

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF
THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1996 AND SECTION
8(1) OF THE PUBLIC PROTECTOR ACT 1994**



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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF PROCUREMENT
IRREGULARITIES, MALADMINISTRATION AND NEPOTISM WITHIN THE ROAD
TRAFFIC MANAGEMENT CORPORATION (RTMC) BY THE CEO, ADVOCATE
MAKHOSINI MSIBI**

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Executive Summary

- (i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and hereby published in terms of section 8 of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into allegations of procurement irregularities, maladministration and nepotism, within the Road Traffic Management Corporation (RTMC) by the Chief Executive Officer, Advocate Makhosini Msibi (the CEO).
- (iii) An anonymous complainant (the Complainant) approached the Public Protector on 04 April 2016, requesting an investigation into allegations of procurement irregularities, maladministration and nepotism, within the Road Traffic Management Corporation (RTMC) by the CEO, wherein the following allegations were made:
 - (a) The CEO introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced in, in order to create posts for his family and friends;
 - (b) In 2014 a fleet of silver Chevrolet vehicles were purchased but the CEO had instructed that they should be painted black, thus causing wasteful expenditure;
 - (c) No security assessment was conducted for the allocation of four body guards for the CEO;
 - (d) In 2015 the CEO, unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano for himself, despite him having already procured a new Mercedes Benz E 500 in January 2014;
 - (e) The “21 Cadre Development Course” conducted by a company owned by Mr George Fivas was improperly procured;
 - (f) An employee named Julia, who was previously a receptionist at the Irene Country Lodge where the CEO was once accommodated, was

improperly appointed to a position in the Supply Chain Management Unit;

- (g) The posts for traffic officers were advertised in 2014, Ref No RTMC/TO/2014 but officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO were remunerated outside the C1 band more than their supervisors who are on C3;
 - (h) Each bodyguard is allocated a vehicle and paid excessive overtime for the protection of the CEO; and
 - (i) The lawyers/legal firms appointed to conduct disciplinary cases against employees of RTMC were improperly appointed.
- (iv) On analysis of the complaint, the following issues were identified to inform and focus the investigation:-
- (aa) Whether the CEO unduly introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced for, in order to create posts for family and friends, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994;
 - (bb) Whether the instruction by the CEO to have the fleet of silver Chevrolet vehicles purchased in 2014, painted black amounted to fruitless and wasteful expenditure as defined in section 1 of the PFMA, 1999 and maladministration in terms of section 6(4) of the Public Protector Act, 1994;
 - (cc) Whether the RTMC failed to conduct a security assessment for the allocation of four body guards for the CEO, and if so whether such conduct amounted to maladministration in terms of section 6(4) of the Public Protector Act, 1994;

- (dd) Whether the CEO unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano , despite him having already procured a new Mercedes Benz E 500 in January 2014, and if so whether such conduct amounts to irregular and/or fruitless and wasteful expenditure in terms of section 1 of the PFMA and maladministration in terms of section 6(4) of the Public Protector Act, 1994;
- (ee) Whether the “21 Cadre Development Course” conducted by a company owned by Mr George Fivas was improperly procured, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act, 1994;
- (ff) Whether an employee named Ms Julia Manamela, was improperly employed to a position in Supply Chain Management Unit, and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994;
- (gg) Whether officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO were remunerated outside the C1 band more than their supervisors who are on C3 for the traffic officers posts, advertised in 2014, Ref No RTMC/TO/2014, and if so, whether such appointment amounted to maladministration and improper conduct as contemplated by section 6(4) of the Public Protector Act, 1994;
- (hh) Whether the bodyguards assigned for the protection of the CEO were unduly each allocated a vehicle and paid excessive overtime, and if so, whether such conduct amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994; and
- (ii) Whether the lawyers/legal firms appointed to conduct disciplinary cases against employees were improperly appointed, and if so whether such

conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act.

- (v) The investigation process commenced with a preliminary investigation, followed by a formal investigation which was conducted through the exchange of correspondence with Mr Zola Majavu, the Chairperson of the Board of the Road Traffic Management Corporation, Adv. Msibi, interviews with the Chief Executive Officer, Ms Lina Moolan the Chief Financial Officer, Ms Petse, the Acting Company Secretary, Mr Mazibuko; the Department Head SCM; and Mr Kopano Mopanyane, the Department Head, Human Capital. Section 7(9)(a) Notices were issued in terms of the Public Protector Act, 1994 against Adv. Msibi and Mr Majavu from whom responses thereto were received, as well as perusal of the relevant documents/correspondence received as well as the analysis and application of the relevant laws, policies and related prescripts
- (vi) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:-
 - a. **Regarding whether the CEO unduly introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced for, in order to create posts for family and friends, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994**
 - (aa) The allegation that the CEO unduly introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced for in order to create posts for family and friends, is not substantiated.
 - (bb) The evidence submitted indicated that the process was approved by the Board and that the RTMC had put in place sufficient structures into the process to deal with employee grievances relating to the matching and placement.

- (cc) No evidence could be found to indicate that the CEO had introduced the matching and placement process, to move qualified people out of the positions to other posts in order to create posts for his family and friends.
- b. Regarding whether the instruction by the CEO to have the fleet of silver Chevrolet vehicles purchased in 2014, painted black amounted to fruitless and wasteful expenditure as defined in section 1 of the PFMA, 1999 and maladministration in terms of section 6(4) of the Public Protector Act, 1994**
 - (aa) The allegation that the CEO instructed that the fleet of silver Chevrolet vehicles purchased in 2014 be painted black amounted to fruitless and wasteful expenditure, is not substantiated.
 - (bb) The evidence indicate that the supplier of the Chevrolets, Williams Hunt Motor, undertook to “wrap” the vehicles in Black at no additional cost.
 - (cc) There is no evidence to indicate that RTMC incurred any additional expenses to “wrap” the silver Chevrolet vehicles to black in colour.
- c. Regarding whether the RTMC failed to conduct a security assessment for the allocation of four bodyguards for the CEO, and if so whether such conduct amounted to maladministration in terms of section 6(4) of the Public Protector Act, 1994.**
 - (aa) The allegation that the RTMC failed to conduct a security assessment for the allocation of four body guards for the CEO, is not substantiated.
 - (bb) The evidence indicates that the security threat assessments were conducted by the Crime Intelligence Division of the South African Police Service (SAPS).
 - (cc) The number of traffic officials deployed were based on the recommendation of the security threat assessment by the SAPS.

(dd) The RTMC is currently utilising traffic officers for the purpose of the physical security for the CEO.

d. Regarding whether the CEO unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano, despite him having already procured a new Mercedes Benz E 500 in January 2014, and if so whether such conduct amounts to irregular and/or fruitless and wasteful expenditure as defined in section 1 of the PFMA and maladministration in terms of section 6(4) of the Public Protector Act, 1994

(aa) The allegation that the CEO unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano, despite him having already procured a new Mercedes Benz E 500 in January 2014, is not substantiated.

(bb) The initial Mercedes Benz E 500 was purchased in February 2014 by RTMC to replace the Audi that was utilised by the previous CEO.

(cc) After a decision by the Board regarding the issue of the employment contract of the CEO and that the vehicle allowance did not form part of his remuneration package but was rather additional to it, a decision was taken that RTMC should purchase a motor vehicle for the CEO for a maximum value not exceeding R 1200 000.00 over a period of five (5) years.

(dd) The evidence indicates that the CFO approved a requisition for goods and services on 10 November 2014, amongst others which included the Mercedes Benz Viano in line with the Board's Resolution taken on 27 October 2014.

(ee) RTMC purchased the vehicles through transversal term contracts in line with National Treasury Regulation 16A6.5.

e. Regarding whether the “21 Cadre Development Course” conducted by a company owned by Mr George Fivas was improperly procured,

and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act, 1994.

(aa) The allegation that the “21 Cadre Development Course” conducted by a company owned by Mr George Fivas was improperly procured is not substantiated.

(bb) The evidence indicates that the RTMC had followed the relevant prescripts in acquiring the services of the company in line with the Constitution and its SCM policy.

f. Regarding whether an employee named Ms Julia Manamela, was improperly employed to a position in Supply Chain Management Unit, and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

(aa) The allegation that the employment of Ms Julia Manamela was improper, is substantiated.

(bb) Although the CEO, initially approved the employment of Ms Manamela on a twelve (12) month contract and had waived the advertising of the position, in line with paragraph 4.4.3 of the Recruitment, Selection and Placement Procedure policy, he only partially complied with the said paragraph as he failed to ensure that a transparent and fair process was followed, in compliance with section 195 of the Constitution and their own recruitment policy.

(cc) The initial appointment of Ms Manamela to the position of Admin Assistant, Travel, and within a period of six (6) months, her elevation to the position of SCM Practitioner: Travel Management with three (3) times her initial salary, amounted to improper conduct as envisaged in section 182(1) of the Constitution and maladministration as contemplated by section 6(4)(a)(i) of the Public Protector Act, 1994.

(dd) I also find that paragraph 4.4 of the Recruitment, Selection and Placement Procedure policy is inadequate in terms of providing guidance on the waiver of advertisements and the appointment of employees on contracts for twelve (12) months or less.

g. Regarding whether officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO were remunerated outside the C1 band more than their supervisors who are on C3 for the traffic officers posts, advertised in 2014, Ref No RTMC/TO/2014, and if so, whether such appointment amounted to maladministration and improper conduct as contemplated by section 6(4) of the Public Protector Act, 1994

(aa) The allegation that officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO is not substantiated.

(bb) The evidence submitted indicates that the CEO did not form part of the shortlisting or interview panels for the appointment of the traffic officers.

(cc) The CEO had only approved the appointments of traffic officers.

(dd) There is no evidence to support the allegation that the CEO was related to Mr LJ Moloi and Mr TR Msibi.

(ee) No further evidence was provided by the Complainant to support the allegation.

(ff) There is also no evidence indicating that that Mr LJ Moloi and Mr TR Msibi were irregularly remunerated outside the C1 salary band more than their supervisors because they are related to the CEO

h. Regarding whether the bodyguards assigned for the protection of the CEO were unduly each allocated a vehicle and paid excessive overtime, and if so, whether such conduct amounted to

maladministration as contemplated by section 6(4) of the Public Protector Act, 1994

- (aa) The allegation that the body guards allocated for the protection of the CEO were unduly paid excessive overtime is substantiated.
- (bb) The evidence and the applicable law indicate that the overtime hours claimed and paid to the officers assigned for the protection of the CEO exceeded the number prescribed in terms of the BCEA and the RTMC Conditions of Employment.
- (cc) Despite the provisions of the BCEA and their own policy the DDG, CFO and CEO were negligent in granting such blanket approvals for overtime and failed to ensure that the claims for overtime allowance complied with the relevant regulatory framework.
- (dd) The payment of excessive overtime allowance to the officers assigned for the protection of the CEO, amounted to maladministration as contemplated by section 6(4)(a)(i) of the Public Protector Act and irregular expenditure as defined by section 1 of the PFMA, as no agreement or policy was in place to regulate the payment of overtime for employees earning above the threshold.
- (ee) However, the submission by the CEO regarding the subsequent control measures that have been implemented to reduce the overtime expenditure is noted.
- i. **Regarding whether the lawyers/legal firms appointed to conduct disciplinary cases against employees were improperly appointed, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act**
 - (aa) The allegation that lawyers/legal firms hired to conduct disciplinary cases against employees were improperly appointed, is substantiated.

- (bb) The CEO failed to ensure that the appointment of lawyers/legal firms followed a process that is transparent, equitable and fair in line with Section 217(1) of the Constitution and National Treasury Regulation 16(A3)2(a) and therefore amounts to maladministration.
- (cc) The expenditure incurred as a result of the irregular appointments of the lawyers/legal firms consequently amounts to irregular expenditure.
- (dd) The CEO further failed to comply with National Treasury Regulation 16A9.1 by ensuring that lawyer/legal firms which were hired were tax compliant prior to their appointment. The expenditure incurred by RTMC amounts to irregular expenditure as defined in section 1 of the PFMA and maladministration as envisaged in section 6(4) of the Public Protector Act.
- (ee) However, I have taken note of the submissions by the CEO, that the RTMC has since appointed a panel of lawyers/legal firms to attend to various legal matters, and that three (3) senior employee relations officers who are advocates have been recruited and appointed within the RTMC to handle legal and labour related matters.
- (vii) The appropriate remedial action I am taking as envisaged in section 182(1)(c) of the Constitution is the following:
 - a. **Regarding whether an employee named Ms Julia Manamela, was improperly employed to a position in Supply Chain Management Unit, and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**

The RTMC Board

- (aa) To take note of my findings in respect of the above issue, and ensure that the Recruitment Policy is accordingly aligned with the requirements

of the Constitution, by safeguarding against the inclusion of clauses that undermines a transparent and fair process in recruitment; and

- (bb) To take appropriate action against the CEO for the irregular appointment of Ms Manamela to the position Admin Assistant: Travel.

- b. Regarding whether the bodyguards assigned for the protection of the CEO were unduly each allocated a vehicle and paid excessive overtime, and if so, whether such conduct amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994**

The RTMC Board

- (aa) To take appropriate action against the CEO for the mismanagement of the overtime scheduling and consequent excessive payments;
 - (bb) To ensure that the control measures implemented with respect to the overtime payments are monitored and evaluated regularly by the RTMC; and
 - (cc) To ensure that the working conditions, overtime hours and remuneration, in this regard is sufficiently detailed in the Conditions of Service Policy, wherein employees earnings both above and below the threshold determined by the Minister of Labour, are included.
- c. Regarding whether the lawyers/legal firms appointed to conduct disciplinary cases against employees were improperly appointed, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act.**

The RTMC Board

- (aa) To take appropriate action against the CEO for his failure to ensure that the appointment of lawyers/legal firms followed a process that is transparent, equitable and fair in line with section 217(1) of the Constitution and National Treasury Regulation 16A.

(viii) **MONITORING**

- (a) The Board of the RTMC must, within thirty (30) working days from the date of the issuing of this Report and for approval by the Public Protector, submit an implementation plan to the Public Protector indicating how the remedial action referred to in paragraphs a, b and c of this Report will be implemented.
- (b) In line with the Constitutional Court judgment in the matter of ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*** [\[2016\] ZACC 11](#), and in order to ensure the effectiveness of Office of the Public Protector, the remedial actions prescribed in this Report are legally binding , unless set aside by a Court order.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF PROCUREMENT IRREGULARITIES, MALADMINISTRATION AND NEPOTISM WITHIN THE ROAD TRAFFIC MANAGEMENT CORPORATION (RTMC) BY THE CEO, ADVOCATE MAKHOSINI MSIBI

1. INTRODUCTION

1.1 This is my report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 This report, specifically the findings therein, are submitted, in terms of section 8 of the Public Protector Act, to the following people:

1.2.1 The Chairperson of the Board Mr Zola Majavu;

1.2.2 The Chief Executive Officer, Adv. Makhosini Msibi; and

1.2.3 The Complainant, Anonymous.

1.3 The report relates to an investigation into allegations of procurement irregularities, maladministration and nepotism, within the Road Traffic Management Corporation (RTMC) by the Chief Executive Officer, Advocate Makhosini Msibi (the CEO).

2. THE COMPLAINT

2.1 The complaint was lodged anonymously with my office on 04 April 2016, in which it was alleged that:

2.1.1 The CEO introduced a matching and placement restructuring process, moving qualified people out of the positions to posts which they were not experienced for in order to create posts for his family and friends;

- 2.1.2 In 2014 a fleet of silver Chevrolet vehicles were purchased but the CEO had instructed that they be painted black, incurring wasteful expenditure;
- 2.1.3 No security assessment was conducted for the allocation of four body guards for the CEO;
- 2.1.4 In 2015 the CEO, unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano, despite him having already procured a new Mercedes Benz E 500 in January 2014;
- 2.1.5 The “*21 Cadre Development Course*” conducted by a company owned by Mr George Fivas was improperly procured;
- 2.1.6 An employee named Julia, who was previously a receptionist at the Irene Country Lodge where the CEO was accommodated, was improperly appointed to a position in Supply Chain Management;
- 2.1.7 The posts for traffic officers were advertised in 2014, Ref No RTMC/TO/2014 but officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO were remunerated outside the C1 band more than their supervisors who are on C3;
- 2.1.8 Each body guard is allocated a vehicle and paid excessive overtime for the protection of the CEO; and
- 2.1.9 The legal firms utilised by the RTMC to conduct disciplinary cases against employees were improperly appointed.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides:-

“The Public Protector has the power as regulated by national legislation-

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.”*

3.3 Section 182(2) of the Constitution further directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 In ***Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618***, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect [at para 76]. The Constitutional Court further held that: *“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences”*.

3.5 In the above-mentioned matter of the ***Economic Freedom Fighters v Speaker of the National Assembly and Others***, the Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:

3.5.1 Complaints are lodged with the Public Protector **to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles** (para 65);

3.5.2 An appropriate remedy must mean **an effective remedy, for without effective remedies for breach, the values underlying and the rights**

entrenched in the Constitution cannot properly be upheld or enhanced.
(para 67);

- 3.5.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints which was the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, **she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint** (para 68);
- 3.5.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their **nature, context and language**, to determine what course to follow. (para 69);
- 3.5.5 Every complaint requires **a practical or effective remedy** that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (para 70);
- 3.5.6 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the **subject-matter of investigation** and the **type of findings made**. (para 71);
- 3.5.7 Implicit in the words "*take action*" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "*action*" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that **she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence**; (para 71(a);

- 3.5.8 **She has the power to determine the appropriate remedy and prescribe the manner of its implementation** (para 71(d));
- 3.5.9 “Appropriate” means nothing less than effective, suitable, proper or **fitting to redress or undo the prejudice, impropriety, unlawful enrichment** or corruption, in a particular case (para 71(e));
- 3.6 In the matter of the ***President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)***, the court held as follows, when confirming the powers of the Public Protector;
- 3.6.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71 of the judgment);
- 3.6.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question. (paragraph 82 of the judgment);
- 3.6.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers(paragraph 100 and 101 of the judgment):
- a) Conduct an investigation;
 - b) Report on that conduct; and
 - c) To take remedial action.
- 3.6.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (paragraph 104 of the judgment);

- 3.6.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105 of the report). ;
- 3.6.6 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraph 107 and 108 of the Judgment);
- 3.6.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment);
- 3.7 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and abuse or unjustifiable exercise of power in the conduct of state affairs or an improper or dishonest act by any person in the employ of government at any level;
- 3.8 The RTMC is a national public entity and its conduct falls within the Public Protector's mandate to investigate; and
- 3.9 The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by the RTMC.

4. THE INVESTIGATION

4.1 The Investigation Process

- 4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

- 4.1.3 The investigation process included an exchange of correspondence with Mr Zola Majavu, the Chairperson of the Board; Adv. Makhosini Msibi, the CEO, Ms Linda Moolman, the CFO, Ms Petse, Acting Company Secretary; Mr Mazibuko, Department Head SCM; Mr Kopano Mopanyne, Department Head, Human Capital, interviews, analysis of relevant documentation, conducted research, and the consideration and application of relevant laws, regulatory framework and jurisprudence.
- 4.1.4 During the investigation process, notices in terms of section 7(9)(a) of the Public Protector Act dated 26 March 2019 were issued to Mr Majavu and the CEO, to afford them an opportunity to respond to my provisional findings to which Mr Majavu's response was received on 02 April 2019. On 29 March 2019 the CEO requested a meeting with me, which I acceded to and was held on 12 April 2019. Prior the said meeting, the CEO subsequently submitted an initial response on 10 April 2019 as well as an additional response and evidence dated 16 April 2019, after our meeting.
- 4.1.5 The submissions made by Mr Majavu on 02 April 2019 and the submissions of the CEO during his meeting with me on 12 April 2019 as well as the written responses have been considered in this report.
- 4.1.6 In response to the section 7(9) notice dated 02 April 2019, Mr Majavu acknowledged the preliminary findings made in the notice and would await the final report.
- 4.1.7 In his initial response to the section 7(9) dated 16 April 2019 the CEO raised, *inter alia*, certain reservations to my section 7(9) notice. The CEO stated that he had issue with my office issuing the notice to the Board before affording him an opportunity to make any representations. He further argued that he had not been given access to the evidence relied upon by the investigation team.
- 4.1.8 The arguments put forward by the CEO do not hold water. In the case of *Minister of Agriculture, Fisheries and Forestry v the Public Protector* [2017] ZAGPPHC 993 the court stated that the procedure followed by the Public

Protector in informing the Minister of Agriculture, Fisheries and Forestry, Ms Joemat-Peterson through a provisional report was an adequate method to ensure that the potential adverse findings made against the Minister and afford her an opportunity to respond and provide evidence to dispute the findings.

4.1.9 The CEO was afforded the same opportunity referred to above and responded extensively to the section 7(9) notice, even in person on 12 April 2019.

4.1.10 With regards to the CEO's argument that he should have been given an opportunity to access the evidence that led to me making the proposed findings, I refer him to the *Gamede v Public Protector* (99246/2015) [2018] ZAGPPHC 865; 2019 (1) SA 491 (GP) judgement, wherein it was stated that during the course of my investigation , you are not entitled to the evidence in my possession Furthermore, the evidence utilised in the investigation was submitted by RTMC itself and I am of the view that the CEO had excess to such records.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?

4.2.1.4 In the event of maladministration or impropriety, what would it take to remedy the wrong or to place the Complainant as close as possible to where he/she would have been but for the maladministration or improper conduct?

4.2.1.5 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on the issues raised in the complaint.

4.2.1.6 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been complied with by the CEO, to prevent any irregularities, maladministration and improper conduct.

4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct or maladministration. Where a Complainant has suffered any prejudice, the idea is to place him/her as close as possible to where he/she would have been had the CEO complied with the regulatory framework setting the applicable standards for proper conduct and good administration.

4.3 On analysis of the complaint, the following issues were identified to inform and focus the investigation:

4.3.1 Whether the CEO unduly introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced for, in order to create posts for family and friends, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994;

4.3.2 Whether the instruction by the CEO to have the fleet of silver Chevrolet vehicles purchased in 2014, painted black amounted to fruitless and wasteful expenditure in terms of Section 1 of the PFMA, 1999 and maladministration in terms of section 6(4) of the Public Protector Act, 1994;

- 4.3.3 Whether the RTMC failed to conduct a security assessment for the allocation of four bodyguards for the CEO, and if so whether such conduct amounted to maladministration in terms of section 6(4) of the Public Protector Act, 1994;
- 4.3.4 Whether the CEO unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano in 2015, despite him having already procured a new Mercedes Benz E 500 in January 2014, and if so whether such conduct amounts to irregular and/or fruitless and wasteful expenditure in terms of section 1 of the PFMA and maladministration in terms of section 6(4) of the Public Protector Act, 1994;
- 4.3.5 Whether the “*21 Cadre Development Course*” conducted by a company owned by Mr George Fivas was improperly procured, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act, 1994;
- 4.3.6 Whether an employee named Ms Julia Manamela, was improperly employed to a position in Supply Chain Management Unit, and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994;
- 4.3.7 Whether officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO were remunerated outside the C1 band more than their supervisors who are on C3 for the traffic officers posts, advertised in 2014, Ref No RTMC/TO/2014, and if so, whether such appointment amounted to maladministration and improper conduct as contemplated by section 6(4) of the Public Protector Act, 1994;
- 4.3.8 Whether the bodyguards assigned for the protection of the CEO were unduly each allocated a vehicle and paid excessive overtime, and if so, whether such conduct amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994; and

- 4.3.9 Whether the lawyers/legal firms appointed to conduct disciplinary cases against employees were improperly appointed, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act.

4.4 The key sources of information

4.4.1 Documents received and considered:-

- 4.4.1.1 Extracts of minutes of the Board Meeting held on 03 July 2014, relating to *“Organisational Structure & Grading”*;
- 4.4.1.2 Copy of Request to Board to *“consider and approve the proposed RTMC Organisational structure and grading as recommended by the Remuneration Committee”*, dated 13 June 2014;
- 4.4.1.3 Copy of letter dated 10 November 2014 , *“APPROVAL TO APPOINT THE MIGRATION AND APPEALS COMMITTEE FOR PLACING OF CURRENT STAFF INTO THE NEW APPROVED ORGANISATIONAL STRUCTURE”*;
- 4.4.1.4 Copy of Matching and Placement Report unsigned and undated;
- 4.4.1.5 Migration Plan Approval , dated September 2014, unsigned;
- 4.4.1.6 Letters to employees *“THE MIGRATION OF STAFF IN THE APPROVED POST ESTABLISHMENT OF THE CORPORATION”*, (various)
- 4.4.1.7 Email correspondence between Daisy Leonard and Tebogo Kgwedi dated 29 November 2016;
- 4.4.1.8 Supplier Advice (order of goods/services), 25/02/2014;

- 4.4.1.9 Security Assessment on Road Traffic Management Cooperation (RTMC) Committee Members MEC Komphela, Limpopo MEC Mpumalanga MEC and Officials, dated 8 July 2015;
- 4.4.1.10 Security Assessment at the home of the CEO, dated 8 December 2015;
- 4.4.1.11 Security Assessment at House Number 23 Klipperspringel: Harrismith: During: 2015/12/02: By LT Colonel MI Khanya;
- 4.4.1.12 Report on Security Risk Assessment of the ACEO and Staff Member of the RTMC as per initial NDOT Security Assessment;
- 4.4.1.13 Request for RT57 Quotation –Mercedes-Benz E 500 Petrol, dated 21 February 2014;
- 4.4.1.14 Supplier Advice (order of goods/services), 25/02/2014;
- 4.4.1.15 Supply Chain Management Policy, Road Traffic Management Policy dated 10 February 2014;
- 4.4.1.16 Mercedes-Benz, New Vehicle Quotation, dated 24 February 2014;
- 4.4.1.17 Purchase of vehicle of the ACEO, memorandum;
- 4.4.1.18 Extract of the minutes of the in-committee board meeting held on 29 May 2014, at Emperors Palace, OR Tambo Airport, Kempton Park at 19:00;
- 4.4.1.19 Round Robin Resolution of the Board of Directors taken on 26 June 2014;
- 4.4.1.20 Extract of the Minutes of the Board Meeting held on 3 July 2014, at Emperors Palace, OR Tambo Airport, Kempton Park at 21h00;
- 4.4.1.21 Minutes of the Bid Adjudication Committee meeting, held on Monday 23 January 2014: RTMC Medium Boardroom;
- 4.4.1.22 Delivery Document for new and Pre-owned Vehicles, Mercedes-Benz, dated 28 February 2014;

- 4.4.1.23 Requisition for Good and Services, dated 10 November 2014;
- 4.4.1.24 Extract of the Minutes of the Meeting of the Board of Directors held on 27 October 2014, at Manhattan Hotel, Pretoria;
- 4.4.1.25 Mercedes-Benz, Tax Invoice 03/03/2014;
- 4.4.1.26 Road Traffic Management Corporation, Request for the approval of a close bid tender for a shorter period to procure a training provider for the purpose of NTP UP-Skilling, dated 23 September 2014;
- 4.4.1.27 Security/Police Training Institutions Market Scan undated;
- 4.4.1.28 Request for Proposal (RFP), "*RFP 1/01/2014: Appointment of a Service Provider to Train Existing Members of the National Traffic Police Unit for a period not exceeding 90 days*";
- 4.4.1.29 Closing of RFP Bidding Register, RFP 1/01/2014 Training of Existing National Traffic Police 7 October 2014;
- 4.4.1.30 Attendance Register BEC, RTMC 1/2014: NTP Training 07 October 2014;
- 4.4.1.31 Declaration of Confidentiality and Impartiality, BEC, RFP1/2014: NTP Training;
- 4.4.1.32 Individual Bid Members Evaluation sheet RFP1/2014: NTP Training;
- 4.4.1.33 Decision Memorandum, from BAC to CEO RTMC 1/2014: Training of National Traffic Police Unit 08 October 2014;
- 4.4.1.34 Appointment letter to service provider, dated 08 October 2014;
- 4.4.1.35 Memorandum, Appointment of Admin Assistant: Travel, dated 26 November 2014;
- 4.4.1.36 Offer of Appointment Contract for Ms Manamela, dated 26 November 2014;

- 4.4.1.37 Advertisement, SCM Travel Practitioner, Ref no. RTMC/SCMTP/2015;
- 4.4.1.38 Recruitment, Selection and Placement Procedure policy, dated July 2011;
- 4.4.1.39 Offer of appointment to Ms Manamela , dated 1 June 2015;
- 4.4.1.40 Copy of “*database of short-term employees/contract employees/interns*” submitted by the RTMC;
- 4.4.1.41 Extract of Minutes of Board Meeting held on 30 August 2016;
- 4.4.1.42 Copy of post for Traffic Officers, National Traffic Police, Ref. RTMC/TO/2014;
- 4.4.1.43 Copy of letter “*Request for Chief Executive Officer to Grant Approval Shortlisting Selection Panel and Interviews for the Posts of Traffic Officers*” dated 14 April 2015;
- 4.4.1.44 Request for *Chief Executive Officer to Grant Approval to Interview the Shortlisted Candidates for the Senior Inspectors (Traffic Officers, Positions)* dated 03 March 2015;
- 4.4.1.45 Request For “*Chief Executive Officer to Grant Approval to Appoint Fifty (50) Senior Inspectors (Traffic Officers)*” dated 30 April 2015;
- 4.4.1.46 Offer of Appointments of various Traffic Officials appointed to the post Senior inspector;
- 4.4.1.47 Copy of salary bands relating to the Paterson Grading Model for the year 2015/2016;
- 4.4.1.48 Copy of organisational structure diagram submitted by the Complainant, undated;
- 4.4.1.49 Copy of a report on investigation undertaken by a team appointed by the Board, dated 31 July 2018;

- 4.4.1.50 Resolution 1 of 2012, Agreement Between RTMC and Labour for the FY2012/13;
- 4.4.1.51 Policy on conditions of Service, dated July 2011;
- 4.4.1.52 Employment Contracts of employees deployed for the protection of the CEO, including employment contract of the driver for the CEO, submitted on 30 August 2019 by the RTMC;
- 4.4.1.53 Government Gazette number 37795 "*Determination: Earnings Threshold*" by the Minister of Labour 1 July 2014;
- 4.4.1.54 Overtime claims and payments approved for the period February 2014 to March 2016;
- 4.4.1.55 Memorandum "*Payment of overtime for the personnel in the office of the CEO*" dated 28 March 2014;
- 4.4.1.56 Memorandum "*Payment of overtime for the personnel in the office of the CEO*" dated 6 March 2015;
- 4.4.1.57 "*APPOINTMENT OF SERVICE PROVIDER FOR LEGAL SERVICES*" dated 10 June 2013;
- 4.4.1.58 Appointment letter to Mdlanga & Partners incorporated for RTMC Legal Services, dated 21 June 2013;
- 4.4.1.59 Appointment letter to Diale Mogashoa Attorneys for RTMC Legal Services, dated 21 June 2013;
- 4.4.1.60 Appointment letter to Ningiza Horner Incorporated for the RTMC Legal Services, dated 21 June 2013;
- 4.4.1.61 Memoranda approving the appointment of service providers to provide legal services (various);
- 4.4.1.62 Memorandum for the approval of lawyers/legal firms, dated 29 July 2014;

- 4.4.1.63 Memorandum for the approval of lawyers/legal firms, dated 23 June 2014;
- 4.4.1.64 Memorandum for the approval of lawyers/legal firms, dated 20 July 2014;
- 4.4.1.65 Email "*SUBMITTED INVOICES FROM ADVOCATE MAFUYEKE*" date 29 October 2014, from Ms Martha Rakhatoe;
- 4.4.1.66 Recommendation for advertisement: Appointment of Panel of Legal Advisors and Related Services to RTMC for a Period of Three Years;
- 4.4.1.67 Advertisement "*Appointment of Panel of Legal Advisors and Related Services to RTMC for Period (3) Years, RTMC BID 25/2015/16*";
- 4.4.1.68 Financial Management Report , RTMC, dated 31 March 2016; and
- 4.4.1.69 Excel Spreadsheet indicating names and payments made to lawyers/ legal firms from April 2013 to 30 March 2017, submitted by the RTMC on 02 March 2018.

4.4.2 Correspondence sent and received:

- 4.4.2.1 Enquiry letter received from Mr Majavu, dated 09 May 2016;
- 4.4.2.2 Response to Enquiry Letter, dated 19 May 2016;
- 4.4.2.3 Request for information regarding alleged investigation against the RTMC sent on 18 November 2016;
- 4.4.2.4 Responses to allegation received from RTMC, dated 30 November 2016;
- 4.4.2.5 Correspondence received from Complainant, dated 10 February 2017;
- 4.4.2.6 Request for information sent to RTMC, dated 15 February 2018;
- 4.4.2.7 Acknowledgement of Receipt from RTMC received on 19 February 2018;

- 4.4.2.8 Response received from Mr Majavu, dated 28 February 2018;
- 4.4.2.9 Correspondence exchanged with RTMC on 02 March 2018 and 5 March 2018;
- 4.4.2.10 Correspondence received from CFO on 04 October 2018; and
- 4.4.2.11 Correspondence exchanged between the Public Protector and the RTMC on 27 August 2019 and 30 August 2019.

4.4.3 Notices issued and responses received:

- 4.4.3.1 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the CEO, dated 26 March 2019;
- 4.4.3.2 Notice issued in terms of section 7(9)(a) of the Public Protector Act to Mr Majavu, dated 26 March 2019;
- 4.4.3.3 Response to section 7(9)(a) Notice from the CEO, dated 29 March 2019;
- 4.4.3.4 Response to section 7(9)(a) Notice from Mr Majavu, dated 2 April 2019;
- 4.4.3.5 Response to section 7(9)(a) Notice from the CEO, dated 10 April 2019;
- 4.4.3.6 Response to section 7(9)(a) Notice from the CEO, dated 15 April 2019; and
- 4.4.3.7 Response to section 7(9)(a) Notice from the CEO, dated 16 April 2019

4.4.4 Interviews Conducted:

- 4.4.4.1 Interview conducted with Ms Petse, Acting Company Secretary; Mr Mazibuko, Department Head SCM; Mr Kopano Mopanyne, Department Head, Human Capital and the investigation team on 28 February 2017;
- 4.4.4.2 Interview conducted with RTMC officials and the investigation team on 20 February 2018;

4.4.4.3 Interview conducted with the CFO Ms Lina Moolman, and the investigation team on 04 October 2018; and

4.4.4.4 Meeting held with the CEO and Investigation team on 12 April 2019.

4.4.5 Legislation and other prescripts:

4.4.5.1 The Constitution of the Republic of South Africa, 1996;

4.4.5.2 The Public Protector Act No 23 of 1994;

4.4.5.3 The Public Finance Management Act 1 of 1999;

4.4.5.4 The Road Traffic Management Corporation Act 20, 1999;

4.4.5.5 Recruitment, Selection and Placement Procedure policy, 2011;

4.4.5.6 The RTMC Supply Chain Policy Dated 10 December 2014;

4.4.5.7 Basic Conditions of Employment Act 75 of 1997;

4.4.5.8 RTMC Policy on Conditions of Service, signed 2011;

4.4.5.9 Agreement between RTMC and Labour for the FY2012/13, signed 25 October 2012; and

4.4.5.10 National Treasury Practice Note 8 of 2007/2008.

4.4.6 Case law:

4.4.6.1 *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618;

4.4.6.2 *President of the Republic of South Africa v Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP);

[2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017);
and

- 4.4.6.3 *Allpay Consolidated Investment Holding (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC);*

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

- 5.1 **Regarding whether the CEO unduly introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced for, in order to create posts for family and friends, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994.**

Common Cause Issues

- 5.1.1 It is common cause that in 2014 the RTMC introduced a process of matching and placing of personnel within the organisation.

Issues in dispute

- 5.1.2 The issue for my determination is whether or not the matching and placement process was undertaken by the CEO in order to move qualified employees out of their positions of employment, to be placed into positions which they were not experienced for, in order to create positions for his family and friends.
- 5.1.3 In its response to the allegations dated 30 November 2016, the RTMC submitted that the matching and placement process was undertaken as a result of the restructuring process that was initiated by the RTMC which was duly approved by the Board in September 2014.

5.1.4 According to the copy of request to the Board to “*consider and approve the proposed RTMC Organisational structure and grading as recommended by the Remuneration Committee*”, dated 13 June 2014, the RTMC Revised Strategic Plan for 2014 to 2019 defined the following strategic goals :

“

1. *Improve and Institutionalise Stakeholder relations*
2. *Enable Legislation and promote Road Safety*
3. *Improve financial sustainability*
4. *Create a dynamic and transformed organisation*
5. *Foster Good Governance ”*

5.1.5 The evidence provided to my office indicates that in November 2014, the Senior Manager, Human Resources, submitted a request to the CEO to approve the appointment of the Migration and Appeals Committee for the placing of the current staff into the new approved organisational structure.

5.1.6 According to the said approval, the Migration and Appeal Committee would oversee the migration process and eliminate unfairness. An Appeals Committee would be constituted by an external representative, Senior Managers and Union representatives.

5.1.7 The approval also indicated that consultation with employees would be conducted to empower them on the migration process, pay restructuring and the Government Employees Pension Fund.

5.1.8 In the evidence submitted, various letters were addressed to employees that were affected by the matching and placement process. The letters indicated inter alia the following;

5.1.7.1 Extensive engagements were held with organised labour, staff, management wherein the Board approved the organisational and post establishment of the RTMC as well as the migration plan as part of the implementation of the new structure on the 19 September 2014;

- 5.1.7.2 Subsequent to the said approval, the CEO further engaged staff, management and organised labour which led to the appointment of the Migration and Appeals Committee to manage and oversee the migration process; and
- 5.1.7.3 The Committee applied all policies and procedures as outlined in the Migration Plan and the terms of reference.
- 5.1.9 According to the undated matching and placement report one hundred and fifty (150) employees were consulted, wherein one hundred and eighteen (118) employees accepted the new positions, eighteen (18) lodged appeals and seventeen (17) appeals were finalised with one (1) appeal outstanding at the time.
- 5.1.10 The RTMC further submitted in its response, that there was no financial implications for the implementation of the matching and placement of employees into the approved organisational structure and the current terms and conditions applicable to the employee's contract remained unchanged.

Application of the Relevant Law

- 5.1.11 In respect of the establishment of functional units within the RTMC Chapter 2, Section 18 of the RTMC Act states that *"the Shareholders Committee must, as part of the organisational structuring of the Corporation, establish as many functional units as are required in accordance with the business plan and financial plan to ensure effective management of, at least the following functional area..."*

Conclusion

- 5.1.12 The design of the structure and process was informed by the objectives of the RTMC ACT and the restructuring was a response to the strategy of the RTMC.
- 5.1.13 The evidence submitted indicated that the process was approved by the Board, and that the RTMC had put in place sufficient structures into the

process to deal with employee grievances relating to the matching and placement.

5.1.14 No evidence could be established to indicate that the CEO had introduced the matching and placement process, to move qualified people out of their positions to other posts in order to create posts for his family and friends.

5.1.15 Consultation in line with the Human Resource objectives was held with various stakeholders including labour.

5.2 Regarding whether the instruction by the CEO to have the fleet of silver Chevrolet vehicles purchased in 2014, painted black amounted to fruitless and wasteful expenditure in terms of Section 1 of the PFMA, 1999 and maladministration in terms of section 6(4) of the Public Protector Act, 1994.

Common Cause Issues

5.2.1 It is common cause that in 2014 a fleet of silver Chevrolet vehicles were purchased by the RTMC and painted, “*wrapped*” in black.

Issues in dispute

5.2.2 The issue for my determination is whether or not the RTMC purchased a fleet of silver Chevrolet vehicles and subsequently requested for the vehicles to be wrapped in black, resulting in it incurring further costs and fruitless and wasteful expenditure.

5.2.3 In its response dated 30 November 2016, the RTMC submitted that no additional costs were incurred for the “*wrapping*” of the vehicles.

5.2.4 Further thereto, the evidence submitted by the RTMC indicates that an email dated 29 November 2016 from Mr Tebogo Kgwedi of RTMC forwarded to Ms Daisy Leonard, the Fleet Specialist, Williams Hunt Motors, sought to confirm

the process that was undertaken to “wrap” the eight (8) Chevrolet vehicles that were purchased in 2014/2015.

- 5.2.5 In response to the email Ms Daisy Leonard stated that “*the black wrapping that was done in 2014/2015 was at no charge to RTMC.*”

Application of relevant law

- 5.2.6 Section 1 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) defines fruitless and wasteful expenditure as “*expenditure which was made in vain and would have been avoided had reasonable care been exercised*”.
- 5.2.7 The words in vain as contained in the definition of fruitless and wasteful refers to a transaction, event or condition which was undertaken without value or substance and which did not yield any desired results or outcome.
- 5.2.8 Further, reasonable care means applying due diligence (careful application, attentiveness, caution) to ensure that the probability of a transaction, event or condition not being achieved as planned is being managed to an acceptable level.

Conclusion

- 5.2.9 The evidence indicates that the supplier of the Chevrolets, Williams Hunt Motor, undertook to “wrap” the vehicles in black at no additional cost.
- 5.2.10 There is no evidence to indicate that RTMC incurred any additional expense as a result thereof.
- 5.3 **Regarding whether the RTMC failed to conduct a security assessment for the allocation of four bodyguards for the CEO, and if so whether such conduct amounted to maladministration in terms of section 6(4) of the Public Protector Act, 1994.**

Common Cause Issues

- 5.3.1 It is common cause that bodyguards were assigned for the protection of the CEO.

Issues in dispute

- 5.3.2 The issue for my determination is whether or not the RTMC failed to conduct a security assessment, in order to determine the security needs of the CEO.
- 5.3.3 The RTMC submitted in their response dated 30 November 2016, that security assessments for both the former Acting CEO and current CEO were duly undertaken. It further submitted that the CEO had only one (1) bodyguard and not four (4) as alleged and that following a 2015 post assessment, the security detail was increased with additional bodyguards.
- 5.3.4 The evidence submitted indicates that in July 2015 a security assessment for the CEO's physical security was conducted by the Provincial Commissioner of the Free State, South African Police Service (SAPS).
- 5.3.5 The security assessment recommended that the current number of two protectors deployed to the CEO, one being a driver, be revised as "*he was the main person pursuing the mission of the government as an official.*"
- 5.3.6 Further evidence was submitted to indicate that in December 2015, the SAPS, Operational Intelligence Analysis and Coordination conducted security assessments at the homes of the CEO.
- 5.3.7 The RTMC submitted in their response that it had previously incurred exorbitant costs for the procurement of body guards as compared to the body guards who were currently being used, who are traffic officers in the employ of the RTMC.

Conclusion

- 5.3.8 The evidence indicates that the security threat assessments were conducted by the SAPS and its Crime Intelligence Division, and the number of officials deployed were based on the recommendation of the security threat assessment.
- 5.3.9 Currently RTMC is utilising traffic officers for the purpose of the physical security for the CEO at a reduced cost to the RTMC as opposed to the use of private security companies.
- 5.4 **Whether the CEO unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano in 2015, despite him having already procured a new Mercedes Benz E 500 in January 2014, and if so whether such conduct amounts to irregular and/or fruitless and wasteful expenditure in terms of section 1 of the PFMA and maladministration in terms of section 6(4) of the Public Protector Act, 1994**

Common Cause issues

- 5.4.1 It is not in dispute that a Mercedes Benz S350, a Mercedes Benz Viano and Mercedes Benz E 500 were purchased by the RTMC.

Issues in dispute

- 5.4.2 The issue for my determination is whether or not the RTMC superfluously purchased the Mercedes Benz S350, a Mercedes Benz Viano and Mercedes Benz E 500 to be utilised by the CEO.
- 5.4.3 In response to the allegation dated 30 November 2016 the RTMC submitted that it had at no stage purchased a Mercedes Benz Viano for the CEO, and that the Mercedes Benz Viano they purchased was part of a fleet of vehicles purchased in 2015.

- 5.4.4 The RTMC further submitted that the procurement of the Mercedes Benz E 500 related to the replacement of the Audi vehicle that was utilised by the former Acting CEO, and that this process was initiated in 2013.
- 5.4.5 According to the evidence, RTMC obtained quotations on 21 February 2014 and 24 February 2014 for the procurement of a Mercedes Benz E500.
- 5.4.6 The quotation received by the RTMC from Mercedes Benz Centurion on 24 February 2014 was accepted, and on the 28 of February 2014 Mercedes Benz Centurion issued a tax invoice to RTMC. RTMC made payment for the Mercedes Benz E500 on 07 March 2014.
- 5.4.7 According to extract of minutes of the in-committee board meeting held on the 29 May 2014, the RTMC Board resolved to pay the CEO a monthly car allowance of R17 000.00 and the remuneration committee (REMCO) was mandated to negotiate the issue of travelling claims with the CEO.
- 5.4.8 The decision taken at a Board meeting held on 29 May 2014, was further discussed at the Board meeting held on the 26 June 2014. It was stated that the REMCO met with the CEO on the 19 June 2014 and the parties had agreed to make the following proposal to the Board:
- 5.4.8.1. The proposal to pay the CEO a monthly car allowance of R17 000.00 be withdrawn, on the basis that the CEO would still be entitled to claim reimbursement for travelling;
- 5.4.8.2. The RTMC should purchase a motor vehicle of a maximum value not exceeding R 1 200 000.00 over a period of five (5) years plus insurance and petrol card; and
- 5.4.8.3. That the CEO shall not be entitled to claim travelling reimbursement when using RTMC motor vehicle or if he elects to use his own motor vehicle.

- 5.4.9 At this meeting the Board resolved that the contract of employment be amended to include the proposal of the REMCO and that the Chairman be authorised to sign the contract of employment between RTMC and the CEO.
- 5.4.10 At the Board meeting held on 03 July 2014 it was noted that a board member, had objected to the round robin decision relating to the contract of the CEO. In particular the issue pertaining to the car allowance as in his view, the car allowance was already included in the R 2 900 000.00 annual salary of the CEO.
- 5.4.11 The Chairperson referred the Board to a letter written by the Chairperson of the Shareholders Committee on 30 April 2014, which stated that the vehicle/travel allowance and bonus, as well as the performance agreement be negotiated and concluded between the CEO and the Board, and therefore were not part of the R 2 900 000 annual salary.
- 5.4.12 Further the RTMC submitted the minutes of the Board meeting held on 27 October 2014, which indicated that Mr Ledwaba tabled a submission to the Board to purchase motor vehicles through the transversal contract.
- 5.4.13 Mr Ledwaba submitted amongst others to the Board that the current vehicles of the RTMC were accumulating mileage at a very rapid pace and that the absence of a sufficient pool and/or additional vehicles resulted in the rental of vehicles at a high cost.
- 5.4.14 Mr Ledwaba further submitted that the fleet of vehicles purchased versus the operational requirements was grossly insufficient, and the Board approved the purchase of motor vehicles at a capital expenditure of R 57 772 839.51.
- 5.4.15 On 04 October 2018, Ms Lina Moolman, the Chief Financial Officer (CFO) was interviewed by the investigation team and she had reiterated and confirmed the evidence submitted by the RTMC, including that the Mercedes Benz E500 related to the replacement of the Audi vehicle that was utilised by the former Acting CEO, and that this vehicle was used by the CEO before the Board's decision relating to his contract of employment. She further stated that the

RTMC participated in transversal contracts facilitated by National Treasury for the purchase of vehicles.

Application of relevant law

- 5.4.16 Section 8(3) of the RTMC Act provides that the Shareholders Committee must, before appointing a Board, come to a decision as to:

*“(a) the powers which may be delegated to the board after its appointment; and
(b) the conditions it thinks fit to impose in respect of the exercise of delegated powers.”*

- 5.4.17 Section 15(4) of the Act provides that the appointment of the chief executive officer is subject to the conclusion of a performance contract between such officer and the Shareholders Committee.

- 5.4.18 Section 15(7) of the Act further provides that *the* Chief Executive Officer holds office, subject to subsections (8) and (9), on the terms and conditions, including remuneration and allowances, as determined in writing by the Shareholders Committee, after consultation with the Minister of Finance.

- 5.4.19 RTMC participates in a transversal term contract facilitated by the National Treasury in terms of National Treasury Regulation 16A6.5 which provides that: *“The accounting officer or accounting authority may opt to participate in transversal term contracts facilitated by the relevant treasury. Should the accounting officer or accounting authority opt to participate in a transversal contract facilitated by the relevant treasury, the accounting officer or accounting authority may not solicit bids for the same or similar product or service during the tenure of the transversal term contract.”*

Conclusion

- 5.4.20 The initial Mercedes Benz E 500 was purchased in February 2014 by RTMC to replace the Audi that was utilised by the previous Acting CEO.
- 5.4.21 After a decision by the Board and the Shareholders Committee, regarding the issue of the employment contract of the CEO and that his vehicle allowance did not form part of the remuneration package but was rather additional to it, a decision was taken that RTMC should purchase a motor vehicle for the CEO for a maximum value not exceeding R 1 200 000.00 over a period of five (5) years.
- 5.4.22 RTMC purchased the vehicles through transversal term contracts in line with Treasury Regulations 16A6.5 and the evidence further indicates that the CFO approved a requisition for goods and services on the 10 November 2014, amongst others which included the Mercedes Benz Viano in line with the Board Resolution taken on 27 October 2014.
- 5.5 **Regarding whether the “21 Cadre Development Course” conducted by a company owned by Mr George Fivas was improperly procured, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act.**

Common Cause issues

- 5.5.1 It is common cause that in 2014, a company owned by Mr George Fivas was appointed by the RTMC for the “21 Cadre Development Course”.

Issues in dispute

- 5.5.2 The issue for my determination is whether or not the RTMC followed proper procurement processes in appointing the service provider for the “21 Cadre Development Course”.
- 5.5.3 In their response dated 30 November 2016 the RTMC stated that proper procurement processes were followed in acquiring the services.

- 5.5.4 The evidence provided indicates that on the 23 September 2014, the Senior Manager: Traffic Training, submitted a memo to the CEO requesting approval for a closed bid tender for a shorter period to procure a training provider for the purpose of the National Traffic Police upskilling. The reason provided for deviating from the procurement process was urgency as the service provider had to begin training on 1 October 2014 to 10 December 2014, in preparation for the anticipated festive season.
- 5.5.5 The recommendation for a shorter advertisement period was approved by the CEO on 23 September 2014, however he indicated on the memo that the tender should not follow a closed tender process.
- 5.5.6 A copy of the tender advertisement was submitted and the evidence indicated that the tender was advertised in the national newspapers and the RTMC website on the 28 September 2014, with a closing date of 07 October 2014. On the closing date five (5) proposals were received.
- 5.5.7 Siyaya Training and Development was disqualified as they had submitted only one envelope in their bid, which was not in accordance with the Terms of Reference of the bid.
- 5.5.8 The Supply Chain Management Unit (SCM), conducted a vetting process in terms of compliance on the submitted proposals on 07 October 2014.
- 5.5.9 On 08 October 2014 the Bid Evaluation Committee evaluated the bids in accordance with the approved terms of reference and recommended that George Fivaz Forensic and Risk, be accepted and approved to provide training to existing members of the National Traffic Police for a period not exceeding 90 days.
- 5.5.10 On the 08 October 2014 the CEO, confirmed the appointment by forwarding a letter of appointment to George Fivaz Forensic and Risk, for an amount of R4 944 280.00.

Application of the Relevant Law

5.5.11 Section 217(1) of the Constitution is the basis upon which all procurement practices within the public sector are developed. The Constitution demands that when an organ of state contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

5.5.12 In terms of section 76(4)(c) of the PFMA, National Treasury may make regulations or issue instructions applicable to all institutions to which the PFMA applies, concerning, *inter alia*, the determination of a framework for an appropriate procurement and provisioning system (supply chain management framework) which is in keeping with the dictates of Section 217(1) of the Constitution.

5.5.13 Regulation 16A3.2 (d) of the National Treasury Regulations provides that:

“ A supply chain management system referred to in paragraph 16A.3.1 must –

(a) be fair, equitable, transparent, competitive and cost effective;

(b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

(c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and

(d) provide for at least the following: –

(i) demand management;

(ii) acquisition management;

(iii) logistics management;

(iv) disposal management;

(v) risk management; and

(vi) regular assessment of supply chain performance.”

5.5.14 National Treasury Regulation 16A6.4 regulates the procurement of goods and services through means other than competitive bidding. As such National Treasury Practice Note 8 of 2007/2008 regulates the use of emergency processes to procure goods and services. It highlights that “*urgent procurement*” process will only apply where early delivery is of critical importance and the utilisation of the standard procurement process is either impossible, or impractical. An “*emergency procurement*” process will only apply in serious, unexpected and potentially life threatening circumstances which require immediate rectification.

Conclusion

5.5.15 According to the evidence provided to my office, the RTMC had followed a competitive bidding process in line with section 217 of the Constitution and relevant Treasury prescripts.

5.5.16 The request for deviation to advertise the tender for a shorter period was duly approved by the CEO,

5.5.17 No evidence could be found to substantiate the allegation that the service provider was improperly appointed.

5.6 Regarding whether an employee named Ms Julia Manamela, was improperly employed to a position in Supply Chain Management Unit,

and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

Common cause issues

- 5.6.1 It is common cause that an employee by the name of Ms Julia Manamela (Ms Manamela) was appointed to a position of Admin Assistant in the Supply Chain Management (SCM) Unit.

Issues in dispute

- 5.6.2 The issue for my determination is whether or not, the RTMC improperly employed Ms Manamela to the position in SCM Unit.
- 5.6.3 In their response dated 30 November 2016, the RTMC submitted, that it is common practice for the RTMC to recruit employees and interns on short terms contracts, from a data base of individuals that submitted Curriculum Vitaes' (CV's) to the RTMC.
- 5.6.4 Further that, Ms Manamela was initially employed as an intern within the RTMC on a short term contract, after submitting her CV to the RTMC.
- 5.6.5 The evidence submitted by the RTMC indicates that a memorandum dated 26 November 2014 was compiled by the Senior Manager Human Resources and Administration, Mr Kopano Maponyane, requesting the CEO to approve the appointment of an Admin Assistant, Travel on a twelve (12) month contract basis in order to capacitate the SCM Unit.
- 5.6.6 The memorandum detailed that the RTMC identified a need to urgently appoint the services of an incumbent with some hospitality background, in order to provide the RTMC with a comprehensive travel related support service.
- 5.6.7 In the memorandum Mr Maponyane motivates that Section 4.4 of the Recruitment and Selection and Placement Procedure, makes provision for the

waiver of advertising in exceptional circumstances which include but not limited to cases where the appointment period of contract is twelve (12) months or less.

- 5.6.8 Further, the memorandum stated that Ms Manamela's application for employment was one of the "*unsolicited applications*" received by Human Capital and that she seemed to be experienced in the identified position.
- 5.6.9 Mr Maponyane further indicated that there was a vacant and funded post of, Admin Assistant in the Supply Chain Management Unit, and that the said appointment would be made at salary level B3 at the TCTC of R138 000.00 per annum.
- 5.6.10 It was noted that the memo stated that the CEO was consulted about the appointment.
- 5.6.11 On 26 November 2014, Mr Maponyane recommended that the CEO grants approval to appoint Ms Manamela as an Admin Assistant, Travel on a 12 months contract.
- 5.6.12 The recommendation of the memorandum signed on behalf of the Acting Chief Financial Officer was not dated, and approved by the CEO on 26 November 2014.
- 5.6.13 Subsequently, the position of SCM, Travel Practitioner, reference, RTMC/SCMTP/2015 was advertised internally within the RTMC, with a closing date of 23 March 2015 and two (2) applications were received by the closing date. Interviews were conducted on 28 May 2015.
- 5.6.14 On 01 June 2015 Ms Manamela was given a letter for an offer of appointment to the position of SCM Practitioner: Travel Management at a total remuneration package of R313 334.00 per annum. Ms Manamela acknowledged and accepted the offer on 01 June 2015.

- 5.6.15 The CEO did not disclose any information regarding his previous association with Ms Manamela, nor could any information be found to verify their previous association.

Application of the Relevant Law

- 5.6.16 Section 195(1) of the Constitution, 1996, stipulates that public administration must be governed by the democratic values and principles enshrined in the Constitution. It requires *inter alia* a high standard of professional ethics and accountability in public administration.
- 5.6.17 Paragraph 4.1.1, of the RTMC Recruitment, Selection and Placement Procedure Policy approved on 19 September 2011, states as follows:
“Exceptional circumstances may allow the waiver of advertising. These include but not limited to the following:..”
- 5.6.18 Paragraph 4.4.3 of the Policy states that *“In the case of appointments whose period of contracts are twelve (12) months or less, advertisements may be waived. In an event the post(s) is not advertised, the corporation will ensure that the process is transparent and fair.”*

Responses to the section 7(9) notice issued to the CEO

- 5.6.19 Subsequent to receiving the section 7(9) notice dated 26 March 2019, on the 29 March 2019 the CEO requested a meeting with me, to which I had agreed. On 10 April 2019 the CEO submitted a written response to the section 7(9) notice, and at the meeting held on the 12 April 2019 the CEO made further oral submissions to the section 7(9) notice, and also submitted an additional response and evidence to me on 16 April 2019.
- 5.6.20 In essence the CEO in his submissions, emphasised that the appointment of Ms Manamela was in line with RTMC policy when she was appointed in November 2014 on a short-term basis. He further stated that he did not form part of the interview panel but had approved the appointment of Ms Manamela.

- 5.6.21 The CEO submitted that the RTMC has previously advised my investigation team as far back as 2 December 2012 that it was practice in the RTMC to recruit short term contract employees and a copy of a list of these contracts were provided to me. He further took exception to the fact that the section 7(9) notice to him did not make any reference to this nor give any indication why this has not been considered. He asserted that in terms of section 6 of PAJA, a court has the power to judicially review an administrative action if the administrative action was taken because irrelevant considerations were taken into account or relevant action was taken because irrelevant considerations were taken into account or relevant considerations were not considered.
- 5.6.22 He further stated in his responses to me that the process of appointing Ms Manamela was transparent and fair. He asserted that she was the only candidate (intern) who met the criteria for the position of Admin Assistant, Travel amongst all the CV's submitted, and contended that at the time there was no need to advertise the position externally as suggested because that would defeat the purpose of section 4.4 of the Policy which entitles the RTMC to waive the advertisement of the position.
- 5.6.23 He submitted that when the position of SCM, Travel Practitioner arose, it was advertised internally and only (2) two applicants met the criteria and were interviewed. He contended that the suggestion in the section 7(9) notice that Ms Manamela's appointment as a contract employee gave her some added advantage, was a total disregard of her previous experience (10 years in the hospitality industry) and unfairly brought into question the integrity of the individual members of the recruitment and interview panel.
- 5.6.24 The CEO highlighted that paragraph 8.2.1.17 of the section 7(9) notice, stated that he did not disclose any information regarding his previous association with Ms Manamela nor could any information be found to verify his previous association with her. He placed on record that he did not have any '*previous association*' with Ms Manamela and that employer employee relations existed when she was in the employ of the RTMC and any suggestion to the contrary cast aspersions on his reputation. He stated that such suggestions are

malicious and mischievous and that he could not understand why this remark was made in the section 7(9) notice and requested that I provide him with an explanation thereto.

5.6.25 In the responses to the section 7(9) notice, the CEO took exception to paragraph 8.2.1.29 of the section 7(9) notice and queried as to how and who manipulated the process. He stated that this statement is made without my office proffering any evidence to support this claim and that it accuses the RTMC of being involved in a fraudulent activity without providing any evidence whatsoever, further stating that the paragraph was broad, speculative in nature and lacked any legal basis and that unless it was substantiated, he did not see how the RTMC could respond to this allegations.

5.6.26 The CEO accepted that paragraph 4.4 of the Policy *“may be inadequate and/or may need to be reconsidered, I maintain that I when I approved the appointment of Ms Manamela, I did so in accordance with an approved policy and that alone cannot constitute maladministration as contemplated in paragraph 10.1.3 of the Notice.”*

5.6.27 He asserted that there was simply no legal basis for the RTMC to reject the recommendation made by the recruitment panel and that any such rejection of the appointment in absence of any reason that due processes were not followed, would have exposed the RTMC to a possible unfair labour practice claim.

5.6.28 In his response dated 16 April 2019, the CEO provided me with the extracts of a Board Meeting that was held on 30 August 2016 wherein he presented to the Board the challenges affecting the RTMC , as a result *“...of the recruitment that was informed by contract, internship and learnership recruitment”*.

5.6.29 The extracts of the minutes recorded that CEO's presented amongst others that :

“The efficiency and competency levels are generally and negatively impacted as staff lacks appreciation and necessary skill level.

Junior officials and contract appointees are mainly and unfairly placed at supervisory and managerial positions.

The process normally denies the Corporation to attract competitive and requisite skills and competency levels.

There is always no value add derived from such recruitment and the Corporation is found wanting from performance perspective”

5.6.30 The resolution recorded of the extract of the minutes, is as follows:

“4.3.1 the practice of unsolicited and or recruitments from the database of all CV’s received undermines transparency and fair competitiveness in finding suitable and appropriately qualified potential applicants and such practices, be discarded.

4.3.2 all recruitments be made publicly and advertised externally for all job seekers to be afforded equal opportunity.”

Conclusion

5.6.31 Ms Manamela’s CV was submitted in what RTMC referred to as an *“unsolicited applications for employment”*.

5.6.32 Section 195 of the Constitution, as well as the RTMC Recruitment, Selection and Placement Procedure Policy, requires a process of transparency and fairness in the recruitment and selection process.

5.6.33 In as much as the RTMC policy allows for the waiver of advertising in exceptional circumstances, the policy also requires the RTMC to ensure that the process is transparent and fair.

5.6.34 The evidence indicates that the process that was followed to employ Ms Manamela as an intern within the RTMC was not transparent and fair. Ms Manamela was the only candidate competing for the position and no other CV’s were considered making the process unfair, therefore that CEO’s assertion to the section 7(9) notice that the process followed was indeed fair and transparent does not lend any credence to the term *“fair and transparent”*.

- 5.6.35 To ensure that the process was fair and transparent the RTMC was required to seek other applications from the so called “*unsolicited CV’s*” to be shortlisted and interviewed for the position.
- 5.6.36 In the event that no other CV’s were available from the “*unsolicited CV’s*” , the RTMC should have undertaken to advertise the position, preferably externally to ensure that there is an adequate pool of potential candidates for shortlisting and interviews. The CEO’s submission to the section 7(9) notice that advertising the position externally would have defeated the purpose of section 4.4 of the policy, which entitled the RTMC to waive the advertisement for the position, cannot be accepted as that section in the policy also required the process to be conducted in a transparent and fair manner, and I am therefore not convinced that the selection of only one CV for the appointment was transparent and fair.
- 5.6.37 The justification by the RTMC to urgently appoint an individual to the position cannot be accepted as an exceptional circumstance as the position of Admin. Assistant Travel was a vacant and funded post and should have been advertised.
- 5.6.38 It is also worth mentioning that the CEO himself had brought this issue to the attention of the Board in August 2016, and the Board had resolved that “*the practice of unsolicited and or recruitments from the database of all CV’s received **undermines transparency and fair competitiveness** in finding suitable and appropriately qualified potential applicants and such practices, be discarded*” and that “*all recruitments be made publicly and advertised externally for **all job seekers to be afforded equal opportunity***”(own emphasis added).
- 5.6.39 It is also evident that the CEO was alert to the fact that appointments made through unsolicited CV’s was improper and had therefore brought this to the attention of the Board.

- 5.6.40 The improper appointment of Ms Manamela as a contract employee, inadvertently led to her having an added advantage to apply, and subsequently be appointed to the permanent position of SCM Travel Practitioner in June 2015, as the position was only advertised internally.
- 5.6.41 It is further noted that just six (6) months after being employed as a temporary employee, Ms Manamela was appointed as a permanent employee within the RTMC at triple the salary she earned as an Admin Assistant.
- 5.6.42 The process followed by RTMC in Ms Manamela's appointment and rapid progression "*raises eyebrows*", as it appears that RTMC deliberately manipulated the recruitment process with the intention to employ Ms Manamela permanently. The CEO took exception to this paragraph in his response to the section 7(9) notice and I am still not convinced by his argument that the employment of Ms Manamela as a contract employee was fair and transparent and I am thus persuaded in drawing the above conclusion.
- 5.6.43 There is no provision in the RTMC Recruitment, Selection and Placement Procedure Policy regarding the transparent and fair process that will be followed when the RTMC does receive "*unsolicited CV's*". This introduces an opportunity for the RTMC to randomly appoint anyone who submits their CV to the RTMC, without advertising the position and ensuring that the process followed is transparent and fair.
- 5.6.44 In responding to the section 7(9) notice, the CEO accepted that paragraph 4.4 of the policy may be inadequate and may need to be reconsidered. In fact he had raised this with the Board in August 2016, almost a year after he had approved Ms Manamela's appointment based on the same policy he subsequently sought to amend.

- 5.7 Whether officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO were remunerated outside the C1 band more than their supervisors who are on C3 for the traffic officers posts , advertised in 2014, Ref No RTMC/TO/2014.**

Common Cause issues

- 5.7.1 It is common cause that Mr LJ Moloi and Mr TR Msibi were appointed at the RTMC on post number RTMC/TO/2014.

Issues in dispute

- 5.7.2 The issue for my determination is whether or not, Mr LJ Moloi and Mr TR Msibi were appointed as they were related to the CEO, and were thus remunerated outside the C1 salary band more than their supervisors who are on C3 for the traffic officer's posts.
- 5.7.3 The RTMC submitted that the advertisement for the post noticeably stipulated the required experience, being at least four (4) years practical experience in law enforcement, possession of either an examiner of vehicles and/or examiner of drivers licence. It further submitted during the interview held with Mr Kopano Maponyane, the Divisional Head for Human Capital (Mr Kopano), that the salary band was never mentioned in the advertisement as this was negotiable, and was premised on the basis that employees with less than ten (10) years' experience were considered for a particular salary bracket and those above ten (10) years' experience considered at a particular bracket within the C1 salary band.
- 5.7.4 The RTMC submitted that the appointed traffic officers were all appointed within the C1 band of the 50th percentile and some would be at minimum level, whilst others would have been at Mid-level and some would be at the maximum level of the 50th percentile as a result of the salary levels that they were at prior to joining the RTMC. The RTMC further attached the salary

scales for 2015/16 financial year to its response, which indicated that the C3 band was above the C1 band.

- 5.7.5 Mr Kopano further indicated during the interview that the CEO did not form part of the interview panel and that according to his knowledge the CEO did not have any relatives in the employ of the RTMC.
- 5.7.6 On 15 August 2017, RTMC submitted documents indicating that the Board had appointed an investigation team to investigate alleged impropriety on the part of the CEO.
- 5.7.7 An investigation report compiled by the investigation team of RTMC indicated that the CEO was interviewed during their investigation wherein he stated that he did not have a younger brother working within the RTMC, and that his younger brother is 55 years of age and blind. He further stated that he did not have any relatives within the RTMC but was aware of someone with the same surname as him that was appointed within the traffic fraternity.

Application of the Relevant Law

- 5.7.8 The Recruitment, Selection and Placement policy outlines the processes to be followed in the filling of vacancies, which include amongst others the advertising procedure, the selection process, as well as the placement process.
- 5.7.9 The Recruitment, Selection and Placement policy of RTMC defines immediate family as an employee's spouse and/ or life partner, children and /or dependent relatives.
- 5.7.10 Paragraph 5.4.8 of the policy states that each panel member including Human Resources will have to sign a declaration of vested interest before each interview stating whether they have vested interests in any of the candidates.

Conclusion

- 5.7.11 The evidence submitted indicates that the CEO did not form part of the shortlisting or interview panels for the appointment of the traffic officer and had only approved the appointments of traffic officers.
- 5.7.12 There is no evidence to support the allegation that the CEO is related to Mr LJ Moloi and Mr TR Msibi, and no substantial evidence was provided by the Complainant to support the allegation.
- 5.7.13 There is also no evidence indicating that that Mr LJ Moloi and Mr TR Msibi were irregularly remunerated outside the C1 salary band more than their supervisors because they are related to the CEO.
- 5.8 **Regarding whether the bodyguards assigned for the protection of the CEO were each unduly allocated a vehicle and paid excessive overtime, and if so, whether such conduct amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**

Common Cause Issues

- 5.8.1 It is common cause that bodyguards were appointed to protect the CEO.

Issues in dispute

- 5.8.2 The issue for my determination is whether or not the body guards were each unduly allocated a vehicle and paid excessive overtime, resulting in excessive expenditure.
- 5.8.3 The RTMC submitted in their response that the officers such as traffic officers from the National Traffic Anti-Corruption Unit (NTAC Unit), Deputy Chief, and traffic officers who provide security to the CEO or officers whose availability is required at all times work inordinate hours, are allowed to use the vehicles of the RTMC, and therefore vehicle allocation is determined by the nature of work performed by the officers and operational considerations.

5.8.4 Further that payment of overtime was made according to the policy directives and collective agreements.

5.8.5 A sample of the evidence provided by the RTMC relating to overtime claims and payments for the bodyguards appointed to protect the CEO, for the period February 2014 to March 2016 indicate the following:

Sample size: six (6) months - February 2014 to July 2014

Sample size: six (6) months - January 2015 to June 2015

Sample size: three (3) months - January 2016 to March 2016

OVERTIME CLAIMS AND PAYMENTS OVER THE PERIOD FEBRURAY 2014 TO MARCH 2016						
	Hours claimed					
	OFFICER X		OFFICER Y		OFFICER Z	
MONTH	T ½	DOUBLE TIME	T ½	DOUBLE TIME	T ½	DOUBLE TIME
February 2014	71	9	N/C	N/C	N/C	N/C
March 2014	133	10	115	5	140	15
April 2014	72	35	137,5	33	129,5	50
May 2014	85	25	100,5	17	140	35
June 2014	113	4	N/C	N/C	134,5	15
July 2014	116,5	10	145,5	22	145,5	22
January 2015	190	23	N/C	N/C	190	34
February 2015	175	27	144	27	N/C	N/C
March 2015	190	39	151	39	190	39
April 2015	100	14	100	14	100	14
May 2015	139	55	139	55	139	55
June 2015	109	25	97,5	12	93	25
January 2016	38	19	94	19	94	19
February 2016	33	6	78	N/C	113,5	5
March 2016	97	14	N/C	N/C	30	4,5

- N/C – No claim submitted

5.8.6 Other claims during the period February 2014 to March 2016 submitted by the RTMC, indicate a similar trend in the hours claimed.

5.8.7 The evidence submitted further indicates that on the 17 March 2014 , Mr Gilberto Martins, the Deputy Director General submitted a memorandum to the CEO for the payment of overtime for personnel in the office of the CEO, for the period January 2014 to June 2014.

5.8.8 The memorandum contained a table of the names and salary levels of the officers that required overtime compensation as follows:

Name	Level	Normal	Saturday	Sunday
OFFICER X	6	3	12	12
OFFICER Y	9	3	12	12
OFFICER Z	7	3	12	12

5.8.9 On 26 March 2014, the Acting CFO indicated on the memorandum that the submission should cover the period up to 31 March 2015.

5.8.10 On 11 February 2015 Mr Gilberto Martins , the Deputy Director- General (DDG) again submitted a similar memorandum to the CEO to request approval for the payment of overtime for the personnel deployed to render protection to the CEO for the period January 2015 to March 2016.

5.8.11 On 30 August 2019, the RTMC submitted the employment contracts for four (4) bodyguards appointed for the protection of the CEO as well as one (1) driver. The RTMC further indicated that initially two (2) employees were assigned for the protection of the CEO, but that in an endeavour to eliminate overtime payment, two (2) additional officers were brought in to relieve the other officers.

5.8.12 The employment contracts of the initial two (2) body guards that were assigned for the protection of the CEO, highlighted the following paragraphs with regards to working hours and overtime:

5.8.12.1 Paragraph 12.4 *"The Employee will be expected to work 24 hour shifts, with day offs and will be informed accordingly by his/her commander/supervisor or duly authorised person".*

5.8.12.2 Paragraph 12.7 *"All conditions of service as per the Corporation's policies will be applicable to an employee."*

Application of the Relevant Law

5.8.13 Section 10 of the Basic Conditions of Employment Act of 1997 , (BCEA) regulates ordinary hours of work and overtime for employees as follows:

"10. (1) Subject to this Chapter, an employer may not require or permit an employee—

(a) to work overtime except in accordance with an agreement;

(b) to work more than—

(i) three hours' overtime a day; or

(ii) ten hours' overtime a week.

(2) An employer must pay an employee at least one and one-half times the employee's wage for overtime worked.

(3) Despite subsection (2), an agreement may provide for an employer to –

(a) pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or

(b) grant an employee at least 90 minutes' paid time off for each hour of overtime worked.

(4) (a) An employer must grant paid time off in terms of subsection (3) within one month of the employee becoming entitled to it.

(b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.

(5) An agreement concluded in terms of subsection (1) with an employee when the employee commences employment, or during the first three months of employment, lapses after one year."

5.8.14 According to paragraph 8.4 of the RTMC Policy on Conditions of Service, signed in 2011, all employees will be required to work such additional number

of hours as may be required in the context of the exigencies of the business of RTMC, and that such requirements shall not be unreasonable, and that the determination of the remuneration for overtime will be dealt with in accordance with the BCEA.

5.8.15 Further, paragraph 9 of the same policy states that before overtime can be worked, approval must be obtained from the CEO prior to the commencement of overtime and that an employee may not work more than three (3) hours overtime a day or ten(10) hours a week.

5.8.16 Provisions with regards to overtime are regulated by the agreement between RTMC and Labour, in Resolution 1 of 2012, which stated as follows:

“Work performed on Sunday: 1.5 pay for uniform official and double pay for civilians and uniform officials who do not work on Sunday. Double pay for both uniform officials and Civilians provided that this does not exceed the minimum notch of salary level 8.

Work performed on Public Holiday: double pay for both Uniform officials and Civilians provided that this does not exceed the minimum notch of salary level 8.

Overtime duties must be planned in advance and be well structured where possible. Employees must be notified of the overtime duties that are to be performed in advance. No overtime remuneration can be paid without the prescribed authorization....”.

5.8.17 Section 1 of the PFMA provides for the following definition of irregular expenditure:

(b) *“irregular expenditure means expenditure, other than unauthorised, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including-*

(a) this Act; or

(b) the State Tender Board Act, 1968, or any regulations made in terms of that act; or

(c) any provincial legislation providing for procurement procedures in that provincial government.”

5.8.18 Section 7 of the BCEA provides that in terms of the regulation of working time, *“Every employer must regulate the working time of each employee-*

- (b) in accordance with the provisions of any Act governing occupational health and safety;*
- (c) with due regard to the health and safety of employees;*
- (d) with due regard to the Code of Good Practice on the Regulation of Working Time issued under section 87 (1) (a); and*
- (e) with due regard to the family responsibilities of employees.*

Response to the section 7(9) notice dated 26 March 2019 issued to the CEO

5.8.19 In his responses dated 10 April and 15 April 2019 the CEO submitted that on 24 June 2014, the Minister of Labour, acting in accordance with section 6(3) of the BCEA, determined that all employees earning in excess of R 205 433.30 per annum be excluded from section 9, 10, 11, 12, 13, 14, 16, 17, 18 of the BCEA with effect from 01 July 2014 and that the previous figure for the determination was R193 805.00.

5.8.20 He stated that the annual salaries of the employees who were deployed for his protection, as at 1 April 2014, was above the threshold determined by the Minister of Labour and are thus excluded from section 10 of the BCEA.

5.8.21 He further submitted that *“... in light of the aforesaid, there is no merit in the allegation / preliminary finding that overtime worked and claimed by these employees constitutes maladministration as contemplated in section 6(4)(a)(ii) of the PP Act and is irregular expenditure as defined in the PFMA. It follow therefore that the Public Protector’s intended findings as set out in paragraph 10.2 of the Notice are factually and legally incorrect and should be retracted”.*

5.8.22 During my meeting with the CEO on the 12 April 2019 and in his response dated 16 April 2019, he reiterated that when he took office at the RTMC in 2014, the previous Acting CEO had made use of a private security firm at an excessive monthly cost of R 158 118.00. The CEO instructed that such services could be sourced internally and as such, officers from the NTP were transferred to the office of the CEO to provide protection services, thereby saving the RTMC approximately R 1 300 000.00 annually.

5.8.23 The CEO submitted that, based on the 2014/2015 expenditure that was incurred for overtime, controls measures were implemented to ensure drastic reduction of overtime expenditure, taking into consideration that the control measures do not affect service delivery imperatives and safety of management as per security clearance requirements. The CEO submitted that the following control measures were implemented:

“

- *NTP deployment to be informed by crash or facilities data*
- *Time off to be given to officers if agreed upon as well as protectors*
- *Total hours per month not to exceed 40 hours per month*
- *Minimal use of officers on rest days during deployment*
- *Costing of overtime per officer to be done before approval granted by CEO”.*

5.8.24 The CEO further submitted that the control measures implemented had reduced the expenditure incurred and that the annual expenditure has since been significantly decreased despite the increase in number of officers paid for the respective year. The average overtime per officer has also been reduced.

Conclusion

5.8.25 The evidence from the records submitted by RTMC indicates that approvals for overtime worked in January and February 2014 were only requested in

March 2014, and that the approval covered a period of fifteen (15) months. The second approval also covered a period of fifteen (15) months.

- 5.8.26 Overtime worked and claimed for by employees that are deployed for the protection of the CEO, is in excess of the requirements of the BCEA, and the RTMC policy on conditions of service.
- 5.8.27 With the fifteen (15) months blanket approval granted for overtime, there was no proper planning and approval of overtime for the officers. This creates the opportunity for employees to claim excessive overtime and the possibility of fraudulent claims being submitted which subsequently exposes the RTMC to irregular expenditure.
- 5.8.28 Having considered the CEO's submission, with regards to the determination issued by the Minister of Labour in July 2014, I am confident that this determination is issued to specify that employees earning over the threshold are excluded from the protection of these sections in the BCEA and do not have a legal right to demand overtime payment in respect of the above-mentioned sections, whereas employees earning under the threshold have a legal right to demand in respect of the above-mentioned sections.
- 5.8.29 The Determination by the Minister of Labour also ensures that the employer also cannot demand that employees earning over the threshold must work overtime, standby duties, attend callouts etc., without limitation and without compensation.
- 5.8.30 Notwithstanding the above, the hours of work must not be so excessive that it is prejudicial to the employee's health, need for rest and a reasonable family life in terms of section 7 of the BCEA.
- 5.8.31 It is apparent that the CEO is contradicting himself by stating that employees who earn in excess of the threshold are excluded from the section of the BCEA, and yet the overtime paid to them was determined in terms of the same section and not through agreements reached or concluded between the employer and employee in their employment contracts, which would have

ensured proper management of the overtime expenditure, to give effect to the determination that is issued in this regard.

5.8.32 The hours of overtime work was included in the RTMC Policy on Conditions of Service which indicated that the overtime stipulations applied to all employees, there was no separate clause to regulate the overtime hours for employees earning above the threshold, and further paragraph 12.7 of the contract of employments subjected employees to all conditions of service as per the RTMS's policies. It can therefore not be accepted that since the Determination by the Minister of Labour excluded employees earning above the threshold from sections in the BCEA, overtime was granted excessively to employees.

5.8.33 Furthermore, the CEO submitted that RTMC has implemented controls measures to ensure a reduction of overtime expenditure however the employment contracts of the employees indicates that prior to this, no agreement was reached with the said employees to negotiate the total hours of overtime that would be worked per month, or how employees would be compensated therefore, this is also substantiated by the memorandum that was prepared to request a blanket approval of the overtime.

5.9 Regarding whether the lawyers/legal firms appointed to conduct disciplinary cases against employees were improperly appointed, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act.

Common cause issues

5.9.1 It is common cause that the RTMC appointed lawyers/legal firms to conduct disciplinary cases against its employees.

Issues in dispute

- 5.9.2 The issue for my determination is whether or not the processes followed by the RTMC to appoint the lawyers/legal firms to conduct disciplinary cases against its employees was proper.
- 5.9.3 The RTMC submitted that the appointment of lawyers/legal firms to conduct disciplinary hearings on behalf of the corporation followed all appropriate processes, including supply chain management processes.
- 5.9.4 The evidence submitted by RTMC indicates that in June 2013, the then Acting CEO, Mr Collins Letsoalo appointed four legal firms as service providers for legal services to render services to RTMC as per the RTMC request.
- 5.9.5 The following four (4) firms were appointed for a period of twenty four (24) months from June 2013:
- Mothle Jooma Saddia as the first preferred legal firm;
Madlanga & Partners Incorporated as the second preferred legal firm;
Diale Mogashgoa Attorneys as third preferred legal firm; and
Ningiza Horber Incorporated as the fourth preferred legal firm.
- 5.9.6 The evidence provided to my office by the RTMC indicates that these four (4) firms rendered services to the RTMC from June 2013 to February 2014.
- 5.9.7 Other lawyers/legal firms were also appointed during this period to render services on labour matters. However, the use of these four (4) lawyers/legal firms appointed for a period of 24 months increasingly diminished.
- 5.9.8 Further evidence submitted by the RTMC indicates that from February 2014, lawyers/legal firms were appointed following a memorandum that was drafted to the CEO, requesting deviation from the normal procurement processes.
- 5.9.9 Various memoranda during the period 2014 to 2016 were analysed by the investigation team and the following common practices were ostensibly undertaken in the appointment of lawyers/legal firms for disciplinary cases:

- 5.9.9.1 An Employee Relations Practitioner or an employee from Labour Relations Unit would initiate a memorandum requesting approval from the CEO for specific lawyers/legal firms to be appointed to either investigate disciplinary cases, represent the RTMC in disciplinary hearings or both;
- 5.9.9.2 The memorandum would be supported by either the Chief Operations Officer at the time, the Group Executive Human Capital, or the DDG and sometimes recommended by the CFO; and the CEO would then approve the memorandum.
- 5.9.10 In a memorandum dated 29 July 2014 submitted by Mr Macema Maluleke, the Manager Labour Relations, recommended by the DDG and approved by the CEO the following is noted in the discussion :

“2.2 Advocate Mathapuna has finalized the investigation and has indicated that he would need the services of an Attorney since he is an Advocate in order to represent the Corporation during the disciplinary hearing. The issue has been discussed with the CEO and the DDG and a decision was taken that this submission is prepared...”

3.3 ...Mr Mafuyeka from Mafuyeka Attorneys is willing to agree to R800. 00 per hour and a daily rate of R8000.00. He worked with Advocate Mathapuna in other cases before and is experienced in both Labour and criminal law and therefore the two will be a good combination.”

- 5.9.11 Another memorandum dated 23 June 2014 also submitted by Mr Macema Maluleke, recommended by the DDG and approved by the CEO states as follows:

“3.10 Advocate Mandla Mathapuna can investigate this case with a view to representing the Corporation at the disciplinary hearing. Adv. Mat cross examination skills are very exceptional and based on his handling of one of the disciplinary hearings in the Corporation it became clear that he is an experienced advocate in the field of Labour Law. Mr Moshwana can preside over the case since chairing the Labour process is his specialised field. The

Labour Court has already given him and honorary award due to his impressive judgements”.

- 5.9.12 Ms Martha Rakhatoe, the Deputy Manager Supply Chain Management forwarded an email to Mr Macema Maluleke, the Manager Labour Relations on 29 October 2014, indicating that a total amount to be paid to Adv. Mafuyeka is R122 963.25 and during her telephonic conversation with him, he indicated that he did not have the tax clearance currently, but that he is “*working on that*”. She indicated that Mr Mafuyeka requested that the invoice be placed on hold until the tax clearance matter is settled.
- 5.9.13 I have also noted that Senior Counsel and Advocates were often used to conduct investigations and preside over internal disciplinary hearings.
- 5.9.14 During an interview held on 20 February 2018, the RTMC indicated that they followed a deviation process as they had not yet appointed a panel of lawyers/legal firms in line with tender processes.
- 5.9.15 They further indicated that in December 2015, the RTMC had embarked on a process of advertising a tender for the appointment of a panel of legal advisors. However this process was abandoned and thus the practice of appointing lawyers/legal firms through a process of deviation continued.
- 5.9.16 The following companies and/or legal firms were utilised for the period April 2013 to March 2016 and according to the information received from RTMC the corresponding amounts were paid to them:

April 2013 to March 2014

PAYMENT DATE	SUPPLIER	PO AMOUNT IN Rands	NOTES
16/04/2013	OPEN WATERS ADVANCED RISK SOLUTIONS	202 840,77	LABOUR MATTER
17/05/2013	OPEN WATERS ADVANCED RISK SOLUTIONS	193 485,36	LABOUR MATTER
21/06/2013	GILDENHUYS MALATJIE ATTORNEYS	87 235,31	LABOUR MATTER
03/07/2013	OPEN WATERS ADVANCED RISK SOLUTIONS	94 300,80	LABOUR MATTER
03/07/2013	FOKISANI ENTERPRISE (PTY) LTD	24 760,00	LABOUR MATTER
19/07/2013	NKONKI INC	353 394,30	LABOUR MATTER

29/08/2013	GOBODO FORENSIC AND INVESTIGATIVE	39 999,32	LABOUR MATTER
17/09/2013	MOTHLE JOOMA SABDIA	569 430,00	LABOUR MATTER
17/09/2013	OPEN WATERS ADVANCED RISK SOLUTIONS	152 928,15	LABOUR MATTER
17/10/2013	NINGIZA HORNER INC ATTORNEYS	19 950,00	LABOUR MATTER
17/10/2013	MPI ATTORNEYS (GUGU MADLANGA)	190 005,00	LABOUR MATTER
24/10/2013	OPEN WATERS ADVANCED RISK SOLUTIONS	143 374,27	LABOUR MATTER
2013-01-11	RAMELA ATTORNEYS	43 840,00	LABOUR MATTER
2013-04-11	ROOTH AND WESSELS ATTORNEYS	142 304,76	LABOUR MATTER
28/11/2013	MOTHLE JOOMA SABDIA	581 283,89	LABOUR MATTER
20/12/2013	MOTHLE JOOMA SABDIA	220 590,00	LABOUR MATTER
17/01/2014	VERVEEN ATTORNEYS	64 302,00	LABOUR MATTER
22/01/2014	MPI ATTORNEYS (GUGU MADLANGA)	147 400,00	LABOUR MATTER
31/01/2014	OPEN WATERS ADVANCED RISK SOLUTIONS	18 240,00	LABOUR MATTER
21/02/2014	MOTHLE JOOMA SABDIA	91 094,94	LABOUR MATTER
21/02/2014	OPEN WATERS ADVANCED RISK SOLUTIONS	14 684,91	LABOUR MATTER
28/02/2014	DIALE MOGASHOA	28 796,40	LABOUR MATTER
28/02/2014	MPI ATTORNEYS (GUGU MADLANGA)	51 835,00	LABOUR MATTER
14/03/2014	VERVEEN ATTORNEYS	98 338,00	LABOUR MATTER
20/03/2014	CIVAIR (STROEBEL ATTORNEYS)	84 000,00	LABOUR MATTER
27/03/2014	MKWANAZI INCORPORATE	29 040,00	LABOUR MATTER
		3 687 453,18	

April 2014 to March 2015

PAYMENT DATE	SUPPLIER	PO AMOUNT	NOTES
2014-04-11	MOHLABA & MOSHOANA INCORPORATE	33 630,00	LABOUR MATTER
2014-04-11	MOHLABA & MOSHOANA INCORPORATE	99 294,00	LABOUR MATTER
17/04/2014	ADVOCATE PRINCE VERVEEN	79 200,00	LABOUR MATTER
2014-05-19	WEBBER WENTZEL	484 022,27	LABOUR MATTER
2014-05-30	MOHLABA AND MOHOANA	79 800,00	LABOUR MATTER
2014-05-30	VERVEEN ATTORNEYS	47 550,00	LABOUR MATTER
2014-05-30	OPEN WATERS	43 318,86	LABOUR MATTER
2014-05-30	NINGIZA HORNER	62 545,00	LABOUR MATTER
2014-06-12	VERVEEN ATTORNEYS	100 050,00	LABOUR MATTER
2014-06-23	ADVOCATE PRINCE VERVEEN	90 000,00	LABOUR MATTER
2014-06-23	MOHLABA MOSHOANA	95 760,00	LABOUR MATTER
2014-06-27	OPEN WATERS		LABOUR MATTER
2014-08-01	ADVOCATE PRINCE VERVEEN	126 000,00	LABOUR MATTER
2014-08-01	ADVOCATE PRINCE VERVEEN	126 000,00	LABOUR MATTER
2014-08-01	MOHLABA MOSHOANA INC	47 880,00	LABOUR MATTER
2014-08-01	ADVOCATE MANDLA E MATHAPHUNA	90 950,00	LABOUR MATTER
2014-08-15	NDOBELA & LAMOLA ATTORNEYS		LABOUR MATTER
2014-08-22	ADVOCATE PRINCE VERVEEN	90 000,00	LABOUR MATTER

2014-08-22	ADVOCATE MANDLA E MATHAPHUNA	78 200,00	LABOUR MATTER
2014-09-12	ADVOCATE MANDLA E MATHAPHUNA	148 750,00	LABOUR MATTER
2014-09-12	ADVOCATE PRINCE VERVEEN	156 600,00	LABOUR MATTER
2014-09-12	NKONKI INC	26 165,85	LABOUR MATTER
2014-10-03	MOHLABA & MOSHOANA INCORPORATE		LABOUR MATTER
2014-10-30	ADVOCATE PRINCE VERVEEN	142 200,00	LABOUR MATTER
2014-10-30	MOHLABA & MOSHOANA INCORPORATE	143 640,00	LABOUR MATTER
2014-11-07	SELEKE ATTORNEYS	166 898,00	LABOUR MATTER
2014-11-21	ADVOCATE MANDLA E MATHAPHUNA	127 500,00	LABOUR MATTER
2014-11-21	ADVOCATE PRINCE VERVEEN	217 800,00	LABOUR MATTER
2014-11-21	SELEKE ATTORNEYS	243 100,00	LABOUR MATTER
2014-11-28	ADVOCATE MANDLA E MATHAPHUNA	328 400,00	LABOUR MATTER
2014-11-28	ADVOCATE PRINCE VERVEEN	198 000,00	LABOUR MATTER
2014-12-12	MAFUYEKA & ASSOCIATES INC	417 596,82	LABOUR MATTER
2014-12-12	VERVEEN ATTORNEYS	215 076,00	LABOUR MATTER
2014-12-17	MOODLEY M	N/A	LABOUR MATTER
2014-12-19	A ADRIAANS INC	37 857,69	LABOUR MATTER
2014-12-19	MOHLABA & MOSHOANA INCORPORATE	205 200,00	LABOUR MATTER
2014-12-19	SELEKE ATTORNEYS	60 400,00	LABOUR MATTER
2014-12-23	MAFUYEKA & ASSOCIATES INC	190 516,80	LABOUR MATTER
2015-02-13	SELEKE ATTORNEYS	253 850,00	LABOUR MATTER
2015-02-24	ADVOCATE PRINCE VERVEEN	198 000,00	LABOUR MATTER
2015-03-09	SELEKE ATTORNEYS		LABOUR MATTER
2015-03-24	MAFUYEKA & ASSOCIATES INC	234 252,90	LABOUR MATTER
2015-03-24	MOHLABA & MOSHOANA INCORPORATE	266 760,00	LABOUR MATTER
2015-03-24	MOHLABA & MOSHOANA INCORPORATE	82 080,00	LABOUR MATTER
2015-03-24	SELEKE ATTORNEYS	18 000,00	LABOUR MATTER
		4 156 844,06	

April 2014 to March 2015

PAYMENT DATE	SUPPLIER	PO AMOUNT	NOTES
2016-03-31	ADVOCATE PRINCE VERVEEN	126 000,00	LABOUR MATTER
2016-03-31	ADVOCATE PRINCE VERVEEN	58 254,80	LABOUR MATTER
2016-03-31	MAFUYEKA & ASSOCIATES	164 160,00	LABOUR MATTER
2016-03-31	MAFUYEKA & ASSOCIATES	82 080,00	LABOUR MATTER
2016-03-31	MAFUYEKA & ASSOCIATES	82 080,00	LABOUR MATTER
2016-03-31	MOHLABA & MOSHAONA INCORPORATE	165 870,00	LABOUR MATTER
2016-03-31	MOHLABA & MOSHAONA INCORPORATE	139 097,10	LABOUR MATTER
2016-03-31	SELEKE ATTORNEYS	613 200,00	LEGAL MATTERS
		2 258 291,90	

April 2014 to March 2016

PAYMENT DATE	SUPPLIER	PO AMOUNT	NOTES
15-04-2016	SELEKE ATTORNEYS	72 000,00	LABOUR MATTER
15-04-2016	SELEKE ATTORNEYS	18 000,00	LABOUR MATTER
17-05-2016	ADVOCATE SM SHABA	104 652,00	LABOUR MATTER
17-05-2016	ADVOCATE SM SHABA	615 560,00	LABOUR MATTER
17-05-2016	ADVOCATE PRINCE VERVEEN	126 000,00	LABOUR MATTER
17-05-2016	ADVOCATE PRINCE VERVEEN	54 000,00	LABOUR MATTER
17-05-2016	MAFUYEKA & ASSOCIATES	143 640,00	LABOUR MATTER
17-05-2016	MAFUYEKA & ASSOCIATES	123 120,00	LABOUR MATTER
17-05-2016	MAFUYEKA & ASSOCIATES	82 080,00	LABOUR MATTER
20-05-2016	ADVOCATE PRINCE VERVEEN	180 000,00	LABOUR MATTER
20-05-2016	ADVOCATE PRINCE VERVEEN	72 000,00	LABOUR MATTER
20-05-2016	MAFUYEKA & ASSOCIATES	164 160,00	LABOUR MATTER
20-05-2016	MOHLABA & MOSHOANA INCORPORATED	143 640,00	LABOUR MATTER
03-06-2016	ADVOCATE SM SHABA	87 210,00	LABOUR MATTER
03-06-2016	MAFUYEKA & ASSOCIATES	102 600,00	LABOUR MATTER
03-06-2016	NISHLAN MOODELY ATTORNEYS	122 265,00	LABOUR MATTER
01-07-2016	MAFUYEKA & ASSOCIATES	102 600,00	LABOUR MATTER
01-07-2016	MOHLABA & MOSHOANA INCORPORATED	126 996,00	LABOUR MATTER
01-07-2016	MOTHE JOOMA SABDIA INCORPORATED	84 951,58	LABOUR MATTER
08-07-2016	SELEPE ATTORNEYS	1 537 827,07	LABOUR MATTER
15-07-2016	ADVOCATE PRINCE VERVEEN	144 000,00	LABOUR MATTER
15-07-2016	ADVOCATE PRINCE VERVEEN	90 000,00	LABOUR MATTER
15-07-2016	MAFUYEKA & ASSOCIATES	123 120,00	LABOUR MATTER
15-07-2016	MAFUYEKA & ASSOCIATES	102 600,00	LABOUR MATTER
08-08-2016	ADVOCATE SM SHABA	143 640,00	LABOUR MATTER
08-08-2016	MOHLABA & MOSHOANA INCORPORATED	104 959,80	LABOUR MATTER
15-08-2016	MAFUYEKA & ASSOCIATES INC	148 771,63	LABOUR MATTER
15-08-2016	MAFUYEKA & ASSOCIATES INC	123 120,00	LABOUR MATTER
15-08-2016	MOHLABA & MOSHOANA INCORPORATED	61 560,00	LABOUR MATTER
15-08-2016	NISHLAN MOODELY ATTORNEYS	42 978,00	LABOUR MATTER
15-08-2016	PRINCE VERVEEN	72 000,00	LABOUR MATTER
01-09-2016	ADVOCATE SM SHABA	20 520,00	LABOUR MATTER
01-09-2016	MAFUYEKA & ASSOCIATES INCORPORATED	N/A	SALARIES
01-09-2016	MOHLABA & MOSHOANA INCORPORATED	318 424,00	LABOUR MATTER
09-09-2016	NISHLAN MOODELY ATTORNEYS	179 040,42	LABOUR MATTER
16-09-2016	MAFUYEKA & ASSOCIATES INCORPORATED	164 160,00	LABOUR MATTER
16-09-2016	ADVOCATE PRINCE VERVEEN	234 000,00	LABOUR MATTER
04-10-2016	ADVOCATE PRINCE VERVEEN	90 000,00	LABOUR MATTER
04-10-2016	ADVOCATE SM SHABA	96 444,00	LABOUR MATTER

04-10-2016	MAFUYEKA & ASSOCIATES	309 914,70	MAFUYEKA & ASSOCIATES
04-10-2016	SELEPE ATTORNEYS	520 800,00	LABOUR MATTER
07-10-2016	MOHLABA & MOSHOANA INCORPORATED	61 560,00	LABOUR MATTER
21-10-2016	MAFUYEKA & ASSOCIATES INC	102600,166880	LABOUR MATTER
21-10-2016	MOHLABA & MOSHOANA INCORPORATED	206 910,00	LABOUR MATTER
21-10-2016	NISHLAN MOODELY ATTORNEYS	163 483,41	LABOUR MATTER
21-10-2016	PRINCE VERVEEN	360 000,00	LABOUR MATTER
28-10-2016	ADV SM LEBALA SC	323 760,00	LABOUR MATTER
18-11-2016	MAFUYEKA AND ASSOCIATES INC	348 840,00	LABOUR MATTER
18-11-2016	MOHLABA & MOSHOANA INCORPORATED	227 430,00	LABOUR MATTER
18-11-2016	NISHLAN MOODELY ATTORNEYS	73 459,89	LABOUR MATTER
18-11-2016	PRINCE VERVEEN	198 000,00	LABOUR MATTER
09-12-2016	ADV SM LEBALA SC	373 920,00	LABOUR MATTER
09-12-2016	MAFUYEKA & ASSOCIATE	307 800,00	LABOUR MATTER
09-12-2016	PRINCE VERVEEN	216 000,00	LABOUR MATTER
15-12-2016	ADVOCATE PRINCE VERVEEN	306 000,00	LABOUR MATTER
15-12-2016	MAFUYEKA & ASSOCIATES	272 398,00	LABOUR MATTER
15-12-2016	SELEPE ATTORNEYS	205 920,00	LABOUR MATTER
20-12-2016	MAFUYEKA & ASSOCIATES INC	228 052,00	LABOUR MATTER
21-12-2016	MOHLABA & MOSHOANA INCORPORATED	268 470,00	LABOUR MATTER
13-01-2017	NISHLAN MOODELY ATTORNEYS	337239,94	LABOUR MATTER
03-02-2017	ADVOCATE PRINCE VERVEEN	252000	LABOUR MATTER
03-02-2017	MOHLABA & MOSHOANA INCORPORATED	61560	LABOUR MATTER
03-02-2017	NISHLAN MOODELY ATTORNEYS	311035,32	LABOUR MATTER
03-02-2017	SELEPE ATTORNEYS	188000	LABOUR MATTER
10-02-2017	MAFUYEKA & ASSOCIATES INC	349771,8	LABOUR MATTER
15-02-2017	MOSHOANA MABENA MOGANE INC	67089	LABOUR MATTER
16-02-2017	MAFUYEKA & ASSOCIATES INC	148380,5	LABOUR MATTER
16-02-2017	MOSHOANA MABENA MOGANE INC	61560	LABOUR MATTER
23-02-2017	ADV SM LEBALA SC	364800	LABOUR MATTER
28-02-2017	DIALE MOGASHOA ATTORNEYS	166405,2	LABOUR MATTER
28-02-2017	MAFUYEKA & ASSOCIATES INC	205200	LABOUR MATTER
28-02-2017	NISHLAN MOODELY ATTORNEYS	185310,42	LABOUR MATTER
10-03-2017	PRINCE VERVEEN	198 000,00	LABOUR MATTER
17-03-2017	NISHLAN MOODELY ATTORNEYS	232 374,18	LABOUR MATTER
17-03-2017	PRINCE VERVEEN	162 000,00	LABOUR MATTER
18-03-2017	ADV SM LEBALA SC	273 600,00	LABOUR MATTER
18-03-2017	MOSHOANA MABENA MOGANE INC	169290	LABOUR MATTER

24-03-2017	MAFUYEKA & ASSOCIATES INC	2015200	LABOUR MATTER
24-03-2017	MOSHOANA MABENA MOGANE INC	107388	LABOUR MATTER
24-03-2017	NISHLAN MOODELY ATTORNEYS	175 387,86	LABOUR MATTER
30-03-2017	MAFUYEKA & ASSOCIATES INC	165252	LABOUR MATTER
30-03-2017	MOSHOANA MABENA MOGANE INC	334818	LABOUR MATTER
30-03-2017	NISHLAN MOODELY ATTORNEYS	148809,9	LABOUR MATTER
30-03-2017	PRINCE VERVEEN	266760	LABOUR MATTER
30-03-2017	SELEPE ATTORNEYS	314200	LABOUR MATTER
		11 341 875,42	

Application of the Relevant Law

- 5.9.17 Section 217 of the Constitution is the basis upon which all procurement practices within the public sector are developed. The Constitution demands that when an organ of state contracts for goods and services it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.
- 5.9.18 In terms of section 76(4)(c) of the PFMA, National Treasury may make regulations or issue instructions applicable to all institutions to which the PFMA applies, concerning, *inter alia*, the determination of a framework for an appropriate procurement and provisioning system (supply chain management framework) which is in keeping with the dictates of Section 217(1) of the Constitution.
- 5.9.19 Regulation 16(A3)2(a) of the National Treasury Regulations states that a supply chain management system referred to in paragraph 16A.3.1 must be *“fair, equitable, transparent, competitive and cost effective”*.
- 5.9.20 National Treasury Regulation 16A6.4 regulates the procurement of goods and services through means other than competitive bidding. As such National Treasury Practice Note 8 of 2007/2008 regulates the use of emergency processes to procure goods and services. It highlights that *“urgent procurement”* process will only apply where early delivery is of critical importance and the utilisation of the standard procurement process is either impossible, or impractical. An *“emergency procurement”* process will only

apply in serious, unexpected and potentially life threatening circumstances which require immediate rectification.

5.9.21 National Treasury Regulation 16A.9.1 states that *“The accounting officer or accounting authority must –*

(a) take all reasonable steps to prevent abuse of the supply chain management system;

(b) investigate any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and when justified –

(i) take steps against such official or other role player and inform the relevant treasury of such steps; and

(ii) report any conduct that may constitute an offence to the South African Police Service;

...

(d) reject any bid from a supplier who fails to provide written proof from the South African Revenue Service that that supplier either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations.”

5.9.22 In his judgment delivered on 29 November 2013, in the case of *Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)* Justice Froneman held that: *“It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner.”*

5.9.23 The Court further held in that case that: *“...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it*

enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences.”

Responses to the section 7(9) notice to the CEO

- 5.9.24 In his submission dated 10 April 2019, the CEO submitted that not all suppliers that were listed in the section 7(9) notice are ‘*lawyer/legal firms*’ and that the service provided by these suppliers were not exclusively for “*Labour Matters*”. He indicated that Nkonki Inc is an audit firm; and Gobodo and Pen Waters Advanced Risk Solutions are forensic investigation companies.
- 5.9.25 The CEO reiterated the information that was submitted to me by the RTMC in its response dated 30 November 2016, stating that the RTMC had on two (2) previous occasions, i.e. December 2015 and December 2016 issued requests for proposal for the appointment of panel of attorneys and that both these processes could not be completed because they were marred by irregularities and/or lapsed. RTMC took necessary corrective action against implicated officials and finally appointed its panel of attorneys in 2018.
- 5.9.26 The CEO further submitted in his responses that during the period when there was no properly constituted panel of attorneys and the RTMC required the services of attorneys to attend to various legal matters, the RTMC appointed different law firms at different intervals on a rotational basis taking into account, amongst others, costs, capacity, availability, experience, BEE status, etc.
- 5.9.27 The CEO asserted that in the absence of a legal panel, the only way to procure such services was through the procedures laid down in RTMC Supply Chain Management Policy, and therefore, the appointment (deviation) referred to in the section 7(9) notice of lawyers/legal firms to attend to disciplinary matters followed all legislative and applicable supply chain management procedures.

- 5.9.28 He further submitted that in 2013/2014, RTMC had to pay approximately R 6 million towards labour dispute compensation as a result of the poor handling of disciplinary matters. In addition, there was serious lack of capacity in the Labour Relations Unit, wherein the unit had only one employee who attended to all labour law related matters and could not manage on his own. In order to bolster capacity and manage the financial risk previously exposed to, it was appropriate to appoint external lawyers, including counsel. Counsel was appointed based on complexity of each matter and not “willy-nilly”.
- 5.9.29 The CEO stated that there was sufficient budget allocated for legal costs and as such, he contended that funds incurred for those services were authorised and consequently can never be regarded as ‘irregular expenditure’ as defined in the PFMA.
- 5.9.30 The CEO further indicated to me in our meeting and his response that the RTMC have recruited and appointed a total of three senior employee relations officers (who are also advocates) to supplement the capacity of employees dealing with legal and labour matters which will and has already reduced the RTMC’s dependency on external legal service providers for labour matters.
- 5.9.31 In responding to the section 7(9) finding that, the CEO failed to comply with Treasury Regulation 16A9.1 by ensuring that lawyers/firms which were hired were tax compliant prior to their appointment, the CEO enquired if this finding referred to a specific number of lawyer/legal firms, and if so, requested that I should provide him with a list of those lawyers/legal firms so that he could investigate whether this was indeed the case, and in the absence thereof he stated that my finding is not substantiated by any evidence.
- 5.9.32 The CEO then went on to state that the only conclusion he could make under the circumstances, was my reference in paragraph 8.2.3.9.5 and 8.2.3.29 of the section 7(9) notice, with regards to the tax status of Mafuyeka attorneys. He contended that there was no suggestion that the RTMC made any payment to these attorneys when it did not have a tax clearance on 29 October 2018. He stated that at the time that RTMC appointed Mafuyeka attorneys in June

2014, and before any subsequent payments were made to it, it had a valid tax certificate.

5.9.33 The CEO again asserted that, there was no merit in the allegation/ preliminary findings and as such the RTMC cannot be accused of any maladministration as set out in paragraph 10.3 of the section 7(9) notice.

5.9.34 He submitted that the findings that I intended to make against him were both factually and legally not sustainable in the light of above consideration and accordingly that I should not make any adverse findings against him or the RTMC.

Conclusion

5.9.35 National Treasury Practice Note 8 of 2007/2008 provides that emergency or urgent procurement allows an organ of state to deviate from normal procurement processes. Lack of proper planning cannot be constituted as an urgent case.

5.9.36 Based on the evidence submitted and the regulatory framework, the CEO had improperly appointed lawyers/legal firms to conduct disciplinary cases against its employees.

5.9.37 Lawyers/legal firms were continuously appointed through a process of deviation and it is evident that this practice continued for a period of four (4) years from 2014 to 2018, until they had appointed a panel of lawyers/ legal firms for the said service.

5.9.38 The continuous use of deviations to motivate the appointment of the lawyers/legal firms was inconsistent with the provisions of the Section 217(1) of the Constitution which requires an organ of state to contract for services with a system which is fair, equitable, transparent, competitive and cost effective.

- 5.9.39 From the two motivations discussed above, it is apparent that lawyers/legal firms were appointed based on the personal preference of the particular lawyer/legal firm based on previous work/service provided to the RTMC, and not on a fair, equitable, transparent, competitive and cost effective obligation as required by Section 217(1) of the Constitution and National Treasury Regulation 16(A3)2(a).
- 5.9.40 I have noted that other memoranda which were utilised like a template by RTMC, had similar motivations for the appointment of a particular lawyer/legal firm.
- 5.9.41 National Treasury Regulation 16A9.1, requires all service providers to have a valid tax clearance certificate prior to being appointed to conduct business with an organ of state.
- 5.9.42 However, despite Mr Mafuyeka of Mafuyeka Attorneys not having a valid tax clearance certificate at the time that he provided a quotation for his services, he was still appointed to render services for the RTMC. The CEO's submission that Mafuyeka Attorney's had a valid tax clearance certificate at the time that they were appointed by RTMC is disputable as the evidence before me clearly indicates that Mafuyeka Attorney's was appointed in June 2014 and had rendered services to RTMC without a valid tax clearance certificate. The evidence further indicates that even though Mafuyeka Attorney's rendered services to RTMC in June 2014, RTMC only paid for services rendered by the firm in December 2014.
- 5.9.43 Furthermore, the appointment of Senior counsel and Advocates to attend to internal disciplinary cases by the CEO, wherein such a high level of expertise is not required, It was noted that Senior counsel and Advocates were used to investigate, prosecute and chair the disciplinary hearings internally This is contrary to the obligations placed on the RTMC to efficiently, economically and effectively utilise state resources in line with Section 195(1)(b) of the Constitution.

- 5.9.44 The evidence received by my office indicates that the appointment of legal firms/lawyers was not procured from a list of registered service providers from RTMC's Supplier Database or the National Treasury CSD, and was also not procured on an emergency or sole supplier basis and therefore could not have been procured on a proper deviation process.
- 5.9.45 Based on the amounts spent on litigation processes, the CEO was clearly conscious to the fact that they had serious labour matters that required them to utilise legal firms/lawyers. This should have provided him with an indication that the appointment of legal firms/lawyers should be made through a proper procurement process, and that the process of finalising a panel for the appointment of legal firms/lawyers, or employing additional employees, should have been prioritised.
- 5.9.46 The CEO failed to take all reasonable steps to prevent the abuse of the supply chain management system as required by National Treasury Regulation 16A.9.
- 5.9.47 The CEO's submission to the section 7(9) notice that, the findings that I intended to make against him were both factually and legally not sustainable is disingenuous and legally flawed. I have indicated earlier that the deviations process to appoint the lawyers/legal firms continued for a period of four (4) years and the use of deviation cannot be justified as a reason for poor planning, especially the approval of a blanket deviation for the appointment of lawyers/legal firms.
- 5.9.48 It is also evident that the utilisation of panel that was appointed in 2013 to provide legal services for a period of two (2) years was abandoned and memoranda for approvals to appoint lawyers/legal firms clearly indicates that the choice of a particular lawyer/legal firm was based on personal preference and previous work/service provided to the RTMC by the particular lawyer/legal firm and not as given by the CEO in his response to the section 7(9) notice that they appointments were made on a rotational basis.

- 5.9.49 The evidence from the table in paragraph 5.9.16 Indicates that in a period of three (3) financial years, 2014/2015 , 2015/2016 and 2015/2016, the following five(5) lawyers/legal firms received most of the appointments and payments; Mohlaba & Moshwana Incorporated, Advocate Prince Verveen, Advocate Mandla E Mathaphuna, Seleke Attorneys and Mafuyeka & Associates.
- 5.9.50 I have further noted that since February 2017, Mohlaba & Moshwana Incorporated were no longer being appointed, but Moshwana, Mabena and Mogane was instead appointed. Moshwana in both these firms is reference to Mr Graham Nascious Moshwana.

6. FINDINGS

Having considered the evidence received during the investigation, the regulatory framework determining the standard that should have been complied with, I make the following findings:

- 6.1 Regarding whether the CEO unduly introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced for, in order to create posts for family and friends, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994:**
- 6.1.1 The allegation that the CEO unduly introduced a matching and placement restructuring process, moving qualified people out of their positions to posts which they were not experienced for in order to create posts for family and friends, is not substantiated.
- 6.1.2 The evidence submitted indicated that the process was approved by the Board and that the RTMC had put in place sufficient structures into the process to deal with employee grievances relating to the matching and placement.

- 6.1.3 No evidence could be found to indicate that the CEO had introduced the matching and placement process, to move qualified people out of the positions to posts in order to create posts for his family and friends.
- 6.2 **Regarding whether the instruction by the CEO to have the fleet of silver Chevrolet vehicles purchased in 2014, painted black amounted to fruitless and wasteful expenditure as defined in section 1 of the PFMA, 1999 and maladministration in terms of section 6(4) of the Public Protector Act, 1994.**
- 6.2.1 The allegation that the CEO instructed that the fleet of silver Chevrolet vehicles purchased in 2014 be painted “*wrapped*” in black amounted to fruitless and wasteful expenditure, is not substantiated.
- 6.2.2 The evidence indicate that the supplier of the Chevrolets, Williams Hunt Motor, undertook to “*wrap*” the vehicles in Black at no additional cost.
- 6.2.3 There is no evidence to indicate that RTMC incurred any additional expense to wrap the silver Chevrolet vehicles to black in colour.
- 6.3 **Regarding whether the RTMC failed to conduct a security assessment for the allocation of four (4) bodyguards for the CEO, and if so whether such conduct amounted to maladministration in terms of section 6(4) of the Public Protector Act, 1994.**
- 6.3.1 The allegation that the RTMC failed to conduct a security assessment for the allocation of four (4) body guards for the CEO, is not substantiated.
- 6.3.2 The evidence indicates that the security threat assessments were conducted by the Crime Intelligence Division of the South African Police Service (SAPS).
- 6.3.3 The number of traffic officials deployed were based on the recommendation of the security threat assessment.
- 6.3.4 Currently RTMC is utilising traffic officers for the purpose of physical security for the CEO.

- 6.4 Regarding whether the CEO unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano, despite him having already procured a new Mercedes Benz E 500 in January 2014, and if so whether such conduct amounts to irregular and/or fruitless and wasteful expenditure as defined in section 1 of the PFMA and maladministration in terms of section 6(4) of the Public Protector Act, 1994**
- 6.4.1 The allegation that the CEO unnecessarily procured a Mercedes Benz S350 and a Mercedes Benz Viano, despite him having already procured a new Mercedes Benz E 500 in January 2014, is not substantiated.
- 6.4.2 The initial Mercedes Benz E 500 was purchased in February 2014 by RTMC to replace the Audi that was utilised by the previous CEO.
- 6.4.3 After a decision by the Board regarding the issue of the employment contract of the CEO and that the vehicle allowance did not form part of his remuneration package but was rather additional to it, a decision was taken that RTMC should purchase a motor vehicle for the CEO for a maximum value not exceeding R1 200 000.00 over a period of five (5) years.
- 6.4.4 The evidence indicates that the CFO approved a requisition for goods and services on 10 November 2014, amongst others which included the Mercedes Benz Viano in line with the Board Resolution taken on 27 October 2014.
- 6.4.5 RTMC purchased the vehicles through transversal terms contracts in line with Treasury Regulations 16A6.5.
- 6.5 Regarding whether the “21 Cadre Development Course” conducted by a company owned by Mr George Fivas was improperly procured, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act.**

- 6.5.1 The allegation that the “21 Cadre Development Course” conducted by a company owned by Mr George Fivas was improperly procured is not substantiated.
- 6.5.2 The evidence indicates that the RTMC had followed the relevant prescripts in acquiring the services of the company in line with the Constitution and its SCM policy.
- 6.6 **Regarding whether an employee named Ms Julia Manamela, was improperly employed to a position in Supply Chain Management Unit, and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994**
- 6.6.1 The allegation that the employment of Ms Julia Manamela was improper, is substantiated.
- 6.6.2 Although the CEO, initially approved the employment of Ms Manamela on a twelve (12) month contract and had waived the advertising of the position, in line with paragraph 4.4.3 of the Recruitment, Selection and Placement Procedure policy, he only partially complied with the said paragraph as he failed to ensure that a transparent and fair process was followed, in compliance with section 195 of the Constitution and their own Recruitment policy.
- 6.6.3 The initial appointment of Ms Manamela to the position of Admin Assistant, Travel, and within a period of six (6) months, her elevation to the position of SCM Practitioner: Travel Management with three times her initial salary, amounted to improper conduct as envisaged in section 182(1) of the Constitution and maladministration as contemplated by section 6(4)(a)(ii) of the Public Protector Act, 1994.
- 6.6.4 I also find that paragraph 4.4 of the Recruitment, Selection and Placement Procedure policy is inadequate in terms of providing guidance on the waiver of advertisements and the appointment of employees on contracts for twelve (12) months or less.

6.7 Regarding whether officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO were remunerated outside the C1 band more than their supervisors who are on C3 for the traffic officers posts, advertised in 2014, Ref No RTMC/TO/2014, and if so, whether such appointment amounted to maladministration and improper conduct as contemplated by section 6(4) of the Public Protector Act, 1994..

6.7.1 The allegation that officers were improperly appointed on the level of senior inspectors on band C1, and Mr LJ Moloi and Mr TR Msibi and a few others who are relatives of the CEO is not substantiated.

6.7.2 The evidence submitted indicates that the CEO did not form part of the shortlisting or interview panels for the appointment of the traffic officers.

6.7.3 The CEO had only approved the appointments of traffic officers.

6.7.4 There is no evidence to support the allegation that the CEO was related to Mr LJ Moloi and Mr TR Msibi.

6.7.5 There is also no evidence indicating that that Mr LJ Moloi and Mr TR Msibi were irregularly remunerated outside the C1 salary band more than their supervisors because they are related to the CEO.

6.7.6 No further evidence was provided by the Complainant to support the allegation.

6.8 Regarding whether the bodyguards assigned for the protection of the CEO were unduly each allocated a vehicle and paid excessive overtime, and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994

6.8.1 The allegation that the body guards allocated for the protection of the CEO were unduly paid excessive overtime is substantiated.

- 6.8.2 The evidence and the applicable law indicate that the overtime hours claimed and paid to the officers assigned for the protection of the CEO exceeded the number prescribed in terms of the BCEA and the RTMC Conditions of Employment.
- 6.8.3 Despite the provisions of the BCEA and their own policy the DDG, CFO and CEO were negligent in granting such blanket approvals for overtime and failed to ensure that the claims for overtime allowance complied with the relevant regulatory framework.
- 6.8.4 The payment of excessive overtime allowance to the officers assigned for the protection of the CEO, amounted to maladministration as contemplated by section 6(4)(a)(i) of the Public Protector Act and irregular expenditure as defined by section 1 of the PFMA, as no agreement or policy was in place to regulate the payment of overtime for employees earning above the threshold.
- 6.8.5 However, the submission by the CEO regarding the subsequent control measures that have been implemented to reduce the overtime expenditure is noted.
- 6.9 **Regarding whether the lawyers/legal firms appointed to conduct disciplinary cases against employees were improperly appointed, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act**
- 6.9.1 The allegation that lawyers/legal firms hired to conduct disciplinary cases against employees were improperly appointed, is substantiated.
- 6.9.2 The CEO failed to ensure that the appointment of lawyers/legal firms followed a process that is transparent, equitable and fair in line with Section 217(1) of the Constitution and National Treasury Regulation 16(A3)2(a) and therefore amounts to maladministration.
- 6.9.3 The expenditure incurred as a result of the irregular appointments of the lawyers/legal firms amounts to irregular expenditure.

- 6.9.4 The CEO further failed to comply with National Treasury Regulation 16A9.1 by ensuring that lawyer/legal firms which were hired were tax compliant prior to their appointment. The expenditure incurred by RTMC amounts to irregular expenditure as defined in section 1 of the PFMA and maladministration as envisaged in section 6(4) of the Public Protector Act.
- 6.9.5 However, I have taken note that of the submissions by the CEO, that the RTMC has since appointed a panel of lawyer/legal firms to attend to various legal matters, and that three (3) senior employee relations officers who are advocates have been recruited and appointed within the RTMC to handle legal and labour related matters.

7. REMEDIAL ACTION

In light of the above, and having taken into account evidence before me, the appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution are the following:

- 7.1 **Regarding whether an employee named Ms Julia Manamela, was improperly employed to a position in Supply Chain Management Unit, and if so, whether such appointment amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**

The RTMC Board

- 7.1.1 To take note of my findings in respect of the above issue, and ensure that the Recruitment Policy is accordingly aligned with the requirements of the Constitution, by safeguarding against the inclusion of clauses that undermines a transparent and fair process in recruitment; and
- 7.1.2 To take appropriate action against the CEO for the irregular appointment of Ms Manamela to the position Admin Assistant: Travel.

- 7.2 Regarding whether the body guards assigned for the protection of the CEO were each allocated a vehicle and paid excessive overtime, and if so, whether such conduct amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994**

The RTMC Board

- 7.2.1 To take disciplinary action against the CEO for the mismanagement of the overtime scheduling and consequent excessive payments;**
- 7.2.2 To ensure that the control measures implemented with respect to the overtime payments are monitored and evaluated regularly by the RTMC; and**
- 7.2.3 To ensure that the working conditions, overtime hours and remuneration, in this regard is sufficiently detailed in the Conditions of Service Policy, wherein employees earnings both above and below the threshold determined by the Minister of Labour, are included.**
- 7.3 Regarding whether the lawyers/legal firms appointed to conduct disciplinary cases against employees were improperly appointed, and if so whether such conduct amounts to improper conduct and maladministration in terms of section 6(4) of the Public Protector Act.**

The RTMC Board

- 7.3.1 To take disciplinary action against the CEO for his failure to ensure that the appointment of lawyers/legal firms followed a process that is transparent, equitable and fair in line with section 217(1) of the Constitution and National Treasury Regulation 16A.**

8. MONITORING

- 8.1 The Board of RTMC must, within thirty (30) working days from the date of the issuing of this Report and for approval by the Public Protector, submit the**

implementation plan to the Public Protector indicating how the remedial action referred to in paragraphs 7.1, 7.2 and 7.3 of this Report will be implemented.

- 8.2 In line with the Constitutional Court judgment in the matter of ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*** [2016] ZACC 11, and in order to ensure the effectiveness of Office of the Public Protector, the remedial actions prescribed in this Report are legally binding , unless set aside by a Court order.



ADV. BUSISIWE MKHWEBANE

PUBLIC PROTECTOR OF SOUTH AFRICA

DATE: 16/09/2019