

Advokaatskapopleiding

DIE Algemene Balieraad het, soos ons elders breedvoerig in hierdie uitgawe berig, 'n dinamiese nuwe inisiatief van stapel gestuur om die beroepsopleiding van advokate te verbeter deur 'n advokaatskapopleidingsprogram te loods.

Die opleidingsprogram beoog as eerste stap om ervare advokate by elke Balie in die land as advokaatskapdosente op te lei. Met die oog hierop is daar in medewerking met die Balie van Engeland en Wallis 'n groep Suid-Afrikaanse advokate na Engeland gestuur om onder-rigmetodes te bestudeer. Hierna het 'n groep lede van die Engelse Balie Suid-Afrika besoek en is daar opleidingssessies in die groter sentra gehou.

Pupilskap

Die daarstelling van 'n advokaatskapopleidingsprogram is die tweede belangrike verandering wat die praktiese opleiding van advokate raak. Die eerste verandering het in 1973 plaasgevind toe die Algemene Balieraad pupilskap ingestel het. Kragtens die stelsel van verpligte pupilskap moet 'n voornemende lid van die Balie, nadat bewys van goeie karakter voorgelê is en nadat hy/sy as advokaat van die hooggeregshof toegelaat is, 'n pupilskap van vier maande aflê, waartydens hy/sy nie toegelaat word om te praktiseer nie. Die pupil moet werk in die kamers van 'n lid van die Balie, wat as sy/haar meester aangestel is en wat verplig is om die pupil te onderrig. Hierdie onderrig is prakties van aard en word afgerond deur die Nasionale Balie-eksamen van die Algemene Balieraad.

Regsvaardighede

Skeptici voer aan dat die vermoë om 'n advokaat te wees nie deur onderrig oorgedra kan word nie – die hoedanighede wat vereis word om suksesvol die kuns van advokaatskap te bemeester, kan volgens hulle nie soos verbruikersgoedere aangeskaf word nie. Voorstanders van hierdie sienswyse noem gewoonlik die deugde op waarvoor advokate na hulle mening moet beskik – deugde wat verkieslik deur ervaring verkry moet word. Die eindresultaat van hierdie argument is egter dat die advokaat sy vaardighede ten koste van kliënte en die publiek in die praktyk moet verwerf. Hierdie uitgangspunt is nie meer aanvaarbaar nie. Dit is wél so dat verborge bekwaamhede en talent by die beoefening van 'n professie – soos ook in

die besigheidswêreld – bepaal of 'n persoon bloot bekwaam of werklik groots is. Nietemin kan dit nie betwyfel word nie dat die basiese vaardighede van advokaatskap, soos enige ander vaardighede, deur onderrig oorgedra kan word. Dit word lank reeds in die bedryfswêreld en deur ander professies aanvaar dat vaardighedsopleiding voordelig is vir nuwe toetreders, maar ook vir die publiek. Dit volg dus dat advokaatskapopleiding die standaard van die advokatuur sal verhoog.

Ander lande

Deur 'n advokaatskapopleidingsprogram daar te stel volg die Algemene Balieraad soortgelyke tendense in ander jurisdiksies. 'n National Institute for Trial Advocacy is reeds in 1971 in die VSA kragtens aanbevelings van die American Bar Association se Task Force on Advocacy gevestig. Die Canadian Advocacy Society het in 1987 tot stand gekom terwyl die Australian Law Council in 1991 die Australian Advocate Institute daargestel het. In Engeland bied die Engelse Balie reeds geruime tyd opleidingsprogramme aan. Hierdie ontwikkelinge word verwelkom. Dit lewer bewys van hervormingsgesindheid – daar is maniere waarvolgens regsopleiding en die lewering van regsdiens te verbeter kan word.

Dit is 'n uitstekende vertrekpunt vir die Algemene Balieraad om met die Engelse Balie mee te werk en ons is dankbaar vir die hulp wat die Inns of Court Advocacy Training Committee verleen het. Die struktuur van die regsprofessie in Suid-Afrika is grootliks op die Engelse lees geskoei en daarom is dit gepas om eerste na die Engelse voorbeeld te kyk. Tog meen ons dat daar ook met vrug lig opgesteek kan word by ander instellings, soos die Nederlandse Advocatenorde of die Duitse Anwaltsverein. Ontwikkelings in Statebondslende soos Australië en Kanada is moontlik van groot belang en ook tersaaklik in die lig van ons gemeenskaplike koloniale verlede.

Samewerking

'n Laaste gedagte: die mening is reeds gelug dat praktiese regsopleiding, en dus ook advokaatskapopleiding, moet streef na 'n groter mate van gemeenskaplike beroepsopleiding van die verskillende vertakkinge van die regs-

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Advocacy training

THE General Council of the Bar has launched a dynamic, new initiative towards the improvement of the vocational training of advocates by starting an advocacy training programme – on which we report fully elsewhere in this issue.

The first aim of the training programme is to train experienced advocates as advocacy-teachers at each Bar in the country. With this in view, a group of South African advocates, in co-operation with the Bar of England and Wales, visited England to study training methods. This was followed by a visit to South Africa by a group of English barristers and training sessions were held in the larger centres.

Pupillage

The introduction of an advocacy training programme is the second major change affecting the practical training of advocates. The first major change took place in 1973 with the introduction of the system of compulsory pupillage. In terms of this system an applicant for membership of the Bar, upon proof of good character and after being admitted as an advocate of the supreme court, has to serve a pupillage normally lasting four months during which he or she is not allowed to practise. The pupil has to work in the chambers of a member of the Bar who is appointed as his or her master and is obliged to teach the pupil. This instruction is of a practical nature and is followed by the National Bar Examination of the General Council of the Bar.

Legal skills training

Sceptics may argue that the ability to be an advocate cannot be taught – the qualities essential to the successful practice of the art of advocacy cannot be acquired like consumer goods. Protagonists of this viewpoint usually specify the virtues which, in their view, all advocates should possess – virtues which should preferably be acquired by experience. The bottom line of these arguments is that the advocate should acquire his or her skills in practice – at the client's and the community's expense. This viewpoint is no longer acceptable. We agree that hidden qualities and talent in the exercise of a profession – as is also the case in business – will determine the difference between being

just competent and being truly great. But there can be no doubt that the basic skills of advocacy, like any other skills, can be taught. It has long been accepted by other professions that skills training is beneficial for new entrants – and also for the public. It, therefore, follows that advocacy training will enhance the standards of advocacy.

Other countries

In embarking on an advocacy training programme the General Council of the Bar is following similar trends in other jurisdictions. A National Institute for Trial Advocacy was established as long ago as 1971 in the USA as a result of recommendations by the American

Bar Association's Task Force on Advocacy. The Canadian Advocacy Society was established in 1987, and the Australian Advocate Institute was established by the Australian Law Council in 1991. Similar training programmes have been presented by the English Bar for some time. The above developments are to be welcomed. It reflects a philosophy of reform – there *are* ways in which legal education and legal services can be improved.


It has been an excellent starting point for the General Council of the Bar to co-operate with the English Bar and we owe a great debt of gratitude to the Inns of Court Advocacy Training Committee for its assistance. The South African legal profession is largely based on the English model and it is, therefore, fitting that the English example should first be considered. It is, however, our view that it would be useful also to look at other institutions, e.g. the Netherlands Advocatenorde and the German Anwaltverein. Developments in Commonwealth countries such as Australia and Canada are possibly of great importance and also relevant in the light of our common colonial past.

Co-operation


A last thought: the view has already been expressed that practical legal training, and therefore also advocacy training, should aim at a greater degree of common vocational training of the various branches of the legal profession. Court practice and ethics are the most important components of the work of the Bar and of pro-

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regsprofessie. Hofpraktyk en etiek vorm die belangrikste komponent van die werk van die Balie, staatsaanklaers en staatsadvokate. Dit speel ook 'n toenemend belangrike rol in die prokureurspraktyk. Effektiewe regsadministrasie hang ten nouste saam met eenvormige en hoë standaarde, asook 'n streng etiese kode in die howe – standaarde en waardes wat die Balie nog altyd nagestreef het. Daar kan dus ongetwyfeld 'n saak uitgemaak word vir 'n mate van gemeenskaplike beroepsopleiding vir prokureurs, aanklaers en advokate met beter benutting van infrastruktuur en mannekrag. Maar dan moet dit versoenbaar wees met die bestaan van die Balie in sy huidige vorm. Verder, inaggenome die besondere aard en opleidingsvereistes van die Balie, moet die kwaliteit van beroepsopleiding vir die Balie vooropgestel en nie afgewater word nie. 

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secutors and state advocates. It also plays a role of increasing importance in attorneys' practices. The effective administration of justice is very much dependent on uniform and high standards, and also a strict ethical code in the courts – standards and values which the Bar has always supported. No doubt a case can be made out for common vocational training of attorneys, prosecutors and advocates with better utilization of infrastructure and expert manpower, but then it must be reconcilable with the existence of the Bar in its present form. Also, taking into account the special nature and training requirements of the Bar, the quality of vocational training for the Bar must be placed first and not be diluted. 

Ondersteun *Consultus* Support *Consultus*

Consultus is now in its ninth year of publication. It is a professional journal which has established itself as the mouthpiece of the advocates' profession providing information and guidance on developments in the profession and the legal administration.

Any journal must keep up with the trends and developments in its environment and we have, therefore, decided to change the cover and general lay-out. Hopefully these changes will result in improved readability; increased readership and more advertisements.

It is our claim to ensure that *Consultus* retain its status and image as a quality professional journal. New features and articles on topical subjects will be introduced and we invite our readers to contribute to the journal.

Ons nooi lesers uit om veral bydraes oor die volgende te stuur –

- Briewe aan die redakteur/Letters to the editor: Tyd ontbreek dikwels vir die skryf van artikels. U word aangemoedig om u mening te lug oor aktuele/interessante aspekte van die praktyk en die regsadministrasie.
- Baliestories/Bar stories: Humoristiese anekdotes of gebeurtenisse.

- Regsopleiding/Legal education: Nuwe ontwikkelings, voorstelle of kommentaar.
- “Het jy gehoor ...?”/“Have you heard ...?": Beklemtoning van absurditeite of inkonsekwentheid in wetgewing/reëls/regulasies.
- Nuwe produkte/Product update: Tegnologiese en elektroniese produkte vir die regsmerk; verskaf asseblief die name van kollegas wat belangstelling/kennis van die produkte het. Ons kan hulle nader om kommentaar te lewer.
- Forum: Verwittig ons asseblief as u enige voorstelle het oor buitestaanders wat genader kan word om kommentaar te lewer oor aspekte van die profesie en die reg.
- Dagboek/Diary: Verwittig ons as u inligting het oor kursusse, seminare wat vir die profesie van belang is.
- Portfolio: Finansiële beplanning.
- Lewenstyl/Lifestyle: Interessante reise of vakansies of stokperdjies, ens.
- Kommentaar op hofsake, wetgewing, regsontwikkelings.

Ons tydskrif kan slegs van krag tot krag gaan met die daadwerklike ondersteuning van al die lede van die Balie. 