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09 August 2016

Honourable Dr Makhosi Busisiwe Khoza

Member of Parliament and Chairperson of the Ad Hoc Committee on Appointment of Public Protector

Per email: mkhoza@parliament.gov.za

And to: Members of the Ad Hoc Committee on Appointment of Public Protector

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Per email: bbongo@parliament.gov.za

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Secretary of the Ad Hoc Committee

Vhonani Ramaano

Per email: vramaano@parliament.gov.za

Vetting of Shortlisted Candidates

Dear Honourable Dr Khoza

1. Please find attached the results of an in-depth vetting exercise of the 14 shortlisted candidates for the position of Public Protector. This vetting exercise was conducted by Corruption Watch and the Democratic Governance and Rights Unit.

2. Please note that for the purposes of this exercise we have not attempted to verify the candidates' educational qualifications. We have relied upon their CVs issued on Parliament's website, as well as information in the public domain. We have also undertaken a limited 'lifestyle audit' by investigating the credit histories and registered assets – including property and motor vehicle ownership and company ownership – of the candidates.

3. During the Committee meeting to shortlist candidates on 13 July, some objections were raised in respect of one of the candidates, a judge. In the debate that followed, there appeared to be a predominant view that, since the judiciary has its own disciplinary procedures, the fact that a candidate continued to serve as a sitting judge meant that their ethical integrity was not open to the committee to question. We do not, with respect, believe that this is the correct approach. It is true that the judiciary has procedures in place to deal with judicial discipline. However, these have not always been the same, and there continue to be problems of enforcement. The current legislative framework for dealing with matters of judicial discipline has only been in place since 2010, and disciplinary proceedings under that legislation have been severely curtailed by legal challenges brought by affected judges. Furthermore, the bar for impeachment of a judge is, appropriately, extremely high. In terms of section 177(1) of the Constitution, a judge may only be removed from office if they are found by the Judicial Service Commission to be suffering from an incapacity, to be grossly incompetent, or to be guilty of gross misconduct. Following such a finding, the National Assembly must adopt, by a two-thirds majority, a resolution calling for the judge to be removed from office (the President is then obliged to remove the judge from office on the basis of such a resolution). It is therefore possible to imagine a situation where a judge has behaved in manner that may reflect negatively on them, but which has not resulted in their impeachment. We submit it cannot therefore be the case that the fact of a candidate being a judge puts their qualification as a fit and proper person (as required by section 1A (3) of the Public Protector Act) beyond scrutiny. We therefore urge the committee to interrogate any issues that might raise questions about whether a judge is a fit and proper person to be Public Protector, as rigorously as the fitness and propriety of any other candidate is scrutinised.

4. We are also concerned that the length of time set aside for the public interviews on 11 August will be particularly taxing on the Ad Hoc Committee members, as well as the candidates who will be interviewed towards the end of the day. We are aware that in other Parliamentary interview processes that continue into the early hours of the morning, candidates who are last on the list are at a disadvantage as their time is often cut short due to the committee members being understandably exhausted due to a long day of interviews.

We urge this Ad Hoc Committee to reconsider the time frames set aside to ensure that all candidates are treated equally and fairly in the public interview process.

5. We trust that this information will assist the Ad Hoc Committee in its deliberations.

Yours faithfully

David Lewis
Executive Director of Corruption Watch
[Unsigned due to electronic submission]

SHARISE WEINER

EXECUTIVE SUMMARY

Weiner is currently a Judge of the High Court and previously a senior advocate, with bar admissions in Lesotho, England and Wales. While in practising her areas of specialisation have been in corporate law. She is extensively involved in legal training, including internationally. Weiner also served as a part-time Commissioner for the CCMA. Weiner has not made a large number of judgements directly relevant to the role of the Public Protector, but has made rulings against abuses of power, as well as findings that support freedom of expression and showing concern with the impact of sexual violence. The majority of Weiner's judgements have been handed down timeously in terms of the judicial norms and standards. A discrete intelligence report reveals that Weiner has a single active business interest in a community based organisation and presents no concerning risk indicators.

QUALIFICATIONS

Qualification	Institution	Year
BA	University of Witwatersrand	1975
LLB	University of Witwatersrand	1977

CAREER PATH

Name of employer	Position	Period
Self-employed	Advocate at the Johannesburg Bar	1978-2011
The Judiciary	Judge	2011-current

PROFESSIONAL AND PERSONAL CONDUCT

No available information

Known political affiliation	No available information
Professional outputs	See Appendix A

SIRAJUDIEN DESAI

EXECUTIVE SUMMARY

Desai is an experienced High Court Judge. He worked as an attorney for AM Omar, South Africa's first post – apartheid Minister of Justice. Desai is the former chairperson of the National Council for Correctional Services where he served for 14 years. In 1996 he took up the position of deputy chairperson of the Foundation for Human Rights in South Africa. Between 1991 and 1995 he was the chairperson of the ANC Woodstock Branch. Desai is the founding member of the National Association of Democratic Lawyers. He is also a council member of the Cape University of Technology and board member of District Six Museum. A discrete intelligence report reveals that Desai has a single active business interest in a civil society organisation and presents no concerning risk factors.

QUALIFICATIONS

Qualification	Institution	Year
Bachelor Arts and Bachelor of Laws	University of Durban	1976
Admitted as an Advocate	High Court	1981
Appointed as a Judge	High Court	1995

CAREER PATH

Name of employer	Position	Period
Cape Bar	Advocate	Since 1995
Mr Essa Moosa	Served as a Clerk	1981-1995
Mr AM Omar	Served as an attorney	Unknown
National Council for Correctional Services	Chairperson	Unknown
Foundation for Human Rights	Deputy Chairperson	1996-current
ANC Woodstock Branch	Former Chairperson	(1991-1995)
National Association of Democratic Lawyers	Founding member	Unknown
Cape University of Technology	Council member	Unknown
District Six Museum	Board member	Unknown

PROFESSIONAL AND PERSONAL CONDUCT

Judge Desai was sued and reported to the JSC by Oasis for comments he made in public regarding the company and its property investments in Woodstock. The matter however focussed more on the conduct of Judge President Hlophe in allowing Oasis (a company for whom he was a consultant) to proceed with the lawsuit against Judge Desai.

> Oasis sued Judge Siraj Desai for alleged defamation over remarks he made at a public meeting. Hlophe, who was a paid consultant for Oasis, controversially gave the group the permission it needed to sue Desai.

> However, Desai argued that Hlophe did not have the authority to decide on the prosecution as he was compromised because of his relationship with Oasis. By Hlophe's own admission he received monthly payments, first of R10 000 and later of R12 500, from Oasis as a trustee of an Oasis-administered retirement fund. The payments totalled R467 000 over a period of more than three years."[1]

During the controversy Judge Desai was reported to the JSC by the Pan-Africanist Congress chairperson in Gauteng, Thami ka Plaatjie, for 'lacking the required character on the bench':

> **Complaint against Judge Siraj Desai at JSC**

'A Cape High Court judge involved in a defamation lawsuit that could sink his own judge president has been reported to the Judicial Service Commission (JSC), the *Saturday Star* reported. Judge Siraj Desai has been reported to the JSC by the Pan-Africanist Congress chairperson in Gauteng, Thami ka Plaatjie, who claimed Desai did not have the "impeccable character" needed in a judge. Plaatjie raised three issues in his complaint last Friday to the JSC's chairperson, chief justice Pius Langa. The first relates to Desai's conduct in Mumbai in 2004, when he was accused of raping a South African Aids activist during the World Social Forum. A court later found that the sex had been consensual. Plaatjie noted that Desai had reportedly denied the incident at first. Plaatjie questioned the judge's morality, and why he had sex with a married woman. The second complaint relates to an alleged row in the Cape High Court judges' common room in April 2006. Desai reportedly confronted Judge John Foxcroft, who had blamed him for attacks on judge president John Hlophe in the media. Plaatjie wanted to know whether Desai had difficulty "controlling his temper".

The third complaint related to the defamation suit brought by the Oasis property company against Desai for allegedly defamatory remarks he made at a public meeting held to discuss a property development. Plaatjie said that the same principle that applied to complaints against Hlophe should apply to Desai. The JSC is considering complaints against Hlophe which might result in his impeachment. Plaatjie denied that his complaint was part of an Africanist campaign against Desai.

> "All judges are open to scrutiny by the public. This is not witch-hunting. The same scrutiny that the judge president is subjected to, surely other people should face the same scrutiny?" Plaatjie said. For his part, Desai said: "A very dirty war is being waged against me. I shall defend myself at each phase at it comes up."'[2]

Rape Allegations

[1] http://mg.co.za/print/2007-09-27-who-will-judge-the-judges
[2] http://mg.co.za/article/2007-05-12-complaint-against-judge-siraj-desai-at-jsc

Judge Desai was accused of raping a South African woman, Mrs Salomé Isaacs, whilst attending a conference in India in 2004.[3] Mrs Isaacs later withdrew the charges. The following was published in the 2003 Annual Survey of South African Law regarding the incident: [4]

> "The saga spawned an intense debate, which raised a crucial issue about the relationship between private conduct and fitness for judicial office. This debate proceeds, as it must, on an acceptance that Mr Justice Desai was innocent of rape. Ordinarily, one would say that no issue therefore arises. After all, he was acquitted of wrongdoing. A dissenting view emerged from an unexpected quarter. Former Deputy Judge President of the Witwatersrand Local Division of the High Court, Mr Justice H C J Flemming, wrote to the *Sunday Times* on the issue. He stated:
>
> > 'On February 1, the Sunday Times published prominently a letter from an advocate pleading that Judge Seraj Desai's adultery was a mere private matter. This misses important aspects.
> >
> > 'Firstly, many forms of "private" behaviour are so unbecoming for a judge that they cause loss of respect for the judge concerned and, importantly, for the Bench. The many private discussions about the Desai affair underscored that point. It is similar to a judge who is secretly a member of organisations, or who finds his friends only in the gangster community. Even if adultery is "private", there is still adequate reason to consider the appropriateness of Judge Desai resigning.

'Secondly, it is unacceptable to administer justice on the basis of "Do as I say, not as I do". In this specific case a judge, a protector of rights, breached the acknowledged rights of his own wife and those of Mark Isaacs. He has lost the right to be a credible flag bearer of the need to observe the law and good morals — as is expected of a judge.

'Thirdly, I have seen no denial of statements by the Indian police, who would hardly choose to fabricate on the point, that when the police confronted the judge, he claimed that nothing happened between him and Salomé Isaacs other than that they had had drinks. That seems to have been a lie because Desai's later statement admitted that sex did take place. The word of any judge should be beyond doubt.

'How can someone who has so lied perform the task of assessing the credibility of witnesses? Witnesses' evidence is often rejected even when the witness lied because he thought it would help or protect him, or the witness admitted some truth only after being confronted by "real evidence". (A condom held in possession would be "real evidence.")

'Assuming that there was no rape, the case for resignation is such that it is surprising that those who conferred with Judge Desai did not request resignation but only demanded that he take three months' paid leave. Until after the election? Or until after the rape trial, even though an acquittal will neither determine in civil law whether there was rape, nor avoid the proprieties I have mentioned.' (Sunday Times 15 February 2004.)This damning indictment is especially pointed coming from a senior retired member of the judiciary. The moral opprobrium Mr Justice Flemming imputes seems outdated. His more important charge is of untruthfulness. Did Mr Justice Desai change his version? Did

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[3] THE TIMES OF INDIA, 22 January 2004, available at http://timesofindia.indiatimes.com/india/Rape-victim-withdraws-charge/articleshow/439909.cms

[4] The Annual Survey of South African Law 2003, Dennis Davis, Gilbert Marcus and Jonathan Klaaren, page 974 onwards.

he do so because Mrs Isaacs was said to have had an evidentiary condom? Had appropriate structures for inquiring into judges' conduct existed, this would have been an issue that may have merited their attention. Perhaps the Judicial Service Commission should in any event have given it its consideration.

Known political affiliation	African National Congress
Professional outputs	See Appendix B

MAMIKI GOODMAN (nee SHAI)

EXECUTIVE SUMMARY

Goodman is the Executive Manager at the National Gambling Board of South Africa. She obtained a BPROC, LLB and LLM from the University of South Africa. Goodman was previously employed as Deputy Public Protector from 2005-2012. She applied for the position of Public Protector in 2009 but was unsuccessful. A discrete intelligence report reveals that Goodman has no active business interests and no concerning risk indicators have been identified.

QUALIFICATIONS

Qualification	Institution	Year
BPROC	UNISA	1987
LLB	UNISA	1999
Masters of Laws: International Economic Law (LLM)	UNISA	2011

CAREER PATH

Name of employer	Position	Period
Standard Bank of South Africa	Ledger Clerk	1986-1987
Phosa Mojapelo Attorneys	Candidate Attorney	1989-1990
Tholi Vilakazi Attorneys	Administrator	1990-1992
Public Defender's Office	Public Defender	1993-1998
Mike Langa Attorneys	Managing Director	1998-1999
Mamiki Shai Attorneys	Managing Director	1999-2001
Gauteng Department of Education	Head of Legal Services	2001-2003
	Divisional Manager – Support and Liaison services	2003-2004
National Department of Science and Technology	Chief Legal Advisor	2004-2005
Public Protector South Africa	Deputy Public Protector	2005-2012
National Gambling Board	Executive Manager: Chief Compliance Officer	2015-2016

PERSONAL AND PROFESSIONAL CONDUCT

Whilst serving as the Deputy Public Protector, Goodman accused former Public Protector, Lawrence Mushwana of sexually harassing her and other female colleagues. Mushwana refuted the claims and noted that Goodman started

the allegations after he had reprimanded her about her work and unnecessary expenses.[5] An Ad Hoc Committee established on Operational Problems in the Office of the Public Protector noted that Goodman's claims were "unsubstantiated". [6]

In 2012, Goodman requested Parliament to investigate the current Public Protector, Thuli Madonsela and former CEO of the OPP, Themba Mthethwa. Madonsela was accused of protecting Mthethwa after he allegedly forged Goodman's signature in order to pay himself a performance bonus. Goodman opened a case of fraud with the police's commercial unit, but Madonsela allegedly wanted Goodman to withdraw the charges because of the embarrassment the publicity would cause Madonsela and the office.[7] She also accused Madonsela of withholding a report on the DA-led Midvaal Municipality until after the local government polls. Parliament's Justice Portfolio Committee labelled Goodman's allegations as "office politics" and noted that she "has not been a happy camper" during her tenure as Deputy Public Protector.[8]

It is interesting to note that Goodman did not list the above conduct in her response to the formal questionnaire that candidates were required to answer when applying for the position of Public Protector.

Known political affiliation	No available information
Professional outputs	No available information

[5] http://www.iol.co.za/news/south-africa/protector-hits-back-after-harassment-claims-285705
[6] https://pmg.org.za/committee-meeting/8002/
[7] http://mg.co.za/article/2012-11-16-00-public-grilling-for-thuli-madonsela
[8] http://www.bdlive.co.za/national/2012/11/27/shai-struggles-to-support-madonsela-allegations-in-parliament

NONKHOSI PRINCESS CETYWAYO

EXECUTIVE SUMMARY

Cetywayo is currently employed as the Sheriff of the Bellville High Court. She holds a BA and LLB from the University of Cape Town and various project management diplomas, as well as a Masters of Commerce in Project and Programme Management. Cetywayo's CV notes that she is an Advocate of the High Court, however it provides no details as to when and where she was admitted as an advocate and does not seem to have practiced at any specific stage. A discrete intelligence report reveals that Cetywayo has no active business interests and no concerning risk indicators have been identified.

QUALIFICATIONS

Qualification	Institution	Year
BA	University of Cape Town	1991
LLB	University of Cape Town	1994
Advanced Diploma in Project Management	Cranefield of Project Management	2001
Post Graduate Diploma in Project and Programme Management	Cranefield of Project Management	2002
Masters: Commerce in Project and Programme Management	Cranefield of Project Management	Current

CAREER PATH

Name of employer	**Position**	**Period**
Parliament of the Republic of South Africa Constitutional Assembly	Committee Manager and later Assistant Legal Advisor	1994-1996
Parliament of the Republic of South Africa	Researcher	1996-1997
Department of Justice and Constitutional Development	Regional Head	1997-2005
Parliament, Speaker of National Assembly Office	Executive Director	2006-2008
Presidency	Special Strategic Advisor to the Deputy President	2008-2009
Department of Corporate Governance and Traditional Affairs	Special Strategic Advisor to the Minister	2010
Parliament of the Republic of South Africa	Head of the Office on Institutions Supporting Democracy	2010-2014

Department of Justice and Constitutional Development	Sheriff for the High Court: Bellville Magisterial District	2014-current

PROFESSIONAL OR PERSONAL CONDUCT

No available information

Known political affiliation	African National Congress
Professional outputs	No available information

NARNIA BOHLER-MULLER

EXECUTIVE SUMMARY

Prof Bohler-Muller is currently the Executive Director of the Human Science Research Council. She obtained a B Juris, LLB and LLM from the University of Port Elizaneth and a LLD from the University of Pretoria. Bohler-Muller was the official BRICS country representative from 2013-2015 and is a NRF rated academic with significant research output. A discrete intelligence report reveals that Bohler-Muller has no active business interests and no concerning risk indicators have been identified.

QUALIFICATIONS

Qualification	**Institution**	**Year**
BJURIS	University of Port Elizabeth	1993
LLB	University of Port Elizabeth	1995
LLM	University of Port Elizabeth	1999
LLD	University of Pretoria	2006

CAREER PATH

Name of employer	**Position**	**Period**
Times Media	Junior reporter on contract	1993
UPE	Contract Lecturer	1995
Vista University	Lecturer and Professor of Law	1996-2003
NMMU	Professor of Law	2003-2010
AISA	Director of Social Science Research	201Dor1
HSRC	Deputy Executive Director and Executive Director	2012 -2016

PROFESSIONAL AND PERSONAL CONDUCT

No available information

Known political affiliation	No available information
Professional outputs	**2015** Co-authored with Sarah Chiumbu and Vasu Reddy “Discursive construction of constitutional jurisprudence

	and socio-economic rights in two Constitutional Court cases" (submitted to *Law and Society* November 2015) Co-authored with Sarah Chiumbu and Vasu Reddy "Framing of socio-economic rights in South African newspapers" (submitted to *Journal of African Media Studies* March 2015) Co-authored with Barwa Kanyane, Nedson Pophiwa and Jakes Dipholo "Life after Judgment: Re-visiting the Nokotyana case on the provision of water and sanitation" (submitted to *Politiea* March 2015) Co-authored with Ben Roberts et al *"In the court of public opinion: Trust in criminal justice in South Africa"* (in progress, to be submitted *Social Indicators Research)* **2013** Co-authored with Charl van der Merwe "Digital Communication, Democracy and Active Citizen Engagement in South Africa" 2013 43(3) *Africa Insight* 115 "Reparations for Apartheid-Era Human Rights Abuses: The Ongoing Struggle of *Khulumani* Support Group" 2013 (1) *Speculum Juris* 1 **2010** "The Strange Alchemy of the Judge and the Blue Dress" (25) *South African Public Law* 152 "The Justice of the heart in Little Brother" *ESLJ* vol. 7 nr 2 (*Entertainment and Sports Law Journal*, Warwick University) **2009** Co-authored with Jana Milne "Rethinking the State's Duty to Protect and Uphold the Right to Life in a Criminal Justice Context" (30:2) *Obiter* 307-327 **2008** "On a Cosmopolis to Come" (17:4) *Social and Legal Studies: An International Journal* 559-571 "*Against Forgetting: Reconciliation and Reparations After the Truth and Reconciliation Commission*" (19:3) *Stellenbosch Law Review* 466-482 12 **2007** The Challenges of Teaching Law Differently: Tales of Spiders, Sawdust and Sedition" (41:1) *The Law Teacher* 50-67

	"Beyond Legal Metanarratives: The Interrelationship between Storytelling, Ubuntu and Care" (18:1) *Stellenbosch Law Review* 133-160 "Judicial Deference and the Deferral of Justice in regard to Same-sex Marriages and in Public Consultation" (40:1) *De Iure* 90-112 "On Desire, Transcendence and Sacrifice" (18:2) *Law and Critique* 253-274 "Western Liberal Legalism and its Discontents: A Perspective from Post-apartheid South Africa" (3) *Socio-Legal Review* 1-27 "Some Thoughts on the Ubuntu Jurisprudence of the Constitutional Court" (28:3) *Obiter* 590-599 **2006** "The Promise of Equality Courts" (22:3) *South African Journal of Human Rights* 380-403 "The Law of the Father, Emotions and Equilibrium" (21:2) *South African Public Law* 299-314 "Justice as Breath(ing)" (4:4) *International Journal of the Humanities* 25-34 **2005** "Fragile Connections?" (14:1) *Griffith Law Review* 61-90 Co-authored with AM Tait "Encountering the Rule Cabbage" (1) *Ratio* 37-39 "When Things Fall Apart: Ethical Jurisprudence and Global Justice" (20:1) *South African Public Law* 29-41 "The Story of an African Value" (20:2) *South African Public Law* 267-282 **2004** "On the Deconstructibility of the Law from a South African Perspective" (25:1) *Obiter* 164-175 **2003** "The Pro's and Con's of Prostitution: A Feminist Perspective" (24.1) *Obiter* 194-202 **2002** "Drucilla Cornell's 'Imaginary Domain': Equality, Freedom and the Ethic of Alterity in South Africa" (65:2) *Journal of Contemporary Roman Dutch Law/Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 166 "Constitutionalism and Cultural Diversity in South Africa: Images from 'Miss Helen's' World" (17) *South African Public Law* 71 – 84

	"Other Possibilities? Postmodern Feminist Legal Theory in South Africa" (18) *South African Journal of Human Rights* 614-629 "Really Listening? Women's Voices and the Ethic of Care in Post-colonial Africa" (54) *Agenda* 86-92 **2001** "Valuable Lessons from Namibia on the Combating of Rape" (14:1) *South African Journal of Criminal Justice* 71 Cultural Practices and Social Justice in a Constitutional Dispensation: Some (More) Thoughts on Gender Equality in South Africa" (22:1) *Obiter* 142 **2000** "Of Victims and Virgins: Seduction Law in South Africa" (41-2) *Codicillus* 1 "Equality Courts: Introducing the Possibility of Listening to Different Voices in South Africa" *Journal of Contemporary Roman-Dutch Law/Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 288 "The Discourse of Pornography: A Feminist Perspective" *Obiter* 167 "The Transformation of Education with Specific Reference to Law Students at an Historically Disadvantaged Tertiary Institution" (14:1) *VITAL* 29-45 "The Ghost of the Law: In Search of Justice (and/or Vengeance)" *Journal of Contemporary Roman-Dutch Law/Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 683 "What the Equality Courts Can Learn from Gilligan's Ethic of Care – A Novel Approach" (16) *South African Journal of Human Rights* 623 Co-authored with M-J "Access to Children Born out of Wedlock – A Narrative Approach" (25:2) *Journal of Juridical Science* 73 Co-authored with AM Tait "The Equality Courts as a Vehicle for Legal Transformation -–A Few Practical Suggestions" (21:2) *Obiter* 406 **1999** "Eating the Forbidden Fruit: The Morality of Police Trapping Practices" (40-2) *Codicillus* 2 "Lead Us Not Into Temptation: The Criminal Liability of the Trappee Revisited" *South African Journal of Criminal Justice* 317 Co-authored with I Van der Spuy "Caught in a Trap: A Psycho-legal Exploration of Police Entrapment" *Obiter* 327

	1996 Co-authored with WB Le Roux “Using (Our) Imagination: The Relationship between Storytelling, Parenthood and the law” in *Language in Court* 182-190 14

MUVHANGO LUKHAIMANE

EXECUTIVE SUMMARY

Lukhaimane is currently serving as the Pension Funds Adjudicator. She is admitted as an Advocate of the High Court and obtained various qualifications such as a B Iuris, LLB, LLM, as well as an MBA. Lukhaimane has a background in dealing with pension funds and was previously employed at the Eskom Pension and Provident Fund, Sanlam Employee Benefits and Liberty Personal Benefits. She was promoted to the post of PFA by Pravin Gordhan after serving one year as deputy adjudicator and has been commended for clearing the backlog of complaints at the Office of the Pension Funds Adjudicator in 15 months. A discrete intelligence report reveals that Lukhaimane has no active business interests and presents no concerning risk factors.

QUALIFICATIONS

Qualification	**Institution**	**Year**
B IURIS	University of Venda	1989-1992
LLB	University of Pretoria	1993-1994
LLM in Constitutional Law	UNISA	1995-1997
Postgraduate Diploma in Management Studies	Buckinghamshire Chilterns University College	1999-2000
Postgraduate diploma in Financial Planning	University of the Free State	2001-2002
Certificate in Compliance Management	University of Cape Town	2003
MBA	WITS Business School	2011-2013

CAREER PATH

Name of employer	**Position**	**Period**
University of Venda	Lecturer	1995-2000
Sanlam Employee Benefits	Research Consultant	2000-2001
	Legal Advisor	2001-2002
Liberty Personal Benefits	Legal Consultant	2002-2003
Eskom Pension and Provident Fund	Principal Officer (later named Legal Manager)	2003-2005
State Security Agency	General Manager Research	2005-2007

	General Manager HR	2007-2011
	Chairperson – Intelligence Services Council	2011-2012
Office of the Pension Funds Adjudicator	Deputy Pension Funds Adjudicator	2012-2013
	Pension Funds Adjudicator	2013-current

PROFESSIONAL AND PERSONAL CONDUCT

Lukhaimane is noted to have improved efficiencies and turn-around times of complaints lodged to the OPFA and has been commended for wiping out the historical backlog of complaints received, which was a first since the OPFA was established 17 years ago. When Lukhaimane was appointed as the Deputy Pension Funds Adjudicator, The Financial Mail noted: "she may be called the deputy pension funds adjudicator now, but unless Muvhango Lukhaimane does something embarrassing, she will be the new pension funds adjudicator before the year is out. Lukhaimane has a different style from those who will have been her predecessors; unlike Vuyani Ngalwana, she is not there to brush her credentials to be considered a great jurist and unlike Mamodupi Mohlala she is happy to stay in the background. The relationship with stakeholders such as pension lawyers and administrators is substantially better under her."[9] The following statement was made about Lukhaimane in the Personal Finance magazine: "The pension lawyer fraternity uses words like "driven" and "hard-working" to describe Muvhango Lukhaimane, the fifth Pension Funds Adjudicator. Bringing to the job an unusual blend of legal and human resources skills and a no-nonsense approach to work, Lukhaimane has proved herself worthy of the job in the eyes of the Finance Minister, Pravin Gordhan. He appointed her deputy adjudicator in June 2012, but after just one year in office promoted her to the post of adjudicator."[10]

Known political affiliation	No available information
Professional outputs	No available information

[9] http://www.financialmail.co.za/fm/2012/10/17/pension-funds-adjudicator
[10] http://www.iol.co.za/business/personal-finance/retirement/hard-work-fair-play-1685295

KEVIN SIFISO MALUNGA

EXECUTIVE SUMMARY

Malunga is currently the Deputy Public Protector. He obtained a BA Law Degree from the University of Swaziland. LLB from the University of Natal, LLM from Georgetown University and is a candidate for a Doctor of Juridical Science from the University of Wisconsin. Malunga was appointed as an Advocate of the High Court in 2005 and previously served as the Acting Chief of Staff in the Office of the Chief Justice. A discrete intelligence report reveals that Malunga has a single active business interest in an organisation called Mbube Consulting. The business status of Mbube Consulting is "AR Final Deregistration" which means that the organisation has not submitted its annual returns within the prescribed time periods and has been deregistered by the Companies and Intellectual Properties Registration Office. According to the discrete intelligence report, Malunga has no concerning risk factors.

QUALIFICATIONS

Qualification	**Institution**	**Year**
BA Law	University of Swaziland	1998
LLB	University of Natal	2000
LLM	Georgetown University	2002
Doctor of Juridical Science Candidate	University of Wisconsin	2006/7 (incomplete)

CAREER PATH

Name of employer	**Position**	**Period**
Coopers and Lybrand	Audit Clerk	1993
Save the Children Fund	Researcher-Analysis of laws protecting children affected/infected by HIV in SA	2000-2001
Georgetown University Law Centre, Washington D.C	Fellow	2001-2002
University of Natal	Lecturer in Law	2001-2003
UNAIDS	Researcher: Domestic laws affecting affecting HIV vaccine trialists: Country Assigned: Ethiopia	2003-2004
University of the Witwatersrand	Lecture in Law	2004-2009
High Court of South Africa	Advocate	2005-current

University of Wisconsin-Madison,USA	Visiting Scholar	2006-2007
South African Institute of Chartered Accountants(SAICA)	Examiner for Company Law and Mercantile Law	2007-2010
Black Lawyers Association Legal Education Centre	Trustee, Member, Finance Committee, Instructor	2009-2011
Ntsebeza Legal Team	Member	2009-2010
Mbube Consulting CC	Executive Director	2009-2010
Association of Personnel Service Organisations	Manager-Legal, Ethics and Compliance	2010-2011
South African Qualifications Authority(SAQA)	Board Member Chairperson: Foreign Qualifications Committee Member: Audit Committee Member: Career Advice Services Committee Other board responsibilities as allocated	2010-2015
Office of the Chief Justice (Then a part of the Department of Justice and Constitutional Development)	Aide and Researcher to the Committee on Institutional Models, Acting Chief of Staff	2011-2012
Department of Justice and Constitutional Development	State Law Adviser-Policy Coordination and Monitoring Spokesperson: Marikana Judicial Commission of Inquiry	2012
Public Protector South Africa	Deputy Public Protector of the Republic of South Africa	2012-current

PROFESSIONAL AND PERSONAL CONDUCT

A recent report in the Business Day alleges that Malunga was dismissed from the Wits Law School for failing to complete his probationary period as a lecturer, and that Malunga failed to disclose this to the committee established to appoint the new Public Protector. Lecturers are placed on probation for a period of three years, extendable for a further four, during which time they must have their work published in a recognised law journal. Malunga, however, was unable to complete this requirement and was forced to leave.[11]

[11] http://www.bdlive.co.za/national/2016/07/29/the-crucial-omission-that-could-scupper-kevin-malunga-s-ambition-to-succeed-his-boss-thuli-madonsela

The Business Day further noted: “In 2009, Malunga told Business Day that "a formal hearing (for Hlophe), with cross-examination", would be futile as it was "ultimately a case either of hearsay, or one judge’s word against another".

In a letter to Legal Brief — a daily publication covering legal news — the then head of the law school, Angelo Pantazis, distanced the school from Malunga’s comments, saying they were incorrect. "The law, as stated by Mr Malunga, is not the law we teach at Wits Law School."

In 2009, Malunga also expressed support for former president Kgalema Motlanthe’s decision to axe Vusi Pikoli as national director of public prosecutions, saying it was "a political decision and must be respected as such". Later in 2009, when President Jacob Zuma appointed Sandile Ngcobo as chief justice and overlooked then deputy chief justice Dikgang Moseneke, Malunga said "the appointment also shows that law and politics can never be separated". In 2011, when Zuma’s appointment of Menzi Simelane as national director of public prosecutions was declared invalid, Malunga rushed to the president’s defence. He characterised it as a "wake-up call" about the "inadequate" nature of the legal advisers surrounding Zuma, rather than any failing on the latter’s part.”

In 2009, Malunga distanced himself and the rest of the OPP from the views expressed by Thuli Madonsela. Malunga noted “there is a certain decorum with regards to how we handle the ¬institution we report to". Malunga wrote to the Parliamentary Portfolio Committee distancing himself from Madonsela’s views. "The spirit of my correspondence is that we must respect Parliament, of course, not suck up to it," Malunga said. "I have a view based on the law. Section 181 (5) of the Constitution. We have to account to Parliament. We can't be a law unto ourselves."

Known political affiliation	No available information
Professional outputs	No available information

BONGANI MAJOLA

EXECUTIVE SUMMARY

Professor Majola is an Advocate of the High Court and former member of the Johannesburg Bar Council. He obtained a Masters of Law degree from Harvard Law School in 1988 and has previous experience as the National Director for the Legal Resources Centre. He occupied the post of Dean of the Law Faculty at the University of Limpopo. Majola was appointed as the deputy chief prosecutor at the United Nations International Criminal Tribunal for Rwanda (UNICTR) in 2003 and was subsequently promoted to Assistant Secretary General of the UN and Registrar of the UNICTR in 2013. Majola was nominated for the position of Public Protector in 2002, but declined the nomination. A discrete intelligence report reveals that Majola has an active business interest in an organisation called Safer South Africa Foundation, and does not have any concerning risk factors.

QUALIFICATIONS

Qualification	**Institution**	**Year**
Public Service Law Diploma	University of Zululand	1975
Diploma Legum	University of Zululand	1977
B Iuris	University of Zululand	1979
LLB	University of Zululand	1981
LLM	Harvard Law School	1998

CAREER PATH

Name of employer	**Position**	**Period**
Department of Bantu Administration	Clerk of the Court	1971-1974
KZN Department of Justice	Public Prosecutor	1975-1977
KZN Department of Justice	District Magistrate	1977-1979
University of Zululand	Lecturer/Magistrate	1979-1982
University of Bophuthatswana	Senior Lecturer / Associate Professor	1982-1988
University of the North	Professor of Law	1989-1996
Legal Resources Centre	National Director	1996-2003
UN International Criminal Tribunal for Rwanda	Deputy Chief Prosecutor	2003-2012
UN International Criminal Tribunal for Rwanda	Assistant Secretary – General and Registrar	2013-2015

PROFESSIONAL AND PERSONAL CONDUCT

In his disclosure to Parliament, Majola noted that in 2014 he was investigated by the Office of Internal Oversight, based in Nairobi as a result of a complaint lodged by a whistle-blower within the United Nations Secretariat. The purpose of the investigation was to collect facts and evidence to enable the Secretary-General to determine whether Majola had committed any violation of the UN rules, and if so, whether disciplinary charges should be lodged against him. The result was that the case was closed as no wrongdoing was found.

Known political affiliation	No available information
Professional outputs	Chapter titled Cumulative Charges under International Criminal Law, in the book, Promoting Accountability under International Law for Gross Violations

WILLIAM HOFMEYR

EXECUTIVE SUMMARY

Hofmeyr is currently the Deputy National Director of Public Prosecutions. He obtained a Bachelor of Arts in Economics, MA in Economic History and a LLB from the University of Cape Town. Hofmeyr was previously the Head of the Asset Forfeiture Unit (AFU), as well as the Special Investigating Unit. He also served as a Member of Parliament for the African National Congress and was part of the Constitutional Assembly that was involved in drafting the final South African Constitution. A discrete intelligence report found that Hofmeyr does not have any active business interests. Given his present position Hofmeyr is flagged on the World Check database of Politically Exposed Persons and heightened risk individuals and organisations for possibly causing heightened financial, regulatory and reputational risk.

QUALIFICATIONS

Qualification	**Institution**	**Year**
BA (Economics)	University of Cape Town	1974-1976
MA (Economic History)	University of Cape Town	1977-1985
LLB	UNISA University of Cape Town	1983-1984 1985-1989
Completed articles for admission as an attorney	Law Society, Cape of Good Hope	1989-1991

CAREER PATH

Name of employer	**Position**	**Period**
Metropolitan Life Assurance	Actuarial Student	1977-1984
United Democratic Front, Western Cape	Western Cape Executive Member responsible for media and campaigns, also acting as treasurer for most of the period. Worked fulltime but unpaid while studying law at UCT	1986-1989
Mallinick Richman Ress & Closenberg Attorneys	Candidate attorney (still serve on UDF Executive)	1989-1991
African National Congress, Western Cape	Campaign organiser. Worked fulltime but unpaid	1991-1992
ANC Western Cape	Assistant Secretary on Western	1992-1994

	Cape Executive – full time paid Position	
Parliament	Member of Parliament for ANC	1994-1999
Parliament	Parliamentary counsellor to Deputy President Mbeki	1998-1999
National Prosecuting Authority	Special Director of Public Prosecutions (Head of Asset Forfeiture Unit)	1999-2001
Special Investigating Unit	Head	2001-2011
National Prosecuting Authority	Deputy National Director of Public Prosecutions (Head: Asset Forfeiture Unit)	2001-2015
National Prosecuting Authority	Deputy National Director of Public Prosecutions (Head: Legal Affairs Division)	2015-current

PROFESSIONAL AND PERSONAL CONDUCT

The NPA's annual report for 2014/2015 mentions that the Asset Forfeiture Unit (AFU), under Homeyr's leadership, warranted a special mention, with the best overall performance recorded. Most noteworthy included:

- An overall success rate of 93.1%;
- 436 completed forfeiture cases, with a value of R1.9-billion;
- 342 freezing orders to the value of R2.7-billion;
- Freezing orders to the value of R2.2-billion and recoveries of R1.5-million, relating to cases where the amount benefited from corrupt activity was more than R5-million;
- R1.6-billion paid to the victims of crime; and
- R11.1-million recovered in cases where government officials were convicted of corruption and other related offences.

Media reports have alleged that Hofmeyr played a central role in dropping corruption charges against President Jacob Zuma. He is said to have been the only key NPA figure to have advocated for dropping the charges. [12] Hofmeyr's sudden exit from the AFU in 2015 is said to have been a result of his support for former National Director of Public

[12] http://www.news24.com/SouthAfrica/Politics/Mbeki-abused-NPA-Hofmeyr-20150331

Prosecutions, Mxolisi Nxasana.[13] Hofmeyr was also removed as the Head of the SIU in 2011 due to him allegedly assisting the Public Protector's investigation involving cabinet ministers and the former national police commissioner, Bheki Cele.[14]

Known political affiliation	African National Congress
Professional outputs	No available information

[13] http://www.dailymaverick.co.za/article/2016-02-02-npa-willie-hofmeyrs-affidavit-spells-trouble-for-jiba-and-abrahams/#.V3u-rPl96Uk

[14] http://www.news24.com/SouthAfrica/Politics/Why-replace-Hofmeyr-opposition-asks-20111129

JILL OLIPHANT

EXECUTIVE SUMMARY

Oliphant is currently a shareholder and director of DMO Incorporated. Oliphant has a legal and financial background, and has been involved in various cases of due diligence and forensic investigations for public entities, financial institutions and the Asset Forfeiture Unit. She is an admitted attorney of the High Court and is currently completing her Masters in Business Administration at Regenesys Business Schools. Oliphant co-authored a book, titled *Management's Daly's Guide to Corporate Law*, to assist businessmen in understanding the Companies Act. In her CV, she notes her involvement in the drafting of the Legislation for Business Rescue, as well as, initiating the process for the formation of the Association of Business Administrators of South Africa. A discrete intelligence report reveals that Oliphant has nine active business interests. The report does not reveal any concerning risk indicators.

QUALIFICATIONS

Qualification	**Institution**	**Year**
BPROC	UNISA	1993
Masters of Law (specialisation in commercial law)	UNISA	2005

CAREER PATH

Name of employer	**Position**	**Period**
Nedbank	Administration clerk	1988-1990
PERM	Administration clerk	1990-1995
DMO Attorneys	Director and Shareholder	1995-current

PROFESSIONAL AND PERSONAL CONDUCT

According to her disclosure to Parliament, in 2012, Oliphant was banned from Sun City Resort and Casino. Oliphant refused to sign a statement by the Sun City management which noted that Oliphant had taken a cell phone that did not belong to her. Oliphant refused, she alleges to have found the cell phone and handed it in to the lost and found department, and did not steal the item.

Known political affiliation	No available information
Professional outputs	No available information

MICHAEL MTHEMBU

EXECUTIVE SUMMARY

Mthembu is an advocate of the High Court. He obtained a B Proc and LLB from the University of KwaZulu-Natal. He was admitted as an attorney of the High Court in 1981, and subsequently admitted as an advocate of the High Court in 2002. He was previously employed as an acting judge in the Eastern Cape and served as the commissioner of the Broadcasting Complaints Commission of South Africa (BCCSA). Mthembu is also a judge in the Electoral Court, having been appointed for a six-year term in 2011. He previously applied for the position of public protector but was unsuccessful. A discrete intelligence report reveals that Mthembu has two active business interests and two judgements recorded in his credit record which are significant in quantum and concerning risk indicators. The one judgement is for R38 329 in favour of Nedbank Limited and the second judgement is for R216 389 in favour of SARS.

QUALIFICATIONS

Qualification	**Institution**	**Year**
BPROC	UNISA	1978
LLB	UNISA	1991
Certificate in Mediation	University of Natal	1997
Certificate in Diplomacy and Diplomatic TRA	Unknown	1993

CAREER PATH

Name of employer	**Position**	**Period**
Self-employed	Practicing attorney	1981
Self-employed	Advocate	2002
Eastern Cape High Court	Acting Judge, Acting Judge President	1997-2009
BCCSA	Commissioner	2001
KZN Magistrates Court	Regional Court Magistrate	2005-present
Tax Appeals Tribunal- KwaZulu Natal	Commissioner	2009
Small Claims Court	Judge	1987-1997
KZN Tender Appeals Court	Member	2002
University of Natal	Senior Lecturer	1999
Electoral Court	Judge	2011-current

PROFESSIONAL AND PERSONAL CONDUCT

Mthembu was the defendant in two matters in the Durban High Court:

- The plaintiff in the first matter was Nedbank Limited and involved an amount of R38 329,43.
- The Plaintiff in the second matter was the South African Revenue Service and involved an amount of R216 389,00.

Known political affiliation	No available information
Professional outputs	No available information

BUSISIWE MKHWEBANE

EXECUTIVE SUMMARY

Mkhwebane is currently the Director of the Country Information and Cooperation Management Unit for the Department of Home Affairs. She obtained a B Proc and LLB from the University of the North and a Diploma in Corporate Law and a Higher Diploma in Tax Law from the University of Johannesburg. Mkhwebane is an advocate of the High Court and previously worked in the Office of the Public Protector for a period of seven years during which time she was mainly a senior investigator but ultimately rose to the position of acting provincial head. In her other positions she has largely focussed on immigration issues having worked for the Department of Home Affairs and the South African Embassy in China in senior positions. A discrete intelligence report revealed that Mkhwebane has seven active business interests and does not have any concerning risk indicators.

QUALIFICATIONS

Qualification	**Institution**	**Year**
BPROC	University of Limpopo	1989-1992
LLB	University of Limpopo	1993-1994
Corporate Law Diploma	University of Johannesburg	1997
Tax Law Diploma	University of Johannesburg	2001-2002
MBL	UNISA	2008-2010

CAREER PATH

Name of employer	**Position**	**Period**
State Security Agency	Analyst	2016
Department of Home Affairs	Director	2014-2016
SA Embassy in China	Counsellor Immigration	2010-2014
Department of Home Affairs	Acting Chief Director	2009-2010
Department of Home Affairs	Director	2005-2009
Office of the Public Protector	Senior Investigator	1999-2005
SA Human Rights Commission	Senior Researcher	1998-1999
Department of Justice	Legal administration officer	1996-1998
Department of Justice	Public Prosecutor	1994-1996

PROFESSIONAL AND PERSONAL CONDUCT

No available information

Known political affiliation	No available information
Professional outputs	No available information

CHRIS MOKODITWA

EXECUTIVE SUMMARY

Mokoditwa has been an advocate of the High Court since 1994. He obtained a Bachelor of Arts degree from the University of South Africa, an LLB from the University of Bophuthatswana and an LLM from the University of Johannesburg. Mokoditwa was previously employed by South Gauteng High Court as an assessor in criminal trials and served as the directorate for the Special Pensions Review Board in the National Treasury. Mokoditwa was shortlisted for the position of Public Protector in 2002, however he was unsuccessful as Lawrence Mushwana was appointed to the post. A discrete intelligence report reveals that Mokoditwa has four active business interests, with no concerning risk factors against him.

QUALIFICATIONS

Qualification	**Institution**	**Year**
BA	UNISA	1972
LLB	University of Bophutatswana	1988
LLM	University of Johannesburg	1991

CAREER PATH

Name of employer	**Position**	**Period**
South Gauteng High Court	Assessor- Criminal Trials	2008-2015
National Treasury	Directorate- Special Pensions Review Board	2003-2007
Educational opportunities Council	• Executive Assistant to Director • Pan Africanist Congress • South African Students Organisation (Vice Chairperson- Soweto: 1970-1972) • National Union of South African Students • Black People's Convention (Vice-President)	1988

	Azanian People's Organisation (Head of Legal Secretariat)	

PROFESSIONAL AND PERSONAL CONDUCT

No available information

Known political affiliation	African National Congress
Professional outputs	No available information

KAAJAL RAMJATHAN-KEOGH

EXECUTIVE SUMMARY

Ramjathan-Keogh is currently the Executive Director of the Southern Africa Litigation Centre (SALC). She holds a B Proc and LLB from the University of Natal and is admitted as an attorney. Ramjathan- Keogh was previously employed as the manager of the Refugee and Migrants Rights Programme at the Lawyers for Human Rights, as well as the Southern African regional representative for the International Detention Coalition. A discrete intelligence report reveals that Ramjathan-Keogh has one active business interest and no concerning risk indicators.

QUALIFICATIONS

Qualification	**Institution**	**Year**
B PROC	UKZN	1992-1995
LLB	UKZN	1996-1997
Practising in Refugee Law – certificate	SA Law Society/ Lawyers for Human Rights	2002
Certificate Course in International Migration Policy	School of Public and Development Management, University of the Witwatersrand Business School	2002
Summer School in Forced Migration- Certificate Course	Refugees Studies Centre, Oxford University	2003
UNHCR Distance Learning Programme on Statelessness, March- December 2011 – Certificate Course	United Nations High Commissioner for Refugees Distance Learning Programme	2011

CAREER PATH

Name of employer	**Position**	**Period**
Lord Chancellor's Department and at the following London law firms: Brough Skerrett, Jones Day Reavis & Pogue, Linklaters and Alliance, Thompsons Solicitors.	Various legal positions in the United Kingdom	1996-2001
International Organization for Migration	Programme Officer and Special Assistant to the Regional Representative	2001-2002
Lawyers for Human Rights	Head of Detention Monitoring Unit	2002-2007

Lawyers for Human Rights	Programme Manager of the Refugee and Migrant Rights Programme	2007-2014
Southern Africa Litigation Centre	Executive Director	2015-current

PROFESSIONAL AND PERSONAL CONDUCT

In 2015, Ramjathan-Keogh led the court application to have Sudanese President Omar Al-Basheer arrested for war crimes in South Africa during the African Union Summit.[15] Also in 2015, under Ramjathan-Keogh's leadership, the SALC took the National Prosecuting Authority to court to compel it to prosecute the killers of anti-apartheid activist Nokuthula Simelane. She is quoted as saying Nokuthula's case brings to the fore the need to adequately address the legacy and crimes of apartheid…gross violations of human rights should not and cannot be swept under the rug. [16]

Known political affiliation	No available information
Professional outputs	No available information

[15] http://city-press.news24.com/News/Newsmaker-Kaajal-Ramjathan-Keogh-At-the-centre-of-the-al-Bashir-debacle-20150621
[16] https://www.ictj.org/news/justice-south-africa-anti-apartheid-activist-disappearance

APPENDIX A:

Judicial record of Judge Weiner

Our research identified 80 results listed on the Juta website; 10 on LexisNexis; and 50 on SAFLII. Allowing for duplications, we identified **71** judgments in total, recorded in this document.

We list these judgments below, including short summaries and quotations in respect of judgments which we feel are particularly relevant to the candidate's suitability for the position of Public Protector.

We did not find a large number of judgments by Judge Weiner that seemed obviously applicable to assessing her suitability for the role of Public Protector. Judgments that did seem relevant include:

- **Smit v Minister of Police, Hamisi v Minister of Home Affairs** and **Mabelane v Minister of Police**, which evidence a strong stance against abuses of power in situations of arrest, detention and prosecution;
- The **Luruli** judgment evidences a strong concern with the impact of rape and sexual violence
- **Cell C v Prokas** shows a commitment to upholding freedom of expression.;
- In **Chalom v Wright**, displeasure with the conduct of attorneys was illustrated through a costs order.
- In **Nyathi v Fenito Properties**, part of a panel taking a stand against so-called building hijacking in an eviction case.

We have also included information relating to the time taken to hand down judgments in these cases, where such information is available. Article 5.2.6 of the Norms and Standards for the Performance of Judicial Functions[17] states that "[s]ave in exceptional circumstances where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing."

We are of the view that this information is relevant to assessing a candidate's suitability to be Public Protector. The office of the Public Protector has a heavy workload. For example, the Public Protector's total case load for the 2013 / 2014 financial year was 39 817.[18] Whilst the Public Protector of course has support and will not deal with every aspect of every case directly, this workload does indicate that the successful candidate should be someone who, amongst other qualities, is industrious and has the capacity for hard work. For judges, one way this can be measured is to look at whether they are responsible for delays in handing down judgments.

We have requested, but not received, information from the High Court about the record of any delayed judgments by Judge Weiner.

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[17] Government Gazette No. 37390, 147, 28 February 2014.

[18] Public Protector Annual Report 2013 – 2014, page 57. Available at http://www.pprotect.org/library/annual_report/Public%20Protector%202013_14%20Annual%20Report.pdf. This is broken down into 13 622 cases brought forward from the previous financial year; 26 195 cases received; 3 072 cases referred to other institutions; 3 040 cases where the Public Protector lacked jurisdiction; 24 642 cases finalised; and 9 594 cases carried over to the subsequent financial year.

Where this information is available in the reported judgments we have considered, we have included the date(s) on which a case was heard and on which the judgment was delivered in the list of judgments below.

From the judgments considered for this report, we have identified only two that were delivered more than three months after the last hearing date, namely **Fattoche v Khumalo** and **Naudé v Road Accident Fund** (and it may be noted that the former appears to have only been delivered 3 days after the 3 month time period expired). We note that not all of the judgments considered list both the date on which the case was heard and the date on which the judgment was delivered.

List of Judgments

S V LURULI 2013 JDR 2552 (GSJ)

Heard between October 2011 and July 2012, Judgment delivered 17 July 2012.

Rape.

WEINER J at paragraphs [1-3]: "This case epitomises the dire state of crime in our country. The rape statistics are horrific, up there as one of the worst in the world. According to a study of the South African Medical Research Council, in 2011, the statistics are a strong reminder of the severity and gravity of rape in South Africa. The figures stand at approximately 55 000 reported incidents per year, and unreported incidents are something like 500 000 per year, that is one rape every minute in this country. We are considered by some as the rape capital of the world, something to make us hang our heads in shame.

"Rape is used as a weapon of power and control over those with lesser physical strength. No-one is safe in the streets of South Africa because of people like the perpetrators of the crimes in this case, and what this case demonstrates is that rape is regarded by some as part of a night out on the town, a way in which weak, drunk men entertain themselves whilst humiliating the women upon whom they prey.

"The facts of this case are an example of the depths to which certain persons in our community have sunk. It involves two paramedics entering a dimly lit and isolated area, to assist a toddler who had been severely burnt. Whilst attending to the toddler they were dragged from the ambulance into the veld, where they were raped by three men, sexually assaulted and humiliated in the most base fashion. These brave and dedicated women's lives will never be the same again."

S v LURULI AND ANOTHER 2014 (1) SACR 511 (GJ)

Heard and delivered 20 July 2012.

Sentencing (Rape with aggravating circumstances)

"This case also involved the compelled sexual assault which was imposed on Mr P. These offences crossed the boundary of humanity. The psychological trauma and the loss of dignity which the complainants and Mr P suffered have left deep wounds and are seen as aggravating circumstances in this case." [Paragraph 12]

"...[T]he community has been adversely affected by this crime. Not only the direct community in Durban Deep, but the entire country, has been affected. Now paramedics are not safe to go into communities on their own to treat people who need their help. They are obliged to call for a police escort, which affects not only the time within which the paramedics can get to those injured, but affects the ability of the police to do their own work." [Paragraph 15]

Sentence imposed : 8 life sentences plus 35 years.

LEASK AND ANOTHER v ROAD ACCIDENT FUND 2015 (5) SA 20 (GJ)

Heard and delivered 2 March 2015.

Loss of support claim (motor vehicle accident).

KROG v BOTES 2014 (2) SA 596 (GJ)

Heard 13 February 2013; Judgment delivered 6 March 2013.

Interim interdict.

BARNARD AND OTHERS NNO v IMPERIAL BANK LTD AND ANOTHER 2012 (5) SA 542 (GSJ)

Heard 19 September 2011; Judgment delivered 1 November 2011.

Liquidation.

GOODMAN V MOSEBO 2016 JDR 0068 (GJ)

Heard 15 June 2015; Judgment delivered 13 August 2015.

Eviction.

FS v RS 2016 JDR 0316 (GJ)

Heard 27 November 2015; Judgment delivered 18 December 2015.

Maintenance.

SYSTEMS APPLICATION CONSULTANTS (PTY) LTD T/A SECURINFO V SYSTEMS APPLICATIONS PRODUCTS AG 2016 JDR 0320 (GJ)

Heard 26 November 2015; Judgment delivered 8 January 2016.

Security for costs (delict).

SMIT V MINISTER OF POLICE 2016 JDR 0321 (GJ)

Heard 20 October 2016; Judgment delivered 26 October 2015.

Unlawful arrest.

"The suspicion held by the arresting officer was not sufficient for the purposes of section 40 (1)(b). He never considered whether or not the allegations amounted to a crime either in Portugal or in South Africa. He failed to investigate same at all. He had obtained an affidavit from Mr Smit and acted upon this without any other considerations or investigations. The defendant has failed to discharge the onus of showing that the arrest was based upon a reasonable suspicion and was lawful." [Paragraph 32]

"The manner in which Madubanja has acted in this matter, unfortunately, leaves a lot to be desired, both in regard to the arrest and the plaintiff's detention. Once the plaintiff was arrested, the investigating officer had the duty, in terms of section 35 (1)(a) of the Constitution, to bring her before a Court as soon as reasonably possible." [Paragraph 37]

MAKHAFOLA V SCANIA FINANCE SOUTHERN AFRICA (PTY) LIMITED 2016 JDR 0322 (GJ)

Heard and delivered 5 November 2015.

Rescission of judgment.

HUMAN V RAF 2016 JDR 0641 (GJ)

Heard and delivered 17 December 2014.

Road accident claim.

SOUTHERN SUN HOTEL INTEREST (PTY) LTD V ARCELORMITTAL SOUTH AFRICA LTD 2016 JDR 0880 (GJ)

Heard 22 February 2016; Judgment delivered 6 May 2016.

Action for damages (delict).

HAMISI V MINISTER OF HOME AFFAIRS 2016 JDR 1187 (GJ)

Heard and delivered 1 September 2011.

Unlawful detention.

"The Applicant has been in detention for over 120 days. The Respondents did not produce a warrant in terms of section 34(1)(b) to confirm his detention. The section is peremptory and the law is settled that the Applicant should not be deprived of his freedom by the Respondents who cannot justify his detention. The 120 statutory limit has already expired and the warrant of extension is invalid, same having been applied for outside the period of 30 days.

Accordingly the following order is granted:

1. The detention of the Applicant is declared unlawful;
2. The respondents are to release the Applicant forthwith;
3. The first and second respondents are to pay the Applicants costs jointly and severally."

PC BECKER V OLD FASHION FISH AND CHIPS DISTRIBUTION CENTRE (PTY) LTD 2015 JDR 0147 (GJ)

Heard 14 November 2014; Judgment delivered 5 December 2014.

Winding-up application.

FOURIE V RONALD BOBROFF & PARTNERS INCORPORATED 2015 JDR 0209 (GJ)

Heard 21 October 2014; Judgment delivered 10 December 2014.

Negligence.

EX PARTE NQWEBO 2015 JDR 0212 (GJ)

Heard 8 October 2014.

Insolvency.

EX PARTE MATABELA 2015 JDR 0213 (GJ)

Heard 22 August 2014; Judgment delivered 8 October 2014.

Insolvency.

IDENTITY DEVELOPMENT FUND (PTY) LTD (ENSEMBLE HOTEL HOLDINGS (PTY) LTD INTERVENING PARTY) V GREENOVATE CONSULTING AND PROJECTS PRIMARY CO-OPERATIVE LIMITED 2015 JDR 0736 (GJ)

Heard and delivered 26 January 2015.

Leave to appeal.

BENSON V STANDARD BANK OF SA LTD 2015 JDR 0748 (GJ)

Heard 13 October 2014; Judgment delivered 14 October 2014.

Rescission of judgment.

DOWDLE V ADVOCATE POOL 2015 JDR 0755 (GJ)

Heard and delivered 13 November 2014.

Application for stay of prosecution.

CELL C (PTY) LIMITED V PROKAS 2015 JDR 0776 (GJ)

HEARD 10 NOVEMBER 2014; JUDGMENT DELIVERED 13 NOVEMBER 2014.

Defamation.

“As was stated by Cameron J … all that is required in this regard is that Prokas must have held this "as an honestly held opinion without malice". The criticism need not be one that the court accepts. It does not have to be impartial or well balanced. It only needs to be fair in the sense that Prokas held it as an honest, genuine expression of his opinion. It seems clear from the facts in this matter that Prokas has established that the facts forming the basis of the comments led him to hold his honest and genuine opinion. In addition, they were fair (as defined by Cameron J in McBride supra).” [Paragraph 54]

“As was held in the Delta case, the comments made were, as in this case, in the public interest particularly to the users of cell-phones. If the service is so inadequate that it does not render any assistance to a customer, but on the contrary, frustrates and abuses the customer, it is in the public interest that such facts be published and disseminated to the public.” [Paragraph 63]

“There has been much tension between the right to freedom of expression which is protected, inter alia, by the defence of fair comment and the rights to dignity, fama and an unsullied reputation, which are protected by the remedies for defamation.” [Paragraph 64]

“In my view, Prokas' defence of fair comment must succeed. Cell C has failed to show that it has any right to the relief that it seeks even on an interim basis. Prokas has discharged the onus of showing that the statements were justified.” [Paragraph 66]

S V BOPALAMO 2015 JDR 0812 (GJ)

Heard 20 February 2014; Judgment delivered 6 March 2014.

Application for leave to appeal.

LEWIS KAPLAN IMPORT & EXPORT CC V SHINE SHARKS (PTY) LTD 2015 JDR 0818 (GJ)

Heard 8 October 2015; Judgment delivered 13 November 2014.

Summary judgment.

NDEBELE V ROAD ACCIDENT FUND 2015 JDR 0894 (GJ)

Heard 16 September 2014.

Motor vehicle accident.

MIA V DEACON 2015 JDR 1189 (GJ)

Heard 20 April 2015; Judgment delivered 4 June 2015.

Insolvency.

ABSA BANK LIMITED V PEREIRA 2015 JDR 1208 (GJ)

Heard 14 May 2015; Judgment delivered 4 June 2015.

Summary judgment.

CHALOM V WRIGHT 2015 JDR 1209 (GJ)

Heard 24 March 2015; Judgment delivered 4 June 2015.

"From the aforegoing it can be seen that these proceedings are fraught with allegations made by both attorneys against each other in a most undesirable and unprofessional manner. There has been a failure to deal with the merits of each particular matter and an ad hominem attack in respect of both parties." [Paragraph 36]

"In regard to costs, this court intends to show its disapproval of the unprofessional manner in which both parties have conducted themselves by ordering each to pay their own costs." [Paragraph 47]

NYATHI V TENITOR PROPERTIES (PTY) LTD 2015 JDR 1296 (GJ)

Heard 8 June 2015; Judgment delivered 9 June 2015.

Eviction (hijacked block of flats)

Weiner J; Van Der Linde AJ; Klein AJ at paragraph 32-34: "Against this background, we consider the following circumstances as being pertinent. The first consideration is that the occupants are not paying for their occupation, nor is anyone else paying for it; while the respondent is availing the building for their occupation. This fact represents an economical aberration for which there is, objectively, no justification. Even if the occupants' worst suspicions were true, they ought to have been paying some compensation for the services and the roofs over their heads.

"Second, the scale on which such conduct is occurring is significant. One is not dealing with a single occupant in a block of flats. That scenario might, depending on the circumstances, have been manageable. Here a whole building is involved.

"Third, the fact that the appellants' continued occupation is maintained by violence is relevant. This represents a degree of anarchy which is fundamentally incompatible with the founding value of s.1(c) of the Constitution, which is the supremacy of the Constitution and the rule of law (emphasis added)."

"The appellants criticise the respondent for not proving its dark prediction. They question why letters of demand from the mortgage bond holders, or bank statements were not provided. However, common sense tells one that bond repayments and rates and taxes are, as the expression goes, like death, certain. And appeals, virtually as certain, take time. Financial ruin is not, we think, far-fetched. The previous owner was liquidated, and although one does not have hard facts about it, it does seem certain that the investment in the block of flats in Berea did not prevent the financial demise. The respondent has stated unequivocally that it has no other income; the income it derives from the rentals pays for the bond and rates and taxes and other running costs. Without such payments, the respondent cannot meet its obligations." [Paragraph 44]

LOWENTHAL V STREET GUARANTEE (PROPRIETARY) LIMITED 2015 JDR 1644 (GJ)

Heard 17 June 2015; Judgment delivered 13 August 2015.

Credit agreement.

FRANJERON (PTY) LTD V INCREDIBLE HAPPENINGS 2015 JDR 2448 (GJ)

Heard 18 June 2015; Judgment delivered 13 August 2015.

Eviction.

MINENZA V GOLDSWAIN 2014 JDR 0151 (GSJ)

Heard 18 November 2013; Judgment delivered 20 November 2013.

Leave to appeal.

XSTRATA COAL SOUTH AFRICA (PTY) LIMITED V SANDVIK MINING AND CONSTRUCTION RSA (PTY) LTD 2014 JDR 0416 (GSJ)

Heard 22 October 2013; Judgment delivered 10 December 2013.

Insurance.

FATTOUCHE V KHUMALO 2014 JDR 0967 (GJ)

Heard 3 February 2014; Judgment delivered 6 May 2014.

Foreign arbitration award.

MALETH INVESTMENT FUND (PTY) LIMITED V PAGET 2014 JDR 0968 (GSJ)

Heard 22 April 2014; Judgment delivered 2 May 2014.

Suretyship.

AIR TRAFFIC NAVIGATION SERVICES COMPANY LIMITED V DIVERSIFIED PROPERTIES SERVICES COMPANY LIMITED 2014 JDR 0969 (GSJ)

Heard 14 March 2014; Judgment delivered 24 April 2014.

Rescission of default judgment.

DANONE SOUTHERN AFRICA (PTY) LTD V CLOVER SA (PTY) LTD 2014 JDR 1502 (GJ)

Heard 19 March 2014; Judgment delivered 15 May 2014.

Matter struck off the roll.

FIRST RAND BANK LIMITED V DU PLOOY 2014 JDR 1780 (GP)

Heard 5 February 2014; Judgment delivered 6 February 2014.

Summary judgment.

ABSA BANK LIMITED V COHEN 2014 JDR 2189 (GJ)

Heard 17 April 2014; Judgment delivered 3 June 2014.

Company law.

NEDBANK LIMITED V VAN DER WESTHUIZEN 2014 JDR 2195 (GJ)

Heard 11 April 2014; Judgment delivered 5 June 2014.

Credit agreement.

CHOLO V MINISTER OF SAFETY AND SECURITY 2014 JDR 2294 (GJ)

Heard 5 August 2014; Judgment delivered 21 October 2014.

Malicious prosecution.

SOUTHERN AFRICAN INSTITUTE OF CHARTERED SECRETARIES AND ADMINISTRATORS V CAREERS-IN-SYNC CC 2014 JDR 2320 (GJ)

Heard 12 August 2014; Judgment delivered 21 October 2014.

Competition law.

AFRICA BANK LIMITED V GREYLING 2014 JDR 2443 (GJ)

Heard 7 October 2014; Judgment delivered 7 November 2014.

Summary judgment.

ENSEMBLE HOTEL HOLDINGS (PTY) LTD) INTERVENING PARTY) V IDENTITY DEVELOPMENT FUND (PTY) LIMITED 2014 JDR 2458 (GJ)

Heard 7 October 2014; Judgment delivered 4 November 2014.

Rescission of judgment (notarial bond).

ESKOM HOLDINGS SOC LIMITED V BHP BILLITON ENERGY AND COAL SOUTH AFRICA PROPRIETARY LIMITED 2014 JDR 2459 (GJ)

Heard 14 October 2014; Judgment delivered 4 November 2014.

Arbitration.

LANIYAN V NEGOTA SSH (GAUTENG) INC 2013 JDR 0331 (GSJ)

Heard 13 February 2013; Judgment delivered 20 February 2013.

Directors' liability.

NAUDÈ V ROAD ACCIDENT FUND 2013 JDR 0332 (GSJ)

Heard 29 October 2012; Judgment delivered 19 February 2013.

Motor vehicle accident claim.

BEAUX LANE (SA) PROPERTIES LTD V SNOWY OWL PROPERTIES 310 (PTY) LTD 2013 JDR 0342 (GSJ)

Heard 13 February 2013; Judgment delivered 25 February 2013.

Amendment of pleadings.

KROG V BOTES 2014 (2) SA 596 (GJ)

Heard 13 February 2013; Judgment delivered 6 March 2013.

Interdict.

FARIA V ROAD ACCIDENT FUND 2013 JDR 0792 (GSJ)

Heard 11 March 2013; Judgment delivered 12 March 2013.

Motor vehicle accident claim.

CASSIM V UNIVERSITY OF JOHANNESBURG 2013 JDR 0871 (GSJ)

Heard and delivered 21 February 2013.

Urgent application.

VANSKE TEAM CONSULTING CC V ZWELOTHANDO MINERALS AND RESOURCES (PTY) LTD 2013 JDR 1408 (GSJ)

Heard 3 May 2013; Judgment delivered 30 May 2013.

Spoliation.

BLAKES MPHANGA INCORPORATED V EAGLE CANYON GOLF ESTATE HOMEOWNERS ASSOCIATION 2013 JDR 1520 (GSJ)

Heard 2 May 2013; Judgment delivered 1 July 2013.

Application to set aside summons and particulars of claim.

MTHONTI V IN-OUT PANELBEATERS CC T/A PROFESSIONAL PANEL BEATERS 2013 JDR 1521 (GSJ)

Heard 11 April 2013; Judgment delivered 1 July 2013.

Lien.

STEFANUTTI STOCKS CYCAD PIPELINES JOINT VENTURE V RAND WATER BOARD 2013 JDR 1635 (GSJ)

Heard 27, 31 May 2013; Judgment delivered 7 June 2013.

Interdict.

"On the 1st respondent's version, the costs and wastage of costs will increase and escalate as the contracts progress. The applicant contends that it launched the application as quickly as possible before the commencement of the execution of the contracts. It is correct that the time that they gave the respondents to respond was very limited and that the respondents were only able to file answering affidavits on limited issues. This might have been a case where, for that reason, the applicant could be held not to have complied with the practice manual and the application might have been struck off for lack of urgency. However, I believe that this matter, being of the public interest, calls to be decided upon and a situation needs to be avoided where the review becomes meaningless and of academic interest only because the contracts are substantially executed by the time that the review application is heard." [Paragraph 21]

SHANE V SCHOUB 2013 JDR 1877 (GSJ)

Heard 28 May 2013; Judgment delivered 3 June 2013.

Spoliation.

VENTER V BURGER 2013 JDR 2613 (GSJ)

Heard 8 October 2013; Judgment delivered 7 November 2013.

Iniuria and statement of account.

NGOZO V ROAD ACCIDENT FUND 2013 JDR 2655 (GSJ)

Heard between June 2013 and 29 August 2013; Judgment delivered 19 November 2013.

Motor vehicle accident claim.

DE MELIN V ROAD ACCIDENT FUND 2013 JDR 2656 (GSJ)

Heard 12-14 November 2013; Judgment delivered 18 November 2013.

Motor vehicle accident claim.

IN-OUT PANELBEATERS T/A PROFESSIONAL PANELBEATERS V SAMUKELISIWE 2013 JDR 2657 (GSJ)

Heard and delivered 19 August 2013.

Leave to appeal.

MABELANE V MINISTER OF POLICE 2013 JDR 2856 (GSJ)

Heard 11, 14, 15, 16, 17 October 2013; Judgment delivered 10 December 2013.

Unlawful arrest.

“The defendant's investigation and prosecution of the case against the plaintiff is fraught with inconsistencies and inexplicable reasons why the dockets are either missing and/or incomplete. Without these, the defendant has been unable to justify the prosecution of the plaintiff. There appears to be no evidence to support the charges of armed robbery. The charge of attempted murder was only instigated some weeks after the arrest. In regard to the robbery charges, the plaintiff was never mentioned in any of the dockets and there appears to be no basis for the arrest nor the prosecution.” [Paragraph 70]

JUPITER ELECTRICAL WHOLESALERS V ABSA BANK 2012 JDR 0463 (GSJ)

Heard 20 September 2011; Judgment delivered 21 September 2011.

Pleadings – exception.

LAZAR PARK INDUSTRIAL (PTY) LTD V SEILSKIP ROAD INVESTMENTS CC 2012 JDR 0587 (GSJ)

Heard 2 March 2012; Judgment delivered 12 April 2012.

Appeal (specific performance).

NAAIDOO V ANTIPOLIS (PTY) LTD T/A NASHUA WEST RAND 2012 JDR 0624 (GSJ)

Heard 24 February 2012; Judgment delivered 13 April 2012.

Rescission of judgment.

ANDERSON V HLONGWANE 2012 JDR 0872 (GSJ)

Heard 10 February 2012; Judgment delivered 13 April 2012.

Motor vehicle accident claim.

PETROS MAGOS AND ASSOCIATES (T/A PMA) V KENNETH CYRIL NTA 2006 JDR 0352 (W)

Heard and delivered 2 May 2006.

Restraint of trade.

NORVAL NO V SQUARE ONE POWER SOLUTIONS (PTY) LTD 2006 JDR 0353 (W)

Heard and delivered 2 May 2006.

Liquidation.

MULLER V LILLY VALLEY (PTY) LTD [2012] 1 ALL SA 187 (GSJ)

Judgment delivered 24 October 2011.

Liquidation.

MAINE V MOSEBO AND OTHERS (46283/13) [2015] ZAGPJHC 287

Judgment delivered 13 August 2015.

Eviction.

S V S (9889/2012) [2015] ZAGPJHC 301

Judgment delivered 18 December 2015.

Maintenance.

TSHABANGU V ROAD ACCIDENT FUND (2009/49589) [2011] ZAGPJHC 145

Judgment delivered 19 October 2011.

Motor vehicle accident claim.

TECMED (PTY) LTD AND OTHERS V SOJITZ CORPORATION (03/03539) [2011] ZAGPJHC 147

Judgment delivered 26 October 2011.

Amendment of pleadings.

Selection of conferences and publications

- *Pro bono conference: The Responsibility of Lawyer's to undertake pro bono work (May, 2002)*. Delivered address on behalf of the General Council of Bar.

- *Is the Face of the Judiciary changing Fast enough?*[19] Article in the Times, London, 19 October 2005.

- *Women at the Bar: Where have all the young Girls gone?* "The Advocate" (April, 2004)

"I have found that the work of an advocate is particularly well suited to a woman with young children, provided she has the right support structure at home. She is her own boss, is solely responsible for regulating the quantity of work she accepts and is responsible for organizing her own diary. That there are times of intense pressure is well known, but provided they are limited and are not the norm (which is a matter under your own control), you can, in my view, still be a good mother. … [M]any women wish to be at home with small children and what may be somewhat unique to our profession is the difficulty of returning to it after an absence of a number of years".[20]

- *Suggestions for a 24-hour criminal court system*. Submission to the SA Law Reform Commission (May, 2008)

- *Talking past each other? Race in legal academia, practice and on the Bench*. Delivered at a conference held at Wits Law School (November, 2009).

[19] Article accessible at http://www.thetimes.co.uk/tto/law/article2213307.ece
[20] http://www.zoominfo.com/CachedPage/?archive_id=0&page_id=1754641653&page_url=//www.womeninlaw.com/newsletter3/Weiner.htm&page_last_updated=2008-08-21T02:09:58&firstName=Sharise&lastName=Weiner

APPENDIX B

Judicial record of Judge Desai

Our research identified 81 judgments listed on the Juta database; 35 listed on LexisNexis; and 15 on SAFLII. After eliminating duplications, we identified **33** judgments written by Judge Desai and reported on the above databases.

We list these judgments below, including short summaries and quotations in respect of judgments which we feel are particularly relevant to the candidate's suitability for the position of Public Protector.

Judgments of significance written by Judge Desai include:

- **Victoria and Alfred Waterfront v Police Commissioner, Western Cape**, where the candidate balanced property rights against the rights to life and dignity, holding that the former must yield in the context of an attempt to exclude beggars from the Cape Town waterfront;
- **Gaqa**, where the candidate (controversially) allowed an order compelling the removal of a bullet from the leg of a criminal accused;
- **Beauvallon**, setting aside the closure of schools for lack of proper consultation;
- **University of Stellenbosch Legal Aid Clinic**, a highly praised decision striking at the debt recovery practices of unscrupulous money lenders;
- **Mavericks Revue CC**, highlighting concern with the position of exotic dancers and referring their situation to the Human Rights Commission;
- **Stellenbosch Municipality v Fusion Properties**, declining to allow the reversal of a sale of property due to unreasonable delays, where this would cause significant loss and inconvenience to the purchaser;
- **Mani, Adams and Kerspuy**, reducing sentences in criminal matters due to the accuseds' difficult personal circumstances;
- **Helen Suzman Foundation v President of the Republic of South Africa**, part of a panel of judges finding sections of the legislation governing the Hawks to be unconstitutional (upheld by the Constitutional Court).

We have also included information relating to the time taken to hand down judgments in these cases, where such information is available. Article 5.2.6 of the Norms and Standards for the Performance of Judicial Functions[21] states that "[s]ave in exceptional circumstances where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing."

We are of the view that this information is relevant to assessing a candidate's suitability to be Public Protector. The office of the Public Protector has a heavy workload. For example, the Public Protector's total case load for the 2013 /

[21] Government Gazette No. 37390, 147, 28 February 2014.

2014 financial year was 39 817.[22] Whilst the Public Protector of course has support and will not deal with every aspect of every case directly, this workload does indicate that the successful candidate should be someone who, amongst other qualities, is industrious and has the capacity for hard work. For judges, one way this can be measured is to look at whether they are responsible for delays in handing down judgments.

We have requested, but not received, information from the High Court about the record of any delayed judgments by Judge Desai.

Where this information is available in the reported judgments we have considered, we have included the date(s) on which a case was heard and on which the judgment was delivered in the list of judgments below.

From the judgments located on the databases, we note that many of them do not list both the date on which the case was heard and the date on which the judgment was delivered. We do note that some of the judgments do seem to have taken a long period to deliver. For instance, the **HEG Consulting** judgment was handed down some five months after the case was heard; **Keith Kirsten's (Pty) Ltd** in 5 months; **Minister of Education v Wynkwart** in five and a half months; **Law Society v Berrangé** over 8months; **Victoria and Alfred Waterfront v City of Cape Town** around 6 months; and **Treatment Action Campaign v Rath** over 9 months;. On the other hand, the **Tobacco Institute of Southern Africa** judgment was delivered around a week after the hearing of the case, and the **Santos** judgment under a month after hearing.

We also note that several judgments are listed as having been handed down on the same day as the hearing, although in some cases we wonder whether the information has been correctly recorded in the law reports. For example, the **Beauvallon Secondary School** decision is listed as having been given on the same day the case was heard, but this seems unlikely in light of the length of the judgment and the fact that there was a dissenting judgment by one of the judges.

Of course, we do not have knowledge of the circumstances that may account for such delays. We also note that the norms and standards, cited above, were only introduced in 2014, and therefore were not applicable for the majority of Judge Desai's time on the bench. We also note that some of the judgments highlighted were in cases heard by a panel of more than one judge, therefore delays may not be attributable to any one judge alone. Bearing these caveats in mind, we are of the view that this is nevertheless an important issue for the Committee to take into account.

List of Judgments

S v AIMES AND ANOTHER 1998 (1) SACR 343 (C)

Admissibility of evidence.

[22] Public Protector Annual Report 2013 – 2014, page 57. Available at http://www.pprotect.org/library/annual_report/Public%20Protector%202013_14%20Annual%20Report.pdf. This is broken down into 13 622 cases brought forward from the previous financial year; 26 195 cases received; 3 072 cases referred to other institutions; 3 040 cases where the Public Protector lacked jurisdiction; 24 642 cases finalised; and 9 594 cases carried over to the subsequent financial year.

TOBACCO INSTITUTE OF SOUTHERN AFRICA AND OTHERS v MINISTER OF HEALTH 1998 (4) SA 745 (C)

Case heard 26 – 27 August 1998, judgment delivered 4 September 1998.

Request for access to information in respect of pending legislation. Declined to grant the application:

"It is clear that the applicants' concerns must relate largely to the possibility that the Bill, if and when it becomes law, would infringe their constitutional rights. In that event the applicants' remedy would be to have the offending sections struck down and they could obtain interim relief, pending the outcome of an appropriate application.

Although, in terms of s 59 of the Constitution, the National Assembly must facilitate public involvement in its legislative and other processes, which, *inter alia,* includes the power of the Portfolio Committee to permit oral evidence or representations to be given or presented by or on behalf of an interested person or party … this does not mean that the applicants can frustrate the legislative process by insisting on access to information to protect ostensible rights.

The argument … that the introduction of a Bill does not establish rights is clearly correct. When a Cabinet Member, Deputy Minister, or a member or committee introduces a Bill in the National Assembly, it only affects the rights of others once it becomes law.

This application is perhaps premature. The applicants have not shown that they require access to the information requested for the exercise or protection of any of their rights." [Page 753]

HEG CONSULTING ENTERPRISES (PTY) LTD AND OTHERS v SIEGWART AND OTHERS 2000 (1) SA 507 (C)

Case heard between 17 March – 19 May 1999, Judgment delivered 21 October 1999.

Contempt of court.

"This is a most unfortunate matter in that it involves unsavoury, if not improper and unethical, conduct on the part of a senior legal practitioner. The applicants essentially seek an order compelling first, second and third respondents to pay, or rather repay, the amount of R1 million previously held in the trust account of second respondent in terms of two orders of this Court and, in the event of that not being done, the applicants seek a rule *nisi* directing the said respondents to show cause why they should not be held in contempt of court." [Page 511]

"Counsel's opinion, it appears, was being sought in a search for ways of escaping the effect of the Court orders. It is not open to a party, in interpreting a Court order, to do so ... Hoffman's opinion, in any event, was surprising and wrong, especially with regard to the approach to the Registrar in the absence of other interested parties. Katz did not share his view and Katzeff should have foreseen the possibility that it might not be correct. …" [Page 521]

"The applicants have successfully demonstrated that Katzeff wilfully breached a Court order. Insofar as second respondent is concerned, there is no suggestion that any other director or employee acted improperly. Their liability arises vicariously. Katzeff is an officer of this Court and as such he is obliged to maintain the highest standards of honesty and integrity. His role in this matter, especially the manner and haste in which the R1 million was encashed and dissipated, thereby rendering the Court orders completely and irreversibly nugatory, appears to fall short of that

standard. I intend to reflect my disapproval with an appropriate costs order. The circumstances of this matter are in any event such that a special costs order is warranted." [Page 522]

SANTOS PROFESSIONAL FOOTBALL CLUB (PTY) LTD V IGESUND & ANOTHER 2002 (5) SA 697 (C); (2002) 23 ILJ 1779 (C)

Case heard 26 June 2002, judgment delivered 15 July 2002.

Restraint of trade / specific performance of an employment contract by a football coach. Declined to grant the application against the coach:

"Ultimately, the Court has a discretion whether to grant specific performance. I must exercise this discretion judicially. There are in this instance practical considerations which deter me from granting the order. The nature of the services are of such a highly personal nature that it would be virtually impossible to determine whether the first respondent is functioning optimally. He no longer wishes to work for the applicant. Should I compel him to be their coach for a further 12 months? Would this not compromise his dignity? He has problems with regard to his family which may or may not be resolved if he moves on to another team. Furthermore, first respondent's relationship with applicant's management has deteriorated. There has been a great deal of publicity, perhaps fuelled to some extent by the applicant or its lawyers, which has undoubtedly exacerbated the ill-feeling between the parties. I do not believe that in these circumstances they will be able to restore a working relationship, let alone the intimate relationship of that of a coach and his team." [Page 701]

Overturned in part and confirmed in part on appeal - **SANTOS PROFESSIONAL FOOTBALL CLUB (PTY) LTD V IGESUND & ANOTHER 2003 (5) SA 73 (C); (2002) 23 ILJ 2001 (C)**

MINISTER OF SAFETY AND SECURITY AND ANOTHER v GAQA 2002 (1) SACR 654 (C)

Applicant sought an order to have a bullet removed from the respondent's leg in order to conduct ballistic tests. Respondent was believed to be a participant in a failed robbery attempt, during which two people had been killed. Judge Desai granted the application:

"s 37(1)*(c)* of the Act permits an official to A take such steps as he may deem necessary in order to ascertain whether the body of any person has any mark, characteristic or distinguishing feature or shows any condition or appearance. While a bullet is clearly not a mark, characteristic or distinguishing feature of the respondent's body, a police officer may nevertheless take the necessary steps to determine whether his body shows the bullet - a condition or appearance - which may be linked to *Boesman's* revolver. I am of the view that both the aforementioned sections permit the violence necessary to remove the bullet.

In any event, police are obliged to investigate crimes - in this instance a double murder - in terms of s 205(3) of the Constitution … and, without the bullet, they may be hamstrung in fulfilling this constitutional duty.

Finally, Mr *Marais* argued that the violence envisaged by the applicants would result in several constitutionally guaranteed rights being infringed. … The proposed surgical intervention to remove the bullet would undoubtedly be a serious affront to the respondent's human dignity and an act of State-sanctioned violence against his bodily - and perhaps also psychological-integrity. …" [Page 658]

"There is little danger of any harm to the respondent when the bullet is removed. He contends that the operation could endanger his life but there is no medical evidence furnished to support this belief. The orthopaedic surgeon states categorically that it would be an uncomplicated procedure. Furthermore, other than the bullet there is no other evidence against the respondent. This case also relates to more serious crime - namely, a double murder.

The order sought, as I have already indicated, involves the limitation of rights. Rights are not absolute and in terms of the Constitution, more especially s 36(1) thereof, they may be limited if the limitation is reasonable and justifiable in an open and democratic society. … [I]t is apparent that a refusal to assist the applicant in this case will result in serious crimes remaining unsolved, law enforcement stymied and justice diminished in the eyes of the public who have a direct and substantial interest in the resolution of such crime. Respondent's interests in all the circumstances, are of lesser significance. Though the intrusion is substantial, community interests must prevail in this instance." [Page 659]

The decision was not followed in **MINISTER OF SAFETY AND SECURITY AND ANOTHER v XABA 2004 (1) SACR 149 (D)**, where Southwood AJ held that: "the Court, after mentioning ss 27 and 37(1)*(c)* of the Criminal Procedure Act and s 205 of the Constitution, concluded that they permitted a 'police official' to use the necessary violence to obtain the surgical removal of a bullet in similar circumstances to those in this case. … I am respectfully of the view that the conclusions reached there are clearly wrong and I decline to follow them. It seems to me that the answer to the complex problem of reaching a balance between the interests of the individual and the interests of the community in having crimes solved by using surgical intervention posed by cases like this should be dealt with by the Legislature." [Page 161]

In an interview in 2016, Judge Desai was reported to make the following comments on the **Gaqa** case:

"A few years ago I ordered that a bullet may be removed from the leg of a young man, he had resisted such removal, claiming a constitutional right to bodily protection. A UCT professor screamed that I was wrong about the law. I might have been right or wrong, but the removal of that bullet resulted in two people receiving life sentences for murder. Am I going to be concerned about the hysterics of the UCT law faculty or shall I be concerned about doing justice? The law doesn't function in a vacuum. You must be acutely aware of the societal impact of a case. But don't let your own world view dominate. It helps being rooted in the society that you function in and alert to its demands."[23]

KEITH KIRSTEN'S (PTY) LTD v WELTEVREDE NURSERY (PTY) LTD AND ANOTHER 2002 (4) SA 756 (C)

[23] See http://www.iol.co.za/capeargus/judge-stays-true-to-his-activist-roots-1914821

21 August – 20 November 2001, Judgment delivered 22 April 2002.

Damages claim for alleged breach of plant breeders' rights.

Overturned on appeal: **WELTEVREDE NURSERY v KEITH KIRSTEN'S (PTY) LTD AND ANOTHER 2004 (4) SA 110 (SCA)**, where Harms JA said the following (at paragraph 22):

"The Court below, in general terms, found this evidence unacceptable. The problem with the finding is that the Court sought to find the answer to the question whether the existence of the variety 'was a matter of common knowledge', without paying any regard to the deeming provision contained in reg 3(3). Except in relation to the evidence of Ms Clara Kruger, Desai J's findings in this regard were unjustified and the criticism unfair. For instance, Rasmussen produced a plant and testified that he had it in his nursery at Howick and Hilton since about 1969. Desai J failed to appreciate that it was common cause that this *Canna* was identical to *Phasion*. ... Desai J nevertheless concluded that there was no proof that her plant was identical to *Phasion*. And one of the reasons why Rogers was rejected was because, Desai J found, he was strongly opposed to plant breeders' rights because they are a money-making scheme. But this misstates Rogers' evidence. He stated clearly that he was opposed to people obtaining plant breeders' rights for plants that are not new, a feeling shared by Parliament (when it made novelty a requirement for a valid right) and by others. There is no reason to doubt Rogers' evidence that he had bought an identical plant at Magaliesburg and that he had used it for landscaping in the Cape during the late 1980s. ..."

VICTORIA & ALFRED WATERFRONT (PTY) LTD AND ANOTHER v POLICE COMMISSIONER, WESTERN CAPE, AND OTHERS (LEGAL RESOURCES CENTRE AS *AMICUS CURIAE*) 2004 (4) SA 444 (C)

[Law reports list hearing date of 23 December 2003 and a judgment date of 27 November 2003, which clearly cannot be correct].

Declining interdict to prohibit people entering the Waterfront:

"I have, in any event, grave reservations about the constitutional validity of such a prohibition. The issue of begging frequently raises a direct tension between the right to life and property rights. In that event, the property rights must give way to some extent. The rights to life and dignity are the most important of all human rights. By committing ourselves to a society founded on the recognition of human rights, we are required to value those rights above all others. … Furthermore, the right to life encompasses more than 'mere animal existence'. It includes the right to livelihood. … There is also the possibility of indirect discrimination on the grounds of race. The modern history of this country is characterised by over three hundred years of rule by a racial oligarchy. The result is that poverty remains racially distributed. In the circumstances, discrimination on the grounds of poverty would inevitably lead to indirect discrimination on the grounds of race, which is prohibited by the Constitution..." [Page 448]

MINISTER OF EDUCATION AND ANOTHER v WYNKWART NO 2004 (3) SA 577 (C)

Heard 30 July 2003; judgment delivered 14 January 2004 (HJ Erasmus and Yekiso JJ concurring).

Schools - negligence

LAW SOCIETY, CAPE OF GOOD HOPE v BERRANGÉ 2005 (5) SA 160 (C)

Heard between 10 - 22 September 2004; judgment delivered 9 June 2005. HJ Erasmus J concurred.

Professional misconduct by an attorney, suspended from practice. Awarded attorney-client costs, although the reasons for this do not appear from the judgment.

"The most plausible explanation of the evidence, viewed in its totality, is that the conveyancing work referred to respondent's firm from Seeff and Pam Golding was generated as a result of the agencies inviting their clients to refer their conveyancing work to respondent's firm. The amount of money paid to them must have been a very strong inducement to the agencies to recommend the services of respondent's firm to their clients. Dickinson's letters constitute strong *prima facie* evidence that Seeff was, in fact, remunerated for conveyancing it succeeded in referring to respondent's firm. The respondent elected not to deal with this aspect. Respondent also failed to explain and to deal with the property schedules from Seeff and the applicant's computation in the founding affidavit of the correlation between the number of transfers referred to respondent's firm in one month and the amount payable by respondent's firm to Seeff in that month. The most plausible explanation is that the schedules were prepared to substantiate the claim for payment at the rate of R1 000 per transaction. The respondent furthermore does not disclose fully to the Court precisely what 'promotional services' Seeff or Pam Golding provided for the considerable fees that they charged respondent's firm and which were, in fact, paid to them pursuant to very cryptic invoices. In the absence of any further explanation, the most probable inference on the evidence is that the respondent devised and implemented a scheme in terms of which his firm rewarded the estate agencies for the referral of conveyancing work. Taken as a whole, the evidence establishes on a clear balance of probabilities that the respondent, *in fact*, secured conveyancing work that was solicited by the agencies as a result of their marketing agreements and the understanding with regard to payment. This clearly constitutes the 'soliciting' of professional work... The respondent accordingly breached the said Rule and is guilty of unprofessional conduct in respect of both the charges levelled against him." [Page 173]

VICTORIA AND ALFRED WATERFRONT (PTY) LTD AND OTHERS v CITY OF CAPE TOWN AND OTHERS 2005 (6) SA 404 (C)

Heard March 3 – 7 2005, Judgment delivered 16 September 2005 (Louw and Knoll JJ concurring)

Zoning.

TREATMENT ACTION CAMPAIGN v RATH AND OTHERS 2007 (4) SA 563 (C)

Heard 13 May 2005; 26 May 2005; 21 June 2005. Judgment delivered 3 March 2006 (Louw and Moosa JJ concurring)

Interdict to prohibit the publication of allegedly defamatory material.

“The respondents' allegations with regard to the pharmaceutical industry and the TAC are premised upon conjecture and inferences and, it seems, are underpinned by a conspiracy involving several players. It is an unlikely scenario and no evidence has been disclosed which supports the respondents' position on the TAC's funding. The TAC, on the other hand, has made full disclosure of its income and the source thereof. Moreover, several local and international deponents have confirmed the TAC's policy and practices in respect of its finances. The respondents' allegations are not supported on the available evidence and the contrary appears to be more likely.” [Page 570]

“The limited restraint on free speech resulting from the order I make is not directed to stop the respondents from participating in a debate of immense public importance. The restraint is directed at the manner in which the respondents have chosen to participate in the debate and the methods they chose to employ. It is imposed to ensure that the TAC's continued participation in the debate is not hamstrung by defamatory and unfounded allegations of undue intimacy with the pharmaceutical industry.” [Page 571]

PETER-ROSS v RAMESAR AND ANOTHER 2008 (4) SA 168 (C)

Heard and delivered 14 March 2008.

Copyright.

A LTD V COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICES 2013 JDR 0357 (WCC)

Heard and delivered 16 November 2012.

Tax.

BEAUVALLON SECONDARY SCHOOL V MINISTER OF EDUCATION FOR THE WESTERN CAPE 2013 JDR 0624 (WCC)

Heard and delivered 19 March 2013 Baartman J concurred, Davis J dissented.

Interdict of school closures.

“Despite widespread objections from the affected parties, and the deep emotions which underpin the said objections, it seems that the decisions by the MEC to close the schools are final. That is his position as well as that of the second respondent. Whatever the legal position with regard to the review, the fact that there is no room for further discussion on the matter is regrettable. A court is simply not the appropriate forum to deal with the issues which arise herein.” [Paragraph 3]

"The whole process contemplated in Section 33 of the South African Schools Act … was simultaneously completed for all the affected schools in a period of about five months. The process would have gained more credibility, and overcome some obstacles, if it had been conducted in an inclusive manner and at a more measured pace. There is no explanation for the undue haste other than to infer that it was designed to prevent the objections gathering greater momentum." [Paragraph 6]

"The hearings were patently farcical. The chairpersons permitted the affected parties and members of the public to say what they wished without making any attempt whatsoever to raise and discuss the reasons for the proposed closure of the respective schools. In fact, it seems, the chairpersons came to the hearings simply to allow the public to say what they wished and thereby, hopefully, complying with the relevant statutory enactment." [Paragraph 31]

Note that a different bench's overturning of the closure of various schools was overturned by the SCA in **Minister of Education for the Western Cape v Beauvallon Secondary School (865/13) [2014] ZASCA 218; (2015) 2 SA 154 (SCA); [2015] 1 All SA 542 (SCA) (9 December 2014)**.

UNIVERSITY OF STELLENBOSCH LEGAL AID CLINIC AND OTHERS v MINISTER OF JUSTICE AND CORRECTIONAL SERVICES AND OTHERS 2015 (5) SA 221 (WCC)

Heard and delivered 8 July 2015.

Abuse of emolument attachment orders [EAOs] by micro-lenders.

"The attachment of a debtor's salary or wages to secure payment of a debt amounts to an attachment of property. The depletion of a debtor's income as a consequence of it being attached to pay a judgment debt may lead to the subsequent loss of other property such as a house or movable assets owned by the debtor. The reduction of a low earning debtor's income has a direct impact on his right to shelter, health and family life." [Paragraph 40]

"The individual applicants are a group of low income earners living in Stellenbosch, supporting themselves and their families on salaries of between R1200.00 and R8000.00 per month. The group includes farmworkers, cleaners and security guards. For debtors who work in low paid and vulnerable occupations, their salaries or wages are invariably their only asset and means of survival. A substantial reduction of this asset has the potential of reducing human dignity. The State, if it is a party to the grant of the EAO, has the duty to refrain from conduct which results in the debtor being left impoverished or facing a life of "humiliation and degradation" ... The ability of people to earn an income and support themselves and their families is central to the right to human dignity ... Any court order or legislation which deprives a person of their means of support or impairs the ability of people to access their socio-economic rights constitutes a limitation of their right to dignity." [Paragraph 41]

"The right of access to courts is fundamental to the rule of law in a constitutional state. The Flemix respondents are obtaining judgments and EAOs against the applicants in courts far removed from their homes and places of work and in places which they could not hope to reach, the right to approach the courts was seriously jeopardised, if not effectively denied. This violation of the rights of debtors to access courts and enjoy the protection of the law was the

product of the Flemix respondents' forum shopping for courts which would entertain their applications for judgments and the issuing of EAOs. As Katz SC contended, quite correctly in my view, this is the most disturbing feature of the debt collecting processes employed by the micro-lenders." [Paragraph 51]

S v SWARTZ AND ANOTHER 2002 (2) SACR 1 (C)

Heard 28 January 2002, judgment delivered 9 April 2002.

Sentencing.

BODY CORPORATE OF "THE AVENUES" SCHEME, NO SS120/1987 V HURWITZ 2013 JDR 2514 (WCC)

Sectional title.

MAVERICKS REVUE CC AND OTHERS V DIRECTOR GENERAL OF THE DEPARTMENT OF HOME AFFAIRS AND ANOTHER (22369/11) [2012] ZAWCHC 5 (3 FEBRUARY 2012)

Rejecting challenge to the withdrawal of immigration permits.

"The so-called exotic dancers come to this country having concluded a flimsy one-sided contract. They are guaranteed nothing. They have to share a room for which they pay rent on a weekly basis. They are not paid at all and given no benefits whatsoever. More alarmingly they have to pay Mavericks R2000 per week. The contracts do not specify who pays for their plane ticket to South Africa and, if it is paid by Mavericks, when and how it is to be repaid. The contract does not specify what happens if they are unable to generate sufficient cash to pay the weekly R2000 and, if at all, they are entitled to keep certain basic sums – as a first payment – for food, shelter and clothing. Save to state vaguely that they are expected to model and dance on tables there is no job description. What do they model? Are they fully informed as to the exact nature of the work they are expected to do so that they can exercise some choice in the matter? Can they speak English? If not, are there people around with whom they can communicate?" [Paragraph 43]

"Though there have been several cases involving Mavericks and I assume that others have had sight of the contracts into which the dancers are obliged to enter, it appears that it has been blandly accepted that these are exotic dancers whatever that may mean. The conditions under which the foreign dancers are procured, housed and expected to work makes them susceptible to exploitation. They are in a vulnerable situation and the fact that the person in control of them demands or, at least, expects large sums of money on a weekly basis places him in possible contravention of Article 3 para(a) of the PROTOCOL TO PREVENT SUPPRESS AND PUNISH TRAFFICKING IN PERSONS." [Paragraph 44]

"...I shall refer this matter to the Human Rights Commission for it to investigate whether the human rights of the dancers are being infringed and, if so, what steps can be taken to alleviate their plight." [Paragraph 46]

STELLENBOSCH MUNICIPALITY V FUSION PROPERTIES 233 CC 2010 JDR 0036 (WCC)

Case heard between 20 May and 6 August 2009; Judgment delivered 9 October 2009.

Municipality attempting to reverse earlier decision to sell immovable state property.

At Paragraph 44 – 47:

"Mr Stelzner diligently listed every conceivable reason why condonation should be refused in this instance. He made out a compelling case in this regard. First applicant had access to legal advice or assistance at all material times. It knew what its rights were at an early stage yet decided to have a forensic investigation done rather than approaching this Court for relief at that time. It had the same information and documentation at its disposal much earlier - and the financial resources - to bring the application. It in fact threatened to do so in Court papers. The inordinate delay after the deeds of sale and cooperation were signed is not properly explained. The respondents participated in a public tender process at the invitation of the Municipality which they were led to believe was correctly conducted. They concluded deeds of sale and cooperation with someone they were entitled to believe was properly authorised.

"Moreover, the respondents have incurred major expenses and stand to suffer severe financial loss if the process is set aside. These are losses which cannot be compensated by way of a damages action. First respondent has also incurred holding costs and the purchase price has increased significantly because of the delay. Furthermore, building costs, the costs of services and interest rates have also risen steadily.

"If the process is set aside at this late stage and the participants have to start all over again it will be gravely prejudicial and unfair to those who participated in the process on the understanding that the officials knew what they were doing. Where a municipality delays inordinately it cannot be expected of its contracting partners to suffer the consequences of the municipality's own inaction or indecision.

"Quite clearly there was an unreasonable delay in pursuing this application and in the light of the factors listed above, I come to the conclusion that the delay cannot and should not be condoned. It cannot be in the interests of justice to do so. The application can accordingly be dismissed on this ground alone."

ANTHONY JOHNSON CONTRACTORS (PTY) LTD V D'OLIVEIRA 2008 JDR 1012 (C)

Directors' liability.

S V PETERSEN 2008 JDR 1447 (C)

The well-known Taliep Petersen murder trial.

SIMELANE v MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT 2009 (5) SA 485 (C)

Heard and delivered 13 April 2006.

Concurred in a decision where the court declined to substitute its own decision for an administrative decision relating to the granting of amnesty.

S V MANI 2001 JDR 0125 (C)

Heard and delivered 20 December 2000.

Overturned unduly harsh penalty imposed by a magistrate.

"In this instance, the accused admitted his guilt, says he recently lost his employment, has to support a young child and is not in any position to pay a fine. It appears that the clothing – valued at R70,00 – was stolen so that the accused could sell it to raise desperately needed money. His situation warrants some sympathy and, as I have already stated, he is a first offender. In the circumstances a sentence of direct imprisonment, or a sentence which effectively results in the accused being imprisoned, is unduly harsh and entirely inappropriate. It reflects a patent failure to properly appreciate the interests of society."

S V ADAMS 1999 JDR 0387 (C)

Heard and delivered 31 May 1999.

Sentencing (Failure to pay maintenance).

"An accused cannot be more severely punished because he is unemployed. In any event, there is no evidence to suggest that his unemployment was attributable to any fault on his part. It may be that he is unemployed as a result of factors entirely beyond his control – a more likely explanation in the light of the depressed economy. Furthermore, imprisonment would simply deny the accused the potential ability to earn an income and support his family. In all the circumstances direct imprisonment, though not an incompetent sentence, ought not to have been imposed."

S V WILLIAMS 1998 JDR 0379 (C)

Heard and delivered 18 March 1998.

Reducing a sentence for theft.

S V KERSPUY 1998 JDR 0803 (C)

Heard and delivered 2 October 1998.

Sentencing (Theft).

"If we take into account the peculiar circumstances of this matter, the result of the magistrates' aforementioned approach is a sentence of an inappropriate severity. It appears from the record that: i) the accused stole because he was hungry; and ii) the items stolen are in fact inexpensive eatables; and iii) he was drunk when committing the offence."

S V ARENDSE 1997 JDR 0665 (C)

Heard and delivered 15 August 1997.

Sentencing (Contempt of court).

"The sentences imposed are patently excessive and an amelioration thereof is warranted especially if one takes into account the context in which they were committed. The accused's frustration with the delays in his trial being finalised is understandable more so in that he remained incarcerated. On the other hand his insults and the attack upon the dignity of the Court constitute unacceptable conduct which must be appropriately punished."

S V ZIMRI 1997 JDR 0666 (C)

Heard and delivered 14 August 1997.

Sentencing (Theft).

HELEN SUZMAN FOUNDATION V PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS; GLENISTER V PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS 2014 (4) BCLR 481 (WCC)

Constitutionality of the South African Police Service Amendment Act 10 of 2012. Founds sections of the legislation to be unconstitutional, a decision that was substantially upheld by the Constitutional Court in **HELEN SUZMAN FOUNDATION v PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS 2015 (2) SA 1 (CC)**.

(**Desai, Le Grange and Cloete JJ**): "The present matter, entirely understandably, is a highly emotive one. It goes to the root of public perception. That is why it is necessary to remind ourselves that, just as we must fulfil our duty to declare invalid laws which fail to pass constitutional muster, we must equally guard against falling into the trap of seeking to satisfy hypersensitivity or paranoia. The very location of the DPCI within the SAPS has already been found by the CC to be constitutionally permissible. As a lower court it is not for us to take issue with that or to entertain debates about whether the DPCI should be located elsewhere. What we are required to do is to assess, objectively, whether Chapter 6A of the SAPS Amendment Act provides the DPCI with "insulation from a degree of management by political actors that threatens imminently to stifle the independent functioning and operations of the unit" (*Glenister 2* at paragraph 216). This is the yardstick to determine whether the DPCI "has an adequate level of structural and operational autonomy secured through institutional and legal mechanisms, to prevent undue influence" (*Glenister 2* at paragraph 206). If it does, then public confidence should follow. If it does not, the converse applies." [Paragraph 30]

S V XHAPHA (A496/2011) [2011] ZAWCHC 548

Sentencing.

2 PRODUCTIONS AND ANOTHER V KLUGMAN (A605/09) [2011] ZAWCHC 419

Negligence.

MICHAEL V AD HOC CENTRAL AUTHORITY AND ANOTHER (24215/2011) [2012] ZAWCHC 173

Application for leave to appeal.

CROWIE PROJECTS (PTY) LTD V DURBAN UNIVERSITY OF TECHNOLOGY AND OTHERS (5612/10) [2012] ZAKZDHC 93

Tender dispute.

THE DESAI COMMISSION

In 2002, Judge Desai presided over a commission of enquiry set up by the then Premier of the Western Cape to investigate practices followed by the Office of the Premier and Director-General of the Western Cape in respect of the administration of recorded information and the use of surveillance methods within the provincial administration. The terms of reference were subsequently expanded to include the receipt of any monies from Jürgen or Jeanette Harksen by the Premier(s) of the Western Cape.[24]

The Commission found inter alia that:

- A secure facility had been created with an electronic surveillance device that had "offensive capability", the acquisition of which had not followed proper procedures;
- Contract workers with backgrounds in the intelligence services had been hired, who were over-qualified and were irregularly appointed;
- No finding could be made that these capabilities were used for a nefarious purpose, although it was "not beyond contemplation" that this had been done;
- The manner of filing recorded information did not promote good governance, and there were serious deficiencies in the Provincial Administration's management of documents;

[24] The Commission's report is available at https://www.westerncape.gov.za/sites/www.westerncape.gov.za/files/documents/2004/10/desai2.pdf. The terms of reference are set out at pages 5 – 6.

- Harksen was an unreliable witness whose evidence regarding the payment of monies could not be accorded any weight, unless supported by other acceptable evidence;
- The payment of a sum of DM99 000,00 had been made to Markowiz (Minister of Finance in the Executive Council) by Harksen or an associate.

The Commission's findings were strongly criticised by the Democratic Alliance:

> ***DA rejects Desai commission findings*** (3 December 2002)
>
> 'The Democratic Alliance has rejected what it describes as the "so-called findings" of the Desai Commission, saying that from the outset it had been a political weapon used by the New National Party and the African National Congress to discredit the DA.
>
> "The fact is that after spending about R1,5-million of taxpayers' money, the Desai Commission was unable to establish that either the DA, Gerald Morkel or Leon Markowitz received any money from Jurgen Harksen," said DA federal council chairperson James Selfe.
>
> He said the DA had been advised that the commission misdirected itself and that chairperson Judge Siraj Desai showed bias against the DA during its hearings, and that the DA would be successful if it asked the high court to set aside the commission's findings.
>
> "However, we have no desire to waste any more money or attach any more significance to this matter," he said.
>
> "I have stated before that Mr Harksen is a serial liar. The commission agrees with this view."
>
> It found that Harksen was "an evasive and most unsatisfactory witness" and that his evidence "cannot be relied upon".
>
> Further, the commission stated that it "places no reliance upon Harksen's evidence with regard to the date, place, amount or manner in which any monies were paid".
>
> "Despite this, the commission has chosen to accept only one material element of Harksen's evidence, which is that he alleged that he gave Mr Markovitz DM99000.
>
> "This amounts to nothing more than the opinion of the commissioners, and has not by any stretch of the imagination been proved. We find it instructive that it accepted this evidence while rejecting all the rest," said Selfe.
>
> The commission was from the outset a political weapon used by the NNP/ANC alliance in an obvious attempt to discredit and damage the DA and opposition in South Africa.
>
> "As such, it represents a form of partisan legal harassment and a dangerous abuse of state ." …'[25]

[25] See http://www.iol.co.za/news/politics/da-rejects-desai-commission-findings-98227