

afforded a hearing before their appointments could be refused; this expectation was based on a long-standing practice at the hospital that such applications carrying the recommendation of the departmental head had invariably been granted by the Director of Hospital Services, the appointment being no more than a formality. This conclusion was reinforced by the seriousness of the consequences to the career prospects of the respondents which would attach to a refusal based on suitability for appointment.

Related issue

A related issue which received attention in the judgment was that of the traditional dichotomy between quasi-judicial and other administrative acts, which has been referred to earlier in this note. This feature of English administrative law has long since been discarded by English law itself, but until now has continued to flourish here despite trenchant criticism voiced against it. As early as 1970, Lord Denning himself stated in *R v Gaming Board for Great Britain ex parte Benaim* 1970 2 All ER 528 (CA) that the 'heresy' to the effect that the

rules of natural justice do not apply in administrative proceedings had been scotched in *Ridge v Baldwin* 1963 2 All ER 66, while Lord Oliver in *Leech v Parkhurst Prison Deputy Governor*; *Prevot v Long Lorton Prison Deputy Governor* 1988 1 All ER 485 stated that 'the susceptibility of a decision to the supervisory jurisdiction of the court does not rest on some fancied distinction between decisions which are "administrative" and decisions which are "judicial" or "quasi-judicial"' (496d). Corbett CJ referred to the criticism which has been levelled by South African authorities against the categorisation of administrative acts into quasi-judicial and purely administrative, and came to the conclusion that, indeed, 'a classification as quasi-judicial adds nothing to the process of reasoning; the court could just as well eliminate this step and proceed straight to the question as to whether the decision does prejudicially affect the individual concerned' (762).

Judgment welcomed

This judgment is to be welcomed without reservation, not least for its

lucidity and for the total absence of the convoluted style which has so often been a blemish on legal writing. The sooner the idea that writing is learned only if it is couched in language so obscure as to be virtually unintelligible loses currency, the better. But what is even more important is that our highest court has excised from our administrative law that quite unnecessary phenomenon, the quasi-judicial act (surely this ghost must now be laid to rest at last?) and has endorsed the principle which has long been recognized in other jurisdictions, namely that it is no more than fair that a legitimate expectation should entitle an individual to a hearing even where he cannot prove any existing or vested right. The practical application of the doctrine of legitimate expectation has been placed on a sound footing, with guide-lines for its applicability, in order to ensure a balance between the interests of the individual and the demands of administrative practice. Important judgments in the sphere of administrative law have appeared thick and fast in recent years; but this one may yet prove one of the most significant of all. ■

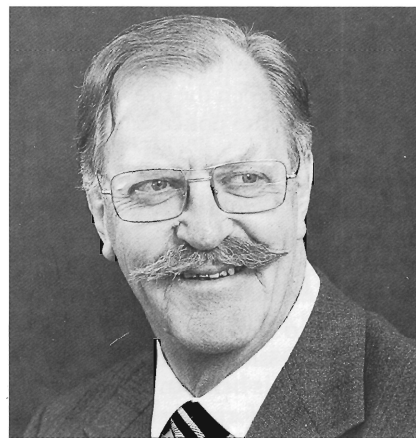
The following is a tribute to the late Mr Justice GA Coetzee (4.4.1920 – 23.12.1989) delivered by Advocate A Mendelow QC on behalf of the Johannesburg Bar at the Memorial Service in the Supreme Court on Tuesday, January 16 1990 at 10:00.

I would respectfully associate the Johannesburg Bar with the remarks which have fallen from your Lordship.

My Lord, I personally have known the late Mr Justice Coetzee since long before he qualified as an advocate – when he was still employed in the Department of Justice, in charge of the default judgment book at the Magistrate's Court at Johannesburg, this was then housed at the spot where the present Van Der Bijl Park bus terminus is to be found. With the exception of the members of his family, I think it would be correct to say that I have known him longer than anyone else in this courtroom.

He was admitted to the Bar on the 14th March 1946 and became a foundation member of the Group of which I am now the leader and, until his elevation to the Bench, we were in almost daily contact with one another.

IN MEMORIAM



The late Mr Justice GA Coetzee

Apart from his many other qualities, he had two that were outstanding – he was fiercely independent and an unrelenting perfectionist. If these two qualities were his strengths, they were, also, possibly, his weaknesses. At a time when it became fashionable in certain quarters to attempt to place upon the shoulders of the judicial arm of government, functions which rightly belonged to the legislative arm, he spoke out in defence of his judicial colleagues with a ferocity

bordering almost on the aggressive. His evidence before the Hoexter Commission, is ample corroboration of that fact. His independence is further illustrated by his demolition of the incipient importation of the Anton Piller procedure, into South Africa.

His insistence upon perfection resulted in a measure of some unpopularity in the ranks of the junior bar. What was often mistaken for possible abruptness on his part was, however, in essence, nothing more than a desire for perfection. The counsel who had done his preparatory work properly and correctly, had nothing to fear from Mr Justice Coetzee. He was impatient of shoddy work, and like many other great intellects, perhaps, intolerant of fools. It was this feeling that led him to prepare the Practice Manual which became known, affectionately, as 'Oom Gert Vertel'.

And yet, he was a much travelled, cultured and warm person; always concerned for the welfare of his fellowman, concerned about his wife and children, courteous to his staff, with a tremendous reservoir of energy, which he canalised into his profession and his hobby – woodworking. At the Bar, he

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One must bear in mind that an accused (especially an unsophisticated one) will very rarely be prepared to admit that 'the police assaulted me so I confessed or made a statement.' He would rather lie and say: 'The police assaulted me and told me what to say.'

The writer submits that the difficulty with *Talane's* case is that the courts may, in these situations, find the accused to be an untruthful witness, reject his version, and rule that the confession is admissible. Yet, the fact that the accused has been untruthful regarding the identity of the author of his statement, does not necessarily mean that he was not assaulted or unduly influenced. One has to guard against over-emphasising the accused's demerits as a witness. Of particular interest here are the following remarks made by Feetham J in *Maharaj v Parandaya* 1939 NP 239 243:

Some innocent people meet accusations by simply telling the truth. Others, who may be equally innocent of the accusation, take refuge in some invented story, because they are not satisfied that the truth alone would be sufficient to carry conviction.

And in *Goodrich v Goodrich* 1946 AD 390 396 Greenberg JA further warns us that:

... in each case one has to ask oneself whether the fact that a party has sought to strengthen his case by perjured evidence proves or tends to prove his belief that his case is ill-founded, and one should be careful to guard against the intrusion of any idea that the party should lose his case as a penalty for perjury.

Safer approach

The writer contends that the premature disclosure of the contents of the confession may be prejudicial to the accused notwithstanding the fact that the courts will always try to be fair to the accused by not allowing themselves to be influenced by the contents before ruling on its admissibility. The trained legal mind is, however, not infallible, and the practice followed by some courts not to have regard to the contents of the statement before deciding on its admissibility is indeed a salutary one. The writer suggests that the better approach is for the court to disallow cross-examination on the contents of the confession (irrespective of the accused's allegations that he is not the source thereof) until a decision on the admissibility has been made. The prosecution should rather confine itself to cross-examination on the nature of the alleged assaults or undue influence to show whether or not the accused's allegations are worthy of credence. This will no doubt be the safer and less dangerous approach.

The writer submits that the better approach was that suggested by Viljoen JA in *S v Gaba* 1985 4 SA 734 (A). In this case the Appellate Division approved the practice, followed by some courts, not to have regard to the contents of a confession before the question of its admissibility in terms of s 217(1) has been decided. At 749 H-I the learned Judge of Appeal stated:

The practice followed by some Courts (see, for instance, *S v Mahlala and Others* 1967 (2) SA 401 (W) at 403B) not to have regard to the contents of

the confession before the issue referred to has been decided, seems, therefore, to be a salutary one because there is always the danger that if this is not done the accused may be prejudiced in some way or another, particularly when the presiding Judge does not, in terms of s 145(4)(b) of Act 51 of 1977, deem it necessary, in the interests of justice, to sit alone.

(See also 749E-G.)

More recently the Appellate Division has held in *S v De Vries* 1989 1 SA 228 (A) 233H-I (per Nicholas AJA) that:

It is . . . essential that the issue of voluntariness should be kept clearly distinct from the issue of guilt. This is achieved by insulating the inquiry into voluntariness in a compartment separate from the main trial . . . In South Africa it is made at a so-called "trial within the trial". Where therefore the question of admissibility of a confession is clearly raised, an accused person has the right to have that question tried as a separate and distinct issue. At such trial, the accused can go into the witness-box on the issue of voluntariness without being exposed to general cross-examination on the issue of his guilt.

Conclusion

The Appellate Division is not likely to overrule *Talane's* case and its predecessors. The only alternative to remedy the situation would therefore be to amend the Act so as to provide that until such time as a confession has been duly admitted by the court, no cross-examination, for whatever purpose, on its contents shall be permissible. It is trusted that the legislature will give effect to this proposal.

To be continued

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was never too tired to help a perplexed colleague.

On the Bench he was never too involved to help an unsure 'amps-broeder'.

He practised and lived not only for himself, but was concerned for others as well – he served on the Bar Council and became Chairman of the Johannesburg Bar Council in 1968 and was Chairman of the General Council of the Bar from 1969 to 1972, although he did not complete that year, because he was elevated to the Bench.

As I was in such close personal contact with Mr Justice Coetzee, perhaps my tribute to him may be too personalised. I have, however, been materially assisted by a telefax which the Chairman of the Johannesburg Bar Council received only yesterday after-

noon and handed to me. This is from a Mr Noel Benjamin, who is now a partner in a well-known firm of solicitors in Grey's Inn, Jacques and Lewis, and this is what one of the paragraphs therein, which I think correctly reflects what everybody who was associated with the late Mr Coetzee, would say –

'During the years the late Judge Coetzee practised at the Bar he represented a wide spectrum of clients who benefitted from his manifest skill and dexterity, his courage, and understanding of the personal difficulties facing many of the persons who consulted him – he was a most excellent advocate. We enjoyed over this period a close working relationship with him in accordance with the highest standards and soundest professional traditions'.

This is a spontaneous tribute which accurately reflects, objectively, what

those of us who come into daily contact with him felt, subjectively.

For the rest, I have been asked to associate the General Council of the Bar and the Law Society of the Transvaal with the tributes paid to the late Mr Justice Coetzee and, the Johannesburg Bar as a whole, together with the Chairman and the individual members of the Johannesburg Bar Council, as well as those of Advocates Group G associate themselves with the expressions of sympathy to his widow and children. I would only add that his passing is a great loss – South Africa has lost a distinguished son; the profession has lost an outstanding member; the Bench has lost an illustrious colleague; the Bar has lost an exemplary contributor, and, I personally have lost a valued and concerned personal friend.