
PUBLIC PROTECTOR SOUTH AFRICA

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"Allegations of improper conduct and maladministration in connection with appointments made at the Northern Cape Liquor Board"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER OF THE NORTHERN CAPE LIQUOR BOARD AND THE SUBSEQUENT APPOINTMENTS OF EMPLOYEES
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Executive Summary

(i) This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(2A) of the Public Protector Act, 1994 (Public Protector Act).

(ii) The report relates to an investigation into allegations of improper conduct and maladministration pertaining to the appointment of Ms R Stadhouer-Andrews as the Chief Executive Officer (CEO) of the Northern Cape Liquor Board (Liquor Board) in August 2014 and the subsequent appointment of employees.

(iii) The complaint was lodged by Advocate Boitumelo Babuseng, a member of the Northern Cape Provincial Legislature, on 15 September 2015.

(iv) Based on an analysis of the complaint, the following issues were considered and investigated:

(a) Whether the appointment of the CEO by the former MEC for Finance, Economic Development and Tourism, Mr J Block (MEC Block) on 7 August 2014 was in accordance with the relevant laws and prescripts regulating the recruitment of the Chief Executive Officer of the Liquor Board; and if not

(b) Whether the appointment of the CEO was improper and constitutes maladministration.

(c) Whether the temporary appointment of Ms Erlene Muller (previously Van Wyk) and Ms Susan Pegram at the Liquor Board in 2015 was in accordance with the relevant laws and prescripts regulating recruitment; and if not

(d) Whether the temporary appointment of Ms Muller and Ms Pegram was improper and constitutes maladministration.
(e) Whether the permanent appointment of Ms Muller and Ms Pegram in the positions of Personal Assistant to the CEO and Procurement Officer, respectively, with effect from 1 December 2015 was in accordance with the relevant laws and prescripts regulating recruitment, and if not;

(f) Whether the permanent appointment of Ms Muller and Ms Pegram was improper and constitutes maladministration.

(g) Whether Ms Juanita Beukes qualified to be transferred to the position of Senior Administrative Officer: Finance at the Liquor Board and was the position advertised, and if not;

(h) Whether the transfer of Ms Beukes to the position of Senior Administrative Officer: Finance was improper and constitutes maladministration.

(v) The investigation was conducted in terms of section 182(1) of the Constitution and Sections 6 and 7 of the Public Protector Act. It included meetings with the Chief Financial Officer of the Liquor Board, the CEO, correspondence with the MEC for Finance, Economic Development and Tourism and the Northern Cape Department of Economic Development and Tourism, analysis of the documents and information obtained during the investigation and application of the relevant laws, prescripts and jurisprudence.

(vi) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:
(a) Regarding whether the appointment of Ms Stadhover-Andrews as the CEO by former MEC Block on 7 August 2014 was in accordance with the relevant laws and prescripts regulating the recruitment of the Chief Executive Officer of the Liquor Board.

(aa) The allegation that the appointment of the CEO of the Liquor Board by former MEC Block on 7 August 2014 was not in accordance with the relevant laws and prescripts regulating the recruitment of a Chief Executive Officer of the Liquor Board, is substantiated.

(b) Regarding whether the appointment of the CEO was improper and constitutes maladministration.

(aa) The appointment of the CEO amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.

(c) Regarding whether the temporary appointment of Ms Erlene Muller and Ms Susan Pegram at the Liquor Board in 2015 was in accordance with the relevant laws and prescripts regulating recruitment.

(aa) The allegation that the temporary appointment of Ms Muller and Ms Pegram at the Liquor Board in 2015 was not in accordance with the relevant laws and prescripts regulating recruitment, is substantiated.

(d) Regarding whether the temporary appointment of Ms Muller and Ms Pegram was improper and constitutes maladministration

(aa) The temporary appointments of Ms Muller and Ms Pegram amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes
maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.

(e) Regarding whether the permanent appointment of Ms Muller and Ms Pegram in the positions of Personal Assistant to the CEO and Procurement Officer respectively, was in accordance with the relevant laws and prescripts regulating recruitment.

(aa) The allegation that the permanent appointment of Ms Muller and Ms Pegram in the positions of Personal Assistant to the CEO and Procurement Officer respectively, was not in accordance with the relevant laws and prescripts regulating recruitment is unsubstantiated.

(f) Regarding whether the permanent appointment of Ms Muller and Ms Pegram was improper and constitutes maladministration.

(aa) The permanent appointment of Ms Muller and Ms Pegram amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.

(g) Regarding whether Ms Juanita Beukes qualified to be transferred to the position of Senior Financial Administrative Officer: Finance at the Liquor Board and whether the position had to be advertised

(aa) The allegation that Ms Beukes did not qualify to be transferred to the position of Senior Financial Administration Officer and that the position had to be advertised is unsubstantiated.

(vii) The appropriate remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution is the following:
(a) The Northern Cape MEC for Finance, Economic Development and Tourism to take urgent steps to:

(aa) Amend the *Regulations Regarding the appointment of the Chief Executive Officer* to clearly provide for the process and procedure to be followed when appointing a Chief Executive Officer, as contemplated by sections 12(1) and 12(6) of the Northern Cape Liquor Act, 2008 within 60 business days from the date of this report; and

(bb) In consultation with the Board, ensure a Recruitment Policy for the Liquor Board that regulates the process and procedure of appointing all employees at all levels is developed and approved in line with the provisions of sections 8(f) and 12(3) and 12(5) of the Northern Cape Liquor Act, 2008 within 90 business days from the date of this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER OF THE NORTHERN CAPE LIQUOR BOARD AND THE SUBSEQUENT APPOINTMENTS OF EMPLOYEES

1. INTRODUCTION

1.1. This is my report as the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(2A) of the Public Protector Act, 1994 (the Public Protector Act).

1.2. The Report is submitted in terms of Sections 8(1) and 8(3) of the Public Protector Act to the following persons to inform them of the outcome of my investigation:

1.2.1 Mr M N Jack, the Member of the Executive Council of the Northern Cape Provincial Government (MEC Jack), responsible for Finance, Economic Development and Tourism (MEC Jack); and

1.2.2 Mr Andrew Sia, the Chairperson of the Northern Cape Liquor Board (the Liquor Board);

1.3 Copies of the report are also provided to

1.3.1 Mr John Block, the former Member of the Executive Council for Finance, Economic Development and Tourism (MEC Block);

1.3.2 Mr G Mabilo, the Acting Head of the Northern Cape Department of Economic Development and Tourism;

1.3.3 Ms Rudessa Stadhouer-Andrews, the Chief Executive Officer of the Northern Cape Liquor Board (CEO).
1.3.4 Advocate B Babuseng, who lodged the complaint.

1.4 The report relates to an investigation into allegations of improper conduct and maladministration pertaining to the appointment of Ms R Stadhouer-Andrews as the Chief Executive Officer of the Liquor Board in August 2014 and the subsequent appointments of employees.

2. THE COMPLAINT

2.1 The complaint was lodged by Advocate Boitumelo Babuseng, a member of the Northern Cape Provincial Legislature, on 15 September 2015 at the Northern Cape Office of the Public Protector South Africa, in Kimberley.

1.2 In the main, the Complainant alleged that

1.2.1 The appointment by former MEC Block of Ms Rudessa Stadhouer-Andrews as the Chief Executive Officer of the Liquor Board on 7 August 2014, was unlawful and improper as she did not attend the interviews conducted by the appointed Interview Panel.

1.2.2 Subsequent to her appointment, the CEO created two temporary positions at the Liquor Board.

1.2.3 The positions were not advertised and no proper recruitment process was followed when the appointments were made.

1.2.4 Ms S Pegram and Ms E Muller were appointed in temporary positions.

1.3 Ms Pegram was subsequently appointment in the permanent position of Procurement Officer and Ms Muller in the permanent position of Personal Assistant to the CEO, even though they did not qualify for the respective positions.
1.4 Ms J Beukes, an employee of the Liquor Board, was transferred to the position of Senior Administrative Officer: Finance, even though she did not have the requisite qualifications and the position was not advertised.

1.5 In essence, the Complainant contended that the appointments of the CEO, Ms Pegram and Muller and the transfer of Ms Beukes were improper and constitute maladministration.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1 The Public Protector is an independent constitutional institution, established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that:

"The Public Protector has the power 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 to result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action".

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through
conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 In the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others, the Constitutional Court per Mogoeng CJ, held that the remedial action taken by the Public Protector has a binding effect\(^1\). The Constitutional Court further held that: "When the remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences"\(^2\).

3.6. In the above-mentioned matter of the Economic Freedom Fighters v Speaker of the National Assembly and Others, Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:

3.6.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);

3.6.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);

3.6.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints. That is the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);

\(^1\) [2016]ZACC 11; 2016(3) SA 580(CC) and 2016 (5) BCLR 618 (cc) at para [76].

\(^2\) Supra at para[73]
3.6.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (para 69);

3.6.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (para 70);

3.6.6 The Public Protector’s power to take appropriate remedial action is wide, but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (para 71);

3.6.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (para 71(a));

3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d)); and

3.6.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e)).

3.7 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP);
3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (para 71);

3.7.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (para 82);

3.7.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182 (1) affords the Public Protector with the following three separate powers ( paragraphs 100 and 101):

a) Conduct an investigation;

b) Report on that conduct; and

c) To take remedial action.

3.7.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings (para 104);

3.7.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (Para 105);

3.7.6 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute *prima facie* findings that point to serious misconduct (paragraphs 107 and 108); and

3.7.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112 of the judgment).
3.8 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute 'special circumstances', some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute 'special circumstances' depends on the merits of each case.

3.9 Members of Executive Councils of Provincial Governments and the Liquor Board and its officials are organs of state, as contemplated by the provisions of section 239 of the Constitution, and their conduct amount to conduct in state affairs, as a result the matters referred to in this report fall within the ambit of the Public Protector's mandate.

3.10 The jurisdiction of the Public Protector to investigate this matter was not disputed by the parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.
4.2 Approach to the investigation

4.2.1 The investigation was approached by using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation constitutes improper conduct or maladministration?

4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong and what action should be taken?

4.2.1.5 The question regarding what happened is resolved through a factual enquiry relying on evidence provided by the parties and independently sourced during the investigation. In this case, the factual enquiry principally focused on whether the appointment of the CEO and certain employees of the Liquor Board was in compliance with the relevant legislation and prescripts.

4.2.1.6 The enquiry regarding what should have happened focuses on the law or rules that regulate the standard that should have been met by the MEC, the CEO and the Liquor Board to prevent maladministration or prejudice.

4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible and appropriate.

4.3 On analysis of the complaint, the following issues were considered and investigated

4.3.1 Whether the appointment of the CEO by former MEC Block on 7 August 2014 was in accordance with the relevant laws and prescripts regulating the recruitment of the Chief Executive Officer of the Liquor Board; and if not
4.3.2 Whether the appointment of the CEO was improper and constitutes maladministration.

4.3.3 Whether the temporary appointment of Ms Erlene Muller (previously Van Wyk) and Ms Susan Pegram at the Liquor Board in 2015 was in accordance with the relevant laws and prescripts regulating recruitment; and if not

4.3.4 Whether the temporary appointment of Ms Muller and Ms Pegram was improper and constitutes maladministration.

4.3.5 Whether the permanent appointment of Ms Muller and Ms Pegram in the positions of Personal Assistant to the CEO and Procurement Officer, respectively, with effect from 1 December 2015 was in accordance with the relevant laws and prescripts regulating recruitment, and if not;

4.3.6 Whether the permanent appointment of Ms Muller and Pegram was improper and constitutes maladministration.

4.3.7 Whether Ms Juanita Beukes qualified to be transferred to the position of Senior Administrative Officer: Finance at the Liquor Board and the position was advertised, and if not;

4.3.8 Whether the transfer of Ms Beukes to the position of Senior Administrative Officer: Finance was improper and constitutes maladministration.

4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 A copy of the advertisement for the CEO position, dated 26 August 2013.
4.4.1.2 A copy of an internal memorandum regarding the appointment of the CEO, dated 10 December 2013.
4.4.1.3 A copy of the advertisement for the position of Personal Assistant to the CEO, dated 03 February 2011.

4.4.1.4 Copies of CVs and qualifications of Ms J Beukes; Ms R Stadhouer-Andrews, Ms E Muller and Ms S Pegram.

4.4.1.5 A copy of the advertisement for the PA to the CEO and Procurement Officer positions, dated 23 September 2015.

4.4.1.6 A list of shortlisted candidates for the PA to the CEO and Procurement Officer positions and the score sheets from the interviews held on 23 October 2015.

4.4.1.7 A copy of the minutes of the Human Resources Sub-Committee meeting held on 14 October 2015, in connection with the shortlisting and interview of the candidates for the PA to the CEO and Procurement Officer positions.

4.4.1.8 A copy of the minutes of a Liquor Board meeting held on 24 November 2015 regarding the appointments of the PA to the CEO and the Procurement Officer.

4.4.1.9 A copy of an internal memorandum regarding the appointment of the PA to the CEO and the Procurement Officer, dated 30 November 2015.

4.4.1.10 A copy of the Liquor Board Resolution regarding the appointment of the PA to the CEO and Procurement Officer, dated 24 November 2015.

4.4.1.11 A copy of an internal memorandum regarding the appointment of the Procurement Officer, dated 26 November 2015.

4.4.1.12 A copy of the internal memorandum regarding the transfer of Ms J Beukes dated 20 May 2015.

4.4.1.13 A copy of the minutes of a Liquor Board meeting held on 20 May 2015 regarding the transfer of Ms J Beukes to the position of Senior Financial Administrative Officer: Finance Unit.

4.4.1.14 A copy of an affidavit of Mr T Makhale, the Chief Financial Officer at the Liquor Board, dated 14 February 2017.

4.4.1.15 Copies of the affidavits of Ms Muller and Ms Pegram regarding the recruitment process for their temporary appointments at the Liquor Board, dated 05 July 2017.
4.4.2 Correspondence between the Public Protector and:

4.4.2.1 The Auditor-General South Africa, dated 21 April 2016 and 23 May 2016.
4.4.2.2 The Chief Operations Officer of the Northern Cape Department of Economic Development and Tourism, dated 08 June 2016.
4.4.2.3 The CEO, dated 8 June 2016, 9 June 2016, 24 November 2016, 29 November 2016 and 02 December 2016.
4.4.2.4 The Acting Head of Northern Cape Department of Economic Development and Tourism, dated 30 May 2016 and 01 June 2016.

4.4.3 Interviews/meetings conducted

4.4.3.1 Meetings with Ms S Pegram and Ms E Muller, held on 12 October 2016 and 21 February 2016.
4.4.3.2 Meeting with the Chief Financial Officer and the CEO of the Liquor Board, held on 06 December 2016.

4.4.4 Legislation and other prescripts

4.4.4.2 The Public Protector Act 23 of 1994.
4.4.4.3 The Northern Cape Liquor Act 2 of 2008.
4.4.4.4 The RegulationsRegarding the Chief Executive Officer in terms of the Northern Cape Liquor Act 2 of 2008.
4.4.4.5 The Northern Cape Liquor Board's Human Resources Policies and Procedures.

4.4.5 Case Law considered

4.4.5.1 Ouderkraal Estates (Pty) Ltd v City of Cape Town & Others 2004(6) SA 222 (SCA).
4.4.5.2 The MEC for Health, Eastern Cape v Kirland Investments 2014 (3) SA 481 (CC).
4.4.5.3 Van Wyk v Unitas Hospital and Another 2008 (2) SA 472 (CC).
4.4.5.4 *Department of Public Works, Roads and Transport v Motshoso & Others* [2005] 10 BLLR 957 (LC)

4.4.6 Notices in terms of section 7(9) of the Public Protector Act

4.4.6.1 A notice was issued to MEC Jack on 5 July 2018. He responded on 23 July 2018.

4.4.6.2 A notice was issued to former MEC Block on 1 October 2018. He responded on 12 October 2018.

4.4.6.3 A notice was issued to the CEO on 18 March 2019. Herman van Heerden Inc attorneys responded on her behalf, on 8 April 2019.

5. **THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**

5.1 Regarding whether the appointment of the CEO by former MEC Block on 7 August 2014 was in accordance with the relevant laws and prescripts regulating the recruitment of the Chief Executive Officer of the Liquor Board

*Common cause or undisputed facts*

5.1.1 It is not in dispute that former MEC Block, appointed Ms Rudessa Stadhouer-Andrews as the CEO of the Liquor Board on 7 August 2014

5.1.2 It is further common cause that Ms Stadhouer-Andrews was shortlisted for the position, but she did not attend the interviews that were conducted by the appointed Interview Panel on 9 December 2013.
Issues in dispute

5.1.3 The Complainant contended that the appointment of the CEO by former MEC Block was improper as she did not attend the interviews of shortlisted candidates for the position.

5.1.4 According to the records of the Liquor Board, the position of Chief Executive Officer was advertised on 12 August 2013.

5.1.5 The Chairperson of the Interview Panel (who was also the Chairperson of the Liquor Board) that was appointed to interview the shortlisted candidates, submitted a Memorandum to MEC Block on 12 December 2013.

5.1.6 The Memorandum stated that seven of the twenty (20) applicants for the position were shortlisted for interviews on the basis of relevant qualifications, training and experience.

5.1.7 Only four (4) of the shortlisted candidates attended the interviews that were held on 9 December 2013. Ms Stadhouer-Andrews was shortlisted, but did not attend.

5.1.8 The Interview Panel “comprehensively and thoroughly reviewed the performance, strong and weak points, skills, exposure, training, knowledge and competencies of each of the shortlisted candidates…” The Panel was unanimous in its selection of the preferred candidate.

5.1.9 The Memorandum recommended the appointment by the MEC of the preferred candidate, with effect from 1 February 2014, and also recommended alternatives should the preferred candidate not accept the offer.

5.1.10 Former MEC Block did not approve the Memorandum. Instead he commented on 7 August 2014 (eight months after the Memorandum was submitted) that;
“After studying the attached long list, I have decided to appoint Ms R Stadhouer (sic) to this position in terms of the Liquor Act (section 12) read with the Regulations.”

5.1.11 The CEO indicated during the investigation that she could not attend the interviews as she was sick. A medical certificate was submitted confirming her evidence in this regard. She also informed the Chief Operations Officer of the Department accordingly at the time.

5.1.12 In his response to the notice issued to him in terms of section 7(9) of the Public Protector Act dated 12 October 2018, former MEC Block stated that he was not satisfied with the recommendation made to him by the Interview Panel. He was made aware that Ms Stadhouer-Andrews was shortlisted, but not interviewed due to ill health. He therefore decided as a matter of fairness to consider her application.

5.1.13 Former MEC Block further stated that he was aware that Ms Stadhouer-Andrews had “vast auditing and financial experience and relevant qualifications obtained during her tenure at both the Auditor-General (for more than a decade) and at the NCGB (Liquor Board) in a managerial position as CFO.’

5.1.14 He relied on the provisions of section 12 of the Northern Cape Liquor Act in appointing Ms Stadhouer-Andrews.

Application of relevant law

5.1.15 Section 12(1) of the Northern Cape Liquor Act, 2008 provides that the MEC must appoint a Chief Executive Officer to administer the affairs of the Liquor Board.
5.1.16 Before appointing a Chief Executive Officer, the MEC must, in terms of section 12(6) of the Act, make regulations regarding, *inter alia*, the procedure to be followed when such appointment is made.

5.1.17 The *Regulations Regarding the Chief Executive Officer* (Regulations) were promulgated with effect from 9 December 2009.

5.1.18 Regulation 2(3) provides that the MEC must, when appointing a Chief Executive Officer, through public invitation request applications for the position to be submitted to him/her within 21 days.

5.1.19 A Chief Executive Officer is, in terms of Regulation 2(4) appointed for a period not exceeding five years.

*Conclusion*

5.1.20 The Regulations require a process of public invitation of applications for the vacant position of the Chief Executive Officer of the Liquor Board.

5.1.21 The procedure to be followed in the making of the appointment by the MEC is not clearly stipulated in the Regulations, as required by section 12(6) of the Northern Cape Liquor Act.

5.1.22 However, it is clear from the evidence that a shortlisting and interview process was adopted by the Liquor Board for the appointment of the Chief Executive Officer, when the position was advertised in August 2013.

5.1.23 The requirement of public invitation of applicants in terms of the Regulations and a process in the making of the appointment by virtue of the provisions of section 12(6) of the Northern Cape Liquor Act are clearly aimed at finding the best candidate for the position of the Chief Executive Officer.
5.1.24 Former MEC Block disregarded the process of shortlisting and interviews that were held by the Interview Panel, chaired by the Chairperson of the Liquor Board. There is no indication in his response to the section 7(9) notice that he even considered the highly qualified and experienced candidates that were interviewed and why he was of the opinion that Ms Stadhouer-Andrews was the best candidate. His response only focussed on her qualifications and experience as the Chief Financial Officer of the Liquor Board. There is no indication that he appropriately applied his mind to the qualifications and experience of the other shortlisted candidates that attended the interviews.

5.1.25 His decision not to approve the candidate that was recommended by the Interview Panel and to appoint Ms Stadhouer-Andrews instead was taken eight months after the interviews were held and the Memorandum of the Interview Panel was submitted. No reason was provided why MEC Block did not request the Interview Panel to interview her and to submit their scores, views and recommendations on her suitability for the position in comparison to the other candidates, in order for him to take an informed decision, in accordance with a fair selection process and in the best interests of the Liquor Board. The impression that he had already decided to appoint Ms Stadhouer-Andrews, even before the recommendations of the Interview Panel were submitted, is unavoidable.

5.2. Regarding whether the appointment of the CEO was improper and constitutes maladministration

*Common cause or undisputed facts*

5.2.1 It is not in dispute that former MEC Block, appointed Ms Rudessa Stadhouer-Andrews as the CEO of the Liquor Board on 7 August 2014.
5.2.2 It is further common cause that Ms Stadhouer-Andrews was shortlisted for the position, but she did not attend the interviews that were conducted on 9 December 2013.

Application of the relevant law

5.2.3 Section 12(1) of the Northern Cape Liquor Act, 2008 provides that the MEC must appoint a Chief Executive Officer to administer the affairs of the Liquor Board.

5.2.4 Before appointing a Chief Executive Officer, the MEC must, in terms of section 12(6) of the Act make regulations regarding inter alia, the procedure to be followed when such appointment is made.

5.2.5 The Regulations were promulgated with effect from 9 December 2009.

5.2.6 Regulation 2(3) provides that the MEC must, when appointing a Chief Executive Officer, through public invitation, request applications for the position to be submitted to him/her within twenty one (21) days.

Conclusion

5.2.7 By disregarding the recruitment and selection process in the appointment of the CEO as referred to in paragraph 5.1 above, former MEC Block acted to the disadvantage of the other candidates that were shortlisted and interviewed, therefore prejudicing them and not in the best interests of the Liquor Board. His decision was irrational and improper and resulted in the appointment of the CEO not complying with the relevant laws and prescripts regulating the appointment of the Chief Executive Officer of the Liquor Board.
5.2.8 The appointment of the CEO was improper and constitutes maladministration.

5.3. Regarding whether the temporary appointment of Ms Erlene Muller and Ms Susan Pegram at the Liquor Board in 2015 was in accordance with the relevant laws and prescripts regulating recruitment:

Common cause or undisputed facts

5.3.1 It is not in dispute that Ms Erlene Muller and Ms Susan Pegram entered into separate contracts of temporary employment with the Liquor Board, on 1 April 2015.

5.3.2 In terms of these contracts, Ms Muller was appointed as the Personal Assistant to the CEO and Ms Pegram as Finance Administrator, for the period 1 April 2015 to 31 July 2015.

5.3.3 On 1 August 2015 and 3 August 2015 respectively, Ms Muller and Ms Pegram entered into a further contracts of employment for the same respective positions, for the period 1 August 2015 to 31 December 2015.

5.3.4 Third contracts of employment between Ms Muller and Ms Pegram and the Liquor Board were entered into on 1 February 2016 for the same respective positions, but for the period 1 February 2016 to 31 May 2016.

5.3.5 The CEO signed all three contracts with Ms Muller and Ms Pegram respectively, on behalf of the Liquor Board.

Issues in dispute
5.3.6 The Complainant contended in essence that the temporary appointments of Ms Muller and Pegram were improper as they were not made in terms of the relevant prescribed recruitment process.

5.3.7 During the investigation, the CEO submitted that:

5.3.7.1 A need was identified at the Liquor Board and it was decided to appoint two suitable persons on a fixed term contract basis.

5.3.7.2 There is no specific legislation or policy of the Liquor Board that governs the recruitment of candidates for temporary appointment.

5.3.7.3 It was decided not to advertise for applications to save costs, but instead to consider CV’s on the Liquor Board’s database.

5.3.7.4 All the staff of the Liquor Board were informed about the temporary positions and to submit CV’s of potential candidates. Several were received.

5.3.7.5 Two suitable persons were identified and contracts were entered into with them for a specific period of four months. The Board approved the entire process in advance.

5.3.7.6 The appointments were made in terms of section 12 of the Northern Cape Liquor Act, 2008 (the Northern Cape Liquor Act) by virtue of which the CEO, in consultation with the Board and the responsible MEC may appoint such staff as may be required for the proper operation and functioning of the Board.

5.3.7.7 The Board and the MEC were consulted.

5.3.8 It further transpired during the investigation that the Chief Financial Officer, Mr K T Makhale, submitted a Memorandum on 20 March 2015 to the Chairperson of the Liquor Board, under the heading: “APPOINTMENT OF CASUAL WORKERS TO ASSIST WITH ADMINISTRATION.”

5.3.9 In this Memorandum, Mr Makhale requested the approval of the Board to appoint “two casual workers to assist with the administration at the Northern Cape Liquor Board”.

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5.3.10 The Memorandum further proposed that the temporary appointees be deployed at the Finance Unit and to perform the functions of the Personal Assistant to the CEO, and that the appointment would be made for four months at an estimated cost of R52 000.

5.3.11 The CEO recommended the Memorandum for approval on 20 March 2015 and it was approved by the Chairperson of the Liquor Board on the same day. However, there is no indication in the Memorandum that it was submitted to the MEC.

5.3.12 No further Memoranda in respect the extension or subsequent reappointment of Ms Muller and Ms Pegram on a temporary basis was submitted or found during the investigation.

5.3.13 In an affidavit made on 5 July 2017, Ms Muller stated that she got to know about the temporary position from a cousin. She forwarded her CV to Ms Beukes at the Liquor Board on 17 March 2015 and received an appointment letter on 26 March 2015. She was not interviewed for the position.

5.3.14 Ms Pegram also made an affidavit on 5 July 2017. According to her, she also learned about the temporary position at the Liquor Board from a family member. She emailed her CV to the CEO on 18 March 2015 and subsequently received an appointment letter. She was also not interviewed for the position.

5.3.15 Herman van Heerden Inc Attorneys responded on 8 April 2019 on behalf of the CEO to the section 7(9) notice issued to her. The response did not clearly distinguish between the temporary and permanent appointments of Ms Muller and Ms Pegram.

5.3.16 Reference was made to the “Human Resources Policies and procedures” of the Liquor Board, which provides that the authority to fill vacant positions must be granted in writing by the Chief Executive Officer. On the basis of this provision it was argued that the CEO had the “right to fill vacant positions”.

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5.3.17 Reference was also made to the *Delegation of Authority* document of the Northern Cape Liquor Board which states that the CEO has the authority to appoint non-management staff. The delegations referred to in this document were approved on 30 March 2015. Copies of the resolutions of the Board were attached. However, as indicated below, these resolutions related to the permanent and not the temporary appointments of Ms Muller and Ms Pegram.

5.3.18 Further, that the Human Resources Policy of the Liquor Board did not apply to the appointment of temporary staff. Despite this submission and with reference to the same Policy it was argued that the Board and not the CEO, has the authority to appoint temporary employees and that the CEO only acted in an administrative capacity.

*Application of the relevant law*

5.3.19 Section 12(3) of the *Northern Cape Liquor Board Act* provides that:

"The chief executive officer may, in consultation with the Board and the responsible Member, appoint such staff as may be required for the proper operation and functioning of the Board". (emphasis added)

5.3.20 Paragraph 1.3 of the Liquor Board's *Staff Policy Document*, dated May 2011 provides that it applies to all employees of the Board.

5.3.21 In terms of paragraph 2.2.4 of the *Staff Policy Document*, the Board may invite candidates to an interview for the filling of a vacant post, either by approaching persons directly, appointing agencies or by advertising in the media. It further provides that the Board may approach any applicant for an interview.

5.3.22 The interviewing of candidates for the filling of a vacant post, whether temporary or permanent, as regulated by the Staff Policy Document, is clearly part of the selection process and to afford the best qualified candidates to compete for the position.
Conclusion

5.3.23 No indication could be found during the investigation that the CEO consulted the MEC regarding the appointment of Ms Muller and Ms Pegram as temporary members of the staff at the Liquor Board, as required by section 12(3) of the Northern Cape Liquor Act.

5.3.24 The Memorandum of 20 March 2015 was only approved by the Chairperson of the Board, but apparently not submitted to the MEC. The approval of the Chairperson of the Board was also only granted in respect of the appointment for a period of four months, as from 1 April 2015 and at the stipulated estimated cost.

5.3.25 No evidence was found during the investigation on the approval of the appointments of Ms Muller and Ms Pegram for the periods August 2015 to December 2015 and February 2016 to May 2016 and that the Board and the MEC were consulted, as contemplated by section 12(3) of the Northern Cape Liquor Act in respect of these temporary appointments.

5.3.26 It could also not be established why the CEO entered into short term employment contracts with Ms Muller and Ms Pegram, respectively on 1 February 2016, when they had already been appointed as permanent employees with effect from 1 December 2015.

5.3.27 There is no indication in the evidence that candidates other than Ms Muller and Ms Pegram were considered for appointment in the temporary positions from April 2015 to May 2016. There was clearly no shortlist, despite the fact that several CV's were available, and no interviews were held. This was not in line with the selection of the best candidate for the position in the best interests of the Board, contemplated by the Liquor Board's Staff Policy Document.
5.3.28 The CEO’s appointment of Ms Muller and Ms Pegram as temporary employees of the Liquor Board, as referred to above, was therefore not in accordance with section 12(3) of the *Northern Cape Liquor Act* and the Liquor Board’s *Staff Policy Document*.

5.4. Regarding whether the temporary appointments of Ms Muller and Ms Pegram were improper and constitutes maladministration

*Common cause or undisputed facts*

5.4.1 It is not in dispute that Ms Erlene Muller and Ms Susan Pegram entered into separate contracts of temporary employment with the Liquor Board on 1 April 2015.

5.4.2 In terms of these contracts, Ms Muller was appointed as the Personal Assistant to the CEO and Ms Pegram as Finance Administrator for the period 1 April 2015 to 31 July 2015.

5.4.3 On 1 August 2015 and 3 August 2015 respectively, Ms Muller and Ms Pegram entered into further contracts of employment for the same respective positions for the period 1 August 2015 to 31 December 2015.

5.4.4 The Third contracts of employment between Ms Muller and Ms Pegram and the Liquor Board were entered into on 1 February 2016 for the same respective positions, but for the period 1 February 2016 to 31 May 2016.

5.4.5 The CEO signed all three contracts with Ms Muller and Ms Pegram respectively, on behalf of the Liquor Board.

5.4.6 As concluded in paragraph 5.3 above, the CEO’s appointment of Ms Muller and Ms Pegram as temporary employees of the Liquor Board was not in accordance with the section 12(3) of the *Northern Cape Liquor Act* and the Liquor Board’s *Staff Policy Document*. 

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Conclusion

5.4.7 The temporary appointment of Ms Muller and Ms Pegram was accordingly improper and constitutes maladministration.

5.5 Regarding whether the permanent appointments of Ms Muller and Ms Pegram to the positions of Personal Assistant to the CEO and the Procurement Officer respectively, were in accordance with the relevant laws and prescripts regulating recruitment:

Common cause or undisputed facts

5.5.1 It is common cause that the Liquor Board advertised the permanent positions of Personal Assistant (PA) to the CEO and Procurement Officer, on 23 September 2015.

5.5.2 Further that Ms Muller and Ms Pegram were shortlisted and appointed to the positions of the PA to the CEO and Procurement Officer respectively, with effect from 1 December 2015.

Issues in dispute

5.5.3 The Complainant in essence contended that the permanent appointments of Ms Muller and Pegram were improper as they were not made in terms of the relevant prescribed recruitment process.

5.5.4 It transpired from the investigation that Ms Muller and Ms Pegram both qualified for the positions they were appointed to.
5.5.5 On 30 November 2015 the Chief Financial Officer submitted two Memoranda to the MEC recommending the appointment of Ms Pegram as Procurement Officer and Ms Muller as Personal Assistant to the CEO, respectively.

5.5.6 The Memoranda was supported by the CEO.

5.5.7 The Board resolved on 24 November 2015 to permanently appoint Ms Beukes and Ms Pegram.

5.5.8 The two Memoranda were signed by the Chairperson of the Board, on 30 November 2015.

5.5.9 The CEO signed letters on 26 November 2015 appointing Ms Muller and Ms Pegram permanently in the respective positions, with effect from 1 December 2015.

5.5.10 However, the Memoranda were only considered by MEC Jack on 11 February 2016. He did not approve the Memoranda, commenting that there cannot be implementation before approval and that "there should be investigations."

5.5.11 In their response to the section 7(9) notice served on the CEO, dated 8 April 2019, Herman van Heerden Inc Attorneys referred to a document with the heading: "OPINION IN RESPECT TO SECTION 12(3) OF THE NORTHERN CAPE LIQUOR ACT 2 OF 2008"

5.5.12 It purports to be an unsigned opinion of Adv P Olivier of the Northern Cape Consumer Protection Authority, provided to the then Acting MEC of Finance, Economic Development and Tourism on 8 February 2016 on the meaning of the expression "consultation" in section 12(3) of the Northern Cape Liquor Act.

5.5.13 This one page document states that: 'there must be consultation with the responsible Member throughout the appointment process. This means that from the point of advertising to long lists, shortlists, interview panel, interviews and
appointment the responsible Member must be consulted, in other words, must be discussed with the responsible Member”.

5.5.14 The conclusion is:

“Through enquiries and investigations conducted, it has been established that the Chief Executive Officer did consult with the responsible Member, Mr J Block, in respect to (sic) the appointment of certain staff members. At the point of obtaining the required approval signature the preceding responsible Member did not occupy office and was not able to provide the required approval.”

5.5.15 No information or supporting documentation was provided in respect of the enquiries made, the investigation that was conducted or the identity of the staff members referred to or the conclusions made in this opinion.

5.5.16 On the basis of this opinion, Herman van Heerden Inc Attorneys submitted that the CEO had consulted with former MEC Block on the permanent appointment of Ms Beukes and Ms Pegram and that there was no obligation on her to also consult MEC Jack. This she did as MEC Jack’s signature was only required for administrative purposes.

5.5.17 The CEO submitted no further statement, information or evidence in regard to the permanent appointment of Ms Beukes and Ms Pegram.

Application of the relevant law

5.5.18 Section 12(3) of the Northern Cape Liquor Act, 2008 provides that:

“The chief executive officer may, in consultation with the Board and the responsible member, appoint such staff as may be required for the proper operation and functioning of the Board.”
Conclusion

5.5.19 It appears from the verifiable evidence that the CEO appointed Ms Muller and Ms Pegram permanently in the positions of Personal Assistant to the CEO and Procurement Officer respectively, before there was consultation with the MEC, as required by section 12(3) of the *Northern Cape Liquor Act*.

5.5.20 The submission made on behalf of the CEO that she had consulted with MEC Block relies only on hearsay statements made in an opinion relating to consultation in respect of unidentified employees and is not supported by any documentary or other evidence.

5.5.21 The only reliable indication of any consultation with the MEC on the permanent appointment of Ms Beukes and Ms Pegram are the Memoranda submitted to MEC Jack on 30 November 2015, which was disapproved by him on 11 February 2016. There is no indication in the Memoranda or any other documents obtained and submitted during the investigation of any consultation with MEC Block.

5.5.22 It is also not clear why it was regarded as necessary to consult MEC Jack if former MEC Block had already been consulted.

5.5.23 By the time that MEC Jack considered the appointments, Ms Muller and Ms Pegram had already completed more than two months in the permanent employ of the Liquor Board.

5.5.24 The evidence therefore shows that the CEO’s appointment of Ms Muller and Ms Pegram did not comply with the provisions of section 12(3) of the *Northern Cape Liquor Act*. 
5.6 Regarding whether the permanent appointments of Ms Muller and Pegram were improper and constitutes maladministration

**Common cause or Undisputed Facts**

5.6.1 It is not in dispute that the Liquor Board advertised the permanent positions of the Personal Assistant to the CEO and the Procurement Officer on 23 September 2015.

5.6.2 Further that Ms Muller and Ms Pegram were shortlisted and appointed to the positions of the PA to the CEO and the Procurement Officer respectively, with effect from 1 December 2015.

**Issues in dispute**

5.6.3 MEC Jack did not approve the appointment of Ms Muller and Ms Pegram. By the time that he considered the matter they had already commenced employment in their permanent capacity at the Liquor Board.

**Application of the relevant law**

5.6.4 Section 12(3) of the *Northern Cape Liquor Act*, 2008 provides that:

"The chief executive officer may, in consultation with the Board and the responsible member, appoint such staff as may be required for the proper operation and functioning of the Board."

**Conclusion**

5.6.5 The appointment of Ms Muller and Ms Pegram was in violation of section 12(3) of the Northern Cape Liquor Act, as concluded in paragraph 5.5 above
5.6.6 It was therefore improper and constitutes maladministration.

5.7 Regarding whether Ms Juanita Beukes qualified to be transferred to the position of Senior Financial Administrative Officer: Finance at the Liquor Board and the position had to be advertised

*Common cause issues*

5.7.1 It is common cause that Ms Juanita Beukes was appointed as the Personal Assistant to the Chief Executive Officer of the Liquor Board on 1 September 2011.

5.7.2 The Chairperson of the Board approved her transfer to the position of Senior Financial Administration Officer: Finance on 20 May 2015, on the recommendation of the Chief Financial Officer and the CEO.

*Issues in dispute*

5.7.3 The Complainant contended that Ms Beukes did not qualify to be transferred to the position of Senior Financial Administrative Officer: Finance and that the position was not advertised.

5.7.4 It was established from the records of the Liquor Board and confirmed by the Chief Financial Officer that the minimum requirements for the position of Senior Financial Administrative Officer: Finance are an appropriate National Diploma or Degree in Human Resources Management/Business Management or Economics/Finance Management, or an equivalent qualification, or 2 years practical experience in payroll administration and general finance administration.

5.7.5 Further that at the time of the transfer, Ms Beukes had a B com degree in Human Resource Management, obtained from the University of the Free State in 2010.
5.7.6 She had also been assisting the Chief Financial Officer since her appointment at the Liquor Board in 2011 with financial administration, payroll reconciliation, asset verification, the compiling of monthly quarterly and annual reports.

Application of the relevant law

5.7.7 Section 12(1) of the Northern Cape Liquor Act provides that the Chief Executive Officer is appointed to administer the affairs of the Board, which include the deployment of appointed staff.

5.7.8 There is no provision in the Northern Cape Liquor Act or in the Human Resource or Staff Policies of the Liquor Board in terms of which an internal transfer is subject to the position being advertised.

Conclusion

5.7.9 Ms Beukes qualified to be transferred to the position of Senior Financial Administrative Officer: Finance.

5.7.10 There was no obligation on the CEO to have advertised the position.

6. FINDINGS

6.1 Regarding whether the appointment of the CEO by former MEC Block on 7 August 2014 was in accordance with the relevant laws and prescripts regulating the recruitment of the Chief Executive Officer of the Liquor Board.

6.1.1 The allegation that the appointment of the CEO of the Liquor Board by former MEC Block on 7 August 2014 was not in accordance with the relevant laws and prescripts
regulating the recruitment of a Chief Executive Officer of the Liquor Board, is substantiated.

6.2 Regarding whether the appointment of the CEO was improper and constitutes maladministration.

6.2.1 The appointment of the CEO amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.

6.3 Regarding whether the temporary appointments of Ms Erlene Muller and Ms Susan Pegram at the Liquor Board in 2015 was in accordance with the relevant laws and prescripts regulating recruitment.

6.3.1 The allegation that the temporary appointments of Ms Muller and Ms Pegram at the Liquor Board in 2015 was not in accordance with the relevant laws and prescripts regulating recruitment, is substantiated.

6.4 Regarding whether the temporary appointments of Ms Muller and Ms Pegram were improper and constitutes maladministration

6.4.1 The temporary appointment of the Ms Muller and Ms Pegram amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.
6.5 Regarding whether the permanent appointments of Ms Muller and Ms Pegram in the positions of Personal Assistant to the CEO and Procurement Officer respectively, were in accordance with the relevant laws and prescripts regulating recruitment.

6.5.1 The allegation that the permanent appointment of Ms Muller and Ms Pegram in the positions of Personal Assistant to the CEO and Procurement Officer respectively, was not in accordance with the relevant laws and prescripts regulating recruitment is substantiated.

6.6 Regarding whether the permanent appointments of Ms Muller and Ms Pegram were improper and constitute maladministration.

6.6.1 The permanent appointment of Ms Muller and Ms Pegram amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(1) of the Public Protector Act.

6.7 Regarding whether Ms Juanita Beukes qualified to be transferred to the position of Senior Financial Administrative Officer: Finance at the Liquor Board and the position was advertised

6.7.1 The allegation that Ms Beukes did not qualify to be transferred to the position of Senior Financial Administrative Officer: Finance and that the position had to be advertised is unsubstantiated.

7. REMEDIAL ACTION

7.1 The appointment of the CEO, Ms Muller and Ms Pegram constitute administrative action, respectively.
7.2 In Ouderkraal Estates (Pty) Ltd v City of Cape Town & Others 2004(6) SA 222 (SCA) the Supreme Court of Appeal ruled that until an administrative decision is set aside by a Court in proceedings for judicial review, it exists in fact and it has legal consequences that cannot simply be overlooked.

7.3 This principle was confirmed by the Constitutional Court in The MEC for Health, Eastern Cape v Kirland Investments 2014 (3) SA 481 (CC). The Court found that if public officials or administrators can, without recourse to legal proceedings, be allowed to disregard administrative actions by their peers, subordinates or superiors if they consider them mistaken, this would be a license to self-help. It would be inviting officials to take the law into their own hands by ignoring administrative conduct they consider incorrect. The Court found that this would spawn confusion and conflict to the detriment of the administration and the public and that it would undermine the Court’s supervision of the administration.³

7.4 Consequently, it is not open to the MEC and the Liquor Board to simply cancel the employment contracts of the CEO, Ms Muller and Ms Pegram. Proper judicial review applications have to be brought to firstly review the decisions to appoint them and to declare their appointments invalid.

7.5 However, section 7(1) of the Promotion of Administrative Justice Act, 2000 provides that any proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days after the person concerned has become aware of the administrative action and its reasons or after completion of the applicable internal remedies.

7.6 The decision to appoint the CEO was taken more than four years ago. Ms Muller and Ms Pegram were appointed on short term contracts and later permanently, in 2015. In Van Wyk v Unitas Hospital and Another 2008 (2) SA 472 (CC), the Constitutional Court found that an applicant for condonation for judicial review of administrative

³ At para 89
action not brought timeously must give a full explanation for the delay, which must cover the entire period of the delay and be reasonable. The MEC and the Liquor Board will probably have considerable difficulty in giving a reasonable explanation for the delay in applying for judicial review.

7.7 It would also be unfair and unreasonable to terminate the employment of the CEO, Ms Muller and Ms Pegram on the basis that the former MEC and the CEO erred in processing them. Dismissing them on this basis may constitute “unfair dismissal” as contemplated by Chapter 8 of the Labour Relations Act, 1995.

7.8 The CEO’s contract expires in August 2019. Ms Muller and Ms Pegram have been permanently employed for more than four years.

7.9 Mr J Block has since left the Provincial Government of the Northern Cape.

7.10 It is trite that disciplinary action against any official must be taken within a reasonable time. In the case of the Department of Public Works, Roads and Transport v Motshoso & Others, for example, the Court found unconscionable and unfair a three year delay in instituting disciplinary action against an employee.

7.11 A further reason for the holding of the disciplinary hearings within a reasonable time is that the employer may be deemed to have waived its right to dismiss for the alleged transgression.

7.12 In this matter, the appointment of Ms Muller and Ms Pegram were made by the CEO in 2015. The MEC became aware of the irregularity as long ago as February 2016, i.e. more than three years ago and no action was taken against the CEO.

7.13 The appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution is the following

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4 [2005] 10 BLLR 957 (LC)
5 Union of Municipal Workers and Another v Stadsraad van Pretoria (1992) 13 ILJ 1563 (IC); Randburg Town Council v National Union of Public Service Workers (1994) 15 ILJ 129 (LAC)
7.13.1 The Northern Cape MEC for Finance, Economic Development and Tourism to take urgent steps to:

7.13.1.1 Amend the Regulations Regarding the Chief Executive Officer to clearly provide for the process and procedure to be followed when appointing a Chief Executive Officer, as contemplated by sections 12(1) and 12(6) of the Northern Cape Liquor Act, within 60 business days from the date of this report; and

7.13.1.2 In consultation with the Board, develop and approve a Recruitment Policy for the Liquor Board that regulates the process and procedure of appointing all employees at all levels in line with the provisions of sections 8(f) and 12(3) and 12(5) of the Northern Cape Liquor Act, within 90 business days from the date of this report.

8. MONITORING

8.1 The Northern Cape MEC for Finance, Economic Development and Tourism to submit an action plan to me within 30 days from the date of this report, indicating how the remedial action referred to in paragraph 7 above will be implemented.