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UCT research proposes new method for reviewing CCMA awards

Research by a PhD student at the University of Cape Town has identified a possible test for reviewing arbitration awards by the Commission for Conciliation, Mediation and Arbitration (CCMA). Such a test could overcome current inconsistent attitudes by the courts in scrutinising CCMA awards.

Emma Fergus's thesis, "From *Sidumo* to *Dunsmuir* - the test for review of CCMA arbitration awards," examines the constraints on CCMA arbitration awards and seeks to define the current test for their review as well as a clear, practical and reliable replacement.

The need to do so arises from reviewing courts' inconsistent attitudes to scrutinising CCMA awards. The cause of the confusion is the ostensible discord between the Constitutional rights to fair labour practices and just administrative action. To preserve legal certainty, a clear and predictable approach to review is crucial. In developing such a test, Fergus's thesis canvasses both South African and Canadian principles of judicial review in the labour sphere. Combining elements of each, it proposes a more structured and focused test for review than that which pertains presently. Arguably, this test is both consistent with the *Sidumo* decision and strikes a suitable balance between the aforementioned rights.

Fergus obtained a BPsych from Stellenbosch University in 2003 and an LLB from UCT in 2006. She has since practised as an attorney at Bowman Gilfillan and has lectured

various subjects at UCT, including labour law, employee relations and business law. She has recently been appointed to a permanent lectureship in UCT's Department of Commercial Law. Her PhD supervisor is Professor Alan Rycroft.

Fergus is one of the students who will graduate at UCT this week (6 and 7 June 2013).

ENDS

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