IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case no: CCT 255/15

ROBERT McBRIDE	Applicant
and	
MINISTER OF POLICE	First Respondent
MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION	Second Respondent
HELEN SUZMAN FOUNDATION	*Amicus curiae*

HSF'S WRITTEN SUBMISSIONS

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INTRODUCTION

1. Mr McBride seeks an order confirming the orders of constitutional invalidity and the ancillary remedial orders of the High Court of 4 December 2015.[1] The Minister concedes that the "impugned provisions do not provide for the adequate protection of the independence of [Independent Police Investigative Directorate ("**IPID**")]".[2] The remaining issue of contention is the remedial relief.[3]

2. This Court is required to exercise its constitutional power to confirm all aspects of the High Court's order. The burden of the evidence and the arguments of the Helen Suzman Foundation ("**HSF**") with regard to the merits of the case are reflected in the High Court judgment, and we see no point in reproducing them before this Court. Rather, the HSF attempts to assist the Court by considering the parties' submissions on remedy in the light of one, the remedial jurisprudence of this Court and two, the principles pertaining to the independence of IPID.

3. The HSF commends the High Court order for two main reasons:

3.1 Firstly, the order affords the applicant effective relief and vindicates the Constitution;

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[1] Sections 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act, 2011 ("**IPID Act**"); sections 16A(1), 16(B), 17(1) and 17(2) of the Public Service Act, 1994; and regulation 13 of the Regulations for the Operation of IPID (GNR98 of GG35018, 10 February 2012)

[2] Paragraph 5 of the Minister's written submissions to this Court, dated 12 April 2016

[3] Paragraph 6 of the Minister's written submissions.

3.2 Secondly, the order will serve the dual purpose of ensuring that Mr McBride's case is dealt with in a manner that conforms to the requisite standard of independence and entrenching public confidence in the police system in a high profile and bitterly contested case.

4. The relief the Minister seeks is to preserve decisions he made under statutory provisions he accepts are unconstitutional precisely because he never had the authority to make those decisions in the first place. In terms of the High Court order, Parliament would initiate and design Mr McBride's disciplinary process. In terms of the Minister's proposals, however, the Minister himself would do so. In other words, if the Minister has his way, the successful applicant will achieve a pyrrhic victory and the very problem that undermines public confidence in the independence of IPID – political interference – will be perpetuated.

5. This is a case in which the applicant's interest coincides with the public interest. This is because the public has considerable interest in the head of IPID's entitlement to an independent disciplinary process, not only in the future, but also in the resolution of the Minister's complaint against Mr McBride.

6. These submissions are structured as follows:

6.1 We analyse the High Court order;

6.2 We summarise the Minister's objections to the High Court order and his proposed alternative;

6.3 We consider the meaning of effective relief in this instance and the reasons the Court may have for limiting the retrospectivity and the relief afforded by an order of invalidity; and

6.4 We address the need to ensure confidence in the independence of IPID and public perception of the institution as aspects of an appropriate remedy.

THE HIGH COURT ORDER AND THE INTERIM REGIME

7. Paragraph 1 of the High Court order declares the impugned provisions to be unlawful to the extent that they purport to authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspensions, or to remove from office the Executive Director of IPID.

8. This order is suspended for a period of 12 months in terms of paragraph 2 to give Parliament the opportunity to amend the impugned provisions.

9. However, instead of allowing the unconstitutional regime to persist during the 12-month period, the High Court order puts in place an interim regime. The most significant feature of the interim regime is contained in paragraph 3.1 of the High Court order in terms of which the suspension and removal provisions pertaining to the head of the DPCI (sections 17DA(3) to (7) of the SAPS Act) apply to the Executive Director of IPID.

10. The High Court set aside the Minister's decision to institute the disciplinary inquiry against Mr McBride at paragraph 5 of the order. This decision is not suspended.

11. The High Court order sets aside the Minister's decision to suspend Mr McBride at paragraph 4 of the order. The court suspends this decision for a 30-day period to allow for Parliament and the Minister, if they so choose, to exercise their powers in terms of the interim regime.

12. This means that, after 30 days, either

12.1 the parliamentary committee will decide to institute an investigation into Mr McBride pursuant to the Minister lodging a complaint, and the Minister will suspend Mr McBride; or

12.2 the Minister's decision to suspend Mr McBride will no longer be of any force or effect.

THE MINISTER'S OBJECTIONS AND PROPOSED REMEDY

13. The Minister concedes the invalidity of the impugned provisions, but objects to the High Court's interim regime (the reading-in of section 17DA of the SAPS Act).[4] He does so on two main grounds.

14. The first objection is that the drafting of legislation is the purview of Parliament. The Minister maintains that rather than read-in a provision into

[4] Paragraphs 3, 4, 5, and 6 of the High Court order

the IPID Act, even temporarily, the correct action would be to suspend the order of invalidity for a period of 18 months to allow Parliament to correct the defects of the impugned sections, as such a course would better accord with the separation of powers doctrine.[5]

15. The second objection is that section 17DA does not adequately provide for a procedure that can be effectively and swiftly implemented. Counsel for the Minister say that Parliament lacks the necessary administrative machinery to process the complaint expeditiously, that there is insufficient clarity as to how the parliamentary process would be initiated, and uncertainty as to the time delays and time periods in which an inquiry would take place.[6] Similarly, they contend it is unreasonable to require Parliament to craft and bring into motion the necessary disciplinary infrastructure within a period of 30 days.[7]

16. The Minister objects to the setting aside of his two decisions (to suspend Mr McBride and to initiate disciplinary proceedings against him) as they were taken in good faith, procedurally fairly and are rational and reasonable.[8]

17. The Minister's proposed remedy is to remove the disciplinary inquiry from the panel he had established and place it in the hands of the relevant

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[5] Para 67, p.24 of the Minister's submissions

[6] Paras 14, 79.2, 85, 91 pp. 6-7, 26-7, 28, 29 of the Minister's submissions

[7] Para 93 p.30 of the Minister's submissions

[8] Para 30 p.13 of the Minister's submissions

Portfolio Committee. The Portfolio Committee would be deemed to be seized with the disciplinary proceedings that the Minister has already instituted against Mr McBride (and which the High Court set aside).[9]

18. The critical difference between the High Court order and the order the Minister proposes goes to who enjoys the authority to decide whether the Minister's complaint has merit to initiate and design the investigation and disciplinary process.[10]

19. The interim regime of the High Court, following as it does removal procedures of section 17DA of the SAPS Act, vests this authority in Parliament. In terms of the interim regime, the Minister's power and duty is confined to lodging his complaint with the portfolio committee; choosing to suspend Mr McBride if the committee institutes removal proceedings; and removing him if the National Assembly adopts a resolution to remove him.

20. In the Minister's scenario, it is he rather than Parliament who enjoys the authority to decide whether the complaint against Mr McBride has merit and, if so, to initiate a disciplinary process and suspend Mr McBride.

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[9] Para 98.2 p.31 of the Minister's submissions

[10] In addition, the Minister proposes that the order of invalidity is suspended for 18 months rather than 12 months

EFFECTIVE RELIEF

21. The submissions on behalf the Minister correctly point out that decisions taken under a valid law which is later declared to be unconstitutional are not necessarily invalid.[11] The court always retains discretion in this regard. This Court had developed a clear approach to guide the exercise of that discretion. The starting point is the "appropriate relief" prescribed by section 38 of the Constitution.

22. This Court has repeatedly held that an appropriate remedy within the meaning of section 38 of the Constitution[12] is an "effective remedy", that is, one that upholds and enhances – vindicates – the values underlying and the rights entrenched in the Constitution.[13] Vindication is synonymous with defending or protecting the Constitution. [14]

23. The courts vindicate the values expressed in the Constitution when they provide a remedy to those whose rights have been violated. A successful applicant is therefore "entitled" to a remedy unless the "interest of justice

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[11] Paras 25 and 26, p.11 of the Minister's Submissions,,

[12] "38 Enforcement of right

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are—

(a)…"

[13] *Fose v Minister of Safety & Security* 1997 (3) SA 786 (CC) at para 34 quoted with approval in *Mvumvu and Others v Minister of Transport and Another* 2011 (2) SA 473 (CC) at para 48. In *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 (2) SA 1 (CC) Ackerman J held that these comments are equally applicable to the current section 38.

[14] *Fose v Minister of Safety and Security* 1997 (3) SA 786 at para 98; *AllPay Consolidated Investment Holdings (Pty) Ltd and others v Chief Executive Officer, South African Social Security Agency and others* 2014 (4) SA 179 (CC) at para 30

and good governance dictate otherwise" or if there are "compelling reasons for withholding the requested remedy".[15]

24. It follows that Constitution is not properly vindicated when a successful applicant leaves the court empty-handed. The constitutional importance of the principle of legality is therefore a fundamental consideration not only in respect of the declaration of invalidity, but also in the determination of remedy.[16] At the remedial stage, the principle of legality dictates that, in the ordinary course, remedial relief for the applicant follows the declaration of invalidity.

25. Mr McBride approached the courts in order to secure an impartial and independent disciplinary process.[17] In doing so, he challenged the constitutionality of the Minister's role in suspending and disciplining him. If Mr McBride achieves his primary relief before this Court – the confirmation of the constitutional invalidity of the impugned provisions – then in the ordinary course he is entitled to the benefits of that relief, that is, that Parliament and not the Minister initiate and determine the disciplinary process. The Minister must demonstrate compelling reasons for this Court to withhold the remedy that follows the violation of Mr McBride's rights.

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[15] *Mvumvu and Others v Minister of Transport and Another* 2011 (2) SA 473 (CC) at para 46; *S v Bhulwana; S v Gwadiso* 1996 (1) SA (CC) at para 32

[16] *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* 2011 (4) SA 113 (CC) at para 84.

[17] Para 24 of the applicant's replying affidavit p.227 vol 4

26. The HSF defends Mr McBride's right to effective relief because his interests intersect with the public interest. The public has significant interest in the head of IPID's entitlement to an independent disciplinary process. The public interest lies not only in the actual independence of the process, but also in the perception that the process is not subverted and discredited by political interference.

27. In short, the starting point is that Mr McBride is entitled to the remedial relief that would follow a declaration of invalidity.

Retrospectivity

28. In line with the default position that remedy follows the violation of a right, the consequences that ordinarily flow from a declaration of constitutional invalidity include that the law will be invalid from the moment it was promulgated. "That is, the order will have immediate retrospective effect. This is the default position."[18]

29. Section 172(1)(b)[19] provides the courts with the power to qualify this effect of their orders of invalidation.[20] The litigant seeking to qualify the effect of

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[18] *Cross-Border Road Transport Agency v Central African Road Services (Pty) Ltd and others* 2015 (5) SA 370 (CC) para 21

19 Section 172 states that:

"(1) When deciding a constitutional matter within its power, a court—

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and

(b) may make any order that is just and equitable, including—

the Court declaring a statutory provision unconstitutional bears the onus of demonstrating that such order is justified.[21]

30. A court's decision to suspend the effect of an order of invalidity entails the exercise of a wide power and can be utilised for numerous reasons, provided it is just and equitable to do so.[22] In the current matter, the High Court qualified the effect of its order of invalidity in respect of two issues. First, the court gave the legislature time (12 months) to intervene to effect the necessary legislative reform (order 2). Second, the court provided for an interim regime that will apply to Mr McBride pending the legislative reform (orders 3 – 6). The interim regime allows Mr McBride to benefit from his success in securing his primary relief, namely, the declarations of invalidity.

31. The primary question before this Court is whether it is just and equitable for Mr McBride to be subject to an unconstitutional process or have the benefit of the interim process the High Court prescribed.

(i) an order limiting the retrospective effect of the declaration of invalidity; and

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect."

[20] *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others 1996 (1) SA 984 (CC)* at paras 25 – 30; *Ex Parte Women's Legal Centre: In re Moise v Greater Germiston Transitional Local Council* 2001 (4) SA 1288 (CC) at para 9

[21] *Mistry v Interim Medical and Dental Council of South Africa* [1998] ZACC 10; 1998 (4) SA 1127 (CC) at para 37; 1998 (8) BCLR 880 (CC) at para 30.

[22] *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC) at para 97.

32. This Court has repeatedly recognised that, if the retrospectivity of orders of invalidity is not limited, the orders may cause severe dislocation by undoing that which was previously done.[23]

33. It is for this reason that this Court has sometimes used it remedial power to limit the effect of the order of invalidity on cases that have been finalised prior to the date of such order.[24]

34. Although this principle was originally identified in the criminal context, this Court has applied it in a civil context as well.[25]

35. In *Law Society of South Africa v Minister of Transport*,[26] this Court set aside a particular regulation on the basis of its inconsistency with the Constitution. The court declined to suspend the order of invalidity or to limit its retrospective application in order to ensure the liability of the RAF remained intact for health care needs of victims of road accidents whose cases arose from the inception of the unconstitutional amendment up to the date of the order of the court.

36. In short, our courts prefer to extend the benefit of the law reform occasioned by a finding of constitutional invalidity by giving an order with

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[23] *Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa and Others* 1995 (4) SA 877 (CC), at para 106.

[24] *S v Bhulwana; S v Gwadiso* 1996 (1) SA 388 (CC), at para 32.

[25] *Engelbrecht v Road Accident Fund and Another 2007 (6) SA 96 (CC), at para 45 and Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others* 2014 (3) SA 106 (CC).

[26] *Law Society of South Africa v Minister of Transport* 2011 (1) SA 400 (CC) at para 106

retrospective effect to all cases except those which have been completed and are not subject to appeal on the date of the court order.

37. Mr McBride's case is not finalised; in fact, it is in its early stages. Mr McBride challenged the lawfulness of that process from the outset and immediately brought this constitutional challenge. The arguments of the Minister, in HSF's submission, do not amount to sufficient reason to disrupt the long line of cases or to deprive Mr McBride of an effective remedy.

38. We summarise the arguments of the Minister at paragraphs 13 to 16 above. In short, he objects to the interim regime the High Court ordered on two main grounds, namely, that:

38.1 The reading-in of section 17DA of the SAPS Act offends the doctrine of the separation of powers;

38.2 Parliament lacks the necessary machinery to process the disciplinary inquiry efficiently and swiftly, particularly within the 30-day suspension period.

39. The Minister also argues that his decisions to suspend Mr McBride and to initiate a disciplinary process should be preserved on the basis that they were rational, reasonable, procedurally fair, and made in good faith.

40. The Minister's concern that the order intrudes on Parliament's domain is difficult to understand. Parliament drafted and passed section 17DA of

the SAPS Act pursuant to this Court's finding that the removal provisions for the head of the DPCI undermined the independence of the DPCI.[27] The independence requirements of the DPCI are similar enough to those of the IPID to render the removal provisions of the former appropriate to the latter, at least as an interim measure. Ironically, the order proposed on behalf of the Minister is more intrusive of Parliament. The High Court's interim regime allows the portfolio committee to design and implement its own disciplinary process in terms of a statute of Parliament. The Minister proposes a structural interdict in terms of which Parliament reports to this Court to determine the adequacy or otherwise of the chosen disciplinary process.[28]

41. The Minister's allegations of the uncertainty and delay that the interim regime would cause also lack substance. Section 17DA of the SAPS Act is silent as to who may lay a complaint with the Portfolio Committee. There is no reason to assume, as the Minister seems to,[29] that the Minister (or anyone else) is precluded from doing so.

42. The Minister offers no evidence of Parliament's alleged inability and lack of administrative machinery to process the complaint in terms of section 17DA of the SAPS Act. These are merely the submissions of his counsel. It would seem that, on the contrary, Parliament must be presumed to have

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[27] *Helen Suzman Foundation v The President of the Republic of South African* 2015 (2) SA 1 CC

[28] Para 98.4 – 98.5 p.32 of the Minister's Submissions

[29] Paras 84 – 85 p.28 of the Minister's Submissions

set up the necessary machinery to process the Minister's complaints in terms of section 17DA of the SAPS Act. Parliament itself crafted that section, pursuant to *Helen Suzman Foundation v President of the Republic of South Africa*.[30] It came into force on 14 September 2012,[31] and Parliament must surely have been ready to act in terms of those provisions from that moment onwards. To presume otherwise would be to presume that Parliament is remiss in its obligations.

43. The Minister should never have enjoyed (and did not as a matter of law ever enjoy) the power to suspend Mr McBride or to initiate disciplinary proceedings against him in the first place as this compromises the independence of IPID. The Minister's allegations (which the HSF accepts for present purposes) that he acted in good faith do not alter this. Nor does the seriousness of Mr McBride's alleged misdemeanours.

44. The Minister asks this court to allow him to decide what he is constitutionally not permitted to decide: whether to institute and continue disciplinary proceedings against Mr McBride and what form such proceedings may take. In light of the overarching constitutional considerations including the requirement of independence, such questions are properly left to Parliament to decide (whether as legislator or the body

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[30] *Helen Suzman Foundation v The President of the Republic of South African* 2015 (2) SA 1 CC

[31] South African Police Service Amendment Act 10 of 2012.

carrying out the disciplinary process). It is thus the Minister's proposal which both breaches the separation of powers and the Constitution.

45. Our courts endeavour to extend the benefit of the law reform occasioned by a finding of constitutional invalidity by giving an order with retrospective effect to all cases still pending on the date of the court order. The Minister had not demonstrated that it would be just and equitable for Mr McBride to be subject to an unconstitutional process, despite the fact that his case has not been finalised. On the contrary, the interests of justice are best served by Mr McBride having the benefit of the interim process the High Court prescribed.

PUBLIC CONFIDENCE IN THE IPID AND APPROPRIATE RELIEF

46. The remedy which the Minister proposes is particularly inapposite in circumstances where the independence and the appearance of independence are central to the unconstitutionality of the impugned provisions.

47. This Court held in the context of the DPCI that public perception of independence is an integral part of the actual independence enjoyed by

an institution.[32] As was held in *Valente v The Queen*, and quoted with approval by this court in *Van Rooyen*[33]:

> *"Both independence and impartiality are fundamental not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice.* ***Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation.*** *It is, therefore, important that a tribunal should be perceived as independent, as well as impartial, and that the test for independence should include that perception."*

48. In the *Justice Alliance* case this Court affirmed its recognition that the public's perception of the impartiality of an institution underpins public confidence in that institution.[34] In short, public perception of independence strengthens both the actual independence of the institution and public trust in its functioning.

49. The High Court considered the parties' submissions in this regard in relation to the merits of the case. However, the critical issue of the public's perception of independence is also germane to the question of remedy.

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[32] *Glenister v the President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) at para 207 citing *S and Others v Van Rooyen and Others* 2002 (5) SA 246 (CC) at para 32.

[33] *Valente v The Queen* [1985] 2 SCR 673 at para 22 quoted in *S and Others v Van Rooyen* 2002 (5) SA 246 (CC) at para 32, emphasis added

[34] *Justice Alliance of South Africa v President of Republic of South Africa and Others, Freedom Under Law v President of Republic of South Africa and Others, Centre for Applied Legal Studies and Another v President of the Republic of South Africa and Others* 2011 (5) SA 388 (CC) at para 75.

50. The obligation to grant just and equitable relief requires the court to consider all the possible ramifications of its order.[35] Appropriate remedial relief in this case should reinforce – rather than undermine – the perception of political impartiality.

51. The High Court drew from the affidavit of Mr David Bruce to support its finding that perceived independence across variety of sectors is necessary for IPID's effective and efficient functioning.[36] Mr Bruce identified three primary sectors in this regard.

52. The first is the need for the public to perceive IPID to be independent and therefore trust that inquiries instituted by members of the public will be dealt with impartially and investigations against police are carried out properly.[37] This in turn encourages members of the public to report cases to IPID, and to have greater confidence in the outcome of IPID investigations[38].

53. The second is the need to enhance IPID's legitimacy in the eyes of the police. It must not merely be independent of the police but be seen by police personnel to be without bias and able to deal with cases in an impartial manner.[39] This is crucial as IPID relies extensively on the

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[35] *Kham and others v Electoral Commission of South Africa and another* 2016 (2) BCLR 157 (CC) at para 97
[36] Paras 31 - 34
[37] Bruce Affidavit, paras 35 and 36.1, p 440, vol 5
[38] Bruce Affidavit, para 22.3, p 429, vol 5
[39] Bruce Affidavit, para 36.5, pp 441-442, vol 5

cooperation and assistance of police personnel,[40] and police resources, in order to conduct its investigations.[41]

54. The third is the need for members within the institution to perceive and support IPID's independence. This is necessary to maintain sufficient impartiality when investigating despite IPID's reliance on, and connection to the police, described above.[42] To foster a culture of independence it is necessary for a 'mind-set' and attitude of independence to be continuously encouraged, nurtured and supported within the organisation.[43]

55. The above considerations pertain as much to the remedial aspect of this case as they do to the merits. The greater the confidence of the public and members of the police and the IPID in the independence of Mr McBride's disciplinary inquiry, the greater their public will be in the finding or outcome of such an investigation.

56. The submissions on behalf of the Minister emphasise that he acted in good faith, procedurally fairly, and on the basis of a *prima facie* case of gross misconduct against Mr McBride; that his decision to suspend Mr McBride was free from political interference; that he acted rationally and

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[40] Bruce Affidavit, para 60, p 457, vol 5
[41] Bruce Affidavit, para 72, pp 462-463; para 74 pp 463-464, vol 5
[42] Bruce Affidavit, para 82.2, p 471, vol 5
[43] Bruce Affidavit, para 83, p 471, vol 5

reasonably.[44] The Minister suggests that this means that, if this Court preserved his decisions, the public's confidence in the independence of IPID would be maintained. [45]

57. This is with respect a *non sequitur*. However well intentioned the Minister may be, the public will likely perceive any process that he initiates and designs as one in which he is attempting to do his own bidding. In any event, it is unclear on what possible basis it may be argued that the public will have confidence in a process which has been found to be fatally unconstitutional (and which the Minister acknowledges is unconstitutional) rather than a constitutionally compliant one.

58. The Minister concedes that there is an urgent need to restore the integrity and independence of IPID. To discipline Mr McBride in terms of an invalid and unconstitutional procedure would only worsen what the Minister acknowledges is a "cloud of uncertainty as to Mr McBride's conduct and the integrity of IPID."[46]

59. In the view of the HSF, certain elements of the High Court's interim regime are critical to restoring the public's confidence in the independence of IPID:

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[44] Paras 30 – 45 pp.13 – 19 of the Minister's submissions

[45] Para 32 and its sub-paragraphs p.13 -14 of the Minister's submissions

[46] Para 49 p. 20 of the Minister's submissions

59.1 First, the Minister's power and duty is confined to lodging a complaint against Mr McBride to the relevant parliamentary committee to suspending him once the committee has initiated a disciplinary process, and to removing him if Parliament passes a removal resolution;

59.2 Secondly, the parliamentary committee investigates the complaint to determine whether it has merit;

59.3 Thirdly, if the parliamentary committee decides the complaint has merit, it designs an appropriate disciplinary process.

60. The relief the Minister proposes would have the effect of clothing him with the authority to decide that the complaint against Mr McBride has merit. The parliamentary committee would inherit the existing process that the Minister initiated rather than designing its own.

61. Whatever the merits of the Minister's process and however honourable his intentions, if he is allowed to be both the complainant and the authority initiating the disciplinary process against Mr McBride, the public's perception of an IPID that is free from political interference will be undermined.

Carol Steinberg

Chambers, Sandton

13 May 2016

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3. *Cross-Border Road Transport Agency v Central African Road Services (Pty) Ltd and others* 2015 (5) SA 370 (CC)

4. *Engelbrecht v Road Accident Fund and Another* 2007 (6) SA 96 (CC)

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6. *Ex Parte Women's Legal Centre: In re Moise v Greater Germiston Transitional Local Council* 2001 (4) SA 1288 (CC)

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8. *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC)

9. *Fose v Minister of Safety & Security* 1997 (3) SA 786 (CC)

10. *Glenister v the President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC)

11. *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another 2010* (2) SA 415 (CC)

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Others, Centre for Applied Legal Studies and Another v President of the Republic of South Africa and Others 2011 (5) SA 388 (CC)

14. *Kham and others v Electoral Commission of South Africa and another* 2016 (2) BCLR 157 (CC)

15. *Law Society of South Africa v Minister of Transport* 2011 (1) SA 400 (CC)

16. *Mistry v Interim Medical and Dental Council of South Africa* [1998] ZACC 10; 1998 (4) SA 1127 (CC)

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18. *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 (2) SA 1 (CC)

19. *S v Bhulwana; S v Gwadiso* 1996 (1) SA (CC)

20. *S and Others v Van Rooyen and Others 2002* (5) SA 246 (CC)

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1. *Valente v The Queen* [1985] 2 SCR 673

Legislation

1. Constitution of the Republic of South Africa, 1996

2. Independent Police Investigative Directorate Act 1 of 2011

3. Public Service Act, 1994

4. Regulations for the Operation of IPID (GNR98 of GG35018, 10 February 2012)

5. South African Police Service Act 68 of 1995

6. South African Police Service Amendment Act 10 of 2012