

# **CHAPTER 14**

## **ABUSE OF POWER**

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## CHAPTER 14

### ABUSE OF POWER

#### 1. INTRODUCTION

This Chapter deals with the treatment and harassment<sup>1</sup> of female employees of the Department, senior officials abusing their positions of power and the manner in which the Department's disciplinary system is open to manipulation and abuse by the Department's senior officials to achieve their personal aims.

Evidence was led at the Commission hearings, which commenced at the Port Elizabeth High Court on the 12 August 2002, by three (3) complainants, Ms Vosloo, Ms van Heerden and Mrs Louw, who alleged that they were sexually harassed by Mr Khoza, one of the Prison Heads at St Albans. This issue of the sexual harassment of Ms Vosloo, Ms van Heerden and Mrs Louw was part of the Commission's wider investigation into the entire disciplinary system of the Department.

It is expected of officials employed in positions of authority in the Department to maintain exemplary conduct and at all times to adhere to higher standards of dedication, impartiality and integrity in the conduct of their duties. By accepting positions of authority they assume a position of trust, not only to implement Departmental policy and directives but also to represent and protect the legitimate interests of those in the Department who fall under their authority.

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<sup>1</sup> The Commission is of the view that harassment is a by-product of the hierarchical relationship in the Department and that the harassment constituted an abuse of power. See C Cooper "Harassment on the basis of sexual gender: A form of unfair discrimination" (2002) 23 ILJ 1 at 1.

No circumstances whatsoever justify officials abusing their power to victimise subordinates or to achieve sinister objectives. The higher the ranking and standing of the official, the greater the responsibility that rests on such official to maintain the standards referred to, to adhere to policy and to afford protection to Department personnel who are being subjected to any form of abuse or unfair or discriminatory practice. Sexual harassment can be labeled a form of sexual discrimination.<sup>2</sup>

Against this backdrop, it was disturbing for the Commission to discover that although all three (3) complainants had been extremely traumatised by the sexual harassment<sup>3</sup> they had endured at the hands of a senior official, Mr Khoza, they repeatedly stated that their main area of grievance was the manner in which officials of the Department had dealt with their complaints.

The disciplinary proceedings, which one of the complainants was subjected to, appears to have been riddled with irregularities and delays by several officials, including the Provincial Commissioner, Mr Mataka, who interfered with and manipulated the process to obtain a desired outcome.

The three (3) complainants were dissatisfied with the manner in which their complaints were handled and decided to challenge the Department for not effectively dealing with the harassment. They alleged that instead of being

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<sup>2</sup> C Cooper *op cit* 1 states as follows:

*“Harassment is discriminatory because it sets up an arbitrary barrier to the full and equal enjoyment of a person’s rights in the workplace. It also constitutes a violation of the dignity of the individual and it can never be deemed acceptable by the individual.”*

<sup>3</sup> Section 6(3) of the Employment Equity Act No. 55 of 1998, clearly defines ‘harassment’ as a form of unfair discrimination and it is prohibited on any one of the listed grounds in section 6(1), which reads as follows:

*“(1) No person may unfairly discriminate, directly or indirectly, against an employee, in the employment policy on practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.”*

assisted by the Department, they were victimised to the extent that one of them decided to resign, another had to be medically boarded and the third, who decided to remain in the service, was subjected to disciplinary proceedings and ultimately dismissed by the Department.

Their treatment was in stark contrast to the treatment meted out to the alleged harasser, Mr Khoza, who was transferred to the provincial office to a more senior post and escaped disciplinary action entirely.

The disciplinary action taken against one of the complainants and the resultant dismissal were clearly a way of victimising her as there could have been no basis in law to dismiss her for the alleged transgressions. The entire disciplinary system was abused and used as a tool to victimise and frustrate the third complainant, Ms Vosloo. This complainant, however, appealed against the dismissal and on appeal she was reinstated but given a final warning. The appeal itself was riddled with irregularities and was only finalised after a delay of approximately two years, which led to the member being even more frustrated. While the appeal dragged on, Ms Vosloo remained suspended from her duties, which in itself constituted an unfair labour practice<sup>4</sup> and had serious cost implications for the Department.<sup>5</sup> Her case is a classic example of how the Department's disciplinary process can be manipulated to bring about a desired outcome should anyone challenge those in senior positions.<sup>6</sup>

The actions of the Department officials were clearly meant to torment the complainants and constructively dismiss them. Right from the onset those in power showed gross insensitivity towards the complaints. The Commission is concerned that the Department, through the conduct of its members, is at risk of being vicariously liable for the failure to take reasonable steps to protect its

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<sup>4</sup> See *Louw and Another v Golden Arrow Bus Service (Pty)Ltd* (1998) 19 ILJ for the view that a continuous suspension constitutes an unfair labour practice.

<sup>5</sup> Ms Vosloo has subsequently resigned from the Department.

<sup>6</sup> See chapter on Disciplinary Inquiries for an in-depth discussion.

employees against sexual harassment. Recently the Supreme Court of Appeal in *Media 24 Ltd and Another v Grobler*<sup>7</sup> held that it is settled law that an employer owes a common law duty of care to its employees. *In casu*, a manager failed to take action when he received a complaint and the court held that the employer was vicariously liable for the manager's failure to take action against the alleged perpetrator.<sup>8</sup>

Similarly, the Department also failed in its duties in dealing with the complaints of the women sexually harassed at St Albans Prison. Such failure, if occurring today, would make the Department vicariously liable for a claim of damages.<sup>9</sup>

As regards the sexual harassment, the facts were not in dispute and were never challenged by the alleged transgressor, Mr Khoza, in any way. He elected neither to tender any version to the Commission nor to place any other evidence before the Commission to contradict what had been said by the three (3) complainants. In dealing with the complaints of sexual harassment of the three (3) victims therefore, this report will in particular focus not only on the harassment itself, but

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<sup>7</sup> (2005) 7 BLLR 649 (SCA). Also see R le Roux "Sexual Harassment in the work place: Reflecting on *Grobler v Naspers* (2004) 25 ILJ and B Whitcher "Two Roads to an employer's vicarious liability for Sexual Harassment: *Grobler v Naspers Bpk en 'n Anders* and *Ntsabo v Real Security CC* (2004)" 25 ILJ 1907.

<sup>8</sup> *Op cit* at 650 G-H.

<sup>9</sup> See section 60 of the Employment Equity Act that deals with the liability of an employer. The relevant sub-sections read as follows:

*"(1) If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee's employer, would constitute a contravention of a provision of this Act, the alleged conduct must immediately be brought to the attention of the employer.*

*(2) The employer must consult all relevant parties and must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act.*

*(3) If the employer fails to take the necessary steps referred to in subsection (2), and it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened that provision.*

*(4) Despite subsection (3), an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act."*

also on the manner in which the complaints were dealt with and how the Department treated these three (3) victims.

The conduct of the Department and its officials is merely the tip of the iceberg and is a further clear indication of the deeper-rooted problems related to the culture of the Department and the Department's disciplinary process.

This report will show that the disciplinary system of the Department, presently in operation, is open to abuse by those in power who vindictively institute disciplinary proceedings if and when they want to "punish" anyone that dares to challenge them as seniors. It will further be shown that discipline in the Department is instituted in an arbitrary and, in some instances, biased fashion as some members are not disciplined even though they have committed serious transgressions.<sup>10</sup>

## **2. SEXUAL HARASSMENT**

### **2.1 Introduction**

Before dealing with the evidence of the three (3) complainants regarding the acts of sexual harassment, it is necessary to pause and consider what has been said in the Industrial Court in *J v M Ltd*,<sup>11</sup> regarding the nature of sexual harassment;

*"Sexual harassment, depending on the form it takes, will violate that right to integrity of body and personality which belongs to every person and which is protected in our legal system both criminally and civilly. An employer undoubtedly has a duty to ensure that its employees are not subjected to this form of violation within the workplace. Victims of*

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<sup>10</sup> See Chapter on Disciplinary Inquiries.

<sup>11</sup> (1989) 10 ILJ 755 (IC).

*harassment find it embarrassing and humiliating. It creates an intimidating, hostile and offensive work environment.*<sup>12</sup>

In a constitutional context it can be said that sexual harassment is considered to be a violation of the fundamental human rights of men and particularly women. In terms of the Constitution,<sup>13</sup> it can also be considered a violation of the right to equality,<sup>14</sup> human dignity,<sup>15</sup> security of a person<sup>16</sup> and fair labour practices.<sup>17</sup> South African labour legislation addresses sexual harassment in a number of statutes.<sup>18</sup>

Sexual harassment on the surface specifically infringes upon the right to human dignity contained in s10 of the Constitution, which provides as follows:

*“everyone has inherent dignity and the right to have their dignity respected and protected and the right to privacy enshrined in s14 of the Constitution.”*<sup>19</sup>

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<sup>12</sup> *Op cit* at 757 I – 758A. For further references see also the pioneering work of Catherine McKinnon in her book “Sexual Harassment of Working Women (1979)” at page 1, where she defines sexual harassment as: “The unwanted imposition of sexual requirements in the context of a relationship of unequal power.” See for comparative purposes J.G. Mowatt ‘Sexual Harassment – New Remedy for an Old Wrong’ (1986) 7 ILJ 637; Lisa Doncaster ‘Sexual Harassment in the Workplace: Should SA adopt the American Approach’ (1991) 3 ILJ 449.

<sup>13</sup> See the Final Constitution of the Republic of South Africa, Act 108 of 1996, hereinafter referred to as ‘the Constitution’.

<sup>14</sup> See section 9 of the Constitution.

<sup>15</sup> See section 10 of the Constitution.

<sup>16</sup> See section 12 of the Constitution.

<sup>17</sup> See section 23 of the Constitution.

<sup>18</sup> These include the Labour Relations Act No. 66 of 1995; the employment Equity Act No. 55 of 1998 and the Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000. The Equity Act also contains the Code of Good Practice on the handling of sexual harassment cases.

<sup>19</sup> Section 14 of the Constitution provides as follows:

Everyone has the right to privacy, which shall include the right not to have –

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications infringed.

What flows from this constitutional right is that employers have an obligation to see to it that the dignity of their employees will not be impaired, and even a greater obligation in matters where there is an inherent risk that their right to privacy might be infringed upon. Sexual harassment in the work place has, since 1998, also been dealt with in the Code of Good Practice on the Handling of Sexual Harassment cases issued by the National Economic, Development and Labour Council in terms of section 203 of the Labour Relations Act.

As the evidence set out hereunder will show, the conduct of the Department and its employees in their treatment of the three (3) complainants clearly breached many of the basic terms of our Constitution and the aforementioned laws. The complainants were afforded no protection whatsoever to their inherent right to equality, security of person and above all, their right to human dignity.

## **2.2 Policy of the Department**

The main objective of the Sexual Harassment Policy of the Department of Correctional Services<sup>20</sup>, as contained in Resolution 6/99, is the elimination of sexual harassment in the Department and to provide for procedures to deal with the problem to prevent its re-occurrence.<sup>21</sup>

Most importantly, the policy, in terms of para 2(1)(c) and (e), provides that allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially and that members who lay charges will be protected against victimization or retaliation.<sup>22</sup>

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<sup>20</sup> See Appendix F2 attached to this report.

<sup>21</sup> Para 1(1) of the Policy filed as Appendix 'F2' to this report reads as follows:

“(1) The objective of this policy is to eliminate sexual harassment in the Department of Correctional Services and provide appropriate procedures to deal with the problem and prevent recurrence.”

<sup>22</sup> See 2(1) for the said policy reads as follows:

“*The Department of Correctional (sic) states the following:*

The set aims and objectives of the Sexual Harassment Policy illustrate that the Department, in theory, is sensitive to the needs of its employees and that it is committed to combating sexual harassment in the workplace. The conduct of the members of the Department, however, should be examined against the backdrop of the policy and what the policy provides. The evidence of Mr Delport, the Chief Psychologist at St Albans Prison, is therefore important since it demonstrates how the management at St Albans Management Area and the Provincial Office failed to adhere to the Department's Sexual Harassment Policy and in doing so neglected the rights of the three (3) complainants in the matter.

Incidents of sexual harassment also surfaced before the Commission at the Durban-Westville Management Area, where a senior member harassed a junior member after hours at the staff quarters.<sup>23</sup>

### **2.3 Mr Marius Delport**

Mr Delport, a qualified psychologist who has a Masters in Clinical Psychology, and is employed as the Chief Psychologist at St Albans, emphasised the fact that he never assessed the complainants and that his evidence was not based on any clinical evaluation of them. In his opinion, the sexual harassment was very traumatic for all three (3) of the complainants, mainly because the advances of the transgressor, Mr Khoza, were unwanted and they had not expected such

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(a) *All its employees, job applicants and other persons who have dealings with the Department, have the right to be treated with dignity and respect;*

(b) *A person who has been subjected to sexual harassment in the Department has the right to raise a grievance about it should it occur and the appropriate action will be taken;*

(c) *Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially;*

(d) *Sexual harassment in the Department will not be permitted or condoned;*

(e) *Members will be protected against victimization, retaliation for lodging grievances and false accusations."*

<sup>23</sup> See Third Interim Report for more details.

behaviour from their superior. What exacerbated their trauma was that the Department did not take their complaints seriously.

Mr Delpont pointed out that the extremely hierarchical structure within the Department, with its various power levels, also hampered the spontaneous reporting of harassment by complainants. Members are very conscious that the right channels and levels of communication have to be followed. Accordingly, a person complaining of ill treatment or harassment would not confront the person involved directly but would rather, to avoid repercussions, try and resolve the issue through the right channels. Another added burden for victims of sexual harassment in the Department is that they work in a prison, which is a very stressful work environment. All these factors therefore had to play a role in the minds of the complainants when they had to pluck up the courage and report the conduct of their superior.

In Mr Delpont's opinion, the Department did not offer the complainants empathy, support or concern regarding their plight for help. Considering the nature of the complaints, it would be expected of a sensitive employer, once the complaint is laid, firstly to keep the complainant fully abreast of all developments relating to the issue and secondly to look at ways to empower the employee, who has suffered through the harassment, and to put them back in the work situation. On an interpersonal level, a sensitive employer would also enquire about the well being of the employee. When all is considered it is clear that neither Ms Louw, nor Ms van Heerden, nor Ms Vosloo received this kind of treatment. Ms van Heerden and Ms Louw, in particular, were so deeply affected by the treatment they received from the Department that they had not recovered at the time they testified before the Commission and were still dealing with post traumatic stress.

Mr Delpont commented on the following provisions of the Department's Sexual Harassment Policy and indicated how the officials of the Department in their

treatment of the three (3) complainants had breached the provisions of the Policy:

- (a) Para 2(1)(a) *“All its employees, job applicants and other persons who have dealings with the Department, have the right to be treated with dignity and respect;”*

The evidence of the complainants showed that they were not granted the opportunity to be treated with dignity or respect. In the case of Ms van Heerden, the failure to treat her with dignity or respect was more apparent in the way she was moved from one section to another once she had lodged a complaint of harassment.

- (b) Para 2(1)(b) *“A person who has been subjected to sexual harassment in the Department has the right to raise a grievance about it should it occur and the appropriate action will be taken;”*

The Department through its managers at St Albans had failed the complainants. The evidence of the complainants was that they indeed complained in the appropriate manner and fulfilled the requirements of the Policy but that the Department never took their complaints seriously.

- (b) Para 2(1)(c) *“Allegations of sexual harassment will be dealt with seriously expeditiously, sensitively and confidentially;”*

It is abundantly clear that the allegations of the three complainants were not treated expeditiously as the investigation took an awful long time. Furthermore, their complaints were definitely not treated sensitively, not even by the investigator who showed no compassion or understanding of what the transgressions entailed when he took their statements. Never during the proceedings was there any evidence that showed that that they were taken

seriously and dealt with sensitivity. The mere fact that they were harassed by other workers after they had lodged the complaints left the suspicion that the matter was never dealt with in confidence.

(d) Para 2(1)(e) *“Members will be protected against victimization, retaliation for lodging grievances and false accusations.*

The Department failed dismally in handling the complaints of the three (3) women. The circumstances as set out by the complainants showed that they have each been victimised in different ways. No protection was rendered to them to protect them from victimization at the workplace.

The provisions of the Policy were clearly not adhered to and remain mere aspirations on paper.

Mr Delport also expressed the view that having examined the Policy of the Department and in dealing with the case of the complainants, it is clear that the policy is not the problem but that the implementation of the policy causes problems and needs to be addressed. Mr Khoza did not challenge the evidence of Mr Delport.

### **3. EVIDENCE OF SEXUAL HARRASSMENT**

The three (3) complainants, Mrs Debbie Louw, Ms Maryke Vosloo and Ms Adele Van Heerden, testified in detail before the Commission at the St Albans hearings about allegations of sexual harassment against Mr Khoza.

Even though the facts relating to the sexual harassment appear not to be in dispute and were never challenged by Mr Khoza, who elected not to give evidence, in order to understand the Commission’s findings in this regard, it is

important that the facts of the sexual harassment complaints be set out in full, as the abuse of power and disciplinary process is closely linked to this.

### **3.1 Mrs Debbie Louw**

Mrs Debbie Louw stated that she was working in the personnel office during 1999 when Mr Khoza started making certain suggestive remarks to her. Most specifically she remembered an incident where he locked her in the office, grabbed her and tried to kiss her. When she refused his persistent sexual advances, he became so obnoxious that she could no longer perform her duties in the personnel office.

Mr Khoza made her life intolerable. He made certain derogatory remarks during meetings and tried to make her look incompetent and foolish in front of all her managerial staff. She gave the Commission a few examples of these incidents, one of which related to a certain staff member, Mr Simon, who was booked off work to be on sports duty. Mr Khoza was of the view that Mr Simon should take leave without pay, which was not the Departmental policy. This incident had caused Mr Khoza to shout and scream at her.

She further testified that on the 30 June 1999, she complained to Mr Nweba about the sexual harassment, and then made a statement about the incident on the 1 July 1999.

She explained that after working hours she would receive phone calls at home and that they were mostly rude/lewd messages relating to the anatomy of a man. The persistent harassment of her at the office and at home took its final toll when her husband could no longer endure it, and started divorce proceedings in December 2000.

When she was asked how she felt about the manner in which the Department had handled her complaint of sexual harassment, she responded as follows:

*“They let me down for one man. I gave them thirteen years of my life but for one man, Khoza, they let me down.”*

Mrs Louw was very tense in the witness stand and at times gave evidence in tears when she related to the Commission what she had to endure for nine (9) months from Mr Khoza. She explained that not only did his advances upset her and impact on her professionally but they also scarred her mentally and she ended up requiring psychiatric treatment at a mental institution.<sup>24</sup>

At the time when she testified, she was no longer employed by the Department of Correctional Services but was medically boarded. Mrs Louw gave her testimony under difficult circumstances and it was clear that she was still emotionally affected by what had happened to her and held the Department responsible for her mental condition. Despite her distress and emotional plea, she remained a confident witness and did not contradict herself on any aspect nor did she deviate from her earlier testimony. She courageously decided to take the matter forward so that victims like her may be spared the harsh treatment she had received from the Department.

### **3.2 Ms Maryke Vosloo**

Another complainant, Ms Maryke Vosloo, testified that she is a female psychologist and has been employed by the Department of Correctional Services since the 12 January 1998. She was stationed at Medium B Prison, St Albans, Port Elizabeth at the time she was sexually harassed.

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<sup>24</sup> It affected her psychologically and she ended up requiring psychiatric treatment at a mental institution and ultimately her condition impacted negatively on her marriage.

Ms Vosloo explained that she had also lodged a complaint of sexual harassment against Mr Khoza in July 1999 and set out all the relevant facts relating to the sexual harassment as well as those relating to her disciplinary enquiry.

It was her testimony that the first woman who had laid a complaint against Mr Khoza was Mrs Debbie Louw followed by the complaint of Ms Adele van Heerden and finally herself. She was therefore the third person to lodge a complaint of sexual harassment against Mr Khoza. She explained to the Commission about the complaints and made it quite clear that her evidence would focus on the manner in which the complaints were handled and their dissatisfaction with the Department in handling it, coupled with the fact that she was finally victimised by having to endure the process of a disciplinary hearing and to suffer the humiliation of being dismissed.

Not long after laying the complaint of sexual harassment referred to above, she was charged with breaching security arrangements for giving a prisoner a psychological report. She explained to the Commission that the whole matter was a misunderstanding and that she had needed to finalise the report of the inmate Mr Crouse. She had therefore handed a copy of his preliminary report to him to check the graphic details. She said that this was explained to all the relevant people when her conduct was questioned. However, she was still charged in terms of the Departmental B-Orders with sabotage, publishing documentation she was not authorised to publish and breaching security regulations. She was not satisfied with her disciplinary hearing and the matter was still pending on appeal on the day that she testified before the Commission.

Ms Vosloo's main grievance at the time when she testified before the Commission was that nothing came of the complaints laid by the three women. Their complaints were not taken seriously and because the Department failed them, they were forced to seek justice through the criminal process. Even the criminal case was, at the time of writing this report, still pending.

By “promoting” Mr Khoza, the harasser, to the Provincial Commissioner’s office shortly after the complainants had laid the charges, a clear message was sent out to these women that they would not be believed.

The action taken by the Provincial Commissioner raised within them a perception that the matter would definitely be swept under the carpet and that Mr Khoza would not be disciplined for his actions. The fact that they did not receive any support from Mr Nweba, the Head of Personnel, strengthened their belief that the Department would not supported them in their pursuit of justice.

### **3.3 Ms Adele Van Heerden**

Ms van Heerden, who previously worked for the Department of Correctional Services at Medium B Prison, St. Albans, testified about an incident that happened during September/ October 1998, when Mr Khoza kissed her against her will while she was alone photostating copies of the G144’s in the conference room of the Area Manager’s office.

She furthermore referred to other incidents of harassment when she worked permanently on first watch night duty in the radio control room at Medium B, when Mr Khoza would visit the prison, remark on her beauty and tell her that he is in love with her and wants to kiss her. Sometimes he begged her to kiss him. She did not welcome his sexual advances and told him so.

She told the Commission that he went so far as to send her a text message from his cell phone number, namely, “Good evening you Beauty, that’s Verrom.” She saw this name, Verrom, on his calculator in his office. She never reported the incident to the Anti-Corruption Unit but reported it to her parents, who advised her not to take action as that might have led to complications that could have affected her future in the Department. Another member offered to report the matter to the

Psychologist, Ms Vosloo. Ms Vosloo came back to her the following day and told her that she had more or less the same experience with Mr Khoza and that they should decide what to do about the situation. Ms Vosloo later advised her not to take action because of the complications that may ensue from such a complaint. This is why she did not report the matter to any authority until she could no longer bear it.

There was an attempt to deal with her complaint against Mr Khoza at a management meetings but one of the Popcru shop stewards, Mr Minners, told her that she was using the sexual harassment charge to her own advantage. Ms van Heerden was reduced to tears when she told the Commission how Mr Minners words made her lose control to the extent that she grabbed him. She told the Commission that she was so hysterical at that time that she had to receive medical treatment. Throughout her testimony, she struggled to control her emotions and to relay to the Commission what had happened without being overcome with emotion.

After the meeting where Popcru was represented, she was moved to the Transport Section where she had to endure further victimisation because members constantly made remarks about her complaint.

Initially, and in accordance with the Department's Sexual Harassment Policy, she was informed by the Personnel Officer that she could use 'special leave' because her 'injury' was an injury on duty. However, later she was informed that because Mr Khoza was not convicted internally on any incident of wrongdoing, she could no longer be granted special leave despite medical evidence supporting the fact that mentally she was unfit to work due to the trauma suffered at the work place. The denial of special leave exacerbated her trauma.

She could not go back to work because of her mental instability and was 'forced' to resign.<sup>25</sup> Ms van Heerden felt extremely frustrated by the fact that the Department did not grant her the opportunity to get the benefits that any other member would have got when he/she was injured on duty, particularly since her mental instability could all be attributed to the sexual harassment.

She is no longer employed by the Department and is now the owner of a small coffee shop. According to her, she has struggled to make ends meet and has been financially destroyed by Mr Khoza's harassment. She is aggrieved that the Department left her no choice but to resign. She begged the Commission to look into the matter so that at least her claim for being injured on duty could be processed by the Department.<sup>26</sup>

Ms van Heerden was also cross-examined by Mr Nweba but never deviated from what she had said earlier in her evidence in chief. She did, however, elaborate on the fact that when she had asked Mr Nweba whether he cared about what was happening to her that Mr Nweba had said to her that he only cares about two things in life, his God and his Union.

It is clear from Ms van Heerden's evidence that she attributed her second nervous breakdown to the Department's failure to process her claim for special sick leave and Workmen's Compensation. Working for the Department became so intolerable that she had to give the Department 24 hours notice of her resignation since she was in no mental condition to continue with her work.

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<sup>25</sup> See discussion below where the view is held that the Department may have constructively dismissed Ms van Heerden.

<sup>26</sup> The harassment occurred at the prison and the Commission is of the view that Ms van Heerden's psychological injury occurred in the course and scope of her work.

#### 4. MANNER OF INVESTIGATION

Before evaluating the evidence of the three (3) complainants, the initial investigation of the complaints of sexual harassment by the investigator, Mr Z.S. Gaqa, requires closer scrutiny and comment.

The first area of concern to the Commission is the fact that the investigation was carried out by a male investigator, Mr Gaqa, despite the fact that all the complainants were female coupled with the fact that all their complaints related to wrongful sexual conduct by a male.

Sexual harassment must be distinguished from other forms of harassment at the workplace.<sup>27</sup> Victims of sexual harassment are generally traumatised by the events and in many cases are required to relay intimate details to the investigator. It is important therefore that victims are comfortable with the way the matter is investigated.

The appointment of a male investigator in circumstances where the services of a female investigator was required hampered the proper investigation of the case. This is supported by the fact that Ms Vosloo, who had initially refused to give a statement to Mr Gaqa, was able to give a more detailed and elaborated second statement to Mrs Thembisa Spambo, a Deputy Director, employed by the Department at a later stage. Clearly whoever appointed Mr Gaqa showed a lack

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<sup>27</sup> See J G Mowatt “Sexual Harassment – New remedy for an old wrong” (1986) 7 ILJ 637 at 638 wherein he describes sexual harassment as follows:

*“Sexual harassment occurs when a woman’s sex role overshadows her work role in the eyes of the male, whether it be a supervisor, co-worker, client or customer; in other words, her gender receives more attention than her work. In its narrowest form sexual harassment occurs when a woman is expected to engage in sexual activity in order to obtain or keep her employment or obtain promotion or other favourable working conditions...It is generally agreed that the effect of sexual harassment in the short term is to make the victim embarrassed, disillusion or humiliated and, in some instances, her work performance may suffer.”*

of insight and demonstrated insensitivity into the nature of the alleged transgressions.

The manner in which Mr Gaqa handled the investigation into the complaints of the three (3) women also left much to be desired. His lack of interest in the matter and his general attitude to his duties as investigator, was clearly demonstrated in the initial stage of the investigation when he had no time to take down Ms Vosloo's statement. Instead, he directed her rather to sign a blank statement form. Such conduct, coming from an investigator, is not only totally unacceptable but also unethical. He furthermore failed to keep the complainants properly informed of the progress of his investigations where it was expected of him to keep them informed.

It is clear that Mr Gaqa acted most inconsiderately to the complaints and without any appreciation of the alleged conduct of the alleged perpetrator. It cannot be said that he acted and investigated impartially. At best, the handling of the complaints of sexual harassment can be described as a successful attempt of rubbing salt into the wounds or even secondary harassment.

In order to show the shortcomings in the handling of the complaints, the findings made by Mr Z.S. Gaqa in his investigation report,<sup>28</sup> which is annexed<sup>29</sup> hereto, will now be discussed.

It is clear from the reading of Mr Gaqa's report that he was very sympathetic to the harasser, Mr Khoza, so much that one can say that he almost sided with him. His sympathy to the harasser showed no attempt to treat the complaints seriously or fairly. The findings show that there was a general expectation from the investigator that the complainants could not be believed since they had no witnesses observing the incidents. If Mr Gaqa's reasoning is to be accepted then

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<sup>28</sup> These findings are contained in a report that formed part of St Albans hearings Exhibit 'J', a statement made by Ms Vosloo.

<sup>29</sup> See Appendix 'F2' attached to this report.

it would mean that no single witness would ever be able to bring a charge of rape or sexual assault, since there would be no witness to substantiate their complaint if they were alone with the perpetrator. This is also contrary to our law. In South Africa you can be convicted on the evidence of a single witness.<sup>30</sup>

Furthermore, a review of the report reflects little if no understanding of what sexual harassment entails. It is seriously flawed in many ways. It has been alluded to early in this report that the investigator erred by arguing that the complainants should have corroborated each other on the occurrence of the harassment. Not only were they single witnesses to the events but evidentiary concepts such as similar facts strengthen the probability that they were sexually harassed. This had been completely overlooked by the investigator.

A review of the recommendations made by Mr Gaqa shows that he had no basis for rejecting the charges of the complainants nor was there any reason for him to doubt their credibility. His task was to investigate and not act as judge and jury in the matter. In usurping the function of a Disciplinary Tribunal, he did the Department and the complainants a disservice.

A responsible manager and investigator would have taken cognizance of the nature of the transgressions and would have recommended that, under the circumstances, disciplinary action be instituted in the matter because of the *prima facie* evidence that existed.

## 5. ANALYSIS

It is most disconcerting that at a time when most organizations in the new democratic South Africa, be it public or private, have become more victim

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<sup>30</sup> See Section 208 of Act 51 of 1977 that reads as follows:

“An accused may be convicted of any offence on the single evidence of any competent witness.” (own emphasis)

orientated and sensitized in dealing with the rights of victims, the Department offered little support to the victims in this matter. There seems to be a clear disregard for the rights of victims, particularly female employees, where serious offences had been committed against them.<sup>31</sup>

It is regrettable that these three (3) complainants had to seek justice in a criminal court where they are burdened with the highest standard of proving their case. If the department was truly sensitive towards the rights of its employees, it would not have neglected its duty and the matter would have taken its normal course through the Department's disciplinary process where the standard of proof is on a balance of probabilities.

The neglect of the rights of these three (3) victims shows a reluctance to discipline, which is not in accordance with general labour practices. Since there was no explanation for such reluctance, it is reasonable to infer from all the evidence presented so far and in particular that of Ms Kgosidintsi, Ms Tseane and Ms Molathedi that the rights of female employees of the Department are less protected and less important than those of their male counterparts.

Much reliance was placed by the officials of the Department on the fact that the three (3) complainants did not corroborate each other. However, if one looks at the investigation of the matter itself, it is clear that this was not simply a single complaint from one woman but in fact three (3) different complaints from three (3) different women about three (3) different events at three (3) different times and that the only common denominator was that the transgressions were committed by one single individual, namely Mr Khoza. It is therefore not only improbable but also impossible that these three (3) complainants could have conspired in an attempt to corroborate each other if they are witnesses to different events. It is also mind boggling how the Department could deduce from its investigation that these witnesses, namely Ms Vosloo and Ms van Heerden were supposed to

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<sup>31</sup> See paragraph 4.2 of Mr Gaqa's investigation report attached hereto as Appendix 'F1'.

corroborate the evidence of Mrs Louw. Such argument defies any logic. There is no clear indication that they either individually or collectively conspired against Mr Khoza when they laid their complaints. Despite all the facts showing that any conspiracy was impossible, the Department elected not to pursue the matter through the disciplinary system but instead, preferred to make a biased credibility finding in the investigation report regarding their truthfulness without granting the complainants the chance to respond to such a finding or to prove their credibility before a disciplinary tribunal. Through this action alone the complainants were denied the opportunity to state their case to an objective tribunal, which only exacerbated the trauma suffered by them and ultimately denied them any justice in the process.

In deciding upon the issue of disciplinary steps, much weight was attached by the Provincial Office to the fact that the complainants did not complain immediately. However, the management lost complete sight of the fact that is quite understandable that a complainant might have a plausible reason for not reporting the incident of sexual harassment immediately or soon after the occurrence. By being denied the opportunity to motivate the delay the victims were prejudiced and had to seek recourse through the criminal courts.

An analysis of Mrs Louw's evidence shows that the conduct of Mr Khoza, who was her supervisor, could not be excused in any way. He was clearly seeking sexual favouritism and when she did not want to submit herself to his sexual advances he made her professional life a misery. What makes his conduct more reprehensible is the fact that it was not a once-off incident but a persistent series of harassments. He abused his authority in the hope of extorting a sexual favour under circumstances where it was unwanted and inappropriate for a manager to conduct himself in such a manner.

In this matter, there was a clear message sent out to the complainants that their complaints would not be believed when the harasser, Mr Khoza, shortly after they

had laid the charges, was “promoted” to the Provincial Commissioner’s office. This action of the provincial office gave rise to their perception that this matter would be swept under the carpet and that the perpetrator would not be disciplined. The fact that they were then accused of being part of “a racist conspiracy to discredit a senior black manager” gave their perception even greater weight. What they construed as being most unfair was that after they lodged complaints against Mr Khoza for sexually harassing them, they were in turn subjected to harassment and victimisation at the work place.

It is this victimisation that resulted in Ms van Heerden and Mrs Louw leaving the Department in different ways, that is, the one resigning and the other being medically boarded. It needs to be stated that in the case of Ms van Heerden, the working conditions became intolerable because the Department shifted her from one position to another in the prison without ever considering the fact that she was traumatised by the events. An objective analysis of the treatment received by Ms van Heerden after she had fallen prey to Mr Khoza's harassment shows that the Department and those members handling of her "transfers" in the prison effectively and constructively dismissed her.<sup>32</sup> Not a single manager acted in accordance with the sexual harassment policy, namely to create an environment

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<sup>32</sup> It is important to consider in the case of Ms van Heerden the provisions of the Labour Relations Act and in particular, section 186(1)(e) of the Act that reads as follows:  
Section 186(1)(e) of the LRA reads as follows;

Dismissal means that ...

*“(e) an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee.”*

Also see *Pretoria Society for the Care of the Retarded v Loots* (1997) 18 ILJ 981 (LAC) at 985A-B, Nicholson JA stated:

*“The enquiry then becomes whether the Appellant, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. It is not necessary to show that the employer intended repudiation of the contract; the court’s function is to look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it. I am of the view that the conduct of the parties has to be looked at as a whole and its cumulative impact assessed.”*

See also *CEPPWAWU & another v Glass Aluminium 2000 CC* (2002) 5 BLLR 399 (LAC) at 404G-406D).

and climate in which a victim of sexual harassment will not feel that their grievances are ignored.<sup>33</sup>

## **6. RECOMMENDATIONS**

6.1 It is recommended that:

- (a) All supervisors be trained and sensitized regarding the Department's Sexual Harassment Policy to enable them to properly apply the provisions of the Policy. Without such training the Policy will remain mere rhetoric and sexually harassed employees will continue being denied justice at the workplace.
- (b) All managers should be tasked to implement the Departmental Sexual Harassment Policy and disciplinary action should be taken against employees who do not comply with the policy. All managers must be trained and made aware of the fact that sexual harassment differs in nature from other disciplinary transgressions and hence investigators tasked with such investigation should be appointed with greater care and caution. In the matter discussed, for example, the victims would have been more comfortable and at ease with an investigator of the same gender. If attention is not paid to the needs of victims, there is a real likelihood that victims will not reveal all the details to the investigator due to the intimate nature of some of the harassments.
- (c) The Department should consider amending its Sexual Harassment Policy to empower harassed complainants in the following way: to

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<sup>33</sup> See Sexual Harassment Policy- Appendix 'F2' at para.6.

give them the opportunity, once an investigation is completed and the complaint is founded, to decide in conjunction with management whether the matter should be dealt with informally or formally. This proposal will alleviate the grievances of complainants in matters like this and at the same time be sensitive to their needs. It will also be more in accordance with the Code of Good Practice on the handling of sexual harassment cases.

- (d) Mr Gaqa not be used as an investigator as he lacks the required objectivity and impartiality that is needed to investigate matters. His bias in this matter also leaves a question mark whether he would be suitable objectively to preside in disciplinary matters in future.
- (e) The Department process the claim instituted by Ms van Heerden to the Workmen's Compensation without delay. Her application should have been lodged when she was still employed and she should not be prejudiced by the inaction and negligence of members of the Department.
- (f) That Mr Khoza be departmentally charged with three (3) charges of contravening Column A clause 5.5 of the Department's Disciplinary Code, in that he sexually harassed the three (3) complainants. In making this recommendation, due cognisance is taken of the fact that the formal disciplinary hearings have a time frame of three (3) months in which such disciplinary hearings should be instituted. However, the Code provides that in matters where the employer can submit good reasons, the disciplinary hearing can still proceed despite the time that may have elapsed.<sup>34</sup>

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<sup>34</sup> See Clause 7.4 of the Department's Disciplinary Code. In the present case sound reasons exist for charges to be brought against Mr Khoza. The investigation was never fully completed and only became completed once the Commission filed this report.

It would be a travesty of justice and nothing short of a disgrace if someone who is accused of such reprehensible behaviour continues with impunity to go about his duties in the Department.

## **7. MANAGERIAL ABUSES**

The Commission earlier on in this report alluded to the fact that the problems facing the Department are multi-faceted and deeply rooted. One of the major factors contributing to the disarray that exists in the Department appears to be an inefficient disciplinary system that lacks the will or capacity to properly discipline the employees.<sup>35</sup> The system is often abused and manipulated to obtain results desired by management who have their own agendas. At almost every prison that the Commission has investigated it has heard that discipline is a problem, employees and managers alike feel that discipline is not fairly instituted for the function that it should fulfil, namely to ensure that employees are obedient and contribute effectively and efficiently to the goals set by the Department.

Discipline in the main should be implemented in accordance with the processes prescribed in terms of the Department of Correctional Services Disciplinary Code<sup>36</sup> as provided for in terms of the Departmental Bargaining Council Resolution 1/2001. The Code envisages that unauthorised behaviour and criminal conduct of employees should be addressed.<sup>37</sup>

While the objectives of the Departmental Code are admirable, their implementation is a matter of serious concern to the Commission. The sexual harassment at St Albans demonstrated that the power the Code gives to

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<sup>35</sup> See the Chapter on Disciplinary Inquiries for a detailed discussion.

<sup>36</sup> Hereinafter referred to as the Code.

<sup>37</sup> See the purpose of the Code as contained in Clause 1, Annexure C of the Department of Correctional Service's Disciplinary Code.

managers can easily be abused and in fact was abused in the case of Ms Vosloo.

An in depth analysis of the conduct of all officials involved in the St Albans matter is therefore necessary.

## **7.1 The Provincial Commissioner**

Mr Raphepheng Ephraim Mataka, the Provincial Commissioner of the Eastern Cape, was the first manager that could throw light on the events of the actual sexual harassment complaints, the disciplinary inquiry that ensued for one of the complainants and the disciplinary system itself.

Mr Mataka affirmed that Ms Vosloo and two (2) other employees lodged complaints of sexual harassment against Mr Khoza, a senior member employed by the Department, who was no longer working at the St Albans Prison but in fact working at the Provincial Commissioner's office. He confirmed that despite the allegations of the three (3) complainants against Mr Khoza that he never ordered that a disciplinary inquiry be instituted against him in the matter of the sexual harassment. He also confirmed that the third complainant, namely Ms Maryke Vosloo, was the only complainant that remained in the employment of the Department and that pursuant to her complaint, she was charged for breaching the security regulations of the Department of Correctional Services by handing over a psychological report to an inmate, who was one of her clients.<sup>38</sup>

Mr Mataka tried to explain to the Commission why the investigation against Ms Vosloo was initiated and given such high priority that he personally got involved and requested a special initiator from North West Province, to wit Mr Mphanya. He initially denied during his testimony that he specially requested the services of

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<sup>38</sup> A detailed summary of all charges preferred against Ms Vosloo follows below.

Mr Mphanya. However, evidence dealt with below convincingly showed that Mr Mataka had not been truthful when he wanted the Commission to believe that it was sheer coincidence that Mr Mphanya was sent to the Eastern Cape to do the investigation in Ms Vosloo's case.

Mr Mataka was asked to comment on the fact that Ms Vosloo's dismissal was manipulated by the Provincial Office through his intervention in the process. Although he conceded that a perception could exist that the transfer of Mr Khoza to his office could be a "promotion", he was reluctant to admit that the disciplinary inquiry of Ms Vosloo that followed shortly after the transfer of Mr Khoza strengthened a perception of unequal treatment and an abuse of power.

He was also asked to comment on the fact that the 'wrongdoing' of Ms Vosloo was to hand a psychological report to the very same inmate who was the subject matter of the psychological report referred to, and that the only intention for such hand over was to let the client confirm his personal details and secondly, whether he would agree that the dismissal of Ms Vosloo was grossly unfair if the circumstances sketched were indeed true. His comment on both submissions was that he would fully agree that Ms Vosloo's dismissal would have been unfair if the submissions were borne out by the proven facts.

Mr Mataka was confronted by the evidence leader to explain his decision to withhold the two (2) statements of Mr Khoza and of another senior member of Correctional Services, Mr Eric Nweba, from the three (3) complainants, who wanted the documents to test whether the Department's decision not to institute disciplinary action against the perpetrator was indeed proper. Mr Mataka explained that he needed to consult with both Mr Khoza and Mr Nweba because he believed that the statements were confidential. Further testimony was then tendered before the Commission that all three (3) complainants were forced to approach the Commission for Conciliation, Mediation and Arbitration<sup>39</sup> for relief

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<sup>39</sup> Hereinafter referred to as the "CCMA".

because they were not granted an opportunity to examine the statements of Mr Khoza and Mr Nweba.

Mr Mataka acknowledged that he decided not to hand the documentation to the complainants because he was of the opinion that they had approached the wrong forum for relief. Mr Mataka stated that he had handed the documentation to the police after the women had laid criminal charges against Mr Khoza. He indicated that he did not hand the information to the women because the matter was in the hands of the police. He considered the police as being the first party in the matter and the women merely as interested parties and maintained that they had no right to the statements.<sup>40</sup>

Mr Mataka was questioned by Mr Soni about the suspension of Ms Vosloo, namely that she was suspended because her presence might interfere with the investigation into the allegations that she supplied a confidential psychological report to the prisoner, Mr Hugo Crause. It was the submission of Mr Soni that despite the impression that was created in the media<sup>41</sup> that Ms Vosloo was involved in the Fanie de Lange matter<sup>42</sup>, nothing in the investigation report by Mr Mphanya supported such an allegation.

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<sup>40</sup> Mr Mataka's action clearly contravened the guiding principles in the Code of Good Practice, particularly clause 5(1)(b) that provides as follows:

***“5. Guiding principles***

*(1) Employers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals. Implementing the following guidelines can assist in achieving these ends:*

*(b) All employers/management and employees have a role to play in creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their conduct does not cause offence and they should discourage unacceptable behaviour on the part of others.”*

<sup>41</sup> Mr Mataka released a press statement in a press conference and a copy of such is filed as Appendix 'F3' and attached to this report.

<sup>42</sup> The Fanie de Lange matter is discussed in more detail later in the Chapter.

Mr Mataka admitted that it was not true that Ms Vosloo was involved in the Fanie de Lange matter and it was also correct that her suspension had nothing to do with the Fanie de Lange matter. It was put to Mr Mataka that she was suspended based on a letter that Mr Mphanya had written to the Area Manager at St Albans.

The letter was handed in as Exhibit "J" and reads as follows:

*The Area Manager  
Correctional Services:St Albans  
Private Bag X6055  
PORT ELIZABETH  
6000*

*Ref: S13/5  
Date : 9\03\2001  
Enq.: Mr P Mphanya*

*"Investigation into application for conversion of sentences and / or placement under correctional supervision various cases at St Albans Management Area.*

*It has come to the attention of this office during investigations specifically on 2001\03\08, that a report from the Psychologist, Ms Vosloo, to the Chairperson of the Institutional Committee had been found in possession of inmate Hugo Crause (98594744) on 25<sup>th</sup> February 2001. The said inmate attempted to have the report handed to his wife during this specific time.*

*It needs to be mentioned that the report is a confidential document and must be handled as such.*

*These office views the leaking of confidential information or documents in a very serious light as it has the potential of causing the Department embarrassment. This type of conduct is also criminal in nature and very serious.*

*This office is of the view that Ms Maryke Vosloo was gross negligent in handling the matter and strongly recommends that she be suspended pending the finalisation or possible disciplinary steps.*

*Kind Regards*

*(sgd.) Paul Isak Mphanya*

*Investigating Officer*

*Acting Area Manager*

*Rustenburg : North West.*

Mr Mataka struggled to answer the question whether he thought that he could escape responsibility for instituting disciplinary action against Ms Vosloo. He maintained throughout his testimony that the decision to institute disciplinary enquiries indeed rested with him and that he will have to take responsibility for such decision. Mr Soni submitted that he was concerned by following the facts:

- (1) there was no publication of the statement of Mr Hugo Crause;
- (2) there was no way that Ms Vosloo could have endangered the safety of the Department;
- (3) that he, as a Provincial Commissioner, lacked judgment in deciding upon these facts to institute disciplinary action against Ms Vosloo.

Mr Mataka's answer never dealt with the concerns raised. Instead he preferred to state that the evidence leader's concerns were merely one person's view on the case.

Mr Mataka's conduct demonstrated to the Commission that he either never entertained the true facts leading to the disciplinary action against Ms Vosloo or if he did, that he could only have acted with malicious intent.

Objectively, Ms Vosloo's conduct could never have endangered the safety of the Department nor could it be seen as the 'publication' of a confidential document. At no time did she give the confidential psychological report of the inmate Hugo Crause to a third person. If the inmate wants to disclose such information to a third party or his wife, as the letter from Mr Mphanya alleged, then that is his prerogative. It would be another matter entirely if Ms Vosloo submitted the document to another institution without the client consenting to it or verifying it. In such circumstances she, as a psychologist, would clearly have acted unprofessionally and *contra* to the ethics of her own profession.<sup>43</sup> None of this occurred in this case.

If there was no malicious intention on the part of Mr Mataka, it should have been obvious to him, as the most senior official in the Department in the province, that the disciplinary proceedings against Ms Vosloo were being instituted maliciously. It is reasonable to have expected him to do his duty and to intervene decisively to put an end to what was developing into nothing more than a vindictive "witch hunt" against Ms Vosloo.

On the contrary, he did nothing of the sort, but rather appears to have assumed an active and direct role in the initiation of the disciplinary proceedings against Ms Vosloo that resulted in her dismissal. He allowed his hand picked official to investigate, compile a report, initiate disciplinary proceedings and tender evidence before the tribunal regarding Ms Vosloo's alleged transgressions. He therefore not only contravened the Department's Sexual Harassment policy ensuring protection against victimisation and retaliation to members who lodge grievances but also abused the power vested in him.

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<sup>43</sup> See the Health Professions Act No. 56 of 1974 that also governs psychologists. Such conduct would be considered unprofessional specifically in terms of Section 1, which reads as follows:

*"unprofessional conduct means improper or disgraceful or dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a person who is registered in terms of this Act, is improper or disgraceful or dishonourable or unworthy."*

Mr Mataka's lack of good judgment, truthfulness and general unsuitability for the office of Provincial Commissioner, is also apparent from his evidence wherein he appeared to find nothing untoward or wrong when confronted with the fact that Mr Khoza had never been disciplined, that Mr Khoza had, in the midst of serious sexual harassment claims been "promoted" to the provincial office, that vindictive and flimsy charges were brought against Ms Vosloo to intimidate or victimise her, that such charges did not justify her dismissal and that he had generally interfered with the due process as a manager.

If the seriousness of the allegations against Mr Khoza are considered and the fact that his defence was nothing more than a mere denial, then it is evident that neither Mr Mataka nor any of the other officials involved in the matter had any desire to discipline a senior member for his conduct.

It is apparent to the Commission that the Department should be extremely cautious in the guidance it gives to managers handling matters of sexual harassment, since the risks of being vicariously liable as a Department is very likely.

## **7.2 Mr Paul Izak Mphanya**

Mr Mphanya played an integral role in the disciplinary matter of Ms Vosloo. Despite the fact that he is from the Northern Province and was especially selected by the Provincial Commissioner, Mr Mataka, to come to the Eastern Cape and investigate irregularities regarding an inmate, Mr Fanie de Lange, he at the same time investigated alleged transgressions committed by Ms Vosloo, the psychologist at the St Albans Prison. Mr Mphanya also compiled a report regarding the investigation into corruption and mismanagement at the Medium B Prison.

The report compiled by Mr Mphanya relating his investigation of the transgressions allegedly committed by Ms Vosloo was handed in and filed as Exhibit "R3". His role however, did not end there since he was also elected to act as the initiator at Ms Vosloo's disciplinary hearing.

Mr Mphanya is well known to Mr Mataka since the time that they have worked together in the North West Province and as the evidence hereafter set out will show, his choice, as the investigator, was not without significance.

Mr Mphanya stated during his testimony that he was appointed by the Provincial Commissioner Eastern Cape, Mr Mataka, after due consultation with the Provincial Commissioner North West, Mrs Tseane. When Mrs Tseane, the Provincial Commissioner North West, came to testify before this Commission on a matter not related to this specific incident of sexual harassment, she informed the Commission that she was not consulted to release Mr Mphanya to handle the investigation in the Eastern Cape but was in fact requested by the Provincial Commissioner Eastern Cape to specifically appoint Mr Mphanya to come and investigate the matter in the Eastern Cape. She then merely complied with this specific request.

Besides the oral testimony of Mrs Tseane, the correspondence relating to his appointment as investigator in the matter, also supported and corroborated Mrs Tseane's testimony that Mr Mphanya's services were especially requested. The document marked St Albans Exhibit 'R2' is illustrative and reads as follows:

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*Provincial Commissioner : North West  
Private Bag 62006  
Mabatho 2735  
2001/03/05*

*The Area Manager*

*Rustenberg Management Area*

*Ref : S16/3*

Private Bag X82108  
Rustenburg  
0300

Enquiries : Mr Masikane  
Tel. 018-3846076\9  
Ext. : 144  
Fax : 018-3846071

**Attention Mr P I MPHANYA**

Dear Sir

**Re: REQUEST FOR SERVICES OF MR M P MPHANYA : PROVINCIAL  
COMMISSIONER, EASTERN CAPE**

Reference is hereby made to the telephonic conversation between Mr Mphanya and Mr Masikane of our respective offices this morning.

The request by the Provincial Commissioner, Eastern Cape for your services at the latter mentioned province, have been approved by the Provincial Commissioner, Ms Tseane on 25/02/2001.

Your office is kindly advised to communicate directly with the office of the Provincial Commissioner, Eastern Cape, for further details.

Any inconvenience that might have been caused to your good self during the arrangements is sincerely regretted. Kind regards and good luck.

Yours faithfully

(sgd) "S O Masikane"

Acting Provincial Commissioner: North West."

The contents of this letter and Ms Tseane's evidence convincingly showed that neither Mr Mataka nor Mr Mphanya had been truthful when they wanted the

Commission to believe that it was not engineered that Mr Mphanya should be sent to the Eastern Cape to do the investigation into the Vosloo matter.

Mr Mphanya's testimony was that although he was initially appointed as investigator of the matter, he was also appointed as initiator in the disciplinary matters of Mr Ben and Ms Vosloo.

Mr Mphanya was also appointed to finalise the hearing of the appeal on or before the 13 May 2002.

Mr Mphanya during his testimony stated that once he was appointed to investigate the corruption and mismanagement at the St Albans Prison, he decided to interview a number of people, inter alia, Mr Ben, Mr Hugo Crause, Mr Shamiel Mohamed, and Mr Peterson but that he never interviewed the chief psychologist, Mr Delport. Despite Mr Delport being the supervisor and line manager of Ms Vosloo, he decided it was not important to interview him. Nevertheless, Mr Mphanya claimed that he compiled a comprehensive report and dealt with all the collected information.

To show how much the disciplinary process was abused, it is essential to focus on the information that Mr Mphanya relayed to the office of the Provincial Commissioner regarding the wrongdoing and transgressions committed by Ms Vosloo. The summary of the investigation and the findings he had made in the matter, which are contained in St Albans Exhibit 'J' at pages 122-124 will be dealt with.

Regarding the mishandling of the information, he found and recommended as follows:

**"MISHANDLING OF OFFICIAL INFORMATION; Ms MARYKE VOSLOO  
PSYCHOLOGIST: ST ALBANS MEDIUM B PRISON**

## **FINDINGS**

*That on Sunday the 25 February 2001, Miss Nozuku Dayile was assigned duties at the section, and whilst there she was approached by inmate Hugo Crause, with a request that he would like to hand over to his wife a letter, that upon searching the envelope, Miss Dayile discovered that the contents were in fact a psychological report addressed to the Chairperson of the Institutional Committee. That inmate Hugo Crause, also agreed that he was in possession of the said report and indicated that it was not a final report. That the said incident was also reported to Mr Ben. That the said report is marked 'strictly confidential' and that it was compiled by psychologist, Maryke Vosloo. That the latter declined to give a statement. That misuse/mishandling and the leaking of information should be viewed in a serious light.*

*That misuse of confidential information is a serious transgression, which could result in summary dismissal of the perpetrator if, found guilty.*

*Further that it is alleged by Shamiel Mohamed that inmate de Lange, from time to time would consult the psychologist, Maryke Vosloo, and that during such consultations de Lange would receive parcels and took them inside the prison. That inmate Shamiel Mohamed was at the time assigned duties as a tea boy at the office of the Head of Prison, (Mr Ben).*

## **Recommendations**

*That Maryke Vosloo be brought before the Disciplinary Tribunal on account of misuse of confidential information. Further that she be charged on account of breaching of internal security arrangements.*

*(sgd.) P I MPHANYA*

*Investigating Officer.”*

When Mr Mphanya was cross-examined it became clear that before he commenced the investigation, he had no written mandate describing the nature of the allegations that he should investigate and the scope of the corruption that he should investigate. Mr Mphanya admitted that Mr Mataka did not hand him a written mandate setting out any terms and that the letter dated the 5 March 2001 marked St Albans Exhibit R2' does not stipulate what should be investigated.

Although he conceded that the said letter only stated that his services as an investigator were required in the Eastern Cape, he claimed under cross-examination that his brief was to look into the conversion of sentences at the St Albans Prison, more particularly the remission of sentences. He also said that Mr Mataka gave him certain files, *inter alia*, the file of Mr Fanie de Lange to investigate and process.

Mr Mphanya was cross-examined at length regarding the relevancy of the report that Ms Vosloo compiled in the case of Mr Crause, and its relevance to the investigations that he was conducting, namely the remission of sentences. He had great difficulty in answering this question and at best, could say that there was a connection between the Fanie de Lange matter and the matter of Hugo Crause, because Ms Vosloo although not directly involved in the Fanie de Lange matter was indeed indirectly involved. Nonetheless he conceded that in the report, which he compiled on Fanie de Lange, he had never mentioned that Ms Vosloo had been involved in the Fanie de Lange case at all.

Mr Mphanya was not only involved in the investigation of Ms Vosloo's disciplinary matter but was also instrumental in suspending her when he went as far as compiling a report requesting her suspension on the 9 March 2001. In his testimony he confirmed that the reason for Ms Vosloo's suspension was that she did not want to give him an explanation with regard to the Hugo Crause matter

and that it sufficed for her to be suspended. He later changed his version and after more questioning stated that there were two (2) reasons why he thought she should be suspended: 1) that she did not want to give him a written explanation in answer to the allegations and 2) that there was foul play on her behalf. Based on this, he thought it appropriate to draft a letter to the Area Manager requesting her suspension.

When he was confronted with the letter written to the Area Manager and the reasons for her suspension, which were stated in that letter, Mr Mphanya was at sea and could not explain why she'd had to be suspended. In an attempt to justify his conduct, Mr Mphanya stated that when he wrote the letter to the Area Manager, he had already come to the conclusion that Ms Vosloo was involved in irregularities regarding the Fanie de Lange matter and that her wrong doing was not only limited to the Fanie de Lange matter. However, in the same breath, he admitted that he never raised the issue of Fanie de Lange with Ms Vosloo, nor did he consult with her regarding the Fanie de Lange matter. All evidence in this matter, including the testimony of Ms Vosloo, overwhelmingly showed that the Fanie de Lange matter was never raised with her neither was she involved in it.

Mr Mphanya remained adamant that the Fanie de Lange matter was indeed the impetus to Ms Vosloo's suspension. The investigation report regarding the Fanie de Lange matter was handed in, and it was marked St Albans Exhibit 'R3'. Mr Mphanya was then confronted with what he had stated in that report, most specifically in paragraph 2, namely; "allegations of favouritism, corruption and mismanagement were brought to the attention of the Provincial Commissioner, and the latter instructed that these allegations be investigated."

Mr Mphanya was asked to explain this briefly, in the light of what he had earlier stated as his original brief. There was a vast difference between what is noted in the document and what he had said. He tried to explain to the Commission but

he could not convincingly state how his brief could have developed into looking into the matter of Ms Vosloo.

Mr Mphanya did not impress the Commission as a truthful or reliable witness. He did not take the Commission in his confidence nor did he disclose the true reasons for Ms Vosloo's suspension and the ensuing disciplinary hearing. In justifying Ms Vosloo's involvement in the Fanie de Lange matter he went as far as saying she compiled the psychological report for Mr de Lange and had said that Mr de Lange was a model prisoner. However, it is clear from the evidence that Ms Vosloo never said it but that the statement was based on information that was given to her by the Head of Prison, Mr Ben and Mr Makhaye. Despite the facts not supporting him, Mr Mphanya still tried to convince the Commission that Ms Vosloo made a false statement. When asked to explain why he did not charge her for such misrepresentation, if she had filed a false report, he could not to his embarrassment tender any explanation. Instead he proffered that such failure was an omission on his part.

Things turned out for the worst for Mr Mphanya when Mr Soni confronted him with Mr de Lange's psychological report, most specifically when it was exposed that there was no reference made in the report that Mr de Lange is a model prisoner. Mr Mphanya conceded, albeit reluctantly, that there was no indication in the psychological report that Mr de Lange is a model prisoner. Despite this inexplicable contradiction in his testimony, he still tried to exonerate himself by saying that he did not want to mislead the Commission intentionally. Mr Mphanya during his testimony showed that he could not be trusted or believed as a witness.

In order to see the bigger picture of the abuse of power it is necessary to consider the charges preferred against Ms Vosloo which are contained in St Albans Exhibit "J" and which reads as follows:

**“ANNEXURE A  
MS MARYKE VOSLOO**

**COUNT 1**

*You are departmentally charged for contravening the provision of the departmental disciplinary code as at paragraph 5.6. (Left column), in that around January or February 2001 (exact date not known to management at St. Albans Medium B Prison), you misused confidential information by handing over a confidential psychological report to inmate Hugo Crause, clearly against the provisions of correctional services Order B, service order 14.*

**COUNT 2**

*You departmentally charged for contravening the provision of the departmental disciplinary code as of paragraph 5.4. (Column A) in that around January or February 2001 (Exact date not known by management) you interfered with the records and operations of the department by handing over to inmate Hugo Crause a confidential report clearly against the provisions of services order 14(CSO-B).*

**COUNT 3**

*You are departmentally charged for contravening the provisions of the departmental disciplinary code as at paragraph 5.10 (Column A), in that you allowed Fanie De Lange to receive parcels whilst consulting with you in your office which parcels were taken into the prison by Fanie De Lange (Exact date not known to Management). That the incident took place at St. Albans Medium B prison.”<sup>44</sup>*

When the charges were examined, Mr Mphanya was asked to explain how Ms Vosloo’s conduct could be considered as handing over departmental confidential

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<sup>44</sup> See page 124 of St Albans hearings, Exhibit “J”.

documents to a third party, furthermore to explain what kind of interference had followed after the report was handed to Mr Crause. Mr Mphanya, at best, could say that the charges that were preferred against her were justified because she allowed other people who were not entitled to those documents, to have them in their possession. Illogically he then explained that if she had given Mr Crause the final report and not the preliminary report, he would not have preferred these charges against her. It escapes all reason what difference it would have made if the report was final and not preliminary. Either it is considered as a “publication” of a document or it is not.

Mr Mphanya also admitted that he informed the Provincial Commissioner, Mr Mataka, that Ms Vosloo would be suspended. However, the reasons he had given to the Commission justifying her suspension did not correspond with those contained in the suspension letter. The suspension letter, although issued by Mr Nweba, was based on information supplied by Mr Mphanya. A perusal of the letter shows a clear contradiction. Ms Vosloo was suspended on the 11 March 2001 and was issued with a letter of suspension on the 11 March 2001. The reasons for her suspension are stated in the suspension letter at page 93 of Exhibit ‘J’, and reads as follows:

*“The reason why this office is considering your suspension is due to the fact that your presence at the workplace might directly or otherwise hamper the investigation in which it is alleged that you supplied a prisoner with confidential information.*

*(sgd.) E M Nweba*

*Area Manager : Correctional Services St Albans.”*

Despite all his attempts to justify the suspension letter, Mr Mphanya could not convincingly show that he either applied his mind properly to the request for suspension, or that he had set out the full reasons why she had to be suspended.

Mr Mphanya stated that he definitely said that Ms Vosloo's presence would hamper the investigation. However, when asked to show where in his report he referred to such, he could not show nor find a trace of such a statement in his report. This is a very important omission. Either Mr Nweba did not consider the true reasons for her suspension and acted *mala fide* or based his decision to suspend on information that was forwarded to him by Mr Mphanya orally and went outside the scope of the formal documentary evidence.

Despite Mr Mphanya's testimony that he indeed considered her presence as a factor that would hamper the investigation, in the absence of any such statement in his own report, one must infer from the circumstances, that Mr Nweba was either acting outside the scope of the document or was ill informed by Mr Mphanya that Ms Vosloo would hamper the investigation and that her presence should not be required on the premises. Bearing in mind that Mr Mphanya was the sole investigator in this matter and that the only other person he informed of any developments in the matter was Mr Mataka, it is reasonable to infer that the information could only have come from two members, either him or Mr Mataka. Mr Mphanya denied that he ever spoke to Mr Nweba and also denied that he spoke to Mr Mataka about the reasons why she should be suspended.

If one accepts the word of both Mr Mphanya and Mr Mataka that they did not supply Mr Nweba with information, then it is disturbing that the Department could suspend professional people like Ms Vosloo in such an arbitrary fashion. In the one instance, there is a letter from the investigator stating the reasons why she should be suspended, coupled with his testimony that he applied his mind to her suspension, and then on the other hand, there is the notice of the intended suspension issued by the Acting Area Manager, Mr Nweba, stating other reasons for the suspension. This indicates that the process clearly under the circumstances, was manipulated, if not by the two (2) individuals, then such instruction came from a higher authority and they acted on it without applying their own minds.

It is evident that Mr Mphanya dealt with the Vosloo matter incompetently and changed his versions as to the basis for her involvement in the Fanie de Lange matter so many times that it is impossible to believe that he acted *bona fide* and without malice.

When his competency and his ability to deal with disciplinary enquiries were scrutinized, it turned out that he had only conducted two (2) disciplinary enquiries namely, that of Mr Ben and Ms Vosloo, both working at St Albans Prison and that these two (2) cases were the only two matters that he had handled as an investigator.

It is therefore quite extraordinary that his services were sought after to the extent that he was specially requested from another province to come and deal with the two (2) matters. As Mr Mphanya neither had the experience to deal with disciplinary matters nor did he have a proven track record as an investigator, the question remains why his services were specifically solicited by Mr Mataka for the Eastern Cape. The only reasonable inference that can be drawn from the facts at hand is that he was prepared to follow instructions and be told who to charge and what charges to prefer against the individual.

Mr Mphanya showed that he lacks integrity and honesty and should not be involved in disciplinary matters of members in future.

### **7.3 Ms Maryke Vosloo**

When Ms Vosloo testified before the Commission in September 2002 her status was that of a dismissed employee. Her dismissal, however, was on appeal and not been finalised despite the fact that she was dismissed on the 1 November 2001 and suspended since the 12 March, 2001.

In the main, it is not necessary to again summarise Ms Vosloo's evidence regarding the sexual harassment complaint in detail, as it is not so much the specific conduct of the sexual harasser as the abuse of a disciplinary process that is important. The disciplinary process will also not be dealt with again since it was extensively discussed when the conduct of Mr Mphanya was examined.

Ms Vosloo stated that she felt betrayed by the system. As a victim of a sexual harassment at the workplace, she found herself being victimised because she had chosen to remain in the Department and to challenge the decision of the Department not to institute disciplinary steps against her former Head of Prison, Mr Khoza. This decision to stay in the Department and not to resign led her to being targeted by a disciplinary system for conduct that she did not consider as wrong.

Her dismissal has had an enormous impact on her career path because she has been without a job since the finalisation of the disciplinary hearing. Even before the disciplinary hearing was held, she had already been suspended from office. In total, she has been denied the opportunity to work for two (2) years and three (3) months. She was not only harmed by being denied an opportunity to work as a professional person but the charges that were preferred against her were without any substance.

The impact of being denied the opportunity to continue with one's employment is clearly highlighted in the case of *Muller and Others v Chairman Minister's Council, House of Representatives and Others*,<sup>45</sup> which is of relevance here:

*"The implications of being barred from going to work and pursuing one's chosen calling, and of being seen by the community round one to be so barred .... There are indeed substantial social and personal implications*

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<sup>45</sup> 1999 (2) SA 508 (C) at 523 B-C.

*inherent in that aspect of suspension. These considerations weigh as heavily in South Africa as they do in other countries.*"<sup>46</sup>

#### **7.4 Mr Eric N. Nweba**

In order to examine the managerial abuse in its entirety it is necessary to also examine the conduct of Mr Nweba, the presiding officer of the disciplinary hearing in the case of Ms Volsoo. It should be borne in mind that it was Mr Nweba who earlier exercised the discretion to suspend her on information that was submitted to him by the investigator Mr Mphanya.

A basic rule of natural justice and our administrative law is that any arbiter should be impartial in deciding a matter. Similarly in employment law, it is required that the presiding officer in a disciplinary hearing should not have been involved in the incident that gave rise to the hearing.

In the matter of Ms Vosloo, however, it is clear that Mr Nweba was very much part of the decision to institute disciplinary steps against the member, yet when he was requested to withdraw as presiding officer at the hearing he refused to do so and proceeded to hear the matter despite his prior knowledge of her misconduct. His persistence in presiding over the matter is inexplicable and procedurally tainted the fairness of the process. Mr Nweba, as a senior manager in the Department, should have known that he should have recused himself from hearing the matter against Ms Vosloo.

The only inference that can be drawn from his persistence in hearing the matter, even when an application was lodged that he should recuse himself, was that he was committed to preside in the matter come what may. It is therefore not surprising that Mr Nweba ultimately imposed the most severe punishment,

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<sup>46</sup> *Op cit* at 523 B-C.

namely to dismiss Ms Vosloo, even though the evidence against her was flimsy and controversial.

In the light of the testimony of her own supervisor, Mr Delpport, during the disciplinary hearing who supported her conduct as being ethical and professional and the inability of the officials Mr Mataka and Mr Mphanya to justify her “wrongdoing”, it is necessary to draw the inference that the case against Ms Vosloo was predetermined and that the entire process was abused by the officials involved.

Although Mr Delpport’s testimony has been discussed earlier, it is also important to deal with the fact that he, as Ms Vosloo’s supervisor and as the line manager, was completely ignored and side-lined by the Department officials when a decision had to be taken whether she should be disciplined.

Mr Delpport was quite upset that he had not been asked to give an opinion on whether Ms Vosloo should be charged, as the matter concerned related to a professional issue, namely, whether a psychological report should be handed to a client by the psychologist. He considered the conduct of Mr Mphanya and Mr Mataka as contemptuous of his authority over Ms Vosloo as a professional person and expressed his dissatisfaction by writing two letters to Mr Mataka to inform him that he should have been the first to be consulted whether disciplinary steps should have been instituted against a professional colleague under his supervision. His dissatisfaction, however, had no effect or impact on the steps taken against her.

An examination of the Disciplinary Code of the Department shows that Mr Delpport was quite justified in being aggrieved by the conduct of Mr Mataka, Mr Mphanya and Mr Nweba. In terms of the Code<sup>47</sup>, which deals with the authority to take

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<sup>47</sup> See Clause 6 of the Department’s Disciplinary Code, that reads as follows:

disciplinary action, Mr Delpont should have exercised the authority to institute disciplinary action against Ms Volsoo, unless extraordinary circumstances existed that required that he be excluded as a line manager in making the decision. Throughout the hearing no such circumstances were ever tendered by any of the three (3) officials.

Mr Nweba challenged Mr Delpont during the Commission proceedings whether he was not part of the management system that had failed Ms Vosloo since he was her supervisor. Mr Delpont explained that he is indeed her supervisor and that he assisted her in her professional conduct with Mr Khoza but that a formal complaint was never lodged with him regarding her being sexually harassed. He was very surprised that both Mr Nweba and Mr Gaqa would consider him as her supervisor when they want him, together with them, to be collectively accountable for the Department's failure in assisting her as a harassed victim and employee, and yet he was excluded as a manager when officials wanted to institute disciplinary action against Ms Vosloo.

The way Mr Mataka, Mr Mphanya and Mr Nweba ignored Mr Delpont when a decision was taken to discipline Ms Vosloo, showed nothing but contempt for a fellow manager. Ms Vosloo's so called misconduct clearly related to a professional issue and Mr Delpont was the most suited person to decide whether disciplinary steps should be instituted against her. The manner in which he was

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*“Discipline is a line-management function. The Commissioner shall delegate powers to different levels of line-management for the application of discipline. In the normal course of events, the direct supervisor shall be responsible for disciplining employees under his supervision. The direct supervisor shall initiate the disciplinary hearing and the following level of supervision shall have the responsibility of chairing such hearing. The principle may not be compromised and supervisors and managers may not abdicate their responsibilities in this regard unless extraordinary circumstances are present (for example, the initiator was allegedly involved in the transgression, or is temporarily or permanently incapacitated for a reason (illness), or the Chairperson dies not dispose of the delegated authority to chair the hearing or was either involved in the incident or has prior knowledge of the detail of the incident or is temporarily or permanently incapacitated for a reason (illness), etc).”*

ignored and denied the opportunity to exercise his authority shows that the officials were busy with a witch-hunt and wanted to charge Ms Volsoo irrespective whether she had acted within the ethics of her profession. It needs to be stressed that Mr Delpont also tendered evidence at the disciplinary hearing of Ms Vosloo but his opinion was ignored and Ms Volsoo was found guilty.

## **8. ANALYSIS**

The disciplinary action taken against Ms Vosloo and her resultant dismissal were clearly aimed at victimising her, as there could have been no basis in law to dismiss her for the alleged transgressions. The entire disciplinary system was abused and used as a tool to victimise and frustrate a fellow employee. Her case is a classic example of how the Department's disciplinary process can be manipulated to bring about a desired outcome should anyone challenge those in senior positions.

The fact that she was the only sexual harassment complainant that remained in the Department and the manner in which the officials tried to charge her and dismiss her for something that was quite in accordance with her professional ethics shows the high level of intolerance for an employee attempting to challenge a superior.

The evidence showed that the provincial commissioner, Mr Mataka, had gone as far as to lie to the Commission when he stated that he never requested the services of a specific individual from the Northern Province to come and help him with the investigation against her. The evidence, documentary and oral, showed that he requested the services not only of someone but specifically Mr Mphanya. Besides the fact that Mr Mataka was not honest with the Commission he also showed that he lacked good judgment when he condoned the disciplinary action that was instituted against Ms Vosloo. Had he considered the true facts of the

matter, he as the most senior official in the province would have known that it would be malicious to institute disciplinary action against her.

The manner in which Mr Mataka pursued the disciplinary action against Ms Vosloo at all cost shows that he could only have acted with a malicious intent. The maliciousness of his conduct becomes all the clearer when all the factors concerned are considered. A line-manager was deliberately ignored in exercising his authority over a sub-ordinate, an investigator was imported to investigate the matter and a special initiator and chairperson were selected to hear the matter.

Mr Mphanya, like Mr Mataka lied to the Commission on how and why he got involved in the matter of Ms Vosloo. It is as clear as daylight that his services were specifically required because he had a specific role to play.

It is rather shocking that senior officials, like Messrs Mataka, Mphanya and Nweba, who were entrusted by the Department to ensure that all disciplinary action against employees take place in a fair manner, were prepared to throw all the principles of fairness and the procedures of the Department overboard in order to get even with a subordinate that dared to challenge them as managers.

The facts before the Commission have borne out that Ms Vosloo never stood a chance of receiving a fair hearing. Everything was well planned and directed from the investigation to the penalty that should be imposed.

Such abuse of power and manipulation of the disciplinary process reinforces the Commission's view that disciplinary enquiries are a major problem and challenge facing the Department. The Department needs urgently to focus on all the shortcomings of the process in order to ensure fair labour practices and re-instill a sense of discipline in the workplace.

## 9. RECOMMENDATIONS

It is recommended that:

- (a) Mr Mataka<sup>48</sup> and Mr Mphanya be charged with contravening Column A, Clause 4.3 of the Departmental Disciplinary Code in that they furnished false and misleading evidence to the Commission.
- (b) The Department should investigate the reasons why Mr Mataka, Mr Mapahanya and Mr Nweba usurped the functions of Mr Delpont and if no good reasons are forthcoming, then all three (3) should be charged for unsatisfactory work performance, for negligence and or failing to follow Departmental policies. (See Column B, Clause 2.1 of the Departmental Disciplinary Code)
- (c) The Department should also investigate why the appeal of Ms Volsoo has been delayed for a period of approximately two (2) years and charge those responsible for the delay for dereliction of their duties.

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<sup>48</sup> At the time of writing this report, Mr Mataka was dismissed but his dismissal was still pending before the Bargaining Council.