



Judgment of the USC Appeals Board in the matter of:

The University of Western Ontario Ski & Snowboard Club v Clubs Governance Board, 2023:5 Clubs

Hearing Date: May 1, 2023

Judgment Released: May 13, 2023

Panel: William Fawcett (Chair), Ann Sony, David Vallillee

Reasons: Fawcett (Sony, Vallillee)

PART I: INTRODUCTION

1. This is an appeal from a decision of the Clubs Governance Board (“**CGB**”) to de-ratify The University of Western Ontario Ski & Snowboard Club (the “**Club**”) for multiple policy violations. Those policy violations may be grouped under three headings:

- (i) promoting and attending unapproved events, specifically trips to Banff and Mont Tremblant;
- (ii) employing an out of date constitution; and
- (iii) participating in an egg drop event that was not approved following an annual general meeting, which had been approved.

2. For the reasons below this appeal is upheld. The process followed by the CGB failed to satisfy the requirements of the principles of natural justice. Specifically, the CGB’s failure to make

full disclosure of the evidence against the Club prior to the judicial hearing and the CGB's reception of additional evidence from non-voting members of the CGB during the CGB's deliberations after the judicial hearing entails that the Club was not afforded the right to know the case that it had to meet and to respond. Because the process by which the CGB reached its decision to de-ratify the Club did not satisfy the requirements of the principles of natural justice, its decision was unreasonable.

3. Having found that the CGB's decision was unreasonable because of shortcomings in the process that led to it, a further question arises as to the appropriate remedy. As detailed below, the most serious errors arose because the CGB followed its normal practices during its deliberations following the judicial hearing. Unfortunately, those normal practices give rise to procedural unfairness when adopted in the context of a judicial hearing. The Appeals Board is satisfied that, in light of the Appeals Board's findings below, the CGB could hold a second judicial hearing following an appropriate process in order to decide the matter on its merits, and, especially given the seriousness of the underlying issues, it is appropriate for this matter to be decided on its merits.

4. Accordingly, the Appeals Board orders as follows:

- a. the decision of the CGB to de-ratify the Club is voided;
- b. this matter is referred back to the CGB for a further judicial hearing to determine what, if any, sanctions should be imposed with respect to the issues of the two trips and the egg drop event;
- c. if the CGB elects to hold a further judicial hearing, then the CGB must provide notice of its intention to the Club and permit the club to exercise its rights under the

usual practice laid out in the *Clubs Hearings and Sanctions Procedure* (“*CHSP*”), and the CGB must satisfy the principle that a party has a right to know the case it has to meet and to respond, specifically:

- i. full disclosure of the evidence the CGB intends to rely upon at the judicial hearing must be provided to the Club in advance of the judicial hearing; and
 - ii. the CGB may rely on only the evidence introduced at the judicial hearing in reaching its decision;
- d. if the CGB elects to hold a further judicial hearing, it shall not consider the issue related to the Club’s constitution, as the Appeals Board finds that the Club has not violated sections 2.05 and 2.07 of the *Clubs Constitutional Amendment Procedure* as alleged; and
- e. if the CGB elects not to hold a further judicial hearing, then there are no sanctions against the Club.

5. For the sake of clarity, the Appeals Board makes no order as to who may be present during the CGB’s deliberations following any judicial hearing, nor does the Appeals Board make any order as to who may chair those deliberations.

PART II: FACTS

i. Past Sanctions

6. The Club has faced sanctions administered by the CGB in the past. In *Ski and Snowboard Club v Clubs Governance Board*, 2021:1 (the “**Prior Decision**”), the Appeals Board upheld a

finding by the CGB that the Club had participated in an unapproved skating event, which resulted in a fine being imposed on the Club.

7. In the Prior Decision, the Appeals Board also found that a lack of disclosure with respect to a separate alleged violation entailed that the Club was not afforded the right to know the case that it had to meet and to respond. The Appeals Board rejected the CGB's findings with respect to this separate alleged violation and reduced the sanctions imposed by the CGB accordingly.

ii. The Trips to Mont Tremblant and Banff

8. Turning to the matters giving rise to the current appeal, the CGB admitted during the oral hearing before the Appeals Board that the central issue giving rise to the CGB's investigation into the Club and the resulting sanctions was the two trips to Mont Tremblant and Banff. Concerns regarding the second two issues – the egg drop event and alleged deficiencies with respect to the Club's constitution – were raised during the course of the investigation of the two trips.

9. Prior to “holding any event for the purpose of the club or its members”, a club is required under section 2.01 of the *Club Event Planning and Risk Management Procedure* (“*CEPRMP*”) to submit a proposal to the Student Organizations Support Staff. Under section 2.05, a proposal must be approved before the event may be held.

10. At some time prior to the trips occurring, the Club approached Shari McIntyre, who is a staff member with the University Students Council in the role of student organizations advisor. For reasons addressed below, the details of this conversation have not been made clear to the Appeals Board. However, the broad strokes of the conversation seem to have been that the Club inquired as to whether it could promote the trips without hosting them and McIntyre indicated that

this would be permissible as long as the Club made clear that the trips were being run by a third party.

11. The Club advertised the two trips on Instagram and posted about the trips on Discord. The Instagram posts included language like, “THIS YEAR WSSC WILL BE GOING ON A TRIP TO MONT. TREMBLANT!!!!!” and “BANFF Who? WSSC is going on this trip!”

12. The Club also held information sessions regarding the trips. The Club indicates that during those information sessions, members were told that the trips were being run by a third party. Some of the Instagram posts included links to other documents, such as an insurance waiver. These documents named Merit Travel, which was the third party running the trips. At least one email sent by the Club, dated January 10, 2023, indicated that the Mont Tremblant trip was being run by Merit Travel.

13. The Club did not seek approval for the two trips.

14. During the oral hearing before the Appeals Board, the CGB indicated that, at some point in January or February 2023, one or more Club members emailed the CGB with respect to the trips, inquiring about refunds and lost items. Those emails were not in evidence. It appears that these emails are what prompted the CGB to investigate the trips.

iii. The Egg Drop Event

15. Both the Club and the CGB agree that the Club held an egg drop competition for members in the University Community Centre (“UCC”) following an annual general meeting. The Club had received approval for the annual general meeting, but the proposal did not include the egg drop event.

16. The CGB indicated during the oral hearing before the Appeals Board that the CGB was no longer maintaining that the Club had spread garbage in the UCC as part of the complaint.

17. It was agreed by both the Club and the CGB that the egg drop event occurred without the Club having received approval. As indicated in the Club's written response to the CGB, "We [i.e., the Club] take full ownership of this complaint. We understand that it should have been included in the event proposal."

iv. The Club Constitution

18. The Club, like all USC-ratified clubs, is required to have a constitution. The Club's constitution broadly follows the draft constitution provided in the *Clubs Constitution Guideline*. What is relevant for the purpose of this appeal is that the Club's constitution provides for the existence of an executive committee of not less than four executives fulfilling the following functions: President, VP Communications, VP Event Coordinator, and VP Finance.

19. As a result of significant growth, the Club has decided to expand the number of "executives" to approximately ninety. The full extent of the roles and functions of these executives is not in evidence before the Appeals Board. There appears to be no dispute that the Club has four executives fulfilling the four functions required by its constitution.

v. The Procedural History of this Matter

20. On March 10, 2023, the CGB wrote the Club to provide formal notice of the complaints against the Club. In that letter, those complaints are identified as follows.

- a. Following the WSSC annual general meeting in January, the club held an egg-dropping competition and spread garbage in the University Community Centre (UCC). These activities were not part of any event proposal.
 - b. Submitting a misleading event proposal that called an event a “bar night” repeatedly. When advertising for the event in the UCC atrium, the event title “Drunk in Love” was used. The process of the event planning in comparison to the diction used for advertising purposes lacked transparency causing the USC to disallow the club from being able to use those materials when advertising for the event.
 - c. Employing a WSSC Constitution that has not been validated by the CGB and using a governance structure that is unreflective of current organizational definitions.
 - d. Advertising and attending events that did not follow proper Clubs Policies and Procedures. The out-of-province trips to Mont-Tremblant and Banff were repeatedly advertised on the WSSC-branded Instagram, Discord and newsletter. Neither of these trips were approved by the Student Organizations Staff.
21. The second complaint regarding the “Drunk in Love” event has been abandoned.
22. On March 10, 2023, the Club’s president wrote to the CGB asking to “receive evidence of these complaints, as there are no supporting documents”.
23. On March 15, 2023, the Club’s Policy Coordinator responded to the Club’s president, stating, *inter alia*, that “[e]vidence of violations of Clubs Policy and Procedures is based on information that was posted to WSSC public social media accounts and on eye-witness accounts

by members of the Western community, so the evidence is readily available (ex. Photos on @westernskiandsnowboard Instagram and videos from the account's Instagram story).”

24. On March 15, 2023, the Club's president responded, stating, *inter alia*, as follows.

How can “eye-witness accounts by members of the Western community” be seen as readily available evidence. I do not have access to such evidence, so how am I expected to speak on these issues. I also believe it is up to the CGB to provide specific examples of all violations found. I cannot speak on any single occurrence or event without specific mention of how and where the violation occurred.

25. On March 23, 2023, the Club provided its written response to the complaints to the CGB.

26. On March 27, 2023, The CGB held a preliminary hearing pursuant to the *CHSP*.

27. Following the preliminary hearing, the Club exercised its right under the *CHSP* to request a judicial hearing in front of the CGB. The judicial hearing was held by Zoom on April 3, 2023. Following the CGB's procedures, that hearing was recorded, including the CGB's deliberations following the hearing. The entire recording was introduced as evidence before the Appeals Board.

vi. The Judicial Hearing

28. As will become clear in the analysis section of these reasons, it is necessary to describe the events of the judicial hearing and the deliberations that followed in some detail.

29. The CGB's chair presented the evidence against the Club. This included a series of screenshots of Instagram and Discord posts. Approximately twelve such images were shown, over a period of approximately ninety seconds. Some of the images were shown for only a few seconds.

30. The Club was represented by its president. In the Club's opening statement, it indicated that it had asked for the evidence relied upon by the CGB but had not been provided with that.

Additionally, in oral submissions, the Club submitted that “it has been made clear at every step of the way that those trips [were] not run by [the Club]”.

31. The Club submitted that it was told by the University Students’ Council that the Club could advertise third party events as long as it was made “very clear” that the Club was not organizing the event and that there was an outside insurance provider. It appears that this is a reference to the communications between the club and McIntyre.

32. The Club also submitted that “on every post you will find that it says Merit Travel Company or it says Ski Can. In every email, it also showed – I can send those in as evidence if you like, but I’m sure in that drive [...] that the chair showed – if you go through those Instagram posts, you will see, on every single post that it is advertised that these trips are not run by us [i.e., the Club]”.

33. Following the judicial hearing, the CGB deliberated.

34. The CGB’s chair, who had presented the claim against the Club during the judicial hearing, chaired the deliberations.

35. Present for the deliberations were seven voting members of the CGB, including the chair, and three non-voting members, including McIntyre. One of the voting members had technical difficulties that prevented him from voting at the end of deliberations. The Appeals Board was informed that the CGB’s chair did not vote.

36. During the deliberations, some of the non-voting members provided additional information that was not presented during the judicial hearing.

37. For example, at one point, one of the voting members asked if there was any validity to the claims made by the Club about being told by McIntyre that the Club could advertise events they were not hosting. McIntyre provided further details about what she had told the Club and provided her opinion that “where I think that they blurred the lines is maybe their communications people didn’t realize that what they were putting out there was a little bit confusing. So you can see on it, a lot of the, it’s like Merit ski right on it, but then it’s WSSC is going on this trip.”

38. As a second example, the University Students’ Council’s Vice President Governance and Finance, a non-voting member of the CGB, acknowledge that he could “not take a position in this argument” but claimed that the Club’s leadership shared an email with all club members in advance of the judicial hearing and described a mass-email that ended up in *The Gazette*. This was not in evidence during the judicial hearing.

39. The previous examples are exhaustive, and there were numerous instances where the non-voting members provided input during deliberations beyond what was in evidence during the judicial hearing.

40. Near the end of the deliberations, one of the CGB’s voting members attempted to bring a motion that the Club would not be de-ratified but that other sanctions would be considered. For formal reasons, the CGB’s chair did not allow that motion to proceed, with the voting member indicating that his intention in attempting the motion was to potentially save time, i.e., if the motion did not pass, the CGB would “know that [it was] de-ratifying them [i.e., the Club]”.

41. Instead, the CGB voted on a motion to de-ratify the Club, with, we are told, four voting members supporting the motion out of the five who voted.

vii. The Importance of the Issues

42. Beyond the facts identified above, it is also prudent here to lay out several additional facts related to the importance of the issues raised on this appeal. These issues go beyond the importance that a club undoubtedly has to its members, which is a consideration in any case involving de-ratification.

43. The requirement that USC-ratified clubs obtain approval before holding an event is grounded in concerns about potential liability on the part of the USC. When those events involve high-risk activities – such as out of province travel, the potential consumption of alcohol, and inherently risky sports such as skiing and snowboarding – the potential liability is magnified. The USC has a legitimate right to control its exposure to this liability, and sanctions through the *CHSP* are one of the tools available to the USC to do so.

44. On the other hand, de-ratification gives rise to financial ramifications for the Club. Under the *Clubs Financial Procedures*, a USC-ratified club operates a bank account through the USC. Section 5.08 of the *CHSP* provides that a de-ratified club will have its bank account closed, with any money in that account becoming property of the USC. Section 5.03 of the *Clubs Financial Procedures* provides that money in a de-ratified club's account will be collected by the USC if that club is not re-ratified within two years. Based on evidence provided during the deliberations following the judicial hearing, it appears that the Club's account contains approximately \$17,000.

PART III: ISSUE

45. The issue is whether the CGB's decision to de-ratify the Club was reasonable.

PART IV: SUBMISSIONS

46. The Club made a number of submissions, including, but not limited to, the following:
- a. the lack of disclosure ahead of the judicial hearing led to procedural unfairness;
 - b. there was no timer available to the Club during the judicial hearing, which should be a procedural right;
 - c. two of the voting board members were absent, but their voices should have been heard;
 - d. one of the voting board members attempted to bring forward a motion for sanctions that did not include de-ratification, but this motion did not move forward; and
 - e. it was unfair for the CGB to rely upon the sanctions in the Previous Decision.
47. The CGB's oral submissions focussed on the potential harms arising from clubs attending unapproved events and from employing out-of-date constitutions. The CGB's written submissions, including its written reasons, addressed the merits of its decision to de-ratify the Club.

PART V: ANALYSIS

48. Section 2.2 of the *Appeals Board Terms of Reference* provides that the "Appeals Board follows the principles of natural justice, including fairness and good conscience", and section 2.3 provides that the "Appeals Board will apply the reasonableness standard when reviewing all appeals."

49. There are two bases on which the Appeals Board may find that a decision under appeal was unreasonable. First, a decision may be substantively unreasonable. To give just one, non-exhaustive example, a decision will be substantively unreasonable if the evidence before the decision maker does not support the decision maker's decision. Second, as identified in the Prior Decision, a decision may be unreasonable because the process leading to that decision was unfair. Procedural unfairness will render a decision unreasonable if the process leading to that decision did not embody the principles of natural justice.

i. Procedural Unfairness – The Lack of Disclosure

50. As identified in the Prior Decision, one of the principles of natural justice is that a party must have the right to be heard. The right to be heard includes a right to know the case a party has to meet. This requires disclosure.

51. The Appeals Board addressed the issue of disclosure in no uncertain terms in the Prior Decision.

A student must be given disclosure so that they may prepare for written or oral argument. Without disclosure, there is no real or genuine opportunity to respond. In practice, this means that a student or club must be told what facts, statements, documents, and law the EGC [i.e., the Election's Governance Committee] or CGB will rely on to make its decision before written or oral arguments are made.

52. In this case, the Club requested disclosure. In questioning before the Appeals Board, the CGB indicated that the Club's request for disclosure occurred during the preliminary hearing stage of the *CHSP*, not the judicial hearing stage, and the CGB submitted that only limited information is required to be provided to a club during the preliminary hearing stage.

53. Section 3.04 of the *CHSP* provides that, during the preliminary hearing stage, a "Club's executive shall be permitted to review the complaint documents". The phrase "complaint

documents” is not defined, but it is sufficiently broad so as to include documents the CGB has in its possession that are said to be evidence with respect to the subject matter of the complaint.

54. Contrary to the CGB’s submissions, disclosure is required during the preliminary hearing stage. Not only is this consistent with the wording of the *CHSP*, but it is necessary in order for a club to know the case that it has to meet. If it does not know the evidence against it, it cannot meaningfully exercise its right to provide a written response under section 3.03 of the *CHSP*.¹

55. The CGB did make some effort at providing disclosure by indicating that the evidence relied upon by the CGB was contained in the Club’s social media posts. While this was an attempt at disclosure, it was not sufficient, as it did not allow the Club to determine what evidence needed a response. The CGB ought to have provided the specific posts upon which it intended to rely.

56. The impact of the CGB’s failure to provide disclosure of the specific posts on which it was relying had a direct impact on the events of the judicial hearing. Because the CGB did not provide the specific posts, the Club did not know which posts were impugned. It did not know which posts it needed to address. This led to the Club’s submission at the judicial hearing, which I paraphrase, that all posts indicated the trips were being run by a third party and that the Club could provide evidence of this if requested.

57. In the Prior Decision, the Appeals Board held that a club’s promotion of an event may make that event an official club event – which would require approval under the *CEPRMP* – if a

¹ While not at issue in this case, the Appeals Board notes that section 3.04(1) of the *CHSP* permits the CGB’s chair to make redactions to the “complaint documents”. This allows the CGB to balance concerns about complainant privacy at the preliminary hearing stage with the right of a club to disclosure so that it may know the case it has to meet.

reasonable person viewing the promotion on social media would conclude that the promoted event was a club event.

58. On this appeal, there is insufficient evidence upon which to evaluate what a reasonable person would conclude. The CGB points to some social media posts that *may* support its position, but the Club appears to be saying that there are others that do not.² The Appeals Board is not in a position to evaluate whether the Club's claim is or is not sustainable because these other posts are not in evidence. If the CGB had provided disclosure, the Club would have known what posts were going to be introduced by the CGB into evidence, and it would have been in a position to prepare and to introduce other posts into evidence in response. Because the CGB did not provide disclosure, the Club was not in a position to respond with its own evidence, and instead it was left simply responding during the judicial hearing that the evidence was there and could be provided.

59. To provide greater clarity going forward, it will **not** normally be sufficient for a club simply to say that there is evidence supporting its claims that could be provided. It is **required** of the club to provide that evidence, and the CGB may conclude from the fact that evidence was not provided at a judicial hearing that the evidence does not actually exist.

60. However, in this particular case, the CGB's indication that the evidence relied on by the CGB was the Club's social media posts generally created a situation in which the Club could

² The Appeals Board is intentionally making no findings as to whether the social media posts that are in evidence do or do not support the CGB's position. Similarly, the Appeals Board makes no findings as to what McIntyre may or may not have told the Club with respect to what promotion would be permitted, and the Appeals Board makes no findings as to whether the social media posts were or were not in keeping with what the Club was told. The Appeals Board has insufficient evidence on which to base any such findings, and leaves these issues to a second judicial hearing, if the CGB continues to pursue sanctions against the Club.

reasonably have expected that the full extent of its social media posts would be in evidence. It was not in a position to evaluate what posts it needed to introduce as evidence.

61. To be clear, the analysis in the previous paragraph applies only to the state of affairs as they existed at the April 3, 2023 judicial hearing. The Appeals Board is returning this matter to the CGB for a further judicial hearing, and the state of affairs for any such hearing will be different. The Club now has received disclosure, as the posts relied on by the CGB have been identified at the first judicial hearing and through this appeal. The Club now knows what posts are being relied upon by the CGB. If the CGB continues to pursue sanctions against the Club and there is a second judicial hearing, the Club will need to provide as evidence at that second judicial hearing the specific social media posts on which it is relying. If it does not, the CGB will be permitted to conclude that such evidence does not exist.

ii. Procedural Unfairness – Further Evidence Provided During Deliberations

62. As part of the right to be heard and the right to know the case it has to meet, a party has a right to know and to respond to the evidence against it. If a party cannot hear and respond to the evidence against it, then its right to be heard has been infringed.

63. As described above, additional evidence was presented by non-voting members of the CGB during deliberations following the close of oral submissions. The Club was not presented with this evidence, nor, as was admitted by the CGB in oral submissions before the Appeals Board, did the Club have the ability to respond to this evidence. This was a breach of the Club's rights to procedural fairness, and this breach renders the CGB's decision to de-ratify the Club unreasonable.

64. To be clear, the Appeals Board has considered the fact that the policies and procedures governing the CGB permit non-voting members to speak to motions and to provide additional information that will assist the voting members to vote in an informed manner.³ However, the vote on a motion arising from a judicial hearing under the *CHSP* is not a regular vote on a regular motion. In order to ensure that procedural fairness is upheld, the voting members of the CGB must consider **only** the evidence that was presented during the judicial hearing.

65. When non-voting members of the CGB participate in deliberations following a judicial hearing, this creates a risk of procedural unfairness, a risk that was actualized in this case. While the Appeals Board does not have the authority to restrict non-voting members of the CGB from being present during deliberations following a judicial hearing, the Appeals Board's decision in this case should alert the CGB of the risks associated with non-voting members participating in such deliberations. In this case, the presentation and consideration of additional evidence during deliberations that was not presented during the judicial hearing was absolutely fatal to the reasonableness of the CGB's decision to de-ratify the Club.

66. In this case, there was a further procedural irregularity that arose during the deliberations following the judicial hearing. The chair of the CGB played two roles: both presenting the evidence against the Club during the judicial hearing and also chairing the subsequent deliberations.

³ The Appeals Board wishes to make clear that it does not find that the non-voting members' participation in the deliberations was in any way intentionally inappropriate. This is especially true of McIntyre, whose responsibilities under the *Clubs Governance Board Terms of Reference* include "provid[ing] any relevant information or documentation necessary to assist the CGB with arriving at an informed decision" and "provid[ing] context and institutional memory with respect to specific events/activities of clubs, past CGB decisions, and USC and Western University policies". McIntyre acted with integrity and in conformity with her responsibilities. It is regrettable that those responsibilities, in the context of a judicial hearing under the *CHSP*, created a situation in which she was called upon to provide evidence after the judicial hearing and that the *CHSP* did not pre-emptively anticipate this issue.

67. While the Appeals Board does not find, on the specific facts of this case, that there was actual prejudice to the Club arising from the dual role played by the CGB's chair, the Appeals Board does find that there was perceived prejudice. This is especially apparent with respect to the concerns raised by the Club with respect to the manner in which the motion to consider sanctions other than de-ratification did not proceed.

68. In its submissions before the Appeals Board, the CGB submitted that this was an unusual situation, insofar as usually a complaint is advanced at a judicial hearing by a party that is not the CGB itself. Moreover, the CGB submitted that, due to the fact that a number of members of the CGB were first year students, the established leadership of the CGB's chair was necessary during the deliberations following the judicial hearing.

69. Although there may have been intelligible reasons why the chair of the CGB played a dual role in this case, one must also bear in mind Lord Hewitt's well-known aphorism: justice must not only be done, but it must also be seen to be done. When one individual acts both as prosecutor and as chair of the decision maker while the decision is made, this may reasonably create a perception of prejudice.

70. While the Appeals Board does not have the authority to restrict the CGB's chair from chairing the deliberations following a judicial hearing if he or she has also presented the complainant's case during the judicial hearing, the Appeals Board's decision in this case should alert the CGB of the risk associated with doing so.

iii. An Observation Regarding the Standard Expected of the CGB in Following Procedural Fairness

71. Near the beginning of the *Nicomachean Ethics*, Aristotle advises that we must only expect as much precision as the subject matter admits of. It is worth keeping this advice in mind.

72. The CGB is a student organization. Its members are students, not judges. It would be unreasonable for the Appeals Board to expect the CGB to conduct a judicial hearing under the *CHSP* with the same degree of rigour, precision, and formality as would be found in a courtroom. The Appeals Board does not expect this degree of precision in the processes followed by the CGB under the *CHSP*, and this decision should not be understood as requiring that degree of precision.

73. However, when there are serious deviations from the expectations set by the principles of natural justice, such as are seen in this case, those deviations may be sufficient grounds on which the Appeals Board may find the decision of the CGB to be unreasonable.

iv. Findings with Respect to the Egg Drop Event and the Allegations of an Improper Club Constitution

74. Under section 11 of the *Appeals Board's Terms of Reference*, the Appeals Board has the authority to impose sanctions or awards available to an initial decision-making body, such as the CGB.

75. In this case, due to the procedure followed both leading up to and during the judicial hearing, the Appeals Board does not have sufficient evidence to reach a decision with respect to the issue of the trips to Mont Tremblant and Banff. This issue is remitted back to the CGB for a further judicial hearing.

76. However, the Appeals Board is able to make findings with respect to the other two issues: the egg drop event and the Club's constitution.

77. The issue of the egg drop event is referred back to the CGB with respect to the issue of sanctions arising from this event.

78. The Club admits that this event was not approved in advance. The Club, therefore, admits it violated sections 2.01 and 2.05 of the *CEPRMP*.

79. Nevertheless, the Appeals Board finds that this violation alone is not sufficiently serious to warrant de-ratification under the circumstances identified in section 5.07 of the *CHSP*. If, after a further judicial hearing, the CGB finds that the trips to Mont Tremblant and Banff were violations of USC policies and procedures, the CGB may also consider the egg drop event in conjunction with this in deciding on appropriate sanctions. If the CGB decides not to impose sanctions with respect to the two trips, the CGB may consider sanctions for the egg drop event alone. But the Club's violation of sections 2.01 and 2.05 of the *CEPRMP* arising from the egg drop event is not sufficient on its own to support a penalty of de-ratification.

80. The issue of the Club's constitution is not referred back to the CGB.

81. The CGB's March 10, 2023 letter providing notice of the complaints against the Club cited only sections 2.05 and 2.07 of the *Clubs Constitutional Amendment Procedure*. These provisions deal with the formal requirements needed to amend a club's constitution, i.e., the material required to be posted, the number of days' notice required before a vote, and the manner in which revisions to the text of a club's constitution are to be marked when submitted to the Clubs Policy Coordinator.

82. The uncontroverted evidence was that the Club has not amended its constitution. Accordingly, it could not have breached the formal requirements that must be followed during the process of amending a club constitution. This ground for sanctions is dismissed.

v. Findings with Respect to the Club's Submissions

83. For the reasons given above, the Appeals Board upholds the Club's submission that there was procedural unfairness in the manner in which the CGB reached its decision to de-ratify the Club. This section addresses other submissions made by the Club before the Appeals Board.

84. Regarding the submissions concerning the availability of a timer during the judicial hearing, which the Club submitted should be a procedural right, this Board finds that there is no right to be provided with a timer during the judicial hearing. A party appearing before the CGB is at liberty to provide its own timing device. The Appeals Board gives no effect to this submission.

85. Regarding submissions concerning the absence of voting board members, the *Clubs Governance Board Terms of Reference* does not specify a quorum for a meeting of the CGB. Likewise, the *CHSP* does not mandate a quorum for a judicial hearing. In the absence of a specified quorum, the common law default specifies a quorum of a majority of members ([*Ontario Korean Businessmen's Assoc v Seung Jin Oh*, 2012 ONSC 338, at para 91](#)). During the judicial hearing, more than a majority of the CGB's voting members were present. The CGB is able to conduct business so long as a quorum of members is present, and there is no requirement that a full complement of the CGB be present for a judicial hearing. The Appeals Board gives no effect to this submission.

86. Regarding the submission concerning the attempt of one voting member of the CGB to bring forward a motion for sanctions not including de-ratification, the Appeals Board has carefully reviewed the video of the deliberations. The stated intent of bringing forward the motion in question was to save time – if a majority of CGB voting members supported imposing sanctions that were less than de-ratification, there would be no need to further debate de-ratification. Instead of voting on that motion, the CGB voted on a corollary motion: whether to de-ratify the Club. Again, this was to save time – if a majority of CGB voting members supported de-ratification, there would be no need to further debate sanctions less than de-ratification. On the resulting vote, a majority of CGB voting members supported de-ratification. The Appeals Board gives no effect to this submission.

87. Regarding the submissions concerning the CGB’s reliance on the sanctions in the Previous Decision, section 5.03(5) permits the CGB to consider a club’s prior history of committing violations when determining the severity of sanctions. The CGB is *prima facie* entitled to consider the Previous Decision in determining the severity of sanctions, and the weight to be given to the Previous Decision is within the discretion of the CGB. The Appeals Board gives no effect to this submission.

W. Fawcett

A. Sony

D. Vallillee