

GCB chair's report: 2006

Report of the GCB chair, Norman Arendse SC, at the annual general meeting of the GCB on 21-22 July 2006

The period under review was dominated by the ongoing saga in the Cape High Court and the controversy surrounding the Fourteenth Amendment Bill and the Superior Courts Bill.

This is also the year in which we celebrate the 10th anniversary of the adoption of the Constitution of the Republic of South Africa as well as the 60th anniversary of the GCB. (At the annual dinner, hosted by the KZN Bar, the GCB conferred upon Chief Justice Pius Langa, the Kentridge Award for Outstanding Service to Law in Southern Africa. See 2006 August *Advocate* 4.) Thus, the year highlights some remarkable achievements, milestones of historical moment, and the ushering in of a new dispensation under the leadership of the new Chief Justice.

At a conference of all the Bars of the then Union of South Africa held at Johannesburg on 26 and 27 July 1946, it was agreed to form a new General Council of the Bar of South Africa on a federal basis, and a draft constitution was approved for submission to the various constituent Bars. On 21 September 1946, a further conference of all the Bars of the Union was held at Johannesburg at which the amendments submitted by the various constituent Bars were considered. The constitution, as amended, was thereupon formally adopted, and it was resolved that the council should come into operation on 21 September 1946.

Much has changed since 1946. When one looks at the minutes of the first meeting of the GCB, then perhaps the most contentious issues raised at that meeting related to the ministerial appointment of retired judges as acting judges and the issue of the conferral of silk!

Since then, the governance structures of the Bar have changed and the number of practising advocates has increased to a current membership of 368 silks, and 1 533 juniors.

The Judge President of the Cape Division had issued a report (the Cape Report) in which certain allegations were levelled at some prominent members of the Bar accusing them of being 'racist'. As a result, the Cape Bar Council and I, as chair, were drawn into the debate and discussion which followed upon the Cape Report. In the end, the matter remains unresolved, and has been shelved on an unsatisfactory basis. The chair of the Cape Bar Council and I had attempted to assist the Chief Justice in finding a solution to what appeared to be an intractable problem. Somehow, the matter went away, the Judge President went on leave, and certain complaints were lodged with the Judicial Service Commission.

The Constitution Fourteenth Amendment Bill (GN 2023 of 2005) was published for comment on 14 December 2005. It was introduced in conjunction with a package of Bills, being the Superior Courts Bill, the Judicial Service Commission Amendment Bill, the South African National Justice Training College Draft Bill, and the Judicial Conduct Tribunal Bill.

Given the seriousness of the proposals, the Human Rights Committee of the GCB organised a conference on 17 February 2006 which was very well attended, and which was addressed by, inter alia, the Chief Justice and the former Chief Justice.

Subsequent to the workshop, some of our more prominent members, including George Bizos SC, spoke out publicly against some of the proposals, thereby garnering a lot of public support in opposition to the proposals.

The executive committee of the GCB resolved to appoint Malcolm Wallis SC as the convenor of a drafting committee to put together submissions to the Portfolio Committee on Justice and Constitutional Development on behalf of the GCB. After having gathered some responses from

some of the constituent Bars, a final submission was made to the Portfolio Committee on 19 May 2006. The document is an outstanding piece of work and stands as a monument to the GCB's commitment to transformation, the rule of law, and the independence of the judiciary (see 2006 August *Advocate* 25).

On the home front, the GCB had to contend with some of its own issues: that relating to the Bar Council crisis in Johannesburg and the high failure rate amongst black pupils. As far as the latter is concerned, a pupillage symposium was held at the Sandton Convention Centre on 31 March and 1 April 2006. The symposium was addressed by some influential speakers, including the Deputy Chief Justice, the former Chief Justice and Justice Johann Kriegler. Those of our members who are intimately involved in pupillage and advocacy training, like Sharise Weiner SC, Spicko Dickson SC and Chris Marnewick SC, also addressed the conference. The conference was a huge success, and many of the issues, some real, others perceived, were fully addressed and were resolved. The purpose of the symposium was to examine the system of pupillage and to analyse its merits and demerits. Additionally, a discussion was held on the issue of the National Bar Examination. The symposium did much to calm any fears or concerns that the system was being rebelled against, and that it lacked legitimacy.

On the transformation front, proposals for the restructuring of the GCB and its constituent Bars have been tabled, and will again be discussed at the AGM. In the light of the Clementi proposals, and given the need to transform the profession, I regard it as imperative that these restructuring proposals be adopted, and that they be implemented as soon as possible.

A Draft Legal Services Charter has been circulated, and I serve on the Legal Services Charter Task Team which was appointed by the Minister of Justice. I have attended several meetings, and a further meeting is scheduled for 28 July 2006. The aim of the Charter is very ambitious as it attempts to transform not only the provision of legal services, but also the legal profession (see also page 2 of this issue).

Things have been quiet on the Legal Practice Bill front. A few meetings were held with the Law Society of SA (LSSA), but as things stand, there appears to be an impasse between the LSSA and the GCB in relation to the Legal Practice Bill.

As a precursor to a meeting with the LSSA in March, a meeting was held with

Race and gender statistics as at 1 April 2006

	WHITE		BLACK		COLOURED		INDIAN	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
Silks	302	13	20	2	8	1	18	2
5 years & more	693	106	75	15	17	4	39	21
Under 5 years	209	83	74	25	14	15	27	25
Non-contributing	53	24	14	2	1			4
SUBTOTAL	1257	226	183	44	40	20	84	52
TOTAL								1901

the independent Bar (IAASA). This was quite an eye-opener, and demonstrated starkly the wide gulf between the GCB and the independent Bar. In fact, it was quite embarrassing in the meeting when some members of the independent Bar delegation indicated their willingness to subscribe to GCB rules and regulations, while others of their delegation indicated that they would not want to do so.

With an eye on the future, a future Bar Leaders' Symposium took place in Port Elizabeth on 14 and 15 July 2006, and topics included the Clementi proposals, restructuring of the Bar, the future of women at the Bar, and advocacy training. The symposium was addressed by Judge Froneman of the Eastern Cape Division. This symposium is an important event as it brings together future Bar leaders in a forum where they discuss matters relating to the profession and issues likely to arise in the future (see page 10 of this issue).

Having attended the IBA Council Meeting in Prague on 25-30 September 2005, the World Bar Conference in Hong Kong and Shanghai on 15-19 April 2006, and the first Bar Leaders' Conference in London on 24-26 May 2006, I have continually stressed the importance of the GCB maintaining contact at an international level. I have reported on all these conferences elsewhere.

The GCB maintains a good relationship with the judiciary and the magistracy. It has done so by demonstrating its support for an independent judiciary in the written submissions made to the Portfolio Committee in Parliament, and by meeting with the heads of court from time to time. Both meetings on 15 October 2005 and 1 April 2006 were dominated by the issues around the transformation of the Cape High Court. Other issues of mutual concern relating to magistrates, the Rules of Court, and the transformation of the legal profession are also routinely discussed.

As part of the GCB's communication with the outside world, media releases are issued from time to time. This is an important part of the business of the GCB as it demonstrates that the GCB recognises, and is concerned, about matters concerning the administration of justice. On 19 August 2005, the GCB issued a media release condemning the raid by the Scorpions on the office of Mr Zuma's legal representative. Subsequently, the warrants of search and seizure were set aside by the court.

On 30 January 2006, the GCB issued a press release relating to its concerns over the Fourteenth Constitutional Amendment and the Superior Courts Bill. A further press release was issued in this regard on 22 May 2006, when the GCB submitted its written representations to the Portfolio Committee.

I must again thank Elize van den Heever, and members of her staff, for the invaluable work that they do for the GCB. Their selfless commitment and dedication to the cause of practising advocates is appreciated. There are also a number of colleagues to whom I wish to extend my profound thanks and gratitude for their assistance during the course of the year. They know who they are, and I am not going to name them. Of course, the members on the GCB executive committee must be thanked for their hard work. On a personal note, I wish to thank the deputy chair, Jannie Eksteen SC for his invaluable support and encouragement during the year under review. The vice chair, Sharise Weiner SC, continues to do outstanding work not only generally on behalf of the GCB but more particularly as regards advocacy training. I also thank all the Bar chairs for their contributions. The GCB would struggle to function without their support. I thank particularly Semenya SC for holding the fort at the Johannesburg Bar. It is our biggest Bar and key to the future of the GCB. There are many others who play key roles in ensuring that the organised profession remains organised, and functions properly. To all of you, thank you very much, and I hope you will continue to assist and render assistance to the GCB as you have done in the past. ☐

Human Rights Committee

Report by Brian Spilg SC, convenor of the GCB's Human Rights Committee.

During the year under review, the members of the committee were Brahm Du Plessis, John Campbell, Gcina Malindi, Laurance Hodes, Terri-Lee Dix, Shirley Rose, Thabiso Machaba, Nadine Fourie, Steven Budlender, Nazreen Budlender and Brian Spilg SC.

Two initiatives have taken up most of the committee's time:

- The first related to the series of Judicial Bills proposed by the Department of Justice and Constitutional Development. In December last year, the Department decided to expedite the Bills concerned with amending the Constitution and with revising the Superior Courts Act. These Bills impacted fundamentally on the independence of the judiciary.

At short notice, we organised a confer-

ence on the Justice Bills for the Bar. The conference was held on 17 February 2006. Keynote speakers included Chief Justice Pius Langa, former Chief Justice Arthur Chaskalson, Deputy President of the SCA Judge Lex Mpati, Justice Kate O'Regan, SCA Judge Robert Nugent, Justice Johann Kriegler and Professor Cathi Albertyn. The topics covered judicial independence and the restructuring of the courts. Invited guests included judges, the Director General of Justice and Constitutional Development, representatives from universities, law societies, attorneys' firms, the SA Institute of Race Relations and the Law Reform Project. There were just under 100 attendees.

The conference appears to have been a success. The papers presented at the conference and the floor discussions were transcribed and appear on the GCB web-

site. Subsequent addresses on the topic by Nugent JA and George Bizos SC have also been posted on our website with their permission. The papers provide an invaluable resource on the issue.

The seminar elicited significant press interest which resulted in a number of press articles and media interviews. The conference would not have been a success without the commitment of Nadine Fourie and Steven Budlender. By the end of June 2006, the government announced that it would be redrafting, from scratch, the offending Bills.

- The second major initiative relates to overcrowding in prisons, and in particular the plight of awaiting-trial prisoners (especially the very young) and problems with parole boards. This subcommittee has been headed by Laurance Hodes. Both Brian Spilg SC and Laurance Hodes were appointed onto the National Initiative Forum on Overcrowding in Correctional Facilities chaired by Judge Eberhard Bertelsmann. Laurance was appointed on the Forum's subcommittee dealing with parole board issues.