

ELECTION APPEALS COMMITTEE DECISION**WEDNESDAY MARCH 4, 2016****APPLICANT: LESLIE TULETT**

The Election Appeals Committee consisted of:

Abdulrahman Alnaar; Chair of the Election Appeals Committee, Speaker of AMS Council

Marjan Hatai; Representative for the Elections Committee

Anne Kessler; Representative for the Applicant

THE DECISION

The Applicant, Ms. Leslie Tulett, requested that the Elections Appeals Committee impose a penalty of (3) days without any campaign privileges to Mr. Alex Kilpatrick (a candidate for the AMS VP External Affairs election) for committing (3) separate violations.

The Election Appeals Committee respectfully finds that the subsequent 39.5 hours (1 ½ days) penalty handed down on Mr. Kilpatrick was sufficient in the context of the violations committed.

This decision comes with reservations regarding the complexities with AMS Code and Procedures, to be addressed in the last paragraphs within this decision.

Representative Anne Kessler dissented from this decision. Her dissenting opinion is contained throughout this report.

REASONS FOR THE DECISION

1. The Speaker of Council Abdul Alnaar had received the formal notice of the appeal from the AMS Administrator Ms. Pickford on Wednesday, March 2, 2016 at 9:19 AM. Leslie Tulett ("The Applicant") identified as the campaign manager of Ms. Kathleen Simpson, a candidate in the 2016 AMS Elections who is running for the position of Vice President External Affairs. The only other candidate in this race is Mr. Alex Kilpatrick.
2. On receiving the appellant's application, the Chair of the Election Appeals Committee determined the appeal met the requirements of paragraphs 8 and 9 within Section IX A – Article 8. The Speaker of Council received the Elections Committee's written response to the appeal on Wednesday, March 2, 2016 at 10:35 AM. The Elections Committee named Ms. Marjan Hatai as their representative in a separate email the same day. The Speaker of Council as Chair of the AMS Elections Appeals Committee then formally sent notice to the members of the AMS Elections Appeals Committee that it's first meeting would be held in the AMS office at **6PM on Wednesday, March 2, 2016**.
3. Ms. Leslie Tulett ("The Applicant") is appealing what she thought was the Elections Administrator's decision to not give any "penalty box" time to Mr. Kilpatrick for allegedly committing 3 campaign violations. The Applicant's representative Ms. Kessler stated at the beginning of the committee meeting that the appeal was written and submitted by Ms. Tulett **prior** to the Election Administrator's declared decision to place Mr. Alex Kilpatrick in the Penalty Box for 39.5 hours (1 ½ days) between Tuesday March 1 and Wednesday March 2. This fact was not disputed by the Elections Appeals Committee members on Wednesday, March 2, 2016 at it's meeting.
4. Ms. Tulett was primarily concerned that giving no penalty time to Mr. Kilpatrick was inconsistent to the Elections Administrator's prior decision to give Mr. Louis Retief (VP Finance candidate) 3 days for what she believed was a similar campaign violation or offense. Furthermore, she believes that any subsequent penalty that is less than 3 days would again result in an inconsistent practice by the Elections Administrator.

5. To reiterate, the Elections Administrator however placed Mr. Kilpatrick in the Penalty Box after this appeal was drafted by Ms. Tulett. The penalty was to place Mr. Kilpatrick on a campaign suspension for 39.5 hours or 1 ½ days from Tuesday March 1 at 00:01 to Wednesday March 2 at 15:30.
6. The Elections Appeals Committee considered each alleged campaign violation one by one before coming to its final determination.

a. Violation #1 – The AMS Communications Manager door incident

- The applicant in her capacity as campaign manager for Ms. Simpson, and Ms. Simpson both protested the fact that Mr. Kilpatrick had multiple posters placed on the AMS Communications Manager’s door on the first day of Campaigning (Monday Feb 22), and that it was a violation according to the following section of code below. (It should be noted here that Mr. Kilpatrick is currently employed within the AMS Communications office, and the Manager is his direct supervisor).

The Elections Administrator (Justin Habashi) counters the applicant’s (Leslie Tulett) argument in his written response, citing the same code as well.

- Section IX Code Procedures A: Electoral Procedures – Article 2 - Nomination and Campaign Regulations – Paragraph 8(a) Conflict of Interest
Candidates and anyone directed by a candidate shall not use the materials or resources of the Executive, the Commissions, the other branches of the Society’s student government, the Student Services, the Student Resource Groups, the Constituencies, the Society’s Clubs, the Administration Office, the Events Office, or other staff offices, including, but not limited to, office supplies, photocopiers, phones, faxes, computers, and printers. This prohibition does not apply to materials and resources available to Society members generally, such as free phones in Constituency offices.
- Both the applicant and the Elections Administrator appear to argue the paragraph code above, and seem to argue over the intent behind this clause. The Elections Administrator argues that it specifically talks about the use of materials or resources, and the applicant argues that the “but not limited to” clause includes the use of the door.
- It became clear to the Election Appeals Committee that the Elections Administrator did not claim this to be a clear violation of the code listed above, but yet gave an official warning to Mr. Kilpatrick nevertheless.
- The Elections Appeals Committee actually considered this to be a clear violation of the next paragraph within the same section and article of the code, which happens to be the next Paragraph (Section IX Code Procedures A: Electoral Procedures – Article 2 - Nomination and Campaign Regulations – Paragraph 8(b)) -
 - ***Candidates shall not use the Administration Office, the Events Office, other staff offices, Executive offices, Commission offices, or other offices of the various branches of the Society’s student government, specifically SUB rooms 220 through 266, or the offices of the Student Services, the Student Resource Groups, or the Society’s Clubs, or bookable rooms in the SUB, for any purpose related to elections, including, but not limited to, use of such offices as campaign offices and for storage of campaign materials, display of campaign materials, campaigning, and campaign meetings. To facilitate enforcement of this provision, candidates shall report to the Elections Committee all privileged access they have to University buildings***

- It is very unfortunate that the Elections Administrator failed in his ruling to outright interpret Mr. Kilpatrick's actions, in this instance, as a clear violation of Section IX A Article 2 Paragraph 8(b).
 - Ms. Tulett does not even mention Paragraph 8(b) in her formal appeal.
 - The Elections Appeals Committee unanimously considers this as a Mr. Kilpatrick's 1st violation.
 - The Elections Appeals Committee considered the fact that even though Justin Habashi (the Elections Administrator) did not consider this as an official violation – he did in fact talk to Mr. Kilpatrick and the AMS Communications Manager to remove the posters, and issued a warning. The posters were removed that Monday afternoon.
 - The Elections Appeals Committee also considered that the AMS Communications Manager's office was not in an area with a high volume of foot traffic, and that not many students witnessed the violation take place, other than the current student staff of the AMS.
 - Ms. Kessler dissented from the view that these circumstances mean that this violation should be considered minor. She feels that it is a clear violation of code, and that maintaining an understanding of the separation between any positions currently held within the AMS and one's candidacy is of utmost importance. Using one's access to the AMS in campaigning, in Ms. Kessler's opinion, is one of the most serious campaign violations as it constitutes an abuse of power. Ms. Kessler does not claim this was at all the intent, but we do not know how it might have been interpreted by students, including student staff. Maintaining distance between the operations of the AMS and campaigning is vital to students having a sense of elections as fair, open and democratic. Although it is unlikely that many students saw the posters, this is not an established fact.
 - The Elections Appeals Committee considered the warning and the order of removal sufficient. The following section of code provides the Elections Committee the ability to issue warnings for first time offenses:
 - Section IX A Article 3 Paragraph 5
 - The Elections Committee may, at its discretion, issue a warning rather than imposing a penalty for lesser offences, especially in the case of a first offence.
- b. Violation #2 – 11" x 17" campaign posters inside multiple classrooms. [Violation of AMS Code of Procedure, Section IX, Article 2 (7)(e)(i)]
- Mr. Kilpatrick was found to have had 11" x 17" campaign posters inside multiple classrooms, which code prohibits and state that only 8.5" x 11" posters are allowed inside class rooms.
 - The Elections Administrator agreed with the complaint, and issued Mr. Kilpatrick with a warning, and an order of removal on Friday, Feb 26th. The Elections Administrator viewed this to be Mr. Kilpatrick's first violation.
 - The Elections Appeals Committee agrees that this was actually Mr. Kilpatrick's 2nd official violation.
 - The Elections Appeals Committee agrees that the Elections Administrator could have given some sort of penalty in this case, but that the warning PLUS the order of removal was appropriate.
 - Ms. Kessler agreed that a warning was appropriate originally when viewed by the Elections Administrator as a first violation. However, given that the Elections Appeals Committee has determined this to be a second violation, and given Ms. Kessler's above stated disagreement with considering the first violation to be a small one, Ms. Kessler feels that for this second violation, a day in the penalty box, PLUS the order of removal, would be appropriate.
- c. Violation #3 – Failure to comply with an order of removal
- Ms. Tulett emailed the Elections Administrator on Tuesday, March 01, 2016 at 1:07 AM with proof that Mr. Kilpatrick still had one violating poster inside one classroom in the Forestry Building as of Monday night
 - The Elections Administrator decided on Tuesday morning to place Mr. Kilpatrick on 1 ½ campaign suspension and placed him in the penalty box. Justin viewed this to be Mr. Kilpatrick's 2nd violation.

- The Elections Appeals Committee agreed that this was Mr. Kilpatrick's 3rd violation.
 - The Elections Appeals Committee agreed that the punishment handed down by the Elections Administrator was appropriate. Ms. Hatai argued that it deserved to be less, as there was only one poster in one classroom remaining after this attempted compliance with Justin's order of removal. The Chair (Abdul) thought that 1 ½ day was appropriate within the context of this violation alone, while Ms. Kessler agreed that a 1 ½ day penalty was appropriate for this third violation, in addition to a day served for the 2nd violation, meaning that total time served should be 2 ½ days
7. In relation to the remedy sought – Ms. Tulett is seeking for the Elections Appeals Committee to increase the penalty of Mr. Kilpatrick for his 3 violations to 3 days, citing that the penalty must be the same as that imposed on Mr. Louis Retief earlier.
 8. The committee acknowledged that Ms. Tulett's appeal may be supported under this section of code:
 - Section IX A, Article 3, Paragraph 9
For similar offences in the same election or referendum, the Elections Committee shall impose similar penalties.
 9. The committee deliberated at length as to whether these were similar or different offenses, and whether a similar penalty should be imposed.
 - The committee considered the counter argument listed in Justin's written response that Mr. Louis Retief *failed to even partially comply with the order of removal*. In Alex Kilpatrick's case, it is understood that Alex attempted to comply with the order of removal but missed one or more posters inside one building, as evidenced by Ms. Tulett's email – she only found the posters in the Forestry building as opposed to others in other buildings.
 10. The committee did appreciate that they were somewhat similar offenses, but acknowledged the different factors and context contributing to the decision the Elections Administrator took in both cases. The Elections Appeals Committee decided that the Elections Administrator could not impose the same penalty in Mr. Kilpatrick's case. The 39.5 (or 1 ½ days) imposed on Mr. Kilpatrick was sufficient in the opinion of the Elections Appeals Committee by a vote of 2 (Abdul and Marjan) to 1 (Anne).
 11. The Elections Appeals Committee all agreed that the current AMS Code and Procedures around Elections does not clearly state what is considered a "small" vs. "major" violation, nor does it provide specific guidelines in determining the number of days (in the penalty box) a candidate should get as a result of them accumulating violations. Furthermore, AMS code does not explicitly state that a punishment may only be imposed as a complete suspension of campaign privileges. For example, the Elections Administrator could have used other penalties like withholding reimbursements. As a result, the Committee is not able at this juncture to change the decision taken by the Election Committee.
 12. In summation, Ms. Tulett submitted her appeal prematurely on the assumption that the Elections Administrator, Justin Habashi, was not going to give Mr. Kilpatrick any penalty for the violations committed. This is obviously now not the case, as Mr. Kilpatrick was indeed placed in the Penalty Box for 39.5 hours. By a margin of 2 votes to 1 vote, the Elections Appeals Committee agreed not to overturn the decision made by the Elections Administrator.
 13. The Applicant's appeal is dismissed.

POST SCRIPT

The Elections Appeals Committee would like to highlight that this was a very difficult appeal to review. The main issue we grappled with was the subjectivity surrounding what is or isn't considered an appropriate punishment or penalty as there is no appropriate or sufficient examples to compare to in this election.

We also wanted to note to AMS Council that we disagreed on the violations that accumulate or accrue should also mean that the penalty imposed should increase. Currently, AMS Code does not state anything clearly that addresses what recourse the Elections Administrator has in dealing with multiple or accumulating violations. While we all agreed that it was also important for the Elections Administrator to have some degree of discretion, we felt that AMS Code should give clearer guidelines for the EA to address the concerns listed throughout this decision.