

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

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ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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THURSDAY, 10 DECEMBER 2015

COMMITTEE REPORT

The Appeals Committee, having considered the appeals lodged by Hon Fransman and Hon Dijana in terms of clause 31 of the Code of Conduct for Members of the Western Cape Provincial Parliament (“the Code”), dated 01 December 2015, wishes to report as follows:

Both Members based their appeals on procedural grounds; that the procedures stipulated in the Code were not followed by the Conduct Committee. The Appeals Committee decided these appeals on procedural grounds only.

In terms of the Code, any person or body that reasonably believes that a Member of the Provincial Parliament has breached the Code may lodge a complaint with the Registrar; the format of such a complaint is clearly defined in the Code, namely that the complaint shall be in the form of an affidavit and shall contain specific prescribed information.

In order to determine whether the prescribed procedure was followed, the Appeals Committee requested a written explanation from the Registrar.

The Registrar submitted a full explanation, which explanation the Appeals Committee considered. The Appeals Committee noted from the explanation that the Conduct Committee did not follow the prescribed procedure in either of the two matters subject to appeal. It was, therefore, common cause that the prescribed procedure for lodgement of a complaint against a Member was not followed in the matters at hand.

It was the Registrar’s view that breaches of this nature (late submission of declarations of interests) fall outside the scope of the complaints lodgement procedure provided for in

the Code, and that the Conduct Committee has the inherent power to deal with these allegations without following the prescribed procedure.

The Appeals Committee sought legal advice on application of the complaints lodgement procedure and on whether the Conduct Committee has the inherent power to deal with allegations of this nature without following the prescribed procedure. The legal advice expressed the view that the complaints lodgement procedure applies to all alleged breaches of the Code and that the Conduct Committee does not have the inherent power to deal with allegations without following the prescribed procedure.

The Appeals Committee does not express a firm view about the correctness of the views expressed by the Registrar or about the correctness of the views expressed in the legal advice; but the Appeals Committee acknowledges that there were two different interpretations of the Code before it.

In light of this apparent ambiguity concerning whether the complaints procedure should have been followed in these cases, the Appeals Committee finds that the interpretation be followed that gives the Members accused of having breached the Code the benefit of the doubt. The Appeals Committee is not of the view that it would be fair and just to interpret the ambiguity in a manner that would prejudice the Members accused of breach of the Code.

The findings of the Conduct Committee are therefore set aside and the appeals are upheld.

The Appeals Committee is of the view that the Code should be reviewed as a matter of urgency, specifically in respect of the powers and functions of the Conduct Committee, in order to rectify any possible shortcomings.

The Appeals Committee is further of the view that until such time that the Code has been suitably amended to eliminate the above possible shortcomings, all alleged breaches should be investigated in terms of the complaints procedure prescribed in the Code.

Report tabled in terms of paragraph 31(6) of the Code.