CASE NO: 97/92

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

AMALGAMATED CLOTHING AND TEXTILE
WORKERS UNION OF SOUTH AFRICA

APPELLANT

AND

VELDSPUN (PTY) LTD

RESPONDENT

CORAM: CORBETT C.J, SMALBERGER, EKSTEEN, GOLDSTONE JJ.A. et
KRIEGLER A.J.A.

DATE HEARD: 20 SEPTEMBER 1993

DELIVERED: 30 SEPTEMBER 1993

J U D G M E N T

GOLDSTONE JA:

During 1988 negotiations were held between the respondent, Veldspun (Pty) Limited ("the employer"), and the appellant, the Amalgamated Clothing and Textile Workers Union of South Africa ("the trade union"). The trade union represented about 850 of the approximately 1000 weekly paid employees of the employer. The negotiations related to the wages and working conditions of all of those employees. A number of the issues were

settled. Three of them were unresolved and were referred to arbitration. The arbitrator made an award on 5 December 1988.

Only one of the issues determined by the arbitrator is now relevant. It was defined in the written submission to arbitration as follows:

> "2.3 whether the arbitrator can arbitrate cm the introduction of a closed shop agreement and if so, whether a closed shop agreement should become binding on the parties in the event of the Union representing 80% or more of the Company's weekly paid employees by 31 March 1989."

Clause 3 of the submission provided that:

> "The Arbitrator shall have the power to make an appropriate award with due regard to fairness and reasonableness."

The relevant part of the award reads thus:

"3.1 It is competent for an arbitrator to arbitrate on the introduction of a closed shop agreement;

3.2 In the event of the union becoming representative of 80% or more of the company's weekly paid employees by the 31st March 1989, the company shall not continue to employ any weekly paid employee who, while being eligible for membership of the union, does not become a dues-paying member of the union within 90 days of the 31st March 1989 or within 90 days of his commencing employment with the company (whichever is the later) unless such employee authorises the company to deduct from his weekly wage an amount equivalent to the dues payable by union members from time to time and such amount is, upon deduction, paid over by the company to a charity agreed upon between the company and the union.

4. The award made in paragraph 3.2 shall lapse -

4.1 30 days after the company gives the union written notice of the fact that the union' no longer has as members more than 80% of the weekly paid employees of the company, unless within that period the union makes good the deficiency in membership;

4.2 in any event, on the 31st March 1991, unless the parties otherwise agree."

It was that portion of the award that the employer sought to have set aside by the South Eastern Cape Local Division (Kroon J). The application, brought under s 33(1) of the Arbitration Act 42 of 1965 ("the Arbitration Act"), was dismissed with costs. The judgment is reported as Veldspun (Pty) Ltd v Amalgamated Clothing and Textile Workers Union of South Africa and Another 1990(4) SA 98 (SECLD). With leave of Kroon J the matter went on appeal to the full court of the Eastern

Cape Division (Zietsman AJP, Erasmus and Melunsky JJ). That Court (Melunsky J dissenting) upheld the appeal with costs and set aside the relevant part of the arbitrator's award. The judgments which were delivered by each of the three members of the Court are reported, see Veldspun (Pty) Ltd v Amalgamated Clothing and Textile Workers Union of South Africa and Another NO 1992(3) SA 880 (E).

The present appeal was heard pursuant to special leave granted by this Court. As there are already four reported judgments I shall not repeat all the facts. I shall refer only to those matters which are necessary to make the issues discussed intelligible.

On a proper analysis, the grounds which counsel for the employer advanced in this Court for having the relevant part of the award set aside may conveniently be considered under two broad headings. These are:

1. That the arbitrator exceeded his powers by making provision for an arrangement not covered by the submission; and

2. That the arbitrator misconducted himself in relation to his duties by making an award which would:

4.3 constitute an unfair labour practice under para (j) of the definition of "unfair labour practice" in s 1 of the Labour Relations Act, 28 of 1956 ("the Act") as inserted by s 1(h) of Act 83 of 1988 (and prior to its deletion by s 1(a) of Act 9 of 1991);

4.4 be contrary to public policy;

4.5 in its implementation require the employer to commit a criminal offence by contravening certain of the provisions of s 18 or s 19 of the Basic Conditions of Employment Act 3 of 1983 ("the Employment Act").

These two grounds follow from the following provisions of s 33(1) of the Arbitration Act upon which counsel for the employer relied:

"33(1) Where -

4.6 any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator ... or

4.7 an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers ...

(c)

the court may, on the application of any party to the reference after due notice to the other party or parties, make an order setting the award aside."

Before considering these grounds, it is as well to emphasise that the basis upon which a court will set aside an arbitrator's award is a very narrow one.

The submission itself declared that the arbitrator's determination "shall be final and binding on the parties". And s 28 of the Arbitration Act provides that an arbitrator's award shall:

> "be final and not subject to appeal and each party to the reference shall abide by and comply with the award in accordance with its terms."

It is only in those cases which fall within the provisions of s 33(1) of the Arbitration Act that a court is empowered to intervene. If an arbitrator exceeds his powers by making a determination outside the terms of the submission that would be a case falling under s 33(1)(b). As to misconduct, it is clear that the word does not extend to bona fide mistakes the arbitrator may make whether as to fact or law. It is only where a mistake is so gross or manifest that it would be evidence of

misconduct or partiality that a court might be moved to vacate an award: Dickenson & Brown v Fisher's Executors 1915 AD 166 at 174-181. It was held in Dormer v Ehrlich 1928 WLD 159 at 161 that even a gross mistake, unless it establishes mala fides or partiality, would be insufficient to warrant interference.

In the present case the parties referred to the arbitrator the very question as to his jurisdiction to make a determination on a closed shop and they are bound by his finding that he had the power to do so. That the parties were entitled to refer that question to the arbitrator is clear: Heyman and Another v Darwins, Ltd 1942 AC 356 (HL) at 392-3; and see Allied Mineral Development Corporation (Pty) Ltd v Gemsbok Vlei Kwartsiet (Edms) Bpk 1968(1) SA 7(C) at 15 A-B; 16A-17A.

When parties agree to refer a matter to arbitration, unless the submission provides otherwise,

they implicitly, if not explicitly, (and, subject to the limited power of the Supreme Court under s 3(2) of the Arbitration Act) abandon the right to litigate in courts of law and accept that they will be finally bound by the decision of the arbitrator. There are many reasons for commending such a course and especially so in the labour field where it is frequently advantageous to all the parties and in the interests of good labour relations to have a binding decision speedily and finally made. In my opinion the courts should in no way discourage parties from resorting to arbitration and should deprecate conduct by a party to an arbitration who does not do all in his power to implement the decision of the arbitrator promptly and in good faith.

Indeed, in the present case, the result of the attack made by the employer on the arbitrator's award has had the result of making it a brutum fulmen. Its terms would have expired on 31 March 1991. It is for that

reason that the only real issue in this appeal is that relating to costs.

I turn now to consider the grounds upon which the employer sought to attack the award of the arbitrator. Whether the arbitrator exceeded his powers.

This issue turns on the meaning, in the submission to arbitration, of the phrase "closed shop agreement". On behalf of the employer it was contended that this was a reference only to what is known in the field of labour relations as a "hard" closed shop, that is the kind of closed shop where the employee must be a trade union member to be employed. The arbitrator's award, on the other hand, provided for a type of "soft" closed shop, where the employees were required to join the union within a certain period after being employed or to authorise their employer to deduct from their wages

and pay to an agreed charity an amount equal to the trade union's dues.

The closed shop has been the subject of debate for more than a century in most, if not all, of the countries in which there has been a trade union movement.

In Kahn-Freund's Labour and the Law 3 ed 240-242 there is a useful description of what a "closed shop" actually means "because it is in fact a term of many meanings".

One reads there, inter alia, the following:

> "In the first place we must distinguish the pre-entry and the post-entry closed shop (called 'union shop' in America). The pre-entry closed shop is the agreed practice whereby no one can apply for a job unless he is a member of a particular union. ... The post-entry closed shop arrangement imposes no restriction on application for jobs and no condition on the making of the contract of employment, but makes it incumbent on every worker to join the union (or a specified union) within a stated period after having taken up the job: union membership is a term of the

contract of employment, not a condition of its making.

Secondly, we must distinguish between a requirement that the worker should be or become a member of a union in general, and a requirement that he should be or become a member of a union of a particular description (e.g. affiliated to the TUC), or that - the most important in practice - he should be or become a member of a particular union, or -more stringent - of a particular section of a particular union, e.g. Section 1, the skilled section of the Amalgamated Union of Engineering Workers.

Thirdly, as Lord McCarthy has shown ... there is the vital difference between a formal closed shop agreement between a union and an employer or employers' association, and an informal closed shop practice observed by the workers and tolerated by the employer, but not articulated.

Fourthly, there is a distinction which cuts across all the previous categories and is in its way as important as they are. This is the distinction between the open union closed shop and the closed union closed shop. An open union is one which, in relation to a particular

> occupational group, does not restrict the categories of persons whom it will admit to membership, while a closed union is one which does place such restrictions."

In South Africa the closed shop developed when trade unions were first established in the last quarter of the nineteenth century: Report of the National Manpower Commission on the Closed Shop in the Republic of South Africa, RP60/1981 Ch II para 3.1.1 p 12, The effect of a closed shop agreement lay at the heart of the action in Matthews and Others v Young 1922 AD 492. And, the validity of a closed shop agreement at common law was considered in R v Daleski 1933 TPD 47. In the Report of the National Manpower Commission (supra) it is stated that:

> "Security arrangements take different forms, ranging from the strict form of the closed shop binding on both employer and employee to the kind in which the employer merely undertakes when employing workers to give preference to

trade union members or where the employee is not obliged to take up membership but nevertheless has to make some sort of financial contribution. Although the debate in South Africa is mainly about the less flexible arrangement in the form of some sort of closed shop as such, the NMC nevertheless thought it useful to review various kinds of security arrangements, even if only by outlining their main features rather than by detailed discussion. It should be emphasised that only a few of these types of arrangements are found in South Africa." Ch I para 3.4 p 4. (Emphasis supplied.)

The Report went on to discuss the various kinds of closed shop. One of them is the "agency shop" about which the following was said:

"3.10 The agency shop leaves the worker the choice whether he wants to become a member of the trade union or not. Even if he does not accept trade union membership, he is still obliged

to pay the trade union a service fee, which is normally equivalent to the trade union dues. A variation of this type of arrangement allows the non-member to contribute the amount concerned to an agreed charity.

3.10.2 The object of this type of arrangement is usually to meet objections (conscientious, religious or other) to compulsory trade union membership. The fees are nevertheless considered a levy in favour of the trade union for its involvement in concluding and maintaining collective agreements and also serve, it is said, to protect the loyal members against the 'free-riders' who enjoy all the benefits of collective bargaining but do not share in its cost."

It is clear from the relevant literature, both South African and foreign, that the term "closed shop" is a generic one. There are various forms of closed shop.

It follows, in my opinion, that the reference to a closed shop agreement in the submission to arbitration, on the plain meaning of the words, was not limited to the hard variety of closed shop. On this ground alone the contention on behalf of the employer must fail.

If, contrary to the view I have just expressed, it were to be found that the expression "closed shop agreement" is ambiguous, it is clear from the parties' negotiations which preceded the submission to arbitration that the type of arrangement referred to in the award had been contemplated by them. The evidence in this regard was set out and fully considered by Kroon J at 112H-114B; 119B-120A of the reported judgment. I agree with the conclusion expressed by the learned Judge that:

> "In the light of the above and contrary to the allegations made on behalf of the applicant, the probabilities point strongly, if not overwhelmingly, to the parties having intended the alternative proposal to be included within

> the concept of 'closed shop' submitted to the second respondent [the arbitrator] for arbitration." (at 120 A).

It is also relevant in this context that the only reason advanced by the trade union, during the negotiations, for wishing to have a closed shop was in order to deal with the problem of the "free-rider", (which is referred to in para 3.10.2 of the Report of the National Manpower Commission cited above).

Furthermore, as also pointed out by Kroon J, (at 120E), when the alternative of a soft closed shop was raised in argument before the arbitrator there was no objection made by the employer, Finally, with regard to this ground, it should be remembered that the employer sought final relief on motion and could only succeed if the facts stated by the trade union together with the admitted facts in the employer's affidavits justified the

relief sought: Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984(3) SA 623(A) at 634 H-I.

It follows, in my opinion, that the arbitrator in making his award did not exceed his powers and this ground for setting it aside must fail.

Whether the arbitrator misconducted himself.

The broad submission made on behalf of the employer is that where an award is itself contrary to

public policy or where, in implementing it one or both parties would be obliged to commit a criminal act, then in making such an award the arbitrator was guilty of misconduct in relation to the proceedings. Such an award would therefore fall to be set aside under the provisions of s 33(1)(a) of the Arbitration Act. The trade union's counsel conceded that that would be the consequence in the case of criminal conduct being required in the implementation of, an award. He made no similar

concession in the case of an award being contrary to public policy.

On the face of it there would appear to be force in the submission made by the employer's counsel. However, in view of the conclusions I have reached in this case it is unnecessary to express a firm view on these interesting questions. I shall assume in favour of the employer that in both cases making such an award would constitute misconduct by the arbitrator and that it could on that ground be set aside by the court.

Unfair Labour Practice

Prior to the substitution of para (x) in s 24(1) of the Act by s 6 of Act 51 of 1982, there was no reference in any South African statute to closed shop agreements. The effect of the substitution was to make provision for forms of closed shop in industrial council agreements. It is unnecessary now to consider the detail

thereof, save that such an agreement could be made binding by the Minister of Manpower even in the face of objection from interested parties if he deemed it expedient to do so: s 48 of the Act.

At that time, therefore, the position was that closed shop agreements were lawful at common law: R_____v Daleski (supra) and forms of closed shop had statutory recognition.

Then section 1(h) of Act 83 of 1988 added para (j) of the definition of "unfair labour practice" in s 1 of the Act. It read as follows:

> " 'Unfair labour practice' means any act or omission which in an unfair manner infringes or impairs the labour relations between an employer and employee, and shall include the following:

> (j) subject to the provisions of this Act, the direct or indirect interference with the right of employees to associate or not to associate, by any other employee, any trade union, employer, employers' organisation, federation or members, office-bearers or officials of that trade union, employer, employers' organisation or federation, including, but hot limited to, the prevention of an employer by a trade union, a trade union federation, office-bearers or members of those bodies to liaise or negotiate with employees employed by that employer who are not represented by such trade union or federation."

As already mentioned, that provision was deleted from the Act by s 1(a) of Act 9 of 1991.

It was submitted on behalf of the employer that the closed shop provision in the arbitrator's award fell within the terms of para (j). The arbitrator held that

it did not. It may well be that the parties are bound by that decision: see the Allied Mineral Development Corporation case, supra, at 16E-17A. Again, it is not necessary to decide this question in this appeal and I shall assume in favour of the employer that it is not bound by that finding of the arbitrator.

In the ordinary course, the only tribunal which has jurisdiction to consider whether any agreement or conduct constitutes an unfair labour practice is the industrial court. And then it can only do so at the instance of an interested party after there has been an unsuccessful attempt to resolve the matter by conciliation proceedings under s 46(9) of the Act. The question which then has to be determined by the industrial court is not a "question of law" or a "question of fact".

"It is the passing of a moral judgment on a combination of findings of fact and opinions."

Per- E.M. Grosskopf JA in Media Workers Association of South Africa and Others v Press Corporation of South Africa Ltd ('Perskor') 1992(4) SA 791(A) at 798I.

The industrial court does not sit as a court of law, even when it discharges functions of a judicial nature: see South African Technical Officials' Association v President of the Industrial Court and Others 1985(1) SA 597(A) at 612I; Paper Printing Wood and Allied Workers' Union v D.J. Pienaar NO and Others, an as yet unreported judgment of this Court delivered on 23 August 1993 at 5-7 of the typed judgment. It was also held in the last-mentioned judgment that the Labour Appeal Court and the Supreme Court have concurrent jurisdiction to review decisions of an industrial court.

The presiding officers in the industrial court are appointed "by reason of their knowledge of the law" and because they are considered by the Minister of Manpower to be "competent to perform the functions assigned in terms of this Act": s 17(1) of the Act. The industrial court is thus a non-judicial tribunal presided over by persons who have been appointed inter alia because of their knowledge of labour law and practice. It is intended by the Act to have exclusive jurisdiction to determine what constitutes an unfair labour practice and to make a determination in the light thereof. In the ordinary course of events that issue could not come before any court of law save on review, whether under the Act before the Labour Appeal Court or at common law to a provincial or local division of the Supreme Court. In these circumstances I am of the view that a court of law should refrain from deciding whether any agreement or conduct constitutes an unfair labour practice unless

strictly necessary for the decision of the dispute before it. Fortunately, on the view I take of this aspect of the case it is unnecessary to decide the question. I shall assume in favour of the employer that the effect of the award of the arbitrator does constitute an unfair labour practice.

Having regard to the primary obligation of parties to an arbitration to comply with the award, I. consider that counsel for the employer correctly conceded that " even if the award does fall within the definition of unfair labour practice, it would not be struck down by a court of law unless it was inevitable that the industrial court would do so. In my judgment it is not inevitable. Even if the employer, as a party to the arbitration, was entitled to take the matter to the industrial court (which is doubtful) a dispute would first have to be submitted for conciliation to the industrial council, if there is one, or in the absence

thereof, to a conciliation board. (It would obviously be open to an employee who is not a union member to attack the award.) The conciliation process might be successful. For example, it could result in specific employees being exempted from the closed shop provision by agreement between the employer and the trade union. Other solutions are not difficult to conceive. If there is no successful result to the conciliation process, the industrial court might make a determination compelling the parties to accept a compromise which one or both of them were not prepared to accept in the conciliation proceedings.

The point is that the industrial court would not be obliged to strike down the closed shop provision. It has been obliged since the 1988 amendments to the Act to determine disputes concerning unfair labour practices "on such terms as it may deem reasonable": s 46(9) (c) of the Act. That it has the power to strike down an unfair

practice is clear: see Trident Steel (Pty) Ltd v John NO and Others (1987) 8 ILJ 27 at 29D-39D. That it would not inevitably do so is no less clear.

Counsel for the employer submitted that if the industrial court modified the closed shop arrangement contained in the award that would be tantamount to striking it down. I do not agree. It might well be a matter of degree to be considered in the light of the terms of the determination. Public Policy

Counsel for the employer submitted further that the form of closed shop contained in the arbitrator's award, constituting an unfair labour practice, was contrary to public policy and on that ground fell to be set aside. Again I shall assume in favour of the employer that it was entitled to attack the award on this ground; that the form of closed shop contained in the award constituted an unfair labour practice; and that an

award made contrary to public policy constituted misconduct on the part of the arbitrator.

I have already referred to the fact that prior to the introduction of para (j) in the definition of "unfair labour practice" even the hard form of closed shop was not contrary to the common law and was sanctioned by the legislature in s 24(1)(x) of the Act. It was clearly then, i.e. prior to the 1988 amendments to the Act, not contrary to public policy. When para (j) was deleted by the 1991 amendments to the Act, the pre-1988 position was revived. It follows that for the employer's submission to be upheld it would have to be found that the mere introduction of para (j) in 1988 had the effect of making any arrangement covered by its terms contrary to public policy.

I agree with counsel for the trade union that the submission on behalf of the employer confuses public policy with legislative or State policy. Public policy

is far less fickle. In Sasfin (Pty) Ltd v Beukes 1989(1) SA 1(A) at 9A-B, Smalberger JA said that:

> "The power to declare contracts contrary to public policy should ... be exercised sparingly and only in the clearest of cases, lest uncertainty as to the validity of contracts result from an arbitrary and indiscriminate use of the power."

The same approach would apply no less to the power to declare an arbitration award contrary to public policy.

Having regard to the views of leading academic writers on labour law. South African and foreign, the reports of South African commissions of enquiry, and the aforementioned report on closed shops by the National Manpower Commission, it is clear that, from the point of view of the public, closed shop arrangements have both advantages and disadvantages. Whether the former are

outweighed by the latter is a matter of dispute and opinion, and there is no clear or manifest case to be made one way or the other. Even in the United States of America, where so much reverence has historically been paid to the freedoms of speech and association guaranteed by the First Amendment to the Constitution, the Supreme Court has recognised that forms of closed shop, even though interfering with an employee's freedom to associate, are not unconstitutional: Railway Employes' Department, American Federation of Labor v Hanson 351 US 225 (1955); International Association of Machinists v Street 367 US 740 (1960). And, in Abood v Detroit Board of Education 431 US 209 (1976) it was stated by Stewart J, who delivered the opinion of the Court, (at 221-2), that

> "A union-shop arrangement has been thought to distribute fairly the cost of these activities among those who benefit, and it counteracts

> the incentive that employees might otherwise have to become 'free riders' - to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees."

It should be mentioned that the European Court of Human Rights held in Young, James and Webster v The United Kingdom 1981 IRLR 408 that a pre-entry closed shop was hit by Article 11 of the European Human Rights Convention which guarantees, inter alia, freedom of association "including the right to form and to join trade unions for the protection of his interests". It would by no means follow that other forms of closed shop arrangements would also be held to be contrary to Article 11.

These cases illustrate the attitude to closed shop arrangements by courts having the power of judicial review of legislation. Where, as in this country, there

is no constitutional impediment it would be even more difficult to hold, as a matter of principle, that closed shop arrangements are contrary to public policy. This ground of attack must also be rejected.

Criminal Contraventions

The provisions of ss 18 and 19 of the Employment Act, relied upon by counsel for the employer,

are the following:

> "18. No employer shall dismiss an employee ... by reason of the fact ... that that employee -
>
> (a)
>
> (b) has refused or omitted to do any act which the employer required or permitted him to do contrary to a provision of section 19 ...

19. No employer shall -

(a)

(b) do any act or permit any act to be done as a direct or indirect result of which an employee is deprived of the benefit or of any portion of the benefit of any remuneration ... payable or paid;

(c)

4.8 -

4.9 deduct from an employee's remuneration an amount except -

(i) in accordance with a written authority given to him by such employee;

(ii) ..."

On behalf of the employer, the submission was that if it were to implement the closed shop arrangement it would commit an offence:

(a) Under s 19(1)(b) by doing an act as a direct or indirect result of which an employee is deprived of portion of the benefit of his remuneration, i.e. by deducting the amount of the union dues from the employee's weekly remuneration; and

(b) Under s 19(1)(e) by deducting the amount without the written authority of such employee; and

(c) Under s 18(b) by dismissing an employee by reason of the fact that he refused to authorise the deduction from his remuneration in breach of s 19(1)(e).

It is arguable that on a proper interpretation of these provisions the implementation by the employer of the closed shop arrangement would not inevitably be in contravention of any of their terms. The complicated and difficult process of interpreting these ambiguous and unclear statutory provisions is, however, unnecessary in this case. In the first place it is by no means inevitable that the non-union employees would have refused voluntarily to authorise the deduction from their wages.- If they did so authorise the deduction then it is highly unlikely that the employer would be committing any offence under the Employment Act. I do not agree with counsel's submission that the threat of dismissal implicit in the closed shop arrangement would effectively preclude such written authority being given voluntarily. Thus, even if voluntariness must be implied in s 19(1)(e)(i), it is not inevitable that that provision would have been contravened.

But even if the implementation of the closed shop arrangement would have necessitated the employer contravening one or more of the provisions of the Employment Act, the employer would have been entitled to approach the Minister of Manpower under s 34(1) of the Act for an exemption. It is there provided that:

> "The Minister may, for such period and on such conditions as may be determined by him, exempt any employer or category of employers generally or with respect to any particular employee or category of employees in respect of whom this Act applies, from any one or more of or all the provisions of this Act."

An example of an official exemption in respect of a contravention of s 8 of the Employment Act, which places limits on overtime work, is to be found in National Union of Metalworkers of South Africa and Others v Macsteel (Pty) Ltd 1992(3) SA 809(A) at 816 F-G. I

would again emphasize that the employer has a duty to do all it reasonably could in order to implement the award.

It follows, in my opinion, that the implementation of the award would not inevitably have required the employer to contravene any of the provisions of the Employment Act. Thus the final ground upon which the employer relied for establishing misconduct by the arbitrator must also be rejected.

The following order is made:

1. The appeal is upheld with costs, including the costs of two counsel.

2. The order of the full court of the Eastern Cape Division is set aside and is substituted by an

order dismissing the appeal with costs, including the costs of two counsel.

R/J GOLDSTONE
JUDGE OF APPEAL

CORBETT C.J.) SMALBERGER J.A.)
EKSTEEN J.A.) CONCUR KRIEGLER
A.J.A.)