
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO. 30 OF 2010/11

"Administrative action must be fair and must be seen to be fair"

REPORT ON AN INVESTIGATION INTO A COMPLAINT OF IMPROPER CONDUCT BY THE GOVERNING BODY OF THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION AND THE PREJUDICE CAUSED BY ITS DECISION NOT TO ACCREDIT A PANELLIST OF BARGAINING COUNCILS
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Executive Summary

(i) Adv N C Mcladla (the Complainant), an independent arbitrator and mediator who serves as a Panellist on various bargaining councils and Tokiso, a private agency, submitted a complaint to the Public Protector on 20 October 2009 in which she alleged that the Commission for Conciliation, Mediation and Arbitration (CCMA) acted improperly and that she was prejudiced by its decision not to accredit her as a panellist for the Metal and Engineering Industry Bargaining Council (MEIBC) and the Motor Industry Bargaining Council (MIBCO).

(ii) In her complaint she stated the following:

(a) Two applications for her to be accredited as a panellist, in terms of the CCMA’s Accreditation Policy, submitted by MIBCO and the MEIBC were unsuccessful. She argued that these decisions were invalid for the following reasons:

(aa) The CCMA did not have the authority to accredit panellists of bargaining councils and in this regard she challenged the CCMA’s interpretation of section 127(1) of the Labour Relations Act, 1995 (LRA) - the provisions of which is discussed in detail at paragraph 5.3 below;

(bb) The CCMA unduly delayed in providing her with the outcome of the application and with written reasons for the refusal of the application; and

(cc) The CCMA did not afford her a procedurally and substantively fair process, neither did it give her the opportunity to appeal their decision in a procedurally fair process.

(b) She further stated that the CCMA instructed various bargaining councils not to use the services of a non-accredited panellist and
removed her name from their case management system, thus preventing her from earning an income and violating her right to freedom of trade, occupation and profession, provided for in section 22 of the Constitution of the Republic of South Africa, 1996 (the Constitution).

(c) She added that her contracts with the bargaining councils concerned were not renewed due to her non-accreditation.

(iii) The Public Protector's findings on maladministration are the following:

(a) The Governing Body of the CCMA was not empowered by section 127 of the LRA to accredit panellists of bargaining councils. The accreditation of panellists of bargaining councils is a power specifically afforded to the councils themselves by section 128 of the LRA. As bargaining councils are required, in terms of the LRA, to demonstrate the competency of their panellists for purposes of accreditation, this process should be left to bargaining councils operating under the criteria stipulated by the CCMA. The conduct of the Governing Body of the CCMA in this regard is found to constitute maladministration and abuse of power.

(b) The delay in responding to the request for written reasons for the decisions taken in the first and second applications of the Complainant was unreasonable in the circumstances and is found to constitute maladministration.

(c) The decisions of the Governing Body in respect of the two applications lodged for the accreditation of the Complainant as a panellist of the respective bargaining councils were unlawful and invalid as it did not comply with the provisions of lawful, procedurally fair and reasonable administrative action prescribed by the Promotion of Administrative Justice Act, 2000 (PAJA) and thus violated her constitutional right to
just administrative action. The conduct of the Governing Body in this regard is found to constitute maladministration.

(d) Were section 127 to be interpreted as to assign to the Governing Body of the CCMA the power to accredit panellists of bargaining councils, the decision not to accredit the Complainant is found to be too harsh. The principle of proportionality requires that measures less harsh or less restrictive should have been considered rather than disbarred her from practicing as a panellist. It is found that the Complainant should have been given a fair opportunity to meet the required performance standard and non-accreditation was not an appropriate sanction in the circumstances.

(e) As a result it is found that the Governing Body of the CCMA acted improperly, viciously and disproportionately and this therefore constitutes gross maladministration. Further, such conduct amounts to an abuse of power and disregard for the human rights and particularly the human dignity of the Complainant.

(f) The CCMA’s conduct in the past year, specifically its failure to accept the urgency of the matter and co-operate towards its expeditious resolution, leaves a lot to be desired. This is more so taking into account the CCMA’s role in society and acknowledging the responsibility on it to lead by example with regard to acting fairly.

(iv) The Public Protector’s findings on prejudice are the following:

(a) The Complainant was prejudiced by the decision of the Governing Body not to accredit her as her contracts with certain bargaining councils were either terminated or suspended. Prior to the non-accreditation the Complainant was a panellist for the following bargaining councils:
(aa) Bargaining Councils contracted with Tokiso such as Metal Engineering Industry Bargaining Council (MEIBC), Metrorail Bargaining Council, Transnet Bargaining Council, South African Road Passenger Bargaining Council and Bombela Concession Company;

(bb) MIBCO Dispute Resolution Centre (MIBCO-DRC);

(cc) South African Local Government Bargaining Council (both in Gauteng and Johannesburg Division);

(dd) Public Health and Social Development Services Bargaining Council (PHSDBC);

(ee) Safety and Security Sectoral Bargaining Council (SSSBC); and

(ff) General Public Service Sectoral Bargaining Council (GPSSBC).

(b) After the non-accreditation the following bargaining councils either suspended or terminated her services:

(aa) All bargaining councils that contracted with Tokiso terminated her services (MEIBC, Metrorail, SARPBAC, Transnet and Bombela);

(bb) MIBCO - DRC;

(cc) SALGBC (both divisions); and

(dd) PHSDBC.

(c) The Complainant was prejudiced by the decision of non-accreditation as it resulted in:
(aa) Pain and suffering as a consequence of being declared incompetent to practise as a Panellist of bargaining councils after specialising in this field for approximately ten years; and

(bb) Financial loss as a result of the loss of income calculated at approximately R45 000.00 per month.

(d) The Complainant was further prejudiced by the CCMA’s dragging of its feet and general lack of interest in resolving the matter under the ambit of the Public Protector in the past year.

(v) Remedial action to be taken in terms of section 182(1)(c) of the Constitution is that:

(a) The CCMA must revoke the decisions in question with immediate effect;

(b) The bargaining councils to which the Complainant was contracted must be allowed to utilise her services in accordance with section 128(3)(a)(i) with immediate effect;

(c) The competency of the Complainant to practice as a Panellist must be assessed by the bargaining councils who have accepted her candidacy; and

(d) The CCMA must compensate the Complainant for pain and suffering and the financial loss incurred as a result of her loss of income. The amount of compensation is to be agreed to by the parties.

(vi) The Public Protector further recommends that:

(a) The CCMA’s Accreditation Policy be reviewed to give power back to bargaining councils to access the competencies of the panellists in general; and
(b) The Minister of Labour takes urgent steps to review section 127 of the LRA to address quality assurance concerns that have led to the CCMA's actions and to specify a body to accredit the panellists in bargaining councils.

(vii) The timelines for the implementation of remedial action are as follows:

(a) The Governing Body of the CCMA must submit an implementation plan in respect of the recommendations made within 30 days of the date of this report;

(b) Thereafter, the Governing Body must submit a progress report on the implementation of the recommendations made, within 2 months from the date of this report; and

(c) The Public Protector will monitor the progress made with the implementation of the recommendations made over the next six (6) months following the date of this report.
REPORT ON AN INVESTIGATION INTO A COMPLAINT OF IMPROPER CONDUCT BY THE GOVERNING BODY OF THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION AND THE PREJUDICE CAUSED BY ITS DECISION NOT TO ACCREDIT A PANELLIST OF BARGAINING COUNCILS

1. INTRODUCTION

1.1 This is a report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 It is submitted to the Minister of Labour, the Governing Body and the Director of the Commission for Conciliation, Mediation and Arbitration (CCMA).

1.3 A copy of the report is provided to Adv N C Mladla (the Complainant) in terms of section 8(3) of the Public Protector Act.

1.4 A copy of the report is also submitted to Parliament for noting and monitoring of implementation.

1.5 The report relates to an investigation into a complaint of improper conduct by the Governing Body of the CCMA and the prejudice caused by its decision not to accredit the Complainant as a panellist of bargaining councils.

2. THE COMPLAINT

2.1 The Complainant, an independent arbitrator and mediator who serves as a Panellist on various bargaining councils and Tokiso Dispute Settlement Agency (Tokiso), a private agency, submitted a complaint to the Public Protector on 20 October 2009 in which she alleged that the CCMA acted improperly and that she was prejudiced by its decision not to accredit her as
a panellist for the Metal and Engineering Industry Bargaining Council (MEIBC) and the Motor Industry Bargaining Council (MIBCO).

2.2 In her complaint she stated the following:

2.2.1 Two applications for her to be accredited as a panellist, in terms of the CCMA’s Accreditation Policy, submitted by MIBCO and the MEIBC were unsuccessful. She argued that these decisions were invalid for the following reasons:

2.2.1.1 The CCMA did not have the authority to accredit panellists of bargaining councils and in this regard she challenged section 127(1) of the Labour Relations Act (the provisions of which is discussed in detail at paragraph 5.3 below;

2.2.1.2 The CCMA unduly delayed in providing her with the outcome of the application and with written reasons for the refusal of the application; and

2.2.1.3 The CCMA did not afford her a procedurally and substantively fair process, neither did it give her the opportunity to appeal their decision in a procedurally fair process.

2.2.2 She further stated that the CCMA instructed various bargaining councils not to use the services of a non-accredited panellist and removed her name from their case management system, thus preventing her from earning an income and violating her right to freedom of trade, occupation and profession, provided for in section 22 of the Constitution.

2.2.3 She added that her contracts with the bargaining councils concerned were not renewed due to her non-accreditation.

3. JURISDICTION OF THE PUBLIC PROTECTOR

3.1 Section 182 (1) of the Constitution provides that:
"182(1) The Public Protector has the powers as regulated by national legislation-

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action."

3.2 In terms of section 6(4)(a) of the Public Protector Act, the Public Protector is competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged maladministration in connection with the affairs of government, abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function.

3.3 The Public Protector is competent, in terms of section 6(4)(b) to resolve any dispute or to rectify any act or omission by mediation, conciliation, negotiation or any other means expedient in the circumstances.

3.4 The CCMA derives its powers from the LRA and is an organ of state as contemplated by section 239 of the Constitution. The conduct of the Governing Body falls within the ambit of 'public function' as envisaged by section 6(4)(a) of the Public Protector Act. As a result, the complaint against the CCMA falls within the jurisdiction and powers of the Public Protector.

3.5 The jurisdiction of the Public Protector as authorised by the Public Protector Act does not prevent the Public Protector from investigating a complaint in terms of sections 6 and 7 of the Public Protector Act where such a complaint has also been placed on the court roll. The investigation by the Public Protector therefore does not impinge on the doctrine of sub judic peace as such
investigation and the court proceedings are considered two distinct and complimentary processes.

3.6 With regard to the jurisdiction of the Public Protector, it must be realised that there is a difference between matters where the Public Protector does not have jurisdiction over the complaint because the matter would prima facie fall outside the legal remit of the office, and matters where the Public Protector has a discretion to decide that the complaint or matter shall not be entertained because:

3.6.1 It was not reported within two years from the occurrence of the incident or matter concerned (section 6(9) of the Act), or

3.6.2 The complainant is an officer or employee in the service of the State or is a person to whom the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994), are applicable and has, in connection with such matter, not taken all reasonable steps to exhaust the remedies conferred upon him or her in terms of the said Public Service Act, 1994 - (section 6(3)(a) of the Act); or

3.6.3 The complainant has not taken all reasonable steps to exhaust his or her legal remedies in connection with such matter (section 6(3)(a) of the Act);

3.6.4 In terms of the provisions of section 182 of the Constitution the only instance where the Public Protector does not have a discretion to decide whether or not the complaints should be investigated, is if she/ he is requested to investigate a decision of a court of law. This is confirmed by section 6(6) of the Act, which provides that "nothing in subsections (4) and (5) shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law";
3.6.5 The law is very specific in limiting the Public Protector's jurisdiction only in so far as the actual "decision" by a court or the performance of its judicial function is concerned. These provisions do not however, prevent the Public Protector from considering information or allegations of improper conduct by a public institution that are, or might have been, the subject of legal proceedings. This is because court proceedings and an investigation or enquiry by the Public Protector involve separate sets of charges, are decided against separate standards and result in two separate outcomes, even if they concern the same alleged improper conduct;

3.6.6 This approach also applies to the same question as to whether or not an issue raised in a complaint is to regard as sub judice. It should be emphasised that this complaint was not lodged with the Public Protector in a prescribed legal format that confines any grievance, concern or dispute to predefined or predetermined matters or issues. The Public Protector is presented with allegations, evidence or information and has to determine if this information prima facie reveals impropriety on the part of an institution that should be dealt with in terms of the Constitution, and the Public Protector Act;

4. **THE INVESTIGATION**

The investigation was conducted in terms of section 182(1)(a) of the Constitution which gives the Public Protector the power to investigate and sections 6 and 7 of the Public Protector Act.

4.1 **Key Sources of Information**

4.1.1 **Communication with the Complainant**

4.1.1.1 After her initial meeting with the Public Protector, on 20 October 2009, the Complainant submitted an e-mail on 21 October 2009, in which she confirmed her complaint and clearly set out the circumstances surrounding and grounds for her complaint;

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1 "verdict, judgment, pronouncement" – Thesaurus: English: UK)
4.1.1.2 On 22 October 2009, the Complainant submitted further documents by e-mail in which she announced that she had been nominated by Tokiso for the Tokiso Awards in the category “Best Case Studies of the Year”;

4.1.1.3 The Complainant was informed of the investigations conducted into her complaint on 28 October 2010, by Mrs C N Pillay, Senior Investigator with the Public Protector. Adv CH Fourie, Executive Manager, Good Governance and Integrity Unit and Mrs C N Pillay were tasked to investigate the complaint;

4.1.1.4 On 26 November 2009, the Complainant was requested, by Mrs Pillay, to submit additional information and evidence relating to her complaint;

4.1.1.5 After completion of the Public Protectors preliminary report on the investigation, on 16 April 2010, Mrs Pillay requested the Complainant to submit her comments on the report. The Complainant’s comments were submitted in an email dated 3 May 2010;

4.1.1.6 The Public Protector, Adv Fourie and Mrs Pillay held a meeting with the Complainant on 27 September 2010 to discuss the CCMA’s response to the Public Protector’s preliminary report on this investigation and other issues emanating from the report; and

4.1.1.7 Subsequent to the above meeting, further information was submitted by the Complainant on 5 October 2010 relating to supporting evidence of her employment at the CCMA, copies of the heads of argument submitted to the High Court and other issues relating to the preliminary report.

4.1.2 Communication with the CCMA

4.1.2.1 The CCMA was informed of the investigation conducted by the Public Protector into the Complainant’s complaint by Adv Fourie on 18 November 2009. The Director of the CCMA, Ms Khan was requested to submit a response to the complaint;
4.1.2.2 Based on this response and other additional information submitted on request, the Public Protector finalised the preliminary report on this investigation. The CCMA was given an opportunity to respond to the preliminary findings on 22 April 2010;

4.1.2.3 A meeting was held with the CCMA and their legal representatives Bowman Gilfillan Attorneys on 5 August 2010 to discuss the preliminary findings; and

4.1.2.4 The CCMA provided a written response to the preliminary findings on 06 September 2010.

4.1.3 Documents considered

Voluminous documents were submitted by both the CCMA and the Complainant in connection with the complaint:

4.1.3.1 Documents submitted by the CCMA

(a) The pleadings compiled for purposes of the High Court review application;

(b) Correspondence between the CCMA and the Complainant and the legal representatives of both parties;

(c) Minutes of the Accreditation Subsidy Sub-Committee (ASSC) meeting of 17 August 2010 during which the Complainant’s second application was considered; and

(d) The CCMA’s policy on the accreditation of panellists of bargaining council’s.

4.1.3.2 Documents submitted by the Complainant

(a) Affidavits containing evidence relating to her complaint;
(b) Correspondence between herself and the CCMA and her legal representatives and that of the CCMA;

(c) Affidavits and heads of arguments that were submitted to the High Court in support of her application for review; and

(d) Evidence relating to her portfolio of evidence submitted to the CCMA by MIBCO and Tokiso.

4.1.4 Legislation and other prescripts

The relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

4.1.4.1 The Constitution;

4.1.4.2 The Public Protector Act;

4.1.4.3 The Promotion of Administrative Justice Act, 2000 (PAJA);

4.1.4.4 The Labour Relations Act, 1995, (LRA);

4.1.4.5 Policies, rules and regulations of the CCMA; and

4.1.4.6 Decisions and observations of Ombudsman institutions in other democracies.

4.2 The investigation process and the evidence and information obtained in connection with the complaint

4.2.1 The CCMA’s Accreditation Policy

4.2.1.1 The criteria applicable to the accreditation of panellists are provided for by the Accreditation Policy of the CCMA (the Policy), which was, according to
the CCMA, developed following the review, in 2008, of the accreditation process.

4.2.1.2 The Policy provides that the applicant bargaining council must appoint persons who are competent to perform the functions for which it seeks accreditation and to exercise any associated powers.

4.2.1.3 The Policy also highlights the importance of consistency and transparency in the appointment, re-appointment and if necessary, the removal of panellists.

4.2.1.4 Panellists are assessed in terms of criteria similar to the requirements that apply to commissioners appointed by the Governing Body of the CCMA. They are required to perform within a range of both qualitative and quantitative standards, which are listed in Annexure D to the Policy. The criteria considered in the process are:

(a) The formal qualification of the panellist;
(b) Recognition of prior learning;
(c) Relevant experience;
(d) The quality of awards;
(e) Issues that arise from successful review proceedings;
(f) Complaints on the conduct of panellists;
(g) Any disciplinary violations by individual panellists;
(h) Timely submission of arbitration awards; and
(i) Settlement rates.

4.2.1.5 The Policy recommends that bargaining councils appoint persons who are part-time commissioners appointed by the Governing Body in terms of section 117(2) of the LRA and persons who are certified by the Accreditation Subsidy Sub-Committee of the Governing Body (ASSC) to perform dispute resolution functions.
4.2.1.6 As indicated above, the purpose of this approach, as set out in the Policy, is to ensure that panellists who are appointed to conduct statutory conciliations and arbitrations, have the required and appropriate training and experience.

4.2.2 Background to the Accreditation Policy

4.2.2.1 Prior to the CCMA reviewing its process of accreditation of bargaining councils in 2008, the process did not include the accreditation of panellists of bargaining councils and only confined itself to the institutional accreditation of bargaining councils.

4.2.2.2 Bargaining councils were only required to submit an application to the Governing Body of the CCMA for accreditation in respect of the following dispute resolution functions:

(a) resolving disputes through conciliation; and

(b) arbitrating disputes that remain unresolved after conciliation, if the LRA requires arbitration.

4.2.2.3 The appointment of qualified panellists to conduct these functions was the responsibility of the bargaining councils and was not dependant on the accreditation of a panellist by the CCMA.

4.2.2.4 In 2008 the CCMA conducted a review of its process of accreditation of bargaining councils.

4.2.2.5 During the investigation the CCMA explained that the review was done as a result of complaints received regarding the quality of dispute resolution functions conducted by accredited councils. These complaints highlighted the following issues:

(a) The submission of late awards; and
(b) The poor quality of awards.

4.2.2.6 The CCMA also identified deficiencies regarding the application by bargaining councils of legal principles which rendered many awards unenforceable. In this regard it was decided to assess and accredit the panellists of all registered bargaining councils to ensure that they were competent to perform the functions associated with the accreditation, as contemplated by section 127(4) of the LRA.

4.2.2.7 In May 2008, during a Joint Consultative Forum organised by the Department of Labour and the CCMA, the revised accreditation criteria were discussed with bargaining and statutory councils and they were afforded an opportunity to make written representations as part of the consultation process. The majority of bargaining councils were in attendance.

4.2.2.8 According to the CCMA, it was and remains the duty of bargaining councils to inform their panellists of the revised system as they are responsible for appointing them.

4.2.2.9 On 9 December 2008, the Governing Body of the CCMA formally adopted the revised accreditation criteria as the consultation process with bargaining councils was complete.

4.2.2.10 The Governing Body initially directed that bargaining councils should only appoint existing CCMA Commissioners onto their respective panels. However, after further consultation with the bargaining councils, it was agreed that they would be allowed to apply for accreditation for their existing panellists in order to retain skills.

4.2.2.11 There are currently 42 accredited bargaining and statutory councils. Applications for the accreditation of panellists, submitted by councils on behalf of panellists, were heard during meetings of the ASSC, which took place on 15 May 2009, 17 August 2009 and 9 December 2009. To date it
has entertained 147 applications for accreditation. From the information provided by the CCMA, no council has challenged the revised system.

4.2.2.12 On 2 July 2009, all councils were informed of the legal implications of utilising the services of a panelist in a non-party dispute (a dispute where a party is not a party to a council but falls within the registered scope of a council) who is not accredited. The CCMA advised that should a council utilise a non-accredited panelist for a non-party dispute, the panelist would not be considered as competent and the CCMA would require the council to re-convene the matter before an accredited panelist. Councils were further informed that an alternative solution is that the CCMA would assume jurisdiction.

4.2.2.13 In addition, the CCMA advised that it would not enforce awards heard by non-accredited panelists in non-party disputes through section 143 of the LRA and this would have serious legal implications for parties. Likewise, where a non-accredited panelist has presided over a non-party dispute, the settlement agreement would not be enforced through section 143 either.

4.2.2.14 During the investigation the CCMA maintained that a main part of the purpose for the accreditation process is to ensure that the competencies of panelists who are conferred with the powers of a commissioner, are of an appropriate standard to perform dispute resolution functions otherwise performed by the CCMA.

4.2.1.15 Accreditation by the CCMA is only necessary when the bargaining council requires a panelist to perform accredited functions, such as resolving non-party disputes. Panelists are not prevented from resolving other disputes, such as those concerning the enforcement of a collective bargaining agreement in terms of section 336A of the LRA.

4.2.3 A detailed account of the Complainant's case
4.2.3.1 The Complainant has a BA (Law) degree, an LLB degree and a Certificate in Labour Law from the University of Natal. She is an advocate of the High Court and has received training and has worked as a commissioner at the CCMA from 1 April 1998 to 31 December 1998. She also worked as a managing commissioner at the MIBCO Dispute Resolution Centre (MIBCO-DRC).

4.2.3.2 In 2000, the Complainant was appointed as a part-time commissioner of the Education Labour Relations Council (ELRC); General Public Service Sectoral Bargaining Council (GPSSBC) and as a national senior commissioner Public Health and Welfare Bargaining Council (PHWBC); and Safety and Security Sectoral Bargaining Council (SSSBC).

4.2.3.4 In 2003 she joined the National Bargaining Council for Chemical Industries (NBCCI) and the South African Local Government Bargaining Council (SALGBC), Tshwane Division.

4.2.3.5 In 2004, she joined the Gauteng Division of the SALGBC where she was appointed as a senior Commissioner in 2005. In 2007, she joined Road Freight Industries Bargaining Council (NBCRFI) and the Johannesburg Division of the SALGBC where she was also appointed as a Senior Commissioner in 2008.

4.2.3.6 On 13 May 2009, Tokiso submitted an application for the accreditation of the Complainant, on behalf of the MEIBC. Tokiso is a dispute resolution agency with a panel of arbitrators that provides dispute resolution services to various bargaining councils. The Complainant was employed by Tokiso as a panellist since 2002.

4.2.3.7 The application was refused on 21 May 2009 and notice of the decision of the Governing Body was given to Tokiso via letter by the CCMA on 24 May 2009.
4.2.3.8 On 27 May 2010 Tokiso submitted a written request for reasons for the refusal to the CCMA which was provided in a letter dated 19 July 2009.

4.2.3.9 The following were the reasons provided for not accrediting the Complainant:

31. NTOMBIZODWA (ZODWA) CONSTANCE MDLADLA

Not accredited.

REASONS:
During January 2009, Ms. Mdadia was interviewed by the CCMA for a part-time Senior Commissioner position, alternatively full-time Level A position. She was unsuccessful in her application. The panel who interviewed her was concerned about the fact that her CV does not reflect the CCMA records of her previous employment at the CCMA. Also, Ms. Mdadia did not disclose that she had previously litigated against the CCMA and accordingly her ethics and integrity became questionable. Another concern was her lack of understanding of labour market issues and policies. The panel was further concerned about her lack to self-reflect and gain personal learning from the situation where she was requested to terminate her full-time employment at a Bargaining Council. Also, reference checks obtained pertaining to her previous employment at the CCMA was negative. She denied to render a lot of awards late, however statistics showed otherwise.

4.2.3.10 Subsequent to receiving these reasons the Complainant contacted Senior Commissioner Eleanor Hambidge at the CCMA to discuss the outcome of her application. However, she was unable to secure a meeting date with her. She thereafter lodged an application for review of the CCMA’s decision with the High Court and notified the CCMA hereof on 11 August 2009.

4.2.3.11 On 30 July 2009, MIBCO submitted an application for accreditation on behalf of the Complainant, who has been a Managing Commissioner at MIBCO since January 1999.

4.2.3.12 On 16 August 2009, she was informed by her attorneys that they were notified by the CCMA on 14 August 2009, in a letter dated 12 August 2009, that she was invited to make oral representations to the ASSC, on 17 August 2009, in respect of her second application for accreditation. The letter stated that she could submit written representations or appear personally before the ASSC to explain why she was of the view that she did meet the accreditation criteria.
4.2.3.13 As she only received this notice on 16 August 2009 at 12h00, she declined the invitation to make an oral presentation, claiming that she was given an unreasonably short notice of the meeting. She decided instead to make a written submission. This submission was actually a response to the reasons given for the decision in the first application.

4.2.3.14 On 19 August 2009, a written request for the outcome of the second application was submitted to the CCMA by the Complainant’s attorneys to which they were informed that her application was considered by the ASSC on 17 August 2009 and that the relevant documents would serve before the Governing Body of the CCMA on 27 August 2009 for the final determination on the outcome of the application.

4.2.3.15 In light of the above information the Complainant decided to remove her High Court application for review from the court roll pending the outcome of the second application.

4.2.3.16 In a letter dated 03 September 2009, the CCMA informed MIBCO and the Complainant’s attorneys that the second application was unsuccessful.

4.2.3.17 On 7 September 2009, the Complainant’s attorneys submitted a request for written reasons for the decision to the CCMA. The CCMA responded to this request on 2 October 2009 in a letter dated, 30 September 2009, addressed to the attorneys and MIBCO.

4.2.3.18 In her written representation submitted to the ASSC in support of her second application, the Complainant stated the following:

(a) The decision by the CCMA is invalid and unlawful:

(i) The CCMA does not have the authority to accredit individual panellists to perform dispute resolution functions. Their authority in terms of section 127 of the LRA is limited to accrediting bargaining councils and private agencies who are registered with the CCMA.
There is no rational connection between the decision and the reasons given:

(i) The ASSC’s concern about "the fact that her CV does not reflect the CCMA records of her previous employment at the CCMA" was not relevant to her application and was not a criterion for purposes of accreditation in terms of the Policy.

(ii) The non disclosure of a dispute lodged against the CCMA in 1997 relating to an unfair labour practice issue should not bring her ethics and integrity into question. This was done in the exercise of her right to fair labour practice and she should not be prejudiced for it. Further, she was of the view that it was not relevant to her application.

(iii) The Committee’s concern that she lacked an “understanding of labour market issues and policies” was not relevant. She stated that this was a subjective view that was not substantiated by any proof. Her work at various bargaining councils and her years of experience was sufficient to establish her competence. She added that these bargaining councils were satisfied with the quality and standard of her work.

(iv) The comment regarding her alleged “lack of self-reflect and gain personal learning from the situation where she was requested to terminate her full time employment at a bargaining council” was confusing as she explained to the CCMA that she was unfairly dismissed by the Dispute Resolution Centre for MIBCO and she was not requested to terminate her employment. She disclosed further that she declared a dispute at the CCMA which was subsequently resolved and therefore she is now on the panel of part-time commissioners at the Dispute Resolution Centre.

(v) The reason why her application for employment at the CCMA was declined in January 2009, was a separate issue from her
application for accreditation. The fact that these reasons were considered makes the CCMA’s decision regarding her application for accreditation irrational in relation to the criteria used for accreditation in the Policy.

(c) Incorrect interpretation of her response to rendering awards late:

It was not denied that certain awards were rendered late. However, she usually counted 14 days from the date of submission of closing arguments and not the date on which evidence was last heard. She considers a case closed only upon submission of closing arguments. She added that should she foresee an award being late, she would request an extension of time before the 14 day period.

(d) The accreditation process was procedurally unfair:

The application process was procedurally unfair in that the criteria for accreditation were not properly applied to the evidence before the ASSC, who was not objective in its decision making. The CCMA did not afford her a proper appeal process in respect of the first application. No appeal procedure existed at the time of her first application and she was given the opportunity to appeal the decision taken in the first application at the same time that the second application was being considered. As a result both the appeal and the second application were heard at the same time.

(e) The CCMA violated her right to freedom of trade, occupation and profession:

(i) The CCMA requested bargaining councils at which she was employed not to use her services as she was declared incompetent;

(ii) Bargaining councils were warned that should they use the services of unaccredited panellists the awards would be revoked and replaced for that of the CCMA;
(iii) Her name was removed from the Case Management System, thus preventing her from being recruited by other bargaining councils; and

(iv) The CCMA failed to consider the financial implications that these decisions had on her career and lifestyle as this was her only source of income seeing that she had been practising in this field for approximately ten years.

4.2.3.19 As a result of the outcome of the second application, the Complainant placed her High Court review application on the court roll again on 12 April 2010 and the case is set to be heard on 15 November 2010.

4.2.3.20 The Complainant submitted further that prior to the decision taken by the Governing Body not to accredit her she was a Panellist for the following bargaining councils:

(a) Bargaining Councils contracted with Tokiso such as MEIBC, Metrorail Bargaining Council, Transnet Bargaining Council, South African Road Passenger Bargaining Council and Bombela Concession Company;

(b) MIBCO Dispute Resolution Centre (MIBCO-DRC);

(c) SALGBC (both in Gauteng and Johannesburg Division);

(d) Public Health and Social Development Services Bargaining Council (PHSDBC);

(e) SSSBC; and

(f) GPSSBC.
4.2.3.21 After the non-accreditation the following bargaining councils either suspended or terminated her services:

(a) All bargaining councils that contracted with Tokiso (MEIBC, Metrorail, SARPBAC, Transnet and Bombela);

(b) MIBCO-DRC;

(c) SALGBC (both divisions); and

(d) PHSDBC.

4.2.3.22 The Complainant submitted that the decision of non-accreditation resulted in:

(a) Pain and suffering as a consequence of being declared incompetent to practise as a Panellist of bargaining councils after specialising in this field for approximately ten years; and

(b) Financial loss as a result of the loss of income calculated at approximately R45 000.00 per month.

4.2.4 The CCMA’s response to the complaint:

4.2.4.1 The CCMA did not have the authority to accredit panellists of bargaining councils:

4.2.4.1.1 Section 127(1) of the LRA provides explicit authority to accredit panellists.

4.2.4.1.2 Section 127(4)(d) provides the Governing Body with the power to determine whether panellists, appointed by bargaining councils to perform dispute resolution functions, are competent to do so.
4.2.4.1.3 Section 127(5)(a)(ii) provides that the accreditation certificate of a bargaining council can include terms of accreditation.

4.2.4.1.4 The CCMA did not exceed its powers in this respect as it provided a mechanism to ensure that one of the legislative requirements for accreditation is maintained and regulated by the CCMA.

4.2.4.1.5 Since the Complainant elected to subject herself to the accreditation process on two occasions and suspended her High Court application for review pending the outcome of the second application, she has thereby, acknowledged and accepted the authority of the CCMA to accredit panellists.

4.2.4.2 The CCMA unduly delayed in informing her of the outcome of the application and in providing her with written reasons for the refusal of the applications.

4.2.4.2.1 The allegation of undue delay, with regard to the first application for the accreditation of the Complainant which was received from Tokiso (on behalf of MEIBC) on 13 May 2009, was denied. The decision by the CCMA to refuse the application was taken on 21 May 2009 and communicated to Tokiso on 24 May 2009.

4.2.4.2.2 Tokiso requested written reasons for the refusal on 24 May 2009 and reasons were provided on 19 July 2009 in a letter dated 13 July 2009, as the ASSC had to finalise and confirm the recordings of the meeting, which was a time consuming task.

4.2.4.2.3 The allegation of undue delay with regard to the second application, which was submitted by MIBCO on 30 July 2009, was denied. The application was considered by the ASSC on 17 August 2009 and finalised by the Governing Body on 27 August 2009. MIBCO and the Complainant's attorneys were informed of the decision to refuse this application on 3 September 2009.
4.2.4.2.4 On 7 September 2009, the Complainant's attorneys requested written reasons for the decision. The Policy requires that requests for written reasons must be made by the bargaining council which submitted the application. The attorneys were given this information and advised, in an email dated 10 September 2009, that no request was made by MIBCO. Subsequently, reasons were provided on 30 September 2009 in a letter addressed to both MIBCO and the attorneys.

4.2.4.3 The CCMA did not afford her a procedurally and substantively fair process:

4.2.4.3.1 The Complainant's allegation that the decision in respect of the first application was not rationally connected to the reasons given, was denied on the basis that the decision was taken in accordance with the evidence which found that the applicant frequently rendered awards late and that a number of her awards were not of acceptable quality. From the evidence it was found that the applicant did not satisfy the objective criteria necessary to be accredited, although concerns about her honesty were taken into account.

4.2.4.3.2 Where an "applicant" was previously refused accreditation as a commissioner (reference to the applicant's job application in January 2009) it is inevitable that the same applicant will be denied accreditation as a panellist, as the applicant will be assessed in both instances against the same objective criteria and the purpose underpinning the assessment would be undermined if different outcomes where attainable depending on whether one applied to be a commissioner or a panellist.

4.2.4.3.3 The procedure was fair and transparent. The Complainant was given reasons for the decision taken when such reasons were requested. Although there was no appeal process at the stage of the first application, the procedure was amended at a later stage and the Complainant was afforded an opportunity to appeal the second decision that was taken. No appeal is necessary in order for the procedure to be fair as the applicant was able to review the decision taken. In addition, the written
representation made in support of the first application was considered during the assessment of the second application.

4.2.4.3.4 With regard to the second application, the CCMA stated that the reasons for the refusal were supported by the documentation submitted to the CCMA and is in accordance with the assessment standards specified in Annexure D to the Policy.

4.2.4.4 The reasons provided by the Governing Body for not accrediting the Complainant in respect of the second application:

4.2.4.4.1 The quality of her awards was not regarded as satisfactory. It was noted that English was not her first language and she needed improvement on her writing skills, although she already had 10 years experience as a full time panellist for various bargaining councils.

4.2.4.4.2 There was a concern that she dealt with issues superficially and failed to apply the provisions of the LRA and to properly apply her mind to the facts of a case before her. The assessment of her decisions was said to be done in order to establish whether her awards would be successfully reviewed by a court of law and not to undermine the decisions taken. The following examples were highlighted:

(a) In a matter referred to as "MINT 14114" she referred to the Basic Conditions of Employment Act (BCEA) without acknowledging that the Bargaining Councils Collective Agreement superseded the BCEA. She should have relied on the appropriate part of the MiBCO Collective Agreement. It was also said that she was not familiar with the MiBCO Collective Agreement although she had worked for them for a period of 10 years.

(b) In another case, two employees were given a written warning valid for 6 months and were subsequently dismissed for the same offence. In her award the Complainant confirmed the dismissal. It
was said that she failed to deal with the principle of double jeopardy before upholding the dismissal. In addition, the award was not dated and this rendered it unenforceable. The panel found that this award would have been successfully reviewed by a court of law due to the failure to apply the principle of double jeopardy.

(c) Reference was also made to her deviation, without justification, from leading case law in another MIBCO case. It involved an employee who was dismissed for drinking on the job. The ASSC found that she only heard the employer's argument and failed to give the employee an opportunity to defend himself. She may not have agreed with leading case law on the matter, however, she is bound by Labour Court decisions. Further, no explanation or argument was recorded as to why she chose not to follow jurisprudential precedents.

(d) Reference was made to the CCMA policy which provides that all Commissioners are bound by the decisions of the Labour Court and if one decided to deviate from a decision, it must be explained to the parties first, arguments from both sides as to why the decision should be applied should then be allowed and considered and the decision for the deviation should be properly explained to enable a court to consider the reasoning, should the matter be taken on review.

(e) The Complainant’s awards contained unnecessary material errors such as in "MINT 14264" where she referred to MEIBC instead of MIBCO.

4.2.4.4.3 According to an independent assessment conducted by the Operations and Information Department of the CCMA, it was established that 68% of the Complainant’s awards were submitted late. The statistics provided indicated that 81 out of 119 awards during 2006 to 2008 were rendered
late. It was stated that the Complainant denied submitting awards late while MIBCO, attributed the late awards to Case Managers who did not close cases on the system timeously. Case Managers at the Bargaining Council managed data capturing and are responsible for verifying the correctness of the data. The ASSC indicated that as the dates were taken from the hard copy of the award, it chose to rely on the statistics provided by the independent assessment.

4.2.4.4.4 The ASSC also noted that the Complainant did not apply for an extension of the required 14 days which was allocated to finalise an award. The following examples were referred to: “METS 113” rendered 79 days late, “MINT 12431” rendered 11 days late, “RFBC 12107” rendered 32 days late and “MEGA 8925” rendered 67 days late. Some awards did not have dates and this made them unenforceable.

4.2.4.4.5 The independent assessment also found that her settlement rate was low:

(a) 2005-2006 = 71%
(b) 2006-2007 = 53%
(c) 2007-2008 = 61%

The required settlement rate is 70% and above.

4.2.4.4.6 The Complainant’s portfolio of evidence contained three awards and one award was submitted twice. Applicants are expected to submit as much information and supporting documentation as possible to support their applications.

4.2.4.4.7 In a letter dated, 3 September 2009, and in subsequent e-mails, dated 28 September 2009 and 26 November 2009, the Complainant was informed by the CCMA, via her attorney’s and MIBCO, that she had the opportunity to “appeal” the decision by making written representations to a formally constituted body who would form an appeals committee. However, the Complainant did not appeal against the decision taken.
4.2.4.5 The violation of the Complainant’s right to freedom of trade, occupation and profession:

4.2.4.5.1 The CCMA stated that it sent a list of accredited panellists to the bargaining councils. However, it denied that it instructed them not to use the non-accredited panellists. In the event of a panellists not being accredited, functions such as those listed in section 33A of the LRA may still be performed.

4.2.4.5.2 The Complainant’s name was removed from the Case Management System in order to monitor who is accredited for the purpose of subsidies. It was denied that panellists cannot work in a bargaining council if they are not on the case management system as they can be reserved manually by the bargaining councils for non-accredited functions. It is only for accredited functions that a panellist is required to be on the Case Management System.

4.2.4.5.3 A panellist is required to demonstrate competency for a position that has significant implications for members of the public who use the services of the bargaining council. Therefore, to consider the Complainant’s financial obligations while assessing her application would constitute a gross example of irrelevant considerations.

4.2.4.5.4 The right to practice a trade or profession does not mean the right to circumvent necessary admission procedures for that trade and where entry to that profession or trade is regulated, the entry requirements must be satisfied.

4.2.5 Legal issues to be considered by the Public Protector:

4.2.5.1 The following legal issues were matters for the Public Protector’s consideration:
(a) Does the CCMA have the authority to accredit panellist in terms of the relevant provisions of the LRA or does its conduct amount to maladministration and abuse of power?

(b) If the CCMA did indeed have the power to accredit panellists, did it afford the Complainant a procedurally and substantively fair process in terms of the requirements for just administration? If not, did such failure amount to maladministration?

(c) Was the CCMA’s corrective action or decision to remove her from the panel of the bargaining councils concerned, reasonable, fair and proportionate in the circumstances or was there an alternate less harsh course of action?

(d) What would be appropriate remedial action in the circumstances?

5. LEGAL AND REGULATORY FRAMEWORK

5.1 The Constitution

5.1.1 Section 33(1) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. In terms of section 33(2), everyone whose rights have been adversely affected by administrative action, has the right to be given written reasons.

5.1.2 In this regard it is important to note that section 2 of the Constitution established its supremacy and provided that conduct that is inconsistent with the Constitution is invalid.

5.1.3 Section 22 of the Constitution makes provision for the freedom of trade, occupation and profession by stating that every citizen has the right to choose their trade, occupation and profession freely.
5.2 The Public Protector Act

5.2.1 Section 6(4) of the Public Protector Act states that the Public Protector shall be competent-

"(a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged-

(i) maladministration in connection with the affairs of government at any level;

(ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function; and

(iii) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person."

5.2.2 The Cambridge online dictionary defines maladministration as "lack of care, judgment or honesty in the management of something". "Maladministration" is not defined in the Constitution and the Public Protector Act. In this regard Parliament seemed to have cast the net as wide as possible to include any conduct in "state affairs that is alleged or suspected to be improper or result in improper prejudice".

5.2.3 As indicated above section 6(4)(a) of the Public Protector Act provides that the Public Protector is competent to investigate any alleged maladministration in connection with the affairs of government at any level and any alleged abuse of power or other improper conduct by a person performing a public function.

5.2.4 The central focus of the Public Protector when investigating maladministration is to promote good governance or good administration.
Former President Nelson Mandela had the following to say about good governance and the checks and balances provided by the oversight institutions such as the Public Protector:

"Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order.

An essential part of that constitutional architecture is those state institutions supporting constitutional democracy. Amongst those are the Public Protector, the Human Rights Commission, the Auditor-General, the Independent Electoral Commission, the Commission for Gender Equality, the Constitutional Court and others."

5.2.5 The question to be answered through the investigation by the Public Protector was whether or not the CCMA’s conduct constituted maladministration, and if so was the Complainant prejudiced by such conduct. PAJA was among the benchmarks used to evaluate the CCMA’s conduct.

5.3 The Promotion of Administrative Justice Act, 2000 (PAJA)

5.3.1 The Promotion of Administrative Justice Act, 2000 (PAJA) was enacted by virtue of section 33(3) of the Constitution, in order to give effect to these rights with the aim of promoting an efficient administration and a culture of accountability, openness and transparency regarding the performance of public functions.
5.3.2 PAJA applies to and binds the entire administration at all levels of government. It provides a set of general rules and principles for the performance of just administrative action in all areas. It encourages fair, rational and lawful decision making and discourages maladministration by setting out a minimum set of procedures relating to the making of decisions. It also requires the provision of reasons for certain adverse decisions in order to remedy instances of maladministration.

5.3.3 For as far as it is relevant to the matter under consideration, "administrative action" is defined by section 1 of PAJA as:

"Any decision taken or any failure to take a decision by an organ of state when exercising a power or performing a public function in terms of any legislation which adversely affects the rights of any person and which has a direct external legal effect."

5.3.4 Section 3(1) of PAJA provides that administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

5.3.5 In order to give effect to the right to procedurally fair administrative action, an administrator must, in terms of section 3(2)(b), give a person referred to in paragraph 5.2.3 above:

5.3.5.1 Adequate notice of the nature and purpose of the proposed administrative action;

5.3.5.2 A reasonable opportunity to make representations;

5.3.5.3 A clear statement of the administrative action;

5.3.5.4 Adequate notice of any right of review or internal appeal, where applicable; and
5.3.5.5 Adequate notice of the right to request reasons.

5.3.6 The administrator performing the administrative action also has a discretion to give to the person affected an opportunity to:

5.3.6.1 Obtain assistance, including legal representation;

5.3.6.2 Present and dispute information and arguments; and

5.3.6.3 Appear in person.

5.3.7 PAJA, in providing for lawful administrative action, goes further to provide a right to judicial review of administrative action on a number of specific grounds listed in section 6(2), including where:

5.3.7.1 The action was procedurally unfair;

5.3.7.2 Irrelevant considerations were taken into account; or

5.3.7.3 The action taken is unconstitutional or unlawful.

5.3.8 PAJA gives effect to the right to reasonable administrative action providing as a ground for review in section 6(2)(h), the exercise of the power or the performance of a function that is “so unreasonable that no reasonable person could have so exercised the power or performed the function”.

5.3.9 In Grey’s Marine Hout Bay (Pty) Limited and Others v Minister of Public Works and Others2 the Supreme Court of Appeal adopted a purposeful approach to the meaning of “administrative action”. It was held that:

“[23] Administrative action is... in general terms, the conduct of the bureaucracy (whoever the bureaucratic functionary might be) in carrying out the daily functions of the State, which necessarily

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2 2005(6) SA 313 (SCA)
involves the application of policy, usually after its translation into law, with direct and immediate consequences for individuals or groups of individuals." (emphasis added)

5.3.10 The Constitutional Court held in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* that:

"The principal function of section 33 is to regulate conduct of public administration and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common-law principles developed over decades."

5.3.11 "Administrator" is defined in section 1 of PAJA as meaning an organ of state or any natural or juristic person taking administrative action.

5.4 The Labour Relations Act, 1995

5.4.1 Section 127(1) of (the LRA) provides that a bargaining council or private agency may apply to the Governing Body of the CCMA for accreditation enabling them to resolve disputes through conciliation and to arbitrate disputes that remain unresolved after conciliation.

5.4.2 In terms of section 127(4), the Governing Body may accredit an applicant (bargaining council) to perform any function for which it seeks accreditation after considering the application and any further information provided by the applicant, including whether *inter alia* "the persons appointed by the applicant to perform those functions will be competent to perform those functions and exercise any associated powers".

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3 1999 (10) BCLR 1059 (CC)
4 Section 127(4)(d)
5.4.3 Section 127(5)(a)(ii) provides that the Governing Body of the CCMA, if it decides to accredit the applicant (bargaining council), must issue a certificate of accreditation in the name of the applicant stating the period and other terms of accreditation.

5.4.4 Section 128(3)(a)(i) provides that an accredited council may confer on any person appointed by it to resolve a dispute, the powers of a commissioner in terms of section 142, read with the changes required by the context. The latter section regulates the powers of commissioners.

6. OBSERVATIONS

6.1 Administrative Action

6.1.1 The CCMA was established by section 112 of the LRA and is independent from the State, any political party, trade union, employer, etc.

6.1.2 The CCMA is governed by its Governing Body, in terms of section 116 of the LRA, which consists of a chairperson and 9 other members nominated by NEDLAC and appointed by the Minister of Labour, and the Director of the Commission.

6.1.3 The Governing Body may, in terms of section 121 of the LRA, establish committees to assist the Commission. It may at any time vary or set aside a decision of a committee.

6.1.4 Although the Governing Body may delegate some of its functions to committees, it is specifically precluded from doing so by section 125 of the LRA, in respect of the accreditation of bargaining councils.

6.1.5 Section 239 of the Constitution defines “organs of state” to include any functionary or institution exercising a public power or performing a public function in terms of any legislation.
6.1.6 The CCMA performs a public function as it plays a pivotal role in regulating labour relations in South Africa. It exercises public power as its authority stems from national legislation, provided for by section 23 of the Constitution, and is therefore an organ of state, as contemplated by the definition of administrative action in section 1 of PAJA.

6.1.7 The Governing Body of the CCMA is its highest decision making body. Any decision on an application for accreditation of a bargaining council is taken in terms of the LRA and has a direct external legal effect as it will determine whether the applicant can perform certain prescribed and regulated functions.

6.1.8 As far as the requirement in the definition of "administrative action" that it has to adversely affect the rights of any person is concerned, note has to be taken of the decision in the Grey's Marine Hout Bay\(^5\) case that this requirement should not be considered in terms of literal meaning, but that the intention was rather that it should mean that the action should have the capacity to affect legal rights.

6.1.9 The decisions to refuse the applications for the accreditation of the Complainant clearly had at least the capacity to affect several of her rights.

6.1.10 It therefore follows that the decisions of the Governing Body of the CCMA raised by the Complainant constituted "administrative action" as contemplated by PAJA and therefore that the provisions regulating procedurally fair administrative action were applicable to it.

6.2 Accreditation in terms of section 127 of the LRA

6.2.1 Section 127(1) of the LRA provides that a bargaining council or private agency may apply for accreditation to the Governing Body of the CCMA. It provides further in section 127(4), that the Governing Body may accredit an

\(^5\) Supra n2
applicant (bargaining council) to perform any function for which it seeks accreditation after considering the application and any further information provided by the applicant, including whether “the persons appointed by the applicant to perform those functions will be competent to perform those functions and exercise any associated powers”.

6.2.2 Our constitutional democracy is founded on the supremacy of the Constitution and the rule of law. It is a requirement of the rule of law that in order to pass constitutional muster the exercise of public power must not be arbitrary or inconsistent with the rule of law.

6.2.3 The Constitutional Court stated in Majake v Commission for Gender Equality that:

“The rule of law is a source of constraint on the exercise of public power. The exercise of public power must comply with the Constitution and the doctrine of legality. The doctrine of legality entails that the first respondent as a Chapter nine institution is constrained by the principle that it may exercise no power and perform no function beyond that conferred upon it by law”.

6.2.4 The doctrine of legality which was the basis of the decisions in Fedsure, SARFU and Pharmaceutical Manufacturers requires that the power conferred on a functionary to make decisions in the public interest, should be exercised properly, i.e. on the basis of the true facts and within the confines of the power.

6.2.5 The legislative power conferred on the Governing Body of the CCMA in section 127 of the LRA refers to the power to accredit bargaining councils or

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\(^6\) Section 127(4)(d)
\(^7\) 09/14529 (2009) ZAGP JHC 27
\(^8\) Fedsure Life Assurance v Greater Johannesburg Transitional Metropolitan Council 1998 (12) BCLR 1458 (CC)
\(^9\) SARFU v President of the RSA 1998 (10) BCLR 1256
\(^10\) Pharmaceutical Manufacturers of South Africa: In re ex parte 2000 (2) BCLR 241
private agencies that apply for accreditation. No reference is made to the accreditation of the panellists of Bargaining Councils.

6.2.6 Section 127(4)(d) states that the "competency" of panellists to perform functions for which the bargaining council was accredited will be considered during the accreditation of bargaining councils, however, no provision is made in the legislation to empower the CCMA to accredit panellists of bargaining councils in addition to the bargaining council itself.

6.2.7 The phrase "other terms and conditions" found in section 127(5)(a)(ii) sanctions a quality assurance mechanism in respect of the competency of panellists rather than a process to accredit panellists.

6.2.8 On the contrary, section 128(3)(a)(ii) specifically authorises an accredited council, to confer on a panellist appointed by it to resolve a dispute, the powers of a commissioner in terms of section 142 of the Act. The accredited bargaining council is thus assigned the legislative power to verify the competency of its panellists.

6.2.9 Merit is therefore found in the Complainant’s argument that the Governing Body of the CCMA does not have the power to accredit panellists in terms of section 127 of the LRA. In doing so, the CCMA has gone beyond the powers conferred upon it by the LRA. If the legislature intended to assign such a power to the CCMA it would have done so.

6.2.10 Global practices on institutional accreditation separate institutional accreditation from the accreditation of individuals who should be accredited by the accredited institution. No precedent is found for the CCMA’s interpretation of section 127(1) of the LRA especially when read with section 128(3)(a)(i) which specifically grants the power to bargaining councils to confer the status of a commissioner to its panellists.
6.3 Procedural Fairness

6.3.1 If section 127 of the LRA was to be interpreted as authority for the CCMA to accredit panellists, the reference to “accreditation” in respect of the persons appointed by bargaining councils to perform certain functions, is misleading. In practice, it will mean that the CCMA determines whether the persons appointed by accredited councils or applicant councils for accreditation, are competent to perform the functions associated with the accreditation of the council, as the councils are authorised to do by the LRA.

6.3.2 The ASSC was established by the Governing Body to assist it in the consideration of the accreditation of bargaining councils. It does not have delegated decision making powers in this regard as the LRA specifically provides that accreditation is an exclusive power of the Governing Body. The decision as to whether a panellist of a bargaining council is competent, in terms of the CCMA’s interpretation of section 127 of the LRA, therefore had to be taken by the Governing Body on the recommendation of the ASSC.

6.3.4 A decision by the Governing Body in respect of the competency of panellists of a bargaining council is “administrative action” as contemplated by PAJA and therefore had to conform to the prescribed requirements of procedural fairness.

6.3.5 Such decisions not only have an impact on the bargaining councils involved, but also, and more specifically, on the panellists being considered.

6.3.6 It therefore follows that the procedural fairness prescribed by PAJA required of the Governing Body (applying the CCMA’s interpretation of section 127 of the LRA) considering the competency of a panellist of a bargaining council, to:

6.3.6.1 Notify the panellist of its intention to decide on his/her competency;
6.3.6.2 Afford the panellist a reasonable opportunity to make representations. In this regard the recommendation of the ASSC on the application submitted by the bargaining council and the information considered by it should be made available to the panellist. The Governing Body has discretion to afford the panellist the opportunity to be legally represented, to present and dispute information and arguments considered by the ASSC and the Governing Body, and to appear in person;

6.3.6.3 Provide the panellist with a clear statement of the decision taken;

6.3.6.4 Provide the panellist with adequate notice of any right of review or internal appeal, where applicable; and

6.3.6.5 Provide the panellist with adequate notice to request reasons.

6.3.7 The actions referred to in paragraphs 6.3.6.1 and 6.3.6.2 above clearly have to be taken before the administrative action, i.e. the decision of the Governing Body is taken.

6.3.8 The LRA does not provide for any internal review or appeal mechanism in respect of decisions taken by the Governing Body of the CCMA, obviously as it is the highest decision making authority. Therefore, a decision taken by the Governing Body generally renders it functus officio. The only remedy is judicial review.

6.3.9 It is common cause that both the decisions contested by the Complainant were taken by the Governing Body of the CCMA on the basis of recommendations made by the ASSC after it had considered the applications submitted by the bargaining councils where the Complainant was involved and information that was obtained from an independent assessment conducted by a Department within the CCMA.

6.3.10 The Governing Body neither informed the Complainant of the recommendations made by the ASSC in respect of her accreditation, nor
afforded her a proper opportunity to make relevant representations on the information considered by them before the decisions in respect of her competence was taken. The only indication that her representations were considered is a statement of the CCMA to the effect that the representations she submitted, (which was mainly a response to the reasons for the decision in her first application), in connection with the first application, after the decision had been taken, were taken into account in the consideration of the second application. It should however be emphasised that the reasons provided for not approving the second application differed substantially from those submitted by the CCMA in respect of the first application.

6.3.11 At the time the decision regarding the first application was taken there was no appeal process. The appeal process was created at the time of the second application and would have to be made to a formally constituted body called an “appeal committee”.

6.3.12 It is not clear how the representations made in respect of the first application to the ASSC on the same day that it considered the second application were considered as an appeal, as the ASSC was not the appeal body. The application for accreditation and the appeal regarding the decision not to accredit are two distinct processes (albeit flawed) and had to be treated as such.

6.3.13 The invitation to the attorneys of the Complainant for her to lodge an appeal against the decision of the Governing Body of the CCMA in respect of the second application that would be considered by an “appeal committee”, was flawed in law, as no provision is made by the LRA or any other law for the decisions of the Governing Body to be reviewed or considered by a body constituted by them, with delegated powers. Again, the fundamental error in this regard was to invite the Complainant to make representations only after the decision of the Governing Body had been taken.
6.4 Substantive Fairness

6.4.1 Lawful administrative action

6.4.1.1 Lawful administrative action requires of the administrator to ensure that it does not take into account irrelevant considerations and thus ignore relevant ones:

6.4.1.2 The reasons provided by the Governing Body for the refusal of the first application indicates that irrelevant considerations were taken into account as the ASSC considered the Complainants job interview, which took place in January 2009, and at which her integrity was questioned.

6.4.1.3 The Complainant's previous employment at the CCMA and the unfair labour practice issue does not relate to her integrity to the extent that it becomes a criterion for assessing her competency for purposes of accreditation.

6.4.1.4 The Policy does not make specific reference to integrity or ethics but focuses on qualitative criteria, which are based on merit and value and quantitative criteria which are based on consideration of measurements.

6.4.1.5 While it is accepted that the labour market issues and the late rendering of awards were relevant and consistent in application, it is noted that ethics and integrity did not feature in the assessment of the second application even though the application related to the same applicant with the very same CV.

6.4.1.6 The reasons given were not a clear statement of why the Complainant did not satisfy the qualitative and quantitative criteria for accreditation. This therefore blurs the objectivity of the process.

6.4.1.7 The decision in respect of the second application involved an application of all the relevant criteria but still raised matters, the relevance of which are questionable.
6.4.2 The submission of late awards

6.4.2.1 The CCMA listed the following awards as late: "METS 113" which was 79 days late, "MEGA 8925" which was 57 days late, "MINT 12431" which was 11 days late and "RBFC 12107" which was 32 days late. The ASSC failed to give the Complainant the opportunity to be heard before they took a decision to declare her incompetent because of the delay in issuing these awards.

6.4.2.2 After consideration of the above, the Public Protector afforded the Complainant an opportunity to respond to the alleged late submission of awards referred to above. In her response she stated the following:

6.4.2.3 "METS 113" was submitted 79 days after the evidence was concluded, it was not submitted 79 days late. The matter was heard on 14 April 2009. It was agreed that the parties would submit written closing arguments. The Respondent would submit by 29 April 2009, the Applicant by 6 May 2009 and the reply from the Respondent was due by 13 May 2009. The closing arguments were received on 23 June 2009 and the award was issued on 13 July 2009. The award was late due to the length of evidence that needed to be analysed.

6.4.2.4 "METS 113" was not submitted as evidence by MIBCO when it submitted the application for accreditation on 25 July 2010. Further, "RBFC 12107" was also not submitted as part of the application because the National Road Freight Industries Bargaining Council did not make any application on behalf of the Complainants.

6.4.2.5 In terms of Annexure D, when the bargaining council submits an application for accreditation on behalf of a panellist, it should attach a portfolio of evidence setting out amongst others, the following:

(a) The Commissioner’s settlement rate;
(b) Record of any late awards; and

(c) At least 4 awards to assess the competence and whether the applicant has a sound understanding of the labour law.

6.4.2.6 The Policy does not provide that this information should be presented by the CCMA as was done in the second application that was considered in July 2009. It was noted that some of the records of late awards were presented by the CCMA, rather than the bargaining council and were not even related to the relevant applicant bargaining council.

6.4.3 The consideration of issues that arise from successful review proceedings as a criteria for assessing competency

6.4.3.1 The Governing Body, in assessing the competency of panellists, appears to engage in the review of arbitration awards issued by panellist. (See paragraph 4.2.4.4.2 above).

6.4.3.2 Section 145 of the LRA provides for the review of arbitration awards and states the grounds upon which an arbitration award may be reviewed. Section 145(2) states that an award may be reviewed and set aside by the Labour Court if the Commissioner committed: (i) misconduct in relation to his or her duties; (ii) a gross irregularity in the conduct of the proceedings; or (iii) exceeded his or her powers, and (iv) if the award was improperly obtained.

6.4.3.2 The Constitutional Court held in Sidumo and Another v Rustenburg Platinum Mines Limited and Others1 that when deciding to review an award, a careful analysis of not only the award is required, but all the evidence presented at the arbitration hearing to determine whether there would be scope to review an arbitration award.

11 2008 (2) SA 24 CC
6.4.3.3 The consideration of issues that arise from successful review proceedings as a criteria to assess the competency of Panellists relates to the comments and decisions of the reviewing court in respect of a review made in terms of section 145(2) of the LRA. The court would not consider the award in isolation of the circumstances of the case but would appropriately analyse an award based on the evidence presented to the arbitrator during the arbitration hearing.

6.4.3.4 The LRA therefore, does not provide the Governing body of the CCMA with the power to review the awards of Panellists of bargaining councils for the purposes of establishing the competency of panellists.

6.4.4 Reasonableness of the decision not to accredit the Complainant

6.4.4.1 Reasonableness, as a specific requirement for the validity of administrative action requires that administrative action should be procedurally and substantively fair and just.

6.4.4.2 In Edcon Limited v Pilemar N.O & Others the court held:

"The Court’s function primarily is to ensure that decisions made by arbitrators exercising their functions under the Labour Relations Act fall within the bounds of reasonableness."

6.4.4.3 The Court went further to state that the key enquiry in the application of the reasonable decision-maker test is whether the factual conclusions reached are reasonable in light of the evidence before him or her. Thus, the court said, a decision would be unreasonable if it is found that there is a glaring discrepancy between the evidence presented and the conclusion reached.

6.4.4.4 Mokgoro J and Sachs J in their dissenting judgements in Bel Porto School Governing Body and others v Premier, Western Cape and Another noted

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12 2009 (10) ZA SCA 135
13 2002 (9) BCLR 891
that the right to just administrative action "that is justifiable in relation to the reasons given for it" incorporates the principle of proportionality which is a fundamental aspect of a constitutional regime. They went on to note that proportionality requires that the effects of the action be proportionate to the objective sought to be achieved. It therefore involves an element of substantive review.

6.4.4.5 Mokgoro J and Sachs J emphasised proportionality as an important aspect of a justifiable decision as follows:

"...the decision making process must be sound, and the decision must be capable of objective substantiation by examination of the facts and the reasons for the decision. Put another way, there must be a rational and coherent process that would tend to produce a reasonable outcome. The suitability and necessity of the decision are to be examined, and in this regard, a number of factors might have to be considered: the nature of the right or interest involved; the importance of the purpose sought to be achieved by the decision; the nature of the power being exercised; the circumstances of its use; the intensity of its impact on the liberty, property, livelihood or other rights of the persons affected; the broad public interest involved. It might be relevant to consider whether or not there are manifestly less restrictive means to achieve the purpose. In our view the question to be asked is whether bearing in mind such factors described above, the decision can be defended as falling within a wide permissible range of discretionary options. In this respect the principle of proportionality is particularly relevant. Ultimately, the issue is a robust one of basic fairness and proportionality, necessitating a contextualised judicial determination of whether the decision is a defensible one on the basis of the reasons given or whether it is so out of line and tainted with unfairness as to demand judicial intervention".

6.4.4.6 The question that arises is whether, having regard to the facts and circumstances of the Complainant's case, non accreditation was a fair decision.
6.4.4.7 If the determination of an appropriate decision in respect of an application for accreditation is indeed a matter largely within the discretion of the Governing Body of the CCMA, the discretion must be exercised fairly. The question is therefore not whether the decision not to accredit the Complainant is a decision that the court would have arrived at, but whether in the circumstances of the case the decision was reasonable.

6.4.4.8 Lord Denning asked in *British Leyland UK Ltd v Swift*\(^1\) "was it reasonable for the employer to dismiss the employee?" In this case the question to be asked is: was it reasonable for the Governing Body not to accredit the Complainant?

6.4.4.9 Both applications for accreditation were submitted by bargaining councils which supported the applications and which did not submit any objections or complaints relating to the Complainants competency to perform the functions for which the council was accredited. Neither were any disciplinary violations reported by these councils.

6.4.4.10 In respect of the policy for accreditation which provides a list of criteria to establish competency of a panellists, the Governing Body's decision not to accredit was based largely on two criteria, that of poor quality of awards and the late submission of awards.

6.4.4.11 The decisions of the Governing Body not to accredit was unreasonable in relation to the reasons given for it as the Governing Body failed to properly evaluate and take into account the totality of the evidence which was placed before it.

6.4.4.12 There was in addition a failure to evaluate the fairness or appropriateness of the decision not to accredit in relation to the applicable criteria. Basic fairness and proportionality requires less restrictive means to be used to

\(^1\) [1981] IRLR 91
achieve the purpose sought to be achieved by the CCMA in its process of accreditation.

6.5 Undue delay

6.5.1 Section 33(2) of the Constitution provides for the right to be furnished with written reasons for administrative action that adversely affects rights.

6.5.2 Section 5(1) of PAJA gives effect to section 33(2) and requires the provision of reasons at the request of any person whose rights have been materially and adversely affected by any administrative action and who has not been given reasons for the action.

6.5.3 The purpose of the right to be given written reasons for an administrative action is intended to make judicial review effective. Without reasons for an administrative action, an affected person is not able adequately to consider whether he or she should challenge it by way of review. Without reasons, one cannot determine whether one was the victim of an unjust administrative action in violation of the fundamental right to just administrative action in section 33 of the Constitution.

6.5.4 The decision had an adverse effect on the rights of the Complainant and this required the CCMA to act appropriately. In addition, the pending judicial review application created a sense of urgency in order for the Complainant to adequately challenge the decision by way of judicial review.

6.5.5 The Governing Body delayed in providing written reasons that were requested for both decisions. The reason for the delay in respect of the first application, that it was a time consuming task to finalise the recordings of the meetings, is unacceptable, as the reasons were provided approximately one month and two weeks after receiving the request. The reason for the delay in respect of the second application, that the request was not submitted by the bargaining council as provided for in the policy, is equally unreasonable, as the letter explaining the outcome of the second application
was addressed to the Complainant’s attorney and MIBCO and both parties were invited to submit requests for reasons.

6.5.6 Mokgoro J and Sachs J stated in the Bel Port case\textsuperscript{15} that a factor to be considered in establishing reasonableness is the intensity of its impact on the liberty and livelihood of the Complainant. The fact that the Complainant was adversely affected to the extent that bargaining councils were not required to use her services and other councils suspended her services were circumstances that required the CCMA to act urgently and appropriately in order to provide the required and requested information within a reasonable time frame.

6.6 The CCMA delayed in reaching a solution

6.6.1 The CCMA is responsible for regulating the industry in which both panellists and commissioners practice. As a regulatory institution its conduct must be fair and must be seen to be fair since the CCMA is perceived to be the custodian of fairness.

6.6.2 While the Public Protector acknowledges the regulatory function of the CCMA it is of the view that the CCMA failed to endeavour to find an amicable solution to this matter. It rather delayed its cooperation with the Public Protector and the Complainant to reach a solution to the above issues that were the subject of this investigation.

6.6.3 The CCMA therefore failed to demonstrate a willingness to resolve the prejudice faced by the Complainant in a fair and transparent manner.

6.7 Responsibility to get it right the first time

6.7.1 The fairness of the CCMA’s conduct transcends its attitude towards resolving this matter after it was brought to the Public Protector. The responsibility of

\textsuperscript{15} 12 supra
the CCMA to lead by example applies to the handling of the matter by the CCMA at the very beginning. While it is the Public Protector’s role not only to ensure justice when state conduct fails, the Public Protector also seeks to ensure that organs of state get it right the first time.

6.7.2 In this regard, institutions such as the CCMA whose own role is to ensure justice and fairness, should lead by example and be parties in promoting good administrative justice.

7. FINDINGS

7.1 Findings of Maladministration

7.1.1 The Governing Body of the CCMA was not empowered by section 127 of the LRA to accredit panellists of bargaining councils. The accreditation of panellists of bargaining councils is a power specifically afforded to the councils itself by section 128 of the LRA. As bargaining councils are required, in terms of the LRA, to demonstrate the competency of their panellists for purposes of accreditation, this process should be left to bargaining councils operating under the criteria stipulated by the CCMA. The conduct of the Governing Body of the CCMA in this regard is found to constitute maladministration and abuse of power.

7.1.2 The delay in responding to the request for written reasons for the decisions taken in the first and second applications of the Complainant was unreasonable in the circumstances and is found to constitute maladministration.

7.1.3 The decisions of the Governing Body in respect of the two applications lodged for the accreditation of the Complainant as a panellist of the respective bargaining councils were unlawful and invalid as it did not comply with the provisions of lawful, procedurally fair and reasonable administrative action prescribed by PAJA and thus violated her constitutional right to just
administrative action. The conduct of the Governing Body in this regard is found to constitute maladministration.

7.1.4 Were section 127 to be interpreted as to assign to the Governing Body of the CCMA the power to accredit panellists of bargaining councils, the decision not to accredit the Complainant is found to be too harsh. The principle of proportionality requires that measures less harsh or less restrictive should have been considered rather than disbarring her entirely from practicing as a panellist. It is found that the Complainant should have been given a fair opportunity to meet the required performance standard and non-accreditation was not an appropriate sanction in the circumstances.

7.1.5 As a result it is found that the Governing Body of the CCMA acted improperly, viciously and disproportionately and this therefore constitutes gross maladministration. Further, such conduct amounts to an abuse of power and disregard for the human rights and particularly the human dignity of the Complainant.

7.1.6 The CCMA's conduct in the past year, specifically its failure to accept the urgency of the matter and co-operate towards its expeditious resolution, leaves a lot to be desired. This is more so taking into account the CCMA's role in society and acknowledging the responsibility on it to lead by example with regard to acting fairly.

7.2 Findings of prejudice

7.2.1 The Complainant was prejudiced by the decision of the Governing Body not to accredit her as her employment contracts with certain bargaining councils were either terminated or suspended. Prior to the non-accreditation the Complainant was a panellist for the following bargaining councils:
7.2.1.1 Bargaining Councils contracted with Tokiso such as MEIBC, Metrorail Bargaining Council, Transnet Bargaining Council, South African Road Passenger Bargaining Council and Bombela Concession Company;

7.2.1.2 MIBCO Dispute Resolution Centre (MIBCO-DRC);

7.2.1.3 South African Local Government Bargaining Council (both in Gauteng and Johannesburg Division);

7.2.1.4 Public Health and Social Development Services Bargaining Council (PHSDBC);

7.2.1.5 Safety and Security Sectoral Bargaining Council (SSSBC);

7.2.1.6 General Public Service Sectoral Bargaining Council (GPSSBC).

7.2.2 After the non-accreditation the following bargaining councils either suspended or terminated her services:

7.2.2.1 All bargaining councils that contracted with Tokiso terminated her services (MEIBC, Metrorail, SARBAC, Transnet and Bombela);

7.2.2.2 Dispute Resolution Centre for MIBCO;

7.2.2.3 SALGBC (both divisions); and

7.2.2.4 PHSDBC.

7.2.3 The Complainant was prejudiced by the decision of non-accreditation as it resulted in:
7.2.3.1 Pain and suffering as a consequence of being declared incompetent to practise as a Panellist of bargaining councils after specialising in this field for approximately ten years; and

7.2.3.2 Financial loss as a result of the loss of income calculated at approximately R45 000.00 per month.

7.2.4 The Complainant was further prejudiced by the CCMA’s dragging of its feet and general lack of interest in resolving the matter under the ambit of the Public Protector in the past year.

8. REMEDIAL ACTION

8.1 The appropriate remedial action to be taken in terms of section 182(1)(c) of the Constitution is that:

8.1.1 The CCMA must revoke the decisions in question with immediate effect;

8.1.2 The bargaining councils to which the Complainant was contracted must be allowed to utilise her services in accordance with section 128(3)(a)(i) with immediate effect;

8.1.3 The competency of the Complainant to practice as a Panellist must be assessed by the bargaining councils who have accepted her candidacy;

8.1.4 The CCMA must compensate the Complainant for pain and suffering and the financial loss incurred as a result of her loss of income. The amount of compensation is to be agreed to between the two parties; and

8.1.5 The CCMA must submit a written apology to the Complainant apologising for the prejudice it has caused her and the pain and suffering suffered as a result of its conduct.
8.2. It is further recommended that:

8.2.1 The CCMA’s Accreditation Policy be reviewed to give power back to bargaining councils to access the competencies of the panellists in general; and

8.2.2 The Minister of Labour takes urgent steps to review section 127 of the LRA to address quality assurance concerns that have led to the CCMA’s actions and to specify a body to accredit the panellists in bargaining councils.

9. MONITORING

The Public Protector will:

9.1 Require an implementation plan in respect of the remedial action to be taken in terms of paragraph 8.1 and 8.1.2 above from the Governing Body of the CCMA within 14 days of the date of this report;

9.2 Require an implementation plan in respect of the remedial action to be taken in terms of paragraph 8.1.3, 8.1.4, 8.1.5 and 8.2.1 above from the Governing Body of the CCMA within 30 days of the date of this report;

9.3 Require a progress report from the Governing Body on the progress made with regard to the implementation of the remedial action to be taken in terms of paragraph 8 above within 2 months from the date of this report;

9.4 Require a progress report from the Minister of Labour on the progress made with regard to the implementation of the remedial action dealt with in paragraph 8.2.2 above within 30 days from the date of this report; and
9.5 Monitor the progress made with regard to the implementation of the remedial action dealt with in paragraph 8 above over the next six (6) months following the date of this report.

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA

DATE: 2010-11-15

Assisted by: Mrs C N Pillay, Senior Investigator: Service Delivery
Adv C H Fourie: Executive Manager: Good Governance and Integrity