

CANDIDATE: JUDGE PATRICIA LYNETTE GOLIATH

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COURT FOR WHICH APPLICANT APPLIES: CONSTITUTIONAL COURT

1 The candidate's appropriate qualifications

1.1 The candidate holds the following academic qualifications:

1.1.1 BA (Law) – University of the Western Cape (1986);

1.1.2 LLB – University of the Western Cape (1988);

1.1.3 LLM – University of Cape Town (1999);

1.1.4 Certificate in Labour – University of Cape Town (2000);

1.1.5 Diploma in Insolvency Law – University of Pretoria (2002);

1.2 The reviewers consider that the candidate is appropriately qualified for appointment as a Judge of the Constitutional Court.

2 Whether the candidate is a fit and proper person

2.1 The candidate has extensive experience in the legal field, having worked as an attorney for approximately fifteen years and as a judge for more than twelve years.

2.2 There is nothing in the candidate's application or the judgments considered to suggest that the candidate is not a fit and proper person.

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

2.3 The candidate is a Black woman.

2.4 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).

2.5 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.

3 The candidate's knowledge of the law, including constitutional law

3.1 The candidate's judgements reflect a strong knowledge of and experience of criminal law and criminal procedure. This is reflected in *S and Another v S* (126/2014) [2014] ZASCA 215 (1 December 2014), where the Supreme Court of Appeal commented positively in respect of the judgment of Goliath J and Cloete AJ sitting as a court of appeal, stating: "I pause to observe that both the regional magistrate and the court below gave detailed and well-reasoned judgments." Of the judgments written by the candidate found by the reviewers, about 45% were written in a criminal law context.

3.2 The candidate appears to have a sound knowledge of constitutional law. She has written three decisions while serving as an acting justice of the Constitutional Court. While in the High Court, the candidate's exposure to constitutional issues appears to be more limited. The candidate's

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judgment in *Tloamma and Others v Speaker of the National Assembly and Another* 2016 2 BCLR 242, although subsequently overruled in part by the Constitutional Court, contains a detailed excursus into the separation of powers doctrine.

3.3 The candidate has also written a small number of judgments in the civil law context that required the application of the Constitution (including, for example, *In Re Heydenrych Testamentary Trust and others* 2012 (4) SA 103 (WCC)).

3.4 Of the 35 judgments written by the candidate found by the reviewers, the following table reflects the areas of law concerned:

Field of law	Cases
Civil (wills and trusts)	4
Civil procedure	3
Contract	3
Constitutional	5
Criminal	16
Family	2
Insolvency	1
Trademarks	1

3.5 The Constitutional Court is now the apex court on all matters, and not only constitutional matters.

3.6 In this context, the candidate may require a broader range of experience in areas of the law outside of criminal law.

4 **The candidate's commitment to the values of the Constitution**

4.1 The candidate's judgments reflect a sound understanding of and endorsement of the values of the Constitution.

4.2 This is well reflected in the candidate's reasoning in *Rahube v Rahube and others* 2019 (1) BCLR 125 (CC). In the judgment the candidate found unconstitutional legislation on the basis of its unequal impact on black women. Her reasoning reflects a recognition of the ongoing impact of apartheid on black women and, in particular, the intersectional nature of inequality. This is captured in paragraph 2 of the judgment where the candidate states:

“During apartheid, the African woman was a particularly vulnerable figure in society and she suffered three-fold discrimination based on her race, her class and her gender. Reflecting upon the present, we must ask ourselves whether the African woman truly benefits from the full protection of the Constitution. Moreover, we must establish whether enough has been done to eradicate the discrimination and inequality that so many women face daily. Laws and policies must seek to do more than merely regulate formalistically. The Legislature is enjoined to ensure that laws and policies promote the participation of women in social, economic and political spheres while also advancing the spirit, purport and objects of the Constitution.”

5 Whether any judgments have been overturned on appeal

5.1 The candidate lists the following decisions as having been overruled on appeal:

5.1.1 *Wellington Ko Operatiewe Wynkelber Bpk v Overhex Wines* [2012] ZAWCHC 59;

5.1.2 *Selwyn Davids v The State* Case No 461/13; and

5.1.3 *Pangarker v Botha* [2014] 3 All SA 535 (SCA).

5.2 The candidate records in her application *Giles N.O. and others v Henriques* 2010 (6) SA 51 (SCA) as an instance in which she gave judgment that was unsuccessfully appealed against. A reading of the judgment reflects, however, that her orders were partially overturned by the Supreme Court of Appeal.

5.3 In *Pangarker v Botha and another* 2015 (1) SA 503 (SCA), the Supreme Court of Appeal commented on the candidate's judgment in the court a quo in strident terms, stating: "The judgment of the High Court in finding that the failure to postpone the trial constituted a gross irregularity is disturbing as it is not supported by the facts", "the High Court failed to appreciate the principles applicable in respect of postponements and recusal applications", "the High Court failed to consider Mrs Botha's competing right to have the dispute settled swiftly. It did not take into account the history of the matter", "It is incomprehensible how it could be said that the magistrate had committed a gross irregularity under these circumstances", and "The

failure of the High Court to consider the appropriate principles, set out above, resulted in a grave injustice to the magistrate. It may well have prejudiced her professional life and must have caused her great discomfort and embarrassment. That court's approach is to be deprecated."

- 5.4 The candidate's holding in *Tlouamma and others v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and another* 2016 (2) BCLR 242 (WCC) that Parliament's rules did not provide for a secret ballot in respect of a vote of no confidence in the President was overruled by the Constitutional Court in the decision of *United Democratic Movement v Speaker of the National Assembly and others (Council for the Advancement of the South African Constitution and others as amici curiae)* 2017 (8) BCLR 1061 (CC).

6 The extent and breadth of the candidate's professional experience

- 6.1 The candidate has worked in the following capacities in the legal field:
- 6.1.1 Candidate attorney (May 1988 – July 1990);
 - 6.1.2 Attorney (January 1991 to December 2005);
 - 6.1.3 Judge of the Western Cape High Court (January 2006 to June 2016);
 - 6.1.4 Deputy Judge President of the Western Cape High Court (July 2006 to date).

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6.2 The candidate has been extensively involved in professional bodies including NADEL, BLA and (SAC) IAWJ.

6.3 The reviewers have searched for electronically available judgments written by the candidate on Jutastat, LexisNexis and SAFLII and have been able to find only 35 judgments written by the candidate.

6.4 The reviewers consider that the candidate may benefit from further exposure in the High Court or the Supreme Court of Appeal before elevation to the Constitutional Court.

7 The candidate's linguistic and communication skills

7.1 The candidate's judgments are well structured, comprehensively summarise the evidence led, and summarise the parties' submissions. The candidate's judgments in criminal cases demonstrate a careful application of the legal principles.

8 The candidate's ability to produce judgments promptly

8.1 The candidate has no outstanding judgments or part-heard matters.

8.2 The majority of the candidate's judgments do not record when the hearing of the matter took place. Of the 35 judgments found, only 9 included both the date of hearing and the date of decision. The average length was 122 calendar days from date of hearing to date of judgment. Given the small sample size, this analysis is an unreliable indicator of the candidate's ability to produce judgments promptly.

9 The candidate's fairness and impartiality

9.1 There is nothing in the candidate's application or elsewhere to suggest that she does not perform her duties as a judicial officer with fairness and impartiality.

9.2 To the best of the reviewers' knowledge, no adverse comments have been received regarding the candidate's fairness and/or impartiality.

10 The candidate's independent mindedness

10.1 There is nothing in the candidate's application or judgments that would suggest that the candidate does not bring an open and independent mind to her work as a Judge of the High Court.

10.2 The letter of support from the BLA describes the candidate as "fearless".

11 The candidate's ability to conduct court proceedings

11.1 There is nothing in the candidate's application or judgments that would reflect unfavourably on her ability to conduct court proceedings.

12 The candidate's administrative ability

12.1 The candidate is the Deputy Judge President of the Western Cape High Court.

12.2 When interviewed for the position, the candidate was posed the hypothetical question of what she would do in the event that one of her colleagues was failing to deliver a judgment or judgments timeously.

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The candidate responded by stating: “Communication is very important, honourable commissioners. One would not always want to be overly critical. You would engage the colleague, you would establish are there any problems? What are the hurdles you need to overcome? Do you need more time? Should we restructure your work programme? Communicate, tell me what your problems are and I will do the utmost to assist the colleague to enable that colleague to finalise the outstanding work.” And when prompted on what her approach would be if the Judge President were absent, she answered: “President and honourable commissioners, it is an avenue that I would not want to explore, I would prefer that the first route of intervention would be successful, but we do have norms and standards to abide by. In those norms and standards there are certain time frames in which we need to perform, because we are accountable. And if need be, as a Deputy Judge President, or the Judge President... I would have to report it to the Chief Justice if there are no results.”

- 12.3 These comments are commendable. It must be noted that there has been recent negative media commentary on the length of delays in handing-down judgments by certain judges in the Western Cape High Court. Whether this should reflect adversely on the candidate is unclear.

13 The candidate's reputation for integrity and ethical behaviour

13.1 There is nothing in the candidate's application or judgments that would reflect poorly on her integrity and ethical behaviour.

13.2 To the contrary, the candidate's involvement in the SAC-IAWJ's mentorship programmes and community awareness programmes, reflected in the nomination letter from the SAC-IAWJ, shows the candidate to be a person of integrity and high ethical behaviour.

14 The candidate's judicial temperament

14.1 To the best of the reviewers' knowledge, no adverse comments have been received regarding the candidate's fairness and/or impartiality.

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

15.1 The candidate's judgments show a firm and unequivocal commitment to human rights, as does her involvement in SAC-IAWJ and its programmes.

16 The candidate's potential

16.1 The candidate has great potential. As emphasised in her nomination letter by the SAC-IAWJ, the candidate's life shows decades of self-improvement and ongoing education.

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

17.1 The candidate is a black woman who joined the attorneys' profession at a time when she would have been subject to significant discrimination on the grounds of both her race and her gender. She practiced in her own name for more than a decade, before being appointed to the Bench. Since appointment as a judge, the candidate has remained committed to transformation and the advancement of human rights not only in her role as a judge, but extra-curriculally. Her appointment would send an appropriate message to the community at large.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Tlouamma and others v Speaker of The National Assembly and others 2016 (1) SA 534; 2016 2 BCLR 242 (WCC)

Discovery Holdings Ltd v Sanlam Ltd and others 2015 (1) SA 365 (WCC)

Steyn v hasse and another 2015 (4) SA 405 (WCC) A

MV Alina Ii Transnet Ltd v MV Alina II 2013 (6) SA 556 (WCC)

In Re Heydenrych Testamentary Trust and others 2012 (4) SA 103 (WCC)

Giles NO and another v Henriques and others 2008 (4) SA 558 (C)

Smart and Others v The Really Great Brandy Company (Pty) Ltd and Another [2008] 2 All SA 474

South African Veterinary Association v Speaker of the National Assembly and others 2019 (2) BCLR 273 (CC)

Unreported decisions

Rahube v Rahube and Others [2018] ZACC 42

S v Mthethwa (CC03/2014) [2017] ZAWCHC 28 (16 March 2017)

Crowther v S (A458/2015) [2016] ZAWCHC 32 (11 March 2016)

King v S (A79/2011) [2014] ZAWCHC 129 (22 August 2014)

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S v Kana (SS31/2013) [2013] ZAWCHC 33 (29 October 2013)

Carelse v S (A259/2012) [2012] ZAWCHC 295 (24 August 2012)

Lourens v S (A156/2012) [2012] ZAWCHC 267 (25 May 2012)

S v Chauke (A227/2012) [2012] ZAWCHC 215 (17 August 2012)

S v Spele (A226/2012) [2012] ZAWCHC 212 (17 August 2012)

S v Swart (SS17/12) [2012] ZAWCHC 179 (21 September 2012)

Wallace v Hendricks (11733/2011) [2012] ZAWCHC 86 (15 March 2012)

Geyer v Bekker (A395/2011) [2012] ZAWCHC 60 (1 March 2012)

S v Nduwiyumu (A487/2010) [2011] ZAWCHC 350 (3 June 2011)

Hardie v Jansen and Others (19339/2014) [2015] ZAWCHC 104 (30 July 2015)

Botha v Pangarker and Another (6499/2012) [2013] ZAWCHC 4 (29 January 2013)

Dondolo v S (A403/12) [2012] ZAWCHC 368 (29 November 2012)

S v Bezuidenhout en Ander (SS38/2006) [2009] ZAWCHC 230 (12 June 2009)

S v Bezuidenhout and Another (SS38/2006) [2008] ZAWCHC 329 (18 March 2008)

S v Van der Ross (A 41/12) [2012] ZAWCHC 155 (3 August 2012)

Manqola v S (A22/2010) [2011] ZAWCHC 563 (13 June 2011)

Dolpire v South African National Road Agency Ltd and Another (A464/2011) [2012]
ZAWCHC 280 (2 August 2012)

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Homsek (Pty) Limited t/a Homsek Suiwel v J.W. Muller & Seun (A33/2014) [2015]
ZAWCHC 121 (2 September 2015)

Rapiprop 31 (Pty) Ltd v Ironside and Another (A396/12) [2012] ZAWCHC 297 (28
August 2012)

*Wellington Kooperatiewe Wynkelder Bpk v Overhex Wines International (Edms)
Bpk* (10935/2007, 8064/2008) [2012] ZAWCHC 59 (1 March 2012)

Ruta v Minister of Home Affairs (CCT02/18) [2018] ZACC 52 (20 December 2018)

Trustees for the Time Being of the Roy Seawright Trust v Seawright (A108/2016)
[2016] ZAWCHC 98 (15 August 2016)

Buffalo City Metropolitan Municipality v Metgovis (Pty) Limited (CCT78/18) [2019]
ZACC 9 (28 February 2019)

Judgments upheld on appeal

Municipality of Stellenbosch v Shelf-line 104 (Pty) Ltd 2012 (1) SA 599 (SCA)

Judgments overturned on appeal

Giles N.O. and others v Henriques 2010 (6) SA 51 (SCA)

Davids v S Case No. 461/13 (SCA)

Pangarker v Botha [2014] 3 All SA 535 (SCA)