

The Judicial Board of
the Student Society of McGill University (SSMU)

Between

Messrs. Nadir Khan and Zain Ali Syed
The Petitioners

and

Ms. Courtney Ayukawa
On behalf of the Legislative Council of the Student Society of McGill University
and
Ms. Rachel Simmons, Speaker of the Legislative Council
The Respondents

Respondents' Declaration

Advocate for the Respondents: Mr. Charles Daoust

I. OVERVIEW

- A. As defined through custom, Article 5.2 of By-law Book I-5 merely sets a deadline for the option of adopting special standing rules and is not a positive obligation to enact or publish special standing rules.
- B. The *Motion Calling on SSMU to Stand in Solidarity with the People of the Occupied Palestinian Territories* (the “*Motion*”) was put to the floor for discussion at the Fall General Assembly. Debate was fostered by the Speaker according to rules previously established.
- C. The Judicial Board should dismiss this appeal.

II. FACTS

- A. Courtney Ayukawa became SSMU President on April 1, 2014, and has been acting in this official function since June 1, 2014.
- B. The Executive Committee selected Rachel Simmons for the position of Speaker on May 5, 2014. On October 23, 2014, the Nominating Committee and Legislative Council formally ratified the selection of Rachel Simmons and validated all of the Speaker’s official acts retroactively.
- C. The *Motion* was added to the agenda by petition, as per Article 4.1 of By-law Book I-5.
- D. The General Assembly lasted from 6:03 p.m. on October 22, 2014, to 12:26 a.m. on October 23, 2014.
- E. Rachel Simmons was acting in her official capacity as the Speaker on the day of the General Assembly.

- F. Rachel Simmons recused herself from the position of Speaker for the *Motion* and was replaced by Mike Tong for the *Motion* and its proceedings for reasons of a potential conflict of interest.
- G. The minutes of the General Assembly quote the Speaker to have said “ Motion regarding solidarity with the people of Occupied Palestinian Territories. [Speaker reads resolved clauses] Any points or motions on the floor?” at the Fall General Assembly.
- H. The *Motion* was motioned to be postponed indefinitely by a Amay Apense [sic] at the General Assembly. This motion was seconded. Debate occurred on the motion to postpone indefinitely. The motion to postpone indefinitely passed with a vote of 402 for and 337 against.
- I. Special standing rules can be adopted by a governing body in order to adapt Robert’s Rules to a specific context and usually encompass administrative specifications.
- J. Special standing rules for the General Assembly were adopted once in the last five years on January 26, 2012. Page 3 of the minutes from the January 26, 2012, Legislative Council meeting show limited debate on this motion for special standing rules and none of the movers stated their motivations for the motion. It is said that the special standing rules were adopted so that “those in debate don’t have to declare pro or con”, but no substantial other reason was discussed.

III. ISSUES

- A. Did the Speaker of Council and the Council fail in their duty to enact and publish special standing rules for the General Assembly?
- B. Did the Speaker of Council and the Council follow the correct procedure in order to enable debate on the *Motion*?

IV. ANALYSIS

- A. The petitioners claim that the Speaker of Council and Council failed to create and publish special standing rules for the General Assembly (GA). According to Bylaw 5.2 (and sub-articles), these special standing rules, should they be necessary, must be approved by the Council by the stated deadline, and follow the requirements set out by the sub-articles.
- B. Due to the controversial nature of the *Motion*, the Speaker, with the support of the President, deemed it more opportune and appropriate to let the Assembly proceed under the standard, authoritative Robert's Rules, as enshrined as the *de facto* rules for General Assembly procedures in the SSMU Constitution (Article 13.2 of the Constitution), in order to ensure the General Assembly's proper unfolding and avoid any potential conflict or procedural issues that may have ensued from the adoption of more informal, special standing rules.
- C. Convention over the past three years has favoured the 'deadline' interpretation of By-Law 5.2. Special standing rules were only adopted once during this period, and the reasoning for adopting those special standing rules was not given by the movers when adopted in 2012. It may be surmised that those rules were adopted to encourage participation and enthusiasm for the General Assembly, a problem

not encountered this year. In effect, the Speaker nor the Council was required to establish special standing rules for the General Assembly. Instead, the Speaker and Council let the General Assembly proceed according to Robert's Rules, the official procedure foreseen by the Constitution (article 13.2).

D. It has been alleged that the Speaker of Council stymied debate on the *Motion*.

According to Robert's Rules (10th edition, p. 38): "After the question has been stated by the chair, the motion becomes the property of the assembly". In the minutes of the General Assembly (p. 5), we read: "Speaker: Motion regarding solidarity with the people of Occupied Palestinian Territories. [Speaker reads resolved clauses] Any points or motions on the floor?" Once the Speaker stated the question, debate among the assembly members was triggered and discussion of the issue commenced. Once debate has been opened, the chair must recognize points and motions on the floor. In conclusion, the claim that Article 5.4 was violated is false.

V. PROCEDURES ALREADY FOLLOWED

A. The SSMU President met with one of the Petitioners, Mr. Nadir Khan, on October 27, 2014, to discuss his concerns and clarify that Article 5.2 of By-law Book I-5 is interpreted to be a deadline and not a positive obligation. The option of petitioning for a Special General Assembly was presented to Mr. Khan in this meeting.

VI. REMEDY SOUGHT

A. The Respondents request that the Judicial Board reject the appeal.

VII. CONCLUSION

- A. No need for special standing rules at the General Assembly was perceived. Hence, Article 5.2 of By-law Book I-5 was interpreted in light of conventional practices as a deadline for the option of adopting special standing rules, and not as a positive obligation to enact or publish special standing rules.
- B. Debate was opened on the *Motion*, according to Robert's Rules of procedure.
- C. The Judicial Board should dismiss this appeal.

VIII. APPENDIX

- A. *Motion Re: Standing Rules of the General Assembly* from January 26, 2012. <http://ssmu.mcgill.ca/wp-content/uploads/2008/10/01.26.12-Motion-Re-Standing-Rules-of-the-General-Assembly.pdf>
- B. Minutes from the January 26, 2012 Legislative Council meeting. *Motion Re: Standing Rules of the General Assembly* begins on page 3. <http://ssmu.mcgill.ca/wp-content/uploads/2008/10/02.09.12-Minutes-01.26.12.pdf>
- C. Minutes from the SSMU Winter General Assembly on February 2, 2012, which the *Motion Re: Standing Rules of the General Assembly* was adopted for. https://drive.google.com/file/d/0B_QjHXx62o8Kbi12TTg3TjFFQzA/view?usp=sharing
- D. Minutes from the SSMU Fall General Assembly on October 22, 2014. The Speaker is quoted to say "Any points or motions on the floor?" on page 5. <http://ssmu.mcgill.ca/wp-content/uploads/2009/10/General-Assembly-Minutes-2014-10-22.pdf>