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JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

29 October, 2003

SUPERIOR COURTS BILL: DELIBERATIONS

Chairperson: Adv J De Lange (ANC)

Documents handed out:

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

[Summary of Comments on Superior Courts Bill](#)

[Superior Courts Bill - working draft](#)

SUMMARY

Morning Session

The Committee discussed Clauses 13 and 14 of the Superior Courts Bill. The Cape Bar Council, Kwa-Zulu Bench and Cosatu made some suggestions on these clauses.

Afternoon Session

The Committee felt it necessary that an application for leave to appeal should also be applicable against the decisions of magistrate, both in civil and criminal matters. However there seemed to be consensus that the Bill should only deal with the application for leave to appeal regarding civil matters and those of criminal nature continue to be regulated by the Criminal Procedures Act. It was said that this would be to avoid duplication between the provisions of the Bill and the Criminal Procedures Act and that the Bill should only deal with criminal application for leave to appeal by referring to the relevant provisions of the Criminal Procedures Act.

The Committee also considered whether it was necessarily that an order should be suspended where an application for leave to appeal had been made, but not granted. It felt that it was imperative that this be regulated since there was a lot of risk involved, especially in civil matters where there were disposable assets at stake.

MINUTES

Morning Session

Clause 13: Referral of order of constitutional invalidity to Constitutional Court

Clause 13(1)(a)

The Chairperson said Clause 13(1)(a) deals with orders and the issue of constitutional invalidity. He asked if there is a definition of competent court. Adv de Lange said a competent court would mean a court with the necessary jurisdiction. The existing provision says it could be a Supreme Court, a High Court or a court with similar status.

The Chairperson asked if the rules of court referred to is the constitutional rules of court. Adv De Lange confirmed this.

Clause 13(1)(b)

The Chairperson asked if 172(2)(d) is when you go directly to the Constitutional Court. Adv de Lange said that this is correct, it is the existing wording.

The Chairperson wondered why they said "any person or organ of state". Adv De Lange said they must do that in terms of the constitution. The constitutional definition would apply. The Chairperson

conceded that it appeared that they did not need a definition, but he asked Adv De Lange to check whether they did not need a definition for "organ of state". There is a simple definition they usually use for this. The Chairperson also said there was no need for a definition of "person".

The Chairperson asked how "sufficient interest" (in the first line of 13(1)(b)) stood with the constitution. He said there is a clause in the Constitution, and he asked if it used a sufficient interest test.

Adv De Lange said that the Chairperson was probably thinking of the Interim Constitution. The Chairperson said it would be assumed that this right could be limited. He referred the Committee to section 38 of the Constitution. Adv De Lange referred to 172(2)(d) of the Constitution, which says that any person or organ of state with sufficient interest may appeal or apply directly to the constitutional court, etc. That was also why he earlier said that they do not need a definition for "organ of state", because that authority is directly derived from 172(2)(d) of the Constitution.

The Chairperson said 13(1)(b) are really just repeating those words from the constitution. So all that 13(1)(b) is saying is that the courts must do their work within the rules.

The Chairperson said it is very interesting that section 172 of the Constitution does not fall under the Bill of Rights. Therefore it could not be limited in any way. Adv De Lange said he was not sure of that but he knew of more than one case where the Constitutional Court discussed what the requirements of sufficient interest should be. The Chairperson said that they could circumscribe sufficient interest. He supposed that they could prescribe a procedure for this. He asked Adv De Lange to get that rule for him.

The Chairperson asked Adv De Lange to write a resolution in the Bill that there would be one Bill, which dealt with all the Bills dealing with the High Courts. He also wanted to have a resolution that asked the department to make sure that there was one set of regulations and one set of rules of court. Adv De Lange said he might be able to put it in the legislation, which forced them to do it. The Chairperson asked him to do it. He said this would make it much easier for the practitioners.

Clause 13(2)

The Chairperson inquired about the reference to subsection (1)(a). Adv De Lange said it is a referral to the Constitutional Court for confirmation. He said that this is where the problem arose in the Omar case, because there was not an order at that stage.

Adv De Lange said the limitation on 13(2) at the moment is that the Chief Justice has thus far only once let a matter be referred to the Constitutional Court as a consequence of parliament.

The Chairperson said that strictly speaking 13(2) does not really belong there, because of the issue of legal representation. Adv De Lange said it would enable the Constitutional Court to obtain government's point of view on the matter.

The Chairperson said that clause 13(2) is a strong clause. Even if the minister does not want to appoint somebody, he must appoint somebody. The Chairperson asked Adv De Lange to make a note to find out if it should be compulsory.

Cape Bar Council

The Cape Bar Council suggested that in 13(1)(a), "applicable rules of court" should be replaced by "rules of the Constitutional Court". The Chairperson said that the Committee also picked this up. Adv De Lange said they were probably correct. There would not be a problem in changing it. The Chairperson said he thought that technically they were right, but it would be better for the future to keep it as it is, since they would have one set of rules.

The Cape Bar Council's proposed that "the court must deal" should be replaced with "the Constitutional Court must deal" in 13(1)(b), and that the words "of that Court be added at the end of the clause. Adv De Lange said that he could do that. The Chairperson also did not have a problem with it.

Discussion: legal representation

The Chairperson asked if there is a clause that deals with legal representation in general. Adv De Lange said there is not. He said he was wondering about the legislation that they had so far identified for the possible inclusion in this Bill. It would be difficult, because the one Adv De Lange had in mind dealt with High Courts. He thought that there is some tightening up that needed to be done. It is a difficult and confusing scenario. The Chairperson said it was an issue that should be dealt with.

The Chairperson asked for the creation of a new section. He wanted to put similar legislation together as much as possible. He wanted to fine-tune the legislation. He said it was very important that they lay a foundation in order to improve legislation.

Mr Landers (ANC) said that he read in the weekend papers about an attorney that was originally appointed in Limpopo, and then moved to the Eastern Cape. He started to practice law without having been admitted there and then joined one of the justice centres. He was now being dealt according to the law society's disciplinary measures. The courts would have to go back to all these cases to see if his clients had been adversely affected.

Mr Landers asked if it was part of the matter that different courts had different rules and procedures. The Chairperson said that an attorney gets admitted in their provinces. Why were attorneys only appointed in their provinces? The Chairperson said he thought it was related to protectionism. Mr Landers asked if it this was constitutional. The Chairperson said these issues would be dealt with in the Legal Practitioners Bill. He said it was more an issue of legal practice.

Adv Schmidt (DA) said that there is a lot of wastage of costs for practitioners not complying with rules, which differed from division to division. Therefore Adv Schmidt was totally in favour of one set of rules for all divisions. He said it was very important, because clients would be paying for wasted costs, because the legal practitioner did not comply with some obscure rule.

The Chairperson said that this Bill did not have the governance of the judiciary. They had started a discussion with the Judiciary a few weeks ago on this issue. He said at the moment they will only have the Superior Courts Act, but in the future there will hopefully be one Act dealing with the courts. There would be one set of regulations, one set of rules and one rules board. As far as court practice is concerned, the Chairperson would want the Chief Justice to be the main person in this regard, in consultation with the Judge President. He wanted one set of orders given by judges. If anything needed to be changed there, the Chief Justice would have to agree to it. He suggested building blocks of the constitution, laws, rules, regulations and orders. He mentioned the judges' rules on interrogation as an example. The Chairperson wanted to put this whole area on a more sound and rational footing, for everybody to understand.

Adv Schmidt said that the different divisions had different, complicated manuals. If you wanted to practice in a new division, you had to learn that manual. He said that all the manuals and practice notes should be unified. The Chairperson agreed that this should be done. The Chairperson said the general principle was that they wanted all these rules harmonised into one set of rules. He asked Adv De Lange to speak to the Chief Justice, to find a common name for these court notices. The Chairperson said there were three ways in which he wanted the practice notes/court notices, to be regulated. Firstly, he wanted it to be said that it would continue. Secondly he wanted it harmonised into one, and thirdly, he wanted the Chief Justice, in consultation with the court involved, to issue it in future. He asked Adv De Lange to proceed with this matter through Judge Chaskalson.

Adv Schmidt said that the counter-argument would be that the situation differed among the divisions. He said they should reply by saying that all of the notices/regulations should be combined into one manual. The Chairperson said that he was not suggesting that they should have everything the same. He hoped it would happen over time, as the different divisions started to look at better practices from the other divisions and take them over. He said that the point was they should start a system. The Chief Justice should play an important role in creating uniformity in the system. He said the Committee would leave some scope for uniformity, and some scope for differences.

The Chairperson said the Adv De Lange that he was not sure where this would fit in. Adv De Lange replied that it would fit with the rules. The Chairperson also asked that the existing Act's section 43(2) (b) be brought into the Bill in a different form. Adv De Lange said they would have a chapter on rules.

The Chairperson said they would discuss the composition of rules board later. He recommended that the Committee read submission 16, which came from the Constitutional Court. He said he had no problem with that. He thought it would be useful if they did that part.

Clause 14: Appeals generally

The Chairperson said that they have amended the appeal procedure quite drastically in the Criminal Procedure Act. He said it was an interesting shift in emphasis. They had received strong support from the judiciary on that Bill. The Chairperson questioned the words "subject to the constitution" in the first line of the clause. Adv De Lange said it is because this Bill does not deal with appeals to the Constitutional Court. He said there were instances when one could appeal directly to the Constitutional Court. The Chairperson asked if the Constitution dealt with any other aspect of appeal other than appeals to the Constitutional Court. Adv De Lange said none other than stating that the Supreme Court of Appeal is the final court of appeal. The Chairperson suggested that it be made clear what the "subject to" in Clause 14(1) refers to. The Chairperson said he supposed 14(1)(a) could be amended to do this. The High Court could be added as a court of appeal by adding it to 14(1)(a).

Clause 14(1)

The Chairperson suggested that they do away with the full court idea. He said the idea was to start simplifying the court system. He said the members should take the issue of full courts to their parties for discussion.

Adv De Lange provided some statistics on full court referrals to the Committee. There were not a large number of civil appeals. The criminal appeals were slightly more. The Chairperson said this issue could be discussed later.

Clause 14(1)(a)

The Chairperson said that 14(1)(a)(i) and 14(1)(a)(ii) would have to change if they do away with the full courts.

Clause 14(1)(b)

The Chairperson said that 14(1)(b) are new. Adv De Lange said it is the existing provision. Adv Schmidt said that labour court did not have an appeal mechanism. Thus, a disparity existed. The Chairperson said they would remove this disparity

Clause 14(1)(c)

The Chairperson asked why provision for "special leave" is made. Adv de Lange said he supposed it is for when you are talking about a full court decision. Adv Schmidt said that when you have applied for leave to appeal and it has been turned down by the High Court. A petition for special leave to the Supreme Court has to be made to override the High Court's decision. The Chairperson said that that is a petition, not special leave. He said that in the Criminal procedure Act special leave applies when a full court have sat, and then you still want to go to the Supreme Court of Appeal. The Chairperson's problem is that (c) is not saying that, since it is not talking about a full court. Adv De Lange referred the Committee to clause 15(2)(f), which contains a cross-reference to 14(1)(c). The Chairperson said that there is a reference to full court. He suggested that 14(1)(c) also refer to full court, unless they do away with full court.

Clause 14(1)(d)

The Chairperson said an appeal of an appeal is missing here. He asked if it is dealt with in clause 15. Adv De Lange said clause 15 is only dealing with leave for appeal. Adv De Lange said that such a provision is missing, and that a clause similar to 14(1)(c) is needed.

The Chairperson asked if the clause is clear that it applies to civil and criminal. Adv De Lange said it is so.

Discussion: juvenile's right to appeal

The Chairperson asked if it stated that criminal appeals are dealt with in terms of that legislation. He warned the Committee that in appeals from lower courts in certain juvenile matters are automatic. He said they must make sure they cover the Criminal Procedure Act regarding juveniles having an automatic right to appeal in certain matters to Supreme Court of Appeal. He asked Adv De Lange to

make sure it is covered in the Bill, because he thinks it is not.

Discussion: full court benches

On the issue of full court benches, Adv De Lange said that the reason why it has not been removed, was because the value of judges sitting with their colleagues could not be underestimated, because of the exposure they were getting when dealing with full bench appeals. He said you could argue that you could get the same exposure when acting on the Supreme Court of Appeals.

The Chairperson said many of these courts did not have full court cases, and every appeal in the High Court had two judges, so the judges would always be sitting with their colleagues. There would be no exposure to anybody else. These things needed to be churned through the system much quicker. This did not happen because three judges had to sit on a full bench. He said there was not a productive use of time, energy and efficiency there. It also made the creation of areas of conflict and the duplication of work more. He suggested a system with circuits for the hearing of appeals. He said there was no unanimity on this issue in the judiciary. The Chairperson said there was a lot of things the courts had to change.

The Chairperson suggested that magistrates were used for sitting with judges on appeals. This would provide training to the magistrates. A large pool of experience would be built up. Double the amount of appeals could be heard on a day, by making magistrates acting judges in the particular court. The Chairperson hoped that this would make the High Courts more productive.

Adv Schmidt said it might be a bit unfair on the magistrates. Some magistrates have a large amount of criminal court experience and sometimes better experience than judges had. He suggested that they make use of retired magistrates as acting judges. He thought that some judges could learn from the magistrates. The Chairperson said that from this cross-pollination, everyone would benefit. But, there was a problem with retired magistrates. The younger magistrates would not gain experience. The Chairperson said they must take out things that clog up the system, full courts were one of these things. He wanted to find a system that worked better. There was nothing that convinced the Chairperson that full courts had any value whatsoever.

Clause 14(2)

Adv De Lange said Clause 14(2) is just the existing 21(A) of the Act. It deals with the question of dubious appeals. The Chairperson said it was interesting that there was a law for that.

14(2)(a)(ii)

The Chairperson asked if this would be more important in a civil case. Adv De Lange said that agreed.

Discussion

The Chairperson said that it was "all just a load of waffle about nothing". Adv De Lange said there must have been a problem in this regard, because it is a fairly new provision. It has been accepted to the Act only in 1993.

Cape Bar Council

With reference to 14(1)(a), the Cape Bar Council inquired why all appeals in labour matters should be heard by the Supreme Court of Appeal and not by the full court. The Chairperson said that Adv Schmidt had answered that question earlier.

They also wanted the courts referred to in 14(1)(d) listed in the clause. The Chairperson said the Constitution did this.

The Cape Bar Council suggested that the senior judge should have the power stipulated in 14(2)(b)-(d). The Chairperson asked how this worked in practice. He asked if some form of delegation takes place. Adv De Lange said this was so. The practical effect became apparent only after the case had been allocated, but in that event the presiding judge acted on behalf of the Judge President of the court. That is why there is the general power in (a). He said the wording is the existing wording and had to date caused no problems.

The Chairperson asked if there is a power somewhere in the Bill allowing the Judge President to

delegate any of the powers in this Bill to any other judge. Adv De Lange said there is no general provision. The Chairperson asked if there should be one, because that would solve all the problems. Adv De Lange agreed and said that had been mentioned in the previous meeting that they should look at a general provision regarding the powers of people acting on behalf of the Judge President. The Chairperson asked that it be added. Adv Schmidt suggested that the reason why the subclause had never given problems before is because it probably had not been used before. He said it was a tedious procedure. Adv De Lange said it had been used in practice. He referred the Committee to 15(1)(b), which refers to it as a test for leave to appeal. Adv Schmidt said probably it had not been used frequently enough to create a problem. He said he had not heard of it before. Adv De Lange thought that the concept had been introduced as a test for leave to appeal. The Chairperson said that it was clear that it only applied in civil matters. The Chairperson wanted to suggest that in the case of the High Court it only stated two judges, but he realised that this would mean that they had to make provision for a deadlock breaking mechanism, so they would keep it for practical reasons.

KwaZulu-Natal Bench

The KwaZulu-Natal Bench suggested that the word "must" in 14(2)(b) should be changed to "may". The Chairperson said it could not be done, and Adv De Lange agreed. They also suggested that the word "or", before "failing which", in 14(2)(c) be deleted. The Chairperson said the "or" could not go. He suggested that it come after the comma. Adv De Lange suggested that they move the comma and the words "failing which". The Chairperson asked that it be reworded.

COSATU

COSATU stated that they strongly support 14(2)(b). The Committee acknowledged their support.

Afternoon Session

Clause 15: Leave to appeal

The Chair said that it should be noted that Clause 15(1) and (2)(a) and (b) are new provisions and that the department would still have to deal with exclusions regarding automatic right to appeal contained in the Criminal Procedure Act, especially in subclause (1). He further proposed that the word "real" in the par (a) of subclause (1) be removed.

Mr J De Lange (Department of Justice: Legal Drafter) noted that while subclause (1)(c) reinstate the case law position however it is necessary that prohibition should be placed on the appealability of ordinary interlocutory.

The Chair asked where the wording in subclause 2(c) comes from.

Mr De Lange noted that the wording of 2(c) is derived from the UK and Australian legal system and that is also evident in the comments made by Judge Harms in this regard to the objections made against this subclause. The learned Judge noted that the first objection is with regard to the requirement that for the leave to appeal to exist there should be real prospects that the appeal would succeed. He said that since there is no test in the Act at presently, many judges do not take the question of leave seriously and as the result there is a substantial number of appeals without any merit. This proposed test was formulated by Lord Wolf when he considered a revamp of the English law of civil procedure and since its adoption in England there are no indications that it is not working well. There is no where in case law where the meaning of reasonable prospect is explained despite what is said by the KwaZulu Natal Bench in its objection to real. The learned Judge thus contended that the test for real prospect is more stringent than that of reasonable prospect and therefore if it is alleged that real is vague so is the test for reasonable. Therefore the proposed test, namely the balance of convenience, is the present test that is being used which has proved to be unworkable due to its vagueness. He said that it should be borne in mind that there may be more than one real issues within one particular case and hence the plural form is used. The learned Judge further noted that it should be borne in minds that the intention here is to come to a speedy conclusion of a case and hence these interim appeals should be limited only to those which would bring the court closer to such conclusion.

The Chair noted that the Committee would have to decide whether it went with real or whether with reasonable, taking into account that if there is no explanation for what is meant by reasonable prospect of success then it is truly a test without a content as alleged by the learned Judge.

Furthermore he noted that what the learned Judge says is that if a person wants to appeal on the interlocutory issue then he must show that such would have an effect of disposing the whole issues in the case not just stall them. However, notwithstanding that it seems that the learned Judge also acknowledge that there might be other compelling reasons why an appeal should be heard such as conflicting judgements, amongst others. He thus proposed that the word "particularly the merits" be considered after the words "all the issues" in subclause (1)(c) and that the proposal by KwaZulu-Natal Bench with regard to this subclause be accepted. He further proposed that the provisions of subclause (2)(b) be split into two separate provisions as it was done with the provisions of the Criminal Procedure Amendment Bill. He thereafter asked whether the issues regarding petitions are dealt with in this Bill since a leave can be refused in a particular case.

Mr De Lange said that although petitions are dealt with in S21 of the Supreme Court Act, however the provisions of Clause 15(2)(b) also amounts to petition even though such word is not mentioned in that subparagraph.

The Chair asked how would this provision be linked to those of the Criminal Procedure Act.

Mr De Lange was concerned that if criminal appeals were to be dealt with in this Bill that would amount to a duplication since they are already dealt with in the CPA and thus proposed that the criminal appeals should be dealt with separately from those of civil appeals.

The Chair noted that since this clause does not apply to leave to appeal from the magistrate courts but only in the High Court then a new clause should be inserted. Therefore this present clause would be a leave to appeal from the High Court and the new one would be a leave to appeal to the High Court. Furthermore he noted that the Committee should consider whether it would be necessarily to introduce a leave to appeal in the magistrate courts concerning civil cases. He said that in principle there is no reason why that should not be done since if leave to appeal is accepted as being constitutional in criminal matters then on the application of the same reasoning a contrary view may not be said of the civil matters.

Mr De Lange in concurring with the Chair's proposition noted that there were little chances of even a constitutionality of the matter coming into fore.

Adv H Schmidt (DA) also welcomed the introduction of a leave to appeal for magistrates in civil matters noting that this would protect the litigants even against themselves. This would be the case since sometimes they receive legal advice that there have reasonable prospects to succeed but when the matter is taken to the High Court then the legal advisor settled for nothing since he realised that he was going to lose the case, with costs. Therefore this mechanism would protect them against legal costs which they would otherwise have borne in the circumstances.

Adv M Masutha (ANC) concurred with Adv Schmidt and further noted that this would really assist the litigants taking into account the fact that in our legal system one did not have recourse, even if a lawyer has been grossly incompetent in his services. This is so notwithstanding the fact that one could legally sue the legal representative where he has acted negligently. But for such person to succeed he would require the services of another legal representative to prove the wrong done by another which is something impractical.

The Chair although he did not agree with the contention made by the Cape Bar Council regarding the provisions of subclause (2)(c), however he requested the department to spell it out very clearly what is it that is intended to be achieved through this provision. He further noted that he is of the view that the provisions of subclause (2)(b) are not relevant to subclause (5)(a) as contemplated in the latter subclause and thus the department should verify this.

Mr De Lange concurred with the Chair's view and noted that the department would indeed relook the relevance of subclause (2)(b) to the provisions of subclause (5)(a).

Adv Schmidt however was of the view that subclause (2)(b) should be retained since on the one hand subclause (2)(a) deals with an appeal from the High Court where a leave has been granted while par (b) deals with a petition for a special leave from the Supreme Court of Appeal.

The Chair then said that if Adv Schmidt's construction is what is meant in subclause (5)(a) thus there is no need of par (b) of subclause (5) in this Bill.

Mr De Lange noted that the provisions of subclause (5)(b) are still relevant since they do not refer to the provisions of subclause (2)(b) but only to those of subclause (2)(a).

Adv Schmidt proposed that the provisions of subclause (5)(b) should thus be qualified by referring it to the provisions of subclause (2)(a).

The Chair asked the department to look at the matter and then refine subclause (5) accordingly.

On the contention made by the Cape Bar Council regarding the test of a question of law of importance as being too narrow, the Chair held a different view. He said that test in S20(2)(a) contested for by the Cape Bar Council is very stringent than the proposed one since it does not only require the presence of the question of law but also that of the question of facts. He said that this is evident by the use of the word "and" instead of the word "or" in joining the provision of this subsection.

Mr De Lange concurred with the Chair. He said that in terms of the test in S20(2)(a) a person is required to satisfy him/herself on the issues of law and fact before he could be able to refer the matter to the Supreme Court of Appeal. However the new test proposed in subclause (5)(a) is much more open than the one in S20(2)(a).

Clause 16: Suspension of decision pending appeal

Mr De Lange noted that the learned Judge Harms, in response to the comments made by the Law Society of SA to the provisions of subclause (1), said that although this subclause reflects the law as it stands but the problem raised by the Law Society is a real one. The learned Judge noted that he agrees with the views espoused by the Law Society save in relation to the giving of security for judgement amount since that would be unfair. The learned Judge based his argument of the fact that the leave to appeal was not dealt with expeditiously by courts of first instance and that petitions for leave also take some time before being concluded. Thus, contended the learned Judge that although it would be fair to place the onus on the losing party to apply for the suspension of the order pending the application for the leave to appeal but however that would have to be stated clearly so as to overrule the existing case law. The learned Judge referred to English and US laws and noted that in those jurisprudence an order is not suspended pending an appeal nor for an application for leave to appeal unless the losing party applies for it. In those jurisprudence there is a presumption that the court decisions are correct and the learned Judge thus contended that although our common law states the law differently there is nothing preventing the situation to be changed.

Adv Schmidt noted that SA law applies to two different approaches to criminal law than that of civil law. He said with regard to criminal law the law deems the judgement of the court as being correct for all purposes and thus even if someone applies for leave to appeal, which is thereafter granted or not, the judgement of the court remains standing and is not suspended. That is why Therefore many people would normally apply for bail pending their application for leave to appeal and this is done through a different application than that of a leave. There would be nothing preventing our law in accepting that the decision of the criminal courts are correct in this regard and therefore one has to apply for bail, if necessarily, since the court decision would not be suspended because of his application for leave to appeal. He therefore proposed that what the situation should be in civil cases, thus whether the decision of the court should be suspended or not, should be based on the facts and merits of each case.

The Chair although he did not have a problem with someone being granted a bail pending his application for leave in criminal matters, however raised concerns with regard to civil matter where such procedure is not available. He said that taking into account the fact that civil matters mostly involve disposable assets, it is thus imperative that a middle route be adopted and thus not just adopt the English or US system in this regard. Further he noted that where one had the ground to appeal and the application was been granted, then this was surely an indication that there were reasonable prospects of success and in such cases a decision could be suspended so as to allow a final one to be taken. He therefore proposed that the Bill should thus state that pending an application for leave to

appeal a decision of the court would be suspended for a period of one to two weeks so as to allow a person to bring his application to court. Should such person fail to bring such an application within the required period then the order of the court would automatically kick in and thus asked the department to research the matter and refine it accordingly. He further asked the department to also consider whether it would not be necessary to add a test in subclause (1) and that it should be made it clearly that this provision would apply only to civil matter.

Adv Masutha noted that this proposed provision seems to be preferring the loser more than the successful party.

The Chair said that the provision does not necessarily prefers the loser but requires him to prove to the court the necessity of suspending the order against him, that is he has the reasonable prospects of success in his appeal. Thus the law cannot require a successful party to make such an application and bear the onus since a judgement would have already been granted in his favour.

The meeting was adjourned.

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