

## **USERS' GUIDE TO MAKING A COMPLAINT ABOUT THE BEHAVIOUR OF A CONSTITUTIONAL APPOINTEE**

The Constitutional Appointments Authority ('CAA') has put in place procedures for receiving complaints about the behaviour of Constitutional Appointees. These procedures are designed to ensure that all such complaints are dealt with quickly and fairly.

### **Who is a Constitutional Appointee?**

The procedures apply to Constitutional Appointees recommended by CAA for appointment by the President namely Judges, Justices of appeal, Ombudsman, Auditor General, Attorney General and Members of the Electoral Commission

### **The objectives of the procedure are**

- (a) to ensure that constitutional appointees conduct themselves in a manner appropriate to their office and
- (b) to demonstrate that the constitutional bodies recognise that the public is entitled to expect high standards of personal conduct from constitutional office holders and is prepared to be accountable when standards falls short of expectations.

### **Who can complain?**

Anyone who observe misbehaviour on the part of a constitutional appointee may make a complaint?

### **What can you complain about?**

Conduct refers to the personal conduct of the constitutional appointee both in and out of office but does not include in the course of decision making.

The following are some examples of the kind of thing which might form the subject of a complaint. Complaints could be made about:

- Misbehaviour
- Inability to perform his or her functions
- Rudeness
- Offensive language
- Derogatory remarks, or behaviour based on race, gender or disability
- Delay or omission in relation to constitutional duties
- The use of constitutional office to gain personal advantage
- A conviction – if you believe the constitutional appointee has been committed of a criminal offence which should result in his or her removal from office.

### **What cannot be raised as a complaint?**

- Decision Making – you cannot complain about the constitutional appointee’s behaviour in the exercise of his or her constitutional function that means his or her decisions in the use of a judge with respect to case management, the outcome of a case, the sentence or any findings of liability or award of damages.
- Allegations of criminal behaviour – if you wish to allege that a constitutional appointee has committed a criminal offence, the matter must be reported to the police for investigation.
- Matters subject to appeal or review – if an appeal or review can or could have been founded on the basis of behaviour about which you wish to complain, a complaint will not be entertained. This is to prevent the restrictions which the law puts on appeals being circumvented and also to prevent the same matter being heard more than once.

### **What are the possible outcomes?**

The resolution of a complaint about judicial conduct cannot alter decision or outcome of any case.

The procedures are designed to be fair to both you as the complainant and to the constitutional appointee against whom you complain. The constitutional appointee will be invited to respond to your complaint and the CAA will consider the facts and evidence before deciding if the complaint is made out.

If the constitutional appointee is found to have committed any act of misbehaviour you will be notified.

- You may receive an apology
- The subject in question may receive such advice as the CAA believes is necessary to prevent recurrence of the error.

Serious misbehaviour – if the CAA after conducting its preliminary investigation and if satisfied there is a case for an inquiry in the case of a judge, it may refer the matter to a Tribunal of Inquiry. The Tribunal of Inquiry is given statutory authority to conduct inquiry proceedings where grounds may exist for the Tribunal to recommend to the President the removal of a Judge in accordance with the provisions of the Constitution.

In the case of any of the constitutional appointee the CAA may refer the matter to the President for action as provided in the constitution.

### Making a Complaint

#### **Time Limit**

A complaint must be received by the CAA within 3 months of the date on which the alleged misbehaviour took place. Exceptionally the CAA may admit a complaint out of time if it believes the interest of Justice requires it to do so.

#### **Complaints must be in writing**

If you wish to make a complaint you must do so in writing, your complaint must:

1. Give your full name and address; and
2. Identify the constitutional appointee who is the subject of your complaint; and
3. Give full particulars of the behaviour you allege constitutes misbehaviour including:
  - (a) The date, time and place, and
  - (b) A description of exactly what is alleged that the subject did, and
  - (c) Where the alleged misbehaviour took place during a hearing, the name and number of the case, and
4. Set out the evidence upon which you will rely supported by a sworn affidavit; and

You should mark your complaint “Complaint-Confidential” and address it to the Chairperson Constitutional Appointments Authority.

### **What will happen next?**

Immediately your complaint is received you will receive an acknowledgement and notice of the Complaint Number assigned to your complaint.

Within 28 days of your complaint being received you will receive notification of the outcome of the preliminary examination.

At this stage your complaint may be summarily dismissed on the grounds that it is

- (a) Incomplete, or
- (b) Out of time, or
- (c) Is not about a constitutional appointee, or the
- (d) Is not about misbehaviour of the constitutional appointee or conduct within the meaning of the procedures or does not allege any misbehaviour or conduct, or
- (e) Alleges criminal activity, or
- (f) Is about behaviour which could have founded an appeal or review, or
- (g) Is frivolous or vexatious
- (h) Not supported by a sworn affidavit

Where a complaint is summarily dismissed you will receive an explanation of why with the notification.

### **Preliminary Investigation**

Provided your complaint is not dismissed it will be referred for a Preliminary Investigation. The constitutional appointee who is the subject of your complaint will be notified of your complaint and given 14 days in which to respond to your allegations. After that the CAA will decide whether the complaint raises issues which are so serious which is the case of a judge they must be referred to a Tribunal of Inquiry in which case a referral will be made and you will be notified to that effect. In the case of any of the constitutional appointee the matter will be dealt in accordance with the provision of the constitution.

In cases where only minor misbehaviour is alleged the CAA will determine how any disputed issues should be resolved and will normally provide a decision within 56 days of the date when the period for the subjects' response lapsed.

### **Overall time**

In all cases you should receive an acknowledgement and the result of the Preliminary Examination within 28 days of your complaint being received

Where the misbehaviour is not serious enough to warrant referral to a Tribunal of Inquiry in the case of a judge, or to the President was case of any of the constitutional appointee you will receive notice of the CAA's final determination.

Where the misbehaviour is sufficiently serious to be referred to a Tribunal of Inquiry the case of a judge, or to the President the case of any other constitutional appointee, you will normally receive notification of referral within 56 days of the receipt of your complaint.