Decision of the Elections Appeals Committee

Date: Tuesday, March 1st, 2022

Members: Neal Cameron (Speaker of Council, He/Him), Daniel Anene-Akosa (Appellant’s Representative, He/Him), Ray Hua (Election Committee Representative, He/Him)

Matter: Application for appeal of the decision of the AMS Elections Committee on February 28th to issue a campaign suspension for a candidate for AMS President in the AMS Spring 2022 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 Elections Committee to suspend Saad Shoaib from campaigning for 12 hours. The Election Appeals Committee is substituting its own decision for that of the Elections Committee and overturns the decision of the Elections Committee.

(B) Reasons for the Decision:

1. The Speaker of Council and Chair of the Election Appeals Committee (“the Committee”), Neal Cameron, received confirmation of formal notice of appeal from the appellant on Tuesday, March 1st, 2022, at 12:29 PM.

2. Upon receipt of the appellant’s application, the Chair of the 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 of AMS Code (“Code”). The Chair of the 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 Committee. Due to the limited amount of time between the receipt of the appeal and the beginning of the window(s) of suspension, the Chair of the Committee named Ray Hua as the Election Committee’s representative on the Committee, pursuant to Section IX-A, Article 8, Paragraph 10, as the Elections Committee did not name a representative to the Election Committee. Ray Hua had previously served as Election Committee representative on the Committee and is not a candidate, nor is he a member of Council, the Executive Committee, or the Elections Committee. The Committee found that it would be unreasonable to wait for a decision by the Elections Committee, pursuant to Section IX-A, Article 8, Paragraph 20(b)(ii) of Code. The AMS Election Appeals Committee met virtually at 4:08 PM on Tuesday, October 24, 2021.

3. Saad Shoaib (“the appellant”) is appealing the ruling of the Elections Committee (“the EC”) to suspend his campaign from Wednesday, March 2, or Thursday, March 3 to from 4:30 AM to 4:30 PM. The appellant seeks a reversal of the ruling and a formal, public apology from the Chief Electoral Officer (“the CEO”) and AMS Elections. The appellant submits that the EC
failed to provide adequate opportunity to rebut the decision of the EC, the EC acted in a manner inconsistent with the Electoral Procedures in the Code, the EC failed to consider relevant evidence, and the EC acted in an obviously unfair manner.

The Issue of Slating

4. The Elections Committee issued a ruling that the appellant and a candidate for AMS Vice-President External, Erin Co, had engaged in slating behaviour contrary to Section IX-A, Article 2, Paragraph 11 and 12(b) of Code, which states that “Candidates shall not run in slates”, and further prohibits “producing campaign materials that resemble those of another candidate in colour, branding, design, or appearance”. The Elections Committee raised that the “look, font, and layout” of the websites of the appellant and the Other Candidate were “identical”, and subsequently issued penalties corresponding to an intermediate offence in the AMS Election Spring 2022 candidate handbook. As such, the Committee suspended the Appellant from campaigning for 24 hours, which was later revised to a suspension of his campaign from Wednesday, March 2, or Thursday, March 3 to from 4:30 AM to 4:30 PM.

5. The appellant argued that neither their layout, font, or colours were similar to Ms. Co’s, that they had used a common website template on a major website hosting site, and that their layout was comparable and inspired by the campaign websites of previous AMS Elections candidates and major political figures.

6. The Committee examined both AMS Code and a previous decision of Student Court dated February 24, 2009, involving Blake Fredrick (Frederick et al v. AMS EC) (“the Frederick Decision”) to reach a decision.

7. The Committee found that there were similarities in layout in the websites of the appellant and Ms. Co, but that the similarities in layout did not in itself constitute a slate-like activity. In paragraph 15 of the Frederick Decision, the Student Court (acting as the Committee) found that the EC was responsible for verifying that alleged slate-like activity was carried out by groups for their mutual benefit. The Committee did not find that the EC verified the similarities in layout in the websites of the appellant and Ms. Co were for their mutual benefit.

8. The Frederick Decision raises two key tests for punishment when slate-like behaviour is alleged by the EC: were warnings given when allegedly slate-like behaviour by Candidates was possibly occurring, (“the grey area of slating”), and was there reasonable doubt that allegedly slate-like behaviour was occurring. The Committee found that no such warnings were given to either candidate, and that reasonable doubt exists that the alleged slate-like behaviour was managed as part of a slating campaign.
9. The appellant submitted in Committee that the EC’s ruling in this matter constituted an unfair burden on candidates in two key areas: first, that candidates were in effect forced to communicate with one another to ensure that there was no possible overlap in website building tools, and second, that candidates could be considered by the EC to be in a slate without their consent, in other words, if one candidate created material that was similar in aesthetic to another candidate’s material without consulting the candidate, the unconsulted candidate could be seen to be slating without actually engaging in slate-like behaviour. The Committee finds that the ruling of the EC creates a prescriptive burden on candidates to actively avoid campaign materials that may share aesthetic traits, and that the ruling of the EC further creates the unreasonable risk that candidates could be considered to be engaging in slate-like behaviour if another candidate created similar material without the original candidate’s consent.

10. The Committee has determined under Section IX-A, Article 8, Paragraph 14 of Code that the CEO and the EC acted in an unfair manner, and that the CEO and the EC acted in a manner inconsistent with the Electoral Procedures in Code.

The Issue of Apologies

11. The appellant submits that as a result of the erroneous decision made by the EC, the CEO and AMS Elections caused reputational damage to the appellant and that the erroneous decision of the CEO would dissuade candidates from running in future elections out of fear of unjust reputational damage, and as such, a formal, public apology was warranted.

12. The Committee is presented with two possible actions if it decides to overturn a decision of the CEO or the EC in accordance with Section IX-A, Article 8, Paragraph 14: it may either (a), substitute its own decision for that of the Chief Electoral Officer or the Committee, or (b), order the Elections Committee to reconsider the decision. In substituting its own decision for that of the EC, the Committee did not find that its substitutive power extends to the issuing of apologies by the EC or the CEO; the Committee is limited to substituting decisions that reasonably remedy the erroneous decision issued by the EC or the CEO, and it is not responsible for prescriptive remedies of the conduct of the EC or the CEO. The CEO reports, as chair of the EC, to AMS Council, not to the Committee, as highlighted in past Committee decisions, including the decision and confidential report to Council of the Committee of October 24th, 2021.

13. While the Committee finds that the EC did not make the decision to suspend the appellant in bad faith, it is important for the EC to provide candidates with a chance to clarify or defend themselves before making a ruling. The EC is required in the AMS Elections Handbook to ensure: "a party accused of a violation shall have the opportunity to present a defence or explain their
actions. In this case, the appellant was not given an adequate opportunity to defend themselves nor provide an explanation for their actions.

14. The Committee further finds that while the decision of the EC in this matter was erroneous, it was not done in bad faith; the templates used by each candidate alleged to be engaged in slate-like behaviour were the same and the website layouts were similar, even if the alleged slate-like behaviour was not found to have occurred. The Committee feels that it would be inappropriate to unduly censure the EC for making good faith attempts to enforce AMS Code.

15. There is no dissenting opinion to this decision.