

Changing the guard

Jeremy Gauntlett SC, chairman of the General Council of the Bar of South Africa

A new national executive leads the GCB as a result of our special general meeting on 28 October 2001 in Johannesburg. The national leadership is now: Jeremy Gauntlett SC (chair); Willem van der Linde SC (deputy), Justice Poswa SC (vice); Patric Mtshaulana (secretary), Fayeza Kathree (assistant secretary); Mabel Jansen SC; Ishmael Semanya SC, Justice Poswa SC, TN Aboobaker SC, Norman Arendse SC and (*ex officio* as NBEB chair) Archie Findlay SC. Three AFT leaders – Poswa, Aboobaker and Arendse – join the national executive as a result of the election.

This is the culmination of the approach agreed at the Winterhoek annual general meeting in July. We wanted to put an end to the debilitating wrangle about governance over the past five years in two phases: by amending the GCB constitution to provide for an expanded executive elected (for the next two years) in terms of a guarantee that not less than half would be Black; and then electing a new national executive in terms of this.

The ten Bars were unanimous that this was the best thing to do. That is not to say that the solution was an easy one. Many of us believed that *any* racial provision had no place in our constitution. Others pointed however to the racial imbalance in the Bar and the need to do something immediate as regards governance about it. Yet others sought a pragmatic resolution – the issue had divided us for nearly five years, the gap needed to be bridged, and the Bar needed to be strengthened at a time of particular challenge.

Just as the constitutional amendment in July was adopted unanimously, so too now has our national executive been elected unanimously. Unity and decisive action are vital to the Bar's survival and growth; it is important that these general meetings have demonstrated both, particularly to those who might prefer to see neither.

Halima Salduker and I have served as the skeleton caretaker executive since July – Haley steps down after serving as assistant secretary then secretary for over six years. Not everything has been achieved that we and those who previously served with us – Nirmal Singh SC, Roland Sutherland SC, Timothy Bruinders and Patric Mtshaulana – would like to have seen happen, but then again strengthening the Bar is a process, not a destination. It has also been a stressful period: when else has the Bar faced simultaneously challenges posed by draft regulatory legislation, the threat of internal division on racial lines, and an attack by the Competition Commission?

My own sense is that all three challenges have ultimately been good for us. Professions are inclined to complacency – even narcolepsy. We have been stirred, if not shaken, by events. The result is a new conviction of the Bar's basic value in our legal system. But we have to remember at all times that societies change, and that institutions which do not keep pace become, in Faulkner's phrase, belated beasts from beyond the ice-age. We would do well to consider this in particular when we look at the results of the reappraisal of our rules by the GCB committee headed by John Myburgh SC.

The immediate challenges for the new leadership are clear. The process of drafting the Legal Practice Bill through a task team broadly representative of the wider profession, and in which the GCB plays a significant role, continues. Indications at this stage of the process are that the profession will retain its essential independence, and that the Bar will indeed continue to exist as a distinct part of it. More, there is every reason to believe that the regulatory body for the wider profession will both be drawn overwhelmingly from it and be independent of government; that the GCB will achieve initial recognition as the body most representative of advocates, and be accredited accordingly; that there will be a fault-line running through the wider profession between those who wish to be free to practise on a non-referral basis (thus taking both instructions and money directly from the public) and those who wish to practise, as advocates, on a referral basis only; that separate and heightened regulatory scrutiny will apply to the former, with "first instance" regulatory jurisdiction for the latter lying with the Bars themselves; that we ourselves shall retain the responsibility of training our new colleagues through the pupillage system.

I have been asked to complete my (third) term of office, leading the new executive. I have agreed to do so, until our next AGM in July next year.

As difficult and demanding as it has been, there have been consolations about serving on the GCB executive during the past three years. One has been the stimulation of professional life at such a challenging time. Another has been the opportunity to propose and implement a number of ideas – from the administrative to issues of legal education and policy matters – which I hope have made a difference. Above all, there has been the friendship and support of so many members, not only those who served on the executive with me, but on the GCB's



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various committees, Bar chairs, and the many individuals who give time and energy when called upon to do so.

I need to say again that without the dedication of Elize van den Heever and her team at the GCB secretariat, and Hennie Mellet as editor of *Advocate*, the GCB could achieve little. Haley Salduker's contribution will be missed, but she continues her important work as GCB representative on the Legal Aid Board.

The greatest satisfaction is seeing a national leadership for the Bar now in place offering not only considerable personal skills and experience, but also the widest degree of representativity in the life of the Bar. For that alone the bad moments have been worth it.

Best moments? Introducing Nelson Mandela QC at our Pretoria AGM in 2000; expanding scholarships; starting a reappraisal of our rules; speaking up for the judges and out on Zimbabwe and other issues; the work on the Bill; forging alliances, at home and abroad; late light on the Bosphorus.

We are not out of the woods yet. The new executive will have its work cut out. A key focus will continue to be the work of our committee on the LPB (Chris Loxton SC, GM Malindi, Fayeza Kathree, Patric Mtshaulana and myself, with particular assistance from Andrew Breitenbach) as the draft Bill heads towards finalisation, Cabinet and parliament.

While difficulties remain, it would seem safe to say (with Mark Twain) that it appears now clear that the rumours of our demise have been greatly exaggerated. 