CANDIDATE: JUDGE ANNALI CHRISTELLE BASSON

COURT FOR WHICH CANDIDATE APPLIES: CONSTITUTIONAL COURT

1. **The candidate's appropriate qualifications**

1.1. The candidate holds the following degrees:

1.1.1. BLC (1982);

1.1.2. LLB (Pret) (Cum Laude) (1984); and

1.1.3. LLD (1990).

1.2. The candidate has a certificate in –

1.2.1. Advanced Labour Law;

1.2.2. Practical Labour Law;

1.2.3. Women and the Law; and

1.2.4. Employment Equity.

1.3. The candidate has been a Judge of the Labour Court (July 2007 to December 2015) and the High Court (January 2016 to present).

1.4. Prior thereto, the candidate was a Professor of Law at the University of South Africa from 1982 to July 2007. The candidate was a member of

the Pretoria Bar between 2003 and July 2007 and a commissioner for the CCMA.

1.5. The candidate is appropriately qualified.

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

2.1. The candidate has been a Judge of the Labour Court and is presently a judge of the North Gauteng High Court.

2.2. There are no adverse comments as to the candidate's fitness for appointment as a Judge of the Constitutional Court of South Africa.

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 woman.

3.2. At present, there are nine permanent Judges on the Constitutional Court. Of these, there are six men (comprised of four Black men and two White men) and three women (all Black).

3.3. The appointment of female candidates to senior positions in the judiciary currently lags behind the goal of equal gender representivity, and the candidate's appointment would therefore further this end.

4. **The candidate's commitment to the values of the constitution**

4.1. The candidate's judgments demonstrate a strong commitment to constitutional values and an understanding of various Constitutional imperatives. The candidate appears not to shy away from her powers and / or duties as a Judge, to further Constitutional imperatives,

including that of redressing inequality and the dark legacy of apartheid. The judgements delivered by the candidate underpin the values and principles enunciated in the Constitution.

4.2. The candidate's commitment to constitutional values is further evident from her involvement in the teaching of basic legal skills, her focus on empowering women who are community leaders and her active implementation of access to justice.

5. **The candidate's knowledge of the law, including constitutional law**

5.1. The candidate was a Professor of Law at UNISA for 25 years. Thereafter, she occupied the position of a Judge of the Labour Court.

5.2. In 2016 the candidate was appointed to the High Court, and continues to occupy that position.

5.3. In addition, the candidate has obtained certificates in the subjects mentioned in paragraph 1.2 above.

5.4. The candidate has co-authored the following books:

5.4.1. Essential Labour Law, 6th ed (2017);

5.4.2. Essential Social Security Law Paperback (2001);

5.4.3. Essential Employment Discrimination Law;

5.4.4. The employment of Domestic Workers: A Practical Guide to the Law (1994); and

5.4.5. Women and the Law in South Africa: Empowerment through Enlightenment: Unit for Gender Research in Law (1998).

5.5. She has also written, solely or co-authored, no less than 28 articles, covering a variety of subjects of which labour law related subjects are the most prevalent.

5.6. The candidate has 107 reported judgments (spanning 1989 to present). Of these, a mere 19 are listed as having been taken on appeal and, of those, the appeal was upheld in only 8. Concomitantly, a mere 8.5 % of the applicant's judgments have been successfully reversed on appeal.

5.7. Of the reported judgments, the candidate lists the following judgments as being most significant –

5.7.1. *UASA - The Union & another v BHP Billiton Energy Coal SA & another* (2013) 34 ILJ 1298 (LC):

In this case the candidate was called upon to determine two points *in limine*; namely, whether the Labour Court has jurisdiction to pronounce upon the validity and/or lawfulness of an agency shop agreement and whether the agency agreement in question constituted an impermissible contravention of the rights to freedom of association and fair labour practices embodied in s 18 and s 23 (1) of the Bill of Rights, respectively.

As to the first point, she held that the Labour Court has jurisdiction to determine the validity and/or lawfulness of an agency shop agreement in terms of s 77(1) and/or s 77(2) of the Basic Conditions of Employment Act and, in this respect, the

judgment is of considerable value. As to the second point, the judgment equally serves to remind litigants of the appropriate procedure to be adopted where the *constitutionality of legislation is challenged*.

5.7.2. *Nyathi v Special Investigating Unit* (2011) 32 ILJ 2991 (LC):

Nyathi is a comprehensive and lucid judgment dealing with the interface between pure contractual law and the principles of the LRA when the termination of a contract is in issue, distinguishing between the common law right to terminate an employment contract (lawfulness) and the residual remedies available pursuant thereto in terms of the LRA (fairness). The judgment also deals with the status of a disciplinary policy once invoked by an employer, holding the employer to the terms thereof.

5.7.3. *Eskom Holdings (Pty) Ltd v National Union of Mineworkers & others* (2009) 30 ILJ 894 (LC):

See paragraph 6.5 below.

5.7.4. *Sekgobela v State Information Technology Agency (Pty) Ltd* (2008) 29 ILJ 1995 (LC):

This matter concerned an automatically unfair dismissal in terms of s 187(1)(h) of the Labour Relations Act 66 of 1995. In deciding whether the applicant was the subject of an automatically unfair dismissal, the candidate reiterated that fairness of a dismissal (in the context of an automatically unfair

dismissal) relates to the reason for the dismissal and that such reason has to be one listed in s 187(1)(a)-(h). As to the onus when establishing the reason for the said dismissal, the principles as enunciated in *Janda v First National Bank* (2006) 27 ILJ 2627 (LC) were restated.

5.7.5. *AB and the Surrogacy Advisory Group v The Minister of Social Development As Amicus Curiae: Centre For Child Law* (Case No: 40658/13):

See paragraph **Error! Reference source not found.** below.

5.7.6. *Duduzile Baleni and Others v Minister of Mineral Resources and Others* (Case No: 73768/16):

This judgment constituted a radical shift from the legal position which existed immediately prior. The matter concerned a mining dispute between a local community and a mining Company. Central to the dispute was the issue of prior consent, and whether this was required prior to mining communal land. In short, the candidate granted the declaratory relief sought by the applicants, the community concerned. In this matter the candidate resolved a conflict in regard to the manner in which the prevailing two pieces of legislation should be interpreted, specifically concerning the issue of prior "consent" / "consultation" of the community and in so doing, the candidate seized herself with various Constitutional imperatives, considered various judgments as handed down by the Constitutional Court, and had further regard to the aim/s as contained in both the Acts. The

judgment is lucid, and well-reasoned. In penning the judgment, the candidate's reasoning expounds a deep understanding of our history as a Country, and the Constitutional imperatives concerned.

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

6.1. *Aviation Union of SA & others v SA Airways (Pty) Ltd & others* (2008) 29 ILJ 331 (LC) and *Aviation Union of SA v SA Airways (Pty) Ltd & others* (2011) 32 ILJ 2861 (CC):

6.1.1. This matter concerned the interpretation of the word "by" in s 197(1)(b) of the LRA. On the candidate's interpretation, she found that there had been no transfer as a going concern in terms of s 197 of the Act. This decision was overturned by the Labour Appeal Court, which adopted a purposive construction to the section, more specifically to the interpretation of the word "by".

6.1.2. The Supreme Court of Appeal overturned the Labour Appeal Court and found that the Labour Appeal Court had impermissibly distorted the meaning of the word "by" to mean "from". Furthermore, the Supreme Court of Appeal found that the Labour Appeal Court had erred in finding that a transfer had taken place, thereby in effect reaching the same conclusion as the candidate.

6.1.3. The matter was taken on appeal to the Constitutional Court, which found that all of the lower courts had erred in their interpretation of the word "by" in section 197(1)(b) of the LRA and the matter was remitted back to the Labour Court.

6.2. *Southgate v Blue IQ Investment Holdings* (2012) 33 ILJ 2681 (LC):

6.2.1. The judgment of the candidate in the Labour Court dealt with a contractual dispute in terms of s 77 of the BCEA. The applicant alleged a breach of a fixed term contract and the respondent alleged that the contract had terminated by the effluxion of time. The applicant relied on an oral agreement that had come into being between himself and the CEO of the respondent that terminated his existing contract and commenced a new contract. The respondent relied on a non-variation clause in the terminated contract, contending that the formalities to enter into a new contract had not been complied with and that the CEO did not have the authority to conclude a new contract with an employee as senior as the applicant and furthermore that the applicant could not rely on the application of the Turquand Rule.

6.2.2. On appeal the court found that the candidate had erred in two respects, the first being the issue of the non-variation clause, and secondly in the application of the Turquand Rule.

6.3. *SA Municipal Workers Union on behalf of Members v Ekurhuleni Metropolitan Municipality* (2012) 33 ILJ 2961 (LC) and *Ekurhuleni Metropolitan Municipality v SA Municipal Workers Union obo Members* (2015) 36 ILJ 624 (LAC):

6.3.1. In this matter, the candidate held that the full-time shop stewards had not participated in a strike and were therefore entitled to their remuneration for the duration of the strike. The LAC had to decide two issues, namely, whether the Labour Court had, in fact,

jurisdiction to decide the dispute and, if so, whether the full-time shop stewards were entitled to be paid during the strike. The majority court (per Coppin AJA; Tlaletsi DJP concurring) noted that the issue of jurisdiction had not been raised in the affidavits before the candidate, but was only raised in the application for leave to appeal. From the pleadings, it appeared that the candidate had to decide whether the main agreement had been breached.

6.3.2. As such, being a dispute relating to the interpretation and the application of the main agreement and, in terms of section 24 of the Labour Relations Act, it was not within the power of the Labour Court to hear and determine such a dispute – it had to be resolved by conciliation, failing that, arbitration. In a minority judgement, Waglay JP agreed that the appeal should be upheld, but for different reasons. He found that the claim had been brought in contract and that the candidate had correctly dealt with the matter on that basis. He found, however, that the no work no pay principle was applicable to the shop stewards and therefore supported the finding by the majority that the decision of the candidate be set aside.

6.4. *Nature's Choice Products (Pty) Ltd v Food and Allied Workers' Union & Others* [2014] 5 BLLR 434 (LAC) or *Nature's Choice Products (Pty) Ltd v Food and Allied Workers Union and others* (2014) 35 ILJ 1512 (LAC):

6.4.1. The candidate dismissed, with costs, the appellant's application for condonation for the late filing of its statement of response to the respondents' statement of claim.

Upon petition to the LAC, leave to appeal was granted and the appeal was subsequently upheld. The candidate had taken the view that the appellant had provided a weak explanation for the delay, and had not dealt with the prospects of success in the founding affidavit. The LAC, however, held that the explanation for the delay, though not detailed, was nonetheless reasonable. Furthermore, the appellant had merely claimed in its founding affidavit that it had "excellent prospects of success" and had referred to the statement of defence in this regard. The candidate declined to have regard to the statement of claim because it was not incorporated in the affidavit. The LAC, however, held that in the circumstances, it was enough to refer to the statement of defence, which was easily identifiable, without an express averment that it should be deemed incorporated in the founding affidavit.

6.5. *Eskom Holdings (Pty) Ltd v NUM & Others* [2008] JOL 22567 (LC) and *Eskom Holdings Ltd v National Union of Mineworkers & others (Essential Service Committee intervening)* (2011) 32 ILJ 2904 (SCA):

6.5.1. In this matter the respondent operated in an industry that was designated as an essential service. The respondent and appellants had been unable to conclude a minimum services agreement (MSA) and in the result the appellant sought to refer the failure

to agree on the terms of an MSA as a dispute on a matter of mutual interest to the CCMA for conciliation, failing which a referral of the dispute to compulsory arbitration. The respondent raised an objection to the referral of the dispute to conciliation on the basis that the CCMA lacked jurisdiction to entertain the dispute. The relevant CCMA commissioner decided that the CCMA did have the necessary jurisdiction.

6.5.2. In reviewing this decision, the candidate found that the only forum which was competent to intervene in disputes about minimum services is the essential services committee (ESC) and that the LRA accordingly did not provide that the failure to agree on the terms of an MSA was a dispute on a matter of mutual interest which could be referred for conciliation to the CCMA.

6.5.3. On appeal, Davis JA expressed the view that whilst the candidate was clearly aware of the implications of s 74, she had glided past the express wording of this section to rely exclusively on s 72 in order to come to the conclusion that the CCMA did not have the necessary jurisdiction. Moreover, Davis JA considered that the candidate had not provided any reasons for her failure to reconcile s 72 with s 74. Davis JA, in upholding the appeal and ultimately finding that the CCMA had jurisdiction to conciliate the dispute, found that the candidate had either ignored or not properly appreciated the provisions of s 74.

6.5.4. With special leave, the appellant sought to reaffirm the candidate's order in the Supreme Court of Appeal. Leach JA, in

upholding the appeal, held that it was the Labour Appeal Court which had erred in finding that the dispute between the parties as to the terms of the MSA was a dispute which could be conciliated or arbitrated under s 74 of the LRA. He took the view, further, that the legislature had not intended an arbitration award under s 74 to be construed as a collective agreement as envisaged in s 72 of the LRA thereby vindicating the candidate's original finding.

6.6. *FAWU obo M Kapesi & 31 Others v Premier Foods Ltd* case number: CA7/2010 reported at *Food and Allied Workers Union on behalf of Kapesi & others v Premier Food Ltd T/a Blue Ribbon Salt River* (2010) 31 ILJ 1654 (LC) and *Food and Allied Workers Union on behalf of Kapesi & others v Premier Foods t/a Blue Ribbon Salt River* (2012) 33 ILJ 1779 (LAC):

6.6.1. Premier Foods Ltd traded, *inter alia*, as Blue Ribbon Bakery at Salt River in the Western Cape.

6.6.2. After the failure of wage negotiations, the Food and Allied Workers Union and most of its members engaged in a protected national strike to demand centralised bargaining to raise the wage levels of employees employed in rural areas to the levels of employees employed in urban areas. The strike was a particularly violent one with non-strikers being harassed and intimidated.

6.6.3. At the conclusion of the strike and with the return of the employees to work, Premier suspended several employees pending disciplinary action. Premier contended, however, that any disciplinary action proved impossible owing to the fact that

some witnesses were not prepared to testify on account of fear and its key witness disappeared. In consequence the disciplinary action was abandoned and, instead, Premier sought to retrench the employees on the grounds of operational requirements. The CCMA facilitated a total of six consultations and, in the result, the employees were dismissed.

6.6.4. FAWU launched an application in the Labour Court on behalf of the retrenched employees, all of whom were its members, complaining that the dismissals of these 31 employees were substantively and procedurally unfair. The candidate held that the dismissal of the employees was substantively and procedurally unfair and granted them compensation.

6.6.5. The Food and Allied Workers Union appealed and Premier Foods Ltd cross-appealed against the judgment.

6.6.6. In considering the merits of the appeal and the cross-appeal, Landman AJA commended the candidate for her comprehensive judgment.

6.6.7. In dismissing the cross-appeal, Landman AJA assumed in favour of Premier, but without deciding, that the candidate had erred in the respects contended for by Premier (including that its selection criteria had been fair and reasonable) but that the cross-appeal, in any event, had to be dismissed for different reasons (i.e. because Premier had not discharged its onus of proving that the selection criteria had been applied fairly and objectively).

6.6.8. Landman AJA was astute to mention that the candidate had "summed up the evidence regarding the application of the criteria, very succinctly."

6.6.9. In upholding the appeal, Landman AJA, noted that the candidate's decision not to reinstate the applicants (on the basis that the employment relationship between the parties would not be able to exist between them) was not based on the evidence (there having been no evidence that the applicants committed the acts of violence or intimidation) and that the candidate had made this finding on the evidence of violence and intimidation which was not linked to the applicants. In this regard the candidate had erred on the facts and reinstatement instead of compensation ought to have been ordered.

6.7. *NUPSAW obo Mani and Others v National Lotteries Board* [2011] ZALCJHB 199 (unreported). *National Union of Public Service and Allied Workers on behalf of Mani and Others v National Lotteries Board* (2013) 34 ILJ 1931 (SCA) ([2013] 8 BLLR 743; [2013] ZASCA 63) (Not court a quo but accessible judgment).

National Union of Public Service and Allied Workers OBO Mani And Others v National Lotteries Board 2014 (3) SA 544 (CC):

6.7.1. The respondent, the National Lotteries Board, dismissed the appellants, its employees, on the ground that their demand for the dismissal of their chief executive officer, with a threat to stop work if the demand was not met, and then also their associating themselves with a letter about the poor performance of the CEO,

which their union leaked to the press, all during a conciliation process in terms of the Act, constituted insubordination, and that the association with the press leak constituted misconduct in the form of disrespect and bringing the CEO and the Board into disrepute. At a disciplinary hearing the employees were found guilty of these charges and those who did not make a formal apology were dismissed. The dismissals were upheld by the candidate in the Labour Court and, on appeal, by the Supreme Court of Appeal.

6.7.2. The Constitutional Court (per Zondo J with Moseneke ACJ, Jafta J, Madlanga J, Mhlantla AJ and Nkabinde J concurring) overturned the decisions of the Labour Court and the Supreme Court of Appeal.

6.7.3. There was, however, a dissenting judgment (per Froneman J (Skweyiya ADCJ and Cameron J concurring)) that would have dismissed the appeal, in effect endorsing the reasoning of the candidate in the *court a quo*. Dambuza AJ delivered a separate judgment, concurring with the majority decision but for different reasons.

6.7.4. In granting the appellants leave to appeal to the Constitutional Court, Froneman J observed (and the majority judgment of Zondo J endorsed) that the "*important issue of principle*" raised by the matter, "*concerns the interpretation and application of a number of provisions of the Act, particularly those dealing with the nature and extent of lawful union activities and the right of*

employees to take part in them. Moreover, this case requires us to clarify the extent of the Act's protection for public employees who speak out on matters of public concern. This court has not authoritatively dealt with these issues. It is in the interests of justice to do so now." This is illustrative of the complexity of the matter.

6.7.5. At the commencement of the majority judgment, Zondo J stated that it was necessary to traverse certain of the facts giving rise to the dispute, saying, "*This is necessary because there are differences of emphasis on the facts between my approach and that of the main judgment.*"

6.7.6. The differences in the findings of fact underpinned the main judgment in overturning the judgment of the candidate in the Labour Court and the Supreme Court of Appeal. The main judgment observed that some of the seven main findings underpinning the candidate's judgment were not sufficiently elaborated upon. That the Supreme Court of Appeal and three of the judges in the Constitutional Court agreed with the candidate's judgment and that the judgment was not simply overturned on the basis of a legal finding, illustrates the complexity of the issues dealt with by the candidate in the Labour Court.

6.8. *Bonfiglioli South Africa (Pty) Ltd v Michael Wayne Panaino* C588/2013 overturned on appeal in *Bonfiglioli South Africa (Pty) Ltd v Michael Wayne Panaino* CA19/13:

6.8.1. This was an urgent application to enforce restraint of trade undertakings against the respondent. The restraint of trade agreement contained a retention provision, with a deeming clause pertaining to the deemed termination of the employment for purposes of determining payment of the retention bonus. The candidate interpreted the deemed termination provision to apply also to the restraint undertaking, and dismissed the application on the basis that the deemed expiration of the retention period also extinguished the restraint period.

6.8.2. On appeal, the judgment was overturned on the basis that on a proper interpretation of the agreement, the deeming provision pertaining to the deemed termination of the agreement operated to extend, rather than limit, the definition of termination in the contract. The contract served two distinct purposes, with the retention payment aimed at retaining the employee in the service of Bonfiglioli and the restraint aiming at protecting its proprietary interests after termination of his employment.

6.8.3. Whilst the candidate's interpretation of the contract blurred the distinction between these two separate functions, which the Labour Appeal Court found would lead to an insensible and unbusinesslike result, it must be borne in mind that the candidate dealt with this matter in the urgent court.

6.9. *AB and the Surrogacy Advisory Group v The Minister of Social Development As Amicus Curiae: Centre For Child Law* (Case No: 40658/13):

6.9.1. In this judgment the candidate found that section 294 of the Children's Act 38 of 2005 to be unconstitutional. This provision, which requires in a surrogacy agreement a genetic link between the commissioning parents and the child contemplated under that agreement, was unconstitutional.

6.9.2. In reaching her conclusion the candidate considered whether the genetic link requirement for the validity of a surrogacy motherhood agreement has a rational connection between the scheme it adopts and the achievement of a legitimate government purpose. In the absence of a rational connection, she declared the challenged legislative provision unconstitutional.

6.9.3. The candidate found that the purpose of regulating surrogacy into legislation was to allow commissioning parents to have a child. Requiring that a genetic link should exist between the parent(s) and the child in the context of surrogacy, whereas such a requirement is not set in the context of *in vitro* fertilisation ("*IVF*"), defeats this purpose and infringes on the constitutional rights to human dignity, reproductive autonomy, privacy and access to healthcare.

6.9.4. She held that the genetic link requirement is entirely severable and that the comprehensive legal checks and protections build into Chapter 19 of the Children's Act 38 of 2005 would remain unaffected.

6.9.5. She also held that a special costs order, despite it being unusual in the context of constitutional litigation, is warranted based on

the respondent's obstructive conduct and failure to ensure that all relevant evidence was placed before the court timeously.

6.9.6. The majority of the Constitutional Court (written by Nkabinde J, in which Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Jafta J, Mhlantla J and Zondo J concurred) held that the provision does not violate any of the constitutional rights that were discussed by the candidate. Nkabinde J held that this case was not about whether the genetic link requirement has relevance to the legal conception of family, but rather only about the constitutional validity of section 294 of the Act.

6.9.7. The majority held there was a sufficient rational link between the legislative provision and its purpose, namely to protect the dignity and best interests of the child contemplated of in the surrogacy agreement. It held that the candidate erred in taking the approach that credible data was necessary to show that the child's best interests were in fact at stake. Empirical research could not be elevated above the purposive construction of the challenged provision, and courts do not rely on the opinions of experts in determining the constitutionality of legislation.

6.9.8. The majority also held that the correct approach was not to consider the legal conception of what constitutes family, but rather to examine whether the means chosen by the legislature were rational and therefore lawful. A lawfully chosen measure by the legislature cannot be set aside because a different decision was preferable.

6.9.9. The majority further held that there was no discrimination inherent in the legislative provision. The applicant was disqualified only by biological and medical reasons. It remained open for the applicant to enter into a surrogacy agreement if she entered into a permanent relationship with a fertile parent.

6.9.10. The majority likewise held that there was no infringement of the other rights.

6.9.11. The majority nevertheless upheld the costs order made by the candidate and found no basis to interfere with this order.

6.9.12. In a minority judgment Khampepe J (Cameron J, Froneman J and Madlanga J concurring) would have confirmed the declaration of invalidity and sustained the position and findings adopted by the candidate.

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

7.1. The candidate has an impressive professional history. It includes the following highlights:

7.1.1. She has obtained three degrees (BLC, LLB and LLD).

7.1.2. She was a Professor of Law at the University of South Africa (UNISA) from 1982 to 2007.

7.1.3. She was admitted as an advocate in 2003.

7.1.4. She was appointed as a commissioner for the Commission for Conciliation, Mediation and Arbitration (CCMA) in 2003 and held that position until July 2007.

7.1.5. She was appointed as a Judge to the Labour Court from July 2007 to December 2015.

7.1.6. She was subsequently appointed as Judge to the North and South Gauteng High Court from January 2016 to present.

7.1.7. As mentioned, during this time the candidate has also written extensively and has been actively involved in training women, CCMA commissioners, human resource managers, trade union officials and shop stewards.

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

8.1. The candidate's judgments read well and show advanced linguistic and communication skills. Moreover, the candidate, having written a variety of articles in both English and Afrikaans, clearly has a command for both languages.

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

9.1. The candidate has no outstanding reserved judgments. Her record indicates an ability to work efficiently and to produce judgments promptly.

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

10.1. No adverse comments have been received in this regard.

11. **The candidate's independent mindedness**

11.1. The candidate's judgments, in which she does not shy away from grasping the nettle when required to do so, are testament to her independent mindedness.

11.2. There is no record of any complaint or incident indicating a lack of independent mindedness on the part of the candidate.

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

12.1. The candidate is an experienced Judge, who has held a seat at the High Court and at the Labour Court for a number of years. With this judicial track record, it can be accepted that the candidate has the requisite ability to conduct court proceedings properly.

12.2. Moreover, feedback received to the candidate's application suggests that the candidate, whilst always being polite and patient (particularly with junior members of both the bar and side-bar), conducts proceedings with a firm hand and retains firm control of her court.

12.3. There is no reason to doubt her ability to conduct court proceedings; information received is to the contrary.

13. **The candidate's administrative ability**

13.1. The candidate's record of producing judgments promptly appears indicative of her ability to administer her role efficiently. In the absence of an additional administrative task over the division in which she sits, we are unable to comment further.

13.2. No adverse comments have been received.

13.3. The candidate lists that she is the Taekwondo Federation of South Africa President and the Vice President of the International Federation.

13.4. That speaks to her administrative ability in this sphere.

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

14.1. No adverse comments have been received in this regard.

14.2. There is nothing else on record to indicate that the candidate's integrity or ethics have ever been compromised.

15. **The candidate's judicial temperament**

15.1. As mentioned, the candidate whilst being gracious and courteous, is firm in the conduct of her matters.

15.2. No concerns appear from the judgments we have considered.

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

16.1. The candidate has for many years been actively involved in teaching basic legal skills, particularly in the fields of labour practises in the workplace, discrimination law and the law regarding sexual

harassment. The candidate focussed on women in the community in order to equip them with basic legal skills.

16.2. The candidate is also the chairperson of the Unit for Gender Research in Law, the co-presenter of the Employment Law Seminar and the co-presenter of the Certificate Management Programme for Trade Unions.

16.3. She has also trained numerous CCMA commissioners, Human Resource Managers, Trade Union officials and shop stewards.

16.4. Through education, the candidate has no doubt furthered the constitutional goal of promoting access to justice.

17. **The candidate's potential**

17.1. The candidate's established academic and judicial career, and in particular her experience as a long - standing Judge of both the Labour Court and the High Court demonstrates that she has the skills required to fill the post of a Judge of the Constitutional Court of South Africa.

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

18.1. The candidate's appointment would further the following important objectives:

18.1.1. ensuring that gender transformation occurs at senior levels of the judiciary, and in particular in the apex court of the Republic; and

18.1.2. ensuring that persons with demonstrated knowledge and experience are appointed to the High Courts.

18.2. The candidate's appointment would be seen in the public and legal domain as being fitting and appropriate to aid the continued efficiency and effectiveness of the Constitutional Court. In this way, it would preserve and enhance the integrity of the court.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Paper, Printing, Wood & Allied Workers Union & Others v Kayraft (Pty) Ltd & Another (1989) 10 Ill 272 (IC)

Karos Hotels (Pty) Ltd v Hotel & Restaurant Workers Union (1990) 11 ILJ 186 (IC)

De Klerk J, Basson DA, Basson AC National Union of Public Service Workers & Others v Alberton Old Age Home (1990) It ILJ 494 (LAC)

Van Zyl J, DA Sasson & AC Sasson Morester Sande (Pty) Ltd v National Union of Metalworkers of South Africa Another (1990) 11 ILJ 687 (LAC). *With National Union of Metalworkers of SA & Another v Bonar Long NTC (SA) (Pty) Ltd* (1990) 11 ILJ 1147 (IC)

De Klerk J, DA Basson & AC Basson Vleissentraal (Kooperatief) Bpk hla Supreme Meat Products v Food & Allied Workers Union (1990) 11 ILJ 1267 (LAC)

Auto & General Insurance Co Ltd v Mabaso & Others (1990) (11) ILJ 1335 (IC)

Goldstein J, AC Sasson & Van der Linde National Union of Mineworkers of SA V Haggie Rand Ltd (1991) 12 ILJ 1022 (LAC)

SA Commercial Catering & Allied Workers Union v lnterfare (Pty) Ltd & Others (1991) 12 ILJ 1313 (IC)

Commercial Catering & Allied Workers Union of SA v Dion Stores (1992) 1 ICD 151 (IC)

Moletsame v Ascot Diamonds (Pty) Ltd (1993) 2 ICD 310 (IC)

Stafford J, AC Sasson & Hartdegen Amalgamated Beverages Industries (Pty) Ltd v Jonker (1993) 14 ILJ 1232 (LAC)

De Klerk J, AC Basson & Van Graan Cardoso Cigarette Co v SA Commercial Catering & Allied Workers Union obo Phiri & Others (1993) 14 ILJ 1022 (LAC)

De Klerk J, DA Basson & AC Basson National Union of Metalworkers of SA & Another v Rotor Electrical CC (1993) 14 ILJ 1042 (LAC)

Stafford J, AC Sasson & Hartdegen Amalgamated Beverages Industries (Pty) Ltd v Jonker (1993) 14 ILJ 1232 (LAC)

Stafford J, DA Sasson & AC Sasson SA Society of Bank Officials v Bank of Lisbon International Ltd (1994) 15 ILJ 555 (LAC)

Landman P & with AC Sasson (Additional Member) Association of Professional Teachers & another v Minister of Education & others (1995) 16 IJL 1098 (IC)

SA Municipal Workers Union & another v Nelson Mandela Metropolitan Municipality & others (2007) 28 ILJ 2804 (LC)

Vodacom (Pty) Ltd v Communication Workers Union & others (2007) 28 ILJ 2846 (LC)

Independent Municipal & Allied Workers Union & others v City of Tshwane Metropolitan Municipality & others (2008) 29 ILJ 171 (LC)

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