



# The Commissioner for Conciliation, Mediation and Arbitration Office in South Africa: Serving the Interest of the Powerful or the Powerless?

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## Abstract

Legislatively, the Office of the Commissioner for Conciliation Mediation and Arbitration (CCMA) in the South was created to ensure a fast, convenient, and fair labour dispute mechanism within the labour force environment. While some believe that the Office is fair in the adjudication of cases brought to them, this article argues differently from such held viewpoint. This article argues that the Office of the CCMA largely serves the interest of the Powerful (Employers) and largely ignores the Powerless (Employees). There are few if any, scholarly articles which addressed this crucial element of injustice against the working class in South Africa, which emanates from the ineffective operation of this institution. This article is conceptual in approach, and it uses literature to argue that the current ineffective systems used in the CCMA office ensure little security and protection of employees' rights against well-resourced and labour-abusive employers. The article concludes that the unfair balance of consideration of the interests of the employers and employees at the CCMA renders the purpose of the office ineffective, with no valid moral reason to exist in South Africa.

**Keywords:** *Democracy; Legislation; CCMA; Labour; Labour Force; Proxy Employer*

## INTRODUCTION

South Africa is acclaimed to be a democratic country. However, despite limitations in implementing policies correctly, many have argued that fancy oversight institutions established to safeguard the same democracy cannot be claimed to be efficient. The inefficiency of these institutions emanates mostly from a high level of corruptive practices emanating from ineffective legislation meant to curb such. The CCMA is one such institution where such may prevail. However, very few scholarly works exist to challenge such inefficiency. The limitation could be linked to the fact that few scholars or academics are mainly affected in that area. [Rapatsa \(2018:202\)](#) asserts that "it is difficult to undertake a precise assessment of the efficacy of the CCMA because of the dynamic nature of labour relations and labour disputes emanating therein". The competing interests of the employer and the employee in the working environment are common and naturally characterised by conflict. The conflict will normally end with the employer terminating the contract of the employee. The labour courts are, however, established to ensure that such termination meets the requirements of a fair negotiation before such termination occurs ([Michels, 2023](#)). [Indradjaja & Chamdani \(2023\)](#) complain of one-sided dismissals in Indonesian firms.

Considering such problems, the South African government established the CCMA in 1996 with the intention of ensuring fair conflict resolution, which is both cost-effective and convenient, unlike the court processes and their delays. It is very clear that legislatively, the Office was established to resolve problems that will better the labour conflict within the employment sector of the country. However, pragmatic realities demonstrate otherwise. It is argued that while sufficient satisfaction may be achieved through the CCMA processes, equal dissatisfaction arises from the lower class with lower voices which cannot be heard.

According to [Atzeni, Hurtado & Sachetto \(2023:207-208\)](#), "labour conflict remains one of the most powerful, visible, and recurrent expression of societies responses to the inequality, poverty and exploitation generated in capitalism by wage dependency". The question to be raised in this

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article is: Does the CCMA serve the interests of the Powerful (Employers) or the interests of the Powerless (Employees)? Legislatively, the CCMA must ensure that fairness exists in handling both the interest of the employer and employee on equal footing in case of labour disputes. In addressing the research question the article will keep its relevance to the following aspects: Conflict Theory, the legal mandate of the CCMA in labour disputes, the nature of the CCMA environment and their Clients, the Efficacy of the CCMA in handling submitted cases and whether the CCMA serve the interests of the powerful or the powerless?

### LITERATURE REVIEW

For the lack of a better theory, I have chosen the Conflict Theory as my perspective of argument for this article. It is a fact that whenever we talk about societies or social groupings, we cannot avoid talking about conflict as a variable that characterises such relationships. The basic tenets of the Conflict theory are that conflict is an inevitable part of any social relationship (Okulu,2014) and that conflict can only be minimised rather than totally eradicated. In support of that, Szczecinska-Musielak (2014:119) maintains that "social conflict is an integral factor in shaping social conditions and the dynamics of social life". Depending on the view of an individual about conflict, it may yield good results for others while producing bad for other groups. A conflict between the employer and employees naturally yields better results for the employer, who is accorded the right to hire and fire. The principle of fairness rarely impresses the employees because of their subordinate relationship with their employers. A good labour relations environment creates a peaceful relationship between the employer and the employee while accommodating each other's goals (Salmerón-Manzano & Manzano-Agugliaro, 2017). A little motivation rather than demotivation is what employees need in order to achieve organisational performance (Escosura, 2023).

According to Frederick (2014), conflict theory is a useful perspective for us to understand how and why such disagreements occur among groups. It can be argued that only if we understand those rationales will we be able to understand the sources of conflicts and deal fairly with or manage them sufficiently. The theory emanates from the philosophical perspectives developed by Nicollo Machiavelli, Thomas Hobbes and Karl Marx. These philosophers maintain that a major source of conflict in society is all about competition for resources and power. In this instance, those without resources and power do not stand a fair chance against their counterpart, either in competition for work or for the justice system. Karl Marx holds that "social order is maintained by domination and power, rather than consensus and conformity (Saroj and Dhanju, 2019)". To Karl Marx, the conflict between different groups in society is fundamental, ongoing, persistent and not temporary, as claimed by the functionalist theorists (Covington,1994:1)". The Conflict between the employee and the employer continues mostly in situations where the legal institutions to uphold justice are seen as ineffective by perpetrators such as employers, who mostly abuse their nearness to the powers be at state political level or public environment level. An uncensored tyranny in semi and public institutions in South Africa perpetuates the existence of the "bourgeoise-peasant" relationship between the employer and the employee, despite the existence of fancy oversight institutions such as the CCMA, who should fairly adjudicate in the arbitration process.

The structural inequalities between people and institutions produce a class within individuals and institutions (Guglu, 2014). Thus, perpetuating inequality socially, legally and institutionally among people. The divide and the difference between the owners and the non-owners become clear. Hired bosses who act on behalf of either the government or shareholders create a hostile relationship with employees on behalf of their bosses as custodians of power resources. Due to the ownership of resources and power attained from such proxy ownership, which most of it does not belong to them (hired bosses) but to either the government or

shareholders, employers (hired bosses), they have accorded themselves the status of a law unto themselves when they deal with employee conflict. And yet, the same organisation have a labour relations office and employee wellness unit, which are created for compliance with the Labour Department. Such offices create no job satisfaction at all (Butarbutar, Lubis, Siregar, Supitriyani, 2022). Proxy owners create a hostile work environment characterised by bullying and patronage (Rosander & Salin, 2022), as they mostly equate themselves to rulers of state in their appointed organisations. As implied by Marx, rulers apply the legal system to enhance their authority (Li, 2018); some employers regard themselves as superclass citizen because of their personal relationship with upper politicians or the fact that their organisations could covertly be financing the ruling party's political agendas. In this instance, the conflict between the employer and the employee will see no objective mediation or arbitration in the office of the CCMA, even if the employer is abusive and bullying. In this case, resources and power rather than an application of justice determine the judgement of the CCMA Commissioners in most parts of South Africa. Getting a conflict resolution through structures such as the CCMA in South Africa cannot be exercised without the possibility of suspecting resource power relations in decision-making that favours the employers and the employees. It is, however, acknowledged that, in principle, the creation of the institution is for good intentions and service to the poor employees. However, like all other institutions created for good, its functions remain limited by poor accountability and effective monitoring of those functions.

## **RESEARCH METHOD**

This article is conceptual in approach, and it uses literature to argue that the current ineffective systems used in the CCMA office ensure little security and protection of employees' rights against well-resourced and labour-abusive employers. A descriptive approach is used to analyse data obtained from literary sources such as labour legislation, articles from scientific journals, labour policy briefs and academic books published on the subject. The data is primarily secondary, and therefore, deductive analysis is used to contribute to knowledge drawn from sources.

## **FINDINGS AND DISCUSSION**

The content of the article is based on the argument that the CCMA office in South Africa is biased and influenced by the unequal power relations between the employers and the employees, in which employees receive little justice from the office itself. In finding a solution to the research question asked in the article, the author engaged in-depth the following matters: the legal mandate of the CCMA in labour disputes, the nature of the CCMA environment and their Clients, the Efficacy of the CCMA in handling submitted cases and whether the CCMA serve the interests of the powerful or the powerless? From such engagements, the following facts then emerged:

### **The Legal Mandate of The CCMA In Labour Disputes**

The dispute between the employee and the employers is a major concern in the labour environment and is not peculiar to South Africa. This ultimately threatens the future prospects of job creation. It is quite important to learn that while employers require maximisation of profits and output, the employees are also required to work in a safe and healthy environment, safeguarding both their mental and physical health. Numerous labour disputes were and are still a concern in South Africa. And such has led to the establishment of the Commissioner for Conciliation and Arbitration body in 1995. Such was enacted through the Labour Relations Act, 65 of 1995 as a statutory dispute resolution body, which should be independent, non-partisan, non-trade union, funded by the government and not to be controlled by it either (Olabiyi, 2022). According to the

Labour Relations Act, 1995 (Act 65 of 1995), a Commission has to be appointed that is independent of the state and of any political party, union, employers' association, or federation of unions or employers' associations, and which will have jurisdiction in all provinces to perform the following functions:

1. Attempt to settle, through conciliation, any dispute referred to it in terms of the act.
2. Where conciliation has not achieved the desired agreement, conduct arbitration if the act requires it to do so or if any of the parties to a dispute within the jurisdiction of the labour court request the commission to conduct such arbitration.
3. Provide assistance with the establishment of workplace forums and
4. Compile and publish information and statistics regarding its activities.

By its nature of existence, the CCMA office was earmarked to reduce the costs and long processes experienced in other forms of labour dispute mechanisms such as the high courts. Moreover, it is affordable and easily accessible by even the lower-class citizens who feel that they are not well treated by their employers. Indeed, 78 per cent of the employed cases in South Africa fall under the jurisdiction of the CCMA ([Policy Brief Series, 2010:2](#)) because of their economic status in the country. The CCMA is supposed to bring democracy into action, in which disputes are resolved through communication and reaching out of agreement, unlike labour courts, which are characterised by labour wars ([Ferreira, 2004](#)) between the employer and the employees. It can, however, be argued that the cost-effectiveness and the quick resolution of the CCMA's success are dependent and mainly achieved at the cost of the employee who lacks the options and resources to take the matter further. In that instance, a one-sided settlement is not benefitting the employee, but the employer may be reached and considered. In this instance, fairness, as espoused by [Michels \(2023\)](#), where requirements of a fair termination should be reached, is not achieved.

### **The Nature of The CCMA Environment and Their Clients**

From a practical perspective, the CCMA deals with the majority of cases referred to them by the poorest of the poor against their powerful employers. The majority are domestic workers, agricultural workers and security personnel who are at the lower end of the skills spectrum ([Policy Brief Series, 2010:2](#)). The larger portion of the Professional Skilled Occupations, though covered in the CCMA referrals but their referrals to the commission are not in larger numbers. Often, because of resource advantage and lack of faith in the CCMA institution, skilled employees may directly take the Labour Court route. The CCMA premises are largely and daily dominated by unskilled workers, which surely is a sign that labour abuse could be prevalent in the South African labour environment. [Smit \(2011\)](#) rightfully noted that employees, irrespective of their status, are a vulnerable group in society and thus deserve protection. Indeed, while we acknowledge that employers have a right to dismiss, it is also fair that that should be within the confines of a fair law and practice. [Van der Bank \(2010: 284-289\)](#) indicated that "many dismissals are challenged in courts of law". Such an option is a luxury of the skilled professional with resources to challenge their unfair dismissals, which failed at the CCMA hearing, and the few unskilled with reasonable unions. It is known, though, that the Labour Relations Act 66 of 1995 does not make provision for an award made by the Commission for Conciliation, Mediation, and Arbitration to be appealed by an unsuccessful party ([Tuner, 2020:1](#)).

The arbitrary powers accorded to the CCMA Commissioners in this instance are risky in the sense that even though the Labour Relations Act Section 145 accords the losing party the right to approach the Labour Court, such is a luxury of the few CCMA beneficiaries (the skilled professional). Lower-level unskilled employees will not benefit from that right, even though it is constitutionally given to them. Unless through the Union, such rights remain limited for a poor employee. Even those

poor with the advantage of being Union members, the Unions do not have equal financial muscles to take cases to the Labour Court. Other Unions can only represent a client up to the CCMA level. And yet, many poor employees are still without unions. [Bernikow \(2007:16\)](#) reported that "in 2007 alone 72% of cases referred to the CCMA were for workers not represented by any trade unions". Most unskilled workers are not empowered to understand the significance of being a union member. Even if they can have, some unions do not take their case to the Labour Court level. This put them at the risk of not getting justice for whatever unfair or genuine reason they were dismissed. Those within the professional occupational category are able to secure through their resources legal representation at the CCMA level. Not because they don't have trade union membership but because they have little faith in both the competency and loyalty of their Shop stewards. There is still a huge prevalence of incompetent shop stewards who are unable to represent employees fairly when so required.

Legal representation is very expensive and unaffordable. Even those within the Professional Skilled Occupational categories find it hard to afford the Senior Councils to represent them at the Labour Court level when feeling that they were unfairly adjudicated at the CCMA level. [Bernikow \(2007:2\)](#) further asserts that "Many applicants do not pursue their case in courts, as they are not union members and cannot afford to appoint an attorney". It is, therefore, clear that, in reality, only a few cases unfairly adjudicated at the CCMA level are likely to go to the Labour Court for those who can afford it. That gives both the employer and the CCMA Commissioners the right to get away with labour injustice. Even though it is statistically noted that about 60 per cent of cases completed nationally in South Africa were ruled in favour of employees, the figures are confusing because regionally, the same figures say something else on the same issue ([Bernikow, 2007](#)). Theoretically, the Labour Relations Act presume that their Officials can facilitate conciliation to resolve disputes. However, in more instances, the employers are arrogant to reject any form of conciliation with employees on account that the employer had enough with the employee, whether fair or not.

### **The Efficacy of The CCMA In Handling Submitted Cases**

The CCMA plays a significant and effective role in South African labour law ([Van Eck and Kuhn, 2020](#)), especially where due processes are fully complied with. Numerous studies on the effectiveness of the CCMA are not in agreement that the CCMA process is sufficiently effective ([Ferreira, 2004](#); [Berkinow, 2007](#); [Rapatsa, 2018](#)). Most of the studies written about the effectiveness of the CCMA focussed on the assessment of the processes of dispute resolution, such as how many cases were reported, resolved and wrongly referred to the CCMA. But, there is little mention of the ethics and fairness of the office itself in dealing with cases. It is known that disputes of rights and disputes of interests fall within the jurisdiction of the CCMA or the Labour Court. Even though relative successes and claimed effectiveness were reported, it has been acknowledged that success is dependent on agreement between the parties in dispute. More often, mediation is just a formality, as employers are so hostile that arbitration remains the only possible option. When employers agree to mediation, their attitude is very hostile and unreasonable.

[Bernikow \(2007:17\)](#) indicated that the highest percentage of the objections to the con/arb's process by employers is a challenge to the CCMA and the labour Court " as such objections defeat the purpose of what was intended to be an expedited process, often to the detriment of the dismissed worker"([Alcock and le Roux, 2020:133](#)). However, there is an over-exaggeration of the employer's prerogative to dismiss an employee; such a right needs to be exercised with caution. It is also required of an employer to enforce workplace discipline through policies that are legal, known and reasonable and not in any way to be seen as punitive to employees. In fact, within the workforce disciplinary considerations, dismissals should be considered as a sanction of last resort

(Van der Bank, 2010). However, most employers consider the dismissal of an employee even before the hearing process can be put together, and mostly putting such a process in place for legal compliance. Such a process mostly yields unfair results for the benefit of employers' selfishness against the employees' loss and misery.

By and large, the Labour Relations Act (LRA) prefers that cases should first be resolved through conciliation, which should be undertaken by a CCMA official, depending on the matter. Ideally, this process is meant to expedite the dispute process and resolve it in an effective and convenient manner. The Conciliator is normally supposed to be a neutral or acceptable third party to help parties arrive at a mutually acceptable, enforceable and binding solution (Policy Brief Series, 2010:3), which does not necessarily have to be in the satisfactory interests of both. Thus far, there was no writing or sufficient writing to look at the effectiveness of the Commissioner himself within the arbitration environment, especially his role as a neutral Conciliator. Indeed, no real scale was used to confirm such neutrality in the arbitration process. The Commissioner's effectiveness regarding balancing the conflicting rights between the employer and the employee remains relatively measured depending on who benefits. More often, the conflicting rights between the employer and the employee seem to have biasedly skewed towards the satisfaction of the employer, in which the employee, because of lack of resource ownership, receives unfair judgement.

#### **Is The CCMA Commissioner a Neutral Arbitrator or Serve Biased Interests of the Employer?**

The Code of Conduct of the Commissioners of the CCMA is regulated in terms of Section 117 of the Labour Relations Act, no.66 of 1995. The code of Conduct is generally meant to maintain the integrity of the CCMA process and ensure that Commissioners conduct themselves within the professional moral campus. The Act prescribes that Commissioners shall:

1. Act with honesty, impartiality, and due diligence and independent of any outside pressure in the discharge of their statutory functions.
2. Conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interests.
3. Not solicit appointments for themselves. This shall not, however, preclude Commissioners from indicating a willingness to serve in any capacity.
4. Accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment.
5. Avoid entering into any financial, business or social relationship which is likely to affect their impartiality or which might reasonably create a perception of partiality or bias and
6. Not influence CCMA officials or employees by improper means, including gifts or other inducements.

From a moral perspective, the Code of Conduct approved for Commissioners may convince any person seeking justice in the office that the Commissioners conducts are well managed. The realities on the ground may, however, suggest otherwise. This is doubtful, despite the existence of the CCMA Governing Body which has the power to remove Commissioners from Office on the basis of serious misconduct, incapacity, or material violation of the code of conduct (Jordaan, 2019: 294-295). The angelic theory by James Madison suggests that "If Men were angels, no government would be necessary. If Angels were to govern men, neither external nor internal control on government would be necessary" (Sebola, 2014:295). The existence of a Code for Commissioners is a reality that they are human. The responsibility of justice cannot be put on the codes and rules which are not incongruent with the real environment, where the powerful have an advantage over the powerless. Moreover, values and ethics are subjective and very individualistic perceptions (Salvedo, 2021),

mostly culturally bound (Sebola, 2014). The CCMA is overly composed of part-time Commissioners, and mostly Attorneys who are not doing well in their legal practices. On average, these Commissioners are said to be paid a Case sitting allowance of R3 500, with a maximum of 13 sitting per month, which rarely happens. The CCMA office deals predominantly with cases from the lower class and the marginalised in society. The employers, whom mostly we agree are not morally straight, when it comes to dismissal cases, have an opportunity to promise better once-off to sitting Commissioners in order to get a poor employee out of the system. These classes of citizens have no financial muscles to review cases ruled against them to the Labour Court. Only a few cases involve the professional class, and even with the professional classes, underhand exchange of brown envelopes between Commissioners and employers is alleged, and hence, unnecessary cases always land and get favour and fairness at the Labour Court.

Many unfair labour dispute cases involving the powerless are resolved at the CCMA level (Ferreira, 2004), in which instance the unfair judgement could have taken place, and the employees had no probability of proceeding to the labour court. Rapatsa (2018) attests that despite the hard socio-economic challenges facing workers in general, not all workers are advantaged to be conversant about labour relations procedures and opportunities available to them. There is no scholarship evidence to suggest that the CCMA Commissioners act in the best interests of the weak in their offices. Very few scholars who wrote about the CCMA are legal practitioners who reproduce the known labour legislation aspects. Oral evidence from the sector, however, suggests that employers may get the favour of the CCMA Commissioners for clear reasons:

Firstly, is the reality that the CCMA's major clientele involves the powerful(employers) and the powerless(employees): In this instance, the powerless who do not have resources to protect themselves, have little chance of success against the powerful employers. In South Africa, every employee has a right not to be unfairly dismissed (Smit, 2011). However, this right is subject to access to both financial and legal resources. Therefore, such a right is not meaningful unless the employee has both legal and financial resources to protect that right. An employee may not reasonably be able to review a CCMA ruling with the labour court due to those named limitations. On the other hand, the employer (represented by managers) pursuing personal interests are always ready to review and delay cases against poor employees, also boasting about the privilege to use company resources to fight personal interests' dismissals. Many labour cases involving professionals take a minimum of five years of legal battle and financial resources to resolve against an aggrieved poor employee sitting at home with financial and psychological trauma. When the Case ends in favour of the employee, there are no personal consequences for the employer to pay for the psychological damage suffered by the employee. Instead, only the financial income suffered.

Secondly is the reality that Commissioners are human beings with human fallibility. According to Ndaba (2023), they are trained in various South African universities on a course with strong Social Justice content. But even with that social justice training, many Commissioners have lost their jobs for failing to uphold that oath of office. Patel & Mhlongo (2021) reiterated the fact that the CCMA exist to promote fair practices within the labour environment. The aggrieved employees depend on them for the administration of fairness and employment justice. Indeed, there is a series of cases reviewed at the Labour Court which demonstrated that the conduct of the Commissioners was found wanting. It is important to note that the Labour Court judges do not arbitrate on the commissioner's ruling but rather review the Commissioner's conduct during the hearing. In reviewing the Commissioner's decision, the appellant needs to demonstrate to the Labour Court Judge that the Commissioner:

1. Committed misconduct concerning his/her duties.
2. Committed a gross irregularity in the conduct of the proceedings.

3. He/she exceeded his/her powers; or
4. He/she made the award improperly.

There are indeed Commissioners who committed serious errors of judgment in the arbitration proceedings. There are also those who stick to their training manuals and arbitrate fairly on cases that no Labour Court judge will overturn. As much as there are cases where CCMA Commissioners ruled fairly, there are indeed many cases where fairness was compromised and where such happened, depending on whether the employee had the resources to proceed or not. For those with financial resources, justice was finally achieved at the Labour Court, while for those without, justice was miscarried permanently to them.

Thirdly, the Commissioner's career advances more on cases successfully arbitrated at the CCMA. That gives them the opportunity for future career advancement as Labour Court judges, a career which is often limited by failed cases reviewed negatively by judges at the Labour Court. In reviewing cases between the employer and the employee, the Commissioners are very careful not to risk their future career as judges. Therefore, arbitrating negatively against the employee is to the Commissioner's advantage, especially where a poor employee is involved, and the Commissioner is aware of the financial predicament to take the case forward. The Commissioner will choose to arbitrate in favour of the employer for fear that the employer has the resources to review his judgement, which, if found wanting, the Commissioner's legal performance is in question. Therefore, arbitrating positively in favour of the employer is not too risky because the employee who is poor may not have the resources to review the judgement with the labour court. Hence, often the Commissioners must make decisions which are not informed by moral scales set by the office, but by the selfish opportunity that presents itself in front of them.

Finally, the CCMA Commissioners are the most legal practitioners vulnerable to conflict of interests, which is ignored by labour unions and the CCMA as an institution. More often, Commissioners serve as both CCMA Commissioners and also preside in local employers' disciplinary hearings as either Chairpersons or Prosecutors or two Commissioners serving in the same hearing employed in their personal capacity by local employers as either Chairperson or Prosecutor, and both serving the same interests of the employer. It never happens that they are not dismissed when hired by local employers. Most such Commissioners are known as either "Mrs of Mr Dismissals" in those portfolios of the labour environment. While they enjoy such legal loopholes, the poor employees suffer under the pretext of a good democracy in action. When their cases are referred to CCMA by employees, those cases are still handled by their colleagues with prior knowledge and the element of conflict of interest is ignored when employees raise such with the Provincial Commissioners.

## **CONCLUSIONS**

The article investigated an important aspect of labour relations in South Africa. There are few investigations written about the Office of the Commissioner for Conciliation Mediation and Arbitration (CCMA) by a few scholars, especially from the discipline of Law. Such scholars looked at the effectiveness of the office from the perspective of administrative processes and completion of cases and never from the perspective of justice on the process itself to the end. The paper argued that the existence of the office itself should serve justice and not biased interests of employers against employees. Although there are no studies which have previously investigated the biases of the CCMA Commissioners, the experiences of employers and Unions on unwritten accounts have demonstrated that more often, Commissioners protect the powerful(employers) against the powerless (employees)because employees have little reward to offer to them. This paper, therefore concludes that for the CCMA to be able to serve with justice, the following two recommendations



are appropriate:

1. Appeal procedures need to be allowed at the CCMA before consideration of taking a case to the Labour Court. This will allow another opportunity for an employee to get a fair hearing in case it is felt that the previous Commissioner acted improperly. This process will be cost-effective for employees and serve the purpose of the existence of the CCMA in the first place. It will be appropriate if, in the appeal hearing, an external Commissioner is preferred over an internal one.
2. External Commissioners should be preferred in the CCMA hearing. Local Commissioners are already privy to local labour issues, and others have relationships with local employers. For example, in Polokwane, the University of Limpopo uses most Commissioners to preside as Chairpersons and Prosecutors to dismiss their employees. After dismissals, such cases are referred to the CCMA locally, where such cases will be handled by a colleague who did not participate in the Case at the University. Although it's appropriate for them to disclose and not handle University cases which they handled externally, it is difficult to assume that both the Chairperson and the Prosecutor did not discuss such cases when they recused themselves from it at the CCMA.

### **LIMITATION & FURTHER RESEARCH**

Commissioners suspected of being biased are to be fully investigated by an independent body rather than the provincial Commissioners; some of them are culprits of the same allegations. Some Provincial Commissioners were alleged to be protective of the staff when employees' lodges complained to them about the conduct of Commissioners in the hearing. Commissioners who are alleged to be biased mostly refuse to recuse themselves when so requested by the employee and their representative. The refusal to recuse is believed to be proof that the exchange has already taken place, and therefore to recuse will mean disappointing the employer. The investigation will improve accountability, transparency, and efficiency in the Office of the Commissioner, as the Commissioners will probably be on alert that loophole or no loophole, morality is a human responsibility.

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