

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, WESTERN CAPE DIVISION OF THE HIGH COURT

ADVOCATE HUGO JOHAN DE WAAL SC

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

1.1. The candidate holds the following tertiary qualifications:

1.1.1. BCom, Stellenbosch University (1985)

1.1.2. LLB, Stellenbosch University (1987)

1.1.3. LLM, University of Notre Dame, United States of America (1989).

1.2. The candidate holds the following professional admissions and honours:

1.2.1. admitted as an advocate on 20 October 2000

1.2.2. conferred senior counsel status on 10 March 2018.

2. The candidate's integrity and ethics

2.1. No circumstances known to the reviewers 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. The racial and gender composition on the bench

3.1. As far as could be ascertained, there are 27 permanent judges of the Western Cape Division of the High Court:

3.1.1. 10 black women (4 African, 6 Coloured)

3.1.2. 12 black men (5 African, 5 Coloured, 2 Indian)

3.1.3. 2 white women

3.1.4. 3 white men

3.2. According to the questionnaire, the candidate is a white man.

4. The maximum period the candidate could serve if appointed

- 4.1. At the time of the interviews, the candidate will be approximately 59 years and 7 months old and will have completed a period of approximately 3 months of service as an acting judge.
- 4.2. If appointed, the candidate would be eligible to serve as a judge for 15 years from appointment.

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

- 5.1. The candidate's professional history demonstrates a strong personal commitment to the Constitution and its values.
- 5.2. He has been closely involved in South Africa's post-apartheid constitutional project since the beginning, when he started publishing academic articles and book chapters dealing with constitutionalism and human rights for a new South Africa.
- 5.3. Perhaps most notably, he is the co-author, with Iain Currie, of *the Bill of Rights Handbook* (now in the 6th ed). The textbook needs no introduction. It comprehensively addresses and discusses the rights in chapter 2 of the Constitution and the general principles applying to rights (such as interpretation, application, and limitations). It has been cited 42 times by the Constitutional Court. Judges, practitioners, academics, and students routinely rely on the textbook. The *Handbook* and the candidate's other writings have been cited more than 100 times by other courts.
- 5.4. The candidate also disclosed that he has attempted at least once a year in his practice to act *pro bono* in a fundamental rights court challenge. This reflects a deep commitment to the Constitution.
- 5.5. Finally, since taking senior counsel status in 2018, the candidate reports he has led black women junior counsel on about 13 occasions, black male counsel on about eight occasions, and white women junior counsel on about 13 occasions.

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

- 6.1. The candidate has a thorough knowledge of the law, including constitutional law. His academic contributions more than demonstrate this, as do the number of reported judgments he has appeared in as counsel.

- 6.2. While acting on the Western Cape High Court bench, the candidate wrote a number of reported judgments dealing with a wide range of non-constitutional matters, including customs and excise, banking, and planning disputes
- 6.3. Throughout his career at the Bar, the candidate has been involved in constitutional matters both for and against the State. For example, he was closely involved in drafting amendments to the legislative framework governing the Road Accident Fund and litigation concerning amendments made to the RAF Act in 2008, in the matter of *Law Society of South Africa and Others v Minister for Transport and Another* 2011 (1) SA 400 (CC). More recently, he represented parties challenging the constitutionality of the amended Electoral Act, in *Independent Candidate Association South Africa NPC v President of the Republic of South Africa and Others* 2024 (2) SA 104 (CC).

7. Judgments of the candidate that have been taken on appeal

- 7.1. The candidate has disclosed that he granted leave to appeal in May 2024 in respect of one judgment, but the parties are not disclosed.
- 7.2. As far as the reviewers are aware, the appeal has yet to be heard.

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

- 8.1. The candidate's career can be divided broadly into two parts.
- 8.2. In the first part (from 1991 to 2002), he was an academic at the Wits Law School and Stellenbosch University. In 1995, he was a legal researcher (commonly referred to as a "law clerk") to the late Justice LWH Ackermann at the Constitutional Court.
- 8.3. In the latter part, the candidate has practised as an advocate at the Cape Bar since 2001, taking senior counsel status in 2018.
 - 8.3.1. His experience has been wide ranging. Over and above litigating public interest and constitutional cases, he has provided regulatory advice to state bodies; been a member of the South African Law Reform Commission; and been the Chairperson of the Cape Bar; sat as a member of the Nkabinde Independent Panel to assess a motion to remove the Public Protector.
 - 8.3.2. He has appeared in 78 reported judgments.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English.

9.2. Nothing in the judgments and other writings considered by the reviewers indicates that the candidate's linguistic and communication skills are not adequate.

10. The candidate's ability to produce judgments promptly

10.1. The candidate indicated that no judgments were outstanding at the time of completing the questionnaire.

10.2. Of the 16 judgments of the candidate considered by the reviewers, all were handed down more or less within three months after hearing.

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

11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.

12. The candidate's independent-mindedness

12.1. The reviewers received no adverse comments from colleagues relating to the candidate's independent-mindedness.

12.2. The candidate's independence is best demonstrated by appearances for and against a number of different private, juristic, corporate, and state parties over the course of his career.

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

13.1. The candidate served as the Chairperson of the Cape Bar in 2022/2023 and the Deputy Chairperson in 2023/2024 and properly discharged his administrative duties.

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

14.1. While the candidate is a white man, he has made numerous contributions to South Africa's constitutional project since the early 1990s as an academic and practitioner.

14.2. His appointment to the bench would reaffirm to the public at large that the Constitution has a central place in South Africa's public life and that experts in that field constitute the bench.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Walker v City of Cape Town and Others* [2024] 2 All SA 612 (WCC)
2. *Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd v Commissioner for the South African Revenue Service and Another* [2024] 1 All SA 824 (WCC)
3. *Goldstar Finance (Pty) Ltd and Others v Capitec Bank (Pty) Ltd and Another* [2024] 1 All SA 727 (WCC)
4. *Solomons v S* [2019] 2 All SA 833 (WCC)
5. *Hodgkinson v K2011104122 (Pty) Ltd and Another* [2019] 2 All SA 754 (WCC)

Unreported judgments

6. *Siertsema v Stoney Meadows Investments 27 (Pty) Ltd and Others* (16845/2022) [2024] ZAWCHC 50 (21 February 2024)
7. *Standard Bank of South Africa Limited and Others v Master of the High Court, Cape Town and Others* (16103/2022) [2023] ZAWCHC 286 (16 November 2023)
8. *ReFin Financial Services (Pty) Ltd v Lush Auto CC and Others* (6695/16) [2019] ZAWCHC 87 (13 June 2019)
9. *Standard Bank of South Africa Ltd v Sauer and Another* (18273/2018) [2019] ZAWCHC 28 (12 March 2019)
10. *Big Catch Fishing Tackle Proprietary Limited and Others v Kemp and Others* (17281/18) [2019] ZAWCHC 20 (5 March 2019)
11. *Interfocus SA Investments 172 (Pty) Ltd and Another v Storbeck and Another* (1577/19) [2019] ZAWCHC 12 (15 February 2019)

Judgments upheld on appeal

12. None

Judgments dismissed on appeal

13. None

Academic writings

14. Currie & De Waal *The Bill of Rights Handbook* (six editions from 2001)
15. Currie & De Waal *The New Constitutional and Administrative Law Vol 1 Constitutional Law* (2001)
16. Co-author of three chapters in *Rights and Constitutionalism: The New South African*

Legal Order (1994) edited by D Van Wyk, J Dugan, B De Villiers & D Davis

17. 'Procedural Fairness and the Deprivation of Liberty: is there a general and residual right to due process in South Africa?' in G Carpenter (ed) *South Africa in Transition Focus on the Bill of Rights* (1996).
18. 'Political Rights' in Chaskalson *et al.* *Constitutional Law of South Africa* (1996, first edition only).
19. 'Executive Authority' in *LAWSA* (2ed)
20. 'Constitutional Law; in Van der Merwe and Du Plessis (eds) *Introduction to South African Law* (Kluwer Law International, 2004).
21. 'A Comparative analysis of the Provisions of German Origin in the Interim Bill of Rights' 1995 (1) SAJHR 1
22. 'Juristic Persons [and the Bill of Rights]' 1995 (2) SAJHR 343
23. 'The Constitutional Jurisprudence South African courts on the application, interpretation and limitation of fundamental rights during the transition' 1996 (2) *Stell Law Review* 179 (with Prof Gerhard Erasmus)
24. 'Is there a general and residual Procedural Fairness in South Africa?' 1997 (2) SAJHR 228
25. 'Die finale Grondwet: legitimitate en ontslaan' 1997 (1) *Stell Law Review* (with Prof Gerhard Erasmus)
26. 'Revitalising the Freedom Right? *De Lange v Smuts NO*' 1999 (2) SAJHR 117