

*CANDIDATE : ADV IAN LESLEY TOPPING*

**APPLICANT: MR IAN LESLEY TOPPING**

**COURT FOR WHICH APPLICANT APPLIES: KWAZULU-NATAL  
HIGH COURT, DURBAN**

**1 The candidate's appropriate qualifications**

1.1 The candidate holds the following degrees:

1.1.1 BA (University of KwaZulu-Natal, 1982); and

1.1.2 LLB (University of KwaZulu-Natal, 1984).

1.2 The candidate is suitably qualified.

1.3 The candidate is currently a senior advocate practising in Durban.

**2 Whether the candidate is a fit and proper person**

2.1 The candidate was admitted as an attorney of the High Court on 17 February 1986. He joined the Department of Justice and Constitutional Development on 1 June 1989 as a prosecutor. He was called to the Durban Bar on 1 July 1992 and took silk on 22 July 2014.

2.2 The candidate is nominated by J Nxusani SC, a senior member of the Durban Bar.

2.3 The candidate has disclosed that his estate was sequestrated in 1978 as a consequence of him being a junior partner in a family business.

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He never had control over the administration of the business and was employed as a baker at the time. His estate was rehabilitated in 1983.

2.4 The candidate has further disclosed that a complaint was lodged with the Judge President of KwaZulu-Natal regarding two applications he presided over on 10 June 2015. Nothing came of the complaint and a perusal of his explanation of the events allays any potential concerns.

2.5 There is nothing in the candidate's application, in the material reviewed, and comments received on the candidate to suggest that he is not a fit and proper person.

### **3 Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa**

3.1 The candidate is a white man.

3.2 His appointment would not contribute to the transformation of the judiciary from a race or gender perspective.

### **4 The candidate's knowledge of the law, including constitutional law**

4.1 The candidate indicates in his application that he commenced articles in 1984. He has since practised as an attorney, prosecutor and advocate.

4.2 The candidate was a member of the KwaZulu-Natal Law Society from 1984 to 1989; a member of the Maritime Lawyers Association from 1986 to 1989; and a member of the Society of Advocates of KwaZulu-Natal from 1992 to present.

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- 4.3 He progressed rapidly as a prosecutor and prosecuted commercial crimes and high-profile matters during his last 12 to 18 months in that position.
- 4.4 The candidate describes his practice as being largely civil in nature and he states that he spends a large proportion of his time preparing for and appearing in trials. His practice consists of two main areas, the first being personal injury matters and medical negligence and the second being commercial matters, acting for banks and similar institutions.
- 4.5 He indicates that he has experience in appearing in the Companies Tribunal, National Consumer Tribunal and Land Claims Court. He has never appeared in the Constitutional court or acted in constitutional matters.
- 4.6 He has held 7 acting appointments between 2015 and 2016.
- 4.7 Given his diverse professional background, he appears to be well versed in most aspects of the law, apart from labour and constitutional matters.
- 4.8 His written judgments indicate a thorough knowledge of civil law and procedure. It should be noted that the majority of judgments located and submitted by the candidate are judgments in civil matters.
- 4.9 The candidate has referred to seven cases in which he appeared, which he regards as significant. He has provided a summary of each.

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- 4.10 In addition to the cases referred to by the candidate, he also appeared in the reported matters of *Chong Sun Wood Products PTE Ltd v K & T trading Ltd and Another* 2001 (2) SA 651 (D) (“*Chong Sun Wood*”) and *Ideal Fastener Corporation CC v Book Vision (Pty) Ltd t/a Colour Graphic* 2001 (3) SA 1028 (D) (“*Ideal Fasteners*”).
- 4.11 The *Chong Sun Wood* matter concerned the question of whether a South African court will assume jurisdiction in an action between *peregrine* in certain circumstances. The Court granted a rule *nisi* for the attachment of certain goods in order to found jurisdiction. The rule was subsequently discharged.
- 4.12 The *Ideal Fasteners* matter concerned the formation of a contract in circumstances where the plaintiff had dispatched conditions of sale, amongst others, to the defendant after receipt of an order for the sale and delivery of goods. The dispatch of the conditions of sale constituted a counter-offer, which served to modify the defendant’s proposal.
- 4.13 It is apparent from the cases reviewed, that the candidate has appeared in a number of matters which ought properly to be described as commercial matters. The candidate has provided summaries and copies of the judgments referred to in his application. Those judgments are thus not summarised again herein.

## 5 The candidate’s commitment to the values of the Constitution

- 5.1 There is nothing in the judgments of the candidate or in any publicly available information which suggests that the candidate is not committed to the values of the Constitution.

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**6 Whether any judgments have been overturned on appeal**

- 6.1 The candidate granted leave to appeal in the following matters:
- 6.2 *Netcare St Augustine's Hospital (Pty) Ltd v EEG & Sleep Laboratory* (case number: 9088/2013);
- 6.3 *S R Naidoo v Classified Informatics (Pty) Ltd* (case number: 11471/2013);
- 6.4 *N Singh and Another v Mount Edgecombe Country Club Estate Management Association (RF) NPC and Others* 2016 (5) SA 134 (KZD) (“Singh”).
- 6.5 The candidate refused leave to appeal in the matter of *eThekweni Municipality v D Bhardwaj* (case number: 3135/2015).
- 6.6 The appeal in the Singh matter was upheld in part, which appeal judgment is reported at 2018 (1) SA 615 (KZP). The Full Bench held that the candidate erred by failing to enquire into whether the first respondent's rules infringe upon relevant legislation and in fact contrary to law. The Full Bench further held that the candidate confined himself to common law principles relative to the law of contract without considering public-law aspects. His judgment was thus overturned on purely legal grounds.
- 6.7 The candidate informs that he is unaware of what transpired in the other matters where he granted and refused leave to appeal. We have been unable to establish from mainstream sources what the outcome of those matters were.

6.8 We found no further judgments that have been overturned on appeal.

## 7 **The extent and breadth of the candidate's professional experience**

7.1 The candidate was an attorney for a period of three years. Thereafter he prosecuted for a period of two years. He has been a member of the Bar since 1992.

7.2 The candidate has acted as a Judge in the KwaZulu-Natal High Court, for a cumulative period of 3 and a half months during seven separate appointments from 2015 to 2016.

7.3 The candidate states that he appeared in the High Court for the greater part of his career at the Bar.

7.4 The candidate's cumulative experience during the course of his career appears to be wide and he would be equally comfortable hearing complex criminal matters and civil matters. His experience in and knowledge of Maritime Law is considered to be an advantage considering the position he applies for.

7.5 From the information reviewed, it would appear that the only area in which the candidate does not have extensive experience, are constitutional and labour matters.

## 8 **The candidate's linguistic and communication skills**

8.1 The judgments written by the candidate appear to be considered and reasoned with appropriate references to legislation and cases.

8.2 It is apparent from the candidate's judgments that he has excellent linguistic skills in English.

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8.3 He is also proficient in Afrikaans and isiZulu.

8.4 No adverse comments have been raised about the candidate's communication skills.

9 **The candidate's ability to produce judgments promptly**

9.1 The candidate indicates in his application that he has no outstanding judgments.

9.2 The judgments referred to by the candidate indicate that he delivers judgments fairly promptly.

9.3 It should be noted that several of his judgments relate to complex matters and required lengthy judgments. His judgment in the Singh matter (referred to in 6.1.3 above) comprised 146 paragraphs and dealt with three opposed applications, heard together. That matter was heard on 12 June 2015 and judgment was handed down on 4 February 2016. His judgment in *ABSA Technology Finance Solutions (Pty) Ltd v Garysun Hardware Merchants CC and Others* (case number 9461/2010) comprises 161 paragraphs. The last day of the trial was on 23 September 2015 and judgment was delivered on 31 March 2016. The judgment records that written argument was presented after the 23rd September, but no date is given as to when such argument was delivered.

9.4 The candidate's judgment in *M L Stuart N.O. and Others v Y G H Moolla N.O.* comprised seven opposed applications, heard simultaneously, on an urgent basis. The matters were heard on 26 April 2016 and judgment was delivered on 29 April 2016.

**10 The candidate's fairness and impartiality**

10.1 Our review of the candidate's unreported judgments affords no reason to doubt his fairness and impartiality.

**11 The candidate's independent mindedness**

11.1 No adverse comments have been received regarding the candidate's independent mindedness.

11.2 His judgments are indicative of thorough research, proper motivation and decisiveness.

**12 The candidate's ability to conduct court proceedings**

12.1 The candidate's judgments which we reviewed demonstrate a clear ability properly to conduct court proceedings.

12.2 His peers have commented favourably on his abilities in trial court and motion court.

**13 The candidate's administrative ability**

13.1 We received no adverse comments concerning his administrative ability.

13.2 His involvement in the Pupil Training Programme and active involvement in the Stella Sports Club indicate that he possesses the necessary administrative ability.

**14 The candidate's reputation for integrity and ethical behaviour**

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14.1 We are unaware of any circumstances that afford doubt to the candidate's integrity and ethical behaviour.

14.2 He is held in high regard by his peers. His elevation to the status of Silk confirms this aspect.

**15 The candidate's judicial temperament**

15.1 No concerns appear from the judgments considered and no concerns were noted by any practitioners or peers.

15.2 The candidate is regarded as congenial, approachable and with a calm temperament.

**16 The candidate's commitment to human rights, and experience with regard to the values and needs of the community**

16.1 The candidate was actively involved in the Legal Aid Programme at university and was a co-convener of a Legal Aid conference in 1983.

16.2 The candidate indicates that he has acted in many matters for indigent persons.

16.3 He has been actively involved in the training of pupil advocates whilst at the Bar and is currently the Pupillage Convener.

**17 The candidate's potential**

17.1 The candidate is a seasoned practitioner, who has had wide exposure in litigation during the course of his career.

17.2 He actively pursued knowledge and experience in criminal litigation before joining the Bar, which is indicative of professional maturity.

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17.3 His work ethic is commendable and his calm temperament is considered to be a valuable asset should he be appointed to the position.

**18 The message that the candidate's appointment would send to the community at large**

18.1 The candidate is a white man with considerable experience as a litigator.

18.2 The candidate's elevation to the Bench will demonstrate that the judiciary is open to skilled and experienced lawyers who wish to serve the cause of justice.

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## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported decisions**

*Singh and Another v Mount Edgecombe Country Club Estate Management Association (RF) NPC and Others* 2016 (5) SA 134 (KZD)

### **Unreported decisions**

*Netcare St Augustine's Hospital (Pty) Ltd v EEG & Sleep Laboratory* (case number: 9088/2013)

*ABSA Technology Finance Solutions (Pty) Ltd v Garysun Hardware Merchants CC and Others* (case number: 9461/2010)

*eThekwini Municipality v D Bhardwaj* (case number: 3135/2015)

*L Naidu and Others v Master of the High Court, Durban* (case number: 3145/2014)

*S R Naidoo v Classified Informatics (Pty) Ltd* (case number: 11471/2013)

*M L Stuart N.O. and Others v Y G H Moolla N.O.* (case numbers: 2816 - 2822/16)

*VDL Bus and Coach South Africa (Pty) Ltd v Distinctive Choice 1256 CC t/a Tuva Coaches* (case numbers: 13323 & 13324/2013)

*A Sukdev v Solar Sport Manufacturers (Pty) Ltd and Others* (case number 3593/2016)

*Mandeni Municipality v The Ingonyama Trust* (case number: 6894/2015)

*S v B S Mjwara* (case number: RC 206/14)

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*S v A Zungu* (case number: RC 68/11)

*S v Steyn* 2017 JDR 2055 (KZP)

*Pillay v Dawood* 2016 JDR 1678 (KZP)

**Judgments upheld on appeal**

None reported.

**Judgments overturned on appeal**

*Singh and Another v Mount Edgecombe Country Club Estate Management Association (RF) NPC and Others* 2018 (1) SA 615 (KZP)

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