

Ströh SC and Japie Vorster cycled with their wives. Rumour has it that in some instances the wives got the better of the husbands. Other participants included Piet du Plessis SC, Bill Scales, De Wet Marais, Paul van Ryneveld, Danie van Wyk, Tokkie van Zyl, Johan Gouws and Ben Swart.

We take the opportunity to congratulate these energetic colleagues with their achievements.

Pretoria Bar cricket match: Under 35s v Over 35s

Our intrepid sports reporter, Japie Vorster, who in his own right managed a couple of good catches at deep midwicket and gully respectively, filed the following report:

"For cricketing purposes the Pretoria Bar may conveniently be divided into two distinct groups, being on the one hand the "upstarts" or "young turks" (hereinafter referred to as the "under 35s" and on the other the "golden oldies" (hereinafter referred to as "over 35s"). A two-match series was played

between these two teams on 21 and 28 March 1998. In the first match the over 35s batted with some authority to reach 99 all out. Opening bat, Mike Maritz SC played a presidential innings of 23. The innings was, however, marred by incessant appeals by the overzealous youngsters. An oldie was constrained to opine that the young wicket keeper's continuous and frivolous appeals might in the long run have a career limiting effect. For the youngsters, South, though feigning injury, bowled a few useful seamers, while Scheepers again proved the truism that bad balls do get wickets.

The under 35s' innings was a tense affair, for the youngsters that is. After a good start wickets tumbled with monotonous regularity. The die was really cast when young Van Onselen panicked in the face of Goosen SC's intimidating bowling and played a rash shot. Eventually, the self-appointed and unofficial under 35s scorer noted that the youngsters had scored 100/8. The correctness of this score cannot be con-

firmed as it is at present the subject of a disciplinary enquiry at the Bar.

At the time of going to the press, the result of the second match in the series was not yet available. However, the pundits anticipate a convincing win for the over 35s".



"Renate Erasmus was sent in at a critical stage by her under 35 colleagues to excite alternatively stimulate alternatively confuse alternatively annoy the older opposition. It appears to have worked."

FORUM

The Law Society of South Africa

Ashwin Trikamjee, immediate past president of the former Association of Law Societies of South Africa

ON Monday 16 March 1998 at 11h00 the Law Society of South Africa was formally launched at a historical signing ceremony in the Old House of Assembly Chamber, Parliament Buildings, Cape Town.

The formation of the Law Society of South Africa was the culmination of lengthy and ongoing negotiations for a considerable period of time between the Association of Law Societies, the National Association of Democratic Lawyers and the Black Lawyers Association. The negotiations had reached a somewhat significant stage in July 1996 when the parties had agreed on a statement of principles. Thereafter there was something of a lull in the process until the middle of 1997 when the whole issue regained momentum.

The Association of Law Societies in its endeavour to resolve the various matters for debate was always influenced in its thinking by its four statutory members – the Natal Law Society, the Orange Free State Law Society, the Transvaal Law Society, and the Cape Law Society.

The discussions, deliberations, negotiations, and debates were intense, at times highly emotional, but otherwise always conducted in the best interests of the profession. It became clear, as the negotiations progressed, that all three parties were willing to make sacrifices in a genuine attempt to resolve the issue once and for all. The technical drafting committee, which was entrusted with the drafting of a constitution produced five drafts which became the basis of negotiations from time to time. It can be safely

said that, in as much as the final draft may not be regarded as a model of classy draftsmanship, it is nonetheless a document which correctly represents the final intentions of the parties.

Once the ALS, BLA and NADEL had agreed to the terms and conditions, it was then necessary for the four provincial law societies to be given the mandate by its general body of members to proceed with the finalisation of the Constitution. This caused no problems in the Transvaal, a minor problem in the Free State but major problems in both Cape and Natal as some members were not entirely happy with the final solution. However, thanks to the persuasive powers of the presidents and the majority of members, this hurdle

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the control of the litigation from the client and place it in the hands of the legal practitioners. In the event of a dispute between the legal practitioner and the client, it will be difficult, if not impossible, to determine whether the legal practitioner is motivated by self-interest or the interests of his client.

In an effort to address this issue, the Act provides, in s 4, that a settlement offer may be accepted only after the legal practitioner and the client have deposed to and filed with the court affidavits dealing fully with the settlement proposed. The Act does not state what the result of failure to comply with these requirements would be. The question must arise of what the position of the other party to the litigation would be. Is the settlement void? Presumably not, as there is no requirement that the opposing party be informed that a contingency fee arrangement has been concluded. Generally speaking, an attorney has no authority to settle a matter without the consent of his client – *Goosen v van Zyl* 1980 (1) SA 706 (0). For the reasons already referred to, it is probable that the contingency fee agreements will be so structured as to confer such authority on the attorney. The client would, I suggest, be bound by the settlement concluded in those circumstances.

Conflict of interests

The system may well also lead to conflicts between the interests of risk-bearing attorneys and risk-bearing counsel. While the bulk of the attorney's fees is earned before the trial commences, the bulk of counsel's fees is normally earned during the course of a trial. Under the circumstances, it may well be that attorneys may wish to settle matters earlier than counsel would wish to settle them.

It is intended that the extent of what is called in the Act the success fee (that is the percentage by which the agreed fee will exceed a normal or reasonable fee) should be determined by the extent of the risk involved in the litigation. The higher the risk the higher the percentage of the success fee may be. Clearly the assessment of risks of litigation is a subjective matter. The profession will have to take care that less scrupulous practitioners do not exaggerate the risks of straightforward litigation in order to persuade their clients to agree to a higher percentage success fee.


The legislation will, of course, not make it easier for clients to run matters involving relatively small amounts. Indeed, such matters will be less amenable to contingency fee arrangements if the ordinary cost of litigation is already prohibitive.

Practitioners will also have to con-

sider carefully how much work of this nature they will undertake. Smaller firms of attorneys and junior members of the Bar will have even greater difficulty with their cash flow if a substantial part of their practice consists of matters which will often entail years of work before a return can be expected.

The introduction of the Act will require various of the current uniform rules of professional conduct of the Bar to be amended. This is a matter currently under consideration by the GCB.

Does the Act in fact shift the burden of legal costs to the legal profession? I would suggest not. On the contrary, it would appear to shift the burden from the unsuccessful litigant and place it upon the successful litigant who will pay up to twice the normal fees in his or her litigation.

Does the Act render justice more readily available? To an extent, the answer must be yes. That extent will depend ultimately on the profession, which has, until now, rendered service to society by acting for many clients who cannot afford fees. The incentive of uplifted fees may well encourage more professionals to assist such litigants. It will, however, not make litigation involving small disputes more readily capable of resolution and may well have the opposite effect. 

The Law Society of South Africa

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was eventually overcome and all four provincial law societies approved the final draft of the constitution for its launch on 16 March 1998.

What does this mean to the profession?

The Association of Law Societies, because of its existing infrastructure, has changed its constitution and its name to the Law Society of South Africa. The previous membership of the Association of Law Societies was confined to the four provinces. The Law Society of South Africa makes provision for nine provinces to be represented by the Association of Law Societies (one each) and NADEL and BLA together (one each). In addition to the nine

representatives from each, both parties would appoint a co-chairperson. This arrangement entrusts the administration of the Law Society of South Africa to a twenty person committee consisting of ten persons from the Association of Law Societies (the four provincial units at this stage) and ten persons from both NADEL and BLA.

Whilst it may well be argued that this is not an ideal arrangement, it is an arrangement which was arrived at and agreed by all parties. The immediate task of the twenty person committee is to assist in the writing of a new attorneys act. This would be done in conjunction with the Ministry of Justice and will ensure that the present arrangement would then fall away and be replaced by whatever arrangement is arrived at in the new act.

It is also envisaged that this would be carried out in the next two years.

The provincial law societies (all four) will adopt a similar arrangement in respect of representation on the councils of the provincial law societies. This would ensure that a proper working arrangement is followed from the councils to the Law Society of South Africa.

As one of those who was involved in the intensive negotiations and its eventual formation, I remain extremely confident that the Law Society of South Africa has the potential to make a significant contribution to the legal profession in this country.

Perhaps a single "Legal Practitioners Act" is what we should all start thinking about? 