A FUTURE FOR THE DOCTRINE OF SUBSTANTIVE LEGITIMATE EXPECTATION? THE IMPLICATIONS OF KWAZULU-NATAL JOINT LIAISON COMMITTEE V MEC FOR EDUCATION, KWAZULU NATAL

M Murcott

SUMMARY

In this paper I briefly discuss the development of the doctrine of legitimate expectation in South African law, which had left the way open for the Constitutional Court to develop a doctrine of substantive legitimate expectation in KwaZulu-Natal Joint Liaison Committee v MEC for Education, KwaZulu-Natal (KZN JLC). I then discuss the court’s refusal to develop the doctrine in KZN JLC and analyse the approach adopted instead, which saw the court invoke rationality review to create a new legal mechanism for the enforcement of a unilateral, publicly promulgated promise by government to pay on broad public law grounds. I do so from the perspective of whether or not this creative approach amounted to the development of the doctrine by another name. I consider the implications of the creative approach in KZN JLC for the development of the doctrine of substantive legitimate expectation under administrative law in future. Finally I discuss how the creation of a new legal mechanism to enforce publicly promulgated promises to pay was "subversive of PAJA and the scheme in s 33 of the Constitution".

KEYWORDS: substantive legitimate expectation; publicly promulgated promise to pay; rationality.

* Melanie Murcott. LLB cum laude (University of Cape Town); LLM cum laude (University of Pretoria). Senior Lecturer, University of Pretoria. E-mail: Melanie.Murcott@up.ac.za. This paper was originally presented at the Administrative Law seminar of the South African Law Teachers Association Conference in January 2014. I am grateful for the opportunity to have presented the paper, and for the feedback and input of Professors Cora Hoexter, Geo Quinot, Michael Kidd and Hugh Corder following my presentation. I am also grateful for the input of the anonymous reviewers. Errors in the paper are, of course, my own.