

From the chair's report, 2003-2004

Extracts from the annual report of the chair, Willem van der Linde SC, at the 59th annual meeting of the GCB, Bloemfontein, on 23 July 2004.

Introduction

This year was marked by two major events in the calendar of the South African Bar. First, we implemented the one-year pupillage system for the first time and, second, we hosted the Second World Bar Conference in Cape Town in April.

On the Legal Practice Bill front, members will recall that in the April 2004 issue of *Advocate* I extended an invitation to the Law Society of South Africa to meet so as to attempt once again to resolve the stand-off between it and the Bar regarding the LPB. That invitation was accepted; I revert below to developments since.

The application by the General Council of the Bar for exemption under the Competition Act, which remains in the background pending comments from the Minister of Justice, surfaced again when the former Minister, in the last days before the election, responded to the 'pre-final' position of the Competition Commissioner in a letter in which he rejected almost all the rules that the GCB considered important, noticeably the rule concerning partnerships.

Finally, the year saw the appointment of a new Minister and Deputy Minister of Justice.

During the past year the South African Bar, at the level of the various provincial Bars and also the GCB, was again run solely on the basis of the commitment of members. We have no income other than from subscriptions. Such sponsorships as are made available by benevolent financial institutions are usually earmarked for specific projects. Our appreciation extends to the members who give up valuable time and energy which they could easily spend on more selfish endeavours.

I report below on the progress made in respect of the material events affecting the administration of the General Council of the Bar of South Africa for the year July 2003 to July 2004.

At the Annual General Meeting in Cape

Town in July 2003, the following executive was elected: WHG van der Linde SC (chair), J Poswa SC (deputy chair), N Arendse SC (vice-chair), F Kathree (honorary secretary), R Williams SC (assistant honorary secretary), TN Aboobaker SC, JW Eksteen SC, IAM Semanya SC, SE Weiner SC, and A Findlay SC (*ex officio* as convener of NBEB). H Fabricius SC was elected at the Special General Meeting in Sandton in September 2003.

Membership

The membership of the ten constituent Bars as at 30 April 2004 stands at 1 871. It is made up as follows:

BAR	SILKS	OVER 5 YEARS	UNDER 5 YEARS	NON-CONTR	TOTAL
JOHANNESBURG	118	324	165	63	670
PRETORIA	71	215	101	69	456
CAPE TOWN	65	164	79	33	341
NATAL	43	107	82	1	233
PORT ELIZABETH	5	27	10	2	44
GRAHAMSTOWN	6	16	3	3	28
FREE STATE	7	29	6	5	47
NORTHERN CAPE	0	6	1	-	8
NORTH WEST	2	3	2	2	9
BISHO	-	7	7	-	14
TRANSKEI	1	10	7	3	21
TOTAL	319	908	463	181	1 871

Standing Committees

The following standing committees were again constituted: Advocacy Training Committee: SE Weiner SC (convener); Arbitration Foundation of SA (AFSA): WHG vd Linde SC (GCB director); Bursary Fund Committee: GC Pretorius SC (convener); Editorial Committee – *Advocate*: H Mellet (editor), JJ Gauntlett SC, WHG van der Linde SC, IJ Smuts SC, F Snyckers, L Fichardt, A Gabriel; Finance Committee: RT Sutherland SC (convener), T Bruinders, F Kathree; Human Rights Committee: B Spilg SC (convener); Judicial Service Commission:

M Seligson SC (GCB representative); Laws & Administration Committee (Pretoria Bar): AJ Louw (convener); Legal Aid Board: H Saldulker (GCB representative), P Mokoena (alternate); Pro Bono Committee: GJ Marcus SC; Legal Provident Fund: JL Basson (GCB representative); Legal Provident Society: R Meyer SC (GCB representative); National Pupillage Co-ordinator: A Dickson SC (convener); Road Accident Fund Committee: D A Nesor SC (convener), J F Mullins SC; Standards Generating Body for Legal Education: DE van Loggerenberg SC (convener); South African Qualifications Authority (SAQWA): P Kemp SC (convener).

Transformation

It has again been a central objective of the GCB during the past year to draw more previously disadvantaged individuals into the profession, and to retain them. Pivotal

resolutions were passed in this regard at the October 2002 National Executive meeting, the November 2002 Executive Committee meeting, and the March 2003 National Executive meeting.

This year was concerned with implementing them, and the ultimate overseer was Arendse SC. The nub of the applicable resolutions is again recorded in this year's annual report:

The Arendse committee report resulted in the following resolutions in March 2003:

- Constituent Bars were requested to appoint a person dedicated to ensuring:

- the collation of names and a register of data of senior juniors who volunteer to implement the second junior system;
- the collation of names and a register of data of seniors or juniors who implement one previously disadvantaged junior in a brief per annum decision;
- interfacing with established law firms on the implementation of 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 other Judges President regarding the appointment of previously disadvantaged juniors in *amici* briefs, and the collation of data in that regard;
- the recording of group/suite 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 counsels' fees;
- that serious consideration be given to the reduction of the 60 day period to 30 regarding the payment of fees to juniors 0-3 years;
- that measures be considered to achieve financial support towards rental and infra structural support for previously disadvantaged juniors.

The individual Bars have the responsibility of carrying out these resolutions. The present membership statistics, on a racial basis are as follows:

	WHITE		BLACK		COLOURED		INDIAN	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
Silks	281	10	7	–	7	1	16	2
5 years & more	670	89	58	8	9	4	37	8
Under 5 years	215	69	115	27	15	11	33	28
Non-contributing	68	38	21	5	8	5	4	2
SUBTOTAL	1 234	206	201	40	39	21	90	40
TOTAL	1 871							

General Council of the Bar of South Africa: race and gender statistics as at 30 April 2004

Pupillage

The Pupil Entry School, which was conducted as a pilot project last year from 14-25 July 2003 in Sandton, provided the concept for the one-year pupillage programme. Marnewick SC, who ran the school, designed the programme with input from Dickson SC and Weiner SC.

The Bar contracted with Marnewick to implement the programme as well. This was done after much debate, and the question of whether it could be done by others at a lesser price predictably caused considerable debate. However, it soon became plain that only Marnewick could implement the programme.

Sponsorships were sought but not obtained. Nedcor Bank Ltd is prepared to combine its sponsorships to various Bars throughout the country into one sponsorship for the SA Bar, but neither Johannesburg nor Pretoria was prepared to accede to the request that they forgo their sponsorships.

The reports that have thus far been received are that the programme has been very successful. Whether it will stand the acid test of examination results at year end remains to be seen.

This will also depend on the form that the examination might take, an issue still being debated. Dickson SC, National Pupillage Co-ordinator, and Weiner SC, who have borne the brunt of the implementation in this country, together with Marion Tanzer, are due our gratitude.

I refer to Dickson's report for more detail concerning the implementation. (See page 8 of this issue.)

Second World Bar Conference

South Africa hosted the Second World Bar Conference in Cape Town in April this year. It was, by every account (and there were many), a resounding success. Ultimate responsibility rested on Gauntlett SC who was appointed the Convenor by the Forum for Advocates and Barristers. The programme was comprehensive and attractive; the speakers were of the best quality; and there can be little doubt that the South African Bar was viewed with due respect.

The events culminated in the Truth and Reconciliation Papers delivered on the Wednesday. The Deputy Chief Justice spoke movingly, as did others, including Bizos SC. The Chief Justice's speech on the Tuesday evening at the gala dinner was equally well received, and impressed the foreign guests particularly.

Despite misgivings by some, the conference was also a financial success, due in no small measure to sponsors that were obtained; we again extend our appreciation to them. The surplus (yes) is being used (at least partly) to conduct an Advocacy Training Seminar for advocates from this and other Southern African countries.

Our thanks are due to Gauntlett and his team of mainly Cape Bar members who worked so unflinchingly to produce the result.

Future Bar Leaders Seminar

The second of such seminars is being held in Stellenbosch on 16 and 17 July 2004. The programme focuses on competition issues, and the Cape Bar is assuming responsibility for it. The report will be made at the AGM.

Legal Practice Bill

The history of the discussions between the GCB and the LSSA is recorded in the previous report. Since then the Budlender Report has been lying with the department waiting for further action.

In the April issue of *Advocate*, I invited the LSSA again to discuss with the GCB the possibility of reaching agreement on a draft Legal Practice Bill. That invitation was then also published in *De Rebus*, and I was contacted by the two new co-chairs, Jan Stemmett and Silas Nkanunu. A meeting was arranged, and at it they raised with me issues such as dress in court and mixed doubles.

My attitude was that those were all part of a larger issue, which is whether the LSSA recognised the need for the Bar to be given statutory recognition as an institution in any future Bill.

After some discussion it was agreed that the LSSA would mandate one person to conduct meetings with me in an effort to resolve our impasse on this issue.

Jan Stemmett was mandated, and he and I have met, as I write, on two occasions. Other meetings have also been arranged. Members must be alive to the central issue: the LSSA, although they formally say that they have abandoned the notion of 'fusion', still insist that all legal practitioners should be regulated, statutorily, by statutory bodies on which attorneys and advocates are represented. Their concept is that all rules of ethics should be the same, and should be administered by these bodies.

In the view of the Bar, and of many others, this proposal means the disappearance of the Bar as an institution. This the LSSA dispute; they say they do not mind the Bar continuing to exist, but in no other guise than a voluntary club which has no powers of regulation. It will not have the power to devise its own pupillage system; it will have no disciplinary powers; it will have none of the powers currently exercised by the ten Bars in the country.

The negotiations continue, and I will keep you advised.

Competition Commissioner

Members are reminded that the GCB applied in 1999 for an exemption from the provisions of the Competition Act. The application was refused, or granted in certain immaterial respects. The GCB then applied to review the decision.

The application succeeded in part but failed in part before Roos J in the TPD. The Commissioner appealed and the GCB cross-appealed. The result was that the Supreme Court of Appeal held that the referral rule was the law of the land and could not be 'bent' (as the Commissioner put it), but referred back to the Commissioner the question whether exemption should be granted in regard to the other issues. Thereafter I met with members of his staff on a number of occasions, and we exchanged correspondence. I copied the letters to members.

The upshot was that he copied me last year with some 'pre-final' recommendations. These conclude that all of the substantive rules for which we applied, be refused exemption. By arrangement with me, I reserved comment until the then Minister of Justice had commented. This he did just recently, and I have responded. I have asked Bars to copy my response to all.

In preparing our response, we considered that there were issues that needed to be debated again at the AGM. I have corresponded with Bar leaders in this regard.

National Bar Examinations

The overall results in respect of the past two intakes are as follows:

- June 2003: 150 pupils wrote the NBE – 88 passed; 62 failed; pass rate: 58,67%
- November 2003: 133 pupils wrote the NBE – 83 passed; 50 failed; pass rate: 62,4%

Press statements

The following media statements were issued by the GCB over the past year:

- 10 September 2003: Statement re Judge Benjamin Paradza: constitutional challenge to the Supreme Court of Zimbabwe.
- 16 September 2003: Statement by the Human Rights Committee of the GCB re State closure of the *Daily News* in Zimbabwe.
- 17 September 2003: Statement re withdrawal of charges against Judge Paradza.
- 19 September 2003: Statement by the Human Rights Committee re Zimbabwe Daily News.
- 31 October 2003: Statement re annual awards of the GCB Sydney and Felicia Kentridge Award to Judge Johan Kriegler.
- 9 February 2004: Statement re assault on freedom of expression in Zimbabwe following restrictive media laws controlling local journalists and foreign correspondents.
- 11 May 2004: Statement by the Human Rights Committee re awaiting trial prisoners in Zimbabwe calling upon the government to intervene in the light of a possible extradition to Equatorial Guinea.

General

The Chief Justice invited the Bar, the LSSA, the President of the Supreme

Court of Appeal, the Deputy Chief Justice, and Judge President Ngoepe to a meeting in Cape Town on 3 July. The object was to speak freely about concerns experienced by the professions. The Bar was represented by Tanya Golden, Dumisa Ntsebeza, and me. I raised appointments to the judiciary, the manner in which candidates were treated during interviews, and the comments made by the GCB on candidates. Regarding the treatment of candidates, I was assured that poor treatment was the exception and not justified. Regarding the GCB comments, there was consensus all round that our comment was much better than that received by any other, and was appreciated. Regarding appointments, I raised whether white male advocates need not apply for appointment. The response was that the need for transformation of the judiciary did mean that in some cases white males who might otherwise have been appointed, were not appointed; but that, provided the Bar put up its best candidates, there was no glass ceiling.

The GCB secretariat and committees

As has always been the case, the GCB functions only because of its highly efficient secretariat: its administrative officer, Elize van den Heever, and her colleagues Marietjie Bohme and Susan Molefe.

There are in addition a string of colleagues who deserve mention. I refer to the members of the standing committees, and all the members who responded during the course of the year to requests for assistance. This they did in the highest tradition of the Bar - without demur, immediately, and effectively. I would do many a disservice if I were to mention names, for I am sure to omit some.

The future

I have reported above in as matter of fact a manner as the essential facts permit. There are, however, apart from the multitude of run of the mill matters, the two very significant undertones of the looming Legal Practice Bill, and the Competition Commissioner. I wrote last year that we must realise that the threat to the Bar from those quarters is real, and that the immediate future will undoubtedly test our resolve. That is no less true now than then. ☐