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***A Call to Revise Section 8(2)(e) of the Occupational Health and Safety Act to Include
Crisis Risk Communication***

ABSTRACT

This article gauges s 8 of South Africa's Occupational Health and Safety Act and highlights its lack of clarity and prescriptive guidelines on crisis risk communication. Paragraph 8(2)(e) specifically obliges employers to provide information and training to ensure a safe and healthy working environment. However, the Act neither defines the words 'communication' and 'information' nor does it clearly provide for the dissemination of information during a crisis, like industrial action, which affects many employees simultaneously. The #FeesMustFall and insourcing protests that occurred at universities across the country during 2015-2016 are a good example of this. The protests compelled universities to send out text messages as a means of communicating with their staff and students. Though crisis risk communication theory expects messages to provide clear and straightforward directives, some messages were vague. This begs the question whether an institution must simply provide information to comply with the law, or whether clear directives should be the only legal standard. Subsection 8(2)(e) of the Act provides little insight. With the above in mind, this article suggests best practice criteria for crisis risk communication and a proposed reformulation of s 8(2)(e).

1 INTRODUCTION

Although the Occupational Health and Safety Act 85 of 1993 (OHSA) explicitly deals with the health and safety of employees at their place of work and of those who enter the workplace from outside, the Act deals mostly with regulating the risks involved in using machinery or dangerous substances.¹ In view of the fact that the successful implementation of the Act depends on the communication of information, it is ironic that very little attention is

¹ See the OHSA, s 8(2) and s 10 respectively.

paid to this aspect. In fact, the words ‘communication’ and ‘communicate’ are completely absent from the Act.² The most important reference to the dissemination of information is listed under the general duties of employers to their employees in s 8 and in s 13(a) ‘Duty to inform’. Section 8 mandates employers to provide a safe working space and subsection (2)(e) of s 8 specifically instructs employers to provide information and instructions (in other words, communication) to ensure a safe working environment. One may deduce here that the legislator assumed that the meaning of the subsection is sufficiently clear and that it should be equated with the legislator’s intention in the Act. However, as stated in *Cool Ideas 1186 CC v Hubbard & another*, the words must also be ‘interpreted purposively, having due regards to context in a manner consistent with and that preserves constitutional validity’.³ It is submitted that this provision is vague and does not provide for any legal certainty.

Granted, the Act may make certain types of information obvious to some employers and employees, like the provision of operation manuals, safety guides, warning labels and evacuation instructions.⁴ Yet, it does not explicitly inform employers about the way in which they should disseminate the information, or even what types of information should be distributed and when. Specific regulations for this purpose are currently lacking. Section 43(1)(b)(xiv) of the OHS Act provides that the Minister of Labour may develop further regulations on ‘the provision of information by an employer or user to employees’, yet no such regulations are available. It could be, as stated in s 43(1)(b), that in the opinion of the Minister such regulations are not necessary or expedient in the interests of the health and safety of persons at work. However, the purpose of the Act in providing a safe and risk-free work environment to employees is first and foremost accomplished by effective communication between employers and employees. The limitations inherent in s 8(2)(e) lead to many questions. Should the information provided be expressed in plain language, for

² ‘Communication’ is defined in the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 simply as including ‘both a direct communication and indirect communication’. Direct communication is defined as: ‘(a) oral communication, other than an indirect communication, between two or more persons which occurs in the immediate presence of all the persons participating in that communication; or (b) utterance by a person who is participating in an indirect communication, if the utterance is audible to another person who, at the time that the indirect communication occurs, is in the immediate presence of the person participating in the indirect communication’. Indirect communication means ‘the transfer of information, including a message or any part of a message, whether — (a) in the form of — (i) speech, music or other sounds; (ii) data; (iii) text; (iv) visual images, whether animated or not; (v) signals; or (vi) radio frequency spectrum; or (b) in any other form or in any combination of forms’.

³ *Cool Ideas 1186 CC v Hubbard & another* 2014 (4) SA 474 (CC) para 34. Section 39(2) of the Constitution further provides: ‘When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.’

⁴ Employers must also provide signage indicating safety requirements or prohibiting certain behaviours and a health and safety representative — see C Sieberhagen, S Rothmann & J Pienaar ‘Employee health and wellness in South Africa: the role of legislation and management standards’ (2009) 7 *SA J of Human Resource Management* 1 at 5.

instance? Does the Act consider the literacy levels of employees? Generally, people read at lower literacy levels than expected,⁵ and very often they do not understand texts with complex vocabulary or syntax.⁶ Should all forms of communication have an English version as standard practice, or should information be made available in all official languages? The overall question is thus whether an employer complies with legislation by providing information that is incomprehensible to the people it is meant to serve. These specific questions will be probed against the background of violent demonstrations in the workplace.

The purpose of this contribution is to suggest improvements to s 8(2)(e). In order to do this, the article is divided into six parts. The first part provides a perspective on the dangers caused by violent demonstrations in the workplace, focusing more specifically on the events occurring at universities during 2015-2016.⁷ Secondly, an overview of the OHS Act with reference to s 8 is given. This is followed by an overview of best practice criteria used in crisis risk communication. The fourth part briefly explains Grice's cooperative principle for better communication and how it relates to crisis risk communication. Part five contains a reformulation of s 8(2)(e) and part six concludes the contribution.

2 CRISIS COMMUNICATION DURING VIOLENT DEMONSTRATIONS AT TERTIARY INSTITUTIONS

It is imperative to provide effective communication to prevent any potential hazards in the workplace. However, what about the obligation to inform employees when the risk or crisis takes the form of an event that endangers many people simultaneously, like a natural disaster or industrial action?⁸ A case in point: in response to the protest actions relating to the #FeesMustFall campaign,⁹ many universities across the country sent out electronic communications, such as text messages or short message services (SMS) to staff and students informing them of events. These messages also served to warn affected parties of the potential safety risks and to instruct them on what action to take. In a situation like this, the

⁵ A Carstens, A Maes & L Gangla-Birir 'Understanding visuals in HIV/AIDS education in South Africa: differences between literate and low-literate audiences' (2006) 5 *African J of Aids Research* 1 (see in general).

⁶ See in general R W Shuy 'Warning labels: language, law, and comprehensibility' (1990) 65 *American Speech* 291; J N Levi 'Evaluating jury comprehension of Illinois capital-sentencing instructions' (1993) 68 *American Speech* 20; J F Stratman & P Dahl "'Readers'" comprehension of temporary restraining orders in domestic violence cases: a missing link in abuse prevention?' (1996) 3 *Forensic Linguistics* 211.

⁷ The research conducted received ethics council approval.

⁸ One of the universities surveyed has a crisis communication directive in place; yet the main purpose of this document is 'to protect the image of the University when a crisis occurs', and deals primarily with media management. Similarly, its communication policy outlines in para 9 communication procedures for business continuity. Interestingly, this policy further differentiates between a crisis and an emergency.

⁹ See *Hotz & others v University of Cape Town* 2018 (1) SA 369 (CC); *University of Cape Town v Davids & others* (2016) 3 All SA 33 (WCC) in this regard.

use of a SMS can be an efficient tool either to remove hazards or inform employees of potential safety risks.¹⁰ However, merely sending out messages containing information has little effect if the information remains unintelligible — for example, some of the messages sent out were vague.¹¹ Admittedly, although the formulation of some of these texts became shorter and more precise in terms of word choice, information and directives as events advanced, a number of the first messages left staff confused and uncertain: should they leave work and return home; and if they did, would they face reprimands or warnings? This uncertainty created personal safety concerns and left line managers accountable. Consider the SMS below:

‘student structures will be staging a protest march on the ... campus today. Please be discerning about your movements on campus in view of this’.¹²

What does the word ‘discerning’ mean? A search on the British National Corpus (2015) reveals that the phrase ‘be discerning’ reflects a very low frequency of 0.03 instances per million words, and is therefore not even remotely significant for first language speakers.¹³ The Corpus of Contemporary American English (2016) reveals similar results.¹⁴ If the British and American corpus results are kept in mind, it might be unwise to assume that all people on university campuses would know what ‘discerning’ means. Assuming that members of staff know the word as referring to ‘insight’ and ‘good judgment’, what would it mean in this context? The implication is that staff should avoid the protest march when moving around on campus, and that they should remain careful and vigilant. But what does it mean to be careful? It is a relative concept. Nothing in the message clearly states that the protest march is potentially dangerous, yet the phrase ‘be discerning’ implies risk. If, evidently, there is a safety concern, why not give a stronger directive to staff to avoid identified zones on campus where the march will take place? Why not instruct staff to stay in their offices for the duration of the march? ‘Be discerning’ is not very persuasive. Though this might not qualify as the

¹⁰ The Act defines ‘safe’ as ‘free from hazard’ and ‘healthy’ as ‘free from illness or injury’ (see s 1). Protesters can themselves act in a hazardous manner and any violent action can lead to minor or serious injury.

¹¹ Seventy-five messages that were sent out between 24 November 2015 and 7 June 2016 were collected.

¹² 26 November 2015 20h47.

¹³ See the British National Corpus results for ‘discerning’ <https://corpus.byu.edu/bnc/>. This is a significant indication that few people are entirely familiar with this phrase and indicates a possibility that many first and second language speakers of English in South Africa might not readily understand it.

¹⁴ See the Corpus of Contemporary American English (COCA) results for ‘discerning’ <https://corpus.byu.edu/bnc/>. COCA is one of the largest corpora of the English language.

vaguest of messages, a more comprehensible note would have been better. Another SMS also uses vague words and lacks clear directives:¹⁵

‘Protest action on the . . . campus today affecting access to the campus. If you [sic] still off campus please contact your line manager for any enquiries.’

The message is vague due to the use of the word ‘affecting’ and is also not clear about who is being addressed. What does it mean if access is ‘affected’? Does it mean that the gates are blocked? Does it mean that staff can still access the campus through certain gates but not others? Does it mean that security measures have been tightened, causing access to campus to be delayed? The text message was sent at 09:01, by which time most staff members would already have been at work under normal conditions. The implication of the message is that many employees have been prevented from entering the campus; those who are still outside are instructed to contact a line manager for information. What if the line managers are also still struggling to access the campus? Furthermore, what does the SMS mean by ‘any enquiries’? Should a staff member phone his or her superior to ask why the gates are closed or for permission to work from home? A better solution would have been to have sent out an unambiguous directive instructing those confronted with blocked gates to work from home and to be reachable by phone and email.

Where does the text message leave staff already at work? No clear directive is given to them and information concerning their current situation is lacking. Are the protesters blocking gates from the inside or the outside? The possible implication is that staff members are now trapped on campus. Should off-campus scheduled meetings be cancelled? Should staff stay in their offices until further notice? In respect of the institution issuing this message, no further message was sent until 13 January 2016. This means that employees who were trapped on campus had to find out for themselves when the gates were accessible and whether it was safe for them to leave.

Van Winsen J points out in *Rosseau v Viljoen* that the mere fact that events are unlikely to occur does not mean there is no risk of them occurring (or affecting people).¹⁶ It is therefore not enough for the risk to be pointed out without also informing the message recipient(s) of what is being done about it or, better yet, what they should be doing.

¹⁵ 4 December 2015 09h01.

¹⁶ 1970 (3) SA 413 (C) 420F-G.

If it is kept in mind that communication is a shared venture that at times of personal threat calls for precise and clear communication, vague messages could create the impression that an employer had recourse to a strategy of self-protective avoidance.¹⁷ It may appear as if the employer deliberately kept its messages vague to shift responsibility and legal accountability onto employees.¹⁸

Ulmer, Sellnow & Seeger argue that communication ambiguity occurs if different stakeholder groups have different outlooks on what causes and characterises a crisis.¹⁹ They add that a company may heighten the level of ambiguity purposely to distract or deceive its public.²⁰ Although this argument relates to an organisation's official stance once a crisis has subsided, it also points in the direction of unethical communication practices during a crisis. One such unethical practice would be to provide information relating to an employee's health and safety, which he or she may not fully understand.

Employers and employees should be able to turn to the OHS Act for proper guidance.²¹ The Act should be more explicit on communication practices and should also include better provisions regarding crisis risk communication. Section 8(2)(e) is currently insufficient to deal with crisis risk events, such as industrial action, which endangers employees that are effectively trapped on a closed site. Employees responsible for crisis risk communication at an institution should be trained in formulating crisis risk messages and they should know what qualifies as a proper message during a crisis risk event. A more thorough provision in the Act would serve to set a necessary standard.

3 THE OHS Act AND SECTION 8(2)(e)

Protest action in South Africa has become increasingly violent.²² Assault, intimidation and property damage (often associated with violent protests) qualify as health and safety

¹⁷ M W Seeger 'Best practices in crisis communication: an expert panel process' (2006) 34 *J of Applied Communication Research* 232 at 234.

¹⁸ R R Ulmer & T L Sellnow 'Consistent questions of ambiguity in organizational crisis communication: jack-in-the-box as a case study' (2000) 25 *J of Business Ethics* 143 at 146-7.

¹⁹ R R Ulmer, T L Sellnow & M W Seeger *Effective Crisis Communication: Moving from Crisis to Opportunity* (2007) 24.

²⁰ n 19 above 24-5.

²¹ This is especially true for organisations that use the Act as an occupational health and safety policy. For example, the policy at one of the institutions applies to every person entering any of its premises. It does not provide any guidelines or procedures. Instead, an abbreviated version of the Act serves as its procedural manual.

²² E Manamela & M Budeli "'Employees' right to strike and violence in South Africa' (2013) 46 *CILSA* 308 at 322-4; M Tenza 'An investigation into the causes of violent strikes in South Africa: some lessons from foreign law and possible solutions' (2015) 19 *Law, Democracy & Development* 211 at 211-12. Workplace violence is obviously not restricted to different forms of industrial action; it includes bullying, harassment and

hazards.²³ The #FeesMustFall incidents at universities exemplify such violent and destructive acts.²⁴ This emphasises the need for proactive and reactive communication tools, such as text messages, to inform employees about possible safety concerns and highlights their dependence on clarity to be effective.

As mentioned before, the Act does not specifically provide clear guidelines or regulations concerning crisis communication;²⁵ however, the employer's obligations regarding health and safety risks are apparent.²⁶ Section 8 of the Act describes an employer's general duties to its employees as far as is reasonably practicable and states that every employer must provide and maintain a work environment that is safe and without risk to the health of employees. According to Mischke & Garbers, this does not only mean that the physical place of work must be safe and secure, but that this also applies to entrances to and exits from premises.²⁷ Mischke & Garbers furthermore stress the employer's responsibility in terms of s 8(2)(e) to ensure that employees are trained in what they must do to reduce potential risks attributable to a lack of knowledge or inexperience.²⁸ The training should be extended to include public

even verbal abuse — see M Kennedy & H Julie “Nurses” experiences and understanding of workplace violence in a trauma and emergency department in South Africa’ (2013) 18 *Health SA Gesondheid* 1 at 2, and P A J Waddington, D Badger & R Bull ‘Appraising the inclusive definition of workplace “violence”’ (2005) 45 *British J of Criminology* 141-2 at 141. The OHS Act is also not very clear concerning these types of health and safety hazards.

²³ See n 10 above and n 19 above 332.

²⁴ *Hotz and Others v University of Cape Town* (2017) 2 SA 485 (SCA); *Rhodes University v Student Representative Council of Rhodes University & others* [2016] ZAECGHC 141, [2017] 1 All SA 617 (ECG); *University of Cape Town v Davids & others* [2016] ZAWCHC 56, [2016] 3 All SA 333 (WCC); *University of Cape Town v Rhodes Must Fall & others* [2015] ZAWCHC 151; *Durban University of Technology v Zulu & others* [2016] ZAKZPHC 58; *Tshwane University Technology v All Members of the Central Student Representative Council of the Applicant and Others* [2016] ZAGPPHC 881. See also News24 ‘Unisa obtains second court interdict’ (6 March 2016); News24 ‘Unisa gets interdict against protesters’ (15 January 2016). Of course, it could be argued that workplace violence caused by industrial action is not prevalent enough in South Africa to warrant changes in legislation, for instance those proposed for s 8(2)(e). A report by the Social Change Research Unit at the University of Johannesburg states that the majority of protests (more than 80%) are peaceful and that the media is often biased when reporting on violent protests — see C Runciman, P Alexander, M Rampedi, B Moloto, B Maruping, E Khumalo & S Sibanda ‘Counting Police-Reported Protests: Based on South African Police Service Data’, Social Change Research Unit, University of Johannesburg (2016) 2. See also K Wilkinson & S Chiumia ‘Are Most Estimates of What Strikes Cost the SA Economy Accurate? Probably Not. Take Them with a Big Pinch of Salt’ <https://africacheck.org/reports/are-most-estimates-of-what-strikes-cost-the-sa-economy-accurate-probably-not-take-them-with-a-big-pinch-of-salt/>. However, s 8(2)(e) is not exclusive to strike-related violence, but applies to any event at work that necessitates the use of a short message service as a means to mitigate health and safety hazards. This includes workplace violence of any kind.

²⁵ The Act is also quite vague concerning health and wellness (specifically psychosocial stressors) — see Sieberhagen, Rothmann & Pienaar n 4 above 7.

²⁶ See *Joubert v Buscor Proprietary Limited* (2016) ZAGPPHC 1024 that outlines employers' statutory duty of care to employees in terms of OHS Act.

²⁷ C Mischke & C Garbers *Safety at Work: A Guide to Occupational Health, Safety and Accident Compensation Legislation* (1994) 2.

²⁸ *ibid.*

relations officers and other employees responsible for issuing crisis risk communications.²⁹ If communication officers are not thoroughly trained and ready for most crisis risk events, the employer should take responsibility for any poor, vague, confusing and misguided communication sent to employees during times of health and safety risks in the workplace.³⁰

Additionally, s 8(2)(e) states that the employer should provide ‘such information ... as may be necessary to ensure ... the health and safety at work of his employees’. This could be interpreted as a requirement to provide crucial information during a crisis through effective means, such as a SMS. An employer should communicate with employees in the event of a crisis to ensure that they understand what is happening and know what to do to keep out of harm’s way.

In terms of the law, an employer’s duty is gauged against that of a reasonable person.³¹ In this respect, a court of law might ask whether an employer could have foreseen potential injury, and, if so, what steps a reasonable person would have taken to try to guard against potential injury.³² This is clarified by Didcott J in *Maartens v Pope* when he states: ‘The question is not, one notices, whether the claimant should have foreseen the risk. It is whether he must have foreseen the risk, and therefore in fact foresaw it.’³³ According to Musi AJA in *Pikitup (Soc) Ltd v SA Municipal Workers Union* this means ‘that what can be done, should be done, unless it is reasonable in the circumstances to do something less, or in extreme circumstances, more’.³⁴ To be ‘reasonably practicable’ an employer only has to comply with the minimum of the imposed duties. The fact that a university’s management sent out crisis risk messages like those during #FeesMustFall informing staff of the crisis and instructing them either to leave work or to use alternative entrances to access campuses, might create the impression that the university complied with the OHS Act as a reasonable person. However, as Mischke & Garbers point out, if an employer complies with his or her duties to a reasonable extent, he or she may be absolved of civil liability, but could still be criminally liable.³⁵ A

²⁹ As illustrated by the crisis communications issued by one of the institutions examined: although crisis communication directives were available, nevertheless the content of the data messages sent were confusing and counterproductive.

³⁰ See *Drifters Adventure Tours CC v Hircock* 2007 (2) SA 83 (SCA).

³¹ This entails the common law test of negligence, which is objective.

³² Mischke & Garbers n 27 above 3.

³³ 1992 (4) SA 883 (N) 888A-B.

³⁴ [2014] 3 BLLR 217 (LAC) para 52.

³⁵ Mischke & Garbers n 27 above 19. According to *Joubert* (n 28 above), strict liability may be imposed on employers in such cases, especially as: ‘Strict liability offences are generally of a regulatory nature; and where it is particularly important to maximise compliance, for example, public safety or protection of the environment’ (para 23).

court will evaluate each case against the criteria for ‘reasonable practicability’ defined in the OHSWA to mean:

- ‘(a) the severity and scope of the hazard or risk concerned;
- (b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;
- (c) the availability and suitability of means to remove or mitigate that hazard or risk, and
- (d) the cost of removing or mitigating that hazard or risk in relation to the benefits deriving there from’.³⁶

Crisis risk communication should be regarded as a means of helping to remove a safety risk, such as workplace violence, by safeguarding employees from the hazard or risk through communication strategies.

When communication is meant to save lives but instead of persuading, it confuses the recipient, then such communication has not achieved its goal. Nevertheless, the OHSWA does not force employers to eliminate vagueness from their crisis risk communication. It is however possible to argue that such an employer complies only with the bare essential requirements, and, in doing so, actually avoids his or her legal duties by shifting the responsibility onto the employees.

As with ‘information’, the words ‘instructions’ and ‘training’ are equally vague. First of all, does the word ‘instructions’ include directives issued by a crisis risk communicator when communicating with employees? Does this mean that the crisis risk communicator must explicitly tell people what to do and when to do it? Secondly, does the word ‘training’ include regular training by an institution’s crisis risk communicator to ensure that management still knows how to formulate a clear message and is aware of best practices? It could be detrimental to the health and safety of many employees to trust someone who does not have proper training in the applicable communication theory.

To understand better what crisis risk communication entails, an overview of best practice criteria is discussed below.

4 CRISIS RISK COMMUNICATION CRITERIA

How should one define ‘crisis’ or ‘risk’? In the words of Barton,³⁷ ‘crisis’ tends to be overused in that almost any problem or issue is described as a crisis, ranging from large

³⁶ See *Pikitup* n 34 above paras 41-42, 52.

numbers of refugees entering Europe to the influences of the hipster beard on popular culture. According to Barton,³⁸ a crisis can be defined as an unpredictable event. This is echoed by Ulmer, Sellnow & Seeger,³⁹ who maintain that a crisis is an unexpected and non-routine occurrence that creates uncertainty and threatens the goals of an organisation. In addition, they distinguish between two major types of crises, namely intentional and unintentional events.⁴⁰ The first category represents incidents that are aimed at deliberately causing harm, such as terrorism, hostile takeovers and workplace violence,⁴¹ which are usually affected by an organisation's external environment in the form of political, economic and social forces.⁴² Unintentional crises include events beyond human control such as natural disasters (tsunamis), disease outbreaks (Ebola in west Africa) and product failures (oil spills).

Related to crisis, is risk. Section 1 of the OHSA defines 'risk' as 'the probability that injury or damage will occur'. Heath describes crisis as risk manifested.⁴³ In contrast to a crisis which is unexpected and unpredictable, a risk is an occurrence which can be predicted and therefore can also be controlled.⁴⁴ Because risky behaviour can be controlled and ultimately prevented, persuasion is an important strategy within risk communication, which mostly deals with health and safety concerns, like personal risk-taking behaviour (smoking, unsafe sex, the intake of unhealthy foods) and personal safety and environmental risks (working with hazardous substances or living on flood-plains).⁴⁵ An employer's legal responsibility to ensure a safe working environment is typically related to risk, especially where employees

³⁷ L Barton *Crisis in Organizations: Managing and Communicating in the Heat of Chaos* (1993) 2.

³⁸ *ibid.* One university's directive similarly defines a crisis as 'any sudden unexpected occurrence or event that has the potential to damage the reputation of an organisation A crisis is any unplanned situation that threatens the integrity or reputation of the University, usually brought on by adverse or negative media attention. These situations can be any kind of legal dispute, theft, accident, fire, flood or manmade disaster that could be attributed to the University. It can also be a situation where in the eyes of the media or general public the University did not react to one of the above situations in the appropriate manner'.

³⁹ Ulmer, Sellnow & Seeger n 19 above 7-8.

⁴⁰ *ibid* 9-13.

⁴¹ See in general B Reynolds & M W Seeger 'Crisis and emergency risk communication as an integrative model' (2005) 10 *J of Health Communication* 43. See also Seeger n 17 above.

⁴² W R Crandall, J A Parnell & J E Spillan *Crisis Management: Leading in the New Strategy Landscape* (2014) 54.

⁴³ R L Heath 'Best practices in crisis communication: evolution of practice through research' (2006) 34 *J of Applied Communication Research* 245.

⁴⁴ *ibid.*

⁴⁵ V Covello, R Peters, J Wojtecki & R Hyde 'Risk communication, the Nile virus epidemic, and bioterrorism: responding to the communication challenges posed by the intentional or unintentional release of a pathogen in an urban setting' (2001) 78 *J of Urban Health: Bulletin of the New York Academy of Medicine* 382 at 382-3; D C Glik 'Risk communication for public health emergencies' (2007) 28 *Annual Review of Public Health* 33 at 34; Reynolds & Seeger n 42 above 45; Seeger n 17 above 234.

utilise machinery or potentially toxic substances, or where the working environment, like a building site, is itself dangerous.⁴⁶

As with many intentional incidents, industrial action may display a combination of crisis and risk criteria. Once violent protests break out, employers are not only faced with a crisis that can damage their core business and professional reputation, but the crisis itself may hold a number of risks that can be prevented if steps are taken. Two very obvious and important risks are those of property damage and threats to the personal safety of employees. To ensure that the working environment and employees remain safe, and to lessen any ongoing destruction, employers must communicate with all parties involved. Staff and visitors must be informed of the crisis at hand and the risks posed for them to make the necessary decisions considering the looming threat.⁴⁷ This can be achieved through effective crisis risk communication, which will depend on a set of best practice criteria being reflected in messages. These criteria (in no particular order) may include:

- timeliness,
- trustworthiness,
- usefulness,
- self-efficacy,
- clarity,
- comprehensibility, and
- consistency.

Crisis risk messages have to be sent out as soon as possible to ‘fill information vacuums’ and reduce uncertainty,⁴⁸ while helping to prevent the spread of rumours. Crandall, Parnell & Spillan suggest that information should be communicated within a matter of minutes, especially where workplace violence is concerned.⁴⁹ It is an added advantage to use a medium that allows rapid information distribution, such as a SMS. Whether the receivers of these messages respond positively partly depends on whether they can trust the sender and the content conveyed. Trustworthiness (or lack thereof) is directly related to a company’s

⁴⁶ OHSA n 1 above.

⁴⁷ Covello, Peters, Wojtecki & Hyde n 46 above 383; R E Kasperson ‘Six propositions on public participation and their relevance for risk communication’ (1986) 6 *Risk Analysis* 275 at 275; B Reynolds ‘Response to best practices’ (2006) 34 *J of Applied Communication Research* 249; Reynolds & Seeger n 42 above 47; Seeger n 17 above 238.

⁴⁸ V T Covello ‘Best practice in public health risk and crisis communication’ (2003) 8 *J of Health Communication* 5 at 6; Reynolds & Seeger n 42 above 46, 50.

⁴⁹ Crandall, Parnell & Spillan n 45 above 197-8, 201.

previous communication blunders and/or successes.⁵⁰ The same applies to the first messages in a series: if they are vague or groundless, very few people will take subsequent messages seriously. The information contained in these messages should also be useful.⁵¹ There is absolutely no point in conveying information that contributes nothing to employees' current situation.

The usefulness of messages is often linked to self-efficacy. What must people do when their safety is threatened? Glik argues that people will not necessarily know the appropriate action to take, and they should therefore be given guidance on what to do: this must include specific directives as to what, where, when, how and for how long.⁵² In addition, Seeger suggests that any recommended action must match the specific situation.⁵³ Instructing people on how to act in times of stress and offering them a choice in terms of possibilities will help them face their fears and protect themselves from the effects of the crisis.⁵⁴ However, there is a difference between providing people with reasonable choices and permitting them to decide based on what is feasible and expecting them to make their own decisions without any guidance or permission. This begs the question how ethical it is for employers to 'allow' employees to decide for themselves without simultaneously giving them the necessary mandate to do so.

The success of self-efficacy directives largely depends on the clarity and comprehensibility of the messages. Receivers should understand, from the very start, what is expected of them;⁵⁵ they should also be in agreement with what the message is trying to convey.⁵⁶ This cannot happen when the information transmitted is formulated in jargon-filled language or is communicated at a level that is too difficult for a reasonable person to comprehend.⁵⁷ This specifically applies to receivers who often speak a language of communication as an additional language. English is a good example of this, in that most South Africans speak it as an additional language.⁵⁸ Although it is not always possible, the authors of these messages

⁵⁰ Kaspersen n 48 above 277.

⁵¹ Seeger n 17 above 235.

⁵² Glik n 46 above 39.

⁵³ Seeger n 17 above 242.

⁵⁴ Covello n 49 above 7; P M Sandman 'Crisis communication best practices: some quibbles and additions' (2006) 34 *J of Applied Communication Research* 257 at 258-9; Seeger n 17 above 242; Ulmer, Sellnow & Seeger n 19 above 44.

⁵⁵ W A M Carstens *Norme vir Afrikaans: Enkele Riglyne by die Gebruik van Afrikaans* (2003) 98.

⁵⁶ N D Weinstein & P M Sandman 'Some criteria for evaluating risk messages' (1993) 13 *Risk Analysis* 103 at 104, 107.

⁵⁷ Covello n 49 above 7; Covello, Peters, Wojtecki & Hyde n 46 above 388; Glik n 46 above 39; Weinstein & Sandman n 57 above 104, 106-7.

⁵⁸ See in general I Khokhlova 'Lingua franca English of South Africa' (2015) *Procedia – Social and Behavioral Sciences* 983.

should try to prevent the likelihood of more than one interpretation. Thus words should be scrutinised for any ambiguity.⁵⁹ Messages have to be simple and straightforward and most importantly accurate and truthful.⁶⁰ Messages that communicate erroneous information will ultimately have an effect on the credibility and trustworthiness of the company/institution and its management. However, mistakes do occur, and when they do it is better to correct them as quickly as possible.⁶¹ Lastly, messages must be consistent.⁶² Being inconsistent — especially in the event that self-efficacy directives were communicated — might lead to confusion and end up being counterproductive.⁶³

One of the factors influencing the successful outcome of crisis risk messages is the emotional state of the receiver. When confronted with violent protest action at work, it is to be expected that most employees will react with fear and concern. Such stressful events elicit a stronger emotional reaction in people than a reasonable evaluation of their direct circumstances would do.⁶⁴ As Ropeik puts it, ‘not only do we fear first and “think” second, but we also fear more and “think” less’.⁶⁵ The way in which people absorb information during a crisis may be different from the way in which information is dealt with under less stressful conditions.⁶⁶ The strong feelings generated by a stressful incident, such as violent industrial action, may create what Covello, Peters, Wojtecki & Hyde refer to as mental noise.⁶⁷ The mental noise model suggests that people’s effective and efficient ways of processing information are compromised when they are tense. Mental noise can potentially interfere with a person’s ability to think and react rationally. Therefore, it is of vital importance that crisis risk messages are clear and comprehensible and do not require receivers to do something they disagree with or which they may experience as counterintuitive.⁶⁸

As can be inferred from the criteria discussed in this section, vagueness should be avoided at all costs. Another principle that proves helpful in determining whether a message is clearly formulated is that of Grice, which will be explained next.

⁵⁹ See in general C G Jardine & S E Hruddy ‘Mixed messages in risk communication’ (1997) 17 *Risk Analysis* 489.

⁶⁰ Glik n 46 above 35.

⁶¹ Covello n 49 above 6.

⁶² Crandall, Parnell & Spillan n 43 above 199; Glik n 46 above 39; Ulmer, Sellnow & Seeger n 19 above at 42.

⁶³ Covello, Peters, Wojtecki & Hyde n 46 above 383; Seeger n 17 above 242.

⁶⁴ Glik n 46 above 35-36; Reynolds n 48 above 251; D Ropeik ‘Best practices response’ (2006) 34 *J of Applied Communication Research* 253.

⁶⁵ Ropeik n 60 above 253.

⁶⁶ Reynolds n 48 above 251.

⁶⁷ Covello, Peters, Wojtecki & Hyde n 46 above 385.

⁶⁸ Reynolds n 48 above; Weinstein & Sandman n 57 above.

5 GRICE'S COMMUNICATION PRINCIPLE

Before an attempt can be made to reformulate s 8(2)(e), one should understand what qualifies as successful communication. Communicative exchanges contain general features of discourse which are connected; (successful) communication does not consist of disconnected comments. Instead, a cooperative effort underlies communication, leading to exchanges having a common goal or set of goals.⁶⁹ This cooperative effort is better understood as a principle, which functions like a code of conduct and can be summarised as follows: guided by the goal and direction of an exchange, a speaker should provide what is necessary when communicating.⁷⁰ According to Grice, four maxims can be distinguished within this principle: quantity, quality, relation and manner.

The first maxim, quantity, relates to the amount of information to be conveyed. The sender should therefore only be as informative as the context and situation dictate. The second maxim, quality, relates to being truthful. It is imperative not to lie or share information which cannot be substantiated. This maxim also applies to what is unsaid or deliberately left out. The third maxim, relation, consists of one rule and that is to be relevant and appropriate to the context and the communicative goal at hand. The last maxim, manner, expects participants to be clear in their communication: they should avoid ambiguity, obscurity, redundancy or long-windedness. Together, the four dicta emphasise an economic approach to communication: the sender or communicator should only say or convey what is essential and what is known to be true and state it as clearly as possible.

Successful communication requires the observance of the communication principle (CP). However, this is often disrupted by a speaker's violation of, or unwillingness to fulfil, a maxim. Sometimes a participant is unable to adhere to a maxim, and at other times an observance of the CP may lead to a clash of maxims.⁷¹ This can very often create the impression that participants are unsuccessful in imparting the relevant information. But this is the difference between Grice's CP and conversational implicatures, where implicature is the intended (implied, suggested) meaning that goes beyond the face value of an utterance.⁷² A listener can make the necessary inferences and work out what the speaker actually intends to communicate by using the context as well as linguistic and non-linguistic cues relevant to the

⁶⁹ H P Grice *Studies in the Way of Words* (1989) 26. See in general Y Huang *Pragmatics* (2013); S C Levinson *Pragmatics* (1995).

⁷⁰ *ibid* (Grice) 26.

⁷¹ *ibid* 30; Huang n 69 above; Levinson n 69 above.

⁷² Grice n 69 above 24; A van Niekerk & J Olivier 'Pragmatiek' in W A M Carstens & N Bosman (eds) *Kontemporêre Afrikaanse Taalkunde* (2014) 289.

utterance. This could be problematic, though, when dealing with a multilingual or multicultural group.

To what extent should crisis risk communicators allow for implicature when informing employees of a problem and communicating directives? There is still little guarantee that people will automatically make the same inferences, assuming that employees all share the same cultural backgrounds and conventional knowledge. Furthermore, it might not be the best approach to expect them to make all kinds of inferences when they are stressed and concerned, considering the presence of mental noise and people's potential inability to think straight during a crisis. An ideal approach would be to include Grice's maxims with the best practice criteria for crisis risk communication and to evaluate messages to determine whether they fulfil the CP. In the event that a message violates one or more maxim, the communicator should determine the extent of the implicature.

With this in mind, a more suitable formulation of s 8(2)(e) must be considered.

6 REFORMULATION OF SECTION 8(2)(e)

Section 8(2)(e) currently deals with different matters at the same time (dissemination of information, training, supervision) and should rather be divided into subparagraphs for easy digestion. For context, s 8(2) with the relevant existing subsection is as follows:

‘(2) Without derogating from an employer's duties under subsection (1), the matters to which those duties refer include in particular —

- (e) providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees ...’.

The proposed reformulation starts from the premise that clear and accessible communication is the cornerstone for health and safety communication. This is followed by examples of communication channels, telling people what to do and providing the necessary training and supervision:

‘(2)(e) relevant information meant to ensure employees' health and safety will simultaneously be communicated in the most commonly spoken language of the premises and in basic English —

- (i) in a clear and unambiguous manner, using basic grammar and a simple vocabulary;
- (ii) by means of manuals, posters, stickers, signage, symbols, colour coding, the spoken word, text messages, emails, e-notifications;
- (iii) during a crisis, in accordance with paragraph (i), where a communication system like a short message service will be used to tell employees what to do in order to stay safe and healthy, and what they must do when they are threatened or have been injured by a hazard;
- (iv) during a crisis, in accordance with paragraph (i), as soon as possible to employees, with regular updates;
- (v) during training and supervision, which will be provided in the use of machinery, substances, evacuation drills, first aid care, firefighting, the formulation of crisis and risk messages, and terminology predominantly used in health and safety’.

The proposed reformulation incorporates elements from the best practice criteria in crisis risk communication as well as Grice’s four maxims as it provides for clarity, relevance, self-efficacy, comprehensibility and timeliness. If regulations are developed in connection with s 8(2)(e), it is advised that similar best practice criteria, as highlighted above, should be followed. This will allow a court to evaluate a contested message better during a dispute in order to determine whether an employer complied with the Act and whether a reasonably practicable message was communicated by an employer to ensure the health and safety of its employees.

Of course, the reformulation is not without its own challenges. One can easily ask what is meant by concepts such as ‘basic English’, ‘spoken word’ or even ‘regular updates’. However, as with ‘information’ and ‘communication’, if these words have existing definitions or are defined in other legislation, and have been interpreted by a court of law, these meanings can be adopted if they fit the specific context.

7 CONCLUSION

Employers have a statutory duty to provide a safe working environment for employees, which include providing them with effective information to ensure their safety. During workplace violence vague communication should be avoided at all costs, especially if employees suffer from high levels of mental noise and need to be persuaded to act in their own interests. When employees are forcefully removed from their offices and victimised, they must be told what to do to stay safe. More thought should go into what is said and how it is said, especially when it

comes to a multilingual work force. It is better to use imperatives which plainly communicate either prohibition or permission, since it will limit implicatures. It is not helpful or acceptable to refer an employee to someone else or recommend what he or she could be doing. It remains unethical to send out messages simply to ‘indemnify an organisation from prosecution’.⁷³ To expect of crisis risk communicators to be more selective when choosing words to express ‘speech acts’ is nothing less than reasonably practicable. In this regard, s 8(2)(e) of the OHSWA should be amended as proposed to provide specific guidelines concerning the encoding of information in order to avoid any incorrect interpretation.

⁷³ G Cook “‘This we have done’: the vagueness of poetry and public relations’ in J Cutting (ed) *Vague Language Explored* (2007) 23.