

**SUMMARY OF THE MAIN REPRESENTATIONS BY THE JOHANNESBURG BAR COUNCIL TO THE PORTFOLIO COMMITTEE ON JUSTICE
8TH MARCH 1999**

A. Introduction

1. The object of these representations is to alert the committee to the implications of a decision to locate the magisterial district of Randburg in the jurisdiction of either the northern or southern Gauteng High Court.
2. The provision in the draft bill on the organisation of the superior courts to place the Randburg district in the Northern Gauteng division is an inappropriate attempt to resolve the supposed lack of work for the Pretoria high court because it creates other equally serious problems to which, ostensibly, no thought has been given.
3. These representations address those problems and offer a perspective which supports the proposition that the provision in the bill requires a revision.
4. A proposal is advanced which, if it is submitted, strikes a sensible balance between contending problems of Pretoria and of Johannesburg both of which call for solutions.

B. The 'reality' of a Johannesburg division excluding the district of Randburg.

1. The point of departure is a bona fide decision to create two divisions of the high court in Gauteng. It would be a shameful betrayal of that decision, overdue for almost a century, if the advent of a distinct Johannesburg division was to be whiteanted by a perpetuation of a subordination of a significant portion of the city to Pretoria.
2. The bare fact of a decision to sever the metropolitan area of the city of Johannesburg on the eve of steps initiated at a cabinet level to properly integrate the administrative structure of the four municipal sub-structures into a single 'mega-city' is contradictory. The details of the dysfunctionality of such an idea have been addressed in earlier submissions and are not repeated here. At a practical level, it is inconsequential to practitioners where the work is performed as any cost of performing the work must eventually be borne by the litigating public. It is insensitive to disregard their interests in order to resolve another problem at another place.
3. The traditional political attitude towards Johannesburg throughout most of its history has been denigration and the community of the city is legitimately entitled to expect a different approach in 1999. Johannesburg has been a bywoner of Pretoria for long enough.
4. No decisions which has the potential to undermine the standing of the Johannesburg high court is in the public interest.
5. The high court throughout the country, generally, has in recent years been diminished by the establishment of the other specialist superior courts, namely, the Constitutional court, the Labour courts, and the Land Claims court where much of the socially and politically important litigation now occurs instead of in the high court. In addition the jurisdiction of the magistrates court has been increased. Sensitivity is required when examining the implications of further organisational changes.
 - 6.1. The inner city of Johannesburg is threatened with extinction as not only business both black and white led, but also much of the legal profession and some governmental agencies move north to Sandton and Rosebank (both places being in the present district of Randburg).
 - 6.2. The Johannesburg bar has also been subjected to these forces, but has largely resisted them. About 25% of members are likely to take up chambers in Sandton, whilst the greater majority, including at least half of all senior counsel have chosen to remain. This is contrasted with the fact that 80% of attorneys firms in Johannesburg are not in the CBD of the city.
 - 6.3. The bar council in collaboration with the judges of the Johannesburg high court have been the driving force behind the creation of the Johannesburg high court precinct, a plan to develop a legal quarter in the environs of the high court. Self-evidently, the standing of the Johannesburg high court is the lodestone for that venture.
7. Vital to the health of the city of Johannesburg is a conscious a deliberate political will to uphold institutions of both local and national character which are identified with the city. One of the most important of these institutions is the high court. The expression by the judges of Johannesburg to be heard on this question before a final decision is taken emphasises the importance of the point.

8. The critical issue is the enhancement of the Johannesburg high court which in turn will ensure the public interest.

9. Accordingly, it is submitted that the Sandton and Randburg CBDs in the district of Randburg cannot prudently be excised from the jurisdiction of the Johannesburg court.

C. Is concurrent jurisdiction an appropriate solution?

1. It has been suggested that the difficult question can be dodged by deciding nothing and conferring jurisdiction upon the two divisions over the whole province.

2. The price of that choice is not cheap, nor particularly dignified.

3. First, it means the much belated creation of a separate Johannesburg high court comes with no territory to call its own. Shared jurisdiction is not what the destiny of the Johannesburg high court was imagined to be.

4. Secondly, it means that the provincial government will not even enjoy the convenience of always being sued at the seat of government. The decision to move the capital to Johannesburg was an expression of the more fundamental belief that Johannesburg was the appropriate city from which to govern the province for a host of socio-political reasons. Accordingly, it must be asked how this consequence can be reconciled with that choice.

5. Thirdly, it means that the city council of Johannesburg may be sued in the Pretoria high court. Such a potentiality serves to perpetuate the subordination which has and will continue to be deeply resented.

6. Jurisprudentially, the notion of concurrent jurisdiction ought to be an anathema. The authority of both divisions is undermined by forum shopping. Litigation may be initiated in one or other court to avoid the consequences of precedents in the caselaw. No two benches have identical approaches to matters of law or procedure. Nor, for that matter, are any two benches perceived in the same way by practitioners who will select the bench which is supposedly more kindly disposed to the issue at stake. It is submitted that to deliberately choose to condemn the High Courts of Gauteng to such a future is a poor solution indeed.

A preferable solution to both problems.

1. It has to be recognised that the political decision in the constitution to locate Pretoria and Johannesburg in the same province has made Gauteng a crowded place. Pretoria has 'lost' its vast hinterland, but as has been pointed out in the detailed submissions to the Hoexter commission, the volume of work for the high court from these regions was nugardly. The lion's share of the Pretoria court's work was and will continue to be the environs of Pretoria itself. A substantial pillar of the Pretoria court's work has and will continue to be that generated by the central government, with or without the transfer of Parliament. Accordingly, the Pretoria court is not being faced with annihilation.

2. The district of Randburg contains three business areas, Randburg and Sandton which are part of the city of Johannesburg, and Midrand, a separate local authority which is more within the orbit of Pretoria, whose business community has been colonising the town of Centurion and Midrand. Midrand represents to Pretoria a growth node, whereas Sandton is an integral part of the Johannesburg community. Midrand warrants its own Magisterial infrastructure and the recognition of that fact cannot be far off. Once the split is achieved the extent of Pretoria's legitimate expectations can properly be met.

3. If that split cannot, for whatever reason, be effected at the same time as the enactment of the Superior Courts act, a period of concurrence over the existence district of Johannesburg may as an interim measure be appropriate. To do more to accommodate concerns for the Pretoria court is to go too far.

4. It is therefore proposed that;

a) The apportionment of the province between the Pretoria and Johannesburg courts as provided in the bill be amended by designating the district of Randburg for inclusion in the jurisdiction of Johannesburg.

b) As an interim measure, until the town of Midrand can be excised from the district of Randburg, there be concurrent jurisdiction over that district alone.

c) The necessary steps be taken to excise Midrand, as contemplated, as soon as possible.

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