

The real Free Market Foundation is alive and well!

FMF Executive Committee response to "Open Letter: Farewell from FMF Founder and President, Leon Louw"

The Free Market Foundation (FMF) was founded in 1975 to pursue a simple agenda in South Africa's public discourse: advocacy of the only verifiable policy route to prosperity. That is an economy based on private property and freedom of enterprise, along with its associated classically liberal institutions, including non-racialism, civil liberty, freedom of the press, constitutional government, and the Rule of Law.

Between 1 July 2021 and 30 June 2022, the FMF was *amicus* in a winning Constitutional Court case regarding preferential procurement.

We concluded a successful campaign against expropriation without compensation, along with other civil society organisations, culminating to the failure of Eighteenth Amendment Bill to amend section 25, the property rights clause of the Constitution.

The FMF has continued its hard-hitting campaign against National Health Insurance, proposing alternatives that would ensure healthcare for all.

The FMF actively mentors an unemployment forum, helping them find a voice in a policy environment that ignores the plight of the unemployed.

The FMF has been published in the media an average of 12 opinion pieces per week since January 2022; made 16 submissions on proposed legislation; published, re-published, or co-published 14 publications; made presentations to or networked with 21 organisations; and launched its Student Knowledge Bank, for hungry minds of all ages.

In addition, FMF's Khaya Lam project has, to date, transferred over 8,000 municipally owned properties, turning former tenants into homeowners. Each property transferred from the public sector to the private is worth an estimated R100,000. When we achieve 10,000 transfers, which we are on track to do by end-February 2023, the project will have converted dead into dynamic capital to the tune of R1 billion.

There have always been external, and only recently, internal, challenges to the FMF's reform agenda, but the FMF is today as committed as ever to championing a free society in South Africa.

In this respect, the FMF has not changed.

What has changed, however, are the political and social circumstances within which the FMF is required to act. It has become evident that critical issues such as the proposed expropriation of property without compensation and the process of the destruction of the independence of the legal profession (and with it the last bulwark against government overreach), require explicit and rigorous engagement. As always, the FMF's engagement is informed by the free market, classical liberal perspective which has individual sovereignty at its core.

The FMF remains willing to discuss with any group or political party, as it always has, the policy framework necessary to turn South Africa into a thriving economy. That not all political parties wish to reciprocate this willingness does not detract from the FMF's open-door policy.

Recent tribulations

The FMF is governed by a Board elected by members at an Annual General Meeting. Between Board meetings, the Executive Committee manages the FMF's affairs.

The current Chairman, Rex van Schalkwyk, is a former judge of the Supreme Court. At the FMF's 2020 AGM, he was elected to the Board by members, and was elected Chairman of the Board by Board members at their September 2020 meeting. He was re-elected to the Board at the 2021 AGM and again elected Chairman by Board members. Mr van Schalkwyk has been Chairman of the FMF's Rule of Law Board of Advisers since 2015.

Five Board members serve on the Exco, which is chaired by Gail Day, who has been closely associated with the FMF since 1987. The person with the shortest history with the FMF who serves on Exco, has been associated with the FMF since 2016. None are newcomers.

Recently, certain unfounded and defamatory accusations have been made against the FMF by Leon Louw, an FMF co-founder* and former President, about its internal governance and its public posture. These have not and will not distract the organisation from its important policy and advocacy work.

The FMF's new Constitution was approved by over 84% of the 69 members present at the August 2021 Special General Meeting (SGM) where revisions to it were discussed and put to a vote. The meeting allowed plenty of time for contentious changes to be explained and debated. At the end, members were convinced that the changes were necessary.

The proposed amendments to the Constitution gave effect to Board resolutions adopted during 2020. The resolutions were intended to ensure that FMF members are *bona fide* and to prevent proxy fishing at AGMs. The 2020 AGM, in the FMF's estimation, was an unacceptable spectacle of hundreds of new "members" (whose names were emailed to the FMF on spreadsheets the day before the meeting) assigning their votes to three or four proxies who sought to dramatically change the institutional arrangements within the FMF. No values-based association would allow such a *coup d'état* to proceed unchecked.

Those who were engaged in the attempted takeover kept up the pretence that they had succeeded in the takeover, until the Board intervened in September 2020.

These events necessitated constitutional changes, which the FMF's real members, who had been associated with the FMF for years, readily agreed to.

The revisions to the Constitution were mailed to members 21 days prior to the SGM date, as the then-constitution required. The same practice was adhered to when the Constitution was previously amended in November 2017.

Regrettably, Leon Louw was involved in the attempted hostile takeover of the FMF at the 2020 AGM. This followed some time of internal strife between Louw and FMF staff and Board members. After September 2020, as had been long planned by the FMF, and which recent events had confirmed was necessary, Louw was relieved of his executive responsibilities and, with his agreement, moved into the new office of President where he would continue to act as the face of the FMF and its chief policy advocate. This, the FMF hoped, would bring an end to the germinating office politics.

Unfortunately, this did not come to pass. Louw almost immediately began refusing to work within the structures of the Foundation and to work with its executive officers. This has been intolerable for the proper functioning of the organisation.

Attempts by the FMF to resolve this problem, including interventions months prior to his appointment as President, have failed. As in all cases where two parties can no longer work together, a parting of the ways became inevitable, and this is the point at which we now find ourselves.

The hearing launched into Louw's misconduct was not brought about lightly. One does not easily accuse a long-standing friend and colleague of misbehaviour serious enough to warrant possible dismissal.

This is why the Board first sought a positive intervention by appointing Louw as President. When this did not work, rather than proceeding directly to a hearing, the Board appointed a conduct committee to coherently formulate the charges of misconduct against Louw so that the Board could rationally apply its mind on the way forward. The Board was presented with a 64-page report; 14 of the 15 Board members determined that a *prima facie* case had been made against Louw, and resolved to proceed to a hearing. 16 charges were prepared, followed by a 458-page bundle confirming evidence of misconduct.

In terms of his appointment as President, Louw was not an FMF employee. He opted instead to become an independent contractor. Being a contractor, Louw was subject to summary contractual termination. Given his long history with the FMF and his extraordinary contribution to the organisation and the cause of liberty, the Board elected instead to convene an enquiry (usually reserved for employees, who enjoy greater labour-law protection than contractors) which offered Louw an opportunity to be heard. An independent chairperson, unassociated with the FMF, was to make an impartial decision on the way forward.

Louw, speaking of the disciplinary hearing, writes that "... half the allegations [against him] were dismissed within minutes by the presiding chair". This is not true.

On 21 April 2022, the first day of the hearing, Louw's lawyers argued that several of the charges had been brought too late to be heard. The chair adjourned the meeting so that the lawyers could fully present their arguments. There followed a written application from Louw's legal representatives, the FMF's opposing affidavit, and Louw's replying affidavit. On 30 May 2022, the lawyers made oral submissions to the chair. On 2 June 2022, she delivered her ruling, dismissing only six of the 16 charges, not as being without merit, but because the FMF, in its attempts to reach a positive accommodation, which involved interventions and waiting to see whether those interventions

produced desired results, had thereby waived its right to institute disciplinary action at the time (these charges dated from 2020).

The remaining ten charges, each one serious, remained.

The FMF's finances are managed according to commonly accepted standards and best practice. The FMF is audited annually, and its accounting is outsourced to a reputable and independent firm.

A recent forensic audit, requested by a donor following an accusation of financial mismanagement by Louw, found absolutely nothing amiss and resulted in that donor releasing further funds to the FMF's *Khaya Lam (My Home) Land Reform Project*.

Before the aforementioned accusations of impropriety were made by Louw, no such charges were made against the FMF in its long, 47-year history, and other than Louw, no other party has levelled such charges.

Any donor who wishes to interrogate the FMF's financial records may contact Gail Day on gailday@fmfsa.org. We will provide our full cooperation.

The FMF is deeply disturbed by the tone of Louw's open letter, and the many inaccuracies it contains, including renewed allusions to financial mismanagement. The FMF is further saddened by his conduct, inimical to the interests of the Foundation which he has, in the past, served with distinction.

The FMF has accordingly terminated Louw's services, with immediate effect.

In recognition of his past contributions, we wish Louw well in his future endeavours, and hope the baseless and defamatory attacks on the FMF by Louw and his followers will cease, to be replaced by a renewed commitment to setting South Africa on the right policy path.

Our door is open to all good-faith members, funders, and friends; we will answer any questions you may have.

* The FMF's co-founders were Ed Emary, Mike Lillard, Leon Louw, Fred Macaskill, André Spies and Marc Swanepoel.

FMF Executive Committee