

STUDENTS' SOCIETY OF MCGILL UNIVERSITY

JUDICIAL BOARD

2020-06-04

BETWEEN

**Marine Khediguian and
Andrea Landers Sciortino**

Appellants

and

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

Respondent

TYPE

Preliminary Decision

JURISDICTION OF PROCEEDINGS

Education Undergraduate Society

CORAM

Chief Justice Patrick O'Donnell and Justices Charles Choi (presiding), David How, Catherine Laperrière and Teddy Neuman

REASONS FOR JUDGMENT

Justice Choi (presiding) and Chief Justice O'Donnell (Justices How, Laperrière and Neuman concurring)



Executive Summary¹

The petitioners, both candidates for the joint positions of Vice-Presidents (Academic) of the Education Undergraduate Society (EdUS) in that society’s Winter 2020 election, have asked the Judicial Board to review the respondent’s (i.e. the Chief Returning Officer of the society) decision to disqualify their candidacy and award the positions to the runners-up. The petitioners received the most votes during the election but were disqualified retroactively due to what the respondent argues were violations of the society’s bylaws regarding elections and referenda. Specifically, the petitioners stood accused of having exceeded the maximum limit of \$50 for spending on electoral campaigns.

The Judicial Board previously issued an interim order suspending the results of the election pending its review of the matter. This preliminary decision supersedes the previous interim order.

This case presents numerous issues to be examined, a full accounting of which will be presented with the release of this board’s final decision. However, the members of the Judicial Board are of the unanimous view that the core questions in this case—that is to say, those that pertain directly to the issue of whom to designate Vice-Presidents (Academic)—have been presented to us with sufficient detail to warrant the release of this preliminary decision. These questions are: a) whether the petitioners’ failure to file their appeal to this board within the specified period of time is, as they claim, attributable to unclear and/or untrue information provided to them by the respondent; b) whether the petitioners made an effort to violate campaign finance bylaws as stipulated by the CRO and the society, and c) if the petitioners’ alleged conduct resulted from a genuine misunderstanding, whether that conduct materially affected the outcome of the election in such a way as to provide them with the kind of unfair advantage that the bylaws seek specifically to prevent.

As our analysis below explains, and as will be entered into in greater detail in our final decision, we find that the petitioners are a) not at fault for having missed the appeals deadline; b) did not knowingly make an attempt to violate campaign spending provisions or any other electoral bylaws of the society, and—importantly— that their conduct c) had no material effect on the outcome of the election.

¹ 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.



Taken in combination, these findings support the conclusion that the petitioners should not have been disqualified retroactively from this election and are therefore instated as Vice-Presidents (Academic) of the EdUS.

Issues

1. Were the petitioners discouraged from appealing to the Judicial Board?
2. Was the conduct of the petitioners and the respondent made in good faith?
3. Did the petitioners' violation have any effect on the outcome of the election?

Analysis

1. Were the petitioners discouraged from appealing to the Judicial Board?

The petitioners claim that the respondent attempted to discourage them from appealing the issue to the Judicial Board of SSMU. In the *Petitioner's Declaration*, the petitioners wrote that the respondent claimed, if the petitioners lost their appeal at the Judicial Board, consequences would include restrictions on the petitioners from applying to other positions at the EdUS and for other academic programs at McGill University.² Moreover, such appeal would lead to “irreparable harm to their professional and academic careers.”³

As evident in the *Petitioner's Declaration* and the *Response to Petitioners' Declaration*, the respondent also admitted that they made this claim without any factual basis and that these comments were made to prevent the “situation from blowing up”.⁴

The EdUS *Electoral and Referenda Regulations* and Article 18 of the EdUS *Constitution* explicitly provides members of the EdUS to appeal to the Judicial Board on matters of election and referenda.^{5 6} By changing the interpretation of the *Constitution* and the *Electoral and Referenda Regulations*, the respondent attempted to intimidate the petitioners, thus discouraging them from appealing their case to the Judicial Board without any factual or statutory basis. In light of this, the Board also

² *Petitioners' Declaration* at para 13.

³ *Petitioners' Declaration* at para 13.

⁴ *Respondents' Declaration* at “Post-Election - 13”

⁵ Education Undergraduate Society of McGill University Bylaw 1-Electoral and Referenda Regulations, s.14 [EdUS Electoral and Referenda Regulations].

⁶ Education Undergraduate Society of McGill University Constitution, s18 [EdUS Constitution].



acknowledges that the respondents' discouragement contributed to their delay in filing an appeal within the regulated 48 hours.

2. Was the conduct of the petitioners and the respondent made in good faith?

The Judicial Board views that the petitioners did not attempt to overspend deliberately, but as a result of the ill-guidance of the respondent. In addition, they followed steps to consult and implement recommendations made by the respondent to ensure they acted in accordance with the *Electoral and Referenda Regulations* and the *Constitution*.⁷

Although the respondent, an individual responsible for the interpretation of the *Electoral and Referenda Regulations* and provisions related to election and referenda of the *Constitution*, failed to properly inform the petitioners, the Judicial Board views that the respondents did not deliberately attempt to mislead the petitioners, but was only an error in judgement.

3. Did the petitioners' violation have any effect on the outcome of the election?

It is of the Board's opinion that the purchase of campaign materials by the petitioners did not cause a disadvantage to other candidates as they did not actually use campaign materials that they purchased past the fifty-dollar limit.⁸ While this case would have been complicated significantly had the petitioners made good-faith decisions that resulted in an unfair advantage, or if they had attempted to violate the spending limits but been caught and prevented from doing so by the CRO, in actuality their mistaken belief that they were allowed to spend more than \$50 was caught early enough in the campaign and addressed satisfactorily by both parties. The petitioners did purchase materials in excess of the stated limit with the intention of using it for their campaign, but both parties agree that this overspending was caught before the materials could actually be used for campaign purposes. The amount of money that was *actually spent* on campaign events fell below the limit and did not, therefore, provide them with a material advantage over their opponents.

Jurisdiction

1. Can the Judicial Board issue preliminary orders?

⁷ *Petitioners' Declaration*, exhibits P-1 and P-2

⁸ *Petitioners' Declaration*, exhibits P-3, P-4, and P-5



Internal Regulations of Governance-03: Judicial Board gives authority to the Judicial Board to write preliminary decisions where it sees fit and necessary.⁹ In addition, section 18.1 of the *Judicial Board Procedures* empowers the Judicial Board to write preliminary decisions on central issues relevant to the case.¹⁰

The purpose of the preliminary order is to provide relevant parties with an initial verdict pending a full decision. When declaring a preliminary order, the Judicial Board looks at different aspects of whether such preliminary orders are necessary, including the time-sensitive nature of the case before the Board and the benefit to the student society. The Board also looks at the benefit of the preliminary order as a feature of this order in that it allows parties to make time-sensitive decisions and actions that are at the benefit of the society. Moreover, preliminary orders are not precedent-setting; rather, it is a tool used by the Judicial Board to maintain its transparency with relevant parties while ensuring core functioning of the society.

The Judicial Board only releases a preliminary order once it is confident that the case merits an expedited decision and that all core questions relevant to the preliminary order have been successfully answered. Additional matters will be included in the final decision, including discussion of several issues raised by both parties that, while important, do not bear on our decision with respect to the appropriate outcome of this particular election.

Decision

1. Based on the issues above, and pending release of its final decision, the Judicial Board of the Students' Society of McGill University unanimously declares that:
 - a. the petitioners' campaign for Vice-Presidents (Academic) of the Education Undergraduate Society should not have been disqualified, and they are to be instated accordingly.

⁹ Students' Society of McGill University *Internal Regulations of Governance-03 : Judicial Board* (28 March 2019), part 2, s.3(1) [Internal Regulations Governance], online (pdf): <ssmu.ca/wp-content/uploads/2017/05/Internal-Regulations-of-Governance-2017-03-09.pdf>.

¹⁰ Students' Society of McGill University *Judicial Board Procedures* (14 October 2018), s 18.1 (Preliminary and Written Decisions) [Judicial Board Procedures].