



SSMU BOARD OF DIRECTORS PUBLIC MINUTES

March 4, 2021

The Board of Directors meeting of the Students' Society of McGill University (SSMU) will be held by teleconference on Thursday, March 4, 2021 at 18:00.

Present: Lauren Hill (Chair, non-voting), Jemark Earle (Officer), Brooklyn Frizzle (Officer), Gifford Marpole (Officer), Ayo Ogunremi (Officer, non-voting), Chip Smith (Legislative Councillor), Paige Collins (Legislative Councillor), Alex Karasick (Legislative Councillor), Benson Wan (Legislative Councillor), Adin Chan (Member-at-Large), Daniel Dufour (General Manager, non-voting), Addy Parsons (International Student Representative, non-voting), Sam Haward (Recording Secretary, non-voting), Ana Paula Sanchez (Member-at-Large, arrived at 18:23), Rohan Bhutkar (Member-at-Large, arrived at 18:43)

Absent: Maheen Akter (Officer), Beatrice Mackie (Member-at-Large)

1. Call to Order: **18:17**

The Chair calls the meeting to order at 18:17.

2. Land Acknowledgement

The SSMU acknowledges that McGill University is situated on the traditional and unceded territory of the Anishinaabeg and Haudenosaunee nations. The SSMU recognizes and respects these nations as the true and constant custodians of the lands and waters on which we meet today. Further, the SSMU commits to and respects the traditional laws and customs of these territories.

3. Adoption of the Agenda -- **ADOPTED UNANIMOUSLY**

There are no changes to the agenda. The agenda is adopted unanimously.

4. Executive Committee Report

Director Earle presents the report of the Executive Committee. They note a transfer from the Environment Committee to the Farmer's market, a submission to the Federal Pre-Budget consultations and some hiring and job descriptions changes. In addition Elections SSMU's contracts were extended, and a statement on equity was endorsed to send to the McGill Board of Governors.



There are no questions on the report.

5. Email Approvals

- a. [Motion to Amend the Internal Regulations of Elections and Referenda 2021-02-11](#)
2021-02-25 --**APPROVED 2021-02-26**

The Board approved this motion by email on February 26, 2021.

Directors who did not vote: Director Sanchez, Director Karasick and Director Collins.

Question:

Director Smith asks why it was necessary to conduct this ratification by email.

Answer:

The Chair responds that it was due to the upcoming elections.

There are no further questions.

6. Legislative Council Motions for Ratification

- a. [Motion Regarding the Adoption of the Divest for Human Rights Policy 2021-02-16](#) --
POSTPONED

The Chair explains that this motion was passed at a Consultative Forum held in February 2021 and has since been approved by the Legislative Council.

Director Smith states that they have some concerns with this Motion. They believe that a motion naming and criticizing McGill's investments in this fashion raises the risk of legal action or the SSMU being accused of an MOA violation. Director Frizzle states that they understand these concerns, but they are certain that it will not propose an operational risk to the Society, and there is nothing in the MOA that prevents the SSMU from doing this. They continue that these tactics have been used in the past, and that this motion does not introduce any new practices to the SSMU, instead it only expands on tactics that have already been used.

Director Wan states that he has received concerns from constituents, and that he would feel more comfortable if this motion was also reviewed by legal counsel.

Director Earle states that he agrees with this and note that the Deputy Provost, Student Life and Learning's (DPSLL) office has been watching the progress of this motion closely, as well as having



threatened action in the past for perceived violations of the MOA. He states that he would like to give the members of the gallery present time to speak if possible.

VP External states that they would like to clarify some points, and that they don't believe it is accurate to suggest that previous policy mandates led to violations of the MOA. VP External notes that the mandate given by this motion is not in violation of the MOA, and concerns about a possible future violation stem from specific tactics involved in pursuing this mandate. As such, they do not believe there is anything legally questionable about the nature of this motion.

Question:

Director Chan asks if it is known which clause the DPSLL is citing as a potential violation.

Answer:

Director Frizzle responds that in the past two (2) situations with the University, it was raised that the SSMU had violated its own Constitution which is considered a violation of the MOA. They note that this policy has been thoroughly vetted, with assurances from the Judicial Board and Steering Committee that it would not violate the Constitution. They believe that there is a distinction between accusations from the University and found violations, and that past arguments would not apply in this case.

Director Earle states that the Judicial Board did not rule on this, and if Directors want to make this assertion they should submit this motion to the Judicial Board themselves. In addition, the previous perceived violations that the University raised were never adjudicated so it cannot be said whether or not the SSMU was actually in violation. They state that the motion in and of itself may not be in violation, but previous similar motions have contained actionable points that can lead to a default.

The Chair notes that the Chief Justice of the Judicial Board was present at Steering Committee meetings to review this motion, but they could not give a binding opinion as it was not formally submitted to the Judicial Board. Director Smith seconds this assertion, and clarifies that this meeting was only to provide the Steering Committee with context and information.

Question:

Director Collins asks if the correct course of action is to refer this motion to the Judicial Board or legal counsel.

Answer:

Director Earle responds that the Judicial Board is the correct body for handling constitutional questions, and legal counsel would be for matters pertaining to the MOA.

VP External states that there is a distinction between the policy in the motion and actions taken in pursuit of the mandate this policy creates. He further notes that if there is no debate about the policy violating the MOA and only actions that could be taken by the Executive Committee, and the possibility of violating the MOA should not be a reason to consider this motion invalid. He agrees with Director Frizzle's point that a claim by the University is not a guaranteed violation, and that the Board should not be overly concerned.



Director Smith states that the Board has a fiduciary duty to the SSMU and the threat of a default on the MOA should be taken seriously, and if this is the case the Board should make this clear and not permit this motion to pass.

Director Sanchez states that the Board discussed a few weeks ago how these purported violations are an insincere move on the part of the University, and while it is reasonable to consider the threat posed by this seriously, they state that they do not believe that the University takes a lot of the work done by the SSMU seriously and it is surprising that this is what the University is choosing to focus on. She further explains that McGill University may not have the capacity to challenge the MOA, and it may just be a tactic to bargain with the SSMU, as such they do not consider this to be a relevant threat. Director Karasick believes that the University is invested due to the involvement of BDS, and that this has historically been the case.

Director Earle states that he agrees with Director Smith, and in their experience McGill has never chosen to reach out to express concerns with SSMU policy but did choose to do so for this motion.

[Director Bhutkar arrives at 18:43.]

Director Frizzle states that they agree with Director Sanchez. They state that it is the responsibility of the Board to mitigate liability and risk, but this means balancing risks not creating zero risk. While the MOA is an important consideration, it cannot be the only consideration. They state that if the SSMU is too reactive to threats from the University it will become a regular strategy to threaten the MOA when the SSMU does something that the University does not like. They state that the Board has a mandate to both the SSMU and its constituents, and that this motion has engaged many members. They note that they can see how actions taken to support this mandate could lead to an MOA violation, but not the policy themselves, and that the Board should wait until such actions are being discussed to have this debate as there is nothing in this policy that would open the SSMU to liability by default. Director Frizzle states that they would caution against shutting down advocacy in the name of minimizing liability, and that this policy is fit for ratification as it proposes no immediate operational or financial risks.

International Student Representative Parsons states that the Board should take MOA violations seriously, given that it will stop the SSMU from operating. Director Collins states that Directors Sanchez and Frizzle were right that the University has not followed through on past threats, and suggests running the motion and MOA by the Judicial Board and/or legal counsel. Director Frizzle responds to the International Student Representative and states that minimizing the risk of default on the MOA should be a priority but the precedent set by the University is to threaten default without grounds. They state that the SSMU was able to negotiate a solution in these cases and the threat of an MOA violation is a smaller risk than it appears. They restate that as a result they believe that it is prudent to pass this motion at this meeting.



The Chair clarifies that interpretations of the MOA should be conducted by the SSMU's legal counsel.

Director Wan states that there have been no motions that have garnered this much student engagement this year, and they have had constituents reaching out to them with concerns. As such, he believes that the Board has a duty to protect the SSMU even if some of the situations are hypothetical. He further states that they are unsure why it would be an issue to have this motion and the MOA reviewed by the SSMU's legal counsel and ask Directors to speak more on this matter.

Director Smith explains that he appreciates student involvement, but that the Board should not pass anything that runs the risk of an MOA violation.

Question:

Director Smith asks the General Manager and Director Earle how long it would take to review this motion with legal counsel.

Answer:

Director Earle responds that this could be completed prior to the next Board meeting.

Director Earle states that the SSMU has not been found in default because the MOA has a clause that first encourages informal resolution of disputes, so they warn against using a broad statement that the SSMU could never have been in default. They agree with Director Wan and Director Smith that the Board should be proactive, and not wait for a perceived violation of the MOA to act on this.

Director Earle moves motion 7a. Director Smith moves that the Board postpone motion 6a should these items pass.

The motion is postponed.

7. Motions for Approval

- a. Motion to refer the Motion Regarding the Adoption of the Divest for Human Rights Policy 2021-02-16 to the Judicial Board for SSMU constitutional compliance, postponing Board approval until the Judicial Board has provided a response --

APPROVED

Director Marpole suggests postponing sending this motion to legal counsel until the Judicial Board has provided a reference, to avoid committing unnecessary funds. Director Frizzle states that sending this motion to the Judicial Board will take a significant amount of time, up to a month. Director Earle agrees that this sounds appropriate.

Question:

Member of the gallery, Andreas Koch asks what possible constitutional violation there could be, as the motion targets a group of companies specifically.



Answer:

Director Earle responds that they would like to see if the motion as a whole violates any part of the constitution as this has not yet been reviewed by the Judicial Board. While the Steering Committee has reviewed the motion, this is not equivalent to a reference from the Judicial Board.

Director Smith states that they would rather send this motion to legal counsel first, to avoid a month long process being overturned by a potential violation of the MOA.

VP External states that it is important to point out that the MOA preventing the SSMU from violating its own Constitution does not give the University reason to adhere to any of its determinations, and these decisions would not prevent the University from alleging a violation of the MOA. Given that this discussion has been centred on the actions of the University, they do not see that an argument based on limiting this eventuality holds. Director Frizzle explains that there has been no answer to the question of how this motion could violate the Constitution. They state that they understand why the Board wants certainty, but sending this policy to the Judicial Board would delay this motion by many months. If the Board cannot point to a specific part of this policy, they believe that it is unreasonable to send this motion to the Judicial Board. They note the Judicial Board reference recently received by the Board permitting advocacy regarding corporations.

Director Earle states that the main reasoning from the Board is due diligence, and asks if there is anything that is actionable at the present that needs to be done. Director Smith states that the Board is analogous to the Canadian Senate, and that it is responsible for ensuring that this motion is properly reviewed. He does not believe that a timeline of even six (6) months is not going to make a huge difference to McGill's choice to divest, as evidenced by the campaign to divest from fossil fuels.

Director Collins states that they agree with Director Earle, she believes that sending this motion to the Judicial Board is a way to balance risk and avoid unnecessary costs. She understands that this is frustrating.

Member of the gallery, Andreas Koch states that they would understand the sentiment to err on the side of caution had there been an effort to understand the policy and raise specific concerns with it. They believe that the students who have worked on the policy deserve a better explanation as to why this is being done, and it feels as if the Board is disregarding the work that has been done to bring this motion to the Legislative Council and General Assembly. They would like a formal response from the Board as to why the decision is being taken to postpone this motion.

Member of the gallery, Jordana Schiff points out that this motion could violate the Service Preamble of the SSMU constitution, and state that this motion is written such that it will detract from the quality and availability of services to Jewish members of the SSMU. They believe that this motion violates the representation preamble it does not represent the interests of the Membership as a whole.



Member of the gallery, Mettannah Jacobson states that they believe the Board of Directors has the Board should work in the interest of the SSMU and its members, and that it is disheartening for them to hear Officers arguing against due diligence. They don't believe that it comes across well if Members do not want to do this work at the highest level of the organization.

Director Bhutkar responds to Andreas Koch, stating that the Board's hesitancy has nothing to do with the work that students have put in but the understanding that the Board has made decisions without legal counsel that have created problems further down the line. They continue that Board members now have a hesitancy to pass these motions without knowing that all bases are covered. While they cannot pull up a specific clause, they do not want this to appear as stalling the motion, instead they want to ensure that when the SSMU gets this done there are no repercussions due to threats that have recently come from the University.

Voting Procedure:

In favour: Director Earle, Director Marpole, Director Smith, Director Collins, Director Karasick, Director Wan, Director Chan, Director Sanchez, Director Bhutkar.

Opposed: Director Frizzle.

Abstain: -

The motion is approved.

- b. Motion to refer the Motion Regarding the Adoption of the Divest for Human Rights Policy 2021-02-16 to legal counsel for MOA compliance, postponing Board approval until legal has provided a response -- **POSTPONED PENDING JUDICIAL BOARD RESPONSE**

Question:

Director Collins asks how much it would cost to consult legal counsel.

Answer:

Director Earle responds that there are less than 20 pages to review and the SSMU can point to specific articles to reduce these costs. The General Manager suggests around \$3,500.

Director Smith states that they are not comfortable passing this policy without a written confirmation from legal counsel that this does not violate the MOA, and that the Board should err on the side of caution. Director Wan states that sending this motion to the Judicial Board first makes sense, but would prefer a motion that binds the Board to consult legal counsel. Director Smith states that they would be in favour of this as well.



Director Marpole states that they would like to avoid spending more money on legal fees as the Board has already exceeded its professional services budget for the year. Director Earle agrees.

This item becomes 7.b.i.

- i. Motion to postpone 7b), until the Judicial Board has provided an official reference in regards to the motion's compliance with SSMU's Constitution --
APPROVED

Voting Procedure:

In favour: Director Earle, Director Marpole, Director Collins, Director Wan, Director Sanchez, Director Bhutkar.

Opposed: Director Frizzle, Director Smith, Director Chan.

Abstain: Director Karasick.

8. For Discussion

There are no items for discussion.

9. Confidential Session: **19:41**

The Board enters into confidential session at 19:41.

10. Adjournment: **20:00**

Jemark Earle, President