

Bold moves by National Executive

The GCB's National Executive – the full executive committee and the leadership of the ten Bars – met at Intundla near Hammanskraal on 15/16 March 2002 to decide a number of important issues.

The meeting adopted unanimously a GCB Vuk'uzenzele. This comprises a Bar voluntary initiative directed at transformation initiatives. It also includes providing acting judges pro bono during recesses to reduce criminal backlogs. The full text appears on this page.

The meeting also resolved to implement (in a form adapted for South African practice) key recommendations in the response of the Kentridge Committee of the Bar of England and Wales to the Office of Fair Trading (the UK competition regulator) report on the Bar. The committee – with Sir Sydney Kentridge QC as chair and a panel drawn from barristers, solicitors and economists – asserted the continuation

of the UK Bar as an independent referral profession, but proposed the modernisation of the referral and advertising rules in some respects.

The text of the two resolutions adopted by the GCB National Executive also appears on this page.

The National Executive also resolved to:

- ask National Bar Examination Board moderator Judge Lex Mpati to chair a GCB committee framing the adaptation of pupillage to the advent of the Legal Practice Bill;
- express opposition to measures directed at eliminating payments by the Road Accident Fund to attorneys, and substituting these with payments direct to clients.

The meeting agreed that the risk of misappropriation needs to be addressed – by the law societies and the RAF – in a way which does not disable the attorney from running the trial (with all the disbursements involved prior to judgment), but which ensures verification of proper payments to clients.

The GCB's 57th AGM will take place in Johannesburg in July, to coincide with the centenary celebrations of the Johannesburg Bar.

Vuk'uzenzele: a fresh transformation initiative

The purpose of this initiative is to suggest for consideration a fresh transformation initiative and contribution to improving the administration of justice. It is intended to pick up on the Vuk'uzenzele theme in the President's speech at the opening of parliament. It consists of three components:

- 1 A drive to expand **bursaries**. The GCB has doubled its own budget for bursaries each year over the previous two years. Individual Bars have been encouraged on several occasions to approach local institutions to raise funding. So far as is known only the Cape Bar in fact has achieved this. A serious new dimension is the fact that the Legal Practice Bill – like our own AGM decision last year – contemplates an extension of pupillage to one year.

It is now proposed that:

- (a) Each of the Johannesburg, Pretoria, Cape, KwaZulu-Natal, Free State and Eastern Cape Bar Councils be asked to designate a suitable person as a Bar bursary fundraiser, and to promote a drive for local funding for this purpose. (If smaller Bars believe that local opportunities do exist, and are willing also to commit to the process, this would of course be of great value.)
- (b) The GCB national bursary committee be asked to *report* to the July AGM its own assessment of the operation of the current bursary system, its co-ordination with local bursaries, appropriate amounts, etc and recommendations for improvement.
- (c) The vice-chair (Poswa SC) *report* on the results of his efforts (undertaken at the December 2001 Exco meeting) to

explore funding opportunities offered by Black lawyer organisations in the United States.

- 2 A drive to achieve a **more equitable spread of work**. The inescapable reality is that Black junior colleagues are not being sustained by commercial (non-State) work. Many are not able to remain in practice at the Bar as a consequence.

It is now proposed that:

- (a) Each Bar follow the Johannesburg lead in circulating to local attorneys each year a guide to current practitioners of (say) five years' experience or less. This would comprise contact details and a brief curriculum vitae in prescribed form stating university qualifications and vocational experience to date.
 - (b) Each Bar chair meet with the local Law Society president, and ask that the Bar's efforts to achieve a fairer spread of work be communicated to all local attorneys. A copy of a letter the GCB chairman sent in 1999 to 616 companies and 143 government and parastatal bodies could possibly be modified and used.
 - (c) Each Bar chair either meet with local senior counsel or write to them, informing them of this initiative and asking them to give serious consideration to it when the question arises of engaging juniors in matters in which he/she is briefed.
- 3 Each Bar commits itself to a voluntary drive to **clear backlogs of criminal appeals**.
It is proposed that:
 - (a) Each Bar ascertain from its High Court registrar or JP/DJP what the local backlog is.
 - (b) Each Bar chair offer (as several have done in past years) to the JP to ask silks to give up (say) a week each during the July court vacation to sit in special High Court appeal sessions on an unpaid basis.
 - (c) Each Bar chair (or nominee) co-ordinates the organisation of this session with the local JP/DJP.

Suggested amendments to referral and advertising rules

I Referral

- 1 It is in the public interest that the Bar continues to exist, in the first instance, as a referral profession.

- 2 The public interest nonetheless requires that appropriate exceptions to this principle be recognized; to this end, this meeting recommends for consideration by constituent Bars, and adoption at the next AGM, the following amendments to the uniform rules of professional ethics:

- “5.12.3 A member is entitled and obliged to take instructions other than through the medium of a practising attorney when it is in the public interest, as envisaged in rule 5.12.4, to do so.

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Judge Charles Byers, Nicholas Price QC, chairman of Continuing Education at Gray's Inn, Colin McCaul, Sidney Maphondo, John Mullins, Lord Justice John Mummery SC, at the Drakensberg Training Workshop



Colin McCaul, Denise Fisher, Lord Justice Mummery and Sharise Weiner SC outside the Apartheid Museum, Johannesburg

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Suggested amendments to referral and advertising rules

- 5.12.4 The following will be regarded as being in the public interest for the purposes of rule 5.12.3:
- 5.12.4.1 instructions from any community based law centre, such as university law clinics, the BLA Legal Education Centre, and the Legal Resources Centre;
- 5.12.4.2 any other category of instructions approved for this purpose by the General Council of the Bar;
- subject to such conditions as the GCB may impose, including :
- (1) A requirement that a member should accept instructions to act without the support of an attorney only if he or she is satisfied that the work in question can be properly and competently carried out without such support, having regard in particular to the limitations on the scope of an advocate's functions.
 - (2) A requirement that any prospective client should be fully advised, in writing, of the services that advocates offer and of the limitations on the scope of those services.
 - (3) Requirements that all instructions to act without an attorney should be accepted on appropriate written terms of work and that detailed case records should be maintained; and
 - (4) an obligation to advise a client if at any stage the member considers that the assistance of an attorney is needed, and for the member to decline to act (or cease to act) if such advice is not heeded.
- 5.12.5 Save with the consent of the Local Bar Council, a member shall not be entitled to render any fees in respect of any such instruction, including any contingency fee arrangement, other than in terms of a written agreement concluded before such services are rendered." 

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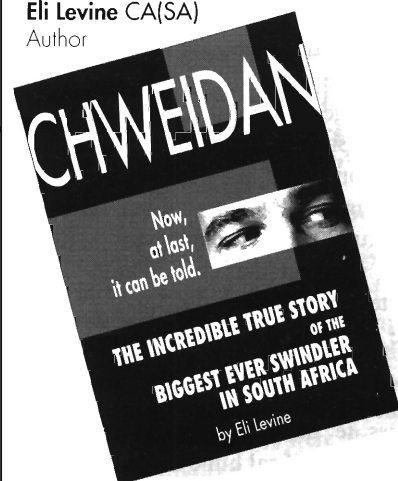
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