

# CONSTITUTION OF PRESS COUNCIL

## 1. Aims and Objectives of the PCSA

1.1 To promote and preserve the right of freedom of expression including freedom of the press as guaranteed in section 16 of the Constitution of the Republic of South Africa;

1.2 To promote and to develop excellence in journalistic practice and ethics and to promote the adoption of and adherence to those standards of practice and ethics by publications that are associated with it;

1.3 To promote the concept of press self-regulation and to set up the office of the Press Ombudsman and South African Press Appeals Panel;

1.4 To accept a Press Code of Conduct enforced by an independent non-statutory, mediating and adjudicating structure aimed at introducing procedures for the expeditious and cost-effective adjudication, in the absence of a settlement, of complaints against publications published by members of the Print Media Association of South Africa ("PMSA") and other publications that subscribe to the press code.

1.5 To promote public awareness of the existence of the Press Ombudsman and Press Appeals Panel and to create an understanding of their function and purpose;

1.6 To collaborate with other press councils and related organisations here or abroad and to facilitate or organise meetings and conferences with other press councils or related institutions here or abroad;

1.7 To undertake such other tasks as are necessary to further the objectives of the Council;

1.8 Generally, to promote the principles forming the basis of the South African Press Code.

## 2. Establishment of the Press Council of South Africa

2.1 To achieve the objectives set out in paragraph 1 of this Constitution, there is hereby established a juristic person to be known as the Press Council of South Africa (PCSA) which shall exercise the powers, functions and duties conferred and imposed by this Constitution.

2.2 Without derogating from the generality of paragraph 2.1, the PCSA, for the purposes of the proper exercise and performance of its powers, functions and duties under this Constitution, shall be capable in law of instituting or defending or opposing legal proceedings of whatever nature, or purchasing or otherwise acquiring and holding and alienating or otherwise disposing of movable or immovable property or any other real right or interest, of entering into contracts and concluding agreements, and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Constitution.

### **3. Jurisdiction**

3.1 The member publications of the associations listed in paragraph 4.2 below are subject to the jurisdiction of the Press Code and Complaints Procedures as amended from time to time by the PCSA.

3.2 All the associations listed in paragraph 4.2 below shall take such reasonable measures as they may determine to promote the aims and objectives of the PCSA.

3.3 Where a complaint is made against a newspaper or magazine which is not a member of the associations listed in paragraph 4.2 below, the Ombudsman shall approach such newspaper or magazine and inquire whether it accepts the jurisdiction of the Press Ombudsman for the settlement of the complaint.

3.4 In the event that the newspaper or magazine refuses to submit to the jurisdiction of the Ombudsman, he or she shall advise the complainant accordingly.

### **4. Membership of the PCSA**

4.1 The Council shall consist of six members representative of the press and six members, one of them nominated alternate, representative of the public.

4.2 The press members shall be appointed as follows:  
One member each shall be appointed by:

4.2.1 The Newspaper Association of South Africa (NASA);

4.2.2 The Magazine Publishers Association of South Africa (MPASA);

4.2.3 The Association of Independent Publishers (AIP); and

4.2.4 The Forum of Community Journalists (FCJ).

4.2.5 The South African National Editors' Forum (SANEF) shall appoint two members, and in the event of a journalists' association being formed, SANEF shall relinquish one seat to the journalists' association.

4.3 The press members are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field.

4.4 In the event of a vacancy occurring, the organisation whose representative has left shall appoint a replacement for the balance of the term.

### **5. Powers and functions of the Council shall include:**

5.1 To consider and decide upon any matter arising from this Constitution or the

functioning of any office appointed in terms of this Constitution.

5.2 The Council shall perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to the achievement, pursuit, furtherance or promotion of the objects and principles contained in this Constitution, the Code or Procedure or any function considered necessary by the Council.

## **6. Structures of the Press Council of South Africa**

6.1 The structures of the PCSA shall include:

6.1.1 The Appointments Panel

6.1.2 Management Committee

6.1.3 The adjudicating structures shall be:

6.1.3.1 The South African Press Ombudsman ("SAPOM") and,

6.1.3.2 The South African Press Appeals Panel ("SAPAP").

## **7. The Appointments Panel**

7.1 The aim of the Appointments Panel is to appoint the Press Ombudsman, members of the public to the PCSA, the members of the Appeals Panel and the chairperson of the Appeals Panel.

7.2 During the last year of the term of office of council members, the council shall request the Chief Justice of South Africa to appoint a judge to chair the Appointments Panel.

7.3 The sitting council shall appoint at least three council members to assist the chairman of the Appointments Panel to select members of the next council.

7.4 The Appointments Panel may determine the procedure for the selection of members of the council.

7.5 The Appointments Panel shall dissolve immediately upon completion of the appointment(s) for which it was constituted.

7.6 The public members of the PCSA shall be appointed for a term of five years from persons who have applied for or have been nominated for the posts in response to advertisements placed in the press.

7.7 In the event of a vacancy occurring for any reason, an appointments panel shall be requested by the PCSA to select a replacement for the balance of the term, if possible from the previous applicants or nominees.

## **8. Management Committee**

8.1 The Council may appoint a management committee to run the daily affairs of the PCSA;

8.2 The Management Committee shall consist of one press member, one public member and the chairperson of the PCSA.

8.3 The Management Committee shall be entitled to represent the PCSA in all matters assigned to it by the PCSA.

8.4 The Council may amend or set aside any decision of the Management Committee provided that no third party is prejudiced by the alteration of a decision of the Management Committee.

## **9. The Ombudsman**

9.1 Qualifications: The Ombudsman shall –

9.1.1 Be a citizen of and permanently resident in the Republic of South Africa;

9.1.2 Have extensive press editorial experience at a senior level;

9.1.3 Have the capability to adjudicate matters independently and fairly;

9.1.4 Be a person who is committed to fairness, freedom of speech, the free flow of information and is committed to the Press Code of the PCSA;

9.2 Powers and functions: The Ombudsman shall manage the office of the Press Ombudsman and he or she shall independently deal with and attempt to settle or otherwise adjudicate, in the latter case with two members as defined hereunder, complaints against publications that fall under the Ombudsman's jurisdiction, as determined from time to time by the PCSA.

9.3 The Ombudsman may initiate a discussion in the Press Council into any matter based on or arising from the Press Code.

9.4 Where no public or press member is available to sit on a matter, the Ombudsman may co-opt a person who, in his or her opinion, has appropriate experience to fill that of the public or press member, as the case may be.

9.5 Appointment: The PCSA shall determine any advertisement relating to the appointment of an Ombudsman.

9.5.1 The PCSA shall determine the terms and conditions of the appointment of the Ombudsman.

9.6 The office of the Ombudsman is in Johannesburg and the hearings will take place in

Johannesburg, unless the Ombudsman decides to hold a hearing in another city of a province when he considers it appropriate to do so.

## **10. Appointment of Public and Press Members to the SAPAP**

10.1 The PCSA shall advertise for eight positions from among members of the public and eight positions for press members to SAPAP on such terms and manner as it considers necessary.

10.2 The public members are required to have a keen interest in communications, social and political issues and have a serious interest in the furtherance of the communicative value of the printed media as founded in the freedom of expression guarantee of the Constitution of the Republic.

10.3 The press members are required to be active in editorial work or reporting for a PMSA publication, or to have wide experience in this field.

10.4 The appointments are made by the Appointments Panel for a term of five years and reasonable fees plus costs are paid to public members per hearing day.

10.5 The press and public members who have been appointed to the Appeals Panel may not sit on an appeal in the matter they dealt with at the level of the Ombudsman.

10.6 A press member who is in the employ of a publication which is owned by a respondent in a matter may not sit on such a matter.

10.7 Where a public or press member is not available to sit on an appeal, the Chairperson or Acting Chairperson may co-opt a member who, in his or her opinion, has appropriate experience to fill that of the public or press member, as the case may be.

10.8 The office of SAPAP shall be in Johannesburg and hearings shall be held in Johannesburg, unless the Chairperson decides that it is appropriate to hold a hearing elsewhere.

## **11. Appointment of the Chairperson of the South African Press Appeals Panel**

11.1 The Appointments Panel shall appoint the Chairperson of the South African Press Appeals Panel.

11.2 The PCSA advertises the post of Chairperson of SAPAP in a manner which it deems fit.

11.3 Qualifications of the chairperson:

11.3.1 The Chairperson must have senior experience within the field of law.

11.4 The term of appointment shall be for five years and is part-time.

11.5 The remuneration is by way of a retainer, a daily hearing fee plus costs.

11.6 One of the eight public members, who have senior legal experience, shall be appointed to act as chair when the chair is not available.

## **12. Persons Disqualified from Holding the Position of Ombudsman or Chairperson of the South African Press Appeals Panel**

12.1 A person shall not be appointed as Ombudsman or Chairperson of the Press Appeals Panel if such person:

12.1.1 Does not, in the opinion of the Appointments Panel, have the requisite experience or capability;

12.1.2 Has any financial interest in the media or is in the employ of the media;

12.1.3 Occupies a seat in a provincial or national legislative body;

12.1.4 Is an office bearer of a political party or movement or is in the employ of the Public Service;

12.1.5 Is an unrehabilitated insolvent;

12.1.6 Was convicted of an offence after 1992, whether in the Republic or elsewhere, for which such person has been sentenced to imprisonment without the option of a fine.

## **13. Cessation of Membership**

13.1 A person shall cease to be the Chairperson, Ombudsman or a member if:

13.1.1 He or she resigns;

13.1.2 He or she becomes incapable for whatever reason of fulfilling his or her duties; provided that if a dispute arises between the incumbent and the PCSA in this connection, the matter will be resolved by an arbitrator appointed by the Chair of the Johannesburg Bar Council in a manner which he or she deems fair;

13.1.3 He or she is declared insolvent by a court or is found guilty of an offence listed in Schedule I or II of the Criminal Procedure Act 1977.

13.1.4 Any member who becomes ineligible to hold the post in terms of the criteria for appointment to the post shall automatically cease to be a member as from the date of such ineligibility.

13.2 The Council may, by a two-thirds majority at a general meeting, suspend or terminate the membership of any member if such a member has brought the good name of the PCSA into disrepute or if such member has omitted to attend two consecutive meetings in a year

without good cause acceptable to the Council.

13.2.1 At least 21 days prior written notice of such a meeting of the Council must be given to all members of the Council.

13.3 Such a resolution must be taken by a two-thirds majority of all the members of the Council and may be taken only at a meeting where at least two-thirds of the members are in attendance.

## **14. Finance**

14.1 The annual reasonable expenditure of the SAPOM and SAPAP shall be met by the PCSA in terms of an annual budget prepared by the Ombudsman's office.

14.2 Public members of the PCSA will be remunerated per meeting and their costs for attending meetings will be paid by the PCSA.

14.3 The remuneration for the public members and the Chairperson shall be determined by the PCSA at the beginning of its term and an annual increase of at least the official inflation rate (CPIX) shall also be determined at this stage.

14.4 All costs of the Chairperson and the public members of the PAP in connection with the adjudication or appeal shall be paid by the PCSA.

14.5 The Chairperson of the Appeals Panel and the Ombudsman shall be entitled to business class flights.

## **15. Meetings**

15.1 The Council shall hold as many meetings per year as the Chairperson deems necessary or where three members require the Chairperson to hold a meeting on a specific matter, he or she shall do so within 21 days.

15.2 The quorum for a meeting shall be six members and resolutions shall be taken by majority vote except in so far as this Constitution requires otherwise. The Chairperson shall have a casting vote where the votes are equal.

15.3 Meetings of the Council may be held in person or by telephone or video conference or other appropriate electronic communications system or a combination thereof: provided that proper notice of such a meeting was given to all members and a quorum is in attendance.

15.4 Minutes shall be kept of the proceedings of meetings by one of the members elected at a Council meeting as secretary.

15.5 Unless all the members agree, a Council meeting shall be held within seven days'

written notice by the secretary or the chairperson.

## **16. Arbitration**

16.1 In the event of any dispute (including a dispute relating to membership costs, or the budget prepared by the Ombudsman, or the costs of SAPOM and SAPAP) within the PCSA relating to any matter arising from functions of any member or office-bearer, the PCSA shall appoint an arbitrator to resolve the problem and where the parties cannot agree on the arbitrator the Chair of the Johannesburg Bar Council shall be approached to appoint an arbitrator.

16.2 Each association which has appointed a representative in terms of 4.2 of this Constitution shall bear the costs of its representative carrying out the bona fide functions.

16.3 The cost of the arbitrator shall be shared equally by the disputing parties except in any dispute with the Ombudsman, in which case the cost of arbitration shall be borne by the Council.

16.4 The decision of the arbitrator shall be final and binding.

## **17. Amendments**

17.1 Any amendment to this Constitution, the Code or the Procedure shall require the approval of two-thirds of the members of the PCSA voting either personally or in absentia.

17.2 No amendment shall be effective unless at least 21 calendar days' written notice of a proposed amendment shall have been given to all members.

17.3 Votes submitted in absentia shall be in writing, signed by the relevant member and be recorded for or against the proposed amendment and no further amendments of the proposal may be made at such meeting unless a two-thirds majority of the Council is present at the meeting and votes for such further amendment.

## **18. Dissolution**

18.1 The PCSA may, after each term of the Press Ombudsman, terminate the existence of SAPOM and SAPAP.

18.2 A resolution to dissolve the said system must be passed at a special meeting called for this purpose, by a two-thirds majority of the members present, which two-thirds majority shall be not less than a simple majority of the total membership.

18.3 Not less than 21 days' notice shall be given of any such meeting and such notice shall give particulars of the purpose for which the meeting is called.

## 19. Seat of the PCSA

19.1 The seat of the PCSA shall be in Johannesburg and meetings shall be held in Johannesburg unless the management decides otherwise.



## COMPLAINTS PROCEDURES

It shall be of the essence of the adjudication proceedings:

That complaints be considered and adjudicated upon within the shortest possible time after the publication of the matter giving rise to the complaint;

That complaints be considered and adjudicated upon in an informal manner; and,

That whenever possible the Ombudsman and SAPAP and the parties will strive for a speedy and amicable settlement.

### 1. Complaints

1.1 "Complainant" shall mean and include any person who or body of persons which lodges a complaint, provided that such person or body of persons has a direct, personal interest in the matter complained of.

1.2 The "respondent" in respect of a complaint shall be the proprietor of the publication, which may delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the member concerned, to act and appear in its stead in respect of any complaints dealt with either by the Ombudsman or the SAPAP.

1.3 A complaint shall be made as soon as possible, but not later than fourteen days after the date of the publication giving rise to the complaint. The Ombudsman may on reasonable grounds accept late complaints if in his or her opinion there is good and satisfactory explanation for the delay.

1.4 The complaint shall be made to the Ombudsman either in person, by telephone or in writing. "Writing" shall include cable, telegram, telex, e-mail and fax messages. Where a complaint is made other than in writing it shall be confirmed forthwith in writing or the Ombudsman's office shall assist the complainant to do so. Upon the receipt of a complaint by the Ombudsman, the Ombudsman shall be entitled to request from the complainant a copy of the material published giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Ombudsman forthwith.

**1.5 The Ombudsman shall not accept a complaint:**

1.5.1 Which is anonymous or which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious and which prima facie falls outside the ambit of the Code;

1.5.2 Where at any stage of the proceedings legal action is threatened or is considered by the Ombudsman to be a possibility, unless the complainant in writing waives any right to claim civil relief of whatsoever nature directly or indirectly related to or arising out of the complaint;

1.5.3 Which is directed at a newspaper outside his or her jurisdiction.

1.6 Where the Ombudsman has accepted a complaint and the respondent offers to settle the matter complained of by way of publication or otherwise, which in the opinion of the Ombudsman constitutes a reasonable and sufficient offer of settlement of such complaint, the Ombudsman may withdraw his or her acceptance of the complaint.

1.7 Where the Ombudsman declines to accept a complaint on any of the grounds specified in rules 1.3 or 1.5 or withdraws his or her acceptance of a complaint under rule 1.6 the complainant may, within seven days, with full reasons, request the Chairperson of SAPAP to review the Ombudsman's decision. In the event of the Chairperson overruling the Ombudsman's decision, the matter shall proceed in terms of rule 2.

## **2. Conciliation and Adjudication Procedure by the Ombudsman**

2.1 Upon acceptance of a complaint by the Ombudsman, he or she shall immediately notify the respondent in writing of the complaint, giving sufficient details to enable the respondent to investigate the matter and respond.

2.2 The Ombudsman shall forthwith endeavour to achieve a settlement.

2.3 The Ombudsman shall hold discussions with the parties on an informal basis with the object of achieving a speedy settlement. Legal representation is permitted.

2.4 If the complaint is not settled within 14 days of its notification to the respondent, the Ombudsman may, if it is reasonable not to hear the parties, decide the matter on the papers.

2.4.1 Where the Ombudsman decides to hold a hearing, the Ombudsman shall appoint a public and a press member of the Appeals Panel to adjudicate the matter with him or her at the hearing.

2.4.2 Decisions shall be by a majority vote.

2.4.3 Legal representation shall be permitted at hearings.

2.5 Within 7 days of receipt of the decision, any one of the parties may apply for leave to appeal to the Chairperson of the SAPAP and the grounds of appeal shall be fully set.

2.6 The application and grounds must be filed at the Ombudsman's office.

2.7 The Ombudsman shall inform the other party of the application for leave to appeal and shall advise the party that he or she may file a response to the application for leave to appeal within 7 days of receipt thereof.

2.8 If the Chairperson is of the view that there are reasonable prospects that the SAPAP may come to a decision different from that of the Ombudsman or the Ombudsman with members, as the case may be, the Chairperson shall grant leave to appeal.

### **3. Adjudication Procedure of SAPAP**

3.1 Where leave to appeal is granted in terms of rule 2.8, the Ombudsman shall place before SAPAP all the documentation that he or she had before him or her and the Ombudsman shall also inform both parties of the date and venue of the hearing before the SAPAP.

3.2 The Chairperson of SAPAP shall appoint one press member and one public member from the persons appointed in terms of clause 10 of the Constitution to hear the appeal with him.

3.3 The Chairperson shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in rule 3.1.

3.4 It shall not be obligatory for either party to appear personally before the SAPAP, but they are entitled to attend and to address the SAPAP which is, in any case, entitled to question them on the matter: provided that a respondent is not under a duty to disclose the identity of an informant.

3.5 The Chairperson may request the parties to appear personally. The Chairperson may advise parties that, in the circumstances, an adverse inference may be drawn from failure to comply with such request without good cause.

3.6 The parties shall be entitled to legal representation when appearing before the SAPAP.

3.7 If the SAPAP finds against a respondent who is present, the respondent shall be given an opportunity to address the Tribunal in mitigation of any order that may be made.

3.8 The hearings of the SAPAP shall be open to the public unless the identity of a rape or sexual victim or a child or a victim of extortion is at issue.

### **4. Variation of Procedure**

4.1 The Ombudsman or Chairperson of the SAPAP may, if satisfied that no injustice will result, and upon such conditions as he or she may impose:

4.1.1 Extend any time period contemplated in these rules;

4.1.2 At any stage require any allegation of fact to be verified on oath;

4.1.3 Call upon the parties to a dispute to furnish such further information as he or she may consider necessary.

## **5. Findings of SAPOM or SAPAP**

5.1 The SAPOM or SAPAP may uphold or dismiss a complaint or appeal, as the case may be.

5.2 If a finding is made against a member of PMSA or a publication that has voluntarily become subject to the jurisdiction of the SAPOM and SAPAP, the SAPOM or the SAPAP, as the case may be, may make any one or more of the following orders against the proprietor of the publication:

5.2.1 Caution or reprimand a respondent;

5.2.2 Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the SAPOM or SAPAP be published by the respondent in such manner as may be determined by the SAPOM or the SAPAP, as the case may be.

5.2.3 Order that a complainant's reply to a published article, comment or letter be published by the respondent;

5.2.4 Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of SAPOM and/or SAPAP.

5.3 In the reasons for the decision and/or sanction the SAPOM or SAPAP is entitled to criticise the conduct of the complainant in relation to the complaint, where such criticism is warranted in the view of SAPOM or SAPAP.

5.4 The Ombudsman shall cause any findings, reasons for a finding and/or requirements of a tribunal to be sent to the complainant and to the respondent who shall comply with the SAPOM or the SAPAP's orders or directives, if any.

5.5 The Ombudsman shall keep on record all findings and reasons for findings by the Ombudsman or SAPAP.

5.6 The records referred to in rule 5.5 shall be public documents except insofar as those documents are privileged in terms of the Promotion of Access to Information Act 2000 or identify a rape victim, a person who has been sexually assaulted or a child, or a victim of extortion.