

IBA Conference, Berlin, October 1996

Malcolm Wallis SC, chairman of the GCB

PETER Hodes SC and Malcolm Wallis SC attended the conference on behalf of the General Council of the Bar. It was preceded by a conference on human rights (see page 29 of this issue).

The principal feature of the formal meeting was the election of new office bearers for the IBA for the forthcoming two years. They are Desmond Fernando PC (Sri Lanka), President; Dr Klaus Böhlhoff (Germany), Vice-President; Francis Neate (England), Treasurer; and Dianna Kempe QC (Bermuda), Secretary General.

Barristers' Forum

The principal initiative arising from the conference flowed from discussions between myself, Frank Clarke QC representing the Irish Bar and Andrew Hardie QC, Dean of the Faculty of Advocates in Scotland and myself. We had noted that a large proportion of the activities of the IBA relating to the practice of law focused upon its practice in the context of what we would regard as firms of attorneys.

There is no separate discussion of the problems of practitioners who, like the Bars in various countries including our own, practise as a referral profession. From these discussions sprang the idea of establishing under the auspices of the IBA a Barristers' Forum where organisations representing advocates and barristers who practise on a referral basis could meet and discuss problems, changes to the profession, training and other initiatives.

Subsequently I discussed this with the chairman of the English Bar, David Penry-Davey QC, and the incoming president of the IBA. Some correspondence has passed amongst the interested parties since the conference and the establishment of such a forum, initially on an informal basis, has been approved by the IBA. I have

been invited to act as chairman of that gathering together with Robert Owen QC, the new chairman of the General Council of the Bar of England and Wales. It is hoped that the first meeting of this body will take place at the 50th Anniversary Meeting of the IBA in New York in June 1997.

Training

A characteristic of the conference was the increasing stress on matters concerning broad human rights and constitutional issues.

There is also an increasing focus on training for the legal profession, the function of universities and the like. Insofar as training is concerned, the universal view is that the profession needs to be involved in and take responsibility for some elements of practical training of members of the legal profession.

There are differing views as to the extent to which such training can properly be given or should be given at universities. Some academics adopt the approach that practical training of legal practitioners is not their concern at all. This appears, however, to be an extreme position and the more general view is that some elements of practical training can and should take place in the universities at least to place the academic portion of the legal programme in an appropriate context. However, once the student emerges from the university there is general acceptance that the profession should be involved in practical training almost invariably as far as I can see with an examination component and some control, as a result thereof, over admission to the legal profession.

This is particularly interesting and relevant in the context of the debate in South Africa at present over changes in education for legal practitioners.

Discrimination in legal practice

The other element which I found of particular interest were the sessions on discrimination in legal practice. These flowed from a questionnaire which had been circulated to Bars around the world concerning their policies on issues of discrimination.

To the South African lawyer two things are of particular interest from these discussions.

The first is the extent to which various forms of discrimination, particularly on grounds of race and gender, remain endemic. It is clear that these are problems with which the legal community internationally is going to have to continue to grapple for some time to come.

The second element was the debate over the usefulness and value of codes of conduct directed at avoiding gender and racial discrimination in the course of practice. The South African Bar does not have such a code, although the English Bar and, as far as I could gather, most other associations of lawyers, particularly in Europe and North America do. Since my return to South Africa I have had discussions with various people on the potential usefulness of such a code in South Africa. Those discussions have revealed a variety of areas where discriminatory practises may exist - particularly of the type known as environmental discrimination - and I think it will be necessary for the GCB to consider these questions in the future and decide what approach we should take in that regard.

Our attendance at the conference was, I think, valuable and useful. The contacts which were made there and the ideas generated from participation in the debates are a useful spur to new and creative thinking about the functioning of the Bar in this country. 