

PCPOLICE

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**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

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**TO: THE HONOURABLE SPEAKER
The National Assembly
Parliament of the Republic of South Africa**

**CC: The Chairperson
Portfolio Committee on Police
Parliament
Cape Town**

RE: REQUEST TO THE HONOURABLE SPEAKER TO CONSTITUTE A COMMITTEE OF NATIONAL ASSEMBLY OR TO AUTHORISE THE PARLIAMENTARY PORTFOLIO COMMITTEE ON POLICE TO INITIATE DISCIPLINARY PROCEEDINGS AGAINST MR ROBERT MCBRIDE ON GROUNDS OF MISCONDUCT AS CONTEMPLATED IN SECTION 17DA (3) OF THE SAPS ACT 68 OF 1995 READ WITH PARAGRAPH 3.1 OF THE ORDER OF THE CONSTITUTIONAL COURT IN MATTER OF MCBRIDE V MINISTER OF POLICE AND ANOTHER (2016) ZACC 30

On 24 March 2015, I decided to suspend and initiate an independent disciplinary inquiry into the alleged misconduct of Mr Robert McBride, the Executive Director of the Independent Police Investigative Directorate ("IPID"). Disciplinary proceedings were instituted on 6 May 2015.

I took the decisions to suspend and initiate the disciplinary proceedings in terms of sections 6(3)(a) and 6(6) of the IPID Act 1 of 2011, sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act and Regulation 13 of the IPID Regulations¹ ("the removal provisions").

¹ IPID Regulations for the Operation of the Independent Police Investigative Directorate (GNR 98 of Government Gazette 35018 of 10 February 2012).

Mr McBride decided to challenge my decisions in court. At the hearing, Mr McBride's case rested solely on the constitutionality of the removal provisions. Mr McBride sought an order declaring the removal provisions to be unconstitutional, and on that basis, reviewing and setting aside of my decisions. Mr McBride argued that the removal provisions were unconstitutional because they do not permit the necessary security of tenure for the Executive Head of IPID and therefore do not afford IPID with the standard of independence required by section 206(6) of the Constitution.

Judge Kathree-Setiloane handed down judgment on 4 December 2015. The learned judge held that the removal provisions were unconstitutional to the extent that they purport to empower the Minister of Police to suspend, institute disciplinary proceedings or remove the Executive Head. On this basis, the learned judge set aside my decisions. The order suspended the declaration of invalidity to allow Parliament to rectify the defects in the IPID Act. The order suggested that in the interim, section 6(6) would be replaced by sections 17 DA(3) to (7) of the South African Police Service Act 68 of 1995 ("**SAPS Act**").

Mr McBride applied to the Constitutional Court for confirmation of the order of the High Court in terms of section 172(2)(d) of the Constitution and Rule 16(4) of the Constitutional Court Rules.

The issue before the Constitutional Court was a narrow one in that, the court had to decide whether the Minister's powers to suspend and remove the Executive Head contained in section 6(6) of the IPID Act are constitutionally permissible or unduly impede on the independence of IPID as required by section 206(6) of the Constitution.

The Constitutional Court Judgment

The Constitutional Court has handed down its judgment. The order is as follows:

4. It is declared that the decision of the Minister of Police to suspend Mr Robert McBride from his position as Executive Director of the Independent Police Investigative Directorate is invalid and is set aside.
5. The order in paragraph 4 is suspended for 30 days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.
6. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against Mr Robert McBride, which was to commence on 21 May 2015, is invalid and is set aside.”

The allegations against Mr McBride

Mr McBride stands accused of several acts of gross misconduct which include insubordination after he was involved in a controversial IPID investigation into the alleged unlawful rendition of four Zimbabwean nationals during 2010 and 2011. An initial report recommended that Mr Dramat and Mr Sibiya should be criminally charged with kidnapping and defeating the ends of justice. However, in a subsequent report, endorsed by Mr McBride, it was recommended that no charges should be brought against them. The inconsistencies between the two reports prompted me to suspend Mr McBride and initiate disciplinary proceedings against him.

These acts of gross misconduct fall into three distinct categories:

1. It is alleged that Mr McBride’s conduct has compromised the independence of the IPID,
2. he is accused of improperly covering up serious breaches of the law by senior members of the SAPS, and