

Transformation

The legal profession clearly has an important institutional role to play. 'The institutional role of an independent legal profession and the need for public confidence in it is the very reason why it is desirable in a democracy that the legal profession and the judiciary chosen from it ... are, where possible, reflective of the whole community and include appropriately qualified men and women from diverse backgrounds.'⁷ These sentiments are particularly apposite in the context of a

changing South Africa. It is in pursuit of such public confidence that the GCB has again reaffirmed its commitment to transformation at the Bar.

The commitment of the GCB is borne out by the composition of the executive committee elected at the annual general meeting in July. Ten members were elected to the executive committee. Eight are black and four are women. At management level transformation has been largely achieved, yet the mem-

bership of the constituent Bars still fall far short of being reflective of the whole community. The reasons for the current pace of transformation are varied and complex. However, transformation of the profession remains one of the major priorities within the profession for the reasons referred to above. To this end it has been resolved to hold a symposium, probably early in 2007, in order to ponder, together with other role players outside of the Bar, a strategy to promote a sustainable transformation of the referral profession whilst ensuring that it remains comprised of 'appropriately qualified' persons.

Endnotes

- 1 Broadbased Black Economic Empowerment Act 53 of 2003.
- 2 *Sunday Times*, 20 August 2006.
- 3 Colin Nicholls QC 2006 April *Commonwealth Lawyer* Volume 23.
- 4 Sidney Kentridge SC 1991 *Consultus* 100 at 102.
- 5 Dato' Dr Cyrus Das, President of the

- Commonwealth Lawyers' Association, in his address to the Latimer House Joint Colloquium in June 1998, published in John Hatchard and Peter Slinn (ed) *Parliamentary Supremacy and Judicial Independence, a Commonwealth Approach* (London: Cavendish Publishing Limited, 1999).
- 6 The full text of the resolution was published in 2005 December *Advocate* 8.

- 7 Judge Margaret MacMurdo, President, Court of Appeal, Supreme Court of Queensland, in her address 'The Legal Profession, Advocacy and Independence in the Twenty First Century,' delivered on 21 July 2006 to the Bar Practice Course in Queensland, Australia. 

Rule of law symposium and IBA annual conference

Jannie Eksteen SC, GCB chair, attended the IBA meeting in Chicago during September 2006. He reports as follows:

Rule of law symposium

On 16 and 17 September a special 'Rule of Law Symposium' was held at the Westin Hotel, Chicago, Illinois. The symposium was a joint venture between the American Bar Association (ABA) and the International Bar Association (IBA). It was the first time that the two largest international lawyers' organisations had come together in this fashion. Almost 400 lawyers attended and I represented the GCG at this symposium.

In his opening remarks Francis Neat, the President of the IBA, urged lawyers to be patient when trying to foster a culture of respect for the rule of law, pointing out that it had taken nearly 300 years to develop universal democracy in the United Kingdom from the time when such values were first expressed.

Mary Robinson, a former President of Ireland and past United Nations High Commissioner for Human Rights, delivered the keynote address. She made a passionate call for a renewed defence of

the rule of law and asserted her belief that that the rule of law is fundamental to supporting human rights. She expressed concern that the policies of many governments toward the threats posed by terrorism and other security problems are undermining the rule of law.

The sentiments expressed by Mary Robinson were echoed by numerous other prominent speakers at the symposium.

Lord Goldsmith, the United Kingdom Attorney General, also spoke at the symposium. He defended the British government's handling of security issues since 11 September 2001. He echoed a speech given by Prime Minister Tony Blair during August 2006 in which he described a global struggle against extremism in which values such as tolerance were as important a tool as force. He expressed the view that part of that effort was achieved by a continued commitment to rights and principles such as the rule of law.

Other specific issues discussed at the symposium included human traffick-

ing, corruption, the independence of the judiciary, the environment and corporate responsibility.

IBA annual conference

The annual conference of the IBA was held in Chicago from 18 to 22 September, following directly upon the Rule of Law Symposium. I attended these proceedings too on behalf of the GCB and in particular the sessions of the Bar Issues Commission (BIC).

The BIC was established in Auckland at the 2004 annual conference of the IBA and has generated considerable interest from Bar leaders during the first two years of its existence.

At the Chicago conference the BIC confirmed its commitment to providing a range of resources and services to developing Bars. These resources include:

- 1 Developing and organising activities/events which increase the opportunity for developing Bars to meet with and learn from one another in formal/informal settings.
- 2 Developing and strengthening ties with and between developed and developing Bars by creating the Bar Co-operation Programme.
- 3 Providing resources for developing Bars either through the IBA's Human Rights Institute or the BIC directly.

- 4 To organise one-day seminars or sessions when the IBA organises events through the regional forum.
- 5 To provide sessions relevant to developing Bars at the IBA's annual conference and Bar leaders' conferences.
- 6 To provide networking opportunities at all conferences.
- 7 BIC E-Newsletter will have articles of relevance to developing Bars.
- 8 Education for young lawyers.
- 9 Support from senior lawyers.
- 10 Online resources:
 - 10.1 Website supporting pro bono activities.
 - 10.2 Papers on topics such as Bar Management, Bar Finances, World Trade Organisation/General Agreement on Trade in Services and on Regulation.

In addition scholarships are made available for the International Practice Diploma Programme and for the IBA Annual Conference for Young Lawyers.

The success of the first two years of the BIC activity was rewarded at the council meeting of the IBA where the outgoing chair of the BIC, Akira Kawamura, was elected as the Secretary General of the IBA.

Also at the council meeting, the following resolution on the *general principles* of the legal profession was adopted.

'Lawyers throughout the world are specialised professionals who place the interests of their clients above their own and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal development with service to their clients, respect for the Courts,

and the legitimate aspiration to maintain a reasonable standard of living. Between these elements there is often tension. These principles aim at establishing a generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world. In addition, the purpose of adopting these general principles is to promote and foster the ideals of the legal profession. These general principles are not intended to replace or limit a lawyer's obligation and the applicable laws or rules of professional conduct. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind.

1 Independence

A lawyer shall maintain and be afforded protection of independence to allow him or her to give his or her clients unbiased advice or representation. A lawyer shall exercise his or her independent, and unbiased professional judgment upon advising his or her client as to the likelihood of success of the client's case and upon the client's representation.

2 Honesty, integrity and fairness

A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the Court, his or her colleagues and all those with whom he or she comes professionally into contact.

3 Conflicts of interest

A lawyer shall not place himself or herself in a position in which his or her client's interests conflict with those of himself or herself, his or her partners or another client unless otherwise permitted by law or, if permitted, by client's authorisation.

4 Confidentiality/professional secrecy

A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of his or her present or former clients, unless otherwise required or permitted by law or, if permitted, by client's authorisation.

5 Client's interest

A lawyer shall treat the interests of his or her clients as paramount, subject always to his or her duties to the Court and the interest of justice, to observe the law and to maintain ethical standards.

6 Lawyer's undertaking

A lawyer shall honour any undertaking given in the course of his or her practise, until the undertaking is performed, released or excused.

7 Clients' freedom

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional rules or by law, a lawyer shall be free to take on or reject a case.

8 Property of clients and third parties

A lawyer shall account faithfully for any property of his or her clients or a third party which come into his or her trust, and shall keep it separate from his or her own property.

9 Competence

A lawyer shall carry out his or her work in a competent and timely manner and shall not take on work which he or she does not reasonably believe he or she will be able to carry out in that manner.

10 Fees

A lawyer is entitled to a reasonable fee for his or her work. A lawyer shall not generate unnecessary work.' 

At the IBA conference



Jannie Eksteen SC, GCB chair, and Alna Eksteen, with Tim Bugg, president of the Law Council of Australia, and Mrs Bugg, at a function for delegates during the IBA conference in Chicago.