

SUMMARY OF COMMENTS ON SUPERIOR COURTS BILL (SUPPLEMENTED)

[B 52—2003]

<i>Clause no.</i>	<i>Name of person or body</i>	<i>Comment</i>
1	Supreme Court of Appeal (SCB 3)	<ol style="list-style-type: none"> 1. Definition of "full court": Replace "more" with "three". 2. Definition of labour matter: After "justiciable matter", insert
1	Cheadle Thompson & Haysom Attorneys (SCB 22)	Definition of "labour matter": Section 82 of the Mine Health and Safety Act, 1996, arising out of that Act to be dealt with by the Labour Court. The definition should be amended to include such disputes.
2	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. There are some anomalies regarding the definition of "labour matter". 2. Since the labour court was established as a "court of law" and not an equity court, a provision for labour matters to be dealt with on an equity basis is not appropriate.
2	COSATU (SCB 25)	Subclause (1)(b): COSATU's preferred option would have been to have the Labour Court as separate structures. However, they recognise the imperatives of the Bill. They strongly believe that this process should ensure the retention of the current determination of labour matters. There is international recognition of such courts.
3	Supreme Court of Appeal (SCB 3)	<ol style="list-style-type: none"> 1. Subclause (3)(a): Only one Deputy President should be appointed. The President of the Supreme Court of Appeal can assign a judge to hear appeals. 2. Subclause (4)(a): Delete items (ii) and (iii).
3	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. Subclauses (1)(b) and (3)(b): Sittings of the Constitutional Court elsewhere than their seats should only be allowed on application. 2. Subclause (3)(b): The number of judges of the Supreme Court should be specified. 3. Provision should be made for a procedural mechanism for the appointment of judges.
3	COSATU (SCB 25)	<ol style="list-style-type: none"> 1. Subclause (3)(a): The provision for the second Deputy President should be deleted to ensure that there is an explicit commitment to ensure that the President of the Supreme Court of Appeal is appointed from the same division as the President of the High Court. 2. Subclause (4)(a)(iii): The provision for consultation with the National Council of the Judiciary should be deleted.
4	Cape Bar Council (SCB 5)	<ul style="list-style-type: none"> • Subclause (2)(b): Any possibility of confusion or ambiguity in the definition of "labour matter" should be avoided. • Should the headquarters of a Judge President also be specified? • Subclause (5): The term "local division" is preferred to "seat area".
4	Eastern Cape Bench (SCB 4)	Each Division of the Supreme Court should have a main seat, and the provisions should enable the agreements that were reached between the existing Eastern Cape Bench and the National Council of the Judiciary to be implemented. The determination of seat areas by the Judge President (subclause (5)(a)) and the Chief Justice, but (5)(b) should be deleted as it will cause practical difficulties from the same magistrate's court being heard at different seats.
4	Circle Council of Limpopo	The establishing of the Limpopo Division of the High Court is well provided for in clause 45.

	(SCB 2)	
4	Law Society of the Northern Provinces (SCB 6)	The "fragmentation" of the High Court is not supported. However, in the provinces, it is suggested that- a. the Mpumalanga, Limpopo and North West Divisions should have concurrent jurisdiction with the Northern and Southern Gauteng Divisions; and b. the Northern and Southern Gauteng Divisions should have concurrent jurisdiction with the Northern and Southern Gauteng Divisions.
4	Law Society of South Africa (SCB 7)	1. Subclause (2)(b): It is unnecessary to make provision for the Deputy President. 2. Subclause (4)(a): Provision should be made for consultation and determination of any seats and territorial jurisdictions.
4	Brits Attorneys' Association (Page 7 of "SCB 7")	The magisterial district of Brits should fall under the jurisdiction of the Northern and Southern Gauteng Divisions and the North West Division should have concurrent jurisdiction with the Northern and Southern Gauteng Divisions.
4	Mpumalanga Attorneys Council (Annexure to "SCB 7")	This Council is concerned about the proposals regarding concurrent jurisdiction. The Council is also divided on this matter. The Highveld Region in Mpumalanga and the Northern Gauteng Divisions, whilst the Lowveld Region in Mpumalanga and the Northern and Southern Gauteng Divisions, should have concurrent jurisdiction with the Northern and Southern Gauteng Divisions.
4	KwaZulu-Natal Bench (SCB 8)	In terms of this provision (read with clause 45) there will be one bench in Durban and Pietermaritzburg. The seats will enjoy concurrent jurisdiction with the Northern and Southern Gauteng Divisions.
4	Black Lawyers Association (SCB 13)	1. Provinces which have more than one Division could have concurrent jurisdiction. e.g. Northern and Southern Gauteng Divisions. 2. The BLA is opposed to concurrent jurisdiction between Divisions. Concurrent jurisdiction will undermine the very essence of the Divisional Court system. 3. However, the BLA supports the principle that a Division's boundaries should be based on convenience. For example, for the purposes of convenience, areas such as Brits, GaRankuwa, Mabopane and Hillside should be under the jurisdiction of the Northern Gauteng Division.
6	Cape Bar Council (SCB 5)	1. Subclause (2): Deputy Judges President should not be appointed. This is inconsistent with judicial independence. 2. Subclause (3): This provision should not be limited to "act as a judge". 3. An earlier version of the Bill contained a similar provision (that the Deputy Judges President should not be appointed as a judge or in any other office of profit). Its omission needs to be explained.
7	Cape Bar Council (SCB 5)	1. Subclause (1): The need for court managers/assistant court managers and registrars? 2. Subclause (2): Why is provision not made for research assistance?
7	Eastern Cape Bench (SCB 4)	The provisions relating to the appointment of court managers are proposed in respect of subclause (1)(c): "A court manager is the senior executive officer of the court who is responsible for the day-to-day management of the court and who is appointed by the court."

		administrative control over the persons referred to in paragraph of the head of the Court concerned, and perform such other functions of the Minister and the Chief Justice."
7	Justice Ngcobo (SCB 16)	<ol style="list-style-type: none"> 1. Subclause (1): It is necessary to make it clear that all officers under the Head of that Court. 2. Subclause (1)(c): It is assumed that the Chief Justice will refer matters when agreeing on functions with the Minister.
7	SASLAW (SCB 26)	Subclause (1)(a)(iv): Labour matters will be dealt with more expeditiously with labour matters continues to do so.
8	Justice Ngcobo (SCB 16)	Having regard to the responsibility of the judiciary to determine the law, to define properly the nature of the relationship between the official and the citizen.
9	Supreme Court of Appeal (SCB 3)	Subclause (2): Delete "or if a vacancy among the members of the court" and references to absence and inability.
9	Cape Bar Council (SCB 5)	The word "decisions" in the heading should be substituted with "orders" in Act 59 of 1959.
10	Supreme Court of Appeal (SCB 3)	Subclause (3): Delete "or if a vacancy among the members of the court" and references to absence and inability.
10	Cape Bar Council (SCB 5)	The word "decisions" in the heading should be substituted with "orders" in Act 59 of 1959.
10	Law Society of South Africa (SCB 7)	Subclause (2): The cost implications of <i>de novo</i> hearings raise serious questions. In no majority judgment, the decision must be regarded to be a final order and as a discharge in criminal matters.
10	KwaZulu-Natal Bench (SCB 8)	<ol style="list-style-type: none"> 1. Subclause (4): This provision is unnecessary as any judge cannot sit in appeal on his or her own judgment and, in an appeal, a judge cannot sit in chambers. 2. Subclause (5): The words "in chambers", at the end, should be deleted and "determine" in the second line.
11	Supreme Court of Appeal (SCB 3)	Subclause (4): Replace "vacation" with "recess", as the former is not a term of art.
11	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. The word "decisions" in the heading should be substituted with "orders" in Act 59 of 1959. 2. Subclause (1)(b): A reference to a full court should be made.

		<p>President or a Deputy Judge President.</p> <p>3. Subclause (5): Amend as follows: "...where the decision of judges of any such court are not in agreement concur, the</p>
11	<p>Law Society of South Africa</p> <p>(SCB 7)</p>	<p>Subclause (5): The cost implications of <i>de novo</i> hearings raise s no majority judgment, the decision must be regarded to be a fine and as a discharge in criminal matters.</p>
11	<p>KwaZulu-Natal Bench</p> <p>(SCB 8)</p>	<ol style="list-style-type: none"> 1. Subclause (2)(b): This provision is unnecessary as any judge cannot sit in appeal on his or her own judgment and, i recusal. 2. Subclause (4): Replace "vacation" with "recess", which ha 3. Subclause (7): The time honoured "<i>mutatis mutandis</i>" is p context".
12	<p>Supreme Court of Appeal</p> <p>(SCB 3)</p>	<p>The entire clause is objectionable and must be deleted. The exer judges, made or effected from outside the ranks of the judiciary open to constitutional challenge. The fact that NEDLAC had a sta irrelevant.</p>
12	<p>Cape Bar Council</p> <p>(SCB 5)</p>	<ol style="list-style-type: none"> 1. Subclauses (1) and (2): It is inappropriate to refer to "the n by a single judge. It is not clear what will happen if a single referred to in subclause (3). See clause 46(7)(c)(ii), which i Litigants in labour matters could be severely prejudiced. It applies to a matter heard by a single judge. 2. Subclause (3): Judges should not be appointed to hear sp the purpose of its deliberations on such appointments, re on an <i>ad hoc</i> basis. Paragraph (a)(iv) would read better if i President.
12	<p>Eastern Cape Bench</p> <p>(SCB 4)</p>	<ol style="list-style-type: none"> 1. The Eastern Cape Bench object in principle to the designa within the High Court of South Africa. The designation pro Constitution, and may offend the fundamental principles o powers. They propose that subclauses (1) and (2) be repla <u>the judge or judges who will hear any labour matter in the President of the Supreme Court of Appeal or the Judge Pr</u> <u>the judges whose names appear on the panel of judges re</u> 2. The word "concentrating" in (3)(a) seems ill-chosen. 3. Subclause (3)(b) should also refer to "a majority" of the NI member could wreck the quorum of a meeting.
12	<p>Law Society of South Africa</p> <p>(SCB 7)</p>	<ol style="list-style-type: none"> 1. The LSSA supports the incorporation of the Labour Appea both proper and desirable given the constitutional conund 2. However, the LSSA is opposed to the abolition of the Labo is devoted to the application of the Labour Relations Act a currently associated with that Court should be addressed and by bringing the provisions pertaining to its judiciary ir
12	<p>KwaZulu-Natal Bench</p> <p>(SCB 8)</p>	<ol style="list-style-type: none"> 1. Subclause (3) is a most objectionable provision. A commit designating judges to the panel. 2. The phrase "concentrating (on) and developing judicial kn meaning of "judicial knowledge" is also vague and it is dif 3. The objection in principle is that a committee of judges an regard to what cases an appointed Superior Court Judge c categorised with respect to labour matters as "suitable" or trade unions and organised business. This impinges on th

		unconstitutional.
12	Justice Ngcobo (SCB 16)	Subclause (3): The "training" provision is a significant development of a pool of labour judges, but a judges' pool in general.
12	COSATU (SCB 25)	<ol style="list-style-type: none"> 1. Subclause (1): The principle of a labour panel is strongly supported and who must actually hear a labour case will still be done by judges. It will not be designating judges for specific cases and the interests are not affected. 2. Subclause (3)(a)(iii) (NEDLAC's involvement): COSATU supports notably the United Kingdom and Canada, members of the panel are judges. In South Africa the JSC is mostly comprised of judges. It is shown that NEDLAC representatives add considerable value. NEDLAC's involvement on the panel is strongly supported by the "Department of Labour".
12	SASLAW (SCB 26)	<ol style="list-style-type: none"> 1. Subclause (3): The panel should not simply be selected from the bench, there should also be appointed (as judges) on the strength of their expertise. There could be a loss of expertise in this area. 2. Subclause (3)(a)(v) and (vi): SASLAW is willing to recommend alternative provisions. 3. Is it envisaged that the current Labour Court premises will be used? 4. Is it envisaged that judges will specifically be appointed to hear cases of expertise in labour law?
13	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. Subclause (1)(a): "Applicable rules of court" should be replaced by "rules of court". 2. Subclause (1)(b): Replace "...the court must deal" with "...the court shall deal" and "of that Court" should be added at the end of the clause.
14	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. Subclause 14(1)(a) and (b): Why should all appeals in labour law go to the Appeal, and not by a full court? 2. Subclause 14(1)(d): The reference to a "court of a status similar to that of the Appeal" should be listed in the clause. 3. Subclause 14(2)(b) – (d): The senior judge (of those considered) should be the one to refer the matter to the Appeal.
14	KwaZulu-Natal Bench (SCB 8)	<ol style="list-style-type: none"> 1. Subclause (2)(b): The issue of the practical effect of a decision being allocated to the full bench panel of judges. The senior judge should be allowed to call for the representations contemplated in this provision. The word "may" should be changed to "may". 2. The word "or" before "failing which" should be deleted as it is redundant.
14	COSATU (SCB 25)	Subclause (1)(b) is strongly supported since it replicates the current Labour Relations Act and it would prevent a situation where an appeal is not part of the labour panel.
15	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. Subclause (1)(c): There may be several "real issues" between the parties as follows: "where the decision sought to be appealed does not raise a real issue, the appeal would lead to a just and prompt resolution of the real issues, and the convenience favours the granting of leave to appeal." 2. Subclause (2)(e): The proviso is problematic – how is the matter to be given for refusal of leave to appeal. This "referral option" should be given to applicants. 3. Subclause (5)(a): The test for the referral of a matter to the Appeal should be "question of law of importance". The Bill should revert to the current test in Act 59 of 1959.

15	Eastern Cape Bench (SCB 4)	<ol style="list-style-type: none"> 1. Subclause (1)(a)(i): The test should be "reasonable prospective" 2. Subclause (1)(c): The word "although" should be inserted
15	KwaZulu-Natal Bench (SCB 8)	<ol style="list-style-type: none"> 1. Subclause (1)(a): This would introduce a new and vague test. What does "reasonable prospect of success" mean? The existing test (reasonable prospect of success) is clearly set forth in case law. 2. Subclause (1)(c): The word "against" should be inserted
16	Cape Bar Council (SCB 5)	Subclause (2): The provision deals with orders which currently are appealable. Whether its effect is to render such orders appealable.
16	Eastern Cape Bench (SCB 4)	Subclause (2)(a): Rule 43 matters should not be made appealable. Divorce matters and increase costs. Interim custody and maintenance if justified by changed circumstances.
16	Law Society of South Africa (SCB 7)	Subclause (1): The operation and execution of a decision should be expedited. Applications for leave are often lodged where the applicant is then drawn out to frustrate the respondent's right to a final order. A cost order will not compensate the respondent for any loss suffered. <i>vide</i> application for leave to appeal, it is suggested that the application relates to a judgment sounding in money.
16	KwaZulu-Natal Bench (SCB 8)	<ol style="list-style-type: none"> 1. Rule 43 orders and interlocutory orders should not be made appealable. The law at present in this regard is satisfactory (Section 20(7) of Act 59 of 1959.) 2. Subclause (2): "(u)nder special circumstances" should be inserted
17	Eastern Cape Bench (SCB 4)	<ol style="list-style-type: none"> 1. Paragraph (a): The majority of Eastern Cape Judges are opposed to oral hearings. Open oral hearings contribute to the hallowed principle of open justice. If judges feel that, in appeals without obvious merit from the facts, it is useful to dispose of them without an oral hearing. 2. Paragraph (c): At the end, replace "and" with "or".
17	KwaZulu-Natal Bench (SCB 8)	In the first line, "appeal jurisdiction" should be changed to "appellate jurisdiction"
18	Justice Ngcobo (SCB 16)	The Supreme Court of Appeal should not decide a question of law. Such questions should be submitted to the Constitutional Court. Such questions should be referred to the Chief Justice, who must direct whether they should be referred to the Constitutional Court or the Supreme Court of Appeal.
19	Supreme Court of Appeal (SCB 3)	<ol style="list-style-type: none"> 1. Subclause (1): Delete the words "subject to the direction of the Judge President concerned" and insert the following new subclause: "The Judge President concerned and (b) above may be heard." 2. Subclause (3)(a): The proviso should be deleted. Although it is a requirement for High Court jurisdiction that the cause of action be stated, it is not a requirement for appeal jurisdiction.
19	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. How is the jurisdiction of "seat areas" to be defined? 2. Subclause (1): The words "subject to the direction of the Judge President concerned" give rise to procedural point-taking. 3. Subclause (3): The concept of arrest of a natural person to be defined.

		law and may be unconstitutional.
19	KwaZulu-Natal Bench (SCB 8)	Subclause (3)(a): After the word " <i>fuga</i> ", "also" should be change
20	Cape Bar Council (SCB 5)	This provision is unnecessary as review powers can be dealt with in this regard.
22	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. "Civil summons" should be defined (as in Act 59 of 1959). 2. A Division should have a discretion to dispense with or co 3. Time periods are not consistently referred to – in this clau others references are made to "days" (which should be "c
22	Law Society of South Africa (SCB 7)	Add the following proviso: " <u>Provided that if the last day on which terms of this section falls on a Saturday, Sunday or public holiday will only expire on the first court day following on that Saturday,</u>
22	KwaZulu-Natal Bench (SCB 8)	"Civil summons" should be defined (as in Act 59 of 1959).
25	Supreme Court of Appeal (SCB 3)	<p>The following amendments are proposed in respect of subclause</p> <p>"Subject to any other law, if any proceedings have been instituted and appears to the Court concerned that such proceedings—</p> <p style="padding-left: 40px;">(a) should have been instituted in an court; or</p> <p style="padding-left: 40px;">(b) would be more conveniently or more</p> <p style="padding-left: 80px;">(i) at another seat of that D</p> <p style="padding-left: 80px;">(ii) in another Division,</p> <p>that Court may, on its own initiative or upon application by any p thereto, order in chambers that such proceedings to be removed case may be."</p>
25	Cape Bar Council (SCB 5)	Subclause (2): The words "may hear" should be replaced with "s
30	Justice Ngcobo (SCB 16)	Rule-making powers should not be fragmented, and should vest Justice.
32	Law Society of	This clause should be deleted and dealt with in the Rules of Cou

	South Africa (SCB 7)	
33	Supreme Court of Appeal (SCB 3)	Subclause (5): After the first "document", insert "in hard copy or
33	Law Society of South Africa (SCB 7)	This clause should be deleted and dealt with in the Rules of Cou
34	Law Society of South Africa (SCB 7)	This clause should be deleted and dealt with in the Rules of Cou
36	Cape Bar Council (SCB 5)	<ol style="list-style-type: none"> 1. Subclause (1): The Supreme Court of Appeal should also i commission. 2. The Bill does not define "commissioner" and do not provi must be appointed. Provision should be made for appointi
39	Justice Ngcobo (SCB 16)	A mechanism should be introduced to effect execution of judgm should amend the State Liability Act 20 of 1957 to this effect.
41	Supreme Court of Appeal (SCB 3)	In subclauses (1) and (2), the word "media" should be replaced b
41	Cape Bar Council (SCB 5)	Subclause (1)(a): Amend as follows: "...may be transmitted by te media as may be in the manner provided for by the rules of that
42	Law Society of South Africa (SCB 7)	This clause should be deleted and dealt with in the Rules of Cou
44	Supreme Court of Appeal (SCB 3)	Subclause (1): Amend as follows: "Notwithstanding any other la proceedings ..."
44	Justice Ngcobo (SCB 16)	The consent of the Chief Justice, as the head of the judiciary, sh being sued.
45	Circle Council of Limpopo	Subclause (1): The fact that Thohoyandou has been named as th It is recommended that this subclause be amended to provide th

	(SCB 2)	<p>Division, and that subclause (2) be amended to provide for (a per Polokwane and Northern Gauteng Divisions.</p> <p><i>(Note: Clause 45 is a transitional provision, dealing with the "fate Thohoyandou becomes a (not "the") seat of the Limpopo Division jurisdiction of the existing Court at Thohoyandou. As there is pr amount to a fiction to convert that "court" to a seat of the Limpopo</i></p>
46	<p>Supreme Court of Appeal</p> <p>(SCB 3)</p>	Subclause (1): The reference to the "panel referred to in section Court of Appeal's comment on clause 12.
46	<p>Cape Bar Council</p> <p>(SCB 5)</p>	<ol style="list-style-type: none"> 1. Subclause (7)(c): This is impractical and may give rise to c for cases to continue as if the Bill had not been passed. 2. Provision should also be made for the finalisation of part-evidence.
46	<p>Justice Ngcobo</p> <p>(SCB 16)</p>	Subclause (7): The manner in which pending labour matters are that parties know how to take these matters forward.
48	<p>KwaZulu-Natal Bench</p> <p>(SCB 8)</p>	Subclause (3): The time honoured " <i>mutatis mutandis</i> " is preferred
50	<p>KwaZulu-Natal Bench</p> <p>(SCB 8)</p>	It is probably not desirable to have a separate Rules Board for L margin of only one between the legally trained and non-legal me
50	<p>Justice Ngcobo</p> <p>(SCB 16)</p>	<ol style="list-style-type: none"> 1. Clause 50 read with clause 30 creates a number of anomalies apply in the same court – one for labour matters and another situation where two different entities, namely the President Board, will make rules for the Supreme Court of Appeal. The rules for the Supreme Court of Appeal as this is taken away for that Court in terms of clause 50. These situations under rulemaking power. 2. Managing labour matters in the Supreme Court of Appeal ; harmonising the rules of those Courts with the rules of the process can be undertaken by Civil Justice Reform Commission the President of the Supreme Court of Appeal and the existing
50	<p>COSATU</p> <p>(SCB 25)</p>	This provision is strongly supported since it provides a dedicated that labour matter proceedings are less formalised and therefore to the Standing Labour Matters Rules Committee on the advice c (2)(c)).
50	<p>SASLAW</p> <p>(SCB 26)</p>	<ol style="list-style-type: none"> 1. The new section 5B(4): There appears to be an inconsistency 2. SASLAW is willing to recommend practitioners referred to
Schedule	SASLAW	Legal practitioners, as defined in the Labour Relations Act, should labour matters. This does not appear clearly from the Bill. <i>(Note:</i>

1

(SCB 26)

dealt with in section 161 of the LRA – a section which is not repe