

## CHAPTER 5

### THE DEVELOPMENT OF A REMUNERATION SYSTEM FOR MEMBERS OF MUNICIPAL COUNCILS

#### 5.1 INTRODUCTION

After municipal boundaries were determined, and wards were delimited, the holding of municipal elections on 5 December 2000 ushered in a new local government dispensation in South Africa. The newly established municipalities were mandated to deliver effective and efficient services for the communities they serve, simultaneously strengthening local governance. The municipal councils were crucial to the service delivery agenda of government, and were seen as the people's alternative for making local choices and setting local priorities.

Botes, Brynard, Fourie and Roux (1997:226) state that in the past, councillors received no payment except for travelling and subsistence allowances for journeys undertaken in the service of their municipal authorities, and that the ordinances of provinces made provision for monthly payment of allowances to councillors. While the Premier in the province approved the allowances, the Premier also revised the extent of the allowances from time to time and prescribed this in the form of a circular. It is further claimed by the same authors that the new development of paying allowances to councillors follows the trend of paying increased salaries to members of Parliament, with a view to attracting more competent persons to seek election as councillors. Unlike members of Parliament, councillors served on a part-time basis (prior to 5 December 2000), and sacrificed their private and personal time in order to serve their community. Due to the decentralized system of determining the remuneration of councillors, the salaries, allowances and benefits that were extended to councillors differed from one province to the next.

The publication of Government Notice No. R. 903 in *Government Gazette* No. 20306 in terms of the *Remuneration of Public Office Bearers Act*, 1998 (Act No. 20 of 1998) was a conscious move to centralize the determination of the remuneration to be paid to councillors. This notice was applicable for the 1998 / 1999 financial year for municipalities.

Government Notice No. R. 803 was the second notice that was published by the Minister for Provincial and Local Government in the *Government Gazette* in terms of the *Remuneration of Public Office Bearers Act*, 1998 (Act No. 20 of 1998), and this notice was applicable for the 1999/2000 financial year for municipalities. The application of this notice came to an end on 4 December 2000, on the eve of the first democratically held elections of all municipal councils.

In leading up to the dispensation where authority was to be vested in the Minister for Provincial and Local Government to determine the upper limits of the remuneration of councillors, an evolving legislative framework began to unfold. This chapter elaborates on and emphasizes the process that was followed to the point where the Minister for Provincial and Local Government eventually exercised discretion in this regard.

## **5.2 THE DEVELOPMENT OF A LEGISLATIVE FRAMEWORK FOR THE REMUNERATION OF MEMBERS OF MUNICIPAL COUNCILS**

According to Craythorne (2003:109) “one of the most striking features of the new, post-1996 legislation is that it changed the whole basis on which councillors are remunerated. In the early twentieth century, councillors were not remunerated; then the idea of paying an allowance for attending meetings emerged. This practice led to most committee meetings having large numbers of councillors present only until the attendance register had been signed. To remedy this

abuse, a monthly allowance was introduced – but, even up to this point, the basic philosophy had always been that a councillor served the community and was only to be partly compensated for the time taken to attend to municipal affairs. The new legislation, in providing for the payment of salaries, changes the whole basis of councillor remuneration. Councillors are now salaried employees of the voters”.

The following sections deal firstly with the provision, if any, for the remuneration for public representatives in the various Constitutions of South Africa since the country became a Union in 1910, and then with relevant legislation, if any, enacted in terms of those constitutional provisions.

### **5.3 THE SOUTH AFRICA ACT, 1909**

With regard to remuneration related matters for public office-bearers, the *South Africa Act, 1909* provided for the salary of the Governor-General, and stipulated that he or she should receive an annual sum of ten thousand pounds, which should not be altered during the term of office. The Governor-General was the representative of the King, and as such, formed part of the executive government in the country. The Governor-General was appointed by the King, and exercised the powers and functions as assigned by the King. “Governor-General” also means the State President, as defined in section 2 of the *Interpretation Act, 1957* (Act No. 33 of 1957).

The *South Africa Act, 1909* further provided that the members of the different Houses should receive an allowance of one thousand pounds per annum, and that the Leader of the Opposition should receive an additional allowance of one thousand pounds. The *South Africa Act, 1909* also stipulated that where no valid reasons were provided by members, an amount of six pounds would be deducted if a member failed to attend a meeting of the House. Although this

provision appears to have been harsh, it is important to note that such penalties were in existence in the early development of the State.

The *South Africa Act*, 1909 further provided that the President of the Senate should receive a salary of two thousand pounds per annum, and that the speaker of the House of Assembly a salary of two thousand five hundred pounds per annum. The same Act further provided that the salaries of the administrators of provinces should be fixed and provided by Parliament, and that the allowances of provincial councillors should be determined by the Governor-General in consultation with his or her Executive Council. The *South Africa Act*, 1909 also provided for the remuneration of Judges, and stipulated that their remuneration should be prescribed by Parliament.

From the preceding paragraphs, four important issues should be noted. Firstly, the *South Africa Act*, 1909 provided for the details regarding the remuneration of public office-bearers and judges, whereas the *Constitution of the Republic of South Africa*, 1996 provides that an Act of Parliament should regulate this matter. Secondly, a hierarchy appeared to be evolving, which established that the Governor-General should receive a greater salary than the Speaker of the House of Assembly, who in turn should receive a greater salary than the President of the Senate. Also, it is noted that the position of the Leader of the Opposition was greater than the position of a member of a House, by virtue of the higher allowance received by the former position. Thirdly, and without any notable elaboration and justification, the *South Africa Act*, 1909 stipulated that the Governor-General, the Speaker of the House of Assembly and the President of the Senate should receive salaries, and that members of the different Houses should receive allowances. This was further entrenched by providing for salaries for provincial administrators, and for allowances for provincial councillors. Fourthly, the salaries of provincial office-bearers were determined by the national government.

The above principles as enshrined in the *South Africa Act*, 1909 were carried forward as the State developed and are contained, albeit in an adapted manner, in the *Provincial Government Act*, 1961 (Act No. 32 of 1961).

#### **5.4 THE PROVINCIAL GOVERNMENT ACT, 1961 (ACT NO. 32 OF 1961)**

The salaries and allowances of a provincial administrator, who was the chief executive officer appointed by the State President and who was known as the administrator of the province, were provided for in section 67 of the *Provincial Government Act*, 1961. Provincial councillors were entitled to such allowances as determined by the State President.

From the above, it is noteworthy that the remuneration of public office-bearers at the national and provincial levels of government continued to be centrally determined by the State President. The remuneration paid to councillors was provided for in the relevant ordinances of the erstwhile provinces. The relevant provisions of the different ordinances that dealt with the remuneration of councillors are discussed hereunder.

##### **5.4.1 The Natal Province**

Section 36 of the *Local Authorities Ordinance*, 1974 (Ordinance No. 25 of 1974) provided for allowances to be paid to councillors, which could be reviewed annually.

The allowance, which was paid out of the municipality's budget, was meant to reimburse councillors for the expenses incurred by them during the performance of their duties as councillors, and to compensate them for the time which they ordinarily spent in the performance of such duties.

#### **5.4.2 The Transvaal Province**

Section 19 of the *Transvaal Local Government Ordinance*, 1939 (Ordinance No. 17 of 1939) provided for allowances that could be payable to the mayor, deputy-mayor and other councillors. Section 19(1) stipulated that the council could make an allowance available to the mayor for general purposes, as the council deemed sufficient. The allowance was traditionally referred to as a "mayoral fund" / allowance. The Ordinance further stated that the allowance should be deposited in a special banking account, and that the mayor and the finance officer should account to the finance committee or to the relevant management committee. The allowance was not subject to audit.

The fact that the mayoral fund was not subject to audit, provided the mayor with discretionary power to spend funds in this account at will, without having to account for expenditure thus incurred. This left the fund open to abuse in the form of mayors supplementing their personal allowances with these funds.

The *Transvaal Local Government Ordinance*, 1939 (Ordinance No. 17 of 1939) further provided that allowances to the mayor, deputy-mayor and councillors should be determined before the commencement of the mayor's term of office, and should not be varied during the term of office. It further provided that whenever the deputy mayor performed the duties of the mayor for 14 days or more, the allowance applicable to the mayor was also extended to the deputy mayor.

#### **5.4.3 The Orange Free State Province**

The *Local Government Ordinance*, 1962 (Ordinance No. 8 of 1962) provided in section 57 that, in addition to an allowance that may have been payable to a mayor or chairman, such councillor could also receive travelling and subsistence allowances, as determined by the Responsible Member. An entertainment

allowance, as determined by the council, was also payable. The Responsible Member, as defined in the *Local Government Ordinance*, 1962 (Ordinance No. 8 of 1962), meant the member of the Executive Council of the Province responsible for the administration of the ordinance.

Section 66K of the *Local Government Ordinance*, 1962 (Ordinance No. 8 of 1962) further provided for the payment of allowances to members of executive committees, and stated that such councillors could also receive travelling and subsistence allowances. It should be noted that this section also provided that where the Responsible Member had made a determination with regard to allowances, the Member could determine that such allowances be paid with effect from a date not more than 6 months prior to the date on which such determination was made.

#### **5.4.4 The Cape Province**

Prior to the promulgation of Proclamation No. 82 of 1995 in the Cape Province, section 56 of the *Cape Municipal Ordinance*, 1974 (Ordinance No. 20 of 1974) provided that a council could pay to a councillor any necessary expenses incurred during the performance of functions as a councillor within the municipal area, or a fixed monthly allowance not exceeding such amount as determined by the Administrator.

The *Cape Municipal Ordinance*, 1974 (Ordinance No. 20 of 1974) also provided that a council could grant leave to any councillor to be absent from not more than six ordinary meetings during any period of twelve consecutive months. The first such period was calculated from the date on which the councillor assumed office.

In comparison with the other provinces, it would appear that the Cape Province had progressed the furthest in terms of developing a remuneration system for their councillors during the interim phase of local government. On 9 May 1995,

the MEC for local government, in terms of section 10(1) of the *Local Government Transition Act*, 1993 (Act No. 209 of 1993), with the concurrence of the Provincial Committee for Local Government for the Western Cape Province as required in terms of section 4(1) of that Act, proclaimed a remuneration system for councillors in that province in Proclamation No. 82 of 1995.

In terms of section 8 of Proclamation No. 82 of 1995, a grading system was introduced which was based on the actual income collected from property rates and the number of registered voters in the municipality. Sixteen grades were provided for, and points were allocated for property rates income and the number of registered voters, as shown in Tables 4 and 5 respectively. The resulting remuneration levels for councillors are presented in Table 6.

**TABLE 4: THE ALLOCATION OF POINTS FOR PROPERTY RATES INCOME**

NO.	PROPERTY RATES INCOME			POINTS
1.	R250 000	and	less	3.125
2.	R250 001	to	R423 454	6.250
3.	R423 455	to	R717 251	9.275
4.	R717 252	to	R1 214 891	12.500
5.	R1 214 892	to	R2 057 799	15.625
6.	R2 057 800	to	R3 485 528	18.750
7.	R3 485 529	to	R5 903 836	21.875
8.	R5 903 837	to	R10 000 001	25.000
9.	R10 000 002	to	R16 938 141	28.125
10.	R16 938 142	to	R28 690 061	31.250
11.	R28 690 062	to	R48 595 627	34.375
12.	R48 595 628	to	R82 311 953	37.500
13.	R82 311 954	to	R139 421 139	40.625
14.	R139 421 140	to	R236 453 477	43.750
15.	R236 453 478	to	R400 000 000	46.875
16.	Greater than R400 000 000			50.000



**TABLE 5: THE ALLOCATION OF POINTS FOR THE NUMBER OF REGISTERED VOTERS**

NO.	REGISTERED VOTERS			POINTS
1.	700	and	less	3.125
2.	701	to	1 119	6.250
3.	1 120	to	1 790	9.275
4.	1 791	to	2 862	12.500
5.	2 863	to	4 576	15.625
6.	4 577	to	7 317	18.750
7.	7 318	to	11 700	21.875
8.	11 701	to	18 708	25.000
9.	18 709	to	29 915	28.125
10.	29 916	to	47 833	31.250
11.	47 834	to	76 485	34.375
12.	76 486	to	122 300	37.500
13.	122 301	to	195 557	40.625
14.	195 558	to	312 696	43.750
15.	312 697	to	500 000	46.875
16.	Greater than 500 000			50.000

**TABLE 6: REMUNERATION LEVELS FOR COUNCILLORS IN THE FORMER CAPE PROVINCE**

CATEGORY	POINTS	LEVEL 1	LEVEL 2	LEVEL 3
		MAYOR / CHAIRPERSON / CHAIRPERSON OF EXCO	DEPUTY MAYOR / MEMBER OF EXCO	ORDINARY COUNCILLORS
1.	0.00 to 6.25	R24 000	R6 000	R6 000
2.	6.26 to 12.50	R29 460	R7 368	R7 368
3.	12.51 to 18.75	R33 312	R8 328	R8 328
4.	18.76 to 25.00	R37 669	R9 420	R9 420
5.	25.01 to 31.25	R42 588	R10 644	R10 644
6.	31.26 to 37.50	R48 156	R36 120	R12 036

CATEGORY	POINTS	LEVEL 1	LEVEL 2	LEVEL 3
		MAYOR / CHAIRPERSON / CHAIRPERSON OF EXCO	DEPUTY MAYOR / MEMBER OF EXCO	ORDINARY COUNCILLORS
7.	37.51 to 43.75	R54 456	R40 836	R13 608
8.	43.76 to 50.00	R61 572	R46 176	R15 396
9.	50.01 to 56.25	R69 612	R52 212	R17 400
10.	56.26 to 62.50	R78 708	R59 028	R19 680
11.	62.51 to 68.75	R88 992	R66 744	R22 248
12.	68.76 to 75.00	R100 632	R75 468	R25 152
13.	75.01 to 81.25	R113 784	R85 331	R28 440
14.	81.26 to 87.50	R128 652	R96 492	R32 160
15.	87.51 to 93.75	R145 464	R109 092	R36 360
16.	93.76 and above	R162 000	R121 500	R40 500

From the above grading system, and other provisions contained in the proclamation, it is important to note the following salient features of this system of remuneration that was applicable in the erstwhile Cape Metropolitan Council:

- (i) The criteria of actual property rates collected and the number of registered voters per municipality formed the basis of grading municipal councils, with more affluent municipalities obtaining more points for each of the criteria;
- (ii) The greater the sum total of the two criteria, the higher the grade of the municipal council – for example, the Cape Metropolitan Council would, by virtue of its affluency, be a grade 16 municipal council;
- (iii) A system of hierarchy was developed, where the mayor / chairperson and chairperson of the executive committee were ranked highest (level 1); the deputy mayor / member of the executive committee were ranked second (level 2); and ordinary councillors were ranked third (level 3);
- (iv) For categories one to five, councillors were remunerated in the ratio of level 1:level 2: level 3 as 4:1:1, respectively;

- (v) For categories six to 16, councillors were remunerated in the ratio of level 1:level 2: level 3 as 4:3:1, respectively;
- (vi) Councillors that served on district councils received an allowance for attendance of meetings, which was limited to ten meetings per year;
- (vii) A councillor who resided more than 30 kilometres from where council meetings were held, was entitled to be compensated for expenses relating to transport to and from such meetings;
- (viii) Councillors who travelled outside the jurisdiction of the municipality received reasonable compensation for out of pocket expenses;
- (ix) Any overpayment could be condoned by the MEC, if such overpayment had occurred prior to the proclamation coming into operation; and
- (x) By resolution, a council could institute fines payable by councillors for failure to attend a meeting without prior approval of the council for leave of absence.

Many of the above provisions and policy positions remained in force until the commencement of the *Remuneration of Public Office Bearers Act, 1998* (Act No. 20 of 1998), and were incorporated into the remuneration system that came into effect when that Act was implemented. This matter is discussed in greater detail *infra* (paragraph 6.3).

From the above discussion, it is clear that the different provinces implemented different legislative provisions to remunerate councillors in their municipalities. This skewed manner of compensating councillors caused huge problems, because councillors essentially had similar roles and responsibilities to perform, but by virtue of them being resident in a particular area, this resulted in them receiving different remuneration.

## **5.5 THE *REPUBLIC OF SOUTH AFRICA CONSTITUTION ACT, 1983* (ACT NO. 110 OF 1983)**

Section 12 of the *Republic of South Africa Constitution, 1983* provided that the State President should be paid, out of and as a charge on the State Revenue Fund, a salary and allowances as may have been determined by resolution of Parliament. While the salary and allowances of the State President were previously paid out of the national fiscus, the *Republic of South Africa Constitution, 1983* was explicit in this regard, as section 81 provided for the establishment of the State Revenue Fund.

Section 70 of the *Republic of South Africa Constitution, 1983* provided for the establishment of a President's Council which was constituted by members from the House of Assembly, the House of Representatives, the House of Delegates, and members appointed by the State President. Section 73 provided for the State President to determine the remuneration, allowances and benefits of members, by proclamation in the *Government Gazette*. In terms of the relevant provisions in the *Republic of South Africa Constitution, 1983*, remuneration, allowances and benefits could differ in respect of full-time or part-time members.

As the *Republic of South Africa Constitution, 1983* did not provide for the remuneration of other public office-bearers, the relevant provisions as contained in the *Provincial Government Act, 1961* were still applicable.

### **5.5.1 The *Remuneration of Town Clerks Act, 1984* (Act No. 115 of 1984)**

De Beer and Lourens (1995:59) state that the *Remuneration of Town Clerks Act, 1984* (Act No. 115 of 1984), provided for the:

- Establishment of a Board on the Remuneration and Service Benefits of Town Clerks;

- Determination of the remuneration and certain other service benefits of the chief executive officers of local authorities; and
- Maximum limits of the remuneration and certain other service benefits of other employees of local authorities.

The *Remuneration of Town Clerks Act*, 1984 (Act No. 115 of 1984), read together with the *Promotion of Local Government Affairs Act*, 1983 (Act No. 91 of 1983) discussed *supra* (paragraph 3.5.1), obligated the Board on the Remuneration and Service Benefits of Town Clerks to classify local authorities according to grades. Use was made of the so-called 13-factor formula, of which income was the most important factor.

This system led to dissatisfaction due to among others, its inhibiting effect on the determination of service benefits of other local government employees, its effect on the Municipal Councillors Pension Fund, the remuneration of chief executive officers of regional services councils and its inhibiting influence on privatization at local level. It also had an effect on the allowances of councillors on the one hand, and on the remuneration of members of Parliament on the other.

According to De Beer and Lourens (*ibid.*) the status with regard to the grading of local authorities, regional services councils and joint services boards (Natal) was as follows on 12 November 1993, as proclaimed in Board Notice No. 127 of *Government Gazette* No. 15250:

**TABLE 7: GRADING OF MUNICIPALITIES AS AT 12 NOVEMBER 1993**

GRADE	CAPE	NATAL	ORANGE FREE STATE	TRANSVAAL
1	50 e.g. Loxton	25 e.g. Kranskop	21 e.g. Rosendale	13 e.g. Devon
2	43 e.g. Garies	8 e.g. Bergville	27 e.g. Clarens	12 e.g. Dullstroom
3	41 e.g. Bedford	10 e.g. Hibberdene	22 e.g. Boshof	16 e.g. Rayton
4	42 e.g. Hopetown	14 e.g. Hilton	19 e.g. Brandfort	21 e.g. Ottosdal
5	35 e.g. Kakamas	9 e.g. Glencoe	10 e.g. Bothaville	19 e.g. Sabie

GRADE	CAPE	NATAL	ORANGE FREE STATE	TRANSVAAL
6	19 e.g. Port Alfred	11 e.g. Kokstad	6 e.g. Bloemspruit	22 e.g. Delmas
7	17 e.g. Hermanus	15 e.g. Dundee	8 e.g. Parys	15 e.g. Bethal
8	7 e.g. Durbanville	7 e.g. Vryheid	2 e.g. Virginia	13 e.g. Brits
9	13 e.g. Strand	3 e.g. Ladysmith	3 e.g. Sasolburg	14 e.g. Acasia
10	5 e.g. Paarl	1 Pinetown	1 Mangaung	16 e.g. Alberton
11	3 e.g. Belville	-	-	7 e.g. Benoni
12	-	1 Pietermaritzburg	1 Bloemfontein	2 e.g. Germiston
13	1 Port Elizabeth	-	-	1 Soweto
14	-	-	-	1 Pretoria
15	1 Cape Town	1 Durban	-	1 Johannesburg

**TABLE 8: GRADING OF REGIONAL SERVICES COUNCILS AND JOINT SERVICES BOARDS**

GRADE	CAPE	NATAL	ORANGE FREE STATE	TRANSVAAL
7	1 Walvis Bay	1 Griqualand East	-	-
8	8 e.g. Upper-Karoo	-	2 e.g. Eastern Free State	3 e.g. Bushveld
9	10 e.g. Amatola	4 e.g. Zululand	2 e.g. Goldfield	3 e.g. Eastern Vaal
10	-	-	-	1 Western Vaal
12	1 Algoa	-	-	2 e.g. Pretoria
13	-	1 Port Natal - Ebodwe	-	-
14	1 Western Cape	-	-	2 e.g. Central Witwatersrand

The system of grading municipalities was abolished with the repeal of the *Remuneration of Town Clerks Act, 1984* (Act No. 115 of 1984). However, the Commission recommended that municipalities be graded according to a system based on the number of inhabitants in a local authority, whereafter the councillors would have to share in a “salary pool” set aside for them. This pool was determined by multiplying the number of inhabitants in a municipality by a factor

of 6 (which represents a cost of R6.00 per inhabitant, per year) to maintain a body of councillors in each area. The Commission further recommended that a meeting allowance of R200.00 per day be paid to councillors with dual membership, and that district council members should receive a meeting allowance in addition to their council salary (*Independent Commission for the Remuneration of Public Representatives*, 1996).

### **5.5.2 The *Pension Benefits for Councillors of Local Authorities Act*, 1987 (Act No. 105 of 1987)**

The *Pension Benefits for Councillors of Local Authorities Act*, 1987 (Act No. 105 of 1987) authorized municipalities to establish a pension fund or a pension scheme for councillors, and empowered the national Minister responsible for local government to determine the rates and conditions in respect of the different categories or grades of local authorities.

According to De Beer and Lourens (1995:67) the establishment of the fund in terms of the *Pension Benefits for Councillors of Local Authorities Act*, 1987 (Act No. 105 of 1987) was not supported by all councils in the country, and during the 1988 general municipal elections, the fund was politicized to a large extent.

### **5.6 THE *CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT*, 1993 (ACT NO. 200 OF 1993)**

As indicated earlier, the *Constitution of the Republic of South Africa*, 1993 ushered in a fundamental change to the country's constitutional development. Chapter 10 radically changed the constitutional status of local government. According to Craythorne (2002:4), "for the first time in the history of the country, the right of local government to exist was constitutionally entrenched, as were its powers and functions".

Section 79 of the *Constitution of the Republic of South Africa, 1993* provided that the State President should be paid, out of and as a charge on the National Revenue Fund, such remuneration, allowances and pension benefits, as may have been determined from time to time by resolution of Parliament. The remuneration of judges was provided for in section 104 of the *Constitution of the Republic of South Africa, 1993*, which stated that their remuneration should not be reduced during their continuation in office. The remuneration and allowances that were paid to the Commission on Provincial Government was determined by the Minister of Finance, in terms of section 171 of the *Constitution of the Republic of South Africa, 1993*.

Section 207 of the *Constitution of the Republic of South Africa, 1993* provided that an Act of Parliament should establish a Commission on the Remuneration of Representatives, and that the Commission should “make recommendations to Parliament, the provincial legislatures and local governments regarding the nature, extent and conditions of the remuneration and allowances of the members of all elected legislative bodies of the national government and of provincial and local governments, including members of the Provincial Houses of Traditional Leaders and the Council of Traditional Leaders”. Section 208 of the *Constitution of the Republic of South Africa, 1993* provided for the composition and functioning of the Commission, and stated that reports of the Commission should be tabled in Parliament at least once a year.

Although the above sections were repealed by section 242 of the *Constitution of the Republic of South Africa, 1996*, the inclusion of the above provisions in the *Constitution of the Republic of South Africa, 1993* was the first intervention made by the State in attempting to centralize the determination of the remuneration to be paid to all councillors.



### **5.6.1 The *Commission on the Remuneration of Representatives Act, 1994* (Act No. 37 of 1994)**

On 23 November 1994 the President assented to the *Commission on the Remuneration of Representatives Act, 1994* (Act No. 37 of 1994), which came into operation on 13 April 1995. Section 5(2) provided for the functions of the Commission, and stipulated that the Commission should annually publish recommendations in the *Government Gazette* on:

- The remuneration, allowances and other benefits, including pension and medical aid benefits of all representatives; and
- The resources necessary to enable a representative to perform his or her functions effectively.

The Commission was also obliged to compile a report on its activities, and submit copies of such report to the Speaker of the National Assembly, to the President of the Senate and to the Speaker of each provincial legislature, for tabling in the House or provincial legislature concerned. The Commission could also request from the Secretary to Parliament or the secretary to any provincial legislature, or from any representative, any information which it would require in order to exercise its powers or perform its functions, and it could conduct such research to achieve its objectives.

The Commission was assisted in the performance of its functions by a secretariat provided, after consultation with the Commission, by the Public Service Commission.

The mandate of the Commission included an obligation to report on the remuneration and allowances of those representatives elected at local government level. When developing its recommendations during 1996, the Commission emphasized its independence, objectivity and representivity. It

referred to the need to be conscious of the transformation process that the country was going through, and emphasized the need for simplicity.

The Commission also proposed that remuneration packages be structured in such a way that any constituent should be readily able to determine at any given time what their local government representative earns. For example, the “total package approach” adopted at the national and provincial levels was, in their view, equally appropriate as a concept in respect of local government remuneration (*Commission on the Remuneration of Representatives*, 1996).

The Commission further stated that national and provincial governments were looking to local government structures as one of the most important institutions through which reconstruction and development projects could be identified and effectively implemented.

During 1996, the Commission declared that municipalities were designated to perform functions of a much greater ambit and significance than their predecessors, and that it could not determine with any degree of certainty the extent to which that principle would impose full-time obligations on councillors. As the Commission was a permanent review body created by the *Constitution of the Republic of South Africa*, 1993, it decided to reserve judgement in that regard (*Independent Commission for the Remuneration of Public Representatives*, 1996).

In accordance with the *Local Government Transition Act*, 1993 (Act No. 209 of 1993), the following local government structures were applicable during that time:

- Transitional Metropolitan Councils and Transitional Metropolitan Substructure Councils;
- Transitional Local Councils; and
- Regional District Councils.

In essence, the following categories of councillors and concomitant responsibilities were in effect at that time:

**TABLE 9: ROLES AND RESPONSIBILITIES OF THE DIFFERENT CATEGORIES OF COUNCILLORS IN TERMS OF THE *CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1993***

<b>CATEGORY OF COUNCILLOR</b>	<b>RESPONSIBILITIES</b>	<b>DISTINGUISHING RESPONSIBILITIES</b>
Mayor	Ceremonial representative of the Council, and chairs council meetings. Ex-officio member of all committees.	Significant time spent on ceremonial responsibilities. Typically, a politically influential person.
Deputy Mayor	Deputises for Mayor.	As for Mayor, but to a lesser extent.
Chairperson of the Executive Committee	Chairs the executive Committee. This is an influential committee that deals with important Council matters	Does not entail significantly higher responsibilities than other Executive Committee members. This position is usually recognition of status and political leadership.
Executive Committee Members	Influential committee of council.	Meets often, as much as once a week in larger local authorities.
Committee Chairperson	Chairs sub-committee of Council.	This position is recognition of status. Typically, committee chairpersons sit on the Executive Committee.
Committee Members	Typically, are advisory committees to the Executive Committee and the Council	These committees usually met once a month.
Ordinary Councillors	Executive and legislative body of the municipality.	Statutory requirement to meet once a month. Regional Councils meet 3 or 4 times a year.

The Commission, having regard to the above, recommended a three-tier hierarchy of councillors to function as follows:

**TABLE 10: HIERARCHY OF COUNCILLORS IN TERMS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1993**

TIER	POSITION OF COUNCILLOR
ONE	Mayor and Chairperson of the Executive Committee
TWO	Members of the Executive Committee
THREE	Ordinary Councillors

The Commission further recommended that a ratio of 5:3:2 be used to differentiate between each tier. By proposing the above, the Commission recognised a difference between the responsibilities and time demands for each position, whilst acknowledging the component of joint accountability for council decisions.

The Commission further recommended that the maximum remuneration of any councillor be the equivalent of a Member of a Provincial Legislature, and that the minimum remuneration of any councillor be set at R1 500.00 per month, subject to inflationary increases (*Independent Commission for the Remuneration of Public Representatives, 1996*).

## **5.7 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996**

Chapter 7 of the *Constitution of the Republic of South Africa, 1996* is applicable to local government. Section 219(1) provides that an Act of Parliament must establish a framework for determining the salaries, allowances and benefits of members of the National Assembly, the upper limit of salaries, allowances or benefits of members of provincial legislatures, members of Executive Councils and members of Municipal Councils in the different categories.

Section 219(2) stipulates that national legislation must establish an independent Commission to make recommendations concerning the salaries, allowances and benefits referred to above, and that the national executive, a provincial executive, a municipality or any other relevant authority may implement the legislation referred to above, only after considering any recommendations of the Commission.

The *Independent Commission for the Remuneration of Public Office-bearers Act, 1997* (Act No. 92 of 1997), enacted in terms of section 219(2) of the *Constitution of the Republic of South Africa, 1996*, was assented to on 26 November 1997 by the President, and came into operation on 29 June 1998. In terms of Proclamation No. 26 of 26 April 2001, the administration of the Act was assigned to the Deputy President.

In terms of section 219(1) of the *Constitution of the Republic of South Africa, 1996*, the *Remuneration of Public Office Bearers Act, 1998* (Act No. 20 of 1998) was assented to on 15 September 1998 by the then Acting President, and came into operation on 23 September 1998.

The above-mentioned legislation is discussed in greater detail hereunder.

#### **5.7.1 The *Independent Commission for the Remuneration of Public Office-bearers Act, 1997* (Act No. 92 of 1997)**

The *Independent Commission for the Remuneration of Public Office-bearers Act, 1997* (Act No. 92 of 1997) provides for the establishment of the Independent Commission for the Remuneration of Public Office-bearers to make recommendations concerning the salaries, allowances and benefits of all office-bearers. Section 2 establishes the Commission, and section 3 stipulates that it shall consist of eight members appointed by the President. In terms of section 5, members are appointed for a non-renewable term of office of five years.

Section 7 of the *Independent Commission for the Remuneration of Public Office-bearers Act*, 1997 (Act No. 92 of 1997) stipulates that the Commission shall meet at least once a year, and five members shall form the quorum for the meeting. In the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to that person's deliberative vote.

The functions of the Commission are prescribed in section 8 of the *Independent Commission for the Remuneration of Public Office-bearers Act*, 1997 (Act No. 92 of 1997). The Commission may exercise the powers and shall perform the duties entrusted to it, and also conduct an enquiry into any matter as provided for by the Act, section 219 of the *Constitution of the Republic of South Africa*, 1996, or any other law.

In addition, the Commission may conduct or cause to be conducted such research or obtain such information from the Secretary to Parliament, the secretary to any provincial legislature, the secretary to the National House of Traditional Leaders, the secretary to any provincial house of traditional leaders, the chief executive officer of any municipality, the Chief Justice or any person designated for that purpose by the Chief Justice, or any functionary or body as may be necessary for the performance of the functions of the Commission under the Act, section 219 of the *Constitution of the Republic of South Africa*, 1996 or any other law.

In terms of section 8(4) of the *Independent Commission for the Remuneration of Public Office-bearers Act*, 1997 (Act No. 92 of 1997), the Commission must publish recommendations in the *Government Gazette* concerning the salary, allowances and benefits of all office-bearers, after taking into consideration the following factors:

- (i) The role, status, duties, functions and responsibilities of office-bearers;

- (ii) The affordability of different levels of remuneration of public office-bearers;
- (iii) Current principles and levels of remuneration, particularly in respect of organs of state, and in society generally;
- (iv) Inflationary increases;
- (v) The available resources of the state; and
- (vi) Any other factor which, in the opinion of the Commission, is relevant.

In terms of section 8(5) of the *Independent Commission for the Remuneration of Public Office-bearers Act, 1997* (Act No. 92 of 1997), the Commission must annually publish in the *Government Gazette* the recommendations referred to above in respect of each category of office-bearer, and this must be submitted to Parliament before publication. In terms of section 9, the Commission shall, at the request of the President, investigate and consider any matter relating to the salary, allowances and benefits of office-bearers, and shall make recommendations to the President in regard thereto.

With regard to the administration of the Commission, section 11 of the *Commission for the Remuneration of Public Office-bearers Act, 1997* (Act No. 92 of 1997) provides that the Director-General in the Office of the President shall, after consultation with the Commission, designate such officers in the Office of the President as may be necessary to perform the work incidental to the exercise or performance of the powers and duties of the Commission. This is in contrast to the *Commission on the Remuneration of Representatives Act, 1994* (Act No. 37 of 1994) where the Public Service Commission was obligated to provide secretariat services to the then Commission.

Since its inauguration in 1998, the Commission annually published its recommendations in the *Government Gazette* as presented in Table 11:

**TABLE 11: ANNUAL RECOMMENDATIONS BY THE COMMISSION**

<b>FINANCIAL YEAR</b>	<b>GOVERNMENT GAZETTE NO.</b>	<b>GENERAL NOTICE NO.</b>	<b>DATE PUBLISHED</b>
1998 / 1999	18776	479 of 1998	3 April 1998
1999 / 2000	19872	457 of 1999	26 March 1999
2000 / 2001	21242	574 of 2000	9 June 2000
2001 / 2002	22321	1403 of 2001	1 June 2001
2002 / 2003	24214	3463 of 2002	27 December 2002
2003 / 2004	23717	22 of 2003	17 January 2003
2004 / 2005	26868	2173 of 2004	5 October 2004
2005 / 2006	27770	1108 of 2005	8 July 2005

From the above table, it is noted that the publication of the recommendations of the Commission was not done during any specific period, or on any common specific date. In some instances, it was published well into the financial year of the public service (which commences on 1 April and ends on 31 March of a calendar year), and of municipalities (which commences on 1 July and ends on 30 June of a calendar year). This had a negative impact on budgeting processes, and resulted in the retrospective implementation of recommendations being made by the Commission, and the concomitant retrospective payment of remuneration to public office-bearers.

For ease of reference, General Notice No. 1108 of 8 July 2005 as contained in *Government Gazette* No. 27770 which provides the Commission's recommendations for the remuneration of all public office-bearers for the 2005 / 2006 financial year, is attached as Annexure A.

It is noted from the contents of the above-mentioned *Government Gazette*, that a specific hierarchy of national and provincial representatives has been provided, which has become entrenched over the years as the Commission made its recommendations.



The table below provides the upper limits of the remuneration of public office-bearers in a provincial legislature, as published in General Notice No. 1108 of 8 July 2005.

**TABLE 12: UPPER LIMITS OF THE REMUNERATION OF PUBLIC OFFICE-BEARERS IN A PROVINCIAL LEGISLATURE**

GRADE	OFFICE	BASIC SALARY	MOTOR VEHICLE ALLOWANCE	TOTAL REMUNERATION
F	Premier	R669 463	R159 322	R828 785
E1	Member of the Executive Council Speaker	R544 122	R136 030	R680 152
D	Deputy Speaker	R425 884	R106 471	R532 355
C1	Chief Whip: Majority Party	R412 675	R103 168	R515 843
C2	Leader of Opposition i.t.o. section 116(2)(d) of <i>Constitution</i> , 1996 Chairperson of a Committee of a Legislature Chairperson of Committees	R399 950	R99 987	R499 937
B	Chief Whip: Official Opposition / Largest Minority Party Deputy Chief Whip: Majority Party Deputy Chairperson of Committees	R383 862	R95 966	R479 828
A1	Parliamentary Counsellor to the King Whip Leader of a Minority Party in a Legislature other than the Official Opposition	R341 449	R85 362	R426 811
A2	Member of a Legislature	R328 846	R82 211	R411 057
All amounts reflected under the "TOTAL REMUNERATION" column include an amount of R40 000 per annum in this Proclamation as the amount to which section 8(1)(d) of the <i>Income Tax Act</i> , 1962 (Act No. 58 of 1962) applies.				

### **5.7.2 The *Remuneration of Public Office Bearers Act, 1998* (Act No. 20 of 1998)**

It has been indicated *supra* (paragraph 5.4) that the determination of the remuneration of councillors was previously conducted at provincial level. In order to centralize and standardize their remuneration across the country, the *Constitution of the Republic of South Africa, 1996* required national legislation to regulate this matter. This resulted in the enactment of the *Remuneration of Public Office Bearers Act, 1998* (Act No. 20 of 1998).

The *Remuneration of Public Office Bearers Act, 1998* (Act No. 20 of 1998) provides a framework for determining the following:

- Salaries and allowances of the President, members of the National Assembly, permanent delegates to the National Council of Provinces, the Deputy President, Ministers, Deputy Ministers, traditional leaders, members of provincial Houses of Traditional Leaders and members of the National House of Traditional Leaders;
- The upper limit of salaries and allowances of Premiers, members of Executive Councils, members of provincial legislatures and members of Municipal Councils; and
- Pension and medical aid benefits of office-bearers.

Section 7 of the *Remuneration of Public Office Bearers Act, 1998* (Act No. 20 of 1998) provides that “the upper limits of salaries and allowances of members of municipal councils shall from time to time be determined by the Minister for Provincial and Local Government, after consultation with the MEC for local government in each province, by notice in the *Government Gazette* after taking into consideration:

- (i) The recommendations of the Commission;

- (ii) The respective role, status, duties, functions and responsibilities of the different members of municipal councils;
- (iii) The different categories or types of municipalities, having regard to their respective powers, duties and functions;
- (iv) The gross income, the area of jurisdiction and the nature of settlement of each municipality;
- (v) The affordability of different levels of remuneration of public office bearers;
- (vi) The current principles and levels of remuneration in society generally;
- (vii) The need for the promotion of equality and uniformity of salaries, allowances and benefits for equal work performed;
- (viii) The provision of uniform norms and standards nationally to address disparities; and
- (ix) Inflationary increases”.

The above section is not intended to constrain the Minister for Provincial and Local Government, but is intended to capture all possible relevant determinants of remuneration. It is also noteworthy that it does not apply to pension and medical aid benefits, which are dealt with in sections 8 and 9 respectively, of the *Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998)*.

Sections 8 and 9 provide that the upper limits of the contribution to be made to the pension fund and/or the medical aid scheme on behalf of a member of a municipal council, shall be determined by the Minister after taking into consideration the recommendations of the Commission.

It will also be noted from the provisions in the *Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998)* that, apart from councillors and traditional leaders, all other office-bearers have a portion of their remuneration, determined by the President in the *Government Gazette* on 13 September 1999 as

R40 000.00, exempt from tax in terms of section 8(1)(d) of the *Income Tax Act*, 1962 (Act No. 58 of 1962) – this provision is discussed in greater detail *infra* (paragraph 8.2.7).

## 5.8 CONCLUSION

It has been shown in this chapter that the remuneration of members of municipal councils did not explicitly feature in law initially, until the 1960's, when various Ordinances dealt with this matter, albeit in a disjointed manner. The introduction of the *Republic of South Africa Constitution*, 1993 entrenched the constitutional status of local government, and specifically provided for the remuneration of councillors, through the Independent Commission on the Remuneration of Public Representatives.

The *Constitution of the Republic of South Africa*, 1996 established local government as a sphere of government, and provided for the establishment of the Independent Commission for the Remuneration of Public Office-bearers. The *Remuneration of Public Office Bearers Act*, 1998 (Act No. 20 of 1998) specifically provides that the Minister for Provincial and Local Government must determine the upper limit of councillor remuneration, thereby entrenching the “centralization” of the system at the national sphere of government.

This chapter concluded appropriately with an exposé of the framework and dispensation that is presently applicable with regard to determining remuneration for councillors. It is important to note that while the provisions relating to the remuneration of councillors may still be contained in certain ordinances, the provisions, if they conflict with the present legal framework, are invalid. This is because they are superseded by the provisions contained in the *Remuneration of Public Office Bearers Act*, 1998 (Act No. 20 of 1998), and the annual determinations made by the Minister for Provincial and Local Government. Provinces have embarked on a process to repeal all old order local government

legislation, a process which was initiated by the Department of Provincial and Local Government during 2001.

In pursuing further understanding of the roles and responsibilities of councillors, the following chapter describes the present institutional, political and administrative systems that are applicable in local government, as a precursor to the manner in which the *Remuneration of Public Office Bearers Act*, 1998 (Act No. 20 of 1998) was applied in developing and implementing a remuneration system for councillors.