



Judgment of the USC Appeals Board in the matter of:

Western Academic Athlete v Clubs Governance Board, 2024:6 Clubs

Hearing Date: February 13, 2024

Judgment Released: February 20, 2024

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

Reasons: Warner (Fawcett, Vallillee)

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 Academic Athlete (the “**Club**”).
2. For the reasons that follow, I would deny the appeal and uphold the CGB’s decision.

PART II: FACTS

3. The Club submitted an application for ratification as a USC club in accordance with the *Clubs Ratification Procedure* (the “**Procedure**”).
4. On January 15, 2024, the CGB provided the Club with its notice of ratification decision (the “**Notice**”), in which the CGB found that the Club was not suited for ratification on account of section 2.4.6 of the *Procedure*, which requires that clubs “cannot duplicate a service already provided by the USC or Western University.”

5. For greater clarity, the “service already provided by the USC” that the CGB indicated for the purposes of section 2.4.6 was the service offered by USC-ratified club Western Strength. As I will explain later in these reasons, the CGB has the authority to consider whether a prospective club duplicates the service provided by an existing club, notwithstanding that on the face of section 2.4.6 such authority is not obvious.

6. The CGB also denied ratification to the Club on the basis of section 2.1.6, which requires that a prospective club submit four (4) events as part of its application. The CGB read in a requirement to section 2.1.6 that those four (4) events be “unique.” As I explained in *Western Students Offering Support v Clubs Governance Board*, 2024:2 Clubs, the CGB’s interpretation of section 2.1.6 was unreasonable. This ground of the CGB’s decision is therefore unreasonable and this Board did not hear arguments on it.

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

PART III: ISSUE

8. The issue is whether the CGB’s decision not to ratify the Club based on section 2.4.6 of the *Procedure* was reasonable.

PART IV: SUBMISSIONS

9. The Club made three principle submissions.

10. First, while there was some overlap between its mandate and the mandate of Western Strength, this overlap was not sufficient to demonstrate duplication. To this end, the Club submitted that Western Strength was focussed on experienced weightlifters, especially powerlifters, while the Club focussed on weightlifters of any experience, explicitly including novices. The Club’s representative indicated that, having previously attended club events hosted

by Western Strength, he did not find that the content or atmosphere of the events was suitable for or welcoming to novice weightlifters. As further evidence, the Club pointed to its focus on providing both weightlifting and broader health and nutrition-related events, not just weightlifting events.

11. Second, the Club submitted that even if there was duplication between the two clubs based solely on the written text of their materials, Western Strength was not in actual fact providing the services that it purported to be providing on paper, leaving a gap that the Club could slot themselves into.

12. Finally, the Club submitted comments from a post on the r/uwo community on reddit.com purporting to support the concept of the Club's mandate.

13. For its part, the CGB submitted that, on the face of the Club's submitted written materials, there was sufficient duplication between the Club and Western Strength to warrant a decision not to ratify the Club. Specifically, the CGB pointed to the fact that both clubs' mandates identified a focus on both weightlifting and whole health nutrition, as well as providing events geared toward both experienced and novice weightlifters.

14. With respect to the Club's submission asserting that Western Strength has not in fact been living up to the mandate it was ratified to pursue, the CGB submitted that a student is free to submit a complaint to the USC pursuant to section 2 of the *Clubs Hearing and Sanctions Procedure* (the "**Hearing Procedure**"). The CGB submits that one possible outcome of such a complaint could be a requirement that Western Strength revise its mandate. If Western Strength were to revise its mandate such that it expressly focussed on powerlifting, there may not be duplication between the Club and Western Strength. However, without such a complaint being made, the CGB submits

that it cannot independently investigate whether Western Strength's current mandate accurately reflects its actual activities.

PART V: ANALYSIS

15. 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).

16. In an appeal of a decision by the CGB not to ratify a club, the role of this Board is to ensure both the presence of fairness in the decision-making process and adherence to 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. This Board does not determine whether any proposed club *deserves* ratification, as this lies beyond the scope of an appeal to this Board (*Western Clay Club v Clubs Governance Board*, 2023:6 Clubs, para 14).

17. Regarding the merits of a decision by the CGB to not ratify a club, this 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). This 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).

18. With respect to the question of the applicability of section 2.4.6 to the Club, I would highlight the decision of this Board in *Speak Western v Clubs Governance Board*, 2024:5 Clubs in which my colleague, the Chair, explained the authority by which the CGB can, as part of its

decision to ratify a proposed club, consider whether the proposed club duplicates the services offered by an existing USC-ratified club.

19. In particular, I would quote with approval the following excerpt from paragraph 29, which helpfully summarizes the relevant considerations before the CGB when determining whether a prospective club would duplicate an existing USC-ratified club:

This review of the past decisions of this Board illustrates two things. First, where there is clear and significant overlap between a prospective club and an existing club, community group, or locally available service, a prospective club is likely to be found to be duplicative. Second, where a prospective club is able to distinguish itself in a meaningful way from its comparators, the fact that there is some duplication will not be grounds to deny ratification. What is sufficient for a prospective club to distinguish itself from its comparators in a meaningful way will be dependent on the facts of each case.

20. As such, the relevant question with respect to the Club's appeal is whether the CGB can demonstrate that there is a clear and sufficient overlap between the Club and the duplicate club that the CGB identified in its Notice, and whether the Club can meaningfully distinguish itself from that same duplicate club.

21. Before assessing this issue, I will pause briefly to discuss the Club's submissions regarding supportive comments from reddit.com. While I appreciate that, in providing these comments to the Board, the Club sought to demonstrate that "students ... believe the need for a general health and fitness club is mandatory to have on campus," they are of no help with respect to whether the CGB was reasonable in concluding that the Club would duplicate Western Strength. The issue to be decided is not whether the Club has support among the Western student body; the issue is whether there is a clear and significant overlap between the Club and Western Strength.

(1) It was reasonable for the CGB to find that Western Academic Athlete was duplicative of Western Strength

22. In this case, the CGB identified Western Strength as an existing USC-ratified club that the Club would be duplicating if ratified, and so the relevant exercise for this Board is to determine whether the CGB was reasonable in concluding clear and significant overlap between the mandate of the Club and Western Strength.

23. The CGB grounded its finding of duplication in both the mandate of the Club and in the events the Club proposed to hold.

24. Turning first to the issue of mandate, it is helpful to reproduce the Club's mandate in full [with emphasis added for ease of reading only]:

Objectives and Goals of the Club:

- To bring fitness and health to Western's community regardless of where you are in your journey
- To inform club members of proper nutrition, recovery, and training information through the use of professionals
- To create a safe and inclusive space for all people interested in fitness and health to ask questions and improve their lifestyle
- To create a community that understands that health and fitness are a vital aspect of a healthy life

Strategies for attaining the objectives and goals of the club:

- Usage of social media to bring awareness to the club and its events
- To create a community that encourages others and themselves to begin and/or continue their fitness journey
- To host events related to health and fitness to provide the necessary resources and information to develop, progress, and elevate a person's fitness

A vision statement articulating how the club will benefit the student experience of students at Western University:

- To bring inspiration, fitness, community and health to all students at the University

25. From this mandate, it can be seen that the Club's focus is on "fitness and health," that it is targeting people interested both in "beginning [or] continuing their fitness journey," with an

emphasis on “proper nutrition, recovery, and training information.” I do not take either the CGB or the Club to dispute this characterization.

26. The CGB pointed to the following excerpts from Western Strength’s mandate as demonstrative of duplication both with respect to what I would describe as the “fitness and health” component of the Club’s mandate, as well as the Club’s openness to those of any skill.

- a. “Western Strength is a friendly, active community built around all things fitness and nutrition.”
- b. “Whether you are a seasoned powerlifter or just beginning your fitness journey, our network of athletes will be there to support you in becoming stronger in every sense of the word.”

27. It was reasonable to infer from this language that there is overlap in mandate. Both mandates refer to both the training aspects of weightlifting and broader concepts related to health and nutrition. Additionally, both mandates explicitly refer to supporting students who are experienced at lifting weights or who are interested in starting.

28. Turning next to the Club’s events, the Club’s application material included a number of what the CGB characterised as “information sessions,” which included a health and fitness speaker series and a nutrition workshop. The Club’s event descriptions, a required component for ratification, are comprehensive and well thought-out. Unfortunately, this is not relevant in assessing whether those events are duplicative.

29. The CGB submitted that the Club's proposed events were duplicative of Western Strength's existing mandate, which noted that "[w]e host various social events, intercollegiate competitions, and **educational workshops** [emphasis added] for all members to enjoy."

30. When assessing duplication, the CGB cannot ask itself whether the proposed club might offer the services in question *better* than an existing club. It must merely ask itself whether an existing club already offers the services being proposed by proposed club. It was therefore reasonable for the CGB to infer that the Club's information sessions would be duplicative of Western Strength's educational workshops.

31. As such, it was reasonable for the CGB to not ratify the Club on the basis of section 2.4.6 of the *Procedure*.

S. Warner

W. Fawcett

D. Vallillee