

Nuwe sekretaris



ELIZE van den Heever is was sekretaris van die Algemene Balieraad aangestel met ingang 1 Februarie 1996.

Sy is in Kaapstad gebore en matrikuleer aan Tygerberg Hoër in 1971. Sy doen ondervinding op in die private sektor en sluit in 1985 by die ABR aan. Sy het van September 1992 tot Januarie 1993 en weer van Oktober

1995 tot Januarie 1996 as sekretaris waargeneem.

Elize studeer tans deelyds aan UNISA. Sy woon in Florida Glen en is die ma van drie dogters waarvan twee nog op hoërskool is. As sy nog tyd kry tussen al haar verpligtinge, speel sy graag muurbaal.

Assistentredakteur



LINDA Pelsler, voorheen redaksionele assistent van *Consultus*, is met ingang 1 Januarie 1996 as assistent-redakteur aangestel.

Linda is 'n gebore en getoë Johannesburger wat haar graad aan die Universiteit van Pretoria behaal het. Na 'n aantal jare in die onderwys het sy haar op vertaal- en redigeerwerk begin toespits en onder meer by die VPO en die WNNR gewerk.

Sy is getroud en die ma van drie kinders, twee hoërskoolseuns en 'n dogter in die laerskool. Die gesin woon in Lynnwood.

Linda lees graag en doen wanneer sy enigsins die tyd daarvoor het, naaldwerk.

Legal Forum on access to justice

by M D Southwood SC,
Pietermaritzburg

A citizen's access to justice needs a quick and fair adjudication of his dispute. The application of substantive law in our legal system is an esoteric subject. The citizen therefore needs assistance to get his quick and fair adjudication. This assistance, because of the training required, costs money. The adjudication, to be fair, needs rules to ensure that the truth is not obscured and, in the adjudicator, knowledge of people and the law, analytical ability and a sense of what is fair.

These matters were discussed at a Legal Forum on Access to Justice convened by the Ministry of Justice, paid for by the Swedish Government, attended by approximately four hundred delegates from all over the country and held at the University of Durban-Westville on 17 to 19 November 1995. Although a late, forced, change of venue and the consequent need to transport a

large number of delegates disrupted the published schedule, the schedule was completed. The delegates were grouped into seven groups, called Commissions, each group under a chairperson. Each group discussed several related topics, attempted to reach conclusions and then reported back its conclusions to a gathering of all the delegates.

Lay assessors

Commission No 1 reported that it had accepted the principle that lay assessors should be used in the lower courts and that there should be further discussion about their use in the supreme court. It was felt that there should be further discussion about lay assessors' qualifications, taking into account the value of the wisdom of community people who might be illiterate, against the need to be able to keep notes of evidence, and deal with documents and legal proce-

dures of a complicate, and sometimes protracted, nature. Discussions on these two topics should proceed together. The Commission had some comments on the draft act and regulations and the draft code of conduct for assessors. It said that there should be more consultation with magistrates "in the front line" in settling the act and regulations. More particularly, their views should be sought on whether assessors should be compulsory in all cases and whether they should be fact finders, or purely advisers.

National Attorney-General and court hierarchy

Commission No 2 felt that there should be a national prosecutorial service with a national attorney-general, there should be a comprehensive national policy incorporating uniform prosecutorial standards, selection and appointment procedures for prosecutors, remuneration, marketing the profession and ra-

Mike Southwood SC attended the Legal Forum on Access to Justice on behalf of the General Council of the Bar. The Forum took place at the University of Durban-Westville from 17 to 19 November 1995.

tionalisation. The budget available to this service had to be increased. There had to be a "consultative process in relation to the planning and adoption of a transformation programme". Negative perceptions "which seem to riddle the service need to be addressed". Finally, "measures to achieve representivity and to monitor the process" should be introduced. In relation to access to justice generally, there should be a public education programme, mediation and arbitration should be encouraged, and the street law programme should be established country wide.

As far as the hierarchy of courts is concerned, small claims courts should be established country wide, and the Ministry should consult on establishing civil divisional courts and family courts. On the magistracy, magistrates should be relieved of their administrative functions as far as practicable and the Magistrates' Commission and Act need to mirror the structure and functioning of the Judicial Services Commission. As far as the state attorney is concerned, there ought to be transparency in the application of the rationalisation policy being implemented, its approach to the inculcation of a human rights culture in its operation and its opposition to constitutionally untenable defences should be reconsidered, its briefing policy needed to be reviewed and it ought, perhaps, to be commercialised.

Inquisitorial system recommended

Commission No 3 reported that, within the adversarial system, increased use should be made of inquisitorial methods of solving disputes, for the benefit of unrepresented people. There should be a pilot project "aimed at developing courts which are user friendly" with attached units to inform the public about them. Litigants should be addressed by their names, presiding officers should curtail irrelevant and unduly protracted cross-examination and testimony and postponements should be done administratively. There should be a general campaign to promote class and public interest actions. The problems associ-

ated with sexual offences and child involvement in litigation should be dealt with. The proposals presented by the Court Interpreters and Clerks Association of South Africa ought to be adopted and implemented. Simple language should be used, and drafters trained to use it. It said that it was necessary to have an official language of record, but could not resolve how this could be reconciled with the promotion of the use of all official languages where possible. The curriculum at the Justice College should be corrected. It also recommended that judicial training should form part of a legal training. On this, the Chief Justice reported that the Judicial Services Commission is investigating formal judicial education. Sexist and racial language should be eschewed in Court proceedings. The balance had moved in favour of accused and it needed to be shifted back in the direction of victims and witnesses.

Legal aid

Commission No 4 recommended that the legislation governing the Legal Aid Board should be immediately amended to incorporate payments for representation by paralegals and university legal aid clinics. The pre-paid tariff project should be incorporated into the legal aid legislation in the medium term. The pro deo system needed to be brought under legal aid and a special roster of practitioners compiled. Contingency fees needed to be considered. The Legal Aid Board needed to be given power to fund the work of legal aid clinics. The Legal Aid Board needed to be allotted a special budget for it to enquire into and formulate a policy for free legal services to poor people, and it should conduct, its activities in a transparent and accountable manner. The means test for legal aid should be reviewed. It recommended that the Ministry of Justice should establish a working group to assess the current performance of the Legal Aid Board and the provision of legal services. It recommended also that the expansion of the public defender system should be undertaken and that there should be a "red line

telephone system" to ensure that detained people have access to legal advice quickly. There should be a mechanism to ensure the accountability the Legal Aid Board. Zero rating of legal services should be considered. Litigants ought not to have adverse awards of costs against them when they bring civil actions against the state, especially, for personal injuries.

Paralegals

Commission No 5 said that paralegals should have rights of audience, that there should be a national paralegal training institute, that funding levies for this should be introduced, such as duties on very large estates, and very large conveyancing transactions. Advice desks should be staffed by paralegals at magistrates' courts.

Dispute resolution

Commission No 6 recommended that the national Working Group for Alternative Dispute Resolution should be reconstructed, funding programmes and training programmes for alternative dispute resolution should be launched, the funds not necessarily coming from government, and there should be a programme to build up the relationship between alternative dispute resolution and formal structures such as courts and government departments. Black divorce courts should not be abolished and the rules under the Family Courts Act should not be passed, but that the whole question of family courts should be reconsidered. There should be an amendment of the Mediation in Certain Divorce Matters Act to apply to all minor children and to build in mediation support. On juvenile courts, there should be reliance on the community as a whole, and mediation should be used. It said that traditional courts were valuable. These courts should be linked to the other courts, and enforcement mechanisms of the traditional court judgments should be created. Where traditional court judgments are subject to appeals, lay assessors familiar with the culture of the specific area and traditions of the area should assist the Appeal Court. Customary law was

not necessarily compatible with the constitution and steps should be taken to research and deal with that incompatibility. Small claims courts should be spread further geographically and should sit on a circuit basis. The sitting times of the small claims courts should be in more suitable hours as people such as labourers and domestic workers, for example, cannot travel, and do not have transport, late at night.

Awareness and educational campaign

Commission No 7 felt that the Ministry should initiate an awareness and educational campaign around the rights of "women, children, aged, disabled, etc," people. The American, Canadian, Australia and Ghanaian legislation should be considered to see how disabled persons' rights are looked after. There should be an interim disability unit to study the problem and make recommendations. A task force should be set up to consider policy in relation to victim rights and general treatment of all victims in the justice system. The rights of children should be addressed to give children access to justice. Penalties for child abuse should be made heavier. The

Justice Department should identify and publicly state which office and which people will concern themselves with the issue of physical and sexual crimes against women. The Justice Department should participate in forums promoted by the "Broader Violence Against Women Movement". There should be a special court for sexual offences along the lines of the Wynberg Sexual Offences court. There should be services for women survivors of physical and sexual violence.

Funding of legal assistance

Before the final reporting, the Minister of Justice pointed out that the Forum was to "Try to develop an understanding as to the general feeling of role players with regard to the various issues we have discussed". This the Forum did, as can be seen from the summaries of the Commissions' reports. The writer would suggest that in many respects the topics for discussion covered the whole already much discussed legal system and that there could, with some benefit, have been a focusing on topics more closely related to access to justice for the citizen. Here, one topic was under-discussed. That is the funding of legal

assistance. The system can be modified to provide better adjudication, and the bulk of discussion was focused on this aspect. But, legal representation is always necessary and requires money. The qualifications for *in forma pauperis* aid and legal aid are such that a large proportion of the population does not qualify, and does not therefore have effective access to adjudication, no matter how good it is. The Bar councils and the Associations of Law Societies have attempted to alleviate the position of the people too rich to be legal aid clients but not rich enough to afford litigation, by relaxing their rules on contingency fees and fee instalment agreements, but this is just scratching the surface of the problem. Perhaps a deeper impression can be made by allowing legal aid in deserving cases, not on an all or nothing basis as at present, but on a sliding scale designed to supplement to a greater or lesser extent a litigant's or accused's lesser or greater means. This will not cure the problem of lack of funding, however, because such a scheme would, in itself, need extra funds. This question needs concentrated attention, and perhaps, half a forum for itself. 

The draft constitution: the courts and the administration of justice

THE General Council of the Bar was represented by A P Blignault SC and B M Griesel SC of the Cape Town Bar at the recent meeting with the Constitutional Committee of the Constitutional Assembly.

During this meeting the branches of the legal profession gave their views on Chapter 6 of the working draft of the Constitution. Chapter 6 deals with the courts and the administration of justice. 

Regsopleidingforum: Vrystaat

DIÉ regsopleidingforum wat op 29 November 1995 by die Universiteit van die Oranje-Vrystaat gehou is, is namens die Algemene Balieraad van Suid-Afrika bygewoon deur Jannie Lubbe SC.

Hy meld dat daar niks nuuts voortgespruit het uit hierdie forum nie. Dit was grootliks 'n herhaling van punte wat voorheen gemaak is. Daar was egter redelike konsensus dat 'n minimum van vier jaar studie (teorie) en een jaar prakties as vereiste moet geld vir die LLB-graad.

Geen finale besluit is geneem nie en 'n kleiner werkgroep is aangestel om die saak verder te ondersoek en aanbevelings te doen. 