

VACANCY: JUDGE OF THE WESTERN CAPE DIVISION OF THE HIGH COURT

Candidate: Dr Michelle Fiona Adams

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

- B.Proc, University of the Western Cape (1992)
- LLB, University of the Western Cape (2004)
- LLM, University of South Africa (2010)
- LLD, University of the Western Cape (2025)

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

- Practised as a prosecutor from January 1994

1.3. The candidate was permanently appointed to the following judicial roles:

- Magistrate from September 1999 to June 2007
- Regional Magistrate from June 2007 to present

1.4. The candidate has acted in the following roles:

- Judge of the Western Cape High Court, approximately 11 terms/100 weeks

2. The candidate's integrity and ethics
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2.1. No circumstances are known to the reviewers that would suggest the candidate is not a person of integrity and with a reputation for ethical behaviour.

2.2. We note that the candidate's pack includes a letter of endorsement from NADEL for Ms Jennifer Marion (pages 9-12). We assume this was an error in preparing the pack, not an error by the candidate. However, how that letter appeared in the pack should be clarified.

3. The racial and gender composition of the bench

3.1. As far as could be ascertained, there are currently 32 permanent judges of the Western Cape Division of the High Court, Cape Town:

- 12 black women (6 African, 6 Coloured)
- 14 black men (6 African, 6 Coloured, 2 Indian)
- 4 white women
- 2 white men

3.2. According to the questionnaire, the candidate is a Coloured woman.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 56 years and 5 months old and will have completed a period of approximately 1 years and 11 months' of active service. If appointed, the candidate would be eligible to complete a further period of up to 11 years and 7 months of active service, if her acting stints are taken into account, or 13 years and 6 months otherwise.

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

5.1. The candidate has been significantly involved in judicial training, including training on the Child Justice Act and sexual offences law. She reports mentoring colleagues and final-year woman law students. The topic of her LLD thesis also demonstrates a commitment to constitutional scholarship.

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

6.1. The candidate's judgments are clear and well-written. They identify the issues, set out the facts and legal principles, and cogently explain the conclusions reached. Overall, the judgments are of good quality and demonstrate a thorough grasp of the facts and the law.

6.2. The candidate's judgments in three cases warrant positive mention. The decision in *McKenzie v S* sensitively addresses the proper assessment of the evidence of child witnesses in the context of a sexual assault case.

6.3. *Taliona v City of Cape Town* (was an appeal against the grant of an eviction order by the Magistrates' Court where alternative accommodation was offered at a "safe space").

The candidate correctly found that the Magistrate's order failed to provide sufficient protections for the occupiers and that the Magistrate had not adequately interrogated the occupiers' circumstances. The judgment reiterates the importance of the court's positive duty to protect those facing eviction.

- 6.4. Lastly, the judgment in *Van Rooyen v Kilbride* carefully analyses the law concerning process and sentence in civil contempt of court proceedings and persuasively holds that (where a contemnor is legally represented) there is no need for a separate opportunity to make submissions on mitigation of sanction.
- 6.5. However, three judgments also contain questionable reasoning.
- 6.6. First, in *Futter v S*, the appellant was convicted of some offences and acquitted of others. In a pending appeal before the SCA, the appellant alleges that Adams AJ improperly considered the facts underlying the charges of which he was acquitted to justify the sentence imposed for the counts on which he was convicted. For example, the appellant was acquitted of driving under the influence of alcohol, yet Adams AJ considered his consumption of alcohol relevant to sentencing. Adams AJ also described the appellant's conduct as "*approach[ing] recklessness*" even though he had been acquitted of reckless driving. This appears to be a misdirection the JSC may wish to raise with the candidate.
- 6.7. Second, in *Minister of Police v Titus*, the candidate, as part of a full bench, upheld an appeal against an order refusing to permit the upliftment of a bar. The plaintiff – a transgender woman – alleged that she had been sexually assaulted while in police custody. She sued the Minister on the basis that the police officers had wrongly placed her in men's cells. The Minister failed to file a plea after being served with a notice of bar. The court a quo had dismissed an application to uplift the bar.
- 6.8. A central part of the candidate's reasoning was that it would be in the interests of justice to permit the upliftment of the bar, as a full ventilation of the issues at trial would enable "*judicial scrutiny of alleged police misconduct within a structured and transparent forum, ensuring accountability and reinforcing public confidence in law enforcement institutions. It also provides an opportunity to develop and clarify the law regarding the treatment of transgender detainees, particularly with respect to the constitutional rights to privacy, bodily integrity, and non-discrimination.*" (para 88, see also paras 2, 56-8, 62-3, 77, 80, 86 and 89-91). It seems questionable whether a plaintiff who

approaches a court solely for individual compensation should have her case converted into one to advance the public interest. It is also questionable whether further delaying the resolution of the plaintiff's claim could be justified by any potential benefit of a trial to the Minister (by clarifying his obligations) and to people who are not parties to the litigation (other transgender detainees). The JSC may wish to engage with the candidate about this issue.

- 6.9. Third, in a judgment delivered after the deadline for submissions – *OVEX (Pty) Ltd v Huing* [2026] ZAWCHC 346 – the candidate granted restraint of trade relief. The judgment is currently the subject of an application for leave to appeal. That application alleges that the candidate misapplied the *Plascon Evans* rule, granted relief not sought, and failed to distinguish a judgment by Holderness J on similar facts (*OVEX (Pty) Ltd v Varejes* Case No, 2026-124280). Without a detailed consideration of the facts, it is not possible to determine whether the criticisms have merit. In comments received by the reviewers, it was remarked that the candidate's failure to apply the *Plascon Evans* test and the apparent bias in favour of the applicant in that case, in reinforcing the restraint agreements without regard to what the respondents had claimed and were submitting, can already be gleaned from the judgment itself. The JSC may wish to raise these issues with the candidate, especially if she has decided the leave to appeal application by the time of her interview.
- 6.10. The candidate's 2024 LLD thesis is titled "*The Challenges of Securing Convictions Against the Kingpins of Organised Crime in South Africa*". Drawing on her practical experience as a prosecutor, magistrate and acting judge, the thesis offers recommendations for effectively prosecuting gang leaders rather than merely foot soldiers. It is well written, addresses an important topic, and presents practical proposals for reform. It received positive reviews from her external examiners, as reflected in the letter of support from her doctoral supervisor.
- 6.11. The candidate has no published academic writing.

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

- 7.1. The candidate has disclosed that no judgments have been taken on appeal.
- 7.2. In *Futter v S* (Bundle p 98), the Supreme Court of Appeal has granted special leave to appeal, and the appeal is pending. The candidate may not have been aware of this fact.

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

- 8.1. The candidate's experience is primarily in criminal law. Her practical experience as a prosecutor was in criminal law. The candidate notes that, as a magistrate, she also presided over civil disputes, but the majority of her work and interest as a magistrate appears to have been in criminal cases. Her LLD thesis concerns criminal law. The candidate does not disclose the subject of her LLM thesis.
- 8.2. As an acting judge, the candidate has gained experience in civil law. She states that she has presided over 8 civil appeals, 19 opposed civil motions, and 30 civil trials.

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
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- 10.1. The candidate indicated that one judgment was outstanding when the questionnaire was completed. The candidate had one part-heard criminal trial.
- 10.2. As far as could be ascertained at the time of completing this review, that judgment is still outstanding.
- 10.3. Of the 9 judgments the reviewers considered, 2 were handed down more than three months after the hearing. For one judgment, the date on which it was reserved was not stated.

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

12. The candidate's independent-mindedness

- 12.1. There is no reason to believe that the candidate, if appointed, would not bring an independent mind to bear on issues presented for judicial determination, nor that the candidate would be unduly influenced in any way, including by the executive or legislative branches of government.

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

- 13.1. The candidate has worked as the Coordinator of the Cape Town Regional Court and was appointed as Acting Regional Court President. She also organised SAJEI training programmes for aspirant Regional Magistrates.

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

- 14.1. The candidate's career demonstrates commitment and dedication to her profession. She has progressed through the prosecutorial system, spent significant time as a magistrate, and served as an acting judge. While doing all that, she has also found time to complete an LLB, an LLM, and an LLD on the prosecution of high-ranking gang members. This demonstrates an admirable commitment to the law and to justice.
- 14.2. Although the candidate does not mention it, as a Coloured woman starting her career in the early 1990s, she would have had to overcome barriers to advancement based on both her gender and her race.
- 14.3. The candidate's appointment would send a positive message.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *S v McKenzie* 2025 (1) SACR 568 (WCC)
2. *Button NO v Mohamedy* 2026 JDR 2193 (WCC)
3. *S v LN* 2025 JDR 0721 (WCC) (written jointly with Lekhuleni J)
4. *S v Sevier* 2025 JDR 1380 (WCC)
5. *Gamlam Investments (Pty) Ltd v Coetzee* 2025 JDR 5206 (WCC)
6. *Minister of Police v Titus* 2025 JDR 5218 (WCC)

Unreported judgments

7. *Goodfood Co (Pty) Ltd v FPG Holdings (Pty) Ltd* Case No. A81/2025
8. *Daniels v Road Accident Fund* Case No. 9698/2021
9. *Futter v S* Case No. A194/2024
10. *Taliona v City of Cape Town* Case No. A168/2023
11. *Van Rooyen v Kilbride* Case No. A302/2025
12. *OVEX (Pty) Ltd v Huing* [2026] ZAWCHC 346

Judgments upheld on appeal

13. None.

Judgments overturned on appeal

14. None.

Academic writings

15. LLD Thesis “*The Challenges of Securing Convictions Against the Kingpins of Organised Crime in South Africa*”, available at <https://uwcscholar.uwc.ac.za/bitstreams/04c84194-4185-4fc3-8e7e-55deb5748f56/download>.