

# The Chief Justice retires

Jeremy Gauntlett SC  
Cape Bar

**T**HE Hon Mr Justice MM Corbett is expected to step down as the sixteenth Chief Justice of the Republic of South Africa later this year. He has served in that office since 1 February 1989, in the Appellate Division since 1979, and as a judge since 1963. He would ordinarily have retired (on the attainment of what Holmes, JA has engagingly termed the age of statutory senility) on 14 September 1993. On 10 February 1993, however, the then State President, Mr FW de Klerk, announced (after consultation with opposition groupings in South Africa) that the Chief Justice had accepted an invitation to continue in office. His confirmation was welcomed by Mr NR Mandela, then leader of the ANC, "particularly given the wide respect and confidence he enjoys". The then Democratic Party spokesman on justice, Mr Tony Leon, referred to the qualities of the Chief Justice necessary "to bridge the great divide between the old legal and constitutional order and the new".

The extension was initially for one year. It was however announced by the Minister of Justice on 5 June 1994 that the incoming government had requested Chief Justice Corbett to accept a further extension of his period of office until 31 December 1996.

## The early years

Chief Justice Corbett was born in Pretoria on 14 September 1923. His father became Commissioner for Inland Revenue in 1929 and had to commute from Pretoria to Cape Town during the Parliamentary session. As a consequence, the young MM Corbett went to school in Cape Town where he matriculated at the age of just 16 in December 1939. In view of his age, he could not enlist for military service as he wished, and instead secured admis-

sion to the University of Cape Town. He commenced a BA degree. On turning 18 later in 1941, he proceeded to enlist.

Commissioned in the South African Tank Corps, Lt MM Corbett transferred to the First Royal Natal Carbineers and proceeded to Italy as part of the Sixth South African Armoured Division, to take part in the campaign by the Eighth Army of the Allied Forces. He was injured after the capture of Rome and Florence, and boarded out of the army in May 1945. He immediately resumed his LLB degree at the University of Cape Town. He went to Cambridge in October 1946, obtaining a first class in the Law Tripos, whereafter he read for the LLB degree, in which he also obtained a first (in 1948).

On 5 November 1948, MM Corbett joined the Cape Bar. He was very active as a junior counsel and university law lecturer, and also found time for involvement in the work of the War Veterans' Torch Commando in its opposition to authoritarian trends in the post-1948 order. He was a representative of the Cape Western region. The citation to his LLD *honoris causa* degree of the University of Cape Town in 1982 (one of his five such honorary doctorates in law by South African universities, with a sixth shortly to follow) records that a monograph written by him in 1942, *The Truth about the Constitutional Crisis*, "gives an exquisitely clear account of the circumstances surrounding the assault on the entrenched clauses of the South African Constitution".

MM Corbett took silk in 1960 at the age of 37. On 1 February 1963, when only 39 years of age, he was appointed an acting judge of the Cape Provincial



Chief Justice MM Corbett

Division. In 1964 his appointment was confirmed. He commenced acting as a judge of appeal in the Appellate Division in August 1970, and on 1 June 1974, he was appointed a permanent member of the Appellate Division.

## The judge

In his 25 years on the Appellate Division, Corbett JA and then CJ has contributed a large number of decisions which have re-fashioned our law: from prisoners' rights to the right to be heard in administrative law, to income taxation and intricate issues in company law, the law of contract and the law of delict.

At the end of 1986, MM Corbett was due to succeed the Hon Mr Justice PJ Rabie as Chief Justice (when the latter

reached the statutory retirement age of 70). In circumstances which have never been fully explained, it was however evidently decided by the government of the day not to appoint MM Corbett as Chief Justice, but to require Mr Justice Rabie to continue as "Acting Chief Justice" for two additional years (which coincided with the height of the states of emergency, and the legal challenges to it).

In 1979, at a time when it was considered inappropriate by the then order to do so, MM Corbett addressed the Human Rights Conference at the University of Cape Town, and spoke out with remarkable clarity and courage of the need for a new legal order based on human rights. His views in this regard have imbued a number of his judgments. His achievements as a judge are the subject of detailed legal analysis by Professor Ellison Kahn in his autobiographical chapter in a book of essays in honour of MM Corbett, *The Quest for Justice* (1995). Other tributes are to be found in this work. Perhaps their content and tone are best captured in this summary by Lord Steyn, Lord of Appeal in Ordinary, (who had himself been a colleague of Corbett at the Cape Bar):

"In more than thirty years as a judge of the first Instance, a member of the Appeal Court and eventually as Chief Justice, Michael Corbett has

in my view displayed all the qualities which I have described. He has earned the highest tribute. He is a great judge".

Similarly, the late Mr RS Welsh QC writing of MM Corbett and his illustrious predecessor, Sir James Rose Innes (the second Chief Justice of South Africa), wrote this in 1994:

"If he [Innes] were alive today, I think he would be glad to know that, despite all the disruption which we are experiencing, there is at least a hope that this country may be purged of racial discrimination. And if Innes were alive today and could meet his present successor, I am quite sure that they would have much to say to each other and much in common, for they were cast in the same mould".

### Characteristics

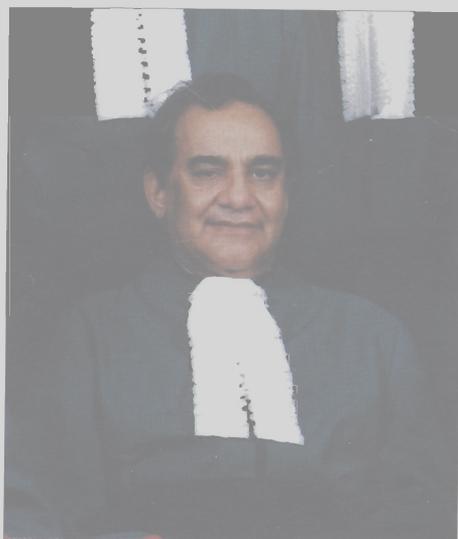
Corbett is generally recognised as one of the finest judges this country has ever produced. Shortly before his death, that dyspeptic observer of the Appellate Division, Professor JC de Wet, remarked that he thought Corbett probably the best judge since Innes. He has been an outstanding legal scholar, writer, advocate and judicial officer. For over three decades, he has sought to uphold the most important legal values which imbue constitutionalism. In recent years, marked by exhausting commitments related to the transition to de-

mocracy, he has borne the heavy administrative and legal burdens of Chief Justice of the Republic of South Africa. His career and person personify the adherence to legal values through the darkest days of repression and his unswerving commitment to judicial excellence in the future.

Perhaps his most striking characteristic as a judge has been his ability to balance detachment and understanding. He has always been punctilious in his control of detail, undistracted and exact: the gift of clear thinking, as one of his colleagues put it in a recent tribute. But his rigour has never been at the cost of a feel for the true inwardness of a case and the needs of the law.

It was said of Harold Macmillan that he could silence the House of Commons with the single droop of a melancholy eyelid. Corbett has this gift too. As measured and unaffected as his prose, his dignity has always pervaded his court, and implicitly required no less of others.

Innes wrote in his autobiography of a belief in intellectual and spiritual honesty, and duty for duty's sake. The Bar will miss the Chief Justice for both. But it would be wrong to bid too comprehensive a farewell: he still plays tennis; he will be active in retirement; and if paternal genes are determinative, we may look forward to another 22 years of his benign influence in our legal life. 



Regter Ismail Mahomed

## Nuwe hoofregter

**M**ET die ter perse gaan van *Consultus* is aangekondig dat regter Ismail Mahomed met ingang Januarie 1997 aangestel is as die nuwe hoofregter van Suid-Afrika.

*Consultus* wil regter Mahomed van harte met die aanstelling gelukwens.

'n Volledige oorsig van sy loopbaan word in die volgende uitgawe gepubliseer.