

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: MS ROCHELLE FRANCIS-SUBBIAH

COURT FOR WHICH CANDIDATE APPLIES: HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, JOHANNESBURG

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments:

1.1. The candidate has the following qualifications:

1.1.1. B Iuris (1995), UNISA;

1.1.2. LLB (1998), UNISA; and

1.1.3. LLM (2003), UNISA.

1.2. The candidate is appropriately qualified.

1.3. The candidate has also held the following positions:

1.3.1. Prosecutor, from November 1998 to May 1999;

1.3.2. Magistrate, appointed on 18 July 2000; and

1.3.3. Admitted attorney (non-practicing toll), admitted in 2012.

2. The candidate's integrity and ethics:

- 2.1. No circumstances are known that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour or is not a fit and proper person for appointment.

3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:

- 3.1. There are currently 81 full time judges on the Gauteng bench, comprising (as far as could be ascertained):

3.1.1. 20 black women;

3.1.2. 31 black men;

3.1.3. 13 white women; and

3.1.4. 17 white men.

3.1.5. The candidate is an Indian woman.

4. The maximum time period the candidate could serve if appointed:

- 4.1. Section 176(2) of the Constitution provides that all judges other than Constitutional Court judges "hold office until they are discharged from active service in terms of an Act of Parliament." The Act in question is the Judges Remuneration and Conditions of Employment Act 47 of 2001.

- 4.2. Section 3(2)(a) of the Act provides that, subject to section 4(4), a judge will ordinarily be discharged from active service upon reaching the age

of 70 if, by that date, they have completed a period of active service of not less than ten years. If not, they will be discharged from active service after having completed ten years of active service.

4.3. Section 4(4) allows for a judge who reaches the age of 70 to continue serving until the age of 75 if, at the time of turning 70, they have not yet served 15 years' active service.

4.4. The candidate is 54.

4.5. If appointed, the candidate could serve up to 16 years actively in office.

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

5.1. The candidate delivered an address at the United Nations Kenya SAC-IAWJ South African Judicial Visit to Kenya in July 2016, where the candidate spoke about the role of women in the judiciary.

5.2. In the past 10 years, the candidate has been a member of a spiritual organisation called Sri Sathya Sai International Organisation in South Africa, in terms of which the candidate was responsible for conducting education in human values, life skills for children and participating in environmental issues, food distribution, old age care and other activities of the organisation.

5.3. The candidate has attended the following courses and conferences that demonstrate the candidate's personal commitment to the values of the Constitution:

- 5.3.1. Social Context and Diversity Training at the University of Cape Town (Law, Race and Gender) & Canada – SA Linkage Programme;
 - 5.3.2. a course on the Promotion of Administrative Justice Act and Access to Information; and
 - 5.3.3. a course on the Promotion of Equality and Prevention of Unfair Discrimination Act.
- 5.4. The candidate held the following positions that demonstrate the candidate's personal commitment to the values of the Constitution:
- 5.4.1. acting head and judicial head of civil court training at the Justice College;
 - 5.4.2. Head of Curriculum Development in civil, equality and PAIA for the district courts rolled out by SAJEI and Justice College; and
 - 5.4.3. project manager for the first multi-disciplinary training and training manual on Child Law for magistrates and prosecutors and International Hague Convention in South Africa.

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

- 6.1. As a Magistrate and acting judge of the High Court, the candidate has presided in matters involving the following fields of law:
 - 6.1.1. criminal law: criminal trials, bail applications and appeals and reviews;

- 6.1.2. administrative law: adjudication of disputes regarding PAJA and PAIA as well as conducted and received training in this area of the law;
 - 6.1.3. constitutional law: civil and criminal court matters, equality court matters, administrative justice and access to information disputes; and
 - 6.1.4. other general areas of the law including personal injury, tax, shipping, intellectual property, and family law.
- 6.2. The candidate has authored a book on the law of taxation: Taxation of Legal Costs in South Africa.
 - 6.3. From the candidate's judgments that were considered it is clear that the candidate has presided over matters in a variety of areas of law and has demonstrated a sound knowledge of the law in those various fields.
7. **Judgments of the candidate that have been overturned, upheld or commented on, on appeal:**
 - 7.1. The candidate makes reference to *Romans Pizza v Neerputh* A257/15, in which the appeal was unsuccessful. The reviewing team could not locate this judgment.
 - 7.2. The candidate has no other judgments that have been overturned, upheld or commented on, on appeal.
8. **The extent and breadth of the candidate's professional experience:**
 - 8.1. the candidate has been a magistrate for 22 years;

8.2. the candidate has been appointed as an acting judge on a number of occasions, namely:

8.2.1. January to February 2016;

8.2.2. July to August 2017;

8.2.3. August to September 2019;

8.2.4. April to July 2020;

8.2.5. October to November 2021;

8.2.6. 24 to 28 January 2022; and

8.2.7. 23 to 27 May 2022.

8.3. Some members have raised concerns that the candidate, although showing good judicial temperament, lacks experience in managing a court and court roll, and lacks experience in the requirements of what are considered to be standard unopposed applications. This has resulted in many matters allocated to the candidate standing over from the previous week or day and proceedings being unnecessarily prolonged.

8.4. The candidate has a good judicial temperament, her judgments are written well and show a sound knowledge of the law, she is dedicated to the legal profession and is still of an age where she will be able to serve up to 16 years actively in office. It is believed that with more experience as an acting judge and with longer appointments as an acting judge, the candidate will obtain the requisite experience in High Court

proceedings and therefore enable the JSC to properly assess the candidate's suitability.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments are well written and well-reasoned. They demonstrate an ability to concisely set out facts and the law and a sound application of the law to the relevant facts to come to an appropriate conclusion.

10. The candidate's ability to produce judgments promptly:

10.1. The candidate delivers judgments promptly and has no reserved judgments.

10.2. There were no instances found where the candidate took longer than 3 months to hand down a judgment.

11. The candidate's ability to conduct court proceedings fairly, efficiently and effectively:

11.1. As stated above, members of the JSA have noted that the candidate lacks the requisite experience in managing her court and her roll, with many matters standing over from the previous day or the previous week. Court proceedings are unnecessarily prolonged as a result.

11.2. Members of the JSA have also noted that the candidate was 25 minutes late for court on one occasion, and despite a roll of over 40 matters and the fact that the initial removals and postponements had not yet been completed an hour later, the candidate still took the tea adjournment.

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

12.1. The candidate shows independent mindedness in her judgments.

13. **The candidate's administrative ability (other than in relation to court proceedings):**

13.1. The candidate was responsible for the upgrade of the South African Chapter of International Association of Women Judges website and has been involved in planning and hosting many international conferences for this association.

13.2. The candidate has lectured many courses and conducted many training programmes over an extended period.

13.3. The candidate has authored a practical guide to determine reasonable legal costs, published by Juta; Taxation of Legal Costs in South Africa. The book has been referred to by De Rebus as an invaluable tool for persons to acquaint themselves with the legal principles of the taxation of legal costs.

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

14.1. The candidate has devoted her entire professional career to the legal profession, both in the judicial sphere and in the areas of training, lecturing and publishing.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Unreported judgments:

- 1.1. *The South African Legal Practice Counsel v Hermanus Johannes Wessels Bothma and Bothma Incorporated*, Case No. 33739/2016 (GP)
- 1.2. *Khwashaba v Ratshitanga and Others*, 2016 JDR 0776 (GJ)
- 1.3. *Morris Martin v The State*, Case No. A179/2019 (GJ)
- 1.4. *Compensation Solutions (Pty) Ltd v The Compensation Commissioner Director-General of the Department of the Labour of the National Government of the Republic of South Africa* 2019 JDR 2178 (GP)
- 1.5. *Celliers v Warwick Invest (Pty) Ltd* 2019 JDR 2332 (GP)
- 1.6. *Du Preez v Alpha Valencia (Pty) Ltd* 2021 JDR 1040 (GP)
- 1.7. *JV Gold Bridge (Pty) Ltd v Kamonyaka Property Developments (Pty) Ltd* 2021 JDR 0914 (GP)
- 1.8. *CMTI Consulting Proprietary Limited v King Pie (Pty) Ltd* 2021 JDR 0898 (GP)