

Change at the Bar



Extracts from the opening address by Hilton Epstein SC, chair, Johannesburg Bar Council, at the Future Leaders Symposium, Johannesburg, on 10 July 2009.

Have you ever looked at old photographs and marveled at how things were and how they have changed? I recently studied the photographs hanging in the Bar secretariat and I was particularly taken by those of the Bar Council committees over the past 20 or more years. Not only did I notice how young I looked when I was first elected to the Bar Council about eighteen years ago, but I was struck by the progressive ageing process of my colleagues as I stared at the array of photographs neatly hanging in date order.

However, the real impact for me was that not only were some of us fairly young when first elected to the Bar Council but we were, at the time, leaders of the Bar. Young leaders have young ideas; old leaders tend to persist with what have become their old ideas. Generally, we tend to maintain our ideas, standards and values, continuing to believe that they remain apposite for all time. Yet we know that there has been over the years a constant change in value systems and attitudes. There was a time when women never had the vote; women were discouraged from having careers; it was a man's right - and job - to drive a motorcar and a woman's place was in the home. These value systems have rightly changed. We have seen change, for example, in matters concerning parental rights and custody of minor children; the age of majority has changed; we now have same-sex marriages, something unimaginable when some of us studied the law of persons at university. The attitude of 'spare the rod and spoil the child' is no longer acceptable, and we have a host of new laws built upon principles enshrined in the Constitution and other laws which have been amended or scrapped because they have no place in our society.

There are innumerable examples of change which have taken place during this century and the last. But these changes did not happen of their own accord. They were steered and driven by leaders – generally young leaders who brought fresh ideas which they promoted, often at risk to their physical well-being and liberty.

Unfortunately, there is a perception that to be a leader you need to be of a certain age. I suppose that with age comes wisdom – something which cannot be learnt. However, looking around at world leaders today, scant respect is shown to those who believe that to be a true leader you must work your way through the traditional ranks.

Values and policies at the Bar have also changed over the past few years. We did away with the need for a senior counsel to appear with a junior counsel; we made in-roads into the rule that counsel cannot consult without an attorney being present; there was a time when it was taboo to visit an attorney's office – even before attending the attorneys' annual

cocktail party, the permission of the Bar Council's professional committee was sought.

Various in-roads have been made into the way the Bar operates. Monopolies which the Bar previously enjoyed have been chipped away. Attorneys now have a right of audience in the High Court; attorneys robe the same way as do advocates; it is becoming more prevalent for parties to divorce suits to conduct their own unopposed divorces; judges and acting judges are no longer appointed from the ranks of advocates but also from the attorney's profession.

For the Bar to continue to play its major role in South African society it must adapt. We must not believe that everything that was good in the past should be sustained now and in the future when it is no longer apposite. What is required is a reappraisal of many of our rules. We must ask what was the rationale for the rule, does the rationale still exist, is it still apposite, and is it worth holding onto?

Fifteen years ago, the advocates at the Johannesburg Bar were housed in two buildings. Most of the advocates knew each other and there was an intimacy about this Society. There have been dramatic changes. We are now housed separately, the Bar Council is no longer the head-lessee of premises and groups have become much more autonomous. Some groups are even bigger than the entire Bar in other provinces. The fact is that we will not revert to the structure we had years ago. But have we adapted to cope with the changes we have seen over the past few years? We do not have a common room as we knew it, despite attempts to resuscitate this. But we have now have a virtual common room (see www.commonroom.co.za).

We need to reappraise the sensibility and sensitivity of certain rules (for example, calling each other by our surnames). This practice needs to be reconsidered especially with advancement in gender equality. At the Johannesburg Bar, we are dealing with a review of the silk-selection process knowing that a broad section of the Bar believes that the criteria for selection must be revisited. We need a system that is open, fair and has regard to transformation imperatives. Yet we need to maintain merit in demonstration of advocacy skills. And importantly, we need transformation initiatives aimed at changing the attitudes of attorneys and clients to briefing black and female advocates.

Dealing with all of the above requires enthusiastic and determined leadership. However, young advocates appear to display a reluctance to participate in Bar affairs, rather leaving matters to the older advocates. But new blood is needed. New ideas must be debated and then implemented by the new generation of advocates. The drafting and processing of the Legal Practice Bill is to be expedited.

You are the young leaders of the Bar. As a leader, your role will not be confined simply to running your own practice and hoping the structures remain untouched. It falls upon you to understand the Bar and its inner workings; to understand the Legal Practice Bill debate so that you can contribute towards it, and to take steps to engage all interest groups and to negotiate the future of the Bar. It also falls upon you to sacrifice archaic rules where necessary but to stand firm on the independence of the Bar – the edifice upon which it is built. 

Legal Crossword Number 9: Answers

- Down**
- 1 What you may seek when you flee (ASYLUM)
 - 2 Double in real life (PRACTICABLE)
 - 3 Venerable authority (GROTUS)
 - 4 Municipal in international law (NATIONAL)
 - 5 English delict (TORT)

- Across**
- 1 Take by force (SPOILATE)
 - 2 Title to sue (STANDING)
 - 3 Keep counsel employed (LITIGATE)
 - 4 The trust you can't bust (MICROSOFTE)
 - 5 Our Constitution should peculiarly protect those who have this (LEAST)