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# CBE Focus

## Defend our Democracy – a call for united action

***Shan Balton***

***Executive Director at the Ahmed Kathrada Foundation***

The events of the last decade or so, especially evidence coming out of the various Commissions that have been setup to deal with corruption and state capture, indicates clearly how vulnerable the system of democracy is if corrupt elements or compromised individuals get hold of or get close to the levers of power.

Efforts to clean up the rot has seen a huge pushback covertly and overtly, especially by those who know they are likely to don the orange overalls because of their complicity and participation in this rot, including the treasonable act of capturing the state or some organs of the state.

The pushback is now taking the form of disregard of the Constitution and laws of the country as these elements have been doing during their acts of corruption and state capture. From the evidence at the Zondo Commission, they prepared for this eventuality and are ready to destabilise the country to continue with their project and avoid going to jail.

The ruling of Judge Zondo on former President Zuma's defiance of the Order by the Constitutional Court resulted in the Commission having to go back to the Constitutional Court for his defiance of its ruling.

The response since then from what can now be best described as the "Lawless Brigade" indicates that the country has entered a corridor of high risk which could cost people's lives. Daily attacks on the Judiciary and specifically the Constitutional Court have become the order of the day.

In response to this, a group of South Africans convened a gathering on 17 March where over 300 people from all sectors of society deliberated on how to respond to the threat to our democracy.

That meeting endorsed a statement titled "The assault on South Africa's constitutional democracy – a call to united action." Over 70 organisations and over 12 000 people have now endorsed this.

The CBE was one of the first signatories to this declaration. The group of convenors , which includes Reverend Frank Chikane, Cheryl Carolus, Saths Cooper, Busisiwe Mavuso, Sipho Pityana,Brigalia Bam, Adrian Gore, Moss Nthla, Mavuso Msimang and myself, thereafter initiated a series of actions to demonstrate its support for accountability by the former President and all others accused of state capture and corruption.

A campaign called "Defend our Democracy" has now emanated from all the actions and conversations. This campaign seeks to unite South Africans around four themes:

- Defending our constitutional democracy from state capture and corruption
- Opposing the destabilisation of "private militias"
- Defending the independence of the Judiciary
- Intensifying actions and calls for accountability in all spheres of government, political parties and the private sector.

The campaign will now start a national conversation on what is needed for all South Africans to defend and rebuild our democracy.

Important in that regard will be efforts to mobilise people against all efforts at destabilisation of the country, especially as the Constitutional Court announces its decision on the case against the former President.

All sectors of society will be engaged to develop their own programmes and inputs for the campaign. # Defend our Democracy must be the work of the majority of South Africans as that is the only sustainable defence for it in the long term.

*Editor's Note: The CBE fully endorses the objectives of the #Defend our Democracy campaign. The unacceptable issues of corruption as detailed in this article go against all that the CBE was established for.*




## CBE launches specialised desks

The CBE, as part of its ongoing vision, has created Specialised Desks. These desks will be gradually introduced and upscaled in terms of relevance and importance.

Some of these desks will be for the internal workings of the CBE while others will be of relevance to members of the CBE. The desks are as follows:

1. Safety and Security
2. Business Enterprise
3. Print / Digital /Social Media
4. Labour
5. Research
6. Legal / Advocacy
7. Training / Human and Entrepreneur Development
8. Membership / Events / Marketing
9. Youth

We would also like to welcome the under-mentioned members on our Board and Standing Committee.

### Board

- Shireen Ebrahim
- Catherine Constantinides
- Riaz Gani

### Standing Committee

- Ahmed Seedat
- Muhammed Choonara
- Kamalesh Naran
- Farmidah Khan
- Nadas Pillay
- Nazir Talia

A Corporate Forum is also a new addition to the CBE membership profile. Please visit our website for the different categories of membership. The link is https://cbeonline.co.za/

## Leadership Lessons

# Andrew Feinstein's link to the CBE, Madiba and achaar from Bangladesh

***Former activist and politician Andrew Feinstein was among the first speakers at seminars organised by the CBE when he addressed one at the Carlton Centre in Johannesburg in October 1993. The seminar included a report from the World Trade Centre titled "The Economic Perspective- structure your Business accordingly" and also featured a report from the Department of Economic Planning of the ANC on " Lifting of sanctions and what opportunities does this present."***

***Fakir Hassen, in his book "Memories of Madiba", retold a story about Madiba's humanity and caring which involved Feinstein and bottles of achaar from Bangladesh.***

## Madiba's Bangladeshi achaar mission

As South Africa marked the third death anniversary of former President Nelson Mandela, a delightful story about his humility and compassion emerged halfway across the world in Bangladesh, in an anecdote involving Madiba carrying back two bottles of homemade achaar for somebody.

Former Marabastad resident and Canadian author Mohammed Keshavjee, who launched his book of "Into that Heaven of Freedom" in South Africa in 2017, shared this story with me.

Keshavjee was at the Canadian Embassy in Dhaka, the capital of Bangladesh, as he continued his global book launches.

"Mrs. Runi Khan came to me and said: 'I see you are from South Africa and felt I had to come to hear you to tell you the story of what my mother (Mrs. Rowshan Ara Ismail) did when Mr. Mandela came on a state visit to Bangladesh.

"She told me that she wanted to send something for her granddaughter Mrs. Simone Sultana. She wanted to send something for her as her husband was in Mr. Mandela's government," Keshavjee said.

Runi cautioned her mother: "He is the Head of State. You cannot even go near him with a request such as this.

"I will go," the feisty mother said. "We have given our daughter to that country."

"Lo and behold, the feisty grandmother somehow went to where Mr. Mandela was staying and as he got off the elevator she rushed to him and told him that her granddaughter was married to one of his MPs called Andrew Feinstein. She then immediately asked him: "Can you please take this parcel for him?" It turned out to be two bottles of mango pickles which were her granddaughter's favourite!" Keshavjee continued.

"Mandela so graciously agreed to do so. The pickles were well wrapped with newspaper."

As it transpired, Mr. Mandela brought them to South Africa and phoned Andrew to come and see him. Andrew was a bit worried when he received the call. Being a junior MP at the time, he wondered what he had done to warrant a call from the President.

"All Madiba told him was: "Andrew, please come and see me personally." He peremptorily responded to the summons only to be told that "your grandmother gave me these for you and asked me to make sure you received them."

"I told Runi : "Only an Indian woman could do this. This was what our old folk would do in the early days. They would send food, sweetmeats etc. with anybody travelling anywhere. No matter whether the achaar leaked on the way or not! And I emphasised -It would only be Mr. Mandela who would have taken it!'"

# Are you getting the maximum or any benefit for your monthly skills development levy (SDL) contributions?

Did you know that you can claim SETA grant funding for training your employees, at no cost to you?

This could increase your staff morale, their productivity, and your business efficiency too. You could also gain valuable points for Skills Development on your BEE scorecard!

Are you submitting your Workplace Skills Plan (WSP) and Annual Training Reports (ATR) annually? Is your annual payroll in excess of R500 000? If so, you could qualify for mandatory and discretionary SETA grant funding.

The CBE is able to assist your company in the above regard. For further assistance please contact:

- Yusuf Moosajee - 083 786 1960 yusuf@cbeonline.co.za or
- Kamalesh Naran - 0825684150 kamaleshnaran@gmail.com.

### CBE Training Needs Survey

The CBE has ascertained that although companies are contributing to the Skills Development Levy, not many have been making use of the training that can be offered to their employees.

The CBE, in conjunction with accredited trainers on the SETA, has developed a questionnaire to assist businesses identify their training needs.

Kindly request a Training Need Survey Form from either of the above-mentioned contacts.

A representative from the CBE will contact you to run through the process of getting skills development training for your staff under the relevant SETA's that your company falls under.

The CBE representative will also ascertain if your company qualifies for the free training.

**Congress of Business and Economics**
**+2783 786 1960 | +2711 837 5728**
**yusuf@cbeonline.co.za**
**www.cbeonline.co.za**
**https://www.facebook.com/CBEconomicsSA**

# CBE Empowerment for All Conference and Banquet

A CBE function at the Gallagher Estate during November 2004 was another milestone in its history in several ways.

The CBE had hosted a Conference with the theme Empowerment for All during the day and a Banquet in the evening.

1. In a rare practice, just about half of the cabinet, including deputy ministers, had attended both events.
2. The then President, Thabo Mbeki, attended the gala banquet where he received a cheque of R1,7m from the CBE on behalf of the ANC.
3. The dinner was attended by about 900 prominent businessmen, professionals and community leaders who contributed towards the funds.



Part of the crowd of about 300 prominent businessmen and professionals who attended the conference



(L to R)Patrice Motsepe; Minister in the Presidency Essop Pahad and Minister Phumzile Mlambo–Ngcuka



(L to R) Former President of the CBE Zahid Faqui-Dawood, Shauket Fakie (Auditor-General), Zainab Fakie, Abdus Salaam Mia (late), Jay Pema and Yusuf Moosajee



(L to R) Current CBE President Jay Pema with then CBE President Setar Motani (late), Minister Phumzile Mlambo–Ngcuka, who later became Deputy President of South Africa in June 2005, and Osman Arbee

# The Great Escape of 1963 recalled

**Fakir Hassen**

Hollywood could not have written a better script, participants remarked as several veteran activists recounted in vivid detail at the Sci-Bono Centre in Johannesburg on one Sunday afternoon in 2013 what became known as The Great Escape of 1963.

A packed audience heard Mosie Moolla and Abdulhay Jassat explain how they, together with Arthur Goldreich and Harold Wolpe, planned their escape from the then notorious Marshall Square where political activists were held and tortured for 90 days at a time without trial.

The event was organised by the Ahmed Kathrada Foundation.

"The year 1963 was not only significant for the raid on Liliesleaf Farm and the subsequent historic Rivonia Trial involving Nelson Mandela, Kathrada and others, but also the year of arrests of activists such as Reggie Vandeyar, Shirish Nanabhai, Indres Naidoo, Ebrahim Ismail Ebrahim, Sonny Singh, Bernard Nkosi, Billy Nair, Zakela Mdhlalose, Joshua Zulu, Curnick Ndlovu, David Ndwonde, Riot Mkwanz and many others," said Nishaan Balton, Executive Secretary of the Foundation.

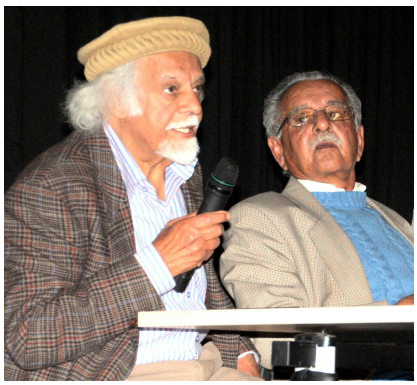
"We therefore felt it fitting to remember this event in this way," Balton added.

Moolla, who later became South Africa's Ambassador to Pakistan in a democratic government, explained how the initial plan had been to saw through the solid steel bars of the cells with hacksaw blades smuggled in by the wife of one of the prisoners.

"But after going through 12 or 15 blades we saw that we had only sawn through a small bit of the bar," Jassat added, resorting to an expletive to describe how they really felt after someone remarked that they were very brave: "We were s**t scared!"

Eventually, a guard was bribed to co-operate with their escape, with him eventually only being paid in 1995 by the ANC after it calculated that the original R4 000 promised to him was worth R110 000 at the time.

Although all the prisoners had to go into exile after escaping, Moolla said the Great Escape came to be regarded as a victory for the anti-apartheid struggle because then Minister of Justice John Vorster had to acknowledge that the movement was well-organised.



***Veteran activist Mosie Moolla (left) explains in details how he and Abdulhay Jassat were part of the plan to escape from Marshall Square in 1963 - Pic by Fakir Hassen***

Despite their ordeal, the two veterans also related in a light-hearted way some of the suffering they had to endure in going into hiding before going into exile.

"I had to dress up in my sister-in-law's clothing – in a Punjabi outfit that someone said I made a beautiful bride in," remarked Jassat.

The full details of the Great Escape are recorded for posterity at Liliesleaf Farm, a heritage site in Rivonia, Sandton.

# Inquiry by Arbitrator




The article - reproduced from the CCMA Info Sheet - was submitted by **Mahamed (Prof) Rajah** - a member of the CBE Panel of Experts and heads the CBE Labour Desk

**Introduction**

It often happens that an employee (usually a senior employee) and employer consent to a disciplinary inquiry relating to conduct or capacity being chaired by a neutral third party. Whatever the outcome, the decision reached by the third party is usually deemed to be that of the employer.

The CCMA, an accredited agency or a bargaining council may act as such third party in terms of section 188A of the Labour Relations Act (LRA).

Both the employer and the employee must agree to this process. This process was previously referred to as Pre-Dismissal Arbitration. However, in terms of the LRA amendments, it is now known as "Inquiry by arbitrator".

An Inquiry by arbitrator is an arbitration hearing that takes place before an employer has decided whether or not to dismiss an employee and is usually reserved for cases that have the potential to lead to dismissal. This differs from other dismissal arbitration hearings held by the CCMA or a

bargaining council which take place after a dismissal has taken place and after the completion of an appeal hearing. The inquiry by arbitrator process is intended to take the place of a disciplinary inquiry and where it is used, the matter may not subsequently be referred to the CCMA or a Bargaining Council for conciliation/ arbitration afterwards.

**Requirements to be met**

The employer and the employee must consent to the inquiry, in writing, on the prescribed form. The employer must pay the prescribed fee to the CCMA or bargaining council or the accredited agency.

The employee may only consent to the inquiry by arbitrator once he or she has been advised of the allegations that the employer has made against him or her.

NOTE:

(i) An employee who earns more than the amount determined in terms of the Basic Conditions of Employment Act –section 6(3), may consent to the holding of an inquiry by arbitrator in his/her contract of employment. This means that a clause to this effect may be contained in the employment contract at the outset when the employee is employed.

The effect of this is that it is not required to first obtain the written consent of such an employee prior to applying for such arbitration as he/ she has already agreed to this process when he/she was employed.

(Ii) A collective agreement may also provide for such inquiry to take place.

The employee's consent is not required where the employee is bound by a collective agreement. Once the above has been complied with, the CCMA or an accredited agency or a bargaining council must appoint an arbitrator to hear the matter.

**Representation**

Legal representation may be allowed by the arbitrator upon application by either party. The employee may be represented by a co-employee, a shop steward or an official or office bearer of a registered trade union.

The employer may be represented by a director or employee, or an office bearer, official of a registered employer's organisation.

**General provisions**

The same provisions, which apply to arbitrations apply to an inquiry by an arbitrator and includes the following:

- The arbitrator may conduct the hearing in a manner considered appropriate to determine the dispute fairly and quickly, taking into account that the substantial merits of the dispute must be dealt with the minimum of legal formalities.
- The arbitrator has the discretion to determine the appropriate form of the hearing.
- A party may give evidence, call witnesses, question witnesses of the other party and address concluding arguments to the arbitrator.
- If the parties agree, the arbitrator may suspend the inquiry and try to resolve the dispute through conciliation.
- If the referring party fails to appear, the matter may be dismissed.
- If the non-referring party fails to attend, the arbitrator may proceed with the inquiry in his/ her absence or may adjourn the proceedings.

The arbitrator must furnish an award within 14 days after the hearing with brief reasons for the decision. The Director of the CCMA may extend the 14-day period on good cause shown. The holding of an inquiry in terms of section 188A and the suspension of the employee on full pay pending the outcome does not constitute an "occupational detriment" in terms of the Protected Disclosures Act.

If an employee in good faith alleges that the holding of a disciplinary inquiry by the employer contravenes the Protected Disclosures Act, either the employee or the employer may require that an inquiry by an arbitrator be held. In such cases, the requirement for consent is waived.

**Arbitration award**

The arbitrator, must in light of the evidence and reference to the criteria of fairness in the LRA rule as to what action, if any, may be taken against the employee.

COSTS

The arbitrator may make an order for costs according to the requirements of law and fairness. (Refer to information sheet: Costs)

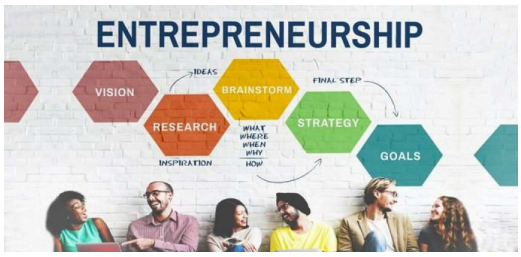
**The effect of the award**

The provisions in the LRA dealing with the effect of the award, variation and rescission and review apply to arbitration awards issued in terms of section 188A.

**Relevant legislation**

- Labour Relations Act 66 of 1995.
- Protected Disclosures Act 26 of 2000
- Basic Conditions of Employment Act 75 of 1997

# Communication and keeping the family-owned business together




**Ahmed M. Seedat**

Communication is the glue that holds any business together. Likewise, the concentration of that glue is vital to separate fact from fiction, success or failure. This is no different for Family-Owned Businesses (FOBs), yet perhaps one of the most essential elements. In FOBs, communication needs to be structured, precise and detailed to avoid derailing the mission and vision.

In a South African context of communication concerning family-owned businesses, many second and third-generation businesses did not or still do not have a clear communication model. Most communication took place over the meal table or while commuting from their home to their business. The communication was not documented, but recalled if there was a challenge.

When the strength of such communication in a FOB is low, based on ambiguity or no clear lines of control, more fiction than fact emerges and leads to confusion. Mistrust develops and damages the business operations.

Therefore, structured communication plays a defining or imperative role. This key factor lays a foundation for the family-owned business's future transition between generations. Selecting the methodology of communication; being clear of the message itself that needs to be dispersed; staying in sync of the message and being responsive to the message are all essential to the success of the message between the sender and receiver.

1 A starting point to strengthen your communication campaign within a FOB should be to define a communication channel from Shareholders to the Board of Directors and vice versa. The Shareholders themselves should define the communication channels within their ranks, to clarify facts first and forge a roadmap in communication. It is also helpful to ensure that there is agreement on the intended message content, instructions, concerns and resolutions to avoid miscommunication, which also has repercussions.

2 Secondly, strong communication channels, both verbal and non-verbal (written emails, texts etc.) can promote generational business continuity by ensuring that the correct messages are communicated, as well as minimise mistrust and anxiety.

When clear communications and expectations are promoted correctly, these can boost morale and retain talent, propelling the business forward. It may also create a platform for robust discussions among members, which in turn promotes idea-sharing, development of creativity and other positive benand managing the succession plan.

3 Thirdly, the communication should be conveyed easily and clearly, so as not to create confusion in disseminating the message. The binding glue should be able to develop, engage and manage communication between the hierarchy of the FOB, from Shareholders to Directors, Directors to Divisional Heads, and Divisional Heads through to their teams.

Successful FOB's or "old monied family-owned businesses" that were in their third generation or older prior to the demise of apartheid, used minute taking to clear any confusion and relay the facts. Post-apartheid many of these businesses felt political freedom was business freedom. The education system evolved, and many doors opened for the previously disadvantaged to further their studies.

There was and is peer pressure between families as to where their offspring studied. So many of the patriarchs were of the opinion that a high performing student from an IVY League University would bring new business ideas. However, there was a culture shock that occurred. The returning offspring was not on the same page with the patriarch's and hence there was a sudden increase in business failure from 1997 to 2007.

Decision-making and purse strings handed over through blurry lines of communication affected business. Initially, it was the founder and his sons; thereafter founder; sons and Managers as the business grew. Now, it is the founders, sons, their offspring and the managers. This line of communication was blurred. Blurry lines of communication can be between the first phase i.e. founder and his kids, as they understood the family creed and values.

As the businesses expand and evolve with new family entrants there needs to be a defined line of communication. The glue being family policies, family member employment policies, family shareholding policies, advisory councils for managing challenges, roles of family and non-family directors; roles of family and non-family managers and managing the succession plan.

*Businessman and author, Ahmed Seedat, has spent years cultivating his knowledge and experience into holistic solutions, empowering a multitude of entrepreneurs globally. He currently holds a Master of Business Administration (MBA) degree exploring the same topic, which has encouraged him to author two books. He is a member of the CBE Standing Committee and heads theCBE Research Desk*