Fried c. Students' Society of McGill University, 2024 QCCS 1381

Superior Court of Quebec, Serge Gaudet JSC, 22 April 2024

An application to dismiss a claim for a declaration about a student referendum.

Key words: Student Society, Quebec, Canada, University, Referendum, Declaration, Moot

1. The Students' Society of McGill University (SSMU) constitution provides for various interest groups and clubs of McGill University (McGill) students. Solidarity for Palestinian Human Rights (SPHR) was one of several clubs operating under the SSMU constitution.

2. SPHR stated that it promoted and advocated for the protection of Palestinians' fundamental rights, and was an advocate of the Boycott/Divestment/Sanctions movement against the State of Israel.

3. In February 2022, SPHR promoted a policy that stated (at [5]):

   > Palestinians are the victims of a "settler-colonial apartheid" that "is characterized by a brutal regime of land theft, checkpoints, house demolitions, environmental destruction, deportation and extrajudicial killings at the hands of soldiers, police and settlers". The resolution that the Policy was proposing would oblige the SSMU, for five years:
   >
   > 1) to issue, once a semester, a public statement affirming its "solidarity with Palestinian students and with Palestinian liberation from settler-colonial apartheid"; 2) to "completely boycott all corporations and institutions complicit in settler-colonial apartheid against Palestinians" and 3) to "campaign for a complete divestment of the University from these corporations or institutions".

4. In March 2022, this policy was put to a referendum of students by the question:

   > Do you agree to the SSMU's adoption of the Palestine Solidarity Policy?

5. The referendum results were that 2,294 students voted in favour of the Policy (71.1%), and 934 students voted against it (28.9%). The turnout for the vote was approximately 16.5% of the eligible voters, above the 15% quorum established by the regulations.

6. Immediately after the results were ascertained, the McGill Deputy Provost for Student Life and Learning sent a letter to the SSMU advising that the policy was in contravention of the SSMU's constitution as it was conducive to discrimination based on race, national or ethnic origin, and religion, and also in contravention of the agreement between McGill and the SSMU, whereby McGill collected student financial contributions to the SSMU.

7. In April, the SSMU board decided not to adopt the policy as it did not conform with its constitution, its equity policy, or Quebec law.

8. Despite this, a student who was Jewish, and described himself as a Zionist, sought a declaration from the Court that the vote was contrary to the SSMU constitution and policies and the university agreement, and was discriminatory.

9. The SSMU and McGill each filed a motion to dismiss, their main argument being that the whole issue was moot as the board of directors of the SSMU decided not to adopt the policy in question. They also claimed that the issue is not justiciable considering its political nature, and that the affairs of the SSMU should be under the exclusive control of its board of directors without undue interference by its members.

10. The Court needed to engage in a two-step process being:

    a) To determine if the case was indeed moot, that is to say, "whether the required tangible and concrete dispute has disappeared, and the issues have become academic"; and
    b) If the case was moot, should the Court hear it considering:
        i. Was there still an adversarial context to ensure that parties well and fully argue the issues with a stake in the outcome?
        ii. Was it a situation where the moot case should be heard despite the usual concerns regarding using scarce judicial resources?
        iii. Could a decision on the moot issue help elaborate the law?

11. The Court dismissed the case as the issues raised were entirely theoretical in all the circumstances. The Court reasoned that the policy had absolutely no real and concrete consequences for any McGill student as the board of directors of the SSMU has decided not to adopt it. Further, even if it was moot, the policy had no consequences.

12. In relation to judicial economy, the same plaintiff lawyer was arguing another proceeding with similar facts and context for an injunction. As the issues were more political than legal, debate was best left to the relevant institutions in place at McGill.

13. The Court dismissed the application.

COMMENT

Courts are generally reluctant to answer questions without a proper factual basis and context. Issues that are theoretical and hypothetical are not the domain of the judiciary.

VIEW THE CASE

This case may be viewed at: https://www.canlii.org/en/qc/qccs/doc/2024/2024qccs1381/2024qccs1381.html

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Date of creation: May 2024

Number of case: 2024-57

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ACPNS acknowledges the funding assistance of Our Community to produce the ACPNS Legal Case Notes Series.

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