

# Students' Society of McGill University

## Judicial Board

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*Nadir Khan and Zain Ali Syed (Petitioners)*

v.

*SSMU Council and Speaker (Respondents)*

*Advocate for the Petitioners: Daniel Richer*

*Advocate for the Respondents: Charles Daoust*

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The following recommendation was delivered by  
THE JUDICIAL BOARD –

Present: Chief Justice Munavvar Tojiboeva and Justices Kevin Paul, Lillian Fradin,  
Matthias Heilke and Robin Morgan

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### **I. Introduction**

[1] On the 29<sup>th</sup> of October 2014, the Judicial Board received and accepted a petition submitted by Nadir Khan and Zain Ali Syed naming the SSMU Council and Speaker as respondents.

[2] On January 17<sup>th</sup> 2015, a mediation session took place during which both sides agreed to abandon the suit and defer to a judicial reference. As a result, the Judicial Board is mandated to investigate and make recommendations on the following two questions:

1. *Analyze and clarify the meaning of Article 5.2 of By-Law Book I-5. If the JBoard deems that there is an obligation, it shall elaborate on the nature and extent of the obligation therein implied.*
2. *Does a special 2/3 majority rule instead of a simply majority for the “Motion to Postpone Indefinitely” constitute a valid standing rule according to Article 5.2.2 of By-law Book I-5?*

[3] The Judicial Board is publishing this recommendation before the Legislative Council to allow councilors to consider it. This recommendation is in not a binding document.

[4] For the reasons that follow, the Judicial Board recommends SSMU Council to adopt and publish a set of simplified standing rules for its General Assemblies.

## **II. Question 1**

[5] What type of obligation, if any, is imposed by Article 5.2 of By-law Book I-5 on the SSMU Legislative Council?

### **1: Introduction**

[6] The question of what Article 5.2 of the SSMU by-laws means touches upon the foundation of McGill’s vibrant student democracy. This question seeks to determine whether the SSMU Legislative Council has any obligation to publish Standing Rules for SSMU General Assemblies, and what that obligation would entail. The Judicial Board concludes that Article 5.2 of the by-laws obliges SSMU Council to publish a set of standing rules for its General Assemblies to ensure Members understand the general rules of procedure.

### **2: The wording of Article 5.2**

[7] The Judicial Board takes its principles of statutory interpretation from the Canadian judicial practice. The Supreme Court of Canada has unanimously adopted Elmer Driedger’s principle of statutory interpretation. That principle reads as follows:

*The words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the legislative body].<sup>1</sup>*

[8] No quotation has been cited more often and with as much unanimous approval by Canada's Supreme Court.<sup>2</sup> Since this principle seeks to ensure the average person can understand the law, and since this principle is dominant within Canada, we see no reason as to why it should not be adopted by the Judicial Board.

[9] The starting point of analysis is unsurprisingly the Article itself. Therefore, it is useful to reproduce the Article and following Articles here:

*5.2 Standing rules for the General Assembly which make Roberts' Rules easier for students to understand procedure must be adopted by Council at least one week in advance of the General Assembly.*

*5.2.1 These standing rules will be prepared by the Speakers of Council in collaboration with the President and any other interested Officers or Councillors.*

*5.2.2 Standing rules must not substantively change the rights of an individual under Robert's Rules, but rather seek to facilitate an effective and accessible process.*

*5.2.3 These standing rules must be publicized to the membership at least five calendar days in advance of the General Assembly.*

[10] Following Driedger's principle, the words of Article 5.2, when read in their grammatical and ordinary sense, create an obligation on the part of Council to adopt standing rules for the General Assembly at least one week prior to that Assembly. The source of this conclusion is the Article itself: Council "**must**" adopt the rules. If, for example, the Article read, "Standing rules [...] **may** be adopted by Council", or "**Any** standing rules... must be adopted", then there would be no obligation on the part of Council to adopt those rules. However, an ordinary reading of Article 5.2 is, on its face, clear in that it imposes an obligation on Council to adopt standing rules.

[11] Reading Articles 5.2.1 and 5.2.3 in their grammatical and ordinary sense further supports an interpretation of Article 5.2 that imposes a positive obligation on Council. Article 5.2.1 outlines how the standing rules "will be prepared": with the necessary input of the President plus

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<sup>1</sup> Elmer A. Driedger, "The Construction of Statutes" (1983) 2nd ed., Toronto, Butterworths, at 87.

<sup>2</sup> Stéphane Beaulac and Pierre-André Coté, "Driedger's "Modern Principle" at the Supreme Court of Canada: Interpretation, Justification, Legitimization" <https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/1352/BeaulacC%C3%B4t%C3%A9RJT40-1.pdf> at 135.

any other interested Officers or Councillors. Similarly, Article 5.2.3 stipulates when the standing rules “must be publicized”. Rather, they outline the basic procedure for standing rules published under 5.2: that they must be adopted by council at least one week prior to the General Assembly (Art. 5.2), they are to be prepared by the Speakers of Council together with the President and other interested Officers or Councillors (5.2.1), and that they are to be publicized to the membership at least five days in advance of the Assembly. No other reading of Article 5.2 would match the By-law’s wording.

### **3: The Scheme and Purpose of the By-Laws**

[12] An important, though not always determinative, component of judicial interpretation includes questioning the overall scheme and purpose of an Act. This interpretation must be done in context. A critical starting point is that the General Assembly is empowered to be, in effect, its own master. Under Article 13.1 of the SSMU Constitution, the Assembly has broad powers to establish, amend or rescind virtually any policy of the SSMU, with only three exceptions: the Constitution or by-laws, membership fees or other financial matters of SSMU, and the composition of SSMU’s staff. It is in this context that 5.2 creates an obligation on Council

[13] Under *Robert’s Rules*, the General Assembly can enact its own standing rules<sup>3</sup>. Neither Article 5.2 nor Article 13.2 of the SSMU Constitution take this power away from the Assembly – Article 13.2 allows the Board the option of creating special rules of order as it considers appropriate, while Article 5.2 creates a positive obligation on the Council which, as shall be seen, is narrow in scope. Despite the default rules indeed being *Robert’s Rules*, there is nothing to prevent the Assembly from enacting its own standing rules, which may modify certain provisions of *Robert’s Rules*. Subject to some oversight from the Board of Directors, the Assembly is its own master and may regulate its own democratic proceedings.

[14] Conversely, the standing rules drafted under Article 5.2 have a narrower scope. Their sole purpose is to “make [the Rules] easier for students to understand procedure” to safeguard the student democracy of Student Society of McGill University (SSMU). The Article seeks to ensure that all participants in a General Assembly understand procedure so that they can fully exercise their participatory rights. While the applicants note the existence of allegations that there was a concerted effort on the part of individual members to manipulate *Robert’s Rules* during the October 2014 General Assembly, this Board has not been asked to adjudicate on that issue. However, the Board notes that Article 5.2 specifically tries to protect against manipulation by ensuring that all members of the General Assembly understand what every motion means and can act accordingly.

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<sup>3</sup> Robert, Henry M. (1981). *Robert's Rules of Order Newly Revised*, 10th ed. §2.

[15] Before the nature of the obligation under Article 5.2 is discussed, a few words should be said about the importance of ensuring all participants of a General Assembly are aware of procedure. A preliminary observation is that informed participants can realize that an individual or group is using concerted efforts to manipulate the General Assembly through procedural rules, and potentially prevent this from happening. This point stems from why informed participation is critical – procedure is necessary for students to have their voices heard. Students participating in an Assembly should be asking themselves “how can I make the most compelling argument?” rather than “is it the right time to speak?” Everyone’s opinion matters equally, and all should have adequate knowledge of process to be able to get their opinion across. Knowledge of the General Assembly’s process is necessary to ensure that the average SSMU member, who may not have extensive knowledge of *Robert’s Rules*, can stand up for a cause they believe in. The ability to have one’s voice heard lies at the very foundation of all democratic institutions and is part of what Article 5.2 aims to protect.

#### **4: The Nature of the Obligation under 5.2**

[16] The scope of Article 5.2 is limited. Article 5.2 seeks to ensure that all members are well informed of a General Assembly’s procedure such that they can participate in debate. This limited purpose, combined with the lack of any authority under which Council can set the procedural rules for debate, shapes the standing rules adopted under Article 5.2. The factum submitted by SSMU in the capacity of respondents was particularly insightful in that SSMU itself recognized the potential problems with Council adopting *any* standing rules for the assembly, which notably included a potential for actual or perceived bias.

[17] Therefore, the question is: what does the Article require of Council? In light of the limited nature of the obligation under 5.2, all that is required of Council is that they publish a set of standing rules which makes procedural rules for the Assembly, in this case *Robert’s Rules*, easier to understand. The rules must also “seek to facilitate an effective and accessible process” per s. 5.2.2.

[18] Unfortunately, Article 5.2 seems to have caused confusion both as to what, if anything, is required. The minimum requirement imposed on Council by Article 5.2 is that they adopt a short, condensed and simplified version of the applicable rules at least one week prior to an Assembly, and make it available to the membership at least five days prior to that Assembly. The publication requirement can be satisfied by clear, explicit, and publicized electronic publication - perhaps via email. Finally, there is no reason why Council cannot write or find a standard short, condensed, and simplified explanation of the rules and then re-adopt and re-publish each time there is a General Assembly, provided the information in that publication is up to date. While the obligation under Article 5.2 may be minimal, it nonetheless ensures students have the necessary information to properly and effectively participate in a General Assembly.

## **5: Convention**

[19] A few words should be said about the role of convention in statutory interpretation since it formed the basis of the respondent's arguments. SSMU relied on past convention that, apart from one very noteworthy and exceptional occurrence, no standing rules were ever drafted under Article 5.2. While convention can be helpful in interpreting by-laws it cannot be used to trump clear, express, and non-ambiguous wording.

[20] Convention will have particular importance in a democratic setting like SSMU. Convention may can be used to give weight to a certain interpretation of an ambiguously worded by-law. An organization like SSMU will have long established internal procedures and workings which are necessary to run the organization in an efficient and effective manner. However, even in this context convention cannot usurp Driedger's principle of statutory interpretation and will only prove helpful – though not determinative – where the wording of the bylaws is ambiguous. In this case there is no ambiguity as to whether Article 5.2 creates a positive obligation on Council, and convention cannot be used to defend an interpretation which cannot be supported by the Article's wording.

## **6: Conclusion**

[21] For the reasons outlined above, Judicial Board answers the question as follows:

1. Article 5.2 and following creates a positive obligation on SSMU Legislative Council;
2. Article 5.2 and following seeks to ensure members are informed of the rules of order governing a General Assembly and promote an effective and accessible process;
3. The obligation imposed by Article 5.2 is limited in scope;
4. Council must, under Article 5.2 and following, adopt standing rules which seek to make a General Assembly's rules of order understandable for the average member at least one week in advance of a General Assembly; and
5. These rules must be published at least five calendar days before the General Assembly.

## **III. Question 2**

[22] The second reference question asks the J-Board to make a recommendation concerning whether a special 2/3 majority rule for the "Motion to Postpone Indefinitely," superseding the simple majority rule contained in Robert's Rules, constitutes a valid standing rule under Article 5.2.2 of By-Law I-5.

[23] The Article in question reads:

*Standing rules must not substantively change the rights of an individual under Robert's Rules, but rather seek to facilitate an effective and accessible process.*

[24] It must be read with Article 5.2, which reads:

*Standing rules for the General Assembly which make Robert's Rules easier for students to understand procedure must be adopted by Council at least one (1) week in advance of the General Assembly.*

[25] The reference question and the context in which it arose indicate possible confusion, surpassing the scope of the question itself, with respect to Robert's Rules and the SSMU's application thereof. Specifically, the question and its context risk conflating *standing rules* and *special rules of order*, thus confusing the question of the legality of the rule at issue per the SSMU's Constitution and By-Laws for the question of the rule's legality under Article 5.2.2. In other words, it may be the case that Article 5.2.2 is simply not the appropriate authority on the basis of which the SSMU's governing bodies may adopt the 2/3 majority rule. Accordingly, the J-Board seeks to frame its recommendation in a way that alleviates some of this confusion.

[26] Article 13.2 of the SSMU Constitution states:

*General Assemblies shall be conducted according to Robert's Rules of Order, subject to any special rules of procedure adopted by the Board of Directors.*

[27] Standing rules are not rules of procedure, but a means of regulating the details of the administration of a society. *Robert's Rules of Order Revised* (RROR) Section 67 defines standing rules negatively: they are rules which may be adopted without previous notice, by a majority vote at any meeting, they do not interfere with the freedom of a meeting, and they may not conflict with the constitution, by-laws, rules of order, or other standing rules.<sup>4</sup> The example given is perhaps more elucidative: "Resolved, That the meetings of this society from April 1 to September 30 shall begin at 7:30 P.M., and during the rest of the year at 8 P.M."<sup>5</sup> *Robert's Rules of Order Newly Revised* clarifies that standing rules relate to details of the administration of a society.<sup>6</sup> There is no question that details such as meeting times are distinct from rules of parliamentary procedure.

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<sup>4</sup> <http://www.robertsrules.org/rror-11.htm#67>

<sup>5</sup> Ibid.

<sup>6</sup> Robert, Henry M. (2000). *Robert's Rules of Order Newly Revised*, 10th ed., p. 18

[28] Consequently, Article 13.2 of the Constitution creates a power entirely distinct from the obligation created by Article 5.2 of Bylaw I-5. Article 5.2 creates an obligation to adopt and publicize standing rules directed at the objectives described in 5.2 and 5.2.2 and which do not conflict with the rules of order, whereas the Constitution empowers the Board of Directors to modify the rules of order by the adoption of special rules of procedure. Article 13.2 of the Constitution is consistent with RROR's specification that a society may adopt "special rules of order" that supplement and take precedence over the parliamentary authority.<sup>7</sup>

[29] This power created by the SSMU Constitution interacts with the power vested in the General Assembly by Robert's Rules to amend the rules of order. Section 68, RROR, states:

*[R]ules of order, that have been adopted and contain no rule for their amendment, may be amended at any regular business meeting by a vote of the majority of the entire membership; or, if the amendment was submitted in writing at the previous regular business meeting, then they may be amended by a two-thirds vote of those voting, a quorum being present.*

[30] As a special rule of procedure, the 2/3 majority rule for the "Motion to Postpone Indefinitely" could be applied to the General Assembly if the Board of Directors adopted it. For its part, the General Assembly retains its powers of self-governance, including the power to amend rules of order and the power to suspend them. Through an amendment to the rules of order, the General Assembly could adopt the special 2/3 majority rule for the "Motion to Postpone Indefinitely."

[31] The distinction drawn between standing rules and rules of procedure makes clear that the special 2/3 majority rule is not a standing rule at all, and thus not a valid exercise of the SSMU Council's power under Articles 5.2 and 5.2.2 of By-Law I-5.

[32] The J-Board need not determine whether the proposed rule facilitates an effective and accessible process.

#### **IV. RECOMMENDATION OF THE JUDICIAL BOARD OF SSMU**

[33] Considering that the J-Board must respect the principles of natural justice, equity, and good conscience in its interpretation and application of the By-Laws and Constitution, the J-Board concludes this recommendation as follows: the J-Board finds a positive obligation on the

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<sup>7</sup> *Supra* note 2.

part of SSMU Legislative Council to create, publicize and bring to all General Assemblies a set of standing rules that promote an effective and accessible process for students as stated in article 5.2 of SSMU By-Law I-5. In order to make a recommendation for the second question, the J-Board found it necessary to distinguish between standing rules and rules of procedure. The distinction between these two sets of rules aims to clarify the point that the special 2/3 majority to pass a Motion to Postpone Indefinitely is not a standing rule at all, but rather a rule of procedure, and therefore does not represent a valid exercise of power on the part of the SSMU Council in establishing standing rules for General Assemblies under Articles 5.2 and 5.2.2 of SSMU By-Law I-5.