

APPLICANT: ADV IAN LESLEY TOPPING SC

**COURT FOR WHICH APPLICANT APPLIES: HIGH COURT:
KWAZULU-NATAL DIVISION**

1 The candidate's appropriate qualifications

1.1 The candidate holds the following qualifications:

1.1.1 Bachelor of Law (University of KwaZulu-Natal). Graduated in 1982;

1.1.2 LLB, Bachelor of Laws (University of KwaZulu-Natal). Graduated in 1984.

1.2 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

2.1 The candidate was admitted as an attorney of the KwaZulu-Natal High Court in 1986.

2.2 The candidate joined the Department of Justice in mid-1989 and commenced as a Prosecutor initially in the District Magistrates' Court and thereafter in the Regional Magistrates' Court and then as a Specialist Prosecutor dealing with commercial crimes and other serious criminal offences.

2.3 He commenced practice as an Advocate at the Durban Bar in July 1992 and took Silk in June 2014.

- 2.4 His practice has developed into two main areas, one largely acting for Plaintiffs in personal injury matters and medical negligence suits and the other acting for various banks and similar institutions in commercial matters. He has also in more recent times acted for claimants in land claim matters.
- 2.5 He has also had experience in appearing in the Companies Tribunal, National Consumer Tribunal, the Land Claims Court and the Constitutional Court.
- 2.6 There is no reason to doubt that the candidate is a fit and proper person to hold a position as Judge in the High Court.

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 The candidate's appointment would therefore help to transform neither the gender nor the racial composition of the bench.

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

- 4.1 The candidate has two degrees as referred to above.
- 4.2 The candidate has some experience in criminal law having prosecuted from 1989 to 1991. He also has experience in the following fields of law namely Administrative law, Labour law, Personal Injury and Medical Negligence matters, Commercial matters, Liquidation and Sequestration applications, applications relating to Companies and

Close Corporations and general commercial litigation. He has also appeared in the Constitutional Court.

4.3 The candidate has listed a number of cases in which he appeared. The cases reflect a diversity of the fields of law which were traversed in these cases in which he appeared.

4.4 The candidate has sat as an Arbitrator in various matters.

4.5 The candidate has sat as an Acting Judge both in the KwaZulu-Natal Division, Durban and the KwaZulu-Natal Division, Pietermaritzburg for five sessions of approximately one month each and it would appear sat on diverse occasions to complete part heard matters. He has sat in numerous criminal proceedings and appeals and has dealt extensively in civil matters and in opposed and unopposed applications involving a variety of matters in different fields of the law.

4.6 He has delivered a number of judgments which are attached to his application. A perusal of these judgments reveals that he has a good grasp of the facts involved in the matter and he has appropriately applied the law to such facts. His judgments are well reasoned and support the conclusions to which he had come.

4.7 Not many constitutional law points came up in the judgments delivered by the candidate. However, given his experience in the various fields of law referred to above, he must have been enjoined to consider and have regard to various provisions in the Constitution. What is significant is that in the judgments referred to, he has not flouted the principles of the Constitution. It would appear that he is aware of constitutional values.

5 The candidate's commitment to the values of the Constitution

5.1 No adverse comments have been received.

6 Whether any judgments have been overturned on appeal

6.1 The matter of *Singh v Mount Edgecombe Country Club Est. Management Assoc two (rf) (NPC)* 2018 (1) SA 615 was taken on appeal to the KwaZulu-Natal Provincial Division and was partially reversed on appeal. The matter was then again taken on appeal to the Supreme Court of Appeal and was partially reversed. The judgment is reported as *Mount Edgecombe Country Club Estate Management Association II RF NPC vs Singh and Others* 2019 (4) SA 471 (SCA).

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

7.1 The candidate has acted as a Judge in the High Court for five sessions of approximately one month each and it would appear sat on diverse occasions to complete part heard matters.

7.2 The candidate has practiced as an Advocate from 1992 up to the present time and has been a Senior Counsel from June 2014.

7.3 The candidate has been involved in the Society's Pupil Training Programme and as the Pupillage Convener.

7.4 He has also sat as an Arbitrator in various matters.

7.5 We are therefore of the view that the candidate has sufficient professional experience to occupy the position of Judge in the High Court.

8 The candidate's linguistic and communication skills

- 8.1 From a reading of the candidate's judgments, his English linguistic skills appear to be good. His judgments are well articulated, and the reasons given therefore are logical and find support in the law.
- 8.2 The candidate is fluent in English and isiZulu.

9 The candidate's ability to produce judgments promptly

- 9.1 Apart from two judgments which were handed down approximately four months after the date of hearing, the candidate generally delivered all other judgments promptly.
- 9.2 As at the date of his application, the candidate had one reserved judgment which he presided over on 11 October 2019. The candidate indicated in his questionnaire that he was in the process of scribing same and envisaged that it would be completed in the first week of the December 2019 recess.

10 The candidate's fairness and impartiality

- 10.1 There is nothing to suggest that the candidate is not fair and impartial to litigating parties that appear before him.
- 10.2 The candidate refers to a complaint which was addressed to the Judge President by one, Peter McHendry regarding what transpired in two applications that had been instituted by him and which came before the candidate on the unopposed motion court roll. The candidate states that he has heard nothing further about this matter. He does not set out the

nature of these complaints and accordingly, it is not possible for us to comment any further thereon.

11 The candidate's independent mindedness

11.1 From a reading of the judgments of the candidate, he clearly displays an open, impartial and independent mind on the subject matter which comes before him.

12 The candidate's ability to conduct court proceedings

12.1 As set out above, the candidate has a wealth of experience in the law and has acted on a number of occasions in the High Court.

12.2 There is nothing to indicate that the candidate is not able to conduct court proceedings ably and in accordance with the required procedural rules.

13 The candidate's administrative ability

13.1 No adverse comments were received.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No adverse comments were received.

15 The candidate's judicial temperament

15.1 No adverse comments were received.

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 involved as a trainer in the Pupil Advocacy Programme since its inception.
- 16.2 It would appear that the candidate mentored many pupils who were aspirant advocates.
- 16.3 He was actively involved in the Legal Aid Programme whilst at university.
- 16.4 There is nothing to suggest that the candidate is not committed to human rights and the values and needs of the community.

17 The candidate's potential

- 17.1 The candidate has already gained experience in diverse fields of law both from his practice and as an Acting Judge.
- 17.2 He clearly has the ability and potential to further enhance his legal skills.

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

- 18.1 The candidate is a white man and his appointment would not address the demographic realities of racial and gender representivity on the Bench.
- 18.2 Aside from this factor, the candidate has the other requisite attributes to be appointed to the High Court Bench, and his appointment would send a positive message to the community.