

SUPERIOR COURT BILL AND RELATED**CONSTITUTIONAL AMENDMENTS**

On behalf of the Judges of the Supreme Court of Appeal I would like to convey our appreciation for the opportunity to express views on the proposed legislation.

The Judges of this Court comment as follows:

1. Ad s 3 of the Constitutional Amendments Bill

This section must be deleted. There need be only one Deputy President. This aspect comes up again in regard to the Superior Courts Bill.

2. Ad s 8(b) of the Constitutional amendments Bill

The word 'the' must remain.

3. Ad s 1 of the Superior Court Bill ("SC Bill")

Full court" can be two or three Judges. Replace "more" with "three". "Labour matter" being a "civil case", it must not involve any criminal proceedings which can arise out of the listed statutes. Therefore, after 'justifiable matter' insert "except criminal proceedings".

4. Ad s 3(3)(a) of the SC Bill

Delete "two Deputy Presidents" and replace with "a Deputy President". While it is appropriate to have a special arrangement made for the management of labour appeals, the assignment of this duty can be effected by the President of the Court to a specific Judge of Appeal who has the relevant experience and knowledge of labour matters.

The imposition of a second Deputy President, apart from being unnecessary for the efficient operation of the Court, will tend to undermine the role and standing of the existing Deputy President with resultant negative effect on the collegial co-operation necessary for the successful management and functioning of an appellate court.

5. Ad s 3(4) of the SC Bill

For reasons already given, this sub-section should be deleted and replaced with the following:

"(4) The Deputy President of the Supreme Court of Appeal must-

(a) perform such functions of the President of the Supreme Court of Appeal in terms of this or any other law as the President of the Supreme Court of Appeal may assign to him or her; and

(b) in the absence of the President of the Supreme Court of Appeal, or if the office of the President of the

Supreme Court of Appeal is vacant, perform the function of the

President of the Supreme Court of Appeal.

6. Ad s 9(2) and 10(3)

Delete "or if a vacancy among the members of the Court arises". These words are unnecessary. The references to absence and inability are enough to cover death or any incapacity.

7. Ad s 11(4)

Replace "vacation" with "recess", the former being out-dated, misleading and wrong.

8. Ad s 12

The entire section is objectionable and must be deleted. The objection is that the exercise of any choice of a judge, or a panel of judges, made or effected from outside the ranks of the judiciary is inimical to judicial independence and therefore open to constitutional challenge. The fact that Nedlac had a statutory right of input before, has become irrelevant. Because the structure in relation to which it had that input has failed, labour cases are now sought to be included in the ordinary judicial process. That process involves the head of a court assigning judges to cases with no extraneous fetter (recusal situations excepted) on that freedom of independent selection.

9. Ad s 15(b)

Delete "that" (already included in the second line of the subsection) and insert "not" after "will" (to mirror the phrase "have no practical effect or result" used in s 14(2)(a)(i).

10. Ad s 19(1)

Delete "subject to the direction of the Judge President concerned". It conveys the Judge President can determine jurisdiction. That is wrong. what the Judge President can do is assign an appropriate venue. Therefore insert an additional subsection (renumber the present (2) and (3)) to read:

"(2) The Judge President concerned may direct where any cases referred to in (1)(a) and (b) above will be heard."

11. Ad S 19(3)(a) - the proviso

Although the proviso repeats existing wording it is misplaced in High Court proceedings. It is a requirement for lower court jurisdiction that a cause of action arises within the area of jurisdiction - but that is not the position in the High Court, Therefore the proviso should be deleted..

12. Ad s 25(1)

This should be more extensive. The proposed wording, with insertions underlined, is this:-

"Subject to any other law if any proceedings have been instituted in any Division or court of similar status and it appears to the Court concerned that such proceedings;-

(a) should have been instituted in another Division or court including a magistrate's court, or

(b) (as is)

that Court may, on its own initiative or upon application by any party, and after hearing all parties, order in chambers that such proceedings be removed to that other Division or court."

This covers removal to other courts such as patent courts and magistrate's courts and offers practical additions.

13. Ad s 33(5)

In second line, after "document" insert "in hard copy or electronic medium". This has been suggested in earlier proposals and is necessary to modernize the provision.

14. Ad s 37(2)

In fourth line, before "intimation", "in" should be "an".

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wherever "media" appears it should be "medium".

16. Ad s 44(1)

In first line after "law", insert "no private prosecution,".

17. Ad s 46(1)

The essential flaw in the panel proposal has been referred to above. The subsection should end after "office" in the sixth line.

It would be appreciated if you would ensure that these comments are put before the Portfolio Committee

Yours faithfully

MR JUQCE 'CT HOWE

PRESIDENT

SUPREME COURT OF APPEAL