Decision of the Election Appeals Committee

Date: Sunday, October 24, 2021

Members: Neal Cameron (Speaker of Council, He/Him), Peter Hindi (Appellant's Representative, He/Him), Ray Hua (Elections Committee's Representative, He/Him)

Matter: Application for appeal of the decision of the AMS Chief Electoral Officer on October 14th to invalidate the results of the Computer Science Representative question in the Science Undergraduate Society 2021 Fall Elections

(A) Decision:

> Pursuant to Section IX-A, Article 8, Paragraphs 14 and 15, the Election Appeals Committee has decided to overturn the decision of the Chief Electoral Officer in their role as the sole member of the Elections Committee to invalidate the results of the Computer Science Representative question in the Science Undergraduate Society 2021 Fall Elections. The Election Appeals Committee is substituting its own decision for that of the Chief Electoral Officer and declares Ramy Hydayatullah elected as the Science Undergraduate Society Computer Science Representative.

(B) Reasons for the Decision:

1. The Speaker of Council and Chair of the Election Appeals Committee, Neal Cameron, received confirmation of formal notice of appeal from the appellant on Saturday, October 23, 2021, at 2:08 PM. There was a delay in the confirmation of appeal due to multiple appeals being received by the AMS Administrative Assistant. Ramy Hydayatullah was running unopposed in the election for the position of Student Undergraduate Society (SUS) Computer Science Representative.

2. Upon receipt of the appellant's application, the Chair of the Election Appeals Committee decided that the appeal met the requirements of Section IX-A, Article 8, Paragraphs 8 and 9, per Section IX-A, Article A, Paragraph 10. The Chair of the Election Appeals Committee notified the Elections Committee of appeal, provided it with a copy of all relevant documentation, and invited it to name a representative to the Election Appeals Committee and submit a written response. The AMS Election Appeals Committee met virtually at 3:30 PM on Sunday, October 24, 2021.

3. Ramy Hydayatullah ("the appellant") is appealing the ruling of the Chief Electoral Officer ("CEO") to invalidate the results of the Computer Science Representative question in the SUS 2021 Fall Elections. The appellant submits that the CEO acted in a manner inconsistent with the Electoral Procedures in the Code and that the CEO acted in an obviously unfair manner.

<u>The Issue of non-member candidacies in member-limited
Constituency Elections:</u>

4. The CEO ruled that the SUS's limitation on the entitlement to *vote* to
members of specific years or programs (per Section IX-A, Article 9,
Paragraph 1(l)) imposed an obligation on the SUS to ensure that
candidates who ran in elections for "representatives from specific
years or programs" were themselves members of the specific years or
programs that voting was being limited to (per Section IX-A, Article 9,
Paragraph 1(m)).

5. The appellant argued that the SUS had not imposed a limitation on the
entitlement to *run* to "members of [specific] years or programs" under
Section IX-A, Article 9, Paragraph 1(m). The SUS confirmed that this
was the case. The appellant is not a member of the computer science
program.

6. The Election Appeals Committee found that there was no *explicit*
obligation in AMS Code for the SUS to limit the entitlement to run for a
specific year or program's representative in a Constituency under
Section IX-A, Article 9, Paragraph 1(m), even if the entitlement to vote
was limited to members in a specific year or program under Section
IX-A, Article 9, Paragraph 1(l). The rationale document which
proposed the inclusions of Paragraphs 1(l) and (m) indicates a clear
preference to provide constituencies broader autonomy in the
selection of representatives for specific groups based on year
standing or program. While the provision of an entitlement to run in a
Constituency election in which an individual may not be entitled to
vote in is perhaps paradoxical, the Committee finds that the CEO does
not have the authority to enforce restrictions on the entitlement of
candidates to run if the Constituency itself does not wish to enforce
said restrictions on the entitlement of candidates to run. The
Committee has determined under Section IX, Article 8, Paragraph
14(a) that the CEO and the Elections Committee acted in a manner
inconsistent with the Electoral Procedures in the Code.

7. The Committee found, however, that the SUS Code of Procedures
does require that "Program Representatives shall be elected by and
from the active members in the Department or Program" (Article 11,
Paragraph 6, SUS Code of Procedures, emphasis added).
Hydayatullah's candidacy for the position of Computer Science
representative is therefore in violation of the SUS Code of Procedures.
It is not the role of the Election Appeals Committee to ensure that
constituencies are compliant with their own Code of Procedures
unless the Committee is addressing an appeal of a decision made by
the Elections Committee that concerns compliance with a
constituency's Code of Procedure. As highlighted below, the Elections

Committee, (and by extension, the Election Appeals Committee), did not receive an internal appeal of a decision made within the SUS. The appeal in this case is limited to the CEO's ruling to invalidate the result of the election for SUS Computer Science Representative, and the CEO's rationale *under AMS Code* for doing so.

<u>The Issue of Ruling on the Validity of a Constituency Election or Referendum by the Elections Committee</u>

8. The CEO further expanded their ruling by highlighting that they had not ruled on the validity of a Constituency election or referendum under Section IX-A, Article 9, Paragraph 3 and that the declaration by the SUS that a candidate had been elected before that ruling was issued invalidated the outcome of the SUS 2021 Fall Election Computer Science Representative question.

9. The Committee, after inquiry to the CEO, found that there had been no internal appeals within the Constituency. Section IX-A, Article 9, Paragraph 3 reads, "*Provided that at least one internal appeal has taken place within a Constituency*, the Elections Committee shall rule on the validity of a Constituency election or referendum…" (emphasis added). The Committee finds that as there were no internal appeals within the Constituency, the CEO did not have the authority under Section IX-A, Article 9, Paragraph 3 to rule on the validity of a constituency election or referendum, and as such, the issues of limiting entitlement to vote and to run in a constituency election are not a matter of discretion afforded to the CEO under Section IX-A, Article 9, Paragraph 3. The Committee has determined under Section IX, Article 8, Paragraph 14(a) that the CEO and the Elections Committee acted in a manner inconsistent with the Electoral Procedures in the Code.

<u>The Power of the Elections Committee to Rule on the Validity of Constituency Elections Under Section IX-A, Article 1-C, Paragraph 6 and the role of the Chief Electoral Officer</u>

10. While not raised in the written submissions of the appellant or the Elections Committee, the Election Appeals Committee notes that the powers and duties of the Elections Committee to rule on the validity of Constituency elections and referenda outlined in Section IX-A, Article 1-B, Paragraph 6 explicitly refers to the limits imposed by Section IX-A, Article 9, including Section IX-A, Article, 9, Paragraph 3, which includes the necessary condition of "*at least one internal appeal [having] taken place within a Constituency*" for the Elections Committee to be able to rule on the validity of a Constituency election or referendum.

11. Finally, the Committee recognized that under Section IX-A, Article 9, Paragraph 1(w), the CEO has an *obligation* to certify results of Constituency elections and referenda in reports made to both the Constituency and to Council. This obligation does not provide discretion to the CEO to decertify the result of a Constituency election or referenda; the use of "shall" is an imperative (*Interpretation Act*, RSBC 1996, c 238, s 29) and not an opportunity for discretion by the CEO.

12. The CEO notes in their ruling that the SUS had an obligation under Section IX-A, Article 9, Paragraph 1(e) to "abide by the rules prescribed by the AMS Chief Electoral Officer". This obligation does not appear to have been met by the SUS and their chief elections official, as they declared their results certified before the CEO had met their obligation under Section IX-A, Article 9, Paragraph 1(w) to certify the results. While troubling, the Committee does not find this to be grounds to decertify the results of the SUS 2021 Fall Election Computer Science Representative question.

13. The Election Appeals Committee, in accordance with Section IX-A, Article 8, Paragraph 15(a), is substituting its own decision for that of the CEO and declares Ramy Hydayatullah elected as the Computer Science Representative in the Science Undergraduate Society. The Committee thanks the appellant and the Elections Committee for their submissions, and further thanks their representatives on the committee for their timeliness and professionalism in discussing this matter.

14. There is no dissenting opinion to this decision.