

1 **JUDICIAL SERVICE COMMISSION AMENDMENT BILL**
[B 50—2007]

Select Committee on Security and Constitutional Affairs (National Council of Provinces)
14 February 2008

2 **BACKGROUND**

- Emanates from Judicial Officers Amendment Bill [B 72—2001]
- Constitutes redraft by Portfolio Committee in terms of NA Rule 249(2)(g) of provisions originally proposed in Judicial Officers Amendment Bill pertaining to judicial conduct and complaints against judges

3 **FLASHBACK: OTHER ACTS EMANATING FROM JUDICIAL OFFICERS AMENDMENT BILL**

Other provisions of the Judicial Officers Amendment Bill were dealt with by Parliament as two separate redrafted Bills and were subsequently enacted into law as the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001), and the Judicial Officers (Amendment of Conditions of Service) Amendment Act, 2003 (Act 28 of 2003)

4 **OBJECTS OF BILL**

- Establish Judicial Conduct Committee to receive and deal with complaints about judges
- Provide that judge may not hold any other office of profit, subject to certain exceptions
- Provide for Code of Judicial Conduct
- Provide for Register of Judges' Registrable Interests
- Establish procedure for dealing with complaints about judges
- Provide for Judicial Conduct Tribunals to investigate impeachable matters

5 **STRUCTURE OF BILL**

- Amending Judicial Service Commission Act 9 of 1994 by—
- Insertion of Preamble
- Dividing Bill into four Chapters, namely—
- CH 1: Administrative Provisions
- CH 2: Oversight over judicial conduct and accountability of judicial officers
- CH 3: Judicial Conduct Tribunals
- CH 4: Miscellaneous provisions

6 **PREAMBLE**


- Note section 180 of Constitution-
- national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including procedures for dealing with complaints about judicial officers
- Note section 177 of Constitution-
- a judge may be removed from office only if—
- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
- (b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members

7  CH 1: ADMINISTRATIVE PROVISIONS

- Mostly consequential since principal Act not yet aligned to Constitution
- Clause 3: New definitions—
- "complainant"
- "Minister"
- "prescribed"
- "respondent"
- "this Act"
- "Tribunal"
- Clauses 4, 5, 6 and 7 consequential

8  CLAUSE 8: ANNUAL REPORT


- Report to be Tabled
- Report to include matters dealt with in terms of complaints mechanism as well as compliance with Register of Judges' Registrable Interests

9  CH 2: OVERSIGHT OVER JUDICIAL CONDUCT AND ACCOUNTABILITY OF JUDICIAL OFFICERS

- Part I: Establishment and objects of Committee
- Section 7 – definitions
- Section 8 – Judicial Conduct Committee comprising—
- Chief Justice (Chairperson)
- Deputy Chief Justice
- Four judges, at least two of whom must be women

10  CH 2, Part II: JUDICIAL CONDUCT

- Section 11: Judge not to hold other office of profit or receive payment for other service
- Distinguish between judges on active service and discharged from active service
- Active service – only exception royalties for legal books
- Discharged judges – may obtain written consent from Minister acting after consultation with Chief Justice

11  Section 11 – Discharged judges


- Written consent if Minister is satisfied that it will not—
- adversely affect efficiency and effectiveness of administration of justice, including undermining of any aspect of administration of justice, especially civil justice system
- adversely affect image or reputation of administration of justice in the Republic
- in any manner undermine the legal framework which underpins the judge for life concept
- result in any judge engaging in any activity that is in conflict with vocation of a judge
- bring judiciary into disrepute or have potential to do so
- Minister, acting after consultation with Chief Justice, may, by notice in the Gazette, issue guidelines regarding any other criteria to be applied when considering the granting of consent

12  CH 2, Part II: JUDICIAL CONDUCT

- Section 12: Code of Judicial Conduct
- Chief Justice in consultation with Minister to compile Code of Judicial Conduct, to be tabled in National Assembly for approval
- Code to serve as prevailing standard of judicial conduct, which judges must adhere to

13  **CH 2, Part II: JUDICIAL CONDUCT**

- Section 13: Disclosure of registrable interests
- Minister in consultation with Chief Justice to appoint Registrar of Judges' Registrable Interests
- Every judge to disclose to Registrar particulars of registrable interests
- Regulations made in consultation with Chief Justice
- Regulations must be approved by National Assembly

14  **Section 13: Regulations for Register**

- Must at least prescribe—
- format of the Register
- kinds of interests of judges and their immediate family members that are regarded as registrable interests
- manner and the instances in which, and the time limits within which, registrable interests must be disclosed to the Registrar
- a confidential and a public part of the Register and the interests to be recorded in those parts respectively
- the recording, in the public part of the register, of all registrable interests derived from the application of section 11 (extra-judicial income)
- procedure providing public access to public part of Register and procedure for providing access to, and maintaining confidentiality of, confidential part
- procedure for lodging of a complaint by Registrar, in the event of—
- (i) failure to register any registrable interest by any judge, including any failure to register any such interest within a prescribed time limit; or
- (ii) disclosure of false or misleading information by any judge

15  **CH 2, Part III: CONSIDERATION OF COMPLAINTS BY COMMITTEE**

- Section 14: Lodging of complaints
- Any person may lodge complaint with Chairperson
- Complaint must be-
- based on certain grounds; and
- lodged by affidavit or affirmed statement

16  **Section 14: Grounds for complaint**

- Incapacity giving rise to judge's inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177(1)(a) of the Constitution
- Any wilful or grossly negligent breach of the Code of Judicial Conduct
- Accepting, holding or performing any office of profit or receiving any benefits in contravention of section 11
- Any wilful or grossly negligent failure to comply with any remedial step imposed in terms of this Act
- Any other wilful or grossly negligent conduct that is incompatible with or unbecoming the holding of judicial office, including conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts

17  **CH 2, Part III: CONSIDERATION OF COMPLAINTS BY COMMITTEE**

- Section 15: Lesser complaints may be summarily dismissed
- Complaint must be dismissed if it-
- (a) does not fall within the parameters of any of the grounds set out in section 14(4);
- (b) does not comply substantially with the provisions of section 14(3);
- (c) is solely related to the merits of a judgment or order;
- (d) is frivolous or lacking in substance;
- (e) is hypothetical.
- Complainant may appeal to Committee


18  **CH 2, Part III: CONSIDERATION OF COMPLAINTS BY COMMITTEE**

- Section 16: Impeachable complaints – Tribunal recommended


- Chairperson must be satisfied that the complaint, if valid, is likely to lead to impeachment of respondent
- Committee to meet to consider recommending that Tribunal be appointed

19  CH 2, Part III: CONSIDERATION OF COMPLAINTS BY COMMITTEE


- Section 17: Inquiry into serious, non-impeachable complaints
- Chairperson must be satisfied that valid complaint not likely to justify impeachment
- Chairperson or member must investigate complaint
- If complaint found valid, remedial steps imposed
- Respondent/complainant may appeal to Committee

20  Section 17: Remedial steps

- Apologising to the complainant, in a manner specified
- A reprimand
- A written warning
- Any form of compensation
- Appropriate counselling
- Attendance of a specific training course
- Appropriate corrective measure
- The state shall not be responsible for any expenditure incurred as a result of, or associated with, any remedy unless the remedy was selected from a list of approved remedies or services compiled from time to time by the Minister, after consultation with the Chief Justice, and then only to the extent set out in that list

21  CH 2, Part III: CONSIDERATION OF COMPLAINTS BY COMMITTEE

- Section 18: Consideration of appeals by Committee
- Appeals against dismissal of complaint, or finding that complaint is valid and/or against remedial step imposed
- Committee may confirm or set aside dismissal or finding/remedial step
- Committee may instruct investigation of complaint or recommend appointment of Tribunal

22  CH 2, Part IV: REQUEST TO APPOINT TRIBUNAL AND CONSIDERATION OF TRIBUNAL REPORT BY COMMISSION








- Section 19: Commission to request appointment of Tribunal
- Section 20: Commission to consider report and make findings
- If Commission finds respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, it must submit finding to Speaker of National Assembly
- If Commission finds that respondent—
 - (a) is not grossly incompetent, but that there is sufficient cause for respondent to attend specific training course or counselling or be subjected to any other appropriate corrective measure, the Commission may order that respondent attend such course or be subjected to such measure; or
 - (b) is guilty of degree of misconduct not amounting to gross misconduct, the Commission may impose any remedial step referred to in section 17(8)

23  CH 3: JUDICIAL CONDUCT TRIBUNALS

- Part 1: INTRODUCTORY PROVISIONS

24  CH 3, Part 1: INTRODUCTORY PROVISIONS

- Section 21: Appointment of Tribunal
- Chief Justice must appoint Tribunal when requested by Commission

- Must give written notice of composition, terms of reference and seat of Tribunal and date by which Tribunal must commence proceedings
- 25  CH 3, Part 1: INTRODUCTORY PROVISIONS
- Sections 22 and 23: Composition of Tribunal
 - Tribunal comprises two judges, one of whom designated as Tribunal President, and one non-judicial officer selected from list compiled by Chief Justice in consultation with Minister
 - At least one member of Tribunal must be a woman
- 26  CH 3, Part 1: INTRODUCTORY PROVISIONS
- Section 24: Investigative and administrative support
 - Person to collect and adduce evidence, and administrative staff
 - Section 25: Rules and procedure
 - Chief Justice to make rules regulating procedure before all Tribunals
- 27  CH 3, Part 2: HEARINGS OF TRIBUNALS
- Section 26: Objects and nature of Tribunal
 - Inquisitorial manner, no onus on any person to prove or disprove any fact
 - Section 27: Hearing to begin and be concluded without unreasonable delay
 - Protecting and enhancing dignity and effectiveness of judiciary and court
- 28  CH 3, Part 2: HEARINGS OF TRIBUNALS
- Section 28: Involvement of judicial officer whose conduct is subject of hearing
 - Section 29: Attendance at hearing and disclosure of evidence
 - Section 30: Tribunal may subpoena witnesses
- 29  CH 3, Part 2: HEARINGS OF TRIBUNALS
- Section 31: Evidence to be given under oath or affirmation
 - Section 32: Evidence disclosing offence
 - Section 33: Findings and report
 - Upon the conclusion of a hearing, the Tribunal must –
 - (a) record its findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and its findings as to the merits of the allegations in question; and
 - (b) submit a report to the Judicial Service Commission, containing–
 - (i) its findings and the reasons for them;
 - (ii) a copy of the record of the hearing; and
 - (iii) all other relevant documents
- 30  CH 3, Part 3: OFFENCES RELATING TO TRIBUNALS
- Section 34: Offences
 - Standard provisions
 - Offences punishable with a fine or imprisonment not exceeding five years
- 31  CHAPTER 4: MISCELLANEOUS PROVISIONS
- Section 35: Regulations
 - Section 36: Finances and accountability
 - Section 37: Secretariat of Commission
 - Section 38: Protection of confidential information

32 CHAPTER 4: MISCELLANEOUS PROVISIONS

- CLAUSE 10 – substitution of Long Title of principal Act
- CLAUSE 11: Short title of Bill

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