

Judicial Services Commission interviews

5 October 2015, Morning session

Gauteng High Court

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Interview of Ms C J Collis

Justice Moseneke welcomed Ms Collis and congratulated her for making the shortlist. He began by asking her why she wanted to become a judge.

Ms Collis: My career thus far has prepared me for that. I have spent the latter part of my career serving. I started off training as a prosecutor and was then appointed as such at the Johannesburg Magistrates Court, prosecuting through the serious offences unit. My specialisation towards the end that was prosecuting sexual offences against women and children, which I am still passionate about today. I then left to become an attorney which exposed her to another dimension of the profession. Finally, I was appointed as a magistrate in the Johannesburg Magistrates Court in the civil section specifically and I have been in that position for the past 13 years.

Justice Moseneke: That is rather unusual, people tend to become attorneys and rarely return to the magistrate's court bench. Why did you do it?

Ms Collis: I found the transition between being a prosecutor and a defence attorney quite challenging. I do not think I really believed clients appearing before me and thought that this is not what I want to do, I would rather serve on the other side. I think the contribution and the satisfaction I received from being a prosecutor was more important and therefore my appointment as a magistrate was actually quite welcome.

Justice Moseneke: Ms Collis, you are a person from what is called the East Rand. I see a lot of Boksburg and Reiger Park in your CV and what did that do for your desire to be in the judicial system?

Ms Collis: Unfortunately my community has been in the news for the wrong reasons, we hardly ever get positive images about Reiger Park. However, there are good stories to tell and not necessarily my story. Other people go to work and church, earn their living and make a positive contribution. At school I wanted to be an attorney, unfortunately after my studies I was not able to secure articles and the prosecution opportunity came around. I felt this is my way of showing my community that I could make a positive contribution. There are people who have grown up in Rieger Park who end up being role models.

Justice Moseneke: There are increasing numbers of young people from that area who I know have clerked at the Constitutional Court and do you find that you are be able to make a contribution through your role in the judiciary.

Ms Collis: I was raised by parents who believed you have to go through the motions to gain life experience. I was exposed to simple things like taking public transportation and walking from

school, as opposed to being dropped off. That was the upbringing which I was exposed to, being a person raised in the Christian faith.

Justice Moseneke: How do you assess your sense of right and wrong? What informs your sense of what is just or unjust?

Ms Collis: to me it comes about naturally and something is either right or wrong, there is no middle ground. To use the Afrikaans my “regsgevoel is baie diep” and I can easily pick up when something is wrong.

Judge President Mlambo: How long was your stint as an attorney?

Ms Collis: My articles were just over a year and I was admitted in February 2002. My appointment as an attorney thereafter was for just over five months.

Judge President Mlambo: So it was not your cup of tea?

Ms Collis: I was constructively dismissed to be honest, but I left by choice.

Judge President Mlambo: There is a spreadsheet in front of you which captures what you did when you acted in the High Court. Could you check it to see whether any detail has been missed?

Ms Collis: It is correct.

Judge President Mlambo: You are a judicial officer in your own right in the magistracy. Can you compare the work done in the Magistrates Court and High Court in terms of complexity and intensity?

Ms Collis: Before I began my first acting stint, I felt I knew what it meant to preside over matters, but when I got to the High Court I realised that you really have to know your story. The work in the magistracy one can easily grasp, it is the volumes which may present a challenge. In the High Court the complexity of the work, as well as the volume, is what poses a great challenge. When one comes to the High Court they must have a sense of managing your work, otherwise you will not survive. You must be able to work independently, in the Magistracy one can simply step down and ask a colleague for assistance, but you cannot do this in the High Court. The work is quite intense and you have to have achieved a certain level of skill and competency to manage the work in the High Court.

Judge President Mlambo: In the process of your acting stint and being grooming for permanent appointment, I have had several discussions with you, sharing a number of things geared towards assisting you. There are judges who have been magistrates, who do not share the view proposed by Ms Collis, they would argue that they do a lot more than judges. Some of these people have been appointed and those are my worst performers. Coming back to the spreadsheet, which work areas would she describe as most challenging? I see you have done a total of seven weeks in the opposed motion, one week in the urgent court and no work in the third court.

Ms Collis: I would say the opposed motion court would be the most difficult, because there is a lot of reading to do and you must read under pressure. You also have senior people appearing before you and often they are experts in their fields.

Judge President Mlambo: When I gave you an acting opportunity in Pretoria, are you able to tell the commission why that happened? You had only acted in Johannesburg and I decided to give you an opportunity in Pretoria, do you recall why that was?

Ms Collis: I cannot recall the reason to be honest.

Judge President Mlambo: I think it is important that you tell the Commission why that was. There were senior judges in Johannesburg who thought you were not up to scratch.

Ms Collis: I remember that and that was why I was taken to a completely different court, to have exposure to other judges and so that they could see how she conducted her work. I sat with the Judge President on an appeal matter, to allow him to get a balanced view on whether the complaints raised by other judges were valid.

Judge President Mlambo: Having heard what the misgivings were and looking at your performance in the appeals court writing judgements, is there merit in the complaints levelled?

Ms Collis: I do not think there was any merit in the complaints.

Judge President Mlambo: You have not reserved any judgements for long periods?

Ms Collis: Not that I can recall, but if you act in the last term of the year then those judgements will be carried over from December and perhaps January, only to be delivered in February.

Judge President Mlambo: How did you find your stint in the urgent court?

Ms Collis: There is pressure there, but it is good to think on your feet and this is something which you have to do as a judge. You cannot have the latitude of always reserving your judgements. Pressure is good and I think I perform well under pressure.

Judge President Mlambo: I have not appointed you in the third court, but can you tell the Commission of what you have heard about that court.

Ms Collis: The judges complain about the volume in that court, but it was about preparation. If you have prepared your files beforehand you are able to handle it.

Judge President Mlambo: I see you have had five special civil trials, did they all run?

Ms Collis: It is very difficult to postpone matters before me. I do not believe people should be given that latitude, unless it is a do or die situation. So yes, they all ran.

Judge President Mlambo: These are trials which are not the run of the mill trials?

Ms Collis: Yes, they usually take longer to hear. They are often set down for two weeks or eight days, periods such as this.

Judge President Mlambo: In your grouping of judgements which I requested you do, is there any judgement which stood out from among the special civil trials?

Ms Collis: I do not think I can recall, having written so many judgements in the past three years.

Judge President Mlambo: Do you feel, looking at the spread of the work areas you have sat in, that it has given you enough exposure to be in the High Court.

Ms Collis: I feel it has given me sufficient exposure, but I do not think you can ever have enough exposure. I have never been scared of work, you get paid to do a job and if the opportunity arises I will do it.

Justice Moseneke: There is a difference of 10 weeks between the spreadsheet provided by the Judge President and your account of how long you spent in the High Court. Paragraph 9.2 indicates that you have been acting in the High Court for 43 weeks and the Judge President has said 52 weeks.

Ms Collis: My count was 42 weeks.

Justice Moseneke: Perhaps this is just an adding error. The second thing is the unreported decisions, has none of these been served on appeal or we do not know what the outcome is on appeal?

Ms Collis: In my application I indicated that there was one matter which was successfully taken on appeal. In the comments received from the organised profession, they could not find that judgement.

Justice Moseneke: Are you sufficiently confident in the work done in civil courts? I see that most of the disputes you presided over were commercial disputes and only three related to criminal justice.

Ms Collis: I think this is my strong point, aside from the fact that I enjoy civil work. Therefore, the answer is yes.

Justice Moseneke opened the floor for questions.

Mr Masutha: I accepted the point that probably to compensate for your long stint in the criminal section, you probably had to put a lot more focus on civil matters. To what extent have you had civil exposure? Because the sense which I get is that having been a prosecutor and then a defence attorney you seem to have focussed on criminal law, but this was just an assumption. As a magistrate I am unsure how much civil work you had done there, apart from the acting stints in the High Court. The bulk of your experience would have been in the criminal section. Would this be a fair assumption or is it completely misinformed?

Ms Collis: This is a misinformed view and my criminal court exposure has been when I was appointed as a prosecutor in the Regional Court, which lasted four years. Since then I have only litigated as an attorney in civil law and confronted as a magistrate with civil work. Therefore, the better part of my career has been spent on civil work.

Mr Masutha: One of the challenges the Department of Correctional Services faces is overcrowding in correctional facilities. One of the contributory factors is remand detention, which likely has to do with prolonged finalisation of matters. Given your prosecutorial and magisterial experience, what value do you think the judiciary can bring to reduce the number of awaiting trials and therefore remand detainees?

Ms Collis: I think it has a lot to do with engaging with the parties on requests for postponement, because if you are going to easily accede to a request for postponement without understanding the reasons and whether they are in fact sound, matters can be finalised more easily. Similarly many accused persons appear through representation by the Legal Aid Board, but the representatives also need to be engaged on why they are not applying for bail where their clients could be afforded bail. Therefore, engaging the parties appearing before you can lead to a reduction in the number of awaiting trial prisoners.

Mr Masutha: I hear there are tricks which some accused persons use such as changing representatives shortly before trial or bringing a newly found critical witness. How do you deal with a situation where the blame for the postponement is solely to be put on the shoulders of the accused person? Particularly if they are not incarcerated.

Ms Collis: If they are out on bail and are not before court, the prosecution must ask for the bail to be provisionally retracted. More importantly where there is a request for postponement, the presiding officer needs to engage with the reasons for the request. You cannot simply accede to it because it has been requested, it is an application brought before the presiding officer and you have the right to refuse such an application for postponement

Mr Lesufi: I am glad that you come from the area that I also come from, Ekurhuleni. Also, that you have raised the unfortunate situation which is sometime misrepresented regarding the coloured community. I had an interesting case of a school called Roodepoort Primary School, but he would not go into this. The issue on which I want to hear your views is that after 21 years of freedom there are still quality service based on language. There are schools which believe that because of the privileges which they have, language will be the only basis upon which they would share access to these resources, be it health education or something else. What are your views on such thinking of preserving privilege on the basis of language, rather than allowing access to every South African who seeks access?

Ms Collis: I believe it is wrong and in fact unconstitutional. It is not a culture which should be inculcated or entertained and our displeasure should be publically disclosed. People cannot be excluded only because they are not conversant in a particular language or conversant with a particular culture.

Mr Lesufi: The reason I raise this is that I see from the record that you are a member of the Black Lawyers Association (BLA). Do you think that there is still space for organisations based on race after 21 years of freedom?

Ms Collis: It is not an organisation only for black people Mr Lesufi.

Mr Lesufi: I know and I understand the history, perhaps it is an indication that the transformation agenda has not moved as fast as we would have expected. It simply means that there are people who could provide quality service in the sector, but purely because of the colour of their skin they are not admitted as part of that organisation.

Ms Collis: Are you suggesting we do away with the word black and simply have it as the lawyers association?

Mr Lesufi: In the sector I operate in, I have always believed our education system is like an Irish coffee: black at the bottom and white on top. Therefore, there is nothing wrong if people feel they need mobilise on the basis of race to rectify the situation from an Irish coffee to a South African coffee. Would you say this is the case with the BLA?

Ms Collis: Not at all, if you are not found to be competent the BLA will not support you. We need to have competent people on the bench and if you are not I do not think they should support you.

Mr Singh: I note that you have the appropriate qualifications to be appointed as a judge, but I see that you received a B Proc in 1997 and since then you have not engaged in further studies. Is there any reason for that? Secondly, you are relatively young, having just turned 42, and earlier you had

said that one of the reasons you believed you ought to be appointed is natural progression. How do you see your trajectory over the next 30 years, given the lifespan which can currently be expected?

Ms Collis: It is not to say that I have not engaged in other studies, rather I have not completed all of it. Since being appointed as a prosecutor, all my focus was on being a prosecutor and the demands thereof. It is quite intense and during that time I attended my practical legal training and sat for the board exams. When I passed the board exams I left prosecution and went to serve articles. When I served my articles, I attended a conveyancing course, I just never sat for the exam. In my first year of being appointed as a magistrate, I attended a higher diploma in tax at the now University of Johannesburg. Therefore, there were further studies which I engaged in and it is not a question of my not liking books. I am not sure whether I will live for the next thirty years, but I do have a balanced lifestyle and I do not think that it would simply be the law.

Justice Moseneke: The cutting end of the question and I do not think you have addressed this is that if you are appointed as a judge now, you will have a good 33 years before you reach 75. Therefore, you may very well have a compulsory stay on the bench for that long. Put simply, is it the right choice to become a judge at this age?

Ms Collis: I think we need a younger bench and we cannot simply have a bench staffed with people who are about to reach retirement age. There needs to be professionals who are younger in other fields as well, such as politicians. There is room for upward mobility once a person is appointed to the High Court, but the Deputy Chief Justice's job is safe for now.

Prof Ntlama: How would you manage the delicate balance between the executive and the judiciary, in relation to the principle of the development of the independence of the judiciary? Particularly, in light of the Al Bashir matter.

Justice Moseneke: It should be clear that you are not inviting the candidate to comment on a matter which is before the courts at present. If you could clarify the question to be clear as to whether you wish Ms Collis to comment on outcome or simply on the separation of powers.

Prof Ntlama: My question is not specific to that matter, it is simply an example. The core of the question relates to how Ms Collis would manage such tensions.

Ms Collis: I think the question relates to the separation of powers. The different arms of state have different powers of governance. The functions of the various arms of government are separate and distinct. The function of the judiciary is to, through the various courts, interpret the law and the facts they are confronted with. The Constitution says that the institution and the function of the courts are to be protected. The function of the executive is to formulate policy and legislation to place before the legislature. The President as well as his ministers have to perform that function. The function of the legislature, consisting of the two Houses, is to have representatives of various political parties engage on issues and where provincial polices can also be table. The functions are distinct and there is no overlapping which takes place. The judiciary must concern itself with its function, it must interpret the law based on the facts presented.

Mr Fourie: I want to clarify matters around her attorney's career. You did your articles between December 2000 and February 2002?

Ms Collis: I resigned as a prosecutor in November 2000, served articles for the entire year of 2001 and was admitted as an attorney in February 2002.

Mr Fourie: Is there any particular reason why you were not offered a position at the firm where you completed your articles?

Ms Collis: The firm that offered me articles was a single practitioner at the time, with his partner having died just before I took up articles. It was going through serious financial difficulties and this is why I was not offered a position.

Mr Fourie: In February of 2002 you joined Swarts and Du Plessis Inc as a professional assistant, after your admission. That stint only lasted some five months, 18 February 2002 to 31 July 2002, what was the reason for that?

Ms Collis: I found it very difficult to work at that firm, to be honest. I was not paid almost since the first month I was at the firm. I therefore decided to leave and also took the firm to the CCMA and was successful.

Mr Fourie: The reason you left were financial as you were not paid?

Ms Collis: I considered it constructive dismissal.

Mr Fourie: So your total experience as a practicing attorney is five months. Secondly, I see you started acting in 2012 and you joined the BLA in 2013. Is there any particular reason why you joined in 2013 and why it coincides with your acting stint? Or was this just a coincidence?

Ms Collis: It was mere coincidence, when I was appointed as a magistrate I joined the Judicial Officers Association of South Africa, as my primary focus at that time was being a magistrate and dealing with the interests of the magistracy. When I started acting it was then that her focus changed and I saw the opportunity of advancing my career to the High Court bench in time. It was not a question of joining BLA to be appointed as a judge, it was mere coincidence.

Mr Fourie: Since 2013 you have been an ordinary member of BLA and in the comments from the Bar Council they at two places refer to your being an active member of BLA and it also states that "the candidate appears to take an active role in the transformation of the judiciary through her roles in the BLA and International Association of Women Lawyers." For the sake of the Commission, could you please elaborate on that active role being referred to?

Ms Collis: I am active in the sense that I attend meetings and participate in their programmes. The position I currently hold is Acting Head of the Roodepoort Magistrates Court and I engage with the student chapter of BLA in organising court visits and in that sense I am an active member.

Adv I Semanya SC: The constitution recognises as one of the fundamental values the rule of law, which connotes other tenants such as the separation of powers, but it also authorises the judiciary to interfere in spheres of government where it does not belong. Where there are executive excesses the courts are authorised by the Constitution to curb these excesses and the same applies where the legislature acts outside its bounds. Do you think this is the right thing?

MS Collis: It is for the legislature to enact laws, it is the judiciary's function to pronounce on these at best. Policy changes would be the domain of the executive. Therefore, my answer would be no.

Adv Semanya: Perhaps I did not articulate my proposition well. I know the Constitution authorises judges and other presiding officers, where executive excesses are found they have to be curbed. The judiciary has to pronounce on unconstitutional actions by either the executive or the legislature. The question I am asking is whether that is a sound constitutional position to have where this power is also given to the courts?

Ms Collis said if the Constitution gives that power to the court then it is the duty of the court to uphold the Constitution and section 2 of the Constitution states that.

Adv L Nkosi-Thomas SC: The General Council of the Bar had given the Commission a write up of certain judgements you have been involved with and they started off by saying none of these have been reported. Perhaps this may be an unfair question, but is there any reason why none of these have been reported on?

Ms Collis: Aside from her never having marked any of my judgements reportable, no.

Adv Nkosi-Thomas: Have any of these judgements raised a *res nova*, such as could be said to contribute to the jurisprudential development of the country.

Ms Collis: the full bench appeal and the manner in which I simplified the *S v Ndlovu* judgement relating to when hearsay evidence should be permissible, as it is in the interests of justice. Perhaps this had been an oversight on my part.

Adv Nkosi-Thomas: On gender representivity, had you ever been involved with such issues during the course of your career? If so how and when?

Ms Collis: Not through formal structures, but in my work as a magistrate through peer training. I have a keen interest to advance other women and I continue to do so.

Adv Nkosi-Thomas: I take it you cannot elaborate any further.

Ms Collis: That is correct.

Ms D Magadzi, Member of the National Assembly: Given the injustices relating to socio-economic issues and rights. One of these issues maybe that not enough is being done to educate people enough when it comes to these rights. How will you look at the issues of socio-economic rights and injustice at present? Particularly looking at the Africans in South Africa. Does more need to be done to make our people aware of these rights issues?

Ms Collis: From the level where I am currently at I think many people did not know what their rights were and they would act differently and assert their rights better if they were exposed to what their rights entail. If a road show, information pamphlets or greater exposure in the media is needed it must take place. A person can only assert certain rights if they are aware of them.

Dr Motshekga: I wrongly or rightly think that residents in Reiger Park and other black areas tend to take the law into their own hands because they cannot access justice. This is because of things like prohibitive attorney's fees and if that is so, do you not think that the establishment of community based advice centres and paralegals could facilitate access to justice. Secondly, do you not think that the institutionalisation of community service for law students and their deployment in such communities could help. Lastly the question of a lack of knowledge of rights can also be addressed through such community based structures.

Ms Collis: I fully agree and that it is important, because ordinary members of public find it difficult to travel to a court or to be able to speak with people conversant in their own vernacular about the problem they face. Therefore, paralegal training centres and community advice centres are of utmost important and I am shocked that they did not exist already.

Mr A Nyambi, Member of the National Council of Provinces: As a judicial officer, could you please share your understanding of judicial accountability.

Ms Collis: The primary means to account is through one's judgements. How efficiently one addresses one's judgements is key, but you also give judicial accountability through one's behaviour. You cannot be a judicial officer and not have people look up to you in a positive manner.

Adv Hellens: I understood Ms Collis to say that she is not comfortable with criminal defence and I would like to know what exactly caused the discomfort.

Ms Collis: I did not say that I did not enjoy. I said I found the transition from the prosecution side to the defence attorney side difficult.

Adv Hellens: What was difficult about it?

Ms Collis: As a prosecutor you represent one party which is the state and you are more inclined to believe that the complainants are victims and therefore their rights need to be protected. However, when you are a defence attorney, then the interest you have to protect is your client'. As a prosecutor I experienced it as giving a service to the broader community, but this did not apply when being a defence attorney.

Adv Hellens: I find that difficult to understand, because when one prosecutes one does not do so in favour of the complainant, you do so in favour of justice. When one defends then it is still in favour of justice: you never put a false version forward. The state has to prove the case and each functionary exercises the same function from a different direction. I would question that if you cannot function with your mindset properly dialled in as defence counsel, I would question whether you can make the transition to the other function.

Ms Collis: I agree with you, but I am not saying that I cannot do it. All I am saying is that I found the transition difficult.

Adv Hellens: Then you shied away from the difficulty.

Ms Collis: No, I do not, what I am doing now is adjudicating matters and where parties are successful in proving the case, their claim will succeed. Where they have not, the claim will be dismissed and I will give my reasons for that.