


## Exco meeting

*The chair of the General Council of the Bar, Jeremy Gauntlett SC, reports that at its first meeting in 2000, held at Irene on 17 and 18 March, the GCB National Executive – including representatives from all nine Bars – resolved:*

- To adopt two reports relating to the judiciary. The first was prepared by a committee chaired by Willem van der Linde SC of the Johannesburg Bar, and comprises a detailed criticism of the White Paper on the Judiciary released by the Planning Unit of the Department of Justice last year. The report criticises proposals advanced in the White Paper as destructive both of the independence of the judiciary and its capacity to serve the administration of justice. The second (prepared by Pretoria senior counsel, Gerrit Grobler) focuses on separate legislative proposals for a mechanism to discipline judges for misconduct. The report again focusses on serious deficiencies likely to undermine the independence of judges, and calls instead for an independent body comprising senior judges to carry out the task. Both reports will be available through the GCB secretariat
- To follow up new initiatives relating to transformation by discussing restructuring proposals with BLA and NADEL members of Bars, with a view to a re-
- port-back to constituent Bars and the consideration of appropriate action.
- To deplore continued chronic mal-administration of legal aid services by the Legal Aid Board, and to call upon the Board to cease applying funding received in respect of accumulated liabilities to new instructions. It was noted that the LAB had once more expressed its optimism that yet further promised administrative capacity – this time, new software and new consultants – would improve matters, but that it feared renewed cash flow constraints within months. The concern was expressed that the LAB was acting quite irregularly in issuing instructions for new work well-knowing that in all likelihood it would be unable to pay for these. It was also noted that Bars had given permission to members to sue the Board direct, and to discontinue appearances in appropriate circumstances, given the Board's conduct in not honouring even its unilateral arrangements.
- To adopt new initiatives relating to its national bursary scheme, to enhance access to legal practice.



*Jeremy Gauntlett SC*

- To express serious concern as regards the spate of recent assaults and highjackings in which judges were targets, and to ask the Minister of Justice urgently to investigate whether these were purely random, and whether the personal safety of judges (like that of senior members of government) requires special measures.
- To note current developments in advocacy training, including a special assistance programme to be offered shortly by the GCB in Lesotho.
- To announce an international law conference to be hosted by the GCB in April next year in Cape Town (elaw@cape town.za) to study the impact on law by IT. Eminent foreign experts have been invited to address the conference, and it is expected that practitioners from around the world will attend. 

## The Satchwell Commission: the GCB views

The three-person Road Accident Fund Commission (“the Satchwell Commission”) was appointed in terms of the Road Accident Fund Commission Bill to enquire into the nature of the existing system of road accident compensation and to make recommendations to the President on “a reasonable, equitable, affordable and sustainable system for the payment by the Road Accident Fund of compensation or benefits, or a combination of compensation and benefits, in the event of the injury or death of persons in road accidents in the Republic”.

A GCB delegation consisting of Nesor SC, Ancer SC, Schwartz and Mullins attended certain of the hearings of the Commission (in particular, the hearings into the financial state of the Road Accident Fund and the presentation of the South African Insurance Association) and drafted submissions, and members of this delegation attended a sitting in Pretoria on Monday 4 October 1999 at which the GCB submissions were debated and discussed with the Commission.

In outline the GCB submissions were:

- (a) The fuel levy whereby the Fund is funded

should be seen not as a tax, but as a premium. Viewed thus, it offers an exceedingly cheap form of socially useful insurance cover to both motorists and pedestrians.

- (b) The present system has proved to be fairly reasonable, equitable, affordable and sustainable.
- (c) Before changes to the system and method of compensation are made, careful thought and statistical prognosis is required. The GCB is concerned about the

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should be adopted and published so that:

- (a) there is public exposure of issues, papers and consultation on major reforms including, where possible, a draft bill;
  - (b) standing orders provide a delay of some days between introduction and debate to enable public comment unless suspended by consent or a significantly high percentage vote of the chamber; and
  - (c) major legislation can be referred to a select committee allowing for the detailed examination of such legislation and the taking of evidence from members of the public.
- 3 Model standing orders protecting members' rights and privileges and permitting the incorporation of variations, to take local circumstances into account, should be drafted and published.
  - 4 Parliament should be serviced by a professional staff independent of the regular public service.
  - 5 Adequate resources to government and non-government back benchers should be provided to improve parliamentary input and should include provision for:
    - (a) training of new members;
    - (b) secretarial, office, library and research facilities;
    - (c) drafting assistance including private members bills.
  - 6 An all-party committee of members of parliament should review and administer

parliament's budget which should not be subject to amendment by the executive.

- 7 Appropriate legislation should incorporate international human rights instruments to assist in interpretation and to ensure that ministers certify compliance with such instruments, on introduction of the legislation.
- 8 It is recommended that 'sunset' legislation (for the expiry of all subordinate legislation not renewed) should be enacted subject to power to extend the life of such legislation.

### VIII The role of non-judicial and non-parliamentary institutions

- 1 The Commonwealth Statement on Freedom of Expression (set out in Appendix 2) provides essential guarantees to which all Commonwealth countries should subscribe,
- 2 The executive must refrain from all measures directed at inhibiting the freedom of the press, including indirect methods such as the misuse of official advertising,
- 3 An independent, organised legal profession is an essential component in the protection of the rule of law.
- 4 Adequate legal aid schemes should be provided for poor and disadvantaged litigants, including public interest advocates.
- 5 Legal professional organisations should assist in the provision, through pro bono

schemes, of access to justice for the impecunious.


- 6 The executive must refrain from obstructing the functioning of an independent legal profession by such means as withholding licensing of professional bodies.
- 7 Human Rights Commissions, Offices of the Ombudsman and Access to Information Commissioners can play a key role in enhancing public awareness of good governance and rule of law issues and adequate funding and resources should be made available to enable them to discharge these functions. Parliament should accept responsibility in this regard.

Such institutions should be empowered to provide access to alternative dispute resolution mechanisms.

### IX Measures for implementation and monitoring compliance

These guidelines should be forwarded to the Commonwealth Secretariat for consideration by Law Ministers and Heads of Government.

If these Guidelines are adopted, an effective monitoring procedure, which might include a Standing Committee, should be devised under which all Commonwealth jurisdictions accept an obligation to report on their compliance with these Guidelines.

Consideration of these reports should form a regular part of the Meetings of Law Ministers and of Heads of Government. 

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- relative absence of such statistical basis to date.
- (d) Effective and sustained efforts to curb deaths and injuries on our roads is required and is in fact bearing fruit. Statistics show that road accident casualties in 1998 were reduced to 129 672, compared with 130 773 in 1990, and 138 421 in 1994. This is a real decrease, which can most certainly be improved upon with obvious financial advantages to the Fund and the system of compensation. However, by the same token, the GCB is disturbed by the extent to which the Fund is being required to contribute to the Arrive Alive Campaign (in the financial year ended 30th April 1986, administration expenditure totalled R100 000 000, whereas the Fund's contri-

bution to road safety totalled R44 000 000 i.e. 2.5% of fuel levy income and 30% of total administrative expenditure).

- (e) Apart from making specific proposals as to methods whereby total outgo could be reduced and the system speeded up, the GCB offered its assistance towards training and its willingness to consult improving the system.
- (f) Our vigorous objection to the introduction of a no-fault system with all that would entail (effectively a reduction in benefits per victim so that innocent victims of road accidents can subsidise the guilty) and our contention that any abrogation of common law rights would, in all the circumstances, be unworkable, inequitable and unconstitutional.

Although we can by no means predict what the ultimate findings and recommendations of the Commission will be, it must be said that we have been greatly impressed with the energy, meticulousness, care and understanding with which the Commission has gone about its work to date. Having attended a number of hearings we are able to say that the Commission has undertaken its task seriously. Our hearing by the Commission was frank, with full opportunity for discussion. When we look back on the nature of previous hearings that were (and in many cases were not) afforded to us since the White Paper process began in 1996, the openness with which the Commission has gone about its task has come as a breath of fresh air. 