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(A)

COURT SERVICES ACT, 2023

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SCHEDULE **15**



No. 59 of 2023

COURT SERVICES ACT, 2023

AN ACT TO ESTABLISH AN INDEPENDENT BODY TO MANAGE THE ADMINISTRATION OF THE COURTS, TO PROVIDE SUPPORT SERVICES TO AND FOR JUDICIAL OFFICERS AND TO PROVIDE FOR RELATED MATTERS

[Date of Assent - 29th December, 2023]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Court Services Act, 2023.
- (2) This Act shall come into operation on the date the Chairman appoints by notice published in the *Gazette*.

2. Objectives of Act.

The objectives of this Act are —

- (a) to enhance the independence of the judiciary by placing the courts under the administration of an autonomous body;
- (b) to confer on such body the power to provide courts with administrative facilities and services necessary for the proper administration of justice;
- (c) to enable the judiciary to manage its administrative and financial affairs;
- (d) to promote transparency and accountability in the administration of justice.

3. Interpretation.

In this Act —

- “Board”** means the Board of Directors of the Council;
- “Chairman”** means the Chairman of the Board of the Council;
- “Chief Executive Officer”** means the person appointed under section 13;
- “Council”** means the Court Services Council established by section 4;
- “courts”** means --
- (a) the Court of Appeal;
 - (b) the Supreme Court;
 - (c) the Magistrates Court;
 - (d) the Coroner's Court; and
 - (e) any other court declared by order of the Chief Justice;
- “court services”** means any administrative, and support services, required by judicial officers in the performance of their duties;
- “financial year”** means the period of twelve months ending on the 30th day of June in any year;
- “judicial officer”** means the Chief Justice, the President of the Court of Appeal, a Justice of Appeal, a Justice of the Supreme Court, the Chief Magistrate and all stipendiary and circuit magistrates, a coroner, the Registrar of the Court of Appeal, the Registrar of the Supreme Court, and other officers exercising judicial functions in any court declared by order of the Chief Justice to be a court;
- “public officer”** means the holder of any office of emolument in the public service and does not include a judicial officer;
- “support services”** means any service which facilitates the delivery of justice by a court.

PART II – ESTABLISHMENT OF THE COURT SERVICES COUNCIL

4. Establishment of Council.

- (1) There shall be established a body to be known as the Court Services Council which shall be responsible for providing administration and support services for the courts.
- (2) The Council shall be a body corporate with perpetual succession and a common seal and may —
 - (a) acquire, hold and dispose of real and personal property;
 - (b) sue and be sued in its corporate name;
 - (c) enter into contracts; and
 - (d) establish and operate bank accounts.

- (3) The Board shall be the governing body of the Council and shall perform the functions and exercise the powers of the Council.
- (4) The provisions of the *Schedule* shall have effect with respect to the constitution of the Board and otherwise in relation thereto.

5. Functions of Council.

The functions of the Council are —

- (a) to manage all matters related to the administration of the courts;
- (b) to provide support services for judicial officers;
- (c) to manage real and personal property under the control of the Council pursuant to section 26;
- (d) to ensure adherence by judicial officers and staff of the Council to any administrative policies and guidelines established by the Board and to oversee the implementation of the policies and guidelines;
- (e) to appoint such staff as it considers necessary on such terms and conditions (including salaries, allowances and other remuneration), and to exercise such disciplinary control as the Council may determine;
- (f) to establish the qualifications for appointment of staff;
- (g) to provide facilities and court services necessary to enable the courts and their staff to effectively and efficiently function;
- (h) to provide training and education for judicial officers and staff of the Council.

6. Powers of Council.

The Council shall have power —

- (a) to enter into such transactions as are necessary for the performance of any functions under this Act;
- (b) to appoint on such terms and conditions as the Council thinks fit, such experts or persons to assist and advise the Council in the performance of its functions;
- (c) to provide services on terms and conditions determined by the Council and to impose fees for such services; and
- (d) to do all such things as are necessary for the discharge of its functions and the exercise of its powers.

PART III - FINANCIAL PROVISIONS

7. Funds of Council.

The funds and resources of the Council shall consist of —

- (a) such sums as may be voted for the purposes of the Council by Parliament;
- (b) filing fees or other court fees;
- (c) such sums arising from grants, covenants, donations and other receipts from persons including national and international bodies for the purposes of judicial education, training, and personal development of judicial officers and staff of the Council; and
- (d) all other sums which may in any manner become payable to the Council in respect of any matter incidental to its functions.

8. Application of funds.

- (1) The funds of the Council shall be applied to defray the following expenditure —
 - (a) the salaries, allowances, pensions and gratuities to Justices of the Supreme Court and Court of Appeal pursuant to the Judges' Remuneration and Pensions Act (*Ch. 45*);
 - (b) the salaries and allowances pursuant to the Public Service Act (*Ch. 39*), and pensions and gratuities pursuant to the Pensions Act (*Ch. 43*), to judicial officers other than those judicial officers referred to in paragraph (a);
 - (c) the salaries and pensions of staff of the Council;
 - (d) the capital and operating expenses, including court security, the maintenance and insurance of real and personal property owned or managed by the Council;
 - (e) the making and maintenance of investments by the Council in the discharge of its functions;
 - (f) any other expenditure authorized by the Council for the discharge of its functions.
- (2) Where the Council is unable to meet an extraordinary expenditure during the financial year which is necessary to enable judicial officers and staff of the Council to discharge their functions, the Government may allocate additional resources to the Council to defray the extraordinary expenditure.
- (3) Notwithstanding the obligation of the Council to pay the salaries, allowances, pensions and gratuities pursuant to subsection (1)(a), such

salaries, allowances, pensions and gratuities shall remain a charge on the Consolidated Fund pursuant to Article 135(2) of the Constitution.

9. Annual budget.

- (1) No later than three months prior to the commencement of a financial year, the Council shall prepare and submit a budget to the Minister of Finance itemizing the estimates of expenditure in respect of each court for the next financial year or for some other period determined by the Minister of Finance.
- (2) The budget prepared pursuant to subsection (1) shall take into consideration such estimates of expenditure as the Council considers necessary for the due administration of justice.
- (3) The Minister of Finance may approve the budget submitted under this section or propose modifications to the budget.
- (4) Where modifications are proposed to the budget submitted pursuant to subsection (1) —
 - (a) the Minister of Finance shall provide reasons for any modifications proposed to the budget in writing; and
 - (b) where the Council objects to a decision of the Minister of Finance, the objection of the Council shall be made in writing to the Minister of Finance.
- (5) The Minister of Finance shall review any objections to the budget received from the Council and his decision on the objections shall be final.

10. Allocation of annual budget.

- (1) The total sum of the annual budget shall be allocated to the Council in two instalments, the first, within fourteen days of the new financial year, and the second, at the expiration of six months thereafter.
- (2) The Council shall determine the priority of the funds allocated in the annual budget.

11. Fiscal policy objective plan of the Council.

The Council shall prepare and submit to the Minister of Finance within one year from the date of commencement of this Act and every three years thereafter, a three year fiscal policy objective plan stating —

- (a) the fiscal objectives and priorities of the Council; and
- (b) the anticipated fiscal expenditure of the Council.

12. Accounts and audit.

- (1) The Council shall keep proper accounts and other records in relation to each court, and shall prepare a statement of accounts for each court in respect of each financial year.
- (2) The accounts of the Council for each financial year shall be audited by an independent auditor licensed pursuant to The Bahamas Institute of Chartered Accountants Act (*No. 13 of 2015*).
- (3) Three months after the end of each financial year, the Council shall submit a copy of the audited accounts to the Minister, together with a copy of any report made by the auditor.
- (4) The Minister shall lay a copy of such audited accounts before each House of Parliament, together with a copy of any report made by the auditor on the accounts.
- (5) Nothing in this section shall be read or construed as derogating from, or in any way limiting, any of the functions exercisable by the Auditor-General pursuant to the provisions of the Constitution or any written law.

PART IV - OFFICERS AND STAFF OF THE COUNCIL

13. Appointment of Chief Executive Officer.

- (1) The Board shall appoint at such salary and on such terms and conditions as it thinks fit, a Chief Executive officer to be the principal administrator of the Council, who shall be subject to the directions of the Board.
- (2) The Chief Executive Officer shall have responsibility for —
 - (a) the effective and efficient management and administration of court services and facilities;
 - (b) the control and management of the staff of the Council;
 - (c) the control and management of real property and personal property for which the Council has responsibility pursuant to section 26;
 - (d) the delivery of court services to the public;
 - (e) the implementation and management of digital technology within the courts;
 - (f) the oversight of transcription services and record management within the courts;
 - (g) the implementation of the policies of the Council;
 - (h) providing such information in relation to the performance of his functions as the Board may from time to time require; and

- (i) performing such other functions as may be conferred on him by the Board.
- (3) The Chief Executive Officer may delegate to a member of staff, such of his functions as may be authorized by the Council.
- (3) Where the Chief Executive Officer is absent from his duties or when the office of the Chief Executive Officer is vacant, his duties may be performed by such member of the staff of the Council as may be designated for that purpose by the Board.
- (4) The functions of the Chief Executive Officer do not extend to any matter involving the exercise of any inherent or statutory judicial functions.

14. Qualifications of Chief Executive Officer.

To be eligible for appointment as Chief Executive Officer, a person shall possess the following qualifications--

- (a) a Bachelors or Masters Degree in business management or public administration;
- (b) at least five years' experience in a senior management position in the private sector or the public service;
- (c) strong knowledge of administration;
- (d) good leadership and communication skills; and
- (e) good computer literacy.

15. Appointment of Chief Financial Officer.

- (1) The Board shall appoint at such salary and on such terms and conditions as it thinks fit, a Chief Financial Officer, who shall be subject to the directions of the Board.
- (2) The Chief Financial Officer shall have responsibility for —
 - (a) the financial administration of the Council;
 - (b) keeping and maintaining records of all financial transactions;
 - (c) preparing the annual budget of the Council;
 - (d) preparing a statement of account in respect of each financial year;
 - (e) ensuring that the Council's financial reports are accurate, completed and delivered to the Board in a timely manner;
 - (f) providing such information in relation to the performance of his functions as the Board may from time to time require.

16. Qualifications of Chief Financial Officer.

To be eligible for appointment as Chief Financial Officer, a person shall possess the following qualifications-

- (a) a public accountant licensed under The Bahamas Institute of Chartered Accountants Act, 2005. (*No. 13 of 2005*);
- (b) strong knowledge of generally accepted accounting principles; and
- (c) good computer literacy.

17. Administrative and financial functions of Registrars, etc.

- (1) The administrative functions of Registrars under the Court of Appeal Act (*Ch. 52*) and the Supreme Court Act (*Ch. 53*), the Chief Magistrate and Administrators under the Magistrates Act (*Ch. 54*), and the coroner an administrator under the Coroners Act, 2011 (*No. 2 of 2011*) shall be vested in the Chief Executive Officer.
- (2) The financial functions of the Registrars and the Chief Magistrate as principal accounting officers shall be vested in the Chief Financial Officer.

18. Staff of Council.

- (1) The staff of the Council shall consist of —
 - (a) public officers who --
 - (i) are transferred from the service of the Government to the service of the Council in accordance with section 20; and
 - (ii) accept permanent employment with the Council in accordance with section 21;
 - (b) employees who are not public officers, who at the date of the commencement of this Act are employed within one of the courts on contracts of employment which continue;
 - (c) temporary employees during the period referred to in section 20;
 - (d) such other persons as the Council appoints to carry out the functions of this Act.
- (2) The staff of the Council shall report —
 - (a) in administrative matters, to the Chief Executive Officer;
 - (b) in financial and accounting matters, to the Chief Financial Officer;
 - (c) in judicial matters, to the Registrars, the Chief Magistrate, the Coroner, or other judicial officer of a court declared by the Chief Justice to be a court for the purposes this Act.

19. Judicial officers not staff.

- (1) For the avoidance of doubt, except for the purposes of receiving salaries, allowances, pensions and gratuities in accordance with section 8, judicial officers are not staff of the Council.

- (2) The allocation of judicial functions and assignment of judicial officer remain the purview of the Chief Justice or the President of the Court of Appeal as the case may be.

20. Transfer of public officers.

- (1) All public officers serving in courts at the commencement of this Act, shall be transferred with their consent from the service of the Government to the service of the Council for a period of one year, pending their acceptance or refusal to accept permanent employment with the Council under section 21.
- (2) Subsection (1) shall not preclude public officers transferred to the service of the Council from applying at any time during the said period of one year, for transfers to a Government Ministry or Department in accordance with the terms and conditions of service attached to their appointment at the time of the applications for transfer, and the same consideration shall be given to their applications as if the public officers had continued in the service of the Government.
- (3) Where a public officer continues his service with the Council during the period referred to in subsection (1) —
 - (a) he shall be deemed to be temporarily employed by the Council and his salary and conditions of service shall be no less favourable than those attached to his appointment under the Government or which would have become attached to such appointment, had the public officer not been transferred to the service of the Council; and
 - (b) for the purposes of pension and gratuity, such service shall be deemed to be service with the Government, and the Council shall pay to the Government such contributions in respect of the cost of such pension and gratuity earned by the public officer during that period.

21. Offer of permanent employment to public officers.

- (1) At the expiration of the period of one year referred to in section 20, the Council may offer to any public officer transferred to the Council, permanent employment at a salary and on terms and conditions no less favourable than those which were attached to his appointment with the Government or which would have become attached to such appointment had such public officer continued in the service of the Government.
- (2) Every public officer who accepts permanent employment with the Council shall be deemed to have ceased to be in the service of the Government on the date of his acceptance.
- (3) Every public officer who —

- (a) is offered permanent employment with the Council and refuses to accept such employment; or
 - (b) has not been offered permanent employment with the Council,
- may, at the expiration of the one year period referred to in section 20, be transferred from the service of the Council to the service of the Government.

22. Pension of persons transferred from public service to the Council.

- (1) Where a public officer ceases to be the holder of that office by reason of his transfer to the service of the Council, and that person subsequently retires from the service of the Council in such circumstances that, had he remained a public officer he would have been eligible for pension under the Pensions Act (*Ch. 43*), then in any such case subsections (2) and (3) shall have effect.
- (2) A pension payable to a person mentioned in subsection (1) by the Council to whose service he has been transferred, shall be calculated and granted to him in respect of his service in accordance with section 23(3).
- (3) There shall be payable out of the Consolidated Fund to the Council, upon the warrant of the Minister of Finance, such contributions towards the grant of pensions as prescribed in section 23.

23. Pension for Staff of the Council.

- (1) The Council shall –
 - (a) establish and maintain a contributory pension plan in which the employee and the Council are responsible for making contributions (the “Contributions Plan”);
 - (b) establish and maintain a non-contributory pension plan for public officers who held pensionable offices under the Government of The Bahamas and were transferred in accordance with section 20, from the public service to the Council (the “Benefits Plan”).
- (2) There shall be payable out of the Consolidated Fund to the Benefits Plan in respect of the subsequent retirement from the Council of an employee referred to in subsection (1)(b), a contribution of such amount as would have been payable to such employee by way of pension under section 22 of the Pensions Act (*Ch.43*) as if that person had retired from the public service in such circumstances that, had he remained a public officer, he would have been eligible for pension under the Pensions Act (*Ch.43*).
- (3) In calculating the pension contribution payable under subsection (2), the employee's service under the Government shall be deemed to be continuous with his service with the Council, that is, his total service with the Government and the Council.

- (4) A contribution to the Contributions Plan established pursuant to subsection (1)(a) shall be paid out of the Consolidated Fund to the Council in respect of a person employed by the Council, who was not transferred from a public office, and who elects to join the Contributions Plan.
- (5) The contribution to the Contributions Plan referred to in subsection (4) shall be four percent of the employee's salary for each year of service.
- (6) The Chairman shall by regulations provide for the establishment of the Contributions Plan under subsection (1)(a), the rules of eligibility, the required contributions, the amount of pension, and other matters with respect to the grant of a pension.

24. Council to consult the Public Service Commission.

- (1) Prior to the offer of permanent employment by the Council to a public officer, transferred pursuant to section 20, the Council shall consult the Public Service Commission and the Public Service Commission shall advise the Council of the terms and conditions of employment of that public officer.
- (2) The Public Service Commission shall state in writing to the Council any objections it may have in respect of the offer of employment to be made to the public officer.
- (3) The Council shall take into consideration any reasonable objections made by the Public Service Commission under this section

PART V – MISCELLANEOUS

25. Procurement.

- (1) The Chief Financial Officer shall evaluate and recommend to the Council the award of contracts for goods, works and services required by the Council in amounts not exceeding twenty-five thousand dollars.
- (2) The Council shall appoint a procurement committee to evaluate and recommend to the Council the award of contracts for goods, works and services required by the Council in amounts exceeding twenty-five thousand dollars.
- (3) The Council shall, with respect to the procurement of goods, works and services, comply with the provisions of the Public Procurement Act, 2023 (*No. 3 of 2023*) and establish guidelines in accordance with the principles of procurement set forth in Part II of the *Second Schedule* to the Public Procurement Act, 2023.
- (4) The procurement committee shall consist of—

- (a) the Chief Executive Officer, who shall be the Chairman;
 - (b) the Registrar of the Supreme Court, who shall be the Deputy Chairman;
 - (c) the Chief Financial Officer;
 - (d) a technical officer appointed by the Minister of Works; and
 - (e) a financial officer appointed by the Minister of Finance.
- (5) At any meeting of the committee, three members shall constitute a quorum, one of whom must be the Chairman or Deputy Chairman.
- (6) The Chairman, or in his absence the Deputy Chairman, shall in the case of an equality of votes have a second or casting vote.

26. Court facilities to be under the control of Council.

- (1) Any real or personal property owned or leased by the Government and used for the operation of any court immediately before the commencement of this Act, shall be under the control of the Council.
- (2) The Treasurer may, after the commencement of this Act, designate any other real or personal property owned by the Government for use by the Council on such conditions as the Treasurer thinks fit, and such real or personal property shall be under the control of the Council.
- (3) Nothing in this section shall preclude the Council from acquiring any real or personal property for the purposes of this Act.

27. Annual report.

- (1) The Council shall not later than six months after the expiration of each financial year prepare a report —
- (a) outlining the activities of the Council and the discharge of its functions during the preceding financial year;
 - (b) providing information on the financial affairs of the Council.
- (2) The Minister shall cause a copy of every such report to be laid on the table of both Houses of Parliament.

28. Audit of accounts.

The accounts of the Council shall be audited and reported on annually by the Auditor-General, and for that purpose the Auditor-General or any person authorised by him shall have access to all books, records, returns and other documents relating to the accounts of the Council.

29. Enforcement of existing contracts, etc. relating to personal property.

All contracts, agreements, and any other arrangements subsisting immediately before the commencement of this Act relating to any of the personal property of the courts, shall after the commencement of this Act be enforceable fully and effectually by the Council instead of the party named therein.

30. Exercise of Council's functions not to affect judicial functions.

The exercise of any function conferred on, or any power vested in, the Council, or any officer of the Council under this Act, shall not –

- (a) interfere with the exercise of any judicial function conferred on, or any power vested in any judicial officer by the Constitution or any written law; or
- (b) impugn the independence of any judicial officer in the exercise of his judicial functions.

31. Regulations.

The Chairman may make regulations as are necessary for giving effect to this Act.

SCHEDULE

(section 4)

Constitution and Procedure of the Council

1. Constitution of Board of Directors of Council.

- (1) There shall be a Board of Directors of the Council which shall consist of—
 - (a) the Chief Justice;
 - (b) the President of the Court of Appeal;
 - (c) a Justice of the Supreme Court appointed by the Chief Justice;
 - (d) the Registrar of the Supreme Court who shall be secretary of the Board;
 - (e) the Chief Magistrate;
 - (f) a public accountant licensed under The Bahamas Institute of Chartered Accountants Act (*No. 13 of 2005*), appointed by the Chief Justice;
 - (g) a member of civil society, appointed by the Chief Justice;
 - (h) the President or Vice-President of The Bahamas Bar Council ; and

- (i) one person appointed by the Chief Justice after consultation with the President of the Court of Appeal.
- (2) The Chief Justice shall be the Chairman of the Board.

2. Common Seal of the Council.

- (1) The common seal of the Council shall be kept in the custody of the Chairman or the Secretary and shall be affixed to instruments requiring the seal in the presence of the Chairman or a member of the Board designated by the Chairman and one other member.
- (2) The common seal of the Council shall be authenticated by the signature of —
 - (a) the Chairman or any other member of the Board designated by the Chairman; and
 - (b) an officer of the Council designated for that purpose by the Board, and such seal shall be officially and judicially noticed.
- (3) All documents, other than those required by law to be under seal, and all decisions of the Council, shall be signified under the hand of the Chairman of the Board or any other member of the Board designated by the Chairman.

3. Functions of Board.

The Board shall have responsibility for —

- (a) determining the administrative and financial policies and guidelines to be observed by the courts;
- (b) giving general or specific directions with respect to the administrative and financial matters of the courts as the Board deems necessary for carrying out the objectives of this Act.

4. Tenure of members of the Board.

- (1) A member of the Board who is not a member by virtue of an office, shall be appointed for a period of three years, and shall be eligible for reappointment.
- (2) Where a Justice of the Supreme Court is appointed under paragraph (1)(c), he shall not be reappointed unless he is entitled to hold such office for the entire period of his re-appointment.
- (3) A member of the Board who is a member by virtue of his office shall continue to be a member of the Board as long as he holds that office.

5. Temporary appointments.

- (1) Where membership of the Board is by virtue of an office and the holder of the office is absent or unable to act, then, the person acting in the office shall be a member of the Board for as long as that person so acts.
- (2) If a member appointed pursuant to paragraph 1(1)(c),(f),(g), and (i), is unable at any time by reason of illness, other incapacity or absence from The Bahamas, to perform the duties of a member, the Chief Justice may appoint a person to act in that member's place on such terms and conditions and for such period as the Chief Justice may determine.

6. Resignation of a member of the Board.

A member of the Board, other than the Chairman, may at any time resign his office by letter in writing addressed to the Chief Justice and from the date of receipt of the letter by the Chief Justice, that person shall cease to be a member of the Board.

7. Revocation of appointment.

The Chief Justice may revoke the appointment of any appointed member, if satisfied that the member —

- (a) has been absent from three consecutive meetings of the Board without the permission of the Board;
- (b) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas and has not been discharged;
- (c) is incapacitated by physical or mental illness;
- (d) is sentenced to a term of imprisonment; or
- (e) is otherwise unable or unfit to discharge the functions of a member of the Board.

8. Remuneration.

A member of the Board shall be paid such honorarium as may from time to time be determined by the Board.

9. Meetings of the Board.

- (1) The Board shall meet at such times and places as may be determined by the Chief Justice.
- (2) The Chief Justice or, in absence of the Chief Justice, the President of the Court of Appeal, shall preside at meetings of the Board.
- (3) The Chief Justice or, in the absence of the Chief Justice, the President of the Court of Appeal, and four other members of the Board shall constitute a quorum of the Board.
- (4) A decision supported by the votes of the Chief Justice or, in the absence of the Chief Justice, the President of the Court of Appeal and four other members of the Board is a decision of the Board.