



Judicial Board | Conseil judiciaire

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*Located on Haudenosaunee and Anishinaabe, traditional territories*

# STUDENTS' SOCIETY OF MCGILL UNIVERSITY JUDICIAL BOARD

Wednesday, November 17, 2021

## SPHR v SSMU

### PARTICIPANTS

**Students in Solidarity for Palestinian Human Rights McGill (SPHR)**

Petitioner

and

**Students' Society of McGill University (SSMU)**

Respondent

### TYPE

Final Judgment

### JURISDICTION

Students' Society of McGill University

### REASONS FOR JUDGMENT

THE SSMU JUDICIAL BOARD [2021-2022] - UNANIMOUS—



## Executive Summary

1. On June 6 2021, a petition was submitted to the Judicial Board to seek a declaration of invalidity on a Confidential Motion passed by the SSMU's Board of Directors on 27 May 2021 ("the Motion"). The Petitioner sought to obtain an order deeming the *Motion* to have been invalidly held at the Board of Directors meeting in Confidential Session.
2. Given delays in timing in submitting the Respondent's R1 form, the Judicial Board chose to proceed to summary judgement. No oral hearing was held.
3. Having discovered factual errors in the previous version of this judgement due to the Respondent's silence on key findings, the Judicial Board accepts the Respondent's factual submissions given the importance of their perspective on procedural details.
4. In the reasons that follow, the Judicial Board finds that the 27 May 2021 Board of Directors meeting was validly held. The motion being considered for ratification was passed by the Legislative Council in Confidential Session and, therefore, the Board of Directors meeting could be held in Confidential Session per section 15 of the *Internal Regulations of Governance-06: Board of Directors*.
5. The *Internal Regulations of Governance-05: Legislative Council* have two different provisions for Confidential Sessions and electronic motions (sections 14 and 15). There is no indication that an electronic motion cannot be considered confidential. Combining these provisions allow to further the good governance of the SSMU.

## Decision

The Judicial Board of the SSMU declares the following:

- a. The Motion was validly considered and voted on in a Confidential Session at the Board of Directors meeting.

## Reasons

### Facts

1. On 4 May 2021, Students in Solidarity for Palestinian Human Rights McGill (SPHR) contacted SSMU Executive Committee regarding the Committee's willingness to publish a joint statement for the occasion of Nakba Day on 15 May 2021.
2. Publication of the joint statement was approved in Confidential Session by both the Executive Committee on 7 May 2021 and the Legislative Council on 26 May 2021 respectively. Following this, the Board of Directors was required to consider the ratification of the Legislative Council motion ("the Motion").



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3. On 27 May 2021, the Board of Directors held a confidential meeting to discuss the ratification of the Motion. The Motion did not pass.
4. Given the confidential nature of the meeting, SPHR requested from SSMU an explanation of the decision by email (Exhibit P-2). SSMU never responded to this request.
5. Following the Petitioner's declaration, the Respondent exceeded the provided delay in submitting their response form. In accordance with ss. 8.3 and 9.4 of the *Judicial Board Procedures*, the Judicial Board excluded their form and decided to proceed to summary judgement with no hearing.
6. There were no intervenors in this case.
7. On 21 October 2021, after issuing our initial judgement, the Board of Directors met to discuss the ratification of our decision. Key factual errors were brought to light, points which the Respondent had not initially contested, and the decision was unanimously sent back to the Judicial Board for review.
8. At this stage, the Judicial Board accepts the Respondent's factual submissions given the importance of their perspective on facts and procedural details. It is in the interest of the proper administration of justice that we decide on the matter with a comprehensive and error-free factual background.

## Issues

9. The Board considered the following questions:
  - a. Was the Confidential Session during which the Board of Directors voted on the ratification of the Nakba Day motion invalid?
  - b. Can electronic motions be confidential?

## Jurisdiction

10. The Judicial Board consulted section 15.1 of the Society's *Constitution and* section 1.1 of the *Internal Regulations of Governance*. Specifically, section 15.1 outlines that the Board "shall have authority to adjudicate on matters within its jurisdiction, as set out in the Internal Regulations."
11. Section 1.1 (b) of the *Internal Regulations of Governance-03: Judicial Board* grants the Board jurisdiction over "the interpretation of all motions and resolutions passed by the Legislative Council with the inclusion of the authority to render invalid any act of the



Legislative Council or the Executive Committee which violates the Constitution or Internal Regulations.”

12. The Judicial Board’s authority and jurisdiction to take on this case must be explained, considering the possibility of a conflict of interest. Indeed, the Judicial Board is under the authority of the Board of Directors (BoD), since it ratifies our decisions. The Judicial Board agrees that this concern regarding the appearance of imperfect independence is justified. However, it deems the importance of litigating petitions where the respondent is the BoD trumps the concern for impartiality, as it is the only judicial body of the SSMU. Additionally, the Judicial Board often decides cases where individual Directors are directly respondents in their other capacity or where the BoD has taken part to some extent in the impugned conduct or rule, due to its supervisory role. Consequently, it does not find naming the BoD as a Respondent to be entirely different from such cases, and not a bar to having jurisdiction.

## Analysis

### A. The Validity of the Board of Directors Meeting Held in Confidential Session

13. The validity of holding the 27 May BoD meeting in a Confidential Session is determined by the *Internal Regulations of Governance*. It hinges on a simple question.

14. Pursuant to section 1.5 of the *Internal Regulations of Governance-06: Board of Directors*, the “Board of Directors shall not consider the ratification of resolutions of the Legislative Council in Confidential Session, with the exception of resolutions passed by the Legislative Council in Confidential Session.” The plain and ordinary meaning of this provision is such that the Board of Directors may only ratify resolutions of the Legislative Council in Confidential Session if the resolution in question was passed by the Legislative Council in Confidential Session.

15. The strict requirement set out in section 1.5 above is sufficient itself to render the 27 May BoD meeting valid. The motion being considered for ratification was passed by the Legislative Council in Confidential Session and, therefore, the Board of Directors meeting could be held in Confidential Session. The Board of Directors meeting did not contravene the *Internal Regulations of Governance* and was thus valid and constitutional.

16. The Legislative Council approved the motion pursuant to section 15 of the *Internal Regulations of Governance-06: Board of Directors* concerning electronic motions, which raises the next issue.



## **B. The Validity of Electronic Motions Being Confidential**

17. The Respondent's reply discusses in depth the alleged breach of confidentiality of the Petitioner and critiques of the Petitioner's present and past actions. We do not believe SPHR's inquiries may be labelled as confidentiality breaches, nor do SPHR's actions appear to be *prima facie* against any governing documents. In any case, they are not relevant to deciding the specific issue of this case.

18. The *Internal Regulations of Governance-05: Legislative Council* have two different provisions for confidential sessions and electronic motions, respectively sections 14 and 15. This case raises the issue of whether an electronic motion can be considered confidential.

19. We see no reason why both provisions could not be combined. As both concern different parts of the process of presenting and voting on a resolution, both means could be appropriate in the circumstances. The Petitioner's argument that nothing explicitly provides for this combination is wrongly premised, in our opinion. We rather see it as a lack of explicit prohibition, considering such a combination may further the goals of the Society. It is in line with the holistic and purposive interpretative approaches the Petitioner demands that we use.

20. Indeed, we note there can be good justifications to combine both, to further the good governance of SSMU. The Respondent's submissions raise "the need for quick responses on time-sensitive confidential issues". In the absence of conflict with other provisions of governing documents, the usefulness of entertaining confidential electronic motions is a valid justification, and its use is best left to the Society. To be clear, we do not believe a certain threshold of necessity is required for confidential electronic motions. We aim to explain the reason why this combination should exist, but it does not appear from these provisions that this aspect of its use is reviewable by the Judicial Board.