

of retirement annuity policies and life insurance policies which are offered to members. The financial investment performance has been encouraging, although

the economy has experienced a period of market volatility.

As a non-executive director of the two companies, I am able to express my continued

satisfaction with the manner in which the companies have operated during the past year. □

Bursary Committee

*GC Pretorius SC,
Johannesburg Bar*

Gerrit Pretorius SC of Johannesburg and Ig Bredenkamp of Pretoria sat on the Bursary Committee which processed 23 applicants for the second half of 2003. The committee decided to award bursaries to four candidates of whom two decided not to proceed with their pupillage, one was not admitted as an advocate, and one failed the examination. All four applicants had been recommended for bursaries by the representatives of their respective Bars. Three further unsuccessful applicants passed their examinations.

Sixteen applicants applied for bursaries in 2004. Bursaries of R10 000 each were awarded to PI Thole of Free State, R Abrahams of Cape Town, CE Malema of Johannesburg, and ML Mohlahlo and TM Matshidza of Pretoria. Matshidza did not continue with his pupillage and no monies were paid to him. The other

four each received an initial payment of R5 000, with a further R5 000 payable on passing the exam.

The manner in which bursaries are allocated remains unsatisfactory. It appears from the applications that many of the applicants are in dire financial need, yet have little or no legal experience. As always, the committee relied heavily on the recommendations from the various Bars. Despite this, the allocations largely remain a hit-and-miss affair. This is graphically demonstrated by the following: the committee decided not to utilise the balance available for the second part of 2003 as bursaries, but proposed that it be utilised as financial assistance to those unsuccessful applicants for bursaries who later passed their examinations. The committee would like the authority to implement this proposal in cooperation with the various representatives at the different Bars.

What might contribute to a more satisfactory allocation of bursaries would be the allocation of a lump sum to each of the Bars ('block bursaries'), in turn to be allocated by them to deserving applicants.

It seems that the larger Bars (Cape Town, Natal and Johannesburg) all have bursary schemes running which seem to meet, to some degree, the demand. The smaller Bars obviously do not have the capacity.

The extension of pupillage to one year has placed a heavy financial burden on almost all the pupils. The committee could easily distribute R400 000 in bursaries, but until a satisfactory system of determining deserving applicants - who have some chance of successfully practising as advocates - is implemented, the committee cannot justify the increased expenditure.

The committee therefore recommends that the budget for the new year should only be adjusted for inflation. If any additional increase is to be considered, the committee feels strongly that half of the amount of the bursaries be paid to pupils only after they have passed the examination. The amounts allocated to unsuccessful pupils should then be paid to unsuccessful applicants who pass the examination.

Editorial note: The committee's recommendation was accepted by the GCB. □

Professional ethics

PJ Olsen SC, Durban Bar

The committee was asked during the course of the year to consider a relaxation of the rule relating to receipt of remuneration during pupillage, and to consider also the admission of regional court magistrates to pupillage. The committee submitted draft amendments to the rules dealing with both these topics. As to the first, the committee supported the amendment, but as to the second (the admission to pupillage of regional magistrates), the committee was not unanimous. On this latter subject a separate

report supported by two of the three members of the committee was submitted through the Society of Advocates of KwaZulu-Natal, advancing the argument that it was inappropriate for regional magistrates to be admitted to pupillage whilst still holding office.

The committee was asked to re-draft the rules relating to pupillage to bring them into line with the new system of pupillage. However, the new system is in its infancy, notwithstanding its current implementation, and the matter of the amendment of the rules was referred to those responsible for education within the profession. Rule 8 concerns in the main matters of training, and it is uncertain whether the issue will be referred back to the Ethics Committee before an

amended rule 8 formulated by those concerned with training is put before the GCB.

An opinion by Wallis SC and others on the subject of contingency fees was referred to the committee with a request that a rule be formulated in accordance with it. The committee however experienced difficulty in formulating the rule, because, as Wallis SC points out, legislative amendments on the subject are required. In the circumstances, a draft rule was prepared for circulation to constituent Bars with a request for critical comment. No response has yet been referred to the committee.

The question of contingency fees is the only outstanding matter on the committee's agenda at present. □

Parliamentary Committee

Report by O Rogers SC, Cape Bar

During the period 1 May 2003-30 April 2004 the Parliamentary Committee comprised Rogers SC (chair), Heunis SC, Dicker, Katz, Ntsebeza, K Pillay and De Waal. The committee, in keeping with past practice, viewed its mandate as being to examine proposed legislation that might impact on the legal profession and on the administration of justice generally.

During the year under review, 172 bills were scrutinised in the first instance by the chair with a view to ascertaining whether they would appropriately form the subject of comment. In 20 instances these were referred to various members of the Cape Bar for their consideration and report. In 13 instances written reports were submitted to either

Parliament, the relevant government department, the GCB or the SALC. On two occasions, oral submissions were made to the relevant portfolio committees (by Williams SC and Dane in regard to proposed new legislation relating to the RAF; and by Rogers SC and Jacobs in regard to proposed amendments to the Supreme Court Act).

The contribution of a number of busy members of the Cape Bar in assisting the GCB to perform this important task is recorded with particular appreciation.

However, it needs to be emphasised that the timeous submission of reports on proposed legislation is essential if the committee is to perform a useful function. Members are generally requested to furnish

their draft reports to the chair within two weeks of referral. Unfortunately, due no doubt to busy schedules, these deadlines are not infrequently exceeded, sometimes resulting in lost opportunities to submit

comments to the relevant portfolio committees. In his recent annual report to the Cape Bar, the chair thus urged members, whose assistance is sought, to be disciplined in attending promptly to this work. ☞

Human Rights Committee

Brian Spilg SC, Johannesburg Bar

During the year under review, the committee increased to nine member: Brahm du Plessis, Gcina Malindi, Terri-Lee Dix, Shirley Rose, Thabiso Machaba, Mohale Lebea, Shereen Said, Nadine Fourie and Brian Spilg SC. It is gratifying that all the new members are young counsel.

Two in-depth analyses were undertaken in respect of issues on the African Continent. In September 2003, a report on the death by stoning issue and its breach of African Charter provisions (the Amina Lawal case) was widely disseminated and an abridged version was published in the local media. In May 2004, we issued a statement dealing with various human rights aspects relating to the 70 alleged mercenaries, and, in

particular, the human rights violations that would occur if they were extradited to Equatorial Guinea. The report engendered considerable interest in both the local and foreign media.

Perhaps as a result of this coverage, the committee has received requests from outside South Africa for our support or comment on perceived human rights violations, usually in respect of political prisoners.

Unfortunately our local initiatives remain embryonic. We met with the Wits Law Clinic/Treatment Action Campaign in March 2004. We believe that we can assist in providing HIV/AIDS-affected people with information setting out their rights not only with regard to treatment, but also generally. Although the lobby

group was interested in our proposal, nothing has yet materialised. It appears that we should explore other ways of bringing our ideas to fruition.

We would like to implement other local initiatives in respect of child exploitation/abuse, the position of farm labourers and requiring informal settlements to meet minimum basic health/safety requirements, with identifiable people being held accountable.

The committee continues to liaise with concerned human rights groups in the Southern African region, and particularly in Zimbabwe and Botswana. We remain on the mailing lists of organisations such as the IBA, Commonwealth Lawyers Association and Amnesty International.

Whilst the committee has expanded, it remains effectively Gauteng based. Unfortunately, there has been very little feedback from any of the constituent Bars which, we understood, would be appointing liaison officers. ☞

2004 Young Leaders Seminar

Owen Rogers SC, Cape Bar

Last year the GCB decided to convene a so-called 'Young Leaders Seminar', a forum where future Bar leaders could meet to discuss issues confronting our profession. Historically there has been a tendency for a relatively small group of leaders to carry the burden of representing the Bar on vitally important matters. The GCB felt it was desirable to broaden the base of members who are familiar with the issues of the day and thus capable of assisting the Bar as the need arises.

The first seminar was held last year in Gauteng and was viewed by all concerned as a great success. The GCB asked the Cape Bar to host the second seminar. This took place at the Stellenbosch Lodge in the Western Cape on 16-17 July 2004. Twenty-seven delegates from the various Bars attended, comprising in the main senior juniors and a few silks. Also present were several GCB and constituent Bar leaders to introduce topics and chair discussions (Van der Linde SC, Arendse SC, Gauntlett SC, Ford SC and Rogers

SC). In advance of the seminar each delegate was sent a file of preparatory reading material. Proceedings started on the Friday evening with a discussion on transformation chaired by Arendse SC. The focus of attention was the question of co-governance of the Bar, an issue which, at the time of writing, remains highly topical, with AFT having proposed amendments to the constitutional co-governance arrangements prevailing both at the Johannesburg Bar and the GCB. The ensuing debate was sufficiently lively and protracted to cause a postponement (*sine die*) of the other matter on the evening's roll, namely the institution of silk.

The sessions on Saturday morning were devoted to a consideration of various aspects of our profession which have attracted the attention of the competition authorities. This topic was given prominence on the programme in view of the fact that the GCB had at about the same time been required to make a detailed submission to the Competition Commission in response to certain views expressed by

the Minister of Justice. Van der Linde SC gave an historical overview of the GCB's dispute with the competition authorities, leading to a general discussion of the importance of preserving the Bar's status as a referral profession. Ford SC then introduced a miscellany of topics covering the prohibition on partnerships, appearances with non-members, and the housing rules prevailing at the various constituent Bars. Andrea Gabriel, of the Durban Bar, led a discussion on the blacklisting system and the question of fee guidelines. After lunch Gauntlett SC conducted the closing session, where the issue for discussion was the regulation of the legal profession with particular reference to the Legal Practice Bill.

From the reaction of a number of delegates it was clear that the seminar was a sobering eye-opener. Many of our members simply do not realise the challenges which the Bar will have to overcome if it is to survive as an independent self-regulated referral profession. There was a uniform conviction that the Bar is worth fighting for – not for selfish reasons relating to money-earning, but because of the vital role which an independent referral Bar can and must play in the proper administration of justice in our new democracy. ☞