e-MANTSHI

A KZNJETCOM Newsletter

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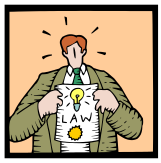
Welcome to the two hundredth and twelfth issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. There is a search facility available on the Justice Forum website which can be used to search back issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.

"e-Mantshi" is the isiZulu equivalent of "electronic Magistrate or e-Magistrate", whereas the correct spelling "iMantshi" is isiZulu for "the Magistrate". The deliberate choice of the expression: "EMantshi", (pronounced E! Mantshi) also has the connotation of respectful acknowledgement of and salute to a person of stature, viz. iMantshi."

Any feedback and contributions in respect of the newsletter can be sent to Gerhard van Rooyen at gvanrooyen@justice.gov.za.



New Legislation

1. The Minister of Justice and Constitutional Development has in terms of Section 55 (1) (b) the Criminal Law (Sexual Offences and related Matters) Amendment Act 2007 (Act 32 of 2007) designated places in each Regional Division for the Establishment of Sexual Offences courts. The notice to this effect has been published in Government Gazette no 51403 dated 16 October 2024. The notice can be accessed here:

https://www.gov.za/documents/notices/criminal-law-sexual-offences-and-related-matters-act-designation-places-regional

Recent Court Cases

1. Pillay v S (10802/2024) [2024] ZAKZDHC 70 (16 October 2024)

Section 60(12)*(b)* of the Criminal Procedure Act (CPA) confers a power upon a court hearing an application for bail to equally "hold an enquiry, issue a protection order referred to in s 6 of that Act against the accused, whereafter the provisions of that Act shall apply." The purpose of the section is clearly to protect the victims of domestic violence, in circumstance where the criminal charge is related to domestic violence. Section 60(12)*(b)* directs the court intending to grant bail in circumstances of alleged domestic violence to issue an order in terms of s 6 of the Domestic Violence Act (DVA). Once such an order has been granted, the section further provides that such order must be dealt with in terms of the further provisions of the DVA. It is clear from the wording of s 60(12)of the CPA that two orders are contemplated, the first being the granting of bail subject to conditions and the second being a protection order in terms of the DVA. The protection order is not a condition of the order granting bail. The section would not direct the granting of a distinct and separate order as is contemplated in s60(12)(b) if in fact the matters to be canvassed under a protection order could be dealt with as conditions of bail in the order granting bail. The magistrate exercising the power under s 60(12)(b) of the CPA granted an order under the DVA. That order cannot be appealed under s 65 of the CPA.

This Judgment can be accessed here:
https://www.saflii.org/za/cases/ZAKZDHC/2024/70.html

2. S v Nthai (SS33/2022) [2024] ZAGPJHC 1091 (24 October 2024)

Where a person is accused of having committed an act which exposes him to both a civil remedy and a criminal prosecution, he may often find himself in a dilemma. While on the one hand he may prefer for the moment to say nothing at all about the matter so as not to compromise the conduct of his defence in the forthcoming prosecution, on the other hand, to do so may prevent him from fending off the more immediate civil remedy which is being sought against him. Civil proceedings invariably create the potential for information damaging to the accused to be disclosed by the accused himself,

not least so because it will often serve his interest in the civil proceedings to do so. The exposure of an accused person to those inevitable choices has never been considered in this country to conflict with his right to remain silent during the criminal proceedings. Where the Courts have intervened there has always been a further element, which has been potential for State compulsion to divulge information. Even then the Courts have not generally suspended the civil proceedings but in appropriate cases have rather ordered that the element of compulsion should not be implemented. The common law allows no statement made by an accused person to be given in evidence against himself unless it is shown by the prosecution to have been freely and voluntarily made – in the sense that it has not been induced by any promise or threat proceeding from a person in authority.

This judgment can be accessed here:
https://www.saflii.org/za/cases/ZAGPJHC/2024/1091.html

From The Legal Journals

Martin, B

Image-based sexual abuse and the requirement of motive under the Films and Publications amendment Act: A critical assessment

(2024)*Obiter*, *45*(3)

Abstract

Section 18F(1) of the Films and Publications Amendment Act (FAPAA) prohibits the commission of image-based sexual abuse (IBSA). This contribution critically assesses the requirement "with the intention of causing that individual harm" contained in section 18F(1)(b) of the FAPAA. It is demonstrated that the requirement "with the intention of causing that individual harm" cannot be understood as indicating intention in the legal sense (that is, dolus). Rather, section 18F(1)(b) refers to motive, or the reason for the perpetrator's conduct. Section 18F(1)(b) should thus more accurately read (to avoid

confusion with dolus) "with the 'motive' of causing that individual harm". In the determination of criminal liability, motive has been repeatedly affirmed as irrelevant. The author supports this conclusion. In addition, the underlying reasons motivating the perpetration of IBSA vary substantially. Thus, requiring proof of motive in this respect is ill considered. However, motive is relevant to the process of sentencing. Some motives for the perpetration of IBSA may be considered by the sentencing court as "aggravating", and, accordingly, attract a harsher sentence. Section 56A(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act indicates several motives (for the commission of sexual offences) that might be considered "aggravating". These include where a sexual offence is committed with the motive "to gain financially, or receive any favour, benefit, reward, compensation or any other advantage". Many of these motives are witnessable in cases of IBSA, and being a sexual offence that should be located in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, should (in terms of section 56A(2)(a)) be considered "aggravating". It is also shown that other aggravating motives listed in 56A(2)(a), such as to receive any "benefit" or "reward", may apply when IBSA is committed for purposes of revenge.

This article can be accessed here:
https://obiter.mandela.ac.za/article/view/20292/23064

(Electronic copies of any of the above articles can be requested from gvanrooyen@justice.gov.za)

Contributions from the Law School

Regulation of Cannabis in South Africa: Cannabis for Private Purposes Act 7 of 2024

The purpose of this note is to briefly set out the current regulatory environment for the adult use of cannabis in South Africa. In consideration of this point, the developments in the case of *Minister of Justice and Constitutional Development v Prince* are briefly highlighted. This groundbreaking case has been followed by the passing of the

Cannabis for Private Purposes Act 7 of 2024. However, what perhaps requires further discussion is the significant restrictions this Act imposes on both the cultivation and commercial trade of cannabis. It is these developments that will briefly be considered.

Introduction

In *Minister of Justice and Constitutional Development and Others v Prince* [2019] (1) SA 14 (CC) the court partially confirmed the judgment set out in *Prince v Minister of Justice and Others* [2017] (4) SA 299 (WCC) where the court declared provisions of the Drugs and Drug Trafficking Act 140 of 1992 and the Medicines and Related Substances Act 101 of 1965 unconstitutional. The court granted interim relief through a reading in exception to the impugned provision in both the Drug and Drug Trafficking Act of 1992 and the Medicines and Related Substances Act (par [113]-[114]). The effect of this was that the use, possession and cultivation of cannabis for private use was now legalized. What made both the High Court and Constitutional Court decisions progressive was the reformatory nature of the position on drugs, indicating a clear shift in the way that society views drug use as no longer being deviant behavior subject to punishment. The implications of the Constitutional Court decision in Prince are twofold. First that cultivation, possession and consumption of cannabis in private is no longer a criminal offence, therefore upholding the right to privacy (M Khabia and A Hutchison 'Regulating Adult use of Cannabis in South Africa: Intentional Law, Foreign Models, and Contextual Realism 45 *Manitoba Law Journal* 113). Second, decriminalisation has had the effect that ending a prohibition war on drugs, which has been backed by United Nations "which had the distinct flavour (with regard to cannabis at least) of historical race-based prohibition" (M Khabia and A Hutchison supra 107). The nature of earlier cannabis laws and their discriminatory nature cannot be emphasised enough: "In part, its racist impacts were a structural feature of competing nationalisms, both steeped (in different ways) in race ideology. One was rooted in the colonial relations of white minority rule, which accommodated cultural difference by partitioning African traditional authority from settler political culture; the other nationalism was aligned with modern progressivism, imposing universal strictures" (T Waitjen "Thinking about drugs histories and private purposes in South Africa" 2024 Acta Academia 148 151).

The Constitutional Court did not confirm the High Court's order of invalidity in so far as it related to section 22(A)(10) which prohibited the sale and administration of cannabis but declared section 40(1)(h) of the Criminal Procedure Act to be constitutionally invalid in that it was no longer a criminal offence for an adult to use or possess cannabis in private. This is underscored the notion that the state had failed to show that the limitation on the right to privacy was reasonable and justifiable (E C Lubaale 'Decriminalisation of cannabis of personal use in South Africa' (2019) 19 *African Human Rights Law Journal* 825). Further, the court extended the use of cannabis from the confines of the home or private dwelling to any private place with the proviso that it is not regarded as a public place (at par [58]). By rooting their decision in the right to privacy, the court did not need to create certain category exemptions for individuals but

instead acknowledged that the exemption for use of cannabis in privacy applied to everyone, with the exception of minors (Lubaale supra 829).

The decision in Prince also gained traction with the finding in *Centre for Child Law v Director of Public Prosecutions, Johannesburg and Others* [2022] (2) SACR 629 (CC) where the court whilst still retaining the view that it is unlawful for minors to consume cannabis, was noted in the case of *"*that the use and/or possession of narcotic drugs and psychotropic substances by the child must be decriminalised, and dealt with by putting in place prevention, harm-reduction and dependence-treatment services, as well as alternatives to punitive or repressive drug-control policies*".* In addition, the Constitutional Court confirmed the constitutional invalidity of the impugned provisions of the Drug and Drug Trafficking Act, and confirmed a moratorium on all arrests, prosecutions, and diversion of minors arrested for the use or possession of cannabis.

However, the Prince decision raised a number of practical difficulties. For instance, a police officer can arrest a person, after having due regard to all the circumstances of the case, including the quantity of cannabis found in the persons possession, if they have a reasonable suspicion that the person is guilty of committing an offence in terms of s 40(1)(b) or (h) of the Criminal Procedure Act (at par [111]). This leaves open the question as to what quantity for personal use is acceptable (Lubaale 830). Further, this leaves the police with 'unfettered discretion' as to what amount will be permissible (Lubaale 830). As Lubaale noted: "Critical to note at this juncture is the fact that from a criminal justice perspective, individuals must be furnished with sufficient information to enable them to know what is prohibited and what is acceptable. With the current state of affairs, neither police officers nor users are certain of circumstances when the amount of cannabis possessed exceeds the threshold for personal consumption or use. With such uncertainty, issues of legality come into play and these directly impact on the right to a fair trial for those accused." (at 830).

Therefore, whilst it is trite that South Africa is one of the first countries to have decriminalised cannabis for adults, the legislative model remains unclear. For instance, the court refers to adults who have cannabis on their person within the boundaries of the private dwelling. Does protection in such cases also extend outside the boundary walls of the dwelling. Clear delineation of the situation is required (Lubaale 830). Whilst some clarity was provided by the Cannabis for Private Purposes Bill No. 43595 of 7 August 2020 which provided a more detailed discussion of the quantities of Cannabis that can be used or possessed. For instance, a person can possess unlimited cannabis seeds and seedlings for purposes of cannabis cultivation. Possess four flowering cannabis plants for private use (s 2(1)(b)(i). Possession 100 grams dried cannabis or the equivalent (s 2(3)(c) in public or 600 grams dried cannabis or cannabis equivalent per adult (s 2(1)(d)(i) or 1200 grams privately per dwelling where two or more adults live (s 2(1)(d)(ii). Possess in private one flowering cannabis plant or cannabis plant in public place. Therefore, consumption is permissible providing no exchange of renumeration occurs 30 seeds or seedlings for plant cultivation (s 2(3)(a). What

becomes apparent is that the Bill does not expressly envisage commercial application of cannabis on large or small scale.

Further, despite this detailed exposition set out in the Cannabis for Private Use Bill, the legislative model that finally replaced it, that of the Cannabis for Private Purposes Act 7 of 2024 provides less clarity regarding the actual quantities. Further, whilst the cultivation and use of cannabis in the privacy of owns home is legal, the use of and distribution of cannabis for commercial and recreation purposes remains illegal and subsequently a criminal offence (see further *S v Haggis* (A147/2013) [2023] ZAWCHC where the accused was found guilty of dealing in more than 300kg of cannabis, the court took cognisance of the fact that persons found guilty of distributing of cannabis in exchange for payment maybe sentenced to a fine or imprisonment not exceeding 15 years
https://www.cliffedekkerhofmeyr.com/news/publications/2024/Sector/Agriculture/agriculture-aquaculture-and-fishing-alert-30-May-2024-Seeds-of-opportunity.

This point is demonstrated in s 4 of the Act which sets out the penalties that apply to persons in contravention of the Act. For instance, any person found guilty of dealing in cannabis may face up to 10 years of imprison or a fine, (ii) any person who transports cannabis in an amount which exceeds the maximum amount, as prescribed for private purpose, will be guilty and liable to a fine or imprisonment up to five years (iii) any person who transports cannabis and contravenes or fails to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of such cannabis, will be guilty of an offence, liable to a fine not exceeding R2 0000, (iv) any person who is in possession of cannabis exceeding the maximum amount prescribed for private purpose, will be charged with either a fine or up to 5 years imprisonment, and (v) any person who cultivates cannabis plants which exceed the maximum amount prescribed for private purposes, will be charged with a fine or up to 5 years' imprisonment.

In addition, the legalisation of cannabis has several other notable effects. Drug legalisation whilst producing a positive shift in demand thereby increasing quantity traded and price regulation (at 11). However, dramatic increases in quantity may create barriers to entry for suppliers which can allow organised criminal organisations to cartelize (and subsequently monopolise the market with high prices (https://globalinitiative.net/wp-content/uploads/2024/02/Anine-Kriegler-Cannabis-policy-reform-and-organized-crime-A-model-and-review-for-South-Africa-GI-TOC-February-2023.pdf at 11). Another potential benefit is that whilst regulatory systems ensure easy access and reduction of stigma thereby widening the pool of consumers, it still places constraints on consumers and can take various forms thereby sustaining the illegal market. For instance, certain customers that do not want to be seen in dispensaries such as nurses and other types of employees. In addition, the effects of using cannabis can lead to discrimination in the workplace. The case of *Enver v Barloworld* invariably demonstrates this point. The labour court dismissed the applicant

who had repeatedly tested positive for cannabis drug in breach of the Companies alcohol and substance abuse policy. Whilst the applicant's job was that of an office clerk, and did not require the operation of heavy machinery. The applicant argued that the use of cannabis was related both to anxiety as well as the constant migraines she suffered and also to combat the effects of the medication prescribed by her doctor (at par [5]). Invariably the court concluded that concluded that a positive test without having any due regard for actual impairment. This is salient since not only was the applicant working in an office, and not operating having machinery or equipment, but further the court failed to distinguish between the fact that unlike alcohol, cannabis can remain in the body for several days after consumption leading to a positive result regardless of when consumed (at par [26]) thereby leading to the employees dismissal (see further SW Sibiya 'The Legal Dilemma of managing and Regulating private consumption of cannabis in relation to the workplace' (2024) *Obiter* 107 at 112 for a detailed discussion of this case).

Conclusion

In 2018 the Constitutional Court judgment in Prince decriminalised the private consumption of cannabis thereby being a welcome development for many South Africans, the enactment of the Cannabis for Private Purposes Act 07 of 2024 has yet to be enacted. The Constitutional court whilst providing limited guidance as to possession and use, does little in aiding the future interpretation of the Act in question, which has not followed the developments that were proposed in the bill and perhaps would have provided better clarity in future enforcement of the Act. The implications of this decision, are wide ranging, expanding so far as to the employment arena.

Samantha Goosen
University of KwaZulu-Natal
School of Law

Matters of Interest to Magistrates

Is it possible to challenge a maintenance order while in arrears?

It has been well documented in every court that the respondent (in most instances the fathers) will approach the maintenance court when difficulty befalls them and approach the maintenance court for a substitution (reduction) or when he learns that his child is self-supporting, for a discharge of that maintenance order even if he is in arrears with his maintenance obligation. Is it as simple as that or how have the courts decided on the rules that are applicable to hearing and finally dealing with such an application?

Is it possible to bring an application for substitution (reduction) or discharge of a maintenance order, while being in arrears?

In *SS v VV-S* 2018 (6) BCLR 671 (CC) the court, even though initially not asked to do so, pronounce on the contempt of court by the appellant (father) due to his non-compliance with his maintenance obligation. The parties were married to each other in 2007 but a year later they got divorced. An order was granted against the father for the payment of maintenance for their minor child. The dispute between the parties arose out of the alleged non-compliance by the father to adhere to the maintenance order. The Constitutional Court (CC) noted that: 'The precise extent of his default was unclear from the record but some clarity, though not sufficient, emerged during the course of this court's first hearing of the matter.' The father admitted to being in arrears, he disputed the amount produced by the mother as the actual arrear amount.

What the court had to decide on

The mother brought a successful application to have his immovable property executed, he unsuccessfully appealed that decision in the High Court and the Supreme Court of Appeal (SCA) also dismissed his application with costs. He then appealed to the CC to have that High Court decision set aside. At para 17 the CC noted that: 'There was a live and open question whether it would undermine this court's integrity to hear the dispute while the applicant remained in default with his admitted maintenance obligations.' At times the arrears will not be admitted as in this instance, but the applicant can have sufficient proof of arrears against the father even if he denies being in arrears. The most perplexing thing the CC did was at para 18 where it held that: 'While it is so that the proceedings in this court on 29 August 2017 were not contempt proceedings, the concession of non-payment of the basic maintenance obligations, which was never in dispute, cannot simply pass without consequence.' The court basically said that, even though this matter is not before us for contempt proceedings,

we cannot overlook you not paying maintenance. At para 21 the court held that 'his conduct, if left unaddressed by this court, would undermine judicial integrity.'

Was the maintenance order diligently complied with?

The CC in *SS v VV-S* held that: 'All court orders must be complied with diligently, both in form and spirit, to honour the judicial authority of courts.' This statement by the court is especially true for maintenance orders, where the consequence of non-compliance has an instant effect on the recipients of the maintenance money. At para 32 the CC wanted to know whether the applicant has paid his arrears? Through his lawyer he admitted to paying only R 150 000 of the R 306 550,18 in arrears. This payment was only done on the advice of his lawyers while this matter was pending in the CC. The court had to ascertain whether the father was still in arrears or not. At para 34 the court held that 'there is no evidence that the applicant had remedied his conduct.' If the mother brings said documentation that indicates the arrears amount, the father must gainsay said documentation with documentation of his own, absent said gainsay-documentation by the father, the court has to find on a balance of probabilities that the arrear amount has been established.

Is it in the interest of justice to hear his application?

The CC had to determine whether it would be in the interest of justice to hear the father's application, given that he was still in arrears. At para 34 the court asked this question of 'whether the interests of justice are served by allowing the applicant to ventilate his argument in respect of the merits of the appeal.' Simply put, can the father be allowed to bring an application before court, while being in arrears with his maintenance obligation? At para 35 the CC answered this burning question where it held that: 'Those interests will not be best served and will be undermined if the applicant is allowed to proceed and deal with the merits of the Appeal in the absence of him remedying his conduct.' The reason for the court's statement was given at para 35 where the court further held that: 'It will dilute the potency of the judicial authority and it will send a chilling message to litigants that orders of court may well be ignored with no consequence. At the same time, it will signal to those who are the beneficiaries of such orders that their interests may be secondary and that the value and certainty that a court order brings counts for little.' To add to that, especially maintenance orders, may not be ignored. The court at para 36 concluded that allowing the applicant (father) to continue with his appeal 'would clearly run counter to the interests of justice' and the reason for not accepting his application was 'his continued failure to respect this court's integrity by flouting the August Order.'

The cumulative effect of the CC decision in *SS v VV-S*

The question now beckons, can a respondent approach the maintenance office for an application for substitution (reduction) or discharge while being in arrears? The CC decision in *SS v VV-S* clearly answered that with a resounding no, he cannot bring such an application while being in arrears. In terms of s 6(2) of the Maintenance Act 99 of 1998, the maintenance officer is obliged by law to investigate every complaint, if the

investigation reveals that an application for a substitution or discharge has been brought and it was found that the person is still in arrears, such application must be turned down and on the basis that it appears that he is still in arrears. The Maintenance Officer should allow him to produce proof that he is not in arrears. In the absence of such proof to gainsay the arrears, the Maintenance Officer must give him written reasons for rejecting his application for substitution or discharge based on the decision in *SS v VV-S*. If a maintenance court (magistrate's court) or a High Court did grant such an order after the *SS v VV-S* decision, such an order is null and void since all courts are bound to the decisions of the CC. In practice there is, however, ways to 'by-pass' the system. The mother is requested to 'agree' to write-off the arrears by consent and allow the father to conclude a more favourable agreement based on changes to his current financial situation. This change can be because of –

- employment: he does not earn as much as before;
- a new situation arises: such as becoming a father to a new baby with someone else that requires him to financially assist; or
- personal: such as the breadwinner at his family home died and now he has his own family to look after back home.

This practice of writing-off the arrear maintenance is in some instances necessary but in most instances should be frowned on.

Reasons why writing-off of arrear maintenance is not a viable option

It would be beneficial to examine relevant case law to determine whether Maintenance Officers should resist the writing-off of maintenance arrears in certain instances. In *SA v JHA* 2022 (3) SA 149 (SCA) the SCA had to decide whether arrear maintenance falls under a 'judgment debt' or 'other debt' as contemplated by the Prescription Act 68 of 1969. A judgment debt falls away after 30 years and other debt only after three years. At para 25, lawyers for the father argued that a 30-year period 'allows the potential for abuse where a maintenance creditor [the mother] seeks to exploit a subsequent windfall in the life of the maintenance debtor.' They also submitted that it would be 'unreasonable to expect them to preserve documents for up to 30 years to deal with such claims.' The SCA dismissed these arguments. At para 26 the court held that 'such prejudice can be avoided by the debtor [the father] doing what all responsible citizens are supposed to do, namely to comply with court orders.' The High Court ruled that a maintenance claim is a judgment debt and has a lifespan of 30 years. The father was unhappy with this decision and appealed it. The SCA dismissed his appeal and confirmed the High Court's decision. Based on the decision in *SA v JHA* the Maintenance Officer can advise the applicants that she should not be in a hurry to write off any arrears. The legal practitioners in *SA v JHA* made mention of it, the father might experience a 'windfall' later in life as a result of an inheritance, good fortune or a well-paying job, that is currently not foreseeable. The arrears will not grow indefinitely, the law is clear that the children must be self-supporting. The financial burden of providing for the children will rest solely on the mother due to the father's inability at that time. As the person that had to shoulder the financial burden, the decision in *SA v JHA* will make some restitution possible later. The arrears can be calculated if the father receives a

windfall later in life. She will still be able to make a valid claim for arrear maintenance, even if it is 29 years after the fact.

Conclusion

At para 21 the CC in *SS v VV-S* held that: 'A court's role is more than that of a mere umpire of technical rules, it is "an administrator of justice … [it] has not only to direct and control the proceedings according to recognised rules of procedure but to see that justice is done.' Many applicants approach the maintenance office while they must accept that circumstances are such that they cannot receive maintenance as yet from the respondent due to the current economic climate. Situations might change and the law as it stands makes it possible for whoever has a valid claim to still enforce it even if it was years in the making. The cumulative effect of the CC decision in *SS v VV-S* and the SCA decision in *SA v JHA* shows that the two highest courts in the land do not only speak of justice but make justice possible.

Andrew Swarts *LLB (Unisa)* is a District Court Prosecutor at the National Prosecuting Authority in Sutherland, Fraserburg and Williston.

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A Last Thought

[46] In his address, on 6 June 2000, to the Advocates' Society Spring Symposium entitled the 'Role of the Courts and Counsel In Justice', the then Chief Justice of Ontario, The Honourable R Roy McMurty had this to say:

'Lawyers are not solely professional advocates or "hired guns". And while they do not surrender their free speech rights upon admission to the Bar, they are also officers of the court with fundamental obligations to uphold the integrity of the judicial process, both inside and outside the courtroom. It is the duty of counsel to be faithful both to their client and to the administration of justice.'

[47] The former Chief Justice of the Supreme Court of Victoria, the Honourable Marilyn Warren put it thus:

‘The lawyer’s duty to the court is an incident of the lawyer’s duty to the proper administration of justice. This duty arises as a result of the position of the legal practitioner as an officer of the court and an integral participant in the administration of justice. The practitioner’s role is not merely to push his or her client’s interests in the adversarial process, rather the practitioner has a duty to “assist the court in the doing of justice according to law.”

The duty requires that lawyers act with honesty, candour and competence, exercise independent judgment in the conduct of the case, and not engage in conduct that is an abuse of process. Importantly, lawyers must not mislead the court and must be frank in their responses and disclosures to it. In short, lawyers “must do what they can to ensure that the law is applied correctly to the case.”

The lawyer’s duty to the administration of justice goes to ensuring the integrity of the rule of law. It is incumbent upon lawyers to bear in mind their role in the legal process and how the role might further the ultimate public interest in that process, that is, the proper administration of justice. As Brennan J states, “[t]he purpose of court proceedings is to do justice according to the law. That is the foundation of a civilized society.”

When lawyers fail to ensure their duty to the court is at the forefront of their minds, they do a disservice to their client, the profession and the public as a whole.’

[48] Brevity is the hallmark of good advocacy. Clarity of thought, logical coherence and conciseness of presentation are the product of painful preparation. Said Winston Churchill: ‘If you want me to speak for two minutes, it will take me three weeks of preparation. If you want me to speak for thirty minutes, it will take me a week to prepare. If you want me to speak for an hour, I am ready now.’ Exasperated sighs, soapbox oratory, empty rhetoric, political posturing, theatrical gestures and long-winded dismissive non-sequiturs have no place in a courtroom, particularly in response to searching questions from the bench. The taking of ‘miserable, pettifogging point[s]’, as Innes CJ described them over a century ago, are bound to fail. The learned Chief Justice added: ‘But points of that kind do commend themselves to a certain class of practitioner, and do undoubtedly possess an attraction for a certain stamp of mind…

Per Ponnan J A in Public Protector of South Africa v Chairperson of the Section 194(1) Committee and Others (627/2023) [2024] ZASCA 131 (1 October 2024)