IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D38/08

REPORTABLE

Heard: 7 February 2008

Delivered: 18 February 2008
Revised: 19 February 2008

In the matter between:

NATIONAL TEACHERS UNION **APPLICANT**

and

THE SUPERINTENDENT GENERAL: DEPARTMENT

OF EDUCATION & CULTURE, KWAZULU-NATAL **1st RESPONDENT**

THE MEC FOR EDUCATION & CULTURE,

KWAZULU-NATAL **2nd RESPONDENT**

JUDGMENT

PILLAY D, J

Introduction

1 An elementary rule of practice is that an applicant must satisfy the court hearing its application that it has complied with all the jurisdictional requirements. When raising matters which the court has not considered before, practitioners have a professional and ethical duty to their clients and to the court to research the jurisdictional questions and raise them up-front and pertinently with the court. When they omit to do so and the court invites them to address it, that duty becomes all the more compelling. As an applicant bears the onus of proving the jurisdiction of the court at the outset, its failure to respond competently to the court's invitation is a travesty of justice.

2 In this case, the Applicant trade union seeks to enforce its right to disclosure of information under the Constitution of the Republic of South Africa Act 108 of 1996 and the Promotion of Access to Information Act No 2 of 2000 (PAIA) against the Department of Education KwaZulu-Natal (DOE), represented by the Respondents. The Applicant denies that section 16 of the Labour Relations Act No 66 of 1995 (LRA) applies to the dispute. The dispute arises in the context of the DOE filling a 1000 office based posts.

3 The Labour Court has not heard a case in terms of PAIA before. As will emerge fully below, counsel for both parties responded so shoddily to two requests from the court for further Heads of Argument that the court has had to undertake its own research and decide a public interest matter without the benefit counsels' considered opinions.

4 The court has to decide firstly, whether the Applicant acquires the right of access to information from the Constitution direct without any regard to the enabling statutes that give effect to that right; secondly, whether it has

jurisdiction to enforce rights under PAIA; thirdly, whether the Applicant complied with other jurisdictional requirements of PAIA; and fourthly, whether the Labour Court has jurisdiction to adjudicate a dispute in terms of section 16 of the LRA.

Urgency

5 The Respondents prefaced their opposition with a challenge to the urgency of the application. They contended that the urgency was of the Applicant's own making because on 12 June 2007 and 27 November 2007, the First Respondent had refused to give all the information the Applicant requested, except the details of the times and venues of the short-listing and interviews.

6 The Applicant submitted that the First Respondent or his representative had agreed on three occasions to give the information to the Applicant or their alliance partners in the bargaining council, the Combined Trade Union Suid Afrikaanse Onderwyserunie (CTU SAOU). The first was on 7 March 2007[1]. The second was at a bilateral meeting with CTU SAOU on 31 July 2007[2]. The third was at another bilateral meeting with CTU SAOU on 3 November 2007[3].

7 Evidence of the third occasion emerged only in reply. As the Respondents did not have a fair opportunity to respond to it, the court disregards it.

8 Following this court's judgment in *NATU v Department of Education and*

1 paragraph 26 of the founding affidavit
2 Annexure H to Founding Affidavit p37 of Bundle
3 Annexure 'R' to Reply

Others[4] delivered on 31 March 2006, the Applicant began requesting information about the panelists appointed to undertake the short-listing and interviews of job applicants. At a meeting on 7 March 2007, the General Manager of the DOE, Mr G H Ngcobo, undertook to disclose certain information to the Applicants. The First Respondent denies that the DOE undertook to disclose any information other than the times and venues of the short-listing and interviews._In any event, until early December 2007, the DOE failed to disclose even that information.

9 On 15 May 2007, the Applicant wrote to the First Respondent itemising the information it sought in terms of the PAIA.[5] On 12 June 2007, the First Respondent refused to disclose the information but, at a meeting on 3 July 2007, he agreed to give relevant information before the short-listing began. A month and a half later on 18 September 2007 and again on 3 December 2007 the Applicant repeated its request. On 5 December 2007 the First Respondent reiterated its stance that it would not disclose any information other than the venues and times of the interviews. By letter dated 6 December 2007, the Applicant whittled down its request for information to the Composite Schedule of all short-listing dates. On 8 January 2008, the Applicant's attorneys resurrected its request for information previously sought in the Applicant's letters of 15 May 2007 and 5 December 2007. The Applicant launched this application on 2 January 2008.

10 As at 5 December 2007 the DOE had still not informed the Applicant about the details of the short-listing and interviews. When it did get the information, some members of the Applicant tried to attend the short-listing but found that the venue had been changed and they could not, at such a

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4 *NATU v Department of Education and Others* (unreported Case No D110/06) dated 31 March 2006.
5 Annexure E to the Founding Affidavit pg 132-1323 of bundle

late stage, make fresh arrangements.

11 The DOE could have avoided inconveniencing the Applicant and timeously disclosed the information which the Respondents conceded it was obliged to give the Applicant.

12 However, the court agrees with the Respondents that if the Applicant believed it had an enforceable right under PAIA it should have launched an application in the ordinary course as soon as the DOE refused or failed to supply the information.

13 The Applicant was aware as early as 15 May 2007, if not before, that the First Respondent had already established Interview Committees. The DOE consistently refused to disclose all the information that the Applicant requested. The best effort that the Applicant made to enforce its right to disclosure was to raise the matter occasionally in correspondence and meetings.

14 From the outset the Applicant requested disclosure in terms of PAIA and not in terms of section 16 of the LRA for disclosure or launch this application in May, September or even December 2007, if it genuinely believed that the information was indispensable to representing its members' interests. The Applicant was spurred into action only when the DOE started the short-listing and interviews in mid-December 2007._The trigger for this application was therefore not the DOE's failure or refusal to disclose information but the Applicant's intention to stay the short-listing and interviews. (discussed further below) This issue too was no longer urgent as the Applicant was aware that the short-listing and interviews were underway since at least 15 May 2007.

15 The application is therefore not urgent. However, by 7 February 2008 the application was ripe for hearing as pleadings had closed. Having submitted brief Heads of Argument from the Bar, the parties were ready to argue the matter on the merits. In the interests of resolving the dispute expeditiously and substantively the court heard the matter on the merits.

Applicant's Case

16 The Applicant requests information from the Respondents about panelists and their appointment to short-list and interview educators to fill 1000 vacant posts in the DOE. It claims the information on the basis of the constitutional right of access to any information held by the state and PAIA in order to exercise or protect the rights of its members to fair appointment processes.

17 The Applicant denies that its case is based on the alleged bias of the Respondent in favour of the South African Democratic Teachers Union (SADTU) and its political ally, the African National Congress (ANC), the ruling party in government.

Respondent's Case

18 The Respondents resist the application firstly, on the ground that the Applicant does not make out a *prima facie* case that the non-disclosure breached, weakened or rendered unenforceable its or its members' rights. Secondly, as the Applicant does not allege that any of its members applied for the posts, it does not have an interest in how they are filled. Hence, the

disclosure of the information will be purely academic.

19 Thirdly, the Applicant launched the application because it suspects that the Respondents are biased in favour of candidates with whom they make common cause because of their political and trade union affiliations. Its suspicions do not establish that its or its members' rights to a fair administrative process is threatened, breached or rendered unenforceable.

20 Fourthly, the Applicant has alternative processes if the appointments are irregular; it may challenge the appointments when they are eventually made.

21 Fifthly, the Respondents reasonably apprehend that premature public access to detailed sensitive information about panelists will undermine the fairness and integrity of the process. The Respondents' concern is that panelists can be bribed, corrupted or intimidated if their identities are known to job applicants because it is not uncommon in our society for job seekers to resort to less then proper avenues to secure employment.

22 Sixthly, the authority to appoint panelists arises from the collective agreement. The collective agreement entrusts the First Respondent to appoint the panelists. It imposes no constraints on the First Respondent exercising his power to appoint the panelists. The only constraints are those imposed by law.

23 Seventhly, the demand for the information has become academic as all the panelists were appointed and the arrangements for the short-listing and interviews were disclosed to the stakeholders including the Applicant. Consequently, the Applicant would know the identity of the panelists by attending the short-listing

and interviews. During his address, Mr Govender, counsel for the Respondents, corrected his submission to the effect that not all the panelists have been appointed.

First Request for Further Heads of Argument

24 The Applicant relied on section 32, 36, 195 and 197 (4) of the Constitution and section 9 of PAIA. The Respondents resisted the application in terms of section 44 (1) (b). Neither party mentioned the disclosure of information rights in section 16, section 210 which asserts the primacy of the LRA over other conflicting statutes or *Chirwa v Transnet Limited and Others* (CCT 78/06) [2007] ZACC 23. Consequently, the Court called for further Heads of Argument to address the following:

(a) Why did neither party address the court on the application of section 16 of the LRA to the dispute? Does the LRA apply to the dispute?

(b) Irrespective of whether PAIA applies, having regard to *Chirwa,* why should the court look beyond the LRA?

Further Submissions (1)

25 _In his further Heads of Argument Mr Pillay for the Applicant contends firstly, that although section 14(4) of the LRA entitles the Applicant to information to perform certain functions as a representative, it does not preclude the Applicant from approaching this court (alternatively the High Court) urgently for a stay of the appointments, pending its access to information. Nor does section 16 deprive the court of jurisdiction.[6]

26 Secondly, as the Constitution and the PAIA are not subordinate to section 16, the

6 *Robbertze v Marsh SA (Pty) Ltd* [2002] 23 ILJ 1448 (LC)

Applicant is entitled to exercise its rights in accordance with these instruments. Thirdly, and in contradiction to his first submission, section 16 relates to the provision of information in terms of section 189(4) of the LRA. Fourthly, the constitutionality of section 16 is questionable. Section 16(10) of the LRA "runs foul" of section 32(1) Constitution which, like PAIA, allows unqualified access to information from the State. Where the employer is the state, the Applicant may rely exclusively on the provisions of PAIA and disregard section 16. Fifthly, *Chirwa* does not apply to the matter. Mr Pillay does not expand on his last three submissions.

27 In his further Heads of Argument Mr Govender raises for the first time that the court does not have jurisdiction because section 16 of the LRA applies to the request for information. The Commission for Conciliation, Mediation and Arbitration (CCMA) has jurisdiction in terms of section 16 (7), (8) and (9). Furthermore, as the Applicant is not sufficiently representative, the DOE has no obligation to disclose the information. Disclosing the information will also cause substantial harm to an employee or the DOE and will undermine the appointment process.

Second Request for Further Heads of Argument

28 Despite the court directing the parties to *Chirwa,* the Applicant persisted in relying on the Constitution and PAIA. In one sentence, the Respondents baldly dismissed PAIA as not applying to the request for disclosure.

29 The court was seriously hamstrung by the scantiness of these submissions. Neither party addressed the court about whether it has jurisdiction to hear disputes under PAIA; whether section 6 of PAIA invokes the LRA; whether the Applicant exhausted the internal appeal procedure in

section 74 to 77 of PAIA; and whether any of the grounds for refusing access to records in chapter 4 of PAIA applied. If the court has jurisdiction neither party indicated what rules apply to the adjudication of the dispute; whether the Applicant complied with the prescribed procedural requirements for accessing information; whether the Applicant met the definition of "requester" and the First Respondent the definition of "information officer"; and whether the information officer took the decision to refuse the information.

30 As the court was reluctant to decide the matter on issues that the parties had not canvassed before it, it called for further submissions on the following questions:

(a) Whether the court has jurisdiction under PAIA.
(b) Whether the applicant has complied with all jurisdictional requirements of PAIA.

Further Submissions (2)

31 Counsels' response to these questions was hardly an improvement on their previous submissions. In response to the question on jurisdiction of this court, Mr Pillay referred to the definition of "court" in section 1 and to section 82 of PAIA for a court's powers when deciding applications under PAIA. To the second question, Mr Pillay submitted that the Applicant complied with the jurisdictional requirements by requesting the information, even if the request was informal.[7] Moreover, the Respondents had not taken issue with the form of the request. For his part, Mr Govender misconstrued the questions altogether and addressed the court on the

7 The Guidelines of the Human Rights Commission, *MEC for Roads and Public Works EC v Intertrade 2 (Pty) Ltd* 2006 (5) SA 1 SCA and *Trustees, Biawatch Trust v Registrar Genetic Resources* 2005 (4) SA 111 TPD

application of the Promotion of Administrative Justice Act No 3 of 2000 (PAJA) instead of PAIA, despite counsel being informed of the questions telephonically and by email.

The Constitutional Right to Information

(a) Section 32 of the Constitution grants access to information in the following terms:

(1) "(1) Everyone has the right of access to-

(b) any information held by the state; and

(c) any information that is held by another person and that is required for the exercise or protection of any rights.

(1) (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state."

32 Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights. That does not mean, as Mr Pillay suggests, that subsection 1 (a) is not subject to any constraints at all. Like all rights, section 32 is limited by other rights, the limitation clause and legislation giving effect to the right.

33 Furthermore, when legislation exists to give effect to constitutional rights, such legislation must be interpreted and applied. In other words, the legislation cannot be bypassed to grant direct access to the Constitution, as Mr Pillay suggests. Just as PAJA gives effect to the right just administrative action,[8] so too does PAIA give effect to section 32. Just as

8 Section 33 of the Constitution; *Bato Star Fishing (Pty) Ltd V Minister Of Environmental Affairs And Others* 2004 (4) SA 490 (CC) para 25

PAJA is not the only legislation giving effect to the right to administrative action, so to is PAIA not the only legislation giving effect to the right of access to information.[9] The LRA also gives effect to these rights in the context of labour law. As section 16 of the LRA codifies the right of access to information in labour cases, the court cannot decide this matter without reference to it.[10] Whether PAIA also applies is discussed below. The Applicant has decidedly distanced its cause of action from section 16 the LRA. Consequently, if it transpires that PAIA does not apply to the dispute, the application must fail.

Jurisdiction

34 Section 79 of PAIA raises the first threshold for jurisdiction. Subsection 2 provides:

> "Until the rules of procedure in terms of subsection (1) (a) come into operation, an application in terms of section 78 must be lodged with a High Court or another court having jurisdiction.

35 PAIA defines "court" as:

"1 (b) (i) a High Court or another court of similar status".

36 Although the Labour Court is a court of similar status as the High Court, neither the LRA nor PAIA confer jurisdiction on the Labour Court to hear disputes in terms of PAIA.

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9 *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* (2007) 28 ILJ 2405 (CC) para 89-91

10 *Bato Star Fishing (Pty) Ltd V Minister Of Environmental Affairs And Others* 2004 (4) SA 490 (CC) para 26

37 Section 78 of PAIA raises the second jurisdictional threshold. It provides:

> "(1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74."

38 Furthermore, a requester who is aggrieved by the decision of the information officer

> "may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82."

39 As the applicant bears the onus of proving that the court has jurisdiction and that it exhausted the internal appeal procedures, its failure to lead evidence and address the court about whether it has complied with sections 79 and 78 results in the court finding that it has no jurisdiction to hear the dispute.

PAIA or LRA

40 Assuming that the court does have jurisdiction, the Applicant still has to overcome the hurdle of proving that PAIA and not the LRA applies. Section 6 of PAIA provides:

> "Application of other legislation providing for access
> Nothing in this Act prevents the giving of access to-
> (a) a record of a public body in terms of any legislation referred to in Part 1 of the Schedule".

41 Sections 86 (1) (a) and (2) provide:

> "Application of other legislation providing for access
>
> (1) The Minister must, within 12 months after the commencement of section 6, introduce a Bill in Parliament proposing the amendment of-
>
> a. Part 1 of the Schedule to include the provisions of legislation which provide for or promote access to a record of a public body; and….
>
> (2) Until the amendment of this Act contemplated in subsection (1) takes effect, any other legislation not referred to in the Schedule which provides for access to a record of a public body or a private body in a manner which, including, but not limited to, the payment of fees, is not materially more onerous than the manner in which access may be obtained in terms of Part 2 or 3 of this Act, respectively, access may be given in terms of that legislation."

42 The LRA is not listed in paragraph 1 of the Schedule to PAIA. PAIA directs therefore that the Applicant's access to information from the DOE should be in terms of the LRA.

43 Furthermore, section 210 of the LRA provides:

> "If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail."

44 *Chirwa* eliminates doubt about the primacy of the LRA over other

legislation in disputes about dismissals and unfair labour practices. There is no reason the following dictum should not be extended to all labour disputes:

> "It is my view that the existence of a purpose-built employment framework in the form of the LRA and associated legislation infers that labour processes and forums should take precedence over non-purpose-built processes and forums in situations involving employment-related matters. At the least, litigation in terms of the LRA should be seen as the more appropriate route to pursue. Where an alternative cause of action can be sustained in matters arising out of an employment relationship, in which the employee alleges unfair dismissal or an unfair labour practice by the employer, it is in the first instance through the mechanisms established by the LRA that the employee should pursue her or his claims.[11]

45 Neither party addressed the court about whether the Constitution or PAIA expressly amends the LRA or whether the statutes conflict with each other. The court cannot, without more, take seriously Mr Pillay's bald assertion that section 16 "runs foul" of section 32 (1) because it does not allow unqualified access to information from the state; as stated above, every right is subject to reasonable and justifiable limitation.

46 From the court's reading of the Constitution and PAIA, neither amends the LRA expressly. An enquiry as to whether the LRA and PAIA conflict with

11 *Chirwa* para 41

each other is a project that falls outside the scope of this judgment. In the circumstances, the Applicant's right of access to information is governed exclusively by the LRA, read with the Constitution. PAIA does not apply to requests for information in labour disputes.

PAIA Requirements

47 Assuming that the court has jurisdiction and PAIA applies, the Applicant must prove that it complied with the procedural requirements of section 18 which prescribes the procedure for requesting access to information. Such procedure includes making a request on the prescribed form to the information officer and indicating which form of access referred to in section 29 (2) is required. The applicant has failed to allege and prove that it complied with section 18. In so far as the Applicant relies on an informal request, it fails to inform the court why it has not complied formally with the prescribed requirements.

48 As regards the substantive merit of the Applicant's request for information such as the qualification and experience of panelists, neither party advanced any evidence or argument about whether the Applicant's request is struck by the mandatory protection of privacy of a third party who is a natural person in section 34 of PAIA. The relevant portions of section 34 read as follows:

> "(1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.
>
> (2) A record may not be refused in terms of subsection (1) insofar as it consists of information-
>
> a. about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the

requester concerned;…

c. already publicly available;….

f. about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to-

i. the fact that the individual is or was an official of that public body;

ii. the title, work address, work phone number and other similar particulars of the individual;

iii. the classification, salary scale, remuneration and responsibilities of the position held or services performed by the individual; and

iv. the name of the individual on a record prepared by the individual in the course of employment."

49 In the circumstances, the Applicant has not taken the elementary step of establishing what the requirements are of PAIA and ensured that it complied with them. The Respondents have not noticed these deficiencies in the Applicant's case.

LRA applies

50 In view of its conclusions above, the court does not have to decide whether the LRA applies. However, as the disclosure of information is an issue in the ongoing process of filling the post, the court elects to state its opinion on Mr Govender's submissions that firstly, section 16 of the LRA deprives the Labour

Court of jurisdiction; secondly, the Applicant is not sufficiently representative to request and receive information; thirdly, the information should not be disclosed because the Applicant's purpose in seeking the information is inconsistent with purpose of section 16 of the LRA and furthermore, the information sought is confidential; and lastly, the Applicant has an alternative remedy. In the course of addressing these issues the court also considers the remaining requirements for an urgent interdict.

51 Section 16 read with section 20 requires an employer to disclose to a representative trade union all relevant information that will allow the trade union representative to perform effectively the function of representing its members. Is the Applicant a representative a trade union for the purposes of section 16?

52 On 22 April 2005 the Applicant and three other trade unions concluded a collective agreement about the procedure for filling office based posts and promotions with the DOE represented by Nkosinathi Ngcobo. That is the agreement which regulates the filling of posts in this dispute.

52 The Applicant is a minority union that is not, on its own, sufficiently representative to claim a seat in the Public Service Co-Ordinate Bargaining Council (PSCBC) or the Education Labour Relations Council (ELRC). Accordingly, on 30 March 2006 the Applicant concluded a "Working Together Agreement" with other unions to be represented at ELRC by SAOU.

53 Either in its own right or in alliance with SAOU the DOE recognizes the Applicant as a collective bargaining partner. As the First Respondent conceded that the Applicant was entitled to certain information it follows that the DOE acknowledges the Applicant as being sufficiently representative for the

purposes of section 16 of the LRA. The Respondent's denial that the Applicant is sufficiently representative is therefore vague and unsubstantiated.

54 The issue in dispute therefore is not about whether the Applicant's representivity qualifies it to request and receive information but about whether the information is relevant for the purposes of enabling the Applicant to represent its members in terms of section 14(4).

55 In terms of section 14(4) the Applicant has the right to monitor compliance with and report any contravention of workplace law including any collective agreement binding on the DOE. Contrary to Mr Pillay's submission, the purpose of disclosure under section 16 is therefore not confined to section 189 (4) of the LRA. *Robbertze* merely confirmed that the Labour Court has jurisdiction to adjudicate disputes about requests for information in terms of section 189 (4). It does not assist the Applicant because in that case the request for information arose in the context of a claim for procedurally unfair retrenchment. Freund AJ had to determine whether the non-disclosure of the information rendered the dismissal unfair.[12] This is an urgent application. Section 16 (6) to (9) which requires disclosure of information disputes to be referred to conciliation and arbitration, does not automatically deprive the Labour Court of jurisdiction to grant urgent interdicts for disclosure, provided the Applicant meets all the requirements for such applications.

56 The court has already found that the application is not urgent. In so far as it may have erred in that finding, it considers the other requirements for an urgent application.

57 On the merits, the secondary purpose of the disclosure in this case is to

12 *Robbertze* at 145 B-D

monitor compliance with the collective agreements and departmental circulars to ensure that the Department fills the posts in accordance with fair procedure. Its primary purpose is to find reasons to prevent the Department from filling the posts with mainly SADTU members to the exclusion of the Applicant's members. Riding on the application for disclosure is the application for the principal relief, namely the interdict against the filling of the posts. As indicated above, if the applicant wanted the disclosure as its primary relief it could have enforced its rights in good time before the short-listing and interviews began. A request for disclosure in order to obstruct the DOE from going about its legitimate business is not a valid request because, even if the information is required to protect and enforce the political interests of the Applicant and its members, the wider interests of learners, other educators and the community take precedence over the parochial interests of the Applicant.

58 Even though the Applicant is sufficiently representative to receive disclosure and the information requested is relevant for its secondary purpose, the DOE may nevertheless refuse to disclose it if the disclosure may cause substantial harm to an employee or the DOE or the information is private personal information relating to an employee, unless the employee consents to the disclosure.

59 The harm which the Respondents seeks to prevent is intimidation, bribery and corruption of the panelists. The chance of that occurring is remote. The DOE contemplates that all of the panelists may be SADTU members because it knows who the panelists are as it has already appointed many, if not all of them. Given the acknowledged political rivalry between SADTU and the Applicant, SADTU panelists are unlikely to succumb to the Applicant's members. Furthermore, the panelists are not banned from disclosing information to the Applicant. If the DOE is genuinely concerned about harm to

the panelists it would have take greater precaution to prevent disclosure. Its primary concern is the purpose for which the Applicant sought the information, namely to obstruct the DOE from filling posts with mainly SADTU members.

60 The information sought is manifestly personal information of employees of the DOE appointed to serve as panelists. Information, such as the qualifications and experience of the panelists, is also private as it is not available publicly. A dispute about disclosing private personal information could have been averted if the parties engaged each other about securing the consents of the panelists. The Applicant did not request the DOE to obtain the consent of the panelists for disclosure. As an order granting disclosure of private personal information will impact on the interests of panelists who are not party to these proceedings, the balance of convenience does not favour granting any relief.

61 On the merits therefore, the Applicant is not entitled to the disclosure of information that is private and personal to the panelists. The remaining information sought, namely the names of the panelists, the name(s) of the person who appointed them and the DOE's criteria for selecting them, is relevant for the Applicant's purpose of representing its members. Before and during the hearing the DOE disclosed and undertook to disclose this information in so far as it had not already done so.

62 Other than asserting that it has enforceable rights under PAIA, the Applicant does not say why section 16 of the LRA was not an appropriate remedy. An urgent application for information may be granted if the genuine purpose is to timeously prevent or correct irregularities in the short-listing and interviews. For reasons stated above, the Applicant has not made out such an application. Irrespective of this application, an aggrieved job applicant retains the option of challenging the selections when the DOE eventually makes them. Even though

the court declines to grant the Applicant any relief, its members who are aggrieved by the eventual selections have a remedy.

Conclusion

63 In summary, the Applicant has not satisfied the court that it has jurisdiction to adjudicate disputes under PAIA and, even if it did have jurisdiction, that the Applicant complied with the prescribed internal requirements before launching this application. The LRA applies to the dispute. Even if the Applicant had proceeded under the LRA the application must fail because the Applicant has not met the requirements for an urgent interdict. Crucially on the merits, the Applicant is not entitled to private personal information of the panelists. The Respondents are deprived of their costs because they did not assist the court competently.

Order

64 The application is dismissed with no order as to costs.

Pillay D, J

APPEARANCES:
Applicant: Adv I Pillay
Instructed by: Attorneys Deneys Reitz
Respondent: Adv S Govender, SC
Instructed by: State Attorney, Durban