was that the Club was not able to demonstrate a feasible model of operations, which is required under section 2.04(4)(viii) of the *Club Ratification Procedure* (the “**Procedure**”).

2. The CGB’s underlying concerns regarding the feasibility of the Club’s model of operations were not communicated to the Club, although the CGB did invite the Club to ask questions about the CGB’s decision. As became clear through this appeal process, the CGB’s chief concern regarding feasibility pertained to the preparation of food by members of the Club to be served at events. The CGB also had secondary concerns regarding the timing of one proposed event and the feasibility of the Club’s proposed budget.

3. For the reasons below, this Board finds that the appeal should be upheld and the Club's application for ratification is remitted to the CGB for reconsideration in accordance with these reasons.

## **PART II: FACTS**

4. The Club submitted a proposal for ratification as a University Students' Council sanctioned club during the last academic year.

5. As a required part of its application package, the Club submitted a list of three proposed events. Two of those events involved the preparation and sale of food. In celebration of St. Trifun, the Club's description of events indicated that "[w]e will bake an assortment of traditional Serbian baked goods (kolače) such as, vanilice, krofne, oblande, baklava and štrudle." In celebration of Palačinke Day, the Club's description of events indicate that "[w]e will cook one of the most popular dishes in Serbian culture – Palačinke."

6. On April 14, 2023, the CGB notified the Club of its decision to deny the Club's application for ratification. The relevant portion of the CGB's decision letter reads as follows.

The CGB found that your club is unfortunately not suited for ratification, for the following reason(s):

- Reason
  - Clubs Ratification Procedure section 2.04(4.8):
    - viii. Feasibility
      - a. The Club must be able to demonstrate, at the discretion of the CGB, that it has a feasible model of operations.

7. The CGB's decision letter concluded with the following statement, "Please let me know if you have any questions."

8. April 14, 2023 was a Friday, and April 16, 2023 was Easter Sunday in the Orthodox Christian calendar. A number of members of the Club are Orthodox Christians. Accordingly, the CGB's decision was provided to the Club during Holy Week that was being observed by a number of the Club's members.

9. The *Procedure* provides that clubs denied ratification may request a reconsideration of the CGB's decision. A club that desires to have its application reconsidered must submit its request within five days of receiving notice of the CGB's initial decision.

10. Notwithstanding the fact that the CGB's decision was communicated to the Club during Holy Week, the Club submitted a request for reconsideration within the required five day period. Although the Club's request for reconsideration ran to some five pages in length, it did not address the CGB's concerns regarding the preparation of food, the timing of one proposed event, and the Club's proposed budget.

11. On April 28, 2023, the CGB notified the Club that it had reconsidered the Club's application but was maintaining its decision not to ratify the Club. The reason given in its April 14, 2023 letter was repeated, to which was added the following further clarification, "The proposed events and the proposed budget did not demonstrate a feasible model of operations." This letter also concluded with the following statement, "Please let me know if you have any questions."

12. The Club appeals from this decision.

### **PART III: ISSUE**

13. The issue is whether the CGB's decision not to ratify the Club was reasonable.

## PART IV: SUBMISSIONS

14. The Club's submissions may be grouped together under three grounds:
- a. the CGB's decision was unreasonable because the CGB failed to provide reasons for its decision or, if reasons were given, they were inadequate;
  - b. the CGB's decision was unreasonable because it was contrary to the *Human Rights Code*, RSO 1990, c H.19;<sup>1</sup> and
  - c. the CGB's decision was unreasonable on its merits.
15. The main thrust of the Club's submissions were that, if it had been notified of the CGB's concerns regarding the preparation of food prior to submitting its request for reconsideration, the Club would have been able to properly address those concerns. Additionally the Club submitted that the CGB's reasons were not transparent because they relied on internal records not available to the Club.
16. The CGB's submissions focussed on two key points. First, all clubs who were denied ratification were invited to ask questions about the CGB's decision prior to submitting a request for ratification. Second, the Club's intention to prepare and sell food at events was not feasible.

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<sup>1</sup> In its written submissions, the Club made submissions regarding the application of the *Human Rights Code*. As addressed during the hearing, this Board is not empowered to hear complaints arising under the *Human Rights Code*. Accordingly, both parties were directed not to make oral submissions regarding this issue, and this Board makes no findings regarding the applicability of the *Human Rights Code*.

## PART V: ANALYSIS

17. Before this Board, a petitioner may seek to challenge the procedure by which the decision on appeal was reached, the substance of that decision, or both (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 9).

18. This appeal raises both procedural fairness issues and substantive issues. We will first address the procedural fairness issues – under three headings – before addressing the substance of the CGB’s decision.

*i. The Application of Administrative Law to Appeals Before this Board*

19. This case highlights an issue that frequently underlies a number of appeals that come before this Board: what is the standard expected of the decision maker whose decision is being appealed?<sup>2</sup> This issue exposes a tension between the framework of administrative law as it has been developed in Canadian courts and the realities of student governance.

20. From its inception, this Board has applied the principles of administrative law in reviewing the decisions appealed to it. There are very good reasons for doing so, which need not be reviewed here. However, this Board has also recognized that administrative law is not a perfect fit when it comes to the matters that come before this Board (*Unload Western v Clubs Governance Board*, 2020:1 Clubs, para 4; *Craft Lover Club v Clubs Governance Board*, 2020: 2 Clubs, part iv, para 1; *Shedeed v Elections Governance Committee*, 2021:1, para 20).

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<sup>2</sup> This Board hears appeals from two decision makers: the CGB and the Elections Governance Board (“EGB”).

21. The CGB and EGB are student organizations whose members are students, not lawyers and judges. This Board does not expect either the CGB or the EGB to conduct their affairs with the same degree of rigour, precision, and formality as would be found in a courtroom or before some other administrative tribunal (*The University of Western Ontario Ski & Snowboard Club v Clubs Governance Board*, 2023:5 Clubs, paras 71 – 72).

22. In this case, this approach is applicable with respect to at least two main issues:

- a. the level of detail required in the CGB’s decision when denying ratification, and
  - b. the manner in which that decision is required to be reached.
- ii. *The Level of Detail Required by the CGB’s Reasons*

23. Section 4.02 of the *Procedure* requires that the CGB provide each club denied ratification with “written reasons for its decision.” The *Procedure* provides no further clarification as to the level of detail required of those written reasons.

24. The CGB receives somewhere in the range of sixty to eighty applications for ratification every academic year, which are adjudicated in April. Pursuant to section 4.01 of the *Procedure*, decisions regarding those applications must be released by April 15. Pursuant to section 5.01 of the *Procedure*, a request for reconsideration must be submitted within five days of a decision being released, and, pursuant to section 5.04, any such request must be deliberated upon as soon as reasonably possible. Added to this is the fact that terms for positions within the University Students Council, including those on the CGB, end in the time frame of the end of April and beginning of May. For example, the Clubs Policy Coordinator for the 2022/2023 academic year, who represented the CGB at the hearing of this matter, indicated that her term ended on April 30. This

system is inherently not conducive to producing reasons that contain the level of detail that might be expected of the administrative bodies addressed in the established Canadian administrative law jurisprudence.

25. In this case, the reasons given by the CGB in its April 14 and 28, 2023 letters to the Club were largely confined to stating the section of the *Procedure* relied upon by the CGB. The Club submits that this was not reasonable, citing the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. In particular, the Club relies on such passages as that found at paragraph 102:

Reasons that “simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion” will rarely assist a reviewing court in understanding the rationale underlying a decision and are “no substitute for statements of fact, analysis, inference and judgment”.

26. Taken at its highest, passages such as this do not preclude the CGB from providing reasons such as those contained in its two letters. The Supreme Court of Canada states only that such reasons will rarely be of assistance.

27. Moreover, in appeals before this Board, parties – both petitioners and respondents – are permitted greater latitude than is permitted on judicial review applications before Canadian courts. Petitioners are permitted *some* leeway to expand upon what was contained in their initial case before the CGB or EGB. Respondents are permitted *some* leeway to expand upon their reasons given. This reflects the fact that the parties before this Board are university students, not lawyers. Consequently, reasons that may not be considered helpful by a court may be sufficient in the context of an appeal before this Board.

28. Indeed, this Board has previously upheld decisions where the CGB has provided reasons that contained only a reference to the relevant sections of the *Procedure (AIM to Educate Western v Clubs Governance Board, 2022: 1, para 7)* or has provided no rationale for the decision (*Smiling Over Sickness v Clubs Governance Committee, 2019:5, para 6*). In both of those cases, the CGB's decision was upheld because it was able to demonstrate the reasonableness of the merits of its decision on appeal.

29. That said, one of the potential problems arising from the CGB providing minimal reasons is highlighted in this case. The CGB's initial reasons for denying ratification referenced only the relevant section of the *Procedure*. Those reasons did not identify the CGB's underlying concerns, especially its concerns regarding the feasibility of the preparation and sale of food. As a result of this, the Club's request for reconsideration did not address these underlying concerns. Indeed, the Club's request for reconsideration makes clear that it was speculating as to why the CGB did not believe the Club had a feasible model of operations.

30. From the above, the following conclusions may be drawn.

- a. The CGB is required to provide written reasons for its decisions not to ratify prospective clubs, but these reasons may be minimal in nature given the inherent challenges faced by the CGB arising from the structure of the club ratification process.
- b. If the CGB is able to support the reasonableness of its position on an appeal to this Board, its original decision may be upheld, and the CGB will be granted some leeway to flesh out the reasoning supporting its decision beyond its written reasons.



- c. However, providing only minimal written reasons creates an increased risk of procedural unfairness, as prospective clubs may not have the information required in order to submit an informed request for reconsideration.

31. In its submissions, the CGB focussed on its invitation to unratified prospective clubs to ask questions as indicated in its April 14, 2023 letter. Before this Board, the Club admitted that it was invited to ask questions through the CGB's April 14, 2023 letter. While the Club did not take up this invitation, other clubs that were denied ratification did. The CGB indicates that approximately five to seven clubs did so. The Club had the opportunity to ask questions to clarify the CGB's reasons prior to submitting a request for reconsideration.

32. However, the salient question is whether the Club understood, or reasonably ought to have understood, that it could ask questions to clarify the CGB's reasons. The language used by the CGB in its letter, "[p]lease let me know if you have any questions", did not make clear that further details regarding the reasoning behind the CGB's decision could be obtained on such questioning. First, the expression "please let me know if you have any questions" is a common sign-off in correspondence. It may evidence a genuine intention on the part of the writer to elicit questions, or it may be a formal pleasantry. Second, and perhaps more importantly, the invitation to ask questions needs to be read in conjunction with the second clause of the sentence that came immediately before it. That clause reads "the request for reconsideration should address the rationale, provided above, that was used to deny ratification of your club", implying that what a club needed to address in its request for reconsideration had already been provided in the CGB's letter. Given that the CGB apparently intended to allow clubs the opportunity to ask questions to clarify its reasons before submitting a request for reconsideration, the ability of the Club to obtain further relevant information in this way ought to have been communicated more clearly.

33. This Board has no authority to direct the CGB to follow, or to abstain, from any particular practice. However, this Board is able to provide guidance regarding practices that are more likely to be found reasonable when reviewed on an appeal. One example of such guidance is found in *Smiling Over Sickness*, which is well worth repeating here.

In future cases, the [CGB] is heavily urged to outline clearly to the clubs requesting ratification the reasons and rationale for denying them. As the [CGB] is denying these clubs, the responsibility is on the [CGB] to provide the rationale, not on these clubs to search for the rationale from them (*Smiling Over Sickness v Clubs Governance Committee*, 2019:5, para 14(a)).

34. To this, this Board adds the following. If the CGB elects to continue its practice of providing minimal reasons and inviting clubs to ask question for clarification, the CGB is heavily urged to clearly indicate to those clubs that further details regarding the CGB's reasons for denying ratification may be obtained in this manner and that the information so obtained may be relevant to any request for reconsideration.

*iii. The Manner in which the CGB's Decision was Reached*

35. Turning to the second of the procedural fairness issues, the Club submits that the CGB's decision relies on internal records not available to the Club, adopting the language used by the Supreme Court of Canada at paragraph 95 of *Vavilov*.

36. Specifically, the CGB's decision was informed by the advice of its student organizations advisor ("SOA"). The specifics of this advice will be addressed in the following section, but the general nature of this advice related to the challenges of USC-ratified clubs gaining approval to sell, at club events, food that was made at home. Broadly construed, the Club's submission was that it was not able to address the advice given to the voting members of the CGB by the SOA.

37. This issue sharply contrasts the difference between the CGB and the sorts of tribunals concerning which Canadian courts have developed administrative law. These tribunals are typically constituted following the model of a court where evidence is provided by one or more parties and a decision is rendered based on that evidence. The CGB is not constituted in that manner.

38. Under the *Clubs Governance Board Terms of Reference* (“*CGBToR*”), the SOA is a non-voting, ex-officio member (section 2.1.5). The duties of the SOA include “provid[ing] any relevant information or documentation necessary to assist the CGB with arriving at an informed decision”, “provid[ing] context and institutional memory with respect to specific events/activities of clubs, past CGB decision, and USC and Western policies”, and “provid[ing] explanations to board members regarding policies enforced by the USC and Western University in relation to [...] risk management [...]” (sections 3.3.3, 3.3.4, and 3.3.5). To put it simply, the SOA’s role is to act as a resource person providing information to the CGB that would assist the voting members of the CGB in reaching informed decisions, including decisions regarding the ratification of prospective clubs.

39. This Board has no jurisdiction to review the policies enacted by the USC, including the *CGBToR*. Insofar as the *CGBToR* provides a role for the SOA and the SOA’s role conflicts with traditionally developed principles of administrative law, the principles of administrative law must be adapted and modified.

40. Accordingly, in making decisions regarding the ratification of prospective clubs, the CGB is entitled to receive and rely on advice from the SOA in conformity with the SOA’s obligations under the *CGBToR*. The CGB may receive and rely on the SOA’s advice in making a decision

under both sections 4 and 5 of the *Procedure*, i.e., in making an initial decision on an application for ratification and in making a decision on a request for reconsideration. The CGB may receive and rely on the SOA's advice in making these decisions notwithstanding the fact, as will be the case in a reconsideration request, that a prospective club may not be able to respond to that advice.

41. In this regard, the CGB's operation under the *Procedure* differs from its operation under sections 4 and 5 of the *Clubs Hearing and Sanctions Procedure* ("*CHSP*"). Under sections 4 and 5 of the *CHSP*, the CGB operates as a quasi-judicial body. In that context, it is not appropriate for the CGB to receive evidence from the SOA outside of evidence that may be presented as part of the formal hearing process (*The University of Western Ontario Ski & Snowboard Club v Clubs Governance Board*, 2023: 5 Clubs, para 65). However, neither the application process nor the reconsideration process under the *Procedure* is structured as a quasi-judicial process. In the context of decisions under the *Procedure*, it is appropriate for the SOA to act as an advisor in conformity with the SOA's duties under the *CGBTOR*.

42. That said, because a prospective club is unlikely to otherwise become aware of the advice given by the SOA to the voting members of the CGB, and because knowledge of that advice is likely to be of assistance to a prospective club in requesting reconsideration or commencing an appeal, the CGB is heavily urged to communicate to prospective clubs what advice it relied on from the SOA in deciding to deny ratification, either under an initial application or under a request for reconsideration.

*iv. The Merits of the CGB's Decision*

43. Having addressed above the procedure by which the CGB's decision was reached, this section addresses the merits of that decision. Evaluating the merits of the CGB's decision requires

an evaluation of the underlying reasons for its decision as identified on this appeal. On this appeal, the CGB identified three underlying reasons for its decision, but two of these were, at most, of secondary importance. The CGB's decision hangs or falls on the merits of its chief reason: the decision that the Club's operation was not feasible because two of its three proposed events included the sale of homemade food and such events were not in compliance with section 5.02 of the *Club Event Planning and Risk Management Procedure* ("*CEPRMP*").

44. To address a preliminary matter, the Club submitted that a decision by the CGB that one or more events is not feasible is not sufficient for the CGB to conclude that the Club's entire model of operations is not feasible. This Board rejects that submission. A prospective club's application for ratification necessarily includes a description and schedule of events. These events form part of the prospective club's model of operations. While a decision that one or more events is not feasible does not necessitate a conclusion that a prospective club's model of operations is not feasible, it is reasonable for the CGB to reach such a conclusion, as it did here.

45. Section 5.02 of the *CEPRMP* provides that "[a]ll food being served/sold must comply with Middlesex London Health Unit safety standards of handling, preparation, and serving."<sup>3</sup> The Club's description and schedule events describes two events where food was to be sold. The relevant portions of the descriptions of those events are as follows.

We will bake an assortment of traditional Serbian baked goods (kolače) such as, vanilice, krofne, oblande, baklava and štrudle. They will be neatly packaged into boxes and decorated in accordance with Valentine's Day (St. Trifun). This will allow students to purchase a special gift for family, friends or loved ones while also

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<sup>3</sup> In its written submissions, the CGB also identified a potential violation of section 5.04 of the *CEPRMP*, which prohibits the preparation of food during an event. The Club clarified in its oral submissions that references to baking and cooking in the description of the relevant events did not refer to baking and cooking during the events, but rather that the baking and cooking would occur in advance of the event. This Board accepts that clarification.

getting a taste of some of the best Serbian desserts that are very popular in Serbian culture.

[...]

We will cook one of the most popular dishes in Serbian culture – Palačinke. Palačinke are thine crêpe-like pancakes that are rolled up. They can be sweet or savory and filled with jam, chocolate or cheese. These are most commonly eaten for breakfast or dessert but are truly perfect for any time of the day.

46. The description of the palačinke event does not indicate on its face that the palačinke will be sold, but the annual budget indicates that the Club anticipated selling 200 – 300 servings at a price of \$5 per palačinke.

47. During oral submissions, a significant amount of time was devoted to the location where these two events were planned to be held, identified in the description and schedule of events as “Atrium Tabling, USC Space”, and the implications of this in connection with the *Clubs Handbook 2019-2020* (“*Handbook*”). It was agreed that the atrium identified in the description and schedule of events was a location in the University Community Centre (“UCC”). It was also agreed that the 2019 – 2020 edition of the *Handbook* was the most recent edition.

48. The relevance of all of this is that the *Handbook* appears to prohibit USC-ratified clubs from engaging in fundraising activities through the sale of food in the UCC (*Handbook*, page 31). The Club submitted that, if it had been made aware of this concern prior to submitting its reconsideration request, it would have clarified that it would not seek to sell food in the UCC but would have focussed on the “USC Space” it identified as an alternate location.

49. However, the CGB’s written submissions make no mention of the *Handbook*, and it does not appear that the prohibition against USC clubs selling food in the UCC was a factor in the CGB’s decision not to ratify the Club. Moreover, while not addressed by either party in oral

submissions, the *Handbook* also indicates that “[b]ake sales are not permitted on campus due to health and safety reasons” (*Handbook*, page 38), suggesting that neither of the Club’s proposed events could be held in “USC Space”.

50. The *Handbook* also appears to permit USC club events with food being held off campus: “Usually these events are approved since food inspectors do not inspect private residences but they also remain approved on a situational basis. Clubs wishing to host BBQs off campus must be for club members only” (*Handbook*, p 31). Reading only these lines, it appears that barbeques where a club prepares food made be permitted.

51. However, the heading for the section quoted in the previous paragraph reads as follows: “OFF-CAMPUS EVENTS WHERE FOOD IS BEING BROUGHT INTO A PRIVATE RESIDENCE”. The phrase “brought into” in this heading is salient. On at least one reading of this phrase, it implies an anticipation that clubs will acquire food from third parties to be brought to a private residence.

52. In light of the above, this Board finds that the *Handbook* is of no assistance to the Board in deciding this appeal. Instead, focus must be placed on the reason given by the CGB, specifically the potential breach of section 5.02 of the *CEPRMP*.

53. During oral submissions, the CGB indicated that, in order for there to be compliance with section 5.02, the CGB must understand that food being prepared would without a doubt comply with the Middlesex London Health Unit safety standards. Food obtained from appropriate vendors, such as The Wave or The Spoke, is understood to have been prepared in compliance with the safety standards. Food not prepared by appropriate vendors does not have that guarantee.

54. However, it is not clear whether (i) this entails that food not prepared by appropriate vendors may never be considered to satisfy the requirements of section 5.02 of the *CEPRMP*, or (ii) whether it is possible that the requirements of section 5.02 of the *CEPRMP* may be satisfied in some cases where food is prepared by someone other than an appropriate vendor.

55. On this point, the CGB's representative made two inconsistent statements. She stated that the SOA indicated to the voting members of the CGB that homemade food is never approved as part of an event. She also stated that the SOA indicated to the voting members of the CGB is generally not approved as part of an event.

56. It is clear that the SOA provided some advice to the CGB regarding the feasibility of homemade the Club's proposed events involving homemade food. However, given the inconsistent statements made by the CGB's representative, it is not clear what that advice was.

57. In fairness to the CGB's representative, she presumably was unaware prior to the hearing that she would be asked questions regarding the specifics of the SOA's advice. The importance of the specifics of this advice did not become clear until the hearing. However, the importance of the specifics of this advice did not become clear until the hearing for the reason that the existence of that advice was not made clear until the hearing. This highlights the value of the CGB indicating to prospective clubs denied ratification the reasons for that denial, especially advice received from the SOA. If the CGB had indicated to the Club earlier that it had received and relied on advice from the SOA, the issue would likely have crystallized ahead of the hearing. As a result, the specifics of the SOA's advice could have been fleshed out as part of the written submission process, or, at the very least, the importance of these specifics would have been made clear and the CGB's representative could have been prepared accordingly.



58. The specifics of the SOA's advice is integral to the decision of this appeal.

- a. If the SOA's advice to the voting members of the CGB was that events involving homemade food are never approved because of section 5.02 of the *CEPRMP*, then the CGB's decision not to ratify was reasonable. Two of the three events planned by the Club simply were unable to proceed, and the CGB could reasonably conclude that the Clubs model of operations could not be feasible.
- b. If the SOA's advice to the voting members of the CGB was that events involving homemade food are generally not approved because of section 5.02 of the *CEPRMP*, then the CGB's decision has the potential to be unreasonable.

59. It is at this point that the conclusion of the analysis in section (ii) above comes to bear. To repeat that conclusion, providing only minimal written reasons creates an increased risk of procedural unfairness, as prospective clubs may not have the information required in order to submit an informed request for reconsideration.

60. In this case, the CGB's failure to provide written reasons beyond the minimal identification of the section of the *Procedure* relied upon has created procedural unfairness. This elevates the potential unreasonableness identified in paragraph 58(b) to the level of actual unreasonableness. If events involving homemade foods are generally not approved, it follows that such events may be approved in some cases. If events involving homemade foods are approved in some cases, the fact that the CGB did not inform the Club of the nature of the SOA's advice deprived the Club of an opportunity to clarify, as part of its reconsideration request, that it could meet the requirements of section 5.02 of the *CEPRMP*.

61. If this Board was able to determine that the SOA advised the voting members of the CGB that events involving homemade food were never approved, then it would follow that the CGB's decision was reasonable. If two of the three events proposed by the Club could never be approved, then it would not have mattered whether the Club had obtained further clarification of the CGB's reasons. The result would not have differed.

62. Only if the SOA advised the voting members of the CGB that events involving homemade food were generally not approved would this further clarification have assisted the Club. If such events may be approved, then the Club did not have the opportunity in its reconsideration request to attempt to clarify how its events could be approved. Whether such an attempt would or would not have been successful is beyond what this Board can decide. However, this Board finds that the Club was denied procedural fairness because it did not have this opportunity.

v. *Outcome*

63. The Club submits that, if this Board grants its appeal, the Board should order the Club's ratification.

64. Although it is granting the Club's appeal, the Board declines to order the Club's ratification. As indicated in the *Procedure*, there is "a potential shortage of resources and space on campus if a sizeable number of clubs is added to the already 200+ clubs that are currently ratified with the USC", and decisions regarding ratification must "ensure that the future of the clubs department is stable". The Board is in no position to evaluate these concerns.

65. Moreover, the Board does not have the assistance of the advice of the SOA, which, as discussed below, will be critical in evaluating the Club's request for reconsideration.

66. Instead, for the reasons addressed above, this Board orders that Club's application for ratification is remitted to the CGB for reconsideration in accordance with these reasons. The specifics of the process to be followed are as follows.

- a. Within five days of the release of this decision, the Club may submit a request for reconsideration to the CGB.
- b. The Club may not make changes to its original application – more on this is said below. As part of its request for reconsideration, the Club may provide clarification as to how it believes the two proposed events in question will not violate section 5.02 of the *CEPRMP*.
- c. If the Club submits a request for reconsideration to the CGB within five days of the release of this decision, the CGB shall meet to consider and deliberate as soon as reasonably possible thereafter. If reasons exist as to why the CGB cannot meet in a timely manner, the CGB should write to the Appeals Board Chair, copying the Club, to explain those reasons and to seek directions.
- d. The CGB shall treat the Club's request for reconsideration as it would any other request for reconsideration under section 5 of the *Procedure*. Without limiting the foregoing, this means that the CGB is not restricted to considering only those issues previously raised. This also means that the CGB may obtain and rely on the advice of the SOA – more on this is said below.
- e. The CGB shall provide its decision, and written reasons for that decision, to the Club within five days of the meeting described in subparagraph (c).

67. Regarding changes to the Club's application, it is the intention of this Board to provide the Club an opportunity to address how its planned events, as originally designed, may satisfy the requirements of section 5.02 of the *CEPRMP*. In other words, it can provide additional clarification on this limited point. As part of its request for reconsideration, the Club may not substitute new events or make changes to the planned events. For example, during oral submissions the Club submitted that it had intended to purchase the food to be sold at the planned events, not have members bake or cook the food. This is belied by the Club's proposed budget, which identified "ingredients" as costs of these two events.

68. Regarding the CGB's reconsideration, the CGB is entitled to rely on the SOA's advice as it normally would. Without limiting the foregoing, if the SOA advises that events involving homemade food are never approved, the CGB may rely on that advice. If the SOA advises that bake sales are never permitted on campus, the CGB may rely on that advice. This Board has made no findings on either of these issues, as it does not have sufficient evidence to make such findings. In identifying these two issues here, the Board is not restricting the SOA's advice to these two issues, and the SOA may provide advice the CGB on any relevant issue at her own discretion

69. As should be clear from the above, this Board is granting the Club's appeal on a very narrow scope. This Board is not prejudging the outcome of the ordered reconsideration process. However, if the Club is not successful in its request for reconsideration, then this Board acknowledges, as it does in similar cases before it, that any unsuccessful application for ratification in the 2022/2023 academic year is without prejudice to any future applications for ratification by the Club. Furthermore, if it is not successful in its request for reconsideration, the Club may also use any information it has obtained through the application process this year to refine any future application for ratification.

W. Fawcett

A. Sony

#### **PART VI: DISSENTING ANALYSIS (Warner)**

70. Having had the opportunity to review my colleagues' reasons, I would disagree on a minor but ultimately fundamental point.

71. I would adopt the reasons delivered by the Chair from Paragraphs 1 through 31, with particular emphasis placed on the following excerpts:

*20. From its inception, this Board has applied the principles of administrative law in reviewing the decisions appealed to it. There are very good reasons for doing so, which need not be reviewed here. However, this Board has also recognized that administrative law is not a perfect fit when it comes to the matters that come before this Board (Unload Western v Clubs Governance Board, 2020:1 Clubs, para 4; Craft Lover Club v Clubs Governance Board, 2020: 2 Clubs, part iv, para 1; Shedeed v Elections Governance Committee, 2021:1, para 20).*

*21. The CGB and EGB are student organizations whose members are students, not lawyers and judges. This Board does not expect either the CGB or the EGB to conduct their affairs with the same degree of rigour, precision, and formality as would be found in a courtroom*

*or before some other administrative tribunal (The University of Western Ontario Ski & Snowboard Club v Clubs Governance Board, 2023:5 Clubs, paras 71 – 72).*

72. It bears repeating that both parties involved in any dispute before this Board are students. While the Club submitted a five-page document as part of its request for reconsideration, which is a laudable effort in support of their ratification application, I would reject the Club’s submission that the CGB must be held to a strict, *Vavilov*-inspired requirement for similarly detailed reasons. As my colleagues note at paragraph 27, “Reasons that may not be considered helpful by a court may be sufficient in the context of an appeal before this Board.” I agree.

73. The point on which I part ways with my colleagues is that I would find that the reasons provided by the CGB in its April 14 letter to the Club were sufficient as per the requirements imposed by Section 4.02 of the *Procedure*, which reads that:

Organizations that are denied ratification shall be notified by the Chair or designate, by April 15th via an email sent to the organization’s representative(s). The organization must be provided with the CGB’s written reasons for its decision.

74. My colleagues correctly note at paragraph 32 that the “salient question is **whether the Club understood**, or reasonably ought to have understood, that it could ask questions to clarify the CGB’s reasons” (emphasis added). While my colleagues held that the question should be answered in the negative, I would find that such a conclusion is, respectfully, not supported by the evidence.

75. During oral arguments, the Club admitted that it understood that it was invited, through the CGB’s April 14 letter, to ask questions about the reasons for the CGB’s decision in order to inform its request for reconsideration. While the Club admitted did not take up this invitation, the CGB noted that other clubs that were denied ratification did. From this evidence, it is therefore clear that the Club did, in fact, understand that it could ask questions to clarify the CGB’s reasons.

76. As an ancillary point, I would address the argument raised by the Club and briefly answered by my colleagues at paragraph 32: that an invitation to the Club to ask questions does not form part of the CGB's reasons. This argument must fail. Regardless of whether the invitation forms a part of the reasons, the Club's admittance that it understood that it was invited to ask questions is sufficient to find that it was afforded the process to inform its request for reconsideration.

77. In coming to this conclusion, I am not required to decide whether the CGB's reasons were sufficiently clear or precise in an abstract sense. Indeed, I would join with my colleagues in citing with approval *Smiling Over Sickness v Clubs Governance Committee*, 2019:5, para 14(a), in which this Board "heavily urged" the CGB to clearly outline to the clubs requesting ratification the reasons and rationale for denying them. However, I find that it is not relevant to ask whether the CGB's reasons were, in general, explicit enough, as I would find that the Club appealing its decision understood the CGB's meaning.

78. Had the Club acted upon the invitation it received, it would have learned the additional information it sought. Instead, it chose to submit a request for reconsideration without that information, at its own peril. Its attempt to appeal to this Board for a remedy citing procedural unfairness must therefore fail.

79. Having found that the Club was not denied procedural fairness, I need not rule on the Club's other grounds of appeal. I would therefore dismiss the appeal.

S. Warner