

Back to basics: Administrative authorities vs. Courts of Law

By JJ Van der Walt

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In April 2018, the Constitutional Court in South Africa handed down a succinct judgment in which it held that an administrative authority's interpretation of legislation is not persuasive authority without more.



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On the question as to what extent a Court may consider or defer to an administrative authority's interpretation of legislation, the Court responded that any Court's interpretation must always be an objective and independent interpretation, which is expressed in the following principle:

“ When a legislative interpretation of an administrative authority is evidence of a consistent and impartial interpretation over a prolonged period by all those involved, then such administrative authority's interpretation is persuasive authority that a Court may take into account when objectively and independently interpreting the meaning of legislation. ”

This judgment has far-reaching implications for, for example, the South African Revenue Service that issues Interpretation Notes, the Broad-Based Black Economic Empowerment Commission that issues Guidelines, and the Independent Communications Authority of South Africa that issues Position Papers (collectively referred to as Interpretative Documents).

First, an administrative authority cannot submit its Interpretative Document as persuasive authority in judicial proceedings, unless such Interpretative Document qualifies as evidence of a consistent and impartial interpretation over a prolonged period by all those involved.

Second and by necessary implication, an administrative authority (forming part of the executive authority) engulfed in litigation against a private citizen (inclusive of juristic entities) must, as the private citizen, convince a Court that its interpretation accords with, and is an accurate reflection of, the purpose of the legislation even if its interpretation qualifies as evidence, as set out above.

It is, therefore, important for legal practitioners, their clients, and regulators to remember that it is only the judicial authority (generally understood as the Courts) that can and must interpret the meaning of legislation.

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