

Cape Bar

Legal Practice Bill Workshop

by André Coetzee

On 26 July 2012 Advocates For Transformation (Western Cape) hosted a workshop focusing on the Legal Practice Bill in the Cape Bar Council Common Room. The workshop was given the general title, 'A discussion on the Legal Practice Bill.' Andries Nel, the Deputy Minister of Justice and Constitutional Development, was the guest speaker, and the workshop was attended by members of the Cape Bar and the attorneys' profession.

The Deputy Minister highlighted the general objectives, purpose and anticipated operation of the Bill, and his speech was followed by a question and answer session. The questions posed by those in attendance focused primarily on the impact of the Bill on the independence of the legal profession, the need for the Bill, and the composition of the governing bodies contemplated by the Bill.

Those who attended generally agreed that the workshop achieved its objective of creating an informative platform from which practitioners could obtain more information about the Bill.

JSC v CBC (in the SCA)

by Luke Kelly

On 14 September 2012, the Supreme Court of Appeal (SCA) dismissed the Judicial Service Commission's (JSC) appeal against the judgment and order of the Western Cape High Court (High Court) in the matter between the Cape Bar Council (CBC) and the JSC.*

Members will recall that the CBC instituted proceedings in the High Court during June 2011 seeking declaratory relief – the CBC sought an order declaring that the seven interviews conducted by the JSC for three vacant positions at the High Court, and the JSC's decision not to fill two of these vacancies, were unconstitutional and that the JSC be ordered to reconsider the candidates' applications. The CBC contended that the JSC was not properly constituted

when it convened to interview and select applicants to be nominated for judicial appointment in that neither the President of the SCA, nor his deputy, were present as required by section 178 of the Constitution. The CBC also contended that the JSC's decision not to fill the two vacant positions was irrational and therefore invalid. The CBC was successful before the High Court.

On appeal the JSC argued that its decisions were expressly excluded from statutory review, and that the CBC had failed to join the successful applicant who had an interest in the outcome of the application. The SCA rejected both of these arguments finding, in particular, that the JSC's power to advise the President on the appointment of judges was an exercise of public power that was subject to review on the basis of irrationality.

Whilst the SCA declined to pronounce on whether the voting process followed by the JSC was constitutionally sound, it upheld the High Court's findings that the JSC's decision that led to its failure to fill two vacancies was irrational and that the reasons provided by the JSC were inadequate. (The JSC argued that it was not obliged to provide reasons but had in any event done so by explaining that none of the other candidates had received sufficient votes.)

The SCA dismissed these contentions and held that the JSC is constitutionally obliged to act rationally and transparently in deciding whether or not to recommend candidates for judicial appointment and that this would, in principle, entail an obligation to provide reasons. In this regard, the SCA held that sufficiency of reasons would be determined by the facts and circumstances of each case. [A](#)

* (818/11)[2012]ZASCA 115. The application was supported by the Centre for Constitutional Rights as *amicus curiae*.



From left to right: Thabani Masuku, Ashton Schippers SC, Ismail Jamie SC, Deputy Minister Andries Nel, Penelope Magona, Cecil Tsegarie and André Coetzee.

Port Elizabeth Bar

By Anusha Rawjee

While no news may be good news it infers a Bar where practice is boring and practising in PE is anything but boring. We witnessed a flurry of activity at the end of the second term with a number of our members heading north to attend the World Bar Conference with the more seasoned practitioners knowing full well just how to balance business and pleasure, touring parts of Europe thereafter. Mouton SC

brought back a picture of the oldest university in the world – making us realise just how young a civilization we are in the bigger scheme of things. What's amazing is that the university is fully operational. England's new Supreme Court Building was shown off to awestruck delegates attending the conference.

Shortly after the World Bar Conference, the Eastern Cape Society of Advocates successfully hosted the Young Leaders

Symposium in July which starred, inter alia, the country's constitutional pandit of Constitutionally Speaking fame, Pierre de Vos. The Legal Practice Bill and the effect it will have on the Bar as an institution was a hot topic of discussion, highlighting the fierce independence with which we practise as members of the GCB. If anything, it is more apparent now than ever before that there is very little that will ever pose a threat to the independence of our Bar. [A](#)