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## Open Justice & Media Access

AmaBhungane engages in advocacy to help secure the information rights investigative journalists need for their work. Advocating for media access in key proceedings involving public institutions is critical to this work.

One recent example is getting access to the CCMA arbitration hearing between SARS and its former spokesperson, Adrian Lackay.

Following 11 years of service, Lackay resigned in February. He approached the CCMA to have his resignation declared a constructive dismissal that stemmed from conflict with newly-appointed SARS commissioner Tom Moyane. Lackay contends that he was sidelined because of his opposition to Moyane's alleged purge senior officials following claims of a rogue spy unit.

In a letter to Parliament, Lackay alleged that the true circumstances surrounding the unit were suppressed in order to facilitate this purge and that Moyane caused him "to issue statements to the media that contained false and incorrect information". He said that various findings to the effect that SARS had carried out illegal intelligence gathering had never been subjected to cross-examination before a neutral arbiter.

The CCMA arbitration, at which Moyane is expected to be the main witness against Lackay, may provide the first opportunity where these allegations and counter-allegations will be canvassed in an open legal setting.

The CCMA barred reporters from a preliminary hearing in September. Media 24 and amaBhungane then formally applied for access via lawyers; amaBhungane specifically to demand access for *all* media. The CCMA convened a special hearing to decide the matter on October 9, presided over by senior commissioner Cameron Morajane.

Media24 and amaBhungane maintained that the spy unit matter was of great public interest and that without the media being in attendance, "the majority of citizens would simply be unable to participate meaningfully in the public life of society".

SARS opposed, claiming the CCMA did not have jurisdiction to decide on media attendance. It also argued that secrecy was demanded as confidential taxpayer information might be referred to in the hearing, and objected to the further "unnecessary" scrutiny of the spy unit.

In his ruling, handed down in mid-October, Morajane referred to the media as "the life blood and soul of our democracy", important to institutional well-being.

He said that SARS's objections carried little weight when balanced against the fundamental rights to freedom of expression and open justice. He granted access to all media subject to specific confidentiality considerations that may be raised during the arbitration, which will resume later this month.

AmaBhungane earlier initiated or joined media access applications in the SARS disciplinary hearings of former acting commissioner Ivan Pillay and senior official Peter Richer (both which became moot when they settled with SARS) and in the internal hearing for Independent Police Investigative Directorate head Robert McBride. Our McBride application was granted.

These victories reinforce a trend of judicial and quasi-judicial confirmation of the right of the media to attend and the public to be informed of disciplinary and labour hearings involving senior public servants.

-- November 2016