

# RELEVANCE & INVESTIGATION REPORTS

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In a recent Labour Court (“LC”) judgment (South African Sports Confederation and Olympic Committee vs. ‘Vinesh’ Maharaj & Others), the LC had to decide whether an investigation report compiled by (external) legal counsel (attorneys) after the conclusion of an independent investigation is relevant to the arbitration proceedings (concerning the fairness of the dismissals) of those employees whose conduct was the subject of the investigation and, thereafter, the disciplinary inquiry that culminated in their dismissal based on misconduct.

In this article, I succinctly articulate how investigation reports occasioned by an (independent) corporate investigations ought to be used advantageously and without prejudice to the rights therein (legal professional privilege), as well as other rights related thereto (the right (or then privilege) against self-incrimination).

The LC held that the investigation report was not relevant to the arbitration proceedings due to the manner in which the employer used it during the internal disciplinary inquiry and how it intends on using it at the arbitration hearing. The LC came to this conclusion because (i) the investigation report was only used to formulate the allegations of misconduct against the employees, (ii) other evidence had been led at the disciplinary inquiry, and (iii) this self-same evidence (i.e., not the report) will be led at the arbitration, to prove the allegations of misconduct. The LC declined to entertain the issue of legal professional privilege because there was simply no need to, since the report, whether its content is privileged or not, is not relevant to the proceedings, which lack of relevance was the product of the manner in which the report had been used.

The principle is, therefore, that once the report is finalised, its circulation must be limited and it should never be used (including disclosed) at internal disciplinary inquiries (i.e., at the inquiry as documentary evidence or for any other reason whatsoever). The report can be used (by (external) legal counsel in tandem with the executives or other employees (internal counsel)) in deciding how, and under which allegations, proceedings against an employee will be instituted to attain the best possible outcome.