ter-integrated systems, can of course lead to businesses being seriously hampered in their normal business activities. This will lead to financial loss for the business, be it directly as a result of not being able to supply the normal product or service, or because of losses incurred in third-party relationships. A diversity of legal relationships will be involved and extensive litigation is being predicted. In this instance an example can be put to use to illustrate the point: *The electricity is interrupted in Pretoria for 2 days. A chain store is, apart from not being able to conduct its day-to-day business, subject to burglaries/looting since the security system is not working. It submits a claim to the insurance company, which denies responsibility for Y2K related damages.* It should be mentioned that insurers are advising business clients that Y2K-related damages will not ordinarily be entertained unless certain remedial steps had been taken. However, should insurance-related claims be submitted and denied, a business might consider litigating to recover its damages?

Existing contractual relationships may also lead to litigation should grounds be found to exist to found a claim for breach of contract. The more obvious relationships are those existing between suppliers and developers of software with either individuals or companies; it can also be extended to personnel-related agreements, e g contractors employed for Y2K remedying assignments. It will, for example, need to be established whether the terms pertaining to maintenance of a computer software system included reference to Y2K related problems. This could prove problematic in an existing agreement which had not been reviewed bearing in mind Y2K anticipated problems. Another example of expected problems could refer to a claim instituted to recover damages where, in order to establish causation, many software-related problems will have to be excluded. Another prediction is the very eminent danger of insolvency. In this regard businesses are advised to establish their risk areas since "bad debts" as a result of Y2K problems, constitute one of the biggest threats.

However, actions instituted to recover damages flowing from delict will probably be more prevalent. Negligence would most often lie in conduct by way of *omission*. Of particular importance is the possible liability of company directors and hospitals. Many systems in hospitals function on computer software and if the result of malfunctioning of such systems or software is not obvious enough, one must bear in mind that hospitals may also suffer from business interruptions. This may for instance increase the risk of non-availability of medication, blood, etc.

One must bear in mind that much of the publication on the subject is highly speculative. According to recent media reports, the Y2K compliancy in South Africa is well on track, and South Africa is rated amongst the top ten countries in the world as regards our Y2K compliancy. This certainly seems very reassuring, and hopefully it will result in much less chaos than is being predicted at present.

Endnotes

1 Jinnett, J. 1996. *Legal issues concerning the year 2000 "Millennium Bug"*, http:www.year 2000. com/archive/legalissues. html, p 1.
2 Meagher, E. 1997. *Y2K and our computer dependency*, Westergaard year 2000, p 1.
3 *The year 2000 software crisis: management and legal gauntlet of the millennium*, http:// www.year 2000.com/archive/brief.html, p 1
4 1997. *Explaining the embedded chip year 2000 problem*, Westergaard year 2000, p 1.
5 *Ibid.*, p 1.
6 *Ibid.*
7 Jinnet, J. 1997. *Testimony*, http://www. comlinks.com/gov/jin710.htm, p 2.
8 Campbell, E. 1996-1998. *The Millennium bug and you*, http://www.everything 2000.com/ comp/fpstory.html, p 2.
9 McLeod, D. "As the time bomb ticks...", *Financial Mail*, 19 February 1999, p 86.

Aspects of practice • Praktyksbrokkies

John Middleton
Pretoriase Balie

Hierdie bydrae behels die *Suid-Afrikaanse Hofverslae* en die *All South African Law Reports* vir die tydperk 1 Januarie tot die einde Maart 1999 en die *Suid-Afrikaanse Strafregverslae* en *Butterworths Constitutional Law Reports* vir die tydperk 1 Januarie tot einde Februarie 1999.

Constitutional Court: Practice Direction 2

The following Practice Direction was issued by the President of the Constitutional Court on 17.02.1999:

"1 When an application for confirmation of an order of constitutional invalidity or a notice of appeal against such order is lodged with the Registrar in terms of rule 15, or an application for leave to appeal is lodged in terms of rules 18 or 20, the applicant or appellant shall at the same time provide the Registrar with a note;

(a) setting out the length of the record, or if the record consists of evidence that has not been transcribed, an estimate of the length of the record and the time required for transcription.
(b) whether there are any special circumstances that may require a hearing of more than one day or which might otherwise be relevant to the directions to be given by the President.

2 Where documents, including records, which are longer than five pages are lodged with the Registrar, and such documents are recorded on a computer disk, the party lodging the document should where possible also make available to the Registrar a disk containing the file in which the document is contained, or transmit an electronic copy of the document concerned by e-mail in Wordperfect format (5, 6 or 7) to the Registrar at: courtcases@ concourt.org.za

3 If a disk is made available to the Registrar the file will be copied and the disk will be returned to the party concerned. Where a disk or an electronic copy of a document other than a record is provided, the party need lodge only

13 copies of the document concerned with the Registrar.

4 If a notice or other communication is given by electronic copy in teams of rule 1(4) the party concerned shall forthwith lodge with the Registrar a hard copy of the notice, with a certificate signed by such party verifying the date of such communication or notice.

5 The binding required by rule 19(2) shall be sufficiently secure to ensure the stability of the papers contained within the volume, and where the record consists of more than one volume, the number of each volume shall be marked clearly on the spine of the volume.

6 For the purposes of this direction "party" has the meaning set out in rule 1(1)of the rules of the Constitutional Court."

Hoogste Hof van Appèl: Nuwe reëls

Nuwe reëls vir die Hoogste Hof van Appèl getiteld *Reëls waarby die verrigtinge van die Hoogste Hof van Appèl van Suid-Afrika gereël word*, is in SK 19507 R1523 van 27 November 1998 uitgevaardig.

Die nuwe reëls beslaan 19 bladsye en is almal uiteraard van die grootste belang. Een interessante aspek van die nuwe reëls, egter, is vervat in die nuwe reël 6. Ingevolge hierdie reël word die bekende versoekskrif- of petisieprosedure by aansoeke om verlof om te appelleer na die Hoogste Hof van Appèl met 'n aansoekprosedure vervang. Die nuwe reëls het op 28 Desember 1998 in werking getree.

National Association of Law Societies of South Africa v Law Society of South Africa, General Council of the Bar of South Africa and Others (Unreported judgment of Du Plessis J, delivered 14/10/98, case No 97/18856 TPD)

In this matter the plaintiff, described in the particulars of claim as "the National Association of Law Societies of South Africa, a body corporate with perpetual succession, with its main place of business at 60 Harpur Street, Benoni 1501, Gauteng Province, on behalf of its members in terms of secton 38(2) (sic) of Act 108 of 1996" claimed the following relief:

"Plaintiff prays for an order for declaration of rights in which the following fundamental rights are exercised:

(a) Striking down of Section 7 of Act 74 of 1964.

(b) Striking down Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,12,13,14,15,22,56 and 57 of Act 53 of 1979, due to their inconsistency with the provisions of Section 2 of Act 108 of 1996.

(c) Declaring the Plaintiff to be entitled to function as the Law Society for all its members in terms of Section 18 of Act 108 of 1996 with all the powers as presented by Act 74 of 1964 and Act 53 of 1979 subject to consistency requirements in terms of Section 2 of the Act 108 of 1996.

(d) Ordering the Third Defendant to receive the audit reports from the Plaintiff's members and issue Fidelity Fund certificates through the Plaintiff's office.

(e) Ordering the Fouth Defendant to pass the national legislation within a reasonable period to normalise the legal profession with room for freedom of association of individual practitioners as well as uniform admission and training requirements for all legal practitioners on equal basis.

(f) Allowing the advocates members of the Plaintiff to take instructions direct from the public subject to the rules regarding trust fund accounts.

(g) Allowing the president and two members of the Plaintiff to sit on the Board of Control in terms of Section 28 of Act 53 of 1979.

(h) Ordering each party to pay its own costs in accordance with Section 34 of Act 108 of 1996.

(i) ALTERNATIVELY

Referring the matter to the Constitutional Court for final determination of the fundamental rights under the Bill of Rights of the Constitution Act 108 of 1996."

The Defendants excepted to the particulars of claim on the ground, *inter alia*, that it was vague and embarrassing. In upholding the exception, Du Plessis J (pp 10/11 of the judgment) made the following observation:

"Mr Moloto for the plaintiff contended that the pleadings should be subjected to a less stringent scrutiny than would have been the case in an action other than one based on the Constitution. He argued that that is so because constitutional matters are complex and there are as yet not many precedents to learn from. The submission cannot be sustained: If a case is complex for whatever reason, more rather than less lucidity is required. It is the function of lawyers, and that is what they are trained for, to couch difficult matters of fact and law in intelligible form."

Nathan v Natal Law Society and Another 1999 (1) SA 706 (C)

In this matter the applicant applied for readmission as an attorney of the High Court of South Africa and enrolment as an attorney of the Cape Provincial Division of the High Court.

In the course of granting the application, Van Zyl J made the following observation at 714I -715A:

"In the case of *Ex parte Moshesh (supra)*" (1992 (4) SA 875 (E)) "the Court suggested (at 881E) that, in the case of an application for readmission, where the applicant has previously been guilty of conduct which is incompatible with his fitness and propriety to act as an attorney, 'there is obviously a heavier *onus* on him to satisfy the Court that he is now a fit and proper person'. I do not believe, with respect, that the *onus* in such cases is any heavier than in the ordinary case of an application for admission to the profession. It is clear, however, that this *onus* is not easy to discharge, since the Court will ordinarily not be satisfied with a mere allegation that the applicant has experienced a reform of character sufficient to render him once again a fit and proper person as required by the Act. There will have to be facts put forward to support this allegation. ..."

Nota

Die volgende ongerapporteerde saak wat in die November 1998 uitgawe van *Consultus* bespreek is, is nou gerapporteer: *General Council of the Bar of South Africa v Van der Spuy* 1999 (1) SA 577 (T).