

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

**SCA CASE NO:
COURT A QUO CASE NO: 6175/19**

In the matter between:-

HELEN SUZMAN FOUNDATION

APPLICANT

And

ROBERT MCBRIDE

1ST RESPONDENT

**THE INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE**

2ND RESPONDENT

THE MINISTER OF POLICE

3RD RESPONDENT

**PORTFOLIO COMMITTEE ON POLICE:
NATIONAL ASSEMBLY**

4TH RESPONDENT

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THIRD RESPONDENT'S ANSWERING AFFIDAVIT

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IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

GP case no.: 6175/19

In the matter between:

HELEN SUZMAN FOUNDATION

Applicant

and

**ROBERT MCBRIDE
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
MINISTER OF POLICE
PORTFOLIO COMMITTEE ON POLICE:
NATIONAL ASSEMBLY**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

THIRD RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

Bhekokwakhe Hamilton Cele

state under oath that:

1. I am the Minister of Police and the Third Respondent in this application for leave to appeal.
2. The facts in this affidavit are true and, except where otherwise stated, within my personal knowledge. Where I make legal submissions, I do so on the basis of advice from my legal representatives.

Handwritten initials: HC

3. Mr McBride was appointed IPID director in March 2014. The IPID Act gave him a five-year term, and his five years came to an end in February 2019. Mr McBride was not removed from office. His term expired; expired by the passage of time, not by backroom politics.
4. About a month before his term expired, Mr McBride rushed to urgent court. He asked for two main things: one, an order declaring unlawful and setting aside my (preliminary) decision not to renew his term; and two, an order directing the Portfolio Committee to decide whether to renew his term (I attach Mr McBride's notice of motion as "AA1"). Mr McBride rightly accepted that he had no right to a renewed term, but that it was up to the Portfolio Committee to decide.
5. As it turned out, Mr McBride was not met with much opposition. Everyone—Mr McBride, IPID, the Portfolio Committee, and me—agreed that, under section 6(3)(b) of the IPID Act, the Portfolio Committee finally decides whether to renew an IPID director's five-year term. And the Portfolio Committee undertook to decide whether to renew Mr McBride's term before it expired on 28 February 2019. There was, in short, no longer a live dispute. Mr McBride got what he asked for. The parties recorded their intentions in a settlement agreement, which was made an order of court. The settlement agreement did not interpret the IPID Act and did not direct the Portfolio Committee to do anything besides report on its progress.
6. The Portfolio Committee took time to deliberate on the polycentric renewal decision. It decided not to renew Mr McBride's term. Mr McBride has since instituted review proceedings against the Portfolio Committee's decision. The review is pending (Mr McBride's notice of motion in the review is attached as

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"AA2"). The HSF is a party to the review. And as a party—not an amicus, as it was in Mr McBride's urgent application—the HSF may raise all its arguments about the IPID Act and IPID's independence in those proceedings, where there is actually a live dispute between adversarial parties on a properly ventilated record. Be that as it may, in the meantime, I appointed an acting IPID director (as I have the power to do under the IPID Act).

- 7. Meanwhile, back in Mr McBride's now-moot urgent application, the HSF—an amicus, not a party—tried to appeal the High Court's unremarkable order. The HSF first tried to skip this Court to go straight to the Constitutional Court. Its leapfrogging application for leave to appeal traversed much the same ground as this application. The Constitutional Court unanimously dismissed the application because it was "not in the interests of justice to hear it at this stage" (the Court's order is attached as "AA3"). Placing some measure of hope in the Court's "at this stage" qualification, the HSF returned to the High Court to ask for leave to appeal. The High Court rightly refused leave. The HSF now comes to this Court. With respect, this Court should follow the Constitutional Court and High Court and refuse leave.**
- 8. The HSF tries hard to turn Mr McBride's urgent litigation into a federal case about the IPID Act and the constitutionality of renewable terms of office. But what really happened in the High Court was much more modest, and the High Court's order much less consequential. In short, the HSF applies for leave to appeal against a case that the High Court did not decide.**

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9. This Court should dismiss the application for leave to appeal for three main reasons:

- First, the High Court's order is not appealable because it is not definitive of any party's rights and did not grant definite and distinct relief.
- Second, an appeal would have no practical effect, and so the application for leave to appeal should be dismissed under section 16(2)(a)(i) of the Superior Courts Act.
- Third, even if the High Court's order is appealable and even if an appeal would have some practical effect, the application for leave to appeal should be dismissed because there is no reasonable prospect of success on appeal and no other compelling reasons to grant leave.

The High Court's unremarkable order is not appealable

10. The application for leave to appeal treats the High Court's order as having spoken the final word on section 6 of the IPID Act and the renewability of the IPID director's term of office. With respect, the HSF reads far too much into the High Court's run-of-the-motion-court-mill order. The order says:

- "[1] It is declared that the decision taken by the [Minister] not to renew the appointment of [Mr McBride] as the Executive Director of [IPID] is a preliminary decision that must still be confirmed or rejected by [the Portfolio Committee].
- [2] It is recorded that the [Portfolio Committee] intends to take a decision regarding the renewal of [Mr McBride's] appointment on or before 28 February 2019.
- [3] The matter is postponed to the urgent roll on 26 February [2019] and for that purpose

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[3.1] The [Portfolio Committee] will report on affidavit by 22 February 2019 on its progress on taking a decision regarding the renewal of [Mr McBride's] appointment; and

[3.2] All parties will be entitled to make submissions to this Court on whether any further just and equitable orders should be granted, including but not limited to whether [the Portfolio Committee] should be given a further period to make a decision on the renewal of [Mr McBride's] appointment and whether [Mr McBride's] terms of office ought to be extended pending [the Portfolio Committee's] decision.

[4] There is no order as to costs."

11. The High Court's order did four things—and four things only:

- First, the order declared that my preliminary decision not to renew Mr McBride's term was just that: a preliminary decision that had to be confirmed or rejected by the Portfolio Committee. I had already said as much in my answering affidavit in Mr McBride's application. There, I described my "narrow" role under section 6(3)(b) of the IPID Act as to make a "preliminary decision that is referred to the Portfolio Committee, which the Portfolio Committee ... may confirm or reject" (the relevant page from my affidavit is attached as "AA4").
- Second, the order recorded what the Portfolio Committee intended to do: decide whether to renew Mr McBride's term, and to decide before 28 February 2019. That's exactly what Mr McBride—the original applicant, remember—asked for. In his notice of motion, Mr McBride asked for an order directing the Portfolio Committee "to take a decision on or before 28

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February 2019 on whether to renew the appointment of [Mr McBride] as Executive Director of IPID" (the notice of motion is attached as "AA1").

- Third, the order postponed Mr McBride's application.
 - Fourth, the order decided costs.
12. The High Court's order did not decide anything. It declared something that I had already conceded (paragraph [1]), recorded the Portfolio Committee's intention to do something that Mr McBride himself asked for (paragraph [2]), and then did things every motion court does day in and day out: granted a postponement and made a costs order (paragraphs [3] and [4]). The High Court's order does not even mention section 6(3)(b) of the Act, let alone decisively interpret it.
13. The order did define anyone's rights. It did not set aside any decisions, did not interpret any statutes, did not order anyone to do anything (besides a housekeeping obligation on the Portfolio Committee to report on its progress). Things would have worked out just the same without the order. After all, all the cited parties in Mr McBride's application—Mr McBride, IPID, the Portfolio Committee, and me—agreed it was for the Portfolio Committee to decide whether to renew Mr McBride's term. That, recall, was all Mr McBride asked for: confirmation that the Portfolio Committee would decide whether to renew his term. In Mr McBride's own words, there was "no longer any dispute" that "the final decision [on whether to renew Mr McBride's term] must be taken by the Portfolio Committee" (the relevant page of Mr McBride's replying affidavit is attached as "AA5").

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14. And because everyone agreed that the renewal decision rested with the Portfolio Committee, the High Court's order did not change anything. Take it out the equation and nothing changes: the Portfolio Committee would still have considered whether to renew Mr McBride's term, and would still have decided against it.
15. The High Court's order also has no precedential value. The HSF claims, for example, that "[t]he Minister's recommendation or preliminary decision is now a jurisdictional prerequisite for a renewal to be considered". With respect, that is an extraordinary interpretation of a court order that does not even mention the IPID Act. The High Court's order is much more modest; it is an unremarkable order without precedential value. And because the High Court's order did not interpret section 6(3)(b) of the IPID Act, most of the HSF's application for leave to appeal attacks an order that the High Court did not make. In the end, the interpretation of section 6(3)(b) of the IPID Act can and, with respect, should, be left for another day when there is a live dispute between adversarial parties in a properly pleaded case. (Mr McBride's pending review is the obvious candidate.)
16. For these reasons, the High Court's order is not appealable. I am advised that to be appealable, an order must be "definitive of the rights of the parties" and must grant "definite and distinct relief" (*Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532H-533B). The High Court's order did none of those things. It did not define Mr McBride's rights, did not interpret section 6(3)(b) of the IPID Act, and did not order the Portfolio Committee to make a decision. The High Court's order, in short, made no difference. And if a court order makes no difference, it cannot be "definitive of the rights of the parties" nor grant "definite and distinct relief". This Court recently dismissed an appeal because it had "no direct effect

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on the final issue" in the case (see *Crockery Gladstone Farm v Rainbow Farms (Pty) Ltd* (592/18) [2019] ZASCA 61 (20 May 2019)). Just so here.

17. For this reason alone, the application for leave to appeal should be dismissed.

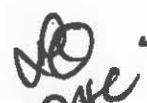
Even if the High Court's order is appealable, an appeal would have no practical effect

18. I am advised that section 16(2)(a)(i) of the Superior Courts Act gives this Court power to dismiss an appeal if it will have no practical effect. Just last year, this Court sounded a unanimous caution against judicial temptation "to decide an issue that may be of academic interest and the decision sought will have no practical effect or result." (*President of the Republic of South Africa v Democratic Alliance* 2018 JDR 0765 (SCA) at para 17).

19. To be sure, the HSF's high constitutional arguments about IPID's independence and the separation of powers may be interesting. But, with respect, congested courts are not here to "decide issues of academic interest only." (*Legal Aid South Africa v Magidiwana* 2015 (2) SA 568 (SCA) at para 2). None of this is new; a century ago, this Court cautioned against appeals for the sake of "pronounc[ing] upon abstract questions, or to advise upon differing contentions, however important." (*Geldenhuis and Neethling v Beuthin* 1918 AD 426 at 441). And it is not only about avoiding a "dissipation of scarce judicial resources"—important as that is—but is "fundamental in the conception of the function of the court". (*Director-General Department of Home Affairs v Mukhamadiva* 2013 JDR 2860 (CC) at paras 34 and 39).

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20. It is not enough that an appeal will have some general public importance or will answer some questions that may be worth answering. Rather, an appeal must "[affect] the position between the parties to the present dispute." (*SA Metal Group (Pty) Ltd v ITAC* 2017 JDR 0521 (SCA) at para 20).
21. An appeal won't affect the parties to Mr McBride's application. Whichever way an appeal goes, the Portfolio Committee's decision not to renew Mr McBride's term will stand. *Oudekraal* (and its many descendants) means the Portfolio Committee's decision remains valid and binding, and has legal effect, unless and until it is reviewed and set aside in a review of that decision. This is not a review of the Portfolio Committee's decision.
22. Still, the HSF says success on appeal "will restore Mr McBride as Executive Director of IPID as the Minister's and Committee's decisions (as sanctioned in the Order and Reasons) will be set aside." But *Oudekraal* stands in the way of that robust reasoning. Assume the HSF is right and wins on appeal. With respect, the appropriate order would be for this Court to set aside the High Court's order. No more, no less. Setting aside the High Court's order means Mr McBride's litigation goes back to square one. That is, the litigation goes back to Mr McBride asking for, to paraphrase his notice of motion, a direction that the Portfolio Committee decides, before 28 February 2019, whether to review his appointment as IPID director. Of course, that relief is now moot; the Portfolio Committee already made its decision. And *Oudekraal* would block any collateral attempt to displace the Portfolio Committee's decision in those resurrected-but-moot proceedings.



23. The proper way to challenge the Portfolio Committee's decision is a review. And that is exactly what Mr McBride has done: instituted review proceedings against the Portfolio Committee's decision. To use this Court's words, it is in Mr McBride's pending review that "the right remedy is sought by the right person in the right proceedings". The HSF is cited as a party in the review. All the arguments it raises here can be raised there. And the pending review boasts what this case lacks: a live dispute, between adversarial parties, on a properly ventilated record, with the potential of practical effect.
24. In the end, even if the HSF's appeal succeeds, the position of the parties "will remain unaltered and the outcome, certainly as far as this case is concerned, will be a matter of complete indifference to [them]" (*Legal Aid South Africa v Magidiwana* 2015 (2) SA 568 (SCA) at para 2). The interestingly lawyerly debates about renewable terms, international obligations, and the politicization of the National Assembly will, with respect, be just that: interesting lawyerly debates without practical effect.
25. For these reasons, the application for leave to appeal should be dismissed under section 16(2)(a)(i) of the Superior Courts Act.

The application for leave to appeal should be dismissed on its merits

26. Even if HSF gets over the high hurdles of appealability and practical effect, its application for leave to appeal should be dismissed on its merits.

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27. The HSF makes two main points:

- The High Court did not comply with what the Constitutional Court says about settlement orders and judgments *in rem*.
- The High Court did not do enough to better promote IPID's independence.

28. Note well what the HSF's case is not. The HSF devotes many pages to parading the evils of renewable terms of office. It argues strongly that "terms of office which are renewable at the instance of third party political actors ... irremediably undermine independence". We are even told in no uncertain terms that "[t]hey are unconstitutional." Yet despite all that, the HSF does not ask for an order declaring the renewable term of office in section 6(3)(b) of the IPID Act unconstitutional. That's surely the logical end point of the HSF's argument. Curiously, the HSF does not ask for that relief—maybe because it has the awkward result of leaving Mr McBride without a renewable term.

29. Be that as it may, the premise of the HSF's first argument is that the High Court's order is a judgment *in rem*. It isn't. And because it isn't, the cases the HSF relies on are easily distinguishable. Start with *Big Five*. *Big Five* was all about a judgment *in rem*, or a judgment that, to use the Constitutional Court's words, "determines the objective status of a person or thing." The High Court's judgment in *Big Five* ticked the *in-rem* box because it set aside a tender. Similarly, the High Court's judgment in *Eke* was a judgment *in rem* because it bound the defendant to all manner of obligations. The High Court's order here is very different: it did not interpret anything, did not direct anything (besides the Portfolio Committee's housekeeping reporting obligation), and did not set anything aside. This is simply not a *Big Five*- or *Eke*-type case.

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30. *Big Five* and *Eke* also say nothing about whether an amicus may disrupt a settlement agreement. In both cases, the validity of the settlement agreement was raised by one of the parties. In other words, there was in both *Big Five* and *Eke* what is missing here: a live controversy between adversarial parties. The parties to Mr McBride's application—Mr McBride, IPID, the Portfolio Committee, and me—all agreed that the Portfolio Committee is the one who decides whether to renew Mr McBride's term. Usually when everyone in court agrees, there is no longer a live dispute. And no live dispute means no justiciable issue. After all, ours is an adversarial system. Without disagreement, there are no adversaries, and without adversaries, there is no longer an adversarial system of adjudication.
31. Next are the HSF's interpretation arguments and how section 6(3)(b) of the IPID Act should be interpreted to better promote IPID's independence.
32. At the outset, I again point out that the High Court's order did not interpret section 6(3)(b) of the IPID Act. This Court would, with respect, be interpreting the section for the first time on appeal. The proper interpretation of section 6(3)(b) should be left to percolate in the High Court before receiving appellate attention. All the more so when the HSF is a party to Mr McBride's pending review, where it can raise its interpretation arguments in a live dispute on a properly ventilated record.
33. As I already noted, the HSF does not take its arguments about the evils of renewable terms to their logical end point. That is, the HSF does not argue that section 6(3)(b) should be declared unconstitutional to the extent that it gives the IPID director a renewable term. The HSF instead tries to use *Hyundai* to get to an interpretive halfway house: section 6(3)(b) should be interpreted so that the incumbent IPID director is the one who decides whether to renew his or her own

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term. In other words, the HSF's case on renewable terms reduces to this: renewable terms are very bad, but not *that* bad if the incumbent gets to do the renewing.

34. Not even Mr McBride was willing to give himself a renewable term. From the get go, Mr McBride—the one who started this litigation, remember—accepted that he had no right to a renewed term, but that the decision rested with the Portfolio Committee. This is what Mr McBride said in his founding affidavit (I attach the relevant pages as "AA6"):

"I emphasise that I accept that I have no right to have my appointment renewed...

...

...[P]roperly construed [under section 6(3)(b) of the IPID Act], it is the Portfolio Committee (as part of Parliament and being the body that decides whether to appoint the Executive Director) that is vested with the power to determine whether to renew the appointment of the Executive Director."

35. The HSF argues, relying on *Hyundai*, that to better promote IPID's independence, section 6(3)(b) must be interpreted so that the incumbent director gets to decide whether to renew his or her own term. Just like that, a discretionary power to renew turns into an irrevocable option to renew.
36. *Hyundai* is not a free pass through statutory text. It is also not a legitimate way of avoiding a direct constitutional challenge, which the HSF has chosen not to bring. Statutory text only gets *Hyundai's* better-promotes-the-Constitution treatment if the proposed interpretation is not "unduly strained". The HSF's roundabout interpretation—a renewable term renewable at the instance of the incumbent—is unduly strained.

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37. Start with text. Section 6 reads, in relevant part:

"6. Appointment of Executive Director

- (1) The Minister must nominate a suitably qualified person for appointment to the office of Executive Director to head the Directorate in accordance with a procedure to be determined by the Minister.
- (2) The relevant Parliamentary Committee must, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination.
- (3) In the event of an appointment being confirmed-
 - (a) ...
 - (b) such appointment is for a term of five years, which is renewable for one additional term only."

38. It is immediately apparent from subsections (1) and (2) that the Minister and the Portfolio Committee—all "political actors", according to the HSF—have an instrumental role in the appointment of the IPID director. This has two interpretive implications:

- Parliament never intended the appointment process for the IPID director to be absolutely independent from the executive and legislative branches of government. This, I am advised, aligns with what the Constitutional Court requires of independent institutions: adequate independence, not absolute or isolated independence.
- Subsection 3(b) refers to "such appointment ... , which is renewable" (emphasis added). The use of "such appointment" can only mean that what is being renewed is the appointment referred to in subsections (1) and (2)—

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that is, the appointment made on the Minister's recommendation, confirmed by the Portfolio Committee. The use of "such" suggests that the renewal process should mirror the appointment process.

39. The HSF's interpretation places far too much interpretive weight on section 6(3)(b) being phrased in the passive voice. Parliament does not speak in code. Had Parliament intended to give the IPID director an irrevocable option to renew his or her own term—quite a thing—it would have said so. Indeed, had that been Parliament's intention, there was a much simpler way to go about it: just give the IPID director a single term of, say, ten years.
40. Constitutional purpose and design also count against the HSF's interpretation. On the HSF's view, the Minister and the Portfolio Committee should play no role at all in renewing the IPID director's term. But that is to require absolute independence, which the Constitutional Court has repeatedly rejected. Everyone agrees that IPID must be independent. But independence does not mean isolation, just like the separation of powers is not the isolation of powers. The Constitutional Court has cautioned that the question in these types of cases is whether a statute does enough to protect independence. With respect, the question is not whether "in the opinion of the judiciary, better options [are] available." (*Helen Suzman Foundation v President of the Republic of South Africa* 2015 (2) SA 1 (CC) at para 75).
41. Section 6(3)(b) does enough to protect the IPID director from the pressure of politics. After all, the most democratic and most accountable branch of government—the National Assembly—is the one that ultimately decides whether to renew the IPID director's term.

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42. The National Assembly and its committees are not good enough for the HSF. It repeatedly dismisses the Portfolio Committee as a mere "political actor" because the Committee "comprises majority members of the same political party as the Minister." This Court has already rejected this type of blunt equivalence between members of the National Assembly and the political parties they represent (see *Chairperson of the Nation Council of Provinces v Malema* 2016 (5) SA 335 (SCA) at para 20).
43. The Portfolio Committee is, in any event, far from a "political actor". Quite the opposite. The National Assembly is, after all, the only branch of government elected by the People. And as the People's representatives, members of the National Assembly must, as the Constitutional Court has held, put the People before the party (see *United Democratic Movement v Speaker, National Assembly* 2017 (5) SA 300 (CC) at para 79).
44. The HSF's bad-political-actors logic has startling consequences. The Judicial Services Commission, for example, suddenly becomes a politically dominated body that too, presumably, lacks independence. (The "political actors" would, on the HSF's logic, be everyone listed in sections 178(1)(d), (h), (i), (j), and (at least one of) (k) of the Constitution, or sixteen out of twenty-five JSC members.) The extraordinary sweep of the bad-political-actors logic doesn't stop there; just like that, it makes all of these very important institutions no longer adequately independent:
- The Electoral Commission. Section 7 of the Electoral Commission Act 51 of 1996 allows the President, on the National Assembly's recommendation,

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to extend the seven-year term of office of a member of the Electoral Commission.

- The Competition Commission. Section 22 of the Competition Act 89 of 1998 allows the Minister to reappoint the Commissioner of the Competition Commission after expiry of an initial five-year term.
 - The Municipal Demarcation Board. Section 9 of the Local Government: Municipal Demarcation Act 27 of 1998 allows a Demarcation Board member's term to be extended by the President, on the recommendation of a selection panel.
 - ICASA. Section 7 of the Independent Communications Authority of South Africa Act 13 of 2000 allows the Minister of Telecommunications to extend an ICASA councillor's term of office on the National Assembly's recommendation.
 - CIPC. Section 189 of the Companies Act 71 of 2008 states that the Commissioner of CIPC is appointed for an agreed term not to exceed five years, but may be reappointed after expiry of that term.
 - The Tax Board. Section 111 of the Tax Administration Act 28 of 2011 states that the chairperson of the Tax Board serves for five years, and is eligible for reappointment "as the Minister thinks fit".
45. Consequences like that call for pause. Our separation of powers envisages—encourages, even—a degree of overlap between the branches of government. To dismiss it all as politicians just doing what politicians do is, with respect, to

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turn the separation of powers into an unprecedented and constitutionally unsupported isolation of powers.

46. That leaves HSF's resort to international law. The treaties it cites in the application for leave to appeal are broadly worded, like most international-law instruments are. Specific foreign statutes are more helpful. Canada and New Zealand have equivalents of IPID. New Zealand has the Independent Police Conduct Authority, regulated by the Independent Police Conduct Authority Act 1988. And Canada has the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police, regulated by the Royal Canadian Mounted Police Act 1985. The executive members of these Canadian and New Zealand IPIDs are appointed by Canadian and New Zealand "political actors", as HSF would presumably describe them.

- In New Zealand, the members of the Independent Police Conduct Authority are appointed "by the Governor-General on the recommendation of the House of Representatives". So is the Authority's chairperson. And a member may be reappointed by the Governor-General. (The relevant sections of the Independent Police Conduct Authority Act and the Crown Entities Act 2004 are attached as "AA7").
- In Canada, members of the Civilian Review and Complaints Commission are "appointed by the Governor in Council". The Governor in Council, I am advised, is a political appointment made by the Governor General on the advice of the Canadian cabinet. The Commission's chairperson is also appointed by the Governor in Council, and any member's term is

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renewable. (The relevant sections of the Royal Canadian Mounted Police Act are attached as "A8").

47. On Transparency International's latest corruption rankings, Canada is the ninth least-corrupt country in the world and New Zealand the second-least (a printout from Transparency International's website is attached as "AA9"). On that measure, section 6(3)(b) of the IPID Act measures up well with the international gold standard.
48. I pause to note, again, that the High Court's order did not definitively interpret section 6(3)(b) of the Act. Moreover, there is no longer a live dispute. So, in the end, while the interpretive debate may be interesting, this case is a bad vehicle to entertain it.
49. For these reasons, even if the High Court's order is appealable and would have a practical effect, the application for leave to appeal should be dismissed.

Paragraph-by-paragraph response to the HSF's founding affidavit

50. In this section, I respond to each paragraph of HSF's founding affidavit, but only in a limited way so as not to repeat what I have already said. If I do not deal with any particular allegations in the founding affidavit, they should be taken as denied.

Paragraphs 1 to 5

51. Except to deny that all the allegations and legal argument in the founding affidavit are correct, I admit the allegations in these paragraphs.

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Paragraphs 6 to 9

52. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit.
53. The application for leave to appeal does not really "concern[] the interpretation of section 6(3)(b) of the [IPID] Act". The HSF wants to turn the High Court's modest order into a federal case on IPID's independence. The High Court's order did not interpret section 6(3)(b) of the IPID Act, which, with respect, ought to be left for another day when there is a live dispute between adversarial parties.
54. The High Court's order did not "sanction[] an agreement between the parties which grants relief which is inconsistent with the Constitution" and the rest. The order did not interpret the IPID Act, did not direct the Portfolio Committee—or any party, for that matter—to do anything (besides the Portfolio Committee's reporting obligation), and did not determine the rights of any party.
55. The HSF's repeated dismissal of the Portfolio Committee (of the National Assembly) as a bunch of "political actors" is unfortunate and, as I have shown, inconsistent with our constitutional structure and design.

Paragraphs 10 to 14

56. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit.
57. These paragraphs mostly dealt with the HSF's *Big Five* argument, which I have already dealt with.



58. On no stretch of the High Court's order did the High Court "give[] judicial effect to the interpretation of section 6(3)(b) of the IPID Act adopted by the parties and issue[] mandatory orders on that basis". The High Court's order does not even mention the IPID Act, let alone definitively interpret any of its sections. And it is simply not true that the High Court issued mandatory orders.

Paragraphs 15 to 16

59. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit.

60. The High Court's order did not definitively interpret section 6(3)(b) and did not "direct[] performance" of anything by anyone (besides the Portfolio Committee's reporting obligation).

61. To its credit, the HSF is a quarter-correct in one respect: the Portfolio Committee decided not to renew Mr McBride's term. But that was not "performance" directed by the High Court and the Portfolio Committee's decision was not made "in tandem" with the Minister.

62. The HSF is correct that an Acting Executive Director was appointed. The HSF does not challenge the constitutionality of my power to appoint an acting director under the IPID Act.

Paragraphs 17 to 20

63. I admit the parties to this application for leave to appeal but deny the argumentative commentary that accompanies the descriptions of the parties.

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64. Mr McBride's term of office did not terminate "as a result of, the proceedings before the court *a quo*". Mr McBride's five-year term terminated by operation of law because five years passed since his appointment. The High Court's order had nothing to do with it.
65. The HSF is correct that the Portfolio Committee decided not to renew Mr McBride's term. The Committee's decision, I am advised, is valid and binding, and has legal effect, unless and until it is set aside in a review. The HSF does not mention that there is, in fact, a pending review of the Committee's decision (which the HSF is party to, with all the participation rights that come with being a party, as opposed to the limited rights of an amicus).

Paragraphs 21 to 36

66. I admit the allegations in these paragraphs to the extent they are consistent with the correspondence annexed to the founding affidavit. The arguments in these paragraphs are denied to the extent they are inconsistent with what I have stated elsewhere in this affidavit.

Paragraphs 36 to 40

67. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit.

Paragraphs 41 to 53

68. I deny these alleged flaws in the High Court's reasons for its order and deny the arguments in these paragraphs to the extent they are inconsistent with what I have stated elsewhere in this affidavit.

NO
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69. In particular, I deny that the High Court's order is a judgment *in rem* for the reasons already addressed.
70. In respect of the allegations made in paragraph 44, the Portfolio Committee indicated on affidavit on 22 February 2019 that it "would be in a position to take a decision [on whether to renew Mr McBride's term] and prepare a report on the matter for the National Assembly by 28 February 2019" (the relevant page from the Portfolio Committee's affidavit is attached as "AA10"). The Portfolio Committee did, in fact, make its decision by that date.

Paragraphs 54 to 66

71. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit.
72. There is simply no basis for the HSF's conclusion that "the Minister's recommendation or preliminary decision is now a jurisdictional prerequisite for a renewal to be considered [by the Portfolio Committee]". The High Court's order does not even mention the IPID Act, let alone definitively interpret section 6(3)(b).
73. In these paragraphs, the HSF argues extensively about the evils of renewable terms of office. Curiously, as noted above, the HSF does not go to the logical end point of this argument; that is, the HSF does not ask that section 6(3)(b) be declared unconstitutional because it allows the IPID director's term of office to be renewed. Perhaps that would prove too much for the HSF's liking, because it would leave Mr McBride without the possibility of a renewed term.
74. I have already dealt with South Africa's international-law obligations. The conventions and treaties that the HSF cites are worded broadly and do not

NO
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provide particular support for the HSF's case. If we are to consider comparative law, specific examples from comparable foreign jurisdictions are more helpful. Canada and New Zealand—paragons of the fight against corruption—both have equivalents of IPID. Their members are appointed by so-called "political actors". Those same "political actors" can renew their terms of office.

Paragraphs 67 to 75

75. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit. For reasons I have already addressed, I deny that the HSF has reasonable prospects of success on appeal.

Paragraphs 76 to 78

76. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit. For reasons I have already addressed, I deny that there are compelling reasons to grant leave to appeal.

77. In particular, I deny that the High Court's order is a judgment *in rem*, or that it undermines IPID's independence. I also deny that IPID's director (or acting director) "is appointed as a result of the operation of the [High Court's order]". The High Court's order was far more modest; it did not define anyone's rights and did not direct anyone to do anything (besides ordering the Portfolio Committee to report back on its progress).

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BHC:

Paragraphs 79 to 91

78. I deny the allegations and arguments in these paragraphs to the extent they are inconsistent with what I have said elsewhere in this affidavit. In any event, the continued relevance of the High Court's reasoning in denying leave to appeal is not clear (presumably, the HSF wants to appeal the High Court's order, not the High Court's dismissal of leave to appeal).
79. Be that as it may, I deny that the High Court's order is a judgment *in rem*. I also deny that an appeal would have any practical effect, as I have already explained. I am advised that the HSF is wrong that a successful appeal "will restore Mr McBride as Executive Director of IPID". The Portfolio Committee's decision remains valid and legally effective unless and until it is set aside in proper proceedings for review. This case is not that, nor could it be since the High Court's order did not empower or direct the Portfolio Committee to do anything of substance.
80. As for the High Court's costs order, the HSF does not come close to meeting the very high standard for appellate interference with a trial court's decision on costs—the heartland of trial-court discretion. At best, the HSF complains that the High Court incorrectly applied the *Biowatch* principle. *Biowatch* is not blank cheque for amici litigation on, in the end, the taxpayers' dime. But in any event, it is not enough to say the High Court got *Biowatch* wrong. In the absence of the usual grounds for appellate interference in discretionary trial-court decisions—which the HSF does not even plead—this Court should, with respect, defer to the High Court's discretion.

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Paragraphs 92 to 93

81. I deny that an appeal has a reasonable prospect of success. I also deny that there are other compelling reasons to grant leave to appeal.

Conclusion

82. The High Court's order is not appealable. Even if it is appealable, an appeal would not have a practical effect. And even if the HSF's application overcomes those hurdles, it does not have a reasonable prospect of success on the merits.

83. The application for leave to appeal should be dismissed.



Bhekokwakhe Hamilton Cele

The terms of Regulation R 1258 published in Government Gazette No. 3619 of the 21st July 1972 having been complied with, I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at Cape Town on this, the 22 day of May 2019.



Commissioner of Oaths
Fazlin Omar

ADVOCATES FIRST FLOOR
42 KEEROM STREET.
CAPE TOWN
8001

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AA1

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

CASE NO:

6175/19

In the matter between:

2019

ROBERT MCBRIDE

First Applicant

**THE INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE**

Second Applicant

and

MINISTER OF POLICE

First Respondent

**PORTFOLIO COMMITTEE ON POLICE:
NATIONAL ASSEMBLY**

Second Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicants intend to make application to this Honourable Court on Tuesday, 12 February 2019 at 10h00, or so soon thereafter as the matter may be heard, for an order in the following terms:

1. It is directed that in terms of Rule 6(12) of the Rules of this Court, this application be treated as an urgent application and the applicants' non-compliance with the forms and service and time-periods provided in the Uniform Rules of Court is condoned.
2. It is declared that the decision of the First Respondent (the Minister of Police) not to renew the appointment of the First Applicant as the

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Executive Director of the Independent Police Investigative Directorate (IPID) is unconstitutional, unlawful and invalid, and the decision is set aside.

3. The Second Respondent (the Portfolio Committee on Police) is directed to take a decision on before 28 February 2019 on whether to renew the appointment of the First Respondent as Executive Director of IPID.
4. To the extent necessary, it is declared that section 6(3)(b) of the Independent Police Investigative Directorate Act 1 of 2011 is unconstitutional and invalid to the extent it confers the power to renew the appointment of the Executive Director of IPID on the Minister of Police, rather than on the Portfolio Committee on Police.
5. The Applicants' costs, including the costs of two counsel, are to be paid by the First Respondent, alternatively (in the event that this application is opposed by the Second Respondent) by the Respondents jointly and severally.
6. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **ROBERT MCBRIDE** will be used in support of this application.

TAKE NOTICE FURTHER that in view of the urgency of this matter the time-periods for the filing of affidavits have been shortened as follows:

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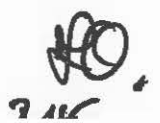
- The respondents must file their notice of opposition, if any, by 16h00 on Friday, 1 February 2019; and
- The respondents must file their answering affidavits, if any, by 16h00 on Monday, 4 February 2019.
- The applicants will file a replying affidavit, if any, by 12h00 on Thursday, 7 February 2019.

DATED at Pretoria this 29th day of JANUARY 2019.


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Ref: JSM/TDM/mnn/LT4287

**TO: REGISTRAR OF THE HIGH COURT
PRETORIA**

AND TO: THE MINISTER OF POLICE
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BY HAND: **THE STATE ATTORNEY**
Attorney for the First Respondent
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0001

AND TO: **THE PORTFOLIO COMMITTEE ON POLICE**
Parliament of South Africa
Parliament Street
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BY HAND: **THE STATE ATTORNEY**
Attorney for the Second Respondent
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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

CASE NO: 13929/19.

In the matter between:

ROBERT MCBRIDE

First Applicant

**THE INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE**

Second Applicant

and

**PORTFOLIO COMMITTEE
NATIONAL ASSEMBLY**

First Respondent

**THE CHAIRPERSON OF THE PORTFOLIO
COMMITTEE ON POLICE - NATIONAL ASSEMBLY**

Second Respondent

THE SPEAKER OF THE NATIONAL ASSEMBLY

Third Respondent

MINISTER OF POLICE

Fourth Respondent

CORRUPTION WATCH

Fifth Respondent

HELEN SUZMAN FOUNDATION

Sixth Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicants intend to make application to this Honourable Court on an expedited date to be arranged with the Registrar and/or the Deputy Judge President, for an order in the following terms:

1. The application is heard as a matter of urgency and any non-compliance with the rules and ordinary requirements for service is condoned;
2. The decision of the First Respondent not to renew the appointment of the First Applicant as the Executive Director of the Independent Police Investigative Directorate is declared unlawful and invalid and is reviewed and set aside;
3. The decision is remitted to the First Respondent for a fresh decision, which decision must be taken within 30 days of the date of this order, and
4. The costs of this application shall be paid by the First Respondent, jointly and severally with any other respondent that opposes the application.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of **ROBERT MCBRIDE**, and the attached annexures, will be used in support of this application.

TAKE NOTICE FURTHER that in view of the urgency of this matter, the ordinary time-periods for the filing of papers have been shortened as set out below.

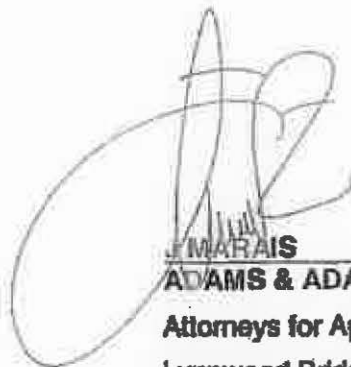
TAKE NOTICE FURTHER that:

- (a) The first respondent is called upon to show cause why the decision referred to in prayer 2 above should not be set aside;

- (b) The first respondent is called upon, within five days of receipt of this notice of motion, to despatch to the Registrar the record of all documents and all electronic records that relate to the making of the decision referred to in prayer 2 above, together with the reasons for such decision, and to notify the applicant's attorneys that they have done so; and
- (c) The applicant will within five days of receipt of the record and reasons from the Registrar, amend, add to, or vary the terms of its notice of motion and supplement the founding affidavit, by delivery of a notice and accompanying affidavit.

TAKE NOTICE FURTHER that any respondents who wish to oppose the relief sought are required:

- (a) within five days of receipt of this notice of motion or any amendment thereto, to deliver a notice to the applicants' attorneys that such respondents intend to oppose this application;
- (b) to appoint an address within 15 kilometres of the office of the Registrar at which the respondents will accept notice and service of all process in such proceedings; and
- (c) within ten days of the expiry of the filing of the applicants' supplementary papers, deliver such affidavits as they may desire in answer to the allegations made by the applicants.

**J. MARAIS****ADAMS & ADAMS****Attorneys for Applicants****Lynnwood Bridge Office Park****4 Daventry Street****Lynnwood Manor****PRETORIA****Tel: (012) 436 6616****Fax: (012) 432 6000****E-mail: jac.marais@adams.africa****thendo.menentse@adams.africa****moya.vaughan-williams@adams.africa****mpumetelo.ndlela@adams.africa****Ref: JSM/TDM/mnn/LT4287**

**TO: REGISTRAR OF THE HIGH COURT
PRETORIA**

AND TO: THE PORTFOLIO COMMITTEE ON POLICE

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CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 48/19

In the matter between:

HELEN SUZMAN FOUNDATION

Applicant

and

ROBERT McBRIDE

First Respondent

**THE INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE**

Second Respondent

MINISTER OF POLICE

Third Respondent

**PORTFOLIO COMMITTEE ON POLICE:
NATIONAL ASSEMBLY**

Fourth Respondent

ORDER DATED 27 FEBRUARY 2019

CORAM: Mogoeng CJ, Cameron J, Froneman J, Jafta J, Khampepe J, Ledwaba AJ, Madlanga J, Nicholls AJ and Theron J.

The Constitutional Court has considered this application for leave to appeal. It has concluded that the application should be dismissed as it is not in the interests of justice to hear it at this stage. The Court has decided not to award costs.

Order: The application for leave to appeal is dismissed.

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Manganga
MR KGWADI MAKGAKGA
REGISTRAR
CONSTITUTIONAL COURT



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Ref: 00418/2019 /Z64/jb

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Once those five years are up, the director's term terminates as a matter of law. Beyond year five, the IPID director, as Mr McBride rightly acknowledges, has "no right to have [his or her] appointment renewed".

8. This case is also not about the constitutionality of renewable terms of office. Mr McBride's complaint is not that the IPID director's term can be extended, which "invites a favour-seeking disposition from the incumbent". The logical end point of Mr McBride's argument is that a non-renewable term is the gold standard of independence (though a non-renewable term would, of course, not be of much help to Mr McBride). Presumably not wanting to prove too much, Mr McBride's case stops somewhere short of independence requiring a non-renewable term: a renewable term is okay, but the final decision to renew cannot be made by the executive branch of government.
9. The final decision is not made by the executive branch of government. Properly interpreted, the renewal process under section 6(3)(b) of the Act works just like the appointment process under sections 6(1) and (2). The Minister's role is narrow: when an incumbent director's five-year term nears its end, the Minister makes a preliminary decision to renew or not to renew the incumbent's term. The Minister's decision, like the decision to nominate someone to be IPID director, is not final. It is a preliminary decision that is referred to the Portfolio Committee, which the Portfolio Committee (and, ultimately, the National Assembly) may confirm or reject.
10. Mr McBride's timeline of events leaves out something important: he was the one who approached me for a decision on renewing his term. His affidavit seems to start the timeline on 16 January 2019 when I "advise[d] that [I] had decided not

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- 2 The facts set out in this affidavit are within my personal knowledge unless otherwise stated or apparent from the context. Where I make legal submissions, I do so on the advice of my legal representatives.
- 3 I have read the answering affidavit of the Minister of Police, Mr Bhakokwakhe Cele, and reply thereto insofar as is necessary. Much of the answering affidavit is legal argument, and will be addressed at the appropriate time.

OVERVIEW OF REPLY

- 4 The Minister has misunderstood and mischaracterized the applicants' case. It is not the applicants' case that the Minister has "no role" in the renewal of the IPID Director's term of office.¹ The applicants' case is that the Minister cannot take the final decision in this regard. The applicants accept that the Minister may make a recommendation to the Portfolio Committee, but the final decision must be taken by the Portfolio Committee.
- 5 It is evident from the Minister's answering affidavit that, on this fundamental point of law, there is (no longer) any dispute. This appears in particular from paragraph 9 of the answering affidavit. The applicants have always accepted that the Minister is entitled to take a "preliminary decision", for the Portfolio Committee's consideration and confirmation or

¹ Minister AA para 3.

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- 14 Under section 6(3)(b) of the Independent Police Investigative Directorate Act 1 of 2011 ("IPID Act"), the Executive Director's appointment is renewable for one additional term. I submit that whether my appointment is renewed is a decision that can only be taken by the Portfolio Committee, and that the Portfolio Committee must take the decision before my term expires on 28 February 2019.
- 15 The Portfolio Committee has thus far been prevented from taking this decision, in truth because of the Minister's conduct.
- 15.1 The Minister began by unilaterally taking the decision himself and allowing the Portfolio Committee to play no role.
- 15.2 When I wrote an urgent letter pointing out that this is unlawful, the Minister indicated that the matter would be referred to the Portfolio Committee for its consideration. However, the Minister has (despite a demand to this effect) refused to withdraw his own decision that my appointment and employment contract will not be renewed. Unless and until that happens, the Portfolio Committee cannot lawfully take a decision, properly or at all.
- 16 I emphasise that I accept that I have no right to have my appointment renewed, nor any guarantee that the employment contract will be renewed. However, I do have a right to have the decision regarding renewal taken lawfully by the body lawfully vested with this power – that is the Portfolio Committee – rather than by the Minister.

principle of independence. If that is what section 6(3)(b) of the IPID Act means, it is unconstitutional.

32 However, in my submission that is not the proper construction of section 6(3)(b). Instead, properly construed, it is the Portfolio Committee (as part of Parliament and being the body that decides whether to appoint the Executive Director) that is vested with the power to determine whether to renew the appointment of the Executive Director.

33 If there were any doubt in this regard, I submit that the judgment and order of the Constitutional Court in *McBride* is determinative.

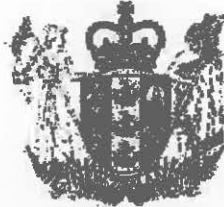
33.1 The Constitutional Court specifically held in *McBride* that section 6(3)(a) of the IPID Act was unconstitutional for making the Executive Director subject to the laws governing the public service.

33.2 The Constitutional Court reasoned in paragraph 39 of its judgment:

"To subject the Executive Director of IPID, which the Constitution demands to be independent, to the laws governing the public service – to the extent that they empower the Minister to unilaterally interfere with the Executive Director's tenure – is subversive of IPID's institutional and functional independence, as it turns the Executive Director into a public servant subject to the political control of the Minister".

33.3 The order granted by the Constitutional Court in *McBride v Minister of Police* reads, in relevant part, as follows:

Reprint
as at 28 September 2017



Independent Police Conduct Authority Act 1988

Public Act 1988 No 2
Date of assent 10 March 1988
Commencement see section 1(2)

Act name: substituted, on 29 November 2007, by section 5(1) of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

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Note

Changes authorized by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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- (b) any other Act that expressly provides for the functions, powers, or duties of the Authority (other than the Crown Entities Act 2004).

Section 4AB: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

5 Membership of Authority

- (1) The Authority consists of up to 5 members appointed by the Governor-General on the recommendation of the House of Representatives.
- (2) Subsection (1) applies despite section 28(1)(b) of the Crown Entities Act 2004.

Section 5: substituted, on 29 November 2007, by section 9 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

5A Chairperson of Authority

- (1) The Governor-General, on the recommendation of the House of Representatives, must appoint 1 member as the chairperson of the Authority.
- (2) A person appointed as the chairperson of the Authority must be a Judge or a retired Judge.
- (3) Subsection (1) applies despite clause 1(2) of Schedule 5 of the Crown Entities Act 2004.

Section 5A: inserted, on 29 November 2007, by section 9 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

5B Appointment of Judge as member of Authority

- (1) The appointment of a Judge as a member of the Authority does not affect his or her judicial office, rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges that he or she has as a Judge, including matters relating to superannuation.
- (2) The time a Judge serves as a member of the Authority must be taken as service as a Judge.

Section 5B: inserted, on 29 November 2007, by section 9 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

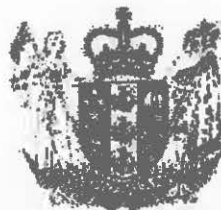
5C Resignation of member

- (1) A member may resign from office by written notice to the Governor-General (with a copy to the Authority) signed by the member.
- (2) The resignation is effective on receipt by the Governor-General of the notice or at any later time specified in the notice.
- (3) This section applies despite section 44 of the Crown Entities Act 2004.

Section 5C: inserted, on 29 November 2007, by section 9 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

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Reprint
as at 31 October 2018



Crown Entities Act 2004

Public Act 2004 No 115
Date of assent 21 December 2004
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the State Services Commission and the Treasury.

NO
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- (a) to assist the responsible Minister to carry out his or her role (which is described in section 27); and
- (b) to perform or exercise any or all of the following functions, duties, or powers:
 - (i) administering appropriations;
 - (ii) administering legislation;
 - (iii) tendering advice to Ministers;
 - (iv) any other functions, duties, or powers in this Act or another Act that may, or must, be performed or exercised by the monitor.

Section 27A: inserted, on 18 July 2013, by section 10 of the Crown Entities Amendment Act 2013 (2013 No 51).

Appointment, removal, and conditions of members

28 Method of appointment of members.

- (1) A member of a statutory entity is appointed by—
 - (a) the responsible Minister, in the case of a member of a Crown agent or autonomous Crown entity; or
 - (b) the Governor-General, on the recommendation of the responsible Minister, in the case of a member of an independent Crown entity.
- (2) The appointment must be made by written notice to the member (with a copy to the entity).
- (3) The notice must—
 - (a) state the date on which the appointment takes effect which must not be earlier than the date on which the notice is received; and
 - (b) state the term of the appointment.
 - (c) *[Repealed]*
- (4) The responsible Minister must ensure that the following are notified in the *Gazette* as soon as is reasonably practicable after an appointment is made:
 - (a) the name of the appointee and the statutory entity; and
 - (b) the date on which the appointment takes effect; and
 - (c) the term of the appointment.

Section 28(3)(b): amended, on 7 July 2010, by section 4(1) of the Crown Entities Amendment Act 2010 (2010 No 60).

Section 28(3)(c): repealed, on 7 July 2010, by section 4(1) of the Crown Entities Amendment Act 2010 (2010 No 60).

Section 28(4): added, on 7 July 2010, by section 4(2) of the Crown Entities Amendment Act 2010 (2010 No 60).

Section 30(2)(b): substituted, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 30(2)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

31 Requirements before appointment

- (1) Before a person is appointed as a member of a statutory entity, the person must—
- (a) consent in writing to being a member; and
 - (b) certify that he or she is not disqualified from being a member; and
 - (c) disclose to the responsible Minister the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the statutory entity.
- (2) The board of the entity must notify the responsible Minister of a failure to comply with subsection (1)(c) as soon as practicable after becoming aware of the failure.

32 Term of office of members

- (1) A member of a statutory entity holds office for—
- (a) 3 years or any shorter period stated in the notice of appointment, in the case of a member of a Crown agent or autonomous Crown entity; or
 - (b) 5 years or any shorter period stated in the notice of appointment, in the case of a member of an independent Crown entity.
- (2) A member may be reappointed.
- (3) A member continues in office despite the expiry of his or her term of office until—
- (a) the member is reappointed; or
 - (b) the member's successor is appointed; or
 - (c) the appointor informs the member by written notice (with a copy to the entity) that the member is not to be reappointed and no successor is to be appointed at that time.
- (4) This section is subject to section 45.

33 Elected, co-opted, etc, members

- (1) Sections 28, 29, 31(1)(a) and (b), and 32 do not apply to a member of a statutory entity who is appointed under the entity's Act by election, co-option, or designation, or by any method other than appointment by a Minister or the Governor-General.
- (2) Section 31(1)(c) does not apply to a member of a statutory entity who is appointed (whether or not by nomination) by any method other than appointment by a Minister or the Governor-General if, under another Act, the member



CANADA

CONSOLIDATION

CODIFICATION

**Royal Canadian Mounted Police
Act**

**Loi sur la Gendarmerie royale
du Canada**

R.S.C., 1985, c. R-10

L.R.C. (1985), ch. R-10

Current to April 25, 2019

À jour au 25 avril 2019

Last amended on September 21, 2017

Dernière modification le 21 septembre 2017

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :
<http://lois-laws.justice.gc.ca>

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PART VI

Civilian Review and Complaints Commission For the Royal Canadian Mounted Police

Establishment and Organization

Establishment

45.29 (1) The Civilian Review and Complaints Commission for the Royal Canadian Mounted Police is established, consisting of a Chairperson and not more than four other members, one of whom may be a Vice-chairperson, appointed by the Governor in Council.

Ineligibility

(2) A person is not eligible to be a member of the Commission if that person

- (a) is a member or former member; or
- (b) is not a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

Appointment consideration

(3) The Governor in Council shall, before appointing a person as a member of the Commission, consider the need for regional representation in the membership of the Commission.

Reappointment

(4) A member of the Commission is eligible for reappointment on the expiry of that member's term of office.

R.S., 1985, c. 9 (2nd Suppl.), s. 16; 2003, c. 22, s. 217(2); 2013, c. 18, s. 35.

Full- or part-time

45.3 (1) The Chairperson is a full-time member of the Commission. The other members may be appointed as full-time or part-time members of the Commission.

Tenure

(2) Each member of the Commission holds office during good behaviour for a term of not more than five years but may be removed for cause at any time by the Governor in Council.

PARTIE VI

Commission civile d'examen et de traitement des plaintes relatives à la Gendarmerie royale du Canada

Constitution et organisation

Constitution

45.29 (1) Est constituée la Commission civile d'examen et de traitement des plaintes relatives à la Gendarmerie royale du Canada, composée d'un président et d'au plus quatre autres membres, dont l'un peut être un vice-président, nommés par le gouverneur en conseil.

Inadmissibilité

(2) Est inadmissible à titre de membre de la Commission quiconque :

- a) est un membre ou un ancien membre;
- b) n'est ni citoyen canadien ni résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*.

Considération avant la nomination

(3) Le gouverneur en conseil, avant de nommer une personne membre de la Commission, tient compte de la nécessité d'assurer la représentation des régions.

Renouvellement du mandat

(4) Le mandat des membres de la Commission peut être renouvelé.

L.R. (1985), ch. 9 (2^e suppl.), art. 16; 2003, ch. 22, art. 217(A); 2013, ch. 18, art. 35.

Temps plein ou temps partiel

45.3 (1) Le président est membre à temps plein de la Commission. Les autres membres peuvent être nommés à temps plein ou à temps partiel.

Mandat

(2) Les membres de la Commission occupent leur charge à titre inamovible pour un mandat d'au plus cinq ans, sous réserve de révocation par le gouverneur en conseil pour motif valable.

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CORRUPTION PERCEPTIONS INDEX 2018

The CPI 2018 is the 18th annual survey of global perceptions of public sector corruption. It is the most comprehensive survey of its kind, covering 180 countries and territories. The survey is conducted by Transparency International (TI) and is the most widely cited source of information on public sector corruption. The CPI 2018 is based on data from 13,000 experts and is the most comprehensive survey of its kind. The survey is conducted by Transparency International (TI) and is the most widely cited source of information on public sector corruption. The CPI 2018 is based on data from 13,000 experts and is the most comprehensive survey of its kind.



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INDEX 2018

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THE FULL DATA SET

Since its inception in 1995, the Corruption Perceptions Index, Transparency International's flagship research product, has become the leading global indicator of public sector corruption. The index offers an annual snapshot of the relative degree of corruption by ranking countries and territories from all over the globe. In 2012, Transparency International revised the methodology used to conduct the index to allow for comparison of scores from one year to the next. The 2018 CPI uses an 18 surveys and expert assessments to measure public sector corruption in 180 countries and territories, giving each a score from zero (highly corrupt) to 100 (very clean).

| | COUNTRY | REGION | 2018 | 2017 | 2016 | 2015 |
|----|----------------|---------------------------------|------|------|------|------|
| 1 | Denmark | Western Europe & European Union | 88 | 88 | 90 | 91 |
| 2 | New Zealand | Asia Pacific | 87 | 89 | 90 | 91 |
| 3 | Finland | Western Europe & European Union | 86 | 86 | 89 | 90 |
| 3 | Singapore | Asia Pacific | 86 | 84 | 84 | 85 |
| 5 | Sweden | Western Europe & European Union | 85 | 84 | 88 | 89 |
| 3 | Switzerland | Western Europe & European Union | 85 | 86 | 88 | 89 |
| 7 | Norway | Western Europe & European Union | 84 | 85 | 85 | 88 |
| 8 | Netherlands | Western Europe & European Union | 82 | 82 | 88 | 84 |
| 9 | Canada | Americas | 81 | 82 | 82 | 88 |
| 9 | Luxembourg | Western Europe & European Union | 81 | 82 | 81 | 85 |
| 11 | Germany | Western Europe & European Union | 80 | 81 | 81 | 81 |
| 11 | United Kingdom | Western Europe & European Union | 80 | 82 | 81 | 81 |

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Committee and certain preliminary issues were discussed by members. The meeting of the Committee has been adjourned until 10h00 on Monday, 25 February 2019. Further Committee meetings have been scheduled between 26 – 28 February 2019 to finalise the matter.

- 14. As presently advised, the Committee would be in a position to take a decision and prepare a report on the matter for the National Assembly by 28 February 2019.



FRANCOIS BEUKMAN

I certify that the deponent acknowledged to me that:

- a. he knows and understands the contents of this declaration;
- b. he has no objection to taking the prescribed oath;
- c. he considers the prescribed oath to be binding on his conscience;

the deponent thereafter uttered the words: "I swear that the contents of this affidavit are true, so help me God";

The deponent signed this affidavit in my presence at the address set out hereunder on this day of FEBRUARY 2019.

Handwritten notes:
22 FEB



COMMISSIONER OF OATHS

Handwritten notes:
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