



### **Report of the Bylaw Review Committee (for SSMU Board of Directors Meeting, February 2, 2012)**

The Committee met on Monday, January 30<sup>th</sup> at 10am.

Present: Councillors Crawford, Kunev, and Paterson; Executive Officers Knight, Clare, Patel, and Fraser; Judicial Board Justices Jean-Philippe Hebert and Raphael Szajnfarber; and Tribune reporter Erica Friesen.

Regrets: Ian Clarke, Dylan Doyle, Max Zidel.

1. The Committee discussed its goals in seeking to evaluate the best way to move forward:
  - Protect SSMU from liability
  - Uphold the SSMU's integrity
    - Ensure a fair, unbiased method of addressing complaints/petitions (including ensuring the independence of the Judicial Board and avoiding inappropriate political influence by the Legislative Council or Board of Directors)
  - Be aware of the precedent we will set
  - In the short term:
    - Ensure that both petitioners and respondent are treated fairly
    - Have a functioning JBoard in place during the Winter elections and referenda period
    - Decide at what point the BoD should make a decision to ratify or not
    - Ensure that the current case does not inappropriately impair Elections SSMU's ability to conduct the Winter elections and referenda
    - Put forward a referendum question to resolve the issue regarding the JBoard
2. Primarily for the benefit of the Judicial Board Justices, who were not present during the Council and Board of Directors meetings where the resolutions regarding suspension of the activities of the Judicial Board were passed, we recapped the SSMU's current concerns:
  - Legality – conflict between Quebec law and SSMU Constitution. Legal liability in the case that the Judicial Board rules to overturn referendum results and this decision is implemented without the BoD's ratification/without just cause (BoD ultimately responsible).
  - The need to ensure due process / have sufficient oversight (due to the above)
  - The need to appropriately manage any biases or conflicts of interest amongst members of decision-making bodies
3. Those present discussed possible ways forward.
  - Draft referendum question and clarify the role of the BoD in the short term.
    - It was agreed that this is necessary for all other scenarios.
  - Set out conditions for ratification and non-ratification by the BoD (must be very clear and tied to specific error/fault of the JBoard).
    - It was agreed that this is necessary for all other scenarios.
  - Allow JBoard activities to resume, with hearing to be held before Reading Week. BoD to ratify (or not) based on entire proceedings.



- This allows for the greatest continuity but with the incorporation of the first two suggestions can also allow us to proceed in a legally responsible fashion. This would be facilitated by calling a Board meeting at the earliest possible time.
- All JBoard activities to resume, with hearing to be held after Winter elections. BoD to ratify (or not) based on entire proceedings.
  - Due to concerns that various parties involved in the current Judicial Board case will, or are likely to be, involved in the Winter election and referendum period, it was felt that if the hearings could not resume before Reading Week it would be fair to delay them until after the Winter electoral period. However, that would be mid-March and would mean that the Judicial Board written reasoning might not be available until mid-April, at which point there will be a limited ability for students to engage in discussion of the ruling.
- JBoard to present rulings so far on accepting petition and extending to the Winter semester to the BoD for ratification. Proceed as appropriate following this decision.
  - There were concerns that this would set an unduly involved procedural precedent regarding Board of Directors involvement in the JBoard; rather, some expressed, it would make much better procedural sense for the Board of Directors to review the entire process and ruling at the end of the process. Given the stage of the current case, and the timing issues indicated above, concerns were raised that this would by necessity further delay proceedings, resulting in the same problem at the end of the year. Additionally, given the amount of information already distributed to the student body, there was a concern that it is in best interests of both the petitioners and the respondent to have the hearing proceed.

#### 4. Recommendations to the Board of Directors

- a. Submit a referendum question, drawing on input from Bylaw Review Committee, the Judicial Board, and SSMU's legal counsel. This referendum question should or could include:
  - i. Clear expectations regarding how the Board of Directors will undertake to ratify Judicial Board rulings, with specific attention to what will be considered reasonable grounds for non-ratification (to ensure that the BoD observes due diligence and is protected from political manipulation). (Please see JBoard suggestion attached.)
  - ii. What changes should be made to the Constitution
  - iii. A method of appeal
  - iv. Possible expansion of the membership of the Judicial Board to include two students who are not from the Faculty of Law (subject to the same requirements regarding lack of campus political involvement), with provisions that all proceedings must have a majority of Law students presiding.

Note: The recommendations from the Judicial Board are appended.
- b. Lift the suspension of the Judicial Board's activities and request that they proceed as quickly as possible in order to complete hearings before Reading Week
- c. Interim conditions of BoD ratification: we recommend adopting conditions similar to those proposed in the referendum question. This should be discussed by all Councillors present at



the next Board of Directors meeting and voted on by the Board at the same meeting where the suspension is lifted.

5. Action Items of the Committee. Those present will undertake the following actions in order to proceed as smoothly as possible.
  - a. VP Clare will draft a statement seeking to clarify the issue for all SSMU members. This should be reviewed by SSMU's legal counsel before being posted on the SSMU website. [Note: This has been completed.]
  - b. President Knight will call a Board of Directors meeting for Thursday at 6pm. Councillor Paterson will contact TVM regarding livestreaming this meeting. [Note: This has been completed.]
  - c. The Judicial Board will submit recommendations by Tuesday at 5pm. President Knight will provide them with the relevant Concordia Student Union legislation for comparison. [Note: This has been completed.]
  - d. VP Patel will post a notice regarding the cancellation of the January 30<sup>th</sup> Judicial Board hearing on the door of Lev Bukhman. [Note: This has been completed.]
  - e. VP Clare and President Knight will investigate room bookings for next week to ensure that the JBoard has physical space for hearings in the event that the BoD agrees with the recommendations of the Committee. [Note: This has been completed and the JBoard has been asked to notify all relevant parties of a possible hearing on Monday, February 6<sup>th</sup>, after 7pm.]
  - f. The Committee intends to meet again following the SSMU General Assembly on February 1<sup>st</sup> to review the wording for the proposed referendum question.



**Recommendations from Judicial Board re constitutional amendments to recognize the Board of Director's primacy**

31 January 2012

*Unless listed here, other articles of the constitution discussing the J Board do not need to be changed.*

Current constitutional provision	Recommended amendment (changes marked)	Rationale
30.1 There shall be a body entitled the Judicial Board which shall be the final authority on: <ul style="list-style-type: none"> <li>• the interpretation of the Constitution and Bylaws of the Society;</li> <li>• the interpretation and legality of all motions passed by Council;</li> <li>• the interpretation and legality of all procedures, questions and results of all referenda and elections;</li> <li>• the interpretation and legality of the constitutions of all Society activities, clubs and functional groups;</li> <li>• the interpretation and legality of any other groups as requested.</li> </ul>	30.1 There shall be a body entitled the Judicial Board which shall <b>be the final have authority to adjudicate</b> on <b>matters of</b> : <ul style="list-style-type: none"> <li>• the interpretation of the Constitution and Bylaws of the Society;</li> <li>• the interpretation and legality of all motions passed by Council;</li> <li>• the interpretation and legality of all procedures, questions and results of all referenda and elections;</li> <li>• the interpretation and legality of the constitutions of all Society activities, clubs and functional groups;</li> <li>• the interpretation and legality of any other groups as requested.</li> </ul>	We all agree that J Board's authority to adjudicate these matters should be maintained, even if they're not the final authority.
30.3 The Judicial Board shall have the power: <ul style="list-style-type: none"> <li>• to declare invalid any act of Council, the Executive Committee or the General Manager which violates this Constitution and Bylaws;</li> <li>• to declare invalid any act of a Society activity, club or functional group which violates this Constitution and Bylaws or its own constitution;</li> </ul>	30.3 The Judicial Board <b>shall have the power may offer rulings before the Board of Directors</b> : <ul style="list-style-type: none"> <li>• to declare invalid any act of Council, the Executive Committee or the General Manager which violates this Constitution and Bylaws;</li> <li>• to declare invalid any act of a Society activity, club or functional group which violates this Constitution and Bylaws or its own</li> </ul>	This recognizes that the J Board's ruling can include those listed in the bullet points, but stresses that we are only offering the rulings before the Board of Directors.



<ul style="list-style-type: none"> <li>• to declare invalid any referendum or election that violates this Constitution and</li> <li>• Bylaws;</li> <li>• to order the placing of a referendum question on a ballot in cases of undue</li> <li>• procedural delay.</li> </ul>	<p>constitution;</p> <ul style="list-style-type: none"> <li>• to declare invalid any referendum or election that violates this Constitution and</li> <li>• Bylaws;</li> <li>• to order the placing of a referendum question on a ballot in cases of undue procedural delay.</li> </ul>	
<p>30.4 All decisions of the Judicial Board shall be binding on the parties involved, and there shall be no appeal from such decision</p>	<p><del>30.4 All decisions of the Judicial Board shall be binding on the parties involved, and there shall be no appeal from such decision</del></p> <p>Rulings of the Judicial Board do not have the effect of binding judgment until ratified by the Board of Directors.</p> <p>Every final written decision of the Judicial Board must be presented to the Board of Directors at the meeting following such a decision. This must be accompanied by any preliminary decisions rendered at the request of either party or as the result of a motion that the Judicial Board heard. As a general rule, decisions of the Judicial Board shall be considered final and shall be ratified by the Board of Directors.</p> <p>Notwithstanding the above, the Board of Directors remains the final authority of SSMU and may, at the request of a party to the proceedings, hear an appeal of the decision if it is filed, with proper documentation, no more than five (5) days after the written reasons are released by the Judicial Board. The Board of Directors should only overturn a decision of the Judicial Board, by a four-fifths</p>	<p>This revision explicitly requires that J Board decisions be ratified by the Board of Directs before they become binding. It sets out a mechanism for how this happens, and creates the general rule (subject to the discretion of the Board of Directors) that decisions shall be ratified unless there is an appeal by one of the parties. It then sets out how appeals should be handled, and what types of decisions can be appealed (in line with Concordia's approach).</p>



	<p>majority vote at a meeting duly convened for such purpose, if it concludes, upon reviewing the decision in its entirety, including the reasons for appeal of appealing party, that the decision of the Judicial Board was manifestly unreasonable or was motivated by discrimination as understood under s. 10 of the Québec Charter of Human Rights and Freedoms.</p>	
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