

# PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

## ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 5 OCTOBER 2016

### COMMITTEE REPORT

The Disciplinary Committee, established by resolution of the House on Thursday, 21 May 2015 to investigate the conduct of Members P Uys, S G Tyatyam and R T Olivier, having completed its investigation reports as follows:

#### Members

The Committee comprised of the following members:

#### Democratic Alliance

Max, L H (Chairperson)  
Joseph, D  
Schäfer, B A

#### African National Congress

Dugmore, C M

#### 1. Introduction

This summary report must be read together with the detailed Finding and Sanction attached as *Annexure B* to this report.

#### 2. Mandate of the Committee

As per the House resolution approved on 21 May 2015, and attached as *Annexure A* to this report, the mandate of the Committee was to investigate and report on:

1. whether Mr P Uys contravened section 13(c) of the *Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act* (hereinafter referred to as the Act), read with Rule 46 of the Standing Rules by allegedly not leaving the precincts of the WCPP;
2. whether Mr S G Tyatyam contravened section 13(c) of the Act, read with Rule 46 of the Standing Rules by allegedly entering the precincts of the WCPP during his period of suspension; and
3. whether Mr R T Olivier contravened section 13(c) of the Act, read with Rule 46 of the Standing Rules by allegedly assisting Mr Tyatyam to enter the precincts of the WCPP during Mr Tyatyam's period of suspension.

### **3. Meetings of the Committee**

In fulfillment of its mandate, the Committee met for a total of 13 meetings, inclusive of two hearing sessions, with the last meeting convened to adopt this report.

Most meetings were open except where the committee specifically resolved to close off the whole or part of a meeting.

### **4. Designated Initiator**

In accordance with Standing Rule 113 (7) & (8), the Committee designated Adv. Susan van Zyl to serve as initiator in the preparation and prosecution of the cases.

### **5. Assistance to the Committee**

Adv. Romeo Maasdorp was assigned as the legal advisor to assist the Committee in its proceedings.

### **6. The case against Members Tyatyam and Olivier**

On 1 September 2015, the Committee, having considered all the factors, resolved not to proceed with charges against Members Tyatyam and Olivier due to the lack of clearly defined precincts of the Provincial Parliament in the context of facilities that are shared with other tenants in the Provincial Parliament building.

### **7. The case against Member Uys**

With regard to the case against Member Uys, the charge was finalized and subsequently served on Mr Uys. In accordance with Standing Rule 113(9), Mr Uys was permitted assistance by a legal representative at his own expense. Mr Brandell Turner of TNK Attorneys served as the legal representative for Mr Uys. The Committee deliberated, received documentary evidence and heard oral evidence and legal arguments from the side of the initiator on behalf of the WCPP, and Mr Turner on behalf of Mr Uys.

### **8. Finding**

On 13 May 2016, the Committee concluded its deliberations on the matter and made a finding that Mr Uys was guilty of the charge against him. The detail of the finding is contained in Annexure B to this report.

## 9. Sanction

In accordance with Standing Rule 13(12), the Committee invited Member Uys to make representations in mitigation of sanction. The initiator was also invited to address the Committee in this regard.

On 10 June 2016, after having considered the arguments in mitigation and the submission by the initiator, the Committee delivered the sanction as follows:

1. That the member be fined in terms of Section 12(5) (f) with a fine of one month's salary and allowances of which half is suspended for twelve (12) months on condition that the respondent is not found guilty in terms of Rules 44 and 45 of the Western Cape Provincial Parliament Standing Rules or a related transgression during the period of suspension;
2. The period of suspension to take effect as from the date the recommendation is endorsed and/or amended by the House; and
3. Further, that the respondent in terms of Section 12 (5) (c) apologise to the House and the Speaker, in a manner determined by the House.

The detail of the sanction is contained in Annexure B to this report.

## 10. Submission by Member Uys in Response to the Finding and Penalty

In accordance with Standing Rule 113 (14), the Committee invited and received a submission from Member Uys through his legal representatives, in response to its finding and the proposed penalty.

The Committee, having deliberated on the submission on 2 September 2016, was of the view that paragraph 38 to 42 of the Committee's *Finding and Sanction* provided substantive grounds to reject the recommendation by the initiator, Adv. Van Zyl, as reflected in paragraph 32(4) of the said *Finding and Sanction*, as well as arguments contained in Member Uys's submission.

The Committee further concluded that the sanction imposed is proportionate to the conduct/transgression by Member Uys and gives effect to the preventative and reformatory purpose of a sanction.

In the result, the Committee is of the view that the submission made by Member Uys provided no justifiable grounds which could prompt the Committee to deviate from its original finding and sanction.

## 11. Minority view

In accordance with Rule 85, Member Dugmore requested that it be recorded that the African National Congress is not in support of the finding and proposed penalty in that:

1. The composition of the Committee, which resulted from the decision of minority parties not to participate, has resulted in a membership not reflective of the composition of the House itself;
2. Member Uys has already been sanctioned and the additional sanction imposed by the committee is clearly linked to the evidence led by the Chief Whip of the majority party in which he called for an additional sanction;

3. The Committee has not adequately explained its reasons for not accepting the recommendations regarding a lesser sanction as made by the initiator; and also did not give sufficient consideration to the judgement of Judge Denis Davis in the case of *EFF and others v The Speaker of the National Assembly and others (2014)*, regarding the issue of appropriate sanction

## **12. Recommendation**

The Committee recommended that the House:

1. Approve the report and its content;
2. Approve the finding and the proposed sanction/penalty as contained in the detailed *Finding & Sanction* attached as Annexure B to this report; and
3. Request the Provincial Parliament to move with urgency in providing clarity to all Members with regard to the specifics of the precincts (including but not limited to an illustrative floor plan) of the Provincial Parliament in the current context of a shared building.

***Disciplinary Committee Report: Annexure A –  
Resolution of the House (as extracted from Minutes)***

**EXTRACT FROM THE MINUTES OF PROCEEDINGS**

THURSDAY, 21 MAY 2015

1. The House met at 14:15.
2. The Speaker took the Chair and read the prayer.
3. [14:18] The Chief Whip moved without notice: That, notwithstanding Rule 198, precedence be given to the Subject for Discussion.

Agreed to.

4-20.

21. [18:12] Draft Resolution.

Mr M G E Wiley: That the House, noting that during its sitting on 20 February 2015, Members P Uys and S G Tyatyam were suspended from the service of the House in terms of Rule 45 of the Standing Rules, resolve that –

- (i) The following be referred to the Disciplinary Committee as contemplated in Rule 113 for investigation and report:
  - (a) whether Mr P Uys contravened section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act read with Rule 46 of the Standing Rules by allegedly not leaving the precincts of the WCPP;
  - (b) whether Mr S G Tyatyam contravened section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act read with Rule 46 of the Standing Rules by allegedly entering the precincts of the WCPP during his period of suspension; and
  - (c) whether Mr R T Olivier contravened section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act read with Rule 46 of the Standing Rules by allegedly assisting Mr Tyatyam to enter the precincts of the WCPP during Mr Tyatyam's period of suspension.
- (ii) the Disciplinary Committee, notwithstanding Rule 113(1) and having regard to Rule 113(15), be composed of Advocate L Max as Chairperson, 2 Members of the DA and 1 Member of the ANC and that the affected parties submit the names of their representatives to serve on the committee to the Speaker by no later than 27 May 2015 failing which the Speaker be authorised to fill vacancies from amongst the parties.

Debate concluded.

Question put: That the motion be agreed to.

Division demanded.

Ayes – 19: Botha, L J; Bredell, A W; Christians, F C; Fritz, A T; Hinana, N E; Joseph, D; Kivedo, B D; Mackenzie, R D; Madikizela, B S; Marais, A J D; Maseko, L M; Mbombo, N; Mngasela, M; Meyer, I H; Plato, D; Schäfer, B A; Schäfer, D A; Wenger, M M; Wiley, M G E.

Noes – 13: Beerwinkel, C F; Davids, S W; Dijana, T M; Dugmore, C M; Dyantyi, Q R; Gillion, M N; Gopie, D; Lekker, P Z; Magaxa, K E; Makeleni, P; Olivier, R T; Tyatyam, S G; Uys, P.

The House divided:

AYES: 19

NOES: 13

Question agreed to.

22. The House adjourned at 18:35.

*Disciplinary Committee Report: - Annexure B - Finding & Sanction*

**WESTERN CAPE PROVINCIAL PARLIAMENT  
("Parliament")  
DISCIPLINARY COMMITTEE**

In the matter of  
**THE WESTERN CAPE PROVINCIAL PARLIAMENT ("Parliament")**  
and  
**Mr PIERRE UYS, MPL ("The Member")**

---

**FINDING**

---

*Background:*

[1] It is apparent from the Hansard dated Friday, 20 February 2015 that it was determined as the date and time for the Premier of the Western Cape to deliver her State of the Province Address ("SOPA").<sup>1</sup>

[2] As Ms Sharna Fernandez ("Speaker") afforded the Premier the opportunity to address the Provincial Parliament ("House"), Mr P Uys ("Respondent") rose on a point of order. He was duly afforded the opportunity to proceed with his point of order.

[3] Without dealing with the detail of the Respondent's points of order, it is save to mention that it appears to reflect on a decision taken by the Deputy Speaker on 4<sup>th</sup> of December 2014. It refers to an agreement between all the political parties that a specific dispute about the correctness of a particular ruling by the Deputy Speaker, be taken for adjudication to the Judge President of the Western Cape High Court.<sup>2</sup>

[4] It appears from the Hansard that the Respondent's point of order was rejected as it was, according to the Speaker not relevant to the business of the day which was the SOPA. It seems as if the ruling by the Speaker didn't prevent the Respondent from continuing with his point of order applications.

[5] As a result the Speaker suspended the operation of the House on two occasions to afford the parties to reach a solution and / or agreement to ensure that the business of the day proceeds.<sup>3</sup> On resumption of the House the second time, the Respondent again rose on a point of order. It was at this stage, after several exchanges of verbal intimations between the Respondent and the Speaker, that she decided in terms of Rule 44 to order the Respondent to leave the House,<sup>4</sup> and subsequently instructed Mr Wayne Naidoo, (the *Sergeant at Arms*) to request the Respondent to leave the House.<sup>5</sup>

---

<sup>1</sup>Hansard dated 20 February 2015; p.1

<sup>2</sup>Id at p.2

<sup>3</sup>Id at p. 9 & 52.

<sup>4</sup>Id at p. 54

<sup>5</sup>Id at p.66

[6] It further appears that the Respondent indicated to the ‘*Sergeant-at-Arms*’ that he will not withdraw from the House as ordered by the Speaker.<sup>6</sup> As a result the Speaker invoked Rule 45(1) followed by Rule 45(2) and 46 which rules give effect to Rule 47(a).

[7] Subsequent to the application of the rules mentioned in par.6 above on 20 February 2015, the House accepted a Resolution on Thursday, 21 May 2015. The Resolution authorised the appointment of a disciplinary committee to investigate the conduct of the Respondent in terms of Rule 46 read with section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004.<sup>7</sup> The latter process gave birth to this disciplinary committee adjudicating the Respondent’s conduct as mentioned hereinbefore.

*Members of the Committee:*

Adv. Lennit Max – DA  
 Mr Denis Joseph – DA  
 Ms Beverley Schäfer – DA  
 Mr Cameron Dugmore – ANC

*Legal Representation:*

Western Cape Provincial Parliament: Adv. PS Van Zyl – Cape Bar Council  
 Mr Pierre Uys (Respondent): Mr Brendell Turner – TNK Attorneys

*The Charge:*

[8] The charge against Mr Uys reads as follows:

*“Whereas, on 20 February 2015, during the proceedings of the House convened for the Premier’s State of the Province Address, and subsequent to you having been named in terms of Standing Rule 45(1) and a motion for your suspension from the service of the House in terms of Standing Rule 45(2) having been carried, you failed or refused to leave the House of the Provincial Parliament upon the Speaker’s request that you should do so, it is alleged:*

***That you, Mr P. Uys, are guilty of contempt of the Western Cape Provincial Parliament as contemplated in section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act No. 4 of 2004, read with Standing Rule 46, in that you wilfully failed or refused to obey a rule, order or resolution of the House.”***

*The standard of proof required:*

[9] The standard of proof in disciplinary hearings such as the present one is that of a balance of probabilities (*Law Society, Cape v Koch* 1985 (4) SA 379 (C) at 386E).

*Deviation from Rule 113(1) of the Standing Rules:*

[10] The composition of a disciplinary committee in terms of Rule 113(1) states as follows:

(1) There is a standing committee called the Disciplinary Committee, consisting of

---

<sup>6</sup>Id at p.55

<sup>7</sup>Minutes of Proceedings, dated 21 May 2015.



- (a) *the Deputy Speaker;*
- (b) *the two most senior whips of the majority party; and*
- (c) *the most senior whip of each political party represented in the House.*

In considering Rule 113(1) (a) above, Mr Piet Pretorius (Deputy Speaker), should have been the chairperson of the disciplinary committee presiding in the matter at hand. As indicated in par.3 above, the points of order raised by the Respondent were in connection with the Deputy Speaker's decision on the 4<sup>th</sup> December 2014. Although the Resolution doesn't reflect the reason for excluding the Deputy Speaker, it follows that the actions (decision on the 4<sup>th</sup> December 2014) of the Deputy Speaker has a bearing on his objectivity and will also encourage objections about the question of bias irrespective whether perceived or real in the circumstances.

It follows that I (Adv. Lennit Max) was in terms of resolution of the House appointed as the chairperson of the disciplinary committee. The suspension of rule 113 was duly considered and authorised by the House in terms of rule 2 of the Standing Rules.<sup>8</sup>

A further issue which needs attention regarding the deviation from Rule 113 is that the Resolution of the House, establishing the disciplinary committee, do not include the whips of the other political parties (ACDP and EFF), and do not indicate reasons for their exclusion from the committee.<sup>9</sup> The respective parties have each only one member and are *ipso facto* qualified to serve on the disciplinary committee. In the absence of any reasons to that effect, the committee extended an invitation to the respective political parties to participate in the disciplinary committee. They regrettably declined the invitation.

#### *Powers / Functions of Provincial Parliament:*

[11] Section 114(2) of the Constitution indubitably places an obligation on the Provincial Parliament to provide mechanisms e.g.

- (a) *to ensure that all provincial executive organs of state in the province are accountable to it; and*
- (b) *to maintain oversight of –*
  - (i) *the exercise of provincial executive authority in the province, including the implementation of legislation; and*
  - (ii) *any provincial organ of state.*

[12] As already alluded to, the provincial parliament bears the responsibility to act as a watchdog over the provincial executive and state resources. It would not be wrong to infer that provincial parliament fulfils a pre-eminently unique role of holding the executive accountable for the fulfilment of promises made, through budget speeches, SOPA etc.<sup>10</sup> For the provincial parliament to judge as to whether the executive fulfils its function, provincial parliament must ensure that those clothed with the responsibility to render services, should be afforded the opportunity to inform the people of the Western Cape what they can expect from government.

<sup>8</sup>Rule 2 of the Standing Rules, February 2014; (1) “Any provision of these rules may be suspended by resolution of the House.” (2) “The suspension is limited in its operation to the particular purpose for which it was approved.”

<sup>9</sup>Rule 113(1) (c) of the Standing Rules, February 2014; “the most senior whip of each political party represented in the House.”

<sup>10</sup>*Economic Freedom Fighters v Speaker of the National Assembly and Others, Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11.

This includes the budget speeches of all provincial ministers and the Premier as the Head of Provincial Government. This is an irreplaceable feature of good governance in a democratic dispensation. It follows, therefore, that the provincial parliament acts on behalf of all people of the Western Cape Province, in particular the poor, the voiceless and the last-remembered. In other words, the people of the Western Cape has an unfettered right to hear what the executive intends to communicate to them and what services they can expect from their democratic elected government. It is convention that provincial parliament allocates one day in a financial year for the Premier to inform the people of the Western Cape about her government's commitment to service delivery and what services they can expect. Hence, these obligations and rights as referred to cannot be interrupted without good cause.

Therefore, it follows that undue interference with this constitutional responsibility of provincial parliament, the obligation of the Premier and the rights of the people to hear their government should have consequences.

### *Responsibility of the Speaker / Presiding Officer*

[13] It is common cause that the primary responsibility of the Speaker of provincial parliament is to preside during the sittings of the House in ensuring compliance with Sec.114 (2) of the Constitution as referred to above. In his / her absence, the Deputy Speaker or a temporary Chairperson so duly elected will presides.<sup>11</sup>

It follows thus that the presiding officer is responsible for maintaining order in the House.<sup>12</sup> For parliament to conduct its business a member present during the House proceedings has the right to speak and / or raise a point of order or a question of privilege among others.<sup>13</sup>

However, the right of a member to speak is not absolute and may be constrained if the presiding officer is of the view that the member's arguments are irrelevant or repetitious in nature.<sup>14</sup> The presiding officer may also in certain circumstances order a Member to withdraw from the proceedings of the House<sup>15</sup> or name a Member.<sup>16</sup>

---

<sup>11</sup>Rule 25 of the Standing Rules, February 2014. *"The Deputy Speaker or a temporary Chairperson must take the Chair whenever requested to do so by the Speaker during a sitting of the House"*. Rule 26 of the Standing Rules, February 2014; *"Whenever the Speaker is absent or otherwise unable to perform the functions of the office of the Speaker or whenever that office is vacant- (a) the Deputy Speaker; or (b) if there is no Deputy Speaker, a temporary Chairperson designated by resolution of the House, acts as Speaker."*

<sup>12</sup>Rule 41 of the Standing Rules, February 2014; *"Order must be maintained by the presiding officer."*

<sup>13</sup>Rule 51(d) of the Standing Rules, February 2014; *"A member may speak to a point of order or a question of privilege."*

<sup>14</sup>Rule 43 of the Standing Rules, February 2014; *"The presiding officer, after having called attention to the conduct of a member who persists in irrelevance or repetition of arguments, may direct the Member to discontinue his or her speech."*

<sup>15</sup>Rule 44 of the Standing Rules, February 2014; *"If the presiding officer is of the opinion that a member is deliberately contravening a provision of these Rules, or that a Member is in contempt of or is disregarding the authority of the Chair, or that a member's conduct is grossly disorderly, he or she may order the Member to withdraw immediately from the Chamber for the remainder of the day's sitting."*

<sup>16</sup>Rule 45(1) of the Standing Rules, February 2014; *"If a presiding officer is of the opinion that a Member's misconduct is of so serious a nature that an order to withdraw from the Chamber for the remainder of the day's sitting is inadequate, the presiding officer may name the Member."*

Points *in limine*:

[14] Subsequent to the serving the Respondent with the charge, his legal representative (Mr Brandell Turner of TNK Attorneys) filed Points-*in-limine* with the disciplinary committee. The committee duly considered these Points-*in-limine* as well as the replies thereto by the initiator (Adv. P.S Van Zyl) and the advisor to the committee (Adv. R Maasdorp). Without dealing with the content of the Points-*in-limine*, they are as follows:

- 1) *The committee's engagement with the initiator is irregular.*
- 2) *The composition of the committee creates a strong perception of bias.*
- 3) *Delay in bringing charges.*
- 4) *Charge sheet does not disclose an offence.*
- 5) *Autrefois convict / "Double Jeopardy".*
- 6) *Inconsistent application of discipline.*

After due consideration of the written arguments, the committee rejected all six (6) points as indicated above and the decision was taken to proceed with the hearing. Although I indicated that I will not deal with the content of the already mentioned Points-*in-limine*, it will be fitting to deal with point no.2 of the Points-*in-limine* as an exception.

The Respondent in par.2.3 of his points *in limine* states the following:

*"Wiley's proposal is very specific as to who is to be the Chairperson of the Committee (i.e. Adv. L Max) without arguing why Max is the appropriate candidate to preside over the committee or how he would exercise the impartiality normally expected of Deputy Speaker. In the absence of a reason, it would not be unreasonable to assume, respectfully, that Mr Wiley would have a sinister motive related to preconceived outcomes which Adv. Max could secure."*

In considering the submission of the Respondent, I am also of the view that a deviation from the rule, or the suspension thereof, cannot be executed without good cause. In other words it cannot be done willy-nilly. There should be good reason to deviate from the rule, such deviation must be rationally connected to a particular purpose and the reason/s should be made known. It is common cause that the resolution of the House, authorising the suspension of rule 113(1) (a), do not contain reasons and as such leave room for debate as well as for wrong inferences.<sup>17</sup> I, however, have already dealt with the reasons for the deviation from rule 113(1) (a) in par.3 above and it needs no repetition.

In regards to the motive of the Chief Whip in appointing the chairperson of the disciplinary committee, I would like to draw the Respondent's attention to the oath which all members of provincial parliament took on 21<sup>st</sup> May 2014 with particular reference to mine, which states: *"I, Lennit Hendry Max, swear that I will be faithful to the Republic of South Africa and the Province of the Western Cape and will obey, respect and uphold the national Constitution, the provincial Constitution and all other law of the Republic; and I solemnly promise to perform my function as a Member of the Provincial Parliament to the best of my ability. So help me God".* (Own Emphasis)

I did not previously and will not in future abandon the oath for political expediency. I will never allow any member of a political party to influence me to act improperly in respect with

---

<sup>17</sup> Minutes of Proceedings, dated 21 May 2015.

the evidence provided to this committee. It will be in breach of the oath and the Constitution and I will be prompted to resign from provincial parliament. I am, therefore, constitutionally bound to execute my responsibility objectively and without fear or favour. I am equally not aware of any member of the committee who was or is unduly influenced. Nonetheless we are required to promise solemnly and sincerely to always connect with the true dictates of our conscience in the execution of our duties.<sup>18</sup>

Therefore, the inference drawn by the Respondent that my appointment as chairperson of the disciplinary committee is to ensure a desirable outcome, not only casts undue and disparaging aspersions on my integrity, but it is without substance and demonstrates total disregard to the importance of the role of the chairperson and is disdainful.

[15] On 4 March 2016 the committee decided that the hearing will continue on 5 April 2016 in order for the parties to present their respective cases.

*The Case for Parliament:*

[16] The Initiator (Adv. Van Zyl) called only one witness in the name of Mr Wayne Naidoo.

Given the fact that Rule 113 is silent in regard to the fact as to whether witnesses should testify under oath or not, the chairperson decided not to administer the oath as a result.

In sum, Mr Naidoo testified that he was on 20 February 2015 on duty in the House in his capacity as “*Sergeant-at-Arms*”. He testified that he was requested by the Speaker to escort the Respondent out of the House. That he walked over to the Respondent and asked him to leave the House. That the Respondent’s response in Afrikaans to him was “*Wayne dit gaan nie gebeur nie*”. That he walked back to the Speaker and indicated to her that the Respondent is not going to leave the House. That the Respondent didn’t leave the House and remained for the duration of the sitting.

During cross examination by Mr Turner, Mr Naidoo indicated that he acts in support of the Speaker in the House and only on request of the Speaker and report back to her.<sup>19</sup> He testified that he was appointed *Sergeant-at-Arms* during 2011.

Mr Naidoo explained further that if a member complies with the request to leave the House, that he will escort such a member to his office and from the precinct of parliament.<sup>20</sup>

*Ruling: Excluding members of the ANC caucus to participate in the hearing:*

[17] At the beginning of the hearing on 5 April 2016, whilst the Initiator was busy leading Mr Naidoo in evidence, members of the ANC caucus attended the proceedings of the hearing. These members were not appointed in terms of the Resolution of the House to be part of the disciplinary committee and did not bear any knowledge of the merits, legal arguments or points in dispute.

---

<sup>18</sup>*Economic Freedom Fighters v Speaker of the National Assembly and Others, Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11.

<sup>19</sup>Record Disciplinary Hearing p.50, par.10.

<sup>20</sup>Record Disciplinary Hearing p.50-51 par.25.

To prevent that the hearing take on the form of a “*Kangaroo Court*” the chairperson ruled that no interaction with these members will be allowed. However, they were free to be present as spectators / observers. This ruling was important to ensure that the hearing take place in an environment which is just and fair, to both the respondent and provincial parliament. It was evident that the motive of the ANC caucus was to hijack and / or to distract the disciplinary committee. It is fitting to place on record that no rule exists which compels the chairperson of the disciplinary committee to allow additional members to participate in the disciplinary proceedings on an *ad hoc* basis.

*Witnesses called as witnesses for the Disciplinary Committee:*

[18] The disciplinary Committee considered a request from the respondent to call the Speaker and the Chief Whip as witnesses for the committee to enable him to question the witnesses about particular facts.

The reason for the Respondent not to call them as witnesses was that he fears hostility from them which could jeopardize his defence.

Although the committee was not compelled to accede to the respondents request, it, however, considered the request favourably in order to ensure that fairness prevail towards the respondent in order for him to ventilate his defence.

Ms Sharna Fernandez (Speaker) – First witness for the Committee:

[19] In sum, the Speaker explained her role as the presiding officer and that the 20 February 2015 sitting was reserved for the Premier to deliver her State of the Province Address (SOPA). That the Respondent raised various points of order on a continued basis, which were not related to the business of the day. That the business of the House was suspended on two occasions in an attempt to get the parties present to agree that business could continue. That more than two (2) hours were already spent on points of order, without the Premier being afforded the opportunity to deliver her SOPA.

That the Respondent at the resumption of the House the second time rose again on a point of order during which she informed him that his conduct was intolerable and ordered him to leave the House in terms of Rule 44. That the Respondent refused to obey the order, upon which she named him in terms of Rule 45 (1), followed by Rules 45(2), 46 and 47. That the Respondent did not leave the House subsequent to the order to do so and also after a motion of his suspension was accepted by the House.

During cross examination the Speaker explained that the *Sergeant-at-Arms* would not act independently, but only on request by her as the presiding officer. That she can’t concur with member Dugmore that the two (2) days suspension of the Respondent was sufficient and fair.<sup>21</sup> On a further question by member Dugmore the Speaker states that the two (2) days suspension of the Respondent was part of the process.<sup>22</sup>

Mr Mark Wiley (Chief Whip) – Second witness for the Committee

[20] In sum, the Chief Whip supports the evidence of the speaker in all material respects. However, on a question by member Dugmore as to whether the Chief Whip regards the suspension of the Respondent as sanction? He responded as follows:

---

<sup>21</sup>See page 231 of transcript).

<sup>22</sup>See page 232 of transcript).

*“Of course it’s a sanction but it’s not sufficient sanction. That’s why we having a disciplinary hearing which is costing hundreds of thousands of rands, the delay of SOPA cost hundreds of thousands of taxpayers’ rands and there has to be an accounting for it. Not it’s not sufficient sanction for him to stay out of the House for 2 days”.*

Witness for the Respondent – Mr P Uys (Respondent):

[21] In sum, the Respondent concedes to the fact that 20 February 2015 was reserved for the SOPA to be delivered by the Premier of the Western Cape. That he questioned the Speaker’s decision to have changed a decision by the Deputy Speaker of 14 December 2014. He denied that he was ever disrespectful towards the Speaker.

He confirmed the meetings with the Speaker during the two suspensions of the House on 20 February 2015. That he, at the resumption of the House the second time, raised a point of order asking the Speaker to inform the House about what had transpired during the break. He had no intention to prevent the Premier to deliver her address. That the Speaker didn’t allow him to make his point of order. That he didn’t leave the Chamber as there was no logic in the Speaker’s decision. That the *Sergeant-at Arms* didn’t approach him in terms of Rule 45 of the House. That he played no part in the proceedings of the House after his suspension but was only present.

During Cross-examination the Respondent responded as follows’ among others.

- *That he did not fail to comply with any resolution of the House.*
- *That he disagrees with the notion that a member who has been suspended must leave the precincts of parliament.<sup>23</sup>*
- *That the manner in which the Speaker conducted herself towards him was clearly biased and the way she treated him was wrong.<sup>24</sup>*
- *That he remained in the House and that he was not in contempt.<sup>25</sup>*
- *That he participated as a member and that there was no legal instruction given to him to leave the House. He was only suspended by the House.<sup>26</sup>*

*Closing Arguments:*

[22] Respondent’s main points of argument are as follows:

- He argued that he did not disobey a Resolution of the House.
- That the Speaker’s order to him to leave the precinct ‘*immediately*’ was an order of the Speaker and not a Resolution of the House and was not permissible in terms of Rule 45 and 46; neither did it form part of the charge against him.

*(a) In articulating the Resolution of the House, the Speaker wrongly read into the Resolution of the House that the member must leave the House “immediately.*

<sup>23</sup>See page 348 par. 25 of transcript).

<sup>24</sup>See page 352 par. 15 of transcript).

<sup>25</sup>See page 358 par. 20 of transcript).

<sup>26</sup>See page 359 par. 10 of transcript).

- (b) *Rule 44 allows the Speaker to order a member to “withdraw immediately” and this power is visibly absent from Rule 45 and Rule 46.*
- (c) *The sanction in terms of Rule 44 takes effect immediately upon the order of the Speaker, while the sanction intended in Rule 46 takes effect only once the suspended dates mentioned in Rule 47.*

Evidence of ‘contempt’ as intended in section 13(c) of the Act.

*‘Contempt’ to an order or resolution assumes a disregard for a lawful order or resolution. One cannot act contemptuously of an irrational or unlawful order.*

- (a) *The Speaker’s order that the Respondent leave the House immediately was not aligned with the resolution of the House and was therefore unlawful. Being unlawful, a member cannot reasonably be said to be in contempt thereof.*
- (b) *Several factors, based on the evidence led at the hearing, point towards the fact that the Respondent did not intend to act contemptuously, despite him having refused to leave the House immediately following his suspension in terms of Rule 45(2);*
- (c) *The Respondent is a seasoned parliamentarian and has a sound understanding of the Rules and its implications. His refusal to leave was not an act of contempt but rather one based on his understanding of the obligations placed on him in terms of Rule 45;*
- (d) *The Respondent sat down after being suspended and did not participate or impact adversely on the sitting of the House in any manner.*
- (e) *After asking the Sergeant-at-Arms to approach the Respondent to leave the House, the Speaker did not pursue the Respondent’s immediate withdrawal. This is a clear indication that the Respondent in fact had no impact on the sitting.*
- (f) *Throughout the sitting on the relevant day, the Respondent did not act disorderly. He rose on points of order in a cordial manner and was engaged by the Speaker in this regard.*
- (g) *The Speaker had in fact never made any order in the House on the relevant day, which members were expected to heed.*
- (h) *Even in his citing in terms of Rule 44 and 46, the Respondent was never made aware of what aspect of his conduct was out of order.*
- (i) *As argued above, the Resolution of the House was not that he was expected to leave the house immediately and he could not logically have said to be in contempt to the order.*

It is argued that the Respondent’s conduct on the day did not warrant a naming in terms of Rule 45(1).

- *For a member to be named, Rule 45(1) requires the Presiding Officer to be of “the opinion that the Respondent’s misconduct is of so serious a nature...”*

- *It has already been stated that the Respondent's conduct was not disorderly and that the Speaker and Mr Wiley (who brought the motion to suspend) associated other members of the ANC's conduct with the Respondent's conduct.*
- *Can the Committee find the Respondent guilty and allow him to face sanction for a decision which was made irrationally and out of sync with the Standing Rules and the Resolution of the House."*

[23] Parliament's (Adv. PS Van Zyl) main points of argument are as follows:

- (a) *From Standing Rules 45 and 46, it is immediately apparent that, as far as context and purpose are concerned and that they form part of a progression of rules that relate to the keeping of order at a meeting. This is clear, in particular, from the content of Rules 43 through to 49.*
- (b) *The purpose of these Rules is to maintain order in the course of progressively, increasingly serious conduct.*
- (c) *Rule 43 is aimed at irrelevance or repetition – the Speaker may direct a Member who makes him- or herself guilty thereof to discontinue his or her speech.*
- (d) *Rule 44 relates to more serious conduct: If the Speaker is of the opinion that a member is, inter alia, in contempt of or disregarding the authority of the Chair, or that a member's conduct is grossly disorderly, the Speaker may order the Member to withdraw immediately from the Chamber for the remainder of the day's sitting. Clearly:*
  - *the Speaker may hold a subjective opinion; and*
  - *the purpose of ordering a member to withdraw is to restore order to the meeting.*
- (e) *Rule 45 progresses to even more serious conduct. This is clear from Rule 45(1), which refers to the fact that the Speaker may form an opinion that a member's misconduct is of so serious a nature that an order to withdraw from the Chamber is inadequate.*
- (f) *In terms of Rule 45, the Speaker may name the Respondent, Whereupon (in terms of Rule 45(2)), a motion must be moved that the Respondent be suspended from the services of the House.*
- (g) *The effect of such a suspension is set out in Rule 46, which provides that the Respondent "must leave" the precincts of the Provincial Parliament. The duration of the suspension is set out in Rule 47.*
- (h) *That it could never have been the intention of the drafter of the Rules that a member could be ordered to leave in terms of Rule 44 for a lesser "offence" (for want of a better word), but that such member had to be allowed to stay following his suspension in terms of Rule 45 after exhibiting even more serious conduct. This would defeat the purpose of the Rule.*



## *Evaluation of Evidence*

### [24] Documentary Evidence

- (1) In terms of section 20 of the PPI Act, in any proceedings before a court or a tribunal such as the DC in which the proceedings of Parliament or a House are relevant, a copy of the journals printed or purporting to have been printed by order of the House or the Speaker or Chairperson, is admissible as evidence of the journals without any proof being given that the copy was so printed.
- (2) In terms of section 1 of the PPI Act, “*journals*” means any recording of the proceedings of Parliament or a house or committee, including minutes, transcripts and tape recordings.
- (3) It was on this basis that the Hansard transcript of the meeting of the House on 20 February 2015, together with the minutes of those proceedings and the DVD recording of the proceedings were introduced and admitted into evidence. These exhibits were annexed A-C to the record.

### Facts not in dispute:

[25] It is apparent from the *viva voce* evidence, the points-*in-limine* and the Respondent’s heads of arguments that the following is not in dispute i.e.

- That the Respondent on 20 February 2015 raised several points of order during the sitting of the House.
- That the Speaker suspended the House twice in an attempt to get the cooperation of all political parties to ensure that the Premier could deliver her SOPA.
- That the Speaker invoked Rule 44 and ordered the Respondent to leave the House.
- That the Respondent refused to leave the House.
- That the Speaker requested the *Sergeant-at-Arms* to escort the Respondent out of the House and from the precincts of Parliament.
- That the Respondent also refused to cooperate with the *Sergeant-at-Arms*.
- That the Speaker invoked Rule 45(1) as the first step of suspension proceedings.
- That Mr Wiley (Chief Whip) moved a motion in terms of Rule 45(2).
- That the House subsequent to that adopted the motion of suspension of the Respondent.
- That the Respondent after his suspension remained in the House for the duration of the proceedings.

### Viva Voce (Verbal) Evidence:

[26] The evidence of Mr Wayne Naidoo supports the evidence of both the Speaker and Mr Wiley (Chief Whip) in all material respects of what happened on 20 February 2015 as already discussed herein-before. No reason/s exists to reject his evidence and as a result the committee regards him as an honest and credible witness.

As already discussed herein before, the Speaker provided the committee with the full extent of what occurred in the House, and behind closed doors during her consultations with the other political Parties.

Although she became at times during cross examination hot under the collar, she never tried to hide information or to be arrogant and in so doing assisted the committee to have a

comprehensive picture of the occurrence of the day in question. She was in all aspects of her evidence a credible and reliable witness who showed no behaviour of ulterior motive.

The Chief Whip supported the evidence of both Mr Naidoo and the Speaker in all relevant respects. The Chief Whip on a question by Mr Dugmore, whether he (the Chief Whip) would regard the suspension of the Respondent as a sanction, he replied;

*“Of course it’s a sanction but it’s not sufficient sanction. That’s why we having a disciplinary hearing which is costing hundreds of thousands of rands, the delay of SOPA cost hundreds of thousands of taxpayers’ rands and there has to be an accounting for it. Not it’s sufficient sanction for him to stay out of the House for 2 days”.*<sup>27</sup>

This statement is somewhat problematic in the sense that it can be construed that a guilty verdict of the Respondent is “*a fait accompli*” as the hearing serves to ensure a heavier punishment in addition to the two (2) days of suspension. The view of the Chief Whip regarding the purpose of the disciplinary hearing is incorrect, misplaced and left room for unnecessary attack on the credibility of the committee. He, during cross examination, at times became rough around the edges.

However, in spite of the aforesaid, the Chief Whip’s evidence as far as it was relevant to the issue/s in dispute cannot be criticized and accordingly regard his evidence as credible and I am therefore constrained to reject it.

The Respondent admitted that he refused to adhere to the order of the Speaker to leave the House when she invoked Rule 44, and that he didn’t leave the House when the House adopted the motion of suspension in terms of Rule 45. His argument is, however, that he was not compelled to comply with the Speakers order as it was, according to him, irrational. In his closing argument he argues that Rule 45 and 46 make no mention of the word ‘*immediately*’. As a result he was not compelled to leave the House ‘*immediately*’ after the suspension.

The Respondent also states that if he was charged in terms of Rule 44 he would’ve argued his case differently.<sup>28</sup> The Respondent didn’t try to mislead or to hide evidence from the committee and no reason/s exists to reject his evidence. As already mentioned he admitted his actions which is the subject of this hearing.

The only difference in his evidence with that of Mr Naidoo, Speaker and Mr Wiley is that he justified his non-compliance in terms of the words ‘*irrationally*’ and ‘*immediately*’ and that he was, subsequent to his suspension, not ordered to leave the House.

#### *Fact/s in dispute:*

[27] In evaluating the evidence ‘*in toto*’ the only fact which the committee found in dispute and to adjudicate is whether the Respondent was compelled to leave the House subsequent to his suspension or was he within his rights to remain in the House. Thus the task of this committee is to investigate the Respondent’s conduct ‘*ex post facto*’ his suspension.

It should be noted that the Respondent was suspended in terms of Rule 45 for failing to adhere to the Speaker’s order (Rule 44) and the request by the *Sergeant-at-Arms*.

---

<sup>27</sup>See page 307 of the transcript).

<sup>28</sup>See page 363 of the transcript).

In answering the aforementioned question, it is advisable at this stage to determine the meaning of suspension.

*Definition of Suspension:*

[28] The Merriam-Webster's Learner's Dictionary defined suspension as follows:

- *the act of forcing someone to leave a job, position, or place for a usually short period of time as a form of punishment: the act of suspending someone.*

- *the act of stopping or delaying something for a usually short period of time'*

- *the act of making something invalid or ineffective for a usually short period of time.*

*Consideration of Rules 45, 46 and 47:*

[29] In terms of Rule 45(1), the Speaker may name the member in question, whereupon (in terms of Rule 45(2)), a motion must be moved that the member be suspended from the services of the House.

The effect of such a suspension is set out in Rule 46, which provides that the member "*must leave*" the precincts of the Provincial Parliament. The duration of the suspension is set out in Rule 47.

In the result Rule 47 follows the effect of Rule 46 in stating "*The suspension of a member (a) on the first occasion in a calendar year continues for the first 2 days on which the House sits after the day of the suspension*". (Own Emphasis) Therefore, Rule 46 must be read alongside Rule 47 to complete the process of suspension. It is evident that there exists an unbridled elasticated interplay between Rules 44 to 47 in the manner it was applied by the Speaker.

It is, therefore, logic to conclude that the absence from the precinct of a member so suspended starts at the moment when the suspension has been affected. As indicated above, the 'Merriam-Webster's Learner's Dictionary' described suspension as the '*act of forcing someone to leave a job, position, or place for a usually short period of time as a form of punishment*'. It follows, therefore, that the privileges of a suspended member (to be in the House) seized the moment the suspension is effected and he should have left the House – leave the job.

On a conspectus of the above, the committee is of the view that there was no obligation on the Speaker to order the Respondent to leave the House subsequent to his suspension as she didn't recall her previous order in terms of Rule 44. For her to invoke Rule 45(1) flows from the Respondent's refusal to comply with the Rule 44 order. Hence her actions followed the one after the other. It is also our view that the omission of the word "*immediately*" in Rule 46 is not a prerequisite for a member to withdraw from the House.

It could never have been the intention of the drafter/s of the Rules that the Respondent should be allowed to stay in the House following his suspension in terms of Rule 45. This would defeat the purpose of the Rule.

*Rationality of the Speaker's order.*

[30] As indicated previously the duty of the disciplinary committee is not to investigate the rationality of the Speaker's decision. However, it would be fitting to explain the Speaker's role by means of a practical example:

"A rugby game is managed by a referee who ensures that the rules are respected and complied with to enable the proper flow of the game. Whenever a rule is being transgressed, the Referee will blow the whistle and the players stop playing and pay attention. Should the transgression justify a yellow or red card, the player has to leave the field without questioning the referee. The referee's decision is a subjective one and is final. Thereafter the game will continue. In other words the game doesn't stop to allow for an opportunity for the affected player to first determine the rationality of the referee's decision. Although some of the rulings might be questionable, it remains final".

In *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 (6) SA 222 (SCA) at para [26] the Supreme Court of Appeal stated the principle as follows:

*"For those reasons it is clear, in our view, that the Administrator's permission was unlawful and invalid at the outset. Whether he thereafter also exceeded his powers in granting extensions for the lodgement of the general plan thus takes the matter no further. But the question that arises is what consequences follow from the conclusion that the Administrator acted unlawfully. Is the permission that was granted by the Administrator simply to be disregarded as if it had never existed? In other words, was the Cape Metropolitan Council entitled to disregard the Administrator's approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view it was not. Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognized that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."*

In having regard to the *Oudekraal Estates* case and the arguments above, it is evident that the Speaker's primary responsibility is to ensure that members behave orderly and comply with the House rules. In the event a member transgresses a rule, she will make an order and / or ruling, whichever is applicable. It bears repetition, that the rules doesn't make provision for a member to first engage with the Speaker or the House, to determine the rationality of the order or ruling before he / she decides to comply. This will make the role of the Speaker untenable and would defeat the purpose of the House rules in ensuring compliance with Sec.114 (2) of the Constitution as argued hereinbefore. It follows further that the rulings of the Speaker is final, irrespective whether it is perceived to be questionable and cannot be ignored without good reason. This means that it is not open for the Respondent or any member in the House to judge the rationality of the Speaker's ruling/s before compliance.

In the event the Respondent perceived the order of the Speaker as irrational as he already argued, he could've pursued the irrationality, thereof, at the rules committee or in any other manner allowed by parliamentary processes.

**Result:**

[31] In considering all the documentary and verbal evidence as well as written arguments, the committee is of the view that the Respondent's reasons for not leaving the House subsequent to his suspension is unsustainable and should fail.

In the result, Provincial Parliament succeeded to prove its case on a balance of probabilities.

Accordingly, the committee find the Respondent guilty as charged.

Finding: Adv. Lennit Max with members Joseph and Schäfer concurring.  
Member Dugmore – Dissenting.

13 May 2016  
CAPE TOWN

---

**SANCTION PROCEEDINGS**

---

*Arguments for the purpose of Sanction:*

[32] The following are the aggravating arguments by Parliament (Adv. PS Van Zyl).

The appropriate penalty:

- (1) In terms of Standing Rule 113(12), if a member has been found guilty, the DC must give him the opportunity to present mitigating factors and to make oral or written representations with regard to the penalty. The initiator may also address the DC, and may propose a penalty to be recommended by the DC to the House.
- (2) Standing Rule 113(13) provides that the DC must recommend to the House the imposition of one or more of the penalties set out in section 12(5) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ("the PPI Act").

Section 12(5) of the PPI Act provides as follows:

- (3) When a House finds a member guilty of contempt, the House may, in addition to any other penalty to which the member may be liable under this Act or any other law, impose any one or more of the following penalties:*
- (a) A formal warning;*
  - (b) a reprimand;*
  - (c) an order to apologise to Parliament or the House or any person, in a manner determined by the House;*
  - (d) the withholding, for a specified period, of the member's right to the use or enjoyment of any specified facility provided to members by Parliament;*
  - (e) the removal, or the suspension for a specified period, of the member from any parliamentary position occupied by the member;*

*(f) a fine not exceeding the equivalent of one month's salary and allowances payable to the member concerned by virtue of the Remuneration of Public Office Bearers Act, 1998 (Act 20 of 1998);*

*(g) the suspension of the member, with or without remuneration, for a period not exceeding 30 days, whether or not the House or any of its committees is scheduled to meet during that period.*

(4) In the initiator's submission, any one (or a combination) of the penalties set out in section 12(5)(a), (b) or (c) would be appropriate in the present matter. An apology to the Speaker would be particularly apposite.

(5) The penalties set out in subsections (d) to (g) are, it is submitted, too severe in the circumstances, and are unwarranted.

(6) The DC has viewed the DVD footage of the events in the House on the day in question, and has heard the evidence of, amongst others, the Speaker, recounting the difficulties she encountered in attempting to regain order in the House. This provides the context within which the charge and the appropriate penalty are to be considered.

(7) The conduct of various of the members there rendered this a particularly serious example of the deliberate and persistent disruption of what was supposed to have been a special occasion. In fact, the House could not attend to the business of the day at all, but had to adjourn after countless fruitless attempts to restore order.

(8) Mr Uys was, admittedly, not alone in contributing to the chaotic atmosphere. But even if he was, it would have been irrelevant, because he has been charged with disobeying a request by the Speaker – not with disorderly conduct.

(9) The DC should thus, once again, turn down the invitation to pronounce on the validity of the Speaker's actions.

(10) As an experienced and senior politician (none less than the Chief Whip of the official opposition), Mr Uys should have known better than to conduct himself in the manner that he did, that is, in not obeying the Speaker's request that he leave the Chamber. He should have set an example, which could – perhaps – even have led to the restoration of some semblance of order in the House.

(11) Instead, he was openly disrespectful towards the authority of the Speaker and the House, and expressly and deliberately disobeyed the instruction directed at him – thereby undermining the authority of both the Speaker and the House. This was done against the turbulent backdrop of the preceding events, and effectively endorsed the disorderly behaviour of other members. He lent credence to the chaos.

(12) The fact that Mr Uys is a seasoned politician is an aggravating circumstance. In mitigation, Mr Uys subsequently – following the adjournment of the meeting – complied with the provisions of Rule 46 to the extent that he did not enter the precincts of the WCPP or participate in activities of the WCPP for the period of his suspension. He therefore did not aggravate his disrespect towards the House by failing to adhere to the balance of the consequences of his naming under Rule 45, particularly insofar as they pertained to his suspension for a specified period.

## Conclusion:

(13) In all of these circumstances, it is submitted that one or more of the penalties set out in section 12(5)(a), (b) or (c) should be recommended to the House.

## Arguments in Mitigation by Respondent (Mr Brendell Turner)

### [33] The Member's Political Background:

- (1) The member is the Chief Whip of the Official Opposition Party, namely the African National Congress (ANC), in the Provincial Legislature. The role of a Chief Whip is well established in parliamentary practice and procedure and will not be repeated herein. The member's background in politics is also well-documented in the public domain and will not be repeated herein, save to make reference to Member Wiley's reference during his cross examination to the member as one of the most 'seasoned politicians' in provincial legislatures in South Africa.

### *The Charge for which the Member has been found guilty:*

- (2) The Committee found that "*the Respondent's reasons for not leaving the House subsequent to his suspension is unsustainable and should fail*". "Quoting the *Oudekraal Estates (Pty) Ltd v City of Cape Town and others 2004 (6) SA 222 (SCA)*, the Committee narrowed its finding and resigned itself to the sentiment of the court that even "*an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside*". The Committee did not pronounce on the legality or otherwise of the Speaker's ruling or whether the member's conduct in fact warranted a naming in terms of Rule 44 and Rule 45.

### *An Assessment of the Member's Conduct as a Mitigating Factor:*

- (3) In coming to its conclusion, the Committee did not pronounce on the lawfulness or otherwise of the Speaker's action, as it adopted the view that the member would have had to acquiesce to the ruling and would have had to express his displeasure thereof only on review to the High Court. We would submit that the member's conduct, which led to his naming, is highly relevant as a mitigating factor and must be considered (and pronounced upon) during arguments on sanction.
- (4) The Committee is urged to assess whether his conduct at the relevant sitting was in fact disorderly and whether his citing in terms of Rule 44 and subsequent naming in terms of Rule 45 was in fact made fairly or not. We note that the focus on the member's conduct herein, is not designed to revisit guilt or innocence, but rather to argue that the member may have been "harshly done by" the Speaker's assessment that he acted disorderly and accordingly that this should play a significant role in the assessment of an appropriate sanction.

### *The Member's Conduct:*

- (5) The member argued previously that his conduct was not disorderly. The member's conduct is evidenced from video evidence of the proceedings of the House of the 20th February 2015. It is submitted that nothing in the video footage would evidence disorderly conduct on the part of the member. It may even be said that it is common

cause that the member did not conduct himself in a disorderly manner or in any manner which would ordinarily lead to his conduct being described as disorderly.

- (6) From the evidence on record, both the Speaker and Wiley attempted to apportion guilt to the Member with reference to the conduct of other Members of the ANC and import blame on him by virtue of the fact that he was the Chief Whip of his party. There is however no tangible link between the conduct of the rest of the members of the ANC and that of the Member. In fact the behaviours are vastly at variance. There is also not a rational basis to suggest that the Member's conduct incited the other members of his party to act disorderly.
- (7) The Speaker's ruling that the member was disorderly is wholly incongruent with the video footage and the Committee is urged to recognise that had it not been for an unsupported conclusion by the Speaker, the disciplinary hearing would not have been necessary.
- (8) The Member raised points of orders which was entertained and ruled upon by the Speaker. These rulings offered explanations to the Member's points and did not rule him out of order.
- (9) The rulings by the Speaker drew emotional reactions from members of the official opposition party (ANC) and sometimes of the majority party. The member, at no stage during the proceedings, even after being suspended by the resolution of the House, reacted emotionally or disrespectfully towards the Speaker.
- (10) A viewing of the video recording of the sitting will show, in the clearest terms that the Member sat quietly throughout emotional outbursts by other members of the House. This acquiescing attitude by the Member is evident even after being cited in terms of Rule 44 and being suspended in terms of Rule 45(2). The member's conduct may in fact be described as gracious.
- (11) Given the glaring evidence emanating from the video recordings of the sittings, the only reasonable conclusion that we can draw is that the Speaker confused the Member's conduct with that of the more emotional reactions by other members of his (the Member's) party. The decision to name the Member is innately wrong therefore and not, in the slightest supported by the evidence presented to the hearing.
- (12) In assessing the Member's conduct, we submit that the following factors are significant;
  - (a) The member was entitled to raise points of order and there was no evidence or ruling by the Speaker that the points were frivolous;
  - (b) His points were entertained and ruled upon by the Speaker, save for the last point of order which the Speaker failed to hear before citing him in terms of Rule 44;
  - (c) There is no evidence presented at the hearing which shows that the Speaker had ruled that no points of orders would be entertained after the resumption of the sitting at 12h47, or at all.
    - (i) The only record of a ruling on points of order is the Speaker noting that she would not allow any points of orders on the "two previous points" which she had ruled upon. Such ruling in fact is an acknowledgement of the fact that she would allow further points of order (other than the previous two orders).
    - (ii) The Member was entitled therefore, in the absence of a ruling to the contrary, to raise a further point of order (not associated to the two previous points of



order). In fact the Speaker acknowledges the Member's entitlement by asking him "*Hon member Uys, your point or order please.*" (Page 54 of Hansard).

(d) The Speaker's action in ruling the Member out of order, despite not allowing him to articulate the point after calling on him to do so is completely irrational and is best described as inexplicable or even strange.

(e) It would not be unreasonable to conclude that the Speaker cited the Member in haste owing to her frustration in getting the House to commence with the order of business for the day. While her frustration may be warranted, her direction of such frustration to the Member, is unwarranted.

*The Committee's Finding:*

(13) The Committee should be careful not confuse the Member's interpretation of the Standing Rules and his disagreement with the interpretation of the Committee, as a demonstration of his disrespect for sanctity of the House and its processes.

(14) The Member is currently considering the option of reviewing the decision of the Committee and the Committee should be mindful that the Courts may come to a different conclusion to the one it drew herein.

*The Appropriate Sanction:*

(15) It is common cause that the member has already served a two day suspension pursuant to his naming in terms of Rule 45.

(16) A reading of section 12(f) of the Act suggests that the Committee may decline to impose an additional sanction on the Member.

"(5) When a House finds a member guilty of contempt, the House may, in addition to any other penalty ..."

(17) It is submitted that the use of the word "may" allows the aforesaid discretion to decline the further imposition of a sanction.

(18) The Committee should bear in mind that the offence for which the member was found guilty occurred more than one year ago. During this period, the Member has not been found guilty or been investigated for any offences listed in the Act. No useful purpose would be served therefore by imposing a sanction which has adverse financial consequences for the Member. The deterrent effect of discipline in the circumstances has adequately been served by the sanction of suspension imposed by the Resolution of the House (of the 20th February 2015) and the disciplinary process itself.

*Disciplinary Committee: Consideration of legal principles in reaching an appropriate sanction:*

[34] Although it is common cause that a politician does not receive the protection in terms of the Labour Relations Act, and that this hearing is not conducted in terms of the Criminal Procedure Act, it would however not be improper to consider the principles applied during these processes in reaching an appropriate sanction as discussed hereinafter.

*Labour Law Principles:***[35] Insubordination and insolence:**

The employer's common law right to issue reasonable and lawful instructions, and the employee's obligation to comply with these instructions is a central element of the employment relationship.

Without this right an employer would not be able to co-ordinate the running of its affairs.

Insubordination cannot be tolerated as it undermines organisational effectiveness. There will always be variation between sanctions imposed depending on the degree of intent. An employee is obligated to obey an employer's lawful and reasonable instruction. Where the employee fails to do so, he or she commits an act of insubordination. Insubordination is considered a more serious offence than mere rudeness because it presupposes a calculated breach by employees of their duty to obey their employer's lawful and reasonable instructions;

*inter alia:*

- ☐ wilful and verbal refusal to obey a lawful and reasonable instruction
- ☐ wilful disregard for managerial authority
- ☐ disrespectful or rude and rebellious gestures, manners or attitudes, and
- ☐ dismissive gesture or abusive language

Dismissal is appropriate where the insubordination is deliberate, sustained, and indicates an intention on the part of the employee to repudiate the authority of the employer. The instruction which the employer gives, and for which the employee is accused of not obeying must be reasonable and fair, lawful, relating to the employment relationship and understood by the employee. The employee must wilfully disobey the instruction and there must be no justification for refusing to disobey the instruction. Further, the employer must not have condoned the disobedience either directly or indirectly. In this regard although the Respondent was not charged in terms of the labour law his action resembles that of insubordination.

*Criminal Law Principles:*

[36] When determining an appropriate sentence it was stated in *S v Rabie*<sup>29</sup> at 861 B, that there is a duty on the presiding judicial officer to approach the determination with a mind-set of mercy or compassion or plain humanity. This *"has nothing in common with maudlin sympathy for the accused. While recognizing that fair punishment may sometimes have to be robust, mercy is a balanced and humane quality of thought which tempers one's approach when considering the basic factors of letting the punishment fit the criminal as well as the crime and being fair to society"*.

Voet, vol.1, 57 stated in a note (Gane's translation, vol. 2. 72) *"It is true, as Cicero says in his work on Duties, Bk. 1, Ch. 25, that anger should be especially kept down in punishing, because he who comes to punishment in wrath will never hold that middle course which lies between the too much and the too little. It is also true that it would be desirable that they who hold the office of Judges should be like the laws, which approach punishment not in a spirit of anger but in one of equity."*

---

<sup>29</sup> 1975 (4) SA 855 (A)

*S v Rabie* at 862 D states, “To sum up, with particular reference to the concept of mercy ~ (i) It is a balanced and humane state of thought, (ii) It tempers one's approach to the factors to be considered in arriving at an appropriate sentence. (iii) It has nothing in common with maudlin sympathy for the accused, (iv) It recognizes that fair punishment may sometimes have to be robust, (v) It eschews insensitive censoriousness in sentencing a fellow mortal, and so avoids severity in anger, (vi) The measure of the scope of mercy depends upon the circumstances of each case”.

[37] It is trite that the Courts and or a tribunal dealing with a process of determining guilt, innocence or sanction is not bound by the arguments of the parties involved and should apply

205

its mind independently and objectively. It follows that this disciplinary committee is equally not bound by the arguments of the Respondent and / or the Initiator.

The disciplinary committee noted that the Respondent (in his own words) is a seasoned politician with 17 years in experience. It is common cause that he held various previous positions, among others the position of Provincial Minister (MEC) and is currently the Chief Whip of the official opposition (ANC).

South Africa is currently experiencing a growing tendency of disrespect by members of parliament in terms of non-compliance with House rules and also in respect of their conduct towards the Speaker. These actions erode the decorum of parliament and simultaneously harm the trust the broader public has placed in their public representatives. As previously stated the Speaker has a constitutional responsibility to comply with Sec. 114(2) of the Constitution. Hence, non-compliance with the House rules or conduct unbecoming of members of parliament renders the role of the Speaker untenable.

As a result the committee in considering the legal principles as mentioned hereinbefore has a moral and legal obligation to ensure reverence for parliamentary rules and orders of the Speaker. In other words this committee has to restore and protect the decorum of Provincial Parliament of the Western Cape which is regarded as sacrosanct.

[38] The Respondent is practising politics since 1999 in a parliamentary environment. As Chief Whip the Respondent is leading his caucus and have to lead with example, give them directions and to ensure that they understand and adhere to the rules of parliament, which is constitutionally enjoined to secure the smooth running of parliamentary business. The Respondent is holding indeed a high and illustrious office. Those under his leadership look up to him with respect. They look to him for guidance and direction. The citizens of this country with specific reference to the Western Cape likewise look up to him in his exalted office. They seek leadership from him and all of us to act in a professional way and in a manner deserving of their respect.

[39] It is in this context and the esteem in which the office he occupies is held that reference must be made to his conduct in the House on 20 February 2015. No point would be served in repeating that which has already been said in the finding that was delivered on 13 May 2016. It is inconceivable that the person who occupied the office of Chief Whip of the opposition to act in the manner that the Respondent did.

[40] The Respondents attitude on the day in question (not to leave the House subsequent to his suspension) is incongruent with what is expected of a person in his position. This kind of disrespect by members of parliament can never be tolerated. It is the very antithesis of what parliament stands for. It precludes the parliament from effectively carrying out its constitutional function. So much more so when it is the Chief Whip (of the opposition) not respecting the rules of parliament and orders of the Speaker.

[41] Members of parliament must know that non-compliance with the rules and disrespect of the Speaker's orders is not worth the effort. They must know that when their unbecoming conduct is revealed they will be dealt with in a manner befitting their disregard of what is expected of them.

Although the aforementioned is important it must however be measured against the respondent's conduct. At no stage during the hearing did the respondent display any indication of remorse. By so doing he eroded much of the sympathy that one could have had with him.

[42] Regard being had to the purposes of sanction and that already said in regard thereto, the preventative and reformative purposes of punishment, would not require a sanction as proposed by the Initiator. In the result the proposal by the Initiator as contained in par. 32(13) supra is therefore rejected. Subject to what has been set out above, the sanction would have to contain an element of retribution. The sanction however would have to be of such a nature that the deterrent purpose of punishment is adequately catered for.

[43] In having considered all the evidence and the mitigating as well as aggravating arguments carefully and have concluded, I am convinced that there are no substantive grounds to impose a sanction as proposed by the Initiator and the Respondent.

The legal representative for the Respondent in par. 33(14) supra threatened with an intended review application and in so doing tried to intimidate the disciplinary committee. In fact the committee was at all relevant times aware of the remedies available to the Respondent as well as to any other member who might find him/herself in a similar situation. As a result the committee regards the threat as unwarranted, disingenuous and rejects it with the contempt it deserves.

[44] Regard being had to all the afore-going, I am satisfied that a sanction in terms of the following be recommended to the House.

That the member be fined in terms of Section 12(5) (f) with a fine of one month's salary and allowances of which half is suspended for twelve (12) months on condition that the Respondent is not found guilty in terms of rules 44 and 45 of the Western Cape Provincial Parliament Standing Rules or a related transgression during the period of suspension. The period of suspension will take effect as from the date the recommendation is endorsed and / or amended by the House.

Further that the Respondent in terms of Sec. 12 (5) (c) apologise to the House and the Speaker, in a manner determined by the House.

The Respondent's attention is herewith drawn to Rule 113(14) and must submit his submission to the committee, if any, within 14 working days as from the day of sanction.

Sanction: Adv. Lennit Max with members Joseph and Schäfer concurring:  
Member Dugmore dissenting.

CAPE TOWN  
10 JUNE 2016