DailyNews

dailynews.gov.bw

22 Dec 2025

Bill No. of 2025

MEDIA BILL, 2025

(*Published , 2025*)

MEMORANDUM

1. A draft of the above Bill, which it is intended to be presented to the National Assembly, is set out below.

2. The Bill seeks to establish an independent self-regulatory body known as the Media Practitioners to regulate the media sector in the public interest. The Bill aims to promote and protect media freedom, uphold ethical and professional standards in journalism, and provide effective mechanisms for dispute resolution, including a Media Ombudsman and Appeals Committee. The Bill also provides for financial autonomy, protection of journalists, and the establishment of a Media Development Fund.

3. The key objectives of the Bill are to —

- safeguard freedom of expression and independence of the media;
- promote ethical and professional journalism through enforceable standards;
- protect journalists and media enterprises from legal harassment, SLAPP suits, and undue interference;
- establish clear accountability and governance structures for media regulation;
- provide accessible and impartial complaint and appeals mechanisms; and
- facilitate development and sustainability of the media sector through a dedicated Media Development Fund.

4. to that end, the Bill provides as follows —

Part I contains the short title, commencement, interpretation provisions, and sets out the object of the Act. It provides that the Act shall prevail over inconsistent laws relating to media freedom.

Part II provides for the continuation and independence of the Council, its objectives and functions, and outlines the application of media standards across all platforms, including digital media. It affirms the editorial independence of journalists.

Part III establishes the governing Board of the Council, defines its composition, qualifications, tenure, disqualification and removal of members, and procedures for filling vacancies. It ensures broad stakeholder representation, including independent journalists and members of the public.

Part IV regulates the conduct of Board meetings, quorum requirements, disclosure of interest, confidentiality obligations, establishment of Board committees, and the role of co-opted members.

Part V provides for the appointment, powers, and responsibilities of the Executive Director, Secretary, and other staff of the Council, as well as internal administrative structures.

Part VI sets out the funding sources, financial autonomy, accounting and auditing requirements of the Council. It allows the establishment of pension and other staff welfare funds and mandates the publication of an annual report.

Part VII stablishes a Media Development Fund to support media growth and innovation, including its sources of income, permitted uses, and administration.

Part VIII guarantees media freedom and the protection of journalistic sources, provides defences against SLAPP suits, prohibits legal harassment and surveillance, and affirms journalists' access rights and the public's right to correction through rejoinders.

Part IX provides for the establishment of an Ethics and Conduct Committee, the development of a Code of Ethics, and responsibilities of media enterprises concerning authorship and editorial accountability.

Part X establishes an independent Media Ombudsman to receive and mediate complaints concerning journalistic conduct and media content, and refers ethical and conduct matters to the Council's Ethics Committee.

Part XI provides for the establishment, composition, and mandate of the Appeals Committee to hear appeals from decisions of the Media Ombudsman, with powers to confirm, vary or overturn such decisions.

Part XII contains miscellaneous provisions which include provisions on monitoring and reporting, exemption from personal liability for actions taken in good faith, offences and penalties, regulation-making powers, repeal of the Media Practitioners Association Act (Cap. 61:09), and transitional provisions.

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A BILL

— entitled —

An Act to provide for the establishment of an independent self-regulatory Media Practitioners Council to regulate the media in the public interest, to promote media freedom and professional standards, to provide for the protection of journalistic sources and to provide protection against abusive legal actions, and for matters incidental thereto.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Media Act, 2025, *Short title and commencement*

and shall come into operation on such date as the Minister. *Interpretation*

may, by Order published in the *Gazette*, appoint.

2. In this Act, unless the context otherwise requires — "Board" means the Board established under section 12;

"Council" means the Media Practitioners Council established under section 5;

"Executive Director" means the person appointed under section 28

"journalist" means any person who engages in regular gathering, processing or dissemination of news or information to the public through any medium whether employed or freelance, in any form of media, including digital platforms, and may be registered as such by the Council for the purpose of professional recognition;

"media" means the regular or periodic production and dissemination of information or content intended to reach and influence a significant section of the public, where such

production and dissemination is subject to editorial responsibility, whether by means of print, broadcast, digital, electronic or any other technological platform;

"rejoinder" means a written response by a person or entity to a publication that they claim is inaccurate, misleading, or harmful, intended to clarify or correct the record;

"SLAPP suit" means a strategic lawsuit against public participation intended to silence or intimidate criticism.

Object of Act **3.** The object of the Act is to —

(a) promote and protect the freedom and independence of the media in Botswana;

(b) establish an independent body to oversee media regulation;

(c) promote ethical and professional standards in journalism;

(d) protect journalistic sources and editorial independence; and

(e) prevent abuse of the legal system to stifle media freedom.

Conflict with **4.** In the event of any conflict or inconsistency between the provisions of this Act

with other laws and any other law on media freedom and independence, the provisions of this Act shall take precedence.

PART II — *Establishment of Media Regulatory Council*

Continuation of Council **5.** (1) The Media Council established under section 3 of the repealed Act is hereby continued under the name Media Practitioners Council and shall continue to exist as if established under this Act.

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

its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform, including to —

(a) acquire and sell such movable and immovable property as may be necessary for the efficient operation of the Council; and

(b) enter into such contracts as may be required under the seal, and for the efficient operation, of the Council.

Independence of Council **6.** (1) The Council shall be independent and shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

(2) The Council shall operate in a manner that ensures impartiality, transparency, and accountability.

7. The objectives of the Council shall be to —

(a) promote and protect the freedom and independence of the media;

(b) determine professional standards for journalists and media enterprises;

(c) promote and enhance ethical and professional standards amongst journalists and media enterprises;

(d) protect the rights and privileges of journalists and media enterprises;

(e) develop and regulate ethical and disciplinary standards;

(f) register, in such manner as may be prescribed, professional bodies responsible for the training of journalists and the certification of the competence of the journalists;

(g) maintain a register of journalists, media enterprises for the purpose of professional recognition;

(h) promote public awareness of the rights and responsibilities;

(i) facilitate cooperation among media stakeholders; and

(j) cooperate with international and regional organisations in promoting best practices and fulfilling Botswana's international obligations.

8. The Council shall, for the purpose of the attainment of its objectives, ensure —

(a) compliance with this Act;

(b) that the freedom and independence of the media is exercised in a manner that respects the rights of others; and

(c) that the protection of national security, public order and public health is maintained in accordance with the applicable law.

9. The Council shall develop, promote and enforce uniform standards of professional and ethical journalism applicable to

all media platforms, including print, broadcast, digital, and online media, to ensure accuracy, fairness, accountability, and public trust in the media.

(2) Without prejudice to the generality of subsection (1), the Council shall, in relation to digital and online media platforms —

(a) promote ethical online journalism, including the transparency of sponsored content and responsible moderation practices;

(b) maintain a voluntary register of online media entities engaged in journalistic activities in Botswana;

(c) ensure that online media platforms are held to the same standards of journalistic integrity as other media platforms; and

(d) safeguard freedom of expression online and protect against unjustified content takedown or censorship.

(3) Nothing in this section shall be interpreted as requiring prior registration or licensing as a condition for engaging in journalistic activities, whether through online or offline platforms.

Objectives of Council

Functions of Council

Media standards and application

Independence of journalists

Lodging of complaint

Establishment of Board

Composition of Board

10. The Council shall not interfere with, or direct, a journalist's professional activities, including editorial judgement, news gathering, choice of sources, and decision making on the publication or broadcast of content.

11. (1) Any person who is aggrieved by the publication of media content or by the conduct or omission of a journalist, editor, publisher or media enterprise may lodge a complaint with the Council.

(2) A complaint shall be lodged within 30 days from the date the complainant became aware of the conduct or publication complained of, or such longer period as the Council may allow for good cause shown.

(3) Upon receipt of a complaint under this section, the Council shall refer the complaint to the Media Ombudsman for resolution under section 59.

(4) Nothing in this section shall preclude a complainant from submitting a rejoinder under section 45 or lodging a complaint in relation to a rejected rejoinder under section 49.

PART III — *Board of Council*

12. There is established a body to be known as the Media Practitioner's Council Board which shall be the governing body of the Council and shall be responsible for the proper management and direction of the affairs of the Council.

13. (1) The Board shall consist of seven members elected from amongst persons who are representatives of the professional bodies, who have experience or expertise in the media, law, or any other area relevant to the objects and functions of the Council.

(2) Notwithstanding subsection (1), the Board shall consist of the following members —

(a) one legal practitioner, with expertise in media law, appointed following a public call for applications;

(b) one person nominated by media publishers;

(c) two persons, one each nominated by online media platforms and broadcasters, respectively;

(d) one person nominated by a principal trade union or representative organisation of media practitioners;

(e) one person representing independent journalists who are not employed by any media organisation; and

(f) two members of the public, who are not affiliated with any media organisation or political party, appointed following a public advertisement.

(3) The Executive Director shall be an ex officio member of the Board but shall not vote.

(4) The members of the Board shall be elected at an annual general meeting of the Council by the professional bodies.

(5) Immediately after the election of the members of the Board at an annual general meeting of the Council, the members of the Board shall elect a Chairperson of the Board and a Vice Chairperson of the Board from amongst themselves.

(6) The Council shall, within 30 days of the appointments under this section being made, publish in a newspaper of national circulation or in electronic media, the appointment of the members, specifying the dates of their appointment and the period for which they are appointed to the Board.

14. A member of the Board shall hold office for a period not exceeding four years and shall be eligible for re-appointment for one further term not exceeding four years.

15. (1) A person shall not qualify for appointment as a member or continue to hold office as a member if he or she —

(a) has, in terms of any law in force in any country —

(i) been adjudged or otherwise declared bankrupt and has not been discharged or rehabilitated, or

(ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;

(b) has, within a period of five years immediately preceding the date of his or her appointment, been convicted —

(i) of a criminal offence in Botswana, or

(ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced to at least six months' imprisonment without the option of a fine, and has not received a free pardon irrespective of whether the sentence has been suspended;

(c) has, within five years immediately preceding the date of his or her appointment, been disqualified or suspended by a competent authority from practising a profession on the ground of misconduct or negligence; or

(d) is at the time of appointment, a member of the National Assembly, a councillor, a member of *Ntlo ya Dikgosi*, or an official in a political party.

(2) The Council shall remove a member from office, if the member —

(a) becomes subject to a disqualification under subsection (1);

(b) is convicted of an offence under this Act, or under any other Act and after a period of 30 days, from the date that a ruling against the member is made on all appeals made in respect of the conviction, he or she is sentenced to imprisonment for a term of six months or more without an option of a fine;

(c) is absent, without reasonable cause, from three consecutive meetings of the Board of which that member has had notice;

(d) is found to be physically and mentally incapable of performing his or her duties efficiently, and a medical practitioner has issued a certificate to that effect;

Tenure of Office of members of Board

Disqualification, removal and resignation of members of Board

Suspension of members of Board

Vacation of office of member of Board

Filling of vacancy in Board

Remuneration and allowances of members of Board

Meetings of Board

(e) commits a material breach of the codes of professional conduct and ethics;

(f) contravenes the provisions of this Act orotherwise misconducts himself or herself to the detriment of the objectives of or the performance of the functions of the Board; or

(g) puts the Council in disrepute or behaves in such a manner that is detrimental to the image or reputation of the Council.

(3) For purposes of subsection (2) (*f*) "misconduct" includes any act, done by a member without reasonable excuse which —

(a) amounts to a failure to perform in a proper manner, any duty imposed on him or her as such;

(b) is prejudicial to the efficient carrying out of the functions of the Board; or

(c) tends to bring the Board into disrepute.

(4) A member may resign from the Board by giving one month's notice, in writing, to the Chairperson of the Board.

16. The Council may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which sentence of imprisonment may be imposed, and whilst that member is suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

17. A member shall vacate his or her office and the office of a member shall become vacant —

(a) if he or she is removed from office by the Council, in accordance with section 15 (2);

(b) upon the expiry of one month's notice in writing to the Council of his or her intention to resign from office;

(c) upon his or her death; or

(d) upon expiry of his or her term of office.

18. (1) Where the office of a member becomes vacant before the expiry of the member's term of office due to death, or removal or resignation from office in accordance with section 15, the Council shall elect another person to fill the vacancy for the remainder of the term.

(2) This section shall not apply where the remainder of the term for which the member whose office has been vacated would otherwise have held office is less than six months.

19. A member shall be paid in connection with his or her service in the Board, out of funds of the Council, such remuneration and allowances as the Council may, from time to time determine.

PART IV — *Meetings and Proceedings of Board*

20. (1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

(2) The Board shall hold its first meeting on such date and at such place as the Executive director may fix and thereafter the Board shall meet at least once in every three months.

(3) Meetings of the Board may be held virtually or in person, at such places and times as the Board may determine and shall be convened by the Chairperson.

(4) The Chairperson may, in writing, convene a meeting of the Board by giving the members of the Board a notice of not less than seven days of the meeting.

(5) The Chairperson may, where a matter is urgent and does not permit the giving of notice in terms of subsection (4), call a special meeting of the Board within a period not less than seven days of receipt of a special request in writing.

(6) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson of the Board; or

(c) in the absence of the Chairperson and the Vice Chairperson of the Board, such member as the members present may elect from among themselves for the purpose of that meeting.

(7) The Secretary of the Board shall cause to be recorded and kept minutes of all proceedings of the meetings of the Board.

21. (1) The quorum at any meeting of the Board shall be a simple majority of the members.

(2) A decision of the Board on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of the votes, the member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or by the fact that a person not entitled to vote did so vote.

22. (1) If a member is present at a meeting of the Board at which any matter in which the member or immediate family member of the member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefitting such member, or an immediate family member of the member, such decision shall be null and void to the extent that it benefitted such member or family member.

(4) A member who fails to comply with the provisions of subsection

(1) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding one year, or to both.

Quorum and procedure at meetings

Disclosure of interest

Confidentiality

Committees of Board

Co-opted members

Appointment of executive Director of Council

23. (1) A member and any other person assisting the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of their terms of office or their mandate.

(2) Any member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of this Act, any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for a term not exceeding one year, or to both.

24. (1) The Board may establish a committee or sub-committee which shall carry out any function of the Board, which the Board may delegate to the committee or sub-committee.

(2) A committee or sub-committee established in terms of subsection (1) shall be responsible for, but not limited to —

(a) finance and audit;

(b) risk management; and

(c) compliance and monitoring.

(3) The provisions of sections 21, 22 and 23 shall, with the necessary modifications, apply to a member of a committee or sub-committee of the Board.

25. (1) The Board may, where it considers it necessary, co-opt any person whose presence at a meeting of the Board is deemed necessary to —

(a) attend and participate in the deliberations at the meeting of the Board; or

(b) undertake occasional assignments related to the functions of the Board.

(2) A person co-opted under subsection (1) shall —

(a) have no right to vote; and

(b) be remunerated at the rate set by the Board.

(3) The provisions of sections 22 and 23 shall, with the necessary modifications, apply to co-opted persons.

PART V — *Management and Staff of Council*

26. (1) The Council shall appoint an Executive Director on such terms and conditions as may be specified in the instrument of appointment.

(2) The Executive Director shall hold office for a maximum period of five years and may be considered for re-appointment for a further term not exceeding five years.

(3) The Executive Director shall not, while in the employment of the Council, engage in paid employment outside the duties of his or her office in the Council.

27. (1) The Executive Director shall be the administrative head of the Council and shall, subject to such directions on matters of policy as may be given by the Board, be responsible for the day-to-day management of the affairs of the Council.

(2) Without prejudice to the generality of subsection (1), the Executive director shall be responsible for —

(a) the efficient administration of the Council;

(b) the organisation and management of all employees of the Council;

(c) the supervision and maintenance of discipline in respect of the employees of the Council;

(d) the implementation of the decisions of the Board;

(e) the management of the support structure of the Council;

(f) all income and expenditure of the Council;

(g) all assets of the Council and the discharge of all the liabilities of the Council; and

(h) managing the Council on sound commercial and financial principles in accordance with policies and decisions made by the Board.

(3) The Executive Director may delegate, in writing, to any senior officer of the Council, the exercise of any powers which he or she is authorised to exercise under this Act.

28. (1) The Board shall, on the recommendation of the Executive Director, appoint a Secretary to the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) The Secretary shall, in addition to any function that may assigned to him or her by the Board or the Executive Director, be responsible for —

(a) taking minutes of the meetings of the Board;

(b) keeping records of all decisions of the Board; and

(c) keeping records of legal transactions of the Council.

(3) The Secretary shall, unless the Board otherwise directs, in writing, giving the circumstances leading to its decision, attend all meetings of the Board but shall not have a right to vote on any matter before the Board.

(4) In the performance of his or her duties, the Secretary shall be accountable to the Executive Director.

(5) In the absence of the Secretary, the Executive Director may appoint any senior member of staff of the Council to perform the functions of the Secretary until the Secretary resumes office, or the vacancy is filled, as the case may be.

29. (1) The Board shall appoint the Executive Director of the Council.

(2) The Executive Director shall appoint such other staff as may be necessary for the proper discharge of the functions of the Council.

(3) The terms and conditions of employment of staff of the Council shall be determined by the Executive Director, in consultation with the Board.

Duties of Executive Director

Appointment of Secretary of Board

Other staff of Council

PART VI — *Financial Provisions*

Funds of Council

Financial autonomy of Council

Financial Year Accounts

and audit

30. (1)The funds of the Council shall consist of —

(a) Such monies as may be appropriated by the National Assembly for the purposes of the Council;

(b) such monies or assets as may accrue to the Council in the course of the exercise of its powers or the performance of its functions under this Act;

(c) such grants and donations as the Council may receive; and

(d) any income that the Council may receive from investments.

(2) The Council shall —

(a) use the revenue acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus accrued for such purposes as it may determine, including investing such funds; and

(b) manage its own budget through the revenue acquired under subsection (1).

31. (1) The monies appropriated to the Council by the National Assembly shall be adequate to enable the Council to perform its functions effectively and independently.

(2) In determining budgetary allocations, due regard shall be had to the need to safeguard the Council's operational independence and ability to discharge its regulatory mandate.

32. The financial year of the Council shall be the period of 12 months commencing and ending on the date to be determined by the Council.

33. (1) The Council shall keep and maintain proper accounts and records of accounts in respect of every financial year relating to its assets, liabilities, income and expenditure, and shall prepare in each financial year, a statement of such accounts.

(2) The accounts of the Council in respect of each financial year shall, within three months of the end of each financial year, be audited by an auditor appointed by the Board.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it pertinent to comment on, whether or not —

(a) the auditor has received all the information and explanation which, to the best of the auditor 's knowledge and belief, were necessary for the performance of the auditor's duties;

(b) the accounts and related records of the Council have been properly kept;

(c) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply; and

(d) the statement of accounts prepared by the Council was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Council.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion of the audit, be forwarded to the Council by the auditor.

(5) The auditor's report and the audited accounts shall be presented by the Board at an ordinary general meeting.

34. (1) The Council may, with the approval of the Board, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its officers and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its officers.

(2) The Council may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

35. The Board shall present to the ordinary general meeting, a full report of the activities of the Council which shall be accessible to members of the public.

PART VII — *Media Development Fund*

36. (1) The Council shall establish a fund to be known as the Media Development Fund.

(2) There shall be paid into the Fund, such monies as may be —

(a) appropriated by the National Assembly into the Fund;

(b) received by way of fines imposed under this Act; and

(c) received from any other source for payment into the Fund

(3) There shall be paid out of the Fund such amounts as are required for the purpose of funding media development activities; and

(4) The Council shall maintain with such a bank as the Board may approve, a designated account into which shall be paid the monies paid into the Fund.

37. (1) The Board shall have the overall responsibility of the administration and management of the Fund.

(2) Without prejudice to subsection (1), the Board shall cause the Council to —

(a) be responsible for the day to day administration and management of the Fund;

(b) keep and maintain proper books of accounts and records of accounts of the Fund; and

(c) maintain an account into which shall be recorded all receipts into the Fund, all disbursements from the Fund, and the reconciliation of the monthly accounts of the Fund.

Pension and other funds

Annual report

Establishment of Media development Fund

Administration of Media Development Fund

PART VIII — *Rights and Protections in Media Practice*

Freedom and independence of media

Protection of journalistic sources and communications

Protection from strategic lawsuits against public participation

Protection from legal harassment

38. (1) Every journalist shall enjoy the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers.

(2) No person shall unjustly interfere with the media's role in informing the public or unduly restrict the publication or dissemination of content.

39. (1) A journalist or media enterprise shall not be compelled to disclose the identity of a confidential source or any unpublished information obtained in the course of professional activities, unless a court of competent jurisdiction, after conducting a thorough and reasoned assessment, determines that —

(a) the disclosure is necessary, proportionate, and in the public interest;

(b) the information cannot reasonably be obtained by any other less intrusive means; and

(c) the public interest in disclosure outweighs the potential harm to —

(i) freedom of expression,

(ii) journalistic confidentiality, and

(iii) the safety of the source.

(2) For the purposes of subsection (1), disclosure shall only be permitted where it is necessary for the prevention of a serious and imminent threat to national security or the commission of a serious crime, and the requirements of paragraphs (*a*), (*b*), and (*c*) of that subsection are satisfied.

(3) A journalist's communications with sources, whether oral, written, or digital, shall be treated as privileged and confidential, and shall not be disclosed except in accordance with subsections (1) and (2).

40. (1) A civil or criminal action shall not be instituted against a journalist or media enterprise with the intent or effect of silencing or intimidating such journalist or media enterprise from engaging in public interest reporting or commentary.

(2) A court may, upon application by the defendant, dismiss a proceeding identified as a SLAPP suit where —

(a) the matter concerns expression on a matter of public interest;

(b) the action lacks serious merit or is disproportionate to the harm alleged;

(c) the action is intended to intimidate, burden, or punish public participation.

(3) In such cases, the court may award costs or damages against the plaintiff and make any further order to deter SLAPP suits.

41. (1) A journalist or media enterprise shall not be subjected to arrest, detention, prosecution, or any other punitive measure for the publication of information on a matter of public interest, unless it is established that —

(a) the publication was made with knowledge of its falsity or with reckless disregard as to whether it was true or false; and

(b) the limitation on publication is necessary and proportionate to achieve a legitimate aim in a democratic society.

(2) The burden of proving any allegation of malice or unlawful conduct under subsection (1) shall lie with the person or authority making such allegation.

(3) Where an arrest, detention, or surveillance of a journalist is contemplated in connection with their journalistic work, such action shall —

(a) be conducted in accordance with the Constitution and any other law; and

(b) be subject to prior judicial authorisation, except in circumstances permitted by law where immediate action is necessary and justified.

(4) The State shall take appropriate measures to ensure the safety of any person, including a journalist, who faces a heightened risk of harm arising from the performance of duties that serve the public interest, particularly in dangerous or hostile environments.

42. (1) A person shall not be penalised, dismissed, or subjected to detriment for —

(a) publishing or broadcasting information in the public interest;

(b) refusing to reveal sources or editorial processes in accordance with this Act; and

(c) lodging a complaint or testifying in media-related proceedings.

(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100,000 or imprisonment for a tern not exceeding two years, or both.

43. A competent authority shall not conduct surveillance, intercept communications, or seize the equipment or devices of a journalist, except —

(a) under a warrant issued by the High Court; and

(b) in accordance with the principles of legality, necessity and proportionality.

(2) For the purposes of subsection (1), a warrant shall only be issued where the High Court is satisfied, on the basis of evidence on oath, that the proposed measure is strictly necessary and proportionate for the prevention of a serious offence or protection of national security.

(3) For purposes of this section, "competent authority" means a public body or officer authorised by law to conduct surveillance, intercept communications, or seize property for law enforcement or national security purposes.

44. (1) A journalist or media enterprise shall not be denied access to information or events solely on the basis of editorial stance or prior publication, except where necessary for legitimate security or privacy concerns.

Non-Retaliation

Prohibition of surveillance

Non-interference with access

Right to rejoinder

Duty to publish rejoinder

Grounds to refuse publication of rejoinder

Public interest defense

Complaint to Council regarding rejoinder

(2) A journalist shall have the right of access to information held by public authorities in accordance with the provisions of the Access Information Act

(3) All public authorities shall keep and maintain records of information and data relevant to their mandate

45. (1) Any person who considers that a publication by a journalist or media enterprise contains inaccurate, misleading, or harmful information about them shall have the right to submit a rejoinder or correction to that publication.

(2) A rejoinder shall address facts or opinions presented in the original publication, and shall be relevant, lawful, and not manifestly defamatory or abusive.

46. (1) A journalist or media enterprise shall, upon receipt of a valid rejoinder, publish it with due prominence and in substantially the same manner and medium as the original publication, within seven days of receipt of the rejoinder.

(2) The rejoinder shall be published without editorial alterations, unless such changes are necessary to comply with editorial standards or any law.

(3) A journalist or media enterprise shall not impose any fee or charge for the publication of a rejoinder.

47. A journalist or media enterprise may refuse to publish a rejoinder if where —

(a) the rejoinder is manifestly false, defamatory, or unlawful;

(b) it is not directly responsive to the contents of the original publication;

(c) it is longer than necessary to respond to the original content, unless reasonably required; and

(d) the rejoinder is submitted more than 30 days after the original publication becomes known to the complainant.

48. (1) It shall be a defense to any civil or administrative action arising from the publication of any material by a journalist or media enterprise, that the publication —

(a) was on a matter of public interest;

(b) was made in good faith and without malice; and

(c) was based on facts which were reasonably verified, or which the journalist or enterprise reasonably believed to be true at the time of publication.

(2) For the purposes of this section, “public interest” shall not be construed to mean mere curiosity or sensationalism, but matters which contribute to public debate or accountability in a democratic society.

49. (1) A person who is aggrieved by the refusal or failure of a journalist or media enterprise to publish a rejoinder may, within 30 days of such refusal or failure, lodge a complaint with the Council.

(2) The Council shall inquire into the complaint and may, where appropriate —

(a) order the publication of the rejoinder; or

(b) take such other remedial action as it considers just and reasonable in the circumstances.

(3) A decision of the Council made under this section shall be enforceable as if it were a judgment of a court of competent jurisdiction.

PART IX — *Code of Ethics and Professional Standards*

50. (1) The Board shall establish an Ethics and Conduct Committee which shall consist of five members of the of the Board.

(2) The functions of the Ethics Committee shall be to —

(a) develop and issue a Code of Ethics for journalists and media enterprises which shall be consistent with international best practice;

(b) review and amend the Code of Ethics for journalists and media enterprises, in line with international best practice; and

(c) ensure adherence to high standards of journalism as provided in the Code of Ethics.

(3) The Ethics Committee shall, submit the Code of Ethics to an annual general meeting of the Council, for consideration and resolution by the members of the Council, before the Ethics Committee issues the Code of Ethics.

51. The Board shall appoint a member of the Ethics Committee for a period not exceeding two years, and such member shall be eligible for re-appointment for one further term not exceeding two years.

52. (1) The Ethics Committee shall appoint a secretariat which shall consist of two staff members of the Council.

(2) The members of the secretariat under subsection (1) shall be *ex officio* members of the Ethics Committee but shall not vote.

(3) The functions of the secretariat shall be to —

(a) coordinate meetings of the Ethics Committee;

(b) record and keep minutes of the meetings and proceedings of the Ethics Committee;

(c) produce and disseminate information on matters related to the media; and

(d) carry out any other duties related to the media, as may be determined by the Ethics Committee.

53. (1) A journalist or media enterprise shall comply with the Code of Ethics issued in accordance with section 50 as may be determined by the Council, in respect of any activity related to the media.

(2) Without prejudice to section 50 (2), the Code of Ethics shall include the following —

(a) provisions relating to the duties and obligations of journalists and media enterprises;

(b) provisions relating to the protection of minors;

(c) provisions relating to the protection of persons suffering from a physical or mental disability;

Ethics and Conduct Committee

Tenure of office of members of Ethics Committee

Secretariat of ethics Committee

Code of ethics

Authorship and editorial responsibility

Establishment of Media Ombudsman

Appointment of Media Ombudsman

(d) provisions relating to advertising content;

(e) provisions allowing for fair competition in the media industry;

(f) provisions relating to the protection of the privacy of individuals, as guaranteed in the Constitution of Botswana;

(g) provisions relating to the unlawful publication of defamatory matter in accordance with the provisions of the Penal Code;

(h) provisions relating to the continuous professional development of journalists;

(i) provisions relating to sexual exploitation or sexual abuse;

(j) provisions relating to gender bias and discriminatory stereotypes in media;

(k) provisions relating to unbiased and unfair reporting; and

(l) any other matter relevant to the conduct of a journalist or a media enterprise, as may be necessary.

54. (1) A media enterprise shall, in publishing news or news articles in newspapers, magazines, radio and television broadcasts, or by electronic or any other prescribed means, indicate the full names of the journalist responsible for the publication, except where —

(a) the journalist has reasonable grounds to request anonymity for reasons of safety, security, or source protection; or

(b) editorial discretion deems it appropriate to withhold the journalist's name in the public interest.

(2) Where news or a news article published under subsection (1) does not indicate the full names of the journalist, the editor-in-chief or head of publication shall be deemed responsible for the publication.

PART X — Establishment of Media Ombudsman

55. (1) There is hereby established, under the Council, the Office of the Media Ombudsman, which shall be an independent, impartial, and non-judicial body responsible for the resolution of complaints concerning journalistic conduct and media content.

(2) The Media Ombudsman shall not, in the discharge of his or her functions under this Act, be subject to the direction or control of any person or authority.

56. (1) The Council shall, on the recommendation of the Board and following a transparent and publicly advertised recruitment process, appoint a Media Ombudsman.

(2) A person shall be eligible for appointment as Media Ombudsman if that person possesses not less than ten years' experience in one or more of the following disciplines —

(a) journalism or media practice;

(b) law, with expertise in media or constitutional law; or

(c) human rights or a related discipline.

(3) The Media Ombudsman shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(4) The Council may remove the Media Ombudsman from office only on grounds of —

(a) gross misconduct;

(b) incompetence; or

(c) inability to discharge the functions of office by reason of infirmity of body or mind.

57. The Media Ombudsman shall —

(a) receive and investigate complaints concerning media content or conduct;

(b) mediate and resolve disputes between members of the public and the media through non-adversarial processes;

(c) recommend appropriate remedies including apologies, retractions or corrections; and

(d) refer unresolved or serious matters involving breaches of the Code of Ethics or gross professional misconduct to the Ethics Committee.

58. The Media Ombudsman shall, for the purposes of performing his or her functions, have power to —

(a) summon and receive oral or written evidence from any person;

(b) determine mediation procedures for the resolution of complaints;

(c) compel the appearance of parties to a complaint for purposes of mediation; and

(d) make recommendations to the Council on matters of public concern arising from complaints.

59. (1) Upon referral of a complaint under section 11, the Media Ombudsman shall —

(a) examine the complaint;

(b) invite the parties to participate in a mediation process; and

(c) endeavour to resolve the matter within 30 days.

(2) The Media Ombudsman may condone any delay in referral, where satisfied that the complainant had reasonable cause for the delay and the complaint warrants resolution in the public interest.

(3) Where the Media Ombudsman is unable to resolve the matter, or where the complaint involves —

(a) a serious or repeated breach of the Code of Ethics; or

(b) allegations of gross professional misconduct, the Media Ombudsman shall refer the matter to the Ethics and Conduct Committee, together with a report of findings and attempts at mediation.

PART XI — *Appeals Committee*

60. The Council shall establish an Appeals Committee which shall consist of —

(a) a legal practitioner, admitted to practice in the courts of Botswana, who shall

be the Chairperson of the Appeals Committee;

(b) a representative of the media nominated by the Council, who shall be the Vice Chairperson;

Functions of Media

Ombudsman

Powers of Media Ombudsman

Resolution of complaints by Media Ombudsman

Appeals Committee

Tenure of office of members

of Appeals Committee

Secretariat Appeals Committee

Appeals

Exhaustion of dispute resolution processes

(c) a member of the general public with expertise in media related matters; and (*d*) two other persons of good standing who are retired and have considerable knowledge and experience in the media.

61. A member of the Appeals Committee shall be appointed by the Council for a period not exceeding two years and shall be eligible for re-appointment for one further term not exceeding two years.

62. (1) The Appeals Committee shall appoint a secretariat which shall consist of two staff members of the Council.

(2) The members of the secretariat under subsection (1) shall be *ex officio* members of the Appeals Committee but shall not vote.

(3) The functions of the secretariat shall be to —

(a) coordinate meetings of the Appeals Committee;

(b) record and keep minutes of the meetings and proceedings of the Appeals Committee;

(c) produce and disseminate information on matters related to the media; and

(d) carry out such other duties as may be relevant for the carrying out of the functions of the Appeal Committee.

63. (1) A person or a member who is aggrieved by the decision of the media Ombudsman may, upon payment of a fee to be prescribed, appeal the decision to the Appeals Committee in writing within 30 days of such decision being made.

(2) Notwithstanding subsection (1), the Appeals Committee may, on its own motion, review any decision of the Media Ombudsman.

(3) The Appeals Committee shall note an appeal made under subsection (1) by delivering a written notice of an intention to appeal to the secretariat of the Appeals Committee,

together with a statement setting out the grounds of the appeal.

(4) The Appeals Committee may dismiss, vary or confirm the decision of the Media Ombudsman.

(5) The decision of the Appeals Committee shall —

(a) be in writing;

(b) be binding on the parties unless appealed to the High Court;

(c) have the same force and effect as a judgment or order of a court of competent jurisdiction and shall be enforceable in the same manner as such judgment or order; and

(d) be published by the concerned journalist or media enterprise, and the concerned journalist or media enterprise shall submit such publication to the complainant.

(6) A person who is aggrieved by the decision of the Appeals Committee may, within 30 days of the decision of the Appeals Committee, appeal to the High Court.

64. A complainant who wishes to lodge a complaint shall exhaust the dispute resolution process provided in this Act before the complainant refers the complaint to a court.

PART XII — *Miscellaneous Provision*

65. (1) The Council shall publish an Annual State of Media Freedom Report, which shall assess:

(a) media freedom and pluralism in Botswana;

(b) violations of journalists' rights;

(c) implementation of this Act; and

(d) effectiveness of dispute resolution mechanisms.

(2) The report shall be submitted to Parliament and shall not be published or otherwise made publicly accessible until it has been laid before Parliament.

(3) Once laid before Parliament, the report shall be made accessible to the public through print and electronic media.

66. A member of the Council, Board, or committee or sub- committee of the Board, any employee of the Council or any other person acting under the direction of the Council or the Board, a member of the Ethics Committee, Complaints Committee or Appeals Committee, or a co-opted person, shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of his or her duties under this Act.

67. (1) A person who —

(a) without lawful justification fails or refuses to comply with any decision made in terms of this Act;

(b) obstructs or hinders any person in the exercise of any powers under this Act; or

(c) furnishes information or makes a statement to the Appeals Committee which he or she knows to be false or misleading in any material particular, commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

(2) Where any of the offences mentioned in subsection (1) is committed by a media enterprise, the director, the chief editor or head of publication who is directly responsible for the acts or omissions constituting an offence is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding one year, or to both.

(3) Any person who knowingly violates the rights protected under this Act commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both.

(4) In this section, reference to a person in relation to a media enterprise means the director, chief editor or head of publication, as the case may be.

(5) A prosecution for an offence under this Act shall not be instituted except with the written consent of the Director of Public Prosecutions.

68. The Minister may, acting in accordance with the recommendation of the Council, make regulations —

(a) relating to any other matter intended to safeguard the interests of the public and promote professional standards in the media;

Monitoring and reporting

Exemption from personal liability

Offences and penalties

Regulations

Repeal of Cap. 61:09

Savings and transitional provisions

(b) to provide for anything for the better carrying into effect of this Act; and

(c) prescribing anything to be prescribed under this Act.

69. The Media Practitioners Association Act is hereby repealed.

70. (1) All rights, obligations, assets and liabilities which have accrued to the Board in terms of the repealed Act, shall, upon this Act coming into force, pass and accrue to the Council and be dealt with in terms of this Act.

(2) All employees of the Media Council of the repealed Act shall become the corresponding employees of the Council and shall continue in office for the period for which, and subject to the conditions under which they were appointed as employees of the Media Council of the repealed Act.

(3) Any disciplinary proceedings which, before the coming into operation of this Act, were pending under the repealed Act shall be continued by, enforced by or against the Board in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Any legal proceedings which, before the coming into operation of this Act, were pending under the repealed Act shall be continued or enforced by or against the Board in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(5) Any proceedings which, before the coming into operation of this Act, were pending before Committees established under the repealed Act shall be continued or enforced by or against the Board in the same manner as they would have been continued or enforced before the coming into operation of this Act.