



Judgment of the USC Appeals Board in the matter of:

Western Cultural Dance Company v Clubs Governance Board, 2024:4 Clubs

Hearing Date: February 7, 2024 (Written Submissions Only)

Judgment Released: February 13, 2024

Panel: William Fawcett (Chair), Stephen Warner, David Vallillee

Reasons: Vallillee (Fawcett, Warner)

PART I: INTRODUCTION

1. This is an appeal of a decision by the Clubs Governance Board (“**CGB**”) to deny the application for ratification submitted by Western Cultural Dance Company (the “**Club**”).
2. On the consent of the parties, this appeal was heard by written submissions only.
3. For the following reasons, the appeal is dismissed and the decision of the CGB is upheld.

PART II: FACTS

4. The Club submitted an application for ratification as a USC club in accordance with the *Clubs Ratification Procedure* (the “**Procedure**”).
5. On January 15, 2024, the CGB provided the Club with its notice of ratification decision (the “**Notice**”), in which the CGB indicated that it found the Club was not suitable for ratification

because the Club failed to demonstrate that it had a feasible model of operations, contrary to section 2.5.1 of the *Procedure*.

6. The Notice also included a paragraph devoted to duplication of services.

7. The CGB has since clarified that the language regarding duplication of services was included with all notice of ratification decisions. Duplication of services was not an issue in this matter.

8. The Club appealed the Notice under section 5 of the *Procedure*.

PART III: ISSUE

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

PART IV: SUBMISSIONS

The Club's Submissions

10. The written submissions received from the Club were passionate and articulate. They responded to the CGB's decision to deny ratification on the basis that the Club did not meet the standard set out in section 2.5.1 of the *Procedure* (regarding feasibility). They also sought to draw a distinction between their club and other clubs on campus, thereby addressing section s. 2.4.6 of the *Procedure* (regarding duplication of services).

11. As stated above, duplication of services was not an issue on appeal, and so these reasons will focus only on the Club's submissions related to feasibility.

12. The Club's position regarding its feasibility appears to be two-fold. First, they argue that the materials submitted to the CGB during the ratification process did, in fact, demonstrate feasibility and that it was unreasonable to conclude otherwise. Second, the Club seems to argue

that they have expanded their membership since the initial ratification process and that, as a result, they are *now* a feasible operation.

13. In support of their position that the club demonstrated feasibility during the ratification process, the Club essentially made the following assertions: (a) past events were successful; (b) the “existing operational approach operates independently and without external funding”; (c) the group was invited to compete in “the largest Collegiate South Asian dance competition in Canada”; (d) they have the ability to “organise logistics and funding”; and (e) they have a full team of choreographers and executive staff with clearly defined duties and responsibilities.

14. However, the Club also acknowledged that their proposed budget, as submitted during the ratification process, left them without any profit. In response, they submit that their membership has expanded since “the initial ratification process” and they have also garnered “high non-member interest”. The Club appears to argue that this indicates that they can *now* operate in a financially feasible manner, or that they can *certainly* operate in a financially feasible manner.

15. I have interpreted the submission summarized in paragraph (14), above, to have been made in the alternative and without prejudice to the Club’s position that they were feasible from the start (i.e., during the ratification process).

16. I would also like to point out that the Club has not expressed (or, at least not clearly expressed) the argument that their current success in recruiting additional members, and garnering non-member interest, is itself evidence that their original plan was feasible all along. If the Club is advancing that argument, that argument fails. Any *ex post facto* success of a club since the denial of ratification should not impact the Appeal Panel’s assessment of the reasonability of the CGB’s initial ratification decision. The CGB cannot be expected to make decisions with a crystal ball and

we must assess the reasonability of their decision based on the information before the Board at the time.

The CGB's Submissions

17. The CGB's written submissions were very thorough, articulate, and cogent. They made clear to the Appeal Panel that the CGB considered the Club's feasibility in a thoughtful, in-depth, and meaningful manner. The CGB considered revenue and expenditures and reproduced those numbers, with commentary and supplemental evidence, in their written submissions to the Appeal Panel.

18. The CGB examined the Club's proposed revenue sources and pointed the Appeal Panel to the fact that the Club's budgeting assumptions included 100% attendance and fee payment at each of their events. The CGB submitted that this was not feasible, stating that it is very rare for any club to have 100% participation at their events. The CGB also observed that 100% participation could only be achieved if participation was mandatory. They pointed the Appeal Panel to the fact that mandatory participation is not permissible.

19. The CGB examined the Club's expenditures and noted the following in their written submissions: (a) the proposed price of costumes was "strikingly low at \$10 per costume" and that a search of costume prices online yielded prices between \$50 and \$100; (b) the proposed venue costs did not accord with the reality of booking fees at various on-campus venues, as researched by the CGB when considering the Club's feasibility; and (c) the proposed technology costs were "extremely low" and that the Club neglected to account for the cost of set up, take down, technician fees and security.

20. In addition to the written submissions, the CGB provided the Appeal Panel with copies of a schedule of university room rental fees, a schedule of labour rates and standard event charges for USC affiliated groups, email correspondence regarding room reservations, and other materials related to their feasibility investigation. These materials provide further evidence of the CGB's good faith efforts to assess the feasibility of the Group.

21. In sum, the CGB submitted that the Club "inflated their potential revenue" and also "underestimated their costs". As a result, the CGB decided that the Club's budget was not feasible and denied them ratification on the basis of section 2.5.1 of the *Procedure*.

PART V: ANALYSIS

22. The CGB has significant discretion with respect to the ratification of proposed student clubs (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 20).

23. In an appeal of a decision by the CGB not to ratify a club, the role of the Appeals Board is to ensure both the presence of fairness in the decision making process and the adherence to the relevant policies and by-laws. The discretionary power to determine whether a proposed club should or should not become a part of the USC community is ultimately within the purview of the CGB. The Appeals Board does not determine whether any proposed club deserves ratification, as this lies beyond the scope of an appeal to the Appeals Board (*Western Clay Club v Clubs Governance Board*, 2023:6 Clubs, para 14).

24. Regarding the merits of a decision by the CGB not to ratify a club, the Appeals Board will look to see whether the CGB's decision was reasonable based on the material that was before it at the time that the decision was reached (*AIM to Educate Western v Clubs Governance Board*,

2022:1, para 32). The Board must determine if the CGB's decision was transparent, justified, and intelligible and fell within a range of acceptable and defensible outcomes (*AIM to Educate Western v Clubs Governance Board*, 2022:1, para 25).

25. The CGB's decision to deny ratification was reasonable, transparent and justified. It was reasonable for the CGB to find that a proposed budget which relied on 100% attendance at revenue generating events was not feasible. It was also reasonable for the CGB to determine that the Club's costume, room rental, and technology costs were underestimated. The underestimation of costs and overestimation of revenue led the CGB to conclude that the Club was not feasible, and that decision was reasonable.

26. The Club, for their part, put forward submissions which were largely aspirational and which failed to demonstrate feasibility with requisite certainty. For example, the Club's boasts about previous events and invitations to dance competitions, while indeed accomplishments to be proud of, were not put forward with any concrete "dollars and cents" evidence. Subjective self-assessments of one's own success as a club does not present a decision maker with certainty of evidence needed to inform a feasibility assessment. In any case, it is not for the Appeal Panel to make a feasibility assessment, but rather to determine if the CGB's feasibility assessment was reasonable. It was.

27. Finally, the Club's argument, apparently in the alternative, that they *now* have increased membership and interest which solidifies their feasibility must be rejected on the basis that the Appeal Panel's consideration of the CGB's decision is based on the information before the CGB at the time. The feasibility of the Club cannot be considered *de novo* before the Appeal Panel

today, and their purported *ex post facto* success should not be interpreted as evidence that their original proposal to the CGB was feasible from the start.

28. Of course, should the Club seek ratification during any future application cycles, it is at liberty to incorporate any such success into any budget it may submit as part of such an application.

PART VI: DECISION

29. For the reasons laid out above, the Appeal Panel has determined that:

- a) the appeal of the Western Cultural Dance Company is dismissed; and
- b) the decision of the Clubs and Governance Board to deny ratification of the Western Cultural Dance Company is upheld.

D. Vallillee

W. Fawcett

S. Warner