

**Judicial Board | Conseil judiciaire**

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3600 McTavish St., Suite 1200, Montréal, QC, H3A 0G3

*Located on Haudenosaunee and Anishinaabe, traditional territories*

**BE**

**BETWEEN**

**Daniel Benjamin Miller**

Petitioner

and

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

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1. 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.
2. In the present decision, both parties agree to the facts of the case, but diverge on the remedy sought. The Board sides with the Petitioner and maintains that the 2017 Constitution should apply until the 2020 Constitution is approved by referendum in a procedurally correct manner. To do otherwise would be to maintain the status quo and not offer voters a meaningful choice. The Board also reached this decision based on the SSMU's constitutional and regulatory documents, which contain language-rights protections that were violated.
3. The Judicial Board's preliminary order, issued previously, demanded that the SSMU ask McGill University to suspend its approval of a new MoA between the SSMU and McGill, in order to avoid violating this MoA if the 2020 Constitution were declared invalid. Full reasons for the decision, including its time-sensitive nature and importance, can be found within its respective document. Seeing the present decision, this order is maintained, since it ensures that the composition of the current Board of Directors complies with the relevant constitutional requirements.
4. The Judicial Board offers some recommendations, based on functions that are already available, as to how the SSMU can adapt to the changes brought by this judgment in order to mitigate adverse effects. However, the course of action taken in response to the present decision ultimately lies with the political bodies of the SSMU.

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<sup>1</sup> 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.

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community), the Society's executives, electoral officials, and directors have a binding obligation to ensure that bylaws and regulations pertaining to the French language are carefully respected. Moreover, in our view, the Judicial Board's mandate is such that we could not, in good conscience, decline to enforce these fundamental requirements upon receiving a petition.

[29] The Respondent submits that returning to the 2017 Constitution would pose serious logistical difficulties for the SSMU. Specifically, the Respondent has suggested that the Society could be forced to undo the hiring of some of its student staff as well as let go several newly-appointed members of the Legislative Council whose seats did not exist prior to the Winter 2020 referendum, and rehire representatives for seats that were scheduled to be removed. We agree entirely that these logistical problems constitute an important reason to consider when deciding on striking down the Winter 2020 amendments, but—perhaps counterintuitively—it is exactly because of our agreement that they *must* be struck down.

[30] If our decision is affected by the Respondent's revelation that a return to the 2017 Constitution would cause the Society significant logistical difficulties, it follows that a hypothetical French-speaking voter may be similarly affected. Although we cannot, and do not want to, assume how students weigh various considerations when voting, we must remove any substantial risk that their decision will be changed based on the expected adverse impacts of the SSMU of returning to the 2017 Constitution.

[31] While practical concerns will factor into any similar referendum, they are acceptable only when resulting from decisions that comply with the requirements at the time of the vote. Whereof

Constitution. As such, the Board, recognizing the importance of having the Constitution approved by the student body in a truly democratic manner, emphasizes that another referendum should be held if the SSMU wants to be governed by the 2020 Constitution. .

[33] In short, the Board finds the 2020 Constitution invalid as its adoption violates internal regulations, the 2017 Constitution and the 2020 Constitution—its own terms—with respect to the language rights that these documents contain. This interpretation is strengthened by consideration for the principle of democracy and the context in which the SSMU operates.

#### **D. Recommended Next Steps**

[34] Our consideration of this case has led us to hear of a few adaptations to the SSMU's operations which can be made to mitigate such impacts and which we offer as guidelines in the next section. These should be read in the spirit of a recommendation, rather than as an order to implement the following suggestions.

##### Councillors

[35] The 2020 Constitution established new positions for four councillors from the SSMU Indigenous Affairs Committee, the SSMU Equity Committee, the SSMU Francophone Affairs committee, and a councillor representing the Macdonald Campus Students' Society (MCSS). All councillors except the MCSS councillor

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can speak to focus matters where the Legislative Council may not have the proper expertise to do so, in order to ensure proper student representation and stakeholder consultations before passing policy. The Respondent mentioned that previously, for the Indigenous Solidarity Policy, re

McGill University. Therefore, this Board, through its preliminary decision, ordered the SSMU to notify McGill to continue its review but suspend taking steps to pass the decision itself. Based on these measures, the Judicial Board finds that reverting to the 2017 Constitution will give no consequences on the Board of Directors.

### Paid Employees

[42] A concern that the Respondent made clear to the Board was the concern of job loss and paycheck for student employees of the SSMU in positions created under the 2020 Constitution. As the Board recognizes the unique situation brought by the onset of the COVID-19 pandemic and the financial difficulties it poses for students, the Board took exceptional caution when evaluating this case at every step.

[43] However, as per the Respondent's response in the amended declaration and hearing, the SSMU did not commence hiring for paid employees for positions created under the 2020 Constitution. Thus, the Judicial Board does not believe there are any consequences to paid employees from this decision.

### Training Executives

[44] The Respondent stated during the hearing that the SSMU executives will be