

# Conducting Workplace Investigations Fairly & Efficiently

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Aligning practice with the new Code of Good Practice: Dismissal

*Notice 3470 of 2025 · GG 53294 · In force 4 September 2025*

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# Why this conversation, and why now?

*An icebreaker, an inflection point, and the six movements ahead*

## A WORD BEFORE WE BEGIN

They say a workplace investigator is someone who arrives at the scene of the crime **after** the disciplinary hearing has already decided who did it — *and is then asked to find the evidence that proves it.*

**That, ladies and gentlemen, is exactly the practice the 2025 Code is trying to end.**

If you laughed, it's probably because you've seen the file. If you didn't laugh — congratulations, you've *been* the file.

## THE INFLECTION POINT · ROADMAP

On 4 September 2025 the Code came into operation, repealing Schedule 8 (1995) and the previous Operational Requirements Code. For the first time in 26 years, our dismissal jurisprudence is being reset around three modern axes: genuine dialogue, proportionate procedure, and mutual respect.

- I** Legal architecture — what the 2025 Code changes
- II** Investigator's craft — planning, evidence, threshold
- III** Audi alteram partem — putting the case
- IV** Sexual harassment — the Shoprite v JL anatomy
- V** Modern risks — defamation, recordings & AI
- VI** Public-sector overlay & practitioner's checklist

# What is an investigation — and what governs it?

Three reflective questions, the typical taxonomy, and the hierarchy of governing instruments

*“The purpose of a fair procedure is to ensure a genuine dialogue and an opportunity for reflection before any decision is taken.”* — item 11(1), Code of Good Practice: Dismissal (2025)

## THREE QUESTIONS TO PONDER

### 01 Process or performance?

A search for the truth — or a paper trail constructed to support a decision already taken?

### 02 Who are you in the room?

An investigator must understand his/her role and limitations: fact-finder, not prosecutor or chair.

### 03 Could your report defame?

After *Ndobe v Gibela Rail* (GJ, 2024) — yes, it can. But qualified privilege protects bona fide, relevant reports.

## TYPICAL INVESTIGATIONS · TAXONOMY

**Misconduct** — theft, fraud, dishonesty, gross negligence · **Sexual & other harassment** · **Incapacity** (poor performance / ill-health) · Whistle-blower / PDA disclosures (PDA, 2000) · **Financial misconduct** (PFMA / MFMA, public sector) · **Grievances** incl. bullying & abusive supervision

## GOVERNING INSTRUMENTS · IN HIERARCHY

**Constitution, 1996** — ss 23, 33, 34 · **LRA 66 of 1995** — ss 187, 188 · **Code of Good Practice: Dismissal (4 Sept 2025)** · **Sectoral / collective agreements** — PSCBC Res 1/2003; SALGBC; SAPS; ELRC; PHSDSBC · **Specialised codes** — Harassment Code; EEA; POPI Act; RICA; PDA.

# I Schedule 8 (1995) vs the 2025 Code

*Six structural shifts every investigator must internalise*

## BEFORE 4 SEPT 2025 · Schedule 8 (1995, am. 2002)

### Pre-dismissal procedure

Investigations treated as informal — focus was the disciplinary enquiry.

### Fairness

Limited codification of the 'corrective' aim of discipline.

### Mutual respect

Little express reference — case-law gloss only.

### Inconsistency

Often treated as fatal; little flexibility for serious cases.

### Sexual harassment / Op-Reqs

Governed by 2005 Code (now repealed); separate 1999 Op-Reqs Code.

(no express small-business carve-out)

## FROM 4 SEPT 2025 · New Code of Good Practice

### Genuine dialogue (item 11(1))

Fair procedure must enable real reflection before any decision.

### Proportionality (item 11(3))

Investigation appropriate to size of employer & nature of allegation.

### Mutual respect (item 2(2))

Anchored as the overarching interpretive principle.

### Inconsistency softened (item 10 fn 4)

Not automatically unfair where continued employment is intolerable.

### Consolidation

Misconduct, incapacity & operational requirements in one Code.

### Small businesses (item 3 / 3(4))

Express recognition: lengthy formal processes may not be feasible.

# Five fairness parameters under the new Code

Read across items 5, 8, 9, 11 and 13 of the Code of Good Practice: Dismissal

|                                                                                                                                                                                             |                                                                                                                                                                          |                                                                                                                                                                                            |                                                                                                                                                                                    |                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div>ITEM 5</div> <div>FAIR REASON + FAIR PROCEDURE</div> <div>Item 5(1): a dismissal is fair only if for a fair reason and following a fair procedure. The investigation feeds both.</div> | <div>ITEM 8</div> <div>RULE-BASED ENQUIRY</div> <div>Was the rule valid, known, important; was harm caused; was it consistently applied; is dismissal appropriate?</div> | <div>ITEM 9</div> <div>INTOLERABILITY TEST</div> <div>Dismissal only where continued employment intolerable — nature of job, seriousness, progressive discipline, length of service.</div> | <div>ITEM 11</div> <div>GENUINE DIALOGUE</div> <div>Items 11(1)–(7): adequate notice, opportunity to respond, assistance, language, exceptional-circumstances justification.</div> | <div>ITEM 13</div> <div>DISCIPLINARY RECORDS</div> <div>Keep records of transgressions, action taken and reasons. The audit trail is your consistency proof.</div> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|

All five parameters interlock — fail one and the entire investigation is exposed at arbitration.

# Where the Code bites — and the proportionality dial

Identify the governing instrument BEFORE drafting the mandate; then size the process to the employer

| SECTOR                                   | PRIMARY SOURCE                | INVESTIGATION FOOTPRINT                                                                                 | TIME                                 |
|------------------------------------------|-------------------------------|---------------------------------------------------------------------------------------------------------|--------------------------------------|
| Private sector                           | Schedule 8 → New 2025 Code    | Code is general; employer policy fills detail. Investigation must be appropriate to circumstances.      | No fixed period — “reasonable”       |
| National & Provincial Govt (Levels 1–12) | PSCBC Res 1 of 2003           | Disciplinary Code & Procedures binding by collective agreement; investigation feeds the formal hearing. | Hearing within 60 days of suspension |
| Senior Management Service                | Chapter 7, SMS Handbook       | Distinct disciplinary regime for SMS members.                                                           | 60-day rule on suspension            |
| Local Government (257 municipalities)    | SALGBC Disciplinary Procedure | Investigation prescribed within agreement framework.                                                    | As prescribed in agreement           |

Practical takeaway: misidentifying the source remains the single most common procedural defect.

LARGE EMPLOYER

Written policy, formal mandate, full witness statements, recorded interviews, investigation report — proportionate to harm and resources.

MEDIUM EMPLOYER

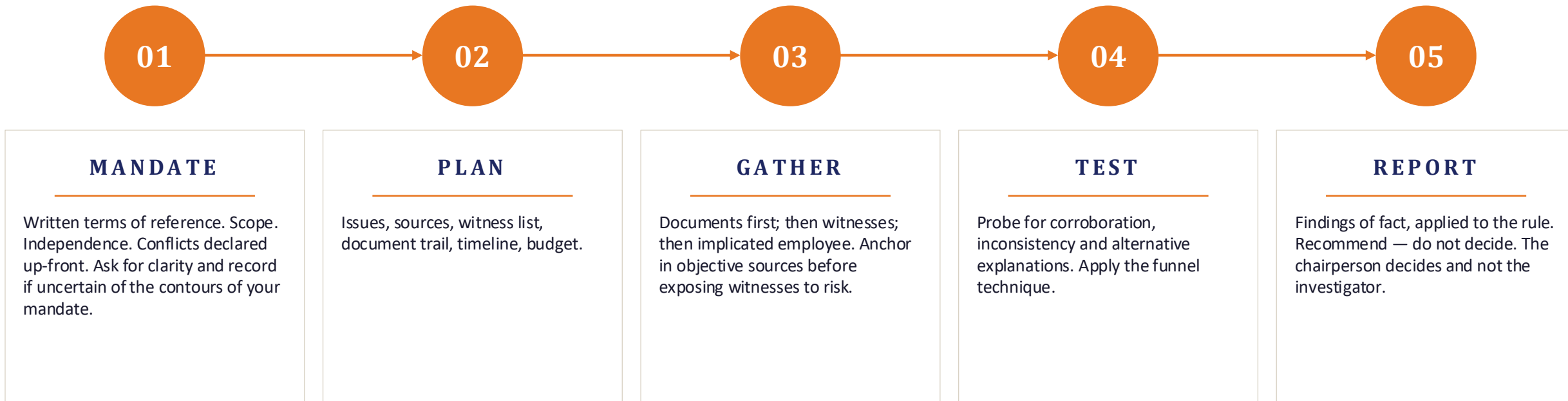
Documented terms of reference; structured interviews; written report — but reasonable departures from formality may be justified.

SMALL EMPLOYER (item 3 (3))

Cannot reasonably engage in time-consuming investigations while keeping business going. Informal advice & contemporaneous note may suffice.

# II The five-stage investigation model

*From mandate to report — the architecture that holds up under review*



## THE GOLDEN THREAD

*An investigator is a fact-finder, not a prosecutor or chairperson. Every stage must be defensible on its own terms — because in arbitration (and on review in the Labour Court) your mandate, plan and timeline will be cross-examined every bit as carefully as your findings.*

# Interview, don't cross-examine — the funnel

Written questions, direct engagement, and the hybrid approach most investigators now use

| METHOD               | ADVANTAGES                                                                  | RISKS                                                                           |
|----------------------|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Written questions    | Reduces leading; clear record; less confrontational.                        | Cannot explore nuance; over-formal; employee may decline on advice.             |
| Direct engagement    | Allows probing, credibility assessment, memory testing.                     | Risk of slipping into cross-examination; demands disciplined notes.             |
| Hybrid (recommended) | Written questions to scope issues; short direct engagement to clarify gaps. | Sequencing matters: never put allegations before a documented prima facie case. |



# The standard of proof

South African labour law applies a single civil standard at adjudication

| INVESTIGATION                                                                                                                                                                             | DISCIPLINARY HEARING                                                                                                                                                                | ARBITRATION / REVIEW                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div>Prima facie case</div> <div>Enough evidence that, if unrebutted, would justify a finding on a balance of probabilities. Not 'beyond reasonable doubt'. Not 'conclusive proof'.</div> | <div>Balance of probabilities</div> <div>Employer bears the onus to prove its allegations are more probably true than not. Single civil standard. No special harassment rule.</div> | <div>Balance of probabilities</div> <div>Same standard, sharper scrutiny. Arbitrator decides afresh under LRA s 138. Labour Court reviews on a 'reasonable arbitrator' test (Sidumo).</div> |

**SEXUAL HARASSMENT**  
*The threshold is NOT lower for sexual harassment. Liberty Group v MM (LAC, 2017) and Shoprite v JL (LC, 2021) confirm balance of probabilities at the dispute stage. What changes is the sensitivity of the process — trauma-informed handling, parity, confidentiality — not the standard of proof.*

# Anchoring credibility — the evidence hierarchy

Why documents, system records and CCTV beat polygraphs every single time

| SOURCE                          | WEIGHT | WHY                                                                            | KEY AUTHORITY                                                                        |
|---------------------------------|--------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Contemporaneous documents       | HIGH   | Independent of memory; date-stamped; difficult to fabricate post-hoc.          | Practice — courts consistently anchor here first.                                    |
| System records / CCTV / data    | HIGH   | Objective; testable for tampering; resolves spatial & temporal disputes.       | Shoprite v JL — in loco inspection plus video footage drove analysis.                |
| Independent eyewitnesses        | HIGH   | Especially where corroborated by documents; assess bias and demeanour.         | Stellenbosch Farmers' Winery v Martell (SCA, 2003) credibility framework.            |
| Complainant / accused testimony | MEDIUM | Subject to credibility findings; reliability shaped by opportunity to observe. | Santam v Biddulph (SCA, 2004) — credibility judged against probabilities.            |
| Polygraph results               | LOW    | Not determinative; questions often miss the point (e.g. Shoprite v JL).        | Shoprite v JL (LC, 2021) — discounted where surrounding evidence cuts the other way. |

Build the file from the top of the hierarchy down — never the other way around.

## When to put the allegations · What to disclose

*Item 11(4)–(5) — sufficient detail to allow the employee to understand the allegations*

*“Usually, before a decision is taken to dismiss, the employee should be notified of the allegations of misconduct, preferably in writing, and given an opportunity within a reasonable period to prepare and make representations on both the misconduct allegations and the appropriate sanction.” — item 11(4)*

### WHEN · THREE TIMING DECISIONS

#### Investigation stage

Once a documented prima facie case exists, put the substance of the allegations to the implicated employee and invite a response — before drawing final findings.

#### Pre-disciplinary

Item 11(4)(a)–(b) requires written notification of allegations and a reasonable period to prepare representations on both misconduct AND sanction.

#### Avoid two pitfalls

Confronting too early (without evidence) is unfair to the employee. Confronting too late (after a finalised report) breaches audi alteram partem.

### WHAT · SUFFICIENT DETAIL, NOT ALL DETAIL

#### The rule, the conduct, the time, the place

Disclose the rule said to be breached **and enough particulars to enable a meaningful response**. Avoid disclosing the entire investigation file (compare New Zealand approach: complete disclosure).

#### Documents & witness statements

Made available within a reasonable time before the hearing. Redact what is irrelevant, privileged, or third-party-confidential information.

#### Identity of complainants

Should identity be disclosed? In harassment, bullying or whistleblower cases, balance fair-trial rights against safety, retaliation risk and POPIA.

# Procedural safeguards under item 11(4)–(7)

*Assistance, language, exceptional circumstances, and trade-union office-bearers*

|                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div>REPRESENTATION<div>item 11(4)(c)</div></div> <div>Allowed the assistance of a fellow employee or trade-union representative. Not legal representation as a default — but bargaining-council rules and the case's complexity may shift that.</div>      | <div>LANGUAGE<div>item 11(4)(d)</div></div> <div>Where reasonably possible, the employee must be given the opportunity to converse in a language they are comfortable with. Frequently overlooked — and a frequent ground of procedural challenge.</div> |
| <div>EXCEPTIONAL CIRCUMSTANCES<div>item 11(6)</div></div> <div>An employer may dispense with some or all guidelines if it cannot reasonably comply — but bears the burden to justify the non-compliance if a procedural-fairness dispute is referred.</div> | <div>TRADE-UNION OFFICE-BEARERS<div>item 11(7)</div></div> <div>Discipline against a trade-union representative or office-bearer should not be instituted without first informing and consulting the trade union.</div>                                  |

# IV Shoprite Checkers v JL — the case in 60 seconds

LC, Cape Town • 10 December 2021 • Lagrange J • Cases C886/17 & C627/2018

## THE FACTS • IN 60 SECONDS

- 20 Dec 2016** Just before 18h00 — JL, a telesales clerk, assists her general manager (KB) at a colleague's terminal. She alleges that, while operating the keyboard, KB slapped her on the left buttock and giggled. No eyewitnesses to the act.
- 21 Dec** Through her partner-attorney, JL emails grievance letters to KB and to the regional GM.
- Investigation** Regional personnel manager (De Villiers) opens an investigation. KB takes a polygraph — passes. JL is later asked — fails.
- 10 Jan 2017** Shoprite communicates the outcome: 'no conclusive evidence' of harassment. JL refuses to sign. De Villiers asks her in Afrikaans, 'What kind of games are you playing?' and warns of a possible defamation claim by KB. She is suspended that day.
- 18 Jan** JL is charged with making a false accusation. She resigns the same day, alleging constructive dismissal. She also refers EEA s 6(3) discrimination & unfair-suspension claims.

## THE ARBITRATOR'S AWARD

- R 50 000**  
compensation for unfair discrimination (sexual harassment)
- 6 months**  
remuneration for unfair constructive dismissal
- 1 month**  
remuneration for unfair suspension
- Costs**  
ordered against Shoprite
- Mandate**  
to adopt a sexual-harassment policy and educate all staff

# What survived the appeal — and the s 60 road to liability

Three claims, three outcomes · Liberty Group v MM (LAC, 2017)

|                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>SEXUAL HARASSMENT</b></p> <p><i>EEA s 6(3) &amp; s 10(6) · APPEAL</i></p> <p><b>UPHELD</b></p> <p>Arbitrator's credibility findings stood. JL's account more probable than KB's. s 60 liability confirmed because Shoprite did not take all 'necessary steps'.</p> <p><i>Compensation reduced from R50 000 to R25 000 (single incident; would have been resolved by an apology).</i></p> | <p><b>SUSPENSION</b></p> <p><i>LRA s 186(2) · REVIEW</i></p> <p><b>PARTIALLY UPHELD</b></p> <p>Procedurally fair (Long v SAB Ltd: precautionary suspension does not require pre-suspension representation). Substantively unfair: KB never suspended despite identical risk.</p> <p><i>1 month's remuneration award unchanged.</i></p> | <p><b>CONSTRUCTIVE DISMISSAL</b></p> <p><i>LRA s 186(1)(e) · REVIEW</i></p> <p><b>SET ASIDE</b></p> <p>JL ought to have used the disciplinary inquiry to challenge the false-accusation charge. Reasonable scepticism did not justify resignation without testing the case.</p> <p><i>6 months' compensation award reviewed and set aside.</i></p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

EEA SECTION 60 · THE ROAD TO VICARIOUS LIABILITY



**LIBERTY v MM CORRECTION:** Subsections (3) and (4) are NOT cumulative. Liability arises under (3) when the employer fails to take necessary steps after a complaint; (4) is an additional escape route. The two operate sequentially, not jointly.

# Six failings that sank Shoprite's defence

*What Lagrange J saw — and what every investigator must avoid*

## 01 NO INFORMAL OPTION

JL was never asked what outcome she sought. An apology would have ended the matter. Item 8.5 of the 2005 Code (then operative) and good practice today requires offering both informal and formal routes.

## 02 BIASED INVESTIGATOR

De Villiers worked closely with KB. He asked JL 'What games are you playing?' and remarked 'It is not as if KB raped you'. Neutrality fatally compromised.

## 03 REGIONAL GM CONTAMINATION

Van der Spuy phoned KB's wife to assure her of her husband's innocence. Once an investigation is delegated, the senior manager must step back.

## 04 DISPARATE TREATMENT

KB given the afternoon off; JL refused paid leave. KB tested by polygraph immediately; JL only when charges were laid. KB never suspended; JL was.

## 05 WRONG THRESHOLD

De Villiers required 'conclusive evidence' to discipline KB. The correct standard is prima facie. By demanding more, he effectively closed the inquiry without deciding it.

## 06 FALSE-ACCUSATION CHARGE

Discounting the only direct evidence (the parties' versions) and then charging the complainant with falsehood inverted the duty under s 60(2) to take 'necessary steps'.

# V Recording the interview · Defamation & qualified privilege

*RICA, POPIA, and Ndobe v Gibela Rail Consortium (GJ, 27 Nov 2024, Windell J)*

## RECORDING THE INTERVIEW · RICA + POPIA + PRACTICE

### RICA · s 4(1)

Where the investigator is a party to the conversation, recording is permitted without the other party's consent. RICA satisfied — but RICA is not the only statute in play.

### POPIA · ss 8–11

Personal information must be processed lawfully, minimally, for a defined purpose. Cleanest lawful ground: express written consent recorded on the audio file itself.

### BEST PRACTICE

Disclose at the start: that the interview is being recorded, the purpose, who has access, retention period. Get a confidentiality undertaking signed. Avoid secret recordings.

## RED FLAG · THE EMPLOYEE'S COVERT RECORDING

*Under RICA the implicated employee is also a party and may lawfully record without the investigator's consent. Plan as if every word will be played back in court — because increasingly, it is.*

## NDOBE V GIBELA RAIL · CAN AN INVESTIGATOR BE SUED?

### Defamatory content?

**YES**

Internal report alleging 'bad management' causing R6.8m loss was defamatory in its ordinary meaning.

### Publication?

**NO**

Distribution within disciplinary forum (chair, HR, employee, compiler) is NOT publication.

### Qualified privilege?

**YES**

Disciplinary proceedings are a privileged occasion; distribution to those with legitimate interest is protected.

### Did privilege survive?

**YES**

Statements relevant and pertinent; no improper motive proved.

## FIVE LESSONS FOR INVESTIGATORS

**Stick to facts** (no editorialising) · **Keep distribution narrow** (chair, HR, employee, compiler) · **Document relevance** (Van der Berg v Coopers & Lybrand) · **Mark every page** 'CONFIDENTIAL — INTERNAL DISCIPLINARY USE ONLY' · **Document absence of malice** — a clean paper trail of motive is your insurance.

# AI-generated grievances — and AI meets privilege

*ChatGPT-drafted complaints are still complaints; the duty to investigate flows from conduct, not typing*

## AI-GENERATED GRIEVANCES · THE 2025 REALITY

### 01 TREAT SUBSTANCE, NOT STYLE

A grievance polished by ChatGPT is no less valid. Ask: does the complaint identify dates, persons, places, conduct? Particularity is the measure.

### 02 PROBE PERSONAL KNOWLEDGE

AI-drafted complaints can elide first-hand observation. Interview the complainant on facts only they can know — sensory detail, sequence, surrounding context.

### 03 VERIFY EVERY ANCHOR

LLMs hallucinate dates, policies, quoted statements and case citations. Verify every factual assertion against contemporaneous records before relying on it.

### 04 WATCH FOR PATTERNS

Suspiciously precise legal citations. Generic chronologies. Hallucinated witnesses. Compare AI text against the complainant's oral account — divergence is a red flag.

## WHERE AI MEETS PRIVILEGE

### THE QUESTION

*If an AI-assisted report contains hallucinated facts or invented citations, can qualified privilege still attach? Privilege protects what is RELEVANT and PERTINENT (Van der Berg; Ndobe). Fabricated detail is — by definition — not relevant. Negligent reliance on an LLM may, in time, displace privilege.*

#### Disclose AI-assistance

Document the human verification step against source materials.

#### Cite primary sources only

Pull the case yourself; quote the judgment, not the LLM.

#### Lock down witness statements

Each statement signed and verified — never AI-edited in substance.

#### Human-in-the-loop file

Record what AI suggested, what was kept, what was changed.

# VI Investigations in the public sector

*Item 2(3): the Code does not alter rights and obligations created under a collective agreement*

| NATIONAL & PROVINCIAL                                                                                                                                                                                                                                                                                                                                                                   | LOCAL GOVERNMENT                                                                                                                                                                                                                                                                                                                                      | SECTOR-SPECIFIC CODES                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>PSCBC Resolution 1 of 2003 — Disciplinary Code &amp; Procedures (Levels 1–12).</li> <li>Chapter 7, SMS Handbook — for Senior Management Service members.</li> <li>60-day rule for finalising hearings on precautionary suspension; chair decides extensions.</li> <li>Special unit in public service supports complex investigations.</li> </ul> | <ul style="list-style-type: none"> <li>SALGBC Disciplinary Procedure</li> <li>Read with the Local Government: Municipal Systems Act and Municipal Staff Regulations (2021).</li> <li>MSA s 71(3): SALGBC agreements bind all 257 municipalities.</li> <li>Reports must withstand both disciplinary scrutiny AND Auditor-General oversight.</li> </ul> | <ul style="list-style-type: none"> <li>SAPS Discipline Regulations, 2016 — members of the Service.</li> <li>ELRC Collective Agreement 3 of 2018 — educators in public schools.</li> <li>PHSDSBC sectoral agreements — public health &amp; social development.</li> <li>Always start by identifying which instrument governs the implicated employee.</li> </ul> |

## DISCLOSURE TO THE IMPLICATED EMPLOYEE · ITEM 11(5) READ WITH POPIA & THE COLLECTIVE AGREEMENT

|                                            |                                                                                                                                                                                                                          |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>What information must be disclosed?</b> | The information that forms the basis of the proposed charge — the rule, the conduct, the time, place, persons. Not the entire investigation file.                                                                        |
| <b>At what stage?</b>                      | After the preliminary investigation, before the disciplinary enquiry. Reasonable period to prepare and make representations on misconduct AND sanction (item 11(4)(b)).                                                  |
| <b>Are there limits?</b>                   | Yes. Where full disclosure threatens witness safety or risks evidence-tampering, a redacted summary may be provided — but the employer must justify the limit. Balance fair-trial rights, retaliation risk, POPIA / PDA. |

# VI

## The practitioner's checklist · Authorities · Six questions

*If you can tick all eight, cite all six, and answer all six — your next file is review-ready*

### EIGHT-POINT CHECKLIST

#### 01 MANDATE IN WRITING

Define scope, independence, deadlines, reporting line. Declare conflicts.

#### 03 DOCUMENTS FIRST, WITNESSES SECOND

Anchor in objective sources before exposing witnesses to risk.

#### 05 INTERVIEW, DON'T CROSS-EXAMINE

Use the funnel; confront contradictions only when the record demands it.

#### 07 APPLY THE RIGHT STANDARD

Prima facie to investigate; balance of probabilities at hearing.

#### 02 IDENTIFY THE INSTRUMENT

LRA Code; PSCBC Res 1/2003; SALGBC; SAPS; ELRC; sectoral codes.

#### 04 PUT THE CASE FAIRLY

Sufficient detail in writing; reasonable time; representation; language.

#### 06 RECORD TRANSPARENTLY

Disclose recording upfront; written consent; comply with POPIA.

#### 08 WRITE THE REPORT DEFENSIBLY

Findings of fact; relevance; no malice; narrow circulation (Ndobe).

### KEY AUTHORITIES

*Constitution ss 23, 33, 34 · LRA ss 187–189A, 192 · EEA ss 6, 10, 11, 60 · Code of Good Practice: Dismissal (GG 53294, 4 Sept 2025) · Harassment Code GN 1890/2022 · POPIA / RICA / PDA · Shoprite v JL · Liberty v MM · Ndobe v Gibela Rail · Long v SAB · Stellenbosch Farmers' Winery v Martell · Santam v Biddulph*

### QUESTIONS

Q

Q2

When you withhold a statement 'for safety', are you protecting a person or insulating a finding? How do you record the balance you struck?

Q3

After Shoprite v JL, when an investigator finds 'insufficient evidence' because two versions are irreconcilable — has the investigation actually happened, or has it been quietly abandoned or compromised?

Q4

Where AI drafted the grievance, what is the employer's duty when material facts are patently hallucinated?

Q5

After Ndobe v Gibela Rail, how should reports be drafted, captioned and circulated to attract qualified privilege without sacrificing candour?

Q6

What is the inter-relationship between the Code and collective agreements?

# THANK YOU

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Aligning practice with the Code of Good Practice: Dismissal

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