



Judgment of the USC Appeals Board in the matter of:

Sending Sunshine Western v Clubs Governance Board, 2024:13 Clubs

Hearing Date: April 22, 2024

Judgment Released: May 4, 2024

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

Reasons: Fawcett (Warner, 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 Sending Sunshine Western (“**SSW**”).
2. On this appeal, there is insufficient evidence before the Appeals Board to support the CGB’s decision. Therefore, the Appeals Board grants this appeal and returns the application for ratification to the CGB for reconsideration in light of these reasons.

PART II: FACTS

3. SSW is a club that intends to connect Western students with seniors through two main activities: (i) organizing the writing of cards from club members to seniors, and (ii) organizing days where club members can volunteer to visit seniors. The aim of the club is to bring cheer to seniors, although SSW also intends to form a tight-knit community among its members and improve its members’ own well-being through this volunteer work.

4. On March 5, 2024, the CGB denied SSW's application for ratification, citing an alleged violation of section 2.4.6 of the *Clubs Ratification Procedure*. Specifically, the CGB claimed that SSW duplicated services offered by other Western programs: Seniors in IT and Western Orientation Serves.

5. It is from this decision that SSW appeals.

PART III: ISSUE

6. Through the course of this appeal, the CGB has agreed that there is no duplication between Seniors in IT and SSW. The CGB has also agreed that, as Western Orientation Serves is a one-time event during orientation week, overlap between the SSW and events held through Western Orientation Serves would not rise to the level of duplication that would preclude ratification.

7. Instead, the issue identified in the written submissions, and the manner in which this appeal was argued in oral submissions by both parties, was whether there was duplication between SSW and both Western Serves and Community Engaged Learning ("CEL"). It is this issue that will be addressed below.

PART IV: SUBMISSIONS

8. The CGB submits that Western Serves is the continuation through the academic year of Western Orientation Serves, which takes place only during orientation week. The CGB believes that the card decorating and letter writing activities that occur as part of Western Orientation Serves, which are described more fully below, carry on through the academic year and SSW's activities would be duplicative of this.

9. The CGB also submits that there are opportunities for students to volunteer to visit seniors through CEL.

10. With respect to Western Serves, SSW submits that there is no evidence that the letter writing and card decorating activities carry on throughout the academic year beyond orientation week. With respect to CEL, SSW submits that it believes there are limited spots for students in CEL, and any volunteering that occurs through CEL is coloured by the goal and aims of the specific course in which the student volunteers are enrolled.

PART V: ANALYSIS

a. The Framework for Appeals Regarding Decisions not to Ratify

11. 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).

12. 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).

13. 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).

b. Overview of the Issues on this Appeal

14. This appeal highlights a challenge that arises from time to time in appeals before the Appeals Board. Unlike an appeal in the judicial system, there has not been a trial where the evidence has previously been marshalled and tested and a fulsome trial record has been generated. Instead, the evidence before the Appeals Board is often sparse.

15. Most of the time, this is of not concern because most appeals before the Appeals Board do not require extensive evidence to be decided, and the evidence substantiating the necessary facts is to be found in the materials submitted by the parties. However, that is not the case here.

16. On this appeal, the issue to be decided is whether SSW would duplicate services offered through Western Serves and through CEL. Insufficient evidence has been provided for the Appeals Board to conclude, one way or the other, whether there is such duplication. As that evidence has not been placed before the Appeals Board, we conclude that this evidence was not before the CGB when it reached its decision. Accordingly, we find that the CGB's decision not to grant ratification to SSW was unreasonable because it was not supported by evidence before the CGB.

c. First Issue – There is Insufficient Evidence to Establish Duplication with Western Serves

17. Dealing first with Western Serves, there is no dispute that Western Orientation Serves includes two activities that are similar to the card writing program that SSW intends to carry out.

The website for Western Orientation Serves¹ indicates that the Faculty of Science offers an opportunity for volunteers to “write and decorate a card for Seniors with Skills” and King’s University College invites volunteers to “join us as we write letters to residents and staff in local retirement homes [...] to brighten some other people’s days”.

18. The CGB’s representative advises that he was told that activities from Western Orientation Serves carry on throughout the academic year through Western Serves.² However, while it is clear that Western Serves generally carries on the goals of Western Orientation Serves – or, perhaps more accurately, Western Orientation Serves provides freshmen students with an exposure to Western Serves – there is no direct evidence that either the letter writing or the card decorating activities continue throughout the academic year. Indeed, the evidence that has been submitted calls this into question for at least two reasons.

19. First, a review of the Western Orientation Serves website indicates that other activities that formed part of Western Orientation Serves appear to have been one-off events. For example, one event is described as “a day of planting pollinator plants behind Thames Hall and cleaning up our river”. It is unclear that there would be more days scheduled for planting pollinator plants in the same location throughout the year. Another event is described as “a day of creating handmade pins to make awareness of HIV/AIDS” with all pins being donated to a specified charity. Another event is described as “a day of decorating kites, making slinky sticks for children, painting wooden faces

¹ See http://cel.uwo.ca/students/local_cocurricular/orientation_serves.html.

² The CGB advises that the March 5, 2024 notice of ratification decision mentions only Western Ontario Serves, and not Western Serves, because of the CGB’s understanding that Western Ontario Serves continues throughout the academic years through Western Serves.

and more”. Another event is an ice cream sale, with a portion of proceeds being donated to a specified charity.

20. If these events are indeed one-off events, as they appear to be, the card decorating and letter writing conducted through Western Orientation Serves may be also be one-off events. In other words, it appears to be the case that the fact that an event is offered as part of Western Orientation Serves does not necessarily entail that the event will carry on throughout the academic year through Western Serves, contrary to what the CGB assumed when reaching its decision not to ratify.

21. Second, SSW advised that there are six events listed through Western Connects for Western Serves, including a mindfulness workshop, a symposium on poverty, and volunteering with the Coldest Night of the Year event. None of the six events related to card decorating or letter writing. The fact that card decorating and letter writing are not listed as Western Serves activities through Western Connects suggests that these activities do not carry on throughout the academic year as part of Western Serves.³

22. In short, if the card decorating and letter writing activities offered as part of Western Orientation Serves carry on throughout the academic year, then SSW’s plan for members to write cards to seniors would *prima facie* be duplicative. However, there is insufficient evidence before the Appeals Board to conclude that these activities do indeed carry on as part of Western Serves throughout the academic year.

³ The CGB postulated that the card decorating and letter writing events may no longer be showing on Western Connect because those activities either had been filled or had been completed for the year. However, as submitted by SSW, the Coldest Night of the Year event occurs in the winter, yet it continues to be shown on Western Connects.

23. If the CGB had additional evidence that would shed light on this issue when it reached its decision, it presumably would have presented that evidence as part of its submissions on this appeal. Accordingly, the Appeals Board finds that the CGB's decision on this issue was not supported by the evidence available to it, and so the decision that the SSW is duplicative of activities offered through Western Serves was therefore unreasonable.

d. Second Issue – There is Insufficient Evidence to Establish Duplication with CEL

24. The evidence presented with respect to CEL on this appeal was even more scant than the evidence with respect to Western Serves. The CGB advised that some members of the CGB were familiar with the program and believed that there were volunteer opportunities with seniors available through that program. The CGB advised that students could obtain course credit with respect to CEL. No further details were provided.

25. During the hearing, the Appeals Board directed the parties to the CEL website.⁴ That website indicates that there were 39 courses that had embedded CEL experiences in the 2022/23 academic year. Most of those are not clearly related to the sort of volunteering proposed by SSW: e.g., Philosophy 2010F (Philosophy of Food), Spanish 1030 (Spanish for Beginners), Chemical and Biochemical Engineering 4413Y (Chemical Engineering in Society), Health Sciences 2700 (Health Issues in Childhood and Adolescents), and Biochemistry 4455E (Community-Engaged Learning and Research Skills in Translational Cancer Biology). It would appear that the course most closely related to the sort of volunteering proposed by SSW is listed on the CEL website as Psychology 3995E (Social Science in the Community).

⁴ See <http://cel.uwo.ca/students/curricular/index.html>.

26. The Department of Psychology's website provides a syllabus for Psychology 3895E (Social Science in the Community).⁵ Notwithstanding the fact that the course numbers do not align, it appears that the course referenced on the CEL website and the course described in the syllabus are the same.

27. The syllabus indicates that the course is open only to those registered in the third or fourth year of a module in the Faculty of Social Sciences, and special permission is required from the course instructor. The course is clearly not available to the broader Western undergraduate community.

28. The syllabus indicates that, for the term covered by that syllabus, the project was to help the City of London move forward with its "Community Diversity and Inclusion Strategy". While presumably other years would focus on other projects – including, potentially, projects involving seniors – there is no indication in the syllabus that students are able to choose outside projects.

29. The syllabus also makes clear that there is a significant class component, and students are expected to complete quizzes and reports and make in-class presentations.

30. Even assuming that volunteering with seniors may be a focus of Psychology 3895E in some years, we find that SSW does not duplicate this CEL course. The course is only available to a subset of Western undergraduates. In some years, the projects do not involve working with seniors, and there is no clear opportunity for students to choose their own projects. Most significantly, participation in the volunteer activity requires that students also enroll in a course requiring them to complete a significant amount of coursework. This is substantially different than the sort of

⁵ See https://www.psychology.uwo.ca/undergraduate/course_outlines/fw2019/3895E-001.html.

volunteering proposed by SSW, which club members would visit with seniors for a few hours from time to time with no additional commitments.

31. Although some CGB members appear to have some familiarity with CEL and those members expressed a view that there was duplication between SSW and CEL insofar as CEL may involve volunteering with seniors, no particulars of this have been provided to the Appeals Board. If those particulars were available to the CGB at the time its decision was reached, those particulars presumably could have been presented on this appeal. Without those particulars, and in light of the evidence addressed above, the Appeals Board finds that the CGB's decision on this issue was not supported by the evidence available to it. Therefore, the decision that SSW is duplicative of activities offered through CEL was therefore unreasonable.

32. On this point, we note further that CEL is not mentioned as a duplicative service in the CGB's March 5, 2024 notice of ratification decision, which does call into question the extent to which the perceived duplication with CEL factored into the CGB's decision at the time the decision was actually made.

e. Next Steps

33. It is the decision of the Appeals Board that SSW's application for ratification shall be remitted to the CGB for reconsideration.

34. On reconsideration, the CGB may reconsider the entirety of the SSW's application, including a consideration of other grounds for denying ratification not addressed in its March 5, 2024 notice of ratification decision (*Speak Western v Clubs Governance Board*, 2024:5 Clubs at paras 52 to 54).

35. For greater clarity, the CGB in this case may also reconsider whether SSW is duplicative of Western Serves and CEL. However, should the CGB wish to reconsider either of these two issues, it may do so only if it obtains additional evidence that was not before the Appeals Board on this appeal. For example, if the CGB obtains evidence that letter writing and card decorating for seniors are activities that do indeed carry on throughout the academic year through Western Serves, it may consider that additional evidence. Likewise, if the CGB obtains evidence that CEL does indeed easily and frequently facilitate students volunteering with seniors in a manner similar to that proposed by SSW, it may consider that additional evidence. That said, these are only hypothetical examples provided as illustrations, and the Appeals Board is not directing the CGB to look for such evidence, is not suggesting that such evidence may exist, and is not limiting what evidence the CGB may look to obtain or consider.

36. If the CGB does obtain new evidence related to either Western Serves or CEL, and if the CGB decides to deny SSW's application for ratification as a result of such new evidence, then its decision letter to SSW must clearly articulate that evidence and provide particulars.

37. Should either party require any additional clarity regarding the reconsideration of SSW's application for ratification, that party may contact the Appeals Board Chair in writing, copying the other party on all such communication.

W. Fawcett

S. Warner

D. Vallillee