Judgment Date: 21 July 2022

In the inquiry between:

THE UNIVERSITY OF STELLENBOSCH

and

THUENS DU TOIT

CHAIRPERSON:	PROFESSOR S HUMAN
PANEL MEMBERS:	MS G JANSEN
	MR N MAPHUMULO
	MR S FOSTER
EVIDENCE LEADER obo UNIVERSITY:	MR B HESS
STUDENT:	MR THEUNS DU TOIT
LEGAL REP obo STUDENT:	MR W FULLARD

Introduction

This is a written judgment of the Central Disciplinary Committee ("CDC") appointed to hear the matter between Stellenbosch University ("SU") and Mr. Theuns Du Toit ("Mr. Du Toit" or "Accused"). The CDC is an internal body established and empowered in terms of the Disciplinary Code for Students of SU 2021 ("Code"). It is inquisitorial in nature, mandated to "embark on a fact-finding enquiry and ask questions of clarification to any party appearing before it".[1] As an administrative judicial body, the CDC must establish guilt on a balance of probabilities,[2] based upon the facts presented to it. It is, however, not a court of law.

This case balances upon five pillars – the urination incident, the abuse of alcohol, residence culture, racism, and the future interests of Stellenbosch University. This judgment shall unpack these topics in order to provide a thorough and axiomatic justiciable conclusion to the events which occurred during the early hours of the 15th of May 2022. Due to the nature of the incident and the wide-spread publicity, the CDC deemed it necessary to produce a written judgment

[1] Clause 37.7 of the Code.
[2] Clause 37.10 of the Code.

which provides clear reasoning for its decision. It is the CDC's hope that doing so would aid in the enrichment of justice and the healing of the community.

Facts of the Case

The following constitutes the undisputed facts of the case. On the 14th of May 2022, Mr. Du Toit, along with his friend ("Mr. Y"), consumed alcohol in their residence – Huis Marais. The accused confessed during the hearing to having consumed half a bottle worth of brandy while in Huis Marais. The accused and Mr. Y left the residence at around 10pm and visited two establishments over the course of the night. The accused confirmed that he consumed eight double brandy and mix drinks (totalling a minimum of 16 shots – close to one bottle worth). In total, the accused consumed around one and a half bottles worth of brandy between 7/8pm on the 14th of May and 2/3am on the 15th of May. During this period the accused states he periodically 'blanked out' – his alcohol consumption led to him failing to render or remember periods of the time at the establishments.

The accused and Mr. Y returned to Huis Marais at around 3am and proceeded to enter a friend's room – Mr. Z. Their purpose in Mr. Z's room was to simply 'fool around' – innocent drunken antics. After ten minutes, Mr. Y left and went to bed. The accused stayed in Mr. Z's room, where he attempted to call a friend who lived in Huis Marais. Mr. Z stated in the hearing that the accused was "slurring" and "quite intoxicated". After attempting to make the phone call with the assistance of Mr. Z, the accused fell asleep on Mr. Z's bed. Mr. Z attempted to wake him but could not, before getting into his bed alongside the accused. Mr. Z woke around 8am with the accused no longer next to him. The accused stated that at around 6am he woke up and left Mr. Z's room to return to his own room on the floor above. He stated that it was only around 10am on the 15th of May that he was informed of what he had done earlier that morning at around 4:30am.

It is undisputed that at around 4:30am on the 15th of May, the accused entered the room two doors down from Mr. Z's room – the room of Mr. Babalo Ndwayana ("Mr. Ndwayana" or "victim"). Mr. Ndwayana woke to the sound of someone in his room, before turning on the light and witnessing the accused standing in the far-right corner of the room, urinating on Mr. Ndwayana's possessions. At this time, Mr. X, a fellow Huis Marais member, walked past and briefly witnessed the event. He attempted to de-escalate the situation by telling Mr. Ndwayana to record the accused. Mr. Ndwayana did so on his cell phone.

The footage taken by Mr. Ndwayana cannot be underappreciated. It speaks to the core of this matter, providing undisputed evidence as to what occurred that morning. The video shows

Mr. Du Toit urinating on Mr. Ndwayana's possessions. When Mr. Ndwayana asks the accused what he is doing, Mr. Du Toit replies, "waiting for someone". It is disputed whether Mr. Du Toit stated the word "boy", following his reply. It is also clear from the video that Mr. Ndwayana again asks Mr Du Toit what he is doing, to which Mr Du Toit replies, "waiting for roommate". At the time the video ends, Mr. Ndwayana alleges that, in response to him asking Mr. Du Toit why he was urinating on his belongings, the accused stated, "it's a white boy thing" or "this is what white boys do". During the hearing, it was made evidently clear that no rendition of the disputed phrase included the term "black boys", as was circulated in the news and the petition.[3] Following this, the accused left Mr. Ndwayana's room, with the former stating that he returned to Mr. Z's room to sleep.

Pre-Hearing Issue

Prior to the start of the hearing, the CDC was required to deal with applications for observership. The only application for observership of importance at present is that of Mr. Ndwayana's legal representatives (take note, this was not an application for legal representation). On the 13th of June 2022, the CDC received an application from Mr. Ndwayana's legal representatives, requesting observership in the proceedings in terms of the Code, which reads:

> "An interested party or parties may apply for access to an enquiry by the RDC, CDC or DAC as observer on good cause shown, which must include at least a *direct and substantial or personal interest in the proceedings*".[4]

The ruling of the CDC's Chairperson was to refuse the application, on the basis that no direct and substantial, or personal interest, was shown on good cause. As a CDC hearing is not a court of law, the CDC's Chairperson rightfully found that the lawyers of Mr. Ndwayana had neither a direct and substantial interest, nor a personal interest, in the matter which was sufficient to constitute good cause. The detailed reasons for the decision were provided to the legal representatives in writing.

It must be stressed that Mr. Ndwayana – albeit the victim in this matter – was not a party to the case (the parties are SU and Mr. Du Toit). Mr. Ndwayana was requested by SU to be a *witness*. A witness to a CDC hearing does not need a legal representative present. They may require an observer – someone who has no speaking rights but will allow for the witness to feel more comfortable while giving testimony. Accordingly, legal representation on behalf of a

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[3] A Spies "Expel Theuns Du Toit from Stellenbosch University" *Change.org* <https://www.change.org/p/expel-theuns-du-toit-from-stellenboschuniversity-expeltheuns-stellenboschuni>

[4] Clause 30.2 of the Code, own emphasis added.

witness should never satisfy the good cause required in terms of clause 30.2, because a witness should never need a legal representative in a CDC hearing. However, there should be no automatic bar on a legal representative being an observer, where they are the closest source of comfort and support for a witness. This, however, ought to be followed closely by the caveat that the legal representative must act as an observer, not in their capacity as the witness's legal representative.

Following the application's rejection, Mr. Ndwayana's legal representatives submitted an appeal application at 9:43pm the night before the hearing was due to start. There are no policy grounds upon which such an application can be made, nor were any cited. Furthermore, the letter was addressed to "The Disciplinary Appeal Committee" ("DAC") but was presented to the CDC. Considering the CDC had neither heard the matter nor given a judgment, no DAC had been appointed. The CDC's Chairperson, again, rightfully rejected the application. In conclusion, it is correct to note that this appeal application was wrong in law and ought to be disregarded.

Despite this, Mr. Ndwayana's legal representatives arrived at the hearing on the morning of the 22nd of June and requested an audience with the CDC. In this preliminary hearing, Mr. Ndwayana's legal representatives raised the fact that Mr. Ndwayana had no family available and that the people he felt closest to and safest around where his legal representatives. They stated that they would act not as his legal representatives but purely as observers. They premised their argument on the fact that they strongly believed that Mr. Ndwayana's testimony would be heavily hampered if he did not have them with him as structures of support. This argument was strongly considered and upon consideration, the Chairperson of the CDC provided an exception to the application's rejection, in order to allow Mr. Ndwayana to have one observer present. The decision to allow one and not both legal representatives in as observers was due to the Chairperson deeming one sufficient in achieving the goal of providing Mr. Ndwayana with the necessary source of support.

Upon receiving this concession, Mr. Ndwayana's legal representatives deliberated with Mr. Ndwayana for a lengthy period of time, only to return and state that Mr. Ndwayana had – by his supposed own volition – given instruction to his legal representatives to inform the CDC that he wished to remove himself as a witness and take no part in the hearing. Furthermore, his legal representatives cited that this decision was based on Mr. Ndwayana's belief that the CDC was biased and unfair. In the words of his legal representative "[Mr. Ndwayana] does not feel

that the decision [of the hearing] is going to be fair. He sees a little bit of bias from the Committee".[5]

These allegations were unfounded and lamentable for three reasons. First, no decision had been made as to the outcome of the matter – in fact, the hearing itself had not begun. To declare bias and unfairness at such a stage was simply premature and legally unsound.

Secondly, no arguments were put forward to substantiate these claims – Mr. Ndwayana's legal representatives elected to say nothing further but informed the CDC that they would "submit [Mr. Ndwayana's] reasons in writing, formally".[6] No submission was ever received by the CDC. As such, it is self-evident to state that these claims are still baseless and immaterial.

Thirdly, it must be unequivocally clear that Mr. Ndwayana was never presented before the CDC. His voice was never heard. He communicated solely through the voices of his legal representatives. How he was able to prematurely conclude that the CDC would be unfair and bias in its truth-finding and decision-making mandate is beyond the realm of reality. However, it is asserted that this CDC is not convinced that Mr. Ndwayana's beliefs were authentic and sincerely, rather that they were ill-formed by the opinions of his legal representatives when they realised that they would not be capable of bullying the CDC's Chairperson into submission.

The unfortunate reality is that Mr. Ndwayana's legal representatives – from the UNISA Law Clinic – failed in their duties to not only their client, but also the CDC. The CDC is an internal truth-finding administrative body, committed to achieving its purpose as set out in Clause 2 of the Disciplinary Code. For this to work, each party has a duty in amicably pursuing these outcomes. The CDC needs to be afforded the opportunity to engage with victims and accused perpetrators in a safe, comfortable environment – we want parties to be able to look each other in the eyes and share their stories. Unfortunately, the UNISA lawyers failed to respect this body, instead treating the CDC as a playground for rouge legal theatrics. They had an opportunity to be an aid to the proceedings, but instead chose to disrupt and threaten.

This CDC is convinced that their actions costed Mr. Ndwayana the opportunity to speak his truth – a necessity in not only this matter, but also in his own healing process. We believe that Mr. Ndwayana's voice deserved to be heard. It was in the interests of the student community as a whole, alumni and even on a national level to hear his story in this setting. However, his legal representatives, through their actions, robbed him of this crucial opportunity. Their actions can only be summarised as a disservice to their client, but also a stain on the legal

[5] Transcript of Proceedings DS500066, page 2, lines 3-4.
[6] Transcript of Proceedings DS500066, page 2, line 22.

profession. Their conduct during the pre-hearing and their dishonest comments to the media following the pre-hearing vindicated the CDC's Chairperson's original decision to not allow them to participate as observers.

Alleged Offences

Mr. Du Toit is accused by SU of the following:

1. Entering the residence room 1032 of Babalo Ndwayana without his permission ("trespassing charge"); and
2. Urinating on Mr. Ndwayana's study desk damaging his laptop, a textbook and three notebooks ("urination charge"); and
3. Conducting himself in a manner which contravened the Code, evidenced by the alleged statements made to Mr. Ndwayana – when Mr. Du Toit was asked by Mr Ndwayana what he was doing, Mr. Du Toit allegedly told Mr. Ndwayana, "waiting for someone, boy". And when Mr. Du Toit was asked why he was urinating on Mr. Ndwayana's belongings, he told him "it's a white boy thing" ("statement charge").

Mr. Du Toit's actions, SU argues, contravene the Code, specifically clauses 3.1, 9.1, 9.3, 9.6, and 13.2, as well as clause 7.2.2 of the Amended Residence Rules. They read as follows:

"**Disciplinary Code for Students of Stellenbosch University:**

3.1. Stellenbosch University operates on a set of basic values which every Student is expected to respect and promote, and which informs the application of this disciplinary code. The values are: Excellence, Accountability, Mutual Respect, and Compassion. In addition hereto, current values adopted by Stellenbosch University and any variation thereof, shall be applicable to the application of this disciplinary code.

9.1. No Student shall, without good and lawful reason, wilfully engage in any conduct which adversely affects the University, any member of the University Community, or any person who is present on the University Campus at the invitation of the University.

9.3. A Student shall not act in a manner that is racist, unfairly discriminatory, violent, grossly insulting, abusive or intimidating against any other person. This prohibition extends but is not limited to conduct which causes either mental or physical harm, is intended to cause humiliation, or which assails the dignity of any other person.

9.6. A Student shall not act in a manner so as to disrupt, or potentially disrupt, the maintenance of order and discipline at the University.

13.2. A Student shall not remove, make use of, damage or destroy any physical property, including emergency equipment, which belongs to the University, any member of the University Community, or for which the University is accountable, without permission to do so and other than as a consequence of the ordinary and intended use of that property. If a Student is found in possession of property which

is known to have been stolen, such Student will be assumed to have committed misconduct under this rule unless the Student is able to show that the property was acquired innocently.

Amended Residence Rules – 7 March 2022:

7.2.2. Students and residences should at all times act in such a manner that no discomfort or disturbance of peace is caused to the occupants or other residences in the area."

Mr. Hess, on behalf of SU, argued that the conduct of Mr. Du Toit warrants expulsion, citing that the accused's conduct was in clear contravention of the relevant provisions in the Code and required the heaviest punishment. Furthermore, Mr. Hess argued that the conduct of Mr. Du Toit was, *inter alia*, racist, discriminatory, violent, grossly insulting, abusive and/or intimidating, and did have an adverse affect on Mr. Ndwayana and the SU community.

Mr Fullard, on behalf of Mr. Du Toit, argued that expulsion would be too strict a punishment, as it amounted to what he conceived as the educational 'death penalty' for Mr. Du Toit, who would be barred from continuing his studies. Rather, a serious, but rehabilitating punishment would be better suited and would be accepted. It was argued by Mr. Fullard that this incident was not a deliberate or intentional undertaking by the accused, but rather a drunken mistake.

Charge 1: The Trespassing Charge

Attention must be drawn to clause 13.1 of the Code. Clause 13.1 reads:

13.1 A Student shall not make use of, occupy, or enter any University Premises without permission to do so.

The CDC is of the opinion that Mr. Ndwayana's room constitutes a University Premises. As part of Mr. Ndwayana's residence agreement, the CDC conclude that Mr. Ndwayana would have acquired certain rights with regard to the room, including the rights associated with the granting of permission of entry. As CDC, we cannot fathom a different understanding of the leasing agreement which does not give effect to these rights. Accordingly, without permission from Mr. Ndwayana (or his roommate), any unauthorised entry into room 1032 of Huis Marais must constitute a breach of clause 13.1.

Mr. Du Toit, in person and by a written plea explanation, submitted that he could neither admit nor deny the trespassing charge, stating that due to his intoxication he could not recall whether or not he was granted permission to enter Mr. Ndwayana's room. He also raised that Huis Marais had an open-door/open-room policy, and that it was common practice to enter rooms without permission. Furthermore, Mr. Ndwayana's roommate is a close friend of Mr. Du Toit, and the accused stated that he is neither a stranger to the room or Mr. Ndwayana.

The CDC struggled to accept Mr. Du Toit's plea. First, the open-door custom must be assessed. Mr. B – a member of the Huis Marais house committee – testified that there was no

official open-door policy, but that it was common for friends to walk into each other's rooms without permission.[7] In other words, individuals are accepting of those whom they feel safe and comfortable around to enter their rooms without prior permission. For this, there must be an incredible level of trust present, as an individual is in essence affording tacit consent to the trespasser who enters their realm of privacy without prior permission. The right to privacy is a constitutional right and ought to be respected as such.[8] In *De Reuck v Director of Public Prosecution, Witwaterstrand Local Division*, the court made it clear that any "intrusion by the law [or person] into the private domain [must be] justified".[9] It is accepted in South African jurisprudence that privacy is fundamentally important and powerful right – what occurs within the sphere of an individual's privacy should be regarded as the business of neither the state nor the proverbial neighbour. Any intrusion must be justified. Accordingly, Mr. Du Toit's intrusion falls short of any justifiability. The CDC cannot accept that it would be permissible behaviour for an individual to enter the room of someone during the early hours of the morning even if the individuals are friends.

Secondly, Mr. Du Toit and Mr. Ndwayana were not friends in the sense that Mr. Du Toit was with Mr. Z, for example. Rather, they were friendly – they weren't unfamiliar with one another, but no evidence was submitted to indicate that they had a close relationship. Again, this leads to the conclusion that there could not have been tacit consent afforded to Mr. Du Toit's trespassing.

Thirdly, Mr. Du Toit was aware that Mr. Ndwayana's roommate – Mr. Du Toit's friend – was not in the room that evening, having testified that he was aware that his friend had gone away for the weekend. There is a marked difference between how Mr. Du Toit entered into Mr. Z's room compared to that of Mr. Ndwayana's room. Mr. Du Toit sought permission to enter Mr. Z's room – he did not trespass into his friend's room earlier in the evening. Mr. Z stated that his roommate let them in. This speaks against the allegation of an open-door policy – Mr. Du Toit and Mr. Y did not simply walk in. Mr. Du Toit, Mr. Y, and Mr. Z are close friends, yet in this instance there was no unannounced entrance or assumed 'open-door-policy-like' behaviour. The CDC views this as a truthful version of events, insofar as Mr. Z was sober and provided a useful testimony. However, we also wish to also deal with Mr. Y's version.

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[7] Transcript of Proceedings on 22 June 2022, page 40, lines 1-4.
[8] Section 14 of the Constitution of the Republic of South Africa, 1996.
[9] 2004 (1) SA 406 (CC) para 90.

According to Mr. Y, he and Mr. Du Toit opened Mr. Z's door and proceeded to wake up Mr. Z by boyishly jumping on him before engaging in pleasantries.[10] If the version occurred, then it is accepted that Mr. Z tacitly consented to the trespassing. In context, this is clearly less invasive than what occurred in Mr. Ndwayana's room, where Mr. Du Toit entered and without announcing himself, proceeded to the furthest corner before urinating. At no point did Mr. Ndwayana consent to Mr. Du Toit trespassing.

Accordingly, based on the presented arguments and the importance of the right to privacy, it is concluded that Mr. Du Toit is guilty of the trespassing charge by unjustifiably entering into the residence room 1032 of Mr. Ndwayana without his permission. By doing so, Mr. Du Toit violated clause 7.2.2. of the Amended Residence Rules – 7 March 2022, by causing clear discomfort and a certain disturbance to the peace of Mr. Ndwayana, and clause 13.1 of the Code, by entering room 1032 without the necessary permission.

Charge 2: The Urination Charge

Mr. Du Toit, in person and by his written plea explanation, submitted that he accepted that he was the individual seen urinating on Mr. Ndwayana's possessions in the video. However, he alleged that he did not act unlawfully and intentionally, insofar as he was heavily intoxicated, and it was not in his character to intentionally destroy Mr. Ndwayana's property. He further submitted that his actions were not racially motivated.

The urination charge, SU alleges, amounts to a breach of clauses 3.1, 9.1, 9.3, 9.6, and 13.2 of the Code. We wish to begin with clauses 13.2 and 3.1. The clauses read as follows:

> 13.2. A Student shall not remove, make use of, damage or destroy any physical property, including emergency equipment, which belongs to the University, any member of the University Community, or for which the University is accountable, without permission to do so and other than as a consequence of the ordinary and intended use of that property. If a Student is found in possession of property which is known to have been stolen, such Student will be assumed to have committed misconduct under this rule unless the Student is able to show that the property was acquired innocently.
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> 3.1. Stellenbosch University operates on a set of basic values which every Student is expected to respect and promote, and which informs the application of this disciplinary code. The values are: Excellence, Accountability, Mutual Respect, and Compassion. In addition hereto, current values adopted by Stellenbosch University and any variation thereof, shall be applicable to the application of this disciplinary code.

Clause 13.2 forbids the unnatural or impermissible, *inter alia*, damage or destruction of any physical property which belongs to the SU or any member of the SU community. Mr. Du Toit's actions clearly caused unnatural and impermissible damage and destruction to Mr. Ndwayana's

[10] Transcript of Proceedings on 22 June 2022, page 23, lines 7-10.

property. Mr. Du Toit's state of intoxication cannot and does not form a defence to this violation of the Code. Accordingly, he must be found guilty of contravening clause 13.2 of the Code. In the same breath, these actions are in contravention of clause 3.1, insofar as the act of urinating on a student's possessions by another student – regardless of intoxication – cannot be acceptable in terms of SU's basic values. Accordingly, it must further be noted that clause 7.2.2 of the Amended Residence Rules – 7 March 2022 has also been breached by Mr. Du Toit's actions, regardless of his state of intoxication.

Next, we wish to address clause 9.6 of the Code. Mr. Hess for SU did not attempt to put forward a convincing argument to prove Mr. Du Toit's violation of this clause – if anything he argued that Mr. Du Toit did not. The clause reads:

> 9.6. A Student shall not act in a manner so as to disrupt, or potentially disrupt, the maintenance of order and discipline at the University.

The CDC must agree with Mr. Hess as to the interpretation of this clause. The aftermath of the incident attracted mass media attention and led to societal uproar, culminating in one of the largest student protests at SU. As Mr. Hess articulated in his closing statement, it was not Mr. Du Toit's single act which caused the consequent unprecedented disruption. Rather, the circulation of the video, labelled first and foremost as a racial incident, the resulting media attention, the accusation of racism at the annual Law Faculty Dance, and the accusation of rape in a residence on campus which took place all within the same week, ultimately led to the disruption. Accordingly, we do not find Mr. Du Toit guilty of contravening clause 9.6 of the Code, insofar as his single act, albeit a contributing factor, did not sufficiently cause the consequent disruption of order and discipline at SU.

<u>The role of SU and Huis Marais in the Incident's Aftermath</u>

The CDC has deemed it necessary to include this criticism of SU and Huis Marais in this judgment. As we have found, Mr. Du Toit was not guilty of causing the consequent disruption of order and discipline at SU, as other factors and incidents also played a role. However, we wished to address the failure in leadership and the culture of Huis Marais. To a very large extent Mr. Du Toit has been scapegoated, thereby conveniently ignoring the culture which has been bred in Huis Marais and, by extension, SU. In his own words, Mr. Du Toit attested to being a part of a drinking culture at SU and relying on alcohol to "fit in".[11]

[11] Transcript of Proceedings on 22 June 2022, page 211, line 15.

We first wish to address the failure in leadership and the culture of Huis Marais. To do so, we must detail the timeline of when people were informed of the incident:

Timeline on Sunday 15 May:
4:30: Incident Occurred
4:31: Mr. Ndwayana's Mentor informed via text
4:39: Huis Marais Vice-Prim informed via text
9:00: Mr. L (Mr. Ndwayana's neighbour) informed by Mr. Ndwayana
9:30: Huis Marais Prim informed by text
12:30: SRC Chairperson informed via email
14:23: Huis Marais Prim informed Dr. Groenewald via text
16:02: Dr. Groenewald receive video of incident
17:45: Dr. Groenewald met Mr. Ndwayana
18:19: Dr. Groenewald message to Mr. Pieter Kloppers (Director of Centre for Student Communities)
18:40: Dr. Groenewald called head mentor to check up on Mr. Ndwayana
20:15: House Committee meeting
21:30: Dr Groenewald had conversation with Mr. Du Toit
22:00: Emergency house meeting at Huis Marais

Painfully, the matter took just shy of ten hours before it was reported to a member of staff – Dr. Groenewald, the residence head. The video of the incident, which the Huis Marais Prim had, was only delivered to Dr. Groenewald at 16:02 – eleven and a half hours after the incident. Why it took the student leadership of Huis Marais so long to report this incident correctly, we can only speculate. And in light of evidence produced by Dr. Groenewald in the hearing, this CDC is inclined to speculate that the delay is undoubtedly linked to the residence's culture of secrecy and poor leadership.

The following indicates such. First, the fact that the Huis Marais student leaders did not act immediately speaks to the gravest failure of what it means to be a leader. At its core, leadership is about acting in times of crisis. It is about harbouring the competence to make the right decisions in all situations. It is not about trying to sweep an issue under the rug or trying to minimise the true nature of an incident. This matter should have been reported to the necessary Huis Marais staff and dealt with at the soonest possibility. It should never have been allowed to take this long.

Secondly, the lack of an immediate reaction speaks to the mindset of those in Huis Marais – this was not viewed as the atrocity the rest of the community saw it as. The reaction arguably seems to breathe an air of normality. It was as if drunken incidents such as this were not an egregious exception. Many of the student witnesses who testified attested to this, with the majority seemingly not grasping the true magnitude of the incident and believing that Mr. Du Toit would be welcomed back into Huis Marais. The CDC wishes to make it clear – incidents such as this are not acceptable. It is only under the ambit of poor leadership that such complacency can thrive.

The leadership in Huis Marais failed atrociously in being there for Mr. Ndwayana. They failed to grasp the true extent of this incident – hours went by before anyone attempted to properly attend to Mr. Ndwayana. As the CDC, we cannot begin to understand what Mr. Ndwayana was going through in the hours after the incident, where no one provided the necessary professional, psychological, and emotional support he surely needed. What took place was merely administration – a bureaucratic game of pass the baton up the line. This is not leadership and any attempt to dress it as such is an insult to the term and the values attached to it. In this regard, the CDC asserts that both SU and Huis Marais must assess their understanding and implementation of Student Leadership, for there is a clear crisis within Huis Marais, and arguable, also in other areas of SU.

Lastly, Huis Marais and its students are notorious for being involved in disciplinary matters, many of them laced with secrecy and racist intentions. Dr. Groenewald strongly indicated this in his evidence. Huis Marais has gone through an attempted process of transformation – one which has undoubtably failed. This is evidenced by the worrying number of disciplinary cases which have been held against Huis Marais members since the transformation process was implemented in 2020. We will come back to this shortly.

It is no secret to SU that Huis Marais breeds an unwanted culture. As was noted, SU has attempted to change the culture of the residence. This attempt took the form of not accepting newcomers in 2020 and 2021. This decision was communicated by Dr. Choice Makhetha (Senior Director: Student Affairs) following a large number of incidents involving Huis Marais members. Underlying racism was one of the important factors noted in this decision. To combat the unwanted cultural issues in Huis Marais, proposals were made to change the residence from a male only residence to a mixed-gender residence. This has shown to have had a positive effect in other residences which have transitioned. To the best knowledge of this CDC, the proposal was at first accepted, only for it to be dubiously overturned and retracted a number of days later by SU's higher decision-makers. To the best of our knowledge, no reasons have been put forward to explain this decision. We view this as a failure in the attainment of transformation of Huis Marais – an incident which the CDC believe must be brought before the current Independent Commission of Inquiry, chaired by retired Justice Sisi Khampepe. One can only speculate as to what the cause of this was, but we certainly believe that had reasons been provided, any rumours to do with SU's political arena and its heavily invested stakeholders would have been quashed.

When SU decided to postpone examinations in the wake of the incident, it did so under the auspice of acknowledging the institution's need for extensive transformation. It was declared

an unprecedented state of affairs – an indication that (finally) SU was ready to take fundamental steps in the correct direction. Actual action, not simply aesthetic policies. In doing so, this CDC hopes that the first indication of this proclaimed new-found attentiveness to ground-level issues will be a reassessment of SU's prior approaches to dealing with unwanted cultures in its residences, amongst others. Evidently, there are unhealthy cultures in SU residences. This is no longer a contentious point – it is a fact. Incidents such as the one at hand – and the massive fallout after it – will continue to litter SU's future unless intentional and courageous actions are taken right through this institution. As the saying goes, the definition of insanity is doing the same thing over and over again and expecting different results. We hope SU takes note of this – for every year there seems to be a protest and an uproar, an inquiry or a commission. This university has become a jack-of-all-trades in damage control and grandiose promises, but ultimately, we question whether it has mastered what is actually expected of it. SU must detach itself from the constraints of its past – which unquestionably includes the influence of *status quo*-inclined staff and alumni – and focus on building itself to the institution which it decrees it aims to be. We cannot strive toward this envisioned future, with one arm clenching onto the past.

Charge 2: The Urination Charge, with regard to Clause 9.1 of the Code

The more intricate and disputed clauses remain 9.1 and 9.3. We shall deal with these as independent subheadings. Clause 9.1 reads:

> 9.1. No Student shall, without good and lawful reason, wilfully engage in any conduct which adversely affects the University, any member of the University Community, or any person who is present on the University Campus at the invitation of the University.

Mr. Du Toit's main defence regarding his actions of urinating on Mr. Ndwayana's property was that he was severely intoxicated, and as such cited that he did not act unlawfully. Furthermore, he stated that, although he cannot recall his intentions at the time, it is not in his character to have urinated on and damaged another person's property. In essence, Mr. Du Toit alleged that he lacked capacity and intention. It is here that we wish to note that, although the legal terminology used is identical to that used in a court of law, the CDC is not a court of law and does not need to conform to being satisfied that the elements of a crime or delict have been met.[12] Albeit, as the CDC does carry out a judicial-like function, we wish to reiterate that it should err on the side of proportionality in carrying out its decision-making process. The CDC

[12] Clause 4.1 of the Code.

must accordingly critically interpret provisions of the Code in such a manner as to give effect to the Code – as such, the CDC's mandate is to deduce whether the conduct of a student conforms to the values and disciplinary standards of SU.[13]

In the case at hand, Clause 9.1 speaks to the wilful engagement in any conduct which adversely affects *inter alia* SU and its members. It is accepted that Mr. Du Toit's conduct of urinating on Mr. Ndwayana's property does constitute conduct which adversely affects, at the bare minimum, Mr. Ndwayana – a member of the University Community. The dispute pertains to whether Mr. Du Toit's actions where wilful and without good and lawful reason. The CDC cannot fathom any good and lawful reason which can exonerate Mr. Du Toit. What he did was neither good nor lawful. Therefore, the issue rests on this CDC's understanding of the term "wilfully engage".[14] This determination requires an assessment of Mr. Du Toit's intoxication and SU's continued attempts at promoting responsible and mature drinking habits amongst its students.

An Assessment of Alcohol within the SU Context

To determine whether Mr. Du Toit satisfies the 'wilfully' component of clause 9.1, we wish to digress and discuss the abuse of alcohol at SU. SU is no stranger to alcohol abuse and alcohol related controversies. As is ever-present in South Africa, SU continues to battle the negative effects of alcohol, however, being a university, it has had to deal with the added difficulties of young adults engaging in a culture of binge-drinking. This comes with many difficulties and unfortunate, tragic events. In 2020, SU implemented a temporary alcohol ban across residences and Private Student Organisations ("PSO") which was aimed at significantly reducing incidents of alcohol abuse and gender-based violence. This general ban was lifted in 2022, with individual residences requested to develop their own alcohol policies which would reflect the type of culture that residence sought. In Huis Marais, no individualised policy has been submitted or approved as of yet. Accordingly, the alcohol ban is still in effect within Huis Marais (which students such as Mr. Du Toit have and continue to contravene).

However, it appears the general consensus was that the ban and reformed policy/policies did not have a desired effect of addressing the systemic plague of alcohol abuse related incidents.[15] The struggle of finding a suitable policy which encourages mature alcohol

[13] Clause 2 of the Code.
[14] Clause 9.1 of the Code.
[15] T Bell "A glass-half-full: SU's alcohol policy revised" *MatieMedia* (17-04-2022) <https://www.matiemedia.org/a-glass-half-full-sus-alcohol-policy-revised/>

consumption remains. The harsh reality is that it is unlikely any policy will carry the necessary influence needed to pierce what has become an incredibly dangerous culture. Drinking in excess envelopes much of a student's life, whether it be a form of initiation, a means to find social acceptance, a method of dealing with avoided personal issues, alcohol has been arguable the main substance many young adults have turned to. The abuse of alcohol cannot be termed anything short of a systemic calamity. "Research has shown that the socio-economic effects associated with alcohol abuse include unemployment, violence, crime, sexual risk behaviour and disruptions to family life and work performance".[16] Furthermore, a 2016 study concluded that "[e]xcessive alcohol consumption constitutes a significant public health problem among adolescents in SA", with the study stating that "[b]inge drinking is a major risk factor for a range of alcohol-related harms in SA, including traffic-related accidents and deaths, interpersonal violence, fetal alcohol syndrome, crime, sexual risk, tuberculosis, pneumonia and the resultant burden of all these harms on the economy".[17] In 2014, researchers concluded that the "[t]otal tangible and intangible costs [of alcohol] represent 10-12% of [South Africa's] 2009 GDP. The tangible financial costs of harmful alcohol use alone amount[ed] to an estimated R37.9 billion, or 1.6% of the 2009 GDP".[18] These are not new facts. The realities associated with alcohol are common knowledge.

<u>Charge 2: The Urination Charge, with regard to Clause 9.1 of the Code – Conclusion</u>

The truth is that alcohol-abuse is, ironically, drinking the country dry. And SU is not excluded from this issue. Unfortunately, the longer the excessive use of alcohol and the resultant defence of intoxication is used to protect an individual from the consequences of their actions, the longer this systemic problem will continue. This CDC does not claim to know the final answer. However, we have the power to guide the interpretation of the Code in determining whether self-inflicted intoxication can be accepted as a defence. This CDC has the power to set a lasting precedent on this matter.

Accordingly, in light of the comprehensible facts on the effects on alcohol within South Africa and within the SU Community – especially pertaining to the lack of substantial and effective alcohol-related policies – we conclude that prior deliberate consumption of an

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[16] BMP Setlalentoa, PT Pisa, GN Thekisho, EH Ryke & T Loots "The social aspect of alcohol misuse/abuse in South Africa" *SAJCN* (2009) 23 11-15.

[17] NK Morojele & L Ramsoomar "Addressing adolescent alcohol use in South Africa" *S Afr Med J* (2016) 106 551-553.

[18] RG Matzopoulos, S Truen, B Bowman & J Corrigall "The cost of harmful alcohol use in South Africa" *S Afr Med J* (2014) 104 127–132.

intoxicating substance such as alcohol must satisfy the clause 9.1 criteria. It cannot hold strength, when taking into consideration the values and disciplinary ambitions of SU, that the deliberate prior consumption of an intoxicating substance be regarded as an excuse for consequential events which have a direct impact on the fundamental rights of a human being. A hard stance must be taken – students are adults, and they must be aware that their actions carry consequences. The consumption of alcohol will likely never be eradicated, but with it must be a strong warning that being intoxicated will not be an acceptable defence to, *inter alia*, damaging, hurtful, or unlawful conduct.

Furthermore, the following offers damning evidence that satisfy the 'wilful' criterion. First, Mr. Du Toit, in his oral testimony, admitted to having an issue with alcohol abuse. He stated to the CDC that he was prone to 'blanking-out' due to excessive alcohol consumption. Prior to the incident he had admitted to himself and some friends that his alcohol consumption and 'blanking-out' was an issue. Yet, he took no constructive steps to preventing these states from reoccurring. Secondly, Mr. Du Toit was not incapable of bodily control when the incident occurred. He was seen walking normally into Huis Marais, he walked himself into Mr. Ndwayana's room, he relieved himself on Mr. Ndwayana's property, he engaged in conversation with Mr. Ndwayana, and then finally, he walked himself out of Mr. Ndwayana's room. At no point did he lack the capacity of conducting his own bodily mechanics. This is indicative of wilful conduct. Lastly, and most damningly, when Mr Ndwayana turned the lights on in his room and asked Mr. Du Toit what he was doing, Mr. Du Toit continued to urinate. He did not stop himself once he was able to see in the light that he was urinating on property and not in a toilet. He was able to decide where and when to urinate and did not chose to stop once it became clear where he was. His continuation, in light of the previously mentioned points, illuminates the necessary wilfulness.

In line with this conclusion, Mr. Du Toit's conduct must satisfy the 'wilful' component to clause 9.1. All of Mr. Du Toit's actions while he was intoxicated cannot be nullified due to his intoxication – they must be seen as wilful conduct, stemming from his earlier intentional conduct to self-intoxicate, as well as evidenced by his failure to stop immediately when he could have and should have. Therefore, we find Mr. Du Toit guilty of violating clause 9.1 of the Code, with regard to the urination charge.

<u>Charge 2: The Urination Charge, with regard to Clause 9.3 of the Code</u>

Clause 9.3 of the Code reads as follows:

> 9.3. A Student shall not act in a manner that is racist, unfairly discriminatory, violent, grossly insulting, abusive or intimidating against any other person. This prohibition extends but is not limited to conduct which causes either mental or physical harm, is intended to cause humiliation, or which assails the dignity of any other person.

Clause 9.3 does not contain any reference to wilfulness as in clause 9.1. Instead, it catches a wide range of offensive behaviours. Importantly, this section contains provision relating to the effect the conduct in question has on another person. Regarding the urination charge, it is self-evident that the act was, at a bare minimum, grossly insulting, abusive, and intimidating. Furthermore, the act of urinating on Mr. Ndwayana's property has undoubtably caused mental harm to Mr. Ndwayana – who has testified through affidavits confirming as much. Furthermore, Mr. Du Toit testified that he agrees that his actions can be perceived as assailing the dignity of another person – Mr. Ndwayana.

Accordingly, Mr. Du Toit is found to be guilty of contravening clause 9.3, with regard to the urination charge. His actions of urinating on Mr. Ndwayana's property can only be seen as a clear violation of clause 9.3. Under no circumstances should acts like this carry anything shy of the severest of punishments at SU in the future. This CDC hopes to set an unequivocal precedent on this matter.

Charge 3: The Statement Charge

The statement charge is the proverbial elephant in the room. This allegation is wreathed in the essence of this country's appalling past – racism. The statement charge is fashioned by two statements. The first is the allegation of racism regarding the statement of "boy" made by Mr. Du Toit on the video taken by Mr. Ndwayana. We digress to state that the majority of the CDC is not convinced by the accused's claims that he said "ooi". The CDC shall, therefore, proceed on the conclusion that "boy" was said. Secondly, the allegations made by Mr. Ndwayana that – off camera – Mr. Du Toit stated the phrase (or a close variation thereof) "it is a white boy thing", when questioned on why he was urinating on Mr. Ndwayana's property. It is this latter phrase which holds the most significant contention, insofar as this CDC must determine whether or not – on a balance of probabilities – the phrase or a close variation of it, was ever stated. If this CDC finds on a preponderance that such a statement was said, it must then determine whether or not it constitutes racism. Any finding of racism will amount to a violation of clause 9.3 of the Code:

> 9.3. A Student shall not act in a manner that is racist, unfairly discriminatory, violent, grossly insulting, abusive or intimidating against any other person. This prohibition extends but is not limited to conduct

> which causes either mental or physical harm, is intended to cause humiliation, or which assails the dignity of any other person.

Understanding Racism

Before assessing the alleged racist comments, we wish to embark upon a deeper understanding of racism. Racism can be defined as "the irrational (or prejudicial) belief in or practice of differentiating population groups on the basis of their typical phenomenal characteristics, and the hierarchical ordering of the racial groups so distinguished as superior or inferior".[19] We wish to emphasise that racism is a foolish belief – born from the womb of irrational fear and deeply-entrenched insecurity. It is a belief that has been weaponised by the most baseless of human beings – a systemic pestilence built upon unfounded generic hatred, abuse, and discrimination. It is a cowardice conviction which does nothing short of dehumanising all who belief in it, and all who fall victim to it. This disease has aggrieved South Africa for many years and continues to do so. The approach towards it must be one of zero-tolerance.

The Constitution of the Republic of South Africa, 1996, protects all persons from racism. Racism impales the dignity and fundamental rights afforded to individuals by our supreme law. In the landmark case of *S v Makwanyane*,[20] O' Regan J rightly affirmed that the protection of human dignity was recognised as the "touchstone of the new political order".[21] As such, to be racist in South Africa is to offend this country and what it stands for, as well as the rest of the supportive international community. This sentiment was echoed in Canada – the country upon which our Bill of Rights was considerably influenced – where the Canadian Supreme Court stated that "messages of hate propaganda undermine the dignity and self-worth of target group members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multi-cultural society which is committed to the idea of equality".[22]

SU is no stranger to racism. The university has long been a bubble from the harsh realities of its surrounding climate. It has notably struggled in its attempts to adequately and aggressively address the plethora of racial macro- and micro-aggressions which many of its student's experience. On paper, SU's policies are frank and clear – they are unequivocally against racism. However, the racist agenda which plagues SU roots deep within its fabric. It

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[19] DT Goldberg *Racist Culture* (1993) Oxford 93.

[20] 1995 3 SA 391 (CC), where the death penalty was declared unconstitutional.

[21] Para 329; J Geldenhuys & M Kelly-Louw "Hate Speech and Racist Slurs in the South African Context: Where to Start?" *PER / PELJ* 2020 (23) - DOI http://dx.doi.org/10.17159/1727-3781/2020/v23i0a7043 6.

[22] *Canada (Human Rights Comm.) v Taylor 1990 13 CHRR D/435 (SCC) paras 28-29*; Geldenhuys & Kelly-Louw *PER / PELJ* 2020 6.

expresses itself in many manners, from students citing cultural preferences as reasons to not wanting to share a room with a person of colour, to the cliques which form, the passive-aggressiveness which people of colour receive from staff and students to the repulsive and atrocious comments made about the 'them's' and 'they's' – racism hidden by nothing more than a thin veil of unspoken understanding. Despite its best efforts, for many so-inclined families SU is still seen as the final bastion of a desired culture – one where certain belief can be allowed to live in the shadows, exonerated by the bubble which conceal those who choose to look away from the penetrating glare of reality. Rightfully, this CDC has a duty to make it clear that SU will no longer be this final stronghold of an undesired culture. There cannot be any room for racism at SU.

Charge 3: The Statement Charge – Assessment of 'Boy'

The intention established above must be applied fairly and reasonably to the facts at hand. Having listened to the video countless times, the majority of the CDC has concluded that the term "boy" was stated. Accordingly, the term "ooi" is disregarded. However, this CDC must determine whether or not the statement of "boy" constitutes a racial slur or is racist in nature. For this, we turn to the aid of the Constitutional Court's judgment in *Rustenburg Platinum Mine v SAEWA (OBO Bester)* ("*Bester*").[23] This matter dealt with the whether the use of the term 'swart man' (black man) was racist and derogatory. The court accepted that the use of the words is not, *per se*, racist – rather it is the context in which such words are said that will impute racism upon them. Furthermore, the court stated that the test for determining such is objective – "whether a reasonable, objective and informed person, on hearing the words, would perceive them to be racist or derogatory".[24] As it was then, the evidence delivered before the CDC must be assessed.

Therefore, this CDC must first determine whether the use of "boy" in this context was racist. As Dr. Groenewald (the Huis Marais residence head) testified, when he "heard the word "boy" very clearly [for] the first time, [he] heard it in a racial context, very strong racial context, it is a white student talking in this interaction with a black student".[25] Dr. Groenewald further elucidated on his reaction, sharing how he had an understanding of the term "boy" stemming from its racist use during South Africa's Apartheid history. His testimony, however, was starkly different to those given by the younger witnesses who testified. Mr. X testified that he

[23] 2018 (5) SA 78 (CC).
[24] Para 38.
[25] Transcript of Proceedings on 22 June 2022, page 100, lines 9-12.

had a neutral reaction to the term. Mr. L did not state that he was confident in being able to deduce that the incident was racially motivated. Other testimonies spoke to how the term 'boy' is used colloquially amongst the younger generation – terms such as 'local boy', 'boytjie', and 'boy' were used casually and without any racial connotations.

Having assessed the testimonial evidence and the video, the CDC must determine whether the context imputed racism upon the term 'boy'. Even Dr. Groenewald – who gave a trustworthy testimony – contended that he could not tell whether Mr. Du Toit was aware of the racial connotations the word could have carried. As a reasonable, objective and now informed CDC, it must be concluded that the use of the term 'boy' – albeit said in a condescending manner – cannot be determined to have been racist in and of itself. There was no mention of race, unlike in *Bester*. There was much testimonial evidence place before the CDC to accept that the term 'boy' was colloquial language and not used racially amongst Mr. Du Toit and his colleagues. This finding would suggest that the younger generations are breaking away in part from the racial terminology of the past. Ultimately, on the facts and evidence presented, SU has failed to prove, on a preponderance, that the use of the term 'boy' was racist or racially motivated.

Charge 3: The Statement Charge – Assessment of 'White Boy' phrase

The second half of this charge regard the alleged phrase "it's a white boy thing". "It's" in this context must relate to the abhorrent action of urinating on Mr. Ndwayana's property. This phrase is markedly different from that of "boy" – it makes reference to race, unequivocally. The issue here is to determine if such a phrase was stated.

As Geldenhuys & Kelly-Louw clarify, the Constitutional Court in *Bester* "expressed the view that recognition of the country's history of apartheid and its legacy should be the starting point in any inquiry where the alleged perpetrator is white and the victim is black".[26] Accordingly, in line with the supreme court of the land, this CDC must be cognisant of the races of the two parties in our investigation on what was said. Mr. Ndwayana is the only person who heard the phrase being spoken from Mr. Du Toit. Mr. X – who happened to walk Mr. Ndwayana's room at the time of the incident and told him to record the events – testified that he did not hear Mr. Du Toit utter the alleged phrase, however, he did hear a conversation taking place in the room and as Mr. Du Toit left the room (once the video ended).

[26] Geldenhuys & Kelly-Louw *PER / PELJ* 2020 3.

Mr. Du Toit can neither confirm nor deny that the phrase was stated, due to his intoxication. His defence was manufactured on establishing his character as a non-racist individual – substantiated by testimony by his friends of colour. The latter testimonies, we believe, cannot hold incredible sway. Simply because no previous evidence of racist behaviour has been presented, does not mean one cannot be racist in a particular moment or incident. Racism can be an individual act. Furthermore, having friends of colour does not exonerate an individual from being racist – it is absolutely possible to have friends of multiple races, but still act in a racist manner one or more times. Accordingly, we fail to be convinced of the importance of these testimonies in determining what was said.

As such, Mr. Ndwayana's written testimony and immediate actions must carry vital importance. Immediately after the event, Mr. Ndwayana sent messages to his mentor and Huis Marais leadership. In these messages, he expressly states that he was insulted. On the morning of the 15th of May at around 9am Mr. Ndwayana told Mr. L about the incident. Mr. L testifies that at around 10am he was in Mr. Ndwayana's room and Mr. Du Toit and 3 other males were there, enquiring as to what had happened. Mr. Du Toit was cleaning the urine, albeit, it would transpire, not sufficiently. Here Mr. L confirms that when the other men asked Mr. Ndwayana what had happened, he again stated that Mr. Du Toit had said a variation of the 'white boy' phrase. Following this, Mr. L recalls that the men laughed. In deviating, this CDC cannot comprehend that this was their reaction. It speaks volumes to the culture in Huis Marais. This aside, Mr. Ndwayana again stated that a variation of the 'white boy' phrase was said, this time to the Chairperson of the Student Representative Council – Ms. Kobokana – via email at 12:13pm. The same recollection of the phrase was said to Mr. B at around 7:20pm on the evening of the 15th of May.

As Mr. Fullard, on behalf of Mr. Du Toit, points out, Mr. Ndwayana's recollection of what was said begins to differ the further from the incident time went on. When the media became involved and Mr. Ndwayana was thrust into the country's – and (briefly) international – spotlight, his testimony developed variations and, as such, more holes through which to question his reliability. However, these later revelations do not and should not retract from the initial statements made prior to Mr. Ndwayana being shrouded by the external pressures. His testimony was clear and consistent in the immediate aftermath of the incident. As Mr. Du Toit cannot testify that he did not say the phrase, and in light of Mr. X testifying that he did hear a conversation occurring at the time the alleged phrase was said, it is this CDC's belief that the balance of probabilities must fall in favour of Mr. Ndwayana. To fail to do so would be to

conclude that Mr. Ndwayana was, and still is, lying. That is a conclusion that will be ill-established and would in many ways be demeaning.

Having concluded that this CDC believes Mr. Ndwayana's testimony, it must be determined whether the alleged statement was racist. This must be in line with what was said in *Bester* – would the reasonable, objective and informed person, on hearing the words, perceive them to be racist or derogatory? In context, Mr. Du Toit's statement is essentially '[peeing on other people's / people of colour's property] is a white boy thing'. This reading is in line with the Constitutional Court's opinion in *Bester*, as it takes into context that this is a white man perpetrating an offense against a black man. Accordingly, this CDC cannot conclude that this statement is anything but racist. It is purely racist. It assumes such dominion over another person – effectively portraying Mr. Ndwayana and people of colour as the toilet for white men. It is incredulously humiliating, hurtful, and assails the dignity of Mr. Ndwayana and all those affected by the statement. This cannot be acceptable behaviour in any way, shape, or form. Accordingly, Mr. Du Toit, on a balance of probabilities, is found to be guilty of contravening clause 9.3 of the Code.

<u>Mitigating Factors</u>

In deliberating on the findings and the order, the CDC took into account the following mitigating factors. Mr. Du Toit is a first-time offender. He showed true remorse and was at all times cooperative with the disciplinary proceedings. However, due to degrading nature of the incident and the impact it had not only on the individual, but also the university community, we cannot justify these factors detracting from the ultimate order.

<u>Findings and Order</u>

The following findings are made:

1. In terms of the Trespassing Charge, Mr. Du Toit is found guilty of contravening:
    a. Clause 7.2.2 of the Amended Residence Rules – 7 March 2022
    b. Clause 13.1 of the Disciplinary Code for Students of SU 2021.
2. In terms of the Urination Charge, Mr. Du Toit is found
    a. Guilty of contravening clauses 3.1, 9.1, 9.3, and 13.2 of the Disciplinary Code for Students of SU 2021.
    b. Not guilty of contravening clause 9.6 of the Disciplinary Code for Students of SU 2021.

3. In terms of the Statement Charge, Mr. Du Toit is found guilty of acting in a racist manner in saying a variation of “it’s a white boy thing”, and by doing so, contravening:
    a. Clause 9.3 of the Disciplinary Code for Students of SU 2021.

The following orders are made:

1. Mr. Du Toit is hereby expelled with immediately effect from Stellenbosch University in terms of the Urination Charge and the Statement Charge.
2. This judgment is to be made public by the Head of Student Discipline, with a copy being delivered to former Justice Khampepe, as a submission to the Independent Commission of Inquiry.
    a. In particular, it is strongly recommended that the attempt to transform Huis Marais be re-evaluated by means of the Independent Commission of Inquiry.
    b. This includes, but is not limited to, investigating the reasons as to why the initial transformative decisions were unceremoniously overturned.
3. It is requested that Stellenbosch University endeavours to investigate the failures by Student Leaders in Huis Marais and actively works towards establishing meaningful Student Leadership development.
4. It is strongly suggested that Stellenbosch University implement the necessary amendments to alcohol-related policy which includes a zero-tolerance policy for all alcohol/substance-induced transgressions which assail the rights of any individuals.
5. It is strongly suggested that Huis Marais design and submit a suitable alcohol policy within 6 month which encourages responsible alcohol use and has a residential zero-tolerance policy for alcohol-induced transgressions, including the unauthorised possession and consumption of alcohol in banned residential areas.