

In this issue

This issue contains news items, reports on developments in the profession, and articles which should be of interest to all practitioners.

Reports and news. The chairman of the General Council of the Bar deals in his report with the progress that has been made with transformation at the Bar and the negotiations with Advocates for Transformation. He also critically examines the recent recommendations by the Judicial Service Commission regarding the appointment of new judges. Special mention is made of the GCB's initiative to appoint a task force to consider the pupillage system. In her report the advocacy training co-ordinator deals with the latest news on this GCB project.

Articles. The "new" Trade Marks Act 194 of 1993 is analysed by Mabel Jansen SC, Pretoria, in an article in which she points out some of the intricacies and interpretative problems which lurk in the provisions of the Act. Chris Marnewick SC, Durban, in his article "Civil procedure: access to justice", reviews the new English rules of civil procedure which came into effect recently, and throws out some challenges to the legal profession.

The judiciary. The spotlight has turned on judges – their judgments, personalities, beliefs and work – matters which were unquestioned in earlier times. Not only has the Bench been criticised for its perceived lack of "accountability to the South African nation" (TRC Report), but there has also been outspoken criticism of individual judges and their judgments – see *inter alia* the publicity surrounding the so-called SARFU, Eikenhof Three, and Boesak cases. A prominent political leader went as far recently to state that "...the true mark of their (members of the judiciary who 'served the apartheid system') independence is to find against us."! To crown it all the appointment process of judges is open to public scrutiny and debate, while the process itself has fallen under suspicion – see the GCB chairman's comments in this issue. In the March 1999 issue of *Consultus* the Public Protector also raised pertinent questions on complaint procedures regarding the judiciary.

The question which arises is whether this development is desirable. On the one hand many lawyers are reacting in a knee-jerk manner viewing it as an aberrant development but on the other hand the view is also held that scrutiny is part of our times and is far from unhealthy – public confidence and involvement are regarded as prerequisites to community acceptance of judicial decision-making. Also, it is inter-

esting to note that South Africa does not stand alone. There are many instances where court decisions and individual judges have been singled out for severe criticism in other Commonwealth countries – more recently the political furore caused by the so-called Aborigine land claims decisions in Australia and the Pinochet extradition case before the House of Lords in England.

Balanced, informed and fair comments on and criticism of judges and their judgments can do little harm to the judiciary as, to quote Chief Justice I Mahomed "...The ultimate power of the court must ... rest on the esteem in which the judiciary is held within the psyche and soul of a nation and in the confidence it enjoys within the hearts and minds of potential litigants in search of justice."

Bar and Bench in South Africa are closely related and this journal has for many years devoted a special column to the judiciary reporting on new arrivals on and departures from the Bench, and on matters affecting the Bench. We shall keep the debate on the judiciary alive in a constructive manner. In this issue we publish an interview with one of South Africa's respected and most experienced judges, Mr Justice C F Eloff, who recently, after a span of 25 years as a judge, retired as judge president of the Transvaal Provincial Division of the High Court. 

Prizes for contributions to Consultus

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- The decision of the panel will be final.
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The prize will consist of either a year's subscription to the *South African Journal of Human Rights*; or a year's subscription to the *South African Law Journal (SALJ)*; or a copy of the loose-leaf title *Constitutional Law of South Africa* by Chaskalson, Kentridge, Marcus, Spitz and Woolman with 2 revision services provided free of charge.

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