

know what part of the judgment was contributed by which judge.

What the complaint teaches us is that the Bar must, going forward, be more strict on the rule, preserving the sanctity of discussions in judges' chambers. Similarly, this complaint should be used by the judiciary to reconsider how strict judges are going to apply the ethical rule, if it exists, to the effect that discussions in the conference chamber are sacrosanct.

Because of various factors, the judiciary as an institution has been subjected to attacks from various quarters. There were demonstrations before various High Courts, such as those related to the matter of the ANC President, Mr Jacob Zuma. As a profession we have no problem in people exercising their right to freedom of expression, but the nature of the demonstrations raise questions whether these demonstrations were mere forms of expression or whether they were aimed and intended to cow down the judiciary into taking decisions in favour of

the ANC President. If this was the aim of the demonstrations, we have no choice but to condemn them as an unconstitutional abuse of constitutional freedom. In this respect, one can do no more than remind South Africans of section 20(4) of the German Constitution which reads:

'All Germans shall have the right to resist any person seeking to abolish this constitutional order should no other remedy be possible.'

In our view threatening judges to act in a particular way undermines the judiciary and the whole order and should be resisted by all citizens.

The judiciary is an institution of our democracy, one for which many South Africans gave their lives. The nation has a duty to respect this and all institutions of our democracy. We must all remember that when Nelson Mandela said 'never again,' he meant that we were committing ourselves to die for this Constitution and all its values. We

cannot be seen to be fighting to destroy the values that underlie our Constitution. Judicial independence is an important and foundational value of our Constitution, one which our nation must fight to preserve rather than destroy.

One issue of serious importance, however, is that the procedure for the appointment of the Chief Justice needs serious review. The Chief Justice presides over an institution with far reaching powers. The Constitutional Court has the power to overturn decisions of Parliament and the Executive and yet only one person, the President, appoints him. If the Constitutional Court retained its present powers and if it is also going to be part of the judiciary replacing the SCA, the procedure for appointing the Chief Justice needs serious rethinking. The procedure must be more transparent than it is now. This will contribute to strengthening the checks and balances and strengthening the stability of our democracy.



## Profile of new GCB chair

Patric M Mtshaulana SC was appointed as chair of the GCB for 2008/9 at the annual general in Johannesburg on 25 July 2008.

**P**atric Mzolisi Mtshaulana was born in Mount Frere on 5 April 1954. He attended his primary school at Mbonda Bantu Community School, his secondary education at Makaula Secondary School, and his high schooling at Osborne High School, all in Mount Frere.

In 1973 he went to Fort Hare where he graduated in 1976. During his studies at Fort Hare, he came into contact with the Black Consciousness Movement. On 6 April 1973 he attended an address by Onkgopotse Tiro at CU hall. This address made an indelible impression on him.

In 1976, after graduating with BJuris, he became a public prosecutor in Bizana but after the Soweto uprisings he resigned his post to join Umkhonto WeSizwe. He did his training at Nova Katengue Camp in Benguela Province, Angola.

In 1978 he became the head of the political department in Quibaxi in the north of Angola. In 1979, when the first survival camp was opened in Fazenda, also north of Angola, he headed the political department in that environment.

In 1980 he was deployed at the Solomon Mahlangu Freedom College (SOMAFCO) as a teacher. During the period at SOMAFCO he attended several ANC education policy conferences and participated in the experiment to establish a future education system of South Africa. During this time, he developed a special interest in cadre development within the ANC. As chairman of the Morogoro Branch of the ANC youth in 1984/1985 he organised a conference on 'cadre development.' The theme of the conference was 'education and revo-

lution.' The aim of the conference was to inspire cadres, especially students, to prepare themselves for a role in the building of a future South Africa.

From 1986 he studied law in the Netherlands where he completed a degree of *Meester in de Rechten* in 1993. In 1993, he returned to South Africa and worked as lecturer at the University of the North. In 1995 he became a research assistant to the then President of the Constitutional Court. In 1996 he joined the Legal Resources Centre, which gave him an opportunity, while employed by the LRC, to do pupillage. He was admitted as an advocate by Justice Edwin Cameron, who, in welcoming him, reminded him that the struggle was not over yet and that there was still a lot to be done to transform the profession and the judiciary. He joined the Society of Advocates (WLD) on 8 December 1996 and was awarded silk on 25 October 2005.

He has been active in Bar politics since 1998 when he became assistant honorary secretary of the Johannesburg Bar Council, later becoming its secretary. He became the assistant honorary secretary of the General Council of the Bar and later became its secretary. From 2005, he has been the chairman of AFT (WLD). He has been a member of the Johannesburg Bar Council for several years. He is a founder member of the Duma Nokwe Group of Advocates.

