



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY  
Stellenbosch University

**STUDENT COURT  
OF STELLENBOSCH UNIVERSITY**

**REPUBLIC OF SOUTH AFRICA**

In the matter between:

**SPEAKER OF THE TYGERBERG STUDENT  
ASSEMBLY**

**Applicant**

And

**TYGERBERG ELECTORAL COMMISSION**

**First Respondent**

**ELECTORAL COMMISSION**

**Second Respondent**

**Neutral Citation:** *Speaker: Tygerberg Students Assembly v Tygerberg Electoral Commission and Another 22/06/24*

**Judgment:** BESTER J (Bryant CJ, Steyn DCJ, Mudzingiranwa J, Swanepoel J concurring)

**Decided on:** 22 June 2024

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**FINAL JUDGMENT**

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BESTER J

*Introduction*

[1] The Applicant, the Speaker of the Tygerberg Student Assembly, approached

this Court on Tuesday, 18 June 2024 on an urgent basis seeking to set aside a decision taken by the Tygerberg Electoral Commission (“TEC”) in respect of the Tygerberg Students’ Representative Council (“TSRC”) elections.

*Factual background*

[2] The TEC is the body constituted by the Tygerberg Student Constitution of 2021 (“Tygerberg Constitution”) for the purpose of managing the TSRC elections.<sup>1</sup> The TSRC is elected by vote of the student body. Section 13 of the Tygerberg Constitution enshrines political rights in the student context, which includes the right to vote and stand for election. These rights are subject to certain limitations. Students may be ineligible to run for the TSRC due to unsatisfactory academic performance or being found guilty of misconduct in certain instances, for example.<sup>2</sup> Students may further be disqualified from standing in the election if they fail to garner the signatures of at least ten other students supporting their candidacy.<sup>3</sup> Therefore, the voting period is preceded by a nominations period such that students who are nominated are vetted by the TEC and other relevant bodies before they are afforded candidacy in the election. For this purpose, the TEC, as mandated by the Tygerberg Constitution, requires that prospective candidates complete a nomination form furnishing certain particulars.<sup>4</sup>

[3] The nomination period for the 2024/25 TSRC elections was set for 10 – 23 June 2024, subject to possible extension in the event that there were too few nominations.<sup>5</sup> The dispute arose on 12 June 2024 when the Tygerberg Election Convenor notified various student structures of a new requirement for the nomination form. The TEC informed leaders of these structures that the Division of Student Affairs was in the process of finalising a new Code of Ethics to guide student leadership structures. In particular, the Code of Ethics addressed concerns regarding conflicts of interest, particularly regarding students holding multiple offices simultaneously.

[4] In order to complete the nomination form, nominees would need to complete a new Conflict of Interest Disclosure Form (“Disclosure Form”). This new rule was

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<sup>1</sup> S110 & 119 of the Tygerberg Student Constitution of 2021 (“Tygerberg Constitution”).

<sup>2</sup> Items 6, 7 & 8 of Schedule 2 of the Tygerberg Constitution.

<sup>3</sup> Item 4(4) of Schedule 2.

<sup>4</sup> Item 3 of Schedule 2.

<sup>5</sup> Item 1(3) of Schedule 2.

couched in the justification of promoting transparency and ethical conduct during elections, in alignment with the TEC's mandate. A portion of the Disclosure Form read:

"As such holding multiple student leadership positions simultaneously presents with ethical concerns, including conflicts of interest and challenges in maintaining accountability. *For instance, a student serving on the executive structure of the TSRC or TAAC, House Committee, etc., while holding a position in the Student Parliament or Student Court demonstrates a clear overlap.* In line with the pending Code of Ethics, student leaders will not be permitted to serve simultaneously in these positions moving forward. The Student Electoral Commission kindly request that candidates complete the following information to disclose any potential conflicts of interest regarding their candidacy for the Tygerberg Students' Representative Council (TSRC) or any other student leadership positions for the term 2024/2025."

[5] The TEC emphasised, in multiple communications, that the new rule would not bar student leaders who hold another leadership position from standing for any particular office and that the Code of Ethics was still pending and not yet in force.

[6] The first issue arises in that by including the Disclosure Form as a requirement for nomination for the TSRC, the Applicant avers that the TEC deprives students who serve in student leadership positions of their right to stand for election as they are entitled to by virtue of section 13(3) of the Tygerberg Constitution's Bill of Student's Rights. The rule is, therefore, functionally an amendment to the Tygerberg Constitution. Thus, the Applicant seeks to have the decision to include the Disclosure Form as part of the nomination requirements set aside on the basis that the TEC had no power to make such amendment. Additionally, the Applicant seeks that the Court extend the deadline for the nomination period to 30 June 2024.

[7] The Respondents deny that the requirement functionally amends Schedule 2 of the Tygerberg Constitution. Rather, they aver that the rule was promulgated in terms of their powers in terms of section 111(3) of the Tygerberg Constitution. They reject that it adversely impacts any constitutional either the right of students to participate in free, fair or credible elections or the right to stand for student leadership elections. Rather, they argue, it is there to regulate the ethical conduct of candidates in the electoral process. Section 105(5) of the Tygerberg Constitution holds that the TEC has the duty to ensure that the elections are free, fair, and trustworthy. The Respondents hold that this measure is a means of ensuring the integrity and impartiality of the

candidates pursuant to their section 105(5) duties. The Respondents therefore seek that this Court dismiss the application. Beyond this, they also seek that this Court issue a declarator reaffirming their independence in line with the doctrine of separation of powers.

[8] In this judgment, the Court must pronounce on 1) whether the TEC has the power to vary the requirements in the nomination form; 2) whether the power exercised in deciding to include of the Disclosure Form as a requirement for the nomination process was rationally connected to a legitimate purpose; 3) whether the decision infringes the right of students to stand for election to the TSRC.

#### *Locus standi*

[9] Neither party disputed *locus standi*. Both section 86 of the Student Constitution of 2021 (“Student Constitution”) and section 80(1) of the Tygerberg Constitution afford standing to students and student structures. The Applicant approached this Court in his capacity as Speaker of the Tygerberg Students Assembly and is afforded standing on the basis of being a registered student.

[10] The Respondents are the Tygerberg Electoral Commission (“TEC”) and Electoral Commission (“EC”). The TEC is a student body constituted in terms of section 3(5) as read with sections 1(13) and 1(15) of the Tygerberg Constitution. The Electoral Commission is a student body constituted in terms of section 3(12) of the Student Constitution. Both Respondents have standing before this Court.

#### *Jurisdiction*

[11] Section 120(2) of the Tygerberg Constitution holds that any complaint which relates to any student leadership election under the authority of the TEC must be lodged with the TEC. Any unresolved complaint must be lodged with the Student Court.<sup>7</sup> The Applicant approached the TEC on 14 June 2024. The Convenor of the TEC responded that same day to the Applicant. Unsatisfied with the justification proffered, the Applicant approached this Court on 18 June 2024 to set aside the decision to require nominees to complete the Disclosure Form. This falls within the jurisdiction of the Court in terms of sections 120(3) and 120(4)(i) of the Tygerberg Constitution. It also falls within the broader jurisdiction of the Student Court

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<sup>7</sup> S120(3) of the Tygerberg Constitution.

enumerated in section 84 of the Student Constitution and section 78 of the Tygerberg Constitution.

### *Urgency*

[12] Section 120(4)(a) holds that the Student Court must handle any complaint lodged in terms of section 120(3) with “the necessary speed if harm will otherwise result.” The Court considered what such resultant “harm” may be in *Sityata v Electoral Commission (Urgent interdict)*.<sup>8</sup> This matter concerned a dispute where a candidate was disqualified from running for the Student Representative Council. Beukes CJ held:

“The finding of this Court in the current matter has the potential to impact the ultimate composition of the SRC. The resultant harm from not regarding the matter as urgent is therefore clear as the Applicant could feasibly not become a member of the SRC should it not be treated as such.”

[13] The Applicant asserts that since the Conflict of Interest Disclosure Form is a requirement for a complete nomination, students who fail to complete the form are ineligible to stand for election to the TSRC. If this is so, it would necessarily impact the ultimate composition of the TSRC, and which would therefore result in harm to students by way of disqualification. Whether this is the case can only be decided after hearing the matter on its merits. Were the matter confined to the ordinary Rules of Procedure of the Student Court 2024 (“Student Court Rules”), this Court would have been unable to grant relief before the harm is occasioned. Section 3(4) of the Student Court Rules holds that the Student Court may depart from the ordinary rules in two instances. First, it may do so where any party shows just cause in terms of rule 8. Second, the Court maintains a broader discretion to depart from its own rules if it is in the interests of justice to do so. In the present matter, the Court is of the opinion that it is in the interests of justice to depart from the ordinary rules of procedure for it to deal with the complaint expeditiously to avoid foreseeable harm which may otherwise result.

[14] The Court will thus dispense with the following rules 9(1), 9(2) and 10 of the Student Court Rules. Although this Court is currently in its recess period, Rule 5(4) of the Student Court Rules allows this Court to sit at any time or place other than the time

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<sup>8</sup> 03/09/23.

prescribed in terms of the Student Court Rules, if it is convenient for the majority of the members of the Court.

### *Duties of the TEC*

[15] This matter hinges on a disagreement and misunderstanding of the roles and powers of the TEC. Thus, it is appropriate to set out what duties the Tygerberg Constitution ascribes to the TEC. First, the TEC must ensure elections are free, fair and trustworthy.<sup>10</sup> They must “ensure that every student who votes does so only once in a particular election, and that each student who makes a reasonable effort will be able to cast a vote if practically feasible.”<sup>11</sup> Second, it has the duty to manage the TSRC election.<sup>12</sup> This includes certain ancillary responsibilities. The TEC must inform students of certain aspects of the election including *inter alia* the nomination period, voting days, and the names and manifestoes of candidates.<sup>13</sup> Election results must be counted by the TEC and Tygerberg electoral commissioners and announced to the student body.<sup>14</sup> Third, it has the duty to investigate complaints regarding individual candidate’s campaigns or relating to any student leadership election.<sup>15</sup> Fourth, it must monitor, and audit certain other elections as prescribed in section 119 of the Tygerberg Constitution.<sup>16</sup> There are other duties mentioned in the Tygerberg Constitution which are not relevant in the present matter.

### *Powers of the TEC*

[16] Section 111(1) of the Tygerberg Constitution holds that the TEC has all the duties and powers that the Tygerberg Constitution ascribes to it. In terms of the principle of legality, any power exercised beyond that conferred by the Tygerberg Constitution or any empowering document is *ultra vires*. The TEC is an independent body, not subject to any student organisation or University management and must discharge its duties impartially and without prejudice.<sup>17</sup> Although its commissioners are appointed by the Executive Committee of the outgoing TSRC, it is not subject to

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<sup>10</sup> S105(5) of the Tygerberg Constitution.

<sup>11</sup> S111(2).

<sup>12</sup> S110 & 119.

<sup>13</sup> Item 10(1) of Schedule 2.

<sup>14</sup> Items 13(1) & (4) of Schedule 2.

<sup>15</sup> S119, 120(1) & 120(2) of the Tygerberg Constitution.

<sup>16</sup> S110, 118 & 119.

<sup>17</sup> S115 of the Tygerberg Constitution.

the TSRC nor the Executive Committee.<sup>18</sup>

[17] The Code of Conduct of the Student Electoral Commission of 2022 (“Electoral Code”) holds that the EC has the power to promulgate binding regulations in addition to the Student Electoral Act.<sup>19</sup> However, in respect of student leadership elections on the Tygerberg Campus, such power is delegated to the TEC subject to ratification by the Rules Committee.<sup>20</sup> Section 20(1)(b) of the Electoral Code also empowers the EC to “take legislative and other measures to ensure that all bodies that fall within its jurisdiction conduct student leadership elections in a free, fair, credible, and orderly manner.” The Electoral Code empowers the EC to delegate such power to the TEC.<sup>21</sup>

[18] The TEC may lay down rules in addition to those found in Schedule 1 of the Tygerberg Constitution (“Electoral Act”) to ensure proper conduct during elections. Section 3(1)(a) of the Electoral Act holds that all persons bound by the Act must comply with any instructions from the TEC and implement any just decisions by the TEC.

*Does the TEC have the power to determine the contents of nomination forms?*

[19] Part S2 of Schedule 2 sets out the format and marketing of the election. Item 10 of Schedule 2, which deals with information the TEC must make available to students regarding elections, deserves particular attention. Item 10(1)(f) holds that the TEC must inform students of “the document containing the rules and procedures determined by the Tygerberg electoral commissioner(s) regarding nomination forms and campaigning.” Implicit to the direction in Item 10(1)(f) is the assumption that the TEC is empowered to determine rules and procedures regarding nomination forms.

[20] Item 3 of Schedule 2 reads as follows:

“The prescribed nomination forms must be available at the TSRC Office as well as electronically for the duration of the nomination period. The TEC must prescribe nomination forms that contain at least the following information:

(1) the criteria according to which academic selection is done and the right to appeal against the outcome of the academic selection process, as well as the place where

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<sup>18</sup> S35(1)(f) & 105(6).

<sup>19</sup> S8(3) of the Code of Conduct of the Student Electoral Commission of 2022 (“Electoral Code”).

<sup>20</sup> S9(4)(c).

<sup>21</sup> S20(2).

such appeals may be lodged;

(2) the rules on the placement and distribution of campaign material, and other restrictions in this regard, and

(3) the time and place of the first meeting of the candidates.” (Emphasis added.)

[21] Therefore, though it is not expressly stated, it is implicit to certain provisions of the Tygerberg Constitution that the TEC has the power and discretion to determine the contents of the nomination form.

### *The right to stand for office*

[22] The point of departure is that the right to stand for election to the TSRC is enshrined in section 13(3) of the Tygerberg Constitution’s Bill of Students’ Rights.<sup>22</sup> This is not an absolute right and is subject to limitations set out in Chapter 11 and other “relevant eligibility requirements.” It is also worth noting that the right to stand for election is not the same as the right to hold office and that the Tygerberg Constitution contains no express right to hold office *per se*. By way of example, it could hardly be argued that the removal of a student leader from office by way of impeachment constitutes a limitation on their section 13 rights.

[23] Section 105(8) of the Tygerberg Constitution holds that Schedule 2 sets out who qualifies to run for the TSRC. Schedule 2 contains procedural requirements for the nomination process and substantive requirements for eligibility to stand for election. Item 4 of Schedule 2 contains the grounds on which the TEC is bound to reject nominations on a *procedural* basis. Nomination forms lacking *inter alia* candidates’ names, the signatures of at least ten students supporting their nomination and other requirements are subject to rejection.

[24] Additionally, Items 6, 7 and 8 of Schedule 2 set out the *substantive* requirements for nominees. Nominees are subject to disqualification on grounds including insufficient academic performance, infractions with the law, or certain prior disciplinary action.

[25] The rule in question is the requirement that students complete a Disclosure Form as part of the nomination form in order to stand as candidates for the TSRC. The

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<sup>22</sup> This is repeated in section 13(4) by what appears to be an oversight.



Applicant avers that the rule acts as a substantive limitation on the right to stand for TSRC. As noted above, this right is enshrined in the Tygerberg Constitution, but is not absolute and may be limited subject to “relevant eligibility requirements”. Therefore, the Applicant contends that the requirement amounts to an amendment of the Tygerberg Constitution. Such “amendment” did not follow the procedure stipulated in Chapter 13 of the Tygerberg Constitution, and the Applicant therefore avers that the decision is *ultra vires* and must be set aside sections in terms of 120(4)(d)(i) and 79(3).

[26] On the contrary, the Respondents hold that the rule has no substantive bearing on the eligibility of a student to stand for election. Rather, it is a procedural requirement that the candidate complete the nomination form. The completion of the Disclosure Form affects the validity of a nomination form. It does not affect the eligibility of the candidate nor their right to stand for office. It is common cause that the contents of the Disclosure Form will include information that may affect the eligibility of a student leader to hold a particular office after the Code of Ethics comes into force. It is notable that this Code of Ethics has not yet come into force. The contents of the Code of Ethics may serve as a bar to the competence of a student leader to occupy a particular position by virtue of his or her position in some other office. However, the TEC has no power to promulgate this Code of Ethics, nor indeed did it ever claim to.

[27] The Code of Ethics ultimately emanates from the Division of Student Affairs, not the TEC. The requirement of completing a Disclosure Form is itself no bar on the eligibility of a student to stand for election. Rather, it is a pre-emptive step in anticipation of the forthcoming Code of Ethics.

[28] This is further illustrated in the Disclosure Form itself, which states the following:

“I affirm that upon the approval of the code of ethics, the Division for Student Affairs may request me to select a single student leadership position to hold, and I will promptly resign from any other positions I may hold. I will notify the Division of Student Affairs immediately when I am offered a paid position such as a student assistantship or any other position where I receive money in exchange for services rendered. I accept that in the case of such a position I will only accept it if the Division of Student Affairs is of the opinion that it will not be a conflict of interest or will have an influence on the time available to devote to my TSRC leadership duties.”<sup>23</sup>

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<sup>23</sup> TSRC Nomination Form 2024, p 11.

[29] This point cannot be overemphasised. The decision which the Applicant seeks to have set aside is the decision of the TEC to include the Disclosure Form as a requirement in the nomination process. The requirement that a prospective nominee complete the Disclosure Form does not bar sitting student leaders in any position or structure from standing for election. It also does not bar students from *running* in multiple offices. It merely requires students to acknowledge the pending Code of Ethics and its authority when it is officially approved. It serves as a safeguard against student leaders averring that they were unaware that they are not allowed to hold more than one student leadership position.

[30] Both the communication through which the TEC Convenor informed student leaders of this new requirement and the Disclosure Form itself provide context for the requirement. The context is that there is a Code of Ethics which is in the process of being finalised by the Division of Student Affairs. This Code of Ethics will preclude student leaders from occupying multiple leadership positions. This Code of Ethics is not yet in force. However, the information provided in the Disclosure Form will be used to establish which offices student leaders occupy in the event that they occupy multiple positions. The minutia of the implementation of the Code of Ethics is unclear. It appears that where student leaders occupy multiple posts which are in conflict, they will have the option of relinquishing the post of their choice. Regardless, it is unnecessary for the Court to comment on the validity of the rules or implementation of the Code of Ethics because that is not in question in the matter at hand.

[31] From the Applicant's founding affidavit, it appears that this confusion may have arisen from the Convenor's initial communication on 12 June 2024 which stated that "student leaders will not be permitted to serve simultaneously in these positions [TSRC, House Committee (HC), etc while holding] moving forward." It seems some were under the impression that the TEC had created this rule. However, in subsequent communication from the Convenor, the position appeared unambiguous. It was clear that the Code of Ethics was not yet in force and that it was pending finalisation by Division of Student Affairs. The communication dated 17 June 2024 clarified:

"A clear distinction must be made between eligibility to run for an election and eligibility to hold office after an election. The additional rule set in place to disclose any conflict of

interest does not impact any student's ability to avail themselves for any of the elections currently taking place on the Tygerberg campus.”

### *Rationality*

[32] It has been established that the decision taken by the TEC does not amount to an amendment of the Tygerberg Constitution. It has further been established that the TEC has the power to determine the contents of the nomination form. In terms of the principle of legality, this power must be exercised rationally. That is, the exercise of the power must serve a legitimate purpose. If the power is exercised bereft of any legitimate purpose, the exercise of such power is arbitrary and *ultra vires*. Therefore, the questions arise, first, as to what purpose the inclusion of the Disclosure Form serves, and second, whether such purpose is legitimately pursued by the TEC.

[33] The second leg of the Applicant's contention is that section 111(3) of the Tygerberg Constitution only authorises the TEC to lay down rules to ensure proper *conduct* during elections. Per the Applicant, the variation of the nomination form does not pertain to conduct in the ordinary sense of the word. That is, it does not regulate behaviour. The Applicant avers that this requirement is not procedural in nature, but rather substantive.

[34] The Respondents argue that the rule is a measure aimed in pursuit of ethical conduct. Disclosing conflicts of interests, so the Respondents argue, promotes transparency in the electoral process. It is an ethical standard that nominees disclose potential conflicts of interest, and thus the rule regulates conduct. This justification was manifestly clear in the Convenor's communication on 17 June 2024. A portion of the communication read:

“We recognise the importance of transparency regarding any potential conflict of interest that may arise. Each conflict of interest case will be carefully considered on its own merits. Should you be a candidate who finds themselves in a position where additional roles may potentially conflict with your duties or responsibilities, we encourage you to declare such potential conflicts transparently.

#### **Promoting Ethical Conduct**

It is imperative that candidates adhere to the election guidelines pertaining to the relevant structures they are availing themselves for. These guidelines have been designed to ensure a free, fair and credible election for all candidates. We encourage respectful

campaigning, constructive dialogue, and the avoidance of misinformation to create a positive environment for our student community elections.

Your active participation and commitment to ethical principles are essential in creating a community where integrity, fairness, and accountability remains important.

Thank you for your dedication to these principles and commitment to ethical governance.”  
(Emphasis added.)

[35] Although it can be argued that the rule affects the eligibility of a student to stand for election, this effect is procedural and not substantive in nature. At the present juncture, it is clear that a prospective nominee cannot be disqualified due to the information provided in the Disclosure Form. A prospective nominee may, however, be disqualified should they fail to complete the Disclosure Form on the basis of having an incomplete application.

[36] The Respondents base the validity of the rule on the basis of their authority to promulgate rules regulating conduct. The Applicant attacks this justification on two grounds. First the Applicant holds that the requirement of completing the Disclosure Form is irrelevant for the nominations process. He further asserts that the rule’s ultimate purpose has nothing to do with regulating ethical conduct.

[37] The Court is not persuaded that the rule is irrelevant. Indeed section 4(6) of the Electoral Act already places a peremptory duty on the TEC to reject nomination forms which do not contain “a list of the candidate’s relevant experience”. Surely, on the ordinary reading of the section, “relevant experience” would include *inter alia* the leadership positions held by the student. Granted, it does not strain the meaning of section 4(6) to presume that the purpose of the provision pertains to the suitability of the candidate for the position. Although the Disclosure Form has the purported aim of promoting transparency, and secondarily will assume a practical function in the event that the pending Code of Ethics comes into force, it too deals with furnishing information for the purpose of ascertaining the suitability of the nominee. What is important is that suitability should not be confused with eligibility. The contents of the Disclosure Form have no bearing on the eligibility of the student to stand for election. For the above reasons, it cannot be said that the rule is irrelevant.

[38] As to the second ground of attack, the Court is further not persuaded that the rule had nothing to do with regulating ethical conduct. The Applicant, in support of this

line of argument, holds that the mere presence of a conflict of interest is not *ipso facto* unethical conduct. This is true. However, this argument has no bearing on the validity of the rule as a means to regulate conduct. It is remembered that prospective nominees cannot be disqualified for merely listing potential conflicts of interest. Therefore, there is no presumption that the mere presence of such potential conflicts is unethical. Rather, it is the non-completion of the form that renders the nomination incomplete. The ethical conduct which the TEC seeks to regulate is not the existence of conflicts of interest but the refusal to disclose such conflicts of interest. Such refusal is seen by the TEC to be contrary to transparency, and thus undermining the freeness and fairness of the election process.

[39] It is clear that the purported purpose of the Disclosure Form, as held by the TEC, is the promotion of transparency and ethical conduct. The standard of rationality does not consider whether the measure in question is the best means of achieving its purported end nor whether less restrictive measures could have been employed. The Court is of the opinion that the rule is not only rational, but reasonable. It is reasonably capable of achieving its purported aim. The disclosure of conflicts of interests poses minimal (if any) prejudice to prospective nominees. Indeed, the notion that it constituted harm through prejudicing the privacy or on some other basis was never pleaded by the Applicant.

[40] The final question is whether the pursuit of transparency is a legitimate goal of the TEC. The Electoral Code expands on the duties, powers and functioning of the EC and TEC. Section 4(1) places transparency as the first-listed founding value of the EC. Section 20(1) of the Electoral Code reads:

“The Electoral Commission has the power to –

- (a) Promulgate binding election regulations in addition to the Student Electoral Act.
- (b) Take legislative and other measures to ensure that all bodies that fall within its jurisdiction conduct student leadership elections in a free, fair, credible, and orderly manner.”

As noted above, these powers may be delegated to the TEC in terms of sections 9(4) and 20(1) of the Electoral Code.

[41] It is indisputable that the TEC has the power to promulgate rules in addition to

the Electoral Act which promote free, fair and trustworthy elections.<sup>24</sup> The right to free and fair elections in the Tygerberg Constitution is analogous to section 19(2) of the Constitution of the Republic of South Africa, 1996.<sup>25</sup> Likewise, the right to vote in section 13(1) of the Tygerberg Constitution finds its analogue in section 19(1) of the Constitution. In *My Vote Counts NPC v Minister of Justice and Correctional Services* (“*My Vote Counts*”), the Constitutional Court held that transparency is inextricably linked to the rights to vote and to free and fair elections.<sup>26</sup> Mogoeng CJ writes: “transparency and accountability occupy centre stage before, during and after the elections.”<sup>27</sup> In *My Vote Counts* the Constitutional Court set the precedent that when elected officials seek public office they do so in the public interest, they may be required to disclose otherwise private information where it is in the public interest. There is no reason why this principle ought not to apply to elected representatives in the student context. Unlike in *My Vote Counts*, there is no challenge regarding this private information being made accessible to the public in the present matter. There is thus substantially less prejudice to prospective nominees than in that case.

[42] The promotion of transparency in the broader context of regulating ethical conduct during elections is a legitimate goal of the TEC. The rule is procedural and not substantive in nature, and in no way limits the right to stand for office. In fact, it could conversely be argued, as was the case in *My Vote Counts*, that it strengthens the right to free and fair elections.

#### *The validity of the Code of Ethics*

[43] It is plain that the conflict of interest requirements place substantive limitations on the eligibility of student leaders to occupy different offices. The Court must decline to comment on the validity of these limitations for four reasons.

[44] First, the Applicant challenged the requirement of the inclusion of the Disclosure Form by the TEC as an overreach of its power. The Applicant did not challenge the authority of the Division of Student Affairs, from whom the Code of Ethics emanates.

[45] Second, the Division of Student Affairs was not cited as a respondent and was

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<sup>24</sup> S105(5) of the Tygerberg Constitution.

<sup>25</sup> S105(1) of the Tygerberg Constitution. S1(4) of the Electoral Act.

<sup>26</sup> 2018 5 SA 380 (CC).

<sup>27</sup> 2018 5 SA 380 (CC) para 32.

thus unable to provide any account for their part. To pronounce on the validity of their actions in their absence would be contrary to the laws of natural justice and the principle of *audi alteram partem* which this Court has consistently reaffirmed.<sup>28</sup> It is also unclear whether the Division of Student Affairs constitutes a student body as contemplated by section 86 of the Student Constitution and thus whether the Court would have jurisdiction in that regard.

[46] Third, the Code of Ethics is not yet in force, so the matter may not even be ripe for judicial consideration.<sup>29</sup> A matter is not ripe where it can be dealt with more conveniently later and there is no tangible benefit from an earlier ruling.

[47] Fourth, section 13(3) of the Tygerberg Constitution expressly provides that the right to stand for office may be limited subject to “relevant eligibility requirements.” Whether the Code of Ethics constitutes a relevant eligibility requirement as contemplated by section 13(3) is by no means clear, but this determination is not the subject of the present matter.

#### *Appropriate relief*

[48] The application that the decision taken by the TEC be set aside is accordingly dismissed. The Applicant also sought that the deadline for nominations be extended for an additional week.

[49] Although the TEC’s decision is upheld, the Court recognises that there may very well be students who misunderstood the nature of the Disclosure Form requirement. Due to some or another misapprehension it is foreseeable that otherwise interested students may have thought they are ineligible due to occupying another leadership position or perhaps may be under the impression that they may only apply for one leadership position. It is notable that the Respondents aver that they intended to extend the deadline regardless. The TEC, when devising their initial timelines, already catered for the possibility of the extension of the nomination period in terms of Item 1(3) of Schedule 2 of the Tygerberg Constitution. This Court therefore binds the TEC to extend the deadline for the nomination period to Sunday, 30 June 2024.

[50] The Respondents further sought a declarator reaffirming the TEC’s

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<sup>28</sup> *Du Toit v Links (Final Order)* 2016 (Student Court) paras 32-33.

<sup>29</sup> *Ferreira v Levin NO; Vryenhoek v Powell NO* 1996 1 SA 984 (CC) para 199.

independence in line with the doctrine of separation of powers. Section 115 of the Tygerberg Constitution holds that the TEC is independent and must perform its duties impartially and without prejudice. That being said, the TEC must also cooperate with student bodies where it is reasonable to do so. This is in the spirit of cooperative governance. The TEC is therefore advised to take appropriate measures to clarify the nature, status, and effect of the Disclosure Form requirement to the student body.

*Order*

The Court therefore makes the following order:

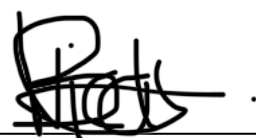
- [1] The matter is urgent
- [2] The Applicant and Respondents have *locus standi*.
- [3] The Court has jurisdiction.
- [4] The application to set aside the decision of the Respondents to include a Disclosure Form as a requirement for nomination for the TSRC election is dismissed.
- [5] The deadline for the nomination period is hereby extended to 30 June 2024.
- [6] The TEC is advised to take appropriate measures to remedy any confusion in the Tygerberg student body regarding the nature, status and effect of the Disclosure Form.

BESTER J



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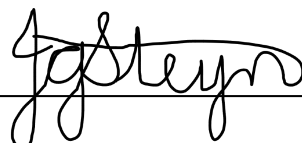
BRYANT CJ



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STEYN DCJ



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MUDZINGIRANWA J



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SWANEPOEL J



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