



Judicial Board | Conseil judiciaire
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Located on Haudenosaunee and Anishinaabe, traditional territories

STUDENTS' SOCIETY OF MCGILL UNIVERSITY JUDICIAL BOARD

2020-07-29

BETWEEN

Daniel Benjamin Miller

Petitioner

and

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

Respondent

TYPE

Preliminary Judgment

JURISDICTION

Students' Society of McGill University

CORAM

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

REASONS FOR JUDGMENT

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



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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.

Both parties presented arguments during the hearing. The Respondent repeatedly expressed concern about the potential serious consequences that the invalidation of the 2020 Constitution could have on the SSMU's relationship with the McGill administration. This was due to the fact that the SSMU and McGill will soon conclude a Memorandum of Agreement (MoA) regarding the composition of the SSMU Board of Directors, in line with its new Constitution.

The Judicial Board chose to issue a partial preliminary decision on this issue seeing the time-sensitive nature and the importance of suspending amendments to the MoA.

The Judicial Board recognizes its order may maintain the unconstitutionality of the current Board of Directors. However, if the amended MoA were violated, the potential gravity of the consequences outweighs the drawbacks of the status quo. These impacts can be avoided.

This order ensures that, if the French 2020 Constitution is presented in a referendum, students have a real option between accepting and rejecting it, without fearing the potential serious consequences of the new Constitution's rejection.

This preliminary decision is not indicative of the Judicial Board's final decision on the case.

Decision

The Judicial Board orders the SSMU to ask McGill to suspend the approval of a revised Memorandum of Agreement with McGill, which will reflect the 2020 Constitution, until and unless the French version of the 2020 Constitution is accepted by referendum

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 judgment and is thus not binding following the ratification of the final judgment by the Board of Directors. The Executive Summary does not replace the final judgment. Therefore, Members of the SSMU are highly encouraged to read the final judgment in addition to the Executive Summary.



Reasons

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.

[2] During the hearing, the Respondent repeatedly expressed concern about the potential serious consequences that the invalidation of the 2020 Constitution could have on the SSMU's relationship with the McGill administration.

[3] The Deputy Provost of Student Life and Learning (DPSLL) will soon (though there is no set date) approve changes to a Memorandum of Agreement (MoA) between McGill and the SSMU in order to reflect the 2020 Constitution. If the Judicial Board's final decision invalidated the 2020 Constitution, the SSMU may be in violation of the amended MoA in order to comply with this Board's decision.

Issues

[4] The Judicial Board chose to issue a partial preliminary decision after hearing arguments from both parties on the merit of the case and being convinced of the time-sensitive nature of its decision regarding changes to the MoA.

Jurisdiction

Can the Judicial Board issue preliminary orders?

[5] *Internal Regulations of Governance-03: Judicial Board* gives authority to the Judicial Board to write preliminary decisions where it sees fit and necessary. 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.

[6] 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.

[7] 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 appropriateness of suspending the approval of a revised MoA with McGill.

Analysis

[8] The Judicial Board recognizes that, as per the Respondent's arguments, the current formation of the SSMU's Board of Directors is unconstitutional as per the 2020 Constitution and the MoA with the McGill administration is inconsistent with the 2020 Constitution. However, having weighed the benefits and drawbacks of its order, the Judicial Board rules that the SSMU must temporarily maintain the status quo regarding the composition of its Board of Directors.

[9] The precise consequences which may be imposed by McGill of violating the MoA are unknown, but the Board takes seriously their potential gravity, since they may harm the relationship between the SSMU and the McGill administration, and considers that they can be avoided. Consequently, the Board orders the SSMU to ask McGill to suspend the approval of a revised MoA, which will reflect the 2020 Constitution, until and unless the French version of the 2020 Constitution (the authoritative version) is accepted by referendum. The SSMU is entitled to maintain contacts concerning the MoA, but McGill should not approve an amended MoA in order



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to avoid possible adverse consequences to the SSMU that may arise from potential violations of the MoA.

[10] This order ensures that, when students vote on the French 2020 Constitution, they have a real option between accepting and rejecting it. They may, depending on the Judicial Board's final decision, already have to consider the negative internal impacts of returning to the 2017 Constitution. Their choice should not be additionally limited by the risk of serious external impacts on the SSMU—especially when suspending amendments to the MoA could have prevented these impacts.

[11] The respondent must communicate to the DPSLL the suspension of the approval process for the MoA within 24 hours of receiving this preliminary decision.

[12] For greater certainty, this preliminary decision is not indicative of the Judicial Board's final decision on the case.