

A BILL

entitled

MEDIA COUNCIL ACT 2010

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SCHEDULE

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Media Council Act 2010.

Purpose

2 The purpose of this Act is—

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- (a) to promote fairness, accuracy, accountability and journalistic integrity in the content and presentation of media coverage, including news reports, comment, articles and pictures, through the creation of an independent Media Council; and
- (b) to establish standards of conduct for the media and a mechanism for dealing with complaints of breach of those standards.

### Interpretation

- 3 (1) In this Act, unless the context otherwise requires—
- “broadcast media” means the persons or organizations that own or operate the radio and television broadcasting stations that are listed in the Schedule;
  - “Code of Practice” means the Code of Practice that is prepared and published under section 11, and includes any amendment to it;
  - “complainant” means a person who makes a complaint under section 13;
  - “Complaint Procedure” means the Complaint Procedure that is prepared and published under section 12, and includes any amendment to it;
  - “Council” means the Media Council established by section 4;
  - “local media” means print media and broadcast media;
  - “Minister” means the Minister to whom responsibility for this Act has been assigned;
  - “print media” means the persons or organizations that publish, in print or on-line, the publications that are listed in the Schedule;
  - “respondent” means a person or organization against whom a complaint has been made under section 13.
- (2) In the event of an inconsistency or conflict between this Act and the following statutory provisions, those provisions prevail—
- (a) the Broadcasting Commissioners Act 1953;
  - (b) the Television Broadcasting Service Regulations 1987.

### Establishment of Media Council

- 4 (1) There is established a body to be known as the Media Council which shall perform the functions assigned to it by this Act and by any other statutory provision.
- (2) The Council shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Council may enter into contracts and do all things necessary for the performance of its functions.

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### Membership of Council

- 5 (1) The Council shall be comprised of twelve members as follows—
- (a) five members elected by representatives of the local media;
  - (b) six members appointed by the Governor after consultation with the Premier, who shall first have consulted with the Opposition Leader; and
  - (c) one other member, who shall be the Chairman of the Council, appointed by the Governor in his discretion.
- (2) Members appointed under subsection (1)(b) and (c) shall be persons who are independent of the media.
- (3) The election or appointment of a member is for a period of three years and a member may be elected or appointed for subsequent periods of three years but not for any two consecutive periods of three years.
- (4) Vacancies in membership of the Council shall be filled in the same manner as set out in subsection (1) and shall be for the remainder of the period for which the original member was elected or appointed.
- (5) The members of the Council shall be elected or appointed within three months after this Act comes into operation.

### Functions of Council

- 6 The functions of the Council are to—
- (a) prepare a Code of Practice, in accordance with section 11, governing the conduct of the local media and their employees, agents and representatives in carrying out their professional functions;
  - (b) prepare a Complaint Procedure, in accordance with section 12, establishing the procedure to be followed by persons who wish to make complaints of breach of the Code of Practice by the local media or their employees, agents or representatives;
  - (c) consider and deal with complaints of breach of the Code of Practice by the local media or their employees, agents or representatives;
  - (d) promote training and excellence in reporting and journalism; and
  - (e) foster relations between the local media and the community.

### Proceedings of Council

- 7 (1) Subject to this section, the Council may regulate its own procedure.
- (2) The quorum for the Council is eight members, at least three of whom shall be members elected under section 5(1)(a) and at least three of whom shall be members appointed under section 5(1)(b) or (c).

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(3) In the absence of the Chairman, the members present at a meeting shall appoint one of the members appointed under section 5(1)(b) to act as chairman for the meeting.

(4) Decisions of the Council shall be by majority of the members present and voting.

(5) Each member has one vote, except that the Chairman or acting chairman also has a casting vote in the event of a tie.

(6) A decision of the Council is not invalid by reason only of a vacancy in the Council's membership or a defect in a member's election or appointment.

(7) The Council shall keep minutes of its meetings and records of its decisions and shall post them on its website or publicize them in such other manner as it may determine.

(8) The Council may establish committees comprised of members for such purposes as it sees fit.

### Executive Officer and staff

8 (1) The Council shall appoint an Executive Officer and such other staff as it considers necessary.

(2) The terms and conditions of employment of the Executive Officer and other staff shall be determined by the Council.

### Financial provisions

9 (1) The Council shall prepare an annual budget of estimated expenditures required to fund its operations.

(2) The local media shall provide the funds required for the operations of the Council in such proportions as may be agreed among them or, failing such agreement, in such proportions as the Council may determine.

(3) The Council shall cause proper statements of its financial affairs to be maintained and audited annually.

(4) Copies of the audited financial statements shall be published on the Council's website.

(5) The Council's financial year is the calendar year.

### Communications

10 The Council shall establish a website for the posting of information to be communicated to the public, in addition to publicizing information in such other manner as it may determine.

### Code of Practice

11 (1) The Council shall, within six months after this Act comes into operation, prepare and publish a document entitled "Code of Practice" setting out professional and ethical standards and practices to be observed by the local media and their employees,

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agents and representatives in carrying out their professional functions, including the publishing or broadcasting of editorial material.

(2) The Code of Practice shall include, but shall not be limited to, provisions dealing with the following matters—

- (a) fairness and accuracy;
- (b) opportunity to reply;
- (c) privacy;
- (d) harassment;
- (e) intrusion into grief or shock;
- (f) children;
- (g) children involved in cases of abuse, including sexual abuse;
- (h) hospitals;
- (i) reporting of crime;
- (j) court reporting;
- (k) use of subterfuge and clandestine devices;
- (l) victims of sexual assault;
- (m) discrimination;
- (n) incitement to hatred;
- (o) financial journalism;
- (p) confidential sources;
- (q) payment for stories;
- (r) headlines and captions;
- (s) pictures;
- (t) letters;
- (u) editorial material;
- (v) conflicts of interest; and
- (w) the public interest.

(3) In preparing the Code of Practice, the Council shall consult with the public and the local media.

(4) The Code of Practice shall be published—

- (a) by posting it on the Council's website;

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- (b) by publishing it in every newspaper that is published at least once a week in Bermuda; and
- (c) by way of an announcement made on the television and radio stations that are listed in the Schedule informing the public of the fact that the Code of Practice has been posted on the Council's website and in local newspapers.

(5) The Council may amend the Code of Practice and any amendment shall be published in the same manner as the Code of Practice itself.

(6) The Statutory Instruments Act 1977 does not apply to the Code of Practice or any amendment to it.

(7) In the event of an inconsistency or conflict between this Act and the Code of Practice, this Act prevails.

### Complaint Procedure

12 (1) The Council shall, within six months after this Act comes into operation, prepare and publish a document entitled "Complaint Procedure" setting out the process for the making, consideration and deciding of complaints.

- (2) The Complaint Procedure shall be published—
  - (a) by posting it on the Council's website;
  - (b) by publishing it in every newspaper that is published at least once a week in Bermuda; and
  - (c) by way of an announcement made on the television and radio stations that are listed in the Schedule informing the public of the fact that the Complaint Procedure has been posted on the Council's website and in local newspapers.

(3) The Council may amend the Complaint Procedure and any amendment shall be published in the same manner as the Complaint Procedure itself.

(4) The Statutory Instruments Act 1977 does not apply to the Complaint Procedure or any amendment to it.

(5) In the event of an inconsistency or conflict between this Act and the Complaint Procedure, this Act prevails.

### Making of complaint

13 (1) Subject to subsection (2), any person may make a complaint in writing to the Council regarding—

- (a) anything that is published in the print media, including editorial comment, or any conduct of employees, agents or representatives of the print media relating to the performance by them of their professional functions; or
- (b) any news, comment on news or discussion of public affairs, that is broadcast in the broadcast media or any conduct of employees, agents or

representatives of the broadcast media relating to the performance by them of their professional functions.

- (2) A complaint may not be made unless it is—
- (a) based on an alleged breach of the Code of Practice; and
  - (b) made within three months after the occurrence of the matter that is the subject of the complaint.

(3) If, at the time a complaint is made, any legal proceedings have been commenced in respect of the matter that is the subject of the complaint, the complaint shall not be dealt with or considered under this Act until after those proceedings have been finally determined.

(4) If, after a complaint has been made, any legal proceedings are commenced in respect of the matter that is the subject of the complaint, the complaint shall not be further dealt with or considered under this Act until after those proceedings have been finally determined.

(5) Notwithstanding anything in this section, no complaint may be made, dealt with or considered until the Council has posted the Code of Practice and the Complaint Procedure on its website under sections 11(4)(a) and 12(2)(a) respectively.

#### Manner of dealing with complaint

14 (1) Upon receipt of a complaint, the Executive Officer, in consultation with any member or members of the Council designated by the Chairman, shall investigate the complaint and endeavour to have the complainant and the respondent resolve the complaint through negotiation, conciliation, mediation or otherwise.

(2) If a complaint is not resolved in a manner referred to in subsection (1), the Executive Officer shall prepare a report on the complaint and refer the complaint to the Council for its consideration.

(3) A copy of the report of the Executive Officer shall be provided to the parties concerned and the Council shall afford an opportunity for the parties concerned to make representations regarding the complaint, either in writing or orally.

(4) The following members of the Council shall not participate in the consideration or deciding of a complaint against a respondent—

- (a) a member who has been involved in the investigation of the complaint or in endeavours to resolve the complaint; and
- (b) a member who is an employer, employee, contractor or shareholder of a respondent.

(5) Resolution of a complaint may include a respondent being required to do or refrain from doing anything that the Council could order under section 15(3) or being subject to having a notice of censure of the respondent published by the Council.

Decision by Council on complaint

15 (1) After considering a complaint, the Council shall make a decision to dismiss or uphold the complaint, in whole or in part.

(2) The Council shall, within fourteen days after making a decision, inform the complainant and the respondent in writing of its decision, together with the reasons for the decision.

(3) If the Council upholds the complaint or any part of it, it may do any or all of the following—

- (a) order the respondent to publish or broadcast an apology, retraction or correction in such media or manner as the Council may direct;
- (b) post a notice of censure of the respondent on the Council's website and publish or broadcast the notice of censure in such media or manner as the Council may direct;
- (c) order a respondent in the print media to refrain from printing anything that is the subject of a complaint;
- (d) order a respondent in the broadcast media to refrain from broadcasting any news, or comment on news, that is the subject of the complaint.

(4) The Council may not impose a monetary penalty on any person or make an award of damages against any person.

Annual report by Council

16 The Council shall, within three months after the end of each calendar year—

- (a) prepare an annual report on its activities for that year; and
- (b) cause copies of the report to be laid before each House of the Legislature.

Review and report by Minister

17 (1) Within one year after this Act comes into operation, the Minister shall—

- (a) review the operation of the Act;
- (b) prepare a report as a result of the review; and
- (c) cause a copy of the report to be laid before each House of the Legislature.

(2) In addition to the review and report under subsection (1), the Minister may at any other time review and prepare a report on the operation of the Act, in which case the Minister shall cause a copy of the report to be laid before each House of the Legislature.

(3) The Council shall provide the Minister with any information that the Minister may require for the purpose of any review or report under this section.

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Amendment of Schedule

18 (1) The Minister may by order amend the Schedule, whether by addition, deletion or otherwise.

(2) The affirmative resolution procedure applies to an order made under this section.

SCHEDULE

(sections 3 and 18)

Print Publications

The Bermuda Sun

The Royal Gazette (including the on-line version) and associated publications such as The Bottom Line and RG Magazine

The Worker's Voice

Class 1 Broadcasting Licensed Stations

Bermuda Broadcasting Company Limited

Television - ZBM; ZFB

Radio - 1230 AM; 1340 AM; 89.1 FM; 94.9 FM; 105.1 FM

Defontes Broadcasting Limited

Television - VSB

Radio - 1450 AM; 106.1 FM

Inter-Island Communications Limited

Radio - HOTT 107.5 FM; Magic 102.7 FM

LTT Communications Limited

Radio - 98.1 FM

Non-licensed Television Stations

CITV; Fresh TV; Look TV; Onion TV

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### EXPLANATORY MEMORANDUM

This Bill would establish a Media Council, comprised of members elected by media representatives and members appointed by the Governor after consultation with the Premier and the Opposition Leader. The Council would be responsible for preparing a code of practice for the print and broadcast media in Bermuda, and for preparing a procedure for dealing with complaints of breach of the code, as well as dealing with complaints.

Clause 1 is the citation of the Act.

Clause 2 sets out the purpose of the Act.

Clause 3 sets out definitions and an interpretative provision.

Clause 4 provides for the establishment and status of the Council.

Clause 5 provides for the membership of the Council.

Clause 6 sets out the functions of the Council.

Clause 7 sets out provisions governing the proceedings of the Council.

Clause 8 authorizes the Council to appoint staff.

Clause 9 provides for the Council to be funded by the media and for the preparation of a budget of expenditures and audited financial statements.

Clause 10 requires the Council to establish a website for communicating information to the public.

Clause 11 sets out provisions regarding the preparation and publication by the Council of a code of practice setting out standards to be observed by the media and their employees and agents in carrying out their professional functions.

Clause 12 sets out provisions regarding the preparation and publication by the Council of a procedure for dealing with complaints of breach of the code of practice.

Clause 13 sets out provisions regarding the making of a complaint.

Clause 14 sets out provisions regarding the manner in which a complaint is dealt with by the Council.

Clause 15 sets out provisions regarding the decision by the Council in respect of a complaint.

Clause 16 requires the Council to prepare an annual report on its activities and to table the report in the Legislature.

Clause 17 requires the Minister to review, and prepare a report on, the operation of the Act within one year after the Act comes into operation. The report is to be tabled in the Legislature.

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Clause 18 provides that the Minister may, by order subject to the affirmative resolution procedure, amend the Schedule that lists the broadcast and print media that are subject to the Act.

The Schedule lists the broadcast and print media that are subject to the Act.