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Explanatory Note

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*The following explanatory note 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 judgment concerns an application for direct access to the Constitutional Court to challenge the constitutionality of the referral rule, which compels advocates to accept work only from attorneys and not direct from the public. The applicant, a senior advocate, breached the rule and was suspended from practice for six months for unprofessional conduct by the High Court in Pretoria. Leave to appeal to the Supreme Court of Appeal (the SCA) was refused last year.

The Chief Justice directed that notice of the application be given to all those with an interest in the legal profession and submissions were received from, among others, the Minister of Justice, Advocates for Transformation and the Law Society of South Africa.

Langa DCJ, for a unanimous Court, explains that direct access is an extraordinary procedure, granted only in exceptional circumstances. The issue the applicant wants to raise was decided in the High Court and, because he failed to appeal the SCA's refusal of leave to appeal, this Court is now asked to deal with the matter as a court of first and last instance. Also, the constitutionality of the referral rule was scrutinised in the *De Freitas* case and, as stated there, the development of the common law, is preeminently one for the SCA to consider.

There are also important disputes of fact relating to the impact of the referral rule on the ability of advocates from disadvantaged backgrounds to establish a practice and to the rule's effect on the cost of litigation. These were not dealt with in the High Court and did not arise in the *De Freitas* matter. If the matter had come to this Court as an appeal from the other two courts, the whole body of evidence which had been before those courts would have been before this Court.

The referral rule is important to the legal profession and the public. Its relevance to the transformation of the legal profession and access to justice is the subject of much debate and has been for some time. It is currently under review in the drafting of the Legal Practice Bill and will presumably be adequately addressed in the resulting legislation.

It is therefore not in the interests of justice for the Constitutional Court to hear the case and the application is dismissed.