

# Students' Society of McGill University

## Judicial Board

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### **BETWEEN:**

*Mr. Bryan Buraga (Petitioner)*

v.

*Mr. Tre Mansdoerfer in his capacity as President of the Students' Society of McGill University (Respondent) and*

*Mr. Jun Wang in his capacity as Vice-President (Finance) of the Students' Society of McGill University (Respondent) (absent)*

### FINAL JUDGEMENT

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### **EXECUTIVE SUMMARY<sup>1</sup>**

- The jurisdiction of the Judicial Board is limited to ruling on procedural and constitutional matters.
- The *Motion Regarding the Creation of an Anti-Violence Fee Levy* was adopted in full respect of the applicable constitutional requirements.
  - ❑ The *Motion Regarding the Creation of an Anti-Violence Fee Levy* was submitted in respect of the applicable procedural timeline for Fee Questions to be voted on in the SSMU Fall 2018 Referendum. The *Motion Regarding the Creation of an Anti-Violence Fee Levy* passed on October 18, 2018, was merely an amendment to the *Motion Regarding the Creation of an Anti-Violence Fee Levy* passed on October 11, 2018, which was submitted to the administration of McGill University before the applicable October 15, 2018 deadline. Therefore, it was submitted in compliance with the constitutional timeline.

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<sup>1</sup> The Executive Summary serves to increase the accessibility of Judicial Board decisions to the Members of the SSMU. However, the Executive Summary is not part of the final judgement and is thus not binding following the ratification of the final judgement by the Board of Directors. The Executive Summary does not replace the final judgement. Therefore, Members of the SSMU are highly encouraged to read the final judgement in addition to the Executive Summary.

- ❑ The *Motion Regarding the Creation of an Anti-Violence Fee Levy* had the requisite number of movers. Main motions require a minimum number of three movers to be presented before the Legislative Council according to the *Standing Rules for the 2018-2019 Legislative Council*. These rules were enacted by virtue of the *Internal Regulations of Governance*. The *Motion Regarding the Creation of an Anti-Violence Fee Levy* was moved by three movers; therefore, it was passed in compliance with the *Standing Rules* and the *Internal Regulations of Governance*.
- Since the *Motion Regarding the Creation of an Anti-Violence Fee Levy* was constitutionally adopted by the SSMU Legislative Council, the question arising from it in the Fall 2018 SSMU Referendum was constitutionally adopted as well.
  - Mr. Jun Wang, in his capacity of SSMU Vice-President (Finance), did not violate the standard of care provided by Section 16.1 of the *SSMU Constitution*. He also fulfilled his obligations under Section 5.3.5 of the *Gendered and Sexual Violence Policy*.
  - As a whole, the Executive Committee of the SSMU is not bound by the standard of care established in Section 16.1 of the *SSMU Constitution*. The standard of care under Section 16.1 of the *SSMU Constitution* only applies to members of the Executive Committee individually but not to the Executive Committee as a whole.
  - Parties appearing before this Board may introduce Canadian jurisprudence as comparative instruments only. They have no binding power on this Board.

The following judgement was delivered on December 2nd, 2018 by

THE JUDICIAL BOARD, UNANIMOUS –

Present: Chief Justice Georgina Hartono, and Justices Benjamin Herrera, Daniel Minden, Natasha Petrof and Samuil Rosenov Stoychev.

[1] The *Gendered and Sexual Violence Policy* (“GSVP”) was drafted in response to the harm perpetrated by some members of the 2016-2017 Executive Committee of the Students’ Society of McGill University (“SSMU”) who “committed acts of sexual violence against a dozen students from the McGill community.”<sup>2</sup> The Legislative Council passed the *Motion Regarding the Adoption of a Gendered and Sexual Violence Policy* (“GSVP Motion”) on October 11, 2018.<sup>3</sup>

[2] However, the funding of the GSVP remains contested. One of the ways that the GSVP could be funded is through a fee levy, which may require the approval of the Members of the

<sup>2</sup> SSMU, Legislative Council, *Gendered and Sexual Violence Policy* (11 October 2018) at Preamble [GSVP].

<sup>3</sup> SSMU, Legislative Council, *Motion Regarding the Adoption of a Gendered and Sexual Violence Policy* (11 October 2018).

SSMU, by way of a referendum.<sup>4</sup> The referendum question regarding the implementation of this fee levy arises from the *Motion Regarding the Creation of an Anti-Violence Fee Levy* (“October 11 Motion”)<sup>5</sup> subject to the October 11 Motion’s constitutionality.

[3] Mr. Bryan Buraga (*Petitioner*) challenges the constitutionality of the October 11 Motion. In this present matter, the Judicial Board is tasked with deciding on the constitutionality of the October 11 Motion and its resulting referendum, in addition to addressing whether Mr. Jun Wang (*Respondent*) and the 2018-2019 Executive Committee as a whole acted with the requisite standard of care provided by Section 16.1 of the *SSMU Constitution*.

## FACTS

[4] To determine the facts surrounding the present matter, this Board used the standard of the balance of probabilities established in *Glustein v. Koparkar*: “For this Board to accept a Party’s allegation as fact, they must convince this Board that what they allege is at least 51% likely to have happened.”<sup>6</sup>

[5] On October 7, 2018, the GSVP Motion and the October 11 Motion were screened at the Steering Committee meeting. Both Mr. Bryan Buraga and Mr. Tre Mansdoerfer (*Respondent*) are members of this Committee as Councillor and President of the SSMU, respectively.<sup>7</sup> Mr. Tre Mansdoerfer was the main mover for these two motions. Mr. Bryan Buraga became a mover for both motions at the Steering Committee meeting. At the time of this meeting, the GSVP Motion and the October 11 Motion did not have the requisite number of movers.

[6] On October 7, 2018 at 1:39 PM EST, after the Steering Committee meeting, Mr. Tre Mansdoerfer requested movers for various motions, including the GSVP Motion and the October 11 Motion via a post in the “SSMU Council 2018-2019” Facebook page.

[7] On October 8, 2018, Mr. Bryan Buraga sent an email to the Speaker of the SSMU, Mr. Husayn Jamal, inquiring about the process of withdrawing as a mover for a motion. Sometime after this exchange, Mr. Bryan Buraga, who had editable access to the October 11 Motion as a member of the Steering Committee, removed his name as a mover for the October 11 Motion. He notified neither Mr. Husayn Jamal, the Speaker of the SSMU, nor Mr. Tre Mansdoerfer of this removal.

[8] On October 9, 2018 at 9:03 AM EST, Mr. Husayn Jamal posted on the “SSMU Steering Committee” Messenger group stating that all motions had the required movers. At the time he

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<sup>4</sup> Students’ Society of McGill University Internal Regulations of Elections and Referenda (23 March 2017) at 09 Fee Referenda, s 1.2 [Internal Regulations Elections and Referenda], online (pdf): <ssmu.ca/wp-content/uploads/2017/05/Internal-Regulations-of-Elections-and-Referenda-2017-03-23.pdf>.

<sup>5</sup> SSMU, Legislative Council, *Motion Regarding the Creation of an Anti-Violence Fee Levy* (11 October 2018).

<sup>6</sup> *Glustein v Koparkar* (31 December 2017) SSMU Judicial Board at para 1 [Glustein Final Judgement], online (pdf): <ssmu.ca/wp-content/uploads/2012/01/Judicial-Board-Final-Judgement-Glustein-v-Koparkar-2017-12-31.pdf>.

<sup>7</sup> *Committee Terms of Reference* (15 September 2016), s 11.4, online (pdf): <ssmu.ca/wp-content/uploads/2008/10/Committee-Terms-of-Reference-Book-2016-09-15.pdf>.

posted this message, Mr. Husayn Jamal was unaware that Mr. Bryan Buraga had withdrawn his name as a mover for the October 11 Motion.

[9] On October 11, 2018, the Legislative Council debated and passed the GSVP Motion and the October 11 Motion. Mr. Bryan Buraga and another Councillor proposed amendments to fund the GSVP without resorting to the use of a fee levy. During the debate, Mr. Jun Wang stated that the SSMU is unable to fund the implementation of the GSVP without the use of a fee levy. Mr. Tre Mansdoerfer also stated that the Officers of the SSMU would find a way to fund the GSVP should the Legislative Council wish to adopt the amendments to fund the GSVP without resorting to the use of a fee levy or should a fee levy not pass. The GSVP Motion was adopted unanimously. The October 11 Motion was approved with 22 votes in favour and three votes against. Both motions had three movers.

[10] Believing that the October 11 Motion lacked the requisite number of movers and is thus unconstitutional, Mr. Bryan Buraga filed a Petition to this Board on October 14, 2018.

[11] Upon being notified of Mr. Bryan Buraga's Petition to this Board on October 16, 2018, Mr. Tre Mansdoerfer summoned an extraordinary session of the Legislative Council on October 18, 2018 for the purpose of rectifying the alleged deficiency in the number of movers for the October 11 Motion. During the October 18, 2018 session, the Legislative Council adopted the *Motion Regarding the Creation of an Anti-Violence Fee Levy* ("October 18 Motion")<sup>8</sup> with 24 votes in favour, one vote against, and one abstention. The October 18 Motion had 14 movers.

[12] During the Fall 2018 Referendum, held from November 9, 2018 to November 12, 2018, out of the 4,674 Members of the SSMU that voted on the referendum question arising from the October 11 Motion and the October 18 Motion, 3,710 (79.4%) supported the funding of the GSVP through a fee levy.

## ISSUES

[13] In the present final judgement, this Board is tasked with addressing the following issues:

- A) Were the October 11 Motion and the October 18 Motion, both passed by the SSMU Legislative Council, adopted in full respect of applicable constitutional requirements?
- B) Is the SSMU Fall 2018 Referendum arising from the October 11 Motion and the October 18 Motion constitutional?
- C) Did Mr. Jun Wang, in his capacity of Vice-President (Finance) of the SSMU, act with the requisite standard of care provided by Section 16.1 of the *SSMU Constitution* and upheld his obligations under Section 5.3.5 of the GSVP?

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<sup>8</sup> SSMU, Legislative Council, *Motion Regarding the Creation of an Anti-Violence Fee Levy* (18 October 2018) [October 18 Motion].

D) Is the Executive Committee of the SSMU as a whole bound by the standard of care established by Section 16.1 of the *SSMU Constitution*? If so, did the Executive Committee of the SSMU breach its obligation under the requisite standard of care?

## JURISDICTION

[14] Pursuant to the Interim Order of *Glustein v. Koparkar*, the term “jurisdiction” refers to moral and physical persons, and constitutional documents over which this Board has authority.<sup>9</sup>

[15] The jurisdiction of this Board is specified in Section 15.1 of the *SSMU Constitution*,<sup>10</sup> in Section 1 of the *Internal Regulations of Governance-03: Judicial Board*,<sup>11</sup> and in Section 7.1 of the *SSMU Judicial Board Procedures*.<sup>12</sup> These three sources, as this Board held in the Interim Order of *Glustein v. Koparkar*, are considered as a whole.<sup>13</sup>

[16] The question of whether this Board has jurisdiction over this matter requires a consideration of what falls within its mandate. The three aforementioned provisions establish that this Board has authority “to render opinions on matters which the Constitution or Internal Regulations specify.”<sup>14</sup> For the ensuing reasons, this Board concludes that all of the remedies sought by the Petitioner would fall within its jurisdiction.

[17] Mr. Bryan Buraga requested that this Board declare the October 11 Motion, the October 18 Motion, and the resulting referendum unconstitutional in its final judgement, adding that this Board should “declare invalid and nullify” them.<sup>15</sup> That request does fall within this Board’s jurisdiction, under Section 1.1 (c) of the *Internal Regulations of Governance-03: Judicial Board*, which states that this Board’s jurisdiction includes the:

Interpretation of all procedures, questions and results of all Elections and Referenda, including the authority to declare invalid any Referenda or Election that violates the Constitution or Internal

<sup>9</sup> *Glustein v Koparkar* (28 October 2017) SSMU Judicial Board (interim order) at para 10 [Glustein Interim Order], online (pdf): <ssmu.ca/wp-content/uploads/2012/01/20171028\_Interim\_Order\_GlusteinvKoparkar.pdf>.

<sup>10</sup> *Students’ Society of McGill University Constitution* (10 November 2017), s 15.1 [*SSMU Constitution*], online (pdf): <ssmu.ca/wp-content/uploads/2018/10/Constitution-2017-11-10.pdf>.

<sup>11</sup> *Students’ Society of McGill University Internal Regulations of Governance* (9 March 2017) at 03 Judicial Board, part 1 [*Internal Regulations Governance*], online (pdf): <ssmu.ca/wp-content/uploads/2017/05/Internal-Regulations-of-Governance-2017-03-09.pdf>.

<sup>12</sup> *Students’ Society of McGill University Judicial Board Procedures* (14 March 2018), s 7.1 (proposed procedures) [*Judicial Board Procedures*]. At the time Mr. Bryan Buraga filed his Petition to this Board, the proposed *Judicial Board Procedures*, which were submitted by this Board to the Board of Directors on March 14, 2018, had not been ratified by the Legislative Council. However, for the purposes of this matter, Mr. Bryan Buraga and Mr. Tre Mansdoerfer both consented to be subject to the proposed *Judicial Board Procedures* instead of the *Students’ Society of McGill University Judicial Board Procedure* (12 April 2012).

<sup>13</sup> *Glustein Interim Order*, *supra* note 9 at para 11.

<sup>14</sup> *Internal Regulations Governance*, *supra* note 11 at 03 Judicial Board, s 1.1. See also *SSMU Constitution*, *supra* note 10, s 15.1; *Judicial Board Procedures*, *supra* note 12, s 7.1.

<sup>15</sup> Mr. Bryan Buraga’s Declaration (19 November 2018) at para 16 [Buraga Declaration].

Regulations and to order the placing of a Referendum question on a ballot in cases of undue procedural delay.<sup>16</sup>

[18] Mr. Bryan Buraga also requested that this Board “declare that the Vice-President (Finance) did not act with the requisite standard of care outlined in Section 16.1 of the SSMU Constitution.”<sup>17</sup> This request falls within this Board’s jurisdiction pursuant to Section 1.1(a) of the *Internal Regulations of Governance-03: Judicial Board*, which explicitly states that this Board’s purview includes “interpretation of the Constitution, Internal Regulations, Policies and Plans of the Society.”<sup>18</sup>

[19] Finally, Mr. Bryan Buraga requested that this Board “declare that the Executive Committee did not act with the requisite standard of care outlined in Section 16.1 of the SSMU Constitution.”<sup>19</sup> This request also falls within this Board’s jurisdiction under Section 1.1(a) of the *Internal Regulations of Governance-3: Judicial Board*.<sup>20</sup>

[20] Having established its jurisdiction, this Board now turns to the analysis of the issues at hand.

## ANALYSIS

[21] In an effort to ensure the intelligibility of the present judgement, the analysis is divided into four sections, each corresponding to one of the four issues outlined in paragraph 13.

[22] Before addressing the substantive issues, this Board wishes to highlight the scope of the matters that it considered when rendering the present judgement. This Board has ruled in *Newburgh and Steven v Tacoma* that “it matters not in law whether complainants act with a specific personal underlying belief. In that sense, the law must be blind to politics.”<sup>21</sup> Considering that this passage was cited by both Mr. Bryan Buraga and Mr. Tre Mansdoerfer,<sup>22</sup> this Board is of the view that both Parties understand that their personal underlying beliefs are not considered by this Board in this present matter. The Justices of this Board express their deep sympathy to Mr. Bryan Buraga for the trauma that he experienced in his first year as a Member of the SSMU and appreciate his courage to share his story. However, this Board may only consider the procedural and constitutional soundness of the Parties’ arguments regarding the issues outlined in paragraph 13.

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<sup>16</sup> *Internal Regulations Governance*, *supra* note 11 at 03 Judicial Board, s 1.1(c).

<sup>17</sup> Buraga Declaration, *supra* note 15 at para 16.

<sup>18</sup> *Internal Regulations Governance*, *supra* note 11 at 03 Judicial Board, s 1.1(a).

<sup>19</sup> Buraga Declaration, *supra* note 15 at para 16.

<sup>20</sup> *Internal Regulations Governance*, *supra* note 11 at 03 Judicial Board, s 1.1(a).

<sup>21</sup> *Newburgh and Steven v Tacoma* (14 February 2012) SSMU Judicial Board at para 34, online (pdf): <[ssmu.ca/wp-content/uploads/2012/01/Newburgh-and-Steven-v-TacomaFINAL-JUDGEMENT.pdf](http://ssmu.ca/wp-content/uploads/2012/01/Newburgh-and-Steven-v-TacomaFINAL-JUDGEMENT.pdf)>.

<sup>22</sup> Mr. Bryan Buraga’s cited this passage in his Declaration, *supra* note 15 at para 37. Mr. Tre Mansdoerfer cited this passage in his oral arguments at the Hearing.

**A. Were the October 11 Motion and the October 18 Motion, both passed by the SSMU Legislative Council, adopted in full respect of applicable constitutional requirements?**

[23] In addressing this first question, it is useful to divide its analysis into two subsections, each tackling an element of the alleged unconstitutionality raised by Mr. Bryan Buraga. Firstly, this Board will consider whether the deadline for submitting the October 18 Motion as a Fee Question to be voted during the SSMU Fall Referendum had lapsed. Secondly, this Board will examine whether the October 11 Motion had the requisite number of movers.

*(i) Was the October 18 Motion submitted in compliance with the deadline for Fee Questions to be voted during the SSMU Fall Referendum?*

[24] This first subsection addresses the Mr. Bryan Buraga's contention that the October 18 Motion was not submitted in compliance with the applicable deadline for Fee Questions that were to be included in the SSMU Fall 2018 Referendum.

[25] As mentioned in the facts section, two motions are under the scrutiny of this Board: the October 11 Motion, which was passed on October 11, 2018 by the Legislative Council, and the October 18 Motion, which was passed on October 18, 2018 by the Legislative Council.

[26] The crux of the contention is that the Parties have different interpretations of the status of the two motions in relation to one another. According to Mr. Bryan Buraga, the two motions are independent, and the October 18 Motion, which was submitted to the electorate during the SSMU Fall 2018 Referendum, was not submitted to the administration of McGill University in time. He alleges that the October 18 Motion violated the October 15, 2018 submission deadline for Fee Questions. On the other hand, Mr. Tre Mansdoerfer contends that the October 18 Motion is merely an amendment to the October 11 Motion. Consequently, he argues that the submission deadline of October 15, 2018 was respected.

[27] Before rendering its interpretation on this aspect of the action, this Board will consider the sources of the obligations at hand. Pursuant to Section 1.1(b) of the *Internal Regulations of Governance-03: Judicial Board*,<sup>23</sup> this Board may interpret motions passed by the Legislative Council. The relevant motion in this case is the *Motion Regarding the Elections Timeline* adopted by the Legislative Council on September 13, 2018.<sup>24</sup> The Motion provided under its Appendix A that the Fee Questions for the SSMU Fall Referendum are due on October 15, 2018 at 6:00 PM EST.<sup>25</sup>

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<sup>23</sup> *Internal Regulations Governance, supra* note 11 at 03 Judicial Board, s 1.1(b).

<sup>24</sup> SSMU, Legislative Council, *Motion Regarding the Elections Timeline* (13 September 2018) [Elections Timeline Motion].

<sup>25</sup> *Ibid* at Appendix A.

[28] At the Hearing, Mr. Tre Mansdoerfer testified that this deadline existed by virtue of the *Memorandum of Agreement* (“MOA”) between the SSMU and the administration of McGill University.<sup>26</sup>

[29] There is no doubt that the October 15, 2018 deadline imposes a strict obligation upon the Legislative Council. Nevertheless, based on the evidence submitted and equitable considerations, this Board must conclude that it was never infringed by the Legislative Council given that the October 18 Motion is merely an amendment to the October 11 Motion. The latter respected the deadline and was submitted to the McGill Administration before the October 15, 2018 deadline.

[30] Indeed, this Board finds that, on the balance of probabilities, Mr. Tre Mansdoerfer’s narration of the sequence of events surrounding the adoption of the October 18 Motion is highly credible and supports the contention that the October 18 Motion is an amendment to the October 11 Motion.

[31] The two motions are identical except for three paragraphs in the Preamble of the October 18 Motion which address the purpose of this Motion. It is useful to cite said paragraphs:

WHEREAS, the previous motion submitted at the October 11th Legislative Council received a judicial board petition against it on the basis that there were not enough movers as specified in our Internal Regulations;

WHEREAS, regardless of the validity of the petition, re-motioning this at Legislative Council will still let the referendum question be asked for the fall referendum and implemented for the winter semester;

WHEREAS, the remainder of the motion is the same motion brought forth at the Legislative Council meeting from October 11th;<sup>27</sup> [Emphasis added]

[32] Further, without being determinative on their own, the underlying motives behind the introduction of the amending October 18 Motion also supports this conclusion. The amendment was introduced in good faith to remedy an alleged procedural flaw, and the strong support it received at the Legislative Council attests to the consensus around its substance. These principles are echoed in the Preamble of the *SSMU Constitution*, which provides that the elected representatives act in the best interests of the Members of the Society.<sup>28</sup> Without adjudicating on the content of the October 18 Motion, as this was not asked of this Board, this Board can nonetheless affirm that allowing for the October 18 Motion to proceed to a vote in the SSMU Fall Referendum respects the SSMU’s democratic commitment to its Members.

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<sup>26</sup> Memorandum of Agreement Between McGill University and Students’ Society of McGill University (15 November 2011), s 1.7 [MOA].

<sup>27</sup> October 18 Motion, *supra* note 8 at Preamble.

<sup>28</sup> *SSMU Constitution*, *supra* note 10 at Preamble.



[33] To summarize, this Board finds that the October 18 Motion was merely an amendment to the October 11 Motion and that, accordingly, the October 15, 2018 deadline for Fee Questions established by the *Motion Regarding the Elections Timeline* and the MOA was respected.<sup>29</sup>

(ii) *Did the October 11 Motion have the requisite number of movers?*

[34] The conclusion to the issue addressed in the first subsection does not affect the relevance of determining whether the October 11 Motion had the requisite number of movers. However, it is unnecessary to consider whether the October 18 Motion received more than the required number of movers considering the evidence presented at the Hearing.

[35] Section 5.1 of the *Standing Rules for the 2018-2019 Legislative Council* (“*Standing Rules*”) provides for the requisite number of movers for a main motion, such as the October 11 Motion. Pursuant to the *Standing Rules*, the requirement appears to be of three (3) movers:

Main motions require a minimum of three (3) movers to be presented before Council, with no more than half (1/2) hailing from the SSMU Executive Committee and no more than 2/3 from each constituency. Main motions do not require a seconder.<sup>30</sup>  
[Emphasis added]

[36] However, since the October 11 Motion is a motion related to the introduction of a referendum question, Section 1.2 of the *Internal Regulations of Elections and Referenda-04: Referenda* also applies.<sup>31</sup> This dual requirement raises some interpretative ambiguity as Section 1.2 establishes a more demanding requirement of four movers before the Legislative Council:

The Legislative Council may initiate a Referendum question by way of a resolution. Any motion to place a question before the Society by the Legislative Council must be presented as a written motion signed by at least four (4) Councillors and distributed to all Councillors no later than 72 hours prior to the meeting of the Legislative Council. If passed, it will be put to Members during the following Referendum period. The wording of a Referendum question must be approved by the Legislative Council fourteen (14) days prior to the opening of polls.<sup>32</sup> [Emphasis added]

[37] Faced with these conflicting requirements, the Parties suggest two opposite approaches. On the one hand, Mr. Tre Mansdoerfer alleges that the *Standing Rules* have precedence over the

<sup>29</sup> Elections Timeline Motion, *supra* note 24; MOA, *supra* note 26, s 1.7.

<sup>30</sup> *Standing Rules for the 2018-2019 Legislative Council* (13 September 2018), s 5.1 [*Standing Rules*], cited in SSMU, Legislative Council, *Motion Regarding the Adoption of the Standing Rules for the 2018-2019* (13 September 2018) at Appendix A.

<sup>31</sup> *Internal Regulations Elections and Referenda*, *supra* note 4, s 1.2.

<sup>32</sup> *Ibid.*

*Internal Regulations of Elections and Referenda* by virtue of Section 5.2 of the *Internal Regulations of Governance-01: Structure, Function, Interpretation and Amendment of the Internal Regulations*.<sup>33</sup> On the other hand, Mr. Bryan Buraga contends that these requirements are not in conflict and that they should be interpreted harmoniously in respect of the principle of dual compliance. This Board will first dismiss Mr. Bryan Buraga's arguments before elaborating on what it holds to be the correct interpretation.

[38] Statutory interpretation inevitably calls for some degree of analytical flexibility, but there are some situations in which the conflict is so apparent that disregarding it amounts to willful blindness. The situation at hand presents a numerical conflict. One source requires three movers whereas the other requires four movers. Both requirements apply to the impugned Motion. There is no possibility of reconciling the obligations stemming from these two sources.

[39] Mr. Bryan Buraga alleges that this Board should consider the doctrine of dual compliance and cites the Supreme Court of Canada decision in *Ross v. Registrar of Motor Vehicles et al.*<sup>34</sup> This case was not introduced as an authoritative piece of evidence but merely as a comparative instrument as Supreme Court decisions obviously do not bind this Board. It should be noted that the doctrine of dual compliance is not mentioned *per se* in *Ross*. In light of the absence of the dual compliance test in *Ross*, this Board is forced to resort to a recent iteration of the dual compliance test in the 2015 Supreme Court of Canada decision of *Saskatchewan (Attorney General) v. Lemare Lake Logging*.<sup>35</sup>

[40] This Board finds that the test would not be applicable in this matter because there is a conflict between two provisions. Indeed, the first step of the dual compliance test requires demonstrating that there is no operating conflict between the impugned provisions, before moving to the second prong, which addresses the eventual harmonious interpretation.<sup>36</sup> Given the presence of a clear operating conflict between the *Standing Rules* and the *Internal Regulations of Elections and Referenda*, the analogy fails to draw consideration from this Board.

[41] Having rejected Mr. Bryan Buraga's arguments regarding the application of the dual compliance doctrine, this Board considers Section 5.2 of the *Internal Regulations of Governance-01: Structure, Function, Interpretation and Amendment of the Internal Regulations*, which specifically provides for a mechanism to resolve conflicts within documents of the SSMU:

In the event of a conflict between the Internal Regulations, the following order of priority shall apply:

- a) Internal Regulations of Governance
- b) Internal Regulations of Finances

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<sup>33</sup> *Internal Regulations Governance*, *supra* note 11 at 01 Structure, Function, Interpretation and Amendment of the Internal Regulations, s 5.2.

<sup>34</sup> *Ross v Registrar of Motor Vehicles et al*, [1975] 1 SCR 5, 42 DLR (3d) 68, cited by Mr. Bryan Buraga in his Declaration, *supra* note 15 at para 31.

<sup>35</sup> *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd*, 2015 SCC 53 at paras 18–21.

<sup>36</sup> *Ibid.*

- c) Internal Regulations of Elections and Referenda
- d) Internal Regulations of Representation and Advocacy
- e) Internal Regulations of Student Groups.<sup>37</sup>

[42] As submitted to this Board during the Hearing, Section 6.2 of the *Internal Regulations of Governance-05: Legislative Council* provide for the enactment of the Legislative Council's *Standing Rules*:

Where the Legislative Council wishes to create Standing Rules, it shall do so in accordance with the provisions for Standing Rules contained in Robert's Rules of Order. Once passed, these rules shall supersede those rules contained in Robert's Rules of Order.<sup>38</sup>

[43] Therefore, this Board holds that the *Standing Rules*, enacted by virtue of Section 6.2 of the *Internal Regulations of Governance-05: Legislative Council*, have precedence over the *Internal Regulations of Elections and Referenda* pursuant to Section 5.2 of the *Internal Rules of Governance-01: Structure, Function, Interpretation and Amendment of the Internal Regulations*.

[44] Hence, the requisite number of voters for the October 11 Motion was three, as provided in Section 5.1 of the *Standing Rules*.<sup>39</sup> This Board concludes that the October 11 Motion was constitutionally adopted as it had the requisite number of movers.

[45] This conclusion is further supported by the Legislative Council's adoption practices from 2015 to 2018 as presented by Mr. Tre Mansdoerfer.<sup>40</sup> Without being a determinative factor on its own, the fact that similar motions were enacted regularly by the Legislative Council with only three movers for the past three years reassures this Board that it has reached the correct decision, consistent with sound practices.

#### *Obiter dicta*

[46] In light of Mr. Bryan Buraga's citation of the Supreme Court's decision in *Ross v. Registrar of Motor Vehicles et al.*, this Board takes the opportunity to clarify the principles

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<sup>37</sup> *Internal Regulations Governance, supra* note 11 at 01 Structure, Function, Interpretation and Amendment of the Internal Regulations, s 5.2.

<sup>38</sup> *Ibid* at 05 Legislative Council, s 6.2.

<sup>39</sup> *Standing Rules, supra* note 30, s 5.1.

<sup>40</sup> In 2015-2016, the following motions were moved by three movers: SSMU, Legislative Council, *Motion Regarding the Increase in the Radio CKUT Fee for the Fall 2015 Referendum* (1 October 2015); SSMU Legislative Council, *Motion Regarding the Renewal of the SSMU Equity Fee* (11 February 2016); SSMU, Legislative Council, *Motion Regarding the Renewal of the McGill Writing Centre Ancillary Fee* (11 February 2016). In 2017-2018, the following motions were moved by three movers: SSMU, Legislative Council, *Motion Regarding Renewal of the SSMU Ambassador Fee* (12 October 2017); SSMU, Legislative Council, *Motion Regarding First Year Council Fee Referendum Question* (12 October 2017); SSMU, Legislative Council, *Motion Regarding Peer Support Centre Referendum Question* (12 October 2017); SSMU, Legislative Council, *Motion Regarding Sustainability Projects Fund Fee Referendum Question* (12 October 2017). In 2018-2019, the SSMU, Legislative Council, *Motion Regarding the Plate Club Fee Referendum Question* (11 October 2018) was moved by three movers.

surrounding the citation of Canadian jurisprudence as supporting evidence in the context of actions before this Board.

[47] Parties citing Canadian jurisprudence should be aware that their sole purpose is comparative and that they have no binding power on this Board.

[48] Moreover, the principles referenced must be easily applicable to the context of an Action before this Board. In the present action, Mr. Bryan Buraga cited a decision on the federal paramountcy doctrine, a concept addressing the precedence of federal legislation over provincial legislation in certain situations.<sup>41</sup> Such a concept heavily depends on the unique nature of provincial/federal interactions in the Canadian context and is hardly applicable within the context of the SSMU. Therefore, this Board was forced to dismiss the attempted analogy.

**B. Is the referendum arising from the October 11 Motion and the October 18 Motion constitutional?**

[49] As this Board has determined that the October 11 Motion and the October 18 Motion were constitutionally adopted by the SSMU Legislative Council on October 11, 2018 and on October 18, 2018, respectively, and as the referendum question was submitted to the administration of McGill University before the specified deadline of October 15, 2018, the referendum that arose as a result of those Motions was constitutional, falling within the purview of the Legislative Council under Section 14.1 of the *SSMU Constitution*.<sup>42</sup>

**C. Did the Mr. Jun Wang, in his capacity of Vice-President (Finance) of the SSMU, act with the requisite standard of care as provided by Section 16.1 of the *SSMU Constitution* and upheld his obligations under Section 5.3.5 of the GSVP?**

[50] In *Glustein v. Koparkar*, this Board held that the requisite standard of care provided by Section 16.1 of the *SSMU Constitution* is breached when the following elements have been established: a fault, a prejudice, and a causal link between the fault and the prejudice.<sup>43</sup>

[51] In the present matter, it is unnecessary to determine whether there is a causal link between an alleged fault committed by Mr. Jun Wang and whether a prejudice arose therefrom. The analysis of the causal link and the prejudice branches of the *Glustein v. Koparkar* test is unnecessary because this Board holds that Mr. Jun Wang did not commit a fault in his capacity of Vice-President (Finance) of the SSMU.

[52] The first alleged violation is that Mr. Jun Wang failed to comply with Section 16.1 of the *SSMU Constitution*, which states that an Officer is required to “act honestly and in good faith”

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<sup>41</sup> Peter W Hogg, *Constitutional Law of Canada: 2016 Student Edition* (Thomson Reuters: Toronto, 2016) at 16-2-16-3.

<sup>42</sup> *SSMU Constitution*, *supra* note 10, s 14.1.

<sup>43</sup> *Glustein Final Judgement*, *supra* note 6 at para 25.

and to exercise the required duties with the “care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.”<sup>44</sup>

[53] To determine whether a fault has occurred under Section 16.1, a fact-specific analysis must be carried out. This Board concludes that, based on the facts and the requirements of conduct in Section 16.1, Mr. Jun Wang has not breached the requisite standard of care.

[54] Mr. Jun Wang's oral statements at the October 11, 2018 Legislative Council session regarding the funding of the GSVP were made in good faith through the exercise of the care and diligence that a reasonably prudent Vice-President (Finance) would have made in comparable circumstances. By discussing the merits of funding the GSVP through a fee levy instead of the SSMU's budget, Mr. Jun Wang was simply weighing the funding options that were available to the SSMU.

[55] As Mr. Tre Mansdoerfer confirmed at the Hearing, the funding of the GSVP has been made a priority by the Executive Committee. Therefore, Mr. Jun Wang has complied with the essence of his role, which requires the Vice-President (Finance) to manage and develop the Society's budget in accordance with the priorities set out by the Executive Committee.<sup>45</sup>

[56] The second alleged violation is that Mr. Jun Wang failed to comply with the responsibilities outlined in Section 5.3.5 of the GSVP, which states that the Vice-President (Finance) “is responsible for ensuring that the designated amount of funding to operate the GSVP is provided for in the SSMU budget.”<sup>46</sup>

[57] This Board concludes that Mr. Jun Wang has fulfilled his obligations pursuant to Section 5.3.5 of the GSVP. This provision imposes an obligation of *result*, rather than an obligation of *means*, on the Vice-President (Finance). Therefore, by stating that the SSMU should first attempt to fund the GSVP with a fee levy, Mr. Jun Wang was pursuing his obligation of ensuring that the GSVP would be funded. Furthermore, by additionally stating that cuts could be made in the SSMU budget to fund the GSVP if the fee levy failed to be implemented, Mr. Jun Wang was equally pursuing this obligation of result.

[58] In summary, Mr. Jun Wang is absolved of all blame: he has not breached the requisite standard of care pursuant to Section 16.1 of the *SSMU Constitution* and he has fulfilled his obligations pursuant to Section 5.3.5 of the GSVP.

**D. Is the Executive Committee of the SSMU as a whole bound by the standard of care established by Section 16.1 of the *SSMU Constitution*? If so, did the Executive Committee of the SSMU breach its obligation under the requisite standard of care?**

[59] Mr. Bryan Buraga argues that, although the Executive Committee of the SSMU as a whole is not explicitly named in Section 16.1 of the *SSMU Constitution*, it is nevertheless bound

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<sup>44</sup> *SSMU Constitution*, *supra* note 10, s 16.1.

<sup>45</sup> *Ibid*, s 10.15

<sup>46</sup> GSVP, *supra* note 2, s 5.3.5.

by the standard of care provided by Section 16.1 of the *SSMU Constitution*.<sup>47</sup> He cites *Glustein v. Koparkar*, where this Board found that the Speaker of the SSMU, who is not explicitly mentioned in Section 16.1, is bound by the standard of care “as it is reasonable to expect the Speaker to act in accordance with the standard of care outlined in Section 16.1.”<sup>48</sup>

[60] This Board rejects the argument that the Section 16.1 standard should apply to the Executive Committee as a whole. A distinction must be drawn between the Speaker of the SSMU in *Glustein v. Koparkar* and the Executive Committee as a whole in the present matter.

[61] This Board held that the standard of care provided by Section 16.1 applies to the Speaker of the SSMU in *Glustein v. Koparkar* to allow the Members of the SSMU to have a justiciable claim against the Speaker under Section 16.1. Members of the SSMU must have a justiciable claim against all individuals, such as the Speaker of the SSMU, who are reasonably expected to act with the standard of care provided by Section 16.1.

[62] On the other hand, the Executive Committee is composed of the Officers of the Society.<sup>49</sup> Unlike the Speaker, the individual members of the Executive Committee are explicitly bound by the standard of care provided by Section 16.1.<sup>50</sup> Since this provision already binds the members of the Executive Committee individually in their capacity as Officers of the SSMU, Members of the SSMU already have a justiciable claim against them under Section 16.1. Therefore, this provision should not be interpreted to bind the Executive Committee as a whole as its individual members are already explicitly bound by Section 16.1.

[63] The standard of care under Section 16.1 should only apply to individuals. This standard does not apply to groups of people even if each member of the group is individually bound by the provision.

## DECISION

[64] This Board holds the following:

- A) The October 11 Motion and the October 18 Motion, both passed by the SSMU Legislative Council, were adopted in full respect of applicable constitutional requirements.
- B) The SSMU Fall 2018 Referendum arising from the October 11 Motion and the October 18 Motion is constitutional.
- C) Mr. Jun Wang, in his capacity of Vice-President (Finance) of the SSMU, acted with the requisite standard of care provided by Section 16.1 of the *SSMU Constitution* and upheld his obligations under Section 5.3.5 of the GSVP.

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<sup>47</sup> Buraga Declaration, *supra* note 15 at para 57.

<sup>48</sup> Glustein Final Judgement, *supra* note 6 at para 49.

<sup>49</sup> *SSMU Constitution*, *supra* note 10, s 11.2.

<sup>50</sup> *Ibid*, s 16.1.

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D) The Executive Committee of the SSMU as a whole is not bound by the standard of care established by Section 16.1 of the *SSMU Constitution*.