

# Legal Services Sector Charter adopted



By Jannie Eksteen SC, chair of the General Council of the Bar of South Africa

The Legal Services Sector Charter ('the Charter') was finally adopted by the legal profession at the final Focus Group meeting held on 24 November 2007 and was presented to the Minister of Justice at a dinner held in Johannesburg on 10 December 2007. The Charter has been the subject of extensive debate and consultation over the past two years.

The Charter which was ultimately adopted differs significantly from the first and second drafts prepared by the Steering Committee. At the start of the process the GCB delivered to the Department of Justice a written response to the first draft of the Charter. We supported many of the objectives of the Charter whilst raising concerns relating to a number of the proposals. All the concerns raised by the GCB have been addressed in the final draft.

The Charter, as adopted, is not a Charter in terms of any particular statute. It is no more than a commitment by government and by stakeholders in the Legal Services Sector. It is adopted as a 'binding and guiding principle' to provide for an independent legal profession and to eradicate the inequalities of the past. Whilst it does not provide for any sanction for non-compliance it is a commitment to which the Bar is firmly tied. In my view, the Bar must embrace the Charter and strive positively to promote the objectives of empowerment and transformation.

Central to the Charter is access; access both to legal services by the citizens of South Africa and to work by members of the profession.

The undertaking given by the profession in respect of access to justice includes an undertaking to:

(i) recognise the ethical obligation to carry out pro bono work and develop and enhance the pro bono system with a view to making it compulsory for all practitioners;

(ii) develop and implement pro bono programmes by investigating and developing a comprehensive referral system for persons seeking pro bono legal services...'

For its part, government has undertaken to enhance the Legal Aid Board's ability to provide legal services to the indigent. The

commitment by government is welcome and it is undoubtedly essential if effective and equal access to legal services is to be achieved. Government cannot, however, be solely responsible for funding services. Pro bono services do have an important role to play in the pursuit of access to justice.

There has long been a debate as to whether pro bono work by practitioners should be compulsory or voluntary. In this regard Navsa J has been quoted as having said:

*'There is a growing perception that in spite of South Africa having one of the best Constitutions in the world, its legal practitioners are losing their social consciousness. Whereas the Constitution has created many opportunities for the use of law to promote social justice and democracy, there are probably fewer lawyers practising in this area than was the case under apartheid. We must return to an ethos that existed at a time when lawyers were resisting and fighting apartheid. There was a sense of mission and of moral duty.'* \*

Sadly, the perception held by Navsa J has come to be recognised. The need for compulsory pro bono services was acknowledged by the constituent Bars of the GCB even prior to the adoption of the Charter. At its annual general meeting in July 2007 the GCB amended its rule relating to pro bono work (Rule 5.12.4) so as to provide that:

*'A local Bar Council shall require its members to undertake pro bono work on the basis that:*

*5.12.4.1 it allocates such work amongst its members on a basis that is fair, reasonable, equitable and transparent.'*

\*J Sarkin 'Promoting Access to Justice in South Africa: Should the legal profession have a voluntary or mandatory role in providing legal services to the poor' *South African Journal of Human Rights*, 2002.

All the local Bar Councils have accordingly been requested to give effect to the reformulated rule providing for compulsory pro bono work. Recent experience, however, is that many advocates have failed to provide the targeted hours of pro bono work, not because they do not wish to, but because their services were not called upon. In order for pro bono services to make a meaningful contribution to access to justice the implementation of pro bono programmes and the development of a comprehensive referral system are indeed pre-requisites. Preliminary discussions in this regard have been held with both the Legal Aid Board and with the LSSA in an endeavour to achieve such a system. These discussions will continue.

Access to work by HDI members of the Bar has for many years presented a challenge to the constituent Bars of the GCB and has inhibited, to a significant degree, the transformation at the Bar. We have, together with the remainder of the profession, again given the undertaking under the Charter to identify and implement equitable procurement strategies to promote access to legal work for HDI members. This too has to a large extent already enjoyed the attention of the constituent Bars. The Model Briefing Policy which has been developed over the last 18 months has been adopted and delegated to the constituent Bars for implementation. It, like the development of pro bono programmes and a comprehensive referral system, cannot be achieved by the Bar alone. It will require greater interaction between the Bar and the LSSA than has previously been the case. The success or failure of the Charter will ultimately depend upon the commitment of both black and white members of the profession, both at the Bar and in the attorney's profession, to honour their undertakings. 