



## **Councilor Hersh Filler & Councillor Christopher Vaccarella V. Council of Representatives**

Complaint Received: October 11th, 2020  
Complaint Delayed: October 17th, 2020  
Complaint Reopened: December 1st, 2020  
Decision: March 8th, 2021

### **Complainant**

- Councilor Hersh Filler

### **Respondent**

- Council of Representatives

### **Interested Parties**

- Chairperson of Council, Caitlin Robinson
- Executive Eduardo Malorni

### **Judicial Board Members**

- **Non-Voting Chairperson**
  - Shai Navi Mazor
- **Unanimous Decision**
  - Shaina Willison
  - Tessa Bertucci
  - Emily Zunti
  - Jack Alarie
  - James Hedrei
  - Vincent Bologna
  - Jose Tornes
  - Sedda Djaoud

### **Statement of Facts**

On October 11, 2020, the Judicial Board received a complaint from Councillor Hersh Filler.

Within the document, Councillor Filler presents the referendum question made in Fall 2019

*Do you support Concordia University bringing the opt-out process online for student fee levy organizations?*

The question received a 61.1% approval rate and had a turnout of 5167 students (Annex 2)

On the regular council meeting of September 16, 2020, a motion was presented to block the online opt-out system from coming into effect.

***Be it Resolved** that the discussion be tabled until the second October RCM*

***Be it further resolved** that the CSU be mandated to stand firm on the recommendations for online opt-out and that fee levies be included in meetings with the administration as per council's March council resolutions (emphasis added)*

*Motion Passed*

Councillor Tzvi Hersh Filler further outlines that Executive Eduardo Malorni and Concordia University cannot satisfy the recommendations (Annex 1) due to legal and technological issues. However, the Complainant further explains how the recommendations created by 2019 Executive Christopher Kalafitidis were not meant to be firmly committed to, but rather guidelines to follow (Annex 3).

The motion passed forces the CSU to commit to *impossible* recommendations that will limit the installment of online opt-out.

The Complainant requests the Judicial Board:

1. Strike down the motion to stand firm on the recommendations for online opt-out passed on September 16, 2020, because it contradicts Section 6.3(g) of the Bylaws by making negotiations for online opt-out impossible;
2. Inform the Council that the issue of online opt-out cannot be discussed at Council until the Judicial Board makes their decision on this case (to prevent further prejudice).

**Question on Referendum Fall 2019**

While the Judicial Board notes that the Concordia Student Union's mandate is to represent the will of its members – as per section 2.1 in CSU Bylaws:

*2.1 The objects of the Student Union are:*

- i. To consider and support activities which enhance the quality of life for students of Concordia University;*
- j. To represent the positions of its membership;*
- m. To be the representative of the undergraduate students of Concordia*

The Judicial board members ultimately find no violation with regards to the Section 6.3(g) which states the Council of Representatives:

*shall do or cause to be done the following ... (g) Enact, amend or repeal policies and resolutions so that the Student Union will conform to any policy, position or resolution passed in a duly convened Special General Meeting, and to the results, affirmative or negative, of duly conducted referendums which met quorum*

Our position is based on the referendum question itself not being a pledge or promise to Student Union Members, but rather a suggestion:

*“Do you support Concordia University bringing the opt-out process online for student fee levy organizations?”*

Thus, through a unanimous decision, the members of the Judicial Board urge the Concordia Student Union to do everything in their power to follow the will of the students.

**Motion by council**

The motion passed by council on September 16th, 2020, states that the CSU is mandated to *stand firm* on the recommendations outlined by Kalafatidis.

However, recommendation 2 and 4 are impossible for the university to implement due to legal and technical issues.

Recommendation 2 - *Each fee-levy group will have its own link where the user will have to click on each group in order to be given a description of the group. It will include an external link to learn even more about the group;*

Recommendation 4 - *The system will be available before the drop deadline so Fee-Levy Groups can be provided:*

- a. A list of all individuals who have opted out;*
- b. A list of the financial amount in dollars per semester resulting in opt-outs;*

Recommendation 2 poses issues for the university due to security related challenges which could lead to legal liability for the University, and thus this recommendation cannot be implemented.

Recommendation 4 states that the system will be available before the drop deadline, but this would be impossible for the University to implement due to technological reasons.

Furthermore, for privacy reasons, the Fee-Levy Groups cannot be provided with a list of the individuals who have opted-out online, but rather of those who have opted in online.

Within Counselor Filler's petition, he interprets the phrase "*stand firm*" to mean that the CSU must *firmly commit* to the six recommendations put forward by Kalafatidis. The Complainant claims that this motion leads to contradiction, and is thus in violation of *By-Law 6.3(g)*.

After careful consideration by the Judicial Board, we have come to the conclusion that this interpretation is flawed. The Judicial Board unanimously agrees that the phrase "stand firm" does not entail that all of the recommendations will be followed without exception. Rather, it should be interpreted to mean that the recommendations will be followed *as closely as is reasonably possible*. The recommendations were meant to be used as the most ideal scenario for the online opt-out system, but can be modified if need be.

Furthermore, this membership pool finds that the issues that interfere with the application of *recommendation 2 and 4* should not be taken as invalidating the entire online opt-out system. Due to the overwhelmingly positive response from the student body to the referendum question, the Judicial Board firmly urges the CSU to pursue the online opt out system to the extent that it is legally and technologically possible.

## Standing Regulations and By-laws

Existing CSU standing regulations refer to referenda regarding fee levies, removal of non-CSU fee levies and removal of University fee levies.

### Standing Regulations

*260. The removal of a University fee levy is at the **discretion of the University.***

While the referendum question was not about the removal of fee levies, the Judicial Board understands that opting out online and removing financial support just like any amendment made to them falls under the discretion of the University. Therefore, the Judicial Board recognizes that the online opt-out negotiations are not under the full jurisdiction of the CSU and the final process falls under the University.

### By-laws Section 6: the Council of Representatives' Tasks and Powers

*6.3 The tasks and powers of the Council of Representatives may only be properly exercised in the course of a duly convened meeting of same. In particular the Council shall do or cause to be done the following:*

*f. Enact, amend or repeal positions that direct the Union's political orientations and representation.*

*g. Enact, amend or repeal policies and resolutions so that the Student Union will **conform** to any policy, **position** or resolution passed in a duly convened Special General*

*Meeting, and to the results, affirmative or negative, of duly conducted referendums which met quorum.*

CSU Positions Book:

*16. The CSU supports an online opt out system for Fee-Levy Groups managed by Concordia University. [Enacted November 2019 | Expiry November 2023]*

Following the CSU's Positions Book, the Judicial Board understands that the CSU's favourable position on the implementation of an online opt-out system is clear. Thus, it falls under the tasks and powers of the Council of Representatives to conform, at the best of their ability, to this position. While fulfilling all six of the recommendations presented may not be logistically possible, the Council of Representatives is required to find a consensus with the University for the implementation of an online opt-out system.

By-Laws Section 8: the Judicial Board's Powers and Tasks

*8.2 The Judicial Board of the Student Union shall, upon the written request of any member or member association, convene to:*

*b. Declare invalid **any act of any member** who through their action derogates from these by-laws or from the constitution of any member association of the Student Union.*

Standing Regulations Article 92: Harmonizing the Positions book

*92. In the case of a conflict or contradiction between a resolution adopted by the members and a position previously adopted through a resolution of the members, the more recent resolution shall take precedence. It shall be the task of the Judicial Board to harmonize the previous position with the most recently passed resolution.*



It falls under the powers of the Judicial Board to invalidate a motion if it finds it to be digressing from the By-Laws.

### Recommendations

The Judicial Board unanimously agrees that the outcome of the referendum question presented to the student body was a clear demonstration for the CSU to take action in implementing the online opt-out process.

However, this body recognizes that this implementation comes with legal and technological hurdles for the Concordia Student Union.

Thus, Judicial Board's recommendation to the Concordia Student Union and its governing body is to exercise their mandate by following the demonstrated will of their members.

*The following will be the recommended guidelines and acceptable limitations for the execution:*

- The CSU should only restrict the execution of its member's will when the illegality of the actions is **clearly** evident.
- In the case where the full implementation happens to be compromised, the CSU's consequent actions must be to achieve the most expansive implementation of online opt-out which would be legally and technologically possible.

The Judicial Board also recommends the redaction and passing of policy to set strict guidelines for the future implementation of referendum decisions. The CSU Judicial Board would implore the council to refrain from presenting referendum questions with disputable wording to its

membership. The Student Union should assure that they have the ability to execute the desired outcomes of a presented referendum question.

## Conclusion

In reviewing the original fee levy Referendum Question,

*Do you support Concordia University bringing the opt-out process online for student fee levy organizations?*

The Judicial Board strongly encourages the Council of Representatives to do everything in their power to listen to the student voice and abide by the will of the students that they represent. This would mean reinterpretation of the motion to stand firm on the recommendations for online opt-out that was passed on September 16, 2020.

The motion in question was passed with a 61.1% approval rate and had a turnout of 5167 students (Annex 2); this is a much higher student voting turn-out than usual for referendum questions, which suggests that this is a matter of great importance to many students, and their desires for online opt-out should be met with the best of the Council of Representatives ability. Therefore, the Judicial Board strongly urges the Council of Representatives to implement all online opt-out recommendations, with the exception of recommendation 2 and recommendation 4 for the reasons outlined above.

The Judicial Board unanimously agrees that the phrase “stand firm” (Annex 1) does not entail that all of the recommendations have to be followed without exception. Rather, it should be interpreted to mean that

the recommendations will be followed *as closely as is reasonably possible* by the Council of Representatives.

## Annex 1

Exhibit C. Motion by Councillor, Minutes

BE IT RESOLVED that the discussion be tabled until the second October RCM

BE IT FURTHER RESOLVED that the CSU be mandated to stand firm on the recommendations for online opt-out and that fee levies be included in meetings with the administration as per council's March council resolutions (emphasis added).

Motion Passed

### 3. ISSUE

The motion states that the CSU must firmly commit to the six recommendations. However, MALORNI made it clear that because of legal and technological issues out of their control, the UNIVERSITY cannot satisfy all six recommendations.

NOT THE SAME THING

## Annex 2

1. The online opt out system is in the MyConcordia portal. Specifically, the financial/account section of the Student Center;
2. Each fee-levy group will have its own link where the user will have to click on each group in order to be given a description of the group. It will include an external link to learn even more about the group;
3. Once the User has read about the group, they are taken back to the financial center page and a user agreement checkbox would appear for that group. The User can check that box after reading the legal agreement. The legal agreement will explain that the student is opting out of the fee-levy group and will therefore lose access to their services. This process will exist for every group in order to give them a fair chance to showcase what they do and provide to the Concordia community.
4. The system will be available before the drop deadline so Fee-Levy Groups can be provided:
  - a. A list of all individuals who have opted out;
  - b. A list of the financial amount in dollars per semester resulting in opt-outs;
5. Opt out period should be a maximum of five days long.
6. No advertisement from Concordia and the CSU. Concordia University must not advertise the process through emails or social media. An explanation through the "How fees are billed" page on the Concordia website is acceptable.

Exhibit A. Referendum Question.

QUESTION: Do you support Concordia University bringing the opt out process online for student fee levy organizations?

Exhibit B. Election Results.

Yes	2905 (61.1%)
No	1849 (38.9%)
Total	5167

## Annex 3

April 2019

Whereas the CSU represents the rights, interests, aspirations and needs of more than 30,000 students of Concordia University who come from different racial, ethnocultural and religious backgrounds, many whom identify as Hindu, Jewish, Muslim and Sikh women and men,

Whereas the CSU supports and adheres to fundamental rights and freedoms enshrined in international human rights instruments such as the *International Covenant on Civil and Political Rights* and the *International Convention on the Elimination of All Forms of Racial Discrimination*, as well as domestic human rights instruments such as the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Human Rights and Freedoms*.

Whereas the CSU supports high quality, universally accessible postsecondary education as a fundamental human right for all,

Whereas the CSU values and promotes the values and principles of equality, diversity, inclusion and an intersectional feminist and anti-oppression approach towards all its endeavors and actions,

Whereas the CSU is opposed to any law, regulation, policy, and action, public or private, that has the effect of negating, diminishing, compromising or violating the fundamental rights and freedoms enshrined in international and domestic human rights instruments,

Whereas in the name of “laicity” and the collective rights of the Quebec Nation, Bill 21, as recently introduced by the Quebec Government in the National Assembly, seeks to ban religious symbols among certain classes of public servants, judges on administrative tribunals and in common-law courts, private workers receiving contracts from the government, and others who freely choose their faith;

Whereas in the name of “laicity” and religious neutrality, Bill 21 also compels the provision and reception of public services with the face uncovered, and limits accommodation on the basis of religion;

Whereas Bill 21 suspends the *Canadian Charter of Rights and Freedoms* by invoking the “Notwithstanding Clause” and seeks to subject the interpretation and application of the *Quebec Charter of Human Rights and Freedoms* on the basis of “state laicity”;

Whereas Bill 21 violates the *Canadian Charter of Rights and Freedoms*, particularly its guarantees of fundamental freedoms

2. Everyone has the following fundamental freedoms:

- •(a) freedom of conscience and religion;
- •(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- •(c) freedom of peaceful assembly; and
- •(d) freedom of association.

and equality rights,

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Whereas Bill 21 will produce disproportionately adverse and negative consequences on the constitutional and civil rights, and the fundamental freedoms of members of religious minorities in addition to First Nations peoples in Quebec, who are Concordia students, CSU employees or part of the Concordia community, and that overall Bill 21, will produce further discrimination, penalization and marginalization of these persons;

Whereas Bill 21 constitutes a form of legislated barrier and deterrent for Muslim women in particular in their exercise of their right to education, and to enjoy employment opportunities at Concordia University;

Whereas Bill 21 will likely impact and infringe on the rights and freedoms of First Nations, Inuit, and Metis individuals covered under Schedule II, including students, faculty, and CSU employees at Concordia, to practice and engage in their spiritual traditions by wearing spiritual symbols;

Whereas Bill 21 will deter many future Concordia students and immigrants from other provinces and countries from seeking education in Quebec, enrolling at Concordia University and other institutions of higher learning;

BE IT RESOLVED:

- That the CSU declare that Bill 21 is unacceptable and unconstitutional state-sanctioned discrimination against members of religious minorities on the basis of religion, gender, ethnic or national origin, and race, among other grounds;
- That the CSU declare that Bill 21 is an unprecedented assault on the part of the Quebec Government on human rights and freedoms that have been recognized by the United Nations and enshrined in Canadian law as fundamental and universal, since the Second World War,

- That the CSU declare that Bill 21 is state-sanctioned violation of the rights of students of religious faiths, particularly Muslims, at Concordia to education, as well as their right to employment and access to related services that are fundamental to their well-being, freedoms, academic and professional endeavors,
- That the CSU rejects the exclusionary concept of the “collective rights of the Quebec Nation” that does not recognize the rights of Indigenous peoples and other of citizens, residents and minorities within Quebec territory, including religious minorities,
- That the CSU, in partnership with other student unions, community and faith organizations and other stakeholders in Quebec and elsewhere, undertake all necessary and proper democratic means to challenge and defeat Bill 21, through mobilization, education, and litigation, and to protect and promote fundamental human rights and freedoms of all Concordia University employees and students, and of all peoples living in Quebec.



## Annex 4

Recommendation Number	What CSU Asked For	What It is Getting
<b>Recommendation 1.</b>	System is in <u>MyConcordia</u>	System is in <u>MyConcordia</u>
<b>Recommendation 2.</b>	Each Fee-Levy Group has a Link to its external website to explain what it does.	Each Fee-Levy can have its own page on the Concordia domain to explain what it does.
<b>Recommendation 3</b>	User signs legal agreement for each Fee-Levy Group	User signs one legal agreement that covers all Fee-Levy Groups
<b>Recommendation 4</b>	University provides list of all students who opted out and financial losses from opt-outs.	University provides list of all students who are opted in. KALAFATIDIS was told they can provide the amount from the financial losses.
<b>Recommendation 5</b>	<u>Opt</u> out period is five days long	<u>Opt</u> out period is five days long
<b>Recommendation 6</b>	Concordia does not advertise opt out period.	Concordia does not advertise opt out period