Allegations of maladministration relating to the transfer of personnel from the Cross Boarder Transport Agency to the Road Traffic Management Corporation

CLOSING REPORT ON AN INVESTIGATION INTO IRREGULAR AND UNLAWFUL TRANSFER OF ROAD TRAFFIC INSPECTORS FROM THE EMPLOY OF THE CROSS BORDER ROAD TRANSPORT AGENCY (CBRTA) TO THE ROAD TRAFFIC MANAGEMENT CORPORATION (RTMC)
1. CLOSING REPORT ON AN INVESTIGATION INTO IRREGULAR AND UNLAWFUL TRANSFER OF ROAD TRAFFIC INSPECTORS FROM THE EMPLOY OF THE CROSS BORDER ROAD TRANSPORT AGENCY (CBRTA) TO THE ROAD TRAFFIC MANAGEMENT CORPORATION (RTMC)

1. INTRODUCTION

1.1 This is my closing 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 This closing report is submitted to the Complainant, Mr Mphahlele.

1.3 This report relates to my investigation into alleged irregular and unlawful transfer of road traffic inspectors from the employ of the Cross Border Road Transport Agency (CBRTA) to the Road Traffic Management Corporation (RTMC)

2. THE COMPLAINT

2.1 The Complainant, who is the General Secretary of the National Transport Movement (NTM), representing the members that belong to the NTM, alleges irregular and unlawful transfer of Road Traffic Inspectors from the employ of the Cross Border Road Transport Agency (CBRTA) to the Road Traffic Management Corporation (RTMC);

2.2 That the Inspectors were allegedly informed of the transfer one day before the transfer was effected without consultation with them;

2.3 That despite the fact that they signed new employment contracts with RTMC, they approached NTM for intervention in the matter as they are of the view that they were coerced into signing the contracts;
2.4 That you approached the Chief Executive Officers (CEO’s) of both CBRTA and RTMC in the hope that the matter could be amicably resolved, however they failed to reply to your communication;

2.5 That the transfer of the Inspectors between the entities are allegedly irregular and contravenes both the entities incorporating legislation namely the Cross-Border Road Transport Act, 1998 (the CBRT Act) and the Road Traffic Management Corporation Act, 1999 (the RTMC Act) and;

2.6 That the transfer of the Inspectors did not comply with section 197 of the Labour Relations Act, 1995 (the LRA).

2.7 In evaluating the complaint submitted to me, I note that there were in fact two processes unfolding simultaneously. The one being the transfer of the inspectors, being the employees of CBRTA to RTMC and secondly, the transfer of the functions of CBRTA to RTMC through the enabling legislation of the two entities.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional body 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 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 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 or any other appropriate Alternative Dispute Resolution (ADR) mechanism.

3.5 In the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016*, the Constitutional Court per Chief Justice Mogoeng stated the following when confirming the powers of the Public Protector:

3.5.1 The remedial action taken by the Public Protector has a binding effect, "When remedial action is binding, compliance is not optional, and 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" (para 73);

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

3.5.3 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);

3.5.4 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as 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);

3.5.5 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);

3.5.6 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);

3.5.7 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);

3.5.8 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(c));

3.5.9 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));
3.5.10 "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));

3.6 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), [2017] ZAGPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the Court held as follows, when confirming the powers of the Public protector:

3.6.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (para 79);

3.6.2 The Public Protector has power to take remedial action, which include instructing the Members of the Executive including the President to exercise powers entrusted on them under the constitution where that is required to remedy the harm in question (para 82);

3.6.3 The Public Protector, in appropriate circumstances, has the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective (para 85 and 152);

3.6.4 There is nothing in the Public Protector Act or Ethics Act that prohibit the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (para 91 and 92);

3.6.5 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 (para 100 and 101):

(a) Conduct an investigation;
(b) Report on that conduct; and
(c) To take remedial action.

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

3.6.7 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).

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

3.6.9 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (para 112);

3.7 The Cross Boarder Road Transport Agency and the Road Traffic Management Corporation, mentioned in this report are organs of state and their conduct amounts to conduct in state affairs, as a result the complaint falls within the ambit of the Public Protector's mandate. Accordingly, I have the power and jurisdiction to investigate and take appropriate remedial action in the matter under investigation.

3.8 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties in this investigation.

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 complaint was classified as a Service Delivery complaint for resolution by way of a formal investigation in line with sections 6(4) and (5) of the Public Protector Act.

4.1.3 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 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

(i) What happened?

(ii) What should have happened?

(iii) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

(iv) In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry primarily focussed on whether there was irregular and unlawful transfer
of Road Traffic Inspectors from the employ of the Cross Border Road Transport Agency to the Road Traffic Management Corporation.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Cross Border Road Transport Agency and the Road Traffic Management Corporation.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where Complainant's have suffered prejudice, the idea is to place them as close as possible to where they would have been had the Cross Border Road Transport Agency and the Road Traffic Management Corporation concerned complied with the regulatory framework setting the applicable standards for good administration.

5. ISSUES TO BE CONSIDERED AND INVESTIGATED

5.1 On analysis of the complaint, information and documents received during preliminary enquiries, the following issues were considered and investigated:

5.1.1 Whether the CEOs of the CBRTA and RTMC failed to respond to your communication and or to your requests for meetings.

5.1.2 Whether the transfer of the function of CBRTA outlined in terms of section 39 of the CBRTA Act to the RTMC was irregular as it was contrary to the enabling legislation of the two entities;

5.1.3 Whether the transfer of the inspectors were in breach of section 197 of the Labour Relations Act 66 of 1995;

5.1.4 If so, whether the Inspectors suffered any improper prejudice as a result of their alleged irregular transfer.
5.1 The Key Sources of information

5.1.1 Documents and information received.

5.1.1.1 Response from the RTMC dated 10 October 2018;

5.1.1.2 Judgment of the Labour Court of South Africa, case number J799/17, dated 7 April 2017;

5.1.1.3 Minutes of entity consultation migration meeting dated 24 January 2017;

5.1.1.4 Inter-agency co-operation agreement, dated 31 May 2018;

5.1.1.5 Collective agreement between RTMC, CBRTA and the Police and Prisons Civil Rights Union (POPCRU);

5.1.1.6 Minutes of the Special Labour Consultative Forum Meeting held on 19 January 2017;

5.1.1.7 Response from CBRTA dated 13 September 2018;

5.1.1.8 Annual Performance Plan and Performance Agreement of the CBRTA for the 2016/2017 financial year;

5.1.1.9 Legal Opinion, Savage Jooste and Adams, dated 19 May 2018;

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

6.1 Whether the CEOs of the CBRTA and RTMC failed to respond to your communication and or to your requests for meetings.
Common Cause

6.1.1 It is common cause that at the time when the transfer of the inspectors were effected, the Complainant was not the representative union, but that the Police and Prisons Civil Rights Union (POPCRU) was representing the majority of the inspectors and thus acted on their behalf.

6.1.2 It is also common cause that a Collective Agreement was entered into between the entities and the representative union at the time, being POPCRU to the effect that the transfer would be effected.

6.1.3 It is further not in dispute that this Collective Agreement has at clause 4.12, a clause relating to a dispute resolution process.

Issues in dispute

6.1.4 The Complainant submits that the chief executive officers (CEO’s) of the entities have failed to respond to requests by him to meet in respect of the transfer of these inspectors.

6.1.5 The CBRTA, in its response to my investigation team, advised that the Complainant wrote to both entities, demanding that a reversal of the transfer of the inspectors be affected. No action was taken by CBRTA based on this letter as NTM was not the representative of the majority inspectors at the time.

6.1.6 The Complainant later notified the CBRTA that the matter was referred to the Public Protector for investigation and no further action was accordingly taken.

6.1.7 In respect of RTMC, they provided the investigation team with copies of a letter addressed to the Complainant, as well as further email correspondence wherein attempts were made by them to meet with the Complainant to address the concerns raised.

Conclusion
6.1.8 On an evaluation of the evidence provided by the Complainant as well as the two entities, I cannot conclude that there was a wilful failure on the part of the entities to frustrate the Complainant by not responding and meeting NTM.

6.1.9 As stated above, in the case of CBRTA the reliance on the Collective Agreement which was entered into, provided a dispute resolution process if the transfer was indeed disputed.

6.1.10 Whilst in the case of RTMC, attempts were made to meet with the Complainant from the email submission by the entity. This notwithstanding, the matter was forwarded to my office for investigation.

6.2 Regarding whether the transfer of the function of CBRTA outlined in terms of section 39 of the CBRTA Act to the RTMC was irregular as it was contrary to the enabling legislation of the two entities?

Common Cause

6.2.1 The CBRTA is a schedule 3A public entity established in terms of the CBRTA Act. The agency’s legislative mandate requires it to advise the Minister of Transport on cross border road transport policy, regulate access to the market by the road transport freight and passenger industry in respect of cross border road transport by issuing permits, undertaking road transport law enforcement, and play a facilitative role in contributing to the economic prosperity of the region.

6.2.2 The RTMC is a schedule 3A public entity established in terms of the RTMC Act 1999. The RTMC Act requires the corporation to pool national and provincial government resources to provide road traffic management. This includes cooperative and coordinated road traffic strategic planning, regulation, facilitation and law enforcement. And further to strengthen partnerships between local government and the private sector.
6.2.3 The RTMC was requested to perform the function of the road traffic inspectorate on behalf of the CBRTA in response to the 2015 National Road Safety Summit that a single law enforcement be established, hence the need for CBRTA to migrate its law enforcement unit to the RTMC, until the applicable legislation is enacted.

6.2.4 These efforts are geared towards the constitutional imperative of creating a single police service and the imperative of establishing a single traffic police service within the transport sector. The project on the migration of the CBRTA law enforcement inspectors into the single traffic police service under the command of the RTMC was completed on the 31 March 2017.

6.2.5 The Entities signed a Memorandum of Understanding (MoU) and a tripartite agreement between CBRTA, RTMC and POPCRU.

*Issues in dispute*

6.2.6 The Complainants submits that the transfer was effected in contravention of the enabling legislation of both the entities.

6.2.7 In this regard, the Complainant relied on a legal opinion submitted to the RTMC by *Savage Jooste & Adams*, which concludes that the transfer of the function of the Inspectors between the agencies are *ultra vires* the legislations as the Minister does not have control over RTMC and secondly as it is not in line with section 37(3) of CBRTA Act as the Minister has transferred the Inspectors themselves and not simply a specific function of the Inspectors as is required by the section.

6.2.8 The legal opinion further goes on to argue that there is in essence no point to CBRTA once the Inspectors are removed from the entity.

6.2.9 The entities indicated that a ministerial directive in 2016, which was later expressed in the Annual Performance Plans for 2016/17 of CBRTA and RTMC, resulted in the finalisation of the process.
To bring effect to this transfer of the function, an Inter-Agency Co-operation Agreement was entered into between CBRTA and RTMC dated 30 March 2017 and a subsequent addendum to this Inter-Agency Co-operation Agreement was signed on 31 May 2018.

The purpose of the addendum dated 31 May 2018 was to clarify the intention of the entities in not transferring, but delegating the functions from CBRTA to RTMC.

Application of the relevant legal prescripts

The CBRTA Act

Sections 37(2) and (3) of the CBRTA act states:

"(2) The Road Transport Inspectorate must exercise its duties and powers under the control of the Board and subject to its prescriptions and instructions.

(3) The Minister may enter into an arrangement with any other Minister in terms of which officials in the department of the latter Minister may perform certain duties or functions on behalf of the Road Transport Inspectorate."

Part 8, which includes section 37-46A, of the CBRTA act outlines the law enforcement functions of CBRTA. The function of the road transport inspectors being one of them, at section 39.

Section 37(3), provides for the delegation of certain functions of the Road Transport Inspectorate under specific circumstances.

The RTMC Act

Section 22 of the RTMC Act requires the Chief Executive Officer (CEO) of the RTMC to submit an Annual Report to the Shareholders for its approval. The said report should contain the information as listed in section 22, which includes the performance targets of the organisation and any other information relevant to the organisation.
6.2.16 It further requires that upon approval by the shareholders, the said report is furnished to the Minister and the relevant Members of the Executive Committees (MEC's) and tabled at Parliament.

6.2.17 In applying the legislation outlined above, it is noted that the addendum clearly states that there was not a transfer of the function of CBRTA, but only a delegation of the function from CBRTA to RTMC.

6.2.18 Furthermore, although the ministerial directive refers to a 'transfer' in its opening paragraphs, the Minister clearly states in paragraph 3 at point 2 that the mandate will be retained within CBRTA “until such time that the necessary legislative changes are effected”.

6.2.19 In terms of section 37(3), the function of CBRTA can be performed by another entity, provided that there is an agreement between two ministers that the function will be performed by the latter Minister, thus allowing for the delegation of function.

6.2.20 In this instance, both entities are under the control of one minister, thus there is no need for such agreement when delegating the functions in terms of this section to another entity under the control of the same ministry.

6.2.21 As outlined above, all steps were taken by RTMC to ensure that the action taken was adequately reported in the Annual Report of the entity as per the requirements of the RTMC Act.

6.2.22 In respect of the argument in the legal opinion by Savage & Jooste, that the Minister transferred the inspectors, and not simply the function, as purported in the act, is not agreed to.

6.2.23 In this regard, we have already stated above that there was in fact two processes unfolding simultaneously, being the transfer of the function in terms of the enabling legislation of the two entities outlined above, and the transfer of the employees as per section 197 of the Labour Relations Act. This process will be considered below.
6.2.24 It is also submitted that this delegation of the function of the inspectors, does not render the CBRTA pointless, as argued, as the mandate remains within CBRTA. Moreover, the act has a number of other functions outside of that of the inspectorate which is still being conducted by CBRTA.

Conclusion

6.2.25 The only requirement would be that the delegation is not in contravention of the enabling legislation.

6.2.26 Nothing in the CBRTA Act prevents such a transfer, and the provisions of the act is not transgressed as the mandate of the Inspectors remain in terms of the CBRTA Act.

6.2.27 The agreement entered into between the two entities recognises that a change in legislation will be necessary to transfer any mandate of the Inspectors.

6.3 Regarding whether the transfer was in breach of section 197 of the Labour Relations Act 66 of 1995?

Common Cause

6.3.1 It is common cause that when the Inspectors transferred from CBRTA to RTMC, a new contract of service was entered into.

6.3.2 It is common cause that a collective agreement was entered into between the representative union at the time, POPCRU and the entities in respect of the transfer of the inspectors.

6.3.3 It is common cause that this Collective Agreement does provide for a dispute resolution process to be followed in the event that any party is not satisfied with any aspect of the agreement.

Issues in dispute
6.3.4 It is disputed that the transfer was properly effected in terms of section 197 of the Labour Relations Act 66 of 1995 (the LRA) which deals with the transfer of a contract of an employment.

6.3.5 In response to the allegations raised by my investigation team that there was no proper transfer of the inspectors, the RTMC and the CBRTA confirmed that there was a lengthy consultation process which was followed which resulted in the Collective Agreement referred to above.

6.3.6 In addition, the investigation team was advised that there was previously an urgent application lodged by one of the affected inspectors in the High Court to reverse the transfer. This matter was dismissed in the High Court as not urgent and the inspector was referred back to the Labour Court to follow the process. This was never done.

6.3.7 The Complainant was requested to comment on this information and he advised that he was not aware of such application.

*Application of the relevant legal prescripts*

*The Labour Relations Act*

6.3.8 Section 197 of the LRA requires that where there is a transfer of employment from one employer to another, such transfer should be compliant with the provisions set out in section 197. The relevant subsections are discussed below.

6.3.9 It is clear that the employee should not be disadvantaged by any transfer of employment to another employer.

6.3.10 Section 197(3)(a) states that the new employer substitutes the old employer and all terms and conditions are transferred to the new employer. The terms and conditions of the employee should in the whole not be less favourable than when they were in the employ of the old employer.
Section 197(3)(b) specifically states that the requirements set out in section 197(3)(a) does not apply to the employee in the event that any of its conditions of employment are determined by collective agreement.

Section 23 sets out the Legal effect of Collective Agreement as follows:

(1) A collective agreement binds-

(a) the parties to the collective agreement;

(b) each party to the collective agreement and the members of every other party to the collective agreement, in so far as the provisions are applicable between them;

(c) the members of a registered trade union and the employers who are members of a registered employers' organisation that are party to the collective agreement if the collective agreement regulates-

(i) terms and conditions of employment; or

(ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers;

(d) employees who are not members of the registered trade union or trade unions party to the agreement if-

(i) the employees are identified in the agreement;

(ii) the agreement expressly binds the employees;

and

(iii) that trade union or those trade unions have as their members the majority of employees employed by the employer in the workplace.

(2) ...

(3)...

(4)...
6.3.13 The Complainant submitted copies of the old contract of employment with CBRTA and the new contract of RTMC in support of the allegation that there has been non-compliance with the provisions of section 197 of the LRA.

6.3.14 We have studied the contracts as stated above and cannot find any marked difference between the two contracts in so far as it relates to the terms and conditions of employment which may be less than that received by CBRTA.

6.3.15 We have further noted that the Collective Agreement referred to by the entities also incorporates some terms and conditions of service and thus falls within section 197(3)(b) as discussed above.

6.3.16 Section 24 continues to elaborate on disputes about Collective Agreements, stating specifically that a collective agreement must contain a dispute resolution process.

6.3.17 The Collective Agreement provided to my office between the entities and POPCRU, at 4.12 provides a Dispute Resolution process.

**Conclusion**

6.3.18 There is no evidence that section 197 of the LRA has been breached.

6.3.19 It is clear that a valid Collective Agreement was entered into between POPCRU and the entities which represented the employees at the time.

6.3.20 The LRA sets out the binding nature of the Collective Agreement as set out above, and this cannot be ignored by me.

6.3.21 In addition, the Collective Agreement itself provides a dispute resolution process for any aggrieved party affected by the Collective Agreement.
6.4 If so, whether the Inspectors suffered any improper prejudice as a result of the alleged irregular transfer.

6.4.1 There has been no evidence of transgression of the enabling legislation of the two entities nor the LRA and we accordingly find no evidence of improper prejudice.

7. CONSIDERATION OF ISSUES RAISED RELATING TO PROVISIONAL CLOSING REPORT

7.1 We received a response from you on 13 December 2019, relating to the provisional closing report that was sent to you, on 29 November 2019.

7.2 You raised issues relating to the following:-

7.2.1 That the RTMC did not serve any correspondence upon NTM pertaining to the meeting sought to address the unlawful or irregular transfer of the National Transportation Inspectors.

7.2.1.1 This issue was addressed in the provisional report under the issue discussed in paragraph 6.1.1 through to paragraph 6.1.10.

7.2.1.2 Furthermore in a correspondence to my office dated, 10 October 2018, the RTMC indicated that the NTM was not the recognised employee representative as per the collective agreement and never met the 30% threshold of the total employees of the RTMC. However the RTMC remain available to engage and afford the parties a hearing. The RTMC submitted documentary evidence confirming correspondence with the Complainant. To this effect a letter dated 14 February 2018 was sent to the Complainant, alluding to the fact that the RTMC is willing to give the Complainant an audience to articulate pertinent issues, provided it is on a mutually agreeable date. There were also e-mailed correspondences between the Complainant and the office of the CEO at RTMC, wherein the Complainant
was notified that the suggested dates for a meeting cannot be confirmed, however they will revert as soon as the CEO’s calendar has an opening. In light of the aforementioned and paragraph 6.1.8 of our provisional closing report, I cannot conclude that there was a wilful failure on the part of the entities to frustrate the Complainant by not responding and meeting the Complainant.

7.2.2 You reiterated the fact that CBRTA transferred the National Road Traffic Inspectorate and the inspectors to RTMC and not migrated them, and attached a document dated 29 March 2017 signed by the CEO of the CBRTA. Your comment is noted, however the document which you referred us to is not new evidence and was already in the possession of the my investigation team when this matter was being adjudicated on. Furthermore this issue has been thoroughly ventilated in paragraph 6.2.1 through to 6.2.27 of the provisional closing report sent to you.

7.2.3 Your further comments regarding individual losses suffered, as a result of the transfer of personnel, cannot be commented on by me as it was not the focus of this investigation, nor was it part of the initial complaint. Furthermore the substantive nature of the Complaint regarding the losses suffered, is one which ought to have been dealt with by the representing Union, at the time of entering into a collective agreement on this matter. I am not at liberty to comment on this issue, after the fact, wherein it prima facie appears that due diligence when entering into agreements appears to not have been a common understanding between all the parties in this matter.

7.2.4 Your allegations of maladministration and evidence produced as "NTM1, NTM6, NTM7 and NTM8" is not new evidence for the purposes of this investigation, as it was also already in the possession of my investigation team when adjudicating on this matter. The issue in paragraph 6.3 of our provisional report regarding whether the transfer was in breach of section 197 of the Labour Relations Act 66 of 1995, succinctly ventilated this concern, from paragraph 6.3.1 through to paragraph 6.3.21, the
explanatory remarks confirms that there was no maladministration in this process.

8. REASONS FOR CLOSURE

8.1 Where the state institution has taken proper actions in dealing with any acts of malpractices within its sphere of administration, and is continuing to take further action to address the issues impeding efficiency and effectiveness within its departments, it would not be prudent for me to interfere with the process concerned, unless where improper conduct or maladministration, through an act of commission or omission manifests.

8.2 Having regard to the evidence received, and for the reasons advanced herein above, I make the following findings:

8.2.1 Regarding whether the CEOs of the CBRTA and RTMC failed to respond to your communication and or to your requests for meetings. This allegations is unsubstantiated.

8.2.2 Regarding whether the transfer of the function of CBRTA outlined in terms of section 39 the CBRTA Act to the RTMC was irregular as it was contrary to the enabling legislation of the two entities. This allegation is unsubstantiated.

8.2.3 Regarding whether the transfer was in breach of section 197 of the Labour Relations Act 66 of 1995. This allegation is unsubstantiated.

8.2.4 If so, regarding whether the Inspectors suffered any improper prejudice as a result of the alleged irregular transfer. There is no finding of prejudice suffered.

8.3 Based on the abovementioned reasons I cannot take the matter any further and I am functus officio in this regard and have closed the file. Should you
wish to further pursue the matter it would be prudent to approach a Court of Law.

8.4 Kindly take note that in terms of section 7(2) of the Public Protector Act, the contents of this closing report are confidential and no person may disclose them without the authorization of the Public Protector.

8.5 Contravention of section 7(2) is in terms of section 11(1) of the Public Protector Act an offence and upon conviction, punishable in terms of subsection (4) with a fine not exceeding R40 000 or with imprisonment not exceeding 12 months or with both such fine and such imprisonment.

[Signature]

ADVOCATE BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 30/04/2020

Assisted by Ms Veronika Pillay & Adv. Johann RAubenheimer