

Heads of court meeting

Writing to Justice Arthur Chaskalson, convenor of the heads of court meeting, which was held in January 2001, Jeremy Gauntlett SC, chairman of the GCB, asked that the following items be placed on the agenda:

- *The continuing vacancy in the Chief Justiceship.* “It is our concern that the Constitution clearly does not contemplate or authorise what has become an indefinite failure to fill this position. We would ask that the meeting, if it shares this concern, convey it both to the President and the Minister of Justice.”
- *The loss of independence for the legal professions projected by the Legal Practice Bill.* “Both the LSSA and the GCB have expressed their public opposition to the loss of independence. It is understood also to be a concern both to the BLA and Nadel ... The meeting is asked to consider whether as a matter of broad principle, it shares these concerns, and if so, too convey this to the Minister.”
- “The GCB has issued public statements in recent years concerning both *public attacks by the executive in Zimbabwe on its judiciary, and defiance of its orders.* [T]he situation has now reached a new level of gravity, in which even the physical safety of judges is at risk.” [See also page 13 of this issue – Editor] “We would ask that in these exceptional circumstances, the meeting consider both an appropriate public statement noting its concern in this regard, and a communication to this effect to the President and the Minister of Foreign Affairs.”
- “The GCB has suggested an annual informal small meeting of leaders of the judiciary, legal professions and government to discuss *pressing problems* in the administration of justice (*according to “Mount Grace rules”*). We would ask that the meeting support the proposal, and invite

the GCB and LSSA in conjunction with BLA and Nadel to convene a steering committee to implement it.”

Legal Practice Bill

The chairman of the GCB, Jeremy Gauntlett SC, addressed a letter to the Minister of Justice and Constitutional Development, Dr PM Maduna, on 10 January 2001, in which he raised the desirability of an urgent meeting with leaders of the wider legal profession to discuss the serious concerns expressed publicly by the LSSA and GCB in particular regarding fundamental policy issues arising from (what was then) the second draft of the Legal Practice Bill. The letter states inter alia that: “The GCB would

support an urgent meeting to discuss these policy fundamentals, and in particular the projected control of the profession by a council in which the professional representatives are a minority, and of which the overwhelming majority are to be selected by the executive. A second fundamental is the proposed statutory prohibition on a rule of a professional association applying the referral principle ...” and “... It was our understanding that no policy commitment had been made (least of all in advance of completion of the consultative process on the Bill) adverse either to the fundamental independence of the profession or the continuation of a referral profession. Unfortunately the successive drafts of the Bill, and the policy statements in your letter to the Competition Commission, have been taken to suggest the converse.”

Indaba



GCB and AFT representatives at the meeting with the LSSA management committee on 6 February 2001. From left to right: Ismael Semanya (AFT), Jeremy Gauntlett (GCB), Patric Mtshaulana (GCB) and Justice Poswa (AFT). Photo: De Rebus

The chairman of the GCB reported back as follows on the indaba held on 24 February 2001 between the GCB, AFT and LSSA regarding the Legal Practice Bill:

“Following two preliminary planning meetings, the organised professions were able to meet in Johannesburg on Saturday 24 February to discuss the third draft of the Legal Practice Bill produced by the Policy Unit of the Department of Justice.

The first planning meeting had been with the national council of the LSSA in January. The GCB was represented by two executive members, Jeremy Gauntlett

SC and Patric Mtshaulana. AFT was also invited to attend, and was represented by Justice Poswa SC and Ishmael Semanya SC. The second planning meeting was between the GCB and AFT: a process was agreed to resolve the lingering governance issue, and the GCB’s own version of a draft Legal Practice Bill was discussed. GCB and AFT agreed on a common commitment to securing the independence of the profession, and to the continuation of the referral profession.”

At the national indaba, discussions took place in an excellent spirit. Not only were LSSA, GCB and AFT viewpoints