



# All must help tailor a suitable professional structure

**Jeremy Muller SC**, chair, General Council of the Bar of South Africa

- 1 The professional landscape for both attorneys and advocates is now dominated, and will for some time to come continue to be dominated, by the Legal Practice Act (LPA), which became law last year. Its provisions come into force in stages. Chapter 10, which establishes the National Forum ('the Forum'), came into effect on 1 February 2015. The first meeting of the Forum will be held on 31 March 2015. The Forum is to exist for a period not exceeding three years. Once he considers the work of the Forum to have been completed, the Minister of Justice and Correctional Services ('the Minister') will promulgate Chapter 2 of the LPA, which establishes the South African Legal Practice Council ('Council'). This will be the permanent statutory institution designed to regulate virtually all facets of our professional life.
- 2 With the promulgation of Chapter 10, the efforts of the Bars have turned to making the arguments and building the relationships required to enhance the prospects of an acceptable outcome to the functions with which the Forum is tasked. Although an interim body, it will be a powerful one. It has 21 members comprising nominees from a variety of stakeholders. The Bars have six of them. The outcomes of the Forum's work will have a significant bearing on the legal professions. These include making recommendations to the Minister on a variety of aspects – the powers and functions of the proposed Provincial Councils (to be established in every Province in due course and to which the Council may delegate certain of its powers and functions); and the practical and vocational training which candidate attorneys and pupils will be required to undergo in order to qualify to practise as legal practitioners, to mention a few. The Forum is also required to prepare a code of conduct for all legal practitioners and to make rules on a variety of issues: a competency-based examination for the assessment of pupils; the minimum conditions and procedures for the registration of practical vocational training; the procedure and directions pertaining to the assessment of persons undergoing practical vocational training; the procedures to be followed by disciplinary bodies; and the manner and form in which complaints of misconduct relating to legal practitioners must be lodged with the Council.
- 3 The Forum has wide powers to do '*... all that it is necessary or expedient to carry out its terms of reference ...*', including the establishment of committees, which may consist of members of the Forum only, or include '*other persons*' to assist it. It may delegate any of its powers and functions to such committees. To complete its work it is likely that the Forum will need to establish such committees.
- 4 Our six nominees on the Forum will have their hands full dealing with the business of the Forum. Their task will entail participating in and influencing the policy discussions within the Forum at high level. They cannot be expected to become engaged actively in the detailed work with which the Forum is tasked, and is required to complete, within a very limited time. That will doubtless be the work of the committees. Members of our Bars are urged to make themselves available to assist here.
- 5 The Forum is comprised of the nine separate stakeholders identified in the LPA. These include the attorneys' profession, the Minister, the South African Law Deans Association and Legal Aid South Africa. In order to ensure the best possible outcome to this process from the perspective of the Bars and the advocates profession generally, ongoing liaison with these stakeholder representatives, and their principals at various levels, will be necessary. The work of our six representatives on the Forum will need to be coordinated and directed with appropriate mandates from time to time. Unlike the attorneys' profession, the Bars have no fulltime executive employees who can dedicate themselves solely to this process. The demands of maintaining a practice make it impractical for members of Bar Councils and the GCB Executive effectively to carry out these functions with the time and energy they deserve.
- 6 For this reason the GCB recently decided to engage the services of an experienced senior member ('SM') from within our own ranks, who will, on a remunerated basis, devote him or herself virtually fulltime to the interests of advocates and the Bars during the implementation phase of the LPA. The terms of reference of the SM include:
  - Formulating policy and making proposals to the GCB and the Bar Representatives on the Forum ('BR') con-

- cerning the future shape and form of the GCB and its constituent Bars within the legislative framework of the LPA.
- Identifying issues on which the Bars might profitably provide contributions to the Forum.
  - Preparing draft proposals on the content of the Bars' representations to the Forum, including the facilitating of consultation with constituent Bars for comment and, if necessary, obtaining their mandate.
  - Liaising with the attorneys, universities, government and other stakeholders on the Forum when required in pursuit of the Bar's overall aims within the Forum.
  - Studying proposals from the other stakeholders within the Forum, providing a critique thereon and, if necessary, preparing draft responses for consideration by the BR's.
  - Making appropriate representations to the Rules Board, which is required by the LPA to set tariffs for fees during the transitional phase.
  - Advising on public relations initiatives which might be desirable or necessary in order to advance the Bar's position on the implementation of the LPA.
- 7 There have been discussions on possible candidates for this role. It is expected that an appointment will have been finalised by the time this edition of *Advocate* is published.
- 8 The position of the SM is to be a paid one. All the Bars have unanimously agreed to the imposition of a special levy, payable for one year with effect from 1 May 2015, in order to fund the remuneration of the SM. The special levy is R150 per month for silks, R100 for juniors of five years plus, and R50 for juniors of one to five years (juniors under one year call will be exempt).
- 9 Fees are a perennially sensitive topic. The thought of parting with any portion of our fees to pay for what might be perceived as distant Bar administration can be guaranteed to hit an even rawer nerve. However, every member of every Bar is urged to embrace the idea of this special levy. The funds raised are to be used for an important purpose. The South African Law Reform Commission is, in terms of section 35(4) of the LPA, tasked with making recommendations to the Minister concerning a wide range of aspects concerning fees charged by all legal practitioners. In terms of section 94(1)(k) of the LPA, the Minister is entitled to make regulations for the implementation of these recommendations. Section 35(1) provides that until the investigation of the Law Reform Commission is complete, fees in respect of litigious and non-litigious legal services 'must be in accordance with the tariffs made by the Rules Board for Courts of Law ...'. One of the functions of the SM will be to ensure that the Rules Board does not make tariffs which bear no relation to reality. On this issue alone – quite apart from all the other important respects in which the LPA will have an effect on the way in which we practise in future – the modest contribution of the special levy will be money well spent.
- 10 As I indicated at the outset, the LPA and its implementation understandably dominates the discussions of constituent Bars of the GCB. The GCB nonetheless continues to deal with the often more prosaic, but occasionally somewhat more distracting, issues that typically arise in our professional life. *A capitis selectae*:
- The GCB recently enquired from the Judicial Service Commission ('JSC') why a permanent vacancy on the Constitutional Court has remained unfilled for over a year. The somewhat surprising explanation we have received is that the JSC has in the past struggled to attract candidates to fill vacancies for the Constitutional Court and, for this reason the Chief Justice has used the past year to afford as many Judges as possible an opportunity to act in the Court hoping in this way to increase the number of those likely to make themselves available to be appointed to it. A special sitting of the JSC will be proposed during the JSC's April 2015 sitting in order to fill the vacancy by June.
  - At the request of the NPA the GCB recently considered remarks by Judges of the High Court and the Supreme Court of Appeal which were highly critical of the conduct of, and affidavits deposed to by three senior NPA officials in several decisions which have attracted wide media attention. As a consequence, the GCB decided to launch applications for their striking off. The applications are likely to have been issued by the time this edition of *Advocate* is published.
  - The GCB has been addressing the frustrating delays in the awarding of silk to members of Bars across the country. These were finally resolved after lengthy communications with the Minister, save in the Cape, where a particular problem has persisted. At the time of writing, it would seem that even the Cape's difficulties are now finally a thing of the past.
  - After a lively internal debate, the GCB has decided that this year's Sir Sydney and Felicia Kentridge award should go to Thuli Madonsela, the Public Protector. It will be formally awarded to her at the GCB's annual general meeting which is being held this year in Cape Town on Saturday, 18 July 2015.
- 11 Finally, a note on three of our most distinguished members. Fanie Cilliers SC of Johannesburg, David Gordon SC of KZN and Peter Hodes SC of the Cape, all celebrated 50 years at the Bar in the course of last year. I had the privilege of proposing a toast to Peter to mark the event at the Cape Bar's annual dinner recently and the good fortune of appearing against Fanie in an arbitration a week or two ago. Some years ago David offered me the sanctuary of his chambers during a spectacular storm while I was running a matter in Durban. Fanie, David and Peter all joined the Bar in 1964. That was the year Bob Dylan charted with his evocative anthem, 'The Times, They Are a-Changin''. Fifty years on, they may be again – at least for our profession in South Africa. Ultimately, however, the future of the Bars and their continued relevance will be determined by the quality of those who make up their membership and who hold dear the principles and ethos which the Bars represent. Fanie, David and Peter, in their very different ways, represent the best traditions of the Bar. The more things change, perhaps, the more they shall stay the same. 