

## DECLARATION

I declare that "THE PROCESS OF RETRENCHMENT IN A PUBLIC INSTITUTION WITH REFERENCE TO THE INDEPENDENT ELECTORAL COMMISSION" is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

---

K.O. TSHIFURA  
STUDENT NUMBER 682-879-5

## ACKNOWLEDGEMENTS

I thank the Lord God Almighty, the One in Whom I live and move and have my being.

I appreciate the kind and valuable guidance, encouragement and patience of Prof. D J Brynard and Dr G M Ferreira, who are respectively supervisor and joint supervisor of this dissertation.

I am sincerely indebted to my employer, the Independent Electoral Commission for financial assistance and for granting me permission to use materials related to the dissertation, without which my efforts would have been in vain. My appreciation also goes out to colleagues in the Independent Electoral Commission who supported and encouraged me.

The many hours I spent working on this dissertation deprived my family of the time they needed to spend with me. I would therefore like to thank my wife who tirelessly modified parts of the dissertation and kept on encouraging me when I felt like giving up. I thank my children for bearing with me as well as giving me the space to go through this study. My mother struggled to ensure that I obtain an education. May God bless her.

## TABLE OF CONTENTS

Declaration.....	i
Acknowledgements.....	ii
Table of contents.....	iii
Abstract.....	ix

### CHAPTER 1 - INTRODUCTION AND STATEMENT OF PURPOSE

1.1 Introduction.....	1
1.2 Aim of the dissertation.....	2
1.3 Background.....	6
1.4 Problem statement.....	8
1.5 Scope of the research.....	9
1.5.1 Time dimension.....	9
1.5.2 Geographic dimension.....	10
1.5.3 Hierarchy dimension.....	10
1.6 Research methodology.....	10
1.7 Data collection techniques.....	11
1.8 Referencing technique used in the dissertation.....	11
1.9 Clarification of terminology.....	11
1.9.1 The Independent Electoral Commission.....	11
1.9.2 The Labour Relations Act, 66 of 1975.....	12
1.9.3 The Basic Conditions of Employment Act, 75 of 1997.....	13
1.9.4 Retrenchment.....	14
1.9.5 Substantive fairness.....	14
1.9.6 Procedural fairness.....	15
1.10 Exposition of chapters.....	16
1.11 Conclusion .....	18

## CHAPTER 2 - THE PLACE OF RETRENCHMENT WITHIN THE LAW

2.1	Introduction.....	20
2.2	Meaning of retrenchment .....	21
2.3	Permitted grounds for dismissal.....	23
2.3.1	Dismissal for misconduct.....	23
2.3.2	Dismissal for incapacity.....	24
2.3.3	Dismissal based on the operational requirements of the employer.....	24
2.3.3.1	Economic needs.....	25
2.3.3.2	Technological needs.....	25
2.3.3.3	Structural needs.....	26
2.3.3.4	Similar needs.....	26
2.4	Position of the law regarding dismissal or retrenchment resulting from operational requirements.....	27
2.4.1	Requirement to establish substantive fairness of dismissal for operational reasons.....	27
2.4.2	Requirement to establish procedural fairness of dismissal for operational reasons.....	29
2.4.2.1	Prior consultation.....	33
2.4.2.1.1	Meaning of consultation.....	34
2.4.2.1.2	Consultation initiator.....	34
2.4.2.1.3	Parties to be consulted.....	35
2.4.2.1.4	When consultation must take place.....	36
2.4.2.2	Attempt to reach consensus over certain matters.....	36
2.4.2.2.1	Measures to avoid dismissals.....	37
2.4.2.2.2	Measures to minimise the number of dismissals.....	38
2.4.2.2.3	Measures to change the timing of the dismissals.....	39
2.4.2.2.4	Measures to mitigate the adverse effects of the dismissals.....	39

2.4.2.2.5	The method of selecting the employees to be dismissed.....	39
2.4.2.2.6	The severance pay for dismissed employees.....	44
2.4.2.3	Written disclosure of relevant information.....	45
2.4.2.4	Allow an opportunity to make representations.....	49
2.4.2.5	Consider representations.....	49
2.4.2.6	Selection of employees for dismissal.....	50
2.4.2.7	Severance pay.....	51
2.5	Position of the courts regarding the fairness of a dismissal or retrenchment for operational reasons.....	54
2.5.1	Substantive fairness from the perspective of the courts.....	55
2.5.2	Procedural fairness from the perspective of the courts.....	58
2.6	Conclusion.....	58

## CHAPTER 3 - THE RATIONALISATION OF THE INDEPENDENT ELECTORAL COMMISSION

3.1	Introduction.....	60
3.2	Background to the establishment of the Independent Electoral Commission.....	61
3.3	The new Independent Electoral Commission and its role in the public sector.....	62
3.3.1	The Constitutional foundation for the Independent Electoral Commission's existence.....	63
3.3.2	The powers, functions and duties of the Independent Electoral Commission.....	63
3.3.3	Funding of the Independent Electoral Commission.....	65
3.3.4	Appointment of Commissioners.....	65
3.3.5	Appointment of the Chief Electoral Officer and other administrative staff.....	66
3.3.6	The contract of employment between the	

Independent Electoral Commission and its employees.....	67
3.3.7 Termination of employment by the employer.....	67
3.4 Rationalisation of the Independent Electoral Commission.....	68
3.4.1 The first rationalisation of the Independent Electoral Commission: 2000.....	68
3.4.2 The second rationalisation of the Independent Electoral Commission and the retrenchment of staff in 2001.....	70
3.4.2.1 Substantive requirement for a fair retrenchment.....	71
3.4.2.1.1 The IEC's statement of intent regarding its rationalisation.....	71
3.4.2.1.2 The reasons for rationalisation of the Independent Electoral Commission .....	72
3.4.2.1.3 Implications of rationalisation.....	73
3.4.2.1.4 The road to rationalisation seen from the perspective of the IEC.....	73
3.4.2.1.5 Key principles in reviewing the proposed structure of the Independent Electoral Commission.....	74
3.4.2.2 Procedural requirements for a fair retrenchment.....	76
3.4.2.2.1 The employer's duty to consult.....	77
3.5 Staff position regarding the proposed structure.....	84
3.6 The IEC's response to the staff position document.....	84
3.7 Attempt to reach consensus on appropriate measures.....	85
3.7.1 Measures to avoid or minimise the number of dismissals.....	85
3.7.2 Measures to change the timing of the dismissals.....	86
3.7.3 Measures to mitigate the adverse effects of the dismissals.....	86

3.7.3.1	Career assistance.....	86
3.7.3.2	Employment placement.....	86
3.7.3.3	Enterprise training.....	87
3.7.3.4	References and certificates of employment.....	87
3.7.3.5	Assistance with tax matters.....	87
3.7.3.6	Employee enterprise contracting.....	88
3.7.3.7	Other assistance.....	88
3.8	Written disclosure of relevant information.....	88
3.9	Allowing opportunity to make representations.....	89
3.10	Consideration of representations.....	89
3.11	Options for redundancy selection criteria.....	90
3.11.1	Confirmation of posts that have not changed.....	91
3.11.2	Head hunting within the IEC for specific positions.....	92
3.11.3	Voluntary retrenchments in specific staff categories with the right of the IEC to decline.....	93
3.11.4	Contract staff.....	95
3.11.5	Request for new applications for re-defined posts.....	96
3.11.6	In post and contract and / or consultant staff.....	98
3.11.7	Last In First Out.....	99
3.12	Monitoring mechanisms to assess the fairness and objectiveness of the selections made.....	101
3.13	Severance pay.....	102
3.14	Conclusion.....	103

CHAPTER 4 - EVALUATION OF THE RETRENCHMENT PROCESS  
CARRIED OUT BY THE INDEPENDENT ELECTORAL  
COMMISSION

4.1	Introduction.....	105
4.2	The Independent Electoral Commission's reason for dismissing employees.....	105
4.3	Evaluation of the procedures employed by the Independent	

Electoral Commission in the dismissal of its employees.....	106
4.3.1 The consultative process.....	107
4.3.2 Attempts by the consulting parties to reach consensus on appropriate measures to avoid and or minimise the number of dismissals.....	108
4.3.3 Changing the timing of the dismissals.....	109
4.3.4 Mitigating the adverse effects of the dismissals.....	110
4.4 Written disclosure of relevant information.....	112
4.5 Allowing an opportunity to make representations.....	114
4.6 Attempts by the parties to reach consensus on the method for selecting the employees to be dismissed.....	114
4.7 Attempts by the parties to reach consensus on the severance pay for dismissed employees.....	115
4.8 Referrals to the Commission for Conciliation, Mediation and Arbitration and or Labour Court.....	116
4.9 Conclusion.....	116

## CHAPTER 5 – SUMMARY, CONCLUSIONS AND PROPOSALS

5.1 Introduction.....	118
5.2 Summary.....	118
5.3 Conclusions and proposals.....	122
5.3.1 Staffing issues.....	123
5.3.2 The timetable for the retrenchments.....	123
5.3.3 The problem of representation.....	124
5.4 Conclusion.....	125

BIBLIOGRAPHY.....	126
-------------------	-----

## ABSTRACT

The dissertation examines the process of retrenchment in a public institution with reference to the execution of such a process by the Independent Electoral Commission (IEC). The aim is to establish whether or not the retrenchment was substantively and procedurally fair as required by legislation.

Notwithstanding the fact that the staff may have been disadvantaged by the short retrenchment notice (the staff did not have representation prior to the announcement, and the swiftness of the process did not, under the circumstances, provide the staff with enough time to comprehensively apply their mind to the underlying issues), the dissertation finds that the retrenchments had been substantively fair given the fact that the IEC could not retain all staff because of budgetary constraints. The dissertation also finds that the process had been procedurally fair in accordance with section 189 of the Labour Relations Act, 66 of 1995.

### KEY TERMS:

Retrenchment; Process; Independent Electoral Commission; Public Institution; Commission for Conciliation, Mediation and Arbitration; Substantive fairness; Procedural fairness; Rationalisation; Dismissal; Labour Relations; Prior consultation.