

Young Leaders Symposium

Extracts from the report by Peter Makhambeni, Johannesburg Bar, on the Young Leaders Symposium held at Muldersdrift on 10 – 11 July 2009

- 1 The 2009 GCB's Young Leaders Symposium was held at Glenburg Lodge in Muldersdrift, near Johannesburg. Delegates from all the GCB's constituent Bars, with exception of the North West Province, were in attendance. The symposium was organised and directed by Anthea Platt of the Johannesburg Bar.
 - 2 The proceedings kicked off on Friday evening at 18h30 with Epstein SC, the chairperson of the Johannesburg Bar Council, welcoming the delegates and the keynote speakers.
 - 3 First on the agenda was a discussion on the Legal Practice Bill, facilitated by Mtshaulana SC, the chairperson of the GCB. The topic generated much heated debate amongst the delegates. At the end of the day it was agreed by all that the fusion of the attorneys' and the advocates' professions should not be confused with transformation. If the Legal Practice Bill is to address the issue of transformation head-on, then it would have to do so taking into account the views of our profession, and without blurring the lines between fusion and transformation of the professions. Mtshaulana SC affirmed the GCB's commitment to protecting the integrity and independence of the Bar as a profession and recorded that as the fusion debate clouds issues to a large extent, the problem of a non-transformed profession remains unresolved (see 2009 December *Advocate* 30).
 - 4 Up next was a discussion on briefing patterns, led by Mr Krish Naidoo, a senior attorney in Johannesburg. The broad history relating to briefing patterns from about the 1950s to the present was covered. New ways of transforming the patterns of briefing amongst attorneys were explored to facilitate the transfer of skills. This would in turn make it possible for advocates from previously disadvantaged backgrounds to specialise in specific areas of law, previously viewed as the sole preserve of white senior advocates.
 - 5 The last topic of discussion was the rule of law from a Zimbabwean's perspective. This was addressed by Ms Beatrice Mthetwa, a senior human rights legal practitioner in Zimbabwe. Ms Mthetwa outlined the raft of atrocities, and violations of the law in Zimbabwe at municipal, regional and international level.
- Most poignant about Ms Mthetwa's outline was the message that Zimbabwe's international law obligations have been violated, and that for the rule of law to remain relevant in that country it requires work from the lawyers in Zimbabwe and people who are courageous enough within South Africa.
- 6 The open discussion session was brilliantly facilitated by Anthea Platt of the Johannesburg Bar. It resonated clearly amongst all the delegates that the good work achieved at the symposium should not end there. The delegates undertook to make a concerted effort to remain in touch with one another and sell the vision discussed at the symposium to all members at their respective Bars. Delegates committed themselves to achieving the goal that the Bar as a whole should move forward cohesively, without some senior members developing rumblings of discontent from the notion that the hot headed juniors are at it again, trying to push forward without involving the guidance of seniors with the requisite wisdom of age and experience.
 - 7 The closing address was presented by Semenya SC of the Johannesburg Bar. He thanked all the keynote speakers and delegates for taking time out of their busy schedules to deliver and debate these issues of cardinal importance in respect of the future and survival of the Bar. Semenya SC went on to remind all those present of the importance of harnessing the type of vigilance that would make it imperative for all of us to neither grow comfortable nor complacent about the issues discussed at the symposium. He urged delegates to take forward the lessons learnt, and to ensure that they make these lessons part and parcel of their metaphoric genetic makeup. It is from these tenets that the Bar can grow from strength to strength.
 - 8 We are indebted to the organisers and keynote speakers for the symposium. As for delegates, it was great to see the high level of intellectual gymnastics; these led to constructive and engaging exchanges and debates. It was all these things which made it possible for us to feel that the 2009 Young Leaders Symposium indeed achieved the objects it sought to achieve. 

Press releases by the GCB

Appointment of acting judge

The General Council of the Bar of SA (GCB) has learned with dismay and concern that the Minister of Justice (the Minister) has appointed Adv Mpshe, a State employee, to act as a judge.

At the Heads of Court meeting in October 2008, the GCB expressed its concern about the appointment of State

employees, such as members of staff of the State Attorney's office, the Asset Forfeiture Unit and the National Prosecuting Authority (NPA), as acting judges.

The then Chief Justice had promised to place the matter on the agenda of the meeting of the Heads of Court and the Judicial Service Commission (JSC).

To the best of our knowledge the JSC decided against State employees acting as judges. We also believe that some discussion took place between the then Minister and the JSC on this issue.

In the light of the above the GCB calls on the Minister to withdraw, or at least suspend, the appointment of Adv Mpshe

as an acting judge pending verification by him of the above. In this regard it is necessary to disclose that the GCB wrote to the Minister on 5 February 2010 with a request that he urgently address this issue but that as at the time of the release of this statement no response had been received.

The GCB believes very strongly that the employment of State

employees as acting judges undermines the independence of the judiciary.

Patric M Mtshaulana SC, chairman

10 February 2010



Response to statement of Minister of Justice

The General Council of the Bar of South Africa (GCB) regrets the statement [made on 18 February 2010] by the Minister of Justice and Constitutional Development defending his appointment of serving public servants as acting judges. For the reasons given in the GCB's earlier correspondence to the Minister, the GCB considers that this stance is flawed. The Constitution contemplates a separation of powers, and the appointment of public servants to the judiciary is inimical to this.

The GCB has taken note of the indication in the Minister's statement that Adv Mpshe has requested the President to allow him to vacate his office, and the subsequent indication by the Minister's spokesperson that the President has granted that request. The GCB is, however, concerned, that in the Minister's statement he indicates that his decision to appoint Adv Mpshe as an acting judge would have remained the same regardless of whether or not Adv Mpshe was still an employee of the NPA.

The GCB has previously pledged its support to the Minister

and offered to work with him in addressing the challenge of delivery of legal services to the poor. We reiterate our pledge of support to the Minister. As in the present instance, however, we expect to differ with the Minister from time to time. When this happens, it is to be hoped that it will be recognised that this is because the GCB represents independent-minded lawyers, instead of its position being characterised as politically motivated. The GCB first raised this issue, through appropriate channels, at a Heads of Court meeting in September 2008, and again in correspondence with the Minister recently, to which it received no substantive response.

The GCB hopes to secure an urgent meeting with the Minister in order to discuss with him these important matters.

Patric M Mtshaulana SC, chairman

19 February 2010



National Bar Examination Board



The National Bar Examination Board met on 7 November 2009 in Johannesburg.

Front left to right: Judge AN Jappie (moderator); Judge D Mlambo (moderator); Judge P Levinsohn (moderator); A Findlay SC (convenor); SCA President, Judge L Mpati; Judge WG Thring. Back: G Farber SC; AK Kissoon Singh SC; AJ Louw SC; NJ Treurnicht SC; JW Eksteen SC. Absent for photo : Judge MM Joffe, MSM Brassey SC.