

JSC INTERVIEW ROUND: APRIL 2023

CANDIDATE: ADVOCATE LINDA ANN RETIEF (BORN CRAWFORD)

COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION

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

1.1. The candidate holds the following qualifications:

1.1.1. Legum Baccalaureus (BLC) – University of (1990); and

1.1.2. LLB – University of Pretoria, (1991).

1.2. The candidate was admitted as an attorney in 1993 and as an advocate in 2007.

1.3. The candidate was recommended for silk in 2022 and is presently awaiting her letters patent.

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 75 full time Judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 22 black women (16 African, 4 Indian, 2 Coloured);

3.1.2. 24 black men (17 African, 4 Indian, 3 Coloured);

3.1.3. 14 white women; and

3.1.4. 15 white men.

3.2. The candidate is a white 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 (she will be 55 on 3 March 2023).

4.5. If appointed, the candidate could serve up to 15 years actively in office.

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

5.1. The candidate has demonstrated a commitment to the recognition of the best interests of children by:

5.1.1. Assisting social development organisations like the Centre for Applied Legal Studies at WITS, where she did an in-house mediation introduction presentation on 20 April 2022 as a means to implement quick redress on social issues which remained unresolved due to COVID.

5.1.2. Assisting non-profit organisations like Baby Savers SA, where she addressed members of the Board on 19 October 2022 on how to set up a task team to partner with CALS to champion the safe relinquishment of infants as a means to prevent the occurrence of infant abandonment. Within the task team the candidate worked with legal aid offices nationally appointed to act on behalf of impoverished single women who have abandoned their babies and face criminal sanctions.

5.1.3. Assisting care facilities like Door of Hope. On 6 July 2022 the candidate addressed a safe house for abandoned children on a way forward to legalise baby savers.

5.1.4. The candidate has demonstrated a commitment to addressing gender inequality in briefing patterns by forming a "Woman Warrior Club" aimed at bringing attorneys and advocates together to demonstrate, advise and encourage women on how to brief one another, rely on one another and reinforce that a woman can "go to war". The club has met several times and

has been embraced by junior members of the candidate's group and their briefing attorneys.

5.2. The candidate has demonstrated a commitment to training other legal practitioners:

5.2.1. From 1996 to 2012 and again in 2021 the candidate was appointed by the Law Society of the Northern Provinces (as it then was) to be involved in training of candidate attorneys and admitted attorneys through the Law School of Practical Training, Pretoria, including presentation and drafting of course material.

5.2.2. The candidate has been appointed on an annual basis to perform an in-house lecturing function by Bowman Gilfillan (Bowmans) in respect of their candidate attorneys.

5.2.3. In 2019 the candidate was appointed by the General Council of the Bar to co-draft, mark, and sit on a panel for the oral examinations in respect of the national pupil exam paper for High Court Practice.

5.2.4. The candidate, together with a team of co-presenters and PABASA, organised and put together a 40-hour virtual training course, on a *pro bono* basis, in mediation. During the course, the candidate, together with the team, trained certain judges from the Gauteng Division of the High Court, directors of the LPC and legal practitioners in mediation in terms of Uniform Rule 41A.

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

6.1. From the reviewers' perusal of the candidate's judgments, the candidate appears to have a fair knowledge of the law.

6.2. In the letter of recommendation for the candidate from Adv JF Mullins SC included in her application, he indicates that the candidate has a good knowledge of the law.

6.3. The candidate states that she is an expert in the field of fertility law, particularly in artificial fertilisation, having played what appears to be a significant role in developing the field.

6.4. The candidate lists three reported cases in which she appeared and argued on her own which developed the field of surrogacy law as they concerned novel surrogacy issues and have in part been referred to, relied upon, considered, discussed, and distinguished in both the Constitutional Court and in various divisions of the High Court. The matters are:

6.4.1. *Ex parte HPP and 3 Others, heard together with Ex parte DME and 3 Others* [2017] (2) All SA 171 (GP);

6.4.2. *Ex parte MS and 3 Others* [2014] (2) All SA 312 (GP); and

6.4.3. *Ex parte CJD and 3 Others, Centre for Child Law as amicus curiae* 2018 (3) SA 197 (GP).

6.5. The candidate states that she is a recognised legal expert in this field, *inter alia* having been invited by SASREG (Southern African Society of Reproductive Medicine and Gynaecological Endoscopy) since 2019 to be part of an expert panel at their annual Fertility Show Africa expo, and by a member of IVF Babble UK to address an

international platform on South Africa's unique surrogacy laws and the ability of surrogacy containing the transmission of HIV from mother to child.

- 6.6. The reviewers received positive comments from counsel who appeared before the candidate who stated that the candidate understood the intricacies of a complicated matter which falls outside the areas of expertise listed by the candidate (customs and excise) and delivered a reasoned judgment which they believe to be correct (and decided in their favour).

7. Judgments of the candidate that have been overturned, upheld or commented on, on appeal:

- 7.1. The reviewers discovered no judgments appealed against or commented on.

- 7.2. However, the reviewers received positive comments in respect of the candidate from a member of the Johannesburg Society of Advocates, in which that member noted that a judgment in which they had appeared before the candidate is being appealed by the unsuccessful party, SARS. It is presumed that the comment refers to the matter of *Glencore International AG v The Commissioner of SARS* (34490/2021) [2022] ZAGPPHC 951 (7 December 2022).

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

- 8.1. The candidate has 29 years of experience as a legal practitioner. The candidate practised as an admitted attorney for 13.5 years and as an admitted advocate for 15.5 years.

8.2. The candidate states that she is a specialist in aspects of law arising in the fields of:

8.2.1. personal injury;

8.2.2. medicine;

8.2.3. health;

8.2.4. medical law; and

8.2.5. fertility.

8.3. The candidate has gained specialist experience in these areas, including through attendance in operating theatres on a few occasions in order to observe procedures.

8.4. The candidate also practises in the fields of energy law (specifically, petroleum) and mediation.

8.5. The candidate lists the following dates as having acted as a judge in the Gauteng Division, Pretoria (being 20 weeks in total):

8.5.1. 2nd term 2019 (1 week);

8.5.2. 2nd term 2020 (4 weeks);

8.5.3. 3rd term 2020 (4 weeks);

8.5.4. 1st term 2022 (4 weeks);

8.5.5. 2nd term 2022 (1 week);

8.5.6. 3rd term 2022 (3 weeks); and

8.5.7. 4th term 2022 (3 weeks).

8.6. The candidate was appointed on 20 October 2022 as a co-arbitrator sitting as an international tribunal under the 2013 UNCITRAL Arbitration Rules in a matter relating to petroleum.

8.7. The candidate also acted as a mediator in a Uniform Rule 41A referral on 29 November 2022.

9. The candidate’s linguistic and communication skills:

9.1. Save for several typographical errors in the judgments considered by the reviewers, the candidate’s judgments appear to be well reasoned, well written, and logically structured.

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

10.1. The candidate lists one outstanding judgment, the matter of *Dwane and Others v Minister of State Security and Others* (case no 11889/21) in which judgment was reserved on 19 October 2022 (more than four months ago).

10.2. All of the candidate’s remaining judgments were delivered within three months (one was delivered three months and one day after the hearing).

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

11.1. The reviewers received positive comments from counsel who had appeared before the candidate. In particular, the candidate was described as “*excellent*”, “*very well prepared*”, “*engaging*”, and “*respectful of counsel*”. The candidate is said to have managed her court well.

12. The candidate's independent mindedness:

12.1. There is nothing in the candidate's judgment which indicates that she is not independent-minded. Indeed, in the judgments considered by the reviewers the candidate gave due consideration to the submissions made by all the parties.

12.2. In the letter of recommendation for the candidate from Adv JF Mullins SC included in her application, he indicates that the candidate is even-handed.

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

13.1. The candidate has, from 2007 to date, been a member of various committees of the Pretoria Society of Advocates, including arbitration, mediation, transformation, and rules board committees.

13.2. Furthermore, the candidate's ability to sustain a successful practice for so many years while engaging in extensive training of other legal practitioners, including co-drafting and marking of national pupil exams, as well as speaking engagements and panel discussions, is indicative of the candidate's excellent administrative abilities.

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

14.1. Appointment of the candidate would send a message to the public at large that the bench is comprised of candidates with extensive and broad experience over decades of practice, and that the bench is comprised of experts in various fields.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

1.1. None

2. Unreported judgments:

2.1. *Xokozela v Road Accident Fund* (42305/16) [2021] ZAGPPHC 233
(11 May 2021)

2.2. *Prowalco (PTY) Limited v Venter and Others* (43483/2020) [2022]
ZAGPPHC 1021 (28 November 2022)

2.3. *Platinum Wheels (Pty) Ltd v National Consumer Commission and
Another* (A261/2021) [2022] ZAGPPHC 831 (2 November 2022)

2.4. *Glencore International AG v The Commissioner for the South
African Revenue Services* (34490/2021) [2022] ZAGPPHC 951 (7
December 2022)

2.5. *The Minister of Police v Dziva In re: Dziva v The Minister of Police*
(38700/2016) [2022] ZAGPPHC 569 (3 June 2022)

2.6. *Silinda NO and Others v Master of the High Court, Pretoria and
Others* (20553/2021) [2022] ZAGPPHC 279 (29 April 2022)

2.7. *Stand 7199 Pietersburg Extension 28 (Pty) Ltd and Others v Geysers
Attorneys Incorporated and Others* (55307/2021) [2022]
ZAGPPHC 210 (1 April 2022)

3. Judgments upheld on appeal:

3.1. None

4. Judgments overturned on appeal:

4.1. None