

Ombuds Investigation – Council Report

AMS Ombudsperson Matt Perzow
1-25-2017

Mandate of the Ombudsperson

The general purpose of an Ombudsperson is to promote procedural fairness and transparency within an institution. When conflict arises between members of the institution, a member may ask an Ombudsperson to intervene and provide an impartial perspective on the conflict in question. A student can also call an Ombudsperson to conduct a 'formal investigation' into a case and present their findings to Council. The AMS bylaws provide the Ombudsperson with the power and duty to recommend a course of action to Council.

The Ombuds Office operates as an independent body which is not influenced by the leadership of the institution. The Ombudsperson may, in their impartial capacity, suggest an approach that is fair and best advances inclusivity and goodwill amongst all AMS members.

Citation: Bylaw 9(1)(a-c,g), Code of Procedure Section II, Article 10(13-14).

Matter of the Investigation

A student, Logan Presch, submitted a request for me to conduct a formal investigation into a proposed referendum question that is circulating on campus. The question is as follows:

'Do you support your student union (AMS) in boycotting products and divesting from companies that support Israeli war crimes, illegal occupation and the oppression of Palestinians?'

He expressed concern about the content and wording of the referendum question, as well as the question's potential effect on student safety and campus culture. This investigation will only concern whether the question as written complies with the Bylaws and Code of Procedure.

This report does not weigh in on the Israeli-Arab conflict, offer judgement on any country accused of oppressing Palestinians, or conclude whether this proposed boycott and divestment would lead to the alleviation of the harms alleged in the referendum question. It is each Councilperson's duty to put aside their personal political views, and to only consider whether the question as currently worded is consistent with the AMS Constitution, Bylaw, and Code of Procedure and how to best remedy the situation.

Bylaw 4 gives the right to an active member of the Society to call upon the President to issue a referendum. The text of the referendum shall be drafted to ensure that the question is capable of being answered “yes” or “no” and that the question meets the criteria of being “clear” and “unambiguous.”

Section IX A, Article 4(4) of the Code of Procedure (numbered Article 4(2) before July 2016) further interprets this Bylaw to mean that the question must be phrased such that it can be answered ‘yes’ or ‘no’, that nothing illegal may be proposed by the question, and if a contract would be broken by the question, that the intent to break such a contract as well as the associated penalty must be included in the question.

When a student sees a question that calls for the boycott of goods and divestment from companies, that student would reasonably expect their affirmative vote to lead to the breaking of contract with those companies.

The AMS Club ‘Solidarity for Palestinian Human Rights’(SPHR) puts forth the argument in their submission that they do not want to make it immediately incumbent upon the AMS to break any contracts. Merely *suggesting* a boycott, in their opinion, would allow them to evade the language on contract breaking. And yet, the SPHR club has handed out campaign leaflets from their table that list “some companies” that would fall under a “boycott of Israel” including: “Chapters, Starbucks, Nestlé, Motorola, MasterCard, Caterpillar, Home Depot, Intel, MEC, and Johnson & Johnson”. The leaflet links to the BDS website and urges readers to not “buy goods from Israel or companies that support Israel.” This reinforces an interpretation that the question is binding.

There is a lack of clarity in the design of the prompt of the question. “Do you support your student union (AMS) in doing [X]” could be reasonably read to imply that the AMS Council has endorsed the described action and is now asking students to affirm the AMS Council’s decision.

While there is international jurisprudence on ‘war crimes’, the reference in the question is misleading because the International Criminal Court has not at the time of this report indicted or convicted Israel of any crime. This is important because it leads to further ambiguities. The question is then ambiguous about which international body would get to decide which “war crimes” would count for this question.

Another large ambiguity arises from the mention of companies “support[ing] Israeli war crimes, illegal occupation and the oppression of Palestinians”. What does a company have to do to “support” those

things? Would this mean boycotting any company that does business with Israel? Does this mean only boycotting companies with offices in the West Bank? Further, does the reference to the illegal occupation include the Golan Heights and the Old City? Is it referring to the pre-1967 Green Line, or the proposed borders of the Oslo Accords? These details are crucial to the understanding of the conflict and the question – if the above paragraph is unclear, so is the question.

For the reasons listed above, this question fails to meet the criteria of being clear and unambiguous.

Recommendation

Due to the number and significant nature of the ambiguities in the proposed question, I recommend the following actions once the referendum petition is formally submitted to the VPAUA:

- **Council direct the referendum question to the Student Court in accordance with Bylaw 4.** The Student Court is the only body within the Bylaws that has authority over referendum questions. There is ample time to form a Student Court and fill the positions. This would provide legitimacy to Council's decision and show the student body that this controversial issue has been properly handled according to the AMS Bylaws. The question deserves further review given the absence of a list of contracts to be broken and the consequences thereof. Bylaw 4(2) requires Council to refer unclear questions to the Student Court, and in Bylaw 21 (Student Court) the mandate of Student Court includes the rephrasing of unclear referendum questions so that they can adhere to the Bylaws, instead of not running at all. Students should know what they are voting for and what the consequences of that vote would reasonably look like.
- Our Members and the press will likely scrutinize Council's decision on whether this matter should go to Student Court. For the purpose of transparency among our Members and the public, **I urge Council to make available written reasons and/or a press release about their decision on whether they will send the petition to Student Court.**