

ELABORATION OF THE SECTION 5

OF

THE LESOTHO POLICE SERVICE ACT 1998

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This is the Section that does not only define role of the Prime Minister in the police service but also explains how powers conferred on him/her shall be exercised. Before seeking to elaborate this caption is how the section is written in the law:

5. Appointment and removal of Commissioner

5.1 The King, acting on the advice of the Prime Minister, shall appoint a Commissioner of Police.

5.2 The Commissioner shall be appointed on such terms and conditions as the king, acting on the advice of the Prime Minister, may prescribe.

5.3 The King, acting on the advice of the Prime Minister, may require the Commissioner to **retire** in the interests of efficiency or effectiveness.

5.4 Before requiring the Commissioner to retire under subsection (3) the Prime Minister shall give the Commissioner the opportunity to make representations and shall consider any representations that he makes.

ELABORATION OF THE SECTION

This Section defines powers of the Prime Minister in the police service as advisory

(i) in the appointment and retirement of Commissioner of Police

(ii) in the determination of terms and conditions of service on appointment

In the exercise of his power in Section 5(3) the Prime Minister is bound by the same section not to advice on the basis of anything except the **interest of interests of efficiency or effectiveness**. This suggests that it could as well be in the interest of both. Because these are concepts of management, which the Act does not put on the Prime Minister but on the Police Authority, the Prime Minister may not exercise his powers in subsection 3 without reliance on the Police Authority.

Efficiency and Effectiveness are central to the application of Prime Minister's power to advice on retirement. This means that should the Prime Minister seek to advice the King to retire Commissioner of Police on any consideration other than efficiency and or effectiveness that contemplation or effect shall be outright illegal.

HOW CAN THE EFFICIENCY AND EFFECTIVENESS BE ASCERTAINED?

Efficiency and effectiveness are concepts of objectivity meaning that they are not arbitrary concepts. In order to objectively arrive at the judgement that Commissioner of Police is inefficient and or ineffective there must be some measures and performance indicators. Put differently Police Authority cannot simply decide that Commissioner of Police is efficient or effectively or contrary. Section 15 mandates Police Authority to determine policing priorities for the year and put that as policing plan. In Section 16 it is provided that the plan shall have objectives and priorities of police authority, the resources allocated and how success would be measured. Two weeks after completion

it will have to be presented to parliament. In essence Section 16 provides a basis for both implementation and monitoring/evaluation. It is against this plan that the Commissioner of Police shall produce annual report.

In terms of Section 18(2) the report shall provide full assessment of how the policing plan contemplated in Section 16 would have been carried out. The same section in subsection 4 provides that such a report would be presented to parliament by police authority. Section 19 gives police authority power to request reports whether oral or written at any time from Commissioner of Police.

Followed to the logical **efficiency and or effectiveness** contemplated in Section 5(3) is determinable in this law.

CONSIDERATION OF THE REPRESENTATIONS BY COMMISSIONER OF POLICE

Section 5(4) provides that in case the Prime Minister wishes to invoke Section 5(3) he /she will request Commissioner of Police to make representations and it mandates him to **consider** such representations. The word consider here is used to bar the Prime Minister from ignoring the presentations made in order to save him/her from the prejudice and predetermined judgment.

This elaboration suggests that the Prime Minister has power to advice His Majesty to retire the Commissioner of Police albeit restrictions. Prime Minister has to request Commissioner to make representations and consider them. In the absence of policing plan and annual report there is no way efficiency and or effectiveness could be determined.

Followed to the logical conclusion, Section 5 may not enable Prime Minister to exercise his powers to advice the King to retire Commissioner of Police without first ensuring that the entire Police Service Act 1998 is diligently implemented. The issues raised as weaknesses of Commissioner of Police in the letter of Acting Government Secretary written on behalf of the Prime Minister, may not be construed as efficiency and or effectiveness or lack thereof for the purposes of Section 5(3) unless they would have first been stipulated in the policing plan and Commissioner has failed to account for in the annual plan.