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Explanatory Note

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*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This matter involved an application for direct access to the Constitutional Court to challenge the constitutionality of a section of the Insolvency Act which provides, in effect, that a liquidator may continue to wind up a close corporation despite the fact that there is an appeal against the order of sequestration. Chaskalson P (speaking for a unanimous Court) found that this case did not warrant the Court exercising its power to permit direct access to the applicants.

The 1996 Constitution empowers this Court to grant direct access to an applicant where it is in the interests of justice to do so. The Constitutional Court Rules provide that direct access is an extraordinary procedure which should only be permitted in exceptional circumstances.

Powerful considerations weigh against any application for direct access. First, it is not generally desirable that matters be brought directly to the Constitutional Court, for the Court is then required to act as court of both first and last instance. In other words, it must hear the matter without the benefit of a decision in a court below and yet must deliver a judgment against which there is no appeal.

Secondly, it is not generally necessary that matters such as the present be brought directly to the Constitutional Court, for both the High Courts and the Supreme Court of Appeal have the power under the 1996 Constitution to declare provisions of an Act of Parliament to be invalid. The applicants would therefore have been able to seek relief in a court other than the Constitutional Court.

Compelling reasons are therefore necessary to persuade this Court that it should grant direct access in a particular instance. These did not exist in the present matter.

24 March 1998