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JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

17 October 2003

SUPERIOR COURTS BILL: DELIBERATIONS

Chairperson: Adv J H de Lange (ANC)

Relevant documents:

[Superior Courts Bill \[B52-2003\]](#)

Summary of Comments on Superior Court Bill

Superior Courts Bill - working draft

[these documents should be available here on 24 or 27 October 2003]

[Supreme Court of Appeal submission](#)

[Circle of Limpopo Province submission](#)

[Law Society of Northern Province submission](#)

[Law Society of South Africa submission](#)

[Cape Bar Council submission](#)

SUMMARY

The purpose of this Bill is to rationalise the various pieces of legislation dealing with Superior Courts of South Africa so as to create one judicial structure as stipulated in Schedule 6 of the Constitution. The Committee dealt with the provisions of Chapter 1 and 2 of the Superior Courts Bill and effected some amendments. While the Committee acknowledged possible constitutional problems, it felt that it would be imperative to involve Nedlac (National Economic Development and Labour Council) in the appointment of the Deputy President of the Supreme Court of Appeal in terms of Clause 3(4)(a)(ii). It was proposed to divide Clause 3 into two separate clauses, one dealing with the constitution of the Constitutional Court and the other with the constitution of the Supreme Court of Appeal.

MINUTES

Chapter 1: Definitions and objects of Act

Clause 1: Definitions

"Division"

The Chair believed that there should only be one High Court system with different divisions based on its seats. He proposed that the discussion on definition of "Division" be deferred.

"full court" / "labour matter"

The Chair noted that two judges, hearing an appeal in High Court, would not qualify as constituting a full court or bench. For a full bench of a High Court to be constituted there should be three or more judges hearing an appeal. He asked the drafters to find out the number of full court cases taking place in South Africa each year.

The Committee accepted the proposals made by the Supreme Court of Appeal with regard to the definition of a "full court" and that of a "labour matter".

Ms F Chohan-Khota (ANC) proposed that a "labour matter" should thus be defined as meaning any matter arising from employment law and labour relations including any justiciable matter, except criminal proceedings, arising out of the application of the labour law.

The Chair suggested that the proposal from Cheadle Thompson and Haysom Attorneys be inserted in

a bracket and be flagged for later discussion.

"lower court"

The Chair requested the drafters to refine and modernise the definition of "lower court" taking into account the fact that preparatory examination is no longer taking place. He raised concern at the use of the terms such as superior and lower courts as there could be a derogatory interpretation. He requested that the drafters come up with constitutionally acceptable terms.

He also asked the drafters to consider defining other parties such as the respondent as only the plaintiff is defined in the Bill. He asked why a definition of a court manager has not been provided for in the definition clause.

Mr J De Lange (Department of Justice: Legal Drafter) noted that they had contemplated providing a definition of court manager but after considerable discussion amongst the drafters, they had decided to provide such in Clause 7 since it is the only clause in the Bill to deal with the issue of court manager.

The Chair flagged the issue of including the definition of court manager in the definition clause or provide it only in Clause 7. He believed that the only reason why this term has not been mentioned in other clauses of the Bill is because it is a new concept. He asked that a discussion on this matter be deferred since the incumbent of the office of the court manager would have to be assigned some legislative function by the Committee.

Ms Chohan-Khota asked the drafters to provide the Committee with their view on how the office of the court manager should be structured and what limits should be placed on its incumbent.

The Chair agreed and noted that the drafters should spell out the department's relationship with the incumbent of the office of the court manager and to whom s/he would be accountable.

Clause 2: Objects and interpretation of Act

Although he was of the view that this clause should be read in conjunction with Chapter 8, the Chair felt that it is imperative that the provisions of Item 16(6) in Schedule 6 in the Constitution, which speak about the rationalisation of courts should be inserted in the provisions of this clause. He also proposed that this clause should also be read in conjunction with the Labour Court Act.

The Committee accepted the proposals made by the Cape Bar Council.

Chapter 2: Structure of Superior Courts

Clause 3: Constitution and seats of Constitutional Court and Supreme Court of Appeal

The Chair was of the view that the constitution and the seats of the Constitutional Court and the Supreme Court of Appeal should be dealt with separately in the Bill. In the Employment Act there is a clear distinction between constitutional judges and other judges. This differentiation between constitutional judges and other judges in that Act is due to the fact that their terms of employment are different. Since now there is going to be one structure to which all judges would belong, the Department would have to determine how this distinction can be addressed in this Bill.

He noted that the Chief Justice or President of the Supreme Court of Appeal can take a decision to hold the hearings of the Court at any place other than in its usual seat. However, because of the financial implications of such a decision, the Minister would have to be involved. While he acknowledged the issue surrounding the accessibility of the Court, he suggested that stronger mechanisms should be put in place regarding the decentralisation of seatings of the Supreme Court of Appeal.

Ms S Camerer (DA) proposed that "so" in 3(3)(a) should be substituted by the word "as".

The Chair acknowledged the concerns raised by the Supreme Court of Appeal and thus proposed that 3(3)(a) should be rewritten. Therefore it should read "The Supreme Court of Appeal consists of the President of the SCA, a Deputy President of the SCA, a further Deputy President appointed to assist in managing labour appeals and as many other judges as the President may determine". If this change is

made then there would no need for 3(4)(b) since the Bill would make it clear that the one Deputy President's functions are similar to those of the Deputy Chief Justice while the other Deputy President is appointed in terms of the provisions of labour law.

Ms Camerer asked why the Committee should not simply adopt the proposal made by the Supreme Court of Appeal, namely that the judge assigned to assist the President of Supreme Court of Appeal need not be a Deputy President but could be any judge of the Supreme Court of Appeal.

Referring to 3(4), the Chair noted that it should be borne in mind that the whole exercise is aimed at integrating the Labour Court into the present court system. Therefore since Nedlac (National Economic Development and Labour Council) co-operation is very important to ensure the success of this process, then the Committee should thus ensure that Nedlac is involved throughout the process. While he was of the view that a provision should be created compelling the Judicial Service Commission to consult with Nedlac when an appointment for the Deputy President of the Supreme Court of Appeal who is dealing with labour matters is to be made, however he was also concerned about the constitutionality of such provision. He thus proposed that Clause 3 should be rewritten and also be separated into two clauses, of which one should specifically deal with the Constitutional Court while the other deals with the Supreme Court of Appeal.

The meeting was adjourned.

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