

## From the publishers

### Employment and Labour Law Vol 1 (Employment law)

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The author is an acknowledged expert in this field of law, both as a scholar and a practitioner. He was the founder of *Employment Law*, is an ex-editor of the *Industrial Law Journal* and co-authored the groundbreaking 1987 textbook *The New Labour Law*. He is an honorary professor of Law at Wits University, senior counsel at the Johannesburg Bar, and has acted as a judge in the Labour Court.

Volume 1 comprehensively presents the law's answers to employment problems from an issue driven, as opposed to a source-based, perspective. It does so by reconciling, harmonising and integrating the constitutional, statutory, common law and equity based sources of law which affect employment. It is a practical guide, written and presented in easily understandable style and contains excerpts from the principal enactments and leading cases on which the text relies.

The Roman and Roman Dutch law roots and guiding principles of employment law in South Africa are first succinctly set out. The history and development of employment law over the years is then carefully detailed and analysed in its historical, political and social context. Sections then follow on the nature and sources of employment law under the common law, statute law and the Constitution.

In the final two sections, the respective rights and duties of employers and employees are set out and analysed in detail. Although approached from a labour law perspective, these sections would be of considerable use to High Court practitioners involved in restraint of trade and unlawful competition matters.

The work would therefore be useful to advocates practising in both the Labour Court and in the high court.

Volume 2 (Collective Bargaining) in the series has not yet been published. Volume 3 (Commentary on the Labour Relations Act) – still to be reviewed in this journal – contains the full text of the Act and a clause by clause commentary thereon. It contains all schedules to the Act, codes and circulars and the rules of the Labour Court and the CCMA.

MA Crowe  
Cape Bar



### Namibian Bar to be prosecuted?

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requested to direct that the detainee be released pending the outcome of the main application. He however refused to direct that the detainee be released and also refused leave to appeal against this refusal. No reasons were given by him for either ruling.

The Bar Council of the Society of Advocates of Namibia then issued a statement deploring the failure of the judge president to direct the release of the detainee in those circumstances. The Bar Council pointed out that there was a clear order to that effect and until it were set aside or discharged, effect should be given to it. The Bar Council was at pains to point out that directing compliance with the order was quite apart and separate from the issue as to whether the minister had the requisite intention to commit contempt of court (which had been raised in the contempt application). The Bar Council expressly made no comment on that issue.

It further stated:

“The failure of the Judge President to direct compliance with a clear order of the High Court, particularly when that order involves the release of a detainee who is detained without trial, amounts to a travesty of justice and serves to seriously undermine the rule of law and, with it, constitutional governance in Namibia.

The Constitution of Namibia is premised upon the rule of law and upon the separation of powers. The ruling by the Judge President is tantamount to condoning disobedience of a court order and to exempt Government officials from complying with the law. This negates the entire notion of the rule of law. It presupposes that everyone is equal before the law and that the laws of the country are to be obeyed by all, even by the highest authorities.

It is for this reason that the Society of Advocates, whose members have taken oath to uphold the Constitution, voice their gravest concern at this disturbing decision of the High Court which can only serve to undermine the Constitution and the rule of law.”

The Bar Council further stressed that the pending ruling on contempt had nothing whatsoever to do with the release order of 24 October and that the continued incarceration of the detainee was completely unacceptable, compounded

by the failure of the judge president to supply any reasons for his ruling (not to direct compliance with the order).

Following the issuing of the statement, Namibia's two leading daily newspapers, the *Namibian* and *Die Republikein* also criticised Judge Teek in editorials in the ensuing days.

When the contempt application was called in court on the return date on 12 January 2001, Judge Teek again postponed the matter to 15 January. Instead of dealing with the contempt, he then handed down a lengthy judgment recusing himself from the case because of the criticism levelled against him by both the Bar and the media. Judge Teek then extended the return date of the application to 1 February 2001 for argument before another court.

In the meantime, the detainee remained in detention.

The contempt application was then fully argued on 1 February 2001 before two other judges, Judges Sylvester Mainga and Elton Hoff, both of whom had been recently appointed. They handed down a detailed judgment the following week committing the minister for contempt of court. This resulted in the immediate release of the detainee – some three and a half months after his initial release had been ordered.

After delivering his recusal judgment, Judge Teek referred the Bar Council and the editors of two newspapers for prosecution for contempt of court to the prosecutor-general, requesting the latter to prosecute the relevant institutions and “their accomplices” for their contempt. He characterised the Bar Council's statement as being “a scurrilous scandalisation” and constituting a “gross and direct interference and intimidation of the incumbent court”. He also asked the prosecutor-general to ensure that “exemplary” and “deterrent” sentences would be sought against the Bar and the editors.

The Namibian Police has since approached both the editors and the present chairperson of the Bar Council for statements, after warning them in terms of the Criminal Procedure Act. The Bar Council and the newspaper editors are presently awaiting the decision of the prosecutor-general whether he is to prosecute.

The Society of Advocates continues to exist as a voluntary association (and has in fact grown in membership) following the adoption of the Legal Practitioners Act in 1995 which brought about a fused profession.

