



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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MEMORANDUM
[Confidential]

TO: Mr. E Kholwane, MP
Chairperson, Portfolio Committee on Communications

COPY: Acting Secretary to Parliament [Mr M B Coetzee]

FROM: Constitutional and Legal Services Office
[Adv C R van der Merwe –Parliamentary Legal Adviser]

DATE: 23 October 2012

SUBJECT: Steps available to a Portfolio Committee where a witness presents misleading evidence

REF: 269/2012



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Chairperson, Portfolio Committee on Communications

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SUBJECT: Steps available to a Portfolio Committee where a witness presents misleading evidence

INTRODUCTION

1. Our Office was requested to advise the Portfolio Committee on Communications (“Committee”) on the steps available to the Committee where the Committee finds that a witness has presented false evidence.

BACKGROUND

2. During two Committee meetings (10 and 16 October 2012) the Director-General of the Department of Communications indicated to the Committee that she has signed a performance agreement for the year 2012/2013. The Deputy Minister of Communications however disputes this and as a result the Committee is of the opinion that the Director-General may have presented false evidence to the Committee.

ANALYSES

3. It is advisable that the Director-General of Communications be given an opportunity to answer to the accusation of the Deputy Minister.
4. The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No. 4 of 2004) ("Powers and Privileges Act") provides in section 17(2)(e) that a person who:

 "... wilfully furnishes a House or committee with information, or makes a statement before it, which is false or misleading commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment."
5. Section 17(2)(e) is applicable whether such person has formally sworn to tell the truth, or not.
6. Furthermore, section 7(a) of the Powers and Privileges Act, read with section 27(1) of the same Act, makes it a criminal offence for a person to "impede the exercise or performance by Parliament or a House or committee of its authority or functions". Such an act is punishable with a fine and / or imprisonment for a period not exceeding three years.

LEGAL ADVICE

7. The Committee may request the Director-General to explain the discrepancy in the evidence before them and may also request a copy of the performance agreement in question. To ensure that the Director-General does not take the enquiry made by the Committee lightly, the Committee may remind the Director-General that making a false statement or impeding the oversight function of the Committee constitutes a serious offence.
8. Should the Director-General not be able to explain the discrepancy, it is recommended that the Committee brings this to the attention of the Minister and that the Committee enquires from the Minister what the Minister intends to do, especially in light of the fact that the actions of the Director-General may constitute an offence in terms of the Powers and Privileges Act.

9. The Committee may also report to the National Assembly on the conflicting evidence received as well as the subsequent responses of the Director-General and / or Minister.


Adv G R van der Merwe

Parliamentary Legal Adviser

Charmaine van der Merwe - Re: Legal Opinion: Misleading Parliament

From: Charmaine van der Merwe
To: Thembinkosi Ngoma
Date: 17 October 2012 02:19 PM
Subject: Re: Legal Opinion: Misleading Parliament

Dear Thembi,

Herewith an informal opinion seeing as you have indicated that the committee wants to include this in the BRRR, which ends this Friday. I can only finalise a formal opinion during the course of next week.

I would recommend that the Committee first obtain the facts in this matter. What the Committee currently have is a matter of "he said, she said". The matter is not yet ripe for a decision to be made. However, this instance is a matter that could be very easily ascertained. A performance agreement is a written document. The DG could simply be requested to submit a copy of the signed agreement to the Committee. The Committee can decide whether it wants to explain why it is requesting the opinion, or it can simply request the performance agreement.

If the Committee wants to explain why it is requesting the opinion, the Committee might wish to also remind the DG of the seriousness of making a false statement to Parliament. Any false statement hampers Parliament in the execution of its oversight function and thus interferes with the business of Parliament. This constitutes an offence in terms of section 7(a) read with section 27(1) of the Powers, privileges and immunities of Parliament and Provincial Legislatures Act, 2004.

Regards

Adv Charmaine van der Merwe
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>>> Thembinkosi Ngoma 16 October 2012 >>>
 Dear Dr Loots

During the meeting of Wednesday 10 October 2012, the Director-General of the Department of Communications, Ms Rosey Sekese informed the Committee that she did not have the performance contract for the 2011/12 financial year but does have the performance contract for 2012/13. In today's meeting she reiterated that she never signed a performance contract for the 2011/12 financial year but has a contract for the current financial year, 2012/13.

However, this was disputed by the Deputy Minister of Communications, Ms Stella Ndabeni-Abrahams who informed the Committee that the DG has misled the House as she has not signed a performance contract for 2012/13. She informed the Committee that the Minister had signed a performance contract and handed it over to the DG to sign and return but until today, that has not been done.

This then means that the DG has lied before (misled) Parliament about her existing performance contract for 2012/13 and wants to know what the National Assembly Rules are saying about someone that misleads Parliament.

The Chairperson has requested that you prioritise this matter as the Committee needs to make a recommendation on the

Budget Review and Recommendations Report (BBRR) on the subject.

He further requested that you must try and get the legal opinion on ICASA Council enquiry as soon as possible as Monday is too far.

Kindest Regards

Thembinkosi Terence Ngoma

Parliament of South Africa

Committee Secretary

Portfolio Committee on Communications

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"I am an African, not because I was born in Africa but because Africa is born in me"

Charmaine van der Merwe - Legal Opinion: Misleading Parliament

From: Thembinkosi Ngoma
To: Loots, Barbara
Date: 16 October 2012 12:39 PM
Subject: Legal Opinion: Misleading Parliament
CC: van der Merwe, Charmaine

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