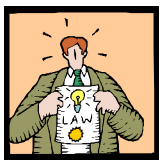
E-MANTSHI

A KZNJETCOM Newsletter

April 2007 : Issue 15

Welcome to the fifteenth issue of our KwaZulu-Natal Magistrate's newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments and suggestions – these can be sent to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or faxed to 031-368 1366.



New Legislation

1. A pricing strategy for Raw Water Use charges in terms of section 56(1) of the National Water Act, 1998 was published in Government Gazette No. 29697 dated 16 March 2007. The document sets out the strategy for implementing water management practises according to the user pays and polluter pays principles.

2. A code of conduct for Home Builders was published by the National Home Builders Registration Council in Government Gazette No. 29689 dated 16 March 2007. The code of conduct is mainly aimed at outlining the general duties of home builders.

3. At the Cabinet Meeting held on 20 March 2007 cabinet approved a Criminal Law (Sentencing) Amendment Bill for submission to Parliament during 2007. As soon as the Bill is published readers will be alerted to it.

Recent Court Cases

1. S. v. ROUX 2007(1) SACR 379 (CPD)

There is no *numerus clausus* of what constitutes *viva voce* evidence

The complainant in an indecent assault case was a minor with Down's syndrome. He was able to speak, but not in a manner that was comprehensible to the court. It appeared, however, that a speech therapist might be able to interpret his speech. The magistrate halted proceedings and referred the matter to the High Court on special review for a determination of whether or not evidence so interpreted would be admissible.

Held, that interpreters were routinely employed in the courts to translate evidence into a language with which the court and the accused were familiar. Over the years the courts had adopted a wide interpretation of the concept of *viva voce* evidence as contained in s 161 of the Criminal Procedure Act 51 of 1977. Sign language and hand signals, reliably interpreted, had been permitted. It had not been the intention of the Legislature to set out in s 161(2) a *numerus clausus* of what would constitute *viva voce* communication. In any event, criminal courts should not, by narrowly interpreting legislation or legal principle, create obstacles to the giving of the evidence by witnesses who could not convey their evidence in the usual manner. The purpose of the subsection was to prevent the exclusion of evidence simply because it was not understandable by the court, the accused and court officials if a method existed that would render it comprehensible. Accordingly, there was no reason why the complainant's evidence should not be given with the assistance of a speech therapist, provided that this person was competent to interpret that testimony. (At 383f-i.)

2. S. v. THOBAKGALE 2007(1) SACR 395 (TPD)

Judicial officer not to delegate duty of explanation of legal rights to unrepresented accused, to interpreter.

It was the duty of the presiding officer to explain an accused's rights to him and to ensure that he understood his rights. The explanation of the accused person's rights should not be delegated to the interpreter by the presiding officer. (Paragraph [4] at 396*e-h*.)

Held, further, that there was a general duty on the part of judicial officers to ensure that unrepresented accused fully understood their rights and it should be recognised that in the absence of such understanding a fair and just trial might not take place. What precisely was stated by a judicial officer to an accused with regard to his rights to legal representation, as also what precisely the accused replied thereto when making his election, all constitute the record of the proceedings as provided for in s 76(3)(a),(b) and (c) of the Criminal Procedure Act 51 of 1977. Therefore, a perusal of the record must reveal precisely what was conveyed to an unrepresented accused. (Paragraph [5] at 396*h* - 397*e*.)

Held, further that the crucial issue in the matter is the explanation of the accused's rights. It could not, under the circumstances, be said that the accused knew and understood his rights following upon the State's closure of its case. (Paragraph [6] at 397f-g.)

3. S. v. MACHETE 2007(1) SACR 398 (TPD)

Presiding officer to make proper enquiries regarding means of accused and his ability to pay a fine either at once or in instalments – Purpose of review system.

The accused, a first offender, pleaded guilty to a charge of theft to the value of R3 000, was convicted correctly in the magistrate's court and sentenced to a fine of R6 000 or three years' imprisonment. On review the Court noted that the fine was clearly beyond the ability of the accused to pay and further that the magistrate had failed to comply with his duty to inform the accused that he could apply for payment of the fine in instalments or for deferment of the fine. Furthermore, the J4 form had not been properly completed and the record had arrived at the Court in a seriously deficient state.

Held, that the magistrate had, in the very recent past, been criticised by the same Court for his approach to sentencing and his reliance on outdated and utterly inappropriate authority. (Paragraph [15] at 401*c-d*.)

Held, furthermore, that the magistrate's action fell short of his duty as a judicial officer. His failure to appreciate the fact that the judgment relied on belongs to a past that the Constitution has deliberately, eloquently and irrevocably turned our society away from, has led to injustices. (Paragraph [21] at 402*b-c.*)

Held, further, the failure of judicial officers to heed criticism by a higher court has been severely berated in the past. The purpose of the entire review system was to ensure that the judiciary in the lower court was given guidance, particularly to correct errors that might have occurred and to prevent a repetition thereof. (Paragraph [22] at 402c-e.)

Held, accordingly, that the conviction should be confirmed. As the sentence was inappropriate, it had to be set aside and substituted with five months' imprisonment. Ordered that the accused be released from imprisonment immediately. The matter was referred to the Magistrates Commission. (Paragraphs [24]-[26] at 402*e-h*.)

4. S. v. MAAKE 2007(1) SACR 403 (TPD)

Magistrate is obliged to hold inquiry when accused convicted of offences falling under ss 103(1) and 103(2)(a) of Firearms Control Act, Act 60 of 2000.

The accused, who was 19 at the time of his arrest, was convicted of malicious injury to property where the damage caused amounted to R9 000 and of assault with intent to do grievous bodily harm for stabbing the complainant several times. He had produced a firearm during the incident, but had not used it. He was sentenced to three years' imprisonment on each of the counts without the option of a fine and the sentences not to run concurrently, effectively six years. In an automatic review:

Held, that the proceedings were not in accordance with justice as the magistrate had

not considered suspending any part of the sentences and had omitted to hold an inquiry in terms of s 103 of the Firearms Control Act 60 of 2000 (the FCA). (Paragraphs [5]-[6] at 404*j*-405*a*.)

Held, further, that there was a clear distinction between offences that fall within s 103(1) and those under s 103(2)(a) read with Schedule 2 of the Firearms Control Act: the conviction of malicious damage to property fell within s 103(2)(a) read with Schedule 2 where it was compulsory for the court to enquire and determine whether that person was unfit to possess a firearm; the conviction of assault with intent to do grievous bodily harm fell within s 103(1), in which case the offender was automatically deemed unfit to possess a firearm unless the court determined otherwise. There was no directive for the court to hold an inquiry. (Paragraphs [17]-[18] at *406d - g*.)

Held, further, that what was required of the judicial officer was: first, to draw the accused's attention to the relevant provisions of either s 103(1) or s 103(2)(a), depending on the circumstances; secondly, to ask pertinent questions to establish whether the accused's conduct and/or the circumstances of the crime warrant the deprivation of his right to possess a firearm; thirdly, the judicial officer had to make a determination that the accused is unfit to possess a firearm and make a declaration to that effect. (Paragraph [20] at 406*i*-407*b*.]

Held, accordingly, that the magistrate had overlooked conducting an s 103 inquiry, which should have been in terms of s 103(2) (a) because of the peremptory nature of this subsection. Case remitted to the magistrate to conduct an inquiry in terms of s 103(2). (Paragraphs [21]-[22] at 407*b - f*.)

From The Legal Journals

1. HOFMAN, J.

"Electronic evidence in criminal cases"
SACJ – (2006) 19 p 257.

2. MEINTJES – VAN DER WALT, L.

"Expert evidence: recommendations for future research"
SACJ – (2006) 19 p 276.

3. VAN DER WALT, T.

"The right to a fair trial revisited: S v. Jaipal"
SACJ – (2006) 19 p 315.

4. NAUDE, B.C.

"Testimonial hearsay and the right to challenge evidence"

SACJ – (2006) 19 p 320.

5. WHITEAR – NEL, N.

"Intermediaries appointed in terms of s 170A of the Criminal Procedure Act 51 of 1977: new developments?"
SACJ – (2006) 19 p 334

6. VAN NIEKERK, J.P.

"Medical aid expenses and damages for personal injury: the relevance of the receipt of medical and benefits to a delictual claim for damages".
Juta's Business Law – 2006, v 14(3), p 102.

7. KELLY-LOUW, M.

"The common-law versus the statutory *in duplum* rule: better consumer protection under statutory rule".
Juta's Business Law – 2006, v 14(3), p 14.

.

(*If you would like a copy of any of the above articles please send your request to* gvanrooyen@justice.gov.za).

Contributions from Peers

ALICE IN THE DEBTORS COURT: FAILING TO APPEAR IN COURT IN TERMS OF SECTION 65 A (9) ACT 32 OF 1944

Many magistrates seem to be under the impression that there is no difference between Section 72 (4) of Act 51 of 1977 (or Section 55(2) or similar sections) (the Criminal Procedure Act) and Section 65 A (9) of Act 32 of 1944 (the Magistrates' Courts Act). Both these provisions deal with a person's failure to appear in court, the first in the Criminal Court and the latter in the Civil Court. The failure to distinguish between these provisions inevitably leads to debtors in the Civil Court being convicted in circumstances where they should have been acquitted.

Section 65 A (9) of the Magistrates Court Act reads as follows:

"*(9) Any person who –*

(a) is called upon to appear before a court under a notice referred to in subsection (1) or (8)
(b) and who willfully fails to appear before the court and on the date and at the

time specified in the notice;

a) in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by a court, willfully fails to appear before the court on that date and at that time;

b) willfully fails to remain in attendance at the relevant proceedings or at the proceedings as so postponed,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months."

This section must be read with the provisions of Section 65 A 10 (b) and (c) which regulates the procedure to be followed in determining whether a debtor has committed the above offence. Section 65 A 10 (b) and (c) reads as follows:

(b) "On the appearance before the court of the judgment debtor, director or officer concerned in pursuance of either his or her arrest under a warrant referred to in subsection (6) or the delivery to him or her of a notice referred to in subsection (8) (b), the court shall inform him or her -

i) that the court intends to inquire in a summary manner into his or her alleged willful failure to appear before the court and on the date and at the time specified in a notice referred to in subsection (1) or (8) (b), or to appear, in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by any court, before that court on that date and at that time, or to remain in attendance at the relevant proceedings or at the proceedings as so postponed, as the case may be;

ii) that the court, if the court so convicts him or her, may impose on him or her any penalty provided for in subsection (9); and

iii) that he or she has the right to choose and be represented by, a legal practitioner.

c) A court before which proceedings under paragraph (b) are pending -

i) shall have due regard to the following rights, namely –

(aa) the right of an accused person to be presumed innocent, to remain silent and not to testify;

(bb) the right of an accused person to adduce and to challenge evidence; and

(cc) the right of an accused person not to be compelled to give self-incriminating evidence;

ii)may adjourn such proceedings to any date on such conditions not inconsistent with a provision of the Criminal Procedure Act, 1977 (Act 51 of 1977), and as the court may think fit;

iii)if the court is of the opinion that it is in the interests of the administration of justice, may at any time before the judgment debtor, director or officer concerned is acquitted or convicted of an offence referred to in subsection (9) suspend such proceedings and refer the matter to the public prosecutor concerned to take a decision on the prosecution of the said judgment debtor, director or officer for such an offence.

There seems to be a lot of magistrates who would agree with the following statement of Mr. B. Gagiano in a letter to *DE REBUS* (1999 De Rebus 9):

"...*Should the debtor wish to remain silent, as is his right, then the magistrate must find the debtor guilty of contempt of court and sentence the debtor accordingly. The debtor is at risk should he choose to remain silent. In any event the inquiry as to the willful failure of the debtor to appear in court is actually for his benefit; should the debtor provide a plausible excuse to the magistrate, a prison sentence or fine can be avoided. The same goes for the jurisdiction of any courts in which the debtor is arrested; it holds an inquiry and if the debtor wishes to remain silent, finds him guilty and then proceeds to the next matter on the roll*."

Nothing can be further from the truth than the above statement. In fact any one holding to the above view is clearly causing an injustice. The simple fact of the matter is, that in the absence of any compelling evidence any debtor who remains silent during such an enquiry, **must** be acquitted.

Section 65 A 10 (a) (i) clearly states that the debtor who fails to appear in court may only be convicted upon "*proof beyond reasonable doubt."* The problem that any civil magistrate will face is the following:

The debtor can only be convicted if he willfully fails to appear before court. This must be proved beyond reasonable doubt. There is no evidentiary burden imposed on the accused to come and show that there is a reasonable possibility that his failure was not due to fault on his or he part. (Sec. 72 (4) Act 51 of 1977 as amended by S.V. SINGO (2002 (2) SACR 160.)

In a civil matter there is no prosecutor involved and the attorney for the judgment creditor has no role to play in the enquiry into the debtor's willful failure to appear in court. Some magistrates try to deal with the question of proving the debtor's willful failure to appear in court by calling the Sheriff of the Court to give evidence as to how he served the notice in terms of Section 65 (A) (1) on the debtor and then think that once personal service has been proved the debtor has an evidentiary burden to come and show that there is a reasonable possibility that his failure was not due to fault on his part. I have already indicated the fallacy of this above.

To add insult to injury the question of willfulness has not even been properly considered yet. According to *JONES AND BUCKLE* (9th edition ACT 266B) the following must be proved beyond reasonable doubt before it can be said that a debtor was in willful failure to appear in court.

"*a) knowledge of the notice referred to in S 65 A (1) or 65 A (8) (b), as the case may be;*

b) a deliberate disobedience of the notice though free to appear before court in terms thereof;

c) *mala fides*"

It must be clear from this that there will be very few debtors who will ever be convicted of contravening section 65 A (9) of Act 32 of 1944 if the provisions as discussed above are properly applied and adhered to.

In the case of S v WAYNE DU PLOOY (case DR 1946/2002) an unreported decision of the Natal Provincial Division, a magistrate had convicted a person of contravening Section 65 A (9) of Act 32 of 1944. The record of the proceedings in the magistrates court read as follows:

"*HE/SHE IS INFORMED:-*

3. That the Court intends to inquire in a summary manner into his/her alleged willful failure to appear/remain in attendance at the Court on 23-7-02 at 08:30.

4. That the Court, if he/she is convicted, may impose a fine of not exceeding R20 000, 00 or imprisonment for a period not exceeding three months.

5. That he/she has the right to choose and be represented by a legal practitioner.

6. That he/she has the right to be presumed innocent, to remain silent and not to testify.

7. That he/she has the right to adduce and to challenge evidence; and -

8. That he/she has the right not to be compelled to give self-incriminating evidence.

THEREAFTER:

Do you understand what has been explained to you?: Yes.

Do you wish to be represented by a legal practitioner?: No.

Do you wish to explain why you did not appear in Court on the date and time specified in the notice?: I went to lawyer on 22nd and asked if I could pay and asked that date be changed. They never came back to me.

FINDING: Guilty of contravening Section 65 A (9) Act 32 of 1944, as amended."

The matter was submitted for review by the Chief Magistrate who submitted that the proceedings were not in accordance with justice as the convicting magistrate acted irregularly by:

1. Simply asking for an unsworn or unaffirmed explanation for Applicant's failure to appear;

2. Convicting the Applicant without evidence that he had willfully failed to appear; and -

3. Concluding that Applicant's explanation amounted to an admission of willful failure to appear.

In his judgment Booysen J (with whom Combrinck J concurred) stated the following on how a matter should be approached where a debtor has failed to appear in court:

"*Unfortunately the Act does not specify how the Court should act in having "due regard" for the rights listed. It seems to me that the Court should simply apply the procedures which are applicable to criminal proceedings. It should thus, after having complied with subsection 65 A (10) (b) ascertain whether the person requires legal representation, and if he does, act as it would in any criminal case by affording him the opportunity to obtain legal representation. It should further call upon the person to plead to the charge of contravening Section 65 A (9) explaining the person's rights in relation to pleas as it would in any criminal case.*

After plea the matter should proceed as any criminal case would e.g. by questioning in the event of a plea of guilty or the hearing of evidence in the event of a plea of not guilty. In the event of a plea of not guilty, the Court shall itself have to call such witnesses as are required to inquire into the matter. Such witnesses shall give evidence under oath and be subject to cross-examination. Thereafter the judgment debtor shall be entitled to apply for discharge; close his case, or give and lead evidence, and present argument as in any criminal case.

Where it is apparent to such a court that the matter is complex or requires much by way of evidence, the Court should generally act in terms of Section 65 (10) (c) (iii)."

In the end the Judge set aside the conviction and sentence and remitted the matter to another magistrate to act in terms of Section 65 A (10) of act 32 of 1944.

What is very interesting in the approach by the judge in the DU PLOOY case (*supra*) is that criminal proceedings have to be held without a prosecutor, but with the possibility of a legal representative. The party who has to act as investigator and prosecutor is the court. If there is going to be evidence on which a debtor can be placed on his defence, the only person who would be able to cross examination the debtor is the court.

Whether this was at all the intention of the legislature in enacting the provisions of Section 65 A (10) is open to debate. It is clear that such an approach is untenable and places civil magistrates in a very difficult position. It is suggested that the most appropriate solution at present is the provisions of Section 65 A (10) (c) (iii) which makes it possible for the court to suspend the proceedings in terms of subsection (9) and to refer the matter to the public prosecutor to take a decision on the prosecution of the judgment debtor.

The long term solution should however be that the provisions of Section 65 A (10) be amended to read the same as the provisions of Section 72 (4) of the Criminal Procedure Act, Act 51 of 1977.

To end off I want to let readers share an extract from the article by Riaan Yssel (1999 De Rebus 22-23) on this subject. He wrote a dialogue between Alice (the debtor), the magistrate and the attorney (for the creditor) which illustrates the predicament caused by Sections 65 A (9) and 65 A (10) in a very pointed manner:

"*But let us presume that Alice ... is arrested and brought before the magistrate at ... on the day on which the attorney concerned deals with S 65 A applications. The magistrate explains to Alice that the court intends to inquire in a summary manner into her 'alleged willful failure to appear before court' and, if the court convicts her, she can be fined or sentenced to three months' imprisonment (s 65 A (10) (b) (i)). The court also explains her rights to her, namely that she has the right to remain silent and not to testify and that she cannot be compelled to give self-incriminating evidence (s65 A (10) (c) (i)).*

Magistrate to Alice: 'Do you understand your rights?'

Alice: 'Yes.'

Magistrate: 'According to the return of the sheriff the notice to appear was served on you personally. Did you receive it?'

Alice: 'You have just explained to me that I have the right to remain silent and that I cannot be compelled to give self-incriminating evidence. I choose to remain silent.'

Magistrate to attorney: 'You will have to satisfy the court that the notice was served personally on Alice and that her failure to attend was willful.'

Attorney to magistrate: 'To prove service, the deputy sheriff will have to be

subpoenaed. However, the legislature has made it manifestly clear that this is a criminal matter and accordingly it is out of the hands of the judgment creditor and your worship will have to issue the necessary instructions to the clerk of the criminal court who will then have to forward the subpoena to the South African Police Services for service.'

Magistrate: 'Before I can find her guilty of any offence I must be satisfied that her failure to attend court was willful and how do I do that if I cannot question her?'

Attorney: 'Can't we proceed with the inquiry and perhaps under cross-examination the debtor will give information which will allow your worship to come to a conclusion regarding her willfulness.'

Magistrate: 'We cannot do that ...subs 11 specifically states that I can proceed with the inquiry into her financial position only after I have dealt with the inquiry into her alleged willful failure.'
Attorney: 'Why not refer the inquiry to the prosecutor in terms of s 65 A (10) (c) (iii) and then we can proceed with the s 65 A (1) inquiry and perhaps from that record the prosecutor will obtain assistance?'

Magistrate: 'That will not help you as in terms of s 65 D you can cross-examine her only on her financial position and not regarding her failure to attend court.'

Attorney: 'In that case, your worship, you will be referring a case to the prosecutor which is impossible to investigate. Willfulness is a state of mind and if Alice cannot be called upon to give reasons why she did not appear it will be impossible to convict her.'

Magistrate to attorney: 'Then I must find her not guilty of the contravention and proceed with the inquiry.'

Magistrate to Alice: 'I find you not guilty of the contravention of s 65 (9) (a). We will now proceed with the inquiry. What is your monthly income?'

Alice: 'I can't answer that question.'

Magistrate: 'Why not?'

Alice: 'Section 106 makes it an offence willfully to fail to comply with a judgment and if I answer that question I will be incriminating myself. You have already told me that I cannot be compelled to give self-incriminating evidence.'

Magistrate: 'Court adjourns.'

Magistrate goes to the restroom to take an aspirin and the attorney notifies his office that, if he is needed, he will be at the club bar."

Gerhard Van Rooyen
Magistrate/Greytown

If you have a contribution which may be of interest to other Magistrates could you forward it via email to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or by fax to 031 3681366 for inclusion in future newsletters.

Matters of Interest to Magistrates

Judges see red over ANC plans to transform courts
CARMEL RICKARD

CARMEL RICKARD reports that if the NEC accepts the policy documents on judicial transformation this weekend, the fire will be stoked yet again.

CONFLICT between the judiciary and the government is set to continue and even intensify, if the ANC accepts the policy documents on judicial transformation being discussed by party's national executive council (NEC) this weekend.

Tension between the judiciary on the one hand, and the executive and legislature on the other has been a feature of public life for several years, particularly since the government attempted to push through a series of laws that would fundamentally change relations between them.

These laws would give new, far-reaching power over judicial matters to the executive, and the judiciary has objected strongly to these proposals.

At one stage, senior lawyers even warned that the conflict had the potential to cause a constitutional crisis.

Although a moratorium was declared on the issue, the fact that the policy document effectively seeks party support for the government position pushes the matter back to the top of the agenda in relations between the judiciary and the rest of government.

The policy document takes a number of issues on which the government has already outlined its views, and backs them to the hilt — despite strong objections to these proposals by judges and members of the human rights sector.

Among the contentious issues to be discussed, but which are not related to this conflict between the judiciary and the executive, is the question of a court language policy. The document proposes that the policy on the courts' language of record should be reviewed and that institutions of language development should be used to promote multilingualism

“including languages not provided for in the Constitution".

The promotion of sign language in court should be promoted by government and “communicative competence" in at least one indigenous language should be introduced as a requirement for a law degree.

But the most contentious question in the discussion paper concerns the fundamental difference in understanding between the judiciary and the executive about what constitutes judicial independence. The ANC policy document says that the three arms of government are separate, as provided for under the Constitution, but that the party should “advance the principle of co-operative governance".

Explaining this “principle" the document says that the “three branches of government must work in tandem with one another".

While the ANC should ensure the existence of a “legitimate and independent judiciary", it should nevertheless agree that policy and budgeting for courts and all matters relating to the administration of the justice system are the responsibility of the justice minister.

In addition, the general administration of the justice system is the prerogative of the justice minister. However, the document adds, in a sop to the judges, “In carrying out this function, the minister is required to take into consideration the views of the judiciary in relation to matters which have a bearing on the proper functioning of the courts and the administration of justice".

What falls to the judiciary according to the document, is the “administration of all judicial and adjudicative functions".

Summarising this position, the policy paper says that “when exercising powers which have an effect on the functioning of the judiciary, the justice minister is required to take into consideration the views of the judiciary in accordance with the spirit of co-operative governance."

And then participants at the meeting are invited to discuss the following question among others, “Should the judiciary have any role in the policy making, budgeting and general administration of courts? If so, what should the role be?"

The attitude expressed in the document, and articulated in previous government draft bills, has been strongly criticised by a number of judges, one of whom said in reaction last night, “It goes back to the problem that the government cannot grasp that there might be some institutions that are outside their control."

Judges say the government defines “judicial function" as narrowly as possible: “it is basically what you do when you sit in court", and that in government eyes, judicial independence means merely that the government won’t bring overt influence to bear when a case is decided.

However, in the view of the judiciary, expressed in meetings with government and in

discussion papers presented by judges, judicial function and judicial independence encompasses far more, and includes the protection of the “institutional independence" of the judiciary.

Another proposal likely to cause considerable concern in legal circles is the statement in the document that “rule making is a legislative competence” and that as such, power to make rules of court rests in the executive as the branch of government responsible for the administration of justice.

The rules should be simplified and the public should be given “meaningful participation" in making the new rules. In a concession to the judiciary, however, the document proposes that the executive must take the views of the judiciary into account when making rules of court.

This would be a complete reversal of the present system in which a rules board of judges, magistrates, lawyers and others draw up changes and new rules, as necessary, at the request of the courts.

“People involved in the process of court are the best placed to understand the issues that the rules must address," said a judge in reaction.

“What would a non-lawyer be able to add when it came to rules about ‘a provisional sentence summons’? And what about a debate on whether notice of an appearance to defend should be entered 10 days or 15 days from the filing of a summons?

“It just doesn’t make sense to have these issues decided by people who are not involved with courts and how they work."

(This article was published in “The Weekender” of 25 March 2007)