**IN THE COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION**

**(HELD AT JOHANNESBURG)**

 **CASE NO: GATW3508/15**

In the application by:

**MEDIA 24 (PTY) LTD** First Applicant

**M & G CENTRE FOR INVESTIGATIVE JOURNALISM**  Second Applicant

In the matter between:

**ADRIAN MARCK LACKAY**  Employee

and

**SOUTH AFRICAN REVENUE SERVICES** Employer

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**APPLICANTS’ SUBMISSIONS**

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**INTRODUCTION**

1. The First Applicant is Media 24 (Pty) Limited, the owner and publisher of various newspapers, magazine and online publications including *Beeld*, *City Press*, *Rapport* and *Netwerk24* with principal place of business at Media Park, 69 Kingsway, Auckland Park, Johannesburg.
2. The Second Applicant is the M & G Centre for Investigative Journalism, a non-profit company with principal place of business at 6th floor, 6 Pepper Street, Cape Town. The Second Applicant’s mandate is to promote open, accountable and just democracy, and a free press capable and worthy of performing this duty. In these proceedings the Second Applicant acts not only in its own interests, but in the interests of the media in general.
3. On 10 September 2015, journalists employed by the First Applicant sought access to the CCMA arbitration that was scheduled to commence between Mr Adrian Lackay and his erstwhile employer, the South African Revenue Services (“SARS”). They were denied access. In the event, the arbitration did not commence on that day and it is now scheduled to commence on 28 October 2015.
4. The First Applicant objected to being denied access to the arbitration and following correspondence in relation thereto between the First Applicant’s legal representative and the CCMA, the CCMA directed the parties to make written submissions on the question of media access by 9 October 2015. A hearing on the question has been convened for 16 October 2015.
5. The M & G Centre for Investigative Journalism in accordance with its mandate seeks access to the arbitration on behalf of all media and it is accordingly the Second Applicant herein.
6. While the issue of media access has arisen in relation to this particular arbitration – one which is manifestly of great public interest – the broader question of public access to CCMA arbitrations generally arises pertinently.
7. The Applicants submit that the default position is that all CCMA arbitrations are open to the public - and by extension the media. This is so by virtue of two clusters of constitutional rights: the fundamental right to freedom of expression, which includes the freedom of the press and other media and the freedom to receive and impart information and ideas; and the principle of open justice which includes the fundamental right of access to courts enshrined in section 34 of the Constitution.
8. As our Courts have held *“it is clear from section 34 that the constitutional ‘default position’ regarding the dispensing of justice is that it must be done in public rather than behind closed doors. It is also clear that this principle applies not only to court proceedings per se, but also, where appropriate to other fora where justice is dispensed.”[[1]](#footnote-1)*
9. There is, since the judgment of the Constitutional Court in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others,[[2]](#footnote-2)* no longer any doubt that the CCMA constitutes an independent and impartial forum as contemplated in section 34 of the Constitution. CCMA arbitrations must therefore satisfy the requirements of a “fair public hearing” in terms of section 34 of the Constitution. This being the case, it follows that the default position in respect of CCMA arbitrations must be that they are open to the public and that if any party wishes to exclude the public (and by extension the media) then the onus would lie on that party to show why there should be a departure from the norm. The Applicants seek a declaratory order to this effect.
10. In the alternative, in the event that it is found that CCMA arbitrations are not open to the public by default (which is denied) then the Applicants submit that the presiding Commissioner nevertheless has a discretion to allow the public, including the media, access to the proceedings if the public interest warrants it. That discretion must be exercised with due regard to the constitutional rights at play, including the fundamental right to freedom of expression and the constitutional imperative of open justice. As will be demonstrated below, the arbitration between Mr Lackay and SARS is, having regard to the constitutional rights and imperatives at play and to the clear public interest in the dispute, manifestly one to which access should be allowed.
11. The Applicants accordingly seek, in the first instance, a declaratory order to the effect that CCMA arbitrations are open to the public. Alternatively, and only in the event that such a declarator is not granted, the Applicants seek media access to the arbitration at hand. In that event, the Applicants seek an order in the following terms:
	1. That such number of reporters as can logistically be accommodated, be allowed into the venue where the arbitration will be held and be allowed to remain present throughout all sessions.
	2. That reporters are allowed to take notes of proceedings, including making use of hand held recording devices to record proceedings or parts thereof, for purposes of writing and publishing articles in the print and digital media.
	3. That reporters will be given access to all documents submitted during the course of the proceedings.
	4. That reporters may use electronic devices to write and post online articles or comment by way of social media during the course of the proceedings.
	5. That photography may be taken at and inside the venue, provided that no photographs may be taken while the proceedings are in session.
12. As stated above, the entitlement of the media (and the public at large) to access CCMA arbitrations arises out of the fundamental right to freedom of expression and the constitutional imperative of open justice. Each of these will be examined in turn below.

**THE RIGHT TO FREEDOM OF EXPRESSION**

1. The right to freedom of expression *“lies at the heart of democracy and is one of a web of mutually supporting rights that hold up the fabric of the constitutional order.”[[3]](#footnote-3)*
2. The right to freedom of expression is enshrined in section 16 of the Constitution. It includes the freedom of the press and other media (in section 16(1)(a) of the Constitution) and the freedom to receive and impart information and ideas (in section 16(1)(b) of the Constitution).
3. In its first judgment dealing with freedom of expression, the Constitutional Court articulated the values underlying the right as follows[[4]](#footnote-4):

“Freedom of expression lies at the heart of democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions and views on a wide range of issues.”[[5]](#footnote-5)

1. The Constitutional Court has stressed the crucial role that the media play in giving effect to the right to freedom of expression. The media do not merely act on their own behalf when they exercise the right to freedom of expression, but on behalf of all citizens. Thus in *Khumalo and Others v Holomisa*,[[6]](#footnote-6) the Constitutional Court held as follows:

“The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the right to freedom of information are respected. The ability of each citizen to be a responsible and effective member of our society depends upon the manner in which the media carry out their constitutional mandate. As Deane J stated in the High Court of Australia:

‘…..the freedom of the citizen to engage in significant political communication and discussion is largely dependent upon the freedom of the media.’

The media thus rely on freedom of expression and must foster it. In this sense they are both bearers of rights and bearers of constitutional obligations in relation to freedom of expression.”[[7]](#footnote-7)

“In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility. The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society.”[[8]](#footnote-8)

1. Without the media playing its crucial role of reporting on issues and disseminating information, the majority of citizens would simply be unable to participate meaningfully in the public life of society. Thus the House of Lords has held as follows:[[9]](#footnote-9)

“In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and decisions which shape the public life of that society….The majority cannot participate in the public life of their society….if they are not alerted to and informed about matters which call or may call for consideration or action. It is very largely through the media that they will be so alerted and informed. The proper functioning of a modern, participatory democracy requires that the media be free, active, professional and inquiring.”[[10]](#footnote-10)

1. It follows that when freedom of the press is abridged, it is the rights of all citizens that are abridged and not merely the rights of the press. The Supreme Court of Appeal expressed this as follows in *Midi Television (Pty) Ltd t/a ETV v Director of Public Prosecutions (Western Cape):[[11]](#footnote-11)*

“It is important to bear in mind that the constitutional promise of a free press is not one made for the protection of the special interest of the press. …..The constitutional promise is rather made to serve the interest that all citizens have in the free flow of information, which is possible only if three is a free press. To abridge the freedom of the press is to abridge the rights of all citizens and not merely the rights of the press itself.”[[12]](#footnote-12)

1. The right to freedom of expression, and freedom of the press in particular, is a critical aspect of the constitutional imperative of open justice. Thus in *Media 24 Limited v National Director of Public Prosecutions,[[13]](#footnote-13)* the North Gauteng High Court, per Tolmay J, held as follows:

“Access by the media to fora in which adjudications are made on issues of public importance is a critical aspect of the constitutional imperative of open justice. It is, as the Constitutional Court has indicated, through the media exercising its obligation to affect a free flow of information to the public that the right to receive information and form ideas is realised. Through this free flow of information via the media, government and other public institutions are held accountable to the public.”[[14]](#footnote-14)

1. It is to the principle of open justice that we now turn.

**THE PRINCIPLE OF OPEN JUSTICE**

1. *City of Cape Town v South African National Roads Authority Limited and Others[[15]](#footnote-15)* recently handed down by the SCA, is a seminal judgment on the principle of open justice. Ponann JA, writing for a unanimous Court, held as follows:

“The principle of open justice, according to Chief Justice Spiegelman, is one of the most pervasive axioms of the administration of common law systems. It was from such origins, so he states:

‘that it became enshrined in the United States Bill of Rights and, more recently, in international human rights instruments such as Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention of Human Rights, as adopted and implemented by the British Human Rights Act 1988. In both cases the right is expressed as an entitlement to ‘a fair public hearing by an independent and impartial tribunal established by law.’”[[16]](#footnote-16)

1. In the famous English case of *Scott v Scott,*[[17]](#footnote-17) the House of Lords held as follows:

“Publicity is the very soul of justice. It is the keenest spur to exertion and the surety of all guards against improbity. It keeps the judge himself, while judging, under trial.”[[18]](#footnote-18)

1. In a similar vein the Canadian Supreme Court in *Attorney General (Nova Scotia) v MacIntyre*[[19]](#footnote-19) held as follows:

“Many times it has been urged that the ‘privacy’ of litigants requires that the public be excluded from court proceedings. It is now well established, however, that covertness is the exception and openness the rule. Public confidence in the integrity of the court system and understanding of the administration is thereby fostered. As a general rule the sensibilities of the individuals involved are no basis for exclusion of the public from the proceedings.”[[20]](#footnote-20)

1. Notably, with the advent of the Canadian Charter of Rights and Freedoms, the open court principle was recognised as a component of freedom of expression, protected by section 2(b) of the Charter.
2. More recently the Canadian Supreme Court has ruled that the open justice principle flows from the rule of law itself:

“The importance of ensuring that justice is done openly has not only survived it has now become ‘one of the hallmarks of a democratic society’……The open court principle, seen as ‘the very soul of justice’ and the ‘security of securities’ acts as a guarantee that justice is administered in a non-arbitrary manner, according to the rule of law.”[[21]](#footnote-21)

1. The United States Court of Appeals, for the Sixth Circuit, has held as follows:

“Democracies die behind closed doors. The First Amendment, through a free press, protects the people’s right to know that their government acts fairly, lawfully, and accurately ... When government begins closing doors, it selectively controls information rightly belonging to the people. Selective information is misinformation. The Framers of the First Amendment ‘did not trust any government to separate the true from the false for us’….They protected the people against secret government.”[[22]](#footnote-22)

1. The United States Court of Appeals went on to hold that *“open proceedings, with a vigorous and scrutinising press, serve to ensure the durability of our democracy.”[[23]](#footnote-23)*
2. In South Africa, the principle of open justice was recognised in our common law before the adoption of the Constitution though it was frequently negated by apartheid legislation.[[24]](#footnote-24)
3. The principle of open justice has now been constitutionalised through the entrenchment of a right to a fair public hearing in section 34 of the Constitution and the right to a public trial in terms of section 35 of the Constitution.
4. In *South African Broadcasting Corp Ltd v National Director of Public Prosecutions,[[25]](#footnote-25)* the Constitutional Court held that the principle of open justice springs from the foundational values of our Constitution: accountability, responsiveness and openness:

“Open courtrooms are likely to limit high-handed behaviour by judicial officers and to prevent railroaded justice, to mention two of the risks of secret justice. It is not surprising then that s 35(3)(c) of the Constitution includes as one of the aspects of the right to a fair trial the right to ‘a public trial before an ordinary court.’ Similarly, s 34 of the Constitution entrenches the right to have disputes resolved in a public hearing before a court. Far from being intrinsically inimical to a fair trial, open justice is an important part of that right and serves as an important bulwark against abuse.”

Courts should in principle welcome public exposure of their work in the courtroom, subject, of course to their obligation to ensure that proceedings are fair. The foundational constitutional values of accountability, responsiveness and openness apply to the functioning of the judiciary as much as to other branches of government. These values underpin both the right to a fair trial and the right to a public courtroom (the principle of open courtrooms). The public is entitled to know exactly how the Judiciary works and to be reassured that it functions within the terms of the law and according to the time-honoured standards of independence, integrity, impartiality and fairness.”[[26]](#footnote-26) (emphasis added)

1. Open justice fosters legitimacy and credibility in respect of adjudicative processes. Thus in  *Shinga v The State*,[[27]](#footnote-27) the Constitutional Court held as follows:

“Seeing justice done in court enhances public confidence in the criminal-justice process and assists victims, the accused and the broader community to accept the legitimacy of that process. Open courtrooms foster judicial excellence, thus rendering courts accountable and legitimate. Were criminal appeals to be dealt with behind closed doors, faith in the criminal justice system may be lost. No democratic society can risk losing that faith. It is for this reason that the principle of open justice is an important principle in a democracy.”[[28]](#footnote-28)

1. Open justice allows the citizenry to engage with the issues that are being tried, thus promoting freedom of information and expression. In *S v Mamabolo[[29]](#footnote-29)* the Constitutional Court held as follows:

“Since time immemorial and in many divergent cultures it has been accepted that the business of adjudication concerns not only the immediate litigants but is matter of public concern which, for its credibility, is done in the open where all can see. Of course this openness seeks to ensure that the citizenry know what is happening, such knowledge in turn being a means towards the next objective: so that the people can discuss, endorse, criticise, applaud or castigate the conduct of their courts and, ultimately, such free and frank debate about judicial proceedings serve more than one vital purpose. Self-evidently, such informed and vocal public scrutiny promotes impartiality, accessibility and effectiveness, three of the more important aspirational attributes prescribed for the judiciary by the Constitution.”[[30]](#footnote-30)

1. In *City of Cape Town v South African National Roads Authority,[[31]](#footnote-31)* the SCA held that *“when justice is open, court reporting is a crucial avenue for public knowledge about what the government does. It is particularly important where the government is one of the parties in a case and where other sources of information are limited.”[[32]](#footnote-32)*
2. The principle of open justice in our law means that the default position regarding the dispending of justice is that it must be done in public and not behind closed doors.[[33]](#footnote-33)
3. The principle of open justice applies not only to court proceedings per se but also to certain other fora where justice is dispensed.
4. In *Media 24 Limited v National Director of Public Prosecutions,[[34]](#footnote-34)* the Court held that *“the guiding principle in all cases is whether the constitutional imperative of ensuring transparency and accountability from public bodies will be served by opening the doors to the particular forum in question.”[[35]](#footnote-35)*
5. In that case the Court had to decide whether to allow the media access to the internal disciplinary enquiry instituted against Ms Breytenbach by the National Prosecuting Authority. The Court ruled in favour of allowing media access. The Court held that the constitutional nature of the NPA and its functions was a central consideration and had two important consequence in that case, viz:

“1. The question of whether the NPA or any member has acted in breach of its constitutional mandate, and specifically its duty to prosecute without fear, favour or prejudice, is a matter of inherent and critical public interest and import.

2. The NPA is subject to the constitutional principles of transparency and accountability to the public it serves. This means that the constitutional imperative of open justice must apply in circumstances where this question is investigated.”[[36]](#footnote-36)

1. The Court concluded as follows:

“The disciplinary proceedings in this matter cannot be described as private or ordinary. Given the allegations of corruption, mismanagement and political interference serious constitutional issues arise, and the public’s right to be informed under these circumstances is undeniable.”[[37]](#footnote-37)

1. The Johannesburg Bar Council has ruled that the imperative of open justice is applicable to disciplinary enquiries of the Bar Council. In the matter of *Media 24 Limited and Another v Menzi Simelane and Another,[[38]](#footnote-38)* the Bar Council held as follows:

“It is certainly in the public interest that the manner in which the Society disciplines its members is not shrouded in secrecy. All advocates and in particular, members of the Society, are expected to be committed to the highest ethical standards. The rules of the Society are directed at maintaining those standards. The public has the right to expect that the Society will not falter in holding its members to account when they are accused of transgressing the rules. The process must be transparent. If it is not conspiracy theories will thrive.

For an association that is committed to the maintenance of the rule of law and the administration of justice, it is also in the interests of the Society that it be seen to hold its members to account. To do this, the Society must act transparently when it disciplines its members.”[[39]](#footnote-39)

1. The Bar Council therefore concluded that “*the constitutional imperative of open justice is applicable to disciplinary enquiries of the Bar Council”[[40]](#footnote-40)*  and  *“the default position concerning disciplinary enquiries of the Bar Council must be that the press is entitled to attend the proceedings and to report thereon, unless the circumstances of the particular case justify a denial of access.”[[41]](#footnote-41)*
2. The position of CCMA arbitrations insofar as the principle of open justice is concerned is significantly clearer and simpler than that of internal disciplinary enquiries. This is because the Constitutional Court confirmed in *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others[[42]](#footnote-42)* that the CCMA constitutes an independent and impartial tribunal as contemplated in section 34 of the Constitution.
3. O’Regan J held as follows:

“I should start, however, by making it plain that it is beyond doubt that the functions performed by the CCMA clearly fall within the terms of section 34 of the Constitution which provides that:

‘Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent or impartial tribunal or forum.’

The CCMA is an independent tribunal established by the Labour Relations Act. It determines a range of matters that arise between workers and trade unions on the one hand, and employers, on the other. Its hearings must accordingly be ‘fair public hearings’ within the contemplation of section 34.”[[43]](#footnote-43)

1. Plainly then, CCMA arbitrations are required to comply with the requirements of section 34 of the Constitution which includes the principle of open justice. It is submitted that it is therefore clear that CCMA arbitrations are open to the public and that the Applicants are entitled to a declarator to this effect.
2. In the alternative, the Applicants seek media access to this particular arbitration, by virtue of the constitutional rights and imperatives set out above and on the grounds that it is manifestly in the public interest that access to this arbitration be granted.

**THE PUBLIC INTEREST**

1. The issues at stake in the dispute between Mr Lackay and SARS have been widely reported on the media. Those issues will be further ventilated and the credibility of the parties’ competing versions assessed in the unfair dismissal arbitration that will be conducted by the CCMA.
2. In essence, Mr Lackay, the former spokesperson of SARS, contends that he was sidelined and victimised and ultimately constructively dismissed as a result of his opposition to certain actions taken by the new SARS Commissioner, Mr Tom Moyane. The actions to which Mr Lackay objected included the alleged purge by Mr Moyane of a number of senior officials of SARS, including the erstwhile Deputy Commissioner of the organisation, Mr Ivan Pillay. It is alleged that these officials were purged because they were committed to protect the mandate of SARS and to act in the best interests of the taxpayers and state capital and not to bow to special interest groups – some of whom were being investigated by SARS at the time of the purge.
3. Mr Lackay made these allegations in a letter to Parliament which was subsequently made public, and was widely reported on. In the letter, Mr Lackay also alleged that he was caused by Commissioner Moyane “to issue statements to the media that contained false and incorrect information.” Mr Lackay has been charged in relation to the letter he wrote to Parliament and in the view of some analysts is effectively being punished for being a whistleblower.
4. The allegations that arise in this matter and which will be ventilated in the arbitration accordingly bear on the constitutional mandate and the integrity of SARS - a vital state institution. Like the NPA, SARS is no private, ordinary employer. It is established in terms of the South African Revenue Service Act 34 of 1997 as the state institution responsible for the collection of revenue and the control over the import, export, manufacture, movement, storage and use of certain goods. It is required to perform its functions in the most cost-efficient and effective manner and in accordance with the values and principles set out in section 195 of the Constitution. These include *inter alia* integrity, transparency and accountability.
5. It is respectfully submitted that:
	1. The question of whether SARS or any member of it has acted in breach of its constitutional mandate is a matter of inherent and critical public interest and import; and
	2. SARS is subject to the constitutional principles of transparency and accountability to the public it serves. This means that the constitutional imperative of open justice must apply in circumstances where this question is investigated.
6. For these reasons, it is respectfully submitted that this is manifestly a case in which media access to the arbitration at hand is warranted.[[44]](#footnote-44) It is submitted that the words of Tolmay J in the matter of *Media 24 Limited v National Director of Public Prosecutions[[45]](#footnote-45)* apply with equal force here:

“The disciplinary proceedings in this matter cannot be described as private or ordinary. Given the allegations of corruption, mismanagement and political interference serious constitutional issues arise, and the public’s right to be informed under these circumstances is undeniable.”[[46]](#footnote-46)

1. It is accordingly respectfully submitted that the media are at the very least entitled to access the arbitration at hand on the terms set out in paragraph 9 above and that an order ought to be granted in those terms.
2. The Applicants reserve the right to supplement these submissions once those of the Employee and Employer come to hand.

**Heidi Barnes**

**Applicants’ Counsel**

*Sandton Chambers*

 *8 October 2015*

1. *Media 24 Limited and Three Others v National Director of Public Prosecutions and Two Others* [2012] JOL 29172 (GNP) at para 40. [↑](#footnote-ref-1)
2. 2008 (2) SA 24 (CC). [↑](#footnote-ref-2)
3. *Case and Another v Minister of Safety and Security and Others; Curtis v Minister of Safety and Security and Others* 1996 (3) SA 617 (CC) at para 27. [↑](#footnote-ref-3)
4. *South African National Defence Union v Minister of Defence and Others* 1999 (4) SA 469 (CC). [↑](#footnote-ref-4)
5. At para 7. [↑](#footnote-ref-5)
6. 2002 (5) SA 401 (CC). [↑](#footnote-ref-6)
7. At para 22. [↑](#footnote-ref-7)
8. At para 24. See also *South African Broadcasting Corp Ltd v National Director of Public Prosecutions and Others* 2007 (1) SA 523 (CC) at para 24. [↑](#footnote-ref-8)
9. *McCartan Turkington Breen ( A Firm) v Times Newspapers Ltd* [2000] 2 ALL ER 913 (HL) [↑](#footnote-ref-9)
10. At 922. [↑](#footnote-ref-10)
11. 2007 (5) SA 540 (SCA) [↑](#footnote-ref-11)
12. At para 6. [↑](#footnote-ref-12)
13. Supra n 1. [↑](#footnote-ref-13)
14. At para 42. [↑](#footnote-ref-14)
15. 2015 (3) SA 386 (SCA) [↑](#footnote-ref-15)
16. At para 13. [↑](#footnote-ref-16)
17. [1913] AC 417. [↑](#footnote-ref-17)
18. At 447. [↑](#footnote-ref-18)
19. [1982] 1 SCR 175. [↑](#footnote-ref-19)
20. At 185. [↑](#footnote-ref-20)
21. *Canadian Broadcasting Corp v New Brunswick (Attorney General)* [1996] 3 SCR 480 at para 17. [↑](#footnote-ref-21)
22. *Detroit Free Press v John Ashcroft* 303 F 3d 681 at 683. [↑](#footnote-ref-22)
23. At 711. [↑](#footnote-ref-23)
24. *S v Leepile and Others* (4) 1986 (3) SA 661 (W); *Botha v Minister van Wet en Orde en Andere* 1990 (3) SA 937 (W). [↑](#footnote-ref-24)
25. 2007 (1) SA 523 (CC). [↑](#footnote-ref-25)
26. At para 39 – 41. [↑](#footnote-ref-26)
27. *Shinga v The State and Another (Society of Advocates, Pietermaritzburg Bar as Amicus Curiae); O’Connell and Others v the State* 2007 (4) SA 611 (CC) at para 25. [↑](#footnote-ref-27)
28. At para 26. [↑](#footnote-ref-28)
29. 2001 (3) SA 409 (CC) [↑](#footnote-ref-29)
30. At para 29. [↑](#footnote-ref-30)
31. Supra n 15. [↑](#footnote-ref-31)
32. At para 20. [↑](#footnote-ref-32)
33. *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa and Another* 2008(5) SA 31 (CC) at para 43. [↑](#footnote-ref-33)
34. Supra, n 1. [↑](#footnote-ref-34)
35. At para 41. [↑](#footnote-ref-35)
36. At para 35. [↑](#footnote-ref-36)
37. At para 36. [↑](#footnote-ref-37)
38. Ruling on Media Access in the Disciplinary Enquiry of the Johannesburg Bar Council into the Conduct of Menzi Simelane dated 26 February 2014. [↑](#footnote-ref-38)
39. At paras 25 – 26. [↑](#footnote-ref-39)
40. At para 29. [↑](#footnote-ref-40)
41. At para 30. [↑](#footnote-ref-41)
42. Supra n 2. [↑](#footnote-ref-42)
43. At para 124. [↑](#footnote-ref-43)
44. *Media 24 Limited and Three Others v National Director for Public Prosecutions and Two Others* (supra, n 1) at para 35. [↑](#footnote-ref-44)
45. Supra, n 1. [↑](#footnote-ref-45)
46. At para 36. [↑](#footnote-ref-46)