



Judicial Board | Conseil judiciaire

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Located on Haudenosaunee and Anishinaabe traditional territories

STUDENTS' SOCIETY OF MCGILL UNIVERSITY

JUDICIAL BOARD

2020-07-05

BETWEEN

Daniel Benjamin Miller

Petitioner

and

Jemarke Earle in his official capacity as President of the Students' Society of McGill University (SSMU)

Respondent

TYPE

Decision on an *Ex Parte* Interim Order

JURISDICTION

Students' Society of McGill University

CORAM

Justices Catherine Laperrière (presiding), Charles Choi and David How

REASONS FOR JUDGMENT

Justice How (Justices Laperrière and Choi concurring)
(paras. 1 to 6)



Executive Summary¹

In the 2020 SSMU Winter Referendum, a new constitution was adopted by the SSMU electorate, which made the French version of the Constitution the only authoritative version. However, a French version was not made available to voters at the time of the Referendum.

The Respondent sought an Interim Order declaring “the motion “Adoption of the Revised SSMU Constitution’ presented and passed in the 2020 SSMU Winter Referendum to remain in effect until such time where a French version of the constitution is made available and can be voted on by members of the Students’ Society of McGill University.”

Decision

The Respondent’s application for an Interim Order is denied on the grounds that such an Interim Order would merely result in the status quo of the 2020 Constitution governing the SSMU.

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.



Reasons

The reasons of the Judicial Board were delivered by Justice How

Facts

[1] The following statement of facts is found in the Petitioner's Declaration and affirmed in the Respondent's Declaration:

At the 2020 SSMU Winter Referendum, a referendum question was posed regarding the adoption of a new Constitution. Attached to the referendum question was a document purporting to be the text of the new constitution to be adopted. The proposed constitution attached is written in English. Article 1.5 of the document reads: "The Constitution and Internal Regulations shall be made available in both the English and French languages. In the case of conflict, the version in the French language shall be authoritative." No French version of the constitution was presented at the referendum.

Issues and Remedy Sought

[2] The Respondent seeks an Interim Order "allowing the motion 'Adoption of the Revised SSMU constitution' presented and passed in the 2020 SSMU Winter Referendum, which closed on March 27, 2020, to remain in effect until such time where a French version of the constitution is made available and can be voted on by members of the Students' Society of McGill University."²

Analysis

Interim Orders Issued Ex Parte

[3] 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. Requests for interim orders are evaluated according to the standard laid out in s. 10 of the [Judicial Board Procedures](#) and in particular section 10.7 which lays out the factors to be considered in determining whether to issue an Interim Order. It must be emphasized that because interim

² See Respondent's Declaration.



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.

[4] The Judicial Board is of the opinion that the Respondent’s request for an Interim Order fails to satisfy the test laid out in section 10.7 of the [Judicial Board Procedures](#), but in particular subsection 10.7(b) that asks “[w]hether the Party requesting an Interim Order will suffer irreparable harm if the Interim Order is not granted”. The Board holds that, in the case at hand, granting the Interim Order sought by the Respondent would merely maintain the current status quo. That is, the SSMU is already currently being governed by the 2020 Constitution and an Interim Order declaring it remain in effect for an extended period of time would have no concrete consequence. Thus, the Board is of the opinion that the Interim Order requested by the Respondent is unnecessary and fails to meet the high standards and exceptional circumstances required of Interim Orders.

[5] Additionally, an Interim Order can only be in effect until the Board’s final judgment. Thus, the request for maintaining the status quo until the 2020 Constitution is translated in French will be dealt with in the final judgment.

[6] The request for interim measures is therefore denied.