

**IN THE STUDENT COURT OF STELLENBOSCH UNIVERSITY**

**REPUBLIC OF SOUTH AFRICA**

**In the ex parte application of:**

**Sebastian Foster**

**Applicant**

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**DECLARATORY ORDER**

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**BACKGROUND**

[1] The Applicant approached this Court on an urgent basis to obtain a declaratory order regarding the correct interpretation of section 31(2)(c) of the Student Constitution (“Constitution”). This order was required to determine whether or not the chairperson of the Academic Affairs Council (“AAC”) was able to continue in their position until their impeachment vote following their resignation as an *ex officio* member of the Student Representative Council (“SRC”).

**PRELIMINARY ISSUES**

[2] The Court was satisfied that the Applicant had the required *locus standi* as provided for in section 86 of the Constitution. As the Applicant is a registered student at the University, he is clearly entitled by section 86 to approach this Court.

[3] The Court was also satisfied that the matter fell within its material jurisdiction. Section 84(1) of the Constitution clearly entitles the Court to interpret any provision of the Constitution, as was requested by the Applicant. Similarly, the remedy requested by the Applicant, a declaratory order, is one that this Court is competent of granting in terms of section 85(2) of the Constitution.

**URGENCY**

[4] This Court was convinced that the matter was sufficiently urgent to decide on an urgent basis. Firstly, it is within the interests of the AAC to have certainty regarding its leadership and secondly, the Constitution clearly provides for certain timelines that the

AAC must follow once its chairperson has resigned. In order to ensure compliance therewith, an urgent declaratory order is required from this Court. To this end, the Court was happy to receive the application from the Applicant and provide attention to it over the public holiday on 9 August. Similarly, it is willing to condone the Applicant's failure to plead jurisdiction in terms of the correct version of the Student Constitution given that there is no substantive change to the provisions he relied on from a previous version and the provisions regarding this Court's jurisdiction under the current Constitution.

### **INTERPRETATION OF THE RELEVANT PROVISIONS**

[5] Section 31(2)(c) is one of the sections in the Constitution that provide for the process to be followed when an *ex officio* member of the SRC resigns from their position as a member of the SRC. In attempting to interpret any statutory provision, various factors will be considered in attempting to understand what the correct meaning of an impugned statutory provision entails. Regard will be given to the plain meaning of the provision as well as its contextual meaning, paying attention to both its statutory context and the broader context within which it finds application. Given that section 31(2)(c) is but one of the provisions that dictate the process to be followed when an *ex officio* member of the SRC resigns, it is particularly important to interpret it contextually.

[6] Section 31(1) clearly provides for the basis upon which a member of the SRC's membership thereof terminates. Section 31(2) then goes on to provide for the process to be followed should the member of the SRC whose membership has been terminated be a member who served on the SRC in an *ex officio* capacity. To that end, in this particular scenario, it is clear that Mr Van Dyk's membership of the SRC terminated when he resigned from the SRC in terms of section 31(1)(b). After that termination, the process provided for in section 31(2) was triggered given that he occupied an *ex officio* position on the SRC.

[7] The different subsections of section 31(2) clearly recognise the different functional roles an *ex officio* member of the SRC plays. One, in respect of their membership of the SRC and the other as the chairperson of their respective student body. Firstly, in terms of section 31(2)(b), an interim *representative* of the relevant student body to the

SRC must be appointed within 5 days who takes over the duties of the *ex officio* member on the SRC. The process provided for in section 31(2)(c) is entirely different. It provides that within 10 days, the student body in question must adopt a resolution to impeach the relevant member of their committee who served on the SRC and then elect someone to replace them in terms of section 31(2)(d). The separation of these two sections and the clear use of the word “interim representative” in section 31(2)(a) and “new chairperson” in section 31(2)(d) separate the process described in section 31(2)(a) from the one described in section 31(2)(c) and (d).

[8] As such, given that a new chairperson would only have to be elected 10 days after the Mr Van Dyk’s resignation from the SRC and he would similarly only have to be impeached within 10 days thereof, one can only conclude that he would continue as chairperson of the AAC until the impeachment vote in question. The fact that a new *interim representative* had to be elected to the SRC does not affect his continuation as chairperson of the AAC until the vote described in section 31(2)(c) takes place. Mr Van Dyk did not resign from his position as the chairperson of the AAC, as such, that role is not affected until he is impeached from that position by the AAC. To interpret section 31(2)(c) to mean that his membership of the AAC ceases immediately runs contrary to the existence of the provision in its entirety. Should that be the case, it would be impossible to impeach him in the first place.

[9] Over and above this being the only interpretation of section 31(2)(c) that makes sense on the ordinary wording of the section, it also serves an important purpose. It allows the AAC time to find a suitable replacement for their chairperson which is important to ensure stability in their leadership.

RANKIN CJ (KRITZINGER DCJ, SCHONEGEVEL J, NAICKER J, LOURENS J  
CONCURRING)