

# Legal Services Sector Charter adopted: GCB chair's annual report 2007/2008

Jannie Eksteen SC, chair of the General Council of the Bar of South Africa, reports as follows on the year under review:

The year 2007/2008 saw the adoption of the Legal Services Sector Charter after some 18 months of consultation and debate. During the process the charter passed through four different drafts before it was ultimately adopted. The final product was handed to the Minister of Justice at a gala dinner attended by the deputy chair of the General Council of the Bar on 10 December 2007.

The application by the General Council of the Bar for exemption of its rules under the Competition Act, which has been pending for several years, surfaced again during November 2007. I revert below to developments since.

On the subject of the Legal Practice Bill I reported last year that the consultation with the Law Society of South Africa had been renewed yet again in an endeavour to find greater common ground. Regrettably those talks have again ended in a stalemate.

## Executive

At the annual general meeting held in Pretoria the following executive committee was elected: JW Eksteen SC (chair), RT Williams SC (deputy chair), RAK Vahed SC (vice-chair), M Sello (honorary secretary), S Hassim (assistant honorary secretary), TN Aboobaker SC, KD Moroka SC, DB Ntsebeza SC, TJ Bruinders SC, GC Pretorius SC. A Findlay SC (as convenor of the National Bar Examination Board) remained as an *ex officio* member of GCB exco.

## Membership

The membership of the constituent Bars of the General Council of the Bar has continued to grow during the course of the year and has,

for the first time, exceeded 2 000 members. As at 1 April 2008 the membership of the constituent Bars of the General Council of the Bar of South Africa stands at 2 045. 28 appointments of silk were made during the year under consideration and 141 new entrants passed the National Bar Examination. The race and gender statistics of the constituent Bars as at 1 April 2008 are set out in the table below.

## Standing Committees

The following standing committees were again elected:

**Advocacy Training Committee:** S E Weiner SC (convenor);

**National Bursary Fund:** GC Pretorius SC (convenor);

**Finance Committee:** Roland Sutherland SC (convenor);

**Human Rights Committee:** Brian Spilg SC (convenor);

**Laws and Administration Committee:** Marius Ackermann (convenor);

**National Pro Bono Committee:** Cape Bar - Russel MacWilliam SC (convenor)

**Pupillage Committee:** Glenn Goosen SC (National Pupillage Coordinator);

**Road Accident Fund Committee:** Pretoria Bar - Piet De Jager SC (coordinator);

**Rules Committee:** Johannesburg Bar - Pieter Pauw SC (convenor).

The following members represented the General Council of the Bar on the respective bodies set out herein:

**Judicial Service Commission:** Milton Seligson SC

**Professional Provident Society:** TN Aboobaker SC

**Legal Provident Fund:** Jacques Basson served as trustee until his resignation in January 2008; Jacques Malan, nominated by the Pretoria Bar, then succeeded Basson;

**Legal Aid Board:** Seta Kolbe (appointed by the Minister of Justice in terms of the Legal Aid Act).

## Race and gender statistics as at 30 April 2008

Bars	White		Black		Coloured		Asian		Bar Total
	Male	Female	Male	Female	Male	Female	Male	Female	
Cape	278	54	5	3	26	17	2	2	387
Port Elizabeth	34	7	7	-	-	1	3	3	55
Grahamstown	22	4	1	-	2	-	1	-	30
Free State	42	4	4	-	-	1	-	-	51
Northern Cape	5	-	-	1	-	-	-	-	6
Johannesburg	457	109	99	28	2	6	29	18	748
Pretoria	333	68	42	7	-	-	3	5	458
Natal	123	18	16	6	5	4	66	27	265
North West	5	1	1	-	-	-	-	1	8
Transkei	1	-	20	-	-	1	-	-	22
Bisho	3	1	8	1	2	-	-	-	15
Total	1303	266	203	46	37	30	104	56	2045

**The following members served on the editorial committee of Advocate:**

Jannie Eksteen SC (chair); Frank Snyckers (deputy chair); Azhar Bham; Alfred Cockrell; Mahlape Sello; Susannah Cowen; Sandhya Mahabeer; Izak Smuts SC (to end April 2008); and Richard Brooks (from May 2008).

Our thanks are extended to the editorial committee and Hennie Mellet for their loyal service.

**Transformation**

Transformation has again been a central objective of the General Council of the Bar during the past year. The executive committee (GCB exco) elected at the annual general meeting held in Pretoria reflects the commitment of the Bar both in relation to racial transformation and gender transformation. The GCB exco, comprised of 11 persons again included eight black members and four female members.

The Model Briefing Policy adopted in the 2006/2007 year as a transformation initiative in order to ensure that black and female entrants will receive fair exposure and opportunities at the Bar has been delegated to the constituent Bars for implementation. Bars have reported mixed success in the implementation thereof and the results of this process will require ongoing monitoring by the Bar and the incoming GCB exco of the General Council of Bar.

I thank TN Aboobaker SC, Dumisa Ntsebeza SC and Kgomotso Moroka SC who have managed the portfolio of transformation on the GCB exco in the past year.

**Legal Services Sector Charter**

Jannie Eksteen SC, GCB chairman, Rashid Vahed SC, Seth Nthai SC, Timothy Bruinders SC, Kgomotso Moroka SC (alternate), Renata Williams SC (alternate), Mahlape Sello (alternate) and Soraya Hassim (alternate) were appointed during 2006/2007 to represent the General Council of the Bar in the various Focus Working Group meetings. The third Focus Working Group meeting was held on 4 August 2007. The chairman, Vahed SC, Bruinders SC and Nthai SC met with members of the Law Society of South Africa on 3 August 2007 to discuss the Charter. They also attended the meeting on 4 August 2007. A new, substantially altered draft Charter resulted from this meeting, which, in turn, lead to a further amended draft ultimately adopted at the final working group meeting on 24 November 2007. The proposed scorecards intended to measure the success of the transformation of the profession have been referred to a technical committee, and the Bar has been requested to submit a proposed scorecard in respect of referral practitioners.

Renata Williams SC represented the GCB at the gala dinner at which the Charter was handed over to the Minister. My thanks go to all members who have sacrificed so much of their time and energy to the entire process.

**Legal Practice Bill**

Martin Brassey SC and Azhar Bham SC represented the General Council of the Bar in a fresh endeavour to overcome the impasse which has existed for the past six years between the GCB and LSSA in respect of the Legal Practice Bill. A number of meetings were attended by Brassey SC with a sub-committee of the Law Society of South Africa. The endeavour finally came to an end during May 2008 with the parties again unable to resolve their differences.

The GCB chair attended a meeting with the Minister of Justice and Constitutional Development, the Director General of the Department, representatives of the Law Society of South Africa and NADEL on the subject of the Bill on 8 December 2007. The Minister reported her intention to proceed with the Legal Practice Bill during 2008.

In regard to the Legal Practice Bill and the transformation of the profession generally the Department of Justice and Constitutional Development presented a 'draft policy on the transformation of the legal profession' for comment during December 2007. The draft policy appears to encapsulate a holistic approach to:

- The delivery of legal services;
- The capacity of the profession to do so; and
- The accountability of the profession to the people.

During March 2008 the GCB delivered a comprehensive response to the document dealing, inter alia, with:

- The facilitation and delivery of and access to, justice for the people;
- The structure of the legal profession and appropriate governance structures;
- The recruitment of and professional training of entrants to the profession;
- Procedures for conferment of silk;
- Demographic representivity and access to work by black counsel;
- The regulation of legal fees by the profession.

Our thanks are extended to the numerous members of the constituent Bars who have made inputs into this response and in particular to Roland Sutherland SC, who coordinated and consolidated these inputs.

**Competition Commission**

At the instance of the Competition Commission the GCB chair, deputy chair and Arnold Subel SC met with representatives of the Competition Commission on 21 January 2008. The Competition Commission requested further and updated information relating to a number of the rules of the Bar submitted to it in the Bar's application for exemption, which remains pending. The meeting was a constructive one which afforded the opportunity to debate the rational of certain of our rules. On a reflection, and in accordance with a resolution of the GCB exco, the Bar has formally withdrawn the application for exemption of certain individual rules which were included in the original application for exemption.

**Pupillage**

The results of a National Bar Examination in August 2007 yet again surpassed the record success rate achieved in 2006. I recognised last year the institution of the English language course instituted at the Johannesburg Bar for pupils whose first language was not English. This course was continued in 2007. There is little doubt that this has contributed in no small measure to the success rate in Johannesburg and I express our sincere appreciation to Tony Gottlieb and Lorraine Chaskalson for their efforts in this regard.

AJ (Spicko) Dickson SC was appointed as pupillage coordinator in August 2003 to design and implement a one-year pupillage course for the General Council of the Bar. At that stage no national programme for pupillage existed and each Bar had in place a system of lectures and advocacy training. Dickson SC resigned this position

in December 2007. The very considerable contribution of Dickson SC in the design and shaping of the pupillage system as we now know it is deserving in recognition and our sincere thanks go to him for his years of dedicated service to the pupillage system.

At the commencement of the pupillage system Chris Marnewick SC, then in New Zealand, was engaged to develop the study material in order to prepare a pupil for the National Bar Examination. In his final report as pupillage coordinator published in *Advocate*, December 2007, Dickson SC recognised that Marnewick's tireless dedication to perfecting his own manual has been a key to success. As the contract of Marnewick SC draws to close in 2008 we recognise the very considerable contribution which he has made to the pupillage system. Our thanks go to Chris Marnewick SC.

In addition there have been a host of dedicated members who have contributed to lecturing, mentoring and advocacy training. These members are the unsung heroes of the success of the pupillage system and it is a source of great pride to be associated with a profession where so many have come forward to contribute, not for personal gain, but because of their commitment to an independent referral profession.

### Meetings attended by members of the GCB exco

The GCB exco met on 19 November and 15 March 2008. The chair and deputy chair attended the Heads of Court meeting in Cape Town on 29 September 2007, and the deputy chair and Binns-Ward SC attended a similar meeting in April 2008.

The GCB chair and Timothy Bruinders SC attended a meeting in Johannesburg on 12 October 2007 with the Legal Aid Board. The meeting was a very successful and constructive meeting and it was resolved to have a similar meeting annually with the Legal Aid Board.

### International associations

The chairman attended the International Bar Association Conference and Council Meeting held in Singapore on 14 to 19 October 2007. The Third Bar Leaders Conference of the International Bar Association and Council Meeting held in Amsterdam between 14 and 17 May 2008 was attended by the vice-chairman, Rashid Vahed SC. The deputy chair, Renata Williams SC, attended the bi-annual conference of the Commonwealth Lawyers Association in Nairobi during September 2007.

### Fourth World Bar Conference

The Fourth World Bar Conference was hosted jointly by the Bars of Ireland and Northern Ireland and held jointly in Dublin and Belfast from 27 June to 30 June 2008. The event was a resounding success and was attended by 29 South African advocates, being members of the constituent Bars. The programme was comprehensive and attractive; speakers were of the best quality; and there can be little doubt that the South African Bar will benefit from the contacts developed with the other referral Bars in the world and the experience gained.

In the opening session of the conference Justice K O'Regan of the South African Constitutional Court delivered a paper on 'Justice and the Law' together with two other speakers. Her address, centred on two cases from our own experience, was well received and made an indelible impression on attendees (see page 41 of this issue).

The Belfast leg of the conference was centred pertinently on the subject of human rights and addresses, inter alia, by Beatrice Mtetwa of the Zimbabwean Law Society. This session resulted in the adoption

by the conference of a strong resolution condemning conditions in Zimbabwe. The resolution, which constituted a significant feature of the conference, was initiated by former GCB chair Jeremy Gauntlett SC.

### Future Bar Leaders Symposium

The Fifth Future Bar Leaders Symposium was hosted by the Pretoria Bar on 18 and 19 July 2008. The event was well attended and a dinner on the opening evening was addressed by Judge Eberhard Bertelsmann of the Pretoria High Court. The programme of the Symposium highlighted a number of issues of significance to the legal profession in South Africa. It was in particular a session addressed by SCA Judge Edwin Cameron on the independence of the judiciary and the profession which gave rise to much thought provoking debate. Our thanks go to the Pretoria Bar and in particular to Carlos da Silva SC who acted as coordinator and organiser of the symposium (see pages 34 to 39 of this issue).

### Press statements

The following press statements were released during the past year:

**24 August 2007:** Press statement in respect of Clause 11 of the Judicial Service Commission Amendment Bill;

**28 March 2008:** Press statement issued in respect of the Expropriation Bill;

**6 May 2008:** Press statement issued by the GCB and the Human Rights Committee of the GCB in respect of Zimbabwe;

**21 May 2008:** Press statement issued by the GCB and the Human Rights Committee of the GCB in respect of Xenophobic violence;

**3 June 2008:** Press statement issued in response to the Constitutional Court announcement of the lodging of a complaint in respect of the Judge President of the Cape.

**6 June 2008:** Press statement issued by the GCB and the Human Rights Committee in respect of Zimbabwe.

### GCB secretariat and committees

It would be remiss of me, in a report of this nature, not to give recognition to the highly efficient and dedicated services of the chief executive of the General Council of the Bar, Ms Elize van den Heever and her colleagues Marietjie Barnard, Susan Molefe, and Binki Mokgejane.

In addition there are a string of colleagues who deserve mention. I refer to the members of the standing committees and to all members who responded during the course of the year to requests for assistance. I would do a great disservice to some if I were to single out names as there have been a host of contributors to whom we are grateful and I am sure to omit some if I were to attempt to name them.

### General

During the past year the GCB and its constituent Bars were again run solely on the basis of the commitment of its members. The GCB has no income other than the subscriptions from its members and limited sponsorship for specific events. We are grateful to the many members who give up their valuable time and energy in service to the Bar. In particular I extend my thanks to members of the GCB exco who have contributed generously of their time in the day to day running of the affairs of the Bar. I am particularly indebted to the deputy chair, Renata Williams, SC and the vice-chair Rashid Vahed SC for their support during the past year.

