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THE SWAZILAND MEDIA COUNCIL BILL, 1997

(Bill No. 9 of 1997)

(To be presented by the Minister of Public Service and Information)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to -

- (a) promote responsible standards of journalism;
- (b) give effect to a code of ethics for the media;
- (c) establish a media supervisory body;
- (d) provide for incidental matters.

S.H. ZWANE
Attorney-General

A BILL
entitled

An Act to promote responsible standards of journalism and to provide for incidental matters.

ENACTED by the King and the Parliament of Swaziland.

Arrangement of Clauses

Clauses:-

- 1. Short title and commencement.
- 2. Interpretation.
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Short title and commencement.

1. This Act may be cited as the Swaziland Media Council Act, 1997, and shall come into force on a date to be appointed by the Minister by Notice in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires -

"accreditation" means the authorisation of a person to practise as a journalist;

"affected person" means a person or agent of the person affected by a publication;

"Code" means the media code of ethics for the media referred to in section 12;

"Council" means the Swaziland Media Council established under section 3;

"Journalist" means a person who derives a livelihood, in whole or in part, as a newspaper journalist, television or radio broadcaster, editor, reporter, publisher or as a person directly or indirectly responsible for the publication of or dissemination of information, views, opinions, news or similar material to the public;

"Minister" means the Minister responsible for information;

"Newspaper" has the same meaning as under the Books and Newspapers Act, 1963;

"Press" includes radio, television, wire services, newspaper, magazines and such other channels of communication involved in the collection and dissemination of information.

"publication" includes -

- (a) any newspaper, book, periodical, pamphlet, poster or other printed matter;
- (b) any writing or typescript which has in any manner been reproduced or made available to the public or any section of the public;
- (c) any drawing, picture, illustration, painting, woodcut or similar representation;
- (d) any film negative, print, photograph, engraving or lithograph;
- (e) a figure, cast, carving, statue, or model;
- (f) any record or other material, contrivance or device by means of which any words or images can be reproduced either in sound or light;

(g) any film, video film, video film chip or any film produced for the purpose of being shown on or through a video recording machine or for the purpose of being broadcast on television;

(h) any radio or television programme, news broadcast, magazine or utterance, whether already broadcast or about to be broadcast;

"radio" means an electro-magnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 300 GHZ;

"Registrar" has the same meaning as under the Books and Newspapers Act, 1963;

"television broadcast" means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images.

Establishment of Council.

3. (1) A Council to be known as the Swaziland Media Council is established.

(2) The Council shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name.

Composition of the Council.

4. (1) The Council shall consist of seven members all of whom shall be appointed by Minister by notice in the Gazette.

(2) Subject to subsection (1) -

(a) two of the members shall qualify to be appointed judges of the High Court and one of whom shall be appointed the Chairperson and the other the vice Chairperson;

(b) three of the members shall be appointed from members of the public whom he considers suitable for appointment to the Council;

(c) The other two members shall be journalists who are resident in Swaziland and who are nominated by the recognized association governing journalists in Swaziland before appointment.

Seal of Council.

5. (1) The seal of the Council shall be such devise as the Council may determine and shall be kept by the Registrar.

(2) The affixing of the seal shall be authenticated by the chairperson or Registrar and any other Council member authorised in that behalf by a resolution of the Council.

(3) Any document bearing the seal of the Council shall be received and deemed in evidence or any proceedings to have been executed or issued as such by the Council unless the contrary is proved.

Functions of Council.

6. The functions of the Council are to -

- (a) promote responsible standards of journalism and press freedom;
- (b) advance the highest professional and ethical standard for journalists;
- (c) ensure the protection of the rights and privileges of journalists in the lawful performance of their professional duties;
- (d) inquire into and consider allegations of conduct which is contrary to the code and the profession of a journalist;
- (e) receive, inquire into, and consider complaints from any affected person, the Government or another journalist, that a publication contravenes the code or professional ethics of a journalist;
- (f) advise and recommend to the Minister on the review of the code and media policy;
- (g) accredit and register local and foreign journalists;
- (h) discipline journalists and publications found to have contravened the code or the professional ethics of a journalist;
- (i) supervise the practice and profession of journalism.

Tenure and vacancy.

7. (1) Subject to subsection (3) a member of the Council shall hold office for a renewable period not exceeding three years at a time.

(2) A member may resign from the Council upon giving a month's notice in writing to the Chairperson.

(3) The tenure of a member shall become vacant -

- (a) upon the member's death or resignation;
- (b) if a member is absent without reasonable cause from three consecutive meetings of the Council;
- (c) if the member becomes otherwise disqualified or incapacitated; or
- (d) if terminated by the Minister in writing.

Remuneration and allowances.

8. A member of the Council shall be paid such remuneration, allowances and expenses as are paid to members of Statutory Boards.

Limitation of Liability.

9. A person including a member of the Council, shall not be liable in respect of anything done or omitted in good faith in the exercise of a power or the carrying out of a duty or the performance of a function, under this Act, or in respect of anything that may result from such act or omission.

Procedure of meetings.

10. (1) The quorum for any meeting of the Council shall be four members of the Council.

(2) Unless a shorter period of notice is required by the exigency of the situation, a meeting of the Council shall be called by the chairperson upon notice in writing of not less than fourteen days.

(3) A meeting of the Council shall also be called at the request of the Minister or of at least half the number of members of the Council.

(4) The Chairperson, or in his absence, the vice-Chairperson, or in the absence of both Chairperson and vice-Chairperson, such member appointed by the members present at any meeting for the purpose, shall preside over a meeting of the Council.

(5) The person presiding at a meeting of the Council shall have a deliberative and, in the event of an equality of votes, a casting vote.

(6) The Council shall keep proper minutes of its proceedings at meeting.

(7) Subject to the provisions of this Act, the Council may regulate its own procedure and frequency of meetings.

Code of ethics.

11. (1) The code of ethics for journalists is contained in the schedule hereto.

(2) The Minister may, at the recommendation of the Council, amend the Schedule.

Compliance with the code.

12. A journalist shall, in the performance or practice of his observe and comply with the requirements of the code of ethics.

Breach of the code.

13. (1) A journalist who conducts himself in a manner contrary to the code or the profession of a journalist or engages in any occupation which is inconsistent with the profession of a journalist shall be guilty of unprofessional conduct and liable to disciplinary action if a complaint is successfully made to the Council by the Registrar, the Government or any affected person.

(2) Subject to section 21 (1), a complaint shall, amongst other things, be in writing, specify the Rule of ethics breached, the journalist or publication concerned and detail the basis on which it is made.

Evidence.

14. (1) In proceedings before the Council, evidence may be presented in such manner and in such form including in the form of affidavit as the Council may decide.

(2) If oral evidence is heard, cross-examination shall be allowed.

(3) In all proceedings of the Council, legal representation shall be allowed at the expense of the person seeking it and principles of fairness and natural justice shall be observed.

Appointment of Registrar.

15. (1) The person designated as Registrar in terms of the Books and Newspapers Act, 1963, shall be Registrar for the purposes of this Act.

(2) The Registrar shall be an *ex officio* member and executive secretary of the Council without a right to vote.

Register for journalists.

16. (1) The Registrar shall cause to be established and maintained a register for accredited journalists.

(2) The Registrar shall ensure that the name and particulars of accredited journalists are entered in the register as soon as accreditation is accorded.

(3) The Registrar shall cause the register to be updated at regular intervals.

Accreditation of journalists.

17. (1) An application for accreditation as a journalists shall be submitted to the Registrar in a prescribed form.

(2) On receipt of an application under this section, the Registrar shall, within thirty days, carry out any investigation or require such other information to be submitted as the Registrar may consider necessary.

(3) An application for accreditation shall be accompanied by -

(a) an accreditation and registration fee; and,

(b) a certificate or certificates of the academic or professional qualifications of the applicant.

Qualification of journalist.

18. (1) A person may be accredited as a journalist if that person -

(a) is a resident of Swaziland;

(b) has attained the age of eighteen years; and,

(c) has at least a diploma in journalism or mass communication from a recognised institution.

(2) An accredited journalist shall be issued with a suitable press card approved by the Council and bearing the seal of the Council and year of validity.

(3) A journalist shall renew his accreditation every year on the payment of an annual subscription fee.

(4) Notwithstanding subsection (1), but subject to section 17 (1) and (3), a person who is not resident in Swaziland, but who otherwise qualifies to be an accredited journalist in terms of this Act, may apply to the Registrar to be accredited as a journalist on an *ad hoc* basis.

(5) The Registrar shall, on receipt of an application under subsection (4), if satisfied as to the need for ad hoc accreditation, issue a certificate of accreditation for a specific event or period not exceeding 3 months.

Effect of accreditation.

19. (1) A person accredited under this Act may use the title "accredited journalist" and hold himself out as an accredited journalist.

(2) A person who is not accredited under this Act shall not -

(a) hold himself out, or practice, as a journalist; or

(b) professionally operate a media establishment.

(3) The editor or other person in charge of a publication which publishes an article or news item by a person who is not an accredited journalist shall be liable for proceedings in terms of section 20 which arise as a result of the article or news item.

Exemptions.

20. The Minister may, upon receipt of a written application, exempt a religious, educational, professional, or institutional organization or publication from the provisions of sections 16, 17, 18 and 19 of this Act.

Disciplinary proceedings.

21. (1) The Registrar, the Government or any affected person may in a manner and form prescribed by the Council make a complaint that a journalist or publication has breached the code or that a journalist has conducted himself in a manner contrary to the profession of a journalist.

(2) The complaint made under this section shall be filed with the Registrar unless the Registrar is the complainant in which case the complaint shall be filed with the chairperson of the Council.

(3) Upon receipt of a complaint, the Registrar or the chairperson, as the case may be, shall immediately institute formal disciplinary proceedings.

(4) The Council shall by written notice served at the place of work call upon a journalist or publication against whom a complaint has been made to appear before the Council for the purpose of the disciplinary proceedings.

(5) Where a journalist who, or a publication which, has been required to appear before the Council fails to do so and the Council is satisfied that there is no reasonable excuse for such failure, the Council may -

(a) in the case of a journalist, reprimand or suspend or de-accredit the journalist in question without a hearing, or

(b) in the case of a publication, suspend or proscribe the offending publication.

Finding of the Council

22. (1) At the close of the proceedings, the Council shall determine and declare whether the journalist or the publication in respect of which a complaint was made breached or did not breach the code or professional ethics of journalism.

(2) Where the Council has found that a breach was committed, the Council shall also decide whether the breach was serious or less serious, bearing in mind the purpose and spirit of the code and the need to maintain a fair balance between the needs of the journalistic profession, the personal integrity of an affected person and socio-economic stability.

(3) Where the Council has found that a journalist or publication has committed a serious breach of the code or professional ethics of journalism, the Council shall take one or more of the following steps against the offending journalist or publication -

- (a) direct the offending publication or journalist to publish the findings of the Council made in consequence of the complaint and hearing;
- (b) direct the publication or the journalist to publish a retraction or counter-statement or apology for the publication with a prominence at least equal to that of the offending publication;
- (c) declare that the publication in question and or any subsequent issue of the publication be proscribed for such a period as the Council may deem fit; or
- (d) deregister the journalist.

(4) A declaration by the Council in terms of paragraphs (c) and (d), shall be communicated in writing by the Council to the publication or journalist.

Offences.

23. (1) A person who contravenes the provisions of section 19 (2) commits an offence and is liable on conviction to a fine not exceeding ten thousand Emalangeni or imprisonment for a period not exceeding five years or both.

(2) A person who contravenes section 20(2) commits an offence and shall be liable on conviction to a fine not exceeding six thousand Emalangeni or to a period of imprisonment not exceeding two years or to both.

(3) A journalist who, or a publication which fails to forthwith comply with a directive imposed by the Council under Section 22 commits an offence and shall -

- (a) in the case of a journalist, be liable on conviction to a fine not exceeding six thousand Emalangeni or imprisonment for a period not exceeding two years or to both;
- (b) in the case of a publication or corporate body, be liable on conviction to a fine not exceeding one hundred thousand Emalangeni.

(4) It shall be an offence punishable in like manner as in subsection (3) for any person or publication to publish, distribute or disseminate in any way a proscribed publication.

Defamatory publication.

24. Where a publication or article in a publication is found by the Council to have breached the code in that it was defamatory or injurious of any person, then -

- (a) in a civil claim for damages before a Court of competent jurisdiction for the said defamation or *injuria*, the finding of the Council shall constitute *prima facie* proof of the alleged defamation and or *injuria*;

(b) the publication or journalist against whom the action for defamation or *injuria* is brought in terms of paragraph (a), shall have the onus to establish that there was no defamation and or *injuria*;

(c) the mere act of publication of the defamatory or injurious matter shall constitute sufficient proof of intention on the part of the journalist or publication.

Criminal liability.

25. (1) For the purpose of imposing upon a corporate body, criminal liability for an offence under this Act -

(a) an act performed by or on instruction or with permission, express or implied, given by a director or servant of that corporate body;

(b) the omission of any act which ought to have been but was not performed by or on instruction given by a director or servant of that corporate body, in the exercise of his powers or in the performance of his duties as such director or servant, or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed by the corporate body or, as the case may be, to have been an omission on the part of that corporate body.

(2) In any prosecution against the corporate body, a director or servant of that corporate body shall be cited as representative of that corporate body, and thereupon the person cited may be dealt with as if he were the corporate body accused of having committed the offence alleged.

(3) A plea of guilty by the representative cited under subsection (2) shall not be valid unless the corporate body has authorised that representative to so plead.

(4) A person representing a corporate body in terms of subsection (2) may be substituted by another representative of that corporate body at any time at the request of the prosecutor, and thereupon the proceedings shall continue as if there was no such substitution.

(5) The court convicting a person representing a corporate body in terms of subsection (2) shall not impose upon that person any punishment other than a fine payable by the corporate body and recoverable by attachment and sale of the property of that corporate body, if necessary.

Regulations.

26. The Minister, on the recommendation of the Council, may make Regulations by Notice in the Gazette for the better administration of this Act.

Transitional provision.

27. On the date of coming into force of this Act, any person who has been practising as a journalist in Swaziland for a period of at least six months, may, on the payment of the accreditation fee, be accredited and registered as a journalist.

Financial year.

28. The financial year of the Council shall be the period of twelve months ending on 31st March in each year.

Accounts.

29. (1) The Council shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Council shall be audited annually by independent auditors registered in Swaziland and appointed by the Council.

Annual report.

30. As soon as practicable, but not later than six months after the end of each financial year, the Council shall submit a report to the Minister concerning its activities during that financial year.

Funds of the Council.

31. (1) The funds of the Council shall be all such monies as may vest, accrue or be paid to the Council by way of donations, subventions, grants or subscription and registration fees.

(2) The Council may invest in such manner as it shall deem fit any monies it holds which are not immediately required for the performance of its functions.

(3) The Council shall, from its funds, pay for all its reasonable expenses including salaries, allowances and other incidentals.

SCHEDULE 1

(Section 11)

CODE OF ETHICS FOR JOURNALISTS IN SWAZILAND

Duty

1. A journalist shall report the truth in a balanced manner and shall respect the right of the individual and public to the truth.

Freedom of the Press.

2. (1) A journalist shall uphold the freedom of the press the unquestionable right to discuss whatever is not forbidden by law, including the wisdom of any restrictive statute.

(2) A journalist shall retain freedom from all obligations which curtail journalistic freedom except the vital obligation of fidelity to the public interest.

(3) A journalist shall not promote any private interest contrary to the general welfare, for whatever reason, as this is not compatible with honest journalism.

(4) A journalist shall resist partisanship in editorial comment which departs from the truth and violates the best spirit of journalism.

Fair Play.

3. A journalist shall at all times -

- (a) ensure that the information he or she disseminates is fair and accurate;
- (b) avoid the expression of comment and conjecture as established fact; and
- (c) avoid falsification by distortion, selection or misrepresentation.

Accuracy and Objectivity.

4. (1) In pursuance of the duty of accuracy and objectivity, a journalist shall defend the twin principles of freedom in the honest collection and publication of news and the right of fair comment and criticism.

(2) A journalist shall not publish anything which affects the reputation or moral character of a person, otherwise than where the matter arises in the course of judicial proceedings, without giving the person affected an opportunity to defend the allegation.

(3) A journalist shall not invade a person's rights to privacy except where the right of the public to information as distinguished from public curiosity, warrants this.

(4) A journalist shall obtain information, photographs and other related materials only by straight forward means and may only use other means to obtain the information or photograph where over-riding considerations of public interest justify this.

(5) A journalist shall ensure that an item which is published by him or her in a newspaper or otherwise broadcast in the media, and which is found to need correction, is promptly and completely corrected by publication in a subsequent edition, on the same page and given the same prominence as the original item or broadcast in the same fashion regarding the time and programme when the incorrect broadcast was made, as the case may be.

(6) A journalist shall observe professional secrecy regarding the source of information obtained in confidence and shall also verify with parties concerned before publication.

(7) A journalist shall maintain freedom from obligation to any interest other than the public's right of access to information and to this end a journalist shall avoid -

- (a) gifts, favours, free travel, special treatment or privileges which compromise the integrity of the journalist and his or her employment;
- (b) secondary employment, political involvement, holding public office and service in community organisations if they compromise the integrity of the journalist and his or her employer; or
- (c) conducting their personal lives in a manner which exposes them to conflict of interest, real or apparent.

(8) A journalist shall ensure that news communications from private sources are not published or broadcast without substantiation of their claims to news value.

(9) A journalist shall seek news that serves the public interest and in particular shall make constant efforts to assure that public business is conducted in public and that public records are open to the public.

(10) A journalist shall accept editorial orders only from the responsible persons of the editorial staff.

(11) A journalist shall ensure that news presentations are designed to offer timely and accurate information, and shall present it in the light of relevant circumstances that give it meaning and perspective and, in particular, that -

- (a) factors such as race, creed, nationality or prior status will be reported only when relevant; and
- (a) comment or subjective content will be properly identified.

(12) A journalist shall at all times display human respect for the dignity, privacy, and well-being of persons with whom news deals in conformity with provisions of international and national law concerning protection of the rights and the reputation of others, prohibiting libel, calumny, slander and defamation.

(13) A journalist and in particular, a news editor shall, in recognition of the responsibility borne by publishing present informed analysis and comment or editorial opinion on public events and issues accept responsibility for the presentation of such matters by individuals whose experience and judgement qualify them.

(14) A journalist shall conduct himself or herself with dignity and shall keep equipment as unobtrusive and as silent as possible.

(15) A journalist shall strive to prevent his or her presence including equipment, from distorting the character or importance of events.

(16) In the reporting of matters that are or may be litigated, a journalist shall avoid practices which would tend to interfere with the right of an individual to a fair trial.

(17) A journalist shall actively censor and seek to prevent, violations of the ethics of journalism and shall actively encourage their observance by all journalists.