



Judgment of the USC Appeals Board in the matter of:

AIM to Educate Western v Clubs Governance Board, 2022:1

Hearing Date: June 7, 2022

Judgment Released: June 16, 2022

Panel: William Fawcett (Chair), Misha Apel, Sean Molnar

Reasons: Fawcett (Apel, Molnar)

PART I: INTRODUCTION

1. This is an appeal from a decision by the Clubs Governance Board (“**CGB**”) not to ratify AIM to Educate Western (“**AIM**”) as a student club within University Students Council (“**USC**”) clubs system.

2. For the reasons below, this Board finds that the CGB’s decision was reasonable. The appeal is denied without prejudice to AIM reapplying for ratification during the next club ratification cycle.

PART II: FACTS

3. AIM applied for ratification during the spring 2022 ratification cycle. As part of its application, it provided the CGB with an application package including, at least, a written statement, a description of four proposed events, and a budget. These documents were in evidence before this Board.

4. If AIM submitted with its application package the executive list, constitution, membership list, and external affiliation form required under section 2.01 of the *Club Ratification Procedure* (“**Procedure**”), this was not communicated to this Board. However, for the purposes of this appeal, nothing turns on whether these additional documents were provided as part of the application package or not.

5. On April 13, 2022, the CGB informed AIM that its application for ratification was not approved. In its correspondence, the CGB referenced section 2.04(4)(iii)(a) of the *Procedure*: “A club’s sole mandate or purpose should not be to fundraise and/or support a specific charity.”

6. AIM exercised its right under section 5.01 of the *Procedure* to request reconsideration. AIM made its request by email, in which it indicated that it was “so much more than fundraising.” A copy of the text of this email (“**Reconsideration Email**”) was part of the evidence before this Board.

7. On April 28, 2022, the CGB informed AIM that, upon reconsideration, its application for ratification was still not approved. In its correspondence, the CGB referenced sections 2.04(4)(i) and 2.04(4)(iii)(c) of the *Procedure*: “Duplication of services with groups and/or services that exist in some capacity on Western University’s campus or in the city of London, Ontario will be critically reviewed” and “A club’s mandate or purpose should be unique and distinct to existing clubs in the USC club’s [sic] system.”

8. It is this reconsideration decision from which AIM now appeals.

PART III: ISSUE

9. Before this Board, an appellant may seek to challenge the procedure by which the decision on appeal was reached, the substance of that decision, or both.

10. There were no procedural fairness issues raised. This appeal focussed on the substance of the CGB's decision not to ratify AIM as a student club within the USC clubs system.

11. Notwithstanding this Board's decision in *Ski and Snowboard Club v Clubs Governance Board*, 2021:1, this Board will continue to apply its longstanding practice of reviewing decisions on appeal on the standard of reasonableness. This was communicated to all parties on May 12, 2022.

12. The issue before this Board is whether the CGB's decision not to ratify AIM as a student club within the USC clubs system was reasonable.

PART IV: SUBMISSIONS

13. In its submissions, AIM emphasized its desire for a fully informed decision to be made with respect to its application for ratification, and it stressed that it had not violated the relevant sections of the *Procedure*.

14. Specifically, AIM emphasized that its intended purpose was to highlight education for all, not simply underprivileged children in India. Although one of its goals is fundraising, this is not its sole purpose. Instead, AIM seeks to raise awareness, although it admits that fundraising is related to this goal.

15. In its submissions, AIM emphasized the events and activities it had held and which it planned to hold that were not focussed on fundraising, e.g., speakers panels and a peer leadership program. It also emphasized that, although other southeast Asian clubs could engage in fundraising and education activities, these were not the primary focus of these other clubs. Accordingly, AIM submitted that it was unique.

16. The CGB's submissions focussed on challenges with AIM's application for ratification. For example, the CGB indicated that it did not understand what club members would do outside of fundraising, as the events AIM indicated it intended to hold, such as the speaker series, would be open to all students. The CGB indicated that other charity-affiliated student clubs engaged in fundraising but also provided their own programming specifically for their members. The CGB was unclear as to what programming AIM intended to provide specifically for its members.

17. Additionally, the CGB indicated that AIM's strong affiliation with an outside organization, AIM for Seva, raised red flags. Other clubs with external affiliations outline in their proposals the boundaries between their club and the affiliated organization, which includes, *inter alia*, details about how the student club remains separate from the external organization and maintains its own identity as a student club as well as details about where liability falls with respect to events. AIM's application did not include such information.

PART V: ANALYSIS

18. Section 2.04 of the *Procedure* is not felicitously worded. It begins with the phrase “[a]n organization must be able to demonstrate”, which is followed by four enumerated items: (1) uniqueness and distinctiveness, (2) significant student interest, (3) autonomy, and (4) “the CGB will use its discretion with the following [nine] subjects”.

19. Grammatically section 2.04 is unclear. The first three items appear to be intended to be criteria that need to be demonstrated in order to qualify for ratification, but the fourth item, with its nine enumerated sub-items, cannot, as written, be a criterion to be demonstrated. Rather, the fourth criterion appears to address factors with respect to which the CGB is directed to exercise some discretion.

20. However, what is clear from section 2.04 is that broadly speaking the CGB is to have significant discretion with respect to the approval of proposed student clubs, even if the criteria of uniqueness and distinctiveness, significant student interest, and autonomy are met. This discretion afforded to the CGB is repeated in the section of the *Procedure* titled “proposed mandate”, which indicates that “[t]he CGB will continue to use its discretion in new club applications and does not limit itself to these subjects as potential reasons for denial.”

21. The reason for this discretion is explained by the section of the *Procedure* titled “proposed mandate”, which indicates that the CGB receives more than eighty-five club applications per year and that there is a “potential shortage of resources and space on campus” should a sizeable number of new clubs be ratified in any year.

22. During questioning, the CGB indicated to this Board that this year there were approximately sixty-five to seventy clubs that applied for ratification, of which thirteen were ratified. It is clear that far more potential clubs apply in a single year than the USC can realistically ratify.

23. Regrettably, the *Procedure* does not appear to make explicit what factors the CGB is to take into consideration when exercising its discretion. For example, the *Procedure* directs that

duplication of services is to be critically reviewed, but on what basis that critical review is to be carried out is not made explicit.

24. During questioning, the CGB indicated to this Board that in exercising its discretion it considers what would be most beneficial to the Western student community as a whole. This appears to be the CGB's longstanding practice, and, while this factor is not made explicit in the *Procedure*, it is consistent with the *Procedure*'s overall tenor. In the absence of explicitly identified factors, which would be preferable and which may help avoid confusion among prospective clubs that are denied ratification, it is reasonable that the CGB has adopted this factor in its consideration.

25. Given this context, and given the history of this Board's prior decisions, the CGB's decision is entitled to deference. This Board must determine if the CGB's decision fell within a range of acceptable and defensible outcomes. The decision must be transparent, justified, and intelligible; see, for example, *Western Fantasy Sports Club v Clubs Governance Committee*, 2019:4 at paragraphs 7 – 8 and 11.

26. In this case, the CGB's decision not to ratify AIM as contained in its April 28, 2022 correspondence is transparent, justified, and intelligible.

27. That decision relied on the provisions of the *Procedure*, which are identified above, that provide for greater scrutiny when there is duplication of services with groups at the University of Western Ontario or in London, Ontario.¹

¹ Notably, the CGB did not expressly rely on section 2.04(1) of the *Procedure*, which is the criterion of uniqueness and distinctiveness, in its decision not to ratify or in its submissions before this Board. Instead, it relied on sections 2.04(4)(i)(b) and 2.04(4)(ii)(c). Accordingly, the interrelationship between 2.04(1), which appears to establish

28. In its written statement that was submitted as part of its application for ratification, AIM indicated that “[n]umerous local organizations perform similar work that [it] hope[d] to form close relationships with and create partnered initiatives to further educate and empower youth in London.” AIM also indicated that it had “connected with various clubs on the Western campus, such as WICSA, to spread awareness of [its] cause and gain a better following within the South Asian community.”

29. In the Reconsideration Email, AIM indicated that part of its mission involved “collecting donations that [it] would send to an organization in London that has similar goals”, and it indicated an intention to “collaborate with a South Asian club already existing on the Western campus”.

30. The CGB’s conclusion that AIM would duplicate services with groups on Western’s campus and in the London community was supported by the material that was before the CGB when it reached its decision. Under the terms of the *Procedure*, this attracted heightened scrutiny, which, given the concerns expressed more clearly by the CGB in its submissions as described above, led to the justifiable decision not to ratify AIM based on the CGB’s discretion to consider what would be most beneficial to the Western student community as a whole.

31. In questioning before this Board, AIM admitted that its written statement may have been misleading in the way that it was framed and that, on one interpretation of this document, there could be seen to be overlap between AIM and other London groups. AIM admitted that, if it could submit its application again, it would be better able to demonstrate its distinctness.

distinctness as a firm criterion, and 2.04(4)(i)(b) and 2.04(4)(ii)(c), which provide the 2.04(4)(i)(b) and 2.04(4)(ii)(c) with discretion when there is duplication, was not raised or addressed on this appeal.

32. This appeal is not an opportunity for AIM to better demonstrate its distinctness. To allow this would be unfair to the CGB and would, in effect, result in the Board usurping the role of the CGB. Instead, this Board looks to see whether the decision reached by the CGB was reasonable based on the material that was before it at the time that the decision was reached.

33. This Board was impressed by the clarity and thoughtfulness of AIM's submissions regarding its distinctness. However, the proper venue for demonstrating AIM's distinctness is before the CGB during the next ratification cycle, where, presumably, AIM will be able to refine its application in light of the various issues identified by the CGB on this appeal.

W. Fawcett
M. Apel
S. Molnar

34. In my role as Chair of the Appeals Board, the following remarks are mine alone.

35. By email dated May 18, 2022, I indicated to all parties that written submissions were due by 5:00 p.m. on May 25, 2022.

36. AIM submitted its written submissions ahead of the deadline on May 24, 2022. The CGB did not attempt to submit its written submissions until May 26, 2022, at which time it failed to attach the correct document to its email – the CGB attached AIM's written submissions to its email. This was not corrected until the following day.

37. By email dated May 18, 2022, I indicated to all parties that the oral hearing would take place at 7:00 p.m. on May 31, 2022. This was reiterated in my email of May 27, 2022 in which the Zoom contact information for the oral hearing was provided.

38. The CGB failed to attend the oral hearing on May 31, 2022. No notice was given to the Board or to AIM that the CGB would not be attending. The Board and AIM waited until approximately 7:30 that evening to see if the CGB would be in appearance.

39. On June 1, 2022, the CGB apologized for its failure to attend, indicating that an “urgent live media request” had arisen and that the CGB’s representative was required to “provide communication support” in connection to this. No explanation was given as to why this urgent request precluded the CGB from taking the simple step of notifying the Board and AIM that it would not be able to attend. Nor is it clear what “communication support” was required and why CGB’s representative was apparently the only individual capable of providing it.

40. While the CGB’s actions in this case did not create a situation in there was procedural unfairness requiring the intervention of this Board, it is possible that failures to meet deadlines or to appear for hearings could create such a situation in the future. As noted above, procedural unfairness is one ground on which an appeal may be allowed.

41. For justice to be done, it must be seen to be done. This Board expects that the USC bodies whose decisions may be appealed to this Board – namely the CGB and the Elections Governance Committee – will lead by example in how they conduct themselves before this Board. It is regrettable that this did not happen in this matter.

42. These bodies should be aware that, in rare circumstances, similar actions in the future could be grounds on which an appeal may be allowed. It would be preferable not to allow such circumstances to arise.

W. Fawcett