

SOUTH AFRICA / JUDGMENT

SANTS Private Higher Education Institution v The Chairperson of the Higher Education Quality Committee of the Council on Higher Education (51588/2015) [2015] ZAGPPHC 791 (20 October 2015) [2015] ZAGPPHC 791

COURT
North Gauteng High Court, Pretoria

BEFORE
D S Fourie

CASE / FILE NUMBER
51588/2015

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IN
THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)
Case
No: 51588/2015
NOT
REPORTABLE
NOT
OF INTEREST TO OTHER JUDGES
REVISED
In

the application of: SANTS
PRIVATE HIGHER EDUCATION INSTITUTION (PTY)
LTD Applicant
and
THE
CHAIRPERSON OF THE HIGHER EDUCATION QUALITY
COMMITTEE
OF THE COUNCIL ON HIGHER EDUCATION 1st
Respondent
THE
REGISTRAR: PRIVATE HIGHER EDUCATION
INSTITUTIONS 2nd
Respondent
THE

SOUTH AFRICAN QUALIFICATIONS AUTHORITY 3rd
Respondent
THE
COUNCIL ON HIGHER
EDUCATION 4th
Respondent
THE
MINISTER OF HIGHER EDUCATION AND TRAINING 5th
Respondent
THE
MEC OF THE DEPARTMENT OF EDUCATION
OF
KWAZULU-NATAL 6th
Respondent

JUDGMENT

D S FOURIE, J:

- [1] The Applicant (SANTS) applies on an urgent basis for an order reviewing and setting aside the decision of the Higher

Education Quality Committee (HEQC) of the Council on Higher Education (CHE) taken on 10 June 2015 to withdraw the accreditation

of two bachelor degree programmes offered by SANTS, being the B.Ed (Foundation Phase) and B.Ed (Intermediate Phase) programmes (the B.Ed Programmes). SANTS contends that the decision of the CHE to withdraw accreditation of the B.Ed Programmes was unlawful and accordingly it seeks an order reviewing and setting aside the decision. It relies on a number of grounds to impugn the decision.

- [2] The application is opposed by the HEQC (first respondent) and the CHE (fourth respondent). They deny that the withdrawal of accreditation was unlawful and have filed, in addition to the answering affidavit, expert evidence attacking the quality of the content of the SANTS' B.Ed Degrees. SANTS denies that these objections have any substantive basis and has likewise filed expert evidence to counter that of the HEQC and CHE. Having regard to this potential dispute of fact, SANTS has indicated in its replying affidavit that although it is contended that the decision in question was procedurally unfair and unlawful, it is nevertheless prepared to engage with the CHE in good faith in order to understand the exact nature of its concerns about the substance of the SANTS programmes. The papers are voluminous, but bearing in mind it is common cause the matter is urgent, I shall focus on what I regard to be the essence of the dispute.

STATUTORY FRAMEWORK:

- [3] The CHE is a statutory body established in terms of the Higher Education Act 101 of 1997 vested with responsibility for quality assurance in higher education in South Africa. Section 5 thereof sets out the functions of the CHE. These functions include, inter alia, that through the HEQC, a permanent committee of the CHE, the CHE must promote quality assurance in higher education, audit the quality

assurance mechanisms and accredit programmes of higher education.

- [4] Section 7(3) of the Act provides that the CHE must establish the HEQC as a permanent committee to perform the quality assurance and quality promotion functions of the CHE in terms of the Higher Education Act and the National Qualifications Framework Act, No 67 of 2008. The Higher Education Act therefore forms part of a body of legislative enactments designed to provide the structures and framework for education at different levels in South Africa.
- [5] The CHE is vested with the exclusive statutory mandate for quality assurance in higher education and for the accreditation of higher education programmes, which mandate the CHE discharges through its permanent committee, the HEQC. It is not in dispute that programme accreditation is a form of quality assurance. Key objectives of the HEQC in performing its accreditation mandate are protecting students against poor quality programmes and maintaining the credibility of higher education programmes and qualifications.
- [6] According to the answering affidavit the HEQC uses a system of peer and expert review in order to ensure credible and consistent

programme evaluations. In this regard subject specialists evaluate programmes in accordance with the accreditation criteria and prepare evaluation reports and recommendations which are then submitted to the accreditation committee. The accreditation committee (as a sub-committee of the HEQC) then considers the programme and evaluation reports and makes recommendations to the HEQC, which makes the ultimate decision on programme accreditation. In the case of adverse recommendations, the institution is granted an opportunity to make representations to the HEQC before a final decision is made by the HEQC.

FACTUAL

BACKGROUND:

- [7] SANTS is a private higher education institution. The HEQC had granted conditional accreditation of SANTS' B.Ed Programmes in August 2010. The accreditation was subject to seven pre-commencement conditions. Following a site visit in September 2011, a site visit evaluators report was issued in which the distinction between contact and distance modes of delivery was addressed. The conclusion reached was that SANTS' proposed model for delivery was in fact in the contact mode, rather than to support students in their self-study. The site visit panellists were Professor Nieuwenhuis and Dr Govender.

- [8] The HEQC subsequently accepted SANTS' claim that its intended mode of delivery was distance, but added a long-term condition to the accreditation of the programmes to the effect that learner support centres may only be used for tuition and as self-study centres, precluding comprehensive services from being offered there. By letter dated 13 September 2013 SANTS was informed by the CHE that the B.Ed Programmes had been accredited for the specific sites of delivery. SANTS then commenced offering the two B.Ed Programmes in January 2013. As part of the HEQC's assessment of SANTS' compliance with that long-term condition, Dr Govender, a specialist on distance modes of delivery of higher education programmes, was appointed to write a report with regard to this condition. His report was compiled based on a review of the documents identified in the report, including the progress report submitted by SANTS. He concluded that the long-term condition was being met.
- [9] In early 2014 the CHE received a bundle of complaints by SANTS' B.Ed students. These complaints raised issues relating to both the quality of SANTS programmes as well as the provision of services and resources at the institution's student service centres. A site visit panel was accordingly appointed, consisting of Professor Sieborger, Dr Govender, Ms Mtombeni and Professor Naidoo. Professor Sieborger decided that the investigation should focus on the quality of the provision of the B.Ed Programmes as a whole, rather than any of the specific complaints detailed. A site visit was then undertaken at the head office of SANTS in Pretoria and at two student service centres. It was conducted on 10 and 11 April 2014.
- [10] The site visit panel then produced a report dated 24 April 2014 (annexure "KN9"). The panel found, inter alia, that the programmes were being presented in the contact mode and that the student service centres (which were being used for this

purpose) were not approved as sites of delivery. It concluded there was a violation of the terms of the accreditation granted to SANTS for these programmes (in particular the long-term condition). In addition, there were found to be serious issues with the quality of the course materials, in particular the level and standards of the learning material. The site visit panel report, which represents the unanimous views of the panel members, therefore recommended that the accreditation of both B.Ed Programmes be withdrawn.

- [11] This recommendation was considered and upheld by the accreditation committee at its meeting of 2 and 3 July 2014. The accreditation

committee's recommendation, together with the site visit report, served before the HEQC at its meeting held on 8 October 2014. The HEQC then (provisionally) approved the accreditation committee's recommendation to withdraw SANTS' accreditation for the following

reasons:

- The programmes were being offered in the contact instead of the distance mode of delivery;

- The student service centres were used as sites of delivery and were not approved for this purpose;
- The quality of the programmes was found to be poor and did not meet the criteria and minimum standards for accreditation;
- The conditions of the student service centres were unsatisfactory, regardless of mode of delivery.

[12] SANTS was then afforded the opportunity of making representations. On 15 January 2015 SANTS submitted representations in response to the recommendation. These representations were comprehensive. The CHE then appointed Dr Govender to evaluate SANTS' representations. He produced his evaluation report which recommended that SANTS be put on notice of withdrawal of accreditation (as opposed to outright

withdrawal of accreditation) and that SANTS be given the opportunity to produce an improvement plan by 30 September 2015 addressing the mode of delivery; student training manual; assessment; library; provisions of PCs; and research. Dr Govender submitted his evaluators report on 6 March 2015.

[13] Professor Nieuwenhuis was then appointed to formulate a recommendation for consideration by the accreditation committee. In

performing this function Professor Nieuwenhuis considered, inter alia, the site visit panel report, SANTS' representations and Dr Govender's evaluators report. Professor Nieuwenhuis then prepared a "summary of the evaluators report" and the "Directorate Recommendation", both of which have been included in the accreditation committee agenda of 15 - 16 April 2015. His recommendation was that the decision to withdraw accreditation for the B.Ed Programmes be upheld. It was then decided by the accreditation committee to accept the recommendation of withdrawal.

[14] At its meeting of 10 June 2015 the HEQC considered and approved the recommendation of the accreditation committee to immediately withdraw the accreditation of SANTS B.Ed Programmes. This decision was communicated to SANTS by way of a letter dated 18 June

2015. It is with regard to this decision that an order for the reviewing and setting aside thereof is being applied for.

CASE FOR SANTS:

[15] SANTS contends that the decision of the HEQC (as a committee of the CHE) taken on 10 June 2015 to withdraw its accreditation was unlawful. It relies on various grounds of review, two of which are that the CHE committed a material error of fact which resulted in the choice of sanction being unreasonable and disproportionate. As far as the alleged material error of fact is concerned, it has been contended that the accreditation committee disregarded Dr Govender's recommendation that SANTS be put on notice and given the opportunity to remedy the defects in the B.Ed Programmes. It has been pointed out that the

summary of Dr Govender's report which was given to the committee members not only omitted his recommendation, but also erroneously indicated that he had recommended an outright withdrawal of accreditation. This was, according to SANTS, a material error of fact.

- [16] SANTS also contends that it was disproportionate and unreasonable for the CHE to withdraw SANTS' accreditation rather than placing it on notice of withdrawal and giving it an opportunity to remedy any defects in the programmes, as was recommended by Dr Govender. It was argued that this would have been a less restrictive option allowing SANTS to continue to provide higher education, without prejudicing either the CHE or SANTS students. On the other hand, if SANTS was unable to remedy the defects within the time available, so it was argued, then the CHE would have been entitled to confirm the withdrawal of accreditation in which event the CHE and SANTS students would be no worse off than they are now.

CASE FOR THE HEQC AND CHE:

- [17] It has been contended on behalf of the HEQC and the CHE that SANTS had, in terms of its own representations, the opportunity to participate meaningfully in the process and in any decision which would be made. It has been acknowledged in the answering affidavit

that if one takes into account only to the evaluation report of Dr Govender and the accreditation committee's agenda (April 2015), then "there appears to be merit in the contentions of SANTS to the effect that the

accreditation committee misunderstood or misconstrued the recommendation of Dr Govender". However, it was further pointed out that if one also takes into account what in fact occurred, and to what in fact was considered and clearly understood by the

accreditation committee, then it should be clear that there was no error of fact and the decision taken to withdraw accreditation was not disproportionate and unreasonable as suggested.

- [18] The reason for that, and what transpired, have been explained as follows: Having considered Dr Govender's report and other documents, Professor Nieuwenhuis disagreed with the recommendation of Dr Govender and concluded that accreditation of the B.Ed Programmes should be withdrawn. In formulating the "Directorate Recommendation" that the decision to withdraw accreditation be upheld, Professor Nieuwenhuis was referring to the earlier decision of the accreditation committee in July 2014 when it was recommended that accreditation be withdrawn.

- [19] Furthermore, according to the answering affidavit, the accreditation committee discussed the matter fully, including the fact that there had been divergent recommendations from the directorate (as formulated by Professor Nieuwenhuis) who had recommended immediate withdrawal of accreditation, as opposed to Dr Govender's recommendation that there should be notice of withdrawal. All members of the accreditation committee had sight of all documents and reports which were tabled or referred to, either in hard copy or electronic format.

[20] It has also been explained in the answering affidavit that what is recorded in the block "accreditation committee decision" (p 11 of the April 2015 agenda) does not accurately record the discussions of the accreditation committee to the extent that it

suggests that the accreditation committee accepted the recommendation of the "evaluator", and as such accepted the recommendation

of Dr Govender. According to the explanation given the aforesaid agenda document is not a static document in the sense that it was created in the form in which it appears in the record. It is in fact a document generated electronically in which different fields are populated at different times. The document that served before the accreditation committee did not contain the sections headed "Accreditation Committee Discussion", "Accreditation Committee Recommendation" or the "Reasons for Non- approval", as these sections were completed by a staff member of the CHE who attended the accreditation committee in the role of a scribe. Therefore, so it was argued, no material error of fact occurred, neither was the ultimate decision taken disproportionate or unlawful.

DISCUSSION:

[21] In *Pepcor Retirement Fund v Financial Services Board* 2003 (6) SA 38 (SCA) the issue on appeal related to certificates granted by the Registrar of Pension Funds in terms of section 14(1) of the Pension Funds Act 24 of 1956 and the transfer of R9,24m from the Pepcor Retirement Fund. Before granting the approvals for the transfer of business in terms of section 14(1) of the Act, the Registrar had been furnished, at his request, with information relating to the funding levels of the fund by the actuary of the fund. It subsequently appeared that the information had contained misstatements, and that the Registrar had accordingly been misled on facts material to his decision. A material mistake of fact, Cloete JA held (at par 45 and 46, does not comply with the requirements of section 33(1) of the Constitution (the right to administrative action that is lawful, reasonable and procedurally fair), and can also be said to be reviewable with reference to section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, No 3 of 2000 (relevant considerations not considered).

[22] In dismissing the appeal against the setting aside on review of the section 14(1) certificates and the resultant transfer of money, it was held (at par 47):

"In my view, a material mistake of fact should be a basis upon which a Court can review an administrative decision. If legislation has empowered a functionary to make a decision, in the public interest, the decision should be made on the material facts which should have been available for the decision properly to be made. And if a decision has been made in ignorance of facts material to the decision and which therefore should have been before the functionary, the decision should (subject to what is said in para [10] above) be reviewable . . . The doctrine of legality ... requires that the power conferred on a functionary to make decisions in the public interest, should be exercised properly, ie on the basis of the true facts; it should not be confined to cases where the common law would categorise the decision as ultra vires."

[23] When the accreditation committee agenda of 15-16 April 2015 (which later became the minutes of that meeting) is considered, it is clear that at least two mistakes had been made. The first relates to the conclusion of the evaluator (Dr Govender) and the second to the accreditation committee's discussion. As far as the first mistake is concerned, the following has been recorded under the heading "Summary of Evaluator's Report":

"The evaluator considered the site visit report, the HEQC recommendation and the representation made and came to the conclusion that the decision to withdraw accreditation be upheld".

This is a reference to Dr Govender's report after he had considered the SANTS' representations. Dr Govender did not come to the

conclusion

that the decision to withdraw accreditation should be upheld. He recommended that SANTS be put on notice of withdrawal (as opposed to outright withdrawal of accreditation) and that SANTS be given the opportunity to produce an improvement plan by 30 September 2015.

[24] The second mistake is contained in the first sentence under the heading "Accreditation Committee Discussion". It reads as follows:

"The committee accepted the conclusion of the evaluator that the accreditation of the programmes be withdrawn."

As pointed out above, Dr Govender did not conclude that the accreditation of the programmes should be withdrawn. This part of the

minutes creates the impression that the committee members were not aware of the true facts as far as Dr Govender's recommendation is concerned. Both these mistakes have been dealt with in the answering affidavit when reference was made to all the other documents and reports which had been tabled (or referred to) as well as the allegation that the committee members were fully aware of the

divergent views that had been expressed.

[25] It was argued on behalf of the HEQC and CHE that this evidence should be accepted as it only endeavours to explain the background and to put the record of proceedings (before the accreditation committee) in its proper context. It was contended on behalf of SANTS that the evidence goes beyond the stated purpose. As a matter of fact, so it was argued, there is a conflict between the explanation given and the contents of the minutes. Although there may be some merit in this submission, it is not necessary for me to decide this issue. I shall therefore assume (without deciding) that the members of the accreditation committee were fully aware of the divergent views that had been expressed, notwithstanding these mistakes in the minutes.

[26] This brings me to the meeting of 10 June 2015 when the HEQC considered and approved the recommendation of the accreditation

committee to immediately withdraw the accreditation of SANTS. This was a final decision and there was no further scope for representations to be made. The record of these proceedings has also been made available. It is common cause (or at least not in dispute) that the documentation which served before the HEQC consisted only of the accreditation committee agenda (or minutes) of 15-16 April 2015 (p 5190 of the papers). This agenda (or minutes) has been incorporated into the minutes of the meeting of the HEQC held on 10 June 2015 (p 5213 of the papers). I shall refer to these documents (agenda or minutes of the accreditation committee 15-16 April 2015 and the minutes of the HEQC 10 June 2015) as the "record of proceedings before the HEQC".

[27] How did the HEQC come to the conclusion to accept the recommendation of the accreditation committee that the accreditation of the B.Ed programmes should be withdrawn? The answer is to be found in the record of proceedings before the HEQC. As pointed out above only the agenda (or minutes) of the accreditation committee (15-16 April 2015) served before the committee members of the HEQC. No other documents or reports such as the site visit panel report of 24 April 2014, the SANTS representations submitted on 15 January 2015 or Dr Govender's evaluation report of 6 March 2015 were tabled at this meeting. According to the record of proceedings before the HEQC it is obvious that the two mistakes in the agenda (or minutes) of the accreditation committee (referred to earlier) had not been corrected as a result whereof these mistakes were passed on to the meeting of the HEQC on 10 June 2015. There is no evidence that the committee members of the HEQC were aware of these mistakes or that they were aware of the fact that Dr Govender had recommended notice of withdrawal and that SANTS be given the opportunity to produce an improvement plan by 30 September 2015.

[28] Taking into account these facts, what is the probable effect of these mistakes in the absence of any other evidence? It appears to be more probable than not that the committee members of the HEQC would have been under the (mistaken) impression that the evaluator (Dr Govender) also came to the conclusion that the decision to withdraw accreditation should be upheld and that this recommendation, and that of the directorate, were unanimously accepted by the accreditation committee. The committee members of the HEQC would also not have been aware of the fact that there had been divergent recommendations from the directorate (as formulated by Professor Nieuwenhuis) and that of Dr Govender. No doubt, these mistaken considerations probably paved the way for the HEQC to accept the recommendation of the accreditation committee.

[29] What is the relevance of these mistakes? SANTS was afforded the opportunity of making representations. Dr Govender was appointed to evaluate SANTS' representations. He produced his evaluation report which recommended that SANTS be put on notice of withdrawal of accreditation and that SANTS be given the opportunity to produce an improvement plan by 30 September 2015. Taking into account these facts, I am of the view

that Dr Govender's recommendation is a material fact which had to be considered by the HEQC at its meeting of 10 June 2015. Furthermore, the fact that his recommendation was incorrectly recorded (i.e. to withdraw accreditation) and that the accreditation committee, as recorded in its minutes, "accepted the conclusion of the evaluator that the accreditation of the programmes be withdrawn" are both material misstatements, albeit by mistake. The result is that the decision of the HEQC, which had been made in ignorance of facts material to the decision, has to be reviewed and set aside. The doctrine of legality requires that the power conferred on a functionary to make decisions in the public interest, had to be exercised properly, i.e. on the basis of the true facts (*Pepcor Retirement Fund v Financial Services Board*, supra, par 47). Having come to this conclusion, I do not think it is necessary to also consider the other grounds of review and I make no finding in that regard.

JUST AND EQUITABLE REMEDY:

- [30] Section 172(1)(b) of the Constitution provides that when deciding a constitutional matter, a court may make any order that is just and equitable, including an order suspending the declaration of invalidity for any period. This case is, in my view, a constitutional matter as it deals, inter alia, with "just administrative action" as provided for in section 33(1) of the Constitution. Section 8 of the Promotion of Administrative Justice Act gives legislative content to this remedy. It also allows the court to grant any order that is just and equitable.
- [31] Counsel for SANTS has proposed, in addition to setting aside the decision, to also direct the CHE to engage meaningfully with SANTS which must include the providing of certain criteria and a list of approved experts who SANTS may approach, at its own expense, to assist in assessing and improving the quality of course content; that SANTS be ordered to submit its plan for modifying the delivery and content of the B.Ed Degrees, where necessary; that the CHE may comment on the plan so as to enable SANTS to submit its revised course content and a report on the adjustments made; and after having assessed the aforesaid report and modified course content, the CHE may take a fresh decision concerning the accreditation of SANTS' B.Ed Degrees and exercise any statutory power it deems appropriate.
- [32] Counsel for the HEQC and CHE has proposed, in the event of this Court finding that the decision should be set aside, that the decision whether the B.Ed Programmes should remain accredited be remitted to the CHE for reconsideration; that the CHE be ordered to take such steps as may be necessary in order to assess the quality of the B.Ed Programmes and to make a decision after a specified period whether or not the B.Ed Programmes are to remain accredited; and, pending the decision of the CHE as to whether the B.Ed Programmes should remain accredited, SANTS should be interdicted from enrolling any student as a first year student in the B.Ed Programmes.
- [33] When considering what an equitable remedy should be, I have to take into account the competing or perhaps even conflicting interests of the parties concerned. SANTS is interested in continuing its business of providing private higher education, more

particularly the B.Ed Programmes, for financial gain. The CHE, as the custodian of the quality of higher education in South Africa, has a statutory duty to ensure that higher education programmes satisfy quality requirements and standards. I also have to take into account the interests of current and future students who may be prejudiced by the discontinuation of the B.Ed Programmes, but who are also entitled to higher education that meets certain minimum standards. Furthermore, when considering a just and equitable remedy one should be careful not to violate the principle of the separation of powers. In trying to find an acceptable balance I should also bear in mind that the primary purpose of the court's remedial discretion is to avoid or, if not possible, to minimise injustice "when legality and certainty collide" (*Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) at par 36). Finally, one should not forget that these considerations are to be taken into account within the context of the urgency of this matter.

- [34] The question of whether the B.Ed Programmes should remain accredited is, in my view, important. It is also important that SANTS be given the opportunity to improve the quality of course content, if it wishes to do so, before the quality of the B.Ed Programmes is assessed again. It has been suggested that the CHE should be directed to engage meaningfully with SANTS with regard to, inter alia, certain specified criteria and the nature of facilities. Although I am careful not to be too prescriptive, it does appear that

the statutory obligation to "promote" quality assurance in higher education (section 5(1)(c)(i) of the Higher Education Act) would probably also include the obligation to engage meaningfully and in a constructive manner, when being requested to do so (cf. *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 CC, par 39, albeit in the context of eviction). This will not only have the benefit of vindicating the Constitution in an open and democratic society, but also to enhance the quality of programmes and to minimise future mistakes, misunderstandings or infringements. This approach will be reflected in the order I am about to make.

- [35] I have considered the issue of costs carefully. I took into account the fact that the applicant should be regarded as being substantially successful. However, one should also bear in mind that the course content may have to be revised and that the applicant will be given the opportunity to do so. Finally, bearing in mind the constitutional nature of this litigation and the fact that the parties will have to engage with one another in a constructive manner, I am of the view that no adverse costs order should be made.

ORDER:

Having regard to all the above considerations, I grant the following order:

1. The decision of the Higher Education Quality Committee of the fourth respondent dated 10 June 2015 in terms of which the accreditation of the applicant's B.Ed (Foundation Phase) and B.Ed (Intermediate Phase) Programmes was withdrawn, is hereby reviewed and set aside;

2. The decision whether the B.Ed (Foundation Phase) and B.Ed (Intermediate Phase) Programmes should remain accredited is hereby remitted to the fourth respondent for reconsideration, subject to the following:

2.1. The applicant shall be entitled to submit, by no later than 15 December 2015, its plan for modifying the delivery and content of the B.Ed (Foundation Phase) and/or B.Ed (Intermediate Phase) Programmes where necessary;

2.2. The applicant and the fourth respondent are directed to meaningfully and in a constructive manner engage with each other in respect of the applicant's plan referred to in paragraph 2.1 above, as well as the criteria and/or requirements to be applied by the fourth respondent, such engagement to commence no later than 15 March 2016;

2.3. The applicant shall thereafter be entitled to submit to the fourth respondent its revised course content and a report on the adjustments made in terms of the plan referred to in paragraph 2.1 above, within one month after completion of the engagement process referred to in paragraph 2.2 above;

2.4. The fourth respondent shall thereafter be entitled to take such steps as may be necessary in order to assess the quality and delivery of the B.Ed (Foundation Phase) and B.Ed (Intermediate Phase) Programmes and to make a decision by not later than three months after receipt of the revised course content and/or report referred to in paragraph 2.3 above;

2.5. The applicant shall provide, upon request by the fourth respondent and within a reasonable time, such documentation and information as may reasonable be necessary for purposes of the assessment and decision referred to in paragraph 2.4 above.

3. Pending the decision of the fourth respondent as referred to in paragraph 2.4 above, the applicant is hereby interdicted and restrained from:

3.1. enrolling any student as a first year student in the B.Ed (Foundation Phase) or the B.Ed (Intermediate Phase) Programmes;

3.2. providing any form of tuition to any student in the first academic year of study towards a B.Ed (Foundation Phase) or B.Ed (Intermediate Phase) degree;

3.3. enrolling any student in the B.Ed (Foundation Phase) or the B.Ed (Intermediate Phase) Programme in the second, third or fourth year of such degree if such student was not enrolled as a student with the applicant in the B.Ed (Foundation Phase) or the B.Ed (Intermediate Phase) Programme at the commencement of the 2015 academic year.

4. If it becomes impossible, for whatever reason, for any party to comply with any provision of this order, that party is authorised, after proper notice to the other party(s), to approach this court for further directions.

5. Each party shall pay its own costs.

D S FOURIE

JUDGE OF THE HIGH COURT

PRETORIA

Date: 20 October 2015.

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