

Response by the Law Society of South Africa

The response by the chairman of the GCB to an editorial in 2001 September *De Rebus* under the heading "Welcome changes from the Bar" was published in 2001 December *Advocate*. At the request of the LSSA their response is also published:

"The General Council of the Bar of South Africa (GCB) has thought it fit to respond extensively to the editorial comment in the September 2001 issue of *De Rebus*. The management committee (mancom) of the Law Society of South Africa (LSSA) is of the view that certain of the matters referred to by the GCB need clarification. Mancom responds only to the undermentioned matters but it does not follow that mancom is in agreement with other statements by the GCB.

The editor of *De Rebus* is criticised for not giving advance warning to mancom of his decision to write about a 'rift' between the GCB and the LSSA. The LSSA has for many years accepted the principle that the editor and editorial committee – to enable them to report objectively on legal issues and even governmental issues – must have independence within the policy framework of the LSSA. The GCB should, therefore, note that it is not expected of the editor to refer his editorial comments to mancom for approval. The principles applicable to ensuring the objectivity and independence of an editor of a publication are, it is hoped, well known to the GCB.

The GCB's response also refers to the divergent views of the GCB and the LSSA on governance structures for the profession. The LSSA welcomes the response from the GCB. The different views of the GCB and the LSSA must be discussed openly and frankly by informed role-players within the justice system and, in particular, all role-players must understand the principles underlying the different views.

It is important to note that both the LSSA and the GCB accept the principle that there is to be a class of people called legal practitioners, all of whom are officers of the court and are admitted by the court. The distinction between admission either as an 'advocate' or as an 'attorney' will be done away with. The LSSA is, however, of the view that – for purposes of an

application for admission and enrolment – the applicant must specify whether the application is sought for admission and enrolment as an 'attorney' or an 'advocate', since a legal practitioner can be admitted only if he has complied with the requirements for registration, which requirements will include a minimum of one year of practical legal training. The distinction between the format of workplace training (articles versus pupillage) will remain.

The LSSA and the GCB both accept the principle that one body should regulate all legal practitioners. There is, however, no consensus as to the powers and functions and even the composition of the governing body. The LSSA favours the concept of a society created by statute and compulsory membership of that society. The GCB, however, favours a statutory body with which all practitioners must be registered but believes that those practitioners can organise themselves in accredited (by the governing body) professional organisations.

In terms of the LSSA model, the governing body may establish regional chapters (sub-structures). The object of the regional chapters is to give effect to the decisions and to serve as the operating arm of the national council (the governing body) in the region concerned. A regional council is to be established in respect of each regional chapter. At this level, it must be ensured that both 'attorneys' and 'advocates' (being referral and non-referral practitioners) are represented. At this level, by way of an example, 'advocates' can organise themselves. It is important to note that the LSSA has through all the discussions indicated that it acknowledges that the members of the referral profession practise differently from the non-referral profession, that the former have certain interests and that they are entitled to organise themselves. It is, however, the LSSA's view that as *legal practitioners* their interests are not so divergent that the governance function of the national governing body should be diverted to accredited professional organisations.

Although the GCB accepts a national governing body, it favours a model where-

by an accredited professional organisation will exercise all governance functions in respect of its members, including discipline, training (pupillage) and assessment for competency. It is the view of the LSSA that the GCB model is flawed in the following respects:

- 1 No unity within the legal profession will be obtained.
- 2 The proposed accredited professional organisations will cause a further fragmentation within the profession. At present, advocates are organised into four fragmented bodies, namely the General Council of the Bar, Independent Advocates, Criminal Law Advocates and Advocates for Transformation. In terms of the GCB's proposal, the profession could become more fragmented.

The independence of the legal profession and the independence of the courts are fundamental and must be acknowledged. The question therefore arises whether the model proposed by the LSSA will affect the independence of the legal profession.

The GCB in its response indicated that it has been supported by the International Bar Association as well as the UN Special Rapporteur on the independence of lawyers and the judiciary. It creates the wrong impression that the model proposed by the GCB is supported by the International Bar Association as well as the UN Special Rapporteur.

It is the view of the LSSA that the independence of legal practitioners and the independence of the courts will not be affected within the model proposed by the LSSA. In particular, the LSSA does not want to be part of a proposal whereby the profession is fragmented into interest groups. The duty of an attorney towards the court is exactly the same as that of an advocate. The ethical conduct of the attorney must be exactly the same as the advocate's. The only difference relates to specialisation. Within the model proposed by the LSSA, the referral profession can either in the training process or by way of continuing legal education ensure that its specialisation is not lost.

It is very important to distinguish in the deliberation process between the protection of minority interests or of minority groupings and the independence of the legal profession." 