

Competition Commission

The General Council of the Bar of South Africa issued an urgent application against the Competition Commission and the Minister of Justice on 23 November 2000 (*General Council of the Bar of South Africa v The Competition Commission and the Minister of Justice*). The application was supported by all nine of South Africa's Bars. It followed a notice gazetted by the commission which gave the Bars five weeks' notice, inter alia, that:

- advocates must take work from the public and not (as is currently the case) only on instructions from attorneys;
- current professional controls on advertising cannot continue to operate;
- the duty on advocates to keep chambers will not be sustained;
- the professional ban on members of Bars working with other admitted advocates who are not members of

Bars, and thus subject to their ethical and disciplinary rules, must cease.

The commission's ruling followed an application to it by the GCB and the provincial Bars in 1999, and a submission to the commission in the name of the Minister of Justice in November 2000.

The chairman of the GCB, Jeremy Gauntlett SC, put the GCB's case as follows in a media release:

"The terms and the timing of this ruling oblige us to seek a High Court review.


The GCB does not want to anticipate in any way what the court may do. We accordingly make no comment at this time other than to say that we do not accept that the ruling is valid.

Our case in broad outline is that -

- the commission has acted under the

wrong provisions of the Act;

- it would appear not to have consulted the Minister of Justice himself, as its own Act requires it to do, but to have acted on a draft document submitted by the Minister's 'Policy Unit';
- it has not given the GCB an opportunity to respond to the document which attacks the Bar in a number of respects which are factually and legally misinformed;
- it has overlooked or disregarded the detailed material the GCB put before it when the GCB sought its ruling – in fact, it requires the Bar to abolish rules changed years ago.

The commission's determination to outlaw at short notice a form of specialist referral practice in existence in many countries, and drawing directly on the internationally respected English Bar, has necessitated that the review be done urgently." 

Feeling ill

In response to a letter published in 2000 December *De Rebus* (and also in *Beeld*) Jeremy Gauntlett SC, chairman of the GCB, addressed the following letter to the editors of those publications:


"Anton Müller ('Advokaatsfooi maak naar') recycles a media report that counsel on the side of the SARFU case in the Constitutional Court marked fees of R45 000 and R28 000 per day. He suggests that the public would be entitled to see them as 'robbers.'

The imputation is serious and the counsel are well-known. It is surprising that the experience in practice of some 30 years which Müller claims did not suggest even the simplest preliminary inquiry – to them, to their Bar Council, or to me. Some regard both for the dangers of hearsay and the *audi alteram partem* rule would have served him better.

For the facts are these, The clipping Müller retails applies the old canard of dividing the total fee by the number of court days only. It disregards the fact that it includes the many days and hours spent on preparing for a matter in relation to which the High Court judgment

alone ran to 1156 pages: the analysis, the research, the collation of constitutional and other activities and ultimately the preparation of oral argument.

Proper investigation by Müller would have revealed this and more (the taxed bill is available): that the taxing master thought the fee reasonable, and that the actual daily fee of the two counsel Müller refrains from naming was in fact just R7 500 and R5 000 respectively. Or might the facts have spoilt the story?

Müller's letter indeed induces nausea – but not for the reasons he gives." 

SA Law Commission competition

Repeating its competition for the best essay in law reform by LLB students, the South African Law Commission is again offering a prize for final year LLB students at South African universities. The competition aims to provide an incentive for good legal writing while generating new

ideas for the reform of the law. The Ismail Mahomed Prize for Law Reform (names in honour of the late Chief Justice who performed the function of chairperson of the law commission) is sponsored by JUTA Law and is valued at R10 000. It comprises a personal computer plus a full years subscription to JUTA's Statutes of South Africa, in print and on CD-Rom. Entries will be judged by a

panel appointed by the Law Commission. The closing date for the competition is 31 August 2001. Further information can be obtained from Michael Palumbo, Secretary of the SA Law Commission: Contact details: Tel; (012) 322 6440; fax (012) 320 0936 e-mail: Mpalumbo@salaw-com.org.za 