

Criticism by politician of Chief Justices' statement

The chair of the General Council of the Bar of South Africa, Willem van der Linde SC, issued the following press statement on 6 March 2003:


"Business Day of 6 March 2003 reported that Mr Dumisani Makhaye, a member of the KwaZulu-Natal Provincial Legislature, accused the judiciary of South Africa, Botswana, Malawi, Mauritius, Namibia, Tanzania, Swaziland, Uganda, and Zambia of 'hiding behind their independence when they got into trouble'. This accusation came just after the chief justices of the countries concerned had issued a joint statement in which they regretted that [Zimbabwean] Judge Paradza had been arrested, detained and prosecuted before an impeachment procedure was followed.

Mr Makhaye is further reported as having said that 'When the law takes its course against them (the judiciary in Zimbabwe), they cry foul and plead the independence of the judiciary. They hope to be the only ones to be unaccountable to anybody' and further 'Elements from the SA judiciary who themselves think they are the only ones that are unaccountable to anybody, including some from the ranks of the struggle, have instinctively come to the defence of elements of the Zimbabwean judiciary, who think they are above the law.'

The joint Chief Justices' statement makes

four points: that judges are not above the law; that judges must be and must be seen to be independent; that accordingly democratic societies follow special procedures where allegations of serious criminal conduct are made against a judge; and that it was regrettable that in Zimbabwe that procedure, although available in terms of the Zimbabwean Constitution, had not been followed.

The statement by Mr Makhaye, speaking as a member of the legislature, is disconcerting for a number of reasons. Firstly, it reflects no appreciation for either the particulars or the central thrust of the joint Chief Justices' statement. Secondly, the tone of the statement suggests a contemptuous attitude towards those voices that express concern about the independence, perceived and real, of the judiciary. Thirdly, the suggestion that there are struggle judges and other judges, and that these two groupings are expected to have different views on the issue of independence of the judiciary, is disquieting.

It is regretted that a member of the South African legislature responded in this manner to the joint Chief Justices' statement." 

The GCB and the LSSA


The national executives of the General Council of the Bar of South Africa and of the Law Societies of South Africa resolved at a joint meeting in East London on 8 March 2003 to set up a joint working commission to seek to reach consensus in relation to current drafts of the Legal Practice Bill.

This followed a wide-ranging discussion between the LSSA and GCB national leadership of this and other current issues regarding the administration of justice.

The co-chairs of the LSSA, Silas Nkanunu and David MacDonald, and the chair of the GCB, Willem van der Linde SC, in a joint statement issued after the meeting said:

"Important discussions have taken place in a very good spirit. We believe this is an historic opportunity for a new understanding within the profession.

It appears that public concerns regarding accountability of the wider profession, particularly including those who appear in courts but are not adequately regulated, could be addressed as a priority by, for instance, legislation to introduce an independent legal Ombud.

The Minister of Justice will be advised of this progress, and will be kept fully informed of developments." 

Trevor Foster

Financial Investigations

Litigation Support • Strategic Tax Advice

Breach of Contract • Business Interruption • Business Valuation • Child and Spousal Support • Companies Act Enquiries • Construction Claims Consulting • Copyright, Trademark and Trade Secret Cases • Cost Estimation • Damage Assessment • Discovery • Fraud and Embezzlement • Incremental Cost • Investigative Accounting • Liquidations/Insolvencies • Lost Earnings • Lost Profits • Marital Dissolutions • Tracing/Appportionment of Assets • Patent Infringement • Tax • Time Value of Money

TREVOR FOSTER

B. Com (Rand) C.A. (S.A.) (Honours) Taxation (Cape Town)

48 Francolin Road Camps Bay Cape Town 8001 Tel (021) 438 1144 Fax (021) 438 5655