

TERMS OF REFERENCE FOR THE INVESTIGATION COMMITTEE INTO ALLEGATIONS OF NEPOTISM

MOTION TO DISMISS

1. At a meeting of the Council of the University (“**Council**”) on 17 April 2023, Dr. Leon Schreiber tabled a motion to dismiss (“**the Motion**”) Professor Wim De Villiers, the Rector and Vice-Chancellor of Stellenbosch University (“**the Rector**”), in terms of clause 42(3) of the Institutional Statute (“**the Statute**”) of Stellenbosch University¹ (“**the University**”) on the grounds of serious misconduct arising from allegations of nepotism as defined in the Nepotism policy referred to in 6 below.

RESOLUTION

2. Following extensive discussion, and pursuant to the provisions of clause 10(5)(a) of the Statute read with rule 56(4) of the University’s General rules about the procedure for meetings, at its 17 April meeting Council resolved:
 - 2.1. to constitute a Council Committee (“**the Committee**”) composed of three persons, to investigate the facts underlying the Motion and the explanation for the Motion, including allegations of nepotism and possible breach of related rules in relation to two known discretionary placements and any other possible discretionary placements of persons related to the Rector, and to report to Council in order to assist Council in its consideration of the Motion;
 - 2.2. that the Committee be chaired by a senior independent legal professional; and

¹ Government Notice 1062 in *Government Gazette* 42636 of 16 August 2019

- 2.3. that the Council will consider the Committee's report as soon as possible after it has been received.

BACKGROUND

3. Academic admissions to the University are governed by the University's Admissions Policy ("**the Admissions Policy**") and faculty-specific admission/selection guidelines that are made available annually on the University's webpage for prospective students.²
4. Paragraph 7.4.8 of the Admissions Policy provides that "*The Rector, after consultation with the deans, may in his or her discretion also request admission for students to a mainstream or EDP [Extended Development Programme] according to individual circumstances regarding each case.*"
5. The Rector's academic discretionary placements are guided by the University's Guidelines: Rector's Discretionary Placement.³ Similar provisions exist for discretionary placements in residences.
6. The University's Policy for the Prevention of Nepotism⁴ ("**the Nepotism Policy**") aims to prevent preferential treatment, as well as situations that may result in conflicts of interests.

² Approved by the Council on 11 February 2107 and implemented with effect from 1 March 2017

³ Checking date of approval and implementation. Detail to be provided to Committee

⁴ Originally implemented in January 2000 and revised for the last time in 2015

7. The University's Policy on Conflict of Interest⁵ ("**the Conflict of Interest Policy**") provides a framework for disclosing and managing conflicts of interest in the University. The purpose of this policy is to uphold the credibility and integrity of the University and its members by avoiding or mitigating real or perceived conflicts of interest, amongst them conflict that may arise as a result of relationship interest.

8. The allegations of nepotism against the Rector originate from two discretionary academic placements made by him under paragraph 7.4.8 of the Admissions Policy. These placements were made in 2021 and 2022 for relatives of his wife. The placement made in 2022 was retracted the same month that it was made. This student is now studying a different course at the University. The student placed in 2021 started his course in 2022 and is still studying that course.

APPOINTMENT AND COMPOSITION OF THE COMMITTEE

9. Council has agreed the members of the Committee, two of whom are members of the Council who are not staff members of the University and one of whom is an independent senior legal professional.

10. The two Council members of the Committee shall be entitled to participate in the discussion of the Committee's report at Council and to vote on any Motion pursuant thereto.

⁵ Approved in 2012 and implemented with effect from 1 January 2013

11. The Committee shall consist of retired Justice Carole Lewis, Ms Helena Conradie and Ms Ziyanda Stuurman. Retired Justice Lewis is designated as Chairperson of the Committee ("**the Chairperson**").

TERMS OF REFERENCE OF THE COMMITTEE

12. The Committee must investigate the two incidences of alleged nepotism and whether any other similar alleged nepotistic academic or residential placements were made by the Rector.
13. On conclusion of its investigation, the Committee must report to Council its findings and may provide any recommendations it may wish to make to Council.
14. The Committee may conduct its inquiry in an inquisitorial manner.
15. The Committee may in its discretion receive any information that is relevant to its mandate from any person and in any manner. However, the Committee shall only consider information that is relevant to matters mentioned in paragraphs 12 and 13 above.
16. All media enquiries relating to the Committee, its investigation and related issues, will be dealt with by the University in consultation with the Chair of Council.
17. The Committee is required to keep a record of all relevant information and material received by it.

PROCEDURAL RULES FOR THE CONDUCT OF THE INVESTIGATION

General

18. Subject to the provisions set out below, the Committee shall have the power to regulate its own proceedings in order to fulfil its functions and to ensure that its process respects the rights of all concerned and shall have the power to take all steps necessary to fulfil its function.
19. The powers of the Committee shall include the power to:
 - 19.1. identify, contact, and communicate with any person about matters relevant to the investigation;
 - 19.2. receive any information relevant to its mandate, whether or not such information would be inadmissible in a court of law;
 - 19.3. conduct interviews to receive information relevant to the investigation;
 - 19.4. receive information relevant to the investigation by means of written statements or submissions;
 - 19.5. request, but shall not have the power to compel, any member, employee or office bearer of the University and any persons that are not members, employees or office bearers of the University, to furnish information relevant to the investigation to the Committee.

Secretariat

20. Van der Spuy Attorneys, represented by Mr. Yasseem Cariem (“**the Secretariat**”) will perform secretarial and administrative supporting functions to the Committee.

Conduct of Interviews

21. The Committee shall conduct its interviews in person, unless it directs that evidence may be provided in the form of a written statement.
22. The Chairperson may in his/her sole discretion determine whether the Committee requires oral evidence of any person, regardless of whether or not such a person has already provided or delivered a written statement or document(s) to the Committee.
23. Interviews with persons shall be held at such venue or venues determined by the Committee Secretariat, after consultation with the Chair of Council.
24. Save as directed otherwise by the Chairperson, the interviews and other proceedings of the Committee will be held *in camera*.

Information provided to the Committee

25. All documents in a language other than English, delivered or handed to the Committee, must be accompanied by:
 - 25.1. an English translation;
 - 25.2. a declaration by the translator that the translation is accurate.

Confidentiality of Proceedings and Information provided to the Committee

26. Subject to any direction by the Chairperson, and to protect the confidentiality of the work of the Committee, no person may disclose the identity of any person interviewed by the Committee, or the identity of any person implicated by another person, or the contents of any statement or document provided to the Committee, to anyone other than a legal representative for the purpose of obtaining legal advice.
27. Any person providing information to the Committee, whether orally or in writing, may apply to the Chairperson of the Committee, on good cause shown, for leave to provide his or her information anonymously. For purposes of this provision, 'good cause' shall include a reasonable apprehension of intimidation or harassment by any other person or of adverse repercussions for providing evidence to the Committee.
28. The Committee's report will be confidential to Council.

Right to Legal Assistance and Questioning of Interviewees

29. Subject to paragraphs 30 and 31, no person appearing before the Committee shall have a right to legal representation nor shall any such person have the right to question or examine any other person appearing before the Committee.
30. The Rector shall have the right, at his expense, to have a legal representative present and to be assisted by a legal representative when interviewed by the Committee.

31. Any other person who wishes to be legally assisted when interviewed by the Committee, must show good cause why this should be allowed and shall make written application to the Chairperson, in which application the grounds for such a request are fully set out. Any decision by the Chairperson regarding such application shall be final.

Implicated persons

32. Any person against whom an adverse allegation relevant to the investigation has been made in oral or written evidence presented to the Committee, shall be informed by the Secretariat:
 - 32.1. of the adverse allegation against him or her and, if in writing, shall be provided with a copy of the relevant portion of the witness' statement, together with any relevant document attached to the statement, if any;
 - 32.2. of his or her right to be heard by the Committee, orally or in writing, and to call any person to provide evidence on his or her behalf;

Power to amend Terms of Reference and Procedural Rules

33. Only the Council may amend these Terms of Reference.
34. The Chairperson may amend the Committee's Procedural Rules.

COMMITTEE'S REPORT

35. At the conclusion of its inquiry, the Committee must compile a full written report, and a summary of its report.
36. The Committee's report with its findings and recommendations, if any, will be submitted to the Chair of Council by not later than the end May 2023, or by such later date as may be agreed to by the Chair of Council.
37. The Council will determine whether the Committee's report should be published.

TERMINATION OF COMMITTEE MANDATE

38. The Committee's mandate terminates once it has submitted its report to the Chair of Council as contemplated in paragraph 36 above.