

- needed to be defined, and provision made for another category of exceptions: where the registration with the GCB of approved direct access institutions such as the Legal Aid Board is warranted, for the specific purpose of ensuring access to justice for those who would otherwise be deprived of it.

A third momentous step was the decision to take a fresh and detached look at Bar rules of conduct in their entirety. Several reflect the accumulated patchwork of amendments over the years. Many are capable of being more simply and sensibly stated. The contemplation, delegates made clear, was not necessarily radical change. But the amassing of comparative rules from around the world by the Bar legal teams both for the *De Freitas* appeal and the Competition Commission litigation meant that the Bar was well placed to carry out the overhaul. Former High Court judge and Labour

Court Judge President John Myburgh SC - now returned to practice - was appointed to chair a strong committee (Philip Ginsberg SC (convenor), Willem van der Linde SC, Glenn Turner SC, Euphodia Tsatsi, Hamilton Maenetjie, Lindi Nkosi-Thomas).

A fourth decision was to extend pupillage to ten months. The NBEB has pressed for this for years. The impossibility of giving pupils real practical training while expecting them to master a curriculum, attend lectures and prepare for examinations and undergo advocacy training courses, all within five months, had become a stark reality. The financial burden on pupils arising from extending pupillage caused delegates anxiety. The need for decisive action in administering bursary schemes - both at national and local level - was discussed, and a reconstituted national bursary committee chaired by Gerrit Pretorius SC was

appointed.

Extracts from some of the GCB committee reports tabled at the AGM will appear in the next issue. From these further initiatives on a variety of respects will be apparent. They include provision for language facilitation in pupillage, investigation of greater Bar involvement in pro bono work, and other matters.

The cost-effective GCB secretariat - just three full-time staff members - and the unpaid dedication of Bar members across the country have again resulted in a satisfactory financial position for the national structures. The 2001-2 budget adopted provides for no increase in GCB subscriptions at all - for the third time in the past four years, and despite substantial increases in expenditure on items such as bursaries and advocacy training.

In cold but beautiful surroundings, the 2001 AGM was a committed and inspiring occasion. 

## National Bar Examination Board

*From the report by A Findlay SC, convenor of the board, March 2001*

### November 2000 examination

- A total of 99 candidates wrote the Bar examination after six had withdrawn. Fifty one passed (of whom 15 passed with sufficiently high marks as to be exempted from oral examination). Of those who passed the oral examination, 12 had repeated their pupillage. Of the remaining 48 who failed, 25 failed outright without being invited to an oral examination. Twenty one of those who failed were candidates who had repeated their pupillage. This represents an overall pass of 51,5% which is unfortunately one of the lowest pass rates achieved in recent years.
- The Board was concerned at the low national pass rate and investigated the rate in relation to the individual Bars which reflect the following percentages:-
  - Free State – 100% (only one pupil);
  - Cape – 75%;
  - Natal – 72%;
  - Pretoria – 60%;
  - Grahamstown – 50%;
  - Johannesburg – 35%;
  - Ciskei – 33%;
  - Port Elizabeth – 29%;
  - Transkei – 0%.

- It is a matter of considerable concern to members of the board that the bad national result has come about particularly by reason of the weighting of the overall result when taking into account the Johannesburg figure.
- The reports of the moderators of the written papers also raise certain matters of concern, particularly in respect of:

#### - *Legal writing*

“The marking was very consistent and adjustments were very few indeed. The questions were to my mind reasonable. Pupils should really have taken advantage of what was a relatively easy paper.

What is disconcerting is to find a pupil who is attempting pupillage for about the fifth time, who still finds it difficult to formulate and draft particulars of claim from an uncomplicated set of facts.”

#### - *Civil trial*

“This paper was also extremely straightforward and I compliment all three examiners who marked carefully and maintained a uniform standard. Having said that, I must also sympathise with the examiners. The standard of this examination was atrocious. This will be evident to

the Board from a mere perusal of the marks attained in this subject. My impression is that candidates throughout the country did not adequately prepare themselves for this examination.”

- It is a matter of grave concern to the board that there may well be problems at particular Bars in that pupils may not have received proper training, particularly in the field of Civil Trial. The board requests that the matter be raised with the four Bars whose candidates fared the worst, inasmuch as the problem would seem to be one relating to pupillage and not the examination, in the light of the remaining results.
- A total of 59 attended the orals at the four main centres and, of the pupils who were able to rehabilitate themselves in the oral examinations, some did so remarkably well, succeeding in turning very bad failures into very good passes.

One pupil appealed against a refusal of his oral. The appeal was allowed after consideration by the moderator and myself of previous marks from an earlier pupillage, but unfortunately the pupil, who had undergone five separate pupil-lages, failed dismally in the oral on his weakest subject, namely Civil Trials, where the oral examiners found that his marks should be reduced to 20%.

### General

Nirmal Singh SC (deputy chairman of the GCB) was invited to attend part of the

meeting of the board which included a discussion with Sharise Weiner SC (on behalf of the advocacy trainers). This discussion proved to be both interesting and useful, and led to the following matters which it was felt should be brought to the attention of the GCB, namely:

- Neither the advocacy trainers nor the members of the board feel that the period of pupillage is sufficient to permit pupils to have the benefit of adequate practical experience, properly to go through the examination and finally to undergo adequate advocacy training. The view of those at the discussion was that the GCB should be strongly urged to reconsider its decision not to lengthen the period of pupillage subject to there being a so-called "fast-track" for those pupils. This was supported by feed-back that most pupils, when asked, said that

they felt that the period of pupillage was far too short. De facto, many of the weaker pupils are undergoing at least twelve or eighteen months' pupillage because they have to repeat, whereas the lengthening of pupillage to a period of between nine and eleven months should cater therefor.

- It is furthermore a matter of concern to the board that, notwithstanding past recommendations and requests from time to time that the GCB circulate constituent Bars, it would appear that many pupils are not being limited to two periods of pupillage and only a third or further period, in the light of special circumstances.
- Yet another matter of concern to the board is the fact that some Bars are still permitting pupils to write the Bar examinations when they have not yet been admitted as advocates. Again

this is a matter which the board has previously drawn to the attention of the GCB and it again urges the GCB to circulate the constituent Bars and remind them of the rule which was formulated in this regard. Condonation of late applications for admission can always be granted provided that there is a reasonable explanation for the delay.

## Exco resolutions

The GCB exco resolved as follows at its meeting in March 2001:

- The rule permitting pupils to do two periods of pupillage and a third only in the light of special circumstances should be more strictly enforced, and provincial convenors should be consulted by Bar councils when the question of a third or further pupillage is under consideration.
- The rule that pupils should be admitted as advocates prior to their undergoing the examination must be strictly enforced.
- A letter be addressed to the BLA suggesting that any advocacy training programmes arranged by it should be during periods that do not conflict with the examinations of those pupils who are still undergoing pupillage.
- A Findlay SC be requested to prepare a proposal for consideration by all Bars outlining a suggested restructuring of pupillage. (A sub-committee consisting of Glen Goosen, Sharise Weiner SC and Philip Zilwa was established to explore an action plan for the Eastern Cape.) 

\* This examination reflected (as in the past) a wide range of marks, which I tabulate:

%	Legal Writing	Motion Court	Ethics	Criminal Procedure	Civil Trails
90-99				1	
80-89	3	5	1	9	
70-79	15	9	10	10	2
60-69	22	20	26	28	14
50-59	29	26	32	30	33
40-49	19	17	13	11	16
30-39	5	8	6	7	14
20-39		9	1	1	11
10-19		6			6

## Nairobi conference

*Contributed by Halima Saldulker, honorary secretary of the GCB*

I represented the GCB at the regional conference of the International Bar Association from 25 to 28 March 2001 in Nairobi.

This year's conference on "Law in a Continent in Transition" was organised by the IBA Section on Business Law held under the auspices of the African Forum with the support of the Law Society of Kenya. The conference was opened by the president of Kenya, Daniel Arap Moi. Present at the conference were Dianna

Kempe QC, president of the IBA, Justice Bernard Chunga, chief justice of the Republic of Kenya, the attorney-general of the Republic of Kenya, ministers and justices of the courts of appeals and the high court of Kenya, and Bar leaders from all over Africa.

This was the second regional meeting to be held in Nairobi within five years. A regional conference of the IBA was also hosted in Nairobi in December 1994. Among the main speakers were the president of Kenya, the president of the IBA and the chairperson of the Law Society of Kenya, Raychelle Awuour Omamo. Delegates from all over the world attended the conference, including the past president of the IBA, William Reece-Smith.

The main focus of the Bar leaders'

meeting was the workshop on client protection funds and discussion on current, global and professional issues.

The chair of the Section on Legal Practice's newly established client protection committee, John Moorehouse, who is the executive director of the South African attorneys' fidelity fund, addressed the session on client protection funds at the Bar leaders' meeting. He outlined the history, the purpose, scope and the development of client protection funds from the beginning of the 20th century. Moorehouse made out a compelling case for the establishment of client protection funds. He said inter alia: "The underlying philosophy for these funds is that the legal profession functions by seeking and obtaining the trust of clients. The public is