The Johannesburg Bar – a great institution

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Very little can be said about the Johannesburg Bar in 1 500 words. That is the beauty of the institution.

Certainly one can list important dates: 1902, when the first members signed the register; 1926, when the first woman was admitted to our Bar; 1950, when the Johannesburg Bar achieved corporate status on the adoption of its constitution; and 1956, when the first black member of this Bar signed the register.

One can list statistics, and use these to indicate the changes that have taken place – from a fledgling Bar in 1902 to the 650 plus counsel today, working in a division handling over 60% of the country’s commercial litigation. One can point at percentages and proportions, hoping that this will in some way illuminate the dynamics of our Bar.

But these are just dates and numbers, meaningless without the context that makes them significant. And the context is provided by the people at the Bar, the men and women that have made, and continue to make, these dates and numbers significant.

The first woman at our Bar was Bertha Solomon. The resistance displayed by prominent members of the Bar at the time, including Charles Frampton Stallard KC, might in today’s context appear absurd – even in the context of 1926 it might be considered absurd. But the profession as a whole, grounded as it is in putting spin on the words of mainly dead people, has always been resistant to change. In 1960 Ruth Kuper, now a silk and still practising from Innes Chambers, signed the register – yet she was only the ninth woman to do so in the 34 years between 1926 and 1960. While the move of allowing women at the Bar was undoubtedly a great step forward in moving towards parity between the sexes, most will admit that despite this step, almost eighty years later, ours is still a male dominated profession. Today there are 126 women at the Johannesburg Bar, including six silks.

Despite the fact that the colour bar had been a point of discussion in the society for many years before then, 1956 was the year in which the first black counsel, Duma Nokwe, signed the register. Nokwe was active in ANC circles with his student friend and fellow lawyer Nelson Mandela, and his admission to the Bar and membership of our society came at a particularly significant time.

In 1951, on the back of the government’s defeat in the Appellate Division on the issue of the striking from the voters’ roll of coloured voters, the government had introduced the High Court of Parliament Bill. Shortly thereafter, in 1955, the judges in the Appellate Division were increased in number, allowing that Bench to be packed with political appointees. The Suppression of Communism Act and various other building blocks of apartheid legislation were also passed in this period.

So it was in this climate that the Johannesburg Bar welcomed its first black member. Well, maybe ‘welcomed’ is not the right word. For Nokwe was indeed the subject of fierce debates – should he be allowed to take up chambers with white advocates? Should he be allowed to share the library and common room?

The question of Nokwe’s taking up chambers was subject to permission from the Minister of Native Affairs to practise in His Majesty’s Building – which was refused. Opposition to Nokwe’s being afforded the same rights and amenities as fellow members of the Bar came from those such as BJ Vorster, later to become Prime Minister, and GGA Munnik and J van Wyk de Vries, both later appointed to the Bench. Undaunted, the Bar allowed Nokwe to share chambers with George Bizos from 1956 until 1962, when, following persecution and detention, Nokwe went into exile.

Another ‘non-European’ member of the Bar at around the same time was Ismail Mahomed, later to become our first black Chief Justice, who signed the register in 1957. Yet, despite these notable crusaders, and the many that have followed them, this society is still largely dominated by white members. Today there are 159 non-white members of the Johannesburg Bar, including nine silks.

It is with pride that today’s members can look upon the fact that some of our colleagues, both past and present, took up the cudgels for justice at a time when justice often seemed to be at the mercy of the State. Some members, such as Nokwe and Abraham Fischer SC, sacrificed their careers fighting a system they knew to be unjust. Members of the Johannesburg Bar routinely took up the defence of people charged with political offences when it was unpopular to do so.

Indeed it was indicative of the time that, when the first treason trial began in 1958, the State was represented by Oswald Pirow QC, three colleagues...
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looking to the future...

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from the Pretoria Bar (all later to become judges) and four advocates from the attorney general's office. The defence was led by Issy Maisels KC, with ten other members of the Johannesburg Bar, including notables such as Fischer QC, Sydney Kentridge and HC Nicholas. The court found that that the Freedom Charter was not a treasonable document, but amounted to legitimate political activity – the outcome of possibly the last political trial to be conducted in accordance with the accepted rules for a fair trial.

This non-conformist attitude resulted in the appointment of fewer members of the Johannesburg Bar to the Bench than might have been expected at the time. And while many might say that our judiciary and jurisprudence are the worse for this omission, it can equally be said that the Bar benefited by having such esteemed and highly qualified members in our midst for a while longer than might otherwise have been the case. For like any Bar, the strength of the Johannesburg Bar lies in its ability to guide and assist new members, to help develop the strengths and maintain the traditions that have allowed the Bar to remain relevant and respected for over a century.

The relevance of the Johannesburg Bar in the last hundred years is perhaps best measured by looking at the Bench in the Constitutional Court over the last decade – Arthur Chaskalson, Johann Kriegler, Richard Goldstone, Ismail Mahomed, Edwin Cameron and Sydney Kentridge have all done this Bar proud over the years – both as advocates and judges. And this is without the 34 judges of appeal and acting judges of appeal in the SCA, or the 180 or so judges and acting judges who have served in this country's other courts and who have all been products of this Bar.

But the best traditions of the Bar, while easily maintained in the select group of gentlemen that signed the register in 1902, have become harder to maintain as the numbers in our ranks stretched past the 650 mark. The common room is gone, and it is practically impossible for a new member to introduce herself to every senior member at the Bar – as was the tradition for so long.

It is in this context that the Johannes- burg Bar has developed a group system. Records indicate some form of group structure as far back as 1922, for the ostensible purpose of economising in the provision of administrative and other support structures. But the role of the groups in an advocate's everyday life has become more prominent in the last few years. Now a group provides the mentoring, the everyday support and the collegiality that are so essential to practice.

While the moves from Sauer's Building to the Old Corporation Building, from there to His Majesty's Building, or even the move in 1960 to Innes Chambers, expanding into Schreiner Chambers and Colman Chambers as our numbers increased, were purely logistical, the recent expansion into Sandton has taken on an altogether different significance. The move north to Sandton was prompted by several factors, including the fact that many of the large firms of attorneys and their clients had moved there, but also the fact that the city centre had become less desirable as a place of work. The move developed political significance, with a core of advocates maintaining that the move marginalised black advocates – with the increases in rental and transportation costs, and the limited space available in Sandton – keeping young black counsel in town. This perception is perhaps now changing, with the first predominantly black group opening up shop in Sandton in 2003 – not to say that the war is over, but perhaps a battle has been won.

It might appear to an outsider that the Bar is now in a state of turmoil, but this would be an overstatement. The Johannesburg Bar is still in a state of transition – as it has been for over a hundred years. Indeed this transition is perhaps the one enduring tradition. All that we can hope for is that this change continues to be effected with adherence to the principles of justice and the rule of law, and with the spirit of collegiality and sense of self-worth that have made this institution one that allows every member to state with pride: I am a member. Now that is a history.