

# Retirement of SCA President Craig Howie

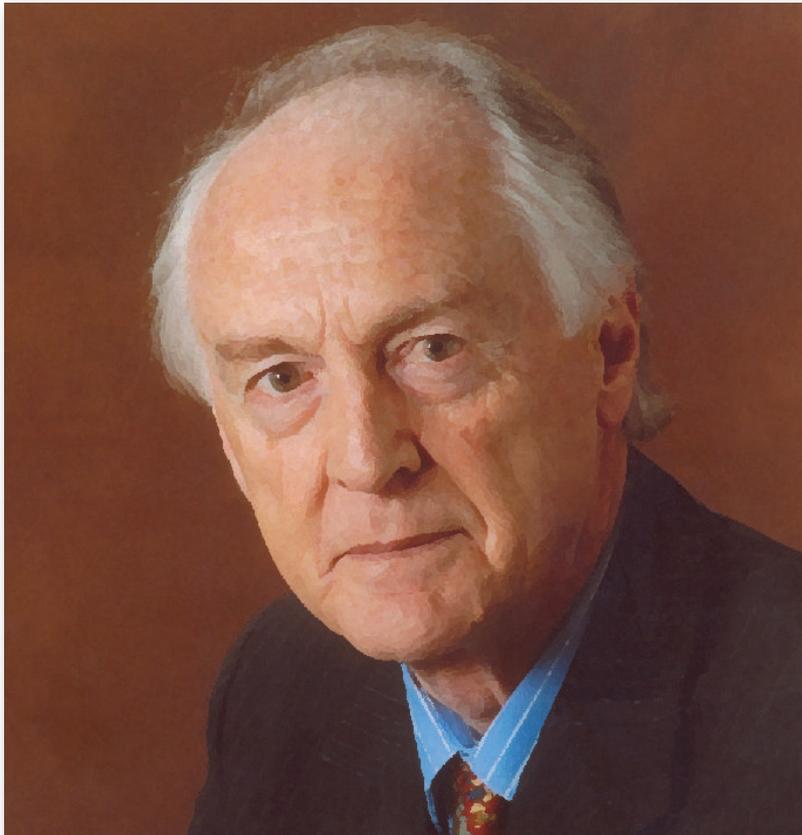
Contributed by RJW Jones, judge of the Eastern Cape High Court

On 15 August 2008, Justice CT Howie, President of the Supreme Court of Appeal, will officially retire from the Bench after a lifetime in the practice of the law - a lifetime which began in 1962 with his appointment as registrar to Judge Marius Diemont of the Cape Bench and culminated in his appointment in 2003 to the high office of President of the Supreme Court of Appeal, a position which he has held with distinction until he finally closed his chambers' doors earlier this year.

Craig Telfer Howie was born in Cape Town on 10 September 1938. After matriculating at the Diocesan College in Rondebosch in 1956, he graduated from the University of Stellenbosch with BA and LLB degrees in 1959 and 1961. In 1965 he married Claerwen Matthews, a graduate of Rhodes University and formerly a member of the academic staff at Rhodes. They have two sons.

After serving as Judge Diemont's registrar, Craig Howie was admitted as an advocate in the Cape Provincial Division and, in 1962, joined the Department of Justice as a public prosecutor. In 1963 he was transferred to the staff of the Attorney-General of the Eastern Cape in Grahamstown.

Grahamstown was to be Craig and Claerwen's home until 1985. In that year they



SCA President Craig Howie

returned to his roots in Cape Town.

In 1964 Howie, by then an accomplished prosecutor, left the public service and commenced private practice as an advocate at the Eastern Cape Bar in Grahamstown. He enjoyed the closely-knit professional life at a small Bar, the cut-and-thrust of learning his trade in criminal defences on the Border and Transkei circuits, and the challenge of beginning a civil practice in the larger centres of the EC Division, notably in Grahamstown and East London. One of his earliest cases was an interesting dispute about liability for personal injury negligently caused to his client by faulty machinery at a travelling funfair. He outpaced his contemporary juniors and some of his more senior competitors in the race for recognition, and soon developed a leading civil practice. He was always prepared down to the finest detail, and his analytic mind, his sound knowledge of the law, and his cross-examination, always penetrative but courteous, set him apart as a most formidable opponent. He took silk in October

1976. Like his friend and frequent adversary at the Bar, JW Smalberger SC, whom he followed to the Eastern Cape Bench and then on to the Appellate Division, his high ethical and professional standards made him an excellent role model for the juniors who followed behind him at the Bar. Always a gentleman, he never allowed himself to become affected by the sometimes volatile atmosphere which can arise during the hurly burly of litigation. He never, ever, lost his composure, in or out of court.

One of his most notable accomplishments at the Bar was stewarding the plaintiff's case in *Ewels v Minister of Police* through the local

courts of the Eastern Cape to the Appellate Division, where, *sub nomine Minister van Polisie v Ewels* 1975 (3) SA 590 (A), it was to become a watershed authority in our law of delict. It not only broke new ground in imposing liability on the police for their omission to prevent an assault wrongfully committed on a member of public in their presence. The judgment also set the criterion for wrongfulness, particularly in novel situations and borderline cases. Since *Ewels*, the wrongful quality of conduct is tested against the general *boni mores* of society, so that conduct once regarded as morally though not legally reprehensible may become legally wrongful in the light of the changed convictions of the community. The judgment has been applied in courts of law on countless occasions since, including *Hawker v Life Officers Association of South Africa* 1987 (3) SA 777 (C) 790 where Howie J, now on the Bench, was called upon to demonstrate how conflicting interests presented by the convictions of society should be balanced to determine whether the *boni mores* of the

community required that the conduct complained of should, delictually speaking, be regarded as wrongful. The *Ewels'* case stands out as a fine example of the young Craig Howie's skills in advocacy and his legal ability and judgment.

Judge Howie has had a long and distinguished career on the Bench. He was appointed as an acting judge on the Eastern Cape Bench in February 1978 at the comparatively young age of 39 years. The appointment was made permanent in December 1978. In 1985 he was transferred to the Cape Bench. In December 1991 he was appointed as an acting judge of the Appellate Division. He became a permanent member of that court in December 1993. In November 2002 he was appointed President of the Supreme Court of Appeal with effect from 1 January 2003. He has presided in his court with courtesy, firmness and dignity in a wide spectrum of authoritative decisions which have shaped the legal landscape in this country. His soundness as a lawyer is complemented by his innate sense of fairness and justice: both merit the highest praise. One of the hallmarks of his quality as a judge is the elegant and disciplined lucidity of his judgments. A recent example of judicial writing at its best is the clarity of his

exposition of the difficult legal issue analysed in his judgment in *Bid Industrial Holdings (Pty) Ltd v Strang* [2007] SCA 144 (RSA). This is the landmark decision which holds that an arrest to found or confirm jurisdiction is unconstitutional, and illustrates the proper way for the courts, in such a case, to develop the common law by filling the gap created by the abolition of a principle which has guided them for centuries.

Judge Howie has also made a significant contribution to the practice and administration of the law. During his years in private practice he was active in the affairs of his profession, first as secretary to the Eastern Cape Bar Council, and later as one of its members. On the Bench he continued with extra-curial service to the profession as a member of the SA Law Commission from 2001 to 2006, inter alia chairing the project committee which investigated and reported upon counter-terrorism laws. He has arranged the heavy work load of the judges of appeal with energy and efficiency. Until his retirement he was a member of the Judicial Service Commission. He has also made a significant contribution in the field of education. While in practice at the Bar in Grahamstown he was a part-time lecturer in law at Rhodes University, and an external

examiner. For many years he was a member of the council of a number of prominent schools, both in Grahamstown (1974 - 1985) and in Cape Town (1986 - 1996). In 1984 he served as a member of the Rhodes University council. After his transfer to Cape Town he was a member of the council of the University of Cape Town until 1996, and thereafter, a member of the University of Cape Town Trust. He remains a trustee.

Howie, P fully deserves his place among the leading jurists of the land. On 1 January 2003 he became the first permanent President of the Supreme Court of Appeal, a position which, until December 2001, had the title of Chief Justice. He has been a worthy successor to the distinguished Chief Justices who went before him, and has set high standards for the Presidents who follow him. I had the privilege of practising at the Bar with him, taking his place on the Eastern Cape Bench when he moved to Cape Town, and sitting with him as an acting judge of appeal in Bloemfontein. I can say with confidence that the legal profession will miss appearing before him, and that his colleagues on the Bench will miss his camaraderie, his dry and subtle sense of humour, and the strong collegial support which his long experience in the courts was able to impart. 



Justice Jan Steyn

## Lesotho says farewell to Justice Jan Steyn

Address by Justice Michael Ramodebedi at a gathering in the Court of Appeal of Lesotho on 11 April 2008.

**T**oday we bid farewell to the President of this Court. He first served on it temporarily more than two decades ago. He has been a permanent Judge of Appeal for 18 years now, and President of the court for the past 11 years. He has served with each of us, and with our former colleagues Jules Browde, Chris Plewman and Leo van den Heever, who have all travelled specially to Maseru to join us today.

We feel his departure very keenly. On behalf of my other colleagues and myself, and I am sure all lawyers and litigants before the Court of Appeal, I wish to say a few words in tribute.

Jan Hendrik Steyn was born on 4 March 1928 in Cape Town. Educated there and at Stellenbosch University, he commenced practice at the Cape Bar in 1950. He became one of the youngest judges in South Africa's history when (at the age of 36) he was appointed to the Cape High Court in 1964. He is now the only surviving judge to have served on a Bench in Southern Africa in the 1960s. A judicial career which began 44 years ago ends in this Court today.