COMPLAINTS AND COMPLIANCE COMMITTEE[1]

CASE NUMBER 216/2016

VAN DAMME COMPLAINANT

v

SOUTH AFRICAN BROADCASTING CORPORATION RESPONDENT

Members **Prof JCW Van Rooyen SC**
Councillor N Batyi
Mr Jacob Medupe
Prof Kasturi Moodaliyar
Mr Jack Tlokana
Ms Mapato Ramokgopa

REASONS FOR A DECISION NOT TO HEAR A COMPLAINT

Prof JCW van Rooyen SC

BACKGROUND

[1] The Democratic Alliance[2] Shadow Minister of Communications and National Spokesperson for the said Alliance, Ms Phumzile Van Damme, lodged a complaint with the Complaints and Compliance Committee ("CCC") against the

[1] An Independent Administrative Tribunal at the the Independent Communications Authority of South Africa. The CCC was recognised as an independent tribunal by the Constitutional Court in 2008. It, inter alia, decides disputes referred to it in terms of the Electronic Communications Act 2005. Such a decision is, on application, subject to review by a Court of Law. The Tribunal also decides whether complaints (or internal references from the compliance division or inspectors at ICASA) which it receives against licensees in terms of the Electronic Communications Act 2005 or the Postal Services Act 1998 (where registered postal services are included) are justified. Where a complaint or reference is dismissed the matter is final and only subject to review by a Court of Law. In such a case the judgment is referred to Council of ICASA for noting. Where a complaint or reference concerning non-compliance is upheld, the matter is referred to the Council of ICASA with a recommendation as to sanction against the licensee. Council then considers a sanction in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued by the Complaints and Compliance Committee's Coordinator. A licensee, which is affected by the sanction imposed, has a right to be afforded reasons for the Council's imposition of a sanction. In the normal course, where Council is satisfied with the reasons put forward to it by the Complaints and Compliance Committee, further reasons are not issued. The final judgment is, on application, subject to review by a Court of Law.

[2] The Official Opposition in Parliament. The Complaint was, however, filed in her own name.

South African Broadcasting Corporation ("SABC"), the national broadcaster which, inter alia, functions in terms of the Broadcasting Act, Act 4 of 1999.[3] The complaint read as follows:

> The complaint refers to the request for an investigation into reports that the SABC had sent a letter to SABC radio stations, instructing them not to allow live phone callers during the period leading up to elections, in order to prevent callers from using the platform to make political statements, or "electioneering".
>
> According to media reports, this decision by the SABC caused listener outrage after a Metro FM talk show host, Rams Mabote, was not allowed to take any phone calls from the public while interviewing a prominent ANC-linked businessman, Vivian Reddy.
> It is my contention the decision is in contravention of the following:
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> 1. Section 10 of the Broadcasting Act, which requires the SABC to "provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests"; and
>
> 2. Section 3(5) of the Broadcasting Act, which holds *inter alia* that broadcasting must be varied and offer a range of content and analysis from a South African perspective [section 3(5)(b)], and provide a reasonable and balanced opportunity for the public to receive a variety of points of view [section 3(5)(d)]
>
> 3. Section 11 of the ICASA regulations on the Code of Conduct of Broadcasting Licensees which entitles broadcasters to "broadcast comment on and criticism of any actions or events of national importance."
>
> 4. Section 12(1) of the ICASA regulations on the Code of Conduct of Broadcasting Licensees, in that the SABC's conduct makes no provision for the fair representation of opposing views, and instead attempts to filter the content that is disseminated to the public.
>
> ***Conclusion***
> Like all South Africans, broadcasters have freedom of speech, and the right to share their points of view. It is incumbent on the SABC to provide programming that is in the public interest, independent and represents varied opinions.
>
> The SABC's own editorial policy acknowledges that: "Phone-in and discussion

[3] See Chapter 4 of the Broadcasting Act 4 of 1999.

programmes are an accepted and important means of broadcasting individual points of view on topics."

It is my opinion that allowing the SABC to ban live callers on radio stations will effectively muzzle audiences by preventing them from freely expressing their views and opinions.

The South African public has a constitutional right to receive or impart information or ideas, as set out in section 16 of the Constitution. This certainly includes information, ideas or opinions about politics. The SABC cannot be allowed to decide, paternalistically, what kind of information the public is entitled to receive or impart.

For the reasons set out above, we trust that ICASA will view this matter with the importance it requires.

[2] In accordance with the 2010 ICASA Regulations Concerning Aspects of the Procedure of the Complaints and Compliance Committee, the Coordinator of the CCC requested the SABC to file a response to the complaint. Mr Fakir Hassen, Manager Broadcast Compliance (SABC), responded as follows on behalf of the SABC:

LETTER RE: ALLEGED SABC MUZZLING OF CALLERS

I refer to your correspondence of 2 March 2016 and the attached complaint therein from Ms Phumzile van Damme regarding the alleged decision to ban live callers on all SABC radio stations in the period leading up to the 2016 Local Government Elections.

1. The complainant calls for "an investigation into *reports (my emphasis)* that the SABC had sent a letter to SABC radio stations, instructing them not to allow live phone callers during the period leading up to elections. A second allegation by the complaint is that "*according to media reports, (my emphasis)* this decision by the SABC caused listener outrage after a Metro FM talk show host, Rams Mabote, was not allowed to take any phone calls from the public while interviewing a prominent ANC-linked businessman, Vivian Reddy. It is rather unfortunate that the complainant, by her own admission, bases her complaint on reports by third parties without knowing the background to the matter, which we will elaborate on further later in this response.
2. We wish to confirm at the outset that there has been no "decision to ban live callers on SABC radio stations", as alleged by the complainant in her letter to ICASA. If the complainant has information to the contrary emanating from the SABC and not any third parties, we would be glad to receive it and respond to it.
3. The complainant very correctly highlights the duty of the SABC, as embodied in Section 10 of the Broadcasting Act, requiring the National Public Broadcaster to "provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and

independence from government, commercial and other interests". The complainant further also quite rightly points out that clauses in Section 3(5) of the Broadcasting Act enjoins on the SABC the obligation of providing programming that is varied and offers a range of content and analysis from a South African perspective and provide a reasonable and balanced opportunity for the public to receive a variety of points of view. The SABC submits that it is doing exactly what the prescription outlined here requires. It is unfortunate, however, that the complainant interprets these requirements very differently, based on the "reports" she has referred to, rather than an understanding of how and why the SABC differentiates between its station-led programmes such as talk shows and open lines; and news and current affairs programmes as defined by ICASA.

4. The SABC has taken a firm position within the prescripts of the licence conditions of ICASA to distinguish between its News and Current Affairs programing, which is handled by specialist staff of its News Division; and other programming on radio stations which is handled more often than not by freelance producers and presenters. What the SABC has done further is to clearly declare that political discussion, given the sensitivities of such programming, be left to the terrain of the News Division, which undertakes programmes on all SABC services. There has been no restriction on any other radio programme staff undertaking listener participation programmes, such as talk shows. This distinction becomes even more significant as we approach elections, when there has been evidence in the past of not just callers but even politicians misusing the facility of an open line available to them to either further their own political ends or to attack their opponents. In a live call situation, presenters have not always reacted appropriately in terms of the requirement of a right of reply if necessary or correct intervention to ensure that we do not contravene the provisions of the Broadcasting Complaints Commission Code of Conduct.
5. Vindication for this differentiated approach has been seen in the concern expressed by other political parties about misuse of programming for electioneering, resulting in a recent meeting with the top management of the SABC. The attached media release by the SABC gives a detailed explanation of this instance and the reasoning behind the separation of political coverage.
6. This distinction between News and Current Affairs programming also ensures that we meet the requirement of the highest standards of *journalism:* required of the Act, as journalists then undertake this task. The reference by the complainant to Section 11 of the ICASA Regulations on the Code of Conduct of Broadcasting Licensees is also applicable here, as comment on and criticism of any actions or events of national importance is specifically catered for in a specialised way by our approach.
7. We deny the allegation by the complainant that we are in contravention of Section 12 (1) of the ICASA Regulations on the Code of Conduct of Broadcasting Licensees because of her perceived view that there is no provision for the fair representation of opposing views and that the SABC instead attempts to filter the content that is disseminated to the public". If the complainant can provide detailed evidence of such filtering, we would be glad to respond.
8. We fully endorse the concluding remarks by the complainant that all South Africans have the right to freedom of speech and the right to share their points of view; and that it is incumbent upon the SABC to provide programming that is in the public

interest, independent and represents varied opinions. This commitment is in fact contained in detailed directives in the Editorial Policies of the SABC.

9. We reject completely the assertion by the complainant that "allowing the SABC to ban live callers on radio stations will effectively muzzle audiences by preventing them freely expressing their views and opinions". Nobody can impose such conditions on the SABC, and the evidence of complying with the requirements of ensuring participation and free speech is on air every day in our eleven official languages on all our services.
   In conclusion, we confirm that we will never decide "paternalistically", as alleged by the complainant, what kind of information the public is entitled to receive or impart. We do however reserve the right as a broadcaster to decide the formats of our content in scheduling programmes in ways that appropriately address the requirements of fairness, balance and impartiality through professional broadcasting.

   We submit therefore that there has been no contravention of any legal or regulatory prescription on the SABC.

   Attached to the Response was a news release by the SABC, which reads as follows:

   Johannesburg, Tuesday 08 March 2016 – The SABC has noted the concerns expressed in the public domain through an open letter by the United Democratic Movement (UDM) published today, as well as in a meeting that took place yesterday between the SABC and the Economic Freedom Fighters ("EFF"). The concerns are around certain political parties allegedly using SABC programmes other than News and Current affairs programmes to advance their political agenda.

   All these concerns reinforced the correctness of the decision that the SABC has taken to the effect that political discussions should only be dealt with in the News and Current Affairs programmes.

   In the meeting with the EFF yesterday, the EFF agreed with the reasons for our decision. The decision was made to make sure that political parties do not misuse entertainment, religious and sport programmes for their political expediency.

   The SABC would like to strongly warn political parties against misusing our programmes that are meant for other purposes … than news and current affairs.

   We will also strongly deal with our employees who will assist any political parties to use their programmes for political expediency.

   The SABC remains committed to continuously being a trusted public service broadcaster, in delivering news that are not divisive but that of nation-building, as well as retaining its editorial independence. We will not allow any political party to use our airwaves unfairly."

[3] The Complainant replied as follows:

I am unfortunately unconvinced by the SABC's response in this matter. There were two separate media reports relating to the SABC's decision to ban call-ins. While the

SABC may deny this, I still believe it requires investigation by an independent body, in this case your office.

There is no legal requirement that the information and evidence relating to a request for investigation emanate from the complainant. There only needs to be prima facie grounds for investigation, which we believe in this case, exists in the form of two media reports.[4]

In the City Press report, the journalist refers to a memo which is said to read, in part: "Communication has been sent to all radio stations to stop having open lines for this current period before the local government elections." It is incumbent on ICASA to, in the very least, investigate the veracity of this memo.

Unfortunately, it is not the first time that the SABC has been accused of attempting to muzzle opinions that do not favour the ruling party, and for this matter to be laid to rest, it needs to be first investigated.

[4] The CCC then instructed the Coordinator to obtain more information from the Complainant. The e-mail that the Coordinator then sent on 8 April 2016 to the Complainant read as follows:

COMPLAINT REGARDING THE ALLEGATIONS OF MUZZLING OF CALLERS BY SABC BEFORE THE COMPLAINTS AND COMPLIANCE COMMITTEE ("CCC")

Our last correspondence dated 30 March 2016 has reference.

The CCC has carefully considered all the correspondence from the parties placed before it by this Office and advises as follows:

1. The SABC has denied the allegations that it has taken a decision to ban live callers on SABC radio stations.
2. Your complaint dated 29 February 2016 is not supported by any evidence to uphold your complaint.
3. The burden of proof therefore lies with the Complainant to prove these allegations to enable the Respondent to adequately respond to the complaint.

I have been instructed by the CCC to request you to submit evidence to corroborate your allegations that SABC has banned live callers on its radio stations for the period leading up to the 2016 Local Government Elections.

You are required to submit such evidence no later than 15 April 2016 at 16:00.

[5] No reply was received from the Complainant.

[4] City Press and Sunday Times (in both instances an internet reference was provided)

[6] The CCC decided that it was not, in terms of section 17E of the ICASA Act, "appropriate" to hear the complaint. The reasons for this decision are provided hereunder.

[7] Section 17B of the ICASA Act provides as follows:

"The Complaints and Compliance Committee -

(a) **must** investigate, and hear if **appropriate**, and make a **finding** on -

(i) all matters referred to it by the Authority;

(ii) complaints received by it; and

Even when the CCC decides not to hear a matter, it must, in accordance with the above sub-section, make a finding on the complaint. Thereby it functions within the obligatory constitutional principle of legality.[5] There is also a primary duty to investigate, as also appears from the above section of the ICASA Act.

[8] In dealing with the investigative function which had been granted to the Broadcasting Monitoring and Complaints Committee (which fell away in July 2006 as a result of amendments to the existing legislation) and the Complaints and Compliance Committee, which was in future to be the relevant tribunal, with a wider jurisdiction than the BMCC, Mpati AJ stated the following on behalf of the Constitutional Court in *Islamic Unity Convention v Minister of Telecommunications* 2008 (3) SA 383 (CC):

"[48] I agree with counsel for the respondents that the inquisitorial role is an inherent aspect of the regulatory authority, which in this case the BMCC represented. Licensees in the broadcasting industry are part of a regulatory realm which requires that they

[5] Thus: the following words must always be taken into consideration when powers, created by Statute, are exercised: Navsa JA states in *Gauteng Gambling Board v MEC for Economic Dev, Gauteng* 2013 (5) SA 24 (SCA) at para [1] "Our country is a democratic state founded on the supremacy of the Constitution and the rule of law. It is central to the conception of our constitutional order that the legislature, the executive and judiciary, in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred on them by law. *This is the principle of legality, an incident of the rule of law.* Public administration must be accountable and transparent. All public office bearers, judges included, must at all times be aware that principally they serve the populace and the national interest. This appeal is a story of provincial government not acting in accordance with these principles."(emphasis added, footnote omitted)"Also see Navsa JA's judgment in *Gerber and Others v Member of Executive Council for Development Planning and Local Government, Gauteng, and Another* 2003 (2) SA 344 (SCA).

abide by their concomitant responsibilities. They accept as a condition of their licences 'that they will adhere to the same reasonable controls as are applicable to their competitors'. The BMCC fulfilled its objects of conducting investigations into complaints by engaging in a fact-finding exercise so as to be able to make a finding, which it then forwarded to ICASA. What was required was for the scheme, created in terms of the impugned provisions of the IBA Act and the Complaints Procedures, to ensure *fairness*.

Clause 1.24 of the complaints procedures also made provision for the licensee, where the finding was against it, to be afforded an opportunity to make representations with regard to the BMCC's recommendations to ICASA as to what penalty, if any, should be imposed. Should ICASA consider that a heavier penalty than that recommended by the BMCC was warranted, the licensee would be given yet another opportunity to make representations. Section 22(3)(a) provided that the chairperson of the BMCC must be a judge of the High Court, whether in active service or retired, a practising advocate or attorney with at least ten years' appropriate experience, or a magistrate with at least ten years' appropriate experience. This requirement, in my view, was aimed at ensuring fairness, impartiality and independence. The chairperson was an experienced, legally trained person. In my view, the scheme adequately ensured *fairness*." (footnotes omitted and emphasis added).

[9] One cannot, with respect, simply state the alleged contravention, even with some allegations as to facts, and not then substantiate it with more detail as to facts – which could even be done in a reply, given the less formal procedure of an administrative tribunal. Although the rules are stricter in the Courts, which do not usually have an investigative function, it is instructive to take cognisance of their approach. Binns-Ward J stated the following in M*athias International Ltd and Another Baillache & Others* 2015(2) SA 357(WCC) at para [24]:

"Indeed it is apparent on a careful reading thereof that the applicants failed, other than by bland reference to the list quoted in para [21] above, to identify specific evidence in their founding affidavit vital to their claim which required preservation by an Anton Piller order."

These sentiments were also expressed by the same Judge in *Belville Pharmacy CC & Another v T Nortje (Pty) Ltd & Others* 2004(6) SA 442(C):

"By contrast, the replying affidavit continues to employ bland, generalised statements which did not provide any evidential support for its assertion that it would suffer direct financial harm as a result of the trading of first respondent."

In *Absa Bank v COE Family Trust & Others* 2012(3) SA 184 (WCC) at 190-1 Davis J referred to this kind of application as a "bland jurisprudential war cry".

Lastly, for present purposes, Van Schalkwyk J said the following in *Mandela v Falati* 1995(1) SA 251(W) at 256:

> "In *Buthelezi v Poorter* … Coetzee J considered the meaning to be attributed to the phrase 'defence set up' as used by Greenberg J in connection with the passage cited above. Coetzee J concluded that Greenberg J had not said, and had not intended to say, that it would be sufficient for the respondent to make the bland statement that truth and public benefit could be proved; something more would have to be said to substantiate those assertions. This, it seems to me, is the state of our common law.

[10] Under the dispensation of the Broadcasting Monitoring and Complaints Committee – which functioned as a broadcasting complaints committee[6] until 18 July 2006 – the *Chairperson* of that Committee had to decide whether a matter should be heard. The ICASA Act amended the position in 2006 and has entrusted the CCC *itself* with the duty to decide whether to *hear* a matter or not. However, before that, "it *must investigate"* and *then* "hear if appropriate" and *then* "make a finding on," complaints received by it in terms of section 17B(a) of the ICASA Act.

[11] The first duty is, accordingly, to investigate the complaint. The Constitutional Court has held that the investigative function of the CCC must be exercised with fairness.[7] We, accordingly, have a complaint, an answer and a reply before us. The CCC has, however, held that it is not its task to build a complaint into a viable complaint[8] or involve itself in gathering material so as to add a viable factual basis to a complaint.[9] The CCC has also held that the above approach should not be understood to exclude complaints which are not perfectly formulated.[10] That would, for example, close the gate for persons who are not experts in law.

[12] In the exercise of its discretion not to hear a complaint, the CCC is bound by the following statement by Malan J when the Court dealt with the exercise of the authority to hear or not to hear a matter, which at the time, was entrusted to the Chairperson of the BMCC:[11]

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[6] Insofar as the Broadcasting Complaints Commission did not have jurisdiction – which is presently still the position in so far as the CCC is concerned. More than 60 broadcasters fall under the jurisdiction of the BCCSA, except insofar as election complaints are concerned. The present complaint, however, relates to a resolution by the SABC to exclude live callers from its broadcasts and that broadcasts relating to political matters be dealt with solely by the divisions as set out in the response by the SABC.

[7] *Islamic Unity Convention v Minister of Telecommunications* 2008 (3) SA 383 (CC) para [48].

[8] *SAPO v Aramex and Others* Case 130 /2016.

[9] *Caxton and CTP Publishers and Printers Ltd v Multichoice Africa (Pty) Ltd and Electronic Media Network Ltd* Case 37/2010.

[10] *SAPO v Aramex and Others* Case 130/2016 para [29].

[11] SA Jewish Board of Deputies v Sutherland NO & Others 2004(4) SA 368(W).

[30] An exercise of a power would not be lawful if the functionary misconstrues the purpose of a statute and as a result errs on the jurisdictional facts to be taken into account when exercising a discretionary power….Clause 1.16 required the first respondent [the Acting Chairperson of the BMCC] to determine whether the complaint merited a formal hearing. The purpose of the power is to determine whether the seriousness of the allegations and the complexity of the issues that arise and, in particular, the dictates of procedural fairness, require a formal hearing to be convened. While the substance of the complaint is not irrelevant it is not the only factor to consider when the power conferred by clause 1.16 is exercised. Where the complaint is not frivolous or vexatious as envisaged by para 1.6 a request for a formal hearing may not be refused simply on the basis that the complaint has *no substance*. Additional factors, such as the *seriousness* of the complaint, the nature of the issues raised and *complexity* of the legal and factual issues, the question whether the parties are willing and able to present evidence and whether the complainant requested a formal hearing, should be considered in the exercise of this power. The first respondent did not have regard to any of these factors. Instead, he first decided that there was no 'merit' in the complaint, on an incorrect understanding of the Constitutional Court's judgment, and then concluded that there was no sound reason for holding a formal hearing. (Emphasis added)

As mentioned above, the CCC is bound by this statement of the law since it deals with exactly the same question: when to hear or not to hear a complainant. One should, accordingly, look wider than whether a *prima facie* case has been made out. Of course, as held by the CCC in *SAPO v Aramex,*[12] that does not mean that an unsubstantiated complaint should be heard or that a fishing expedition should be undertaken.

[13] Although the Complainant referred to an issue which is quite relevant, it was not shown that the decision of the SABC is not a permissible one. The complaint was also not substantiated by demonstrating that the SABC does not have a right to exclude live callers. The references to sections of the Broadcasting Act are of a general nature and do not exclude the right of the SABC to take precautionary steps so as to exclude abuse by live callers from the public. The Complainant has also not shown that the public interest was being placed at risk. Public interest, of course, not amounting that which is "interesting to the public."[13] Furthermore, the

[12] Case 130/2016.

[13] See *Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another* 1993 (2) SA 451 (A) Corbett CJ said in delivering the majority judgment (at 464C-D): "(1) There is a wide difference between what is interesting to the public and what it is in the public interest to make known . . .(2) The media have a private interest of their own in publishing what appeals to the public and may increase their circulation or the numbers of their viewers or listeners; and they are peculiarly vulnerable to the error of confusing the public interest with their own interest..." Quoted with approval by Hoexter JA in *Neethling v Du Preez; Neethling v The Weekly Mail* 1994 (1)

public has the right, after a *specific* broadcast, to file a complaint with the BCCSA or, in an election period, in so far as sections 56, 57, 58 and 59 of the Electronic Communications Act may be applicable, with the CCC. That the Broadcasting Code is applicable to what a live caller-in says, appears from the BCCSA judgment in *Nzimande* v *SABC (SAFM)*.[14] In so far as the principles of fairness and gravity are concerned, as referred to by Judge Malan, there is a sufficient alternative (post broadcast) remedy available – as appears from the above. The Broadcasting Code also includes a right to reply to what is broadcast in matters of public importance and, in any case, requires balance in such matters.

[14] The CCC realises that in not hearing a matter the fundamental right to be heard is not afforded to the Complainant.[15] The Complainant was granted the opportunity to add to the complaint but did not make use of that opportunity. On the whole, the Complainant did not show that the fundamental right to information had been thwarted by the SABC's decision. In fact, live callers-in could readily place the SABC in a risqué situation as to defamation or obscene language. A specific broadcast should rather, *after* the broadcast had taken place, be identified as having breached the Broadcasting Code. A case could then be made out with reference to specific facts in a broadcast. Such a Complaint may then be

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SA 708 (A) at 779 and Hefer JA in *National Media Ltd v Bogoshi & Others 1998(4) SA 1196(SCA) at 1212* where reference is made to Asser *Handleiding tot de Beoefening van het Needelands Burgerlijk Recht (9th Ed vol III at 224 para 238 which*, *translated*, *reads as follows:*"In practice the public interest is especially employed in matters concerning views expressed via die printed media and television: public interest is, within this context, based on freedom of expression, as guaranteed by the Constitution and by treaties, to expose alleged abuse (and or evil in society).In deciding whether the defence of public interest was lawful usually depends on a balancing of interests – the outcome of which is dependent on the facts of each case.

[14] [2014] Judgments Online 32629.

[15] In deciding not to hear the parties, the CCC took into consideration that hearing a party to a matter is an important constitutional principle and should not lightly be interfered with. Compare *Stopforth Swanepoel & Brewis Inc v Royal Anthem (Pty) Ltd and Others* 2015 (2) SA 539 (CC) where Nkabinde J states as follows:
"[19] Section 34 of the Constitution entitles everyone 'to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court'. The right to a fair public hearing requires 'procedures . . . which, in any particular situation or set of circumstances, are right and just and fair'. '(A)t heart, fair procedure is designed to prevent arbitrariness in the outcome of the decision.' In *De Lange* this court said that —'(t)he time-honoured principles that no-one shall be the judge in his or her own matter and that the other side should be heard [audi alteram partem] aim toward eliminating the proscribed arbitrariness in a way that gives content to the rule of law. They reach deep down into the adjudicating process, attempting to remove bias and ignorance from it. . . . Everyone has the right to state his or her own case, not because his or her version is right, and must be accepted, but because, in evaluating the cogency of any argument, the arbiter, still a fallible human being, must be informed about the points of view of both parties in order to stand any real chance of coming up with an objectively justifiable conclusion that is anything more than chance. Absent these central and core notions, any procedure that touches in an enduring and far-reaching manner on a vital human interest . . . points in the direction of a violation.' [footnotes omitted.]

lodged with the BCCSA or, within an election period, with the CCC in terms of section 59 of the ECA.

The *finding* is, accordingly, that the complaint is dismissed since the Complainant has not, judged as a whole, made out a viable complaint based on an identifiable risk to the constitutional right to information.

JCW VAN ROOYEN SC 11 September 2016

The above mentioned members agreed.