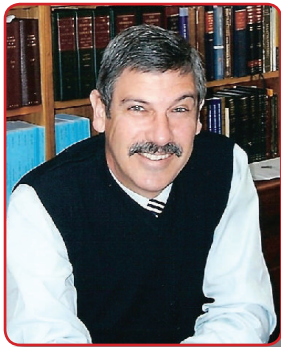


Lawyers must create consensus about fundamental issues



By Jannie Eksteen SC, chair of the General Council of the Bar of South Africa

By the time you read this my term of office as chair would have expired. A new chair will have assumed office and new leadership installed. As I reflect on the areas of success in the past two years I am filled with an enormous sense of gratitude to the large number of colleagues who have invested so much of their time and energy in the Bar.

The membership of the constituent Bars has grown in this time from 1901 in 2006 to more than 2000 practising advocates in 2008. The results of the National Bar Examination achieved record success rates in each of the past two years. Spicko Dickson SC argued in his final contribution as National Pupillage Coordinator in 2007 December *Advocate* that 'a participatory pupillage is the purest form of transformation at the Bar: it empowers and transfers skills to the nascent advocates; it demands industry from pupils; and it takes hours of professional time on the part of a cadre of mentors, tutors and trainers.' This statement remains true in every sense and it has been a privilege to have been associated with this cadre of advocates so dedicated to the enhancement of the standards of practice at the Bar.

Whilst we are rightly proud of the dedication and success of all those involved in the mentoring, tutoring and training of pupils we still find that less than 30% of the new entrants to the Bar in the past two years have been black. Transformation of the composition of the membership of the constituent Bars is accordingly still slow, notwithstanding the contribution of so many in providing quality training to all entrants equally. My personal view is that the challenge in respect of transformation for future leadership of the Bar is twofold. First, the Bar will have to find ways to make sure that intelligent young people from less privileged backgrounds, particularly black scholars, have the opportunity to see the profession at first hand when there is still time for them to choose their direction of study. Secondly, greater financial support will have to be found to assist such

young entrants in the first year of practice, possibly by way of loans. This may be difficult to achieve at local level, particularly at the smaller Bars and a national project may be required.

On the political front recent months have presented new challenges for the independence of the greater legal profession. During May 2008, prompted by their concern for the independence of the judiciary in South Africa, the International Bar Association sent a fact finding mission to South Africa to assess the position. At the end of May 2008 the judges of the Constitutional Court released a press statement announcing that they had referred a complaint to the Judicial Services Commission against the Judge President of the Cape High Court alleging that he had endeavoured improperly to influence certain judges of the Constitutional Court to effect a particular result in certain matters before that court. At approximately the same time the enquiry into the National Director of Public Prosecutions recommenced in Johannesburg placing the focus on the independence of the National Prosecuting Authority.

The complaint by the justices of the Constitutional Court immediately sparked considerable debate amongst lawyers and politicians alike. It revealed the considerable diversity of views and perceptions which exist in respect of the independence of the judiciary and of right and wrong. Sadly, the division manifested largely along racial lines within the profession. One is inevitably reminded of the very pertinent warning of Judge Edwin Cameron at the opening of the Advocates for Transformation workshop in

January 2008 where he said: 'For, without shared norms of conduct and shared norms of criticism and debate, our profession is nothing - and its aspirations without substance: and it will disable itself from playing the central role in securing justice that our Constitutional dispensation assigned to it.'

Lawyers cannot get away from right and wrong. The law would not exist without norms. Without values and principles our profession would not exist. Norms presuppose values and values rest upon fundamental premises of right and wrong. If we cannot agree on right and wrong in our profession, if we cannot agree on when it is legitimate for office bearers in our profession to be called to account for transgressions, if the racial fractions of the past are to disable criticism and debate, then we as lawyers and judges cannot perform our transformative function in a society which has entrusted that special role to us.

The question for us is this: What future is there for our non-racial constitutional democracy if lawyers cannot create consensus about fundamental issues of right and wrong, if the debates about ethical and non-ethical conduct are to be racially riven each time?'

This cautionary note has never been more apposite than now. The urgency for consensus on such issues has been demonstrably highlighted by recent events. I trust that the new chair and executive of the General Council of the Bar will seriously strive to develop a set of shared norms within the professional which would found debates upon ethical and non-ethical conduct. 