

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 7 DECEMBER 2022

COMMITTEE REPORT

Report of the Conduct Committee on the breach of the Code of Conduct for Members of the Western Cape Provincial Parliament, adopted by the House on 20 December 2020, tabled in accordance with paragraphs 26(11) and 26(12) of the Code.

Summary

At the meeting of the Conduct Committee (“Committee”) on 25 February 2022 the Registrar of Members’ Interests submitted a report on the complaint lodged by Hon Speaker M Mnqasela, dated 19 November 2021, against Hon B A Schäfer.

On 19 November 2021 the Speaker of the Western Cape Provincial Parliament, Hon M Mnqasela, filed with the Registrar of Members’ Interest an affidavit wherein he alleged that the Deputy Speaker had breached paragraphs 2(4)(b), 2(4)(c) and 2(3) of the Code of Conduct.

At the same time (19 November 2021), a report titled “Investigation report into whether the use of a BMW X5 by the Deputy Speaker of the Western Cape Provincial Parliament resulted in fruitless and wasteful expenditure” was forwarded to the office of the Registrar as an annexure to the affidavit deposed to by the Speaker. The affidavit contained a complaint against the Deputy Speaker (“the Deputy”) alleging that she had beached paragraphs 2(3), 2(4)(b) and 2(4)(c) of the Provincial Code of Conduct (“the Code”).

The Committee deliberated on the report at length and agreed to reject the Registrar’s report and referred it back to the Registrar with further instructions to:

- Submit the annexures to the Vassen report to Members of the Committee; and
- Provide copies of the log sheets for the two vehicles, these two vehicles being the BMW X5 used by the Deputy Speaker and the Audi Q5, which was the vehicle allocated to the office of the Deputy Speaker by Government Motor Transport (“GMT”).

The Conduct Committee, at its meeting held on 6 April 2022, considered and deliberated upon the amended report from the Registrar concerning the possible breaches as set out above.

After having considered and deliberated over the report of the Registrar, the Committee unanimously determined that Hon Schäfer had not breached paragraphs 2(4)(b) and 2(4)(c) of the Code.

The Committee, however, determined that Ms Schäfer had breached paragraph 2(3) of the Code of Conduct by failing to exercise the requisite standard of care in complying with the requirements of the Ministerial Handbook of the time by not acting on the verbal requests to return the BMW X5, which had been given to her to use for the short period that she was the Minister of Economic Opportunities, and by not diligently enquiring as the reasons behind the request to return the BMW X5 and by refusing to use the Audi Q5 allocated to her office.

The Chairperson, acting in terms of paragraph 32 of the Code, wrote to Hon Schäfer to allow her the opportunity to make written representations to the Committee in mitigation of any penalty that the Committee may recommend to the House in terms of paragraph 32(1) of the Code of Conduct for Members of the Western Cape Provincial Parliament.

The Hon Deputy Speaker rejected the finding of the Committee and requested an oral hearing on the matter as she was placing the facts in dispute. At the time the Hon Deputy Speaker did not specify which facts she was placing in dispute.

Request for an oral hearing

At its meeting of 8 June 2022, the Committee agreed to grant the request for an oral hearing.

The Committee met on 29 June, 9 November, 15 November and 30 November 2022 for the oral hearing.

The Deputy Speaker was represented, in accordance with the provisions of the Code, by another Member, namely, Hon D G Mitchell, Minister of Mobility.

All witnesses were given the requisite ten days' written notice of the hearing in accordance with paragraph 26(3) of the Code.

The Committee heard evidence from the Speaker, Hon Mnqasela; Mr R Adams, Secretary to the Western Cape Provincial Parliament; Ms J Gooch, Head of the Department of Transport and Public Works; and Warrant Officers Ngwenya and Steyn (VIP protectors of Hon Schäfer).

The Committee at the meeting of 15 November decided, as a matter of courtesy, to afford the Deputy Speaker and the Registrar the opportunity to make concluding written submissions regarding the matter. The deadline for the submission of written arguments was before 16:00 on 25 November 2022. The Hon Deputy Speaker was informed of this at the meeting, as well as in a reminder letter sent to her on 17 November 2022.

The Registrar submitted his written arguments before 16:00 on 25 November 2022. A request was received from the Hon Schäfer's legal representative requesting a copy of the Registrar's submission and an extension of the deadline to submit her written arguments.

This request was considered by the Committee during their deliberations on 30 November 2022 and the Committee unanimously agreed to dismiss the request based on resolution taken at the Committee meeting on 15 November 2022.

The Committee reiterated that the request for written submissions was a matter of courtesy as they, the Committee, had agreed unanimously that they had the benefit of listening to the oral evidence and being able to pose extensive questions to each and every witness.

On 30 November 2022 the Committee considered the submissions made by the Registrar.

Thereafter the Committee deliberated on the matter with reference to the submissions from the Registrar and held extensive discussions regarding the evidence presented at the hearing. The Committee also considered the Vassen report and its annexures in so far as it related to the alleged breaches of the Code.

The Committee determined that:

- The Deputy Speaker had been asked on multiple occasions to return the BMW by both the Speaker and the Secretary, but she had refused.
- She had stated that, if she was made to return the car, she would take it to a higher authority.
- She had admitted to Adv Vassen in an interview and in response to a question posed by her Counsel Adv Borgstrom SC that she had “dug in her heels” and refused to return the car.
- The Secretary had attempted to accommodate her wishes to retain the BMW, but was ultimately unsuccessful.
- The Deputy Speaker was aware that, at the time she was elected Deputy Speaker, she was limited to a vehicle whose purchase price was 40% or less of her salary.
- She was aware that she could utilise the vehicle hired by the Ministry prior to her accession as Deputy Speaker for a period of one month.

The Committee heard that:

- According to the Deputy Speaker, there was an agreement with the Speaker that she could use the car.
- In his evidence the Speaker stated that he had said she could use the aforesaid car, but within the financial prescripts. This was not disputed by the Deputy Speaker.
- The purchase price of the vehicle was about R976 000, supported by invoices supplied by Ms Gooch.
- The BMW was a “general hire” vehicle that could be utilised by any VIP who required a vehicle for a short term.
- The vehicle was a pool vehicle and was never allocated to a specific Ministry or office. Provided that the vehicle costs were paid on time, GMT would not demand the return of the vehicle.
- That all trip authorities had been properly filled in and that the vehicle was thus being used legally.
- The vehicle was only returned when a written instruction was given to the Deputy Speaker to return the vehicle in or about November 2019.
- The vehicle was returned in December of 2019.
- In 2022 an internal investigation by Mr Jawoodien had found that the costs of using the BMW, while the Audi Q5 was allocated to the Deputy Speaker’s office, met the definition of fruitless and wasteful expenditure.¹

¹ It should be noted that it is not in the mandate of the Committee to determine fruitless and wasteful expenditure.

- The Deputy Speaker was then asked for reasons why she should not be held liable for the fruitless and wasteful expenditure. To this request she provided an eight-page reply wherein she made allegations of financial misconduct against the Secretary.²
- These allegations triggered the commissioning of the Vassen report in terms of FMPPLA.
- That, on the strength of the recommendations of the report, the complaint was lodged against the Deputy Speaker.

The Committee noted that:

- The Deputy Speaker did not dispute the evidence of the Secretary and the Speaker regarding the requests to return the vehicle, nor did she dispute the evidence of Ms Gooch.
- The Deputy Speaker focused on the fruitless and wasteful expenditure, the fact that the trip authorities were properly authorised and that, on receiving a written instruction, had returned the vehicle.
- The Deputy Speaker premised her defence on the fact that she did know the provisions of the handbook, did not know the processes involved regarding vehicles, and that she had an agreement with the Speaker to use the car.
- The Committee rejected the above-mentioned defences offered by the Deputy Speaker and unanimously determined that she had in fact breached paragraph 2(3) of the Code.³
- The Committee unanimously determined that a complaint of a breach of paragraph 2(3) of the Code was indeed valid and that Hon Schäfer had breached paragraph 2(3) of the Code that states, “A Member shall ensure at all times that the dignity, credibility and integrity of the Provincial Parliament is maintained”, by:
 - failing to exercise the requisite standard of care in complying with the requirements of the Handbook;
 - by not acting on the verbal requests to return the BMW X5, and
 - by not diligently enquiring as to the reasons behind the request to return the BMW X5.

The committee accepted the following facts as having been proven:

- The price of the BMW was about R976 000 according to the tabled invoices;
- That it exceeded the Deputy Speaker’s entitlement in terms of the Handbook;
- That it was intended as a short-term hire;
- That the Deputy Speaker had been requested by both the Secretary and the Speaker to return the vehicle on multiple occasions;
- That the Deputy Speaker was aware of the financial limitations contained in the Handbook at the time she became Deputy Speaker;
- That she had repeatedly refused to return the car until instructed to do so in writing; and
- That she had admitted that she had “dug in her heels” and refused to return the car.

Thereafter the Committee commenced deliberations on an appropriate penalty. The Committee heard submissions from the Registrar regarding factors in aggravation and factors in mitigation of an appropriate penalty.

The Committee noted and determined that:

² It should be noted that the Committee may only hear matters of alleged breaches of the Code so far as it relates to Members of the WCPP.

³ It is to be noted that the Committee unanimously upheld its original determination that Hon Schafer had not breached paragraphs 2(4)(b) and 2(4)(c) of the Code.

- The media leaks from sources unknown regarding the matter had caused considerable reputational damage to the institution;
- That, as a result of the allegations made by the Deputy Speaker in her response to the Jawoodien report, the institution had incurred expenses of R296 700;
- That her conduct in refusing to return the vehicle when asked to do so diminished the reputation of the WCPP among staff members who were involved in the saga and that it damaged the institution's integrity; and
- The Committee noted that in mitigation the Registrar stated that the Deputy Speaker was a first-time offender and that she had, in her personal capacity, incurred substantial costs, alleged at an estimated value of R200 000.

After deliberation the Committee unanimously agreed to recommend the following penalty:

- a reprimand;
- a fine of R17 800,67 (calculation based on the difference in expenditure between the two vehicles in question); and
- the suspension of the privileges of the Deputy Speaker, as well as her right to a seat in parliamentary debates or committees for a period of seven days.

The Committee further unanimously agreed that the following recommendations be forwarded to the Parliamentary Oversight Committee (POC):

- The Vassen report and the Conduct Committee report, after publication in the ATC, for the POC to consider the systemic failures and the conduct of officials or employees and other matters, such as not reporting matters in monthly and annual reports; and
- That all new Members and current Members must sign the Handbook to indicate that they have read and understood it.

Report to be considered.