To: The Office of the Chief Justice, National office

Attention: The Secretary - General

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1. In a document dated 19 August 2024, Adv Ngalwana SC penned an objection to the amendment proposed by the Chief Justice in a notice issued and dated 15 August 2024,[the notice addresses robing and dress code by counsel in the Magistrates Court including Regional Court, a practice spanning over a century]. The argument is that the proposed amendment would be irrational, unlawful and therefore unconstitutional. I find the objection to be insuperable and cogent. Ngalwana SC makes the point, *inter alia,* that section 165 of the Constitution, read with section 8 of the Superior Courts Act, 2013, does not confer any power on the Chief Justice to deal with the dress code of legal practitioners. With the permission of Ngalwana SC, which I have obtained, I wish to amplify and embellish the grounds of objection.

2. Given the limited period in which any objection is to be filed [26 August 2024], I make three crisp points. The Legal Practice Act, 28 of 2014("the LPA") has as its purpose, the creation of a single unified statutory body to **regulate the affairs** of all legal practitioners and candidate legal practitioners.[1] The objects of the Legal Practice Council, is amongst others, to regulate all legal

[1] Section 3(c) of the LPA.

practitioners and all candidate legal practitioners.[2] Under Chapter 4, the LPA deals with the code of conduct which applies to all legal practitioners.[3] In the relevant part of the code of conduct, clause 36 provides:

> "36 **Appropriate dress**
>
> *Counsel shall dress appropriately when rendering services to or on behalf of a client"*

3. The norms and standards for legal practitioners fall within the province of the Legal Practice Council. The plain reading of section 3(g) of the LPA impels the conclusion that the regulation of the norms and standards for the legal practitioners is that of the Legal Practice Council. The section reads:

> *"3 The purpose of this Act is to— (g) create a framework for the— (i) development and maintenance of appropriate professional and ethical* ***norms and standards*** *for the rendering of legal services by legal practitioners and candidate legal practitioners;".*

Nothing makes it clearer than where section 6(b)(i) of the LPA reads:

> *"6. Powers and functions of Council — (b)(i) In order to achieve its objects referred to in section 5, and having due regard to the Constitution, applicable legislation and the inputs of the Ombud and Parliament, the Council must— (i) develop norms and standards to guide*

[2] Section 5(c) of the LPA.
[3] Section 36 of the LPA.

the conduct of legal practitioners, candidate legal practitioners and the legal profession;".

4. In the LPA, Parliament reposes the regulation of the legal practitioners, including their dress code on the Legal Practice Council. It is with respect, a power, as pointed out in the objection made by Ngalwana SC, not a power within the remit of the Chief Justice. For this reason, too, the proposed amendment by the Chief Justice, would be irrational, unlawful and unconstitutional.

5. Another point of objection is that the Chief Justice addressed the notice to various structures and not to the legal profession itself. It is manifestly obvious that the notice intends to impact directly to all legal practitioners. As a body of practitioners having a direct interest, it is only fair that their input is solicited and responded to. For this reason as well, the proposed amendment falls foul of a consultation which would be indicated by the direct interest of the legal practitioners. Again, with respect, the proposed amendment is irrational and unconstitutional.

6. Allied to the point of lack of consultation, the law requires that if a decision is to be made adverse to interests of those affected by it, such a decision would have no force of law, if those affected are not advised of the decision and their

input factored in before the decision is made.[4]For this reason alone, the proposed amendment, is with respect, unlawful and unconstitutional.

Adv. IAM Semenya SC

22 August 2024

[4] section 4 (1) of Promotion of Just Administrative Action Act 3 of 2000 provides:

"*In case where an administrative action materially and adversely affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, must decide whether –*

(a) to hold a public inquiry in terms of subsection (2);
(b) to follow the procedures in both subsection (3);
(c) to follow the procedures in both subsection (2) and (3);
(d) where the administrator is empowered by an empowering provision to follow a procedure which is fair but different, to follow that procedure; or
(e) *to follow another appropriate procedure which gives effect to section 3.*"