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Coaching competencies in the CCMA conciliation process for senior and executive employees

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“Coaching competencies in the CCMA conciliation process for senior and executive employees”

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A research report submitted to the Faculty of Commerce, Law and Management, University of the Witwatersrand, in partial fulfilment of the requirements for the degree of Master of Management in Business Executive Coaching

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ABSTRACT

The research focused on whether introducing coaching competencies within the CCMA section 135 conciliation process can assist the CCMA achieve its mandate of resolving disputes of senior and executive employees speedily and effectively. Senior and executive employee disputes are highly technical, legalistic and protracted disputes, placing a burden on the resources of the CCMA. The limitations of the conciliating commissioners' current conflict resolution and business executive skills when dealing with high-level business disputes add to the delay. Employing coaching techniques within the conciliation process is proposed as a means of enhancing the conciliating present skillset for speedy and effective resolutions of these disputes as coaching senior and executive employees and mediating disputes rely on strong and effective communication for positive outcomes. The discretion created in section 135 of the LRA and the CCMA's Imvuselelo Strategy allows for further innovative strategies to conciliate disputes.

The phenomenological research design was chosen as introducing coaching competencies within a statutorily constituted conciliation process is a new concept. Senior and Level A commissioners from the CCMA Johannesburg and Benoni offices, with at least five years of mediating experience, were interviewed before and after the application of coaching competencies. The interviews were semi-structured and the data collected was analysed using thematic analysis. The key findings are that disputes of senior and executive employees are complex disputes that do not easily resolve at the conciliation process due to challenges and dynamics that do not respond to the current problem-solving approach adopted by CCMA conciliating commissioners. The facilitative approach to mediation, together with the application of executive and conflict coaching competencies achieved more effective outcomes: changed behaviours and attitudes, trust between the parties, parties taking ownership of the dispute and changing their perspective of the dispute. Further training of all commissioners on this model was supported as it was found to be innovative means of resolving disputes, thus meeting the aims of the Imvuselelo Strategy.

KEY WORDS

Commission for Conciliation, Mediation and Arbitration (CCMA) conciliation, CCMA commissioners, communication theory, conflict coaching, dialogic intervention theory, executive coaching competencies, facilitative mediation, Graduate School Alliance of Education in Coaching (GSAEC) Academic Standards, Imvuselelo Strategy (CCMA), Labour Relations Act (LRA), section 135(3) of the LRA, senior/executive employees

DECLARATION

I, MOHINI DEVI SOMAN, declare that this research report is my own work except as indicated in the references and acknowledgements. It is submitted in partial fulfilment of the requirements for the degree of Master of Management in Business Executive Coaching at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.

Name: MOHINI DEVI SOMAN Signature: 

Signed at JOHANNESBURG

On the 1st day of MARCH 2021.

DEDICATION

This is dedicated to God and my beautiful family: Pooja, my angel in heaven, Nish, my rock, Shravan and Kabir, the light of my life, and my parents, especially my 84 year old father who continues to inspire with his constant thirst for knowledge, integrity and incredible work-ethic.

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LIST OF ACRONYMS

ACAS	Advisory, Conciliation and Arbitration Service (UK)
APP	Annual Performance Plan (CCMA)
BCEA	Basic Conditions of Employment Act, 75 of 1997
BRICS Unit	Business Research Intelligence and Communications Unit (CCMA)
CCC Model	Comprehensive Conflict Coaching Model
CCMA	Commission for the Conciliation, Mediation and Arbitration
CMS	Case Management System (CCMA)
GB	Governing Body (CCMA)
GSAEC	Graduate School Alliance for Executive Coaching
LC	Labour Court
LRA	Labour Relations Act, 66 of 1995 (as amended)
LRAB	Labour Relations Amendment Bill

CHAPTER 1.

1.1 Purpose of the study

The purpose of this qualitative study is to explore whether using coaching competencies within the Commission for Conciliation Mediation and Arbitration (CCMA) conciliation process, can resolve labour disputes of senior and executive employees speedily and effectively.

1.2 Context of the study

The CCMA is the primary statutory labour dispute resolution body in South Africa of both collective and individual labour disputes. In an attempt to adapt to a fast changing labour market, it has introduced a new five year strategy, viz. the Imvuselelo Strategy to reconfigure the CCMA to adapt to this changing labour market and increase its efficiencies. Disputes of senior and executive employee, in particular, pose specific challenges to the efficiencies of the CCMA, creating an opportunity to introduce innovative ways of resolving these disputes. Coaching competencies, particularly executive and conflict coaching competencies, are possible innovative solutions to enhance the conciliation efficiencies of the CCMA as both coaching competencies are behaviour-changing interventions (Stout-Rostron, 2012).

Coaching is described as a structured human development process whereby strategies and tools are used to effect positive and sustainable change with an individual (Cox, Bachkirova, & Clutterbuck, 2014b). Ennis et al. (2015) advance that the executive coach, the executive and the organization are the key stakeholders in the coaching engagement and the executive's goals must always be connected to and in support of strategic organizational objectives. While coaching within the CCMA conciliation process is not a traditional coaching engagement as identified by Ennis et al. (2015), conciliating commissioners could apply coaching competencies successfully to disputes of

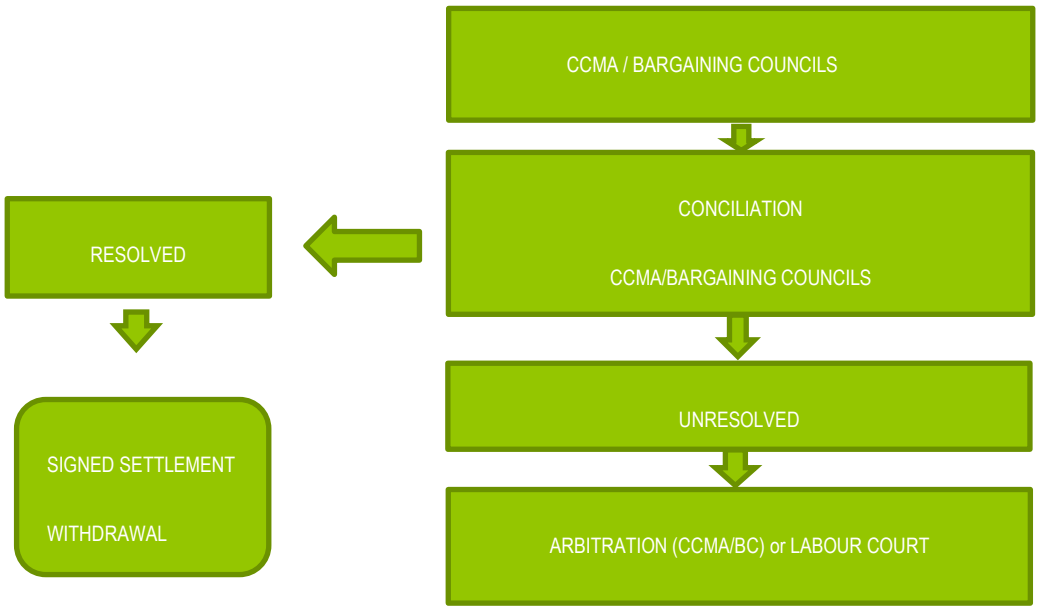
senior and executive employees. The role that the CCMA plays within the South African labour relations environment, and the resolution of labour disputes within a compulsory conciliation process constituted under the Labour Relations Act, 66 of 1995, as amended (LRA), suggest the suitability of such a coaching strategy.

1.2.1 *Background: LRA and the CCMA*

South African labour relations developed over the years along deep racial lines, mimicking the political and social make-up of the country. The white miners' strike in 1922, a watershed moment in South African labour history, gave birth to centralised collective bargaining where employees organized themselves in negotiating better conditions of employment (Du Toit, 1996). This also gave birth to the Industrial Conciliation Act of 1924 (Du Toit, 1996), and later the Industrial Conciliation Act of 1956, which created a racially exclusive and parallel industrial relations system specifically excluding African workers from centralised collective (Du Toit, 1996). The prevention of the registration of unions with mixed race membership resulted in unregistered unions representing black workers (Du Toit, 1996). These unions had strong roots in the workplace and were therefore able to grow in strength and numbers. This led to increased worker consciousness and heightened strike actions, creating a deeply adversarial relationship between employers and organized labour in the workplace, a clear sign of the unworkability of this dual system (Du Toit, 1996). However, registered trade unions representing black workers were later allowed direct representation on Industrial Councils and conciliation boards, following the Wiehahn Commission recommendations. Both bodies were constituted for the sole adjudication and resolution of labour disputes (Du Toit, 1996) but they proved to be lengthy, complex and unworkable, leading to an explosion of disputes and intensified industrial action (Benjamin, 2013). Following the emergence of a new democracy and adoption of the Constitution, the Labour Relations Act, 66 of 1995 (LRA), was negotiated with the focus on worker participation and co-operation, workplace democracy and social justice

(Benjamin, 2013; Du Toit, 1996). The LRA was therefore intended as a single legal framework for a cheap, speedy, accessible and expeditious resolution of labour disputes across all sectors of the economy (Du Toit, 1996). The CCMA and industry sector specific Bargaining Councils (BCs) were established in terms of the LRA to provide a two-pronged approach to dispute resolution-conciliation and arbitration (Figure 1.1.)

REFERRAL OF INDIVIDUAL LABOUR DISPUTES: LRA



Designed by researcher:2020)

FIGURE 1:1: Dispute Resolution Structure of Individual Rights Disputes-LRA

1.2.2 *Conciliations under the LRA*

One of the CCMA's primary statutory mandate is to conciliate workplace disputes [section 115(1)(a) of the LRA] with a key innovation being the compulsory submission of the parties to the conciliation process. Conciliation is therefore the first step in the dispute resolution system (Figure 1.1 above), allowing the employee and employer to "self-resolve" the dispute speedily (Blignaut, 2018, p. 19; Steenkamp & Bosch, 2012). The intention is to prevent the dispute from becoming protracted and costly (Benjamin, 2013; Du Toit, 1996). Section 138(3) of the LRA allows for the process to revert to conciliation

whilst in the arbitration stage, allowing parties a further opportunity to resolve the dispute themselves, rather than relying on the commissioner to decide on the dispute in an arbitration process. The arbitration process, as opposed to the conciliation process, requires the commissioner to resolve the dispute by deciding on the fairness of the dispute (Du Toit, 1996). The speedy resolution of disputes is further sanctioned by section 191(1) of the LRA which prescribes that all disputes must be conciliated within 30 days of referral to the CCMA/BC.

The LRA does not provide a definition of conciliation. Rycroft (2016), in a legal review of the mandatory mediation process in South Africa, describes conciliation as an umbrella term that includes mediation, fact finding exercises and making a recommendation to parties. This definition correlates with Section 135(3) of the LRA which allows the conciliating commissioner the discretion to decide on the process to assist parties resolve their disputes, and this includes mediation, conducting a fact-finding exercise or making a recommendation to parties in the form of a non-binding advisory award. The discretion created in section 135(3) of the LRA creates opportunities for introducing additional competencies to resolve disputes during the conciliation stage, including those disputes that revert to conciliation at arbitration [s138(3)]. The CCMA has also launched its new five year strategy, the Imvuselelo Strategy (the Revival) (CCMA, 2020c) in March 2020 with the intention of reconfiguring the CCMA to adapt to a changing labour market in order to improve its effectiveness, efficiencies and impact on the South African labour market to meet its statutory mandate of speedy and expeditious resolution of labour disputes. This strategy creates further opportunities for innovative ways, of resolving disputes during the conciliation process, allowing for the introduction of different competencies within the section 135(3) conciliation process, supporting the introduction of coaching competencies in this process.

1.2.3 *Coaching competencies within the section 135(3) conciliation process*

Coaching in a business environment is regarded as a targeted intervention for high achievers to attain their full potential and further develop their skills and competencies (Stokes & Jolly, 2018). Disputes of senior and executive employees are challenging disputes and present with unique challenges during the conciliation process due to the nature of the dispute and relationship of the employee to the organization (The Republic of South Africa, 2010). The current conciliation competencies have been identified as being inadequate in dealing with high level disputes (Bhorat, Pauw, & Mncube, 2009). Disputes of senior and executive employees therefore clearly require a different approach during the conciliation process to effect positive outcomes.

Executive and conflict coaching competencies was therefore targeted as the ideal competencies for application within the section 135(3) conciliation process because the outcome for both processes are generally accepted as behavioral and attitudinal changes in executives (Athanasopoulou & Dopson, 2018; Naficy & Isabella, 2008; Stokes & Jolly, 2018). Conflict coaching, initially used within executive coaching as an important leadership and behavioural change competency (Jones & Brinkert, 2007; Kilburg, 1997), evolved as a distinct alternate dispute resolution process on campuses for students unwilling to participate in mediation (Jones & Brinkert, 2007). Both coaching processes have continued to evolve over the years with its importance embedding in organizations worldwide regarding executive/leadership development and support (Brubaker, Noble, Fincher, Park, & Press, 2014; Stokes & Jolly, 2018). Executive and conflict coaches rely on clear and effective communication, active listening, reframing and powerful questioning to achieve its outcomes (Athanasopoulou & Dopson, 2018; Brinkert, 2013; GSAEC, 2014a; Jones, 2016) to help executives' improve their performance in response to the ambitions of their sponsoring organizations (Athanasopoulou & Dopson, 2018; Blackman, Moscardo, & Gray, 2016).

While the coaching engagement within an organizational context recognizes three stakeholders, viz. the coach, the coachee (executive) and the sponsoring organization (Cox, Bachkirova, & Clutterbuck, 2014a; Ennis et al., 2005), the section 135(3) conciliation process is not a traditional coaching engagement. In undertaking this study, the use of executive and conflict coaching competencies emerged as a logical extension of the strategies already employed to help disputants prepare more intentionally for mediation (Brubaker et al., 2014). There is, however, limited understanding of applying these competencies within a statutorily constituted mediation process like the CCMA conciliation process. Nevertheless, the value of these competencies within the CCMA section 135(3) conciliation process is based on the assumption that the success of coaching competencies in achieving executive development and behavioural change within an organizational context (Stokes & Jolly, 2018; Stout-Rostron, 2012), will have equal or related value within the conciliation process to resolve disputes of senior and executive employees. It is recognized that both processes rely on strong communication forms to effect positive outcomes with executive and/or senior employees (Athanasopoulou & Dopson, 2018; Rosha, 2013). It is anticipated that the competencies applied in a successful coaching engagement, namely strong listening skills, powerful questioning, helping the coachee change perspectives and holding the professional self (Athanasopoulou & Dopson, 2018) will support the senior and executive employees in consideration of all relevant issues and factors influencing the dispute (Myers & Witzler, 2014); and will assist in meaningful engagement with the intention of resolving the dispute effectively and speedily. While, the scope for the application of executive and conflict coaching competencies within the conciliation process is narrower than executive coaching, as it is hoped that this commonality will provide a smooth transition of coaching competencies within the section 135(3) conciliation. The integrity of both processes are founded on confidentiality, ethics and professionalism (CCMA, 2019c).

1.3 **Research problem**

The CCMA's statutory mandate to resolve labour disputes speedily and expeditiously has been negatively impacted by a 25% yearly increase in referrals to the CCMA due to a substantial and notable increase in unemployment (compounded by the 2020/2021 Covid-19 lockdown), a severely constrained budget and limited resources (CCMA, 2020c). The CCMA is now expected to meet its mandate with an ever increasing workload but without the corresponding increase in resource and budget assistance (CCMA, 2020a).

Disputes of senior and executive employees add a unique challenge to the conciliation process as they do not always fall within the traditional definitions of dismissal in terms of section 188 of the LRA (The Republic of South Africa, 2010). They are often regarded as complicated (Bhorat et al., 2009), primarily because of the strong organizational influence on the termination of the employment relationship as well as a strong reliance on legal representation (Bendeman, 2006; The Republic of South Africa, 2010). These disputes are notoriously protracted as they very rarely resolve at the conciliation stage, a clear indication of the inadequacies of the current conciliation competencies in resolving these disputes (CCMA, 2019c). There is consensus that because the CCMA's services are free, it should be reserved for lower skilled and lower paid employees who cannot afford private arbitration (Bhorat et al., 2009; The Republic of South Africa, 2010) as the assumption is that highly skilled employees congest the system as their disputes are more complex (Bhorat et al., 2009). Moreover, the view is that since these employees can afford private arbitration, they should be excluded from the CCMA process by the contractual use of private agencies to resolve their disputes (Bendeman, 2006). The CCMA is, nevertheless, compelled to deal with these disputes as the LRA is intended for all employees, regardless of the level and status of the employee.

These challenges have been identified by various researchers in the past as negatively impacting on the efficacy of the CCMA (Bendeman, 2006; Blignaut, 2018). Suggestions to reverse this trend include introducing innovative solutions

within the section 135 (3) conciliation process to cope with the current challenges. There is a clear need, as supported by the objectives of the Imvuselelo Strategy (CCMA, 2020c) for alternate thinking to resolve these disputes speedily and effectively. If disputes of senior and executive employees resolve at a much earlier stage, this will have a positive impact on the CCMA and its operations where it's reputation as an effective conflict resolution body is enhanced, thereby meeting the objectives of the Imvuselelo Strategy (CCMA, 2020c). It is anticipated that applying executive and conflict coaching competencies within the conciliation process of disputes of senior and executive employees will assist the conciliating commissioner resolve these disputes speedily and effectively, thereby increasing the efficacy of the CCMA.

1.4 **Research objectives**

The section 135(3) conciliation process is not a traditional coaching engagement and introducing coaching competencies, in particular executive and conflict coaching competencies, within this process is a new phenomenon. The effect, if any, of this phenomenon can be determined by the following research objectives:

1.4.1 investigating the efficacy of applying executive and conflict coaching competencies outside the traditional coaching engagement;

1.4.2 exploring whether additional competencies within the section 135(3) process can resolve disputes of senior and executive employees speedily and effectively; and

1.4.3 examining the implications of applying executive and conflict coaching competencies within the section 135(3) conciliation process in disputes of senior and executive employees.

1.5 **Significance of the study**

There is peer reviewed, academic literature to support conflict coaching as an alternative to mediation or to assist disputants prepare for mediation (Brinkert, 2016; Brubaker et al., 2014; Noble, 2012); this applies to the use of executive coaching in an organizational environment as well, specifically for executive behavioral and attitudinal change (Stokes & Jolly, 2018; Stout-Rostron, 2012). The traditional coaching engagement envisages a partnership between the coach, executive client and sponsoring organization. However, there is a lack of literature on transferring executive and conflict coaching competencies from this traditional environment into a statutorily mandated process like the conciliation process under the auspices of the CCMA as an additional competency within the conciliation process. It is hoped that this study will show that coaching competencies can be transferred to similar communication-based processes to expedite positive outcomes and behavioural changes. Communication theory, together with dialogical theories of intervention, recognizes that effective communication and dialogue are key for the effective resolution of conflict. These theories encourage and accommodate the need to explore alternative forms of communication, besides negotiation and bargaining, within the mediation process (Zariski, 2010). It is hoped that this study will demonstrate the importance of coaching competencies in supporting parties to these disputes when the communication band is expanded to allow for deeper and more meaningful dialogue in a statutorily mandated mediation process. This will be of benefit to CCMA accredited commissioners hoping to enhance their mediation skills to achieve more favourable outcomes in such processes. This could also have a significant impact on the future training of CCMA commissioners, especially for the various tertiary institutions offering CCMA Commissioner training programs.

1.6 **Delimitations of the study**

The study excludes the following:

(i) all labour interest disputes referred to the CCMA;

(ii) individual disputes where the employee has the status of middle manager and below as the focus of this study is on senior and executive employees;

(iii) all disputes referred to sector specific Bargaining Councils;

(iv) the study of executive coaching since the commissioner and the senior or executive in the section 135(3) conciliation process are not in a traditional coaching engagement;

(v) the impact of culture on coaching competencies;

(vi) the study was conducted in the CCMA Gauteng offices of Johannesburg and Benoni only due to the impact of covid-19 on the operations of the CCMA Pretoria office.

1.7 Definition of terms

The terms used frequently in this report are tabulated below:

Table 1.1: Definition of terms

TERM	DEFINITION
Conciliation	Umbrella term that includes mediation, fact finding exercises and making a recommendation to parties (Rycroft, 2016)
Conflict coaching	"the process in which a coach and disputant communicate one-on-one for the purpose of developing the disputant's conflict related understanding, interaction strategies, and interaction skills" (Brinkert, 2006, p. 518)
Coaching engagement	Partnership between the coach, coachee and sponsoring organization to achieve the agreed upon goals (GSAEC, 2014a)
Collective bargaining	negotiation of wages and other conditions of employment by an organized body of employees.
Competency	"an underlying characteristic of an individual that is causally related to criterion-referenced effective and/or superior performance"(GSAEC, 2014a; Spencer & Spencer, 1993, p. 9)
Dismissal	The termination of the employment contract by the employer, with or without notice to the employee (s186 of the LRA)
Executive Coaching	"A development process that builds a leader's capabilities to achieve professional and organizational goals" (GSAEC, 2014a, p. 5)

Mediation	"a process in which an impartial third party, who lacks authority to impose a solution, helps others resolve a dispute or plan a transaction"(Riskin, 1996, p. 8)

1.8 **Assumptions**

(i) That the participating commissioners applied coaching competencies within the section 135(3) conciliation process in disputes of senior and executive employees;

(ii) That the participating commissioners provided honest reflections on the application of coaching competencies within the section 135(3) conciliation process;

(iii) That the facilitative mediation model with coaching competencies provided to the participating commissioners for application within the section 135(3) conciliation process was sufficiently comprehensive to cause a shift in perspective in conciliating these disputes differently.

1.9 **Structure of the Report**

Chapter One provides an introduction to the topic and an explanation for choosing this topic. Specific problems which led to the need to research this topic are identified. The research objectives, the significance of the study, delimitations, an explanation of the definitions used in the course of this report and finally the assumptions made, are discussed.

Chapter Two provides a critical review of the scholarly articles pertinent to the topic. It looks at existing notions that relate to the research objectives, detailed in chapter one. Possible answers are detailed in the propositions at the end of this chapter.

Chapter Three gives details of the research methodology employed to obtain data to test the propositions extricated in chapter two.

Chapter Four provides a detailed discussion of the findings from the data obtained including direct quotes from the participants interviewed to support the key findings.

Chapter Five discusses the meanings that emerged from the data analysis in relation to the literature findings, and focuses on new knowledge that may have been created.

Chapter six details conclusions reached and recommendations made for the relevant stakeholders, including the CCMA, and future research on training commissioners in conducting conciliation processes.

CHAPTER 2. LITERATURE REVIEW

2.1 Introduction

The literature review outlines and, in some instances, critiques the relevant existing research on coaching competencies, particularly executive and conflict coaching. It examines the arguments for successful coaching engagements, both within and possibly outside the traditional coaching engagement. An examination of communication theory as well as dialogical theories of intervention is included since coaching is substantially based on the way in which communication takes place. These theories create a theoretical framework that indicates the lens through which to understand how or whether coaching competencies could lead to more successful conciliation and resolution within the section 135(3) conciliation process. Research on the current section 135(3) competencies will determine whether innovative solutions are required to resolve high-level disputes more speedily and effectively, and whether this type of innovative solutions could add value to conciliation processes.

2.2 Background Information

Rosha (2013), in a study aimed at identifying the role of coaching in other targeted interventions found that coaching had more in common with mediation and identified the following commonalities with mediation: they were both transformational, short, creative, thought-provoking, empowering, non-linear, goal orientated, performance enhancing, and change inducing processes. However, Rosha (2013) also identified that coaching was non-instrumental and expedited development and learning, while mediation did not, positing that the while the philosophies of both are close, the aims are different. Rosha (2013) describes mediation as assisting in “managing the process of dispute and conflict resolution” (p.12), while coaching is described as helping a person

“develop in a more effective way” (p.12). It is therefore hoped that coaching within the mediation process can assist the disputant employee develop a coherent approach to the dispute in order for the dispute to resolve effectively and speedily. To this end, various coaching professional standards and the current CCMA conciliation competencies are examined to determine whether coaching within the mediation process can assist the disputant employee.

The Handbook of Executive Coaching was produced out of a need to set professional standards in a newly emerging coaching discipline and was formulated in collaboration with numerous executive coaches (Ennis et al., 2015). Earlier authors noted that executive coaching was required to help executives resolve their dilemmas and “transfer their learning into results for the organization” (Koortzen & Oosthuizen, 2010, p. 2). Stokes and Jolly (2018) posit that effective executive coaching results in more than a resolution of an executive’s dilemma but “work with senior level executives that focuses on the executive becoming more self-aware in order to carry out their leadership role more effectively.” (p.245). In other words, coaching includes developing, learning and adapting their behaviours to multiple roles within the organization.

The current conciliation competencies are contained in the CCMA Practice and Procedure Manual, 2019, (CCMA, 2019c), a guideline on the official practices and procedures of the CCMA, requires commissioners to act with integrity, fairness, impartiality, empathy, restraint and professionalism (Chapter 7 [7.5 – 7.8]). The commissioner is required to reality test with the parties, and provide recommendations and suggestions to settle the dispute. However, the discretion allowed in section 135(3) of the LRA clearly infers that further competencies will be tolerated in resolving disputes in the conciliation process.

The CCMA’s new five (5) year strategy is titled Imvuselelo – The Revival, the 2020/21 – 2024/25 Strategy. Imvuselelo is a Nguni word used in both isiZulu and in IsiXhosa, translated into “renewal” or “revival”. The strategic intent of this strategy is reviving the CCMA internally, transforming it into a world class, modern, optimised and high–performing institution (CCMA, 2020c). The

intention is to enable the CCMA deliver world–class service to its users in the labour market and beyond. In this quest, the CCMA will need to equip itself with appropriate infrastructural and human resources capital to meet the requirements of the changing nature of work, whilst remaining relevant and accessible to all, but especially vulnerable groups. The need to improve or enhance conciliation competencies is therefore supported by the aims of the Imvuselo Strategy.

2.3 Conceptual Framework

There is little to no academic research on coaching competencies within a statutory mandated mediation or conciliation process. A conceptual framework was therefore developed to guide the literature review and research (Figure 2.1)

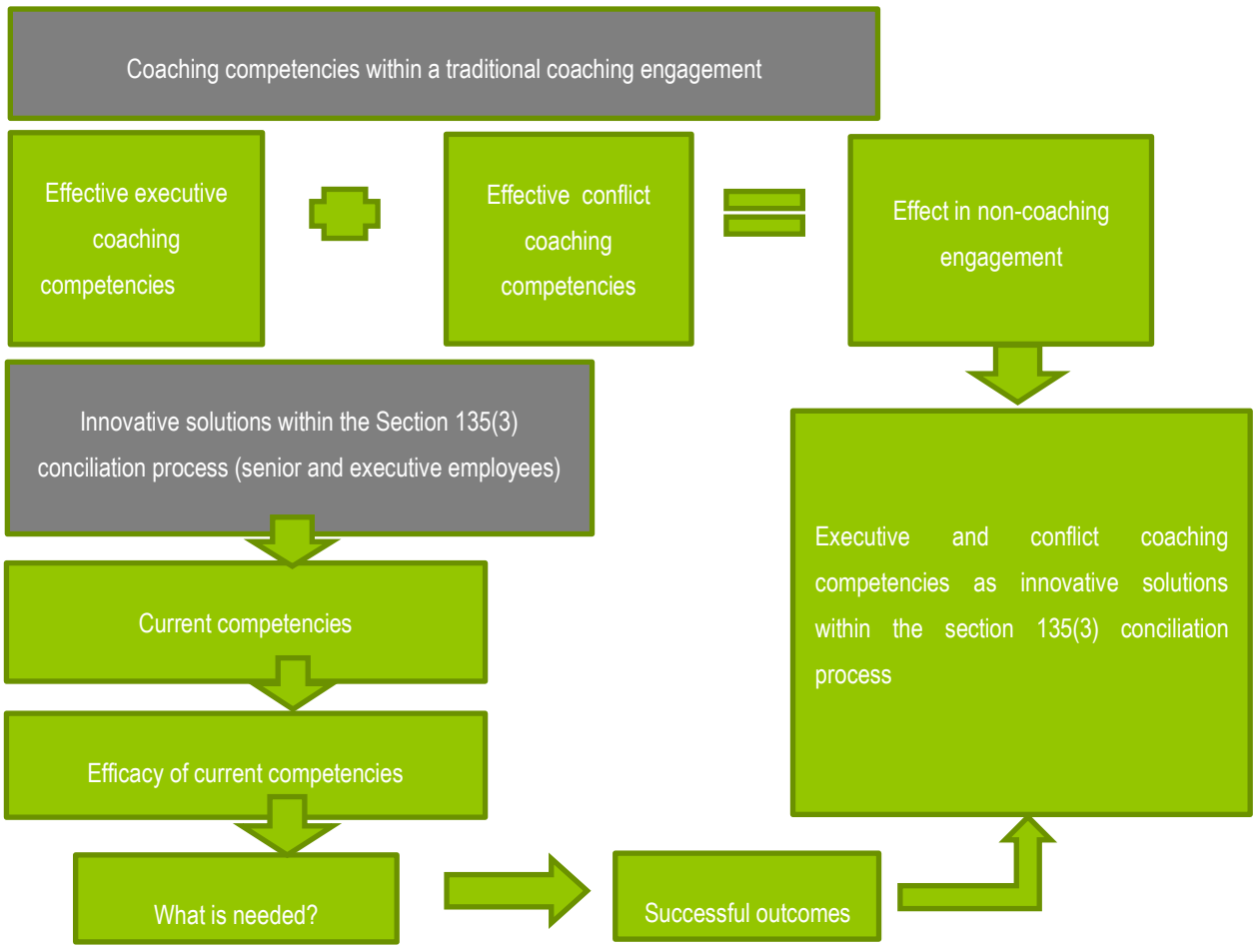


Figure 2.1: Conceptual Framework

2.4 Executive and conflict coaching competencies efficacy outside the coaching engagement

In this section of the review, literature is examined that establish which competencies result in successful coaching outcomes within a traditional coaching environment. Processes outside the traditional coaching engagement that could accommodate these competencies are then examined. The emphasis on successful communication, leads to a section which outlines communications theory and dialogical intervention. Thereafter, literature that determine whether executive and conflict coaching competencies in combination with communication theories that emphasise a new narrative can be used outside the coaching engagement in conflict situations are analysed.

2.4.1 *Effective Executive Coaching Competencies*

While executive coaching is a relatively new field of coaching, there have been attempts at standardizing the competencies that could assist executive coaches effect positive outcomes with the coachees.

(i) The Graduate School Alliance for Executive Coaching (GSAEC)

The Graduate School Alliance for Executive Coaching (GSAEC) was formed specifically to develop an aligned curriculum for graduate schools in order to make executive coaching an academic discipline, developing a set of Academic Standards to assist academic and training institutions on uniform and consistent training in executive and organizational coaching (GSAEC, 2014a). Academic Standard 8.0 is relevant in this instance as it contains guidelines on core competencies supported by a set of behaviours that the executive coach should adhere to during the coaching engagement. This includes co-creating the coaching relationship, making meaning with others and helping others succeed (GSAEC, 2014a) (Table 2.1 below):

Table 2.1: Summary: Academic Standard 8.0 GSEAC

Co-creating the coaching relationship	**Relationship building** • Connecting (explore common interests to strengthen the bond) • Encouraging (prompt coachee to keep talking and show interest and presence with non-verbal signs) • Building Trust (actively exhibit competence and fulfil promises as relationship unfolds) **Coaching Presence** • Self-awareness (aware of feelings and triggers, as well as implications-can detail strengths and development areas, and extract feedback) • Self-management (is adaptable, remains calm under stress, has a positive outlook of the coachee and is able to remain focused on achievement)
Making meaning with others	**Listening:** Notice verbal and non-verbal communication and interpret what coachee says in relation to goals set, and comment on what is not being said by: • hearing • understanding • remembering • interpreting • evaluating **Questioning** • Closed questions (for clarification in order to move coaching process forward) • Open questions ("what" "why" "how" questions to gain different perspective and move coaching process forward) • Progressive questions *Objective:* factual questions to gain different perspective and move coaching process forward *Reflective*: focusing on asking coachee to focus on how he/she feels *Interpretive*: interpreting themes, patterns, impacts and checking for accuracy to increase coachee's understanding *Decisional*: summarizing options and challenging coachee to take decisions
Helping others succeed	**Reframing:** • Framing ("succinctly summarize and confirm understanding of coachee's mental mode and convey in a clear manner what it means in terms of other frames of references or new mental models" p.4) • Transforming ("Facilitate reframing of current mental models into new transformed ones that enable new behaviour" p.4) **Contributing** • Responding ("in such a manner that the coaching is taken to a higher level by contributing to the coachee's process of moving towards a goal" p.4) • Providing ("Provide and advocate alternative perspectives in such a manner that coachee is influenced to expand his/her's and invite debate" p.5) • Focusing ("Focused succinct enthusiastic contributions that take others' opinions into consideration" p.5)

Designed by researcher and based on GSAEC Summary Table of Coaching Skill Competencies(GSAEC, 2014a)

(ii) Literature findings

The competencies recommended by GSAEC (2014a) are supported in varying degrees by Blackman et al. (2016); Peterson (2011); Athanasopoulou and Dopson (2018); Dagley (2010); Passmore and Fillery-Travis (2011), Brockbank (2008), Naficy and Isabella (2008); Stokes and Jolly (2018); Ennis et al. (2005); Drake (2018) and Stelter and Law (2010) as necessary competencies required by the executive coach to assist the executive coachee in achieving the desired coaching outcome: behavioural and attitudinal changes.

Peterson (2011), in a critical review of executive coaching, found that there is no definitive definition of executive coaching, but he posits that enhancing an executive's learning and development ability should be the broad criteria for effective executive coaching. This is supported by Passmore and Fillery-Travis (2011), who describe executive coaching as follows:

> "a Socratic based future focused dialogue between a facilitator (coach) and a participant (coachee/client), where the facilitator uses open questions, active listening, summarises and reflections which are aimed at stimulating the self-awareness and personal responsibility of the participant." (p.74),

This definition is based on the belief that the coachee has the knowledge and awareness to discover the answer to the problem, challenge or issue informing the coaching engagement, and further describing the role of the coach as one who facilitates a "guided discovery". (p.74). This correlates with GSAEC Academic Standard 8.2 "making meaning with others" which relies on active listening and powerful questioning to move the coaching process forward (GSAEC, 2014a).

For the purpose of this study, the more extensive definition proposed by Naficy and Isabella (2008) has relevance. Naficy and Isabella (2008) propose that the purpose of executive coaching is to create awareness and connections with the executive using powerful questioning and active listening, with the intention of

effecting *behavioural change*, believing that a change in mindset is not effective if it is not accompanied by a change in behaviour. Stokes and Jolly (2018) agree that executive coaching is intended to help the executive develop, learn and adapt their behaviours to any new roles within the organization, also endorsing behavioural changes as the outcome of a successful executive coaching engagement.

Brockbank (2008) proposes that when the coachee owns the developmental agenda and when the coach is seen as a facilitator in the coaching process, this ultimately leads to growth and transformation. The study by Dagley (2010) confirmed that users preferred coaches who are facilitative rather than directive. They liked coaches who are able to hold their professional ground within the coaching process regardless of the level of difficulties experienced in the coaching engagement. GSAEC Academic Standard 8.1 requires a coach to self-manage by remaining calm under stress while continuing to view the coachee in a positive light (GSAEC, 2014a).

Passmore and Fillery-Travis (2011), in a critical review of executive coaching research, detail the critical attributes of an effective executive coach as identified by various authors. In relation to coachees, they list the following "challenge, listening, reflecting back and checking back on understanding." (p.76) (Hall, Otazo, & Hollenbeck, 1999); in terms of their own professional attitude: "self-awareness, core coaching competences and an understanding of the ethics and management of coaching relationships" (p.76) (Jarvis, Lane, & Fillery-Travis, 2006). Fillery-Travis and Lane (2014) identify the common coach competencies in literature as including good interpersonal skills (empathy, encouragement, genuineness, authenticity, approachability, compassion, intelligence) and communication skills (tact, listening/silence, questions, playful exchange), as well as instrumental support ("creativity, dealing with paradox, self-knowledge, positive regard, tolerance for interventions made, stimulation to think, feel and explore new ideas and behaviours, working on resistance to change") (p.63). This supports Brockbank (2008) and Dagley (2010) proposition

that a good coach must be facilitative and recognize that the coachee must own the development agenda for growth and transformation.

Peterson (2011), in his critical review of executive coaching, also posits that "active listening and communication skills, assessment and feedback skills, integrity, empathy" (p.533) are widely regarded as core coaching competencies. According to Ennis et al. (2015), an effective executive coach is capable of building and maintaining coaching relationships in order to facilitate development and change (Academic Standard 8.1 GSAEC). Blackman et al. (2016), in a systematic review of 111 published empirical studies investigating business coaching theory, processes and outcomes, identify integrity, support of the coachee and good communication skills as critical characteristics for an effective coaching outcome. Blackman et al. (2016) endorses the communication skills required of an effective coach as documented by Passmore and Fillery-Travis (2011): tact, listening/silence, questions, playful exchange. Athanasopoulou and Dopson (2018), in a similar review of all peer reviewed articles on coaching outcomes, confirm that the coach's behavior, skills, attitudes and quality of practice have a positive impact on the coaching engagement. This was further detailed as having a "positive frame of mind, authenticity, active listening and empathy, reflective questioning, learning and development facilitation, agility and ability to understand context and interpret results and ethical challenges, and professionalism" (p. 76). McGill, Clarke, and Sheffield (2019) also identify the critical behaviours of an effective coach as listening, reflecting back and challenging the coachee. Blackman et al. (2016) summarises all the factors that contribute to an effective coaching practice at the conclusion of reviewing 111 articles on coaching effectiveness (Table 2.2 below) relying on those empirical studies displaying strong evidence-based studies.

Table 2.2: Summary of factors contributing to effective coaching practice from study by Blackman, et al (2016)

Coach	Coachee	Coaching Relationship

• Experience with coaching • Experience with relevant sector • Likeable • Self-confident • Empathetic • Warm • Organised • Creative • Calm • Communicates clearly • Honest • Maintains confidentiality	• Self-efficacy • Motivated • Locus of control • Confident • Committed • Involved • Effort • Ability/competence	• Matching between coach and coachee • One-on-one interaction • Trust • Authenticity • Challenge • Commitment by both

Designed by researcher (2020)

The Executive Coaching Forum Model (Ennis et al., 2015) also lists the attributes and abilities that make a good and effective executive coach as someone who has mature self-confidence, positive energy, who is assertive, open and flexible, is goal orientated, has integrity and believes in continuous learning and development.

Drake (2018) and Stelter and Law (2010) propose using narrative to help people “shift their stories in order to generate new options and new results” (p.109), supporting the definition of executive coaching by Naficy and Isabella (2008), as one creating awareness and connecting with the executive. The narrative collaborative approach proposed by Drake (2018) and Stelter (2014) is based on the rational that coaching should evolve to assist the executive make sense of his/her role in a fast changing society, where the coach and executive, by focusing on co-creation and co-operation, make meaning together in the coaching engagement. This is a clear move away from simply finding solutions to coaching issues. In this instance the coach creates a reflective space to help the coachee make meaning of his/her life where reflective and value-based leadership is supported (Stelter, 2014).

Drake (2018) describes narrative collaborative practice as a practice where the factual truth is uncovered by using the narrative to move between the text, context and subtext, where text refers to the stories as told by the individual, context refers to the narrative material and subtext refers to the implications for

the narrator. According to Drake (2018), this approach helps individuals gain valuable insights which assists in challenging their assumptions about reality from their stories, creating new realities and therefore new behaviours. Narrative collaborative coaching clearly assists the coach in "making meaning with others" (GSAEC, 2014a) when it is used as a collaborative practice between the coach and coachee as proposed by Stelter and Law (2010), where active listening is regarded as a crucial tool in deciphering vital clues from the coachee's narrative to help the coachee find new meanings.

The key coach competencies and attributes responsible for effective coaching engagements where behavioural and attitudinal changes are effected, is summarised in Table 2.3 below:

Table 2.3: Key Coach attributes and competencies

Summary: Key Coach Attributes and Competencies			
Interpersonal skills *(Co-creating the coaching relationship)*	Communication skills *(Making meaning with others)*	Instrumental support *(Helping others succeed)*	Outcome
Agility Approachability Authenticity Compassion Empathy Encouragement Genuineness Intelligence Integrity Professionalism	Active listening Assessment and feedback Clear communication Challenging the coachee Powerful questioning Reframing Reflecting Back Reflective dialogue	Allow coachee to own development agenda Hold professional ground and deal with paradox Creativity and Self-knowledge Learning and Development facilitation Positive regard and frame of mind Stimulation to think, feel and explore new ideas and behaviours Working on resistance to change Support of the coachee Narrative collaboration	Creating awareness Behavior change Growth and transformation

It is also accepted that executive coaching extends beyond the relationship between the coach and executive, with the organization forming an integral stakeholder in this coaching engagement (Ennis et al., 2005; Peterson, 2011; Stokes & Jolly, 2018). Stokes and Jolly (2018), argue that executive coaching is most effective for those individuals with significant responsibilities and influence within the organization and whose potential and development as a leader is linked to the success of the organization. Executive coaching developed into its current form when the need arose to adopt a facilitative approach to assist executives reach their potential and devise their own responses to successes and failures within the organization (Stokes & Jolly, 2018).

2.4.2 *Effective Conflict Coaching Competencies*

Conflict coaching emerged as a distinct and separate conflict resolution process at the Macquarie University in Australia in 1993, offering a one-on-one engagement with a person involved in conflict not willing to enter into mediation (Brinkert, 2006, 2016). However, conflict coaching remained integrated with executive coaching as a means of helping executives with problematic behaviours that arise between executive and others and as a tool to resolving workplace conflict within a human resources context (Brinkert, 2016; Noble, 2001). Brinkert (2006), defines conflict coaching as "the process in which a coach and disputant communicate one-on-one for the purpose of developing the disputant's conflict related understanding, interaction strategies, and interaction skills" (p.518). There is strong reliance on communication and narration as tools to help the coachee better understand the conflict, to manage the conflict and seek appropriate outcomes to the conflict. Brinkert (2013), posits that conflict coaching has evolved considerably since its humble beginnings and now enjoys success in government, health and education sectors; and most notably with conflict resolution practitioners who are not trained in conflict coaching. Levine-Finley (2014), recognizes that a strong coaching relationship allows the ombudsman to be critically supportive of the client by fostering self-reflection and encouraging a more coherent and broader

understanding of their conflict. Levine-Finley (2014), acknowledges the natural coaching tendencies of ombudsmen by introducing a general coaching model at the National Institute of Health Office of the Ombudsman, Centre for Cooperative Resolution to help parties in conflict prepare for difficult negotiations or mediation. The coaching model is founded on the belief that the ombudsman's organizational knowledge and appreciation of this dynamic assists in the informal coaching relationship with the client. This model relies on active listening, asking elective questions, helping the client broaden their perspective of the conflict and providing difficult feedback to the client by holding a mirror to the client in terms of helping the client appreciate the effects of their behaviour, ultimately leading to positive behavioural changes.

Brinkert (2013), proposes introducing the comprehensive conflict coaching model (CCCM) in any interactions involving dialogue and facilitations, recognizing that *de facto* coaching occurs within such interactions, in an attempt to define the relationship between ombuds work and the CCCM. The CCCM was designed by Jones and Brinkert (2007) on the assumption that conflict is primarily communication based, describing conflict as "a story waiting to be told" (p.47) and largely influenced by narrative theory. Jones and Brinkert (2007), posit that since meaning is socially constructed (e. g. a person's meaning of "worth' or 'value' is built on the social and cultural engagements, interactions, and exposures that have been experienced during their lifetime), conflict arises when individuals have opposing interpretations (or socially constructed understandings) of an issue. Conflict coaching reduces conflict by helping the parties to reinterpret or deconstruct the meanings they attach to the issue in question. According to Levine-Finley (2014), coaching assists the ombudsman to help clients broaden their perspective of the conflict by appreciating other's perspective and understanding their role in the conflict.

The CCCM was therefore designed specifically to deconstruct the meaning of the conflict using the narrative approach (Jones & Brinkert, 2007). This involves five stages which includes listening to the disputant's description of his/her dispute, providing different perspectives of the dispute to the disputant,

reappraising the initial story after consideration of the different perspectives offered, defining a successful outcome, identifying the right conflict management tools and finally, readjusting the story (Brinkert, 2006; Jones & Brinkert, 2007).

These stages also support Academic Standard 8 of relationship building, making meaning with others and helping others succeed (GSAEC, 2014a). Jones and Brinkert (2007) and Brinkert (2016) assert that the CCCM can be modified and expanded to suit different situations with Brinkert (2016) proposing that conflict coaching is an established conflict resolution practice enjoying equal influence to mediation. While the authors have conducted research in the business executive coaching involving one-on-one interaction with individuals as an *alternative* to mediation, the use of conflict coaching as an additional tool *within* the mediation process has not been investigated. Nevertheless, Jones and Brinkert (2007) believe that a mediator can coach individuals in a dispute to interact with each other in a more productive manner. In later studies that replicate this model, Brubaker et al. (2014) confirm that conflict coaching competencies can help disputants engage more intentionally in the mediation process.

Winslade and Pangborn (2015), expand on the narrative approach adopted by Jones and Brinkert (2007), based on the belief that a purposeful conflict coaching conversation is possible if the lines of force running through the conflict story is made visible. Winslade and Pangborn (2015) endorse Jones and Brinkert (2007) CCCM in understanding the conflict story, namely deconstructing the conflict story (referring to these stages as denotation, manifestation and signification) and introducing the fourth criteria: sense, which is believed to be the glue that holds the three sequence of events together.

Winslade and Pangborn (2015) rely on the philosophical assumptions of Gilles Delauze that two distinct readings of time exist independently and separately from each other. These are *chronos* (clear definition of the past, present and future) and *aion* (an elastic reading of time where the past flows into the present

which flows into the future). Winslade and Pangborn (2015) propose viewing conflict through the lens of *aion,* which is flexible enough to allow for the individual to change his/her perspective of the conflict This corresponds to Drake (2018) narrative approach of moving between the text, context and subtext of the individuals stories in order to challenge their assumptions about their realities, as well as Reissner (2008) contention that reality is socially constructed as an on-going story reflecting the different experiences of the coachee's life. Conflict coaching researchers also endorse a facilitative approach relying on strong narrative and reflective dialogue as competencies to assist the coachee change their perspectives of the conflict, leading to attitudinal and behavioral changes.

2.4.3 *Communication and Dialogical theories of intervention*

Zariski (2010), advances that effective and active listening skills form part of the mediator's training, but mediators are not exposed to theories that describe the patterns and clues within communication between the parties they are listening to. Zariski (2010) suggests that communication theories can assist in this regard, especially as the mediator is regarded as the "monitor and manager of communication in the mediation process" (Zariski, 2010, p. 215). Effective communication is seen as key to resolving conflicts (Bodtker & Jameson, 1997). Zariski (2010), suggests that for mediators to be effective communicators, they must be able to analyse how communication flows during mediation, proposing applying communication theory to conflict. Millen (1994), agrees that communications theory is the logical source of resources for mediators to effectively facilitate a resolution of disputes because mediation is so closely interlinked with communication. This is based on the premise that every human interaction is defined by communication, be it verbal or non-verbal, where communication is viewed as an on-going process (Millen, 1994).

According to Zariski (2010), communication theory applied to conflict is divided in three strands: the first strand relates to the analysis of communication approaches and practices that take place within negotiation and bargaining, the

second strand relates to the wider communicative scope of conflict interactions and the third strand looks at finding other forms of communication in addition to negotiation and bargaining (Table 2.4 below).

Table 2.4: Communication Theory applied to conflict (Zariski, 2010, p.215)

Communication theory applied to conflict		
Strand one	*Strand Two*	*Strand Three*
Analysing the communication strategies and processes occurring within interactions of negotiation and bargaining	Focusing on the wider communicative context of conflict interactions	Exploring alternative forms of communication in addition to negotiation and bargaining

Zariski (2010), developed a mediation theory matrix to assist mediators in easily accessing a wide range of theories useful in mediation, viz. the Mediation Theory Matrix, where theories are surveyed according to the micro, meso and macro levels of conflict and behaviours of the disputants (see Table 2.5 below).

Table 2.5: Mediation Theory Matrix adapted from Zariski (2010)

Mediation Theory Matrix			
Behavioral Focus	**Scale of Conflict**		
Perception Emotion Cognition Communication Intervention	**Micro** (interpersonal conflict)	**Meso** Conflict between organizations or individual with organization	**Macro** Conflict between nonvoluntary groups and national governments

According to Zariski (2010), the horizontal scale of the matrix represents the different levels of conflict, viz. the micro, meso and macro levels. The micro level refers to interpersonal conflict, meso level refers to conflict between

organizations or an individual in conflict with organizations, and the macro levels refers to conflict between non-voluntary groups and national governments. The vertical scale represents different behaviours which include perception, emotion, cognition, communication and intervention as a guide to implementing mediation theory (Folger & Bush, 2014). If the principles of the Mediation Theory Matrix are to be considered (Zariski, 2010), labour disputes of senior and executive employees can fall either under the micro or meso level category of conflict (conflict between individuals and organizations).

The third strand of communication theory (Table 2.4) bears relevance at the meso level as it is concerned with finding alternative forms of communication in addition to negotiation and bargaining with dialogue and narrative becoming the dominant communicative form during the mediation process for an effective resolution of the dispute. Various researchers support the use of dialogue and narration, especially in the form of story-telling within a mediation process to effect perspective change of the conflict for an effective resolution of the dispute (Jones & Brinkert, 2007; Kenny, 2014; Putnam, 2010; Winslade & Pangborn, 2015). Alternative forms of communication support the dialogical theory of intervention which challenges traditional mediation communication forms of negotiation and bargaining only. It proposes argument, dialogue and narrative as alternative and more productive communication forms to negotiation and bargaining (Zariski, 2010).

Zariski (2010) believes that productive communication can be achieved by challenging the narrative coherence of a disputant's story in order to construct a different story, supporting Winslade and Pangborn (2015) proposition that constructing a different narrative enhances the disputants engagement with each other. Zariski (2010) calls for a "compassionate intervention" (Zariski, 2010, p. 224), where the mediator understands that the communication between the parties is difficult and based on mistrust, requiring different mediator competencies to negotiation and bargaining. The success that ombudsmen have using coaching to broaden the client's perspective of the dispute appears to support the expansion of communication in achieving

positive outcomes in conflict resolution (Levine-Finley, 2014). It seems logical that if conciliation is the goal of conflict and disputes, communication forms in addition to negotiation and bargaining, not only could, but should be used within the mediation process for use in consensus building at the meso level of conflict.

The key focus of executive coaching is behavioural and attitudinal change with Drake (2018), Stelter (2014) and Reissner (2008), proposing the narrative approach to coaching to help the coachee change his/her story to allow for new meanings and new results. Reissner (2008), believes that purposive questioning and focusing on looking for evidence to support the coachee's story are important competencies to help the coachee rewrite his/her story. Dagley (2010), states that reflective dialogue is an important tool used to encourage the coachee to grow and transform. Within conflict coaching, the emphasis is also on facilitating the disputants view of the conflict with a strong emphasis on deconstructing the conflict using the narrative approach (Jones & Brinkert, 2007; Winslade & Pangborn, 2015). Both executive and conflict coaching clearly rely on strong communication (dialogue and narrative) to achieve their respective outcomes.

Gower, Cornelius, Rawls, and Walker (2020), in a study of outcomes of cases using Reflective Structured Dialogue (RSD), show clear support for dialogue to improve communications between participants. This was found to help improve the relationships between the participants and reduce polarization. Communication theory places emphasis on effective communication for an effective resolution of conflict. This emphasis, together with the dialogic intervention theory (Zariski, 2010), serve to enhance the engagement between the participants, making executive and conflict coaching competencies worthy contenders since they both rely on narrative and dialogue to achieve behavioural and attitudinal changes. The call for a more compassionate intervention by the mediator during the dialogic process (Zariski, 2010), creates a further opportunity for executive and conflict coaching competencies within this process to assist the mediator in facilitating difficult communication between

the disputants especially as the mediator is regarded as the “manager of communication” in the mediation process (Riskin, 1996; Zariski, 2010, p. 215). Coaching competencies could also assist the disputants in creating a more intentional approach within mediation as suggested by Brubaker et al. (2014) as it can allow the mediator to assist the disputants focus on the desired outcomes. Rifkin, Millen, and Cobb (1991), in 1991 identified the importance of the mediator facilitating the formation of a new coherent narrative with the end goal of forming agreements that empower all parties to the mediation. Folger and Bush (2014), posit that mediation has the unique capacity to foster self-determination and communication, and the mediator’s role is to engage continuously with the parties to encourage and support shifts occurring within the mediation process.

While it is accepted that mediation and coaching are two different processes with different aims (Rosha, 2013), the mediator applying the executive coaching competencies highlighted in Tables 2.1 and 2.3 above, can assist disputants change their construction of their conflict, thus allowing for meaningful participation within the mediation process; increasing the possibility of a speedy and effective resolution of the dispute.

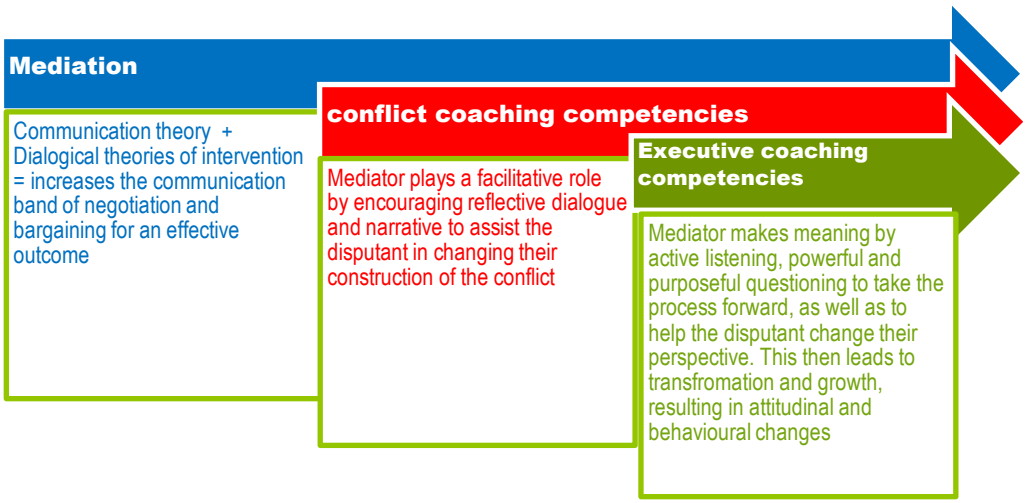


Figure 2.2: Executive and Conflict coaching competencies within the mediation process

Proposition One:

The executive and conflict coaching competencies of active listening, purposive questioning, and the encouragement of reflective dialogue and narration, results in successful coaching outcomes. This can be applied fruitfully within a similar communication-based facilitative process where effective communication is required for an effective outcome.

2.5 Additional competencies in the resolution of disputes of senior and executive employees

In this section of the review, contextual factors are discussed. These relate to the history and current situation of the LRA and the establishment of the CCMA. The competencies, processes and goals for conciliation that are specified in government documentation are described and discussed. It looks at the Imvuselelo Strategy which has as its objective to introduce innovative solutions to increase the CCMA's efficiencies within the conciliation process. Research into whether there is a need to introduce further competencies in alignment with the objectives of the Imvuselelo Strategy, is examined.

2.5.1 *Current CCMA conciliation competencies in resolving disputes of senior and executive employees*

While, the LRA does not provide a definition of senior or executive employees, the Basic Conditions of Employment Act, 75 of 1997 (BCEA) distinguishes a senior managerial employee as "an employee who has the authority to hire, discipline and dismiss employees and to represent the employer internally and externally" (section 1). Senior managerial employees as well as those employees who are earning in excess of R205 433.30 per annum (The Republic of South Africa, 2014), increasing to R 211 596.30 as at 1 March 2021, are specifically excluded from the provisions of Chapter 2 of the BCEA regarding the regulation of working time. Clause 38 of the Labour Relations Amendment Bill (LRAB) purposefully set out to exclude "high earning" employees from the

provisions of the LRA relating to dismissal disputes, recommending a minimum remuneration threshold of R1 million per annum. According to the Explanatory Memorandum to the LRAB (The Republic of South Africa, 2010), these employees are described as exercising the role of employer in many organizational aspects and occupy a position of trust and influence within the organization, which correlates with the BCEA definition of a senior managerial employee.

Chapter 7 of the CCMA Practice and Procedure Manual (CCMA, 2019c) provides guidelines to support and assist commissioners in the performance of their duties during the conciliation process. Clause 7.5.5 is of interest: "Should the parties not be able to resolve the dispute on their own, the conciliator should act as a mediator and assist the parties to break the deadlock" (p.70) with clause 7.7 providing guidelines on methods to break a deadlock. This includes reality testing and advising parties with poor prospects of consequences of not accepting offers made; and suggestions on how to compromise to break the deadlock or any other options (CCMA, 2019c). The guidelines contained in clause 7.7 provides clues as to the type of mediation approach that the conciliating commissioners is expected to use, suggesting a strong interventionist role (CCMA, 2019c), with little or no focus on relationship building as the outcome of the mediation process. This points to a problem-solving mediation approach within the section 135(3) conciliation process, which includes reality testing, a measure of coercion and giving advice (CCMA, 2019c; Riskin, 1996; Rycroft, 2016). Faris (2006), refers to this type of approach as a compromise model of mediation where the mediator's role is limited to helping the parties finding a settlement based on a compromise of competing interests. Faris (2006), posits that because these competing interests are rights-based, there is little or no attention placed on relationship building as the focus is purely on the dispute itself.

Clause 7.5.5 of the Practice and Procedure Manual (CCMA, 2019c) and section 135(3) of the LRA clearly anticipates mediation as a different process to conciliation: "The commissioner must determine a process to attempt to resolve

the dispute, which may include- (a) mediating the dispute;" The LRA, however, does not provide a definition of mediation, supporting Faris (2006), concerns that there is no consistent mediatory terminology within South African statutory provisions. This lack compromises the further development of practical and theoretical underpinnings of mediation, a necessary undertaking as it is institutionalised in our legal systems. Both Faris (2006) and Ridley-Duff and Bennett (2011) recommend making a clear distinction between the conciliation and mediation process, to increase the competencies and effectiveness of both processes. Faris (2006), in attempting to construct a proper terminology of mediation and conciliation within South African statutes, suggests that conciliation is a "form of mediatory intervention applied within a statutory context where it is incumbent upon the conciliator to ensure compliance with specific statutory provisions." (p.435). Rycroft (2016) defines conciliation as an umbrella term that includes mediation, fact finding exercises and making a recommendation to parties, while Bosch, Molahlehi, and Everett (2005) describe conciliation as a process where a neutral or acceptable third-party assists parties arrive at a mutually acceptable and binding solution. Ridley-Duff and Bennett (2011) describe conciliation as a process whereby a third party guides the disputants to try and reach a compromise that is beneficial to both parties. While there is a lack of uniformity in the terminology of both processes, the legislature clearly intends for commissioners to adopt two different approaches (conciliation and mediation) in an attempt to break the deadlock between the parties [section 135(3) of the LRA and clause 7.7.].

This approach is largely successful with the settlement rate in 2018/19 pegged at 74% (of all cases heard and closed) (CCMA, 2019a). However, Bhorat et al. (2009), using econometric evidence of CMS data from 2005/6 and using the turnaround times as a proxy for efficiency, found that where both employees and employers are professionally represented, the turnaround times are much higher than those matters with unrepresented employees or employees represented by union officials; arguing that this is a strong indication of the legal and procedural technicalities that cause the arbitration hearing to become

protracted. Bhorat et al. (2009), posits that the time that it takes to resolve a dispute is an indication of the complexity of the dispute, as well as the CCMA's efficacy in dealing with the dispute. Benjamin (2013), Blignaut (2018), Bendeman (2006) and Bhorat et al. (2009), arrive at the same conclusion, albeit using different research methods, that complex disputes rarely resolve during the conciliation process, and often proceed to arbitration, becoming protracted and expensive disputes. This is a strong indication of the ineffectiveness of the problem-solving approach to the conciliation and mediation methods currently used during the section 135(3) conciliation process (CCMA, 2019c) to effectively resolve complex disputes, which could include disputes of senior and executive employees. The common argument is that legal representatives create highly technical and procedural processes, with parties often losing sight of the intention of the LRA, which is to provide simple procedures for the speedy and effective resolution of labour disputes (Bendeman, 2006; Benjamin, 2013; Bhorat et al., 2009).

These findings support the argument submitted in support of the removal of high earning employees from the provisions of the LRA by introducing s188B into the LRA (The Republic of South Africa, 2010). According to the Explanatory Memorandum (The Republic of South Africa, 2010), executives are often dismissed for reasons that do not necessarily fall within the fair reasons for dismissal contained in section 188 of the LRA (misconduct, incapacity or reasons relating to the employer's operational requirements), citing challenges relating to compatibility, culture and leadership changes as more probable reasons for executive dismissals. The dismissed executive is often a highly influential and high earning employee, and this has significant cost implications for both the executive and organization, further impacting on the efficiency of the organization (The Republic of South Africa, 2010). The Explanatory Memorandum (The Republic of South Africa, 2010) further argues that high earning employees often use the resources of the CCMA to negotiate favourable settlement terms after their dismissals, thus causing unnecessary delays in finalizing the disputes. This congests the CCMA system, causing

further prejudice to vulnerable employees by impacting on the speedy resolution of their disputes (Benjamin, 2013; The Republic of South Africa, 2010). Section 188B has since been removed from the LRA for reasons relating to the constitutionality of denying these employees the right to fair labour practice. Nevertheless, the Explanatory Memorandum (The Republic of South Africa, 2010), does highlight the challenges identified with disputes of senior and executive employees and the problems that they pose to the CCMA dispute resolution process. Although dismissal cases of senior and executive employees are relatively small, the time that it takes to finalise is disproportional to other disputes and it still remains that senior and executive employees have more bargaining power to negotiate with their employers than less skilled and lower paid employees (Bhorat et al., 2009; The Republic of South Africa, 2010).

Concerns have also been raised about the quality of the settlement agreements achieved during the conciliation process and the failure of commissioners to address the underlying causes of conflict in their haste to resolve disputes (Benjamin, 2013; Bhorat et al., 2009). Benjamin (2013), is critical of this practice calling it “superficial settlements” (Bhorat et al., 2009, p. 7), further supporting the dissatisfaction that the International Labour Organization (ILO, 2013), has with the limited timeframe allocated to conciliations (Steenkamp & Bosch, 2012). The subsequent findings of Rycroft (2016), confirm Steenkamp and Bosch (2012) assertions that the high settlement efficiency of 70% imposed by the CCMA has resulted in commissioners coercing parties to settle their disputes at conciliation, calling it “blind spots” (p.81) as it prevents parties from exploring viable settlement options themselves. This may not necessarily apply to disputes of senior and executive employees, as they rarely resolve during conciliation (Bendeman, 2006; Benjamin, 2013; Bhorat et al., 2009), but it does highlight challenges with the problem solving approach adopted during conciliation of disputes at the CCMA and the focus on settlements to measure the success of conciliations at the CCMA, possibly hinting at a different conciliation/mediation approach.

International trends support the removal of high earning employees from mainstream alternative dispute resolution bodies. Employees earning in excess of $118 100 are excluded from the provisions of the Fair Works Act, 2009 (Australia) because they are recognized as "sophisticated investors', capable of creating and protecting their own employment interests" (Ruskin, 2013, p. 1). Similarly, the Fair Labour Standards Act, 1938 (USA), specifically excludes executive employees from its provisions as the termination of the employment relationship in this instance is managed contractually (Ruskin, 2013). However, the CCMA, while acknowledging these challenges, is statutorily obliged to accept all disputes including those relating to senior and executive employees.

2.5.2 *Alternate competencies to assist in the speedy and effective resolution of disputes of senior and executive employees*

Hanger and Cooper (2004), state: "… it is essential to design a dispute resolution process that suits the particular dispute rather than to try to make the dispute fit into a process" (p.82), arguing that flexibility is crucial for success in mediating large and complex disputes. Blignaut (2018), is also of the view that in order to maintain its efficiency and effectiveness, the CCMA must remain flexible. Benjamin (2013), argues that the CCMA has in the past found innovative ways to counter challenges to its efficiencies and must now find innovative ways to cope with challenges presented by a changing labour market which is affecting the quality of its resolution functions. The need for change is supported by the objectives of the CCMA's current Imvuselelo Strategy (CCMA, 2020c), which calls for the CCMA to innovate and reconfigure to cope with a changing labour market. Section 135(3) creates a legal basis for the introduction of further competencies to resolve disputes with Bendeman (2006), arguing that the discretion created in section 135(3) implies that other forms of dispute resolution will be tolerated and proposes an "appropriate" dispute resolution process which is adapted to the dispute as well as the needs and

capacities of the disputants, supporting the Hanger and Cooper (2004) argument that the process must suit the dispute.

Hanger and Cooper (2004), further argue that it is the disputants need to be heard and understood that results in a successful mediation, and that this need increases if the company's finances and reputation are affected, with the CEO and mediator best suited to satisfy that need. Although the reflections of Hanger and Cooper (2004), on the use of the Senior Executive Appraisal Mediation (SEAM) are based on one case study only, it nevertheless provides valuable insight into the challenges that arise when mediating complex disputes. By directly involving the CEO in the mediation process, the CEO was able to provide and obtain a different perspective of the conflict. This process allowed for the direct integration of the organizational context within the mediation process, as proposed by Myers and Witzler (2014) and Levine-Finley (2014), suggesting that the ombudsman expand the dispute landscape in order to broaden the client's perspective of the dispute, thereby assisting in resolving the conflict. Both Myers and Witzler (2014) and Levine-Finley (2014), believe that this requires a different way of questioning, listening and framing. According to Folger and Bush (2014), attitudinal changes are possible by allowing parties to express their emotions during the mediation process, arguing that this assists in changing emotions, thus leading to transformation.

The problem approach to mediation presently employed by the CCMA has been criticised as it compromises the neutral role of the mediator (Rycroft, 2016), especially as the Code of Good Practice (clause 7) specifically calls for strong intervention from the mediator to break the deadlock between parties (CCMA, 2019c). There is further criticism that the problem-solving approach does not address the cause of the conflict (Benjamin, 2013; Bhorat et al., 2009). Folger and Bush (2014), believe that the problem approach is too narrow and limits the potential of mediation, arguing that mediation should be used to support important shifts occurring during the mediation process. This corresponds to Zariski (2010), proposition that expanding the communication band within the mediation process creates an opportunity to redirect parties to looking at

resolution of the conflict. Bush (1994), proposes a novel approach to mediation, viz. transformative mediation which supports self-determination and communication, in response to the limitations of the problem-solving approach to mediation. The implications of this approach are that the parties are empowered to find their own solutions, which is believed to lead to transformation and growth (Bush, 1994). Brubaker et al. (2014) endorse this approach because it is seen to further strengthen the individual's ability to appreciate the experiences of the other party, founded on the belief that empowerment is the foundation of transformational practice, providing further support to Bush (1994) proposal of transformative mediation. This advances Riskin (1996) description of facilitative mediation as one grounded in the assumption that the participants are intelligent and are better able than the mediator to understand and find solutions for an effective resolution of the dispute. Kriesberg (2012) agrees that the facilitative mediator is responsible for enhancing and clarifying communication between the participants to create their own solutions to the dispute.

Thus, the dominant theme emerging from the literature is that facilitating dialogue and narration between the parties creates a deeper understanding of the conflict. It also creates an opportunity for recognition and empowerment, anticipating that the change in perspective of the conflict leads to behavioural and relationship changes (Winslade & Pangborn, 2015). The facilitative approach to mediation, with its emphasis on empowerment and recognition, therefore supports the assertion by Hanger and Cooper (2004) that it is important for the CEO to be heard in complex disputes. Myers and Witzler (2014) believe that expanding the view of the problem assists the parties to resolve the conflict and affect more profound relationship changes. These assertions support Zariski (2010) proposition to introduce a dialogical process as it allows for the inclusion of factors such as morals, identity, emotions and prejudices within the dialogue, thus broadening the dispute horizon. This also addresses the unease that many authors have with the efficacy of the problem-solving approach to mediation in building meaningful relationships and

addressing the underlying cause of the conflict (Benjamin, 2013; Bhorat et al., 2009; Kwakwala, 2010).

Proposition Two

Disputes of senior and executive employees require a facilitative approach to mediation to resolve, where the focus is on strong reflective dialogue and narration as this encourages parties to address the underlying cause of the conflict, ultimately leading to behavioural and attitudinal changes.

2.6 Executive and conflict coaching competencies within the s135(3) conciliation process of disputes of senior and executive employees

In this section of the review, it is suggested that by combining the literature on executive and conflict coaching competencies with a high success rate for attitudinal and behavioural change, with literature showing proven strategies of effective mediation techniques involving facilitation that empowers disputing parties to find suitable resolution, may lead to a testable intervention.

Cox et al. (2014b) propose that tailoring the coaching approach and model to the needs of the organization and client, and purpose of the coaching engagement, allows for an effective coaching engagement and outcome. While it is acknowledged that the CCMA section 135(3) conciliation process is not a traditional coaching environment as anticipated in the definition of executive coaching, the principle remains that to affect a successful conciliation outcome, the needs of the parties must be met.

The introduction of executive and conflict coaching competencies in a mediation process is supported by the communication theory with a dialogic intervention (Zariski, 2010). The conciliation process of disputes of senior and executive employees are usually complex (Bhorat et al., 2009), and requires a different set of competencies to resolve these disputes speedily and effectively. Through

coaching, it may be possible to effect behavioural and especially attitudinal changes. ACAS commissioners, in successfully resolving labour disputes referred to ACAS (Dix, 2004, 2015), display the core competencies of the executive coach as contained in GSAEC's Academic Standard 8.0 (GSAEC, 2014a) with their emphasis on relationship building and empowering parties. ACAS similarly to the CCMA, is mandated by legislation to mediate labour disputes with commissioners displaying similar competencies to the CCMA commissioners: integrity, and good communication and listening skills (CCMA, 2020b). Executive coaching competencies of building strong relationships of trust and respect, active listening, reframing, asking powerful questions, self-management and holding the professional self during the conciliation process are required to empower parties and to facilitate more sustainable and meaningful resolutions of the dispute with high impact individuals (Dagley, 2010; Dix, 2004; GSAEC, 2014a). Therefore, the basic tenets of the work of conciliator and coach are similar as they both operate from a communication perspective (Rosha, 2013), thus making for an easy integration into the section 135(3) conciliation process. Brinkert (2016) recognizes that *de facto* coaching occurs in any interactions involving dialogue and facilitation, providing further support for (Zariski, 2010) assertion that the mediator, as manager of the communication between parties, should enhance this communication by adopting an intentional communication approach with the mediation process (Brubaker et al., 2014).

The literature shows a strong reliance on the facilitative role of coaches in both executive coaching as well as conflict coaching which emphasises dialogue and narrative to empower the coachee/disputant to find their own solutions and change their perspective of the conflict (Drake, 2018; Jones & Brinkert, 2007; Winslade & Pangborn, 2015). This facilitative role is instrumental in transferring executive and conflict coaching competencies into the section 135(3) conciliation process. Facilitation through clear dialogue with participants can modify and change behaviours (Keil, 2000). The CCCM supports the assertion by Folger and Bush (2014), Brubaker et al. (2014) and Lipsky (2015), that

transformation and growth is possible by focusing on empowerment and recognition when parties are allowed to generate their own options for resolution. This is accomplished by focusing on empowerment and recognition, the building blocks for the generation of own solutions, and therefore effective resolution of the dispute.

Proposition 3

Applying executive and conflict coaching competencies within the section 135(3) conciliation process of disputes of senior and executive employees, facilitates dialogue and narrative around the conflict, helping the employee construct a coherent narrative of the dispute. This ultimately leads to behavioural and attitudinal changes, resulting in a sustainable and meaningful resolution of the dispute.

2.7 Literature Review Conclusion

The need for the CCMA to find innovative solutions to adapt to a changing labour market and to address the challenges to its efficiencies is encapsulated in its Imvuselelo Strategy (CCMA, 2020c). Section 135(3) provides for the use of discretion to use different competencies to resolve disputes (Bendeman, 2006). Literature research shows that the present problem solving approach to resolving disputes of senior and executive employees are not effective since they mostly fail to resolve at conciliation. These disputes proceed to arbitration, becoming protracted and expensive disputes (Bendeman, 2006; Benjamin, 2013; Bhorat et al., 2009). The problem solving approach also faces criticism that it does not address the cause of the conflict thus preventing parties from reaching a meaningful and sustainable resolution of the dispute (Benjamin, 2013; Bhorat et al., 2009; Kwakwala, 2010). The research therefore establishes a clear need for innovative solutions within the section 135(3) conciliation process for the expeditious resolution of disputes of senior and executive employees.

The narrative approach to executive coaching and conflict coaching have importance in conflict resolution as these competencies assist the coach in helping the parties change their perspective of the conflict. The communications theory, coupled with a dialogical intervention, allows the mediator to introduce further competencies into the mediation process and this includes reflective dialogue, narration and strong communication skills. Research also shows that executive and conflict coaching competencies are best suited for the application within a facilitative mediation process where the mediator relies on communication forms other than bargaining and negotiation to help the parties identify the core issues of the conflict, thereby resolving the disputes effectively.

2.8 Literature response to research objectives: Summary of propositions

Proposition One:

The executive and conflict coaching competencies of active listening, purposive questioning, and the encouragement of reflective dialogue and narration, results in successful coaching outcomes. This can be applied fruitfully within a similar communication-based facilitative process where effective communication is required for an effective outcome.

Proposition Two

Disputes of senior and executive employees require a facilitative approach to mediation to resolve, where the focus is on strong reflective dialogue and narration as this encourages parties to address the underlying cause of the conflict, ultimately leading to behavioural and attitudinal changes.

Proposition Three

Applying executive and conflict coaching competencies within the section 135(3) conciliation process of disputes of senior and executive employees,

facilitates dialogue and narrative around the conflict, helping the employees construct a coherent narrative of the dispute. This ultimately leads to behavioural and attitudinal changes, resulting in a sustainable and meaningful resolution of the dispute.

2.9 **Summary**

The literature review established that CCMA commissioners conciliate individual labour disputes using a problem-solving approach with a strong interventionist strategy. This includes reality testing with the parties, making suggestions and recommendations, and advising parties with poor prospects of the consequences of not accepting offers made to resolve the dispute. This approach has been found to be ineffective in resolving disputes of senior and executive employees, as these disputes require expanding on the dispute landscape. Disputes of senior and executive employees need a strong focus on reflective dialogue and narration and a facilitative mediation approach to encourage the parties find effective outcomes. Executive and conflict coaching competencies of active listening, purposive questioning, and encouraging reflective dialogue and narrative results in successful coaching outcomes and can be applied successfully within a similar communication-based facilitative process where effective communication is required for an effective outcome. Executive and conflict coaching competencies encourages senior and executive employees to construct a coherent narrative of the dispute, allowing for recognition and empowerment to occur. This leads to behavioural and attitudinal changes, resolving the disputes effectively. However, the literature review does not show support for the speedy resolution of these disputes.

CHAPTER 3. RESEARCH METHODOLOGY

This chapter describes the methodology that was followed to investigate the phenomenon of applying coaching competencies within the section 135(3) conciliation process. This study was guided by the research objectives. Details of the research approach, research paradigm, population and sample, the data collection methods, the research instruments are provided. The method for how the data was analysed and interpreted is outlined and the reasons for using this method are discussed. The question of the trustworthiness of the study, as well as relevant ethical considerations are scrutinised in light of the importance these have for the credibility of any research work.

3.1 Research approach

This qualitative study was chosen because a deeper understanding of the effect that coaching competencies could have within the section 135(3) conciliation process was required. This could only be answered adequately by testing the direct application of coaching competencies within a “live” section 135(3) CCMA conciliation process (Cresswell, 2007). This would require the participation of a number of commissioners at the CCMA, as well as an adequate number of cases in order to compare and research for variability.

Merriam and Tisdell (2015) and Hammarberg, Kirkman, and de Lacey (2016) state that qualitative research is necessary to determine how people interpret their experiences, construct their realities and give meaning to their experiences. Gyllensten (2007) posits that the objective of qualitative research is to obtain rich descriptions of the research topic by asking participants how they feel about the topic or phenomenon under investigation. This is described as relying on participants to produce new insights, themes and understanding into the phenomenon (Gyllensten, 2007; Holliday, 2007). The participant commissioners are trained in conflict resolution and were best placed to provide a credible and authentic account of their experiences of using these

competencies during the conciliation process, as well as the effect, if any, that it had on their ability to resolve disputes of senior and executive employees. Their narrative data therefore provided valuable insight into the efficacy and effect of this phenomenon within the section 135(3) conciliation process and especially whether coaching competencies had value outside the traditional coaching environment (Bansal & Corley, 2012).

This study is also situated in the constructivist-interpretivism reality. Constructivism recognizes that an individual's experiences, perceptions and social environment influences reality, creating degrees of overlap in consensus between parties, and sometimes substantial differences. This applies to all interactive instances. The interaction between participant and researcher is crucial to uncovering the deeper meaning of phenomena whereby the researcher and participant uncover joint findings (interpretivism) and construct new knowledge (Cresswell, 2007). The constructivism paradigm was chosen because the outcome of using coaching competencies in this process cannot be quantified as it is dependent on many variables, including the parties' intention to resolve the dispute and the commissioners' level of skill and years of experience. Therefore, the effect of these competencies could only be obtained from the participating commissioners' direct experience of applying these competencies. This was also important to accommodate the individual unique mediating styles and competencies of the participating commissioners.

Recent literature also shows tolerance towards the researcher introducing his/her personal story into the study for the value that this personal insights and experience could add to research (Corbin & Strauss, 1990; Ellis, Adams, & Bochner, 2011). This required bracketing personal values, prior experiences of conciliating disputes of senior and executive employees, as well as observations prior to interacting with the participating commissioners (Ponterotto, 2005), to limit any potential bias or influence on the data generated (Chan, Fung, & Chien, 2013; Tufford & Newman, 2012). Personal experience in this phenomenon was disclosed to the participants before the commencement

of the first interviews with the agreement that the interviews would be focused solely on their experiences of this phenomenon.

3.2 **Research design**

The phenomenological research design was chosen because the phenomenon of using executive and conflict coaching competencies in a section 135(3) conciliation process is a new concept in South Africa and the value thereof could only be found in a “live” conciliation process conducted by commissioners conciliating disputes involving senior/executive employees. According to Patton (2014), the aim of phenomenological research is based on the assumption that there is an essence or essences to shared experience and the essence is the core meaning of the phenomenon experienced. Osborne (1994) posits that the focus in phenomenology is on “discovery, description and meaning” (p.168), where the human experience provides meaning to the phenomenon. The phenomenological research design allowed for the participating commissioners to provide an unbiased understanding of what value these competencies had within the section 135(3) conciliation process (Groenewald, 2004; Patton, 2014). The data was therefore contained within the perspective of the conciliating commissioners (Groenewald, 2004). This gave meaning to the phenomenon and assisted in determining the core essences of its value in this process. This was necessary as the nature of the research objectives relied on the richness of the information provided by the participants.

However, the essence of this phenomenon could only be understood by allowing the conciliation process to unfold without preconceived stipulations or influence. According to Groenewald (2004) “The aim of the researcher is to describe as accurately as possible the phenomenon, refraining from any pre-given framework, but remaining true to the facts” (p.44). This therefore necessitated deep reflection on this phenomenon in order to put aside personal knowledge, assumptions and experience of this phenomenon before commencing with the study. Chan et al. (2013) suggests that before choosing a phenomenological design, it is important to ask: “Can we equip ourselves to

adopt an attitude of conscious ignorance about the issue under investigation?"(p.4).). An affirmative answer shows readiness to proceed with the phenomenological research design. A reflective journal recording thoughts, views, assumptions and experiences was used as a distancing tool to create the necessary neutrality and to avoid personal knowledge and experience impinging on the study [see 3.4.1 below]. It was also necessary to ensure the integrity of the data collected by proper storage, transcriptions and recording, to prevent influence by unconscious bias and/or assumptions, i.e. to limit the impact of subjectivity on the data collected (Tufford & Newman, 2012).

Seventeen commissioners meeting the selection criteria of at least 5 years of mediation experience in disputes of senior and executive employees, were initially identified from the Johannesburg and Benoni CCMA offices. Polkinghorne (1989) recommends a sample size of between 5 and 25 participants to develop the possibility of experiences. Two senior commissioners and a level A commissioner declined for reasons relating to their unavailability during the period of the study, while fourteen commissioners expressed their willingness to participate in the study. This included six senior commissioners and eight Level A commissioners. The demographics of the participants were: seven female and seven male commissioners, nine black commissioners, three white commissioners, and one Indian and coloured commissioner respectively (see Figure 3.1 below). This diverse selection enabled a true reflection of the demographics of part-time commissioners providing their services to the CCMA, although cultural and racial differences were not expected to impact on the outcome of the study.

The identities of the participating commissioners were removed from the transcripts and corresponding codes allocated accordingly to protect their anonymity, viz. PC1, with PC being an abbreviation of "participating commissioner" and the numbers indicating the order in which they were first interviewed (Arifin, 2018).

Table 3.1: Participating Commissioner Information Sheet

	*Name **	*Level*	*Gender & Race*	*1st Interview*	*2nd Interview*	*Consent form & Non-Disclosure forms*
CCMA JOHANNESBURG						
1.	PC6	SC	M (W)	07/09	06/10	Submitted
2.	PC7	Level A	M (B)	09/09	15/10	Submitted
3.	PC8	Level A	M(W)	09/09	15/10	Submitted
4.	PC9	SC	F(B)	09/09	14/10	Submitted
5.	PC10	Level A	F(B)	10/09	19/10	Submitted
6.	PC11	Level A	M(C)	11/09	12/10	Submitted
7	PC12	SC	F(B)	11/09	19/10	Submitted
8.	PC13	Level A	F(I)	11/09	24/10	Submitted
9.	PC14	Level A	F(B)	11/09	22/10	Submitted
CCMA BENONI						
1.	PC1	SC	F(B)	04/09	27/10	Submitted
2.	PC2	SC	M(B)	04/09	Withdrew	Outstanding
3.	PC3	Level A	F(B)	04/09	10/10	Submitted
4.	PC4	Level A	M(B)	04/09	Withdrew	Submitted
5.	PC5	SC	M(W)	07/09	12/10	Submitted

Participants: Jhb office	Participants: Benoni office	Female	Male	Black	SComm	Level A
9	5	7	7	9	6	8

*Note: Participants were allocated codes to ensure their anonymity

3.3 Population and sample

3.3.1 *Population*

The population for the research was situated at the CCMA nationally involving all senior and commissioners with at least five years of experience, who are tasked with resolving disputes involving senior and executive employees. The participants presented with conciliating/mediating experience of between five and twenty years and most presented with high settlement rates at the CCMA.

3.3.2 *Sample and sampling method*

Purposive sampling, the most important type of non-probability sampling technique (Etikan, Musa, & Alkassim, 2016), was employed to maximise efficiency and validity in achieving a vigorous understanding of this phenomena (Palinkas et al., 2015). The participants were chosen because they were knowledgeable and experienced mediators/conciliators, and were willing, available and able to "communicate experiences and opinions in an articulate, expressive and reflective manner" (Etikan et al., 2016; Palinkas et al., 2015, p. 2). Furthermore, the phenomenon of applying coaching competencies within a statutorily constituted conciliation process is not an event that bears relevance to the entire population (Etikan et al., 2016). The criteria included at least five years of experience in dispute resolution with an advanced level of mediation skills as disputes involving senior and executive employees are only allocated to senior and experienced commissioners due to its complexities. Commissioners with an advanced level of mediation skills were also able to clearly articulate their experience with the phenomenon thereby providing rich data on their experiences and perspective (Palinkas et al., 2015).

The research was also limited to participants in the CCMA Gauteng offices because of time and geographical limits, and because Gauteng is recognized as the province with the highest referrals nationally (CCMA, 2019b). While it was initially intended to interview twenty commissioners from the

Johannesburg, Benoni and Pretoria offices, this was not possible as the lockdown regulations and covid-19 infections impacted on the CCMA's operations and access to the commissioners. Therefore, only nine commissioners emerged from the CCMA Johannesburg office and five from the Benoni office. The Pretoria office participation was abandoned due to its frequent closures during the lockdown period in 2020 and subsequent unavailability of the commissioners. The final sample size of 14 participants nevertheless was sufficient to develop the possibility of experience as the interviews conducted required in-depth reflections and responses from highly skilled and experienced participants (Cresswell, 2007; Polkinghorne, 1989).

Although cultural influences on the relationships was excluded from this study, a cross-section of commissioner population was selected to provide a richer and more comprehensive account of the value of executive and conflict coaching competencies in the conciliation process, as detailed in Table 3 below.

Table 3:2: Profile of Participating Commissioners

Office	SC	Comm-5+ years exp Level A	M	F	B	W	C	I	Total
Jhb	3	6	4	5	5	2	1	1	9
Benoni	3	2	3	2	4	1			5

(Designed by researcher:2020)

3.4 **The research instrument**

The 2020/2021 Covid-19 lockdown impact on the CCMA altered the method of obtaining data to direct one-on-one interviews with the participating commissioners on their current experiences of conciliating disputes of senior and executive employees. The participating commissioners were asked for their thoughts, insights and experiences when dealing with disputes of senior and

executive employees. The questions were kept deliberately open-ended to encourage their narrative on their experiences of conciliating these disputes (Merriam & Tisdell, 2015). The interviews began by asking the participating commissioners about their years of experience in mediating and conciliating disputes of this nature. Once trust and rapport were achieved, more focused questions were posed about their experiences and reflections of conciliating disputes of senior and executive employees. However, this was intended to steer and guide the interview only (Chan et al., 2013).

After the first interview, the participating commissioners were inducted individually on the facilitative model (Appendix I) which was designed specifically to incorporate executive and conflict coaching competencies. This model was based on the CCC Model designed by Jones and Brinkert (2007) with the specific aim of using reflective dialogue and strong narrative to help parties reinterpret/deconstruct the meaning of the conflict. The intention was to use particular competencies of asking open-ended questions, active listening, reframing and rephrasing, encouraging reflective dialogue, role-playing, focusing on behaviour change and clear communication, to reduce the impact of the conflict on the relationship between the parties. The participating commissioners were provided with a copy of Appendix I and each competency was explained with practical examples of its usage within the conciliation process. However, most participating commissioners immediately understood the nature of the competencies and the practical application within the conciliation process.

Each participant commissioner was given a month to apply these competencies to any dispute involving a senior or executive employee and to record their experiences in a diary, with the arrangement that they would be interviewed on this experience thereafter. The period of a month was informed purely from an operational basis as most participating commissioners conduct arbitrations and conciliations at the CCMA on a regular basis and would therefore have had an opportunity to conciliate at least one dispute involving a senior or executive employee. The participating commissioners were instructed to email their

completed diaries to the researcher. However, only three participants submitted written diaries. The other participants chose instead to reflect on their experiences during the post-experiment interviews.

The second set of interviews again used open-ended questions, about their experiences of applying the coaching competencies within the section 135(3) conciliation process (Merriam & Tisdell, 2015). An inductive approach was adopted during the interviewing process with follow-up questions during the interviews being informed from the participants' narrative and reflections, e.g. Can you tell me more about that? The probing questions were intended to elicit richer insights about their respective experiences of applying coaching competencies within the section 135(3) conciliation process. Reflections on the participating commissioners' responses immediately after each interview were recorded and assisted with the data analysis in interpreting meanings from the respective narratives from the interviews.

Heeding the warning of Wilkinson (1998) that the reliability and validity could be impacted by inherent moderator and participant bias, the purpose of the research was explained at the outset to limit this effect. A memo explaining the purpose of the study attached to the diaries (Appendix D) reiterated this. Once their voluntary participation was determined, the participating commissioners signed their consent to participate in the study. Non-disclosure forms (Appendix E) were also included.

Personal experiences of conciliating disputes of senior and executive employees were recorded in a journal after applying the facilitative mediation model during the same period as the participating commissioners (Cresswell, 2007; Ponterotto, 2005; Tufford & Newman, 2012). The interviews also concentrated exclusively on the participants' insights and experiences. It must be noted that the researcher has worked alongside many of the participant commissioners throughout the years but did not engage with the commissioners during the interviews and refrained from sharing similar experiences, opinions and thoughts on the phenomenon under study. Initial reflections of the

interactions with the participating commissioners was also recorded as a means of collecting extra data to contextualize the interview material (Smith, Flowers, & Larkin, 2009). The participating commissioners' versions were recorded verbatim to further reduce any possibility of bias.

3.4.1 *Researcher's reflections*

Interest in this phenomenology was inspired by a personal involvement in disputes of senior and executive employees, having conciliated and arbitrated disputes of this nature for over twenty years. This presented an opportunity to conciliate them differently and led to investigating whether different competencies could apply within the section 135(3) conciliation process. Applying the facilitative mediation model with coaching competencies (Appendix I) within the conciliation process of disputes of senior and executive employees during the study period prompted insights into this phenomenon and assisted in bracketing preconceptions before the process of data collection and analysis began (Tufford & Newman, 2012). Ellis et al. (2011) and Chan et al. (2013), acknowledge that while the researcher's voice aims to be subjective, this influence cannot be ignored especially as the researcher is the instrument for analysis. This tolerance for the researcher's personal story in the study is based on the value that the researcher's insights and experiences could add to the research and find deeper meanings into the phenomenon (Corbin & Strauss, 1990; Ellis et al., 2011). The purpose of including a part of the reflective diary is to facilitate *epoche* (Patton, 2014), requiring a conscious setting aside of potential bias that could potentially influence data collection and analysis.

"*I was an "unconscious" coach during one-on-one sessions with the employees during previous conciliations and soon realised that a more intentional coaching approach could have considerable value in helping the parties settle their dispute. I agree that a more facilitative approach is necessary and that good communication skills are key to resolving these disputes. My experience is that these individuals are highly intelligent, skilled and educated individuals who are also high earners with expectations that far exceed your normal Joe employee in terms of the outcome at the CCMA. Commissioners must deal with these employees differently as the*

expectations are complex and layered, and the egos need assuaging. These employees are also entrenched in their positions because of reputational and principle reasons and causing a shift in their perspective is extremely challenging.

These matters never settle at conciliations. At this stage of the dispute, the parties are too close to the period that a dispute is declared and they are extremely positional. Without fail, both parties need to be proven right and are not in the right mind-set to "compromise" their positions in any way. Invariably, legal advice has been sought and legal expenses incurred and this dynamic also influences the need for both parties to have their so-called day in court. The resolutions I have managed to obtain have always occurred in arbitration when I revert to conciliation. However, conciliating these disputes require many tools in the toolbox and it's not a simple act of negotiating and taking offers and counter offers back and forth or reality testing. This interaction goes beyond reality testing. There are many dynamics to consider, not least the personalities of the employee applicant, the presence of legal representatives, the financial and reputational implications, operational consequences, and the complexity of the dispute as these employees are not usually dismissed for reasons in accordance with the Labour Relations Act. Parties to this dispute are also extremely well-versed in the law, well advised, knowledgeable, sophisticated and have extremely high expectations of the outcome as well as the commissioners' expertise. Although the CCMA services are free, this nevertheless does not preclude these employees from expecting world class service from the CCMA Commissioner and are not tolerant of service that is less than professional. This often requires a lot of patience, tolerance and staying focused on the main goal, which is facilitating a settlement. It can be frustrating as these disputes do take a long time to resolve and it requires a lot of effort and concentration. It also requires being able to read people well and to stay a few steps ahead at all times. Professionalism is non-negotiable and the commissioner must never personalise a failure to resolve these disputes. Parties often play games as well and it is equally important to remember to detach from these dynamics. I regularly tell myself it is not my dispute if I find that I am becoming too attached to the story rather than focusing on the outcome.

I often adopt a facilitative role as they are represented and I refrain from giving legal advice. The legal representatives bill by the hour and need to show that they are earning their keep. However, if I gain the representative's trust and confidence, I know that it is just a matter of time before we get a settlement. It is also interesting that both parties drive a very hard bargain and

this is largely because the employee is intimately aware of the financial status of the company. I try not to get involved in the contents of the dispute and use my energy to keep the parties off the grass and on the path. I have also learnt to be deaf at times and to not take comments personally. Interestingly it is often just enough to stoke the ego and give the employee the opportunity to be heard. These disputes are undeniably harder to resolve because of the high expectations of the employee, the financial and reputational impact and the presence of legal representatives. Nevertheless, with patience and the will to facilitate a process, a settlement is possible but it certainly is a lot more challenging that those disputes involving lesser paid employees. I put a lot of my personality into the process and connect with the employee, and people often respond to my genuine interest to help. It really does not matter whether an employee is a CEO, VP or train driver…everyone thrives when interest is shown in their stories. Everyone wants to be heard.

I am a firm believer that "softer" skills are required with these employees. They are surrounded by people who talk tough and it is easier to change their perspective when they are allowed to reconnect with what they really want as against what they have been advised to seek. Empathy, good listening skills, respect, kindness, authority and good questioning can elicit a desire to want to resolve rather than litigate because we allow the employee to connect on a human level. This is an important component that is often ignored in these disputes. Strengthening our communication skills will add huge benefit to these disputes."

3.5 **Procedure for data collection**

This study could not be undertaken without the consent of the Director, CCMA, due to the confidential nature of the conciliation process. An agreement was entered into with the CCMA prior to the start of the study to abide by certain conditions necessary to maintain the integrity of the conciliation process. This included the signing of non-disclosure forms by the researcher and participating commissioners (Appendix G). The selected commissioners were chosen and interviewed only after the Johannesburg and Benoni convening senior commissioners were advised that permission had been granted by the Director CCMA to collect data. The participation of the participating commissioners was voluntary and they signed non-disclosure forms confirming that the only

information required in the personal diaries were personal reflections on the effect and impact of the competencies on the conciliation process (Appendix E), as well as their express consent to the conditions of the study (Appendix D) (Arifin, 2018; Kalu & Bwalya, 2017). The commissioners, bound by the CCMA Code of Conduct, also pledged to comply with the Code and to maintain the confidentiality of all disputes under their control, especially the identities of the parties to the dispute. Permission was granted to conduct the one-on-one interviews and briefing sessions with the commissioners at the Johannesburg and Benoni offices.

In accordance with the agreement with the CCMA (Appendix H), regular progress reports were submitted to the CCMA BRICs Unit. Copies of the verified transcripts of the interviews were provided to the CCMA to maintain the integrity of the CCMA and its processes, while the raw data remained in the sole control of the researcher, including the participating commissioners' diaries of those disputes conciliated using the coaching competencies, and handwritten notes of the interviews.

The first round of interviews commenced on 4 September 2020, finalizing on 11 September 2020, while the second round of interviews commenced on 6 October 2020 and ended on 24 October 2020. PC1, PC2, PC3, PC4 and PC5 are based at the Benoni office but due to operational challenges, PC1 and PC5 were unable to participate in the focus group and were interviewed and inducted on the facilitation mediation model (Appendix I) individually. The participating commissioners from the Johannesburg office were individually inducted on the facilitative model (Appendix I) because the lockdown regulations posed a challenge in terms of arranging all nine participating commissioners to participate in a focus group. They were also provided with pre-drafted copies of the diary and memo, with instructions to complete the diary for a month recording their experiences of applying these additional competencies as indicated (Appendix B).

Follow-up interviews with the commissioners were then conducted on a one-to-one basis after a month had lapsed since the first interview with most of the second interviews occurring via an online platform, due to the unavailability of most participants for face-to-face interviews. However, two commissioners (PC2 and PC4) from the Benoni office chose not to participate further and one commissioner (PC1) was unable to apply the competencies after the first interview. The data was thus collected from eleven participating commissioners only. Three commissioners provided copies of their diaries but the remaining eight commissioners interviewed chose to speak about their experiences in the interview, citing severe work pressures as challenges to keeping detailed diaries. The focus of the interviews was therefore altered slightly to accommodate further discussions of those matters that were conciliated using the coaching competencies. The participating commissioners were asked open-ended questions to allow the participants a free reign in describing their experiences of using the coaching competencies within the section 135(3) conciliation process (Appendix C).

The participating commissioners were provided with the list of questions for both interviews (see Appendix A and C), which was shared with them prior to the interviews. The interviews were recorded with their permission and the duration of the interviews ranged from 30 to 60 minutes. The transcripts were transcribed in its entirety and duly verified against the audio recordings. The verified transcripts were then sent to the commissioners to confirm the authenticity. However, none of the participating commissioners indicated any error or misrepresentation in the transcripts. Field notes were made after the interview of each participant, based on personal observations, reflections, thoughts and insights gleaned from the interviews. According to Saldaña (2015), it is accepted that while coding is not wholly objective, the researcher must also actively monitor his or her bias influencing the manner in which data is coded (Tufford & Newman, 2012). Bracketing personal views, perceptions and direct experiences of this phenomenon was attempted by keeping a journal throughout the data collection stage [see 3.4.1 above].

3.6 **Data analysis and interpretation**

The primary aim of this qualitative study was to draw meaning from the data narrative and to ensure that it was valid and trustworthy (Miles, 2014; Tracy, 2010). The transcendental phenomenological approach was used in order to get an unbiased, objective and fresh perspective of the phenomenon (Cresswell, 2007) focusing on the "how" as well as "whether". This approach required bracketing personal views and assumptions about the phenomenon before interacting with the participants (Cresswell, 2007; Tufford & Newman, 2012) in order to transcend subjectivity and maintain, as far as possible, an untainted and pure perspective of the phenomenon. A self-reflective journal throughout the study to actively monitor the potential of bias or assumptions on the quality of the data collected (Chan et al., 2013; Houghton, 2013). This was also necessary to maintain the integrity of the data collected.

Thematic analysis was used because of its flexibility and ability to find patterns both within and across data of the participant commissioners' direct experiences of conciliating disputes of senior and executive employees as well as applying coaching competencies to these disputes (Clarke, 2017). Thematic analysis also offers greater flexibility to the qualitative researcher to capture both the latent and manifest meanings from the data (Clarke, 2017), which was necessary in this instance to understand and interpret the meanings of the participant experiences of the phenomenon. The further attraction was that it allowed for large amounts of data to be analysed in a structured and coherent manner by generating codes and themes. The steps prescribed by Nowell, Norris, White, and Moules (2017) was followed in an attempt to meet the trustworthiness criteria when conducting thematic analysis:

(i) Becoming familiar with the data:

The transcripts were studied repeatedly, making notes as further insights came to light. The thoughts, insights, experiences, reflections and emotions of the participating commissioners had to be captured as close as possible to the essence of their experiences and of the recurring themes. This was

necessary to find the *epoche* or essence of the phenomenon of applying coaching competencies in a conciliation process (Patton, 2014). Key words, observations, quotes, significant statements and insights were recorded in the transcripts as these were important in determining the relevant codes from the data narrative. This initial stage required organizing the data, reading the transcripts repeatedly, documenting initial thoughts, interpretations and questions, searching for meaning by noting potential codes and themes, monitoring potential bias and assumptions, and storing the data securely;

(ii) Generating initial codes:

This required a repeated reading of the transcripts and becoming immersed in the data, giving equal attention and value to all the transcripts. Attention was given to those specific statements representing the phenomenon. These statements were analysed and categorized accordingly by physically highlighting the relevant statement and recording the code on the transcript itself. The number of codes generated from interviews one and two are contained in table 3.3 below. The coding was executed into two sessions, namely after the first and then the second interviews. Each participant's interview transcript was coded and a number of new codes emerged per participant as per Table 3.4 below. The cumulative codes from interview one was 141 while interview two produced 102 codes. Characteristics peculiar to the participating commissioner was also noted, viz. whether they were also tasked with training, their level of appointment (senior commissioner or level A) and their current conciliating style. PC1 presented with the most number of codes (42), followed by PC12 at 19 during interview one. Both participating commissioners are senior commissioners with extensive mediation experience. PC12 is also an accredited CCMA mediating trainer.

Table 3.3: New codes per participant and accumulated codes

Transcript Number	New Codes Allocated	Cumulative Codes	New Codes Allocated	Cumulative Codes
Interview One			Interview Two	

PC1 (SC)	42	42	n/a	n/a
FG1: PC2 (SC), PC3(Level A), PC4 (level A)	5	47	n/a (PC2 and PC4)	n/a
PC3 (Level A)			35	35
PC5 (SC)	5	52	8	43
PC6 (SC)*	12	64	19	62
PC7 (Level A)*	8	72	9	71
PC8 (Level A) *	11	83	11	82
PC9 (SC)	6	89	5	87
PC10 (Level A) *	11	110	3	90
PC11 (Level A)*	2	112	3	93
PC12 (SC)**	19	131	4	97
PC13 (Level A)	5	136	2	99
PC14 (Level A)	5	141	3	102
LEGEND:				
PC = Participating Commissioner SC = Senior Commissioner		*currently using facilitative model with strong coaching competencies **Trainer		

Designed by Researcher (2020)

Annexures M and N detail the codes that emerged from both sets of data, eg. Interview one generated data on the number of years that the participating commissioners mediated disputes of senior and executive employees. This was given the code NOY. Interview two generated data on parties attitudes and this was given the code PA. The codes that emerged from the interview data were then grouped into categories and colour coded for easy reference (Table 3.4 below).

Table 3.4: Emerging categories

Interview One	Interview Two
Blue – Impact of commissioner experience and skillset on disputes of senior and executive employees Orange – Challenges and dynamics to resolving disputes of senior and executive employees during the conciliation process Yellow: Additional skills and competencies applied in resolving disputes of senior and executive	Yellow – Positive implications of coaching competencies within the conciliation process Yellow – challenges in applying coaching competencies within the conciliation process Orange – Effect of coaching competencies on commissioners within the conciliation process

employees Pink – Failure of current conciliation competencies to effectively resolve disputes of senior and executive employee	Purple – parties reaction to coaching competencies Pink – Effect and future role of coaching competencies

Designed by Researcher (2020)

(iii) Searching for Themes:

The search for themes began once all the data was coded and collated. The codes and categories were listed on a spreadsheet (Annexures M and N). The emerging categories (table 3.4 above) provided a valuable guide in identifying themes as it reflected the codes emerging from all the transcripts, and ensured the equal treatment of all data. Three major themes were identified from the categories emerging from Interview one, with thirteen sub-themes (Table 3.5 below). The themes were then added to the spreadsheet as this formed an important audit trail of the data analysis (Annexures M and N).

Table 3.5: Themes and Sub-themes emerging from first interviews with participating commissioners

THEMES	SUB-THEMES
THEME 1	
Current Commissioner Experience and Skillset	(a) Mediation Experience (Senior and Executive Employee) (b) Current conciliating skills and competencies
THEME 2	
Unique challenges and dynamics	(a) Dismissal Reasons (b) Employee/Employer Relationship (c) Employee Attitude and Knowledge (d) Different Outcomes and settlement (e) Previous history (f) Representative Attitude and Influence (g) Subtext (h) Process dynamics
THEME 3	
Additional competencies	(a) Ability to capacitate parties (b) Commissioner education and training (c) Imvuselelo Strategy

Interview two produced four themes and six sub-themes- Table 3.6 below:

Table 3.6: Themes and sub-themes emerging from second interviews and diaries (participating commissioners)

THEMES	SUB-THEMES
THEME 1	
Coaching competencies impact on section 135(3) conciliation process	(a) Favourable impact (b) No impact
THEME 2	
Coaching competencies impact on conciliating commissioner	(a) Favourable impact (b) No impact
THEME 3	
Coaching competencies impact on parties	Favourable impact
THEME 4	
Role of coaching competencies within s135(3) conciliation process	Positive
THEME 5	
Coaching Mindset	(a) Self-Regulation (b) Commissioner Mindset

(iv) Reviewing Themes:

This stage required a review of the coded data extracts to ensure that the themes were adequately supported. In the course of this exercise, a number of codes were amalgamated due to its similarities. Some themes were also merged with others, as they related substantially to the same idea. The point of this exercise was to maintain coherence and a distinction between the themes. The raw data was read through one more to ensure that the themes correctly captured the ideas and meanings generated by the data. The analysis began after relevant quotes supporting each theme was highlighted and captured in the report.

3.7 **Limitations of the study**

This study was limited to obtaining data from the participating commissioners only and not from the parties to the dispute. Therefore, this research was informed by one perspective only, albeit from a vital participant in the conciliation process. This was necessary because obtaining ethical and legal clearance due to the confidential nature of the conciliation process for parties to

participate in such a study is beyond the scope of this study. Accounts from the participating commissioners were relied on the parties' reflections of the process after applying executive and conflict coaching competencies during the conciliation process.

Obtaining the data was a time-consuming process as the lockdown regulations imposed during the covid-19 pandemic impacted heavily on the standard operations at the CCMA, resulting in many commissioners working away from the CCMA offices. This also impacted on the availability of many senior commissioners to participate in the intended original focus group studies, necessitating one-on-one interviews with the participating commissioners instead. It also impacted on the number of participating senior commissioners in this study and the exclusion of the CCMA Pretoria office, which arbitrates a number of disputes of executives within the various State Owned Entities (SOE's). This might have provided a different insight and perspective into this phenomenon.

The participating commissioners also indicated that the month afforded to them to complete their diaries (September 2020) was insufficient as the lockdown also impacted on the number of cases of senior or executive employees scheduled and allocated to them during that period. However, due to time constraints, it was not possible to afford the participating commissioners more time to apply the competencies. A few participating commissioners applied the competencies to disputes of employees who were not necessarily executive employees, but were nevertheless relatively senior employees. Three commissioners withdrew their participation from the study after the first round of interviews citing the unavailability of opportunities within which to apply the competencies. Time and operational constraints also impacted on the induction that the participating commissioners received on the coaching competencies as it was initially intended to take the form of a formal workshop on the facilitative mediation model with coaching competencies (Appendix I). The lack of a more intensive induction session could have negatively impacted on the application of the coaching competencies within the section 135(3) conciliation process.

3.8 **Trustworthiness**

Lincoln and Guba (1986) are strong proponents of the naturalistic approach to applied research and evaluation and argue that the new naturalistic paradigm requires a different set of criteria for measuring quality. The authors propose trustworthiness of qualitative research data as a parallel to rigour and provide criteria to ensure trustworthiness, viz. credibility, transferability, dependability and conformability.

3.8.1 ***Transferability***

Houghton (2013) posit that to determine transferability "the original context of the research must be adequately described so that judgements can be made" (p.16), in other words, judgements of the extent to which there is transferability of the findings to the context of the reader (Lincoln & Guba, 1986). The data generated from the interviews with the participating commissioners provided a first-hand account of the phenomenon of applying executive and conflict coaching competencies within the conciliation process. The interviews were transcribed and verified. The self-reflective journal entries on this phenomenon are available as well raw data in the form of those diaries received by the participant commissioners. The findings and analysis contained direct quotes from the interview transcripts to lend authenticity and validity to the data analysis, and to allow for further interpretation of the findings (Houghton, 2013).

3.8.2 ***Credibility***

According to Lincoln and Guba (1986), the criteria for credibility includes prolonged engagement, peer debriefing, triangulation and negative case analysis. The participating commissioners were given a month to assess the impact of introducing the additional executive and conflict coaching competencies into the conciliation process and assessing several processes as each commissioner is allocated two arbitrations per day. Triangulating data (Miles, 2014) was obtained through diary entries by the participating

commissioners and in-depth interviews after the application of these competencies into the conciliation process. Bracketing possible bias and assumptions about the phenomenon was enhanced by peer debriefing with non-participating commissioners (Tracy, 2010) and keeping a self-reflective diary throughout the study (Merriam & Tisdell, 2015). This was especially relevant as the researcher was the solely responsible for data collection and analysis.

3.8.3 *Dependability and confirmability*

The process for determining dependability and confirmability are closely linked and follow the same process (Houghton, 2013). Houghton (2013) states that dependability relates to the stability of the data generated from the study while conformability relates to the neutrality and accuracy of the data. Lincoln and Guba (1986) and Houghton (2013) both recommend keeping a strong audit trail detailing how the researcher came to an interpretation. This was done by keeping both physical and electronic copies of the transcripts, the audio recordings and the diaries that were submitted by participating commissioners. Furthermore, as the coding was done manually, the actual physical transcripts are available with depictions of the codes for easy reference and to show how the data was managed. A reflective journal was maintained to limit the transference of assumptions and bias into data analysis by recording insights, thoughts and reflections about decisions made to ensure transparency of the process.

3.9 **Ethical considerations**

According to Guba and Lincoln (1994), ethics is intrinsic to the constructivism paradigm because the participant values are included in the construction of meanings in the study. Arifin (2018) is of the view that ethical considerations have particular importance in qualitative studies due to the in-depth nature of the study process, making it the researcher's responsibility to ensure that the

participation is voluntary, that the participant's identity is preserved and confidentiality maintained throughout. The dominant ethical theme in this study was maintaining the integrity of the CCMA, the participating commissioners and the conciliation processes. The following procedures were effected to maintain this integrity during the duration of the study:

(i) Ethics clearance was obtained from Wits Business School Ethics Committee before the commencement of the research (Appendix J).

(ii) The director of the CCMA was provided with the full reasons and objectives for conducting the study within the CCMA processes with CCMA appointed commissioners (Appendix G). Research only commenced once this permission was received and an agreement was entered into with the CCMA Head Office on conditions relating to maintaining the integrity of the conciliation process (Appendix I). The CCMA BRICS department was also informed of the changes in data collection warranted by the changes in operations due to Covid-19.

(iii) The participating commissioners signed consent forms at the outset confirming their willingness to participate in the study, and their individual interviews being recorded and transcribed (Arifin, 2018). A memorandum detailing the nature of the study and the scope of their participation was handed to the participating commissioners prior to the commencement of the study and prior to obtaining their consent to ensure their thorough understanding of the objectives of the study (Appendix B).

(iv) The researcher and participating commissioners signed non-disclosure forms at the start of the study endeavouring not to disclose personal information of the parties and committed to adhering to the CCMA's Code of Conduct during the study. There was no interactions with the participating commissioners during the period of the application of the coaching competencies to allow for an unbiased and honest reflection on the phenomenon during conciliation processes (Arifin, 2018).

(v) The audio recordings and transcriptions of the individual interviews with the commissioners, as well as the commissioners' electronic diaries is stored on the researcher's personal laptop, Dropbox and OneDrive, and will be in the sole control of the researcher at all times.

3.10 **Summary**

A qualitative research approach situated in the constructivist-interpretivism reality was chosen to elicit rich narrative about the participating commissioners' experiences and meaning of their current experiences of conciliating disputes of senior and executive employees; as well as their subsequent experiences of applying coaching competencies within this process. Fourteen commissioners participated in the initial stage of the study while eleven participated in the second stage. The research data consisted of two sets of interviews and three completed diaries with the interview data from both interviews producing three themes across interview one and five themes across interview two. These themes formed the basis of the study propositions regarding the research objectives. Permission was obtained from the director of the CCMA and transferred to the CCMA Johannesburg and Benoni offices before the study could commence. The data collection, unfortunately, was negatively impacted by the 2020/2021 covid-19 lockdown regulations resulting in abandoning the CCMA Pretoria office, thus significantly reducing the planned number of participating commissioners from twenty to fourteen. It also meant that the interviews, workshops and focus groups could not take place as initially planned. The participating commissioners from the Johannesburg office were inducted on the facilitative mediation model (Appendix I) on an individual basis and most interviews occurred on the online platform. Nevertheless, this process was finalised on 24 October 2020 and the participating commissioners were provided with copies of the audio transcriptions for verification thereafter. The audio recordings and transcriptions are within the control of the researcher and stored on One-Drive and Dropbox, both of which are subject to password control. All ethical considerations were upheld and the participating

commissioners and researcher signed Non-Disclosure Forms in due consideration of the Code of Good Practice that all commissioners are bound to. The trustworthiness requirements, including transferability, credibility, dependability and confirmability, were met.

CHAPTER 4. PRESENTATION OF FINDINGS

4.1 Introduction

In this chapter, findings from the interview data of interviews one and two will be presented on the phenomenon of applying executive and coaching competencies within the section 135(3) CCMA conciliation process. The experience and meaning that the participating commissioners made of this phenomenon was analysed using thematic analysis to capture the essence of this phenomenon. Although the interviews were semi-structured to encourage unconstrained narrative from the participating commissioners, the interview questions were based on the research objectives.

Interview one generated data regarding the participating commissioners' current experiences of conciliating disputes of senior and executive employees and the data generated related to whether additional competencies can resolve these disputes speedily and effectively. Interview two generated data on the participating commissioners' experiences post application of coaching competencies within this process, and the data generated related to the efficacy of applying coaching competencies outside the traditional coaching engagement as well as the implications of applying executive and conflict coaching competencies within this process. The extracts recorded below capture the essence of identified recurrent themes as the participating commissioner's thoughts, reflections, emotions and lived experience of applying coaching competencies within the section 135(3) conciliation process is paramount to this study. The findings will therefore be presented in accordance with the themes identified from the data of interviews one and two respectively.

Interview one was structured around investigating how the participating commissioners currently experience conciliating disputes of senior and executive employees and how they make sense of this experience. This resulted in the participating commissioners sharing the challenges experienced

in conciliating these disputes as well as the current competencies applied in the section 135(3) conciliation process. The themes and sub-themes that emerged from this data are captured in Table 3.5. p.60 above. There were three themes and several sub-themes under each main theme. Firstly, current commissioner experience and skillset: This relied on the conciliation and mediation experience of senior and executive employees that the commissioner had, as well as additional skills and competencies. Secondly, unique challenges and dynamics of high-level disputes: these consisted of the reasons for dismissal; employee/employer relationships; employee attitude and knowledge; different outcomes and settlement possibilities; previous history; and attitude and influence of representatives (legal or union) in the dispute; and the subtext. Thirdly, additional competencies required: the ability to capacitate the parties; the commissioner's education and training; and the impact of the Imvuselelo strategy.

Questions presented to the participating commissioners in interview two were designed to elicit their responses on the application of coaching competencies to actual disputes of senior and/or executive employees that were conciliated during the month after being inducted on the facilitative mediation model with coaching competencies (Appendix I). The themes and sub-themes that arose from the data are presented below in table 3.6, p.60 above. There were five themes and several sub-themes under each main theme. Firstly, the impact of coaching competencies on the section 135 conciliation process: This relied on its positive impact in most instances, and where no impact was made on the process itself. Secondly, the impact of coaching competencies on the conciliating commissioner: This consisted of how the commissioners felt using coaching competencies; either a positive enhancement of or similar to their current competencies. Thirdly, the positive impact of coaching competencies on the parties to the dispute where the parties benefited from the addition of coaching competencies within the conciliation process. Fourthly, the positive role of coaching competencies within s135(3) conciliation process. Finally, the

coaching mind-set: This consisted of the commissioners' ability to self-regulate and present with a mind-set conducive to coaching.

The participating commissioners will be referred to throughout this chapter as PC (participating commissioner) followed by the number in the sequence of their first interviews (e.g. PC1). The first interview and second interview transcripts will be referred to as I(1) and I(2) respectively eg. PC1 I(1). The only focus group conducted will be referred to as FG1. PC2, PC3 and PC4 were participants in FG1. However, PC2 and PC4 subsequently withdrew from the study, leaving PC3 as the only participant continuing with the study with regard to providing her reflections, insights and experience of applying coaching competencies within the section 135(3) conciliation process.

4.2 Current commissioner competencies in resolving disputes of senior and executive employees

All participating commissioners interviewed presented with extensive conciliation and mediation of disputes of senior and executive employees. This placed them in a strong position to provide keen insights and reflections into the current conciliating and mediating competencies of disputes of senior and executive employees, as well as the challenges presented by these disputes. The participating commissioners were well placed to then also provide further reflections into what the effect of the current problem-solving approach to resolving disputes of senior and executive employees.

Ten participating commissioners, viz. PC5, PC6, PC7, PC8, PC10, PC11, P13 and PC14, indicated that they successfully resolve disputes of senior and executive employees and presented with high settlement rates. Particular attention was therefore paid to their experiences to understand the essence of the competencies and skills used in resolving these disputes (Figure 4.2 below). Participating commissioners PC1, PC2, PC3, PC4, PC9 and PC12 indicated these disputes do not resolve easily, either at the conciliation process or at the arbitration process when the matter reverts to conciliation. Unique challenges

and dynamics within these disputes are cited as reasons that frustrate possible resolution of the disputes.

The participating commissioners have extensive mediation experience of disputes of senior and executive employees. These participating commissioners acknowledged that disputes of senior and executive employees resolve mainly during the arbitration process when the matter reverts to conciliation in terms of section 138(3), very rarely resolving at the initial conciliation process. They further indicated that although they rely on the problem-solving approach currently applied in conciliation disputes, these disputes require additional skills and competencies to resolve successfully. This is referred to as extra tools in the toolbox, gathered over many years of mediating experience: *"so obviously the more a commissioner is exposed to, the more tools he has in his toolkit."* PC11 1(1) p.5

Nevertheless, even those participating commissioners who are not as successful in resolving these disputes also apply skills and competencies required of conciliating commissioners, viz. to act with integrity, fairness, impartiality, empathy, restraint and professionalism, to reality test with the parties, provide recommendations and suggestions to settle the dispute. Those who successfully resolve these disputes all presented with extensive mediation experience and high settlement rates as per the CCMA's national efficiencies of a 70% settlement rate (Figure 2.1. below).

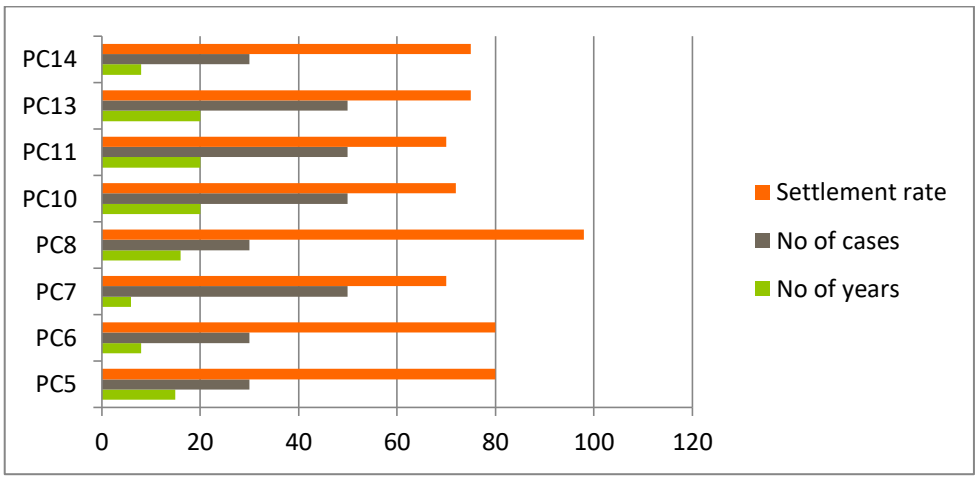


Figure 4:1: Commissioner Experience in mediating disputes of senior and executive employees

Participating commissioners PC1, PC2, PC2, PC4, PC9 and PC12 reflected on the reasons why disputes of senior and executive employees rarely resolve and believed it was due to the parties arriving at conciliations with strong positions and refusing to compromise. The commitment of the commissioners to remain neutral and the CCMA's efficiencies imposed on commissioners added to the problem, creating a complex dynamic.

> "*When the person is here, they don't want to participate because they have preconceived positions, they don't want to move, then they make your conciliation process useless."* PC1 I(1) p.9

> "*…they give you the sense that actually they well stoked in their process. They even use jargon in the conciliation. So you basically say, okay, I guess they did their homework and they just want to take it further."* PC4 FG1 p.14

> "*My participating is very limited. I'm not too inquisitorial, I let the attorneys and the advocates do the work so that at no stage does it appear that I entered into the arena for any reason."* PC9 I(1) p.2

Participating commissioners use the following skills and competencies to resolve disputes of senior and executive employees:

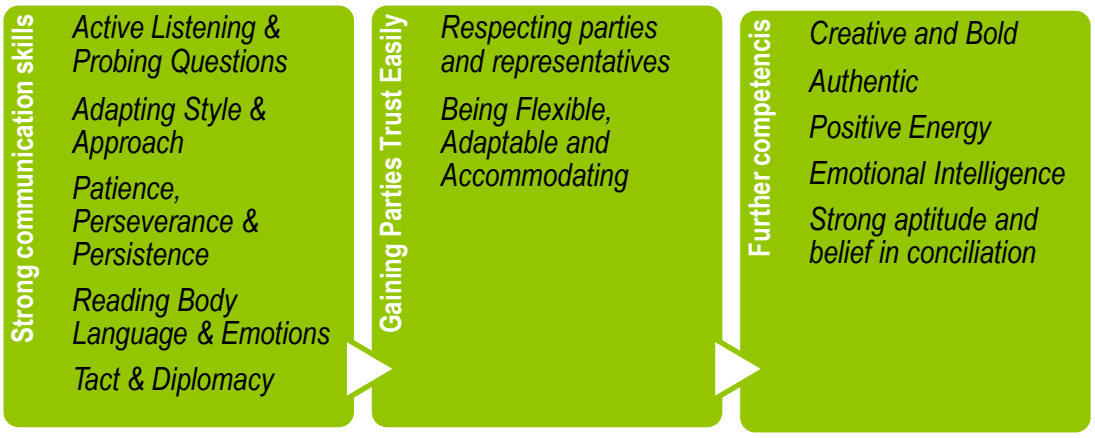


Figure 4.2: Additional competencies within the conciliation process

4.2.1 Strong Communication Skills

Participating commissioners showed overwhelming support for active listening and asking probing questions (9 PC's), followed closely by adapting their style and approach during the conciliation process (7 PC's). Four PC's specifically mentioned having patience, perseverance and persistence as important competencies, as well as being able to read body language and emotions. Two PC's recognize tact and diplomacy as important competencies in resolving disputes of this nature.

(i) Active Listening and asking probing questions

This competency enjoyed the most support with those participating commissioners who enjoy a high settlement of disputes of senior and executive employees, ranging from allowing the parties to vent their feeling; asking probing and hard questions, to reading between the lines, as well as being observant and alert for possible resolution opportunities, including paying close attention to non-verbal communication.

> "…*I allow the parties to vent their feelings"* PC5 I(1) p.1

> *"It's important to find out what the party actually wants, what the applicant wants, what they really want. Sometimes what they say and what they want are two different things."* PC6 I(1) p.18

> "*You pick the little things in the conversation that you think you can use, you think you can use to try and persuade the other party to look at it differently."* PC10I(1) p.4

> "*I think parties want to speak about their experiences and the trauma they suffered, they want an outlet."* PC13 I(1) p.6

(ii) Adapt Style and Approach

These participating commissioners adapt their style of conciliating and approach to the parties according to their level of sophistication, the presence of legal representatives as well as the complexity of the dispute. Such modification is necessary to get parties to change their respective perspective of the dispute. Techniques cited by commissioners include humour (…*get the parties to laugh and chuckle and chat to each other."* PC6 I(1) p.4); alleviating anxiety (…*often parties are very anxious, so I try and calm them down and ease their anxieties."* PC13 I(1) p.4); and changing attitudes, cited repeatedly, but explained here by PC 10:

> "*Getting them to look at it differently, getting them to look at the other person, the circumstances like differently, because for as long as they're focusing on what has happened, and their codes and their law and the whatever, it's difficult to get them to where you want them."* PC10 I(1) p.4

(iii) Patience, Perseverance and Persistence

Patience, perseverance and persistence is also considered key to successfully resolving disputes of senior and executive employees. Commissioners spoke about powers of persuasion ("…*because you can sell ice to an Eskimo"* PC6 I(1) p.3), sometimes having to be forceful (*"I tend to be a bit of a bulldog as well…* PC6 I(1) p.5) and giving advice (… *trying to persuade parties that a bad settlement is better than a good judgement."* PC13 I(1) p.3). PC13 felt that it was important "…*to be persuasive rather than overbearing."* PC13 I(1) p.3. P10 sums up what most commissioners conveyed:

> *"I do have strong mediation skills…but remember, that involves a lot of patience and a lot of listening, and a lot of changing things around…finding something that you can use to change the attitude."* PC10 I(1) p.8

(iv) Reading Body Language and Emotions

PC5, PC11 and PC14 also rely on their ability to read the parties, especially their body language and emotions, as well as character and personality traits, as further tools in successfully resolving disputes of senior and executive employees:

"*I believe I have the ability to assess character and assess demeanour and personality traits. I think that's important, you've got to know who you're dealing with, and once you can suss out who the personality is, it helps you to be able to tailor your questions in getting the parties closer to each other, it makes it easier."* PC6 l(1) p.3

"*One of the techniques was you gently nod your head at the parties when you're trying to get them to settle, and when I used the technique I found it actually did have some benefit because it was getting the party to agree with you."* PC11 l(1) p.5

"*I always say we are mini social workers because you need to read the parties that are before you, you need to get an insight of the parties that are before you…"* PC14 l(1) p.10

(v) Tact and Diplomacy

PC7 and PC14 are mindful of being tactful and diplomatic with senior and executive employees and believe this is necessary to help the parties find resolution of the dispute:

"*You cannot say straight that you are going to lose this case."* PC7 l(1) p.5

"I don't go and say, you do not have a case or you don't have a case." PC14 l(1) p.3

4.2.2 Gaining Parties Trust Easily

The participating commissioners who successfully resolve disputes of senior and executive employees gain the parties trust easily by showing respect to both the parties and their representatives, as well as being flexible, adaptable and accommodating the parties needs.

(i) Respecting Parties and Representatives

The participating commissioners articulated a clear need to show the parties, as well as their representatives respect during the conciliation process. Words like

'sensitivity', 'respect' 'self-esteem' and an emphasis on the humanity of individuals are emphasised repeatedly by commissioners.

> "*So you deal with a different sensitivity, a different approach, and you still understand that they are still human."* PC6 I(1) p.1

> "*…the pride of that person, the ego, you know, the self-esteem and so many things…so all those things you need to approach with sensitivity, and you need to be very, very conscious when you deal with them."* PC7 I(1) p.4

> "*whoever, comes before me, when they leave they must be a better person for having met me. I'm doing it as a servant."* PC8 I(1) p.7

> *"I'm talking to a human being"* PC8 I(1) p.12

> *"I can speak to them honestly, and I'm not bothered about whether they think it is a biased approach or whatever, I'm giving them what I believe, and I do find that in a lot of times it makes them think because I'm telling them, I make examples of myself…"* PC10 I(1) p.5

> "*…if you then reprimand a party in front of the people they're representing, you are going to have a very long day, and we still want to give them that respect…"* PC14 I(1) p.10

(ii) Being Flexible, Adaptable and Accommodating

The participating commissioners recognize the need to be flexible, adaptable and accommodating when conciliating these disputes, knowing that the employees in these disputes are generally more sophisticated than your average employee:

> *"It's almost as though you're creating the right environment through positive thought."* PC6 I(1) p.11

> "…*because they are senior, they are able to discern as to whether they're now winning the case or not, so at some stage, even if it's in the middle of arbitration, it's easy to divide them and have separate caucuses with them and*

tell them the pros and cons of their case going forward, in a form of reality check." PC7 I(1) p.4

"He's talking my language. Wow. Now that I've got their attention, and I start talking about settling, this doesn't sound like such a bad word anymore." PC8 I(1) p.7

"*You've got to give them a chance to reflect so sometimes you can see they're on the borderline but they still persist in proceeding, so you give them that time and say, listen, just think through the position, take your time, think it through, and you go back there and just keep building on that until hopefully they become realistic and settle."* PC11 I(1) p.4

"*I give them time, as long as time is there."* PC14 I(1) p.6

4.2.3 Further competencies

Aside from the competencies mentioned above, the participating commissioner endorsed creativity and boldness as an important competency in facilitating a settlement (*you step out and take chances."* PC6 I(1) p.5). PC8 describes this as *"you step out of the box in order to resolve a dispute."* PC8 I(1) p.2. PC13 believes creativity in problem solving involves more than "*just sweeping in under the carpet with money."* PC13 I(1) p.6. Authenticity was also regarded as an important attribute that contributes to resolving these disputes with PC10 believing that parties respond to her attempts to help them resolve the dispute because "*I'm genuinely here, I want to help, I want this thing…I want to help you and I want to help the other party."* PC10 I(1) p.6. PC8 believes authenticity means having positive energy *"So in order to do conciliation, you have to have a positive energy and you must have an energy"* PC8 I(1) p.11. Emotional intelligence is another competence that is valued especially self-regulation (*Unless you can control yourself and respond in an appropriate manner, sometimes without even saying anything…"* PC8 I(1) p.3).

A strong aptitude for and belief in conciliation was apparent in most participating commissioners who successfully resolve disputes of senior and executive commissioners (*I love a challenge and I do then manage to negotiate a settlement."*

PC5 I(1) p.5.). This influenced their input, influence and effort they placed conciliations, and showed their love and passion for mediating disputes throughout the interview (*"I love this process of conciliation."* PC7 I(1) p.11). PC1 was clear about the role of conciliations: *"We don't arbitrate just for the sake of arbitrating, our rule is to first conciliate the dispute and meaningfully seek consensus."* PC1 I(1) p.3.

PC12 succinctly summarised the competencies that a good conciliator requires to resolve disputes of senior and executive employees:

> *"I think you should be a good listener. I think you should be patient, obviously treat your parties with respect…but I think you also should be problem solver, you must have those problem solving skills, and you must also be creative, in the sense that sometimes parties don't see, they only see this as a solution."* PC12 I(1) p.11

4.2.4 Unique dynamics and challenges in disputes of senior and executive employees

All participating commissioners, regardless of whether or not they successfully resolve these disputes, agreed that resolving disputes of senior and executive employees present with unique challenges and dynamics, making it difficult to resolve during the initial conciliation process.

> **"***Yes. It takes time to settle the executive ones in comparison with the normal employees."* PC14 I(1) p.1

> **"***They never end. They are frustrating. They are not in line with the purpose of the LRA, which is speedy resolution of disputes. They defeat the purpose."* PC1 I(1) p.12

> "*They're hard. I think the parties on both sides have a lot to lose so they're difficult to settle, the stakes are high, both reputational and financial. So they're difficult to settle."* PC13 I(1) p.1

"*it takes time to settle the executive* ones in comparison with the normal employees, and it also goes with others who *have shares in the companies and that has to consider it when we come to the settlement, what is being owed to them, and whether they were getting salaries, whether they're not getting salaries, and it's over and above what the Labour Relations actually tells us to do because they want more out of it."* PC14 I(1) p.1

The participating commissioners stated that these challenges and dynamics arise because of the unique positions these employees occupy within an organization. This influences the reasons for their dismissals, the relationship between the employee and employer, and the employee's attitude and knowledge of his/her rights and the processes of the CCMA. The role that representatives play in the conciliation process can be critical. They have an influence on the employee, have strong agendas for the different outcomes that these disputes warrant, and can present the previous history of the dispute and the sub-text and underlying reasons behind the dispute in a way that suits their agenda.

(i) Dismissal Reasons

The participating commissioners intimated that the dismissals of senior and executive employees are influenced by different and unique factors peculiar to their positions within the organizations:

"*…because they don't part in a clinical way, like a cleaner."* PC9 I(1) p.7

"*He's also considering that if I get dismissed or whatever, if I don't succeed in* this matter, now it means that I won't get a position anywhere else as a CEO. *It's no longer about the issue at hand."* PC12 I(1) p.2

(ii) Employee/Employer Relationship

Reputational and financial factors influence the relationship between the employee and employer, causing them to become entrenched in their respective positions. This has a negative influence on the conciliation process and the ability to resolve the dispute during the conciliation process:

"*Their matters even internally take so long and that is a factor as well because it tends to build tensions, it breaks the relationship down so by the time they come to you, the relationships are already at a very…the damage, and it's very difficult to conciliate, given the time as well that we're given to do that conciliation."* PC12 I(1) p.2

(iii) Employee Attitude and Knowledge

The participating commissioners found that the employee's level of sophistication, apparent in their attitude towards the process as well as knowledge of their rights under the LRA, is a unique dynamic which requires different conciliation competencies:

"*If I'm dealing with an executive who's experienced, who understands what mediation is, conciliation, some would have been to the CCMA, they're clear on what is expected of the process and what they can get out of it."* PC1 I(1) p.6

"*they would show lack of interest in wanting to engage. They just say commissioner just issue the certificate, there is not much we can talk about."* PC3 I(1) p.12

"*…as much as you can read them, they can read you."* PC9 I(1) p.10

"*the attitudes have hardened by the time the matters come here…"* PC10 I(1) p.1

"*they judge you, I promise you, firstly they look at you and they want to see, is she senior enough?* PC10 I(1) p.6

"*With senior people it's different, they come here with knowledge, that is number one, they will usually know our processes, they will usually have been advised by their legal teams on what to expect."* PC14 I(1) p.4

(iv) Different Outcomes and Settlement terms

The huge salaries earned by the employees influence both the intention to resolve the matter, and if it is resolved, it presents unique terms of settlement,

requiring the conciliating commissioner to often to operate outside the ambit of the LRA:

> "*It's very challenging, more especially because of the quantum that will be proposed for settling, and also because of their seniority."* PC1 I(1) p.2

> "*My experience is that the employers would be reluctant to pay because, remember, these people earn a lot of money, so it would be difficult to settle those kinds of matters."* PC7 I(1) p.1

> "*…and it's over and above what the Labour Relations actually tells us to do because they want more out of it."* PC14 I(1) p.1

> "*However, also the difficulty is that if you settle those matters, they want everything to be in there, which then means we go beyond what we are required to do."* PC14 I(1) p.2

(v) Representative Attitude and Influence

All the participating commissioners agree that senior and executive employees very rarely proceed with their disputes at the CCMA without legal representation. However, some view the presence of attorneys and advocates in a positive light (*"I think lawyers come with a far clearer head, they're not burdened with emotions and pride and that kind of stuff."* PC5 I(1) p.8)); others felt their presence was actually a hindrance to speedy resolution of the dispute.

> "*When the representatives, either the union or legal representatives come and fight matters, whereas they know for sure that their client committed misconduct, and they are not prepared to compromise or anything, they just say, we want reinstatement and nothing else."* FG1 p.13

> "*they will consult their lawyers immediately, even during the conciliation process, you'll find the lawyer is waiting outside the process, advising their client, and the client is not willing to participate during the conciliation process or they are participating based on the advice they get from their lawyers, which is not in the conciliatory mood."* PC1 I(1) p.4

"*It's in no advocates interest to settle right away, because they have a relationship and they don't want to shoot themselves in the foot by resolving it too quickly, and you have to know that and respect that the person is here for his fees."* PC8 I(1) p.14

"*I personally feel that I'm left with very little discretion, from the time they come to me and say that both parties, we have a pre-arb minute, both parties have agreed to legal representation"* PC9 I(1) p.3

Nevertheless, they were unequivocal that legal representation is a unique dynamic affecting the speedy resolution of disputes of senior and executive employees:

"*On very rare occasions legal representative or attorneys assist in this process, because remember, with attorneys, it's about money, they know if they extend the life of this particular dispute, then it means money for them."* PC7 I(1) p.5

(vi) Previous History

Previous concessions made by the employer sometimes influence the manner in which a dispute with a senior or executive employee can be resolved:

"*…and another thing, when they come here, there are some concessions that have already been made."* PC9 I(1) p.6

(vii) Subtext

The underlying issue or core issue is often hidden and the inability to detect the sub-text to the dispute makes it challenging to resolve:

"*If there's one thing I've discovered, is that there's a lot of grey areas. Sometimes their fears are…there's stuff going on that we don't know about."* PC6 I(1) p.16

"*The difficulty comes in when parties come in with positions, they come in and because they already have positions, and where there are also underlying issues, that becomes a difficulty."* PC12 I(1) p.1

"…*it is just as important to listen to what is not being said, because you see during conciliation we are actually hesitant, even though we sense that there is a subtext to the whole conversation."* PC3 I(1) p.16

(viii) Process Dynamics

The participating commissioners recognize that dynamics within the arbitration process itself provides for the perfect opportunity to change strategies and persuade parties to revert to conciliation in an attempt to assist the parties to resolve the dispute

"…*then the Respondent's matter was being weakened because that was their key witness, so it had to change now, the bargaining strategy."* PC1 I(1) p.1

"*Also you will settle them at the arbitration process, they take your conciliation for granted."* PC1 I(1) p.9

"*Another way you can deal with them, if you are sure the parties, okay, fine, if I revert to conciliation, then I will not arbitrate so that we can meaningfully conciliate."* PC1 I(1) p.9

"*When you are at arbitration, dynamics change, as you are ultimately in charge of the matter and they now have to confront the issues that were before them…"* PC4 FG1 p.17

4.2.5 Additional Competencies Required

Participating commissioners who find resolving disputes of senior and executive employees challenging, believe that the unique challenges and dynamics presented by these disputes (*"so you have to find a different technique in mediating that dispute, because there will be different dynamics in it."* PC1 I(1) p.5); as well as the egos of employees (*There is an element of ego involved in a huge way…* PC9 I(1) p.1); and the presence of legal representatives require a different way of conciliating these disputes ("*And also with the complications that most often than not they come here armed with attorneys and advocates. So the process tends to be very legalistic at*

that point." PC9 I(1) p.2). Obtaining quality settlements and building relationships also prompted a call to conciliate this dispute differently:

> "*Whereas if we go back to the basics and look at the intention of creating the CCMA, I'm sure we will then…our focus will be on resolving these disputes and coming out with quality agreements, we would attempt to even save jobs."* PC12 I(1) p.3-4

> "*I think building relationships and trying to level the playing field promoting equality between the parties, and also making the bargaining process equitable."* PC13 I(1) p.7

The first set of interviews revealed a number of important issues: firstly, that experienced commissioners already tend toward the kinds of skills and approaches that align with executive and conflict coaching, and secondly that given the difficulties that arise in high-level disputes, there is general agreement that the exploration of an alternate strategy embedded in executive and conflict coaching would be fruitful.

4.3 Application of coaching competencies to disputes of senior and executive employees

The interview data from the second interviews resulted in four themes on the impact that coaching competencies have had on the actual conciliation process (where matters reverted to conciliation during arbitration), on the participating commissioners and the parties to the dispute (figure 4.3 below):

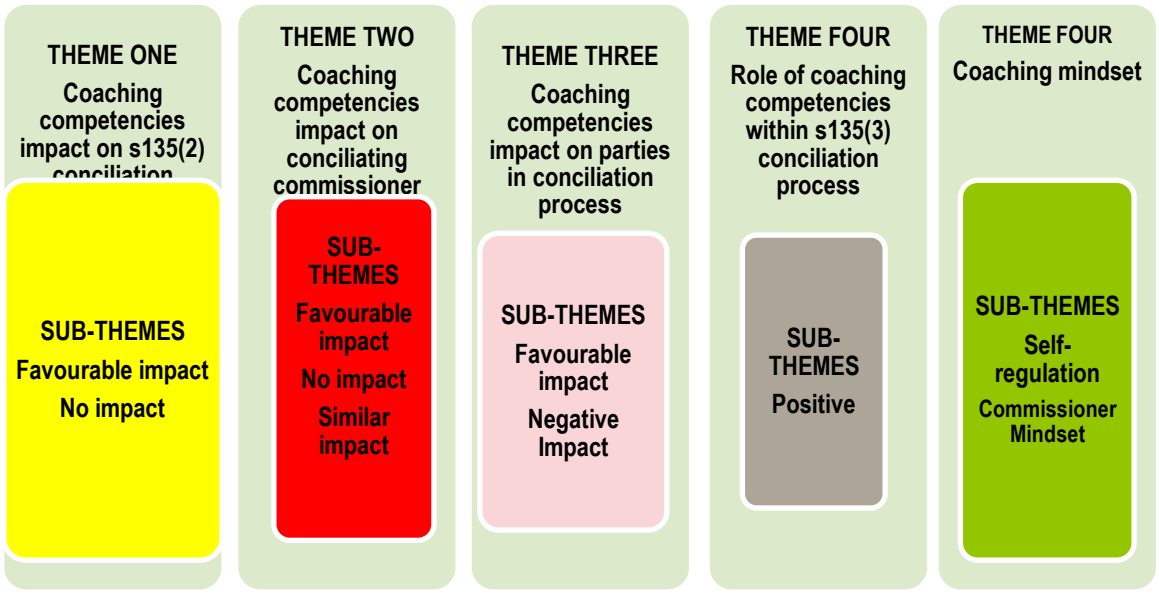


Figure 4.3: Themes and Sub-themes -Interview Two

4.3.1 Impact of Coaching competencies on section 135(3) conciliation process

The data contained mixed results regarding the success of applying coaching competencies during the conciliation process in disputes of senior and executive employees. Only PC3, PC5, PC7, PC8, PC10, PC11 and PC14 found that the coaching competencies had a favourable impact during the conciliation of disputes of senior and executive employees. PC6, PC9, PC12 and PC13 found that the competencies had no effect or impact on these disputes. PC1, PC2 and PC4 withdrew from the study after the first interview.

Data from these interviews showed that not all the competencies as per the facilitative model with coaching competencies (Appendix I) were utilised. The participating commissioners relied predominantly on those competencies they were most comfortable applying, as per Figure 4.4 below:

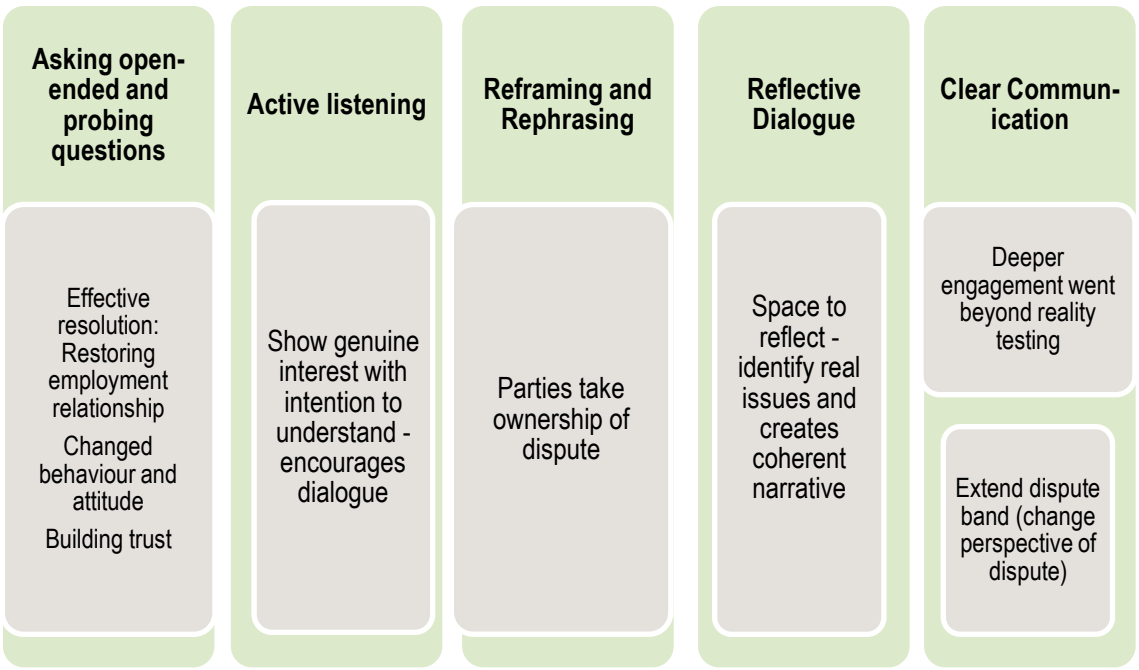


Figure 4.4: Coaching competencies applied within s135(3) conciliation process

The participating commissioners indicated that the application of these competencies had a positive impact on the section 135(3) conciliation process resulting in restored relationships, changed behaviours and attitudes and built trust between the parties. It also assisted in resolving these disputes faster than the standard approach.

(i) Open-ended and probing questions

The participating commissioners indicated that asking open-ended and probing questions resulted in the restoration of the employment relationship, changed behaviours and attitudes and the restoration of trust between the employer and the employee. They also believed it resolved the disputes faster.

- Restoring Employment Relationship

In some instances, it was possible to restore the employment relationship and work out how a more positive way forward could be established in the workplace.

"Now the dilemma was that this person was still employed, so the employer was even saying, no, they could see that the relationship was broken down, but now the applicant said, no, I want to go back, all that I needed is to be treated fairly and justice to be done, and that matter was finally settled." PC3 I(2) p.4

"…they went back together, back together to work" PC3 I(2) p.7

- Changes behaviours and attitude

The modified dynamic brought about by a coaching approach led to unexpected insights and softening of entrenched attitudes. It appears that concerted engagement through listening and articulating issues clearly could resolve aspects of the disputes.

"Just coming in with a bit of a curveball, I think, is one of the secrets to getting that settlement, I think getting people off their pedestal out of that position…I'm using the term step down off the pedestal, I'm not sure if that's the right expression, but the line drawn in the sand, suddenly it's not that deeply embedded in the sand anymore." PC5 I(2) p.9

"I will say that amongst all of them that appeals to me a lot is about probing up until you're able to get to the point where parties are able to see your way of thinking or how you perceive this dispute, and also get buy-in from them and then after getting buy-in, you'll be able to get some form of an agreement. So it will be about extensive engagement." PC7 I(2) p.5

- Building Trust

Often there are undisclosed and underlying issues to disputes that militate against the possibilities of conciliation. If it is possible to uncover the exact nature of the problems that led to dispute and establish sufficient trust for parties to express their real issues and desires, the path to conciliation can be opened up.

"…the finger pointing, that's when I did start the questioning, okay, exactly what do you mean, why did you write these letters to the company, why did you withhold that information, all that, and slowly that information came out. So, I

think it was a combination, yes, probing questions and then not second-guessing what the guy was trying to say, what the responses are." PC5 I(2) p.6

"If you can find exactly what it is they want and you can give it to them, you've got a settlement, and that you achieve by asking them what is that you really want, what, why are you saying this, is this what you really want, tell, talk to me, trying to build trust." PC6 I(2) p.4

"there was a bit of facilitation, in that facilitation where you have both in the same room and I'm asking questions from the both sides..." PC10 I(2) p.2

(ii) Active Listening

These participating commissioners repeatedly expressed that active listening encourages dialogues and empowers parties to easily communicate what it is that they really want, i.e. identifying the real issues in the dispute. This was especially true if the participating commissioners showed genuine interest with the intention to understand the dispute:

"I think the crux of the matter was listen to everything and it's just through simply asking the right questions, getting the parties to vent, just suddenly picked up on just maybe a bit of money owing, and then it was possible to get that settlement." PC5 I(2) p.4

"*I think what would be important as well is actually showing an interest in what is being said, it's very easy to be dismissive, and I think the right questions being asked is going to show the interest that the party…because everybody or most people love an audience and if they really think that the person listening is actually listening it certainly loosens tongues."* PC5 I(2) p.6

"*…active listening is trying to figure out what exactly it is that they want, because often what they say what they want and what they want are two different things."* PC6 I(2) p.4

Active listening also alerted commissioners to the meta-messages and body language that form part of the discussions:

"*I said lots of times you read things in between the lines, they don't say things directly, so then you start asking probing questions and you start getting to the heart of the matter."* PC11 I(2) p.4

"*So it's an issue of trying to listen because that is where you need to, as I'm saying…active listening is quite a huge point for me and focusing on the behaviour of the parties."* PC14 I(2) p.6

(iii) Reframing and Rephrasing

The participating commissioners found that rephrasing and reframing assisted in getting parties to take ownership of the dispute. This is what participating commissions had to say:

"Because if you do not allow them to rephrase or to articulate their disputes because if you don't allow them to do that, you'll not get buy-in from them and if you don't you'll not be able to resolve the dispute." PC7 I(2) p.11

"*So if you do that by the time you settled, they will also be owning the whole process or the outcome from that process."* PC7 I(2) p.11

(iv) Reflective Dialogue

The biggest benefit of reflective dialogue was giving the parties space to mull over the issues of the dispute. This then assisted in identifying the real sticking points and ultimately helped the parties form a coherent narrative of the dispute. The following quotes reveal a variety of techniques or strategies that were used by the participating commissioners, as well as the effects of these:

"*I really let them talk and I really let them just dig out exactly what it is that is bothering them, and once they had expressed themselves, the applicant was saying, well she didn't know which way to turn, that's why she went to an attorney and then the company official, the company representative was saying well all you managed to do was really piss everyone off quite frankly, but now that we understand each other, let's see how we can settle this."* PC5 I(2) p.3

"when the person is finished talking, don't respond, just keep looking at them, they don't like that silence and then they'll fill the gap and out will come more information." PC5 I(2) p.6

"but it helps them to reflect because sometimes disputes are personal in nature…At times you will go beyond that." PC7 I(2) p.7

"It encourages parties to engage in further dialogue,…and also to give their own perception of the whole dispute, and then this is where then you can assist them in reflecting and comprehending what exactly needs to happen." PC7 I(2) p.10

"When you want to sell something to a person, they need to agree and come up with the, yes, you're right, I agree. But it must come from them." PC8 I(2) p.12

"So you allow them to give their little narrative or vent first, and then you start probing and nudging them." PC11 I(2) p.3

(v) Clear Communication

Clear communication is necessary for encouraging deeper engagement which goes beyond reality testing. This also allowed the participating commissioner to extend the dispute band in order to get the parties to "think right about their disputes" (PC12).

"*if you can touch the heart, you can touch a person's pocket"* PC8 I(2) p.3

"A commissioner can achieve a lot by talking their language, by putting their feelings and their situation into that person's shoes…you must get into their skin and understand how they are thinking, and how they are feeling, what are they using, who they are reporting to…" PC8 I(2) p.4

"So it's about engagement and allowing them to express themselves, and also finding alternatives." PC7 I(2) p.4

" because you are now appealing directly to them personality, or their character." PC7 I(2) p.7

"so communication is indispensable. There's no way they would have settled without that kind of engagement." PC3 l(2) p.10

4.3.2 Unfavourable impact of coaching competencies

PC6, PC9, PC12, PC13 and PC14 found it challenging to apply coaching competencies during the conciliation process citing various factors that impacted on its application, including covid-19 lockdown regulations, time and the mindset of the parties and commissioners:

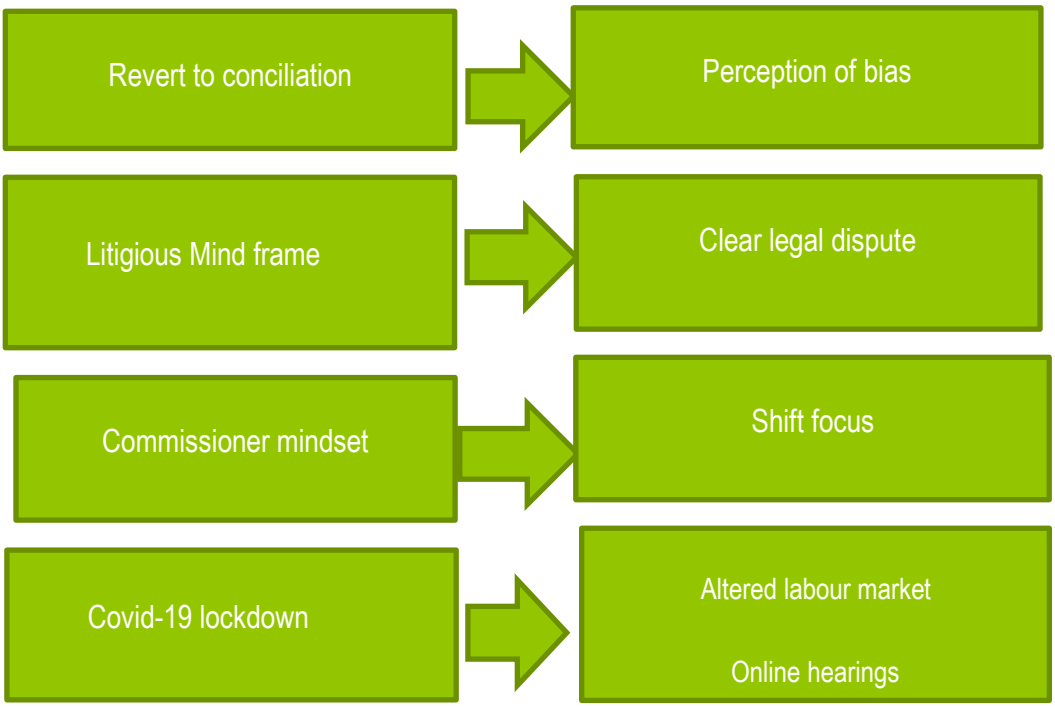


Figure 4.5: Factors impacting on application of coaching competencies within s135(3) conciliation process

PC6, PC9 and PC12, all senior commissioners, found it most challenging applying the competencies within their processes as they were allocated matters during the period of the study that were on-going matters, with evidence already having been presented. This impacted on the parties' willingness to revert to conciliation. However, the discussions around the difficulties and challenges experienced in applying the coaching competencies yielded deep and valuable insights into this phenomenon. This was especially gratifying as all three participants present with at least 20 years of mediation experience and are highly experienced senior commissioners. PC6 indicated during the first

interview that he is successful in resolving disputes of senior and executive employees, which made his insights of particular value. That he struggled to successfully apply coaching competencies within his processes during the period of the study, clarified some possible stumbling blocks in the introduction of an executive coaching function in the conciliation process. PC12, who is also a CCMA trainer, had thought-provoking and insightful insights. The issues that arose for these participating commissioners are captured below:

(i) Revert to Conciliation

The fear of being seen to be biased or having prejudged the matter prevented all three of these participating commissioners from effectively applying coaching competencies within those disputes that were already on-going:

> *"…one feels a certain reluctance under certain circumstances to try and force the parties into discussing things and it's quite clear that they're just not interested in talking settlement, they want to get on, they have their instructions, the lawyers want to continue doing the case and you just run the risk of getting asked to recuse yourself, being seen to be biased."* PC6 I(2) p.1

> "*Because you're going to make a decision in this matter, you don't want a situation where parties now have a perception that you've already prejudged the issue with the limited information that you have. So whilst you want to go on and do reality testing with them and you're still very cautious because if they now perceive you have prejudged the issue, there's going to be issues of recusal."* PC12 I(2) p.5

> "…*and then after that you cannot probe further to get into the merits of the matter so that you can exercise that skill of resolving disputes, like reality checking and all of those things, you cannot do that because now you are limited by the fact that you are the arbitrator."* PC9 I(2) p.4

(ii) Litigious mindset

The parties' determination to arbitrate the dispute provided little or no opportunity to revert to conciliation and apply the coaching competencies for

PC6, PC9 and PC12, especially where there was a clear legal dispute. Furthermore, the employee's construction of the dispute also proved to be a stumbling block:

> "*The parties were in the mind frame of litigating, arbitrating and attempts to settle had been done before and had not succeeded."* PC6 I(2) p.1

> *"…there is a clear legal position in this matter, and the applicant has no case....He is the one who is blurred by the relationship. I do not care how much law you throw at that guy, he'll come back to the same point."* PC9 I(2) p.15

> "*The Applicant as well had the narrative in his head that he's being dismissed because he's earning this salary. So the focus was more on the salary issues than on the real issues. So I tried to show them. I tried to use the competencies, try and get them to focus on what the real issues were."* PC12 I(2) p.2

(iii) Covid-19

The Covid-19 lockdown and resultant compliance with regulations had an effect not only on the CCMA's operations but also on the parties' willingness to resolve their labour disputes, thereby suggesting that the labour market has been altered by the pandemic:

> "*…but I just find my ability on this electronic platform to be somewhat compromised. Because you're battling technical issues and bad connections, it's not working properly, can't hear what you're saying, then you start getting frustrated and you lose the whole plot yourself with the parties."* PC6 I(2) p.13

> "*I think part of the problem, I think that some of these coaching competencies are being applied but not fully because commissioners' don't have time, they're under pressure to do four or five cases a day."* PC9 (I(2) p.8

> "*I just find that parties are more reluctant to settle now than previously."* PC13 I(2) p.1

"*I must say wearing the mask makes it difficult because it's difficult to breathe and you just want to get through the process quickly."* PC13 I(2) p.2

(iv) Commissioner Mind-set

It became clear that the participating commissioner's mind-set is as impactful on the application of coaching competencies in the conciliation process:

"*…if I get a feel that parties are reluctant to settle I kind of just stop and continue with the arbitration process."* PC13 I(2) p.2

"*I think maybe I should shift my focus…"* PC13 I(2) p.7

PC12 stated that she attempted to apply the coaching competencies within a facilitative mediation approach throughout the four-day arbitration process, although the matter failed to resolve:

"*…and when we adjourned the proceedings, I will say to them, listen, the door for negotiation is not closed, so you need to continue talking. Even when I'm there I would steer them towards trying to resolve this matter on their own terms."* p.4

4.3.3 The effect of coaching competencies on the conciliating commissioner

Not all the participating commissioners who applied the coaching competencies experienced success, viz. PC6, PC9, PC12 and PC13. Nevertheless, all the participating commissioners experienced some form of emotion after applying the coaching competencies, ranging from gratitude to acknowledgement. Interestingly, PC6 felt that it also important in helping him manage his own narrative, although he did not experience success with regard to resolving disputes of senior and executive employees through the use of coaching competencies:

"*Good competent commissioners, without the training they'll be good. Give the training they'll probably be even better."* PC6 I(1) p.9

"*After all isn't that part of what this whole thing, this coaching competencies is also competencies…is working on our own narratives to make us better mediators."* PC6 I(2) p.15

"…it also gave me perspective." PC3 I(2) p.1

An unexpected development was the personal effect that coaching had on PC6 during his explanation of why he experienced challenges applying coaching competencies. In attempting to understand why some parties did not respond to coaching, he concluded that coaching could also assist commissioners work on their own narratives: "*…this coaching competencies…**is working on our own narratives to make us better mediators**."* PC6 I(2) p.15

PC9 indicated that although she was not successful in resolving disputes of senior and executive employees applying coaching competencies, it assisted her separate the dispute from the person:

"*It helps because you're separating the dispute from the person, you're dealing with the person, because if you understand where that person's mind is at, then you're able to work with that person. It can definitely work."* PC9 I(2) p.9

The rest of the participating commissioners, with the exception of PC1, PC2 and PC4 who subsequently withdrew from the study, provided positive feedback on the application of coaching competencies:

"*I say we always feel gratified when you settle a matter, it doesn't matter how much longer it took, it brings about so much relief."* PC3 I(2) p.11

"*You feel much more empowered"* PC3 I(2) p.12

"I think so yes, it energises. It also made me more confident." PC3 1(2) p.8

"The quality of the communication that goes in there in the interaction and the engagement is very fulfilling." PC10 I(2) p.12

"I have used all aspects of this model and they were very helpful, and you know, I also found it refreshing for me to be able to use all those things..." PC10 I(2) p.1

"So I was very excited about that, because I actually saw it, all these competencies at work." PC10 I(2) p.2

"What I have learned personally is your open-ended questions, that has given me as a commissioner going forward, is to go back and say why did it happen and when it happened, how did it happen, and what was your expectation when that happened? PC14 I(2) p.6

"It has taught me to observe, which is quite important because when you do that, for me, you are able to see whether the person has lost interest or whether the person is in a fighting mood, and so that is when you start conciliating." PC14 I(2) p.7

"It has assisted. That is why I'm saying it was a refocus on what your role is as commissioner." PC14 I(2) p.9

4.3.4 The effect on the parties within s135(3) conciliation process

The participating commissioners also felt that the parties benefited from the application of coaching competencies as it helped with dialogue and strengthened communications between the parties, and between the commissioner and parties. In response to a question about what was most beneficial about the coaching competencies, these are some of the responses:

PC3: "Number one, it settles, it assists the parties to relax and to have confidence in the person before them, and to have a different eye, to look at the dispute differently and to look forward to having the dispute resolved." p.6

"*I don't think either of them feels too comfortable about it, but I do think that there is the sense of relief that's now over, it's done, finished and klaar, we've got a paper that says it's over with."* PC5 I(2) p.9

Another thing is that this program, it's assisting in that it encourages parties to engage in further dialogue, especially in separate caucuses, and also to give their own perception of the whole dispute, and this is where then you can assist them in reflecting and comprehending what exactly needs to happen, and then also it assists, if you use it correctly, in changing the perceptions of both parties." PC7 I(2) p.10

"*But some of them miss a point because they keep dwelling on the past, what has already happened, and when you can just move them and break them and chip them away from the past so they can be in the present and they can start thinking now with a clear mind, that is the skill one needs as a commissioner at high level executive people that come before you."* PC8 I(2) p.3

"So there was a bit of that kind of getting people to have some EQ and you coach them a bit on how they should look at these things, just life generally" PC10 I(2) p.2

"Very powerful. The whole issue of letting people vent…I found that just by letting them vent, once they get it out of their system, they're more amenable to looking at settlement." PC11 I(2) p.5

"your method will work in the sense that your method also focuses on getting them to change their narrative, and for you to get them to change their positions, to change from what they believe the story is, to get them to understand what the real story is…" PC12 I(2) p.8

"…so you find that the human aspect of it comes in and sometimes people start being empathetic and sometimes people even become sympathetic, and you may find that it does have an impact on the relationship…" PC12 I(2) p.10

"…you've re-established the relationship between the parties, even the parties themselves, the employer as a company and…and simply because at conciliation they moved from those positions, they moved from the narrative of vendetta, they've looked at the issues and they've now identified that this was the problem." PC12 I(2) p.10

"*If we at conciliation can do this…get the parties to think right."* PC12 I(2) p.13

"…because once they think right about their dispute, they will be focused." PC12 I(2) p.14

4.3.5 Positive role of coaching competencies within s135(3) conciliation process

Participating commissioners stated that coaching competencies within the section 135(3) conciliation process has value even though this dispute may not necessarily resolve during the initial conciliation stage. The commissioners found that applying coaching competencies during the conciliation process was a time-intensive exercise that is not conducive to the time presently allocated to processing these disputes:

"It can help well by being proactive. If I apply this method of having to coach and be more proactive in facilitating a settlement, it will definitely save a lot of time, even if it may take a bit of time in a conciliation room." PC3 I(2) p.10.

"If you've got all day to conciliate and to facilitate and apply these coaching competencies, you've got a good chance of eventually settling the case." PC6 I(2) p.8

"In fact even when they're difficult, this method will work and the only thing is that it will take time, by time I don't mean a day. They're not showing a strong willingness to settle because if they show a strong willingness to settle, it's just for you to nudge them and then they settle." PC12 I(2) p.8

PC10 and PC12 nevertheless believe that the coaching competencies would have more success if it is applied in the initial conciliation process rather than at the arbitration stage when the commissioner reverts to conciliation.

"A high-level intervention is needed at the beginning." PC9 I(2) p.8

"They do tend to be complex so give it enough time because most of the time you don't get the opportunity to engage the parties right at the beginning." PC10 I(2) p.5

"*…but I think it can save more time and resources if it is adopted at conciliation stage, because now you must remember that whilst you are trying to apply this, as in arbitration stage, it's very difficult, you are again dependent on them, it's not your process. Conciliation, when you look at them at that level of conciliation which is your process, you're in charge."* PC12 I(2) p.4

"*I think at conciliation…if you adopt this and use this approach efficiently, you're likely to impact it and get them to resolve the matter. There you have time, there's nothing that worries you as a commissioner in terms of your impartiality."* PC12 I(2) p.9

"…and if you use this approach, this method, you get them to look at what it is, so by the time they go to arbitration, even if they don't resolve there, they're likely to settle the matter simply because now they've reflected on it. The conciliation has assisted them to identify what the real issues are." PC12 I(2) p.11

"it took almost two, three hours to convince the parties to try and resolve the matter, so it took a long time, but it was resolved." PC14 I(2) p.2

PC6, PC7 and PC11 believe that the coaching competencies are very similar to their present style of conciliating and mediating, and regard these competencies as an enhancement of their current efficiencies, as well as an intentional approach:

"I think that some of these coaching competencies are being applied but not fully because the commissioners don't have time, they're under pressure to do four or five cases a day." PC6 I(2) p.8

"I've just seen it as asking open-ended questions, active listening, reframing and paraphrasing. I just have done all of this but not specifically thinking that this falls under the banner of coaching." PC6 I(2) p.17

"Yes, it can be an innovative way but my advice will be rather let's add it on top of what has already been provided for currently at conciliation, because even this method, it's not really bad but it depends on one's personality. If you use that model constructively, it will indeed assist you." PC7 I(2) p.9

"I think it was very close, maybe it made me focus more because you tend to do this like a robot, but it's very close." PC11 I(2) p.2

"It made me pay more attention to how I do it." PC11 I(2) p.2

"Compared to what I used to do, which is almost similar to the approach that your model is talking about. It therefore opens a little bit but you need to be in a position to have a little bit of time on your side, that is where the issue is." PC14 I(2) p.3

PC3, PC6, PC8 and PC10 were unequivocal on the value of coaching competencies within the conciliation process.

"It's a very good intervention, I would say." PC3 I(2) p.11

"*I believe that there's always a place for additional competencies, you always work on bettering a system. So there's certainly a lot of merit in what you're doing."* PC6 I(1) p.10

"you get more done in that way, unlike being right and saying this is my business and I can do whatever we want, because you need each other here. So you had to do all those things, which I think that as your normal conciliation would sort of limit." PC10 I(2) p.4

4.3.6 Coaching mind-set

The interview data (interview 2) also revealed an interesting dynamic, viz. in that PC6, PC7, PC8 and PC10 demonstrated strong characteristics of a coach in terms of their attitude, aptitude and intention. This manifested as displaying strong self-regulation, being accommodating and having the right mind-set, natural coaching competencies and a strong desire to serve and help:



Figure 4.6: Coaching mind-set of participating commissioners

PC7 and PC8 believe that self-regulation is crucial in mediating disputes as it allows the commissioner to remain outside the dispute and maintain a clear focus of the dispute:

> "*Yes, once you lose your temper you'll not be able to settle …be focus orientated instead of getting lost in the whole process, because emotions sometimes can compromise you."* PC7 I(2) p.12

> "*…and we have to first of all learn how to question our own thoughts because they're not our own thoughts."* PC8 I(2) p.8

> *"You look at that person, they've already ignited an emotion in you…What emotions does that bring to a commissioner? Unless you can control yourself and respond in an appropriate manner, sometimes without even saying anything…"* PC8 I(1) p.3

PC6, PC8 and PC10 displayed strong coaching mind-sets, a desire to help and self-improve and going beyond what is expected of a commissioner during a conciliation process (CCMA, 2019c):

> *"I think the better humans we are, the better conciliators we are."* PC6 I(2) p.5

> *"When you get to the door, wipe your feet, dust your feet off and leave everything here with me, I'll throw it away, I want you to walk down those stairs and out here with a light heart."* PC8 I(2) p.5

> *"The misconduct is an item, it's an aspect, but the person is a different thing. Now we shouldn't connect the two and confuse it because there was a bad thing that happened doesn't mean the person's a bad person."* PC8 I(2) p.5

` *"You still need to deal with the human being aspect of it."*PC8 I(2) p.5

"It comes with how you see yourself and what your purpose in this world is. Are you here to make an invention or are you here to change people's lives?" PC8 I(1) p.7

"*I am here to serve everybody."* PC8 I(2) p.7

"It's a strong desire to help. It's a strong desire not to judge a person, to listen and understand." PC8 I(2) p.8

"*We have to also self-improve. Self-improvement doesn't only go to your thinking, it also goes to your feeling."* PC8 I(2) p.9

"I think more talking out of the box kind of discussion, you know, I mean, I even went to the Bible…you talk about things, and you say to people, don't look at things narrowish, be broad, look at other things, look at how you would feel if this were to happen, and all that, and for now no-one is right or wrong, and even if they were right, at what expense." PC10 I(2) p.3

"Coaching is about everything, it's talking about life, talking about how you view things, talking about being also not just target focused, it's about also focusing on human beings, resembling, having empathy, all those things." PC10 I(2) p.3

4.4 **Summary of the Findings**

All the participating commissioners met the criteria of having at least 5 years of mediation experience and further presented with extensive conciliating/mediating experience of disputes of senior and executive employees. They showed strong insights into the dynamics of conciliating disputes of senior and executive employees and were able to clearly articulate what effect coaching competencies had on the process and the parties to the process. There was unanimous agreement that the current problem-solving approach to resolving disputes within the section 135(3) conciliation process is not as effective in resolving disputes of senior and executive employees. These

disputes present with unique challenges and dynamics that do not respond to the problem-solving approach to mediation. Those participating commissioners who present with strong mediation skills, rely on further competencies and skills to resolve disputes of senior and executive employees. These competencies include strong communication skills, including active listening, adapting their style and approach to conciliation, easily gaining the trust of parties and being creative, bold and authentic. Positive energy and emotional intelligence, as well as showing an aptitude for and a strong belief in conciliation were of primary importance.

While it is clear that the resolution of these disputes still largely depend on monetary settlement, PC5, PC7, PC10 and PC14 indicated that applying coaching competencies (as indicated in Figure 4.5) resulted in a restoration of the employment relationship. Particular participant commissioners combined a facilitative approach with reality testing during the section 135(3) conciliation process. Seven participating commissioners expressed success in using the executive and conflict coaching competencies of asking open and open-ended questions, active listening, reframing and rephrasing, reflective dialogue and relying on clear communication throughout.

The participating commissioners, even those who did not experience success applying coaching competencies, believe that these competencies have value within the section 135(3) conciliation process. However, the participant commissioners indicated that while these competencies helped with changing the parties' narrative of their respective disputes and resolves these disputes effectively, they do not necessarily believe that it can resolve the dispute speedily. The participant commissioners believe that successful application of the coaching competencies requires time that the operational requirements of the CCMA does not accommodate in terms of allocating sufficient time to conciliate these disputes. However, they believe that if applied within the initial conciliation process by experienced commissioners, and where time is not subject to operational requirements, it would be highly effective in resolving disputes of this nature speedily and effectively.

CHAPTER 5. DISCUSSION OF FINDINGS

5.1 Introduction

This chapter discusses the research findings obtained from the perceptions and experiences of the participant commissioners conciliating disputes of senior and executive employees, both before and after the application of coaching competencies within the section 135(3) conciliation process, and positions it within the literature review findings. The findings from the interview data from interviews one and two will be analysed separately as they were intended to provide answers to two different aspects of this study: the commissioner's current experience of conciliating disputes of senior and executive employees and the commissioner's experience of conciliating these disputes after the application of coaching competencies.

5.2 Commissioner experience of conciliating disputes of senior and executive employees

The findings emanating from the themes produced by this interview data produced the following three propositions with regard to the CCMA commissioner experience of conciliating disputes of senior and executive employees:

(a) Unique challenges and dynamics of disputes of senior and executive employees;
(b) Additional competencies and skills that commissioners require to resolve disputes of senior and executive employees; and
(c) Coaching behaviours and attitudes of commissioners who successfully resolve disputes of senior and executive employees.

5.2.1 Disputes of senior and executive employees present with unique challenges and dynamics

The key findings from the interview data of interview one are that disputes of senior and executive employees do not easily resolve during the initial conciliation process because they present with unique challenges and dynamics that do not respond to the current problem-solving approach (CCMA, 2019c; Rycroft, 2016). This supports the findings of Bhorat et al. (2009), Benjamin (2013); Blignaut (2018) and Bendeman (2006) that disputes of senior and executive employees are generally complex disputes that rarely resolve at conciliation and proceed to arbitration, becoming protracted and expensive disputes. Data drawn from the CCMA case management system also show that those disputes where parties are professionally represented have a lower turnaround time to those disputes where the parties are not represented or are represented by union officials (Bhorat et al., 2009). The findings showed, however, that these disputes do resolve during the arbitration process when the matter reverts to conciliation. Nonetheless, this is only possible because of the conciliating commissioner's extensive mediation experience and the additional competencies and skills relied upon to mediate the dispute.

All participating commissioners agreed that disputes of senior and executive employees are notoriously difficult to resolve at the initial conciliation hearing. The participating commissioners cited unique challenges and dynamics within these disputes that negatively impact on an early resolution of the dispute (refer to Table 3.5, p.60). These include: the reasons for a dismissal; the relationship between the employer and employee; the knowledge and attitude of the employee; the different possible outcomes of a settlement; the previous history of the parties; the attitude and influence of the representatives of the parties; the subtext to the dispute; and the dynamics of the conciliation or arbitration process.

In identifying the challenges and dynamics that cause both the employee and the employer to become entrenched in their positions, making resolution of the

dispute during the initial conciliation hearing scheduled by the CCMA extremely challenging, the participating commissioners provided support for the arguments tendered for the removal of these employees from the LRA (The Republic of South Africa, 2010): these employees are often dismissed because of factors related to their positions within the organization and the influence they yield in terms of their bargaining power. The Republic of South Africa (2010), further identifies these reasons as reasons falling outside the ambit of section 188 of the LRA. The participating commissioners confirmed that senior and executive employees are not usually dismissed for reasons relating to misconduct, incapacity and operational requirements (as per section 188 of the LRA).

The participating commissioners also indicated that senior and executive employees rarely appear at the CCMA processes without legal representation and this representation is considered the biggest influence and dynamic in disputes of senior and executive employees. They are of the view that the influence that the legal representatives yield over the employee and the process itself causes the disputes to become protracted and expensive, mainly because prolonging the dispute benefits the representatives (Bhorat et al., 2009). Benjamin (2013); Bhorat et al. (2009) and Bendeman (2006) similarly place the blame for the delay in finalizing disputes of senior and executive employees predominantly at the feet of their legal representatives, arguing that the representatives create a highly technical and procedural process, arguing that this causes the parties to lose sight of the intention of the LRA, which calls for the speedy and effective resolution of labour disputes. Brubaker et al. (2014), describes statutory mediation as a “settlement conference focused on legal evaluation.” (p.366).

The participating commissioners also believe that the senior and executive employees’ salary and the cost implications for the organization are challenges that must be considered when drafting the settlement agreement. Some participants articulated the need to go beyond the realms of the LRA when drafting a settlement agreement. This would appear to support the argument

tendered in The Republic of South Africa (2010) that senior and executive employees use the CCMA to negotiate favourable settlement terms after their dismissal, thus adding further pressure to an already overburdened system. The participating commissioners who successfully resolve disputes of senior and executive employees confirmed that considering the quantum, as well as the unique terms and conditions of settlement, is a time intensive exercise.

5.2.2 Commissioners rely on additional competencies and skills to resolve disputes of senior and executive employees.

All participating commissioners agree that disputes of senior and executive employees require different competencies within the section 135(3) conciliation process to help the parties resolve the dispute. Those commissioners who successfully resolved these disputes, and those who were less successful, recognized that additional competencies to resolve disputes of senior and executive employees were necessary. Competencies currently required of CCMA conciliation commissioners are to act with integrity, fairness, impartiality, empathy, restraint and professionalism (CCMA, 2019c). Participating commissioners proposed using stronger conciliation skills, mainly because parties to this dispute have strong egos and are influenced by their respective legal representatives. Participating commissioners were keen to enter into better quality settlements and restoring relationships in these high-level disputes, rather than focusing on quick but not necessarily effective resolution of the dispute. This supports the belief of Rycroft (2016), and Steenkamp and Bosch (2012) that the current focus on achieving the national efficiencies of a 70% settlement rates results in commissioners coercing parties to settle resulting in “superficial settlements”. Brubaker et al. (2014), calls this “settlement under pressure.” (p.366). The findings support the difficulties of focusing on specific outcomes rather than relationship building, which Faris (2006) refers to as a compromise mediation approach where the focus is on the interests of the parties rather than relationship building.

The common thinking is that disputes of senior and executive employee disputes are notoriously difficult to resolve even for those commissioners who find success with the parties. While still showing a clear reliance on reality testing, these participating commissioners nevertheless show a strong desire to assist the parties in resolving their dispute and this manifests in the manner in which they conduct the mediation process by stepping out of the prescripts of clause 7.5.5. of the Practice and Procedure Manual (CCMA, 2019c). They focus more on the needs of the parties rather than the outcome of the process, and show strong respect for the parties as well as their respective representatives. While seemingly in contrast to Bhorat et al. (2009) findings that legal representatives contribute to these disputes becoming protracted, it is again indicative of the mind-set of the conciliating commissioner where a strong belief in conciliation allows the commissioner to turn challenges into workable solutions. PC6 described this as adopting a positive approach to the representative dynamic: "*A lot of times the representative will do a lot of the selling for you but you've got to create the idea, plant the seeds…*"

Faris (2006), contends that mediation is not subject to an external structure but derives its structure primarily from the personal authority and skill of the mediator in directing the disputants towards drafting a settlement or strengthening their relationship. Participating commissioners displaying strong aptitudes for conciliation successfully used dynamics within the process to steer parties to a resolution of the dispute. Folger and Bush (2014), posit that the mediator must use an intentional approach within the mediation process to assist the parties achieve their goals of empowerment and recognition. The experiences of the participating commissioners also mirror the experiences of the ombudsman where an intentional approach to coaching was adopted during mediation, resulting in positive outcomes (Levine-Finley, 2014). The participating commissioners displayed an instinctive need to improve communication with the parties. The participating commissioners' strong reliance on active listening, as well as using open-ended and probing questions, show this appreciation and understanding for the need to manage the

communication channels and promote effective communication with the parties. Some participating commissioners allowed parties to "vent" during the process, while other engaged extensively with the parties. This supports the recognition of both Hanger and Cooper (2004) and ACAS of the importance of allowing parties the opportunity to be heard during the mediation process, believing this expedites the resolution of the dispute (Dix, 2004). In fact, Jones and Brinkert (2007) believe that the first step in assisting the disputant to change his/her construction of the dispute is to first listen to the disputant's description of the dispute. The commissioners' attempts to allow both parties an equal opportunity to be heard supports the proposition by Millen (1994) that neutrality should be the goal of mediation.

A particular quote that arose from the focus group speaks volumes about the keen appreciation of using effective communication to successfully mediate a dispute: "*Of course you're hard on the issues but soft on the parties, but you need to ask those questions."* The quote above dovetails neatly with an extract in which Dagley (2010) reflects on a participant coach who presented with qualities of an excellent coach: "…*tough in words and empathic in process. I do ask quite challenging questions. I'm not fearful of asking the hard question*." This competency shows a clear parallel between those participating commissioners who successfully resolve disputes of senior and executive employees and successful executive coaches. This fearlessness, coupled with strong empathy, also shows that the participating commissioners have a clear understanding of their role within the mediation process: to manage the communication channels. This is in line with the call for a more compassionate intervention in managing difficult conversations between the disputants (Zariski, 2010).

The prevailing sense is that these participating commissioners have their finger on the communication pulse at all times and skilfully navigate the parties towards their desired outcome by allowing strong narrative and carefully managed communication. This corroborates the idea of Zariski (2010), which challenges the focus of traditional mediation on communication forms of

negotiation and bargaining only, part of his formulation of the third strand of communication theory, together with the dialogical theory of intervention. Instead, Zariski (2010), recommends dialogue and narrative as alternative and more productive communication forms during the mediation process. The use of strong and effective communication by the participating commissioners also support the proposition of Zariski (2010) that productive communication can be achieved by challenging the coherence of a disputant's story in order to construct a different story. This also provides support for Winslade and Pangborn (2015) suggestion that the parties engage better with each other after constructing a different narrative of the conflict. It is also clear that these participating commissioners have adopted a more facilitative approach to mediation by guiding the parties towards finding their own solutions to the dispute. This supports the definition of facilitative mediation of Ridley-Duff and Bennett (2011). There is clear evidence that the participating commissioners also make meaning with the parties as anticipated by Academic Standard 8.2 (GSAEC, 2014a) through active listening and asking probing and open-ended questions.

The findings show unequivocally that disputes of senior and executive employees can only resolve by adopting different communication forms during the mediation process, especially by using strong narrative and dialogue. This structured approach is more effective than negotiation and bargaining in helping the parties change their perspective of the conflict and bringing them closer to finding a common resolution of the dispute.

5.2.3 Coaching behaviours and attributes of conciliating commissioners

Those participating commissioners who successfully resolve disputes of senior and executive employees have the following in common:

(i) extensive mediating and conciliating experience;
(ii) a strong aptitude and belief in conciliation;

(iii) positive energy;
(iv) a flexible, adaptable and accommodating;
(v) reliance on active listening and ask probing questions; and
(vi) the ability to adapt their style and approach within the conciliation process to the parties before them.

These participating commissioners display characteristics of effective coaches as identified by Athanasopoulou and Dopson (2018); Blackman et al. (2016); Dagley (2010); (GSAEC, 2014a). Athanasopoulou and Dopson (2018), describe successful coach behaviours and attitudes as including a positive frame of mind, active listening, as well as having the agility and the ability to understand context. Blackman et al. (2016), cites extensive experience with coaching as a factor contributing to a successful coaching engagement. Dagley (2010), in his study found that exceptional coaches had the following in common:

- commitment to on-going professional development
- extensive coaching experience
- a firm belief in the facilitative rather than directive role of the coach

The participating commissioners had an instinctive understanding of their role as a facilitator in the mediation process and this is demonstrated in the manner that they adapted their style and approach of communicating with the parties. The use of active listening and asking probing questions to help the parties resolve their dispute are typical coaching competencies. The flexibility created during the process speaks directly to Hanger and Cooper (2004) assertions: "…it is essential to design a dispute resolution process that suits the particular dispute rather than to try to make the dispute fit into a process" (p.82). The findings of Blignaut (2018) on the effectiveness of conciliation under the CCMA is largely supported as the author calls for more flexibility and fluidity within the conciliation process to increase its effectiveness. The successful participating commissioners clearly demonstrate that they have their ear to the ground and are more than capable of responding to the parties' needs.

Passmore and Fillery-Travis (2011), describe the facilitative role that the coach plays as a "guided discovery." (p74.), which P10 describes as follows: "*You pick the little things in the conversation that you think you can use, you think you can use to try and persuade the other party to look at it differently.",* a clear attempt to find patterns in the communication between the parties (Zariski, 2010).

Drake (2018) refers to this skill as the "third ear" (p.117), which narrative coaches use to remain fully present while listening to the coachee's story, corresponding to Academic Standard 8.2 (GSAEC, 2014a), where the coach remembers what is said as well as what was not said, and interprets it according to the goals of the coaching engagement. Several successful coach behaviours and attitudes identified in the literature review, applied to the participating commissioners, in the ways they resolved disputes of senior and executive employees.

5.2.4 Summary

The research findings of the first interview data of this study largely conform to international research done. This is that disputes of senior and executive employees are unique due to their positions and influence within an organization and that this causes such disputes to become prolonged and expensive disputes at the CCMA. However, what also emerged is that there are further dynamics that impact on an early resolution of these disputes. This was identified as the different expectations senior and executive employees have of the conciliation process which is largely informed by their knowledge of CCMA processes and arbitration dynamics, as well as the legal possibilities for excessive compensation. However, some participating commissioners, regardless of the challenges and dynamics, still resolved these disputes, an indication that this was not an insurmountable challenge. The findings showed that not all challenges and dynamics experienced with disputes of senior and executive employees caused the dispute to become protracted and expensive. The presence and influence of representatives, as well as the level of sophistication of the employee can be harnessed to effectively procure a

resolution of the dispute. However, this is dependent on the level of skill and experience of the conciliating commissioner, as well as the commissioner's confidence in applying different competencies to resolve these disputes.

An unsurprising but welcome breakthrough was that all the participating commissioners who successfully resolve disputes of senior and executive employees show behaviours and attributes of a successful coach. These participating commissioners adopt a facilitative approach to mediation, going beyond negotiation and bargaining to effect resolutions of the dispute. This includes encouraging the parties to "vent" during the process, engaging extensively with the parties, and going beyond their obligations in terms of the conciliation process:

> "*However, also the difficulty is that if you settle those matters, they want everything to be in there, which then means we go beyond what we are required to do."* PC14 1(1) p.2

Not surprisingly, these participating commissioners have a strong belief in conciliation as well as an aptitude for conciliation. Most participating commissioners experience disputes of senior and executive employees differently to disputes of lesser earning employees. Their experience is that these disputes need different competencies to assist the parties to resolve as they present with unique challenges and dynamics. However, by adapting their approach within the section 135(3) process and expanding the communication band, these participating commissioners are successfully able to navigate the mediation process to assist the parties to look at their disputes differently, leading to the resolution of the dispute.

5.3 Coaching competencies impact on disputes of senior and executive employee

Interview two was intended to elicit the participating commissioners' perceptions and experiences of applying coaching competencies within the section 135(3)

conciliation process of disputes of senior and executive employees. The interview data produced the following key findings with regard to the impact of coaching competencies on disputes of senior and executive employees:

(i) Favourable impact of coaching competencies
(ii) No impact of coaching competencies on section 135(3) process
(iii) Role of coaching competencies within the section 135(3) conciliation process
(iv) Coaching behaviours and attributes of the participating commissioners

5.3.1 Favourable impact of coaching competencies

With the exception of four participating commissioners, the participants experienced a favourable application of coaching competencies within the section 135(3) process. This manifested in how the participating commissioners felt after applying these competencies and the resultant impact and/or effect on the process itself and the parties to the dispute. However, those four participating commissioners who indicated that these competencies had no impact or effect within the disputes allocated to them during the period of the study, were nevertheless still positive that coaching competencies have an important role to play in assisting parties resolve their disputes effectively and speedily. They agreed that the existing approach was inadequate in resolving these disputes and that there was a need to find alternatives to assist parties in resolving these disputes: *"so you have to find a different technique in mediating that dispute, because there will be different dynamics in it."* PC1 1(1) p.5

The participating commissioners used the facilitative mediation model with coaching competencies (Appendix I) which was based on the CCCM conflict coaching model designed by Jones and Brinkert (2007). They were encouraged to apply the coaching competencies of asking open-ended questions, active listening, reframing and paraphrasing, encouraging reflective dialogue, role playing, focusing on behaviour changes and encouraging clear

communication. The aim of this approach was to help parties reinterpret or deconstruct the meaning of the conflict to reduce the impact of the conflict on their relationship.

Those participating commissioners who experienced a favourable application of this model found the most success when relying on asking open-ended and probing questions, active listening, reframing and rephrasing, encouraging reflective dialogue and clear communication. The effect was found in a change in parties' behaviours and attitudes, restoration of the employment relationship and trust between the parties, parties taking ownership of the dispute and constructing a coherent narrative of their dispute (Figure 4.5, p87).

Open-ended and probing questions was found to build trust and resolve the dispute faster. It has been established that successful executive coaching outcome is behaviour and attitudinal changes (Athanasopoulou & Dopson, 2018; Naficy & Isabella, 2008; Stokes & Jolly, 2018). GSAEC Academic Standard 8.0 proposes active listening and questioning to make meaning with others in order to move the coaching process forward and to help the coachee gain different perspectives of the dispute. The participating commissioners claimed that active listening showed the parties that they were genuinely interested in their perspective of the dispute and this need to truly understand the dispute encouraged further dialogue. This aligns with Academic Standard 8.2 (GSAEC, 2014a, p. 2) to "make meaning with others", and support of the parties and good communication skills (Blackman et al., 2016). According to the participating commissioners, reframing and rephrasing allowed the parties to take ownership of the process. This is a sign of a strong facilitative approach to mediation, supporting Passmore and Fillery-Travis (2011) definition of executive coaching using open questions, active listening and reflections to stimulate self-awareness and encourage personal responsibility for the outcome of the process.

Through reflective dialogue, a valuable space was created for the parties to reflect and according to the participating commissioners, this reflection helped

them identify the underlying issues of the dispute thereby creating a coherent narrative of the dispute. This fully supports the intention behind the creation of the CCC Model by (Jones & Brinkert, 2007), viz. to help disputants reinterpret/deconstruct the meaning of the conflict. Many participating commissioners reflected that by allowing the parties to speak freely about their versions of the dispute and engaging extensively, the parties became less positional allowing them to move closer to a resolution of the dispute. This narrative approach supports the approach proposed by Drake (2018) and Winslade and Pangborn (2015), where moving between the text, context and subtext challenges the disputants assumptions about their realities allowing them to reconstruct a new reality. The participating commissioners found that encouraging clear communication throughout the process enabled the parties to engage deeply and this process allowed the parties to, as PC12 so accurately stated, "*think right about their disputes."* In other words, construct a coherent narrative of their disputes.

The participating commissioners were largely supportive of the coaching competencies and experienced feeling energised and empowered, indicating that it also helped improve the quality of communication within the section 135(3) conciliation process (Blackman et al., 2016) by helping the parties to engage deeply with one another.

5.3.2 No impact of coaching competencies within the section 135(3) conciliation process

Four participating commissioners applied the coaching competencies in varying degrees but found that it had little or no impact on the process and the parties to the dispute. The discussions around the challenges experienced with conciliating disputes during the period of the study provided interesting insights into the different process dynamics posed by disputes of senior and executive employees, again reinforcing the earlier reflections that disputes of this nature are difficult disputes to resolve (Bendeman, 2006; Benjamin, 2013; Bhorat et al., 2009). Three of the four participating commissioners were allocated partly

heard arbitrations during the period of the study and this had a substantial influence on the parties desire to revert to conciliation in terms of section 138(3) of the LRA.

PC6 and PC12 indicated that they attempted to apply the coaching competencies but while it did not result in a settlement, it did have an impact on assisting the parties to identify the real issues to be decided upon, thus allowing for a smoother and more efficient arbitration of the dispute. This provides further support for using coaching competencies to help the parties construct a coherent narrative of their dispute (Jones & Brinkert, 2007; Winslade & Pangborn, 2015). They were, nevertheless, still mindful of the need to be seen to be neutral and were concerned that a stronger intervention during the arbitration process might be seen to be biased by the parties. It was clear that they did not want to compromise the trust they built as the arbitrator in the process, and this affected the depth of their engagement with the parties during the conciliation process.

> "*When you do reality testing as an arbitrator, particularly where you have not heard any evidence, it becomes very difficult because you still have to make a decision in this matter."* PC12 1(2) p.5

It also emerged that in those disputes where the arbitration had already commenced, parties were very reluctant to revert to conciliation as there were clear legal disputes to be decided on, making the parties extremely positional and reluctant to consider the possibility that an alternative resolution to arbitration. Covid-19 and its resultant impact on operations at the CCMA also had an impact on the commissioners' ability to effectively apply coaching competencies as most arbitration hearings were held on the online platform. The participating commissioners expressed their frustration at being unable to effectively communicate with the parties on these platforms, or while wearing masks during the process.

PC9 and PC13 were apprehensive about stepping out of the problem-solving approach and relied heavily on reality testing as a way of breaking the

deadlock. When this failed, both commissioners allowed the matter to proceed to arbitration, with no further input within the conciliation process. PC13 summed up her interaction within the section 135(3) conciliation process as follows: "*…if I get a feel that parties are reluctant to settle I kind of just stop and continue with the arbitration process."*

This attitude reveals the shortcomings of the problem-solving approach to mediation where the mediator's role is limited to helping the parties find specific outcomes rather than to improve the quality of interaction between the parties. Folger and Bush (2014) argue that the mediator should support important shifts that happen with disputants during the mediation process by continuous engagement with the parties. To the end Folger and Bush (2014), propose that the mediator's skills should be used to support the "goals of supporting empowerment, recognition, party driven dialogue and deliberation, and positive changes in the quality of parties' conflict interaction." (p.23). This, again highlights the need for a different mediation approach within the section 135(3) conciliation process.

PC5, in particular, displayed strong coaching competencies during interview one, yet he found it challenging to effectively apply coaching competencies to disputes which were already on-going and where parties were extremely positional. This underscores an important dynamic relating to applying coaching competencies during the arbitration process, viz. that breaking the deadlock between parties during the arbitration process is more challenging simply because parties to the dispute must consent to reverting to conciliation [section 138(5) of the LRA]. Unlike the initial conciliation hearing, where parties to the dispute must submit to conciliation, this leeway is absent during the arbitration hearing and the commissioner's discretion to apply additional competencies is limited by the constructs of the arbitration hearing. Ethical considerations by the commissioner are more imperative considering that the Code of Conduct requires all commissioners to respect the integrity of the LRA processes (CCMA, 2019c). Dagley (2010) found that the executives readiness and motivation to engage in coaching is a key factor in the success of the

coaching engagement. This is supported by Blackman et al. (2016), implying that that voluntary participation would be prerequisite for a successful coaching engagement. Jones and Brinkert (2007), posit that not all disputes are receptive to coaching competencies. This dynamic is a clear indication of the limitations of applying coaching competencies within a statutorily constituted process where the disputants express consent is required before the matter can be mediated. This supports Rosha (2013), assertions that mediation and coaching have its own aims, where mediation assists in managing the conflict and dispute resolution process and coaching helps a person develop in a more effective way, confirming that while coaching competencies can enhance the conciliating commissioners' competencies, it cannot change the purpose for which each process is constituted.

5.3.3 Role of coaching competencies within the section 135(3) conciliation process

Most participating commissioners are of the view that coaching competencies should be applied to disputes of senior and executive employees in the first conciliation hearing, believing that an early high level intervention with coaching competencies will be successful in resolving these disputes speedily. Brubaker et al. (2014), also propose conflict management coaching as an early intervention strategy to assist in a better understanding of the conflict. The participating commissioners believe that an early intentional intervention will not compromise the commissioners' impartiality; however, applying coaching competencies at the arbitration stages will compromise the trust of the commissioner as arbitrator. Participating commissioners also believed that disputes of senior and executive employees should be allocated to senior commissioners and Level A commissioners with extensive mediation experience during the initial conciliation hearing as they would be better placed to apply the competencies with an aim to resolving the disputes. Dagley (2010), finds that coaches who present with extensive experience, skills and motivation for self-development and improvement, have the most success in the coaching

engagement. Blackman et al. (2016), also find, in reviewing articles on coaching effectiveness, that coaching experience is an important factor contributing to an effective coaching engagement, leading to behavioural and attitudinal changes.

It was also communicated that even if the conciliation does not result in a resolution of the dispute, the coaching competencies applied by the conciliating commissioner will assist the parties becoming more informed of their positions when they proceed to arbitration, as the strength of coaching competencies has been found to be in changing perspectives and assumptions, and looking at reality differently (Jones & Brinkert, 2007; Winslade & Pangborn, 2015). This strongly aligns with Ridley-Duff and Bennett (2011), proposition that sometimes mediators are simply required to probe and establish " where 'battle lines' have been internalised." (p.119). Folger and Bush (2014), suggest that the role of the mediator is to effectively manage communication around the conflict with the parties to support empowerment and recognition, is also apparent in the participating commissioners' understanding of their role when required to mediate the dispute.

Furthermore, it was felt that applying coaching competencies within the initial conciliation hearing is an intentional strategy (Folger & Bush, 2014), that will give the parties food for thought and cause reflection of their disputes before the arbitration is scheduled. This could assist in the matter resolving in the early stages of the arbitration process as well, preventing the dispute from becoming protracted. The approach of Drake (2018), to narrative coaching by using the coachee's narrative to move between the text, context and subtext to arrive at the factual truth, resonates in this instance as it could assist the parties in constructing a more coherent narrative of their dispute when it proceeds to arbitration (Jones & Brinkert, 2007). This was supported by the success that most participating commissioners experienced by applying the facilitative model with coaching competencies (Appendix I). This model was based predominantly on the CCC Model designed by Jones and Brinkert (2007), which is intended to assist the disputant to better understand and manage the conflict, and to find

appropriate outcomes. There is strong support for the introduction of this intervention within the section 135(3) conciliation process as an intentional strategy to help senior and executive employees understand the dispute better and to find appropriate outcomes rather than relying only on the present conciliation competencies of reality testing and providing suggestions and options to the parties.

5.3.4 Coaching mind-set, behaviours and attributes of participating commissioners

Athanasopoulou and Dopson (2018); Blackman et al. (2016); Dagley (2010) and GSAEC (2014a), capture the essence of an effective executive coach, and the identified key attributes and competencies (for a summary see Table 2:3, p.21)

The effective executive coach displays strong communication skills, identified as active listening, good assessment and feedback skills, powerful questioning, reflecting back, reframing and having the ability to challenge the coachee. This is achieved with compassion, empathy, professionalism and encouragement. The effective executive coach is highly ethical, intelligent and is able to remain authentic throughout the process. The effective executive coach is further identified as being creative, having a positive frame of mind and views the coachee in a positive light.

During interview one, and while reflecting on their experiences of conciliating disputes of senior and executive employees, PC5, PC6, PC7, PC8 and PC10 spoke about how they often successfully resolved these disputes with skills and competencies beyond the competencies of a CCMA conciliating commissioner (CCMA, 2019c). These additional skills and competencies included strong communication skills of active listening, being able to read the parties body language and emotions, gaining the parties trust easily and having the right attitude, maturity and ability to conduct themselves in the conciliation process. The interview data from interview two amplified the coaching mind-set, behaviours and attributes when the same participating commissioners shared

their experiences and reflections after applying coaching competencies within the section 135(3) conciliation process. The participating commissioners were unequivocal that helping the parties identify the core issue is key to resolving these disputes, and that once the core issues are identified, their perspective of the dispute changes, allowing for an effective resolution of the dispute. The strong coaching competencies also manifested as a need to self-regulate and having strong self-awareness GSAEC (2014a). They also demonstrated natural coaching competencies with a servitude attitude and a strong desire to improve the relationships between the parties.

PC6, PC7, PC8 and PC10 enjoyed the most success when applying coaching competencies and found that it helped restore the employment relationship and built trust. It is no coincidence that they also have a positive outlook of the conciliation process and have a strong aptitude for conciliation. This corresponds with Academic Standard 8.1 (GSAEC, 2014a) where executive coaches are guided in terms of co-creating the coaching relationship with suggestions on how to remain self-aware and self-manage. In terms of this standard, great behavioural indicators means the coach must become "aware of feelings and triggers and implications" (p.2), remain calm under stress and always maintain a positive outlook of the coachee. Athanasopoulou and Dopson (2018) and Ennis et al. (2015), believe that effective coach behaviours and attributes include a positive frame of mind and outlook, as well as having strong self-confidence. This positive outlook was apparent in their strong belief in conciliation and passion for conciliating disputes, evident when PC8 stated: "*So I go in as it I am a servant with an attitude, a servitude attitude. I am here to serve everybody."*

An unexpected benefit of coaching competencies was helping the commissioners with their own narratives. PC6, on reflecting on the challenges he experienced with the disputes allocated to him, stated that while the coaching competencies did not result in a resolution of the dispute, it did help him work on his own narrative: "*this coaching competencies…is working on our own narratives to make us better mediators."*

This also largely speaks to Academic 8.1 (GSAEC, 2014a), which states that great coaching behaviours requires an awareness of feelings and managing triggers to remain present for the coachee during the coaching engagement.

5.3.5 Summary

Applying the facilitative mediation model with coaching competencies (Appendix I) was well-received by the participating commissioners, even those commissioners who did not experience favourable outcomes after applying coaching competencies. The dominant view is that these competencies improve communication within the section 135(3) conciliation process, as it encourages strong dialogue and reflection. This narrative approach results in parties changing their perspectives about the dispute, resulting in a change of attitudes and behaviours. The aim of the facilitative mediation model (Appendix I) was achieved: to use reflective dialogue and communication to help parties reinterpret/deconstruct the meaning of the conflict to reduce the impact of the conflict on the relationship between the parties. This supports the dialogical theories of intervention (Zariski, 2010), where narrative is proposed as alternatives to negotiation and bargaining within the mediation process. In the intervention orchestrated for this study, most participating commissioners achieved the use of the facilitative mediation model with coaching competencies.

Most of the participating commissioners adapted to and applied the coaching competencies with ease suggesting that executive and conflict coaching competencies can be applied as effectively outside the traditional coaching engagement as within it. The participating commissioners strong reliance on active listening and probing questions prior to the application of the coaching competencies establishes the role that communication plays in successfully resolving disputes of senior and executive employees and allows for a painless introduction of further executive and conflict coaching competencies within the section 135(3) conciliation process. The participating commissioners also responded positively to applying the facilitative mediation model with coaching

competencies describing it as energising, empowering and interesting, and reflected that it improved the quality of communication within the section 135(3) process. The prevailing view is that coaching competencies within the section 135(3) conciliation process is a positive enhancement of the process, improves the participating commissioners' competencies and assists the parties in constructing a coherent narrative of their dispute, leading to an effective resolution of the dispute.

However, there is little consensus that it resolves disputes of senior and executive employees speedily. The participating commissioners found that applying coaching competencies to these disputes is a time intensive intervention, which is not suited to the time allocated to disputes at the CCMA. It is for this reason that it is proposed that disputes of senior and executive employees should be subjected to an early high level intervention where coaching competencies are applied within the section 135(3) conciliation process. It is also proposed that these disputes should be conciliated by senior and level A commissioners with extensive mediation experience and that these matters should be allocated at least a day to allow for extensive conciliation to occur. It is also proposed that all commissioners should be formally trained on the facilitative mediation model with coaching competencies as these competencies can be beneficial to all individual labour disputes and supporting the objectives of the Imvuselelo Strategy.

5.4 **SUMMARY**

At the core of this phenomenological study are disputes of senior and executive employees that present with unique challenges and dynamics requiring additional competencies to assist the parties find resolution of their disputes. The participating commissioners who successfully resolve disputes of senior and executive employees display coaching competencies of active listening, asking probing questions and clear communication. The same participating commissioners, in applying coaching competencies to disputes of senior and executive employees, created an intentional strategy to extend the

communication band by encouraging reflective dialogue and narration. This resulted in strong positive outcomes: restoring the employment relationship, building trust between the parties, changing behaviours and allowing the parties to take ownership of the outcome of the dispute. This confirmed that executive and conflict coaching competencies have a similar impact outside the traditional coaching engagement, which is changed behaviours and attitudes. The presence of executive and conflict coaching competencies have value within the conciliation process of disputes of senior and executive employees as the unique challenges and dynamics respond favourably to these competencies. An unexpected benefit was the indirect value that coaching competencies had on the participating commissioners in managing their internal narrative. The positive response to executive and conflict coaching competencies within the section 135(3) conciliation process of disputes of senior and executive employees is a clear sign that it could constitute additional competencies within the mediation process.

CHAPTER 6. CONCLUSIONS, RECOMMENDATIONS AND LIMITATIONS

This Chapter amalgamates the findings and discussions of the research results against the propositions emerging from the literature review to find conclusions to the research objectives of this study, and to ultimately determine whether coaching competencies can resolve disputes of senior and executive employees speedily and effectively. Recommendations for key stakeholders and future research will be discussed, as well as limitations to the research design that may have impacted on the findings.

6.1 INTRODUCTION

The intention of using the phenomenological philosophy when conducting the research was to understand the participating commissioners' direct experiences of conciliating disputes of senior and executive employees, both before and after the application of coaching competencies within the section 135(3) conciliation process. According to Osborne (1994), the focus in phenomenology is on "discovery, description and meaning" (p.168), where the human experience provides meaning to the phenomenon. This maxim guided this study in its entirety. This was achieved by asking the participating commissioners open-ended questions to allow for unconstrained responses and finding this essence within the interview data. The interview data was coded to uncover relevant themes across all the interviews which attempted to describe this essence. Finally, the findings were analysed by situating the participating commissioners' reflections and experiences of using coaching competencies within the section 135(3) conciliation process within the research objectives. The research objectives formulated in chapter one will be analysed with regard to both the literature as well as study findings to determine whether the objectives have been met.

6.2 CONCLUSIONS

6.2.1 Research objective one

"investigating the efficacy of applying executive and conflict coaching competencies outside the traditional coaching engagement"

(i) Proposition from literature

Executive and conflict coaching competencies of active listening, purposive questioning, and the encouragement of reflective dialogue and narration, results in successful coaching outcomes. This can be applied fruitfully within a similar communication-based facilitative process where effective communication is required for an effective outcome.

(ii) Proposition from findings

Disputes of senior and executive employees require coaching competencies of active listening, asking open-ended questions, reframing and rephrasing, encouraging reflective dialogue and clear communication to effect positive outcomes within the conciliation process. The positive outcomes identified by the participating commissioners were the restoration of the employment relationship and trust between the parties, parties taking ownership of the dispute, changes in parties behaviours and attitudes and constructing a coherent narrative of their dispute. Although not a traditional coaching engagement, the discretion contained in section 135(3) of the LRA allows for the intentional introduction of executive and conflict coaching competencies within the conciliation process where the conciliating commissioner "makes meaning with others" as identified in Academic Standard 8.1 (GSAEC, 2014a).

6.2.2 **Conclusion**

The research findings confirmed the literature review findings. The participating commissioners were unanimous that “stronger conciliation skills” are required when conciliating disputes of senior and executive employees, believing that strong and effective communication is key for an effective resolution of these disputes. Applying coaching competencies of asking open-ended and probing questions, active listening, reframing and rephrasing, and clear communication within the section 135(3) conciliation process adds value by restoring relationships, changing behaviors and attitudes, resolving the disputes effectively. The conscious and intentional application of these competencies also allows the conciliating commissioner to make meaning with the parties as anticipated by Academic Standard 8.1 (GSAEC, 2014a). This was particularly suited to the unique dynamics and challenges presented by disputes of senior and executive employees, especially considering the sophistication of the parties and accommodating the presence of legal representatives. There is clear support that executive and conflict coaching competencies have equal value outside the traditional coaching engagement.

6.2.3 **Research objective two**

“*exploring whether additional competencies within the section 135(3) process can resolve disputes of senior and executive employees speedily and effectively”*

(i) Proposition from Literature

Disputes of senior and executive employees require a facilitative approach to mediation to resolve, where the focus is on strong reflective dialogue and narration as this encourages parties to address the underlying cause of the conflict, ultimately leading to behavioural and attitudinal changes.

(ii) Proposition from Findings

Unique challenges and dynamics present within disputes of senior and executive employees require additional competencies to the current problem-solving approach to conciliation to resolve effectively. A facilitative approach to mediation, together with applying coaching competencies of asking open-ended and probing questions, active listening, reframing and rephrasing, encouraging reflective dialogue and clear communication, allow the parties to determine the underlying issues to the dispute. This leads to the parties constructing a different meaning of their dispute, leading to empowerment and recognition and ultimately to an effective resolution of the dispute.

6.2.4 Conclusion

The data showed unequivocally that additional competencies are required to resolve disputes of senior and executive employees. However, those participating commissioners who are successful at resolving these disputes agree that these disputes very rarely resolve during the initial conciliation process and that the resolution often occurs during the arbitration process. Most successful conciliating commissioners used the facilitative mediation model with coaching competencies to effect favourable outcomes. Those participating commissioners who experienced the coaching competencies favourably, were unanimous that disputes of senior and executive employees respond to strong dialogue and deep engagement during the conciliation hearing as this encouraged a sense of empowerment. P10 attempted to coach the parties by referring to the bible and asking parties to relate to each other directly rather than relating via the dispute. In this way she succeeded in getting the parties to see each other as humans in a relationship rather than protagonist and antagonist within the dispute. This strategy was a success as it allowed for empowerment and recognition as advocated by Folger and Bush (2014).

Most participants sounded tired and jaded during the first interview but it was notable how their energies picked up after the application of the coaching competencies. Many said that it felt good to go back to basics as they had forgotten the purpose of conciliations, a clear indication that the problem solving approach has reached a stalemate with regard to resolving disputes of senior and executive employees. The coaching competencies provided a glimmer of hope to the participating commissioners that these disputes could be conciliated differently. Nevertheless, while coaching competencies found success in effecting positive outcomes, the unanimous agreement is that applying coaching competencies within the conciliation process is a time-intensive intervention that will not necessarily result in a resolution of the dispute within the time currently allocated to disputes for the conciliation process. However, the participating commissioners clarified that although it may not resolve disputes within the hours allocated to conciliations, it will definitely assist in resolving disputes at conciliation if disputes of this nature are allocated a full day for the conciliation process. The participating commissioners were clear that the coaching competencies assisted in resolving the disputes effectively, viz. by restoring relationships and changing behaviours and attitudes of the parties.

6.2.5 Research objective three

"examining the implications of applying executive and conflict coaching competencies within the section 135(3) conciliation process in disputes of senior and executive employees."

(i) Proposition from Literature

Applying executive and conflict coaching competencies within the section 135(3) conciliation process of disputes of senior and executive employees, facilitates dialogue and narrative around the conflict, helping the employees construct a coherent narrative of the dispute. This ultimately leads to

behavioural and attitudinal changes, resulting in a sustainable and meaningful resolution of the dispute.

(ii) **Proposition from Findings**

Coaching competencies of asking open-ended and probing questions, active listening, reframing and rephrasing, encouraging reflective dialogue and clear dialogue resolves disputes of senior and executive employees. The dispute resolves effectively as it assists in restoring the employment relationship, builds trust between the parties, changes attitudes and behaviours and resolves faster. The parties also take ownership of their dispute as the competencies encourages deeper engagement which goes beyond reality testing. This expands the dispute band allowing the parties to think right about their disputes. It also assists conciliating commissioners to manage their internal narratives.

6.2.6 Conclusion

These competencies assist the parties obtain a more coherent narrative of their dispute, as these commissioners are skilled at helping the parties identify the core issue, believing this to be the key to resolving these disputes. It is clear that using the facilitative mediation model with coaching competencies provided an intentional approach to mediation which was highly valued by the participating commissioners. It allowed for the participating commissioners to become conscious managers of the communication within the conciliation process (Zariski, 2010). This supports personal reflections that executive and conflict coaching competencies allows for the use of soft skills on the executive or senior employee to create an environment that is conducive to strong dialogue and controlled narrative about their disputes.

Another valuable and inadvertent insight that emerged was that commissioners at the CCMA could personally benefit from coaching in order to increase their mediation competence for these particular disputes: coaching can help commissioners manage their own internal narratives as well, making them better mediators.

At the outset of this study, one of the key objectives was to find out whether coaching competencies could qualify as innovative solutions in accordance with the Imvuselelo Strategy. The positive feedback from the participating commissioners show strong support that coaching competencies qualify as part of an innovative solution. Covid-19 has changed the labour market considerably and possibly permanently. Subsequent to this study, decisions were made in November 2020 to cut the CCMA budget substantially resulting in the culling of all its part-time commissioners. No doubt this will lead to a considerable increase in cases for full-time commissioners and its effect on the labour market will be felt for years to come. This makes finding innovative ways to meet its statutory intent an urgent undertaking. The findings provide some hope that coaching competencies could assist all commissioners adopt new competencies to assist parties resolve their dispute speedily.

One of the key findings was the impact of mediation experience on the successful resolution of disputes of senior and executive employees. Those participating commissioners who successfully resolve disputes of senior and executive employees displayed deep insight made possible by the number of disputes of senior and executive employees they conciliated and arbitrated over the years. They displayed a strong aptitude for and belief in conciliation, manifesting in their desire to go beyond the call of duty. They conducted their processes with passion and deep commitment. One participating commissioner referred to the CCMA as a “place of healing”, clearly recognizing the pain and trauma that conflict imposes on parties to the dispute. They were patient, taking their time conciliating these disputes with unwavering faith in the importance of the parties resolving the dispute rather than the matter being arbitrated by the arbitrator. These commissioners embraced executive and conflict coaching competencies and applied it with maximum benefit to the parties, a clear indication that these coaching competencies definitely have a place within the section 135(3) conciliation process.

6.3 **LIMITATIONS**

The scope of the research study was severely limited by the effect of the 2020/2021 covid-19 lockdown regulations on the operations of the CCMA. Limitations were placed on the number of participating commissioners that could be interviewed as well as data collection, as many participants were unavailable for one-on-one interviews during this period. This impacted on the quality of the data collected as the closure of the Johannesburg and Benoni CCMA offices resulted in reducing the number of disputes of senior and executive employees conciliated. It also affected the number of commissioners who were available to participate in the study. A larger number of participants would have increased the reliability of the findings.

The CCMA was under pressure to finalise many matters that were still pending when the country went into lockdown level 5 on 28 March 2020, and this resulted in many participating commissioners having to arbitrate these disputes, leaving very little room to revert to conciliation. This impacted on the application of coaching competencies within a section 135(3) conciliation process. This study required a longer period for application and proper reflection as a month was not sufficient for this purpose. Furthermore, workshops could not be held on the facilitative model with coaching competencies (Appendix I) and this influenced the level of training that the commissioners received on coaching competencies and the facilitative mediation model. This no doubt had an impact on the results obtained as a workshop would have resulted in a better application of the coaching competencies within the section 135(3) conciliation process. The interviewer has undergone coaching intensive training while pursuing this particular program and it was important throughout the interview stages to be mindful of not “coaching” the participating commissioners into eliciting favourable responses to the questions posed to them. This was especially important as the interviewer found applying coaching competencies to disputes of senior and executive employees presented with extremely favourable outcomes. Although prior experiences of applying coaching competencies within the section 135(3) conciliation process were bracketed,

and kept constant guard against any preconceptions, there is still a small possibility that some bias that may have affected the rigour of the study.

6.4 **RECOMMENDATIONS**

Numerous suggestions were made on the future of coaching competencies within the section 135(3) conciliation process.

6.4.1 Practical implications

An early high-level intervention in disputes of senior and executive employees is necessary to resolve these disputes speedily and effectively at the initial conciliation hearing. A panel of senior and Level A commissioners who present with extensive experience in disputes of senior and executive employees must be constituted to conciliate these disputes. These disputes must be assigned sufficient time during the initial conciliation process (at least a full day) to allow the allocated commissioner ample and unrestricted opportunity to apply the facilitative mediation model with coaching competencies. This will include active listening, asking open-ended and powerful questions, reframing and rephrasing, allowing reflective dialogue and communicating clearly with the parties. There is also support for providing coaching services to the commissioners themselves especially where they experience challenges in mediating disputes.

6.4.2 Future Training

All the participating commissioners expressed keen interest in future training on coaching competencies with a further recommendation to extend this training to all commissioners. The positive impact that coaching competencies had on the process and the commissioners' confidence, provides strong support for including coaching competencies in all future commissioner training programs.

6.4.3 Clarifying definitions

Mediation should be clearly defined in the CCMA Practice and Procedure Manual (CCMA, 2019c) to assist in determining standards for the training of mediators (Faris, 2006), and that the definition should encompass a facilitative process in recognition of the definition by proposed by Folger and Bush (2014) where mediation is used to support important shifts occurring during the interaction between the parties. This is particularly relevant to disputes of senior and executive employees where a facilitative mediation process is found to be the most effective process to obtain an effective resolution of the dispute and will assist all commissioners with clarity of purpose and method.

6.4.4 Future Studies

Further studies can be initiated into a specific conflict coaching model for application within the CCMA mediation process. The population and sample was also limited to Gauteng and it would be useful to extend the study nationally to obtain a more comprehensive understanding of applying coaching competencies within the section 135(3) conciliation process.

6.5 **SUMMARY**

Imvuselelo - the Revival: I am because you are: a powerful statement of collaboration, oneness and common humanity which speaks directly to making meaning with others. Academic Standard 8.1 (GSAEC, 2014a) encourages using active listening and powerful questioning to make meaning with others, and in so doing, encourages collaboration, co-operation and support within the coaching engagement. Executive and conflict coaching competencies can be that partner in the journey to achieving greater worker participation and co-operation, workplace democracy and social justice, thus reviving the CCMA into a world-class dispute resolution body.

If you want to go fast, go alone. If you want to go far, go together.

*(*African proverb)

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LIST OF APPENDIXES

APPENDIX A

<table>
<tr><th colspan="2">Questions guiding interviews with participant commissioners on a one-to-one basis prior to implementation of coaching competencies</th></tr>
<tr><td colspan="2">1. How many disputes with senior/executive employees have you conciliated or arbitrated at the CCMA?
Please provide a general background on the type of disputes encountered [names and details of the parties to be withheld]</td></tr>
<tr><td colspan="2">2. How did you experience conciliating disputes involving senior/executive employees? [This includes conciliations in terms of section 138(5) of the LRA].</td></tr>
<tr><th>Favouably</th><th>Challenging</th></tr>
<tr><td>(i) Elaborate on how you successfully resolve these disputes?</td><td>(i) Describe the challenges that you experience when attempting to conciliate disputes of this nature? How are these challenges different to challenges presented in disputes involving lower paid employees</td></tr>
<tr><td>(ii) how do you experience these disputes in relation to disputes of lower paid employees?</td><td>(ii) Describe the approach that you adopt during the conciliation process of senior and executive employees?</td></tr>
<tr><td>(iii) Do these disputes resolve easily during the s135(3) conciliation process?</td><td>(iii) Describe the approach that you adopt during the conciliation process of senior and executive employees?</td></tr>
<tr><td>(iii) How do you approach disputes of this nature?</td><td>(iv) Do you believe that the conciliation process adds any value to the parties to the dispute? Please explain why and how if you believe that it does.</td></tr>
<tr><td>(v) Do you believe that successful resolution of these disputes benefit from added competencies?</td><td></td></tr>
</table>

APPENDIX B

MEMO TO PARTICIPATING COMMISSIONER: DIARY-KEEPING

Purpose of the research: The focus of this research is to explore whether introducing executive and conflict coaching competencies into the conciliation process can assist in the speedy and effective resolution of disputes involving senior/executive employees.

Your experiences and skill levels are extremely important to this study and can assist in providing me with important information and feedback on how the application of coaching competencies, in particular executive and conflict coaching competencies, impacts on the conciliation process. Your feedback is also critical in determining whether there is a place for these additional competencies in future conciliation processes with due consideration of the challenges identified by yourselves at the commencement of this study. I therefore require your reflections, thoughts, observations and possible suggestions on:

- Your experiences in applying executive and conflict coaching competencies in the conciliation process:
- How the parties to the dispute experienced the additional competencies, if possible; and
- Whether it added any value to the process. If your experiences support these competencies in a conciliation process, please elaborate on how it added value to the process and who gained the maximum benefit from this intervention.

I am mindful that conciliating these disputes is a labour-intensive exercise and I do not expect lengthy entries. It is sufficient to provide a one-page response to each dispute, using the standard format provided, for a period of a month. Please note that your identity is confidential and will be maintained at all times, and the contents of the diary are for purposes of this research only. The parties' details as well as details of the dispute itself are not required and should

not be disclosed in your diaries to maintain the integrity of the conciliation process.

I am deeply indebted to you for your time and input as this study would not have been possible without your participation.

FRAMEWORK GUIDING COMMISSIONER REFLECTIONS FOR DIARY
It would be helpful if you could complete a diary of your experiences in conciliating disputes involving senior/executive employees, using the facilitative mediation model incorporating executive and conflict coaching competencies, especially during one-on-one interactions with the parties, for a period of one month (details of the parties and dispute are NOT required). The questions below are intended to guide in you in completing the diary: 1. How many conciliations of disputes of senior and executive employees did you undertake during the period of study? 2. How did you experience using the facilitative mediation model incorporating executive and conflict coaching competencies during the conciliation process with senior and executive employees? 3. Did the use of this model add any value to the conciliation process? Please elaborate if it did, and if so, please provide details?.
DIARY
Date: Process: Representation:

My observations:

Effect of the facilitative approach with strong dialogue and narrative:

Effect of coaching competencies in the conciliation process:

My reflections:

Parties reflections, if applicable:

Suggestions, if any:

APPENDIX C

INTERVIEW QUESTIONS POST APPLICATION OF EXECUTIVE AND CONFLICT COACHING COMPETENCIES TO DETERMINE THE EFFECT ON THE CONCILIATION PROCESS	
Did you utilise executive and conflict coaching competencies during the conciliation of senior and executive employees?	
YES	NO
What worked and why?	What prevented you from using these competencies? Please elaborate
How did the employee react?	Do you believe there is a place for coaching competencies within the s135(3) conciliation process?
How did the employer react?	Will the conciliation process benefit from these added competencies?
How did you experience applying these competencies during the conciliation process?	
Do you believe that applying executive and conflict coaching competencies within the s135(3) conciliation process supports the objectives of the Imvuselelo Strategy? Please elaborate if you believe that it does.	

APPENDIX D

Participant Consent Form

Participating in research study conducted by **Mohini Soman** in partial fulfilment of the requirements for the degree of Master of Management in Business Executive Coaching

For the following topic:

Coaching Competencies in the CCMA conciliation process for senior and executive employees

- I…… voluntarily agree to participate in the abovementioned research study.

- I understand that my participation in the research study is for the duration of a maximum period of 3 months and that the commencement date will be communicated to me in writing at least one month prior to the commencement.

- I have read the memo explaining the nature and purpose of the study and the requirements of keeping a diary. I have had the opportunity to ask questions about the study.

- I understand that my participation involves the following:

- My participation in a focus group on questions pertaining to the efficacy of the CCMA in resolving disputes of senior/executive employees,

- Participating in a workshop conducted by the researcher on acquiring executive and conflict coaching competencies,

- keeping a diary for a month on my reflections of applying executive and conflict coaching competencies in conciliation process, and

- participating in an interviewer with the researcher on my experience of applying these competencies within the s135(3) conciliation process.

- I understand that I have the option to withdraw from this study at any time without any consequences of any kind.

- I understand that I can withdraw permission to use data from my interview within two weeks after the interview, in which case the material will be deleted.

- I understand that I will not benefit financially from participating in this research.

- I agree to my interview being audio-recorded.

- I understand that all information I provide for this study will be treated confidentially.

- I understand that in any report on the results of this research my identity will remain anonymous. This will be done by changing my name and disguising any details of my interview which may reveal my identity or the identity of people I speak about. However, I also understand that my identity will not be anonymous during my participating in the focus group discussions.

- I understand that disguised extracts from my interview may be quoted in the research report.

- I understand that I am free to contact the researcher to seek further clarification and information.

- I understand that I am required to sign a Non-disclosure form in accordance with the CCMA Commissioner Code of Good Conduct.

Signature of participant: Date:

_____

I believe the participant is giving informed consent to participate in this study

Signature of researcher: Date:

APPENDIX E

Non Disclosure Form

I, , hereby commit to not disclose the personal data of the employer and employee parties appearing before in the conciliation process under discussion. I further commit to not disclose details of the dispute and/or terms of the settlement agreement reached by the parties, if applicable. I endeavour at all times to comply with Item 17 of the CCMA's Code of Conduct and to maintain the integrity of the conciliation process and parties to the dispute.

The diary entries are purely my reflections, thoughts and observations regarding the application and effectiveness of executive and conflict coaching competencies within the conciliation process.

Name:

Date:

APPENDIX F



University of the Witwatersrand,

Faculty of Commerce, Law and Management

Master of Management Business Executive Coaching

Wits Business School

Parktown

The Director: CCMA

Mr Cameron Morajane

28 Harrison Street

JOHANNESBURG

2001

Tel: (011) 377-6650

Email: ho@ccma.org.za

25 May 2020

Dear Sir

Re: Permission to conduct research at the CCMA.

My name is Mohini Soman. I am a part-time senior commissioner, currently based at the Johannesburg CCMA offices.

I am currently studying for a Master's degree (Management in Business Executive Coaching) at Wits Business School (University of the Witwatersrand). I am seeking permission to conduct

research at the CCMA for the completion of my research report in partial fulfilment of the requirements for the above degree.

My research topic is: ***Coaching competencies in the conciliation process for senior and executive employees.*** The focus is on introducing executive and conflict coaching competencies within the s135(3) conciliation process with the expectation that these additional competencies will assist in resolving disputes of senior and executive employees speedily.

My interest in introducing coaching competencies within the conciliation process was initiated by arbitrating disputes involving senior and executive employees over the past 20 years. My experience of these disputes is that they are protracted and expensive disputes, both for the parties and the CCMA, especially as they rarely resolve at the conciliation process and often proceed to the Labour Court on review. I was further encouraged to pursue this topic after having regard to the Imvuselelo Strategy objectives of pursuing innovative means of resolving disputes within the CCMA. Business Executive Coaching, although a fairly new discipline, has proved its effectiveness in the business world with more organizations resorting to this discipline for leadership development, executive behavioral and attitudinal changes. The competencies employed by business executive coaches' are similar to those employed by conciliating commissioners and it is my belief that it will be extremely effective in helping senior and executive employees during the conciliation process in changing their perspective of the conflict/dispute and thereby leading to the disputes resolving at an earlier stage. It is anticipated that this will have a two-fold impact, viz. that the parties themselves save money, limit reputational damage and most importantly effectively resolve the dispute, while the CCMA will in essence step up its dispute management and prevention role by helping high impact individuals and influential organizations resolve their dispute effectively and speedily. This will have the added benefit of freeing valuable resources to deal with the inordinately high case referrals to the CCMA, especially during the next few months when the CCMA is required to deal with labour disputes arising from the recent Covid-19 lockdown.

The research will entail collecting data from participating commissioners while conducting conciliations of senior and executive employees. However, I am mindful that all conciliation processes are confidential. Participating commissioners are therefore not expected to provide details of the parties or the issues in dispute for purposes of this research. It is the commissioners' reflections of using coaching competencies during the conciliation process that is required. The participating commissioners are expected to be either senior commissioners or Level A commissioners with at least five years of labour dispute resolution experience. The number of participating commissioners required is 20 and for purposes of convenience, will be drawn from the Johannesburg, Pretoria and Benoni offices only. I am hoping that the CCMA Head Office will assist in identifying those commissioners with the relevant qualifications to participate in this research. The participating commissioners will be expected to attend a focus group where they will share their experiences of conciliating disputes of senior and executive employees. They will further be expected to keep a diary for a period of a month, recording their reflections in applying executive and conflict coaching competencies during conciliations of senior and executive employees. The commissioners will be interviewed by myself thereafter. The focus group discussions and interviews will be recorded and transcribed as the raw data will be used in the report, where applicable. The identities of the commissioners will be confidential and their anonymity guaranteed in the final report.

To ensure the integrity of the study, both the participating commissioners and myself will sign non-disclosure forms further pledging our support to the Commissioner Code of Good Practice. The commissioners are also expected to sign consent forms with the understanding that they are participating freely and that they have the option to withdraw at any stage with no repercussions or consequences.

Participants will be asked to give their written or verbal consent before the research begins. Furthermore, their responses will be treated confidentially, and identities will be anonymous unless otherwise expressly indicated. Individual privacy will be maintained in all published and written data resulting from the study.

The research data will be under the sole control of myself at all times.

I therefore request permission in writing to conduct my research at the CCMA Johannesburg, Pretoria and Benoni offices. The permission letter should be on the CCMA letterhead, signed and dated, and specifically referring to myself by name and the title of my study.

Please let me know if you require any further information. I look forward to your response as soon as is convenient.

Yours sincerely,



Mohini Devi Soman

0824528614

8419440@student.wits.az.za

Dr Jenika Gobind

Jenika.gobind@wits.ac.za

(011) 717-3761

ANNEXURE G

UNIVERSITY OF THE WITWATERSRAND JOHANNESBURG

SCHOOL OF GRADUATE SCHOOL OF BUSINESS ADMINISTRATION ETHICS COMMITTEE
CONSTITUTED UNDER THE UNIVERSITY HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)

CLEARANCE CERTIFICATE **PROTOCOL NUMBER: WBS/BA8419440/317**

PROJECT TITLE Coaching competencies in the CCMA conciliation process for senior and executive employees

INVESTIGATOR	Ms Mohini Soman
SCHOOL/DEPARTMENT OF INVESTIGATOR	MM (Business & Executive Coaching)
DATE CONSIDERED	20 July 2020
DECISION OF THE COMMITTEE	Approved unconditionally
RISK LEVEL	LOW RISK
EXPIRY DATE	30 JUNE 2021

ISSUE DATE OF CERTIFICATE 4 August 2020 **CHAIRPERSON** _____
(Dr MDJ Matshabaphala)

cc: Supervisor: Dr Gobind

DECLARATION OF INVESTIGATOR

To be completed in duplicate and **ONE COPY** returned to the Chairperson of the School/Department ethics committee.

I fully understand the conditions under which I am are authorized to carry out the abovementioned research and I guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee.

_____ 04 /08 /2020
Signature **Date**

PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES

APPENDIX H

ACCEPTANCE

I, MOHINI DEVI SOMAN, accept terms and conditions set by the CCMA on conducting research at the CCMA and involving CCMA appointed commissioners.

This includes:

1. Providing the CCMA with the ethics clearance certificates from Wits Business School Ethics Clearance Committee by 31 July 2020;
2. Sharing the findings and the research report, before release, with the director, Mr Cameron Morajane, for approval prior to the publication of the results;
3. Sharing the final research proposal with the BRICS unit. It is anticipated that the findings of the study will be completed by November 2020;
4. Provide the BRICS unit with a weekly data collection report once the study commences and in the event that the data responses might pose a risk to the CCMA's integrity or reputation, the data collection process will be immediately halted. It is anticipated that the study will commence in August 2020 and run for a period of two months completing at the end of September 2020;
5. Provide the BRICS unit with transcripts of the interviews with the commissioners, as well as the audio files. However, in accordance with the terms of the university's ethical clearance certificate, the identities of the commissioners must remain confidential (as per participant consent form).
6. Providing the BRICS unit with signed non-disclosure forms by participating commissioners and myself.

Dated and signed at Johannesburg on the 15th day of July 2020.



_____ _____

MOHINI DEVI SOMAN

Part-time senior commissioner: Johannesburg CCMA

Email address: soman@mweb.co.za

Contact details: 0824528614 / (011) 6151394

APPENDIX I

MODEL: FACILITATIVE MEDIATION WITH EXECUTIVE AND CONFLICT COACHING COMPETENCIES

FACILITATIVE MEDIATION MODEL WITH COACHING COMPETENCIES

KEY FEATURES

- ***Process orientated***: Assist the parties make their own deliberations and outcomes (parties are empowered to find their own solutions)
- ***Client centred***: Help parties understand the ***underlying issues*** by identifying the ***text*** (which relates to stories told by the party) ***context*** (which relates to the narrative material) and ***subtext*** (which relates to the implications of the story for the narrator)
- ***Communication focused****:* Help parties communicate with each other on concerns and issues they wish to resolve
- ***Interest based****:* Help parties identify their needs and concerns, and help them find ways to meet these needs.

AIM:

To use reflective dialogue and narrative to help parties reinterpret/deconstruct the meaning of the conflict to reduce the impact of the conflict on the relationship between the parties

COACHING COMPETENCIES

Apply narrative coaching principles to steps 1-5 above by:

- *Asking open-ended questions:* Ask "why""what" "how" questions to facilitate further dialogue on the conflict and to move the process forward
- *Active listening*: Remember what the party said and interpret it in relation to the party's goals (it is just as important to listen to what is not being said)
- *Reframing and paraphrasing*: Succinctly summarise and confirm understanding of party's mental model and convey it in a clear manner in relation to other models or frames of reference
- *Encouraging reflective dialogue*: Ask party how he/she feels about something or ask that person to reflect on what that experience reminds him/her of.
- *Role-playing* helps party gain recognition of the other party's position and empowers the party gaining a different perspective of his/her dispute
- *Focusing on behavior change*, especially if positive. Acknowledge negative behavior without attaching meaning to it.
- *Clear communication:* Check in constantly with party by asking clarifying questions

APPENDIX J

Table 2.6: Summarized Consistency: Research objectives and Propositions

RQ	State Objective	Prop / hyp	State Proposition
1	To explore whether using coaching competencies within the Commission for Conciliation Mediation and Arbitration (CCMA) section 135(3) conciliation process, can resolve labour disputes of senior and executive employees speedily and effectively.		
1.1	investigating the efficacy of applying executive and conflict coaching competencies outside the traditional coaching engagement	1.1	*Executive and conflict coaching competencies of active listening, purposive questioning, and encouraging reflective dialogue and narrative results in successful coaching outcomes and can be applied successfully within a similar communication-based facilitative process where effective communication is required for an effective outcome.*
1.2	exploring whether additional competencies within the section 135(3) process can resolve disputes of senior and executive employees speedily and effectively	1.2	*Disputes of senior and executive employees require a facilitative approach to mediation to resolve, where the focus is on strong reflective dialogue and narration as this encourages parties to address the underlying cause of the conflict, ultimately leading to behavioural and attitudinal changes.*
1.3	examining the implications of applying executive and conflict coaching competencies within the section 135(3) conciliation process in disputes of senior and executive employees.	1.3	*Applying executive and conflict coaching competencies within the section 135(3) conciliation process of disputes of senior and executive employees, facilitates dialogue and narrative around the conflict, helping the employees construct a coherent narrative of the dispute. This ultimately leads to behavioural and attitudinal changes, resulting in a sustainable and meaningful resolution of the dispute.*

APPENDIX K

Table 3.7: Consistency table: research objectives, propositions, data collection and data analysis

RQ	Research Objectives	Prop	Proposition	Data Collection Detail	Data analysis method
1	To explore whether using coaching competencies within the Commission for Conciliation Mediation and Arbitration (CCMA) section 135(3) conciliation process, can resolve labour disputes of senior and executive employees speedily and effectively.		*Executive and conflict coaching competencies of active listening, purposive questioning, and encouraging reflective dialogue and narrative results in successful coaching outcomes and can be applied successfully within a similar communication-based facilitative process where effective communication is required for an effective outcome.*		
1.1	investigating the efficacy of applying executive and conflict coaching competencies outside the traditional coaching engagement	1.1	*Disputes of senior and executive employees require a facilitative approach to mediation to resolve, where the focus is on strong reflective dialogue and narration as this encourages parties to address the underlying cause of the conflict, ultimately leading to behavioural and attitudinal changes.*	Detailed semi-structured one-on-one interviews with participants (Annexure A)	Thematic analysis
1.2	exploring whether additional competencies within the section 135(3) process can resolve disputes of senior and executive employees speedily and effectively	1.2	*Applying executive and conflict coaching competencies within the section 135(3) conciliation process of disputes of senior and executive employees, facilitates dialogue and narrative around the conflict, helping the employees construct a coherent narrative of the dispute. This ultimately leads to behavioural and attitudinal changes, resulting in a sustainable and meaningful resolution of the dispute.*	Diaries of participants (appendix B)	Thematic analysis
1.3	examining the implications of applying executive and conflict coaching competencies within the section 135(3) conciliation process in disputes of senior and executive employees.	1.3	*Executive and conflict coaching competencies of active listening, purposive questioning, and encouraging reflective dialogue and narrative results in successful coaching outcomes and can be applied successfully within a similar communication-based facilitative process where effective communication is required for an effective outcome.*	Detailed semi-structured one-on-one interviews with participants (appendix C)	Thematic analysis

APPENDIX L

Table 5.1: Comparison of literature review and findings

RQ	Research Objectives	Prop	Propositions from Literature	Findings from own study
1.1	Investigating the efficacy of applying executive and conflict coaching competencies outside the traditional coaching engagement	1.1	Executive and conflict coaching competencies of active listening, purposive questioning, and encouraging reflective dialogue and narrative result in successful coaching outcomes, and can be successfully applied within a similar communication-based process requiring effective communication for an effective outcome.	Commissioners who successfully resolve disputes of senior and executive employees display strong coaching competencies of active listening, purposive questioning and encouraging reflective dialogue and narrative, providing support for the proposition that executive and conflict coaching competencies can be applied with equal effect outside the traditional coaching engagement.
1.2	Exploring whether additional competencies within the section 135(3) process can resolve disputes of senior and executive employees speedily and effectively	1.2	Disputes of senior and executive employees require a facilitative approach to mediation to resolve, where the focus is on strong reflective dialogue and narration as this encourages parties to address the underlying cause of the conflict, ultimately leading to behavioural and attitudinal changes.	Disputes of senior and executive employee require additional competencies to the problem-solving approach to resolve because they present with different challenges and dynamics, viz. encouraging strong narrative and dialogue to get the parties to understand the root cause of their dispute and to resolve the dispute effectively.
1.3	Examining the implications of applying executive and conflict coaching competencies within the section 135(3) conciliation process in disputes of senior and executive employees	1.3	Applying executive and conflict coaching competencies within the section 135(3) conciliation process of disputes of senior and executive employees, facilitates dialogue and narrative around the conflict,	Executive and conflict coaching competencies can resolve disputes of senior and executive employees effectively by restoring the relationship between the parties. However, these

RQ	Research Objectives	Prop	Propositions from Literature	Findings from own study
			helping the employees construct a coherent narrative of the dispute. This ultimately leads to behavioural and attitudinal changes, resulting in a sustainable and meaningful resolution of the dispute.	disputes require extra time and may not necessarily resolve speedily.

APPENDIX M

Codes Categories and Themes identified from data Interview one

Themes	Category	Codes	Sub-Codes
A Impact of commissioner experience and skillset on disputes of senior and executive employees	1. Mediation Experience (ME) 2. Executive employee experience (EEE)	Number of years (NOY) Number of cases (NOC) Major corporation (MC) SOE's	
B Challenges to resolving disputes of senior and executive employees during the conciliation process	1. Dismissal reasons (DR) 2. Conciliation not initiated (CNI) 3. Employer/Employee relationship (EER) 4. Employee Attitude and Knowledge (EAK)	Conditions of employment (COE) Specific to organization (SPO) Employee voice (EV) Broken relationship (BR) Understanding the dispute (UTD) Power imbalance (PI) Sophisticated Parties Parties Mindset (PM) Arrogance and Ego (AE) Lack of Engagement (LOE)	Reading & Judging commissioner (RJC) Knowledge of company (EKC) Denial Take conciliation for granted (TGFC) Stubborn & Positional (SPo)

	5. High profile disputes (HPD) 6. Lengthy disputes (LD 7. Outcome (O) 8. Previous History (PH) 9. Representative attitude and influence (RAI) 10. Subtext (ST) 11. Terms of settlement	Matter of Principle (MOP) Getting mandate (GM) Difficult to resolve (DTS) Employer strategy (ES) Operational Challenges (OS) Legal representative timing (LET) Nature of dispute (ND) – legalistic and technical (LT) Intensive and Engaging (IE) Quantum (Q) High Stakes (HS) Reputation and Status (RS) Ineffective resolution (IR) Prior concessions (PC) Prior concessions (PC) Labour Court intervention (LCI) Internal Delay (ID) Bullying (B) Underlying issue (UI)	Positional & Emotional Exhausted (PEE) Employee Expectations (EE) Previous conciliations (PC)

	(TOS)	Core Issue (CI) Side Issue (SI) Quantum (Q) Other Benefits (OB) Retraint of trade (ROS) Getting mandate (GM)	
C Impact of the arbitration process on the resolution of senior and executive employees	1. Employee Attitude and Knowledge (EAK) 2. Legal representation (LP) 3. Process Dynamics (PD) 4. Commissioner Experience and Attitude (CEA) 5. Resolve at arbitration (RAA)	Sophisticated Parties Parties Mindset (PM) Resolve easily (RE) Settlement prior to arbitration (SPTA) Legal representative positive (LRP) Change of circumstances (COC) Change of bargaining strategy (CBS) Probing Questions (PQ) Revert to Conciliation (RTC) Face Reality (FC) Pragmatic and Realistic (PR) Focus on Issue (FOI)	Meaningful participation (MP) – Core issues (CI)
D Additional skills applied in resolving disputes of senior and executive employees	1. Many Competencies and Skills (MCS)	Creative © Tactful and Diplomatic (TD) Positive Energy (PS)	Bold and Innovative (BI) Belief in Conciliation (BC)

	2. Subtexts .	Honesty (H) Focused (F) Authentic (A) Calm and Relaxed (CR) Professional (P) Patient, persuasive and Persistent (PPP) Firm and assertive (FAS) Active Listening (AL) Emotional Intelligence (EI) Good Salesperson (GS) Teacher (T) Read Parties Differently (RPD) Core Issue (CI) Underlying Issue (UI)	Self regulate (SR) Instinct (I) Emotions and Body Language (EB) Adapt Style (AS) Different Approaches (DA) Background of Dispute (BoD
E Additional competencies applied in resolving disputes of senior and executive employees	1. Appreciation for Lawyers (AFL) 2. Commissioner Attitude and Aptitude (CAA) 3. Commissioner Experience and Authority	Inherent Ability (IA) Intention to settle (IS)	

	(CEA)	Belief in Conciliation (BC) Commissioner Knowledge (CK Facilitative Approach (FA)	
	4. Gain Trust (GT)	Executive Employee Experience (EEA) Quality Settlement agreements (QSA) High Settlement (HS) Respect parties (RP) Communication skills (Sinkovics & Alfoldi)	
	5. Reality test (RT)	Flexible Adaptable and Accommodating (FAA) Remaining Neutral (RN) Respecting representative relationship (RRR) Get permission (GP) Challenge assumptions and positions (CAP) Manage Expectations (MA) Recognize openings (RO) Probing Questions (PQ) Face Reality (FS) Engage with parties (E) Allow parties to vent (APTV) Comfort Zone (CZ) Chance to reflect (CTR) Redirect focus (Saunders et al.)	

		Propose solutions (PS) Focus on issue (FOI) Encourage Parties (EP)	
E Failure of current conciliation competencies to effectively resolve disputes of senior and executive employees	1. Capacitate parties (CP) 2. Education and Training (ED) 3. Imvuselelo Strategy (IS)	Place of Healing (Budd, Colvin, & Pohler) Retraining and reskilling commissioners (RRC) Save Jobs (SJ)	

APPENDIX N

Codes Categories and Themes identified from data Interview Two

Themes	Category	Codes	Sub-Codes	
A-Impact of coaching competencies within a facilitative mediation process	1. Building Trust (BT) 2. Probing questions & Open ended questions (PQ) 3. Rephrasing reframing and role-playing (RRR) 4. Educating Employer and Employee (EEE) 5. Beyond Reality Testing (BRT)	Empathy and Understanding (EU) Recognition and Empowerment (RE) Restoring employment relationship (RE) Changed behaviour (CB) Parties attitudes (PA) Effective resolution (ER) Encourage and recognize potential (ERP) Resolve faster (Saunders et al.) Find Innovative solutions (Elliot) Deeper Engagement (DE)	Extend Dispute Band (EDB) Focus on Person (FOP) Constant Engagement (CE) Focus on Emotion	'Reputation an Status (RS) Think Right ab Disputes (TRA Coherent Narra

	6. Self regulation (SR) 7. Accomodating (A) 8. Intentional Strategy (IS) 9. Commissioner Mindet (CM)	Remain neutral (RN) Diplomacy (D) Strong self awareness (Miller, Chan, & Farmer) Natural Coaching Competencies (NCC)	Clear Communication (CC)	(CN) Reflective Dial (RD) Identify Real Is (IRI) Change parties Perspective (C Informed positi (IP) Active Listenin Show Genuine Interest (SGI) Space to reflec (STR) Encourage Dia (ED) Intention to Understand (In

		Servitude Attitude (SA) Desire to Improve (DTI)		
B Challenges in applying coaching competencies within the s135(3) conciliation process	1. Revert to Conciliation 2. Arbitration necessary (AN) 3. Litigating Mindframe (LM) 4. Stubborn and Positional 5. Nature of Dispute (ND) 6. Covid and Lockdown Challenges (CLD) 7. Time 8. Commissioner Mindset (CM)	Perception of Bias (POB) Time to Reflect (Kim et al.) No opportunity (NO) Incoherent narrative (IN) Clear Legal Dispute (CLD) Without prejudice disclosures (WPD) Altered Labour Market Online hearings Tone of voice Operational Challenges to conciliation (OCC) Shift Focus		
C Effect of coaching competencies on commissioners within the s135(3) conciliation process	1.Clearer perspective © 2.Empowering and energised (EE) 3.Relief ® 4.Gratitude (G)	Time to Reflect (Kim et al.) Increased confidence (IC) Improved mediation competences (IMC) Intentional Structure(IS) Helpful and Refreshing (HR)	Extra Tools (ET) Mindful and focused	

	5.Enjoyment (E) 6.Powerful (P) 7.Interesting (I) 8.Previous Coaching Experience (PCE) 9.Similar to conciliation competencies (STCC)	Value in Coaching (VIC)		
D Effect of coaching competencies on parties in the conciliation process	1. Empowering Parties (EP) 2. Uncomfortable (U) 3. Unaware (UA)	Clear Perspective © Parties voices heard (PVH)		
E Effect and impact of role of coaching competencies	1. Save Time (ST) 2. Expedite Settlements (ES) 3. Refresher Commissioner Training (RCT) 4. Coaching commissioners directly (CCD) 5. Extension of conciliation (EOC) 6. Early High Level intervention (EHLI) 7. Current conciliation competencies ineffective (CCCI)	New Commissioners (NC) Experienced commissioners (EC) Increase value of conciliations (IVC) Intentional Strategy (IS) Time (T)	Aptitude for conciliating (AFC)	