CANDIDATE: JUDGE ANDRÉ JOHANN VAN NIEKERK

COURT FOR WHICH CANDIDATE APPLIES: DEPUTY JUDGE PRESIDENT OF THE LABOUR COURTS

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

1.1. The candidate holds the following degrees:

1.1.1. University of the Witwatersrand, Johannesburg:

1.1.1.1. Bachelor of Arts (1977);

1.1.1.1. Bachelor of Laws (1979);

1.1.1.2. Master of Arts (Applied Ethics for Professionals) (with distinction) (2009); and

1.2. University of Leicester, United Kingdom:

1.2.1. LLM (with distinction) (1992).

1.3. The candidate has a certificate in:

1.3.1. Industrial Relations (with distinction) Advanced Labour Law;

1.3.2. Awarded medal for top student (1987)

1.4. The candidate has been a Judge of the Labour Court from January 2009 to present.

1.5. Prior thereto, the candidate was an attorney and director of Perrott Van Niekerk Woodhouse Matyolo Inc from June 1998 to December 2008. Between February 1999 and December 2008, the candidate held 8 acting appointments as a Judge of the Labour Court.

1.6. Prior thereto, the candidate was employed by Anglo American Corporation of SA Ltd as a legal advisor in various positions from August 1986 to June 1998.

1.7. The candidate was admitted as an attorney in 1984 and appointed as a professional associate in the labour law department, Webber Wentzel & Co. The candidate was appointed as associate in 1985.

1.8. International Appointments and activities:

1.8.1. Member of the South African employer delegation to the Conference of the International Labour Organization, Geneva, and a member of the Conference Committee on the Application of Standards 1994 – 2000, 2002 and 2004-2005;

1.8.2. Appointed by the Governing Body of the International Labour Organisation as a member of the Meeting of Experts on Workers' Privacy, Geneva, 1996. Code of Practice published in (1997) 18 ILJ 26

1.8.3. Appointed to ILO Team of Experts to investigate and make recommendations to enhance the arbitration service conducted by the CCMA, SA, 1998;

1.8.4. Appointed to attend and attended training course on international labour standards for judges and teachers of law, ILO Training Centre, Turin, August 2002;

1.8.5. Appointed by the International Labour Office, Pretoria, to prepare a report on the nature, structure and functioning of the Swaziland Industrial Court; October 2004;

1.8.6. Appointed by the International Labour Office, Pretoria, to draft Swaziland Employment Bill, 2005;

1.8.7. Appointed by the International labour Office, Pretoria, to prepare a report on statutory dispute resolution structures in Botswana, 2005;

1.8.8. Appointed by International Labour Office, Bangkok, to conduct workshops on labour law reform in Kuala Lumpur, Malaysia, and Bangkok, Thailand; 2007;

1.8.9. Appointed by the International Labour Office, Pretoria, to advise on labour legislation for the public sector, Botswana; 2005 – 2007

1.9. Other Ministerial appointments:

1.9.1. Appointed by Minister of Labour as member of the Rules Board of the Industrial Court; 1992;

1.9.2. Appointed by Minister of Labour Mboweni to Task Team, headed by Prof Halton Cheadle, to draft Bill to replace the Labour Relations Act, 28 of 1956, and to draft Labour Relations Act, 66 of 1995; 1994;

1.9.3. Appointed by Minister of Justice to the Rules Board of the Labour Appeal Court and the Labour Court; prepared draft Rules of the Labour Court and Labour Appeal Court (with Judge Johan Froneman) for submission to Rules Board; 1996;

1.9.4. Member of drafting team – Labour Relations and Basic Conditions of Employment Amendment Bills 2001; 2001.

1.10. 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 since 2009 and acted between February 1999 until his permanent appointment as a judge.

2.2. There are no adverse comments as to the candidate's fitness for appointment as the Deputy Judge President of the Labour Court.

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

1.1. The candidate is a White man.

1.2. The appointment of a White, male candidate will not advance the Constitutional imperative of racial and gender representation within the Judiciary.

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

4.1. The candidates' judgments demonstrate a strong commitment to constitutional values. This is evident from the number of roles taken on

by the candidate in respect of representing South Africa at various International Labour Organisation conferences, his participation in drafting of South African legislation, training both nationally and internationally and his appointment in various academic positions.

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

5.1. The candidate has been appointed to the positions of:

5.1.1. Professor Extraordinarius, Department of Mercantile Law, University of South Africa, 1995 – 1997;

5.1.2. Professor (part-time), Faculty of Law, University of Johannesburg, January 2001 to 2009;

5.1.3. Visiting Professor, Faculty of Law, University of Johannesburg, 2009 to 2015;

5.1.4. Visiting Professor, School of Law, University of Witwatersrand, January 2002 to 2015; and

5.1.5. From January 2009, the candidate has occupied the position of Judge of the Labour Court

5.2. In addition, the candidate has obtained degrees and certificates in the subjects mentioned in paragraph 1.2 above.

5.3. The candidate has had various international appointments and taken part in various international activities relating to the International Labour Organisation. These roles have included investigative research, report writing, research, advisory roles and training across various

jurisdictions, including Botswana, Swaziland, Kuala Lumpur, Malaysia and Thailand.

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

5.4.1. The South African Law of Unfair Dismissal (Juta 1994)

5.4.2. Practice in the Labour Courts (Juta 1998)

5.4.3. Law @ work (Lexis Nexis Butterworths 2008) – Fourth edition published January 2018

5.5. The candidate has authored the following books:

5.5.1. What you must know about Unfair Dismissal (First edition Siberink 2002, Fourth edition, January 2008)

5.5.2. What you must know about employing a Domestic Worker (Siberink 2003);

5.6. He has also written and/or co-authored no less than 64 articles, 2 chapters, contributed to publications, and a published research paper, covering a variety of labour law subjects.

5.7. The candidate has 169 reported judgments (spanning 1999 to present). This excludes unreported judgments. Of these, a mere 20 are listed as having been taken on appeal and, of those, the appeal was upheld in only 8. This reaffirms the candidate's accurate knowledge of the law. Three judgments have been considered by the Constitutional Court with one having been overturned and the remaining two judgments concur with the position originally adopted by the Labour Court.

5.8. Of the reported judgments, the candidate lists the following judgments as being most significant;

5.8.1. *Wyeth SA (Pty) Ltd v Manqele & others* (2005) 26 ILJ 749 (LAC)

In this matter, the Labour Appeal Court ("the LAC") upheld the judgment made by the candidate, which judgment extended labour rights to persons who were employed but who had not yet commenced work. The principles set out in this case remain good law.

5.8.2. *Avril Elizabeth Home for the Mentally Handicapped v Commission for Conciliation, Mediation & Arbitration & others (2006) 27 ILJ 1644 (LC)*

In the above matter, the candidate set out the guidelines for fair procedure in workplace disciplinary enquiries. The criminal justice model established by the Industrial Court was no longer relevant and an employee is entitled to an expeditious and independent review of the employer's decision to dismiss. The candidate referenced ILO Convention 158, the draft Labour Relations Bill and the Labour Relations Act and The Constitution of South Africa.

This case has been, and remains, the benchmark for procedural fairness in workplace enquiries in cases of unfair dismissal.

5.8.3. *Discovery Health Ltd v Commission for Conciliation, Mediation & Arbitration & others (2008) 29 ILJ 1480 (LC)*

This matter dealt with the question of whether a foreign individual without valid work documentation qualified as an employee in terms of the Labour Relations Act and therefore the right to claim the protections afforded to employees. The matter considered the stance of the Constitutional Court as well as ILO Conventions and various international standards.

As at 2018, the case remains good law.

5.8.4. *Villiers v Head of Department: Education, Western Cape Province (2010) 31 ILJ 1377 (LC)*

The candidate considered the power of the court to review the action of an organ of state under section 14(2) of the Employment of Educators Act, alternatively section 158(1)(h) of the LRA in order that the power of the state as an employer would not be permitted to run unchecked.

The power to review and set aside a decision of the employer was found to be viable in terms of both sections.

As at 2018, the case remains good law.

5.8.5. *Harsco Metals SA (Pty) Ltd and another v ArcelorMittal SA Ltd & others (2012) 33 ILJ 901 (LC)*

The candidate considered whether a transfer of a business as a going concern took place by considering the meanings of transfer, business and going concern in light of local and foreign jurisprudence.

5.8.6. *Unitrans Supply Chain Solutions (Pty) Ltd & another v Nampak Glass (Pty) Ltd & others (2014) 35 ILJ 2888 (LC) read with TMS Group Industrial Services (Pty) Ltd t/a Vericon v Unitrans Supply Chain Solutions (Pty) Ltd and Others (2015) 36 ILJ 197 (LAC)*

A dispute arose as to whether the employees of UHGL who were providing the services to Nampak under the previous agreement with USCS had been transferred to Vericon in terms of s197 as a result of the conclusion of the new agreement between Vericon and Nampak.

In resolving the dispute, the candidate as judge sitting in the LC ("the LC") (being the court of first instance) determined that there were essentially two issues that needed to be resolved. Firstly, whether the fact that the employees were employed by a different entity (ie UHGL) to the entity that contracted with Nampak (ie USCS), had any bearing on the application of s197 and secondly, whether the appointment of Vericon as the new service provider constituted a transfer of business as a going concern.

In addressing the first issue, the LC referred to prior judgments handed down by the Constitutional Court as well as foreign jurisprudence in reiterating that s197 would apply to any transaction in terms of which the whole or part of a business is transferred as a going concern.

The LC found that the termination of the agreement between USCS and Nampak and the conclusion of a new agreement for

the provision of similar services between Nampak and Vericon constituted a transfer of a business as a going concern as contemplated by s197 and further, the employees who were employed by UHGL, had transferred to Vericon by operation of the law.

The LAC supported the decision of the LC and held that in deciding whether a business has been transferred as a going concern, regard must be had to the substance and not the form of the transaction.

This case reiterates and reasserts the nature and scope of application of section 197 of the LRA. It is clear that should the factors discussed in this judgment be met, a transfer of a going concern can be said to occur in outsourcing arrangements.

5.8.7. *SALGA v South African Municipal Workers Union [2008] 1 BLLR 66 (LC)*

The candidate delivered this judgment on an ex tempore basis given the urgency of the application. It dealt with the right to engage in a secondary strike and the candidate found in favour of protecting the strike subject to the principles of proportionality and the nature and extent of the strike action.

5.8.8. *Association of Mineworkers and other v Chamber of Mines*

See below as cases upheld by the Constitutional Court

5.8.9. *Rustenburg Platinum Mines v SA Equity Workers Association obo Bester*

See below as cases upheld by the Constitutional Court**.**

5.8.10. *Vodacom (Pty) Ltd v Motsa & another (2016) 37 ILJ 1241 (LC)*

This case dealt both with the principles applicable to the enforcement of controls in restraint of trade (in relation to which the candidate has delivered many judgments, all of which have served to clarify the jurisprudence in relation to this area of law), but also expounded for the first time the law relating to "garden leave".

5.8.11. *Appels v Education Labour Relations Council & others (2018) 39 ILJ 816 (LC)*

The candidate had to consider whether a bargaining council is entitled to vary a time limit for the referral of a dispute where that time limit is fixed by the LRA. The candidate answered this question in the affirmative.

The rationale therefor was that section 51(9) of the LRA clearly empowers bargaining councils to 'establish procedures to resolve any disputes'. Such section is not subject to a condition that any agreed procedure must replicate time periods and any other limitations as they find reflection in the LRA and a bargaining council may agree to establish dispute resolution procedures provided only that any procedures established by a council pursuant to s 51(9) must be fair, reasonable and broadly consistent with the LRA.

This remains good law.

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

6.1. *National Bargaining Council for the Road Freight Industry & another v Carlbank Mining Contracts (Pty) Ltd* (2012) 33 ILJ 1808 (LAC)

6.1.1. This matter involved the question of the right of persons, who are subject to the terms of a collective agreement providing for dispute resolution, to opt for private arbitration in labour disputes on terms different to the provisions of the collective agreement.

6.1.2. The LAC found that the candidate's interpretation of the relevant clause of the collective agreement to mean that it did not preclude referral to arbitration was unsustainable and rested upon an incorrect interpretation of the opening sentence of the clause. Despite this, the LAC found [at paragraph 35] that the candidate was "evidently alive to the relevant principles"

6.2. *MEC for Education NW Province v Gradwell* (2012) 33 ILJ 2033 (LAC)

6.2.1. In this matter, the candidate granted a final order declaring the respondent's suspension by the applicant unlawful and an interdict prohibiting the Premier of the North West Province from filling the post of head of department of the Department of Education in the province unless and until the respondent was afforded an opportunity to be interviewed for the post.

6.2.2. The LAC noted the candidate's finding that the MEC did not have an objectively justifiable reason to deny the respondent access to the workplace was predicated upon his finding that, before such

a course of conduct was justifiable, the MEC had to have taken a decision to conduct an investigation and that the MEC had not done so. The LAC found that the candidate had relied on the requirement of clause 2.7(2) of the 'Senior Management Service Handbook' which applies to senior management in the public service and which stated that an employer had to believe that the presence of the employee 'might jeopardize any investigation' and that the MEC's letter dated 14 July 2010 specifically stated that 'a decision to investigate has not yet been finalized'. The LAC found that this statement alone could not serve as categorical proof that the condition precedent had not been met.

6.2.3. The LAC found that the candidate erred in declining to adjudicate on the papers whether the MEC had a justifiable reason to believe that the respondent had engaged in serious misconduct.

6.2.4. The LAC found that the candidate had in all likelihood implicitly founded the right of the respondent to a hearing on the right of every employee in terms of s 185(b) of the Labour Relations Act 66 of 1995 not to be subjected to unfair labour practices. However, it found that the right to a hearing prior to a precautionary suspension arises not from the Constitution, PAJA or as an implied term of the contract of employment, but is a right located within the provisions of the LRA, the correlative of the duty on employers not to subject employees to unfair labour practices. That being the case, the right is a statutory right for which statutory remedies have been provided together with statutory mechanisms for resolving disputes in regard to those

rights. Since disputes concerning alleged unfair labour practices must be referred to the CCMA or a bargaining council for conciliation and arbitration in terms of the mandatory provisions of s 191(1) of the LRA, the respondent ought not to have sought a declaratory order from the LC in terms of s 158(1)(a) to the effect that the suspension was unfair, unlawful and unconstitutional. The candidate ought, therefore, not to have exercised his discretion to grant the declaratory order.

6.2.5. The LAC also found that the candidate erred in granting the interdict prohibiting the Premier from filling the post until the respondent had been afforded an opportunity to be interviewed for the post as the respondent had not established the requisites for an interdict..

6.3. *SA Municipal Workers Union Find v Arbuthnot* (2014) 35 ILJ 2434 (LAC).

6.3.1. In this matter, the respondent claimed that her dismissal was automatically unfair as it had been based on the fact that she had made a protected disclosure which she had made in terms of the Protected Disclosures Act 26 of 2000 (“the PDA”). The candidate upheld the employee's claim, finding that at the time she made the disclosure, she reasonably believed that it was substantively true and that it disclosed a breach of fiduciary duties by the applicant’s trustees. The candidate concluded that the employee's dismissal was automatically unfair as she had been dismissed for

making a protected disclosure and awarded her 12 months' compensation.

6.3.2. The LAC found that it had to be satisfied that the respondent reasonably believed that the information she disclosed was substantially true; that in making the disclosure, the respondent acted in good faith; and the disclosure was a protected disclosure, because in all the prevailing circumstances, it was reasonable to make that disclosure.

6.3.3. It found that the candidate was correct in concluding that the respondent reasonably believed that the information disclosed was substantially true.

6.3.4. The LAC was of the view that the respondent had not acted in good faith in making the disclosure, that it was not reasonable for her to make the disclosure when she did and that as the disclosure was not a protected disclosure as contemplated in the PDA, the respondent's actions were not protected by the provisions of the PDA. On this basis, her dismissal was not automatically unfair.

6.4. *National Union of Metalworkers of SA & others v CBU Electric African Cables* (2014) 35 ILJ 642 (LC)

6.4.1. In this matter, the LAC agreed with the candidate that the cause of the strike in respect of which the employees were dismissed was the issue of irregular payslips and incorrect deductions from wages and not the introduction of a new shift system.

6.4.2. The LAC therefore upheld the candidate's finding that the dismissals were substantively fair but procedurally unfair and stated [at paragraph 38] that "*The court a quo's reasoning for its finding cannot be faulted*".

6.4.3. While the candidate ordered the respondent to pay each of the individual appellants an amount equivalent to two weeks' remuneration, as well as 50% of the appellants' costs as compensation for the procedural unfairness, the LAC found, however, that compensation equivalent to 12 months' wages was just and equitable in the circumstances.

6.5. *Coco Cola Sabco (Pty) Ltd v Van Wyk* (2015) 36 ILJ 2013 (LAC)

6.5.1. The matter concerns the question in regards whether a writ of execution could be calculated between the date of the award and the implementation of the award and whether such calculation (quantification) could be done by way of affidavit before the registrar. The LC held that it could.

6.5.2. On appeal, such finding was overturned (all LAC judges concurring) on the basis that the Labour Relations Act did not cover the period between the date of the award and the implementation of the award and that any claim for remuneration by an employee from the date of the award to the date of implementation of the award would be a contractual one.

6.5.3. In their judgment, the LAC did not criticize the judgment of the court a quo, but rather found that the judgment, although

practical, was incorrectly reasoned in relation to the nature of a reinstatement award.

6.5.4. Paragraph 2 of the judgment in the court a quo was deleted.

6.6. *Monare v SA Tourism and others* (2016) 37 ILJ 394 (LAC)

6.6.1. The LAC considered the jurisdiction of an employee working in London. This after the court a quo reviewed and set aside the award made by the commissioner acting in the CCMA in favour of the appellant. The court a quo mero motu raised the question of jurisdiction and found that the Labour Relations Act did not apply.

6.6.2. The LAC considered found that the "pleadings" filed in the CCMA as well as the records (which were common cause) made no issue of jurisdiction (either by the commissioner or the parties before it) and thus it had not been established that the employees London office was an independent undertaking of the employee as has been set out as a factor / requirement though case law.

6.6.3. The LAC thus found that the LC did have jurisdiction. On that basis, the court when on to consider other aspects of the review application which were not dealt with in the court a quo because the judge in the said court found that it lacked jurisdiction in the matter. The balance of the judgment is thus a review of the findings by the commissioner in the CCMA.

6.6.4. The appeal was upheld with costs and the review and setting aside of the award in the court a quo was set aside. The other LAC judges concurred.

6.7. *City of Johannesburg Metropolitan Municipality & others v Independent Municipal & Allied Trade Union & others* (2017) 38 ILJ 2695 (LAC)

6.7.1. The court a quo found that there was unreasonable delay in the prosecution of a dispute and dismissed the application.

6.7.2. On appeal, the LAC found that the court a quo erred in the dismissing of the application. The main submission on appeal was that the court a quo failed to exercise its discretion properly when it decided to dismiss the application on the ground of delay and that it failed to give sufficient weight to the factors aforementioned and the national importance of the matter.

6.7.3. Tlaletsi DLP concurred in the judgment. Ndlovu AJ passed away before the judgment was finalized.

6.8. *SA Equity Workers Association obo Bester v Rustenburg Platinum Mine & another* (2017) 38 ILJ 1779 (LAC)

6.8.1. See below as case upheld by the Constitutional Court.

6.9. Judgments overturned by the Constitutional Court

6.9.1. *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Ltd t/a Metrobus & others* (2017) 38 ILJ 527 (CC)

The question whether an arbitration award issued in terms of the Labour Relations Act will expire after three years from the date on which the award was issued in terms of the Prescription Act of 1969 was answered by the Constitutional Court ("the CC") in the negative contrary to the initial finding by the Candidate.

The LAC had considered three similar matters involving orders by the candidate and two other judges of the LC. In two of the three matters (one of which concerned the candidate), LC had held that arbitration awards prescribed after three years. In the other, the LC had held that the Prescription Act was not applicable to awards made in terms of the LRA.

The LAC concluded that an arbitration award made in terms of the LRA is a debt envisaged in the Prescription Act. The LAC concluded further that such award is a simple debt that prescribes on the expiry of three years and that the institution of a review application would not interrupt the running of prescription. Accordingly, the LAC held that the award had prescribed and dismissed the appeal.

The CC, in three judgments, held that the Prescription Act does not apply to the LRA, but that, even if it did, an arbitration award could not prescribe because it is not a debt as contemplated in the Prescription Act. In the circumstances, the appeal succeeded and the order of the LC (that is, of the candidate) and the LAC was set aside.

While the candidate's order was affirmed on appeal, it was ultimately set aside by the CC. Even so, the CC delivered three judgments with each providing different reasoning for supporting its ultimate conclusion.

The issues considered are of fundamental importance to the entire labour market.

6.10. Judgments upheld by the Constitutional Court

6.10.1. *Association of Mineworker & Construction Union & others v Chamber of Mines of SA & others* (2017) 38 831 (CC)

This case concerns the extension of a 2013 wage collective agreement to AMCU members in terms of section 23(1)(d) of the Labour Relations Act, 1995 (LRA). The judgment follows a prior judgment of the LC, which AMCU took on appeal to the LAC, and then to the CC after the LAC dismissed AMCU's appeal. AMCU's primary challenge to the previous judgments in the LC and LAC was that section 23(1)(d) of the LRA is unconstitutional.

The candidate sat in the court of first instance in this matter, the LC. When this matter was heard by the CC it agreed with both the LC and the LAC that section 23(1)(d) of the LRA is not unconstitutional and that the 'workplace' is not the place where any single employee works - it is where employees collectively work.

The case has important implications for collective labour law and industrial relations in South Africa.

6.11. *Rustenburg Platinum Mines v SA Equity Workers Association obo Bester* (2018) 39 ILJ 1503 (CC)

Mr Bester attempted to raise a parking issue with the Applicant's Chief Safety Officer ("Mr Sedumedi"). His attempts were ignored which led to Mr Bester allegedly interrupting a safety meeting, pointing his finger at Mr Sedumedi and loudly stating: "verwyder daardie swart man se voertuig" or else he would approach management. Mr Bester referred to a fellow employee as a "swart man". The CC held that the test for whether words are derogatory and racist is objective and that the starting point must take into account the history of apartheid. The lack of remorse and no acknowledgment of wrongdoing demonstrated no possibility of rehabilitation and the dismissal was an appropriate sanction.

The candidate sitting in the LC in a review application, considered the fact that the Applicant had circulated a memorandum to all employees, days before the incident, indicating that the mine had a zero-tolerance policy for abusive and derogatory language in the workplace. As a result, the LC held that the use of the words "swart man", within the context, was derogatory and racist which constituted an act of serious misconduct and warranted a dismissal.

In the LAC, it was held that the LC had erroneously applied a subjective test and stated that the correct test, to determine whether the phrase "swart man" was derogatory, was objective. In this context, the LAC found that there was more than one plausible inference which could be drawn from the proven facts. Rather than using the phrase in a derogatory and racist manner, Mr Bester used the phrase as a way to describe the driver, whose name he did not know.

The CC held that the correct test was whether a reasonable, objective and informed person would perceive 'swart man' to be racist and derogatory. In a unanimous judgment, Theron J found that the approach adopted by the CCMA and LAC, together with their findings that the phrase "swart man" was racially innocuous and neutral, failed to recognise the impact of the legacy of apartheid and racial segregation. The CC held that the candidate was therefore correct in reviewing and setting the CCMA award aside.

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. He has obtained four degrees (BA, LLB and MA and LLM).

7.1.2. He practiced as an attorney between 1984 and 1986 and thereafter between 1998 until his appointment as a Judge in 2009.

7.1.3. He was a Professor Extraordinarius between 1995 – 1997 at the University of South Africa, a Professor between 2001 and 2009 at the University of Johannesburg, and a Visiting Professor at the University of Johannesburg and the University of the Witwatersrand between 2009 to 2015 and 2002 to 2015 respectively.

7.1.4. The candidate held various Ministerial appointments between 1992 and 2001 relating to the drafting of legislation and the drafting of Rules for the LC and the LAC.

7.1.5. He held various international appointments and took place in various international activities and training with the International Labour Organization between 1994 and 2007.

7.1.6. The candidate held various acting appointments between February 1999 December 2008. Thereafter he was appointed permanently.

7.1.7. During this time the candidate has also written extensively, been widely published and has been actively involved in lecturing.

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

8.1. The candidate's judgments read well and show advanced linguistic and communication skills.

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

9.1. The candidate listed only two outstanding judgments, both of which were reserved in November 2018. It has come to the attention of the

reviewers that one of these judgments has been delivered. It is not clear whether the other judgment has been delivered. His 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. 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 seat at the Labour Court for nearly a decade. For approximately a decade prior to that, the candidate held various acting positions. With this judicial track record, it must be accepted that the candidate has the requisite ability to conduct court proceedings properly. His demeanour in court is firm and robust.

12.2. There is no reason to doubt his 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 his ability to administer his role efficiently. Furthermore, it is the perception of the Johannesburg Bar that the candidate has spear headed the pre-enrolment hearing process which has successfully cleared a backlog of many years' worth of abandoned files in the Labour

Court. He has also been instrumental in preparing and implementing a practice directive for the conduct of restraint of trade applications, by introducing practical measures that limit unnecessary postponements and which frees up the urgent court.

13.2. No adverse comments have been received.

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

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

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

15.1. Whilst being courteous, the candidate is firm in the conduct of his matters.

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 developing the labour legislation in South Africa, including the drafting of the bill to replace the Labour Relations Act, 1956 and to draft the Labour Relations Act, 66 of 1995.

16.2. The candidate has advised on labour legislation in Swaziland, Botswana and South Africa.

16.3. The candidate has been involved in several varying capacities with the International Labour Organisation, many of which have had a direct impact on SADAC countries and their legal systems.

16.4. The candidate has held Professorships for many years, spanning 1995 to 2015, through various universities and taught post-graduate students interested in pursuing their studies in labour law.

16.5. The candidate was a member of the Rules Board and contributed towards the drafting of the Rules for the Labour Court and LAC and the Practice Manual for the Labour Court.

16.6. Through education and a profound contribution to the development of labour legislation and labour law, 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 judicial career, his experience as a long-standing Judge of the Labour Court and his various initiatives regarding the running of the Labour Court illustrate that he would be well suited to the position of Deputy Judge President of the Labour Courts.

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 persons with demonstrated knowledge and experience are appointed to the position;

18.1.2. preserving and enhancing the integrity of the court as 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 courts.

18.1.3. The lack of women judges in leadership positions in the Labour Court should however be noted.