

## **Comments to the KZN Association of Public Lawyers 8<sup>th</sup> October 2010**

***Prof Karthy Govender***

1. Define the objectives of these measures-to achieve proper, effective, impartial and efficient governance.
2. Visions of the Constitution.
3. Constraining vision and the Egalitarian vision.
4. Section 22 of the Constitution – Freedom of trade, occupation and profession.
5. Appears to be a match between the broader objectives of the measures and those of the Constitution.
6. Define the enquiry – section 30 and 31 of the Public Service Act.
7. Moonlighting. Having an interest in entities that do business with the state and revolving door.
8. Limitation clause is always useful for people drafting laws of this nature.
9. Test of rationality – Ryan Albut test.
10. Moonlight – approx 5% of the US workforce moonlight. Generally in the USA, outside employment requires disclosure and in many instances consent. Reasons are conflict of interests, distraction from job performance quality or scheduled work hours, misuse of employees' resources and the appearance of impropriety.
11. How do we effectively the practice of officials doing business with their departments, disclosure.
12. Philippines Public Act – no blanket prohibition of entities in which government officials have an interest doing business with government – but a more nuanced way of identifying the mischief and then remedying it.
13. Revolving doors laws of the USA – cooling off period for variety of issues.
14. Section 32 – Access to Information.
15. Section 33 – Right to just administrative action.
16. Chapter 10 deals with the Public Administration.
17. Issues of retrospectivity – collective agreements.