

Pupillage

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The purpose of this article is to bring readers up to date with the latest developments regarding pupillage.

The GCB in March of this year appointed a committee tasked with producing a draft pupillage training programme for the one-year pupillage likely to be required by the Legal Practice Bill (the LPB).

The committee consisted of Mpati JA (chair), Findlay SC (National Bar Examinations Board), Weiner SC (Practical Advocacy Training), Brassey SC, Semanya SC, Mtshaulana, Renata Williams, and myself as convenor.

The committee's report and recommendations were presented at the GCB AGM of 25 July 2002. The recommendations were accepted, and the existing committee was asked to oversee implementation of the recommendations.

In the nature of things, most of the recommendations must await (and long may we wait) the promulgation of the LPB, but certain of the recommendations simply have to do with improving the quality of training, and are in the process of implementation already. Below I indicate which recommendations await the LPB, and which are being implemented now.

The committee's recommendations, as accepted by the GCB, are these:

1 Entrance to pupillage

This need not await the LPB and is in the process of implementation.

The recommendations were as follows:

- 1.1 No entrance examination is to be instituted. After considerable thought and debate, it was decided that the advantages of an entrance examination are outweighed by the disadvantages.
- 1.2 Each Bar is entitled to determine a limit to its numbers for pupillage, based on its own capacity. (As a matter of interest, a number of Bars experienced a record number of applicants for the second half of 2002. By and large, those Bars have had to limit the numbers, for the simple reason that there is a limit to training capacity. It would serve no

purpose to take all comers and then give them poor training.)

- 1.3 Each Bar will be expected to subscribe to general guidelines (to be drawn up by the GCB: this is in process) as to the criteria for choosing applicants where numbers exceed limits, which criteria are, it was agreed, to be drawn up on the basis of inter alia the following factors (not necessarily stated in order of importance):
 - (a) University results
 - (b) Relevant previous experience
 - (c) Race
 - (d) Gender
 - (e) Previous pupillage (which, it might be mentioned, might weigh either in favour of, or against, the applicant; so, a pupil who narrowly missed passing and who attended all courses would be more likely to be re-accepted than one who failed dismally).

2 Dates, registration and university involvement

This will await the LPB. It was decided as follows:

- 2.1 A one-year pupillage under the LPB will extend from 15 January to 31 December of any year.
- 2.2 Subject to the individual discretion of each Bar, applications to the individual Bars for pupillage must be lodged by 30th September of the preceding year.
- 2.3 Details of the applications are to be copied to the GCB, and it is recommended that individual Bars conduct interviews with each applicant.
- 2.4 Individual Bars are permitted to levy a registration fee (over and above the examination fee) subject to the right of the GCB to determine a maximum amount.
- 2.5 Individual Bars are encouraged to arrange delegation visits to their local universities in mid-year to inform final-year students about the advantages and disadvantages of joining the Bar, and the practicalities of doing so (cut-off date for registration, costs, availability of subsidies, period and content of pupillage, etc).

3 Lectures

The aim is to implement this aspect of the resolution as soon as reasonably possible. Marion Tanzer of Johannesburg has been

appointed full-time National Training Coordinator tasked with coordinating the whole spectrum of training, viz mentoring, lecturing, practical advocacy training, preparation for the examinations, etc throughout the country.

It was felt that there is a need to standardise lecturing and lecturing materials at all Bars and that to a certain extent the successful example of practical advocacy training's trainer-training method (including the training workshop held in January every year) should be followed.

Marion is working on implementing this aspect of the proposal, which involves the following:

- 3.1 Instituting a system of training lecturers to lecture. In principle, the annual practical advocacy training workshop should be coordinated with an annual lecturer training workshop so as to improve the standard of lecturing and create greater cohesion between practical advocacy training and lecturing.
- 3.2 Study material is to be drawn up on a countrywide basis in all main subject areas.
- 3.3 The emphasis in lectures must be on the practical.
- 3.4 Provision should be made within the curricula of each Bar to hold at least one workshop in legal writing.

4 The curriculum

It was agreed that the present curriculum is satisfactory, save for the following additions:

- 4.1 An additional course and subject is to be introduced in Magistrates' Courts procedure.
- 4.2 Care must be taken to ensure that sufficient training is given in practice management.
- 4.3 Where possible, consideration must be given to a course in practical English. There are sensitivities in this regard, but the proposal is a helpful one.

5 The one-year pupillage programme

- 5.1 When a one-year pupillage system is introduced under the LPB, it will be broken up into the following phases:
 - (a) 15 January to 31 July: mentoring, lectures and basic practical advocacy training;
 - (b) August and September: pupils study for the examinations;

- (c) end of September/beginning of October: NBEB examinations;
 - (d) remainder of October: oral examinations and mentoring to continue;
 - (e) November: advanced advocacy training for those who have passed their examinations;
 - (f) December: wind down.
- 5.2 Pupils will not be granted a certificate without satisfactory attendance at all practical advocacy training courses.

6 Practice supervision system

This will await the LPB. But certain of the recommendations (particularly those referred to at 6.3 and 6.4 below) deserve consideration by individual Bars at this stage already.

The recommendations are:

- 6.1 Reference will be made to pupil mentors, and to pupils. The term "master" is outdated.
- 6.2 One pupil mentor per pupil, subject to the discretion of each Bar to appoint more mentors per pupil.
- 6.3 The GCB is to draft guidelines for pupil mentors as to their responsibilities and functions, which guidelines are to be distributed annually to mentors.
- 6.4 In order to create more cohesion and a higher level of responsibility:
 - (a) Where possible, each Bar is to allocate a silk to an appropriate number of pupils and pupil mentors, the ratio to be determined on the basis of available numbers (e.g. one silk to every six pupils/mentors);
 - (b) the allocated silk is then to assist with the practical training of the pupils allocated to him/her where and to the extent that this is appropriate and practicable;
 - (c) the pupil mentor's certificate is to be co-signed by the particular silk.
- 6.5 Where possible, mentors and mentor-silks are not to be taken from the existing lecturers and trainers.

7 Court appearances of pupils, and other employment

Implementation of this aspect of the recommendation will await the LPB.

The committee recommended as follows:

- 7.1 Pupils are entitled (and indeed encouraged) to appear with their pupil

mentors or other members of the Bar approved by the mentor from the commencement of pupillage.

- 7.2 A pupil may appear independently only in the second six months of pupillage and then only:
 - (a) In unopposed matters;
 - (b) on these conditions:
 - (i) the pupil remains subject to the overall supervision and direction of the pupil mentor;
 - (ii) the presiding judge or officer is informed beforehand of the fact that the pupil is a pupil;
 - (iii) the pupil must in open court when placing himself or herself on record state clearly his/her status as a pupil;
 - (iv) a pupil in accepting a brief must put it on record to the instructing attorney that he/she is a pupil and must ensure that the attorney is fully aware thereof.
- 7.3 Pupils may take up part-time hourly-paid or otherwise casual employment during pupillage, provided that the employment activities are entirely restricted to weekends and/or to week nights from 20h00. Prior permission of the Bar Council is not required in such cases, but each Bar Council retains the right to require individual pupils to limit or terminate part-time activities in the event of these interfering with pupillage.

8 Already-qualified legal practitioners who apply for membership of the Bar

It is envisaged that the LPB will retain for the Bar the right to determine the conditions on which legal practitioners may join the Bar. On the one hand we don't want to make it unnecessarily difficult for already-qualified legal practitioners (i.e. attorneys) to switch to the Bar, but on the other hand we want to ensure proper training bearing in mind the different requirements of being an advocate. A further difficulty the committee faced was the need to slot this group into the fixed one-calendar-year-pupillage under the LPB. It was recommended as follows:

- 8.1 In principle, the period of and programme for pupillage will be the same under the LPB for pupils who have not yet qualified as legal practi-

tioners as it is for pupils who have already qualified as legal practitioners, viz. twelve months.

- 8.2 Provision for partial or complete exemption from this requirement is as follows:
 - (a) No-one may be in any way exempted from any of the requirements of pupillage unless he or she has practised as a legal practitioner for at least four years;
 - (b) a legal practitioner who has so practised for at least four years may (as is the case at present) apply to the Bar Council of the Bar which he/she wishes to join for complete or partial exemption from the requirements of pupillage, subject thereto that:
 - (i) no-one may be exempted from the requirement of having to pass the NBEB examinations;
 - (ii) no-one may be exempted from the requirement of having to satisfactorily attend advanced practical advocacy training (ideally we would have liked to include basic practical advocacy training in this as well, but the obstacle is that in terms of 5 above, basic practical advocacy training takes place in the first six and a half months, and advanced such training only in the eleventh month). 

Referral rule: judgment

On Friday, 6 September 2002 the Supreme Court of Appeal handed down judgment in the matter of *Competition Commissioner v General Council of the Bar of SA* case no 350/2001, 6 September 2002 – unreported. The court upheld the commissioner's appeal in part, in holding that Roos J should not himself have exempted the rule precluding members from accepting briefs with non-members, and the rule precluding members from accepting briefs on contingency without Bar Council consent. Those rules were remitted to the commissioner for reconsideration.

The SCA dismissed the appeal in part, in upholding that Roos J was correct in