

Legal Aid Forum

Report on the Legal Aid Forum which discussed legal aid, training and entry to the legal profession by Johann Gautschi SC, vice-chairman of the General Council of the Bar

THE Legal Aid Forum, convened by the Department of Justice at Kempton Park, was attended on behalf of the GCB by Johann Gautschi SC, Gerrit Grobler SC, Mike Hellens SC and M M Mtyumza. Hilton Epstein SC attended in his capacity as the GCB nominee on the Legal Aid Board.

The well-attended forum debated wide-ranging issues raised by the Ministry's position paper entitled "Enhancing Access to Justice through Legal Aid". Copies of all documents and position papers distributed at the forum were subsequently circulated to all constituent Bars where they are available for perusal of members.

Legal aid

Whilst considerable debate related to administrative matters such as the delayed payment of accounts and to altering the composition of the Legal Aid Board to increase representivity, the underlying concern of the forum was how to provide the best and most cost-efficient manner for the enormous and ever-increasing demand for legal aid with inadequate financial and human resources. Of particular interest to the Bar and the attorneys' profession was the internship proposal in the keynote address of Arthur Chaskalson, President of the Constitutional Court. The thrust of his argument was that legal aid in South Africa was in crisis caused by financial constraints in attempting to meet the right of every accused person to a fair trial. He drew attention to the eight-fold increase in the number of cases financed by the Legal Aid Board over the past nine years. This was straining the financial resources of the State, the Treasury having indicated that the spending must be curtailed given that legal aid has to compete with other basic needs

for a share of the State budget. He supported the following proposals in the Ministry's position paper:

- that the public defender system be rapidly and substantially expanded;
- the phasing of the internship system to become compulsory by the time the new four-year LLB students graduate;
- that representation in civil cases be provided by a mix of the private profession, salaried lawyers and paralegals employed by the Board and other legal aid institutions.

The rationale behind his proposal is to provide legal aid at a cost which is, on average, lower per case than provided by the legal profession under the *judicare* system.

The GCB representatives made it clear that the National Bar Examination was not open for discussion given the insistence of the profession that it be allowed to be self-regulating. They undertook to ask the GCB to consider whether and to what extent the period of internship proposed could serve as pupillage. They also said that the Johannesburg Bar Council would be asked to consider incorporating a system of internship as a pilot project as part of its proposed Johannesburg Bar Legal Aid Clinic.

Concerns

In conclusion the Minister of Justice assured the forum that he had noted the concerns of the advocates' and attorneys' professions that they should be allowed to control entry into their own professions. He said there was no intention to discuss the future of the professions nor entry to the professions without consulting more widely first. For this purpose he had set up a task group to look at the future of the professions. He also recommended *inter*

alia that payment of outstanding accounts be addressed, that management problems at the Legal Aid Board be addressed urgently, that the public defender system be expanded nationwide and that there be an extension of Legal Aid Clinics, including the Transkei.

The Minister also referred to the Department's strategic plan "Justice Vision 2000" and the various areas of transformation which were being looked at. He gave an assurance that further representations would be heard before finalising implementation of the Department's programmes and that this would be dealt with by the task team of the Department of Justice.

The draft 1998 Legal Aid Guide was circulated at the forum and comment invited.

At the GCB exco meeting on 31 January 1998 support in principle was expressed for one year of internship provided it embodies a satisfactory training programme and some flexibility of choice as to the form of legal service bearing in mind the individual's wishes and future career intentions. A sub-committee would circulate draft proposals to constituent Bars for discussion would circulate draft proposals to constituent Bars for discussion as to the basis upon which the Bar could act as an accredited agency supporting an internship programme for aspirant advocates. The GCB is insistent that pupillage, under its aegis, forms part of this one year internship, and that such pupillage takes place at the beginning of the year.

The exco meeting also appointed a sub-committee to make submissions to the Legal Aid Board on the draft 1998 Legal Aid Guide. Pursuant thereto submissions received from constituent Bars were submitted for consideration of the Legal Aid Board. 