

29-04-2014

Student Society of McGill University

Judicial Board

Mr. Tariq Khan (Petitioner)

v.

Mr. Benjamin Fung in his capacity as the Chief Electoral Officer of the Students' Society of McGill University (respondent) and

David Koots in his capacity as Deputy Electoral Officer (respondent)

Advocate for the petitioner Ms. Kiran Ross

I. Introduction:

[1] Since the events of this dispute transpired late in the semester and just before the Winter 2014 examination period, today is the first available day that the Judicial Board has been able to schedule and hold a hearing. Today also happens to mark the last day of the Winter 2014 term. Since Articles 28.4 and 28.5 of By-law Book I-1 provide that all appeals regarding the conduct of elections must be heard and adjudicated in the semester in which they are launched, the Judicial Board has been compelled to reach a decision on this matter by midnight. Due to time constraints, the reasons are being delivered orally and a written copy will be submitted to the Board of Directors by noon tomorrow in anticipation of their meeting to decide upon ratification.

II. Analysis:

[2] The Judicial Board is a dispute resolution body empowered under the Constitution to hear appeals regarding any matter within its jurisdiction to ensure that Society actions and decisions are made in accordance with the SSMU Constitution and the by-laws. Its mandate is not to act as a policy-making or political body but strictly to ensure that all decisions that it reviews are legal. Where the law is silent or ambiguous, the Judicial Board is bound to interpret the legality of Society activity in accordance with principles of natural justice, including equity and fairness.

[3] Article 28 of By-law Book I-1 expressly grants a right of appeal to the Judicial Board regarding the conduct of Elections and Referenda.

[4] The Constitution prov

laws in order to maintain

[10] The Petitioner's case rests predominantly on the assumption that the post-election collaborated effort to bring down Tariq Khan's election amounted to bias and that the evidence produced was tainted.

[11] To this effect, it was submitted that the respondent's method of assessing bias- the so called metric of "two degrees of separation"- was not sufficient to adequately sort out biased testimony from reliable testimony. However, the J-Board's review of all the un-redacted evidence together with the submissions in the respondent's declaration indicates that even after use of this metric, evidence detected to have potential bias was given proportionately less weight in the balance of probabilities. The respondent also recognized that the mere presence of bias does not lead inexorably to the conclusion that the testimony is false. It must be considered in relation to corroborating evidence and the circumstances of the case. This indicates that Elections SSMU acted impartially and with a high standard of diligence in its evaluation of the viability of the evidence.

B. The reasonableness of the sanction imposed:

[12] With regards to the decision to invalidate the election of Mr. Khan, the CEO invoked Article 27 of By-law Book I-1. The full provision reads as follows:

27.1. In the case of any grave violation of the Constitution, By-laws, or Policies on the part of a candidate, candidate's campaign team or referendum committee, the CEO shall invalidate the election or referendum if, in his/her determination, a violation of the Constitution, By-laws, Policies or electoral decisions by the CEO has adversely affected the outcome of the election or referendum. In making this decision, the CEO may consider the conduct of the parties and the seriousness of the violations.

[13] This article confers the CEO with the discretion to decide, in his determination, whether grave violations of the Constitution, by-laws, or policies on the part of a candidate or his campaign team have been committed when he determines that they have adversely affected the outcome of the election. It permits the CEO to consider the evidence and circumstances *as a whole* in making this assessment. The evidence indicates that the CEO made this decision not on a single infraction but through his finding of multiple infractions that had the potential to adversely affect the outcome of the election.

[14]