

- (a) Advocates' briefs;
 - (b) medical and associated professionals;
 - (c) other service providers.
- At a seminar in May 2001 on the commission's data-base by the Human Science Research Council and the Medical Research Council various statistics were made available to us. Although interesting, it did not really take the matter forward one way or another. For example, the Human Science Research Council had found it impossible to make an estimate as to what the cost would be in the event of passengers' claims being uncapped and in the event of a no-fault system being introduced.

Possibly the most interesting development at that seminar were remarks by Mr Sithole who, eloquently, expressed his opinions on "equity." It was obvious to us that he viewed the fuel levy as a premium paid by everybody to cover those who are disabled in an accident or the dependants of a breadwinner deceased in an accident. It was clear that he had no understanding or feeling for the historical evolution of the fund, ie that it was in fact started as a compulsory short-term insurance by drivers against the possibility of them being delictually liable to people injured or killed as a result of the driver's negligent driving.

If we understood his sentiments correctly, the fund would only be liable to look at the injury. The compensation in respect of each injury would be the same, irrespective of the status or actual loss of

that individual. Similarly, the cover to which the dependants would be entitled, would not differ in accordance with their actual loss of support. The compensation would be on a fixed tariff basis.

– From the outset, Judge Satchwell made it clear that she intended to assess the competence of the fund to run its own business.


– At the commencement of the commission, there was a possibility that the Heath Commission would be investigating errant attorneys. Judge Satchwell, because of that, decided not to elicit any evidence relating to the incompetence or dishonesty of the legal profession. After the demise of the Heath Commission, she made some mention to us of getting some sort of information as to how attorneys in general handled the so-called third party matters. In passing, we pointed out to Judge Satchwell numerous ways in which the costs could be dramatically reduced, for example, by implementing a "fast-track" claims system. We furthermore recorded that we had reason to believe that the arbitration experiment in the Western Cape was working very successfully and requested that we be informed by way of a report as to how it was in fact functioning.

– From the outset, and as far back as our representations to the Melamed Commission, we have advocated that on some or other innovative basis, there ought to be a return of the system to the free-market where competition is in fact rewarded.

– One is obliged to take out a crystal ball and to make an educated guess as to what the future holds. In a nutshell, we believe that the Satchwell Commission's recommendations will move the fund more and more in the direction of the manner in which the Compensation Commissioner's claims are dealt with.

**Editorial note:*

The RAF's directive of 26 April 2001 raised serious difficulties which the GCB chairman addressed in a letter to the chairman of the Empowerment and Transformation Committee of the RAF. In his letter the GCB chairman stressed the fact that "... The GCB itself has supported initiatives for a wider briefing of young advocates, precisely with a view to achieving greater representativity as regards race and gender in the membership of the Bar. That the RAF should seek to do so, is accordingly not only understood, but supported." A reformulation of the problem was suggested "[which] ... in a practical way ... on the one hand, meets the concern regarding briefing of newer and under-represented PDC (previously disadvantaged category) members, and at the same time addresses the equally understandable concern of competent and committed white members regarding the wording of the directive ..."

The RAF subsequently withdrew the directive of 26 April and replaced it on 4 July 2001 with a new, and more acceptable, directive entitled "The appointment, instruction and briefing of advocates." 

GCB reports

Professional committee

JC Pammenter SC, Durban, Society of Advocates KwaZulu-Natal

The KwaZulu-Natal Bar is the Professional Committee of the GCB. It dealt with the amendment to GCB Rule 4.29, which was debated at the July 2000 AGM.

The only other matter which was referred to the GCB related to a query raised by the Investigating Directorate : Serious Economic Offences regarding possible conflict of interest situations arising out of appearances at proceedings in terms of section 28 of the

National Prosecuting Authority Act 1998.

The committee's view is that the Uniform Rules of Professional Ethics of the General Council of the Bar do not prohibit members to represent both the "suspect" and "potential State witnesses" in the circumstances referred to. Rule 4.3.2 of the rules prohibits legal representatives of an "... accused person...at any time after the accused person has been arrested or charged and before he has been convicted or acquitted in respect of the charge against him ..." from interviewing a "witness for the prosecution" in relation to such charge without permission of the prosecutor, unless a court orders otherwise. This rule does not apply where a "suspect" has not been arrested or charged.

Notably, section 28(6) of the Act makes no reference to "suspects" or "potential State witnesses" but instead, refers to "any person who is believed to be able to furnish any information on the subject of the investigation ..." Any such person is, in terms of section 28(9) of the Act entitled to assistance by an advocate or an attorney at the examination. Counsel instructed on behalf of more than one such a person will be entitled (and obliged) to represent all of them unless it appears from his instructions that he will be embarrassed, for instance, on account of having been given conflicting instructions. Such cases of potential embarrassment can only be assessed as and if they arise, and on their peculiar facts.

The AGM adopted the Professional Committee's report.