CITATION: Trasolini *v.* AUS Elections Committee, 2010 UBCSC 1

BETWEEN:

Ryan Trasolini
Appellant

v.

AUS Elections Committee
Respondent

HEARING: 2 April 2010
DECISION: 16 April 2010

On Appeal from the Decision of the Alma Mater Society Elections Committee

CORAM: Frederic C.J. and Askari, Chan, Cooke, and Flanders JJ.

REASONS FOR JUDGMENT: Cooke J. (Frederic C.J. and Askari, Chan and Flanders JJ. concurring)

(paras. 1 to 68)

COOKE, J (Frederic C.J. and Askari, Chan and Flanders JJ. concurring):

Ruling

[1] This case arises from a dispute that might have been averted by the expedient purchase of a two-dollar box of ballpoint pens.

[2] From 12 through 19 March 2010 the U.B.C. Arts Undergraduate Society (the "AUS") conducted its general election. Votes were submitted either electronically through the U.B.C. WebVote system or by means of a paper ballot. Polling stations were established to coincide with events around campus. The voter turnout was said to be relatively high by the standards of student politics.

[3] The candidates for AUS president were Mike Silley, Brian Platt, and Ryan Trasolini (the "Appellant"). This case only concerns the latter two. It arises as an appeal from a decision of the AUS Elections Committee (the "Respondent"), and subsequent order by the AMS Elections Committee ("AMSEC"). Both resulted in Mr. Platt being declared the winner. Both levels featured a tie-breaking vote cast by the AUS Elections Administrator, Matthew Naylor. The Appellant claims that the tie-breaker at the AMS stage was unnecessary, since one the ballots counted in Mr. Platt's favour during the recount conducted by AMSEC is ambiguous as between Mr. Platt and the Appellant and should therefore be discounted.

[4] Effectively, the Appellant asks the Court to substitute its opinion for that of the AMS Chief Returning Officer, Ricardo Bortolon, who was charged with the last count under the authority of AMSEC, and who exercised his discretion in recording the impugned ballot. The Appellant would have the Court reject the ballot, at least for the purpose of selecting the AUS president, for want of sufficient manifest intention. This would leave the Appellant with the most votes, and thus the presidency.

[5] For the reasons that follow I cannot accede to this request. Rather, by reason of an inconsistency between the AMS *Code of Procedure* ("*AMS Code*") and the AUS *Constitution*, I find the rules under which the AUS Elections Committee conducted the election void. It follows that the result, to the extent that it was challenged, is also void.

Background

[6] The modern student is presented with multiple means of casting his or her vote, and this creates some complications for electoral officials. In order to ensure that electors do not vote multiple times, e.g. both online and on paper, it is necessary before tallying the results to compare the student numbers associated with both sets of ballots so as to remove any duplicates.

[7] On Friday 19 March 2010 Mr. Naylor obtained a preliminary report concerning the WebVote ballot count. However, this document contained only the total online votes cast for each Council candidate, and lacked the student numbers critical to determining an accurate integrated total. Thus a final count was delayed until those numbers could be obtained. Mr. Bortolon states in an email submitted to the court that these preliminary online results were announced to patrons of the Gallery.

[8] Sometime on the weekend between 19 and 22 March, while in the custody of Mr. Naylor, the preliminary WebVote report was damaged. The section of the document containing the presidential ballot count, as was shown to the Court, is partially missing, a black-edged hole in its place. This is the apparent result of the document having caught on fire. There also appears to be water damage in the vicinity of the hole. Under questioning, neither Mr. Naylor nor Mr. Bortolon offered any explanation whatsoever as to how this might have occurred.

[9] The damage obliterated the vote count for Mr. Platt, and the first digit of the Appellant's count. No other candidate's counts were affected.

[10] On 22 March Mr. Naylor obtained a list of the student numbers associated with the online vote and was therefore able to remove duplicate votes so that the overall results could be tallied. It was on that date that the damage to the WebVote report was discovered. Those in the room during the tabulation, in the words of the Respondent's factum, were "going by memory" as to Mr. Platt's online count (at paragraph 5), which was remembered as 180. In contrast, there was some basis to infer from the document that the Appellant had received 170 online votes (despite the missing first digit the totals for the other candidates were visible, enough to reasonably suggest a ballpark figure).

[11] The scrutineers, according to an email submitted by scrutineer Mr. Nathan Tippe, were "simply informed" of the supposed online result. Mr. Bortolon's email claims the scrutineers "confirmed" the total. Nobody seems to have asked the patrons of the Gallery.

[12] Despite this uncertainty, since the AUS Elections Committee had the list of student numbers counting could proceed, pending a new copy of the WebVote report. The paper ballots were 34–24 in favour of the Appellant. Based on the assumed online results this would have meant a tie, 204–204.

[13] Rather than wait for an intact copy of the WebVote results this integrated total was accepted as final (if not official in the sense of presentation to AUS Council per AUS *Constitution*, s. VI(10)(c)). In event of a tie the AUS *Constitution*, s. VI(3)(h) says that "the Elections Administrator shall cast the deciding vote". This Mr. Naylor did in favour of Mr. Platt.

[14] The next day, 23 March, the Appellant obtained a fresh copy of the WebVote results, which contained a presidential ballot count different from Mr. Naylor's "memory". The new count was 178–170 in favour of Mr. Platt. This would have meant a 2-vote margin of victory for the Appellant, and as such he appealed to AMSEC, per *AMS Code*, s. IX A(9)(2).

[15] While it was the online tally that was in the Appellant's mind suspect, his initial complaint led to a recount of all ballots, paper included. There were, compared to none on 22 March, now three disputed ballots. Mr. Bortolon, conducting the recount on behalf of AMSEC in his capacity as AMS Chief Returning Officer, exercised discretion in resolving the disputes, with both Mr. Platt and the Appellant receiving the benefit of at least one of those ballots.

[16] The new total was 33–25 in favour of the Appellant. This meant a tie of 203–203. Mr. Naylor again cast a ballot in favour of Mr. Platt.

[17] The Appellant appeals the decision AMSEC, founded on Mr. Bortolon's three rulings. Accepting the new WebVote figures, the Appellant has in this Court focused his complaint on a single ballot, claimed to be more ambiguous than the other two that were contested in the

recount. He claims that the ballot ought to be discarded for want of demonstrated intention. This would leave the Appellant with the majority of the votes, and thus as AUS president.

The Ballot

[18] The impugned ballot was put before the Court. On it the voter's selections are marked with an "X" in a broad-tipped highlighter. Mr. Platt and the Appellant are listed one above the other on the left side, and the voter's "X" straddles the underscore adjacent to Mr. Platt's name, which line effectively divides the areas in which the voter may indicate his or her selection.

[19] Because of the thickness of the highlighter it is not only the arms but also the centre of the X that spans both sides of the line. That is, the top and bottom crotches of the arms are above and below the line, respectively. The left and right crotches appear slightly above the line, in the space beside Mr. Platt's name.

[20] Mr. Bortolon told the Court that in his mind the ballot is not ambiguous, and that it displays a clear intention by the voter to select Mr. Platt. The Appellant's complaint indicates that there was some talk on the part of those in the room during the recount, before Mr. Bortolon's decision, of trying to measure the X, to determine how much of it extended on to one side of the line or the other. For his part, Mr. Bortolon stated that such empirical considerations did not factor in his decision. If he discussed them it all they were, at most, explanations or rationalizations for what was an intuitive determination which, under the terms of the appeal, was his to make.

[21] On the other hand, the Respondent's factum at paragraph 14 suggests that Mr. Naylor took the position of the X, as well as the claimed fact that "the part closer to Mr. Platt's name was darkened more significantly", as indicia of intention. However, as I wrote above, the result of the paper count on 22 March differs from that of 23 March so I have difficulty taking this as the true position of the Respondent, whose parent AUS "put its faith in Mr. Naylor" (at paragraph 15). While Mr. Naylor may defend AMSEC's decision, the AUS Elections Committee accepted a paper count which, when combined with the uncontested online totals, results in a victory for the Appellant, 204–202. The AUS may have puts its faith in Mr. Naylor, but its Elections Committee only defends his opinion subsequent to his mandate being exercised: the latter body defends his defence of Mr. Bortolon.

[22] On that same subject, Mr. Bortolon told the Court that while the ballots were on 22 March counted multiple times, the scrutineers were then essentially recounting the piles, rather than assessing the intention of the voters anew each time. The Court, it is therefore implied, ought not to give too much weight to the mere fact of a sustained consensus.

The Law

[23] Appeals relating to Constituency elections can be made to the Court pursuant *AMS Code*, s. XI A(9)(3), which states that

> [a]ppeals of Elections Committee decisions on Constituency elections and referenda may be made to Student Court in accordance with Section XV of the Code.

Here the "Elections Committee" means AMSEC.

[24] AMSEC heard the appeal under *AMS Code*, s. XI A(9)(2), which states that

> [p]rovided that all internal appeals procedures within a Constituency have been exhausted, the Elections Committee shall rule on the validity of a Constituency election or referendum upon presentation to the Elections Administrator of a written petition from ten (10) Active Members of the Constituency or ten percent (10%) of the Active Members of the Constituency, whichever is less.

The Court heard no evidence as to whether or not the formal requirements of this section were met, though neither party challenged the Committee's jurisdiction.

[25] The AUS *Constitution*, s. VI, governs AUS elections. The rules are characterized, by s. VI(1), as "[i]n addition to any rules or requirements as set out in the A.M.S. Constitution, Bylaws, and Code of Procedures". However, the *AMS Code*, s. IX A(9)(1) states that

> [c]onstituencies shall determine the rules and procedures to be followed in conducting their elections and referenda, *provided however that the following conditions are adhered to* [emphasis added].

If a consistent interpretation is not possible the implication is that the *AMS Code* will govern. Any "additions[s]" the AUS *Constitution* makes should in my mind be interpreted wherever possible to be consistent with the *AMS Code*. I take as uncontroversial that the AUS would intend the provisions of its *Constitution* to be effective.

[26] The conditions listed include paragraph (b):

> "the Constituency's chief elections official and its elections committee must conduct elections in an unbiased and impartial manner;

paragraph (d):

> the Constituency must establish rules governing election procedures and the penalties for violating such rules;

paragraph (e):

> the Constituency's rules and penalties must be in writing, and the Constituency must not introduce non-written rules or penalties;

and paragraph (r):

> the Constituency must establish an internal appeals procedure to deal with protests and complaints concerning its elections and referenda[.]

[27] The AUS *Constitution*, s. VI(3)(g) states that "[t]he Elections Committee has the right to set election rules as it deems appropriate, providing they do not contravene A.U.S. Code, and providing they make all candidates aware of these rules". The only other relevant section is VI(3)(9)(a) "[t]he Elections Committee shall arrange for the counting of ballots immediately after the close of polls on the last day of polling."

[28] This laconic drafting approach is in contrast to the more detailed provisions of the *AMS*

Code. For instance, s. IX A(7)(4)(c) of that document states that "[o]nly correctly marked ballots shall be counted." This is elaborated on in s. IX A(7)(5)(b) which gives an example of what a "correctly marked" ballot might look like, though I do not take this single example as exhaustive. It speaks specifically to the condorcet method used for AMS Executive elections, whereas the requirement of correctness applies to all elections conducted under the immediate supervision of AMSEC.

[29] There is no indication in the *AMS Code* regarding what should happen if a provision in a Constituency's electoral rules and procedures are not in accord with the *AMS Code*'s requirements to the extent that they fail to meet a requirement, rather than conflict directly. That is, for example, if a Constituency has not "establish[ed] rules governing election procedures". However, the *AMS Bylaws*, s. 21(e) gives the Court remedial powers in the case of violations by "the Society's organizations" of "the Society's Constitution, Bylaws or Code". Organizations are defined in *AMS Bylaws*, s. 13(1)(a) as including Constituencies.

[30] In his testimony Mr. Naylor asserted that in this case the election "rule" under the AUS *Constitution*, s. VI(3)(g) was that Mr. Bortolon had been granted the absolute discretion to decide the intention of the voters. Of course, Mr. Bortolon was by the time of the disputed decision operating under the authority of AMSEC, not that of the AUS.

[31] The *AMS Code* says only that the "Elections Committee shall rule on the validity of a Constituency election". That could be valid under the AUS's own terms, in the opinion AMSEC, but I do not think it possible to read the AUS and AMS rules together as saying that a rule of the AUS was that AMSEC or its delegates would enjoy the delegated powers of the AUS Elections Committee in the event of a recount. AMSEC enjoys independently-sourced and superior authority to hear an appeal under the *AMS Code*, noted above in paragraph .

[32] It is a small point, but it goes to the nature of the discretion exercised in this case. The Court was repeatedly asked to defer to the decisions of experts. Mr Naylor, for instance, is said to have had

> a lengthy history of activity in federal and provincial elections. In other words, he is someone with a demonstrably above average experience as to what constitutes a distinguishable ballot, and alternatively what is a truly incomprehensible ballot. (factum of the Respondent at paragraph 15).

Indeed, counsel for the Respondent then goes on to give evidence of his own expertise in governmental elections. More to the point, both Mr. Naylor and Mr. Bortolon are by virtue of their positions closer to the action.

[33] There does not appear to be any direct support in the *AMS Code* for the principle of deference. It is true that an Elections Appeal Committee under *AMS Code*, s. IX A(8)(14)(a)–(d) has limits on its ability to overturn the decision of an AMS Elections Administrator or AMSEC, but the Court does not appear to be so bound. Indeed, as a creature of the *AMS Bylaws* it has a wider mandate than those elections officials constituted by the *AMS Code*. It may be good practice, and it has been endorsed by this Court in the past, but it is not required.

[34] Again, as to the discretion employed in this case, the evidence presented to the Court regarding the role of Mr. Bortolon was unclear. While a member of AMSEC, he was also involved in the initial AUS supervised count on 22 March. He was, in the words of Mr. Tippe's, email, "in the room". The Court was not told whether this was due to his being hired as a poll

administrator, under AUS *Constitution*, s. VI(3)(b), or whether he was providing "advice and assistance" under AMS *Code* s. IX A(A)(1)(5). It makes no difference to the Court's ability to make a ruling in this case, but it may be a factor should deference need to be considered.

[35] For its part the Respondent simply defended Mr. Naylor's exercise of discretion, as the person responsible for overseeing the election. Again, as discussed in paragraph , were I to agree the Appellant would achieve his goal.

On Interpretation

[36] Before I move to the application of the law, I pause to consider the effect of *AMS Code*, s. XV(1)(6), which states that

> [t]he Court shall not make rulings of a political nature, or stray into the area of policy making. To this end, the Court shall interpret the Code, Bylaws, and Constitution of the Society without addition to or omission of any language set out within them.

This follows from *AMS Bylaws*, s. 21(2)(i), which says "[t]he Court shall, in the case of any ambiguity existing in the meaning of a Bylaw, interpret that Bylaw as written, and in no other way."

[37] These sections are particular relevant given the weight placed by counsel for the Appellant on the provisions of the provincial *Election Act*, R.S.B.C. 1996, c. 106, and the federal *Canada Elections Act*, S.C. 2000, c. 9. While allowing that they were not binding on the Court, counsel submitted that they were persuasive insofar as they demonstrated the fundamental importance in elections of voter intent. This first principle, counsel argued, ought to be weighed when characterizing the discretion granted to the AUS Elections Committee.

[38] Counsel for the Respondent was opposed to any use of the two statutes.

[39] S. 123(1) of the *Election Act* states that "[a] ballot must be rejected if any of the following applies", with counsel for the Appellant emphasizing subsections (d) "the ballot is marked as voting for more than one candidate" and (e) "the ballot does not clearly indicate the intention of the voter to vote for a candidate".

[40] S. 284(1) of the *Canada Elections Act* states that "in examining the ballots, the deputy returning officer shall reject one ... (d) that has been marked in more than one circle at the right of the candidates' names".

[41] Returning to the *AMS Code*, the instant case is within the jurisdiction of the Court, not unrepresentative of the Court's docket, though it has political implications however the Court rules. I take it that the *AMS Code* prohibits the Court from straying into the realm of what might otherwise be termed "policy", the proper business of elected representatives. I do not think we are here presented with that problem.

[42] As to what it means to "interpret", that is a difficult manner. I do not claim to be schooled in hermeneutics, but I think it plain that any act of statutory interpretation necessarily involves at least the *consideration* of language not "set out within" the four corners of the document, even if that means only an ultimate recourse to a dictionary.

[43] I note that Driedger framed his "modern principle" of statutory interpretation thusly:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. (*Sullivan and Driedger on the Construction of Statutes*, 4th ed., at 1).

It may be that the Court by *AMS Code*, s. XV(1)(6) is prevented from 'reading in' language or 'reading down' the "Code, Bylaws, and Constitution", or directly applying statutory or common law to cases before it. But, it is to my mind wrong to suggest that the Court cannot attempt to make sense of its own quasi-legislative framework in a matter analogous, if not identical, to those of a 'real' court.

[44] I imagine it might be construed as begging the question to cite a book on statutory interpretation when faced with the problem of whether or not law is relevant to the work of the Court. The "approach" that Driedger refers to is of course manifest in a body of Canadian law. To that I can only reply that the Court is modelled on its namesakes, that its enabling documents make reference to legal concepts (e.g. *AMS Bylaws*, s, 21(2)(f) requiring the Court's rules of procedure to be "consistent with the principles of natural justice" and *AMS Code* XV(8)(16)(a) regarding the "formal rules of evidence"). In the case of an ambiguity it is a truism that the "Bylaw as written" is ambiguous—yet one must decide.

[45] All that said, I think in this case is that the statutory excerpts presented by the Appellant, as helpful as they would have been to my task, are not binding, and thus do not form any part of the decision.

Analysis

[46] *Crompton v. AMS Elections Administrator*, 2008 UBCSC [*Crompton*], is the most recent appeal from the decision of an Elections Committee. Unlike that case, while there were here two prior determinations neither was by an Elections *Appeal* Committee, as this is not a case of an AMS election.

[47] It is interesting to note that despite Mr. Naylor's suggestion that the Court not refer to provincial or federal law, as the Appellant would have, that the Respondent's factum relies on the "general principles of administrative law" in asking us to defer to the decision of Mr. Naylor.

[48] It may be a "principle of administrative law that a decision, though made legitimately in accordance with the decision-maker's mandated power, can be appealed and overturned on the basis that the decision was either incorrect or unreasonable" (*Crompton* at paragraph 8). Yet AMSEC is not a tribunal akin to those statutorily-created bodies studied in an undergraduate course in public administrative law, and the Court lacks the inherent jurisdiction of a Superior Court. The AMS is an incorporated society, not a sovereign state. From the perspective of the proper legal system we are all but committees.

[49] Thus, it cannot be said that administrative law is as important as the Respondent suggests. There is of course the reference to "natural justice" in *AMS Bylaws*, s. 21(2)(f), a term of art regarding the conduct of hearings with which the Court here complied. But that should not be taken as importing the whole field of administrative law along with it.

[50] Both counsel for the Respondent and Mr. Naylor argued that the AMS Council's decision against receiving the judgment of the Student Court in *Crompton*, as is required by the *AMS Bylaws*, s. 21(2)(k), for it to be binding, is a factor to be considered in their favour. I disagree.

[51] The AMS Council is not a judicial body, and its decisions in and of themselves are not binding on this Court. What are binding are the AMS *Constitution*, *Bylaws*, and *Code of Procedure*. It is therefore incorrect to say, as counsel for the Respondent submits in his factum, that "two years ago, the AMS Council overturned the Student Court's decision, because the Student Court did not accord the adequate amount of deference to the Elections Administrator that the Administrator deserved." (at paragraph 18). The Council did not "overturn" anything: Rather it declined to receive the judgment of this Court by resolution.

[52] Even if the failure to receive the judgment ought to influence my decision, I face a problem akin to that of statutory intent. I have already written of interpretation, and intent. The denial to receive the judgment of the Court in *Crompton* was an act of Council, and the statements of particular councillors cannot be identified with the will of the Council taken as a whole.

[53] Moreover, in the case of statutory intent there is at least the statute to interpret. Here there is nothing—the *absence* of a resolution that would have at most amounted to one effective word: "Yes".

[54] There seem to be two main issues with which the Court is presented in this case:

1) Was the electoral framework sound? And, if so

2) Was the application of the framework correct in this case?

[55] In my opinion the framework was not sound. The AUS and its delegate, the AUS Elections Committee, failed in fulfilling their requirements under the *AMS Code*.

[56] The *AMS Code* intends for Constituencies to have some control over their elections, and so I do not hold it to be a requirement that a Constituency's rules match exactly those of the AMS as to the conduct of its own elections. However, there must be some minimum content to satisfy the requirement, and I think the AMS' own rules are in this respect helpful in adumbrating that content.

[57] Both the *AMS Code* and AUS *Constitution* are detailed as to the nomination and campaign periods of an election. It is on the time thereafter that they diverge. *AMS Code*, ss. IX A(1), and (6)–(8) are lengthy, covering the Elections Committee, the layout of ballots, their tabulation, and appeals respectively. As to the first, the AUS *Constitution* simply gives discretion, and to the second it is silent.

[58] Regarding the third, s. VI(9)(a) of the AUS *Constitution* says only that "[t]he Elections Committee shall arrange for the counting of ballots immediately after the close of polls on the last day of polling". It is unclear if it is the arranging or counting that is immediate, though there are no rules for tabulation beyond the Election Committee's aforementioned discretion. That is the effect of AUS *Constitution*, s. VI(3)(g), which implies that rules can be set at any time, even during tabulation, so long as candidates are "made aware". That is not, to my mind, a "rule" as foreseen by the *AMS Code*, s. IX(9)(1), delegation of authority. Furthermore, I do not think it possible to interpret the power of an appointed official to set such rules on an ad hoc basis to be a determination of such rules *by the Constituency*, as required by that section.

[59] There is fourthly no mention of appeals: Scrutineers may observe counting per s. VI(9)(b),

though it does not appear they can complain to anyone beyond AMSEC. This is contrary to *AMS Code*, s. IX A(9)(1)(r), which requires an established internal appeals process, which I take to be actual extant procedures, rather than after the fact exercises of discretion.

[60] Even so, whether to AMSEC or the AUS Elections Committee, what would anyone complain *about*? That is the crux of this case: The lack of rules, *clear rules*, on substantive matters means that there is very little on which to base an appeal to an elections committee, and by extension this Court. The result is that, instead of an appeal there is a hearing *de novo*, the circumstance that the Respondent fears in the instant appeal, but it is a hearing adrift. AMSEC's only jurisdiction under *AMS Code*, s. IX A(9)(2) is to see that the Constituency election was valid, a meaningless criteria absent rules against which to judge violations. All that can be said is that the AUS Elections Committee acted in their discretion, as was their discretion.

[61] I must therefore conclude that the AUS *Constitution* is in violation of the *AMS Code*, ss. IX A(9)(1), (1)(d), and (1)(r). It is a structural violation, and not merely a matter of interpretation that can be avoid by appeal to AUS *Constitution*, s. XVI(1).

Remedy

[62] *AMS Code*, s. IX A(9)(1), granting Constituencies the power to determine their election rules is conditional. It follows that the *AMS Code* rules on elections must govern if the conditions are not fulfilled, as I have just found. As to which of the AMS rules will govern—all or only those relating to those areas not addressed by the AUS—I think a partial imposition more in the scheme of the *AMS Code*. That document provides for Constituency independence in matters of electoral policy. I do not think it could have been intended for even the slightest violation of the *AMS Code* to deny that independence in its entirety.

[63] In the circumstances of this appeal, only the absence of rules on tabulation, appeals and by extension the operation of the Election Committee are invoked. I therefore find *AMS Code*, ss. IX A(9)(1), and (7)–(8) applicable to AUS elections, to the extent appropriate given the circumstances and institutional arrangements of the AUS, including but not limited to the AUS not requiring an Elections Appeals Committee by virtue of the *AMS Code*'s explicit allowance for direct appeals to AMSEC. The applicability of the *AMS Code* is also limited to the extent its provisions have not been rendered inoperative by a specific exercise of the AUS' authority as a Constituency to establish actual rules. I make no finding as to the validity of the remainder of the AUS electoral rules on different matters.

[64] While the application of the *AMS Code* occurs as a matter of interpretation, *AMS Bylaws* ss. 21(e) also provides remedies for violations of the *AMS Code*. Paragraph (iii) allows the Court to:

> declare that an action is void and of no effect, and that the organization must take the appropriate steps to remedy the situation.

In this case "an action" would be the presidential election, the only one at issue before me, and I would so order. The AUS Elections Committee lacked the authority to act as it did throughout the election, and I find it both appropriate and within my own authority under *AMS Code*, ss. IX(8)–(9) to make such a finding.

[65] Because of the above, I do not need to answer the question whether I would have chosen

differently than Mr. Bortolon if presented with the impugned ballot, perhaps declaring it in favour of another candidate, or disqualifying it for want of intention. But if I did, I would be reluctant to examine the ballot in isolation. The Appellant has focused the Court's attention on only one of the dozens of paper ballots, only one of three ballots disputed during the recount, on which one ballot the fate of the AUS presidency rests. This is convenient for the Appellant, but to frame the case in this way obscures the other issues. Both the Appellant and Respondent emphasized the importance of democracy. Given the peculiar circumstances of this election, including conflicting factual determinations by the committees below, however founded, the interests of democracy support if not compel my finding that the election be invalidated rather than being decided by this Court, or remitted for reconsideration by one of those same committees.

[66] As to the "appropriate steps to remedy the situation", I imagine the AUS will move to hold a by-election, though I refrain from making a specific order on that point. There was a *violation*, but the need for a new election is a consequence, not a *remedy*.

[67] I am not unmindful of the practical implications of this decision, coming as it does at the end of the year. It is my hope that the result of any election, whatever the turnout, would be seen as more legitimate than any order I could otherwise impose.

[68] In conclusion, I would allow the appeal, find *AMS Code*, ss. IX A(9)(1), and (7)–(8) applicable to AUS elections with the qualifications expressed in , and declare the AUS presidential election void and of no effect.