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## Parliamentary Monitoring Group



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### JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

14 November 2003

#### SUPERIOR COURTS BILL: DELIBERATIONS

**Chairperson:** Adv J de Lange (ANC)

**Documents:**

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

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

[Superior Courts Bill - working draft](#)

#### SUMMARY

The Committee considered submissions that were made by various institutions on the Superior Courts Bill. The drafter was asked to investigate the use of international interrogatories. It was agreed that there is a need for a mechanism to effect execution against government departments. The Committee agreed that pending proceedings should be allowed to continue as if the Bill has not been passed.

#### MINUTES

##### **Clause 33 Manner in which witness may be dealt with on refusal to give evidence or produce documents**

The Chair noted that the Supreme Court of Appeal feels that the phrase "in hard copy or electronic medium" should be inserted after the first "document" in 33(5). He asked why this phrase suggested by the SCA should be inserted.

Mr J de Lange (Departmental drafter) said that perhaps the SCA is concerned that the phrase "book, paper or document" may not be interpreted to include the various kinds of disks.

The Chair wondered why the suggested phrase has to be inserted after the first "document" only and not everywhere where the phrase appears. He suggested that the drafter should draft a new clause in the interpretation clause that will make it clear that a document includes hard copies or anything stored in an electronic medium.

The Chair objected to the Law Society of South Africa's suggestion that Clause 33 should be deleted and the provision to be dealt with in terms of the Rules of Court.

##### **Clause 35 Reference of particular matters for investigation by referee**

Clause 35(1) allows the Constitutional Court and, in any civil proceedings, any Division, with consent of the parties, to refer any matter which requires extensive examination of documents to a referee. The Chair asked why the SCA is not included in the clause.

Mr J de Lange said that the SCA is not supposed to deal with facts hence it has been excluded.

The Chair said that the period of "three months" in 35(5)(a) should be replaced by a period of "one year". He went on to say that the phrase "as the court may determine" in 36(6) should be deleted.

##### **Clause 36 Examination by interrogatories**

Clause 36(1)(b) allows Divisions of the High Court in connection with any civil proceedings pending before them to use interrogatories if the person concerned resides or is for the time being outside the

area of jurisdiction of the Court. The Chair said that the clause is absurd as it treats our Courts as if they are in a federal state.

Ms F Chohan-Kota (ANC) said that the clause is empowering and does not direct that what it provides for, must be done. She said that the clause could be vital where a person is handicapped or for some other reasons cannot attend Court.

The Chair wondered if the clause would apply to a person who is within the jurisdictional area of the court but for some reasons cannot go to court. He suggested that the clause should be drafted to allow the use of interrogatories in appropriate circumstance regardless of whether the person is in or outside the jurisdictional area of the Court concerned.

The Chair advised the drafter to split 36(2) as it deals with two different issues. He went on to say that 36(5) should include persons who attend but fail to remain in attendance of the proceedings. He also asked the drafter to have a look into the use of international interrogatories.

#### **Clause 37 Manner of dealing with commissions rogatoire, letters of request and documents for service originating from foreign countries**

The Chair advised the drafter to break up Clause 37(1) as different things have to be done under it.

### **Part 3 Process of Superior Courts**

#### **Clause 39 Scope and execution of process**

The Committee noted and agreed with Justice Ngcobo's submission that a mechanism should be introduced to effect execution of judgements against the state. The Chair added that it should not be possible for anyone to seek execution against the government as a whole. He said that the department concerned should be the one to discharge the liability.

#### **Clause 40 Execution of process by sheriff**

The Chair asked if sheriffs can also detain people.

The drafter said that sheriffs can detain people in connection with civil proceedings. He went on to suggestion that the word "decrees" should be deleted from 40(1)

#### **Clause 41 Transmission of summonses, writs and other process and of notice of issue thereof**

The Committee agreed with the SCA's submission that the word "media" in 41(1) and (2) should be replaced by "medium".

The Chair asked why transmission by post is not included. He also suggested that the drafter check if the sheriff can leave any documents he sought to deliver at the place of abode of the person. He went on to say that the period of "14 days" in 41(2)(b) should be replaced by "seven days".

#### **Clause 42 Property not liable to be seized in execution**

The Chair said that he was not happy to protect firearms and told the drafter to remove reference to firearms.

#### **Clause 44 No process to be issued against judge without consent of court**

The Committee agreed with the SCA's suggestion to amend 44(1) as follows: "notwithstanding any other law, no private prosecution and no civil proceedingsâ€".

The Chair said that the consent of the Chief Justice should be required whenever a judge is to be sued. He also said that in the case of a Chief Justice being sue, one should require the consent of the Deputy Chief Justice. The issue of consent raises a problem in that one wonders if this means that the Chief Justice could refuse consent for a litigant to institute proceedings against a judge. He felt that perhaps one should require the consultation of the Chief Justice as opposed to his consent.

### **Chapter 8 Transitional provisions, amendment and repeal of laws, and commencement**

#### **Clause 45 Existing High courts**

The Chair rejected the suggestion of concurrent jurisdiction of courts as suggested by the Circle Council of Limpopo.

**Clause 46 Labour and Labour Appeal Court**

The Chair said that 46(4) should make it clear that it applies to someone who does not become a judge. He said that the subclause seems to imply that one can get a severance package and still become a judge and receive benefits of a judge of his standing.

The Cape Bar Council submitted that proceedings referred to in 46(7)(c) should continue as if the Bill has not been passed. The Chair agreed with this submission. He requested the drafter to look at the possibility of a provision regarding the finalisation of partly heard applications on motion without oral evidence.

**Clause 48 Pending proceedings, other than labour matters**

The Kwazulu-Natal Bench submitted that the time honoured "*mutatis mutandis*" use be used in 48(3) in the place of "with the changes required by the context". The Chair said that the two are not the same and rejected the submission.

The meeting was adjourned.

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