

SUBMISSION TO THE PORTFOLIO COMMITTEE FOR
THE JUDICIAL REVIEW OF ADMINISTRATIVE ACTION
I.T.O. THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 3
of 2000 (as advertised in Business Day, Feb 6, 2009, p2)
Faxed to: 0865659219 (Att: Mr V Ramazoo)
From: Dr R. Naidoo (citizen)
Address: P. O. Box 13501
Hatfield
0028

Date: 11 February 2009

Dear Chair-person and Portfolio Committee
Members

Here are some brief comments. I am
available in Pretoria for any hearings
here.

1. I request the Rules Board for
Courts of Law to simplify the
rules of procedure so that
ordinary citizens can clarify
constitutional provisions without
expensive litigation beginning at
the High Court.
2. If the Committee is restricted to
examining section 7 of request
that the Committee 'cast its net

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wider to take into account the
practical consequences and effect
of cumbersome procedures for
judicial review of administrative
action in general is not specifically
focusing on the Rules themselves.
In this regard, I wish to draw
your attention to the Rules of
the Constitutional Court and give
two Scenarios of real life situations.
Firstly, the Sectional Titles Act and
Prescribed Regulations (Annexes); and
Secondly, the Public Service Act and
Regulations and the Public Service
Commission and sections 195-196 of the
Constitution.

Both the above legislation and
regulations have a profound and
significant impact on millions
of citizens and, indeed, taxpayers.
More than fifty percent of all
homeowners now live in Sectional
Titles Schemes.

Moreover, the State is the largest employer in the country. Therefore it is in the public interest to simplify the Rules of Court to allow millions of citizens access to judicial review of administrative action that is procedural fair, reasonable and inexpensive and also providing a judicial forum that is not intimidating and intrusive on issues such as privacy.

The constitutional Court Rules makes provision for direct access to the Court but there are many obstacles for an ordinary citizen with limited resources. The Court expects detailed written submissions, 25 copies plus copies to all parties. After lodging the documents with the Court, there is a long waiting

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before the Court may decide to refuse to consider the application (or it may set a date for a hearing).

2. Proposal:

I propose that there be established Regional Constitutional Courts, and at least 4 City Constitutional Courts, and specialized Courts such as a Sectional Titles Homeowners' Court; a People's Court; and a Public Servants' Court.

The Rules should be very simple logical and involve procedures that is accessible to all citizens. Applications for judicial review should also be allowed in the electronic format plus one printed version stamped by the Court to certify the contents and to prevent electronic altering of documents.

3. I propose that the Dept of Justice and Constitutional Development train judicial officers with a specific focus on the Constitution. For instance, they should look at the Spanish judiciary, where judges are trained directly out of law school. They undergo judiciary training at a government institution. In this way we can create a pool of judges who can preside over the local, regional Constitutional Courts and specialized Courts. These judges can also give clarification on administrative law (across all depts) and also direct the relevant depts. to amend their regulations.

For instance, I need clarification on provisions of the Sectional Titles Act and Regulations and the Public Service Act and Sections 195+196 of the Constitution.

The Sectional Titles Regulations Board has refused to clarify certain regulations on the ground that the Act prohibits the Chief Registrar from doing so. In turn, they referred me to other provisions in the Act that provides for legal remedies such as arbitration or the courts. Arbitration is also an expensive process.

It seems absurd and indeed frustrating for me to go through all of these hurdles when all I need is for the Regulations to be clarified and amended.

For example: The Regulations provide that trustees of a Body Corporate are elected "until the next succeeding ^{annual general} meeting". In my complex, the trustees have exceeded their powers and, due to an abrupt adjournment of the AGM, they are refusing to step down. It is a complex issue and dispute. My view is that their term of office has ended.

These trustees have voted themselves large contracts and continue to impose large levies that include the rates (even though they have stopped paying ^{the} Municipality). The law prevents us from getting a refund on our levies. As long as they remain in power, we are held hostage to their "powers as trustees." In this global economic crisis, many homeowners are going to default on their levies and rates. This will lead to a further housing and financial crisis. It is imperative that the Parliament, as elected representatives of the people, look at these broader issues and seek to address these issues, especially when laws and regulations contribute to the problem. If we had a local or regional Constitutional Court or a Sectional Titles Court, then a simple letter to the Court should suffice.

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The Court can then examine the offending provision in the Act or Regulation and, if the request from a citizen is considered practical, fair and reasonable and/or the amendment would improve social cohesion and it is in the public interest then the Court could direct the relevant dept / statutory body to amend the regulation and/or also table an amendment to a relevant Act before Parliament. At present, I have no means to proceed with this matter before the High Court and, if necessary, on appeal right up to the Constitutional Court. The Rules of the Con. Court are far too cumbersome and they may refer me to the High Court if I chose to go there directly. It is critically important that the terms of reference for this Public Committee hearing be broadened.

The provisions of the Bill of Rights and Chapter 10 of the Constitution are very progressive and, yet, it is my view that these are serious laws and problems resulting from administrative action (& indeed inaction). The Public Service Commission is, again in my personal experience ineffective. I propose that section 196(f) of the Constitution be amended to allow for an appeal to a Public Servants' Court. In the interim, I propose that the Rules of the Constitutional Court be amended to permit the Court to accept electronic submissions for clarification and direction to the Dept of Public Service and Administration and the relevant department(s) and the Public Service Commission.

Since time is of the essence, this submission is written hurriedly and I apologize for inadvertent errors. I am willing to add further at a later stage.

Thank you for your kind consideration.

Sincerely,

H. Kaudoo