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Media statement (for immediate release)

JSC proceedings and position of Chief Justice

The Legal Practice Council (LPC) has as its objects the realisation of a transformed legal profession that is accountable, efficient and independent, and the promotion and protection of the public interest. In the pursuit of these objects, the LPC aims to uphold the independence of the legal profession, and to enhance and maintain the integrity and status of the legal profession. Overall, its duty is to uphold the rule of law, the administration of justice and the Constitution of the Republic.

The LPC accordingly supports the decision for an open and transparent process to be followed prior to the selection of and appointment by the President of the next Chief Justice. Interviews conducted by the Judicial Services Commission (JSC) serve the public interest. These interviews provide an opportunity for candidates to display their legal acumen and their ability to deal with pressurized and difficult situations. It also allows the JSC, legal practitioners and the public at large to gauge how the candidate intends practically to approach the constitutionally significant role of the Chief Justice. Moreover, the process allows for candidates to answer to legitimate and serious criticisms and objections to their candidacy, properly raised.

The interviews conducted by the JSC over the period from 1 to 4 February 2022 were particularly significant for their capacity to display the high quality of candidates that can lead a transformed judiciary. The LPC celebrates the fact that the JSC was able to consider four exceptional candidates for the position of Chief Justice, particularly for the ability of the interviews to showcase the breadth and depth of judicial competence and so to breed respect for and confidence in the justice system. The significance of a black woman being interviewed, and ultimately recommended for appointment as the Chief Justice, cannot be understated.

In the circumstances, the LPC regrets that the interview process has been marred by controversy surrounding perceived unfair treatment of certain candidates, the sexist nature of some questions posed and the tone of engagement by and between members of the JSC. The LPC condemns, in the strongest possible terms, the failure of the JSC to adhere to fair procedures.

The rule of law and confidence in the judiciary is undermined when the process fails to achieve the purpose of putting on full display the relative strengths and weaknesses of candidates, or if the interviews are perceived by members of the public as an opportunity to pursue objectives unrelated to the selection of the best candidate. The recommendation of the first black woman for the position of Chief Justice, a woman who has proven her merit, is a moment to be celebrated. It is now undermined by the legitimate criticisms of the interview process that resulted in the recommendation, the very process that ought to have given the public confidence in the outcome. Regrettably, the controversial

nature of the interviews for the position of Chief Justice was not an isolated event, but rather the culmination of a degeneration over time.

The LPC would like to see the development of a Code of Conduct and guidelines for Commissioners of the JSC that would place greater discipline on them as regards the nature of the questions posed to candidates for appointment so as to avoid improper engagement with candidates concerning judgments that they have rendered, *ad hominem* attacks and questions that undermine the fundamental and constitutionally enshrined rights to equality and dignity. Moreover, judicial independence is paramount, and the interview process cannot be one that has the capacity to stifle judicial independence.

The LPC declines to comment on the conduct of particular Commissioners. The LPC has a statutory duty to enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners. Insofar as complaints against any Commissioner that is a legal practitioner have been, or may be received, the LPC will fulfil its disciplinary role. The LPC does wish to make clear its view that personal attacks and name-calling do not constitute an appropriate way of raising criticism against the conduct of Commissioners. Legitimate criticism and engagement in the public domain are the hallmarks of a healthy democracy, and gratuitous insults are not.

Finally, the LPC takes note of issues concerning the appointment of Acting Justices that arose in the course of the interview process. The LPC shall continue to engage with the Minister and the Chief Justice, once appointed, to provide inputs in this regard.

Janine Myburgh
LPC Chairperson