

JSC needs to look at itself - Nugent

Before interviews for the selection of a new Constitutional Court judge came to an end at the weekend - according to a [Mail & Guardian Online](#) report Ray Zondo appeared to hold an advantage over his three rivals (see report below) - SCA Judge Robert Nugent hit a nerve within the JSC.

According to a [Weekend Argus](#) report, he told JSC members he had previously withdrawn his candidacy because he didn't trust the body following its handling of the complaint against Western Cape Judge President John Hlophe. The report notes Nugent was being interviewed for a vacancy at the court, along with three other judges - Ronnie Bosielo, Mandisa Maya and Zondo - and was already at a disadvantage being the only white male. In what [Weekend Argus](#) describes as a spirited exchange with commissioners, Nugent suggested the reason people were reluctant to come forward was in part to do with the JSC itself. Nugent said the decision by the SCA, that the JSC had 'abdicated' its responsibility, mirrored his own concerns. 'To come before a body like the JSC, you must trust it,' he said. A series of questions followed, during which Nugent was asked for further clarity. Advocate Ishmael Semanya said: 'The judgment of the SCA said we had abdicated its function. It did not say that the JSC was untrustworthy.' Nugent responded that he did 'not see a distinction'. 'A body must never abdicate its duty,' he added. Commissioner Krish Govender asked what 'perception' would be created by 'a senior judge bringing down an institution by using a word like distrust'. But Nugent was unapologetic, saying only that the JSC should do some introspection. [Full Weekend Argus report](#)

In stark contrast to Nugent, Zondo appeared to have the easiest of the lines of questioning, according to the [Mail & Guardian Online](#) report. Zondo's was the shortest of the four interviews, lasting about 40 minutes, and it appeared a pleasant enough exercise. This while SCA Judge Ronnie Bosielo had performed strongly in a convivial exercise of minds and Judge Mandisa Maya appeared nervous and the JSC cagey around her - perhaps with the growing calls for a woman judge to be appointed at the back of their minds. Zondo, currently acting at the Constitutional Court, was not questioned at any depth on the matter of travel and subsistence claims amounting to almost R1.3m that he received over a period between 2002 and 2007 while he both headed the Labour Court and was posted as a judge of the North and South Gauteng High Court. The matter had been raised by the Johannesburg Council of the Bar, and in his response submitted to the JSC, Zondo stated: 'I had requested the then Minister of Justice, Dr Penuel Maduna, to make the Durban Labour Court/Labour Appeal Court my headquarters and he had done so. By reason of that I was entitled to subsistence and travelling allowance for the periods I spent away from Durban in connection with my work and for short periods spent in Durban as long as my accommodation commitments in Johannesburg remained during the time spent in Durban. That was in terms of the regulations.' Complaints that Zondo had been an ineffective administrator during his stint as Judge President of the Labour Appeals Court, and that he had an inordinately long turn-around time in writing judgments, were dealt with in a perfunctory manner. This, notes the report, was because they had been raised at previous JSC interviews that Zondo had had, which commissioners had transcripts of, Justice Minister Radebe pointed out. [Full Mail & Guardian Online report](#)

Maya told the JSC she had been put under 'tremendous pressure' to make herself available as a candidate for a full-time post, notes a [Sunday Times](#) report. The Women's Legal Resources Trust, International Association of Women Judges, SA Women Lawyers' Association and University of Cape Town Gender, Health and Justice Research Unit all nominated Maya. Maya said she had been intensely lobbied by those who nominated her to make herself available. She said some had felt it would be 'selfish' for women of her 'calibre' not to make themselves available while there was so much talk about the transformation of the judiciary. Bosielo (54), a SCA judge since 2009, was the first to be interviewed. The interview took two-and-a-half hours, with JSC member Koos van der Merwe remarking it was the longest interview for a single candidate in the 16 years that he's been a member of the commission. Issues members focused on included the separation of powers, the independence of the judiciary, access to justice, the controversial Legal Practice Bill and gender representation in the judiciary. Bosielo told the commission that even though progress had been made in ensuring there were black male judicial practitioners on the Bench, it was 'stagnant' when it came to women. [Full Sunday Times report](#)

Inevitably, government's disenchantment with rulings that have gone against it was touched on. Ngoako Ramatlhodi, Deputy Minister of Correctional Services, asked Maya whether the Constitutional Court made decisions that infringed on the executive arm of government. According to a report in [The Times](#), Maya said: 'I am not aware of any judgment where courts encroached on the government. There is a balance not to overstep

authority. I am not aware of any action that has overstepped authority.' Bosielo defended the Constitutional Court, saying it showed restraint in its judgments. 'I adhere to and promote the principle of separation of powers. There is no universal model of separation of powers. The time will come in SA when we find our own model for the separation.' Wits University's associate law professor Morné Olivier, who attended the interviews, said Ramatlhodi's line of questioning showed the government's frustration with the courts. 'Ramatlhodi's questions about the separation of powers reflect the government's frustration with what it considers to be judges' 'overreaching' into the exclusive domain of the executive by 'second-guessing' its policies and decisions.' Ramatlhodi attacked the judiciary last week, accusing a 'minority tyranny' of using the courts to undermine the government. [Full report in The Times](#)

It remains to be seen whether the JSC will recommend all four candidates, because all four showed that they were suitable for appointment, says **Business Day**. It points out the commission took a chance by interviewing only four candidates, because all four had to get a majority yes vote from commissioners before the President could choose a name from those submitted to him. The Constitution states that the commission must prepare three names more than the number of appointments to be made. If one of the candidates was not chosen, the commission would not be able to submit the list to the President and the commission would have to advertise the post for the third time. [Full Business Day report](#)