

Human Rights

Overcrowded prisons, Zimbabwe and the judiciary

Brian Spilg SC, convenor of the GCB Human Rights Committee, reports as follows:

The committee has again been heavily involved in the National Initiative Forum regarding correctional services chaired by Judge Eberhard Bertelsmann and assisted by Judge Cynthia Pretorius. The Forum is concerned principally with reducing overcrowding in prisons, with particular emphasis on awaiting trial prisoners, youth offenders and the parole system. The number of State bodies and NGOs who are represented on the Forum, which meets monthly, has resulted in a wider focus. The Forum also concerns itself with issues such as child trafficking and school violence. We are presently assisting in the initiative to speed up the transcription of appeal records which has become a real problem in processing appeals.

Once again, the Zimbabwe situation loomed large. The committee assisted in compiling a number of press statements on behalf of the GCB condemning the worsening situation in that country.

The issue of judicial independence has remained of concern. First, we presented a report to the IBA committee appointed to investigate issues concerning the independence of the judiciary in South Africa and attended a meeting requested by them together with the GCB chair and other GCB executive members. Second, the committee lodged a complaint with the South African Human Rights Committee against the president of the ANC Youth League relating to his 'kill for Zuma' statement issued in the context of the criminal proceedings brought against the ANC president. We also assisted in drafting a press release on behalf of the GCB condemning Mr Malema's statement.

The committee comprises John Campbell SC, Brahm Du Plessis, Laurance Hodes, Shirley Rose, Thabiso Machaba, Steven Budlender, Karabo Kgoroadira, Keabetswe Mokotedi, Mohammed Hosanee, and Brian Spilg SC (convenor).

Members who are interested in any of the committee's initiatives are welcome to contact Brian Spilg at 011 535 1800/Cell 083 303 3344. [a](#)

Pupillage programme continues to flourish

Glenn Goosen SC, Port Elizabeth, took over the reins as national pupillage coordinator from Spicko Dickson SC in January 2008. He reports that 'thankfully the pupillage programme has been so superbly managed by Spicko that I have had no major difficulties in picking up where he left off.'

Since the last AGM the pupillage programme has continued to flourish and to deliver excellent results. In reporting on the programme I intend to highlight three issues, namely the examination results of 2007; the growth in the tutorial programme; and some planning challenges for 2009.

Examination results 2007

The 2007 NBEB examination results indicate a pass rate of 89%. This is an unprecedented achievement. These results improve on the 2006 results by an additional 4%.

171 pupils were accepted for pupillage during 2007. Of these 159 wrote the Bar Examination, 12 pupils having withdrawn from pupillage;

Six pupils qualified to write the supplementary legal writing examination in November 2007.

A total of 141 pupils passed, with 18 failures. The table below indicates the statistics per Bar:

BAR	No of pupils	RESULT
GRAHAMSTOWN	4	Pass: 2 Fail: 2 Pass rate: 50%
PORT ELIZABETH	5	Pass: 5 Fail: 0 Pass rate: 100%
CAPE	26	Pass: 26 Fail: 0 Pass rate: 100%
KZN	28	Pass: 22 Fail: 6 Pass rate: 78.5%
NORTH WEST	1	Fail: 1 Pass rate: 0%
PRETORIA	37	Pass: 31 Fail: 6 Pass rate: 83%
JOHANNESBURG	52	Pass: 49 Fail: 3 Pass rate: 94%
FREE STATE	5	Pass: 5 Pass rate: 100%
NORTHERN CAPE	1	Pass: 1 Pass rate: 100%

There can be little doubt that the achievement of an overall pass rate of 89% marks a very significant achievement by the Bar. Analysis of the results indicates that 84 candidates passed the examination outright (ie without being required to undergo an oral examination). Five failed outright. Of the 70 oral examination candidates, 11 candidates failed to rehabilitate themselves, 53 were passed and six were

required to undertake a supplementary examination in legal writing.

These statistics indicate, in the first instance that provision for an oral examination and a supplementary examination is essential, and secondly that a structured programme of remedial work can and does have a significant effect on the achievement of creditable results overall. It is important therefore that our future planning must adequately provide for sufficient opportunity for such remedial work during pupillage .

A further aspect worth noting about these results is the high pass rate maintained by the smaller Bars. When reference is made to the success rates at the smaller Bars during the 2006 year it will be noted that generally speaking the smaller Bars have been able to achieve high pass rates despite the fact that they are relatively under-resourced and less able to provide systematic tutoring across all areas of the NBEB syllabus.

The importance of this should not be underestimated. It is essential that the pupillage programme is offered with consistency. Consistency and effective implementation will undoubtedly play a crucial role in any future accreditation process that may be applied to the Bar as a professional training institution.

These results indicate that we are in fact able to achieve high levels of consistency in the mentoring and training programmes we offer.

The Free State, Northern Cape and Port Elizabeth Bars are to be congratulated on their 100% pass rates.

As far as the larger Bars are concerned, their results continue to impress. Johannesburg has improved its success rate from 78% in 2006 to 94% in 2007. The Cape Bar has again achieved a 100% pass rate. The slight decline in pass rates at Pretoria (90% in 2006 to 83% in 2007) and KZN (100% in 2006 to 78.5% in 2007) should be noted. It is hoped that these Bars will pay careful attention to the programme during 2008 in order to again achieve the success rates of last year.

It is important to consider the range of factors that contribute to the overall results achieved. In my view four key factors can be identified:

The achievement of a greater degree of coherence in the implementation of the pupillage system;

The alignment of mentoring methods, tutoring programmes, advocacy training and the systematic use of the Workbook as a core component of the pupillage programme. This has been a steady development over the past number of years.

The introduction and steady expansion of a tutoring system based on trained tutors utilising a more effective teaching method; and

The introduction of pupillage selection systems by most (if not all) of the Bars.

We should of course never be complacent about the results achieved. We will need to continue to ensure that the level of membership involvement in this programme remains as high as it currently is, and we will need to constantly evaluate how effective we are in meeting the goals of our pupillage system.

My congratulations go to all the Bars and in particular the many mentors, tutors and advocacy trainers who have made Pupillage 2007 a great success.

The tutoring programme

In January we again held an intensive two-day training programme to develop the tutoring skills of members of the Bars involved in syllabus instruction. Apart from Mthatha, Bisho, Grahamstown and the North West, all of the other Bars were represented. The course was

presented by Toni Gottlieb and Lorraine Chaskalson (two education specialists who have been engaged in assisting the Johannesburg Bar for some time) together with Sias Reynecke SC and Chris Marnewick SC.

The programme was again regarded as a huge success. Significantly the Bars represented were able to add to the pool of trained tutors operating at the respective Bars. This will no doubt enhance the tutoring programmes that they currently offer, expand the skills base available and contribute to a general integration of mentoring activities with tutoring based on the Workbook programme.

The capacity to provide systematic tutoring based on the Workbook programme necessarily differs from Bar to Bar. At the larger Bars the tutoring programme offered tends to be more structured and formal, whereas at the smaller Bars the tutoring tends to be less formalised and programmatic, principally because of smaller pupil numbers.

The tutoring methodology upon which the programme is based is however ideally suited to small groups. Based on the feedback received during the January workshop (and subsequently) the smaller Bars have benefited significantly from the tutoring system that has been introduced.

Careful planning and coordination by each Bar is essential to the success of the tutoring programme, both to minimise the drain on stretched resources and to ensure that the pupils achieve maximum learning benefits from the programme.

A further course is being planned for January 2009. In preparation for the course I will be undertaking an evaluation exercise in order to identify areas in which further training and support may be required. I will be working with Toni Gottlieb, Chris Marnewick SC and Sias Reynecke SC to build up a tutoring resource base to facilitate the work of tutors at each of the Bars.

Challenges for 2009 and beyond

Chris Marnewick SC's contract to produce the Workbook and its updates comes to an end at the end of this year. He has understandably decided that he will no longer be directly involved in the production of the Workbook beyond this year. He will however be preparing the 2009 Workbook which will be made available in October this year. I have been in discussion with him regarding suitable arrangements for the future production of the Workbook and will report to the GCB Executive Committee in this regard in due course.

Marnewick SC has made an enormous contribution to the development of a credible and effective system for the instruction and training of pupils. The success achieved by the Bar in the implementation of its one-year pupillage system is due in no small measure to his dedication and commitment. I believe that the Bar owes him a debt of gratitude and that this AGM should mark its appreciation appropriately.

The proposed Format for Pupillage 2009 is published on page 20 of this issue. It will be noted that the Format follows the programme utilised during this year.

One aspect must be highlighted, namely the need to ensure that Bars do not admit to pupillage persons who are not admitted as advocates or can be admitted as advocates. We have, over the past few years, from time to time had to deal with the difficult situation that arises when a pupil has not yet been admitted at the stage that the examination is to be written. This situation should not arise and is easily avoided. Individual Bars should be urged to apply the rules applicable to entrance to pupillage systematically and consistently.

Tributes

I have already paid tribute to Marnewick SC. Tribute should also be paid to Dickson SC for the success of pupillage in 2007. I would like to express my appreciation to the Pupillage coordinators for their ongoing commitment to the pupillage programme. Without their efforts we would not have a programme. Special thanks to the GCB secretariat for their ongoing support and assistance.

Postea: Resolutions passed at the AGM:

That the one-year pupillage programme be maintained for 2009 and that the Format for Pupillage for 2009 be approved.

That the pupillage registration fee payable to the GCB for 2009 be fixed in the sum of R450.

That the National Pupillage Coordinator is authorised to do the following in respect of pupillage for the year 2009:

- Issue the general guidelines containing the criteria for the acceptance by Bars of pupils where the number of applications exceeds the number of places for pupillage ;
- determine the curriculum in consultation with the National Bar Examination Board;
- determine the Pupillage Programme;
- determine the programme of examinations in consultation with the National Bar Examination Board;
- issue guidelines for pupil mentors; and
- issue guidelines on the coordination and structure of pupillage at all Bars and the supervision and coordination thereof. 

Advocacy Training

Sharise Weiner SC, convenor of the GCB's Advocacy Training Committee, reports as follows:

International workshops

The Advocacy Training Committee (AT) continued its ongoing relationship with Gray's Inn and ATC (England) and made many more international connections over the year.

Our trainers and juniors attended two workshops at Gray's Inn as well as the Keble College workshop at Oxford:

2007 May, Gray's Inn: Ron Paschke, Cape Town, Gerhard Naude, Pretoria,

2007 September, Oxford Keble College: Trevor Gorven, Pietermaritzburg, Danny Berger, Johannesburg

Juniors: Ntsiki Sandi, Grahamstown, Henriette Murray, Bloemfontein

2008 May, Gray's Inn: Izak Smuts, Grahamstown, Gary Oliver, Cape Town, Johann Barnardt, Pretoria

We were invited to send two juniors and two trainers to Keble in August 2008. (See Graham Grindwood's report on page 29 of this issue.)

Second International Advocacy Teachers' Conference, Prato, January 2008

I attended the conference together with Tim Bruinders SC and Tanya Golden. I delivered a paper on 'The Art of Oral Advocacy.' Other papers included one on the controversial subject of conducting a case analysis. Charles Haddon Cave QC's paper on the subject incorporated the model compiled by, inter alia, Les Morrison of the Johannesburg Bar. A copy has been furnished to all Bars for use.

Expert Witness Workshop

This took place in Pretoria in March 2008. Piet van Niekerk of the Pretoria Bar organised the workshop which dealt with experts in a custody dispute.

The Jhb Bar organised two advocacy

training workshops for junior counsel, namely a labour court workshop on Tuesday, 18 September 2007, and a criminal appeal workshop on Thursday, 4 October 2007.

Teacher Training Workshop

In January 2008, we held our annual teacher training workshop at Mont-aux-Sources Drakensberg. Edwin Glasgow QC, Charles Haddon-Cave QC, Vincent Nelson QC and Anuja Dhir of Gray's Inn attended from the ATC. Judges Johann Kriegler and Roger Claassen attended to assist as trainers. It was a very successful weekend in which we trained 30 new advocacy trainers; 24 pupils assisted in this. We were also asked by Professor Wanyama Kulundu-Bitonye, the director of the Council of Legal Education, Kenya School of Law, to include four of their representatives as trainees at the workshop. The GCB funded their airfare. Besides Prof Kulundu, Ms Dorcas Agik Oduor Abuya, chief litigation counsel, Directorate of Public Prosecutions, and Ms Beatrice Kemunto Sungura, chief executive officer, Council of the Law Society of Kenya, attended.

The timing of the workshop coincided with the post-election violence and unrest in Kenya. As a result of this, Judge Isaac Lenaola, chair of the Kenya Magistrates and Judges Association, was unable to attend. Prof Kulundu spoke movingly about the plight there and the importance of our work as advocates in maintaining the rule of law through, inter alia, the continued training in advocacy skills.

Pupillage Lecturer Workshop

A successful workshop conducted by Lorraine Chaskalson, Toni Gottlieb and Sias Reyneke SC with lecturers from all Bars, took place simultaneously with the AT workshop in the Drakensberg. See Toni's article in 2008 April *Advocate* 18. The workshop will be repeated in 2009.

Drakensberg 2009

The view of the referral Bars is that it is essential that, in order to retain the high level of training, all trainers should be reassessed on a regular basis.

At the Drakensberg in 2008, we put this into practice through a system of peer review. We were fortunate to have the expertise and experience of the UK trainers at our disposal. The peer review process was very successful and the majority of trainers whom we chose to participate as 'teacher-trainers' retained their A or A+ grading. A report was made to the AT chair of each Bar in respect of those who fell below an A grade.

This peer review system continued throughout 2008 with trainers being assessed during the pupil and junior training workshops.

The necessity of continuous assessment has resulted in a decision to devote the majority of our resources for the 2009 workshop to the 'refreshing' and, if necessary 'retraining' and 'reassessing' of our existing trainers. The workshop will thus involve many more trainers than usual. In order to meet our budget constraints, it has been provisionally agreed that trainers will contribute an amount of R1 000 per person towards the workshop costs. This workshop will be an excellent opportunity to ensure that our training is kept at a high standard and also an opportunity to provide our trainers with a weekend in which to have some enjoyment as a reward for their devotion to training over the past 13 years.

Joni Raff left the GCB/Jhb Bar administrative position to travel overseas. Her successor is Sheri-Leigh Lowe who has been a great help in taking over so seamlessly.

Our thanks to Elize van den Heever of the GCB and her team for their able assistance this year. 