

Respondents' Position
Submitted May 6, 2012.

Judicial Board
of the Students' Society of McGill University

BETWEEN

Jade Calver and Victor Cheng

(The Respondents)

AND

Petitioner

Christopher Bangs

RESPONDENTS' POSITION

Advocate for the Respondents: Vladi Ivanov

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Overview

1. The present case concerns the 2012 Arts Undergraduate Society Winter Referendum Period, the results of which were announced to members of the Society on April 13, 2012. The actions of the respondents followed the AUS Electoral bylaws. The actions taken by the respondents did not compromise the integrity of the Referendum Period, nor did they result in the disenfranchisement of the petitioner.

2. The petitioners were proactive in their actions with regard to the petitioner's concerns regarding the validity of the referendum period, and took the necessary steps to ensure the integrity of the elections.

3. The petitioner is ultimately biased in his presentation of this case, given previous communications with the respondents during AUS Elections and in his position as Chair of the "No Committees." His actions both at AUS Legislative Council, and in his communications with the Respondents during the referendum period attest to this fact. Furthermore, his request for the invalidation of simply two of the Referendum Questions exemplifies his inherent bias in the case.

4. The validity of the 2012 AUS Winter Referendum Period is justified. Proper procedures were followed, questions were properly submitted through Legislative Council. Furthermore, Elections feels as though the Referendum Period was properly announced in a way that did not compromise the integrity of the vote, evidenced by the high voter turnout in the referendum period. There were concerted efforts made by the Respondents to respect AUS bylaws.

Statement of Facts

1. The 2012 AUS Winter Referenda Period was originally scheduled to coincide with the 2012 AUS Election period, with voting slated from March 15, 2012 to March 21, 2012. The questions had been passed at AUS Council held on February 15, 2012 (Appendix A-1) by a show of votes, for which the AUS President took as an affirmation of a signature for each question from a majority of councilors. The questions being contested by the Petitioner were sent to all Members of the Society in an email sent by the CRO on March 9, 2012 (Appendix A-2).
2. The Petitioner wrote the AUS President on March 11, 2012 with concerns that these questions had been passed improperly. The AUS President wished to respect the concerns of the Petitioner with regards to transparency of Elections AUS, she thus called for a new referendum period.
3. At the AUS Legislative Council held on March 21, 2012, the Petitioner was present as a member of the gallery. The Petitioner was insistent that the AUS President call for a revote at the Legislative Council, when she motioned to do so, it was overturned by Council, as it was absolutely clear to all Councilors that the questions had passed with a clear majority. The vote was a democratic decision of Council that resulted in the recount being overruled.
4. The CRO contacted the President on April 1, 2012 stating that the Yes Committee statements had not been submitted to the online voting system. The Respondents decided to postpone the vote so that the statements could be included. An e-mail was sent out by the CRO to all members of the society, clearly stating that voting would begin April 9, 2012 at 9am, this e-mail was sent on April 2, 2012 (Appendix A-3).
5. On April 9th, 2012, the CRO sent out an e-mail reminding AUS members of the Society that voting had begun (Appendix A-4). The CRO sent out the time, date and location in this e-

- mail, as stated in his April 2nd e-mail to all Society members. The CRO was transparent in the procedure for the referendum.
6. The Respondents received e-mails from the Petitioner on April 9, 2012, the day that voting had opened. The Respondents failed to respond on the 9th as it marked a day of religious observance for both of the Respondents. The Petitioner was unnecessarily harsh in his emails to the Respondents, as evidenced in his e-mail to the Respondents dated April 10, 2012 (Appendix A-5(1)). The Petitioner also contradicts himself in these e-mails (Appendix A-5(2)).
 7. The CRO responded to the Petitioner's questions explaining that the Referendum had already, in fact been announced, and the reasons for delay in the e-mail announcement. He also explained to the Petitioner that he did not feel in his position of the AUS CRO that the delay had compromised the integrity of the election, and thus decided to continue forward with the Referendum (Appendix A-6).
 8. The Respondents made an effort to meet with the Petitioner to discuss the issue. (Appendix A-7).
 9. The Petitioner responded to the President's aforementioned request at mediation with an ultimatum indicating that he was only available to meet immediately that evening (Appendix A-8). The President found the tone of the e-mail to be threatening in nature, and this chose not to respond.
 10. The Petitioner arrived at the AUS offices a few hours after sending the aforementioned e-mail. Despite being fully aware that the President was unprepared to meet regarding the issue, he insisted on a meeting. The President was not ready for a discussion regarding the issue, as she had not had time to review all correspondence between the Petitioner and the Respondents. Despite this, the President retained the stance of Elections AUS that the Referendum Period was valid. The Petitioner left the offices immediately.

11. The CRO announced the results of the Referendum Period to all of the AUS's members in an email dated April 13, 2012. (Appendix A-9).

Procedures Already Followed

1. The respondents are of the opinion that all other measures for mediation were not respected by the Petitioner; the Petitioner was unwilling to find convenient times to meet with the Respondents to discuss the matter. Furthermore, the Petitioner was set on resorting to the use of the Judicial Board from early in the process. It is because of this that the Respondents now feel it necessary to continue with the Judicial Board process.

Remedy Requested

1. The Respondents request that the Judicial Board of the Students Society of McGill University:
 - a. Deem that there were no serious violations of the Electoral Bylaws of the AUS by the Respondents, and that as a result there was no disenfranchisement of the Petitioner nor AUS members;
 - b. The Judicial Board deem, as a result, that the integrity of the AUS Winter Referenda Period was upheld by elections AUS and is indeed binding.

Reasoned Argument:

The Respondents challenge the validity of the Petitioner's case based on both the biases of the Petitioner vis-à-vis Elections AUS and the Referenda as well as the steps taken by Election AUS to ensure the integrity of the 2012 AUS Winter Referenda.

1. The Respondents argue that the Petitioner is inherently biased in his request that the Judicial Board of the SSMU deem unofficial the polls for the referenda questions "Online Ratification for the decisions of the AUS General Assembly" and "Amending the Constitution". There are several reasons as to why the Respondents believe this to be:
 - a. The petitioners would like to note that the Petitioner was a candidate for the position of AUS President in the AUS Executive Elections, where he lost the vote. The Respondents believe that the submission of the Petitioner's case was fueled by these results, as he associated the Election results with the conduct of Elections AUS.
 - b. The Petitioners would like to note further that the Petitioner was also the Chair of the respective "No Committees" for the question being contested. While this is not reasoning in itself for bias, the Petitioner has failed to challenge the other questions, all of which passed in the recent Referendum Period. The Respondents view this as a blatant reflection of the Petitioner's bias in submitting this case.
 - c. The Petitioner's actions at Legislative Council also made it clear that his motives were fueled by his opposition to the contested questions. The Petitioner was insistent that the AUS President call for a revote at the Legislative Council, merely for the aforementioned questions. When the President motioned to do so, it was overturned by Council, as it was absolutely clear to all Councilors that the questions had passed with a clear majority. The Petitioner's statement that the Speaker refused her request is misleading; it was a democratic decision of Council that resulted in the recount being overruled.

2. The Petitioners also feel that the Bylaw violations of which Elections AUS has been accused by the Petition are for the large part, false and misleading, the evidence put forward by the Petitioner does not accurately represent the actions of the Respondents. The Respondents argue that their actions leading up to, during as post-Referendum period resulted in the retention of the integrity of the AUS 2011 Winter Referendum nor did the serve to disenfranchise the Petitioner.
 - a. The President made a concerted effort to respect the Electoral Bylaws of the AUS, she entertained numerous concerns from the Petitioner regarding Article 6.1 of the AUS Electoral Bylaws. The belief by the petitioner is unwarranted, and his belief of what happened at Legislative Council is ultimately skewed by his aforementioned biases.
 - b. Elections AUS was aware of both violations of Articles 6.2 as well as 6.7. While Elections AUS acknowledges that they are bound to the bylaws, the Petitioner reasons that these decisions result in the undermining the integrity of the polls. These decisions however, were ironically made to uphold the integrity of the polls and enfranchise AUS constituents. It was felt as though the 21-day minimum was too long before voting was to begin, as we had already significantly delayed the vote. A unanimous decision was thus made in order to uphold the integrity of the Referenda by ensuring the highest percentage of student interest. Furthermore, with regard to article 6.7 AUS Elections also deemed the Elections listserv an appropriate student publication, as our statistics showed voter turnout to be the highest when the Listserv was used, the Respondents decision is warranted in that all Society members receive the Referendum announcement.
 - c. With regard to the ratification of questions submitted to referenda in both English and French, the Petitioner is mistaken in his claims, the question, “Amending the Constitution” was ratified in both French and English at the March 21st meeting of AUS Legislative Council. Furthermore, the Respondents would like to note that all questions were available in both English and French during the time of voting for its members.

- d. Article 7.1 was indeed followed, as the campaign period gave significant exposure time for the questions. Furthermore, while the Petitioner argues that this reduced exposure of the Referendum question to Arts members, the Respondents challenge this statement with the high rate of participation in the referendum.
- e. The claim by the Petitioner that articles 9.2 and 9.3 were not following is misleading. As seen in the appendices, the date, time and location of the Winter Referenda Period was sent out to all students in the AUS Elections Listserv. The location of the polls was advertised, as only online voting was available during this period.
- f. The claim that the second Voting Period not being announced is false and misleading, the Petitioner as and AUS member received the e-mail from the CRO stating that the second vote would begin on April 9, 2012. This was sent prior to the CRO's e-mail from the McGill Tribune cited by the Petitioner.
- g. The CRO made available the texts of the concerned motions available to all AUS members in an e-mail containing the announcement of AUS Executive Elections, the claim by the Petitioner that this was not done is false.

Conclusion

The Respondents' action have not in any way served to undermine the integrity of the polls, nor have they restricted the rights of the Petitioner. The supposed "systematic violations of the Bylaws" are unwarranted and in no way affected the validity of the 2012 AUS Winter Referendum.

Furthermore, the motives of the Petitioner are inherently biased in nature for various reasons, which render the Petitioner's case invalid. The Petitioners believe that the motives of the Petitioner are not those of democracy, but rather are fueled by the Petitioner's position on the questions. Should the Judicial Board continue with the case, the Respondents ask that the Judicial Board uphold the validity of the challenged referendum questions.

Appendix

A-1 Excerpt of Minutes for AUS Legislative Council held February 15, 2012.

A councilor: Motion to suspend the rules and allowing for a straw poll.

Straw Poll.

3) Fletcher: Drafted possible referendum question with Calver. Our constitution was amended with a plurality of votes, with the last referendum, and I think this is dangerous. Not necessarily a majority of our students supported this. Constitutions are required to be flexible documents, but not easily flexible. Our document should require a clear majority of vote.

Fletcher: Motion to suspend the rules for a straw poll.

4) Calver: the ASEF already exists as a by-law of the AUS. The last time that this fund was ratified through referendum was 3 years ago; we must pass it through referendum again.

Chung: Have these numbers been adjusted in relation to increase in QC minimum wage?

Calver: No.

Khan: The number of the students who are paying this fund has increased, so this has made up to it.

BASiC: Can you specify that arts and science students pay the same rate as part time students?

Calver: Yes.

JSSA: Is this fee opt-out-able?

Calver: Yes, if the study opts out, they are not eligible for a research position or a work study position.

Calver: Motion to suspend the rules for a straw poll.

Approved.

Straw poll.

A-2 E-mail from the CRO to all Society Members sent March 9, 2012 sent March 9, 2012 at 11:27am.

French Version to Follow

The three 2012 Winter Referendum Questions are attached to this email. Voting for Elections and Referendum Questions will open online on Thursday March 15th at 8 am.

All McGill University Arts and Arts and Science students are eligible to cast their vote.

Ladies and Gentlemen, the Final Candidates for the 2012 AUS Executive Elections are as follows:

Running For President:

Devon Buik, Chris Bangs

Running for VP Academic Affairs:

Shaina Agbayani, Tom Zheng, Ian Gerald King

Running for VP Communications:

Adam Casole-Buchanan, Yasmeen Gholmieh

Running for VP External:

Brian Farnan, Ben Patrick Stidworthy

Running for VP Finance:

Qazi Saad Uddin, Sean Handrahan

Running for VP Internal:

McKenzie Kibler, Justin Fletcher

Running for VP Events:

Agatha Slupek, Josh Greenberg

Running for Arts Representative to the SSMU:

Nicole Georges, Colleen Morawetz, Ryan Mitton, Sean Phipps

A-3 E-mail from the CRO to all AUS Members Indicating the New Voting Date and Time sent April 2, 2012 at 11:33am.

Hello Everyone,

The current Winter Referenda will be invalidated and a new Winter Referendum will begin next Monday April 9th at 9am. The reason for our invalidation is that supporting YES Committee statements have been omitted from the ballots and unfortunately online system is locked at this time to prevent editing. A reminder will be sent out next Monday once we fix this problem.

Best,

--

Victor Cheng

Chief Returning Officer / Directeur Général des Élections

Arts Undergraduate Society | L'Association Étudiante de la Faculté des Arts

McGill University | L'Université McGill

Cell: 514 708 1688

Website: <http://www.ausmcgill.com>

The Arts Undergraduate Society of McGill University is a student association accredited by the gouvernement du Québec. (R.S.Q. Ch.A-3.01)

A-4 E-mail from the CRO to all AUS Members reminding them of the Voting Period sent April 9, 2012 at 6:00pm.

Elections AUS

Polling for the 2012 Winter Referendum is now open. All Arts and Arts and Science students have until 11pm this Thursday to vote at the following link: <https://ovs.ssmu.mcgill.ca/>

Best,

--

Victor Cheng

Chief Returning Officer / Directeur Général des Élections

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A-5 (1) Threatening e-mails received by the Respondents from the Petitioner

Date: April 10, 2012 6:47:32 PM EDT

To: Victor Cheng <mcgillauselections@gmail.com>, <jadecalver@gmail.com>

Subject: Emails

Dear Elections AUS,

I have now sent repeated emails about the ongoing voting period, raising serious and compromising issues that undermine the integrity of the vote. I have not gotten a response. I hope you will respond soon.

Tomorrow at noon I will go to campus media to discuss these issues. I will also begin preparing a case to take to the Judicial Board. I hope this dispute can be resolved without the Judicial Board.

Also, please tell me how many people have voted to date.

Sincerely,
Christopher Bangs
No Committees Chair
Question re: Online Voting
Question re: Constitutional Amendment

A-5 (2) Threatening e-mails received by the Respondents from the Petitioner sent on April 10, 2012.

Victor,

You did not announce the date, time and location of the polls until hours after the start of voting. Furthermore, the referenda questions were passed by Council in English only, not in both official languages as is mandated by the bylaws.

Each of those reasons independently undermines the validity of this voting period, and taken together they threaten the integrity of AUS polls.

As is my right under section 9.3 I do not agree that the poll be official. And I do not believe the questions were properly submitted to your office, and so should not be considered at all.

I hope this clears up my objections to the process.

Sincerely,
Chris

A-6 Email sent by the CRO to the Petitioner Regarding Reasons for Delay in Announcement sent April 10, 2012 at 7:19pm.

Hey Chris,

They did not send a french pensketch. Also I do not have to release any voting information until polling is over but we have met quorum so results will be official. I was away for personal reason's during a national holiday this weekend Chris sorry for not getting back to you sooner! The delay in the list-serv was because usually when I send out a list-serv, Jade gets a confirmation email that she approves before it is sent out to the whole population. This time it seemed to not reach her but as soon as we knew about this issue I re-sent it and ensured it went out properly. I deem that this election is in fact official due to a lack of malicious intent on anyone's part to deliberately delay or affect the outcome of our referenda.

Best,

Victor

A-7 E-mail Sent to the Petitioner by the President requesting Mediation sent April 11, 2012 at 10:23am.

Mr. Bangs,

While I understand your concerns regarding the referenda period, circumstances of this voting period render them invalid. The date was indeed announced in an e-mail, after we pushed forward the polling dates. Furthermore, polling was announced the same day polls opened.

Concerning the translation of the questions, the questions were translated by the AUS translator. The AUS has upheld throughout the year its commitment to bilingualism. Students currently voting in the AUS referendum are able to see both the English and French versions of the questions.

If you have a formal complaint, I do invite you to submit one to the Judicial Board, but I feel we should discuss this in person. You are welcome to join us in the Arts Lounge at 2pm on Friday after our meeting.

I thank you for your concern regarding elections, and I will see you Friday.

Warm regards,

Jade Calver

A-8 E-mail from the Petitioner with a Meeting Time Ultimatum sent to the AUS President sent April 11, 2012 at 1:04pm.

President Calver,

We expect officials to follow the bylaws of the AUS, not what they think the bylaws should be. Regardless of whether Elections AUS is of the opinion that its actions SHOULD not compromise the integrity of the ongoing period, it has repeatedly committed severe violations of the bylaws.

I will be out of town this weekend, and so will not be able to meet with you unless you are free tonight at around 7:00. I will be filing a complaint to the Judicial Board.

Thanks,
Chris