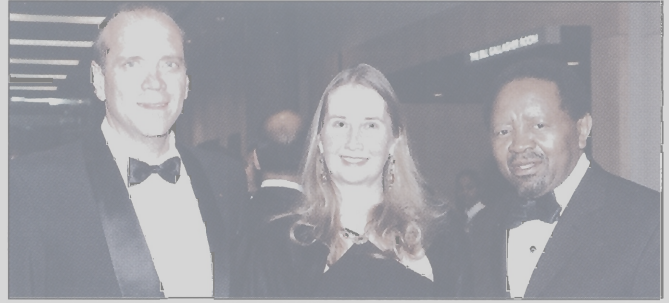


## GCB: New national executive

At the 57th annual general meeting of the General Council of the Bar of South Africa held in Sandton on 26 and 27 July 2002, the following office bearers were elected for the incoming term:

Willem van der Linde SC (chair), Justice Poswa SC (deputy chair), Mabel Jansen SC (vice chair), Patric Mtshaulana

(honorary secretary), Fayeeza Kathree (assistant honorary secretary), Norman Arendse SC, TN Aboobaker SC, Jannie Eksteen SC, Ishmael Semenya SC, Renata Williams, Archie Findlay SC (ex officio, chair of the National Bar Examination Board) and Jeremy Gauntlett SC (ex officio, past chair).



The new chair of the GCB, Willem van der Linde SC, with the vice chair, Mabel Jansen SC, and the deputy chair, Justice Poswa SC. The photo was taken at the dinner celebrating the centenary of the Johannesburg Bar. See pages 24-26 of this issue.

## Jeremy Gauntlett SC steps down

Jeremy Gauntlett SC has stepped down as chair of the GCB after serving three years in that capacity. At a dinner in his honour during the 57th annual general meeting of the GCB the (then) deputy chair (and now chair) of the GCB, Willem van der Linde SC, paid tribute to him. After introductory comments on Gauntlett's remarkable academic and professional career\* he said:

"When Jeremy took over as GCB chair, the profession was under attack both from within and from without. From within, the race issue was particularly acute, and had in effect split the organized profession starkly along a racial divide. From outside, the clouds of statutory regulation were gathering.

Jeremy tackled both head

on. It was under his leadership that the bold Kimberley decision was taken last year that set us irrevocably on the course of joint governance. Since then, and thanks to the brave co-operation of black leadership, the GCB has been demonstrably representative and effective in its leadership of the South African Bar.

As regards regulation of the profession, I remember vividly that Unisa gathering that had been arranged by the Department of Justice, where it all started. The auditorium was packed, and believe you me, not with supporters of the Bar. To speak publicly and forcefully in support of the Bar in that climate, was brave. To make it sound that you were summing up the consensus of the meeting was brilliant. In

## New chair

Willem van der Linden SC of the Johannesburg Bar has been elected as chair of the General Council of the Bar at its annual general meeting on 27 July 2002.

Willem van der Linde was born in 1956 in Port Elizabeth. He matriculated in 1973, underwent military service in


1974, and graduated from UPE in 1979. He qualified and practised as an attorney, and joined the Johannesburg Bar in 1983. He took silk in 1996, was chair of the Johannesburg Bar during the 2000-2001 term, and deputy chair of the GCB during the 2001-2002 term.



later months, aided and abetted by Loxton SC, he represented the Bar on the ministerial task team, and as you know, we are cautiously optimistic about the result.

There are too many other examples of his effective leadership. Let me tell you, Jeremy packs into one day what the rest of us pack into three — I know, since I know what his

daily rate is.

I think here I should cease, for fear of being labled a sycophant. Let me conclude by simply saying this, Jeremy: that the Bar has been fortunate to have had your leadership, and we are grateful for it." 

\* See also 1999 September Advocate 3 and 2001 August Advocate 10.

## Constitutional challenge to GCB dismissed

On 17 July the Constitutional Court unanimously dismissed the application\* by AS van der Spuy SC for direct access to the Constitutional Court to challenge the constitutionality of the referral rule, which compels advocates to accept work only from attorneys and not direct from the public. The applicant, a senior advocate, breached the rule and was suspended from practice for six months for unprofessional conduct by the high court in Pretoria. Leave to

appeal to the Supreme Court of Appeal (the SCA) was refused last year.

The chief justice directed that notice of the application be given to all those with an interest in the legal profession and submissions were received from, among others, the Minister of Justice, Advocates for Transformation and the Law Society of South Africa.

Langa DCJ, for a unanimous court, explained that direct access is an extraordin-

ary procedure, granted only in exceptional circumstances. The issue the applicant wanted to raise was decided in the high court and, because he failed to appeal the SCA's refusal of leave to appeal, the Constitutional Court was now asked to deal with the matter as a court of first and last instance. Also, the constitutionality of the referral rule was scrutinised in the *De Freitas* case and, as stated there, the development of the common law, was pre-

eminently one for the SCA to consider.

There were also important disputes of fact relating to the impact of the referral rule on the ability of advocates from disadvantaged backgrounds to establish a practice and to the rule's effect on the cost of litigation. These were not dealt with in the high court and did not arise in the *De Freitas* matter. If the matter had come to the Constitutional Court as

*Continued on page 3*