SECOND READING SPEECH OF HON. ATTORNEY GENERAL

MAURITIUS BROADCASTING CORPORATION (AMENDMENT) BILL

(No. XXII of 2012)

Mr Speaker, Sir, let me at the outset congratulate you on your election.

As aptly set out in the Explanatory Memorandum to this amendment Bill, the Board of the Mauritius Broadcasting Corporation will be able to set up independent disciplinary committees, once the Bill is passed and assented to. The provisions of this Bill will ensure that fairness and transparency prevail in disciplinary actions against employees of the MBC. The Hon. Prime Minister should be commended for bringing this Bill to the House.

The Mauritius Broadcasting Corporation Act currently does not provide that only independent persons shall be qualified to sit on disciplinary committees. As aptly pointed out by the Lord Chief Justice, Lord Hewart in the landmark and far-reaching United Kingdom judgment of R v Sussex Justices, ex parte McCarthy – I quote

"it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.” Unquote.

The Bill will ensure that justice is also seen to be done. In fact, Mr Speaker, Sir, our domestic laws already contain provisions designed to adhere to the principle of Lord Hewart. The Public Service Commission Regulations may be referred to in that context.

Mr Speaker, Sir, the PSC Regulations made under the Constitution provide, in regulation 37, that where a responsible officer considers it necessary to institute disciplinary proceedings against a public officer on the grounds of misconduct which, if proved, would justify his dismissal from the public service, he shall, after such preliminary investigation as he considers necessary, forward to the officer a statement of the charge or charges preferred against him, and call upon such officer to state in writing any grounds on which he relies to exculpate himself.

Where that public officer, Mr Speaker, Sir, does not furnish any explanations, or where the responsible officer is of the opinion that the reply of the public officer is not satisfactory, he shall report the matter to the Public Service Commission (PSC). The PSC may, after considering the report of the responsible officer and where it is of the opinion that proceedings for the dismissal of the officer should be continued,
appoint a committee, which shall consist of not less than 3 members, who shall be public officers or former public officers, to inquire into the matter.

The Chairperson of the committee shall be a Judge, Magistrate or a public officer who is or has been a barrister. Mr Speaker, Sir, it is worth noting that the responsible officer shall not be a member of the committee.

Mr Speaker, Sir, the amendments sought to be brought to section 11 of the Mauritius Broadcasting Corporation Act, in clause 3(e) of this Bill, are very much akin to the provisions of regulation 37 of the PSC Regulations.

Firstly, where dismissal on grounds of misconduct is contemplated, the Chairperson of a disciplinary committee shall be a lawyer.

Secondly Mr Speaker, Sir, employees or former employees of the MBC shall not be members of a disciplinary committee, the difference with what obtains in the public service being that under the PSC Regulations, any public officer who is serving, or has for any period during the 5 years preceding the alleged misconduct served, in the accused officer’s Ministry or Department, shall not be a member of a disciplinary committee.

Thirdly, a responsible officer in the public service, who is by law, required to carry out a preliminary investigation with respect to a public officer, shall not be a member of a disciplinary committee inquiring into the conduct of that public officer. Similarly, the proposed subsection (6) of section 11 of the MBC Act will ensure that all those involved in the investigation of a case against an employee of the MBC shall not sit on a disciplinary committee set up to inquire into the case.

Mr Speaker, Sir, regulation 38 of the PSC Regulations, sets out similar disciplinary procedures as in regulation 37 with respect to public officers whose dismissal are not considered as appropriate, the material difference being that the Chairperson of a disciplinary committee need not be a lawyer. As such, Mr Speaker, Sir, a similar procedure is set out in the proposed section 11(6) of the MBC Act.

The alignment of the procedures for dismissal of employees of the MBC, Mr Speaker Sir, with those of officers in the public service are most welcome given that by virtue of the MBC Act, the MBC is a statutory body exercising public functions for the benefit of the public. As I have stated earlier on, these proposed new disciplinary procedures will, furthermore, guarantee fairness and transparency in the process leading to the eventual dismissal or punishment of an employee.

I thank you for your attention.