IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: **CCT09/2014**

In the matter between:

HUGH GLENISTER **Applicant**

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA **First Respondent**

MINISTER OF POLICE **Second Respondent**

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT **Third Respondent**

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **Fourth Respondent**

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA **Fifth Respondent**

HEADS OF ARGUMENT ON BEHALF OF SECOND, THIRD AND FIFTH RESPONDENTS

A APPLICANT'S CASE

1. The applicant appeals the whole of the judgment of the Western Cape High Court.[1] He alleges that the entire scheme provided for the Directorate by the provisions of the South African Police Service Amendment Act, 2012 ("the 2012 Amendment Act"), situated as it is within the SAPS, is unconstitutional and invalid.

2. He makes one core submission.[2]

"*The applicant's core contention is that the requirements of C207(2), that a political appointee (the National Commissioner), who reports to a politician in the executive (the Minister) must have 'management and control' over the Service, renders it impossible, without a constitutional amendment to that section, to create a*

[1] See application for leave to appeal.

[2] The further substantial submission on which applicant relied in the Court *a quo* was set out in paragraph 11.9 of his founding affidavit in this Court under case number CCT48/10 (annexure "HG1" to his founding affidavit in the court below), as follows:

> "*Under the Second Amendment Act, the DPCI accordingly remains a structure within the Service, is still not a dedicated anti-corruption agency and is still accountable to the National Commissioner, the Minister and the Cabinet. It accordingly does not enjoy any appreciable added autonomy and does not have the necessary independence and efficacy this Court held that the Constitution requires. The competence given to senior politicians to determine the limits, outlines and contents of the Ace's work 'is inimical to independence [J234].*"

structure in which the ACE can function within the service with the necessary degree of independence as required by Glenister II."[3]

3. He then states that it is unconstitutional to give the National Head of the DPCI ("the Directorate") the right to manage and direct the Directorate for as long as C207(2), which vests management and control of the service in the National Commissioner, remains part of our law.[4]

4. It is implicit in the applicant's argument that the Constitution and the judgment in *Glenister II* will remain at odds for so long as the Directorate is located within SAPS.

5. He also contends that s17AA seeks to elevate the provisions of Chapter 6A above all other provisions of the SAPS Act, and to limit unconstitutionally the control and management of the service by the National Commissioner.[5] He contends further that the attempt in s16(3) to permit the National Head, under specified

[3] See applicant's head paragraph 22. The suggestion is that either the Constitution must be obeyed or the judgment in *Glenister II*.
[4] See applicant's heads of argument, paragraph s 22 and 23. The suggestion is that if the Head is given the power to manage and direct the Directorate s207(2) of the Constitution will be breached; but if he is not *Glenister II* will not be complied with.
[5] Heads, paragraph 30

circumstances, to prevail over the National Commissioner is invalid.[6]

6. He contends that while it may be theoretically possible to establish the Directorate within SAPS, the manner in which the 2012 Amendment Act sought to do so does not clothe it with the requisite independence and freedom from executive control identified as necessary in the majority judgment in *Glenister II*.

7. He alleges further that the declarations of invalidity of ss16, 17A, 17CA, 17D, 17DA and 17K(4) to (9) by the Court *a quo* cannot cure the alleged defects. To the extent that the entire scheme may not be invalid for want of independence and freedom from executive control, the applicant supports the submissions of the Helen Suzman Foundation to the effect that the provisions of ss17AA, 17E(8), 17G, 17H, 17I and 17K(1) to (2B) should also be declared invalid and inconsistent with the Constitution. (He does not elaborate on this submission in his heads, but leaves it to the Foundation to do so.)

[6] Heads, paragraph 26

8. Applicant also alleges that it was irregular to strike out the material that the Court *a quo* struck out;[7] and that the Court *a quo* improperly granted a punitive costs order against him in respect of the Minister's application to strike out, and further erred in not awarding costs to the applicant in the light of the partial success of his application.

B RESPONDENTS' SUMMARISED ANSWER TO THE MAIN SUBMISSIONS

9. The respondents' answer is that the prevention, combating and investigation of the crime of corruption constitute policing under the Constitution.[8] Constitutionally, the Minister of Police is responsible for policing and must determine policing policy.[9] The National Commissioner must exercise control over and manage the police service in accordance with the national policing policy and directions of the Minister.[10] Therefore, this management and control is not absolute, but subject to policy – of which the impugned legislation is part – as well as Ministerial direction. Responsibility by the Minister and qualified management and

[7] The material in question forms part of the record filed by the applicant in terms of the direction of the Chief Justice, dated 3 February 2014.
[8] See s 205(3) of the Constitution
[9] See s 206(1) of the Constitution
[10] See s 207(2) thereof

control by the Commissioner over the Directorate are therefore constitutionally endorsed. When Chapter 6A of the SAPS Act, as it currently exists, is properly analysed no undue influence of the Directorate by the Minister or the Commissioner is possible. Amenability to such influence is the touchstone for the necessary independence of the Directorate and the validity of the impugned legislation. It is the mischief which *Glenister II* sought to cure.

10. While s16(3) permits a determination by the National Head to prevail over the National Commissioner in a dispute as to whether criminal conduct or endeavour falls within the mandate of the Directorate, this must be "*in accordance with the approved policy guidelines*" determined by the Minister. The provision is valid because it accords with the provisons of ss206(1) and 207(2) of the Constitution which allow the Minister to make policy in terms of which the National Commissioner must exercise control and management of SAPS.

11. In any event, the abovementioned subservience due by the National Commissioner to a determination by the National Head relates only to "*criminal conduct and endeavour*" i.e. to the "*circumstances*" defined in ss16(1) and 16(2). Section 16(1) treats

these circumstances as national priority offences; as opposed to corruption.[11] The mandate of the Directorate as set out in s17D includes national priority offences, but also separately includes "*corrupt activities*" as defined in Chapter 2 of PRECCA. The priority given to the National Head in terms of s16(3) does not appear to relate to corruption *per se* but only to national priority offences. Corruption *per se* is in issue in this case.

12. Section 17AA provides that the provisions of Chapter 6A in respect of the mandate of the Directorate apply to the exclusion of any section within the SAPS Act. This section does not – as applicant alleges[12] – unconstitutionally seek to elevate the provisions of Chapter 6A above all other provisions of the SAPS Act. What it does is eliminate limitations on the mandate of the Directorate as set out in s17D.

13. The applicant has misunderstood; firstly, the nature of the findings in *Glenister II* and the test for validity laid down there; secondly, the qualities of structural and operational independence of the Directorate established under the 2012 amendment; and thirdly,

[11] The wording of s16(1) suggests that the circumstances set out in s16(2) constitute national priority offences, i.e. because the words used in s16(1) accord with the definition of national priority offence in s17A.
[12] See applicant's heads, paragraph 30

the principles applicable to evidence and striking out matter by a High Court in terms of Rule 6(15) of the Rules of the High Court. We deal with these aspects, as well as costs, chronologically further below.

14. Chapter 6A of the SAPS Act, as presently constituted, passes muster upon application of the relevant criteria for constitutionality found in *Glenister II*. The defects that were identified in that judgment have been eliminated. The Directorate is constitutionally located within SAPS and duly ring fenced from the SAPS hierarchy. Pursuant to the 2012 Amendment Act the Directorate has become a dedicated anti-corruption unit that is insulated from executive influence and functions independently in accordance with the principles required in *Glenister II* for structural and operational autonomy.

C THE JUDGMENT IN GLENISTER II:

15. In *Glenister II* this Court determined the relevant test to be "*whether the structural and operational attributes of the DPCI*

satisfy the requirement of independence."[13] This Court found the "*offending legislative provisions establishing the DPCI to be constitutionally invalid*.[14]" While the provisions introduced by the 2008 South African Police Service Amendment Act ("the 2008 Amendment Act") succeeded in creating some hedge around it, they nevertheless failed to afford it an adequate measure of autonomy.[15]

16. The two main reasons for this conclusion were that the Directorate was "*insufficiently insulated from political influence in its structure and functioning*"; and "*the conditions of service that pertained to its members, and in particular its head,*" which made it "*vulnerable to undue measure of political influence.*" This statement was amplified in paragraphs [248] to [250] of the judgment.[16]

---

[13] Paragraph 165
[14] Paragraph 164
[15] Paragraph 208
[16] The Court said the following:-

"*[248] For these reasons we conclude that the statutory structure creating the DPCI offends the constitutional obligation resting on Parliament to create an independent anti-corruption entity, which is both intrinsic to the Constitution itself and which Parliament assumed when it approved the relevant international instruments, including the UN Convention. We do not prescribe to Parliament what that obligation requires. In summary, however, we have concluded that the absence of specially secured conditions of employment, the imposition of oversight by a committee of political executives, and the subordination of the DPCI's power to investigate at the hands of members of the executive, who control the DPCI's policy guidelines, are inimical to the degree of independence that is required. We have also found that interpretive admonition in s17B(b)(ii) of the SAPS Act is not sufficient to secure independence.*

[249] Regarding the entity's conditions of service, we have found that the lack of employment security, including the existence of renewable terms of office and of flexible grounds for dismissal that do not rest on objectively verifiable grounds like misconduct or ill-health, are incompatible with adequate independence. So too is the absence of statutorily secured remuneration levels. We have further found that the appointment of its members is not sufficiently shielded from political influence.

17. The Court dealt with political influence under the heading "*Accountability and oversight by the Ministerial Committee*";[17] and with conditions of service under the heading "*Security of tenure and remuneration*."[18]

18. All of the criticisms contained in the passages referred to above were fully addressed by the 2012 Amendment Act, which secured the necessary insulation from political influence. We demonstrate this below.

D: DEFECT 1: POLITICAL INFLUENCE IN STRUCTURE AND FUNCTIONING:

19. Applicant contends[19] that the Directorate is under the control of the Executive and the National Commissioner of Police (as its accounting officer), and not appropriately separate from the hierarchy that is in place "*in the ordinary course in the service*

---

[250] Regarding oversight, we have concluded that the untrammeled power of the Ministerial Committee to determine policy guidelines in respect of the functioning of the DPCI, as well as for the selection of national priority offences, is incompatible with the necessary independence. We have found that the power to requires prosecutors to join an investigation has limited impact, given that the National Commissioner is the functionary who has the power to request it. We have also found that the mechanisms to protect against interference are inadequate, in that Parliament's oversight function is undermined by the level of involvement of the Ministerial Committee, and in that the complaints system involving a retired judge regarding past incidents does not afford sufficient protection against future interference."

[17] See paragraph [228] to [247] of *Glenister II*

[18] See paragraph [217] to [227] thereof.

[19] See paragraph 10 of applicant's application for leave to appeal and paragraph 32 of his heads of argument.

under s207 of the Constitution." He is wrong for the following reasons.

20. This Court did not hold that insulation from political influence in structure and functioning meant that the Directorate should be a law unto itself or that it should not be accountable to the executive and legislature,[20] or that full independence is required.[21] It recognised that in a legal system such as ours the executive is assigned final responsibility over the functioning of the police (or the prosecution). The international standard expressed by the OECD required the Directorate it to be shielded "*from <u>undue</u> political influence*".[22]

21. The Court stated that "*adequate independence does not require insulation from political accountability. In the modern polis, that would be impossible. And it would be averse to our uniquely South African constitutional structure. What is required is not insulation from political accountability, but only insulation <u>from a degree of management by political actors that threatens</u>*

[20] See minority judgment paragraph [121] to [123] with which the majority did not disagree
[21] See the OECD report, which the Court used to interpret and give content to the unconvention against corruption in paragraph [188]
[22] Applicant relies particularly on the OECD report as quoted in paragraphs [187] to p189] of Glenister – See application for leave to appeal paragraph 9.

imminently to stifle the independent functioning and operations of the unit." (Counsel's underlining.)

22. Applicant's submissions demand a far stricter degree of insulation from the executive than this Court required. His submissions run contrary to the judgment and are wrong. Such executive control as applicant requires to be eliminated in accordance with paragraph [200] of *Glenister II*[23] has been eliminated.

23. The dispensation under the 2008 Amendment Act, with which this Court was faced in *Glenister II*, provided for a degree of management by political actors that this Court proscribed. The Ministerial Committee was eminent in this regard.

Influence of the Ministerial Commitee:

24. Under the 2008 dispensation s17I provided for "*Coordination by Cabinet*". The section authorised a Ministerial Committee to determine policy guidelines in respect of the functioning of the Directorate; and directed the Committee to oversee the functioning

[23] See paragraph 10 of applicant's application for leave to appeal

of the Directorate.[24] Section 17I therefore directly facilitated undue influence by the executive. This prompted the Court to state that the power of the Ministerial Committee to determine guidelines was untrammelled and could specify categories of offences that it was not appropriate for the Directorate to investigate – or, conceivably, categories of political office bearers whom the Directorate was prohibited from investigating.[25] The legislation did not rule out far-fetched inhibitions on effective anti-corruption activities, but left them open.[26] Section 17I allowed the Ministerial Committee to "*oversee*" the Directorate "*when of necessity they*

---

[24] S17I provided as follows:

"*Coordination by Cabinet*
17I. ((1) The President shall for purposes of subsections (2) and (3) designate a Ministerial Committee which shall include –

(a) at least the Ministers for –
(i) Safety and Security;
(ii) Finance;
(iii) Home Affairs;
(iv)Intelligence; and
(v) Justice; as well as
(b) any other Minister designated from time to time by the President.

(2) The Ministerial Committee may determine

(a) policy guidelines in respect of the functioning of the Directorate;
(b) policy guidelines for the selection of national priority offences by the Head of the Directorate in terms of s17D1(a);
(c) policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate in terms of section 17D(1)(b);
(d) procedures to coordinate the activities of the Directorate and other relevant Government departments or institutions.

(3) (a) The Ministerial Committee shall oversee the functioning of the Directorate and shall meet as regularly as necessary;
(c) *The National Commissioner and the Head of the Directorate shall, upon request of the Ministerial Committee, provide performance and implementation reports to the Ministerial Committee***.**"

[25] See paragraph 230 of *Glenister II*
[26] Paragraph 231

are themselves part of the operational field within which it is supposed to function."[27]

25. Save that the Minister was bound to submit any policy guidelines the Committee determined to Parliament [28] no statutory check or balance on the Committee by Parliament was provided for.

26. Under the 2012 amendment the Committee has lost its former powers. Coordination by Cabinet via the Committee is limited to determining procedures to coordinate the activities of the Directorate and other relevant Government departments or institutions. The present Committee must report to Parliament on its activities as part of the annual report of the Directorate (s17I(3)(a)) and "*at any time, upon being requested to do so*" (S17I(3)(aA).

<u>Influence of the Minister</u>:

27. The Minister's previous power to make regulations affecting the Directorate under s 24 of the SAPS Act has now been constrained, inasmuch as s17A(17) requires such regulations to be submitted to

[27] Paragraph 232
[28] See paragraph 231 of *Glenister II*

Parliament for its approval, "*if such regulations or any amendment thereto affect the Directorate*."

28. Previously the Ministerial Committee was authorised to determine policy guidelines for the selection of national priority offences by the Head of the Directorate (in terms of s17D(1)(a)); and for the referral to the Directorate by the National Commissioner of any offence or categories of offences for investigation by the Directorate (in terms of s17D(1)(b)). This power to determine policy guidelines is now vested in the Minister in terms of s17K(4)(a). However, the Minister is additionally required to submit such policy guidelines to Parliament for its concurrence.

29. The eminent mischief aimed at by *Glenister II* and the 2012 dispensation is corruption. Unlike the 2008 dispensation the present legislation directly addresses it. A material addition has been made by the 2012 amendment in S17D(1)(aA). In terms thereof the Minister is not vested with any power at all to determine policy guidelines for the selection by the National Head of offences

of corruption referred to in Chapter 2 and s34 of PRECCA[29] for investigation by the Directorate.

30. S17D(1)(aA) vests the Directorate with the functions of preventing, combating and investigating selected offences not limited to offences of corruption defined by Chapter 2 and, *inter alia,* corruption known to persons who hold positions of authority and have a duty to report corrupt transactions in terms of s34 of PRECCA. This new provision has the effect of making the Directorate a dedicated anti-corruption entity. Previously it was not one. [30] Its previous mandate was described entirely in terms of national priority offences and any other offence referred to it by the National Commissioner.[31]

---

[29] The Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004).
[30] See paragraph [233] of *Glenister II*.
[31] The previous S17D provided as follows:
"*S17D (1) The functions of the Directorate are to prevent, combat and investigate –*

(a) national priority offences, which in the opinion of the Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Ministerial Committee, and

(b) any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Ministerial Committee.

2. If, during the course of an investigation by the Directorate, evidence of any other crime is detected and the Head of the Directorate considers it in the interest of justice, or in the public interest , he or she may extend the investigation so as to include any offence, which he or she suspects to be connected with the subject of the investigation.

3. The Head of Directorate may at any time prior to or during an investigation by the Directorate request the National Director of Public Prosecutions to designate a Director of Public Prosecutions to conduct an investigation in terms of section 28 of the National Prosecuting Authority Act, 1998 (Act No.32 of 1998)."

31. Unlike s17D(1)(a), which deals with national priority offences which in the opinion of the National Head need to be addressed by the Directorate, and s17D(1)(b) which deals with any other offence or category of offences referred to from time to time by the National Commissioner, s17D(1)(aA) is not subjected to any policy guidelines issued by the Minister.

32. Upon a proper interpretation of s17D(1)(aA) the National Head "selects" offences of corruption and other offences reported in terms of s34,[32] independently of ministerial policy guidelines.

33. In *Glenister II* this Court accepted that the executive would have to have final responsibility over the functioning of the Directorate. The Court stated that whilst the Constitution requires the creation

---

[32] *The reason for our interpretation is that s17D(1)(aA) must be read in context with s17D(1)(a), which in turn must be read together with s17K(4)(a)(i). The last-mentioned section provides that the Minister shall determine, with the concurrence of Parliament, "policy guidelines for the selection of national priority offences by the National Head of the Directorate referred to in s17D(1)(a)." It is apparent from this provision; firstly that the National Head must "select" national priority offences; and secondly, that this is also referred to in s17D(1)(a).*

However, s17D(1)(a) does not use the word "selection" as it is used in the referring s17K(4)(a). Instead s17D(1)(a) refers to national priority offences, "which in the opinion of the National Head of the Directorate need to be addressed by the Directorate." It is apparent from the quoted words that they mean that National Head "selects" national priority offences. Accordingly, when the words "selected offences" are used in the immediately following s17D(1)(aA) the words implicitly refers back to the "selection" of national priority offences originating in SK(4)(a)(i). This selection is made, and can be made, by no-one other than the National Head.

The above interpretation not only accords with the words "in the opinion of the National Head in s17D(1)(a)" but also with the words "and the Head of the Directorate considers it in the interests of justice" etc as they are used in s17D(2). The National Head is dominus in the functioning of the Directorate and selects cases for investigation.

of an adequately independent anti-corruption unit, it also requires that a member of the Cabinet must be responsible for policing.[33] "*These constitutional duties can productively co-exist, and will do so, provided only that the anti-corruption unit, with a place within the police force (as is the DPCI) or in the NPA (as was the DSO), has sufficient attributes of independence to fulfil the functions required of it under the Bill of Rights. The member of Cabinet responsible for policing must fulfil that responsibility under s 206(1) with due regard to the State's constitutional obligations under s 7(2) of the Constitution"*.

34. That is precisely what the impugned legislation facilitates. Applicant has overlooked the statement quoted above.

<u>Insulation from the police hierarchy</u>:

35. The Directorate is insulated from the police hierarchy. S17C(1) establishes the Directorate "*in the service"*, in much the same way as the Directorate of Special Operations ("DSO") "*was established in the office of the National Director*."[34] The present location of the

[33] Paragraph 214
[34] S7 of the National Prosecuting Authority Act No. 32 of 1998 provided as follows:-
"*7. Investigating Directorate* –

Directorate differs from the dispensation under the 2008 Amendment Act where the Directorate was simply made part of the SAPS hierarchy.

36. The previous s17C(1) provided that the Directorate "*is hereby established as a division of the service*". The Directorate comprised the Head of the Directorate, who was a Deputy National Commissioner, as well as persons appointed by the National Commissioner on the recommendation of the Head, and an adequate number of legal officers appointed to the Directorate as well as officials from any Government Department or institution seconded to the Directorate in terms of laws governing the public service. The priority of the Legislature seemed to be to move the Directorate from the Justice to the Police portfolio without considering all of the implications for the independence of the unit.

---

(1)(a) There is hereby established in the Office of the National Director an investigating Directorate, to be known as the Directorate of Special Operations, with the aim to –

(i) investigate, and to carry out any functions incidental to investigations;
(ii) gather, keep and analyse information;
(iii) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings, relating to –

(aa) offences or any criminal and unlawful activities committed in an organized fashion; or
(bb) such other offences or categories of offences as determined by the President by proclamation in Gazette"

37. A new s17C was substituted by s6 of the 2012 Amendment Act. The present Directorate comprises the office of the National Head at national level and the office of the Provincial Directorate in each province.[35] The Directorate consists of the National Head at national level, "*who shall manage and direct the Directorate*"; the Deputy National Head at national level and the Provincial Heads;[36] other persons appointed by the National Head at national and provincial level on the basis of the required level of experience, training, skills, competence and knowledge; administrative staff appointed to the Directorate, as well as the appointees referred to in the previous sub-section 17C(2)(c) and (d).

38. The Head is no longer a Deputy National Commissioner. He is therefore no longer directly accountable to the National Commissioner, whose post is vulnerable to political pressure. [37]

39. The new s17C(3) provides that the National Head "*shall manage and control all members of the Directorate in accordance with the provisions of the Constitution, Chapter 6A of the SAPS Act, and*

[35] S17C(1A)
[36] S17C(1A)
[37] See *Glenister II* paragraph [229]

any other applicable legislation."[38] This balancing of the power of the Head with provisions of the Constitution is therefore similar to the balance required of the Minister by this Court in the passage quoted in paragraph 33 above. Applicant's submissions overlook this balance.

40. Section 17DB, inserted by s9 of the 2012 Amendment Act, relates to staff of the Directorate. The National Head must –

"*(a) determine the fixed establishment of the Directorate and the number and grading of posts, in consultation with the Minister and the Minister for Public Service and Administration; and*

(b) appoint the staff of the Directorate: Provided that where a member of the service is appointed to the Directorate, the National Head ... shall do so after consultation with the National Commissioner."

[38]By comparison sections 7(4)(a)(i) to (v) of the NPA Act provided that Deputy Directors, Prosecutors, Special Investigators, State employees or other bodies seconded to the DSO, and any other persons appointed to the DSO were obliged to perform their "duties and functions subject to the control and direction of the head of the *Investigating Directorate* concerned."

41. The National Head may in terms of s17F(2), (substituted by s11A of the 2012 Amendment Act), "*request the secondment of personnel from any other Government department or institution, whenever he or she deems it necessary for the effective performance of the functions of the Directorate*."

42. In terms of s17CA(21) "*the National Commissioner may only in consultation with*" the National Head involve members of the Directorate in national joint operations and in circumstances that would be of assistance to the Directorate in the execution of its mandate and functions in terms of this Act.

43. In terms of s17CA(20) no Deputy Head, Provincial Head, member or administrative staff of the Directorate may be transferred or dismissed from the Directorate, except after approval by the National Head.

44. In the circumstances the Directorate is insulated within the SAPS by Chapter 6A of the SAPS Act. Such authority as the Minister and National Commissioner may have to influence the Directorate on the investigation of corruption is directly vested by the Constitution and cannot be challenged.

Financial control independently of the National Commissioner:

45. For the following reasons adequate independence of the Directorate is firmly entrenched by the 2012 Amendment Act, notwithstanding the role of National Commissioner as its accounting officer.

46. Insofar as the Directorate's budget is concerned the National Head does not act under the supervision or direction of either the National Commissioner or Minister. Parliament sets the budget of the Directorate.

47. In order to ensure that monies are appropriated by Parliament for the exercise of the powers, duties and functions of the Directorate and remuneration and other conditions of services of its members, the Head must prepare and provide the National Commissioner with the necessary estimate of revenue and expenditure of the Directorate for incorporation in the estimate and expenditure of the Service.[39]

[39] S17H(2)

48. In terms of s17K(2) the National Head is responsible for preparing a report in respect of the performance of the Directorate for inclusion as a separate programme in the National Commissioner's annual report to Parliament in terms of s40(d) of the Public Finance Management Act, Act 1 of 1999 ("the PFMA"). The 2008 provisions did not contemplate such a report; nor any such reporting function by the National Head.[40]

49. In terms of s17K(2A), the budget report to Parliament must include a full breakdown of the specific and exclusive budget of the Directorate. In terms of s17K(2B) the National Head is required to make a presentation to Parliament on the budget of the Directorate. The Head may therefore assert the Directorate's budgetary requirements before Parliament.

50. In terms of s17H(3), whenever the National Commissioner and the National Head are unable to agree on the estimate of revenue and expenditure of the Directorate, the Minister shall mediate between the parties. Any disagreement that is not resolved by the Minister to the satisfaction of the Head, may be ventilated during the

[40] In terms of s34(1) of the NPA Act the head of the DSO was required to submit annual reports to the National Director.

presentation made by the Head to Parliament in terms of s17K(2B). In terms of s17K(1) Parliament must effectively oversee the functioning of the Directorate. By virtue of the very existence of s17K(2B) and in the context of the further provisions contained in s17H and s17K(1), (2), (2A) and (2B) it is unlikely that monies would be appropriated by Parliament for the Directorate without Parliament first hearing the Head on any disagreement.

51. Under the 2008 provision, the National Head would play no part at all in presenting the Directorate's budget to Parliament. In terms of the previous s17H(2) that role was performed exclusively by the National Commissioner as the accounting officer. The previous s17H stated no more than "*expenditure in connection with the administration and functioning of the Directorate must be paid from monies appropriated by Parliament for this purpose to the Departmental vote in terms of the PFMA.*" The previous provisions of s17H drew no adverse comment in *Glenister II*; either to the effect that the independence of the Directorate was curtailed or at all."[41]

[41] Insofar as NPA Act was concerned, s36(3A) thereof empowered the Minister of Justice to appoint "*a fit and proper person*" as the DSO's chief executive officer, who was designated as the DSO's accounting officer.

52. In terms of the current s17H(6) the National Head "*shall have control over the monies appropriated by Parliament envisaged in sub-section 17(H)(1) in respect of the expenses of the Directorate.*" Section 17H(1) provides that the expenses incurred in connection with the exercise of the powers, the carrying out of the duties and the performance of the functions of the Directorate, and the remuneration and other conditions of service of members of the Directorate, shall be defrayed from monies appropriated by Parliament for this purpose to the departmental vote.

53. In terms of s17H(5) such monies must be regarded as specifically and exclusively appropriated for the aforementioned purpose and may only be utilised for that purpose.

54. As the accounting officer, the National Commissioner remains bound by all of the aforementioned provisions. She must ensure that monies appropriated by the Directorate are used for the purpose described in s17H(1). She cannot deny the Head his right to use monies appropriated by Parliament for those statutory purposes.

55. In the premises, the Directorate has the ability to access the funds reasonably required to enable it to discharge the functions it is obliged to perform under the SAPS Act and the Constitution. It is therefore financially independent.[42]

56. In the circumstances there is no merit in the applicant's submission that a reasonable decision maker would not place the ACE under the control of the executive and the National Commissioner, as its accounting officer, but would keep it "separate" from the hierarchy that is in place in the ordinary course of the Service under (207)[43].

E DEFECT 2: INSECURITY OF TENURE AND REMUNERATION:

57. In *Glenister II* this Court found that members of the Directorate enjoyed no specially entrenched employment security. This criticism included the existence of renewable terms of office and of flexible grounds for dismissal that did not rest on objectively verifiable grounds like misconduct or ill-health. This was incompatible with adequate independence.[44] No special provisions secured members employment. The Head was merely

[42] See New National Party of South Africa v Government of the RSA 1999 (3) SA 191 (CC) at paragraphs 97 and 98
[43] See Applicant's heads, paragraph 38
[44] *Glenister II* paragraph [249]

a Deputy National Commissioner in the Force, appointed by the Minister in concurrence with the Cabinet. The Directorate comprised persons appointed by the National Commissioner on the recommendation of the Head.[45]

58. Members of the Directorate were, like other members of SAPS, subject to enquiries into their fitness to remain in the service on account of any disposition, ill-health, disease or injury and on various other grounds contained in s34(1)(b) to (h) of the SAPS Act. The National Commissioner was authorised to discharge any member of the Directorate on account of redundancy or the interests of the SAPS.[46] The Commissioner was also empowered to discharge a member of the service for reasons other than unfitness or incapacity, if the discharge would promote efficiency or economy in the SAPS, or would otherwise be in the interests of the SAPS[47], The reach of this provision seemed to include the Head.[48] Members of the Directorate enjoyed no more or less security than other members of the Force. Their dismissal was subject to no special inhibitions, and could occur at a threshold

[45] Paragraph 219
[46] In terms of s35(a) to (b) of the SAPS Act
[47] In terms of s35 of the Act
[48] Paragraph 220

lower than dismissal on an objectively verifiable ground like misconduct or continued ill-health.[49]

59. The Court also found that the absence of statutorily secured remuneration levels gave rise to problems similar to those occasioned by a lack of secure employment tenure.[50]

60. The Court also concluded that the appointment of members of the Directorate was not sufficiently shielded from political influence.[51] Apart from this statement of the Court's conclusion the appointment process of members was more fully described in paragraph 219.[52]

---

[49] Paragraph [221] provides as follows:
"*By contrast individual members of the DSO were especially protected, which reduced the possibility of them being threatened or feeling threatened with removal for failing to yield to pressure in a politically unpopular investigation or prosecution. Furthermore, the Deputy NDPP enjoyed a minimum rate of remuneration which was determined by reference to the salary of a judge; whereas the conditions of service for all members of the Directorate (including the grading of posts, remuneration and dismissal) were governed by regulations which the Minister determined under s24 of the SAPS Act. The Head of the DSO was a Deputy National Director of Public Prosecutions, assigned from the ranks of Deputy NDPPs by the NDPP, and reporting to the NDPP. In terms s11(1) of the NPA Act the President, after consultation with the Minister of Justice and the National Director, would appoint not more than four persons as Deputy National Directors of Public Prosecutions. The NPA Act provided that the Deputy NDPP could be removed from office only by the President, on grounds of misconduct, continued ill-health or incapacity, or he or she was no longer a fit and proper person to hold the office. Parliament held a veto over the removal of a Deputy NDPP (s12(6)(c) – (d) of the NPA Act). [While it was a requirement that the NDPP should possess legal qualifications that would entitle him to practice in all Courts in the Republic and be a fit and proper person, with due regard to his, or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, no such jurisdictional requirements existed for Deputy National Directors that were prospective Heads of the Directorate*."
[50] Paragraph 227
[51] Paragraph 249
[52] Paragraph [219] provides as follows:
"*What is more, the head of the DPCI and the persons appointed to it enjoy little if any special job security. The provisions at issue provide that the head of the DPCI shall be a Deputy National Commissioner of the SAPS, and shall be 'appointed by the Minister in concurrence with the Cabinet.' In addition to the head, the Directorate comprises persons appointed by the National Commissioner of the SAPS 'on the recommendation'*

<u>Present appointment criteria</u>:

61. The present appointment criteria exclude the possibility of undue political influence in the appointment of the Heads of Directorate.

62. Whereas the 2008 provisions provided for the appointment of the Head by the Minister, with the concurrence of Cabinet, they did not require the consideration of any specific criteria for the appointment of the National Head.[53]

63. Objective criteria for fitness and propriety of the National Head of the Directorate, the Deputy National Head and the Provincial Heads have been introduced by the 2012 amendment.[54]

---

of the head, plus 'an adequate number of legal officers' and seconded officials. The Minister is required to report to Parliament on the appointment of the head of the DPCI."

[53] See s17C(2)(a) of the 2008 provisions. S17CA(1) of the SAPS Act presently provides that:

"*The Minister, with the concurrence of Cabinet, shall appoint a person who is –*

(a) a South African citizen;

(b) *a fit and proper person,*

with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as the National Head of the Directorate ..."

[54] It is submitted that these criteria are identical to those set out in s9 of the NPA Act. This provides as follows:

"*(1) Any person to be appointed as National Director, Deputy National Director or Director must –*

(a) ...

64. In **DA v President of the RSA**[55] this Court endorsed the conclusion of the SCA,[56] to the effect that these criteria constitute a jurisdictional fact capable of objective ascertainment. The requirements for the appointment of the Head of the Directorate in s17CA(1) of the SAPS Act are therefore jurisdictional facts the objective existence of which are a prelude to the appointment of the Heads of the Directorate.[57]

65. For the purpose of giving guidelines the SCA also commented on the effect of the fit and proper criteria. Significant among the considerations was the purpose of the legislation.[58] The purpose of the 2012 SAPS Amendment Act is stated in its heading, namely;

"*To amend the South African Police Service Act, 1995, in order to align the provisions relating to the Directorate for priority crime investigation with the judgment of the Constitutional Court; to amend those provisions in order to ensure that the Directorate has the necessary structural and operational independence to fulfil its*

(b) *be a fit and proper person, with due regard to his or her experience, consciousness and integrity, to be entrusted with the responsibilities of the office concerned*."

[55] 2013 (1) SA 248 (CC) paragraphs 14 and 20

[56] **DA v President of the RSA 2012 (1) SA 417 (SCA)**

[57] See SCA judgment paragraph [118]

[58] See paragraph [107]

mandate without undue interference; and to provide for matters connected therewith." The criteria for appointment would have to be applied by the Minister with this purpose in mind.

66. It is clear that in appointing the National Head, Deputy Head and Provincial Head the Minister must strive towards establishing an independent Directorate as required in *Glenister II*.[59] In considering the appointment of the Heads, the Minister must, at the very least, have regard to the relevant factors that are brought to his knowledge, or that can reasonably be ascertained by him.[60] In construing s17CA(1) the Minister is not entitled to bring his subjective view to bear. (This section does not use the expression, "*in the Minister's view*", or some other similar expression, but it is couched in imperative terms. The appointee "*must be a fit and proper person*".) [61] Experience, conscientiousness and integrity must be objectively assessed.[62]

67. The failure by the Minister to undertake a proper enquiry as to whether a candidate satisfies the objective requirements of s17CA(1), (anterior to the exercise of any subjective judgment

[59] See paragraph [107] of the judgment of the SCA in **DA v President of the RSA**
[60] *ibid* paragraph [108]
[61] Paragraph [116]
[62] Paragraph [117]

discretion) will render the resulting appointment subject to annulment by the Courts.[63]

68. It is submitted that the considerations above leave no room whatsoever for political influence to be used to appoint a Head that is not fit and proper; or alternatively, to appoint a Head with a view to undue political manipulation in the future.

69. Furthermore, in terms of s17K(9), the Minister must report to Parliament on the appointment of the National Head.[64] This forms part of the Minister's duty in terms of s92(3)(b) of the Constitution. It is therefore not a mere make weight. In terms of s17DA(3), Parliament may also remove an appointee that is incapable or incompetent. This is a further check and balance on an appointment by the Minister. Appointment of the Head of the Directorate now meets this Court's previous criticism that appointment of members was not sufficiently shielded from political influence.[65]

[63] See paragraph [121]
[64] In terms of s17CA(3)) he must do so within fourteen days of the appointment if Parliament is in session. or, if Parliament is not, within fourteen days after commencement of its next ensuing session.
[65] *Glenister II* paragraph [249]

Security of tenure and remuneration

70. Under the 2012 dispensation there is no room to argue that members of the Directorate are just ordinary members of SAPS, or that specially secured conditions of employment have not been entrenched. The following position pertains to their tenure and remuneration.

71. The National Head is appointed for a non-renewable fixed term of not shorter than seven years and not exceeding ten years (s17CA(1)). This period is to be determined "*at the time of appointment*"(S17CA(2)). The same applies to the Deputy and Provincial Heads.

72. The remuneration, allowances and other terms and conditions of service and service benefits of the National Head are determined by the Minister with the concurrence of the Minister of Finance, by Notice in the Gazette (s17CA(8)(a)); and of the Deputy National Head and Provincial Heads by the Minister after consultation with the National Head and with the concurrence of the Minister of Finance (s17CA(8)(b)).

73. The salary of the National Head may not be less than the salary of the highest paid Deputy National Commissioner; of a Deputy National Head not less than the salary level of the highest paid Divisional Commissioner; and of the Provincial Head not less than the salary of the highest paid Deputy Provincial Commissioner (sub-sections 17CA(8)(b)(i), (ii) and (iii).)

74. The Minister must submit the remuneration scale payable to the National Head, as well as the Deputy and Provincial Heads to Parliament for approval, and such remunerations scale may not be reduced except with the concurrence of Parliament (s17CA(9)).

75. In terms of s17DB the National Head;

(a) determines the fixed establishment of the Directorate and the number and grading of posts, in consultation with the Minister and the Minister for Public Service and Administration; and

(b) appoints the staff of the Directorate.

76. In terms of s17G, under both the 2008 and 2012 dispensations, remuneration, allowances and other conditions of service of

members of the Directorate were regulated by the Minister in terms of s24 of the SAPS Act. However, the 2012 Amendment introduced s17CA(18), which requires the regulations referred to in s17G to be submitted to Parliament for approval.

Dismissal

77. The removal from office of the National Head is dealt with in s17DA. There was no counterpart in the 2008 Act. Subject to the provisions of sub-sections 17DA(2) the Minister may remove the National Head from office for misconduct; on account of continued ill-health; on account of incapacity to carry out duties efficiently; or on account of being no longer a fit and proper person to hold the office. [66]

78. Prior to the dismissal of the National Head an enquiry into fitness to hold office must be performed by a judge or a retired judge subject to the provisions of the Promotion of Administrative Justice Act.

[66] The first three grounds are not materially different to the grounds on which judges may be removed in countries such as Australia, Canada, New Zealand the UK. They are similar to the grounds on which the Public Protector, the Auditor-General or members of the SA Human Rights Commission, the Commission on Gender Equality and the Electoral Commission may be removed from office (viz. misconduct, incapacity, or incompetence). In **Van Rooyen's** case this Court accepted that these grounds for removal were not inconsistent with judicial independence in the case of Magistrates.
See **Van Rooyen & Others v The State & Others 2002 (5) SA 248 CC paragraphs [161] to [165].**

79. Though the Minister may have the final say, a report dealing with the removal, the reasons therefore and the representations of the National Head must be communicated in writing to Parliament within fourteen days. There is therefore a check and a balance on the Minister.

80. Alternatively, the National Head may be removed from office on the ground of misconduct, incapacity or incompetence (substantially the same grounds on which the Minister may dismiss) on a finding to that effect by a Committee of the National Assembly ("NA"), and the adoption of a resolution by the NA calling for removal, with the supporting vote of at least two-thirds of the members of the NA.[67]

81. Section 17CA(2) provides that no Deputy, Provincial Head, member or administrative staff may be transferred or dismissed from the Directorate, except after approval by the National Head.

[67]The Public Protector, the Auditor-General or a member of the Human Rights Commission may be removed from office on the ground of misconduct, incapacity or incompetence; a finding to that effect by a committee of the NA and the adoption by the NA or resolution calling for that person's removal; as well as a supporting vote of at least two-thirds of the members in the cases of the Public Protector and Auditor-General, and a simple majority in the case of a member of the Commission.

82. Section 17CA(19) provides that any disciplinary action against the Deputy National Head, Provincial Head, member or employee of the Directorate must be considered and finalised within the Directorate structures subject to the relevant prescripts.

83. In short, the members of the new Directorate enjoy especially entrenched employment security and statutorily secured remuneration levels. There is no room for undue executive influence.

F RELEVANT EVIDENTIARY MATERIAL AND "CIRCUMSTANCES"

84. Before the Court *a quo* the applicant alleged that corruption is rife amongst politicians and officials; and that therefore the threshold for independence of an anti-corruption unit must be raised. Presently the applicant contends that – because the legislation required to meet the State's constitutional obligations must fall within the range of possible conduct a reasonable decision maker may in the circumstances adopt – the High Court erred in striking out available evidence about the prevailing circumstances and in seeking to consider the legislation in a "*circumstance free*"

vacuum. [68] As the High Court correctly pointed out,[69] "*The rationale of adequate independence of the DPCI is the protection against potential manipulation by corrupt politicians through political control. This rationale stands, irrespective of the absence or presence of actually corrupt politicians in the power structure at any given time*."

85. The issue in *Glenister II* before the Court *a quo* was whether the structural and operational attributes of the Directorate satisfied the requirement of independence. The critical test was what the terms of the legislation left open and what it ruled out;[70] and whether the legislation insulated the Directorate from a degree of management by political actors that threatened imminently to stifle the independent functioning and operations of the Directorate.[71] The "*circumstances*" raised by the applicant are irrelevant.

86. The standard of independence required was adequately set out in *Glenister II* and the Court *a quo*. Reference was made to

[68] Applicant's heads of argument, paragraph 37
[69] See paragraph 11 of the judgment
[70] "*[231] This may be far-fetched. Perhaps. The Minister for Police must submit any policy guidelines the Committee determines to Parliament for approval. This is a safeguard against far-fetched conduct. But if Parliament does nothing, the guidelines are deemed to be approved. The point is that the legislation does not rule out far-fetched inhibitions on effective anti-corruption activities. On the contrary, it leaves them open. This is our view plainly at odds with a structure designed to secure effective independence. It underscores our conclusion that the legislation does too little – indeed, far too little – to secure the DPCI from interference*."
[71] *Glenister II*, paragraph 216

international instruments, the report prepared in 2007 by the Organisation for Economic Co-operation and Development: Specialised Anti-corruption Institutions: Review of Models,[72] (which gave content to the State's obligation), and our own constitutionally created institutions which manifest independence, *inter alia*, the Courts, Chapter 9 institutions, the NDPP and the defunct DSO.[73]

87. Seen against the above criteria the impugned provisions of the SAPS Act are either objectively valid, or invalid, from their enactment, depending on whether or not they secured the necessary degree of independence (in which case they were either consistent or inconsistent with the Constitution). The issue of whether this law is valid or invalid cannot fluctuate with time or the "*circumstances*" as contended for by the applicant. Nor does it depend on whether, at the moment when the issue was considered by the Court *a quo*, a particular person's rights were

[72] On international instruments see paragraphs 183 to 186. The OECD report is dealt with in paragraphs 187 and 188.
[73] See paragraph 211.
"*There is a further point. As the main judgment observes, the international instruments require independence within our legal conceptions. Hence it is necessary to look at how our own constitutionally created institutions manifest independence. To understand our native conception of institutional independence, we must look to the courts, to Ch 9 institutions, to the NDPP, and in this context also to the now defunct DSO. All these institutions adequately embody or embodied the degree of independence appropriate to their constitutional role and functioning. Without applying a requirement of full judicial independence, all these institutions indicate how far the DPCI structure falls short in failing to attain adequate independence*."

being threatened or infringed by the offending law or not.[74] The objective approach to constitutional validity of legislation was affirmed in the **New National Party of South Africa v Government of the Republic of South Africa & Others.**[75]

88. In the Court *a quo* the applicant relied upon the *dicta* in the judgment of this Court in paragraphs 69 and 86 of the **Rail Commuters Action Group v Transnet Ltd t/a Metrorail**.[76] He submitted that the application of "*circumstances*" in that case were equivalent to the present one. His reliance was misplaced.[77] The Court *a quo* correctly distinguished the circumstances with which it was seized from the circumstances in the **Rail Commuters' case**, and found that changing circumstances cannot increase the threshold for the validity of the impugned provisions. It would appear that applicant no longer relies on that case.

---

[74] See **Ferreira v Levine NO & Others; Vryenhoek & Others v Powell NO & Others 1996 (1) SA 984 CC at paragraphs 27 and 28**

[75] **1999 (3) SA 191 (CC) at paragraphs 22 to 24**

[76] **2005 (2) SA 359 (CC) at paragraphs 68 and 86**

[77] Those *dicta* dealt with the correlative obligation that arose from rights contained in the Bill of Rights and lay upon the transport authorities to provide for the safety of rail commuters. In assessing the reasonableness of Metrorail and the Commuter Corporation in dealing with commuter safety the context of factual circumstances was referred to in paragraph 85 of the judgment. These circumstances were relevant to the constitutional duty of care that rested on organs of State. They were not related to the validity of legislation.

G THE STRIKING OUT:

89. During the High Court proceedings the Minister of Police filed and served a notice to strike out certain paragraphs in the applicant's papers, annexures referred to in some of these paragraphs, as well as a report of Professor Gavin Woods and the affidavit of Gareth Newham, which were annexures to the applicant's papers. A copy of the notice is annexed to these heads of argument. The offending material forms part of the record filed by the applicant.

90. The grounds for striking out were that the matter in question was irrelevant, scandalous, vexatious and/or hearsay. The irrelevance of the 31 paragraphs and annexures thereto is apparent. The Woods report is entirely hearsay. The Newham affidavit motivates an anti-corruption unit that must be located outside the structure of SAPS, although the contrary was decided in *Glenister II.* The High Court has encapsulated the irrelevant material in paragraph 9 of its judgment.

91. The procedure followed by the applicant in his founding papers before the Court *a quo* was destructive of established practice in our courts and rendered the respondents unable to know the case

they had to meet. What the applicant filed was the same application that he had previously prepared, served and filed in this Court in November 2012 under case no. CCT118/2012. There he alleged that the new legislation failed to comply with the order made in *Glenister II.*[78] Rather than resort to the expense and delay involved in rehashing the papers filed in this Court, the applicant simply attached his founding and supporting affidavits in that matter to his founding affidavit in the Court *a quo*.[79] He did not indicate which portions of his previous papers he was placing reliance on to attack the constitutionality of the new legislation. This process rendered it impossible for the respondents to ascertain with certainty what the applicant's case on constitutionality was; as opposed to his case on the State's failure to comply with the order in *Glenister II*.

92. The striking out order was therefore inevitable. In the circumstances the applicant was constrained, in order to save a substantial part of his papers from striking out, to raise an argument on the relevance of "*circumstances*", based on the aforementioned *dicta* in the **Rail Commuters** case.

[78] See founding affidavit paragraph 7, p. 3
[79] Founding affidavit, paragraph 9

H COSTS

93. The applicant's core and only submission is wrong for the reasons above.

94. In his heads of argument applicant in effect suggests that the Directorate cannot be located within the SAPS under the National Commissioner and the Minister of Police; although policing must inevitably fall under the Minister of Police and the Commissioner by virtue of the provisions of s206(1) and s207(2); and this Court has ruled that the creation of the Directorate within SAPS was not unconstitutional.[80] The further suggestion he makes is that unless his proposition is given effect to the judgment in *Glenister II* will be disobeyed.

95. The substance of the applicant's argument is aimed at furthering these suggestions. He has no other argument. The applicant relies on a plethora of vexatious and irrelevant evidentiary material to resist the status *quo*.

[80] See *Glenister II* paragraph 162

96. Save for the above the applicant ultimately rested his case in the High Court on the submissions made on behalf of the Helen Suzman Foundation.[81] He does so again. The applicant does not assist the Court in that regard.

97. In **Biowatch Trust v Registrar, Genetic Resources**[82] this Court held that the primary consideration in constitutional litigation must be the way in which costs orders would hinder or promote the advancement of constitutional justice. The general rule is that an unsuccessful litigant in proceedings against the State ought not to be ordered to pay costs, because this might have a chilling effect on litigants who wish to vindicate their constitutional rights. This is not an inflexible rule. Where the litigation is frivolous or vexatious this may justify a departure from this rule.

98. The substantial part of the applicant's papers were not drafted to vindicate the applicant's rights, but in order to demonstrate to this Court that the State was in contempt of its order. That endeavour is saturated with vexatious material which had to be struck out when the issue became one of the independence of the Directorate. The above constitutes conduct on the part of the

[81] See Judgment or the Court *a quo* paragraph [122]
[82] **2009 (6)** SA 232 (CC) paragraphs [16], [21].

litigant that ought to influence the Court to order the unsuccessful litigant to pay costs.

99. In any event, the applicant ought to be ordered to pay the costs of the appeal against the striking out.

I CONCLUSION

100. In all the circumstances:

100.1 the declaration of invalidity of s16 as well as ss17A, 17CA, 17D, 17DA and 17K(4) to (9) should be set aside;

100.2 leave to appeal against the judgment of the Court *a quo* should be refused;

100.3 the applicant should be ordered to pay the respondents' costs of the application for leave to appeal; alternatively, the costs of the application for leave to appeal against the striking out order made by the Court *a quo*;

100.4 the order made by the Court *a quo* that the applicant pay the costs of the Minister of Police in the application to strike out on the scale as between attorney and client should be confirmed.

MICHAEL DONEN SC

THABANI MASUKU

HERMIONE CRONJE

Counsel for Respondents
Chambers
CAPE TOWN
4 April 2014