

**APPLICANT: JUDGE DENISE CAROL FISHER****COURT FOR WHICH CANDIDATE APPLIES: THE COMPETITION  
APPEAL COURT****1. The candidate's appropriate qualifications:**

1.1. BA, University of the Witwatersrand (1985)

1.2. LLB, University of the Witwatersrand (1988)

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

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

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

3.1. The Competition Appeal Court currently comprises one black woman, one white woman, one Indian man and one white man.

3.2. The candidate is a white woman.

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

4.1. On the strength of the candidate's reported and unreported judgments over a wide range of subjects, she has demonstrated a good knowledge of the law.

4.2. While specialist competition law experience is not evident in the application, the candidate's demonstrated experience in related areas of commercial law is likely to provide a foundation on which to build the necessary specialist knowledge.

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

5.1. The candidate has demonstrated a commitment to constitutional values. This is reflected in the judgments to which the candidate refers in her application for appointment to the Competition Appeal Court ("CAC").

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

6.1. Four of the candidate's judgments have been overturned on appeal.

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

7.1. The candidate has over 30 years' experience as counsel and as a judicial officer:

7.1.1. Advocate, Johannesburg Society of Advocates: December 1989 – December 2016 (appointed as senior counsel in 2009), with a focus on commercial law, insolvency law, constitutional and administrative law, intellectual property and delict (but with broad experience across the spectrum);

7.1.2. Judge of the High Court, Johannesburg: January 2017 – to date.

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

8.1. Based on the candidate's reported and unreported judgments, it is apparent that her command of the English language is excellent. Her judgments are well structured, canvassing appropriately the facts and the law. Her decisions are clear and concise and are set out in a manner which makes easy reading even for lay persons.

8.2. The candidate communicates excellently in English.

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

- 9.1. The candidate produces judgments quickly and efficiently, and generally speaking, within one month of the hearing.
- 9.2. In *GM v KI* 2015 (3) SA 62 (GJ), judgment was given more than four months after the matter was heard, although the facts of the case are peculiar, i.e., an order was granted in the unopposed motion court on the day of the hearing at the instance of the applicant. The applicant thereafter requested written reasons for an order that she herself sought.
- 9.3. In *Dube NO v Road Accident Fund* 2014 (1) SA 577 (GSJ), judgment was given approximately four months after the hearing.

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

- 10.1. As presiding officer, the candidate is generally regarded as fair and impartial.
- 10.2. Reference is however made to paragraph 12.4 below.

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

- 11.1. In *Moyane v The National Director of Public Prosecutions* 2020 JDR 2409 (GP), being an appeal against a forfeiture order in terms of section 50 of the Prevention of Organised Crime Act 121 of 1998, the candidate gave a dissenting judgment to the judgment of Louw J (Jordaan AJ concurring).

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

- 12.1. The candidate is always well-prepared and engages with counsel.

- 12.2. Comments received from practitioners who regularly appear in the Competition Appeal Court uniformly described the candidate as firm but fair and open to persuasion based on good law and good facts.
- 12.3. These practitioners indicated strong support for the candidate's appointment as a permanent member of the Court.
- 12.4. In the High Court, the candidate's robust approach in the matter of *Taylor v Road Accident Fund 2021 (2) SA 618 (GJ)* attracted media attention. It is understood that both plaintiff and defendant have been granted leave to appeal by the Supreme Court of Appeal, and that further petitions for leave to appeal made on behalf of the legal practitioners affected by the judgment are pending.

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

- 13.1. No comments on the candidate's administrative ability have been received.

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

- 14.1. There have been no adverse reports received on the candidate's integrity and ethical behaviour.

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

- 15.1. The candidate has a reputation for:
  - 15.1.1. being firm but fair;
  - 15.1.2. being open to persuasion;
  - 15.1.3. engaging extensively with counsel during hearings; and

15.1.4. possessing a good presence in court, exercised with judicial humility.

15.2. Reference is however made to 12.4 above.

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

16.1. The candidate's mentoring and training of junior lawyers, especially women and disadvantaged individuals, is a significant contribution to the law and the pursuit of justice in South Africa.

16.2. Apart from the aforesaid, the candidate's application does not contain evidence of community-based involvement outside of her professional field.

**17. The candidate's potential:**

17.1. The candidate would be a suitable appointment to the Competition Appeal Court.

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

18.1. The candidate's experience, hard work and perseverance would be appropriately recognised by elevation to an appellate court.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED****Reported decisions:**

*Taylor v Road Accident Fund* 2021 (2) SA 618 (GJ)

*Nedbank Ltd v Mzizi and Related Cases* 2021 (4) SA 297 (GJ)

*Chang v Minister of Justice and Correctional Services (Helen Suzman Foundation Amicus Curiae)* 2020 (2) SACR 70 (GJ)

*Beiersdorf AG v Koni Multinational Brands (Pty) Ltd* 2019 (4) SA 553 (GJ)

*Absa Bank Ltd v Njolomba and Another, and Other Cases* 2018 (5) SA 548 (GJ)

*Mngomezulu v Van Den Heever* 2018 (1) SACR 601 (GJ)

*GM v KI* 2015 (3) SA 62 (GJ)

*Conekt Business Group (Pty) Ltd v Navigator Computer Consultants CC* 2015 (4) SA 103 (GJ)

*Dube NO v Road Accident Fund* 2014 (1) SA 577 (GSJ)

*Stevens and Others v Swart NO and Others* 2014 (2) SA 150 (GSJ)

**Unreported Decisions:**

*The MEC for Health & Social Development, Gauteng v TM obo MM* (380/2019) [2021] ZASCA 110 (10 August 2021)

*Reckitt Benckiser Pharmaceuticals Proprietary Ltd v The Advertising Regulatory Board NPC Colgate - Palmolive Proprietary Limited* 2021 JDR 0300 (GJ)

*Bliss Brands (Pty) Limited v Advertising Regulatory Board NPC* 2021 JDR 1019 (GJ)

*S v Joseph* 2020 JDR 0216 (GJ)

*Sappi Southern Africa Limited v Renasa Insurance Company Limited* 2020 JDR 0308 (GJ)

*T 4 Computer Systems CC v RCL Foods Limited* 2020 JDR 0309 (GJ)

*N B Developments (Pty) Ltd v Cargo Loading Solutions (Pty) Ltd* 2020 JDR 0310 (GJ)

*S v Ndlovu* 2020 JDR 0534 (GJ)

*Tempelhoff v Watirus* 2020 JDR 2041 (GJ)

*Batsalani Coral Investments (Pty) Ltd v Cll Rental Pool Company Cape Town (Pty) Ltd* 2020 JDR 2157 (GP)

*S v Hartney* 2019 JDR 0255 (GJ)

*S v Madikwe* 2019 JDR 0256 (GJ)

*Narayan Textiles CC v Fox Alarms and Security* 2019 JDR 0317 (GJ)

*Nash v Director of Public Prosecutions* 2019 JDR 0318 (GJ)

*Magobotha v The Member of the Executive Council Responsible for Health and Social Development in the Gauteng Province* 2019 JDR 0593 (GJ)

*Mings Distributors CC v The International Trade and Administration* 2019 JDR 2525 (GJ)

*Southern African Quantum Consultants and Actuaries (Pty) Ltd v Amplats Group Provident Fund* 2019 JDR 2609 (GJ)

*Mabota v MEC for Community Safety* 2018 JDR 0571 (GJ)

*Kalyan Hospitality Development Togo Sau v Santam Limited* 2018 JDR 0772  
(GJ)

*Ajax Cape Town Football Club v William NO* 2018 JDR 1120 (GJ)

*Simson v Beaton NO.* 2018 JDR 1255 (GJ)

*EPA Development (Pty) Limited v Attorneys Fidelity Fund Board of Control* 2018  
JDR 1256 (GJ)

*SR v LR* 2018 JDR 1257 (GJ)

*Klopper NO. v Ragavan* 2018 JDR 1258 (GJ)

*Katay Racing CC v Nickel* 2018 JDR 1704 (GJ)

*Lombard Insurance Company Limited v McCrae* 2018 JDR 1706 (GJ)

*Tendai v MEC Health and Social Development, Gauteng Provincial Government*  
2018 JDR 1849 (GJ)

*AmaZulu Football Club v National Soccer League* 2018 JDR 1887 (GJ)

*S v Marunga* 2018 JDR 2198 (GJ)

*Mabota v MEC for Community Safety* 2018 JDR 0571 (GJ)

*Kalyan Hospitality Development Togo SAU v Santam Limited* 2018 JDR 00772  
(GJ)

*Estoril Body Corporate v Ndayiragije* 2017 JDR 0534 (GJ)

*Waleed Investment Holdings (Pty) Limited v Mandonca* 2017 JDR 0637 (GJ)

*PAIA v Member of the Executive Council for Health and Social Development*  
(Gauteng) 2017 JDR 0735 (GJ)



*Executive Carports (Pty) Limited v Airports Company South Africa Limited* 2017 JDR 1508 (GJ)

*Absa Technology Finance Solutions Limited v Rockbit Drilling Equipment (Pty) Limited* 2017 JDR 1595 (GJ)

*National Empowerment Fund v C-Pro Construction (Pty) Limited* 2017 JDR 2097 (GJ)

*Advocate Patel NO. v Road Accident Fund* 2017 JDR 2099 (GJ)

*Ukubekzela Logistics v Umzobanzi Coal and Energy* 2015 JDR 1468 (GJ)