

Exco meeting

Consensus on Legal Practice Bill

Contributed by Fayeeza Kathree, assistant honorary secretary of the General Council of the Bar of SA

The GCB's national executive and the leadership of the ten Bars met at Blue Lagoon, East London, on 7-9 March 2003. Foremost on the agenda was the issue of transformation and a meeting with the management committee of the Law Society of South Africa to seek consensus on the Legal Practice Bill and the Road Accident Fund Commission Report, popularly referred to as the Satchwell Commission Report.

Transformation

Pursuant to the Kievits Kroon resolution of October 2002 and the Sandton resolution of November 2002, the committee headed by Norman Arendse SC had been charged to present, for adoption by this meeting, a proposal on practical solutions towards achieving meaningful transformation in the advocates' profession. Arendse SC submitted a detailed report dealing with matters both principled and practical. His proposals were unanimously adopted by the meeting.

Having recognised that housing, support for junior members, briefing patterns, and pupillage were problem areas that require urgent attention, the Arendse committee proposed the following measures for immediate implementation:

The constituent Bars were requested to appoint a person dedicated to ensuring:

- the collation of names and a register of data of seniors and juniors who volunteer to implement the second junior system;
- the collation of names and a register of data of seniors and juniors who implement the one previously disadvantaged junior per annum decision;
- interfacing with established law firms concerning the engagement of previously disadvantaged juniors and the collation of data in that regard;
- interfacing with the State Attorney on the engagement of previously disadvantaged juniors in the work out-sourced by that office, and the collation of data in that regard;
- liaising with the chief justice and judges president regarding the appointment of previously disadvantaged juniors in *amici* briefs, and the collation of data in that regard;
- the recording of groups'/suites' plans for the support for previously disadvantaged juniors in their structure and the collation of data in that regard;

- interaction with the Legal Aid Board to facilitate the payment of junior counsel's fees;
- that serious consideration be given to the reduction of the 60 day period to 30 regarding the payment of fees to juniors between nil-three years;
- that measures be considered to achieve financial support towards rental and infrastructural support for previously disadvantaged juniors.

Pro bono work

Regarding pro bono work, there is at present no structured system for the provision of pro bono services, despite the fact that individual Bars undertake pro bono work on a large scale. A proposal by Gilbert Marcus SC in this regard was unanimously adopted by the meeting. The Marcus Report proposes the creation of a mechanism for the obligatory provision of pro bono work by advocates. Juniors above three years would be obliged to perform a stipulated amount of pro bono work, for instance two days per year. Each Bar is required to establish a pro bono committee to implement the system. The justification for the creation of such an institutionalised mechanism for the obligatory provision of pro bono work by members lies in the GCB's Statement of Intent to provide "access to justice for indigent persons" and the commitment to attain "justice for all according to the Rule of law."

Pupillage

The meeting expressed concern about the high failure rate of pupils from disadvantaged backgrounds who commence pupillage immediately after graduating with an LLB. Accordingly, it unanimously adopted the report by John Mullins SC in which, in line with the Legal Practice Bill, a curriculum for a one year pupillage is proposed. The ten Bars will consider the proposal and the AGM in July 2003 will decide whether pupillage is to be one year starting in 2004. The extended pupillage would offer better training and equip pupils not only to pass the NBEB examination at the first sitting but also equip them better to succeed as advocates.

High court

The magistracy is being mooted as a source of appointment to the high court Bench. The GCB had been requested to consider making an exception so as to permit regional court magistrates from disadvantaged backgrounds who have been admitted as advocates, to commence pupillage without having first resigned. The meeting agreed, subject to such pupils being required to commit to practice at the Bar, should they pass the National Bar Examination Board examination. Should

they fail, they could return to the magistracy not having forfeited years of accumulated employment benefits.

LSSA

The meeting provided an opportunity for the management committee of the LSSA and the GCB's national executive, comprising the full executive committee and the leadership of the ten constituent Bars, to meet for the first time. The discussions took place in a co-operative spirit which it is hoped provides for a new understanding within the profession.

On the issue of the *Legal Practice Bill*, the LSSA and the GCB resolved to set up a joint working committee to identify areas of consensus on current drafts of the Legal Practice Bill. In this regard, public concerns regarding accountability of the wider profession, particularly those who appear in courts but are not at present adequately regulated, could be addressed as a priority by, for instance, legislation to introduce an independent legal ombud. The Minister of Justice would be advised of this progress and be kept informed of the developments.

The LSSA and the GCB agreed that the present system of *road accident victim compensation*, which is based on establishing "fault" (as opposed to the "no fault" recommendation of the Satchwell Commission) is the preferred system, and so resolved to appoint a joint committee to present a joint position to the Parliamentary Portfolio Committee on 19 March 2003.

It was also resolved that a joint committee be appointed to consider afresh *rule 5.11.4* of the Uniform Rules of Professional Ethics which permits members to appear with non-members only with the leave of the local Bar Council.

As regards *transformation*, the LSSA was apprised of the difficulties experienced by juniors from previously disadvantaged groups in sustaining a practice at the Bar. The issue of fixed briefing patterns was discussed. The LSSA agreed in principle to implement the Bar's second junior rule i.e. to brief a second junior of say nil-three years standing from a previously disadvantaged background, when briefing senior counsel or senior juniors. The LSSA will also encourage its members to put in place a policy to spread work more equitably amongst juniors from disadvantaged backgrounds. It was agreed that the problem of briefing patterns be addressed jointly by each provincial society of the LSSA and the GCB by making contact with law firms, corporates, parastatals and government institutions. Finally, it was agreed that a liaison committee be appointed to ensure future meetings between the LSSA and the GCB on areas of common interest.

The annual general meeting of the GCB will take place in July in Cape Town. The Cape Bar will be the host. 