

Case management: Bar initiatives

Peter Hodes SC
Cape Bar

SOME time ago most common law countries – other than South Africa – recognised that the civil justice system found itself in urgent need of fundamental restructuring in order to make the resolution of disputes quicker, less costly and more efficient. One of the tools employed in the United States of America, Australia and England to address these problems is the system of case management (also known as case flow management).

Problems

The GCB Executive has for a considerable period been aware that the problems experienced in earlier years in other common law jurisdictions have become endemic in South Africa. Several years ago we proposed a system of rule 37 conferences under judicial control as a first step along the path of case management. This eventually led to the Rules Board adopting a pilot rule 37A scheme for the Cape Provincial Division which has achieved moderate success. Its main failing is, however, that the judges do not have sufficient powers in respect of pre-trial procedures and do not have adequate tools at their disposal to compel or penalise the recalcitrant or slothful litigant or practitioner. As a consequence the Cape Bench - in conjunction with the Cape Bar and the attorneys' profession - is in the process of finalising a new rule 37A which promises to be far more effective. It is expected to come into force in August of this year and it is hoped that this will be a precursor to a more comprehensive system of case management throughout the country in the not too distant future.

At its meeting in October 1996 the GCB Executive decided that it was time to take a further lead in attempting to arrest the problems confronting our civil justice system. Clearly the Woolf Report was a further spur encouraging us to take yet another step along the way of ad-

ressing what has developed into an almost intractable problem.

Fortunately, we were aware that Mr Justice David Ipp of the Supreme Court of Western Australia – a former member of the Cape Bar and before that a partner in a large Johannesburg firm of attorneys - would be visiting South Africa on vacation in January of this year. Judge Ipp is an acknowledged expert in the field of case management and has made a major contribution in the recent

in countries such as Australia is an idea whose time has come in South Africa, albeit that it will have to be adapted for local conditions. The views expressed by the visiting speaker were underscored by the address of Mr Justice Gerald Friedman, the Judge President of the Cape Provincial Division, who in no uncertain terms expressed the opinion that the civil justice system is in need of the introduction of case management here as well.



Peter Hodes SC, vice-chairman of the GCB, with Judge David Ipp of Western Australia, guest speaker at the GCB seminar on case management (left), and Malcolm Wallis SC, chairman of the GCB (right).

effective streamlining of civil procedure in his state. He has published and spoken widely on the topic, both at home and abroad.

Seminar

We decided to ask him to be the main speaker at a seminar on case management to be held in Johannesburg on 24 January 1997, the day before a GCB Executive meeting. He was only too happy to oblige. From his address his expertise was readily apparent. The members of the Bar who were present were convinced by his arguments that case management of the type practised

While not everybody at the seminar was unanimous about the introduction of this system in South Africa, those present agreed that this issue should be taken up with the Rules Board without delay. The chairman of the GCB, Malcolm Wallis SC, has since raised the matter with the chairman of the Rules Board, Mr Justice Ralph Zulman. It is our fervent wish that the Board will not only take heed of the case management measures adopted in other common law countries, but follow the lead of the GCB and facilitate the expeditious institution of this system in South Africa. 