



**Judicial Board | Conseil judiciaire**

jboard@ssmu.ca

3600 McTavish St., Suite 1200, Montréal, QC, H3A 0G3

*Located on Haudenosaunee and Anishinaabe, traditional territories*

# STUDENTS' SOCIETY OF MCGILL UNIVERSITY

## JUDICIAL BOARD

### 2020-05-19

#### BETWEEN

**Asa Kohn**  
Appellant  
and  
**Science Undergraduate Society (SUS),**  
**Science Undergraduate Society Executive Committee and**  
**Elections SUS**  
Respondents

#### TYPE

Final Judgment

#### JURISDICTION OF PROCEEDINGS

Science Undergraduate Society | Students' Society of McGill University

#### CORAM

Justices Charles Choi, David How, Catherine Laperrière, Nikita Tafazoli and Cherry Wu

#### REASONS FOR JUDGMENT

THE SSMU JUDICIAL BOARD, UNANIMOUS—



## Executive Summary<sup>1</sup>

1. Moses Milchberg resignation from his position as SUS Representative to SSMU created a vacancy on both the SUS and SSMU levels, even if he did not formally resign to the SSMU.
  - 1.1. The *Internal Regulations of Governance* regarding the SSMU Legislative Council automatically suspend a Councillor that, twice, does not notify the Speaker of their absence to the Legislative Council. This would have created a vacancy in Milchberg's position.
  - 1.2. The conditions of the *Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit* were not all met, so it does not nullify a violation of the *Standing Rules*.
  - 1.3. Milchberg's resignation at the SUS level necessarily meant he would not serve the student body at the SSMU level.
2. The sending of proxies was invalid. The SUS should have appointed a new Representative.
  - 2.1. Elections could also have been held. Inexperience should not be a justification to deny democracy, and having three SUS Representatives mitigates the inconvenience of a newly elected Representative. However, the short timeline for elections is retained as posing difficulty.
  - 2.2. Whether or not an election was deemed suitable, Article 19.6 of the SUS Constitution is clear that an interim Representative must be appointed.
  - 2.3. Proxies are not meant to replace a Representative who has resigned from their position.
  - 2.4. Neither the SUS Executive Committee's good-faith belief that there was no vacancy nor the best interests of the SUS warrant violating explicit provisions.
3. The rejection of the Petitioner's referendum question was invalid.
  - 3.1. The Chief Returning Officer (CRO) does not possess discretion to refuse referendum questions that respect the SUS Constitution's requirements, namely that the question be "fair and stated without bias".
  - 3.2. Representatives and other members of student governments should be very transparent about the source of their powers and avoid asserting powers not grounded in explicit provisions.
  - 3.3. Questions spreading what the CRO considers as misinformation, but meeting the constitutional criteria, should be addressed by campaigning or by representatives when they refuse to follow the referendum results. This course of action better protects democracy.

---

<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



## Facts

1. Between January 7<sup>th</sup> to 14<sup>th</sup>, 2019, SUS Representative to SSMU Moses Milchberg submitted his resignation from his position with the SUS, through Slack, to the SUS President, Reem Mandil. Although Milchberg submitted his official notice of resignation to the SUS, he did not do so to the SSMU.
2. On January 23<sup>rd</sup>, 2019, during the SUS General Council meeting, President Mandil announced that the SUS Representative to SSMU resigned from his position. Mandil added that the SUS would not be selecting an interim representative to the SSMU Legislative Council, nor hold elections to elect a new representative. Rather, it would send proxies from the SUS Executive Committee to represent the SUS constituency at the Legislative Council.
3. On January 25<sup>th</sup>, 2019, the Petitioner communicated his disagreement with the decision of the Executive Committee to nominate proxies instead of an interim representative.
4. The Petitioner wrote a motion, titled *Motion to Replace the Representative to the SSMU*, collected the required 100 signatures of SUS constituents, and presented it to the Speaker of the SUS, Husayn Jamal, to be asked at the General Assembly on February 6<sup>th</sup>, 2019. However, the deadline for motions concluded on January 23<sup>rd</sup>, 2019, and thus the Speaker did not accept this motion.
5. At the Legislative Council on February 7<sup>th</sup>, 2019, the two remaining SUS Representatives to SSMU; the SSMU President, Tre Mansdoerfer; and the Arts & Science Senator, Bryan Buraga, moved the *Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit*. This motion exempted the SUS from a provision that permitted a maximum of two (2) proxies per councillor per academic year.<sup>2</sup> As per Appendix A of the *Motion*, the SUS selected members of its Executive Council that did not already hold seats at the SSMU Legislative Council to represent the SUS constituents as proxies.<sup>3</sup>
6. On February 18<sup>th</sup>, 2019, the Petitioner submitted a referendum question package to the SUS Chief Returning Officer (CRO), Charles Smith, asking the SUS to compel the Executive Committee to select either the prospective SUS Representatives to SSMU for the following year (2019-2020 school year) or an alternative SUS constituent to serve as the interim SUS Representative to SSMU. The referendum question proposed by the Petitioner was as follows: “Shall the SUS Executive Committee, in accordance with Article 19.6 of the *Constitution*, in order to replace former SSMU Representative Moses Milchberg, who resigned during this

---

<sup>2</sup> Students’ Society of McGill University Legislative Council (7 February 2019), [*Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit*], online (pdf): <[ssmu.ca/wp-content/uploads/2019/02/Motion-Regarding-Exemption-for-SUS-from-the-Standing-Rules-Proxy-Limit-2019-02-07-APPROVED.pdf?x21981](https://ssmu.ca/wp-content/uploads/2019/02/Motion-Regarding-Exemption-for-SUS-from-the-Standing-Rules-Proxy-Limit-2019-02-07-APPROVED.pdf?x21981)>; Students’ Society of McGill University Legislative Council (13 September 2018), [*Motion Regarding the Adoption of the Standing Rules for the 2018-2019 Legislative Council*], online (pdf): <[ssmu.ca/wp-content/uploads/2018/09/Motion-Regarding-the-Adoption-of-the-Standing-Rules-for-the-2018-19-Legislative-Council-2018-09-13-APPROVED.pdf?x21981](https://ssmu.ca/wp-content/uploads/2018/09/Motion-Regarding-the-Adoption-of-the-Standing-Rules-for-the-2018-19-Legislative-Council-2018-09-13-APPROVED.pdf?x21981)>.

<sup>3</sup> *Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit*, *supra* note 2.



academic year, nominate the candidate who receives the most votes for that position in this election, or another member of the SUS, to serve as the interim SSMU Representative for the remainder of the term?”

7. This package contained, on its third page, a disclaimer which stated that “The CRO shall have final discretion with regards to the suitability of any referendum question submitted by any member of the society.”
8. Once submitted, Smith signed the referendum question package, acknowledging its receipt.
9. On February 22<sup>nd</sup>, 2019, Smith resigned from his position as the SUS CRO. The SUS President, Reem Mandil, took over as acting CRO since the election period had already commenced.
10. On February 24<sup>th</sup>, 2019, at 20:40, Mandil, in her capacity as the CRO, rejected the Petitioner's referendum question.
11. The Respondents and the Petitioner have undertaken mediation before taking the case to the Judicial Board (“the Board”).

## Issues

In the present judgment, the Board is tasked with addressing the following questions:

1. a) Was Moses Milchberg's seat vacant?  
b) Consequently, was the sending of proxies to the SSMU Legislative Council instead of appointing an interim Science Representative to SSMU valid?
2. Was the rejection of the Petitioner's referendum question by the CRO valid?

## Jurisdiction

1. As prescribed in the Interim Order of *Glustein v Koparkar*, jurisdiction relevant to the Judicial Board of the SSMU includes “persons, moral and physical, and constitutional documents” that are within the scope of the Board.<sup>4</sup>
2. The jurisdiction of the Board of the SSMU is outlined in Section 15.1 of the *SSMU Constitution*,<sup>5</sup> Section 1.1 of the *Internal Regulations of Governance-03 : Judicial Board*,<sup>6</sup> and Section 7 of the *Judicial Board Procedures*.<sup>7</sup> The Board considered all three regulating documents to confirm its jurisdiction over this matter.

---

<sup>4</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>5</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>6</sup> *Students' Society of McGill University Internal Regulations of Governance-03 : Judicial Board* (28 March 2019), part 1 [*Internal Regulations Governance*], online (pdf): <ssmu.ca/wp-content/uploads/2017/05/Internal-Regulations-of-Governance-2017-03-09.pdf>.

<sup>7</sup> *Students' Society of McGill University Judicial Board Procedures* (14 October 2018), s 7 (Proposed Procedures) [*Judicial Board Procedures*].



3. Specifically, Section 1.1(b) of the *Internal Regulations of Governance-03 : Judicial Board* grants the Board jurisdiction over motions and decisions of the Legislative Council of the SSMU that violates the Constitution or Internal Regulations of the SSMU.<sup>8</sup>
4. The *SUS Constitution* establishes the Judicial Board of SSMU as the final authoritative body on “the interpretation of the Constitution and By-laws of the Society” and “any decisions made by the CRO.”<sup>9</sup> It further adds that this Board has the authority to “declare invalid any act of the Society [...] or decisions of the CRO which deviate from the Constitution and the By-Laws of the Society.”<sup>10</sup>
5. Considering that the actions the Board is tasked with examining were made by the SUS, its Executive Committee and its CRO, and that this case also concerns the SSMU Legislative Council as well as the interpretation of the *SUS Constitution*, the Board found that it has jurisdiction over the present case.

## Analysis

### 1. a) WAS MOSES MILCHBERG’S SEAT VACANT?

1. For a SUS Representative to SSMU to resign from their position, they must resign at the SUS-level and accordingly at the SSMU level. At the SSMU level, they must complete their resignation process by submitting their formal letter of resignation “to the head office of the Society by electronic mail, courier or by registered mail.”<sup>11</sup> However, as evident in the minutes of the SSMU Legislative Council of February 7<sup>th</sup>, 2019, Milchberg resigned from his position as the SUS Representative to SSMU and submitted his resignation to the SUS, but he did not submit his formal resignation to SSMU.<sup>12</sup> Thus, he resigned from his position at the SUS level but not at the SSMU level. This presented much difficulty for both the SUS and the SSMU, as Milchberg’s resignation fell into a gap, only covered ambiguously by parts of both the SUS and SSMU constitutions and other regulatory documents.
2. In light of this gap, the Board recognizes that discrepancies exist between the governance documents of the SUS and the SSMU regarding the determinants of seat vacancy that may have caused difficulty in proceeding with proper action.

### SUS

3. The Respondents argue that Milchberg’s resignation to the SUS resulted in a vacancy on the SUS; therefore, the Executive Committee invoked Article 19.6 of the SUS Constitution.<sup>13</sup> The

---

<sup>8</sup> *Internal Regulations of Governance-03 : Judicial Board*, *supra* note 6, s 1.1(b) (Jurisdiction).

<sup>9</sup> *Science Undergraduate Society Constitution* (January 2018), art 18.1 (Judicial Board) [*SUS Constitution*].

<sup>10</sup> *Ibid*, art 18.2 (Judicial Board).

<sup>11</sup> *SSMU Constitution*, *supra* note 5, s 8.5 (Resignation).

<sup>12</sup> Students’ Society of McGill University Legislative Council (7 February 2019), item 12 [*Legislative Council Minutes*], online (pdf):

<[ssmu.ca/wp-content/uploads/2019/03/Minutes-Legislative-Council-Approved-2019-02-07.pdf?x21981](http://ssmu.ca/wp-content/uploads/2019/03/Minutes-Legislative-Council-Approved-2019-02-07.pdf?x21981)>.

<sup>13</sup> *SUS Constitution*, *supra* note 9, art 19.6 (Judicial Board).



Board agrees with the view of both parties that Milchberg's resignation did leave a vacancy on the faculty level as prescribed in the *SUS Constitution*.

#### SSMU

4. Concerning the vacancy on the SSMU level, the Respondents argue that there was no vacancy, as Milchberg did not submit an official resignation letter through the procedures prescribed under Section 8.5 of the *SSMU Constitution*.<sup>14</sup> Although the Board agrees that Milchberg did not follow official resignation processes, it considers that there was a vacancy on the SSMU level as well.
5. Milchberg resigned from the SUS by sending an official notice to conclude his responsibilities as a SUS Representative to SSMU. The Board accepts the argument presented by the Petitioner that a Councillor occupying such a position at two governing bodies cannot resign from one and be expected to serve the society of the other body. Moreover, such action would not be democratic, as a Councillor who resigns at the faculty level but continues to serve at the undergraduate-society level would not be accountable to SUS constituents.
6. The *Internal Regulations of Governance* provide automatic suspension of a Councillor who does not notify the Speaker of their absence to the Legislative Council twice.<sup>15</sup> Such immediate suspension is considered "temporarily vacant." In this manner, Milchberg's failure to notify the Legislative Council is a violation of Section 3(4) of the *Internal Regulations of Governance* and should be interpreted as a vacancy. The *Motion Regarding the Adoption of the Standing Rules for the 2018-2019 Legislative Council* also affirms that the penalty of a Councillor that fails to follow Section 3(4) is automatic suspension, thus leaving the Councillor's seat vacant.<sup>16</sup>
7. The Board recognizes the *Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit* passed by the Legislative Council on February 7<sup>th</sup>, 2019.<sup>17</sup> This motion provided an exemption of Section 2.4.3 to the proxy limit for Milchberg's SUS Representative to SSMU position, allowing a continuity of Milchberg's position. However, notwithstanding the exempted Section 2.4.3, Section 2.4.2 requires that the Councillor must notify the Parliamentarian of the SSMU with the replacement, which Milchberg did not complete. Moreover, although the *Standing Rules* lay that Section 2.4 are notwithstanding the *Internal Regulations of Governance*, Section 2.4.2 is part of the *Standing Rules*. Therefore, a violation of Section 2.4.2 holds, even if the *Standing Rules* nullifies the provisions of the *Internal Regulations of Governance*.
8. The Board recognizes that these actions should have been taken at the level of the SSMU, and not by the Respondents; however, the Board was not tasked with examining the SSMU's

---

<sup>14</sup> *SSMU Constitution*, *supra* note 5, s 8.5 (Resignation).

<sup>15</sup> *Students' Society of McGill University Internal Regulations of Governance-05 : Legislative Council*, (28 March 2019), s 3.4 (Failure to Notify in Absence), [*Internal Regulations Governance*], online (pdf): <[ssmu.ca/wp-content/uploads/2017/05/Internal-Regulations-of-Governance-2017-03-09.pdf](http://ssmu.ca/wp-content/uploads/2017/05/Internal-Regulations-of-Governance-2017-03-09.pdf)>.

<sup>16</sup> *Motion Regarding the Adoption of the Standing Rules for the 2018-2019 Legislative Council*, *supra* note 2.

<sup>17</sup> *Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit*, *supra* note 2.



actions. Still, the Board highlights there was no attempt by the SUS to request the SSMU follow this constitutionally sound course of action.

### **1. b) CONSEQUENTLY, WAS THE SENDING OF PROXIES TO THE SSMU LEGISLATIVE COUNCIL INSTEAD OF APPOINTING AN INTERIM SCIENCE REPRESENTATIVE TO SSMU INVALID?**

1. Although Milchberg's resignation to the SUS but not the SSMU left the Legislative Council in a difficult situation, alternative recourses existed via means outlined in the *Constitution* and the regulatory documents that allow the Legislative Council to remove an individual from office.
2. As per Article 19.6 of the *SUS Constitution*, if there is a vacant position among representatives to SSMU, the "Executive Committee will appoint a replacement on an interim basis to be approved by General Council, until a by-election, if deemed necessary by the General Council, is held."<sup>18</sup> However, while acknowledging the vacancy, the SUS did not fill the vacancy with "a replacement on an interim basis".
3. Instead, the SUS filled the vacancy with a rotating proxy, rather than a replacement, as supported by the *Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit*.<sup>19</sup> This motion provided an exemption of Section 2.4.3 to the proxy limit for Milchberg's SUS Representative to SSMU position.
4. The course of action chosen by the SUS to address Milchberg's resignation, namely the decision to send proxies on a rotating basis as representatives, was invalid. The Board recognizes that various mitigating factors made other solutions difficult to implement, but the SUS was not left without remedy provided for in the *Constitution*.

#### Election

5. The Respondents argue that a By-Election would not have been in the best interests of the SUS due to the fact that a newly elected SUS Representative would likely only be able to sit on two SSMU Legislative Council meetings before the end of the year.<sup>20</sup> The Board recognizes the difficulties of the tight timeline for an election, though the minimal duration of an election is contested.
6. The Respondents additionally contend that the newly elected Representative would likely not have had experience in this position and the quality of the representation may have been affected. However, in support of the use of proxies, the Respondents themselves acknowledge that, since there are three SUS Representatives to the SSMU, two can "report on behalf of SSMU and maintain that required liaison between the two bodies. The aim to have a third is simply for the purposes of proportional representation"<sup>21</sup>.

---

<sup>18</sup> *SUS Constitution*, *supra* note 9, art 19.6 (Removal or Vacancy from Office).

<sup>19</sup> *Motion Regarding Exemption for SUS from the Standing Rules Proxy Limit*, *supra* note 2.

<sup>20</sup> *Respondents' Declaration*, exhibits R17 and R28.

<sup>21</sup> *Respondents' Declaration* at para 44.



7. Thus, although inexperience is not ideal for a representative not undergoing formal training, it cannot justify refusing to appoint a new Representative. Additionally, Executives should keep in mind that democracy and accountability are essential values to uphold as well.

#### Appointment

8. The Respondents further argue that the appointment of a new SUS Representative would also be harmful to the society on the basis that it would be difficult to find an adequately suitable candidate for the position. The Board does not find this argument convincing, nor an adequate reason to circumvent the clear provisions of the *Constitution*.
9. Article 19.6 of the *Constitution* makes very clear the course of action to be taken in the event of a vacancy: appoint a replacement. The fact that the General Council may choose to run a by-election or not does not alter the simple fact that it must appoint an interim replacement to fill the vacancy.
10. The use of proxies is clearly outlined in Section 2.4.3 of the *Standing Rules for the 2018-2019 Legislative Council* and replacement of a vacant representative is ostensibly not one of their purposes. Furthermore, Article 19.6 of the *Constitution* makes no mention of the use of proxies as an alternative solution and it is not within the SUS's powers to amend this in a motion. Ultimately, the SUS's belief in the low likelihood of suitable candidates for Milchberg's replacement does not give it the authority to contravene the *Constitution*.
11. For the same reasons that the inexperience of an elected SUS Representative to SSMU is not problematic if the two other Representatives are knowledgeable about their duties, the appointment of an inexperienced person is not a reason to refuse to appoint a replacement, contrary to what the Respondents allege.<sup>22</sup>
12. In the alternative, the Respondents argue that Milchberg's position was never vacant and thus proxies were the only legitimate means available to them. Even if the SUS was operating with the good-faith belief that Milchberg had not resigned from the SSMU due to his failure to follow the procedures outlined in Section 8.5 of the *SSMU Constitution*, the Board rejects the argument that the only remedy available to the SUS was the use of proxies.
13. As mentioned in the above section, Milchberg's absences from SSMU Legislative Council would result in suspension, triggering temporary vacancy until reinstatement.<sup>23</sup> Section 8.6 of the *SSMU Constitution* lays out the process of removal from office and Milchberg's absences certainly qualified for removal. The SSMU and the SUS had not only the ability, but also the duty, to ensure Milchberg's resignation from his position with the SUS also applied to his position with the SSMU. This would have triggered a vacancy which would clearly require appointment of a replacement by the SUS Executive.
14. The Respondents, in the Board's opinion, may not invoke their belief that Milchberg had not resigned from the SSMU as a reason to use proxies to replace him. The notion of "best interests of the Society" found in Article 9, regarding SUS Executives, and in the preamble of the *SUS Constitution* does not extend this far: it constitutes a guideline for situations not

---

<sup>22</sup> Respondents' Declaration at para 49.

<sup>23</sup> SSMU Internal Regulations of Governance, *supra* note 15 at paras 3.5–3.7.





explicitly included in the *Constitution*, not a justification to bypass explicit provisions. Finally, the Respondents admit in their own *Declaration* that “the SUS Executive Committee framed this situation [Milchberg’s resignation] as a resignation triggering specific duties [in] the *SUS Constitution*”<sup>24</sup> and qualify this framing as mistaken. This draws into question the good-faith belief of the SUS that Milchberg had not in fact resigned from the SSMU.

15. Thus, the Board declares the SUS Executive Council’s decisions—not replacing Milchberg’s position with an interim representative and sending proxies instead—invalid since they deviate from the *SUS Constitution* and By-Laws.<sup>25</sup>

## 2. WAS THE REJECTION OF THE PETITIONER’S REFERENDUM QUESTIONED BY THE CRO INVALID?

1. The second issue raised in this case is the validity of the CRO rejecting the referendum question proposed by the Petitioner, namely “Shall the SUS Executive Committee, in accordance with Article 19.6 of the *Constitution*, in order to replace former SSMU Representative Moses Milchberg, who resigned during this academic year, nominate the candidate who receives the most votes for that position in this election, or another member of the SUS, to serve as the interim SSMU Representative for the remainder of the term?”
2. Both parties agree that the *SUS Constitution* only explicitly allows the rejection of a proposed referendum question on two grounds, namely that it is not “stated fairly and without bias”.<sup>26</sup> Nonetheless, the Respondents contend that the CRO (at that time, President Mandil) had the right to refuse the question based on her inherent discretionary power to do so.
3. This proposed power is grounded in the disclaimer found on the third page of the *2018-2019 Referendum Question Petition Form*, which states that “The CRO shall have final discretion with regards to the suitability of any referendum question submitted by any member of the society.” The referendum question in this case was, according to the Respondents, based on a false premise (the vacancy of the Milchberg’s seat) and led to two ‘yes’ options (Milchberg’s seat could be replaced by the candidate who received the most votes in the election to come, or by another student). This justified rejecting the question.
4. The Board refuses the interpretation that the CRO holds this power. First, a form does not constitute a source of power for a position in a student association. This source must be found elsewhere, explicitly or implicitly in an authoritative document. The Respondents say there is no prohibition of other grounds for rejection,<sup>27</sup> which is the inverse approach representatives should take in interpreting their powers.
5. The Board wishes to emphasize that the practice of asserting, on various administrative documents, powers not found in the relevant constitution or internal regulations could deter students from demanding redress for a violation of their rights that they believe is warranted

---

<sup>24</sup> *Respondents’ Declaration* at para 38.

<sup>25</sup> *SUS Constitution*, *supra* note 9, art 18.2 (Judicial Board).

<sup>26</sup> *SUS Constitution*, *supra* note 9, art 16.6 (Procedures of Elections and Referenda).

<sup>27</sup> *Respondents’ Declaration* at para 58.



by the rules. Representatives and other members of student governments should be very transparent about the source of their powers and assume students are not aware of the content of their Constitution or internal regulations.

6. Second, the proposed discretionary power should not be read into the *SUS Constitution*. The CRO holds some discretion as per Article 16.6: the referendum question must be “stated fairly and without bias, according to the interpretation of the CRO”. This provision allows for a reasonable interpretation by the CRO, but not for discretionary powers of refusal beyond that.
7. The Board finds the risks of an increased and final discretion greater than its benefits. One student, no matter how prudent and impartial, should not be able to prevent students from generating fair debates. Additionally, while the Respondents raise the risk of spreading misinformation with referendum questions, as they feared was the case here due to the supposedly false premise of the question, there are other options for addressing such concerns. A campaigning committee may be formed to counter inaccurate arguments.<sup>28</sup> Additionally, if the action demanded by the student body is unconstitutional, then the Executives or other relevant actors cannot take action; similarly, other strong policy grounds to reject the decision of the student body can be raised by representatives, since referenda are not strictly binding.
8. Then, the issue would be one of interpretation, and the Respondents in this case would presumably have maintained their position had the referendum question received a majority of votes in favour. Nonetheless, this debate would have taken place knowing the student body’s opinion and would have been more public, rather than being stopped before reaching the student body at large.
9. Importantly, the *SUS Executives* are elected representatives, accountable to the student body, whereas the CRO is not.<sup>29</sup> They have more legitimacy to decide the response to a referendum that they consider based on misinformation or calling for constitutionally invalid action. Once the question is stated fairly and without bias, a rejection becomes a political act, and thus is the responsibility of elected students.
10. The Board wishes to specify that the CRO can make minor corrections that do not change the meaning of a question, such as correcting spelling or grammar mistakes or changing the structure slightly to clarify a question. Still, these modifications should ideally be approved by the student who submitted the question, if there is enough time before the deadline to consult them.
11. The Respondents also argue that, should the Board reject the discretionary power of the CRO, the question was nevertheless unfair since it led to two ‘yes’ options. Thus, students could vote ‘yes’ because they favour one of the ‘yes’ options while being strongly opposed to the other. The Board finds that the proposed phrasing, while not ideal for clarity, is still fair. Results of a vote on this referendum question would have indicated the position of the student body, namely that it wishes, or doesn’t wish, to appoint an interim representative, based on which the Executive Committee could have taken their decision.

---

<sup>28</sup> *Science Undergraduate Society Electoral and Referendum By-Laws*, (April 2018), art 6, [*SUS Constitution*].

<sup>29</sup> *SUS Constitution*, *supra* note 9, art 14.2 (Electoral Officers).



12. The Petitioner could have phrased the question differently, using a multiple choice answer for example, for better clarity, but was notified of the rejection a few hours before the deadline for submitting questions. He could not collect the necessary number of signatures for his modified question. The Board wishes to mention in passing that it is important to allow enough time for due process to take place, but understands that the resignation of a CRO in the middle of an electoral campaign creates unforeseeable difficulties.
13. In short, the CRO does not possess more discretion than is given to them by the *SUS Constitution* and the By-Laws when it comes to rejecting referendum questions. This is particularly true when other options for addressing potentially problematic questions are more conducive to values of democracy and accountability. This act is therefore declared, pursuant to Article 18.2 of the *SUS Constitution*, invalid since it deviates from the *SUS Constitution* and By-Laws.

## Decision

1. The Judicial Board of the SSMU, through the power and authority vested by the Science Undergraduate Society and the Students' Society of McGill University, its constitutions, and governing documents, declares the following :
  - a) that Moses Milchberg's position of the SUS Representative to SSMU was vacant;
  - b) that the sending of proxies instead of appointing an interim representative was invalid;
  - c) that the rejection of the Petitioner's referendum question by the CRO was invalid.