

# General Council of the Bar

## *Chairman's report*

### Membership

ONCE again the past year has been a year of growth for the Bar. The table sets out the membership figures as at 30 April of the past four years.

One hundred and twenty pupils wrote the Bar examination at the end of June and approximately 69 passed. The bulk of these have commenced practice.

Whilst numbers at the Bar continue to grow the rate of growth appears to be slowing. Bearing in mind that only 12 members were elevated to the Bench during the past year whilst 137 pupils passed the Bar examination – of whom the bulk commenced practice – an increase in overall membership of only 32 and a decline for the second consecutive year in members of less than 5 years standing suggests a high rate of attrition. Whilst this demonstrates that the Bar remains a highly competitive profession it is also a reflection of three things: a lack of growth in the economy; a shift in work to the magistrates' courts as a result of the increase in jurisdiction and to some small extent the appearance of attorneys in the High Court especially the motion court.

Whilst I have little doubt of the Bar's ability to weather these problems two matters are of particular concern to me. Both I stress are matters of impression rather than statistical analysis but they will repay consideration. The first is that in the present climate I sense that the Bar is not seen as a particularly attractive option for the most talented products of our universities. Such graduates are in great demand by attorneys' firms; universities which increasingly offer challenging positions in institutes such as CALS at Wits; and in public and quasi-public service (such as the LRC or as judges' clerks). A substantial number are also I think going overseas to further their studies or obtain work experience and not returning. What is

Report by Malcolm Wallis SC, past chairman of the General Council of the Bar of South Africa, presented at the annual general meeting in Port Elizabeth on 25 July 1997

***Table: Membership figures for 1994–1997***

	1994	1995	1996	1997
Juniors (-5 years)	535	558	520	504
Juniors (+5years)	578	594	656	700
Silks	186	201	217	221
	<u>1299</u>	<u>1353</u>	<u>1393</u>	<u>1425</u>

plain is that the Bar can no longer sit back and expect the bulk of the brightest and best law graduates to gravitate to practise as advocates.

My second concern is directly related to the first. It is that the general problem I have referred to is particularly acute among the most talented black graduates and young lawyers. So many opportunities now beckon such persons at salaries which are undeniably attractive that the prospects of a career at the Bar cannot, save for the most committed, be overly appealing. We are now the only profession where one's training period is unpaid and once that hurdle has been surmounted the prospects of future success are for anyone, however talented, problematic for at least the first two or three years.

These problems are not unique to South Africa. Certainly they have been experienced at the English Bar where both bursaries and salaries are now being offered by many sets of chambers to attract particularly talented prospects. I have my doubts whether this is a possible solution in the context of South Africa where all advocates practise as individuals and where groups exist they are only a faint approximation of a set of chambers in London. Nonetheless we need to consider ways of making advocacy more attractive to ensure that we

attract a reasonable proportion of the most talented young lawyers and particularly the most talented young black lawyers to our profession.

### Overview of the past year

In large measure the past year has been one of consolidation rather than one of dramatic change. In my report to last year's AGM I noted that the principal achievements of the Bar had been the establishment of the advocacy training programme and the Bar's role in the establishment of AFSA. Inevitably, the past twelve months have been spent cementing these two initiatives in place. That has, I think, been achieved.

Advocacy training is now I think recognised as an integral and essential part of our pupillage programme. Its scope has broadened over the past year and there is considerable room for improvement. One of the most encouraging features has been the growing interest of members of the judiciary and their willingness to assist in elements of the training programme. This should I think be encouraged.

One problem which should be noted in this regard is that with the introduction of the advocacy training programme, the operation of a regular system of lectures for pupils in the major centres and the maintenance of a high standard >

for the Bar examination there is increasing pressure on pupils to give attention to these matters rather than to the day to day work of pupillage involving drafting documents for their masters, attending consultations and going to court. There is simply not enough time to do this and not surprisingly the pupils concentrate on those matters which are central to their being able to commence practice, namely the advocacy training programme and the Bar examination.

One possibility which is becoming ever more demanding is the prospect of extending the period of pupillage to at least six months. This seems to be compatible with the current view of the minimum practical training requirements to following upon the LLB degree and I suggest that it requires weighty consideration. If that were done then those portions of pupillage which fall within the "dead" periods of vacation could be used for training and examinations leaving more of the "heart" of the period of pupillage for the purpose of observation of and participation in the master's practice.

Another factor which arises from this is the need for greater co-ordination between the advocacy training programme and the Bar examination. At present the one has no direct impact on the other although I am aware of at least one instance where a judge, presiding in an appellate advocacy workshop, was sufficiently impressed by a pupil to grant an oral when the pupil's results in the written examination paper would not otherwise have justified it. It seems to me that the time has arrived when we should be examining ways in which to ensure that the pupillage programme is a coordinated whole not a series of disparate elements.

The other area of consolidation during the past year has been in the development of the work of AFSA. This will be reported on elsewhere on the agenda. Whilst it remains early days I think it is proper to say that so far AFSA has been reasonably successful and if it continues on its present path it will provide a very substantial contribution to dispute resolution in South Africa. Its urgent task at present is to spread its operations

beyond its base in Gauteng and to that end it is pleasing to note that its operations have been launched in both Cape Town and Durban in the past few months.

The Bar has been engaged in two new initiatives during the past year, the one on the domestic front and the other internationally. The former arose from a resolution at our October executive meeting to try and stimulate debate in South Africa on the introduction of judicial case management in this country. An interesting and I think successful seminar was held in January prior to our executive meeting and I have subsequently discussed the matter with the chairman of the Rules Board. The difficulty, as with many matters, appears to be a lack of adequate funding to engage in the necessary research and preparatory work. There are also areas in which there remains opposition to the concept or indeed any change in existing court practices. In my view, however, this remains a worthwhile area for the Bar to pursue.

On the international level, as I mention in greater detail in my report on the IBA Council Meeting in New York, considerable strides have been made towards establishing an international forum for advocates and barristers under the auspices of the IBA. It has been agreed in principle that such a forum will be formally established at the New Delhi conference of the IBA when its first office bearers will be elected. At present all arrangements are taking place under a steering committee chaired by Robert Owen QC and myself. I believe that this will provide a significant opportunity for co-operation between advocates and barristers on an international level.

### **The GCB office**

The GCB finally outgrew the cramped offices we have occupied for many years and moved into new premises adjacent to the old in August 1996. This together with the employment of a full staff complement has meant that the GCB office continued to function extremely smoothly. This is in no small measure due to the leadership of Mrs Elize van

den Heever. The work which she and her staff do together with the enormous contribution by Cassim and Bruinders, ensures a high level of operating efficiency. I must once again record my thanks to all involved for the loyalty, support and assistance which they have given to me as chairman.

### **Consultus**

Two editions of *Consultus* have appeared since our last AGM. They have continued the trend of moving the magazine towards being a Bar journal rather than an academic journal. There remain some difficulties in ensuring that publication meets the required deadlines but the editor and the editorial committee are giving attention to this.

### **The Judicial Service Commission**

The JSC has met three times since our last AGM and made a total of 27 appointments including the Chief Justice and a Deputy Judge President. The others have been respectively to the Appellate Division (2), the High Court Bench (17), the Land Claims Court (1), the Labour Court (2) and the Labour Appeal Court (3). Of the persons appointed to the High Court Bench 11 had the support of the GCB and its associate Bars and all save 3 were practising advocates at the time of their appointment. The Commission has recently called for nominations to fill a number of vacancies.

At the last AGM I reported that the JSC had adopted a standard questionnaire to be completed by all candidates for appointment to the Bench. This has, as anticipated, been helpful in eliciting information about candidates and in at least two instances the responses to questions on the questionnaire have played a significant role in the rejection of candidates.

The Commission has only sat once since its reconstitution pursuant to the final Constitution. It is accordingly too early to determine whether the changes in its composition have had any significant effect of the process of judicial appointments. One issue which was raised with me by the Cape Bar was

whether the reconstitution of the Commission complies in all respects with the provisions of the new Constitution. I have written to the Chief Justice in this regard and he has undertaken to place the matter on the agenda for consideration at the next meeting of the JSC.

**Meetings of the GCB Executive**

Two full meetings of the executive of the GCB have been held since our last AGM. Although a meeting was provisionally planned to take place in April it was decided, after consultation with Bar chairmen that there were insufficient items for discussion to warrant the expense of such a meeting. This is I think an indication both of the efficiency with which the national office is operating and of the fact that there have been fewer matters of controversy affecting the Bar in the past year.

**International conferences**

Since the last AGM there have been four international conferences at which the GCB has been represented. Bertelsmann and I attended the Commonwealth Law Association conference in Vancouver in August 1996. I have reported on this conference to the executive and the pa-

per which I delivered has been published in *Consultus*.


The vice-chairman and I attended both the biennial conference of the IBA in Berlin in October 1996 and the council meeting of the IBA in New York in June 1997. The idea for an international forum for advocates and barristers was first mooted in discussions at the Berlin conference and brought to fruition at the New York meeting.

In addition to these a delegation from the advocacy training committee attended the International Advocacy Training symposium at Greys Inn in London in January 1997. Attendance was funded largely by the ODA and individual Bars. The symposium was a useful experience as was the participation of our trainers in a subsequent workshop in Greys Inn for junior barristers on appellate advocacy. As a direct result an appellate advocacy component is being introduced into the advocacy training programme. I hope that in due course it will be possible to extend this to junior advocates who have not been through that course.

**General**

As this is the last report which I will present as chairman of the GCB it is appropriate for me to make some gen-

eral comment on the past three years. Whilst life has not always been easy going for the profession it has I think emerged relatively well from the processes of change which have occurred in South Africa. The position remains that in the Bar's specialised fields of giving legal advice and the conduct of litigation (including arbitration) we are the principal provider of these legal services. I remain optimistic that this will continue to be the case.

From a personal perspective the past three years have been enormously challenging and, whilst they have involved a considerable expenditure of time and effort, extremely satisfying. I wish to take this opportunity of expressing my thanks to all my colleagues throughout South Africa for the generous support which you have given me. Apart from those who have served in Bar councils throughout the country and as members of this executive I wish to say a special word of thanks to Michael Kuper and Peter Hodes who have served as my vice-chairmen and at all times provided me with enormous support, counsel and encouragement. If I have been able to achieve anything during the period of my chairmanship it has only been because I have had such unequivocal support from all concerned. 

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## *New chairman*

### Peter Hodes SC

PETER Hodes SC was elected as new chairman of the Bar at the AGM of the GCB in July 1997.

Peter Barrie Hodes was born in Port Elizabeth in 1941. He matriculated at Grey High School in 1958 and obtained the degrees of B Comm (1961) and LLB (1963) at the University of Stellenbosch.

He joined the Cape Bar in 1964 (before the days of pupillage) but read in chambers for three months with Harold Berman. He served for more than 14 years on the Cape Bar Council (three times as chairperson) before stepping down from the Council in April 1997.

Peter played cricket and rugby in earlier years and was for many years a very astute second division cricket captain. In more recent years he has been an avid sports spectator, wine collector and theatre lover. He has also been active in local (Camps Bay) educational affairs.

He is married to Liz and they have two children. 