



Judgment of the USC Appeals Board in the matter of:

## ***Craft Lover Club v Clubs Governance Board, 2020:2 Clubs***

**Hearing Date:** By Written Submission

**Judgment Date:** April 17, 2020

**Panel:** Zohaib Ahmed (Chair), Alysia Sainas, Joshua Creado

**Reasons for Judgment:** Ahmed (Sainas and Creado concurring)

### **PART I: OVERVIEW**

1. This is an appeal by Craft Lover Club in response to the decision by the USC Clubs Governance Board (“CGB”) to deny the former’s application for ratification. In short, the CGB denied the Craft Lover Club’s application because the Craft Lover Club does not meet the “Uniqueness and Distinctiveness” requirement under s. 204 of the *Club Ratification Procedure*. The CGB arrived at this conclusion on the basis that: **(i)** the mandate of the Craft Lover Club is too similar to the mandates of existing craft clubs, **(ii)** the Craft lover Club’s proposed events could be incorporated into existing clubs. This appeal was heard by written submissions from both parties.

## **PART II: FACTS**

2. Craft Lover Club submitted an application during the annual club ratification process of the 2019-2020 academic year. Its application was reviewed by the CGB which found that the application was incomplete. Thereafter, the CGB found that the Craft Lover Club failed to satisfy the uniqueness and distinctiveness requirement as it too closely resembled existing clubs (*Western Art* and *Western Crafting For A Cure*). Accordingly, Craft Lover Club's application for ratification was refused.
3. Craft Lover Club appealed this decision by making a "Request for Reconsideration" under s. 5.00 of the *Club Ratification Procedure*. Craft Lover Club requested a hearing as is provided for under the standing orders of the CGB. After the hearing took place, the CGB denied the appellant's request for reconsideration. Craft Lover Club now appeals to this court, asking the decision of the CGB be overturned, and that it be granted full ratification.

## **PART III: ISSUES**

4. There are two issues in this appeal:
  1. What is the appropriate standard of review?
  2. Was the CGB decision to deny Craft Lover Club's ratification reasonable?

## **PART IV: ANALYSIS**

### ***What is the appropriate standard of review?***

1. 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).

2. 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.
3. Currently under Canadian administrative law, there are two standards of review upon which administrative decisions are reviewed: reasonableness and correctness. To determine whether the CGB'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.
4. 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.

5. In summary, the role of the Appeals Board is ensuring the CGB's decisions are reasonable, adheres to its by-laws, and that it is transparent in its decisions. Any shortcomings must be more than superficial or peripheral to the merits of the decision (*Vavilov*)

***Was the CGB's finding, to deny Craft Lover Club's ratification reasonable?***

6. The CGB's central reason for denying Craft Lover Club's request was that the club is not unique or distinct enough to warrant ratification. The CGB stressed the importance of this criterion throughout its reasons. A careful balance between limited resources and the desire for new clubs has to be struck. Emphasizing that each new club be unique and distinct helps ensure that resources are used efficiently.
7. The CGB found that the appellant was not unique or distinct on two grounds. I shall address both of these in turn.

**(i) Craft Lover Club's mandate and proposed events are not unique or distinct**

8. Craft Lover Club's mandate is to "[p]rovide unique opportunities for Western students who love handmaking to share their experience with each other and also for those who want to study handicraft in various fields". The CGB identified *Western Art Club* as an existing club with an overlapping mandate. *Western Art Club*'s mandate is to "[p]rovide all undergraduate students, regardless of their artistic abilities, the opportunity to participate in multiple art and craft workshops throughout the year". The CGB also identified *Crafting for a Cure* as an existing club with an overlapping mandate. CGB notes that *Crafting for a Cure* conducts its activities "[t]hrough arts and crafts, as well as other creative activities"

9. The CGB reasoned that that the three mandates overlap and thus the uniqueness and distinctiveness criterion was not met.
10. Although not expressly stated, implicit in the CGB's finding that these mandates overlap is the idea that the subject-matter of the clubs are too similar. On a standard of reasonableness, deference must be given to the initial decision-maker, Thus, the Appeals Board must defer to the CGB in what level of overlap in [the subject-matter of the] mandate will fail to satisfy the uniqueness and distinctiveness factor. Thus, in finding that this criterion was not met, the CGC acted reasonably.
11. In paragraph three of its written submissions, the Craft Lover Club states that the focus of the club would be on "Asian arts and crafts". For this reason, it argues, the club is unique and distinct. The CGB responds to this by pointing out that both *Western Art Club* and *Western Crafting for a Cure* host workshops and events that focus on creating non-Western crafts.
12. I note this dialogue to directly address what the appellant argues makes Craft Lover Club unique and distinct. All the aforementioned clubs focus on arts and crafts; the Craft Lover Club would focus specifically on Asian arts and crafts. Still, the two existing clubs *already* provide opportunities for Western students to make and enjoy Asian arts and crafts. Consequently, this narrower focus does not make the Craft Lover Club unique or distinct.

**(ii) Craft Lover Club's proposed events could be incorporated into existing clubs**

13. This brings me the second reason why the CGB refused the Craft Lover Club's request. This has to do with the fact that events focusing solely on Asian arts and crafts can be incorporated into *Western Art Club* and *Western Crafting for a Cure* events. Indeed, as noted, the existing clubs have already host activities to create and enjoy non-Western arts

and crafts. For this reason, I find it reasonable for the CGB to have found at paragraph 17 of its written submissions that Craft Lover Club’s proposed events “could be wholly accomplished within the confines of an existing organization”.

14. I now note an additional consideration raised by the Craft Lover Club. In paragraph four of its written submissions, Craft Lover Club states that arts and crafts enthusiasts have indicated that they cannot find a community that allowed them to create Eastern cultures crafts. It is noble to want to respond to this gap. This gap can also be filled if the existing clubs host more frequent non-Western craft workshops and events. In this way, the need to be financially prudent and the desire for more craft opportunities are both met.

#### **PART V: DISPOSITION**

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