

Judicial Board of the Students' Society of McGill University

Newburgh v. Tacoma

Written Reasons: Interpretation of by-laws, Book I-1 *Election and Referenda Regulations*, articles 32.4 and 32.5

13 December 2011

- [1] On December 7th 2011, the Judicial Board accepted to hear the *Newburgh v. Tacoma* petition on its merits. The parties were informed of our decision on the same day.
- [2] Concurrently, we accepted the respondent's request for an extension to prepare her factum until after the fall examination period. We also decided that a preliminary hearing would be held on December 17th at 17:45 at which time proceedings would be stayed until the winter semester.
- [3] On December 9th 2011 the respondent submitted a second motion in which she explains that she will be unable to continue with this petition in any capacity. The respondent suggests that she is being forced to either proceed in an illegal petition, in the winter semester, or neglect her studies during the examination period.
- [4] As per the legality of hearing and adjudicating the petition in the winter semester, the respondent refers to articles 32.4 and 32.5 *By-law I-1 Election and Referenda Regulations*, which read as follows:
- 32.4 Notwithstanding Judicial Board rules of practice or procedure, all appeals arising from elections and referenda shall be heard in the semester that they are launched.
- 32.5 Any case that is not adjudicated during the semester that it is launched shall be deemed moot.
- [5] We agree that no one should be asked to neglect their studies during the exam period. However, we disagree with the respondent's assertion that the relevant by-law articles make hearing or adjudicating the petition in the winter semester "illegal". Our reasons follow.
- [6] The *SSMU Constitution* (Constitution) supersedes any by-laws and procedures. The preamble of the Constitution commits the SSMU to *service, representation and leadership*. The Constitution establishes the Judicial Board as the final authority on the interpretation of the Constitution and by-laws of the Association. In doing so, the Judicial Board is bound to follow the principles of the natural justice, including equity and good conscience (see article 30 of the Constitution).

- [7] Given the special circumstances of the case, we have satisfied the requirements of the by-laws as interpreted in light of the Judicial Board's constitutional obligations. Exceptional factors have made this case impossible to hear in its entirety before the winter semester. Both parties were provided additional time (until December 6th) to argue the admissibility of the petition. The Judicial Board then decided to accept the petition on December 7th (reasons to follow on January 13th, 2012). Because all students are now in exams, we accepted the respondent's request to have more time to prepare. Additional time is also required to provide time for interveners, if any, to provide written submissions. We, nonetheless, scheduled a preliminary hearing for Saturday, December 17th in order to begin hearing and adjudicating the case during the fall semester.
- [8] It is inconceivable that the by-laws were designed to prevent petitioners from being able to have their otherwise lawful petitions heard because of the examination period. The Judicial Board was established to provide students with an opportunity to make substantive complaints about perceived injustices. Therefore, any reading of the by-laws which would prevent the Judicial Board, in this instance, to hear an otherwise admissible case would be in direct violation of the constitutionally protected principle of natural justice.
- [9] The respondent's motion is therefore rejected. The date for the preliminary hearing remains set for December 17th 2011 at 17:45. The deadline for submission of the respondent's factum remains January 17th 2012 at 17:00.

Szajnfarber J (Herbert J, Parry CJ *concurring*)

