

**APPLICANT: ADVOCATE BRAD CHRISTOPHER WANLESS SC**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION OF  
THE HIGH COURT**

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

- 1.1. BA – University of KwaZulu-Natal (1983);
- 1.2. LLB – University of KwaZulu-Natal (1985); and
- 1.3. Diploma in Maritime Law – University of KwaZulu-Natal (1986).

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

- 2.1. In the previous review on this candidate, a potential issue was raised in respect of his conduct. Subsequent thereto, the Legal Practice Council has issued a certificate of good standing in respect of the candidate.
- 2.2. There is therefore nothing in the candidate's application or judgments to suggest that he 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. There are currently 73 full time judges on the Gauteng bench, comprising (as far as could be ascertained):
  - 3.1.1. 22 black women (17 African, 3 Indian, 2 Coloured);
  - 3.1.2. 25 black men (18 African, 5 Indian, 2 Coloured);
  - 3.1.3. 13 white women; and

3.1.4. 13 white men.

3.2. The candidate is a white man.

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

4.1. The candidate has had exposure to diverse areas of the law, from criminal law to matrimonial, maritime, contract, delict, insolvency, property, engineering and construction law.

4.2. Whilst in practice, the candidate did not practise in the field of constitutional law. In addition, none of the judgments submitted in support of this application has any bearing on this field of law.

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

5.1. The candidate does not make specific reference to his commitment to the values of the Constitution.

5.2. Whilst practising at the KwaZulu-Natal Bar, the candidate mentored "*approximately*" nine pupils, of whom eight are said to have been from previously disadvantaged backgrounds. The candidate states that he endeavoured, where possible, to assist the pupil advocates, including by means of financial assistance.

5.3. As a senior counsel, when briefed together with a junior, the candidate states that his junior was always a black junior counsel.

5.4. The candidate assisted with transformation initiatives at the KwaZulu-Natal Bar, including by "*signing-up*" for an initiative involving fee-sharing arrangements with black counsel.

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

- 6.1. No judgments have been found overturning decisions by the candidate.
- 6.2. The candidate states that “[w]hilst I have granted leave to appeal in respect of several of my judgments, I am not aware as to whether any of those appeals have proceeded and the results thereof”.

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

- 7.1. Between 23 November 1988 and 31 July 1990, the candidate served as a public prosecutor in the District and Regional Magistrates’ Courts of Durban, KwaZulu-Natal.
- 7.2. The candidate was a member of the Society of Advocates of KwaZulu-Natal between 01 December 1990 and 30 June 2016 and is said to have been a member of the Legal Practice Council (LPC) from 21 June 2019 to date of his application.
- 7.3. The candidate achieved senior counsel status in June 2011, after approximately 20 years of practice as an advocate.
- 7.4. The candidate has experience in both criminal and civil law, encompassing both trial and motion matters.
- 7.5. The candidate enjoys a reputation for being prepared for his matters and on top of the issues arising from those matters, even those cases involving lengthy papers. The candidate also has a reputation for being efficient and pleasant when dealing with matters.

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

- 8.1. In terms of the judgments the candidate has written, both reported and unreported, he exhibits good linguistic and communication skills.
- 8.2. The candidate's judgments are well written and easy to follow as he deals directly with the point in issue and simplifies the application of the law to the facts logically.
- 8.3. The previous review on the candidate noted as a minor concern with his written work that he used brackets mid-sentence in an attempt to clarify his thought process. This resulted in long sentences that tended to confuse or dilute the point he sought to communicate. The candidate's recent judgments show that this concern is no longer apposite.
- 8.4. The candidate has penned only two reported judgments in more than two years of serving on the Bench. Both relate to summary judgment. The second took almost five months to deliver. Whilst it is appreciated that he has acted in extremely busy Divisions of the High Court, it could be expected of the candidate to have made a greater contribution to our jurisprudence in this time.

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

- 9.1. The candidate on average delivers judgments within an acceptable three-month period and appears to be alive to the need for an expeditious resolution of disputes.

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

- 10.1. There is nothing to indicate that the candidate is not fair and impartial in the discharge of his duties as counsel or acting Judge.

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

- 11.1. There is nothing to indicate that the candidate is not independent minded in the discharge of his duties as counsel or acting Judge.

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

- 12.1. There is no adverse information in this regard. No concerns appear from the judgments of the candidate that were considered.
- 12.2. Regard should also be had to the positive reports outlined in paragraph 7.5 above and 15.2 below.

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

- 13.1. No adverse comments have been received by the reviewers in this regard.
- 13.2. The candidate was a member of a committee entrusted with negotiating the renewal of the leases of various groups of advocates in Durban, KwaZulu-Natal. He has served as the vice chairman of the governing body of a primary school, as well as a committee member of a retirement village.
- 13.3. The candidate also appears to deal with cases relatively efficiently and expeditiously, as the positive reports by JSA members outlined in paragraph 15.2 below attest.

13.4. The candidate is known to be able to manage a lengthy motion roll with ease.

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

14.1. There are no other adverse comments concerning the candidate's fitness for appointment as a Judge of the Gauteng Division of the High Court.

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

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

15.2. The reviewers received the following two positive reviews from members of the JSA who have appeared before the candidate:

15.2.1. *"I ran a trial before him 3 years ago, he is knowledgeable and firm although he has a reserved personality. He is thorough, listens, debates and asks critical questions. He delivered a very good judgment within a week. I was very impressed with his temperament and I think he would be an asset to the judiciary."*

15.2.2. *"I have appeared before him a few years ago, he was part of a full bench – he seemed prepared and posed a few questions to both sides. However, since he was the most junior amongst the judges and was reserved compared to the other judges who were more dominant. My sense is that he was still finding his feet and adopted a reserved demeanour. In respect of his fitness, I cannot express a view, other than, there's nothing that points to his unfitness."*

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

16.1. No adverse comments have been received by the reviewers in this regard.

16.2. Whilst practising as a member of the KwaZulu-Natal Bar, the candidate was a member of the *Pro Deo* Committee and a pro-ponent of transformation by working with junior black counsel.

**17. The candidate's potential**

17.1. The candidate has the potential to be a competent and diligent Judge of the High Court.

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

18.1. The candidate is an experienced legal practitioner and has an extensive record of diligent service as an acting Judge.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported decisions**

*SA Taxi Securitisation (Pty) Ltd v Phambuka* (8821/11) [2012] ZAKZPHC 19 (30 March 2012)

*Absa Bank Limited v Mphahlele and Others* (45323/2019 and 42121/2019) [2020] ZAGPPHC 257 (26 March 2020)

### **Unreported Decisions**

*Jabulani Zulu & Another v The State* (A596/2015) ZAGPPHC [2018] (15 February 2018)

*Nedbank Limited v Janse Van Vuuren and Another* (33222/2011) [2018] ZAGPPHC 335 (04 May 2018)

*Orion Real Estate Limited v Zephan Properties Proprietary Limited* (09441/2019) [2019] ZAGPJHC 185 (18 June 2019)

*Ferrero S.P.A v Interactive Trading 716 (Pty) Limited* (38478/2019) [2020] (13 February 2020)

*Van Rensburg NO and Another v Master of the High Court, Pretoria and Another* (56029/18) [2020] ZAGPPHC 73 (14 February 2020)

*Morton v The State* (RC35/2017; A367/18) [2020] ZAGPPHC 221 (26 March 2020)

*HBZ Bank Limited v Mukadam's General Enterprises and Others* (32628/2019) [2020] ZAGPPHC 292 (01 June 2020)

*S v Bonginkosi Mkhize* (155/2018) [2020] ZAGPJHC (15 June 2020)

*Bustque (Pty) Limited v Vendor's Paradise (Pty) Limited* (56261/2019) [2020]  
ZAGPPHC (03 September 2020)

*Hlubi v MEC for Health, Gauteng Province* 2021 JDR 0199 (GP); (57301/15) [2021]  
ZAGPPHC 214 (08 February 2021)

*John Wright Veneers (SA) (Pty) v Komatieland Forests SOC Limited* 2021 JDR 0747  
(GP); (52088/2018) [2021] ZAGPPHC 107 (16 February 2021)

*S v Naicker* 2021 JDR 0505 (GP); (A388/2019) [2021] ZAGPPHC 136 (22 February  
2021)

**Judgments upheld on appeal:**

None of which the reviewers are aware.

**Judgments overturned on appeal:**

None of which the reviewers are aware.