

Short Notes on:

THE LEGAL STANDING OF COMMISSIONS OF ENQUIRY

Introduction

Today, one often hears the term, Commission or Commission of Inquiry, whether it be the “Zondo Commission” (on state capture) or numerous other references in the news. What is often less clear however, is what the term “Commission” or Commission of Inquiry actually means and what the associated implications are. This article will briefly explore what these are.

As the name would imply, the purpose of a commission is to inquire and establish facts, and ultimately to render advice to those who established it. Furthermore, commissions operate within specific parameters, with specific terms of reference and powers.

How are commissions created

As a point of departure, the constitution of the Republic of South Africa, 1996 is clear on who may appoint commissions. Section 84(1)(f) of the Constitution grants the President of the Republic the power to appoint commissions of Inquiry.

Nature of commissions of inquiry

Commissions of inquiry are distinct from court proceedings insofar as they are inquisitorial in nature. In contrast to a South African court of law which is adversarial in nature, this means that the commission takes on an active and involved role in the proceedings rather than being an objective arbiter¹. Furthermore, the findings of commissions of Inquiry are not binding in the way that court rulings are, and they can only be subject to administrative review in terms of the Promotion of Administrative Justice Act 3 of 2000 (‘PAJA’) if and when they have a direct effect on a party.²

Finally, commissions do have an advantage in the sense that they are able to admit any evidence that may be deemed useful to the inquiry, whereas a court of law may only consider admissible evidence.

¹ <https://www.fin24.com/Opinion/sas-commissions-of-inquiry-what-good-can-they-do-20181109-3>

² <https://www.fin24.com/Opinion/sas-commissions-of-inquiry-what-good-can-they-do-20181109-3>

Conclusion

In conclusion, commissions of inquiry can be useful for the purpose of purely establishing facts, as they are not bound by the same restrictions as the courts. Finally, because a commission's findings are non-binding there must be political will by those who establish them, such as the president, to enforce those findings. Contact SchoemanLaw for all your administrative legal needs.

