

## **THE STUDENT COURT OF THE UNIVERSITY OF STELLENBOSCH**

Applicant: Matthew McDonald

Respondent: None

Date: Monday 18 August 2008

### **DECLARATORY ORDER**

Applicant seeks a declaratory order confirming his eligibility to stand for election as vice-chair of the Academic Affairs Council (AAC) for the 2008-2009 term. The basis for the application is an alleged irregularity in the Constitution of the AAC, in that it (a) does not actually or actively recognise the position he was appointed to, and (b) does not actively prevent him from running for office. He is currently appointed in the unofficial position of secretary, and served as vice-chairman on the AAC during the 2006-2007 term. An informal meeting was held on Thursday 14 August 2008, where the generalities of the issue were discussed in order to ensure that all parties were in agreement as to the basic facts. The applicant, the current chair (Anke Stoman) and vice-chair (Wynand Spruyt) of the AAC as well as four members of this court were present.

The Vice-Chair is appointed in accordance with the provisions of the AAC constitution. Regrettably, there is uncertainty regarding which version of the constitution is currently in force, since there are two different versions available. However, it is apparent, and all parties agree, that the 2004 version is the one that has been duly approved by the SRC. This order will therefore be decided in terms of that version. The issue to be decided is whether the applicant is eligible for election based on the provisions of the AAC constitution, or whether there are any other circumstances justifying his eligibility.

Section 2.1 of the constitution provides that the following faculty societies have the right to appoint two representatives each to serve as members of the AAC:

Agriculture and Forestry Student Assosiation  
Ekonomiese & Bestuurswetenskappe Studentekomitee  
Ingenieurswese Studenteraad  
Juridiese Vereniging  
Lettere en Wysbegeerte Studentekomitee  
Natuurwetenskappe Studenteraad  
Opvoedkunde Studentekomitee  
Teologiese Studentekomitee

In terms of section 4.2.1 the vice-chair is elected out of the current members of the AAC. If a person is not a member as defined in the constitution, then he or she cannot be eligible for election. A position of secretary occupied by the applicant *in casu* is not provided for in the constitution at all. The applicant is not a member and can therefore not be eligible for election.

It is submitted by the applicant that, even though the secretary is not provided for in the constitution, each year a secretary gets appointed by the chair and is recognised as a member by the other members. In this regard the secretary is granted certain duties and responsibilities. This leads to the unfortunate result that a person in the position of the applicant may be performing legitimate functions and perhaps be recognisable as a *de facto* member, but cannot enjoy all the privileges of membership, such as being able to run for the position of vice-chair because the constitution does not authorise it.

Article 32(a) of the Student Union Constitution of the University of Stellenbosch empowers this court to deliver an advisory opinion regarding the interpretation of any document referred to in article 61, the AAC constitution being such a document. Furthermore, article 32(b) states that the court can, on administrative grounds, review any decision or conduct of an administrative nature. The court does not have legislative authority and any decisions regarding the ideal composition or operation of a student organisation such as the AAC would be beyond our jurisdiction. Should the AAC decide to create an official position of secretary, then it should be done by them and according to the procedures prescribed by its constitution. It is in any event

strongly recommended by this court that the AAC constitution be amended in order to correctly reflect what occurs in practice. Whether this involves granting membership to a secretary is something for them to decide.

Finally, it should be pointed out that it would be contrary to the recognised purpose and structure of the AAC to allow a secretary who was not democratically elected by the students of a specific faculty, but appointed by a chair, to be able to run for the position of vice-chair. Effectively this would mean that a chair would be able to indirectly appoint a person eligible to become vice chair without that person ever having represented a faculty society on the AAC.

As stated above, this court has specific administrative functions and cannot create eligibility to run for election where it is not authorised by the constitution.

The application is accordingly dismissed.

Members of the Court:

Bovijn S

Mubika D

Nel RT

Van Schalkwyk AS

Wessels AB

