

Whither the system of pupillage?

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Introduction

The legal profession is set to undergo fundamental changes. The proposed Legal Practice Bill triggered unprecedented debate within the legal profession. There have been menacing noises, which have come from some members of the legal fraternity, challenging the very existence of the advocates' profession. Absolute fusion of the Bar and the attorneys' profession was said to be an answer to all the problems besetting the legal profession.

The case for the continued existence of the Bar as a referral profession has been stated before.¹ In the words of Georgina Kent (a barrister in London): "A strong and independent Bar is vital in the public interest. There are always battles to be fought. But the Bar is more resilient than the prophets of doom suppose"². That is not to say that the Bar should continue to exist in its present form. There is, undoubtedly, a need for transformation of the Bar.

The draft Practice Bill and the system of pupillage

The Budlender Task Team has now produced a draft Bill supported by the majority of the members of the team. However, the attorneys' profession has produced its own version of the Bill. It is reported that the Budlender Task Team is most likely to submit two Bills to the Minister³. This will be an extraordinary step; indeed very unfortunate. I have had an opportunity to study proposals of both Bills on the training of prospective legal practitioners, and I am inclined to agree with the Bill supported by the majority of the members of the task team. Clause 27 reads as follows:

"The following persons are deemed to be duly qualified for the purpose of section 26(1)(a), namely any person who —

(a) (i) has satisfied all the requirements for the degrees of *baccalaureus legum* of any university in the Republic after completing a period of study of not less than four years for that degree; or

(ii) after he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum* of any university in the Republic, after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after

completing a period of study for such degrees of not less than five years in the aggregate: Provided that a university may reduce the required aggregate period to four years if it is satisfied that the first degree obtained was substantially a law degree; and

(b) after obtaining a degree of *baccalaureus legum* referred to in paragraph (a) has completed a period of study of not less than a year of practical legal training consisting of—

(i) work-place training and course work as prescribed by the Council or by an accredited organisation with the approval of the Council, and published in the Gazette; or

(ii) pupillage as prescribed by an accredited organisation with the approval of the Council, has been furnished with a certificate to that effect by the person who supervised the practical legal training referred to in subparagraph (i) or the secretary of the accredited organisation referred to in subparagraph (ii); and

(c) after completing the practical legal training referred to in paragraph (b) has undergone an assessment in terms of section 29 and has been furnished with a certificate by—

(i) the Council, in case of a person who has undergone the practical legal training referred to in paragraph (b)(i); or

(ii) the secretary of the accredited organisation, in the case of a person who has undergone the pupillage referred to in paragraph (b)(ii)."

The provisions retain pupillage. The Bar as an accredited organisation will offer and supervise the training. The period of pupillage will be a year. This proposal must be supported. A system of pupillage is not only necessary but is best left in the hands of the Bar. Perhaps it is important to share my personal experience.

When I served pupillage I had already been teaching and practising law for almost nine years. I was very sceptical about serving pupillage and in fact sitting for examination and writing, amongst others, criminal procedure, a subject I had been teaching for seven years. I must confess that I found the examination and the whole training very invigorating and challenging. The many areas covered in the training were quite new to me. In any event, the practice of law involves learning all the time.

The other positive experience of the system of pupillage is the atmosphere of rubbing shoulders with your peers and the whole feeling of being accepted by other colleagues. It is true that in order to understand what the law is all about, one must see it working, and this is what pupillage offers⁴. There are, however, weaknesses in the system that need to be addressed. I have heard of masters who are totally uninterested in the work of their pupils. Perhaps masters should volunteer to take pupils instead of having the Bar Council appoint masters. The introduction of advocacy training as a way of improving the system should be welcomed⁵. The extended

period envisaged in terms of the draft Practice Bill offers an excellent opportunity to revamp and strengthen the system of pupillage. This brings me to the issue of an entrance examination.

Entrance examination

My colleague John Mullins SC has stirred a hornet's nest by resuscitating the idea of an entrance examination for aspirant advocates. He says that an entrance examination would, *inter alia*, reduce the number of pupils and improve their overall quality⁶. A further argument in support of an entrance examination is that aspirant advocates employed elsewhere will have an opportunity to detect their weaknesses before rushing into resigning from their positions.

I disagree. First, the idea of an entrance examination will resurrect the old accusation that the Bar is bent on blocking entrance to the profession by black aspirant advocates. It is an accusation that is also based on perceptions. Secondly, reducing the number of pupils can be done without resorting to an entrance examination. The Bar should take only the number of pupils that it will be able to train adequately. Thirdly, I fail to understand how an entrance examination will improve the quality of pupils. If pupils are not well prepared at university level, no entrance examination will improve their quality. In my view the solution lies in the Bar starting to get interested in the quality of legal education offered at different law schools. Lastly, the argument that an entrance examination offers an opportunity to those employed to detect their deficiencies before jobs are resigned is equally flawed. The fact of the matter is that there are many hundreds of African aspirant advocates roaming the streets jobless.

I believe now is the time for the Bar to maximise its efforts to attract more black recruits. What will happen if, for example, the Bar registers twenty aspirant advocates, ten of whom are whites and ten black. They all sit for an entrance examination and all ten blacks fail? I am sure in such a situation perceptions of deliberate exclusion will continue unabated. I am also of the view that an entrance examination will add an unnecessary extra burden to the Bar.


Devilling

As we grapple with the issue of training, we need to revisit the issue of devilling⁷. Many new advocates find themselves briefless for some time. We need to encourage them to occupy themselves in devilling for senior members of the Bar. At the moment, the rules of professional ethics effectively prohibit devilling as a form of employment and denies a devil an opportunity to acquire the necessary skills. Rule 4.26 reads as follows:

"4.26.1 It is essential that practising advocates should retain their professional independence. Any system of payment which

converts a devil's service into employment by the members requesting such services is undesirable. Thus, although it is not improper for the member requesting such services to show his appreciation therefor in tangible form, any form of payment which obliges the devil to do the work is undesirable.

4.26.2 It is not within the etiquette of the profession for a devil to be obtruded on the notice of an attorney in respect of any brief worked up by the devil. The latter should not be present at a consultation, nor should he take any active part in the conduct of the case in court."

Is it not time that we revisit the above rule? I believe devilling can be utilised as an effective tool of training new advocates. I have in mind, making it obligatory to all senior advocates briefed by the state attorney to take a new advocate to "devil" for him or her with payment of a certain percentage of his or her fees. This will assist especially black advocates immensely in acquiring the necessary skills and at the same time, enable them to pay their Bar fees. The day I take silk and if the ban on devilling is effectively lifted, I will be the first to volunteer to take a new advocate to "devil" for me for a fee. 

Endnotes

- 1 Seth Nthai "Fusion of the legal profession" 1999 December *Consultus* South African Bar Journal 32
- 2 Georgina Kent "The man for all reasons" 2002 February *Counsel* Journal of the Bar of England & Wales 8. The article is on the profile of David Bean QC, the new chairman of the Bar of England and Wales
- 3 Barbara Whittle "Two draft Legal Practice Bills for Minister?" 2002 January / February *De Rebus* South African Attorneys' Journal 19, see also CDA Loxton SC and WHG van der Linde SC "The draft Legal Practice Bill" 2002 April *Advocate* South African Bar Journal 15
- 4 Lord Denning *The Family Story* Butterworths (1981) 93
- 5 WHG van der Linde SC "What the Bar does" 2002 April *Advocate* Journal of the South African Bar 9-10
- 6 JF Mullins SC "Pupillage: the face of the future" 2002 April *Advocate* South African Bar Journal 29
- 7 On the issue of devilling generally, see Edmund Heward *Lord Denning: a biography* 2nd Edition Barry Rose Law Publisher (1997) 20-21. See also Glanville Williams *Learning the Law* 11th Edition Stevens and Sons (1982) 198

Justice College – training judicial officers

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In terms of the regulations issued under the Magistrates Act of 1993, no person shall be appointed as a magistrate unless he or she — "... has successfully completed an applicable course (the duration, content and extent of which shall be specified by the Chief of the Justice College after consultation with the [Magistrates] Commission) to the satisfaction of the Chief of the Justice College or a person designated by him [her]."

On 1 May 1997 the current head of the college, Ms MC van Riet, took office.

Soon after Ms Van Riet's appointment a separate directorate responsible for judicial training was created to give effect to the principle of judicial independence. This directorate is accountable to the Magistrates Commission and receives direction from the commission as concerns policy and training content.

Further restructuring has been proposed to remove the college from the realm of the executive. What is envisaged is the creation of an autonomous statutory body governed by a college council which is to be representative of all role players. Different faculties are to be responsible for *inter alia* judicial training, prosecutorial training, general legal training and administrative, management and leader-

ship training. These proposals are presently receiving the attention of the executive committee of the Department of Justice and Constitutional Development.

A system of "rolling needs assessments," which entails continuous consultation of all role players on their training needs, has also been introduced. A result has been the expansion of training programmes for persons to be appointed as magistrates and of the centralized seminars for aspirant regional magistrates, serving regional magistrates and civil magistrates. As a result of feedback, training interventions for criminal court magistrates have been made shorter but more frequent and have been decentralized to at least one seminar in each of the nine provinces.

The current composition and functions of the Directorate: Judicial Training are as follows:

Sub-Directorate Judicial Training: Criminal Court

The section is staffed by five senior magistrates and two magistrates. Their task is to present training programmes for regional magistrates, aspirant regional magistrates, presiding officers in criminal courts and



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