

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

CASE NO: - C 705/2006

5 In the matter between:-

**THE BARGAINING COUNCIL FOR THE
CLOTHING MANUFACTURING INDUSTRY &**

C DE KOCK N.O.

Applicants

10

and

N PRINSLOO

Respondent

15

JUDGMENT

NEL AJ

20 This is a referral to this Court in terms of Section 142(9)(b) of the
Labour Relations Act ("the LRA") for the decision by this Court.
The referral took the form of a notice of motion. The applicants are
cited as being the Bargaining Council for the Clothing
Manufacturing Industry and C De Kock *nominee officio*. N Prinsloo
is cited as the respondent.

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In the body of the referral, which was couched in the same manner as a notice of motion, reference is made that the applicants are referring the finding of contempt made by Coen de Kock in the proceedings and details of the parties are given. It continues to advise that the finding of contempt is referred to this Court for its decision in terms of Section 142(9) and (11) of the LRA.

10 The applicants filed the record of the arbitration proceedings and the arbitration award in question, together with a supporting affidavit by Coen de Kock “to assist the above Honourable Court in its decision in terms of Section 142(11) of the Act”. The applicants stated that they believed they had done what was required of them and concluded by advising of an address at which they would accept notice and receipt of all documents in the proceedings, if any. The applicants served the referral on the respondent’s attorneys of record.

20 Section 142 of the LRA regulates the powers of Commissioners when attempting to resolve disputes. It is apparent that it enables the Commissioner to bring parties before him for questioning and to secure documents necessary for the resolution of disputes. It empowers the Commissioner to enter and inspect premises relevant to the resolution of the dispute. In short, this section enables the

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Commissioner to do a number of things to enable him to resolve disputes.

5 Obviously because of the need to be able to enforce the
Commissioner's powers, the Section then sets out, in Section
142(8)(a) to (i) of the LRA, conduct which will be regarded as
contempt of the Commission. In summary, a person who has been
subpoenaed and without good cause fails to appear before the
10 Commissioner, or, if having appeared in response to a subpoena,
fails to remain in attendance, commits contempt of the Commission.
Refusal to take the oath or make an affirmation will also be
regarded as contempt of the Commission. Likewise refusal to
answer any question fully and to the best of a person's knowledge
15 and belief, subject to the law relating to privilege, constitutes
contempt of a Commission. Failure without good cause to produce
any book or document or object subpoenaed to be presented, is
contempt of the Commission.

20 Then, in conclusion, Section 142(8)(f) to (i) of the LRA states that
a person who commits contempt of the Commissioner:

“(f) if the person wilfully hinders a Commissioner
in performing any function conferred by or in
25 terms of this Act;

- 5 (g) if the person insults, disparages, or belittles a Commissioner, or prejudices or improperly influences the proceedings or improperly anticipates the Commissioner's award;
- (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
- 10 (i) by doing anything else in relation to the Commission which, if done in relation to a court of law would have been contempt of court."

Section 142(9)(a) of the LRA then states that:

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"(a) A Commissioner may make a finding that a party is in contempt of the Commission for any of the reasons set out in sub-section (8)."

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Having made such a finding, Section 142(9)(b) of the LRA says that;

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"(b) The Commissioner may refer the finding, together with the record of the proceedings

to the Labour Court for its decision in terms of subsection (11).”

5 Once this Court has had a finding of contempt referred to it, but before it makes its decision in terms of sub-section 142(11) of the LRA, this Court, in terms of section 142(10)(a):

- 10 “(a) must subpoena any person found in contempt to appear before it on a date determined by the Court;
- (b) may subpoena any person to appear before it on a date determined by the Court; and
- 15 (c) may make any order that it deems appropriate, including an order in the case of a person who is not a legal practitioner that the person’s right to represent a party in the Commission and the Labour Court be suspended.”

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And then, lastly, section 142(11) of the LRA reads as follows:

“The Labour Court may confirm, vary or set aside the finding of a Commissioner.”

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In light of the apparent uncertainty relating to the manner in which a Commissioner may refer his finding of contempt to this Court, I believe it is necessary to remind parties that in terms of the
5 footnote to rule 7 of the rules of this court, rule 7 applies to referrals of a contempt of the Commission in terms of section 142(9) of the LRA. It follows that the notice of application must *inter alia* indicate the relief sought, give notice to the other party of its rights and obligations if he intends opposing the matter, and the
10 referral must be supported by affidavit.

It follows further that the respondent party must also comply with rule 7 and must file a notice of opposition and an answering affidavit and generally comply with rule 7 of the rules of this Court.
15 If I say he must file a notice of application, it obviously follows that if the respondent party, who will be the party who has had a finding of contempt made by the Commissioner, elects not to oppose the matter, that is his good right.

20 I am however of the view that once the parties have complied with the requirements of rule 7 in referring the contempt finding to this Court, the powers of this Court to deal with the application in the manner it deems fit are circumscribed by the peremptory dictates of section 142(10) of the LRA. This Court must then first subpoena
25 the person found in contempt to appear before it on a stipulated

date. At such hearing the Court may then decide whether it is able to decide the matter on the papers or whether it will hear oral evidence. It is evident that prior to the hearing, the court may also
5 subpoena any other person to appear before it on a determined date. It follows that the party found to be in contempt by the Commissioner must state his defence, if any, fully in his answering affidavit. I have already indicated that this is obviously in the normal course of events and if the party elects to oppose it.
10 Failure to do so, that is either to oppose the matter or to file an answering affidavit will, in my view, not allow this Court to determine the matter without first issuing a subpoena to the person found in contempt to appear before it.

15 Such failure, as I have indicated, to either oppose or file an opposing affidavit, may result in this Court, having subpoenaed the person found in contempt, to possibly not call any witnesses or deeming it necessary to allow that person to give oral evidence. I am of this view as it is clearly incumbent on the respondent party
20 to have stated his defence in his answering affidavit. In short, the normal rules applying to applications and the founding, answering and replicating papers will apply.

From the aforesaid it should be clear that I am of the view that the
25 Commissioner and the person found in contempt having complied

with rule 7 of the rules of this Court, these parties will have the right to personally appear before this Court to argue their respective cases just as they would be able to do as applicant and
5 respondent parties in any application proceedings before this Court.

Whether it will be appropriate for a Commissioner to personally appear to argue his case in defence of his finding of contempt, is
10 another question. I believe that it may be proper for the Commissioner to present his case in his founding affidavit and such replication as he may deem necessary and then only to be present on the date this Court considers the contempt referral in order to possibly answer any questions the Court may want to put to the
15 Commissioner. I do not believe that Commissioners, through argument before this Court, ought to actively pursue having his or her contempt finding confirmed.

Before turning to determine whether to confirm, vary or set aside
20 the finding of contempt of the Commissioner herein, I wish to also briefly deal with a question raised and a view expressed by the learned BASSON J in the matter of COLYER v ESSACK NO AND OTHERS (1997) 18 ILJ 1382 (LC) at 1387A to the effect that:

25 “...Section 142(9) of the Act is clearly not an empowering section in regard to the making of a

5 finding of contempt or the punishment of such
conduct. It merely empowers the CCMA to refer
conduct such as that described in section 142(8)
of the Act as being contempt, to the Labour Court.
It follows that Section 142(9) of the Act should be
10 interpreted to mean that the Commissioner does
not make a finding of contempt nor does he or she
punish the person who is guilty of such conduct.
The CCMA refers the matter to the Labour Court
for an appropriate order, meaning both the finding
of guilty and the punishment of the person
concerned.”

15 To the extent that the learned Judge found that the Commissioner
is not empowered to make a finding of contempt, I find myself in
respectful disagreement with such finding. Earlier on in his same
judgment (at 1385 H) the learned Judge stated that the High Court
and this Court;

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“.....Ha(d) the inherent jurisdiction summarily to
deal with and punish a person who commits
contempt of Court against such Court or presiding
Judge.”

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He went on to state (at 1385 I);

30 “Accordingly the specific statutory empowerment
to find a person guilty of contempt of court and to
punish such person is unnecessary. Not so in the
case of a tribunal which is not a court of law.
Specific statutory empowerment is required before
a presiding officer will be able to exercise such
power.”

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BASSON J then had regard to the far-reaching effect, the power or
competence to find a person guilty of contempt and to punish him.

He expressed the view that this competence militated against the important rule of natural justice that a person should not be a judge in his own case. The rule of natural justice to inform the person
5 whom it proposes to punish what the complaint was against him, and afford the person a proper opportunity of answering it, and to allow the person the opportunity to apologise was referred to by BASSON J. He expressed the view that all these principles or rules of natural justice are to be given even more weight in terms
10 of our new legal system, which is based upon a justiciable Bill of Rights. He also referred to Section 34 of the Constitution which gives everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a Court, or, where appropriate, another independent and impartial
15 tribunal or forum. He held the view that it was in this context that Section 142(9) of the LRA had to be interpreted.

Let me hasten to say that I find myself in full agreement with all these aforementioned views of BASSON J. However, whilst being
20 mindful of this framework within which to interpret Section 142(9) of the LRA, I am not able to agree that the Section is not an empowering one in regard to the making by a Commissioner of a finding of contempt. Clearly it does not empower the Commissioner to determine the punishment. In fact it only empowers, in my view,
25 the Commissioner to make a finding that a party is in contempt of

the Commission for any of the reasons set out in Section 142(8) of the LRA. Once he has made such a finding he may (not must), refer the finding to this Court who may confirm the finding, vary or set it
5 aside. As I have already stated, this finding of this Court must, in the first place, be preceded by a referral of the finding by way of an application supported by affidavit. The party found to be in contempt has every opportunity to be advised what the complaint is against him, and may answer these allegations and
10 apologise, if he so wishes, or deal with the allegations as he deems fit. The matter will then be heard in a public hearing before a Court and if this hearing is not fair any party who so contends will have the normal remedies. Only then may this Court, and this Court alone, confirm the Commissioner's finding, vary it or set it
15 aside. Then it may make any order it deems appropriate.

I am accordingly of the view that the legislature specifically empowered Commissioners in the first instance to make a finding of contempt for any reasons set out in Section 142(8) of the LRA, and
20 thereafter to refer such finding to this Court to have it confirmed, varied or set aside. Thereafter this Court will make an appropriate order.

I believe this check and balance was regarded as necessary for the
25 very reason which BASSON J alluded to in the COLYER matter

(supra), namely that a Commissioner must not be allowed to be a judge in his own cause.

5 I further believe that the process dictated by Section 142(9) to (12) was legislated exactly because the legislature was mindful, as was BASSON J. of a person's constitutional rights under Section 34 of the Constitution. The legislature, in my view, had in mind a process whereby through this court the Commissioner could be
10 assisted with this Court considering whether a person was in contempt of the Commission on any of the grounds referred to in Section 142(8) and the making of appropriate orders.

In many instances such orders may be to compel compliance with
15 the subpoenas and processes of the Commission. Clearly the legislature also deemed it necessary that Commissioners needed to be protected from insults, or being disparaged or belittled. In fact the legislature went so far as to clearly state that a person will be in contempt of the Commission if he/she does anything else (than
20 that already stated in the preceding sub-sections of Section 142 of the LRA) in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

In National Bargaining Council for the Road Freight Industry v Myer
25 t/a Oakley Carriers [2000] 5 BLLR 604 (LC), WALLIS AJ expressed

the following view (at 615 A – C):

5 “It is also appropriate to say that the discretion
thus vested in the CCMA and Bargaining Councils
is one which is to be exercised with caution and
restraint. It was not the intention of the legislature
to invest Commissioners and designated agents
10 with the status and dignity of courts of law. The
legislature intended that Commissioners and
designated agents would deal daily with the public
in relation to matters where strong feelings and
impassioned senses of grievance or persecution
15 may arise. They are expected to deal with these
and behaviour consequent thereupon robustly, with
patience and a measure of stoicism. The purpose
of Section 142(8) and (9) is to enable them to
approach this Court for aid when the conduct in
20 issue, be it failure to respond to a subpoena, a
refusal to answer questions or disruptive
behaviour, renders it impossible for them to
perform their statutory function. That is, in my
view, the sole purpose of these provisions.”

25 Elsewhere in the same judgment (at 614D), WALLIS AJ, with
reference to Section 142(8)(g) and (i) of the LRA said that these
sections do not “*elevate the position of a Commissioner or a
designated agent to the position of a Court.*”

30 It is so that Commissioners and designated agents deal daily with
the public which will generally be made up of employer and union
parties in relation to matters where strong feelings and senses of
grievance or persecution may arise as WALLIS AJ suggests.
Equally I am able to agree that Commissioners are enjoined to deal
35 with these kinds of matters and emotions and behaviour

consequent thereupon as WALLIS AJ suggested “*robustly, with patience and a measure of stoicism.*”

5 I do not believe that it at all means that if a person acts in breach of the provisions of particularly Section 142(8)(g) and (i) of the LRA and a Commissioner or designated agent were to find him in contempt, and refer such finding to this Court for an appropriate order, that in the event of this Court confirming the contempt
10 finding it should not, in making an appropriate order, do so with the purpose of protecting the dignity and status of the Commission, Bargaining Councils, Commissioners and designated agents. Such appropriate order as the Court may make in respect of contempt in terms of Sections 142(8)(g) and (i) of the LRA must leave no doubt
15 in the minds of the public, with whom the Commission and Bargaining Councils are to deal, that these bodies, and their functionary Commissioners and designated agents need to be treated with due respect. I believe I cannot otherwise but than state that if the Courts find that a person has insulted, disparaged or
20 belittled a Commissioner, or if he has prejudiced or improperly influenced the proceedings of a Commission, or improperly anticipated a Commissioner’s award, the kind of appropriate order this Court will make will as effectively as it could impose a sanction which would hopefully deter the perpetrating by other parties of
25 such conduct.

Likewise, if a person in the Commission or a Bargaining Council conducts himself in a manner which, if done in relation to a Court of law would have been contempt of Court, he must expect to be
5 treated very much in the same manner as if he was held in contempt of Court. I can see no reason why Commissioners or designated agents must not enjoy the appropriate level of respect from parties appearing before them or in their tribunals where they sit to determine disputes.

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Quite obviously the facts and circumstances of each matter will always have to be considered to determine whether a party was wilfully in contempt of the Commission. If a person is found in contempt, likewise all relevant facts and circumstances prevailing
15 at the time, and relevant to the determination of an appropriate order, will also have to be considered.

I now turn to deal with the finding of contempt by Mr Coen de Kock, who served at the time on the panel of Commissioners of the
20 National Bargaining Council for the Clothing Manufacturing Industry. Mr de Kock's affidavit revealed the following facts. He stated therein that the events that caused him to find the respondent in contempt of the bargaining council are contained in the record of the arbitration proceedings. He in his affidavit
25 summarised that whilst Mr Prinsloo was cross-examining the

dismissed employee in respect of a Department of Labour form, to try and establish that a previous employer had dismissed her, the Commissioner intervened and explained to Mr Prinsloo that the form in itself was not sufficient for purposes of putting it to the employee that she was dismissed. Mr Prinsloo also attempted to use the form to establish that the employee at no stage had applied for sick leave benefits.

Prinsloo then requested that the matter be postponed in order for the Department of Labour officials to testify. This application was opposed by the Union. The Union then referred to the issue in dispute agreed upon and stated that the line of cross-examination had no relevance to the issue in dispute. Prinsloo thereupon confirmed that he was trying to establish that the employee was not an honest witness. Discussions between Prinsloo and the Commissioner then ensued regarding the interpretation or meaning of certain words contained on the form. The Commissioner then advised Mr Prinsloo that there would be cost implications should he want to postpone the arbitration hearing.

The Union then submitted a Department of Labour document regarding illness benefits, which indicated that the form was received by the Department of Labour on 17 October 2005. Mr Prinsloo was of the view that the applicant was dismissed on 24

October 2005. The Commissioner then explained to Prinsloo the difficulties involved in relying on documentation which one had no knowledge of and which in essence constituted hearsay evidence.

5 Discussions then ensued between Prinsloo and the Commissioner regarding what a Department of Labour official had told Prinsloo. The Union again raised an objection to a postponement, submitting that the line of cross-examination was irrelevant to the issue in dispute. Prinsloo then responded to the Union's objection, with no
10 ruling having been made as yet, by stating that there was a thing like a review and that he will take it on review. The Commissioner then advised Prinsloo that, should he want to get an official of the Department of Labour to testify based purely on an issue regarding credibility, there would be cost implications. The Commissioner
15 further advised Prinsloo that, if he wanted to seek a postponement, he must make a formal application to postpone the arbitration hearing. The Commissioner however also advised Prinsloo that the issue of costs would be reserved. The Union reiterated its objection to a postponement. It then asked for a ruling on the postponement
20 issue and also in respect of the relevance of the issues under discussion.

Prinsloo asked for two minutes to get instructions from the employer regarding the cost implications. The Commissioner
25 however first explained to Prinsloo that there was a strong

indication that what he was putting to the employee was not correct and the Commissioner again raised the problem he had with hearsay evidence. The Commissioner also advised Prinsloo that
5 should he want to delay the proceedings purely based on a credibility issue, which did not address the merits of the matter, he would need to tender costs in the event that his version proved to be incorrect. At that point in time Prinsloo started taking money, namely R100 notes, from his wallet whilst he was standing and he
10 started throwing the notes one by one onto the table, stating that he needed a paper saying that he would get the money back on that day because he had spoken to these people himself.

When the Commissioner asked Mr Prinsloo what he was doing he
15 responded that he was paying for it because the Commissioner had said he should pay for it, that is obviously with reference to the postponement. The Commissioner advised Prinsloo that he had to tender costs and further that his act of taking out money and throwing the R100 notes on the table was viewed as a deliberate
20 and wilful attempt to interrupt the arbitration proceedings and to belittle the Commissioner. The Commissioner advised Mr Prinsloo that he was being arrogant in throwing money on the table. Prinsloo denied being arrogant. The Commissioner then reiterated that he was arrogant and that he was in contempt by doing that,
25 that is the throwing of the money on the table.

The Commissioner then asked Prinsloo whether he, the Commissioner, had asked him to pay monies, and Prinsloo, according to the Commissioner, incorrectly stated that the
5 Commissioner had said he must pay the money today. The Commissioner advised Prinsloo that he had said he should tender costs if he was proven to be wrong. Prinsloo then continued by stating that it was fine, that he would write out a cheque.

10 The Commissioner, in his affidavit, went on to say that Prinsloo did not apologise for his behaviour of throwing the money on the table but instead he continued by stating that he would then write out the cheque. According to the Commissioner, Prinsloo then incorrectly stated that he had said the issue was not relevant. Prinsloo then
15 again stated that he needed to get instructions from the employer party if the Commissioner was going to award costs.

The Commissioner was then busy explaining to the Union, at its request, the consequences of a postponement in relation to costs
20 when Prinsloo interrupted the Commissioner. The Commissioner then specifically addressed Prinsloo and asked him to have respect and not to intervene whilst he was talking to the Union official. The Commissioner was of the view that Prinsloo's contemptuous behaviour then continued in that he responded by stating that
25 respect came from two sides. The Commissioner submitted that

there was no reason whatsoever for Prinsloo to have responded in this manner as, so stated the Commissioner, up to that point the Commissioner at no stage had shown any disrespect towards
5 Prinsloo.

The Commissioner therefore requested Prinsloo to explain to him what Prinsloo meant by stating "*it comes from two sides*", and the Commissioner insisted to be advised where he had not shown
10 respect for Prinsloo. Prinsloo refused to answer the Commissioner's questions. The Commissioner then repeated himself and insisted on Prinsloo giving an explanation for what the Commissioner regarded as unfounded comments. The Commissioner expressed the view that Prinsloo's contemptuous
15 behaviour still continued and that in the process Prinsloo had indicated to the Commissioner that the Commissioner should not scream at him and that he, Prinsloo, was not the Commissioner's dog. He asked the Commissioner why the Commissioner was screaming. The Commissioner, in his affidavit, categorically
20 denied that he was screaming at Prinsloo. He said that it was indeed so that he spoke to Prinsloo in a stern manner as Prinsloo's behaviour had started to have a serious impact on the arbitration proceedings.

25 The Commissioner also contended that there was no reason

whatsoever for Prinsloo to say to him that he was not the Commissioner's dog. The Commissioner contended that Prinsloo's behaviour was belittling in the extreme of him, the Commissioner, and that it negatively had impacted on the proceedings. The Commissioner expressed the view that he had no doubt that had this particular incident happened in a Court of law, Prinsloo's actions would have led to an immediate order of contempt.

The Commissioner went on in his affidavit to state that, whilst he was in the process of explaining to Prinsloo that his actions constituted contempt of the Commission, Prinsloo, without any basis, stated that *"here comes a review, I see it already."* The Commissioner drew attention to the fact that he was still at that time in the process of explaining to the Union the consequences of a postponement. According to the Commissioner, Prinsloo had therefore improperly anticipated the Commissioner's award, as the Commissioner at no stage had addressed the merits of the matter and that he was at all times prepared to listen to an application for postponement.

At this point in time the Union objected to Prinsloo's conduct. Prinsloo then again continued with his unacceptable and contemptuous behaviour, according to the Commissioner, when, whilst the Commissioner was in the process of advising the parties

that he needed to take an adjournment Prinsloo, again without any basis, accused the Commissioner of being biased. The Commissioner denied that he was biased and he contended that
5 Prinsloo's accusation against him was without any basis and that it was indicative of his unacceptable behaviour towards the arbitration proceedings and the Commissioner himself.

Further discussions then ensued between the Commissioner and
10 Prinsloo, as well as with the union representative in respect of the events, and in the end Prinsloo decided not to ask for a postponement after having discussed the matter with his employer.

The Commissioner, in his supporting affidavit, confirmed that the
15 events, which I have referred to above, formed the basis of his conclusion and his finding of contempt. It is accordingly based on these facts that the Commissioner made the following comments in his finding of contempt, contained in his award:

20 "Contempt of the National Bargaining Council for the Clothing Manufacturing Industry."

 The Main Collective Agreement specifically provides that Section 142 of the Labour Relations Act 66 of 1995

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is applicable to arbitration proceedings conducted under the auspices of the council. It states more specifically that an Arbitrator shall have the powers of a Commissioner in terms of Section 142.

Section 142(9) states that a Commissioner may make a finding that a party is in contempt of the Commission for any of the reasons set out in sub-section (8). In context therefore the section reads that an Commissioner who had been appointed to resolve disputes under the auspices of the Council may make a finding that a party is in contempt of the Council for any of the reasons set out in sub-section (8).

I have found Mr Prinsloo's actions as a representative of the respondent party during the arbitration proceedings to be completely unacceptable. His actions were disparaging, insulting, belittling, to name but a few sentiments, and he further improperly anticipated my award. He further continuously interrupted the opposing party and when instructed to have respect to the other side he questioned my respect towards him without supplying any reasonable foundation therefor. This was despite the fact that he was asked to explain his

statement questioning my integrity. Mr Prinsloo further, at one stage of the arbitration proceedings, stood up and counted and threw money on the table in response to me requesting whether the respondent would tender costs should it be found that a postponement of the arbitration, on his request, was unnecessary. Mr Prinsloo's actions in this regard were contemptuous in the extreme.

I have carefully considered the question whether to find Mr Prinsloo in contempt or not, and I have found it both necessary and essential for me to do so and to refer his contemptuous actions and/or behaviour to the Labour Court for an appropriate order. I cannot allow actions and/or behaviour such as experienced in this arbitration proceedings to go unnoticed and unpunished as such actions and/or behaviour will surely have negative consequences in the eyes of the public insofar as it relates to the credibility, status and integrity of our labour dispute resolution forums.

I therefore find Mr Prinsloo in contempt of the Council insofar as his actions and/or behaviour were in contravention of Section 142(8)(g), (h) and (i). It is to

be noted that the above is not an all inclusive list of the actions and/or behaviour that led to this finding and that the record of the proceedings would be self-explanatory in this regard.

I must state, in conclusion, that Mr Prinsloo appeared before me in another matter on 12 May 2006 and that he apologised. I do not know to what extent the apology was but nonetheless accepted his apology in my own capacity to whatever extent it was offered for. This however is not, in my opinion, sufficient to excuse Mr Prinsloo's behaviour on the day in question, as it is not only me but also various other role players that were involved in the arbitration proceedings, being the Council, the Union, the applicant, the CCA and the respondent. I do believe that the Labour Court must make an appropriate order under the circumstances of this case in order to avoid any similar actions/behaviour from Mr Prinsloo in future cases."

Mr Prinsloo was duly subpoenaed to appear before this Court. He did appear on the determined date and was legally represented. Both the applicants were also present in the person of Mr de Kock, the Commissioner, and a representative of the Bargaining Council.

As the applicants had in their referring papers not followed the dictates of Rule 7 of the rules of this Court, with Mr de Kock in fact in his supporting affidavit having expressed the view that “*there*
5 *appears to be no precedent in the Labour Court, Western Cape, regarding the manner in which applications/referrals of this nature needs to be made.*” It was therefor no surprise that the respondent, Mr Prinsloo, had also not complied with the requirements of Rule 7. He had not filed any opposing affidavit. I
10 accordingly called him to the witness stand, swore him in, and sought his responses to questions by the Court under oath. His legal representative was allowed the opportunity to question Mr Prinsloo as well. As I had adopted an inquisitorial role when questioning Mr Prinsloo, I did not deem it necessary, or
15 appropriate, to allow Mr de Kock, or the representative of the Bargaining Council, any opportunity to put any questions to Mr Prinsloo. Neither of these parties indicated that they wanted to put any questions or that they believed that they had the right to cross-examine Mr Prinsloo.

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It is apparent that the Commissioner relied on a few specific acts on the part of Mr Prinsloo in support of his conclusion of contempt. These acts may be summarised as being that Mr Prinsloo responded to an objection by the Union representative and before
25 the Commissioner had made any ruling, Prinsloo stated “*That is*

fine, because there is a thing like a review and I will take it on review.”

5 To perhaps put this comment of Mr Prinsloo in context, it followed directly after the Union representative had in effect objected that Mr Prinsloo was pursuing an issue, which was not the issue in dispute. The Union stated on behalf of the applicant in the arbitration that they would also be requesting that costs should be
10 awarded in favour of the applicant against the respondent. It was in direct response to this statement that Mr Prinsloo stated that which I have recorded earlier on he had said. The Commissioner is of the view that this conduct of Prinsloo was an improper anticipation of his award in breach of Section 142(8)(g) of the LRA.

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Clearly one must interpret Prinsloo's statement as meaning that, in the event of the Commissioner finding in favour of the applicant, and awarding costs against the respondent, who Mr Prinsloo represented, then the Commissioner's finding would be reviewable
20 and he will take it on review. This remark having been made well in advance of the Commissioner's award, it does in my view amount to an improper anticipation of the Commissioner's award. Surely a party may only properly conclude that an Commissioner's reward is in his view reviewable after evidence have been concluded and
25 after the award then had been handed down. Only then would a

party reasonably or properly be able to assess whether, in its view, the Commissioner acted irregularly, misconducted himself, or exceeded his powers, or generally speaking had come to irrational
5 or unjustifiable conclusions.

To state, as Prinsloo did, well in advance of an award, that if it goes against the party he was representing, it would be reviewed, is in my view a breach of Section 142(8)(g) of the LRA.

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Later on in the proceedings, when the conduct of Prinsloo had induced the Commissioner to say to Prinsloo that he was so close to contempt, Prinsloo said, *"Here comes a review, I see it already. Okay Commissioner I am listening."* I will in due course deal with
15 what preceded this comment of Prinsloo's. The conduct of Prinsloo immediately preceding his statement that he could see a review coming was perhaps the most seriously insulting or disparaging of the Commissioner. To then, in response to the Commissioner at that point saying that Prinsloo was close to contempt, respond that
20 he could see a review coming, is in my view equally a breach of Section 142(8)(g) of the LRA, but I believe of a more serious nature, having regard to the context in which it was stated. I believe it was intended to try to intimidate the Commissioner to reconsider his view expressed, namely that Prinsloo was close to
25 contempt. If not so intended, it clearly must then have been

intended to suggest to the Commissioner that his conduct at that point was such that it would justify a review. Even if the conduct of the Commissioner may at that stage have given Prinsloo reason to
5 believe that it was reviewable, I believe it is improper for a representative to expressly advise a Commissioner that a review would follow, and to do so well in advance of the final conclusion of the matter by the delivery of his award by the Commissioner.

10 The next conduct on which the Commissioner relied for his finding of contempt was that after he had advised Prinsloo that if he wanted to seek a postponement, there may be a cost implication, and also having said that the respondent needed to tender costs, when Prinsloo stood up and started taking R100 notes from his
15 wallet and throwing them one by one on the table.

Prinsloo, while so counting out the money, stated that he needed to hear what the cost would be and that he needed a paper saying that he was going to get the money back. When questioned by the
20 Commissioner what he was doing, Prinsloo replied that he was paying (presumably for the postponement), as the Commissioner had said he must do so. When the Commissioner accused Prinsloo of being arrogant, Prinsloo denied being so. The Commissioner then told Prinsloo again that he was being arrogant and he advised
25 Prinsloo that he had not said Prinsloo must pay the money, but that

he must tender the costs. Prinsloo persisted in stating that the Commissioner had said he must pay the money. When the Commissioner again stated that he had not said Prinsloo must pay
5 the money, but that he had said he must tender money, Prinsloo responded by saying it is fine, then he would write another cheque.

It is apparent from the record of the proceedings that Prinsloo said he thought he was asked to pay the money. It is further apparent
10 that further confusion arose, at least in the mind of Prinsloo, when he offered to pay with a cheque.

Under oath before me Prinsloo said that although he did regularly appear in the Bargaining Council, this was the first time that he
15 was involved in a matter where costs implications were alluded to by the Commissioner, in the event of him seeking a postponement. He testified before me that he genuinely was under the impression first that he must pay, and when the Commissioner told him it was arrogant to do so, he understood it to mean that he should not take
20 out cash, but should pay by cheque.

I have repeatedly listened to the tape recorded record of the actual event. I believe that at this particular point of the proceedings tension levels had been rising. It is obviously possible that
25 Prinsloo could, under these circumstances, have misunderstood the

implication or meaning of the Commissioner advising him that he would have to tender costs, that he could have misunderstood that to be that he had to pay there and then. That there was a
5 misunderstanding on his part is further supported by the fact that the record reflects that he then wanted to pay by cheque. That his conduct could, as the Commissioner did do, be regarded as arrogant, is understandable. I am however of the view that I must accept Prinsloo's explanation that he acted under the mistaken
10 belief that he needed to pay there and then. He therefore did not have any intent, in my view, to act on contempt of the Commission, and I therefore find that this part of his conduct was not in breach of any of the sub-sections to Section 142(8) of the LRA.

15 Both the record itself and the audible recording thereof reflect that there then ensued a short period of calm amongst all the parties. It was literally the calm before the storm. Whilst the Commissioner was explaining to the Union representative the consequences of a possible postponement, he was interrupted by Prinsloo. The
20 Commissioner admonished Prinsloo not to interrupt him and to please have respect. The relevant part of the record itself reads as follows:

25 “ARBITRATOR: I certainly do not want to postpone the matter but if it is so important for a party and that party... (interruption).

MR PRINSLOO: Commissioner... (interruption).

ARBITRATOR: I am busy talking to her. Can you please have respect Mr Prinsloo.

5 MR PRINSLOO: It comes from two sides Mr Commissioner.

ARBITRATOR: It comes from two sides what?

MR PRINSLOO: No, I ... (interruption).

ARBITRATOR: No, no, no, what do you mean by that?

10 MR PRINSLOO: It comes from two sides.

ARBITRATOR: From two sides what?

MR PRINSLOO: Respect.

ARBITRATOR: Where did I not have respect for you?

15 MR PRINSLOO: Commissioner I am not answering that.

ARBITRATOR: No, no, you must answer me because you said it comes from two sides, where did I not have... (interruption).

20 MR PRINSLOO: Why are you speaking to me like that. I am not your dog. Why are you screaming to me? Why are you screaming at me Commissioner?

ARBITRATOR: Mr Prinsloo what are you saying to me?

MR PRINSLOO: Why are you screaming at me Mr Commissioner, I am a normal man Mr Commissioner.

25 ARBITRATOR: You are so much, so close to contempt

with the action ... (interrupted).

MR PRINSLOO: That is why I am saying I am keeping quiet now.

5 ARBITRATOR: I will appreciate it because then I can finish talking to Miss Karolien.

MR PRINSLOO: Here comes a review, I see it already. Okay Commissioner I am listening.

MS SMALL: Commissioner are we on record?

10 ARBITRATOR: No we are.

MS SMALL: I have got serious objections to the conduct of the respondent, we are on the record, we have asked you to explain to us, we have got a member that we need to explain to the implications of a postponement and I really have serious problems with the conduct from the respondent's side.

15 ARBITRATOR: Actually what I am going to do is I am going to adjourn and I am going to just ask for some guidelines in terms of what I am to do in this matter, I know what to do but I want to get the Council's approval because the last statement goes even further, more in terms of being contempt by saying here comes a review, when I have not even touched the merits of the matter, ... (interruption).

25 MR PRINSLOO: Commissioner I am saying you are

biased.

ARBITRATOR: You said, how can I be biased Mr Prinsloo?

5 MR PRINSLOO: That is my perception, can I explain without being interfered?

ARBITRATOR: Yes.

MR PRINSLOO: First of all ... (interruption).

10 ARBITRATOR: Who interfered with you in the first place?

MR PRINSLOO: Okay, first of all let me explain to you what I am going to do. First of all I have got this paper, now I am cross-questioning, as soon as I start cross-questioning you say to me fine, you are not allowed to do that, alright, I say fine Commissioner, I am asking you then seeing that you are not allowing me, because now I cannot test her credibility, I cannot test her credibility, now this is where the whole argument is. Now you say you cannot see the merits of the case because of this and credibility is quite important because we are saying that she is lying, that is our argument.

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ARBITRATOR: (inaudible) Why do you think I am biased, I have never in my whole life been biased, this is the problem, you are not listening to me, I am allowed

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to give you a postponement just on one condition, now
you come in and say but I am saying it is not relevant, I
am about to give you a postponement based on
5 credibility, how can you say I am not going to give it to
you? All I said is if you are proved to be wrong on the
assumptions from this letter then what you must do is
pay the costs, that is all I said.

MR PRINSLOO: And I did not do it out of disrespect,
10 and this is now really, I thought you said I must pay up
front before I can have, the costs, it was not trying to be
arrogant, and I would have taken out my credit card but
I do not have it with me.

ARBITRATOR: You know and now you come and say to
15 me that this case will be on review, I have not even
touched the merits, I do not even know what I am going
to decide. I have to deal with hearsay document, that
document is hearsay, I have got an obligation, now I am
being met with I do not have respect of you, which I do
20 not know where that comes from, there is money being
put on the table, I am being told, and this is contempt by
itself, by telling an Arbitrator that this matter will go on
review.

MR PRINSLOO: That is surely my right to do that
25 Commissioner.

ARBITRATOR: You do not even know what the outcome is.

5 MR PRINSLOO: But what I am seeing here is what I am perceiving to see it makes me think.

ARBITRATOR: But what do you see, I am about to give you what you want?

10 MR PRINSLOO: No, all I asked you at this stage, no Commissioner, you are saying one moment I will give it to you and I said to you alright, can I just speak to the employer if he is prepared to do it, which you have not done yet.

ARBITRATOR: We have not finished it yet.

15 MR PRINSLOO: Alright, secondly of all you are saying too that you do not see the relevance of it.

ARBITRATOR: No man, you are not listening to me Mr Prinsloo.

MR PRINSLOO: Can we just play it back and we can listen.

20 ARBITRATOR: You are not listening, I know what is on the record, I know what I said, I said there is no relevance to the merits of the matter, I said that it is obviously, obviously it goes to credibility.

25 MR PRINSLOO: Commissioner can I just deal with credibility. There is a very clear rule, ... (indistinct) what

she says, she says she did do it.

5 ARBITRATOR: You are talking about he merits, I am
agreeing with you, I never said I am not going to give
you postponement, let us just look at the credibility.
You are arguing this on credibility and I am dealing with
the matter on credibility, and I said to you that if that is
so important to you and you tender costs, if you are
correct there is no costs, because you are correct, but if
10 you are not correct then obviously it means that this,
whatever, somebody misinformed you, it means that the
Council has incurred costs, I cannot see how you can
perceive me to be biased?

15 UNIDENTIFIED PARTY: Can I just ask one question?

ARBITRATOR: Yes sure.

UNIDENTIFIED PARTY: What costs, or what is the
value of the costs?

ARBITRATOR: R1 500.

20 UNIDENTIFIED PARTY: Well considering we are here
for half a day?

ARBITRATOR: R750.

UNIDENTIFIED PARTY: I would say I need to know
what costs I am looking at before I can say yes or no.

25 ARBITRATOR: I know ... (indistinct) normal fees is
about R2 600/2 700.

MR PRINSLOO: That is ridiculous because the other day it was still ... (indistinct).

5 ARBITRATOR: So we are looking at maybe half of that because we may have to come back for another half a day.

UNIDENTIFIED PARTY: So we are looking at R1 500 at most, okay, I just needed to get clarity on that.

10 MS SMALL: That is precisely the reason why we asked for an explanation so that we can understand, you know ... (interruption).

ARBITRATOR: I was busy explaining that.

MR PRINSLOO: Then I am sorry I interfered, I thought you were ... (indistinct) I apologise then."

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Prinsloo's explanation of these events when he testified before me was that the Commissioner had raised his voice. In fact he said at the time, and in his testimony before me, that the Commissioner had screamed at him. I have listened to the tape recording of the arbitration hearing a number of times. Whilst the Commissioner's tone of voice may have changed, understandably so, having regard to the reason therefore, namely Prinsloo interrupting him, there is no basis for Prinsloo's proposition that the Commissioner screamed at him. Prinsloo's statement in response to the Commissioner, asking him to have respect, obviously for the Commissioner, to the

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effect that respect comes from two sides, clearly implied, if not expressly, then so suggesting, that the Commissioner had not treated him, Prinsloo, with respect. When the Commissioner
5 immediately demanded to be told where he had not had respect for Prinsloo, Prinsloo replied that he is not going to answer that. This I must say was to be expected, as I am of the view that Prinsloo could not then, and did not before me, come up with any evidence of disrespect having been shown to him by the Commissioner. It
10 follows that this accusation of Prinsloo was baseless. I believe it was an insulting and disrespectful comment and in contempt of the Commissioner.

When the Commissioner insisted to be answered where he was
15 disrespectful, his voice could be described as intense. He certainly was not screaming and in my opinion not speaking in any manner which in any way may have justified Prinsloo's next verbal attack on the Commissioner, which is what I believe he was launching, when he again asked the Commissioner why he was screaming at
20 him and demanding not to be treated like a dog. Again, there is not an iota of evidence, either in the record or from the audible recording of the proceedings that the Commissioner had screamed at Prinsloo, or had treated him in any manner other than what one could reasonably expect from him. Prinsloo's voice, on the other
25 hand, bristled with emotion. The Commissioner, who experienced

the events firsthand, in his affidavit and his award, described Prinsloo's conduct as contemptuous and belittling in the extreme and that it negatively impacted on the proceedings.

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Having perused the written record, and having listened to the recorded version thereof, I have no reason not to agree with the Commissioner's conclusions and I find that this conduct of Prinsloo was in contempt of the Commission.

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It was at this point that Prinsloo, for a second time, anticipated the Commissioner's award by saying, "*Here comes a review. I see it already.*" I have already dealt with this aspect of Prinsloo's conduct. Not letting up, when the Commissioner then indicated that he was going to adjourn to seek guidelines on what to do, Prinsloo launched what I believe one can under the circumstances justifiably describe as a further attack on the Commissioner by now all of a sudden accusing the Commissioner of bias. On top of that he clearly implied that the Commissioner had interfered with him. A long discussion ensued. Whilst it appears that the Commissioner did not consider this particular statement of Prinsloo as part of his conduct which constituted contempt of the Commission, the record reflects that after the Commissioner was asked, it would appear by the employer party himself, what the amount of the costs was, the Commissioner said something to the effect that the normal fees

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were about R2 600 to R2 700, to which Prinsloo responded “*That is ridiculous, because the other day it was still*” What he said further is indicated as being indistinct. Later on, the Commissioner
5 indicates that he was busy explaining the costs aspect and then one sees Prinsloo apologising to the Commissioner for having interfered.

I believe the conduct of Prinsloo, which I have referred to, but with
10 the exception of the incident where he threw money on the table, clearly amounted to contempt of the Commission. Prinsloo had no basis for accusing the Commissioner of screaming, nor did he have any basis for accusing him of having been disrespectful towards him. Likewise there was no basis whatsoever for Prinsloo saying to
15 the Commissioner that he treated him like a dog, or that there was any basis for Prinsloo’s accusation levelled at the Commissioner that he was biased. Similarly his allegation that the Commissioner had interrupted him is without foundation.

20 His response to a statement of the Commissioner that it was ridiculous, in my view, was the final conduct of Prinsloo which ineluctably drove me to the conclusion that Prinsloo acted in utter disdain and with disrespect of the Commissioner. He in addition, more than once, improperly anticipated the Commissioner’s award.

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I am accordingly satisfied that the Commissioner's finding of contempt stands to be confirmed. Before making such order as I deem appropriate, it is, I believe, necessary to comment briefly on
5 Section 142(10)(c) of the LRA. It reads:

“(10) Before making a decision in terms of sub-section
(11), the Labour Court –

- (a)
- 10 (b)
- (c) may make any order that it deems appropriate, including an order in the case of a person who is not a legal practitioner that the person's right to represent a party in the
15 Commission and the Labour Court be suspended.”

It is not understood how the Court would be able to make an order suspending a person's right to represent a party in the Commission
20 and Labour Court prior to first making a decision in terms of Section 142(11) of the LRA. It will be remembered that in terms of Section 142(11) of the LRA the Court may confirm, vary or set aside the finding of a Commissioner. Logic dictates that only once the Court has found a person guilty of contempt, will it make an
25 appropriate order. One can understand that, before making its

decision, the Court, in terms of Section 142(1)(c) of the LRA making any order it deems appropriate in respect of the proceedings before it, in addition to subpoenaing the person found
5 in contempt, or subpoenaing any other person to appear before it. Interpreting Section 142(10)(c) of the LRA so that it makes sense, I am of the view that this Court is given the power to make any order it deems appropriate, which may include suspending the right of a person other than a legal practitioner to represent a party in the
10 Commission and the Labour Court. This may include suspending the person's right to represent a party in a bargaining council.

On behalf of Mr Prinsloo I was urged to have regard to the evidence as a whole and not just to the specific instances of
15 conduct of Prinsloo which was unacceptable. I was asked to consider particularly Prinsloo's alleged frustration with the process involving him seeking a postponement, and the Union representative who became involved. I was urged to consider that Prinsloo could perceive the amount of questioning by the
20 Commissioner as having displayed possible bias and that the Commissioner did not want to give Prinsloo a chance to put his case. I was also asked to consider the length of time spent on the issue of the witness Prinsloo wanted to call, and the postponement he sought in order to do so. It was suggested in mitigation that the
25 Commissioner might have exceeded his powers by interfering too

much. I was also asked to consider that the Union representative was also reprimanded shortly before the incidents which led to the Commissioner's finding that Prinsloo was in contempt of the
5 Commission.

This is with reference to the Union representative having said that she thought it would be irresponsible, obviously implying of the Commissioner, to postpone the matter. The Commissioner
10 indicated that he took serious offence to the remark. The suggestion was that this remark was no less contemptuous than that of Prinsloo. I was asked to consider that the Commissioner had screamed at Prinsloo. It was suggested that matters had gone wrong after a number of small incidents. It was also argued that
15 nowhere did the Commissioner say Prinsloo was in actual contempt but he a number of times indicated that Prinsloo was close to being in contempt.

I was also asked to have regard to the fact that Prinsloo had
20 approached the Commissioner and had subsequently apologised. I was asked not to view the apology as an admission that Prinsloo was in contempt. It was suggested that a number of small incidents had added up to emotions boiling over. I was asked not to suspend Prinsloo's right to represent parties as that would be
25 too extreme a punishment. It was suggested that a serious warning

or, as was put, a rapping over the knuckles, would suffice. A fine, suspended in whole on condition that Prinsloo was not found guilty of contempt in a stipulated period, was suggested.

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What I do not accept as valid grounds in mitigation of Prinsloo's conduct is that he had any reasonable ground to perceive the Commissioner to be biased. I also cannot see how the offensive conduct of the Union representative should be mitigating of
10 Prinsloo's conduct. It cannot be seriously suggested that because she got away with her conduct, Prinsloo should be treated lightly. I also reject the contention that Prinsloo was not given a chance to put his case.

15 The suggestions that the Commissioner may have exceeded his powers, or that he screamed, are also rejected. That the Commissioner a number of times advised Prinsloo that he was close to contempt, if anything, is an aggravating circumstance, as I do not believe Prinsloo heeded any of these clear messages from
20 the Commissioner.

I will, however, take the other factors raised in mitigation into consideration when deciding on an appropriate sanction. The CCMA and Bargaining Councils perform an essential service within
25 the employment and labour relations arena. These institutions, and

the Commissioners and the Arbitrators fulfil their duties, sometimes under less than ideal circumstances. Their workloads are heavy. That they at all times need to perform their duties with the necessary decorum, goes without saying. That they are to be respected is equally true. No doubt must be left in any person's mind that if he or she falls foul, particularly of the dictates of Section 142(8)(g), (h) and (i) of the LRA by in any way conducting themselves by insulting, disparaging or belittling Commissioners, or improperly anticipating a Commissioner's award, or wilfully interrupting or misbehaving during conciliation or arbitration proceedings, or in any manner acting in contempt of the Commission, they will be treated appropriately by being suspended from appearing in these forums, or by imposing fines and in extreme cases by possibly being imprisoned.

The perception must not be allowed that to be in contempt of the Commission or of Bargaining Councils, its Commissioners or Arbitrators, will not amount to a serious offence which, where and when necessary, will be met with serious sanctions, including fines, and as I said, possible imprisonment.

Having taken all these factors into consideration, and whilst I am aware that part of Prinsloo's responsibilities is the representation of parties in the Commission and Bargaining Councils, I believe

that he must be reminded by the sanction I intend imposing that his contempt of the Commissioner and of the Bargaining Council is regarded as serious. I have considered a fine, but believe that a
5 period of suspension of Prinsloo's right to representation in the Commission, Bargaining Council, and this Court, to be the most appropriate order.

The order which I accordingly make is the following:

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1. The finding of the Commissioner in case number CCA169-05 dated 16 May 2006, that Mr Prinsloo is in contempt of the Council insofar as his behaviour were in contravention of Section 142(8)(g), (h) and (i) of the
15 Labour Relations Act is confirmed.

2. Mr Prinsloo's right to represent a party in the CCMA, any Bargaining Council and the Labour Court is suspended for a period of six months from the date this order is handed down in Court. Five months of this
20 suspension of Mr Prinsloo's right of representation is suspended for two years on condition that during this period of suspension he is not found guilty of contempt in terms of Section 142(8)(g) and/or (h) and/or (i) of the Labour Relations Act.

25 3. Should Mr Prinsloo during the month that his rights of

representation have been suspended represent or attempt to represent any party in the mentioned forums, the whole of the sanction imposed in paragraph 2 of this order, or any other appropriate order may on application to this Court by any party then be imposed.

4. Mr Prinsloo is ordered to pay such costs as the Council herein may have incurred in referring the finding of contempt to this Court.

DEON NEL

ACTING JUDGE OF THE LABOUR COURT

DATE OF HEARING: 20 November 2006

DATE OF JUDGMENT: 27 March 2007

APPEARANCE:

For the Bargaining Council for the Clothing Manufacturing Industry:

Adv. C. de Kock (Arbitrator)

For the Respondent: Mr. W.P. Welgemoed of Bornman & Hayward Attys.