



*Judgment of the USC Appeals Board in the matter of:*

## ***Western International Students Club v Clubs Governance Committee, 2017:9***

**Judgment Date:** May 2, 2017

**Panel:** Laura Lepine (Chair), Danielle D'Alonzo, and Adrita Shah Noor

**Reasons for Judgment:** Shah Noor (D'Alonzo concurring) and Lepine

**SHAH NOOR (D'Alonzo concurring):**

### **PART I: OVERVIEW**

1. Western International Students Club (hereinafter "WISC") is the Petitioner in this appeal. WISC applied to the Clubs Governance Committee (hereinafter "CGC") for ratification as a USC club. The CGC denied both WISC's application and request for reconsideration. WISC has appealed to the USC Appeals Board pursuant to Section 6.01 of the Ratification Procedure and By-Law #6.
2. For the reasons that follow, the Board has determined that the CGC's decision to not ratify WISC was reasonable and should be upheld.

### **PART II: FACTS**

3. WISC is a proposed club that aims to facilitate a smooth transition for international students attending Western University. It strives to inform international students of relevant services and resources offered by the University, and to be a source through which international students can meet one another. The proposed club would host guest speakers and organize social events such as bowling and Games Nights. Its membership would also include social and academic advisors.
4. In its initial letter denying the WISC's application for ratification, the CGC stated that the proposed club was not suitable for ratification because 1) Western University already offered

various services on campus for international students, 2) USC ratified clubs are not permitted to mentor other students (referring to the club's proposed "social and academic advisors"), and 3) the names of the executive team was not indicated in the application.

5. WISC subsequently submitted a request for reconsideration. In its request, WISC identified the members of its executive team and removed the advisory/mentorship aspect of the club, clarifying that it was never a core aspect of the proposed club. WISC acknowledged that the University provided services to help international students integrate into their new environment and offered opportunities for socialization, but that these were not sufficient to truly integrate international students into both the University and London community.

### **PART III: ISSUES**

6. The issues present in this appeal are the following:
  - 1) What is the appropriate standard of review?
  - 2) Should the CGC's decision not to ratify WISC be upheld?

### **PART IV: ANALYSIS**

*What is the appropriate standard of review?*

7. In determining whether a proposed club is suitable for ratification, the CGC interprets its governing statute and relies on procedures and policies it is familiar with. These are the Clubs Governance Committee Terms of Reference and the Procedure for Ratification respectively. As a result, the CGC is owed considerable deference in its interpretation of these policies. Therefore, the appropriate standard of review is reasonableness.
8. The role of the Board in this appeal is to determine whether the CGC came to a reasonable decision in concluding not to ratify the proposed club and whether the CGC acted throughout the process in compliance with USC club policies. It is not the role of the Board to appraise whether the proposed club deserves to be or should be ratified. Instead, the Board seeks to ensure that the proposed club was treated to a fair process.

*Should the CGC's decision not to ratify WISC be upheld?*

9. The requirements for ratification can be found in the USC's Procedure for Ratification. Section 2.04 outlines three qualities that a proposed organization must demonstrate. They are the following:
  - i. *Uniqueness and Distinctiveness – the organization must not have the same or a similar mandate to other existing clubs and must be readily distinguishable from all other clubs and services;*
  - ii. *Significant student interest; and,*

*iii. Autonomy – the organization must not be directed by any external organization(s), as outlined in the External Affiliations Policy, in such a way that the organization’s conduct will conflict with USC and University policies and procedures. This does not prevent the club from having a relationship with an external organization, and/or receiving resources from an external organization.*

10. Section 2.02 of the USC’s Clubs Operating Policy also emphasizes the “Uniqueness and Distinctiveness” requirement and states that a “USC Club shall be unique from other USC Clubs.”

11. Sections 2.01(iv) and 2.01(v) of the Procedure for Ratification requires that an application for ratification include a constitution and a membership list. The meaning of those terms are provided for in the policy:

iv. Constitution: A proposed club constitution that is drafted in accordance with the Club Constitution Guideline, and is formatted the same or similar to the Club Constitution Template. [emphasis added]

v. Membership List: A membership list containing at least twenty-five (25) current undergraduate student names, and contact information for those prepared to join the organization once ratified.

12. The CGC’s governing statute is the Clubs Governance Committee Terms of Reference, which delineates in section 5(1)(i) that the CGC has the ability to ratify qualified organizations as USC clubs. It is evident from the objective and mandate provisions of the Terms of Reference that the CGC has broad authority in deciding how it oversees and manages the clubs community. The decision to ratify a proposed club is thus a discretionary one. In evaluating a student organization’s suitability for ratification, the CGC has the discretion to consider aspects beyond the three requirements outlined in section 2.04 of the Procedure for Ratification and can take into account other factors that are relevant to the operation of a USC club and to the clubs culture as a whole.

13. The CGC’s initial decision to reject WISC was reasonable. The first reason for the denial, that the University already provides similar services for international students, is clearly related to the “Uniqueness and Distinctiveness” requirement. The second reason is justifiable given the discretionary nature of grating ratification, while the final reason is an extension of the administrative requirements outlined in sections 2.01(iv) and 2.01(v) of the Procedure for Ratification. Although the “Club Constitution Guideline” mentioned in section 2.01(iv) does not explicitly require members of the proposed executive team to be named, Article 4 of the Guideline (which is titled “Executive & Executive Responsibilities”) does insist that proposed clubs indicate the number of executives in its organization, and allows clubs the ability to identify the duties of each executive member and to create new executive positions.

14. The CGC’s decision to reject WISC’s request for reconsideration was also reasonable. The CGC’s primary reason for denial was that the University offered many academic and social

programs catered to international students. This explanation is directly tied to the “Uniqueness and Distinctiveness” requirement, and is thus a legitimate reason. In its denial, the CGC added that many international students have been able to become involved in the Western community and form friendships within other USC ratified clubs. As per its broad authority, it was reasonable for the CGC to consider whether there was a need for a club such as WISC, and this was an ancillary ground the CGC could rely to base its ratification decision.

15. Therefore, both the CGC’s denial of the initial ratification and the request for reconsideration was within its jurisdiction and reasonable.

**LEPINE:**

16. I have had the benefit of reading my colleagues’ decision with respect to this appeal, and while I agree with their result, I am unable to fully agree with the reasoning. I agree that the appropriate standard of review is reasonableness, and that the decision in this case was reasonable. I reach the latter conclusion by a different approach.
17. There are several requirements that a club must demonstrate in order to be ratified as a USC club. Three of these requirements are laid out in s.2.04 of the USC’s Procedure for Ratification. As my colleagues have already recorded the section in its entirety, I will reiterate only that a club must demonstrate uniqueness and distinctiveness (s.2.04(i)); significant student interest (s.2.04(ii)); and autonomy from external organizations (s.2.04(iii)). Other requirements exist in the various clubs policies – see *Bicycle Safety Awareness Club v CGC*; *Western Ski and Snowboard Club v CGC*, April 2017:3.
18. Where a club has satisfied all of the requirements, the CGC must ratify the club. This imperative is taken from the wording of s.4.01 of the CGC Terms of Reference, which states that the CGC “shall ... (1) ratify qualified organizations as USC clubs”. There is no scope for discretion in this wording. I am therefore unable to agree with my colleagues that the CGC has discretion in determining whether an organization may be ratified as a USC club (see para 12, above). Where the CGC has discretion in decision-making, this power is written explicitly: for example, in the Club Hearings and Sanctioning Procedure, s.4.01, the CGC is given power to sanction clubs “**as deemed appropriate** by the Clubs Governance Committee” (emphasis added). In s.4.04 of the same procedure, the CGC is given the power to “at its **sole discretion**, sanction a club. Sanctions may include, but **are not limited to** ...” (emphasis added). The absence of similar permissive language in the CGC Terms of Reference s.4.01 leaves me unable to conclude that such discretion exists.
19. Despite this finding, I agree that the CGC’s initial decision to reject the WISC’s application was reasonable. The reason given – that the University already provides similar services to international students – speaks clearly to the requirement of uniqueness and distinctiveness in s.2.04 of the Procedure for Ratification. In its denial of the WISC’s request for reconsideration, the CGC reiterated that the University offered many programs catered towards international

students. Despite the WISC's attempt to respond to this issue in the request for reconsideration, I find the additional information given by the club to be insufficient. The CGC was reasonable in continuing to rely upon the failure to meet the uniqueness and distinctiveness requirement in denying ratification to the WISC.

20. For these reasons, I agree with my colleagues that the appeal should be dismissed.

**PART V: DISPOSITION**

*The appeal is dismissed.*