



Judicial Board | Conseil judiciaire
jboard@ssmu.ca
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STUDENTS' SOCIETY OF MCGILL UNIVERSITY JUDICIAL BOARD

2020-02-21

BETWEEN

**Marine Khedigian and
Andrea Landers Sciortino**

Appellants

and

Office of the Chief Returning Officer of the Education Undergraduate Society (EdUS)
Respondent

TYPE

Ex Parte Interim Order

JURISDICTION OF PROCEEDINGS

Education Undergraduate Society

CORAM

Chief Justice Patrick O'Donnell (presiding) and Justices Charles Choi, David How, Catherine Laperrière, Nikita Tafazoli and Cherry Wu

REASONS FOR JUDGMENT

Chief Justice O'Donnell (Justices Choi, How, Laperrière, Tafazoli and Wu concurring)



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Facts

The petitioners ran for the position of Vice-Presidents¹ Academic of the Education Undergraduate Society (EdUS) in the Winter 2020 elections.

There was ongoing communication between the petitioners and the Chief Returning Officer (CRO) of the EdUS, Lucie Aubin (hereinafter “the respondent”), throughout the election. During this time, there appears to have been a misunderstanding between the petitioners and the respondent as to whether the stated limit of \$50 per candidate for campaign-related expenses is a limit on how much money a candidate may spend on their campaign (regardless where that money comes from), or merely on how much money a candidate will be reimbursed for by the EdUS. The petitioners claim that the respondent explicitly told them at the start of the campaign that they could exceed the \$50 allowance, provided they pay for any expenses above that amount themselves.

Partway through the campaign period, the petitioners were informed by a friend that the \$50 allowance was, in fact, a cap on the amount they were allowed to spend and not just on the amount they could expect to be reimbursed for. The petitioners reached out to the respondent to discuss the situation and were told that they could remedy the misunderstanding by cancelling a campaign event (the second of what they had been referring to as “Coffee Mornings”) that had been planned for the next day, which they promptly did. According to the official expense report, which has been verified by the respondent, a total of \$49.86 had been spent on campaign-related expenses up until this point, excluding the cost of things (food, predominantly) that were purchased for use at the petitioners’ now-cancelled second “Coffee Morning” event but never actually distributed or otherwise used in a way that would have benefited their campaign. The respondent allowed the petitioners to continue campaigning, and did not impose any additional sanctions or punitive measures during the final four days of the campaign period.

When the results of the election were released on Tuesday the 11th of February, the petitioners received a majority (56.6%) of the votes² cast in the election and had outperformed the sole other candidate for the position by just over 14%.

Two days later, on Thursday the 13th of February, the respondent approached the petitioners to inform them that they had been disqualified from the election due to violations of EdUS campaign bylaws and that the position of Vice-Presidents Academic would instead be

¹ Article 10 of the EdUS Constitution, included here as Exhibit P-8, allows certain executive positions including Vice-President Academic to be shared by up to two persons at once.

² Per the official voter summary, included here as Exhibit P-7.



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awarded to the candidates with the second-highest number of votes.³ In accordance with the bylaws, the CRO's inquiry was initiated at the request of the other candidate for the position. A statement⁴ was sent out on the 15th to inform the electorate of the bylaw violation and new electoral results.

The respondent informed the petitioners of their right to appeal before the Judicial Board, but the petitioners allege that they were discouraged by the respondent from exercising that right because their appeal would be unlikely to succeed, and because escalating the matter to the J-Board could result in it appearing on their academic transcripts⁵ and/or jeopardizing their ability to apply for other positions in EdUS and at McGill. The petitioners state that they "felt pressured to not discuss this matter anymore, because if they were to do so, they understood that they would suffer irreparable harm to their professional and academic careers."⁶

Issues and Remedy Sought

The petitioners seek an Interim Order suspending the election of Emily Guilcher & Tianna Kloepfer to the position of Vice-Presidents Academic of the EdUS, pending a final decision on the matter. The three other remedies sought are of a permanent nature and will be dealt with if and when a full decision is reached.

Analysis

A—Jurisdiction of the Judicial Board

The general authority of the Judicial Board is laid out in the [Internal Regulations of Governance-03: Judicial Board](#) ("Internal Regulations of Governance"). Section 1.1(c) of these regulations empowers the J-Board to render decisive opinions on all matters pertaining to "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 Regulations," thereby giving it the clear authority to intervene in matters concerning decisions made by electoral officials, including the Chief Returning Officer.

However, while the Internal Regulations clearly establish the J-Board's authority over officials responsible for administering elections and referenda within the context of SSMU, that same authority does not automatically extend to their counterparts within the various faculty associations. In the case of the Education Undergraduate Society, the J-Board's authority over

³ Like the petitioners, these two candidates ran jointly and appeared as a single option on the ballot.

⁴ Included here as Exhibit P-6.

⁵ We feel compelled to mention here that involvement in Judicial Board cases absolutely does not—and, in fact, cannot—appear on or otherwise affect any aspect of a student's academic record.

⁶ See [12]–[13] of the petitioners' declaration.



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questions relating to “Elections and/or Referenda” is explicitly provided for in Part IV of the EdUS Constitution⁷ (“Part IV - Judicial Board”), which reads:

“18.1 The Judicial Board of the Students’ Society of McGill University shall be the final authority on: (a) **the interpretation of the Constitution and By-Laws of the EdUS;** (b) the interpretation and legality of any motion passed by Council; (c) the interpretation and legality of the Referendum question; (d) **any decision made by the CRO**

18.2 The Judicial Board of the Students’ Society shall have the power to declare invalid any act of the Council or the Committees of Council which derogates from the Constitution and By-Laws of the EdUS.

18.3 All decisions of the Judicial Board shall be binding upon all involved parties, and no appeals will be permitted.

18.4 All members of the EdUS shall have the right to petition the Judicial Board on matters falling within the EdUS’ authority, as set out herein.” (Emphasis added)

The Judicial Board’s authority is reinforced in Part III, Article 13 of the EdUS Constitution, which confirms that while the CRO is entitled to a certain degree of deference and has a broad discretion to interpret the rules governing elections and referenda, their decisions are nevertheless subject to appropriate review:

“13.2 A decision made by the CRO concerning the interpretation of articles in this Constitution and By- Laws regarding elections and referenda, shall be considered binding, subject to an appeal to the Judicial Board.”

However, Article 14.1 of the EdUS bylaws on Elections and Referenda stipulates that decisions made by the Chief Returning Officer must be appealed to the Judicial Board within 48 hours of their issuance, which the petitioners failed to do. The petitioners argue that they would not have failed to submit their petition on time were it not for the respondent’s discouragement and interference. This is a claim that cannot be substantiated without further investigation, which in turn requires at least a conditional acceptance of jurisdiction.

Based on the totality of our analysis so far, we tentatively find that this case falls within the Judicial Board’s jurisdiction in respect of the relevant requirements and principles set out by the EdUS and the SSMU itself. Should the petitioner’s claim about their interactions with the respondent regarding Judicial Board appeals later prove to be false or exaggerated, the Board will have no choice but to relinquish jurisdiction.

B—Can an Interim Order Be Issued Ex Parte?

⁷ Included here as Exhibit P-8.



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Yes. Section 10.5 of the [Judicial Board Procedures](#) allows the Board to issue Interim Orders based on the written submissions of the petitioner(s) alone in time-sensitive cases. Given the sheer amount of objective supporting documentation available to us in this case already, the Board is confident it has enough information at its disposal to justify issuing the Interim Order in an *Ex Parte* manner. Our reasons for concluding that the case is time-sensitive are discussed in further detail below.

C—Is there sufficient basis to issue an Interim Order?

Requests for interim orders are evaluated according to the standard laid out in s. 10 of the [Judicial Board Procedures](#), which is replicated in the analysis below. It must be emphasized that because interim orders and regular decisions of the Board are decided on the basis of entirely different criteria, decisions to grant or refuse interim orders cannot be taken as indicative of how the Board is likely to rule with respect to the larger issue in any given case.

1. Existence of a serious issue to be heard

This case raises numerous serious concerns that demand the Judicial Board’s attention. Transparency is of paramount importance in representative student governance, and disqualification of a candidate—let alone one who won the popular vote—is not a step that can ever be taken lightly. While we emphasize that none of the petitioners’ claims have been independently substantiated at the time of this order, several of these concerns are fundamental enough to the EdUS governance system that the Board could not, in good faith, refuse to investigate them without shirking its duties. The most immediate priority is to review the CRO’s decision regarding whom to appoint to the position of Vice-President Academic as expeditiously as possible so as to minimize uncertainty for the candidates and allow the elected party to begin integrating themselves into next year’s executive team.

The petitioners’ allegations about being led to believe that Judicial Board appeals can result in academic or professional consequences will also need to be investigated and addressed. It is apparent that, as a bare minimum, the Board will need to clarify to the student body that it has no affiliation with the university’s own academic disciplinary units.

Finally, in addition to the practical remedies sought by the petitioners, the Judicial Board is also being urged to issue guidance on how similar cases should be viewed and treated in the future. Given the greater-than-usual impact this case is likely to have on future precedent within EdUS as well as within SSMU more broadly, it will be important to address its implications beyond just the effect it will have on the involved parties.



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2. Whether the party requesting an interim order will suffer irreparable harm if the interim order is not granted

A public notice sent out to all EdUS constituents implied the petitioners had committed such an egregious violation of the norms and regulations of democratic student governance that the only appropriate response was to disqualify their candidacies entirely and award the position to someone else. Regardless of the Board's ultimate decision, the potential reputational damage that stands to be done to the petitioners is significant and justifies taking steps to ensure that, at a minimum, no additional damage is done before each party has been afforded the opportunity to make their case.

Moreover, in the absence of an order by the Judicial Board, the CRO is only required to preserve documents and records for 14 days following an election. Given the reliance on witness corroboration and contextual evidence in a case like this, an interim order helps to decrease the likelihood that essential documents go missing or witnesses lose interest in the matter.

3. The balance of inconvenience

In deciding whether to grant the interim order, this Board must consider the potential harms that may be imposed on both the Petitioner and the Respondents, and balance these harms accordingly. As well, this Board must take into consideration the best interests not only of the petitioners and of the respondent, but of the EdUS and its membership as well.

If the J-Board were to reject the request for interim measures but side with the petitioners in its final decision, then the petitioners would almost certainly be inconvenienced in two ways. Firstly, the particularly public nature of this case means that there is a real, unquantifiable risk to their reputations within EdUS. Secondly, while it would be just as challenging for Ms. Guilcher and Ms. Kloepfer to integrate into the incoming executive team a few weeks after the rest as it would be for Ms. Khediguian and Ms. Landers Sciortino, the petitioners would suffer in the additional sense of having to then bond with a team of executives that may by that point have become accustomed to working with the first candidates, and resent their replacement.

Regarding the likely impact of the proposed interim measures on the respondent, we see two possibilities. If the respondent has made an error in her interpretation or application of the bylaws, then the interim order simply preserves the status quo long enough for the parties to remedy the problem. If, on the other hand, the petitioners' claims are exaggerated or they've made a genuine error of judgment of some sort, then the annoyance of a brief suspension of the results will be made up for by the added future certainty of knowing that the CRO's interpretation has been upheld as the correct one. Thus the respondent herself stands to lose



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very little (and arguably gains something) from an interim order suspending the results, while the petitioners suffer a significantly greater risk of harm from the absence of such an order.

Given what has been discussed, it is clear both that the EdUS as a whole has an interest in erring on the side of thorough investigation, and that the petitioners stand to suffer a good deal more by us refusing the request for interim measures than the respondent stands to suffer by us granting it.

In summary, and in taking the above into consideration, we find that the harm likely to be suffered by the petitioners outweighs the harm likely to be suffered by the respondent, and the Education undergraduate community as a whole, given the totality of the circumstances as understood by the Board.



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Decision

The results of the Education Undergraduate Society's Winter 2020 election for the position of Vice-President Academic Affairs are hereby suspended with immediate effect pending a final decision by the Judicial Board. The *de facto* election of Emily Guilcher and Tianna Kloepfer to the position is invalidated by extension, though this may be restored in a final decision.

Additionally, all persons subject to the authority of the Judicial Board are to take steps to ensure that any and all records or documents pertaining to the election in question, or which could otherwise be relevant to this case, be preserved and maintained until further notice.