The Judicial Board of the
Post Graduate Students’ Society of McGill University
17 April 2015

In Re: Candidacy Switch of Ms. Pura - on action by Ms. Lungu with regard to PGSS Election 2015-2016

Extension of Nomination Period

1. On 12 March, Chief Returning Officer Briggs (“the CRO”) announced the extension of the nomination period for various uncontested positions, including that of Member Services Officer, until 19 March, in accordance with Society Activities Manual Section Ch. 9, Section 2.4. The CRO requested nominees contact him via email, or the Administrative Coordinator in person.

2. Separately, the CRO contacted current candidates and offered them the option to change the position for which they were nominated.

Candidacy of Ms. Lungu

3. On 19 March, at some point later than 6:00PM, Ms. Lungu submitted her signed nomination forms to the CRO, and he acknowledged them as receivable. Ms. Lungu thinks that this occurred slightly before 6:30PM, and the CRO thinks that this occurred slightly after 6:50PM.

Candidacy Switch of Ms. Pura

4. On 19 March, an employee of the PGSS, other than the CRO, received a request from Ms. Pura to change her candidacy to Members Services Officer.

5. On 20 March, Ms. Pura contacted the CRO with her request. Initially, he refused, as the deadline had passed. After consulting with the employee who had received the request on 19 March, the CRO informed Ms. Pura that he accepted the change in candidacy.

Ms. Lungu's Appeal to the CRO

6. On 24 March, Ms. Lungu sent a four page letter to the CRO appealing the decision to allow Ms. Pura to change her candidacy to the MSO position.

7. On 4 April, the CRO rendered a nine page decision, answering Ms. Lungu's complaint, upholding his original decision. The CRO claimed in an email to Judicial Board member Daniel Simeone, that the decision, dated 4
April, was actually sent to Ms. Lungu on Friday, 3 April. There is some confusion in the record as to the decision of “3 April” and “4 April”, but they are one and the same.

**Interaction with the Judicial Board**

8. On 30 March, Ms. Lungu emailed the three members of this Board directly with a copy of her letter of 24 March, asking that this Board convene conditionally upon either the CRO not rendering a decision, or the decision being contrary to her complaint.

9. This Board normally receives appeals via PGSS administrative staff, and, frankly, did not quite know what to make of a direct appeal, and a conditional appeal at that.

10. This Board contacted the CRO for information, and the CRO informed this Board that he was working on his ruling.

11. On 2 April, this Board informed Ms. Lungu that it was not properly seized of the case, as the CRO had yet to issue his ruling, a ruling that we had been assured was forthcoming. This Board invited Ms. Lungu to wait to receive the CRO's ruling, and if she was not satisfied with it, to appeal at that time.

12. On 2 April, Ms. Lungu wrote to the Judicial Board, again, directly, rather than through the administrative staff. She repeated her request: “In the event that [the CRO] fails to respond by the time that you convene, I will ask you to adjudicate the contestation given the CRO's negligence to act.”

13. On 4 April, the CRO rendered his decision. Ms. Lungu did not contact this Board with respect to any appeal of that decision, until her letter of 13 April, in which she stated:

   Given your negligence to act, I will have no choice but to seek injunctive relief from the courts to prevent the disclosure of the election results this Friday, April 17, 2015 if I do not hear back from you by this Wednesday, April 15, 2015.

14. Although Ms. Lungu did not explicitly state that she wished to appeal the decision of the CRO of 4 April, this Board treated the letter as an appeal of that nature, and pursuant to SAM Chapter 13, which requires hearing and decision by this Board with three days of a complaint of an electoral nature, this Board convened a hearing for 16 April, at 9:30AM.

15. On 16 April, Ms. Lungu attended the hearing by tele-conference. Also present were Board members Simeone and Seretis.
Issue: Permissibility of Candidate Switching

16. Ms. Lungu argues that the entire candidacy switching procedure is null and void, as the language specified in the nomination form, and, we note, indicated in Section 4, 1.5, refer to the particular position for which the individual is to be nominated.

17. She further argues that the discretion of the CRO, as per Section 9.1.1, is limited only to rules and regulations “contained within this Manual.”

18. She further argues that by notifying a specific PGSS employee, rather than PGSS Administrative Coordinator, as required by SAM Ch. 9 Section 4, 1.5, Ms. Pura failed to meet the nomination requirements, and that the CRO acted improperly in accepting the switch on the basis of this notification.

19. The CRO made use of this discretion in his decision to allow candidate switching. Ms. Lungu alleges that this decision exceeded the allowable level of discretion.

20. Ms. Pura did not contact CRO within the agreed deadline; however, she was on the premises of a McGill-affiliated teaching hospital at the time, in which she was professionally engaged; within those premises, she could not secure access to the internet so as to contact the CRO, and; she did take all reasonable steps to communicate her candidacy to PGSS on time, given the restrictive circumstances within which she was required to operate on the evening of March 19. In our view, the denial of Ms. Pura’s right to switch her candidacy for an office of PGSS on account of limitations encountered within university-affiliated premises while she was working at an affiliated teaching hospital would be inequitable, in addition to offending the spirit of the facilitation of democratic representation within PGSS.

21. Of course, respect for Ms. Pura’s rights should not compromise Ms. Lungu’s rights. Accordingly, the previous paragraph ought to be considered in light of Ms. Lungu’s legitimate expectations that the publicized procedures would be followed and that the associated March 19 deadline would be respected. Ms. Lungu has cited a dictum from the jurisprudence of the Supreme Court of Canada in Baker in support of her contention that the decision of the CRO has offended her legitimate expectations. Yet, in the same decision, the Court noted that:

underlying all these factors [i.e. the criteria for procedural fairness] is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being
made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker. [emphasis added]

22. We note; (i) the contextual sensitivity of the assessment of legitimate expectations, and we pertinently reiterate the democratic value of having contested positions; (ii) that Ms. Lungu has indeed been given an opportunity to put forward her views with respect to this matter; (iii) that the CRO did provide a long explanation of the reasons for his decision to accept the candidacy switch of Ms. Pura; (iv) the overall significance of winning a position in PGSS by default, rather than being permitted to contest the election against another candidate, is not critical to one’s life, by an objective measure, in the terms of *Baker*; (v) the limited nature of the non-compliance with the procedures: timely notice was given, albeit not to the right person, who was not reachable at the time; (vi) the limited prejudice suffered by Ms. Lungu: the candidates were still announced the day after the deadline.

23. Accordingly, balancing these considerations, we find that Ms. Lungu cannot prevail on the basis of her legitimate expectations having been offended.

**Issue: Validity of Ms. Lungu's Candidacy**

24. Separately, we note that Ms. Lungu submitted her nomination form at some point after 6:50PM on 19 March, the extended deadline.

25. SAM Section 2.4 gives the deadline for submission of nomination forms as Noon on the date of the February Council meeting, and allows for a one week extension in the case that one candidate or no candidate submits a nomination. The CRO made use of his discretionary powers, in the context of a referendum, to move the deadline to the date of March Council.

26. Further, the original nomination period, according to Ms. Lungu's letter, closed on 11 March. The one week extension should have been to 18 March.

27. The nomination form had stated that nominations (for the original, unextended date) were to be accepted at the office until 5:00PM, and by email until 11:59PM. Both the CRO and Ms. Lungu agree that she submitted the forms, in person, after 5:00PM.

28. A strict reading of Section 2.4 and of the nomination form would imply that Ms. Lungu's nomination is null and void.
Issue: The Meaning of Discretion

29. The CRO, in both the case of the candidate switching process, in his decision to schedule the nomination extension as he did, and to accept Ms. Lungu’s nomination, exercised his discretion, as allowed by the SAM.

30. In both cases, the discretionary judgement went beyond the strict letter of the SAM.

31. SAM Chapter 9 Section 1 clearly lays out that the CRO has discretion in the application of these rules.

32. This Board rules that in both cases, the rule at hand lies within the discretionary power of the CRO. Absent unfairness, arbitrariness, unreasonableness, or a reasonable apprehension of bias, the CRO's decision should stand.

Issue: Unfairness, Unreasonableness, Arbitrariness, and Reasonable Apprehension of Bias

33. This Board is then confronted with the question as to whether or not the CRO's decisions were unfair, unreasonable, arbitrary, or if he acted with a reasonable apprehension of bias.

34. Had the CRO announced the nomination deadline of 19 March, when in fact the one week extension should have been to 18 March, and then rejected nominations received on 19 March, that most certainly would have been unreasonable and unfair. This did not occur.

35. Ms. Lungu alleges that the CRO violated a duty of fairness by not following the publically advertised nomination deadlines.

36. This Board rules that the allegation has no basis, as the CRO did, in fact, follow the publically advertised nomination deadlines. The notice allowed for either the CRO or PGSS staff to be notified of a candidacy switch, and PGSS staff were notified on the evening of 19 March.

37. Further, Ms. Lungu alleges that the CRO reversal of his decision on Ms. Pura's switch of candidacy was arbitrary or unreasonable. The basis for this allegation is circumstantial, and disappears entirely with the CRO's affirmation that another staff member had been informed.

38. In this allegation, she cites Roncarelli v. Duplessis, the classic case of executive interference in administrative decision making, namely the interference of the Premier in the issuance of a liquor permit to a restaurant owned by a notable Seventh Day Adventist, a religious persuasion with which the Premier took great exception. It is not in the least clear what, if
any, “improper purpose” may be at play in the CRO’s case. At the hearing, Ms. Lungu stated that she is aware of no specific evidence of this nature. Absent compelling evidence of inappropriate interference in the CRO’s decision making, we find no improper purpose.

39. Further, Ms. Lungu alleges that the decision creates a reasonable apprehension of bias. Her only evidence is as above, and thus this allegation is dismissed.

Ruling

40. The role of the CRO is to be an impartial arbiter in the electoral process, to foster democratic engagement, and to ensure that the principles of fairness, reasonableness, and due process are upheld as he performs these duties.

41. One of the purposes of the PGSS, as constituted in Bylaw 2-1.2 (and letters patent), is to “promote and enhance collegial relations amongst members.”

42. The core of collegiality is equal participation in democratic process by members of the society. The decisions made by the CRO have been in favour of democratic participation and inclusion, and they do so in a manner that is beyond reproach.

43. For these reasons, the complaint is dismissed.

Judicial Board of the PGSS
Luigi Bruno
Marios Seretis
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