



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

LEGAL SERVICES

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MEMORANDUM

[Confidential]

TO: Mr S E Kholwane, MP
Chairperson of the PC on Communications

COPY: Secretary to Parliament

FROM: Constitutional and Legal Services Office
[Dr B E Loots – Parliamentary Legal Adviser]

DATE: 22 April 2013

REF: 126/2013

SUBJECT: OPINION ON ACTION TO BE TAKEN BY THE MINISTER OF COMMUNICATIONS AGAINST THE DIRECTOR-GENERAL (MISLEADING PARLIAMENT)



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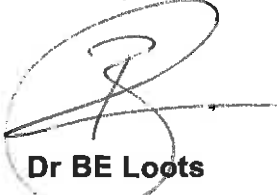
INTRODUCTION

1. Our Office was requested to advise on the appropriate action to be taken by the Minister of Communications ('the Minister'), following a letter to the Minister from the Portfolio Committee on Communications ('the Committee') regarding the alleged misleading statements made to Parliament by the Director-General of the Department of Communications. A copy of the letter is attached for ease of reference.

LEGAL ADVICE

2. In terms of the attached letter, the Committee requested that "the Minister takes appropriate action and reverts to this Committee on the matter".
3. The alleged misrepresentation spoke to the non-signature of a performance assessment agreement. The signing and implementation of such agreements is a management function which the Minister oversees.
4. The non-signature and alleged misrepresentation of related events by an official (in this context the Director-General) would require an internal investigation to determine whether disciplinary action amounts to "appropriate action".

5. The form of the disciplinary action takes (if found necessary) then stands to be determined by the context of the case, which can only be decided upon by the Minister following an initial investigation.
6. As the Committee has oversight over the Department of Communications, it has the authority to call upon the Minister to report to the Committee on the form of the “appropriate action” instituted to resolve the matter in question.



Dr BE Loots
Parliamentary Legal Adviser



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COMMITTEES

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Portfolio Committee on Communications
Chairperson: Mr SE Kholwane, MP

Committee Secretary:
Mr Thembinkosi Ngoma
Tel: 021 403 3733
Cell: 083 709 8407
Email: tngoma@parliament.gov.za

7 November 2012

Ms D Pule
Minister of Communications
manthekeleng@doc.gov.za

Dear Minister Pule

RE: MISLEADING STATEMENTS MADE TO PARLIAMENT BY THE DIRECTOR-GENERAL OF THE DEPARTMENT OF COMMUNICATIONS, MS ROSEY SEKESE.

I refer to the above matter.

The Portfolio Committee on Communications (the Committee) received presentation from the Director-General, Ms Rosey Sekese, as well as inputs from the Deputy Minister, Mrs Stella Ndabeni-Abrahams on 16 October 2012. On analysis of what was presented to the Committee, it observed inconsistencies, especially related to the signing of a performance agreement for the financial year 2012/13 by the Director-General.

She was requested to address the Committee on these inconsistencies, which was done on 6 November 2012. She explained that she signed a document, and subsequently received a signed counteroffer from the Minister. She was apparently advised by senior counsel that these two separately signed documents constituted a contract. The Parliamentary Constitutional and Legal Office addressed the Committee to clarify when a contract comes into existence, and it is clear that no contract can come into existence without parties to the contract reaching a meeting of minds.

It was further clear from the minutes written by the Director-General to the Minister's office during July 2012 that the Director-General also understood the counter-offer not to constitute finalisation of the matter as she requested a meeting with the Minister's office to finalise the performance agreement. The Committee accordingly did not accept the explanation of the Director-General.

The Committee regards these inconsistencies very seriously. Inconsistent or misleading information undermines the trust relationship between the Committee and the officials of the relevant Department over which it has oversight. The wilful furnishing of false or misleading information or statements to the Committee furthermore constitutes an offence in terms of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No. 4 of 2004).

Accordingly the Committee requests that the Minister takes appropriate action and reverts to this Committee on the matter.

For further information please contact Thembinkosi Ngoma on the above contact details.

Yours sincerely

Sent electronically without a signature

Mr SE Kholwane, MP
Chairperson: Portfolio Committee on Communications

