



LAW SOCIETY
OF SOUTH AFRICA

PRESS RELEASE

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**LAW SOCIETY WELCOMES HIGH COURT JUDGMENT DECLARING RULE
PREVENTING LEGAL REPRESENTATION FOR DISMISSED EMPLOYEES AT CCMA
ARBITRATIONS UNCONSTITUTIONAL**

The Law Society of South Africa (LSSA) welcomes the judgment by the North Gauteng High Court: Pretoria which declares unconstitutional CCMA rule 25(1)(a). This rule does not allow an employee to be represented by a legal representative in arbitrations concerning dismissals for misconduct or incapacity, unless the Commissioner and all the other parties to the arbitration consent.

'The LSSA notes with appreciation the view expressed by the court that the dismissal of an employee is a serious matter for the employee. In almost all cases, the loss of employment is a grave blow for any person, and very often a source of suffering for the families they support. This must be regarded as a serious matter for any just society,' say LSSA Co-Chairpersons Jan Stemmett and Krish Govender.

Evidence before the court showed that 80% of the arbitrations before the Commission for Conciliation, Mediation and Arbitration (CCMA) are about whether a dismissal for misconduct is fair. 'Employees involved in arbitrations where the fairness of their dismissal for misconduct or incapacity is to be adjudicated, should have the right to be represented by their attorneys if they choose to do so,' say Mr Stemmett and Mr Govender.

The court noted that, in the vast majority of court cases, lawyers contributed to the efficiency and speedy resolution of disputes by agreeing matters which are not genuinely in dispute and limiting evidence, cross-examination and argument to what is strictly necessary for the case. The court noted that there was no reason why it should not be so in CCMA arbitrations as well.

CCMA rule 25(1)(a) gives arbitration litigants the right to legal representation in all arbitrations except where these concern dismissals for misconduct or incapacity, unless the Commissioner and all the other parties to the arbitration consent. This exception was challenged in the High Court by the Law Society of the Northern Provinces, which represents attorneys in Gauteng, Mpumalanga, North-West and Limpopo.

The court suspended the declaration of invalidity of the rule for 36 months to give all the relevant parties the opportunity to promulgate a new rule. The LSSA trusts that this rule will be relaxed in its application during this intervening period, or applied with circumspection, taking into account the thrust of the judgment handed down.

In the year 2000, the LSSA published a Code of Conduct for attorneys appearing at the CCMA in order to encourage practitioners to adopt a more conciliatory approach and to demonstrate a willingness on the part of attorneys to participate constructively. Among the requirements, the Code obliges an attorney appearing before the CCMA to act with reasonable diligence and promptness in representing a client. The attorney should pursue the matter on behalf of a client despite opposition, obstruction or personal inconvenience and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavour. The attorney must act with commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. In so doing the attorney should take into account the nature and objectives of the CCMA, bargaining councils and the Labour Relations Act (LRA).

'The concerns that the drafters of the LRA had in the year 2000 about the conduct of lawyers in labour matters should, by now in the year 2012, have fallen away or be substantially reduced. It is for the legal profession to ensure that lawyers uphold the aims and objectives of the LRA in ensuring the speedy resolution of labour disputes,' say Mr Stemmett and Mr Govender.

ISSUED ON BEHALF OF THE CO-CHAIRPERSONS OF THE LAW SOCIETY OF SOUTH AFRICA, JAN STEMMETT AND KRISH GOVENDER

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Editor's note:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 21 200 attorneys and 5 000 candidate attorneys.