

**GCB AND AFT PROPOSAL ON PRACTICAL
VOCATIONAL TRAINING FOR PUPILS UNDER THE
LEGAL PRACTICE ACT**

1. In order to place the GCB and AFT's proposal on practical vocational training ("PVT") in context, it is necessary first to provide a broad outline of the current pupillage programme offered to our pupils in order to explain why this cannot be offered in its current form to all those who wish to become advocates, which is one of the primary concerns which informed this proposal.

A: THE PRESENT FORM OF PUPILLAGE AT THE GCB BARS

Duration and cost

2. Since 2005 the pupillage programme has been a one year programme. Before that the programme ran for 6 months but the increasing numbers of pupils with no prior legal experience meant that pupils had difficulties assimilating all that was required of the GCB pupillage programme within that limited time and the failure rate in the bar exams was high. Many pupils ended up having to repeat pupillage and would get through the exams on the second attempt and so ended up serving a year's pupillage.

3. The period of pupillage was consequently extended to one year and additional facets, particularly the Workbook were added to the programme with a view to assisting pupils through the curriculum. The pass rate on the bar exams then improved from roughly 60 % to above 90% and has stood at around 95% since.
4. The present format for pupillage is summarised in “**A**” hereto.
5. Pupils are only required to pay an administration fee, (R600.00 for 2016) for the training and mentorship they receive. At some bars they are provided with their course and other materials electronically and required to pay for their own printing, other bars supply their pupils with hard copies of all materials at no charge, the costs being met from practising members’ subscriptions.
6. All of the training and education set out below is provided to pupils free of charge by members of the GCB, and Judges of the High Court, who do not charge for their time.

Five components to the programme

7. There are five components to the current programme. They are:
 - 7.1 Individual daily mentorship and periodic group mentorship by a silk;

- 7.2 Tutorials on the subject matter in the syllabus for the National Bar Examination;
 - 7.3 Workbook tasks;
 - 7.4 Practical advocacy training;
 - 7.5 The Bar examinations themselves.
8. We furnish a brief summary of each of the components.

Mentorship

- 9. Mentorship comprises reading in chambers, attending court and drafting under the guidance of a mentor who is a practising advocate generally over 5 years' call.
- 10. Each pupil is assigned to a single mentor for the entire year.
- 11. The relationship is not akin to that between a candidate attorney and a principal in that there is no "*contract of service*", the pupil is there to learn from and be trained by the mentor who derives no financial benefit from the pupil's services but instead gives of his or her time and experience to help the pupil in the interests of the profession.

12. The pupil does not earn any money during pupillage and the mentor cannot charge for the pupil's work. The GCB centrally and many of its constituent bars run and administer bursary schemes funded by their members to assist deserving and needy pupils during this time.
13. Pupils are required to attend consultations, inspections and pre-trial conferences as well as court with their mentors and to actively participate in their practices. Pupils are required to draft documents in connection with their mentors' briefs. Sometimes this is done in parallel with their mentors who thereafter review the pupil's draft and give feedback on it, at other times pupils may be required to do a "first draft" which the mentor thereafter reviews and "*settles*" (or frequently re-drafts from scratch) and again gives feedback to the pupil.
14. Pupils are required to be actively involved in the preparation of and to attend a minimum number of court proceedings of different types and in different disciplines during the year. A list of the current requirements is annexed as "**B**".
15. The GCB also encourages limited supervised practice by pupils once they have passed their trial exams¹.

¹ At present, admission as an advocate occurs before the bar exams are written so such appearances are possible. That will not be the case under the LPA.

Tutorials

16. Each bar offers tutorials in the syllabus of the subjects covering the National Bar Examination curriculum (*“the syllabi”* or *“the curriculum”* hereafter). The curriculum and syllabi are determined by the National Bar Examination Board (*“NBEB”*) each year in collaboration with the GCB. The current curriculum is annexed marked **“C”**.
17. The NBEB is not a sub-committee of the GCB. It is an independent body comprising members of the bar and 7 moderators, all of whom are judges or retired judges of the High Court or the Supreme Court of Appeal.
18. Pupils are expected to make their way through the curriculum independently. The tutorials do not therefore *“teach”* the syllabi, they simply guide pupils in understanding particular aspects of the curriculum and focus their attention on particular areas of importance. Tutorials are generally in the style of a seminar rather than a lecture.
19. Legal writing tutorials are something of an exception to this general rule however as the tutors provide a seminar on each type of document advocates draft in the course of their practices and then all pupils are required to draft such a document on the basis of *“instructions”* provided to them. The tutor then assesses every document so drafted and gives individual as well as group feedback on the drafts at the start of the next session.

Workbook tasks

20. The GCB's workbook was adopted by Chris Marnewick SC from a distance learning programme introduced in New Zealand and has been updated from time to time.
21. The workbook comprises a daily reading list and questions or assignments which pupils are required to answer and submit. It is integrated with the NBEB curriculum and requires practical application of its content. Almost every daily task requires the pupil to draft. Model answers are also provided.
22. The pupil's answers are submitted to the pupillage co-ordinators at the bars where the pupils undergo pupillage, and are reviewed with the pupil by the pupil's mentor. We attach a copy of the explanatory page of the workbook as "D".
23. The workbook described above is integrated with the curriculum and likewise frequently requires skills-based and practical answers.
24. The workbook is an important component of pupillage, *inter alia*, because it is accessible to all pupils and is not affected by the imbalances that are inherent in the other components of pupillage caused by the disparity in resources and numbers of members at the constituent bars.

Advocacy Training

25. Advocacy training is offered at each bar by GCB trained and graded trainers. The training is conducted in the vignette method with a structured review system referred to as "*The Method*".
26. "*The Method*" is a specialised advocacy training technique used in common law countries around the world. Training according to "*The Method*" is a mandatory component of PVT for advocates in many countries.
27. Advocacy training is conducted on case studies which have been compiled by the GCB over many years and in some instances comprise materials adapted from those internationally. The training requires pupils to perform as advocates in those cases.
28. To address the training inadequacies at the smaller bars, the GCB introduced a National Training Programme for pupils at all the smaller bars in 2015 and conducted three such regional workshops in 2016.
29. The National Training Programme is residency based which runs over 5 days. It covers all the main training exercises offered at the larger bars including bail proceedings, leading and cross-examination, open and closing arguments, appeal skills and opposed motions.

30. The quality of training is high as the GCB's senior trainers and International Advocacy Training Council trainers from overseas conduct the training. The cost of the course² is covered by the GCB.

31. The GCB also distinguishes between standard and advanced advocacy training.

32. The advanced training comprises:
 - 32.1 witness handling in a case involving multiple parties;

 - 32.2 an opposed application;

 - 32.3 a civil appeal.

33. Attendance at the advanced training is compulsory. No pupil, save on application to the GCB, may be exempted from attending and completing the advanced training in terms of the GCB's requirements for pupillage.

34. As an example of the sort of training offered at the constituent bars, we attach a copy of the Cape Bar's advocacy training and tutorial schedule for 2016 as "E". In the Cape each pupil performs, and gets reviewed on, every exercise in the programme. The same is true for all the larger bars but it is not the case

² Course materials, accommodation and meals for the pupils and trainers and transport costs for out of town faculty

at all the smaller bars due to a lack of human resources and adequate training at the smaller bars has been problematic in the past.

35. Some of the GCB Bars offer training in addition to the above. For example in Durban, over and above training according to The Method which occurs every Friday afternoon for all pupils from the end of January until just before the mock examinations in July :-

35.1 Seminars are conducted before each advocacy training exercise on the skill The Method workshop will focus on e.g. leading, cross-examination, opening and closing addresses etc.

35.2 Other seminars are provided on argument advocacy, appeal advocacy and Constitutional Court preparation by a justice of the Supreme Court of Appeal, a retired Constitutional Court justice and leading silk with a busy appeal practice.

35.3 Early in the year the pupils receive and are required to prepare 4 to 5 different unopposed applications which are actually on a court roll for a particular day. All the matters on the roll are allocated amongst the pupils in this way. A silk or senior junior advocacy trainer who has prepared the whole roll conducts a briefing with all the pupils on the morning of the day the matters are in court where the pupils are required to indicate for the benefit of the group what their matters are about, where they think the pitfalls are and what they think is likely to

happen with the matter. They then attend court with the trainer and watch all proceedings, after which they return to chambers for a debriefing where their predictions in the morning session are assessed against what in fact happened in court.

- 35.4 Four practical motion court exercises covering different facets of motion court practice are held in the High Court before a judge of the division towards the end of year. The pupils are allocated a set of papers in actual applications of various types and move them, robed, in court. They receive feedback from the presiding judge and advocacy trainers at the end of the session.

The National Bar Examinations

36. The National Bar Examinations are held at the end of August each year. The pupils write one examination paper on each of the following subjects:
- 36.1 Legal writing (an 8 hour open book paper);
- 36.2 Ethics;
- 36.3 Motion Court Practice and Procedure;
- 36.4 Criminal Procedure and Evidence;

36.5 Preparation for and the conduct of Civil Trials.

37. The last four examinations are closed book, one to one and a half hour papers.
38. The NBEB legal writing curriculum and examination is entirely skills-based and much of the assessment of the knowledge-based NBEB curriculum is likewise conducted in a manner which requires an understanding of the problem and then practical application of the curriculum.
39. Effective legal writing is an absolutely essential competence for every advocate. The Legal Writing curriculum focusses on equipping pupils with the ability to draft the array of legal documents inherent in an advocates' practice in the proper form and with the essential content. The examination retains that focus and pupils are not marked on style.
40. The examinations are marked by advocates and moderated by Judges who are members of the NBEB. Oral examinations are held for those pupils who do not pass, but who obtain sufficiently high marks to be eligible for an oral. A supplementary examination is held in legal writing.
41. To prepare our pupils for the National Bar Examinations, a system of mock examinations, held each year in July, was introduced a few years ago. Since two years ago the mock examinations are written on the same dates at all the

bars. Each constituent bar marks its own pupil's mock examination papers. They are not moderated and the marks are not taken into account in the final marks. They are used as a guide to identify pupils who may be struggling and to offer timeous remedial training.

The implications and advantages of the current system

42. In our experience, the form of pupillage outlined above provides education and training which can equip pupils for practice and does so at virtually no cost. It is however incredibly labour and time intensive:
 - 42.1 every pupil needs to be allocated a suitably experienced mentor, the duties of a mentor are onerous and time consuming;
 - 42.2 several members of each bar assist with tutorials and advocacy training, which requires much preparation over and above the hours spent in the sessions with the pupils themselves;
 - 42.3 numerous examiners need to be sourced and the process of setting, vetting, making and modifying the papers is arduous.

43. The GCB Bars have around 2900 members country-wide. Of this total a substantial number, are under 5 years call and generally³ do not have sufficient experience to serve as mentors or trainers.
44. For these reasons, the GCB is only able to accommodate roughly 40 % of those applying for pupillage each year. In 2016, the GCB accepted 245 pupils of the 648 who applied to do pupillage.
45. The GCB applies transformation criteria in the process of selecting who will be accepted into its pupillage programme. Significantly, the application of these criteria has had the effect that the demographics of the GCB Bars have transformed far more racially than they would have done had the Bars been in a position to accept all applicants as both the race and gender demographic profile of applicants is not generally reflective of the national demographic.
46. Even with all this training and mentorship however, there is a fairly high attrition rate, with the market unable to absorb the numbers of qualified pupils, many of whom in consequence are unable to sustain viable practices, even with support initiatives.
47. Notably however, there is at present no legislative requirement that an aspirant advocate undergo any form of training before he or she is entitled to be admitted. This has meant that there are many practising advocates who have had no training at all.

³ Unless they have significant prior legal experience

48. The disparity in the standards of the service offered to members of the public and the levels of competence between those who have been trained and those who have not is marked.

B: THE LPA 6 MONTH PROPOSAL MARKS A SEA CHANGE IN THE INTERESTS OF ACCESS TO THE PROFESSION

49. The GCB and AFT proposal for PVT under the LPA submitted to the National Forum in October 2016, is a marked departure from the current model. The reason therefor is the recognition that the current programme cannot accommodate everyone who applies.
50. The preamble to the LPA stressed that the Act is intended to ensure that legal services are accessible and to remove any unnecessary or artificial barriers for entry into the legal profession.
51. At the same time, we are mindful of the fact that one of the issues the LPA is designed to address is the fact that advocates can commence practice with no training and without a competency-based assessment⁴. It is therefore important to bear in mind for what follows that the profession is now able to set a uniform and mandatory standard for advocates' PVT through the rules made under the LPA .

⁴ The LPA changes the present position in terms of which advocates may be admitted as such without PVT and examination or assessment and makes these mandatory prior to admission

52. It was with those imperatives in mind that we recorded the following in our October 2016 proposal:

“In considering what the practical vocational requirements in respect of pupils should be, we have been guided by two main considerations:-

- 1. There is a need to ensure that persons who are admitted to practise as advocates have the necessary skills to be able to provide an effective service to clients, in the interests of those clients and in the interest of the right of access to justice and the rule of law; and*
- 2. The practical vocational training requirements should be designed in such a manner as not to inhibit access to the profession.*

The latter consideration is particularly pressing because unlike candidate attorneys, pupils are not employed by a legal practitioner, do not render legal services on behalf of a legal practitioner, do not charge fees, and do not earn an income while they are undergoing training. Practical vocational training for pupils therefore necessarily requires the pupils to undergo a period during which they are not employed and not in receipt of any income (that is, assuming that the State does not provide funding to pupils, which seems unlikely to happen). The longer

the period of practical vocational training, the more this will limit access to the profession for those who are not well resourced.

A further consideration is that any aspirant advocate who has acquired the necessary academic qualifications should be able to obtain practical vocational training. The system of practical vocational training has to be designed in such a manner that there is capacity to offer it to all qualified aspirant advocates. If the required training cannot be provided to all qualified candidates who wish to obtain it, the result will be to limit access to the profession.”

53. It was consequently with these matters and the aim of the LPA in mind that in our October 2016 memorandum we proposed a pupillage of not less than six months on a full time basis⁵. We proposed that the training should consist of:

53.1 knowledge-based practical training;

53.2 skills-based practical training;

53.3 practical training with regard to the organisation of the courts and of the practice of an advocate;

⁵ We also proposed that the training could occur over 12 months on a part time basis but the manner in which the proposed course has now been structured means that a part-time programme is not practicable.

with the first part of the knowledge-based practical training consisting of a common introductory module dealing with matters that are common to attorneys and advocates in the basic conduct and procedure of litigation, after which the pupils would complete modules specifically focused on advocates' practice.

54. After the proposal was tabled at the Education, Standards and Accreditation sub-committee of the National Forum on 15 October 2016, we were asked to provide more detail as to how the proposal was envisaged to work.
55. The process leading up this memorandum has involved representatives of the AFT and GCB.
56. In formulating the detail and devising the programme outlined in this memorandum, we have consulted and worked with persons with a great deal of experience in pupillage, the bar exam and advocacy training, including:-
 - 56.1 Van Der Merwe SC, the current GCB National Pupillage Convener who also served on the NBEB *ex officio* and who is a senior GCB advocacy trainer with extensive involvement in pupillage and training; and
 - 56.2 Bruinders SC, the current GCB advocacy training convenor, a senior GCB advocacy trainer who is also involved in the pupillage programme at the Johannesburg Bar and likewise has extensive experience of pupillage and advocacy training; and

- 56.3 Several judges but more particularly, His Lordship Mr Justice Glenn Goosen who was the former National GCB pupillage convenor and served on the NBEB before his elevation to the bench, and has been extensively involved in advocacy training both whilst at the bar and since his appointment as a judge of the High Court; and
- 56.4 Mr Nic Swart of LEAD regarding the formulation of the proposed introductory module and the possibilities of creating a single college for the administrative and infrastructural benefit of both branches of the profession, as he had kindly expressed his willingness to work together with the advocates' profession in this regard.
57. We express our gratitude to them for their time and the valuable inputs they have made into the formulation of this proposal.
58. We have sought in structuring this proposal to retain as far as is practicable the components of a GCB pupillage because we know from years of experience that they work.
59. Judges with whom we have engaged on the issue of PVT for advocates tell us consistently that there is a noticeable and distinct difference in the advocacy presentation and legal writing skills of those advocates who have been through a GCB pupillage and those have not. More significantly still, our members and judges report a marked difference when it comes to ethics and

etiquette between those advocates who have undergone pupillage and been exposed to the ethical challenges of practice and the responsibilities an advocate owes to the court.

60. We have however somewhat modified the form of pupillage so as to provide a PVT programme which sets a suitable standard in the public interest that equips and empowers advocates, but which can be offered to all candidates thus enhancing access to justice and removing barriers to entry.

C: THE FORM AND CONTENT OF THE PROPOSAL FOR A SIX MONTH PUPILLAGE UNDER THE LPA

61. It is best to explain the PVT we propose first as to the structures required to offer it and then the curriculum as the course would unfold chronologically.

Regional PVT colleges

62. LEAD presently offers PVT to some 1 400 candidate attorneys across the country from 10 regional centres. These centres correspond largely to the centres where there are high courts and this GCB affiliated bars and other advocates' organisations.
63. From an administrative and financial perspective it makes sense for that infrastructure or at least the systems and thinking underlying it to be

expanded or reconfigured so as to create regional colleges able to offer certain elements of PVT to candidate attorneys and pupils. Certainly if all aspirant advocates are to be afforded the opportunity of undergoing PVT then such a structure is essential, as the GCB Bars which are the only advocates' body which offers a comprehensive and structured course to numbers of pupils do not have the necessary infrastructure to cope with the anticipated numbers who will apply to enter pupillage under the LPA.

64. However, in some of the centres LEAD's current facilities are not sufficient to accommodate all candidate attorneys as well as all applicants for pupillage and additional premises will need to be sought from which these programmes can be offered.
65. As LEAD will however cease to exist with the coming into force of the other chapters in the Legal Practice Act, it will be possible under the new dispensation to create a regional legal training colleges in the 10 centres with venues and premises sufficient to offer and administer both the common introductory model for candidates in both streams as well as providing venues for the subsequent special focus courses referred to below.
66. We consequently propose that negotiations and collaborations ensue between a small group of LSSA and LEAD representatives and advocates' representatives experienced in the provision of PVT regarding how best these colleges can be set up. It will also need to be costed for LPA purposes.

Months 1 and 2: The introductory common stream

67. It is proposed that for the first two months of pupillage, a common module be conducted in a college setting for both candidate attorneys and pupils at the start of their period of practical vocational training which would focus, through practical exercises and tutorials on the basics of areas common to both branches of the profession.
68. The common stream should be open to all candidate attorneys and pupils who have an LLB and are fit and proper. By the imposition on this second criteria we do mean only that that there should be an application form requiring disclosure of past criminal conduct and/or disciplinary proceedings on the basis of which an administrative committee at the colleges can determine whether, on the face of it, the applicant is likely to be entitled to be admitted as an advocate after PVT.
69. Whilst the precise course content and nature of the assessment following the introductory common stream will need to be devised through a collaboration between attorneys' and advocates' educational specialists⁶, it is envisaged that the course will cover competency training in -
- Case analysis
 - Consultation

⁶ a process which has already begun with our engagement with Nic Swart

- Advocacy skills
- Computers
- Drafting
- Research
- Numeracy

in the context of litigation.

69.1 Ethics

69.2 The role of the Constitution in legal practice

69.3 Alternative dispute resolution and the allied skills of negotiation and the conclusion of settlement agreements.

70. The aim of this common stream is to synergise training efforts where possible so as to maximise the use of resources and minimise costs. It also facilitates conversion from one branch of the profession to the other as we discuss below.

71. The course will be presented at the colleges by an accredited service provider⁷.

⁷ Likely to be the “*successor*” of LEAD but with input from the GCB and such other advocates’ organisations as may wish to seek accreditation or contribute to the endeavor.

72. At the end of the common module, a standard competency based assessment will be conducted on candidates and it is proposed that candidates who do not pass this competency based assessment will not be permitted to proceed to the next stage of their practical vocational training but will need to repeat the module until they have successfully completed it.
73. It must be stressed that the common introductory module is intended to equip candidates with basic skills, the mastery of which are necessary if they are to succeed with the other training modules and indeed professional practice in due course.
74. The common stream course will likewise need to be costed. The 6 month course run by LEAD has an actual cost of around R 22 000, but participants pay roughly half that amount, the balance is covered by the Fidelity Fund. It is not yet clear to what extent the Fund will continue funding legal education or whether they would be prepared to make any contribution to the training of advocates who will not practice with a fidelity fund certificate. The GCB and most of its constituent bars currently offer bursaries and those initiatives would likely continue, in some form or another and may make some contribution in this regard⁸. Other than government or Fidelity Fund subsidy, candidates would need to cover the costs of this course themselves .

⁸ We must be careful how we pitch this as the bursary fund may be changed post LPA so that it is used for those who actually join GCB Bars or to fund training post admission. I have tried to be as high level as I can here but I am concerned mentioning this at all in the context of the common stream course and think it is better placed elsewhere.

Months 3 to 6: Knowledge- and skills-based practical training and mentorship

75. We propose that PVT during this period would comprise:
- 75.1 The curriculum, supported by the Workbook and tutorials;
 - 75.2 The Bar exams;
 - 75.3 Mentorship; and
 - 75.4 Practical advocacy training.
76. We deal with each of these components and the form we propose they should take under the LPA, in more detail below.
- (i) The curriculum supported by the Workbook and tutorials

Content of the curriculum

77. The GCB's experience over many years is that the NBEB curriculum whilst comprehensive and detailed, is absolutely necessary foundational knowledge for every pupil.

78. We have, with the assistance of Mr Swart, compared the syllabus for the attorneys' exams in areas of apparent common interest, such as high court practice for example, and note that the content of the attorneys' syllabus and that of the NBEB as well as the type of assessments conducted thereon differ markedly from one another. As an advocate's practise is confined to a much narrower and more specialised compass than general attorneys' practice, an advocate needs to learn about more discreet areas but in far more detail, much of it of an applied but academic nature. This level and degree of focus is not necessary for those wishing to practice as attorneys. Given the broad and diverse nature of attorneys' practice it is consequently also surprising that the curriculum for attorneys focuses on covering a far broader spectrum but in less detail than that contained in the NBEB syllabus.

79. We are therefore of the view that in order properly to equip pupils for practices as advocates, the knowledge-based practical training ought to be based on the current NBEB curriculum.

80. That should be the basic requirement for all those who wish to be admitted as advocates. The GCB's members will remain referral practitioners but for those aspirant advocates who wish to the NBEB curriculum, they also be required successfully to complete the attorneys' modules for:-

80.1 book keeping and accounts and

80.2 practice management.

The Workbook to support the curriculum

81. It is our recommendation that the Workbook be included as part of PVT the under the LPA. The Workbook assists pupils in working through the syllabi in preparation for the exams and affords them a great deal of drafting practice.

82. Having considered our experience over the years in running the GCB pupillage programme in its present form, and the time required to work through the curriculum and the workbook in preparation for the exams, we are of the view that it is possible for pupils to cover the materials in the Workbook and the exam syllabi in conjunction with tutorials within a period of 3 months within a few hours a day, leaving a large part of the day available for workplace training.

Tutorials

83. Tutorials should continue to be offered and it is envisaged that they will be presented at the regional colleges for large numbers, and, resources permitting, even live streamed from a central venue to pupils either in the colleges or at their computers.

84. Tutorials on legal writing must continue but will not be able to offer the same degree of support and feedback on the pupils' drafts as is presently provided

as the larger numbers will make this impossible. Pupils will however receive feedback and drafting opportunities from their mentors.

85. In addition to the subjects covered by the curriculum, the tutorials should cover practice management for advocates⁹.

(ii) The Bar Exams

86. The Bar exams which test the practical application of the curriculum are a vital assessment tool and the only objective and standardised means of evaluating a candidate's understanding of the syllabi and ability practically apply that knowledge.

87. The Bar exams are the means by which a standard can be set in the interests of the public to whom advocates will provide legal services and the proper functioning of the courts before whom the advocates will appear.

88. We consequently propose that Bar exams as presently required by the GCB be made mandatory under the LPA and written at the end of the 5 month of PVT to allow time for moderation and oral examinations for unsuccessful candidates during the sixth month of pupillage.

⁹ This is not intended to replace the requirements in respect of practice management for trust fund advocates

89. Oral examinations should be offered to those candidates who do not pass any of the exams other than legal writing. The 6 month time period proposed does not permit a supplementary exam for those candidates who fail the Legal Writing examination¹⁰.
90. We sound a note of warning here. Our experience with pupillage and the bar exams as set out above leads us to anticipate that the retention of the bar exams coupled with the reduction of the period of pupillage will inevitably mean that the failure rate of the exams is higher than the rates in respect of the NBEB exams at present. That is an unfortunate but unavoidable consequence. We remain of the view that this is preferable to large numbers of aspirant advocates being denied an opportunity to qualify. The shortened duration of PVT means at least that those candidates who do not successfully complete the assessments on their first attempt are able to attempt them again within a short time period.
91. In order to ensure the maintenance of proper standards in the interests of the public and the legal profession as a whole, it is proposed that the knowledge based examinations for pupils be set and moderated by an independent examination board comprised in similar manner as the NBEB but large enough to undertake the setting and moderation function for far larger numbers than is presently the case.

¹⁰ The supplementary legal writing paper presently offered by the GCB takes approximately 6 to 8 weeks to set, write, mark and moderate

92. The Bar Examination Board accredited under the LPA would not be connected to the GCB but would have representation of accredited advocates' organisations offering mentorship and training. The retention of judge moderators is in our view vital both to the independence of the examination board and the maintenance of standards.

93. We consequently propose that the rules under the LPA in this regard provide for:-

93.1 the creation of a bar examination board comprising advocates from accredited organisations and judge moderators;

93.2 a recognition of the board's independence;

93.3 the powers and functions of the board;

93.4 the process of appointing moderators and examiners;

93.5 the subjects to be covered by the bar exams;

93.6 the manner of assessment of those subjects as set out above.

(iii) Mentorship

94. We are of the view that workplace training is vital and so creative ways need to be devised to offer all pupils sufficient exposure to practice during the third to sixth month of PVT whilst the Workbook, tutorials and studying for the Bar exams are underway.
95. It is the only effective way to expose would-be advocates to the practical and ethical challenges of practice. Members of the bench with whom we engaged expressed concerns that if pupils are confined to pupillage in a school setting only they will not receive adequate exposure to the rigours of practice and, particularly, the ethical obligations that should subsume and effuse an advocate's every action.
96. Without mentorship we have grave concerns that aspirant advocates will not gain sufficient exposure to values-based training to equip them to apply the ethical theory to the demands created by their primary duty to the court.
97. Mentorship during this time should be on an individual basis and provided by a practising junior advocate¹¹ of not less than 5 years' call¹².

¹¹ Silks' practices are such they would not provide exposure to the types of matters and drafting a pupil will encounter and be required to deal with post-admission and are too complex to offer meaningful workplace training for a candidate only starting in the profession and needing to grasp the basics within a short period of time.

¹² This has always been GCB policy: under 5 years generally not equipped

98. As outlined above, it is quite simply not possible for workplace training in the form of mentorship by individuals to continue in the form it has been offered within a GCB pupillage if a standardised PVT is to be offered to all aspirant advocates. A six month period of pupillage will enable twice as many applicants to be accommodated annually but the GCB will still not be able to offer mentorships to all aspirant advocates if the number of applicants remains as it is or increases.
99. We are of the view that the responsibility of training advocates should be shared by all advocates properly in a position to offer mentorship. In order for training to be offered to all applicants not only the GCB but other advocates' organisations, appropriately placed NGO's, University Law Clinics, Legal Aid Offices and Justice Centres would need to offer mentorship to pupils.
100. We propose that mentorship placements only be sanctioned by the LPC once the organisation in question has been accredited to offer placements.
101. Each such organisation should advise the LPC of the numbers of pupils to whom it can offer mentorship, which would be determined by the numbers of suitably qualified practising advocate members of the organisation or entity concerned.
102. Applications for mentorship places would be made by aspirant advocates to the LPC before the start of each 6 month training period and the application form ought to make provision for an applicant to indicate his or her special

fields of interests and the professional career path the applicant would like to follow so as to enable a sub-committee of the LPC on which all the organisations offering places are represented or accredited body (with similar representivity) appointed by the LPC to assign mentorship places in a manner which accommodates these preferences as far as possible.

103. During mentorship pupils should be required to:-

103.1 attend at the mentor's chambers¹³ from 8:30 am to 4:30 pm daily; and
(This period is too long. I would suggest 8:30 to 16:30);

103.2 be actively involved in his mentor's practice; and

103.3 complete the Workbook,

103.4 study for the bar examinations in his or her own time; and

103.5 attend all the tutorials which will be offered in the regional colleges in the evenings from Monday to Thursday from 5 pm to 6:30 pm ;and

103.6 attend and be actively involved in the preparation of a prescribed number of court appearances of various types¹⁴.

¹³ or offices in the case of non-bar placements

¹⁴ The present GCB pupillage requirements for attendance and involvement cannot be met in the 4 month period and would need to be reduced.

104. The mentor would need to certify to the LPC or the body accredited to perform these functions on its behalf that the pupil had complied with all these requirements.
105. Pupils would not be entitled to receive remuneration from their mentors.
106. We consequently propose that the rules under the LPA prescribe:-
- 106.1 mandatory workplace training on an individual mentorship basis provided by a practising advocate of not less than 5 years' call from an organisation accredited by the LPC to provide mentorship;
- 106.2 a total period of workplace training of three months¹⁵ full-time from 8:30 am to 4:30 pm daily during months 3 to 6 ;
- 106.3 the pupils' duties during mentorship as outlined above;
- 106.4 that pupils are not entitled to receive remuneration from their mentors during mentorship but that the state and other organisations may in their discretion provide funding to assist deserving pupils;
- 106.5 the mentor's certification obligation as described above.

¹⁵ Although the placement period spans months 3 to 6 and is thus 4 months long, the Bar exams still need to be written in this period and practical advocacy training offered, see below. The period of 3 months' full-time mentorship allows for time to be devoted to these additional components of the course.

(iv) Practical advocacy training

107. During the sixth and final month of pupillage, in addition to the oral examinations, pupils would be exposed to practical advocacy training.
108. Again, this training would not be able to assume the form presently offered in the GCB pupillage due to the constraints described above. The training would have to be done in larger groups and on a less intensive basis than is presently possible at the GCB's constituent bars or on the GCB's regional pupillage workshops.
109. We are however of the view that advocacy training is an absolutely vital component of any pupillage programme and it would not be fair to the candidates, the profession as a whole or the interests of the public to jettison such training altogether simply because it is impossible to continue to offer training of the present standard.
110. The final form the training should take can be determined in due course once budgetary and other constraints have been fully assessed. For present purposes we recommend that a minimum duration of advocacy training be prescribed and that this be determined as no less than a two week full time course to be offered after the completion of the examinations.

111. At the end of the course there would need to be a competency based assessment the successful completion of which should likewise be mandatory.

D: CONVERSION

112. We mentioned above that one of the purposes of the common 2 month introductory stream was to facilitate conversion from one branch of the profession to the other.

113. In framing the proposals set out below we are mindful of the fact that legal practitioners wishing to convert under the LPA, if they are advocates, may not have had any training at all. If they are attorneys, they may well have qualified as such before the introduction of the two month common stream. We are of the view that their experience in practice since admission should have provided through experience that which the course provides in a classroom setting.

114. We consequently propose that the rules under the LPA provide as follows regarding conversion :-

114.1 attorneys wanting to qualify for admission as advocates only be required successfully to complete all advocates' modules;

114.2 referral advocates wishing to become attorneys are required successfully to complete all attorneys' modules

114.3 advocates with trust funds, admitted to practice as such in terms of the LPA, who wish to become attorneys are required successfully to complete all attorneys' modules other than bookkeeping, accounts and practice management.

E: DISCIPLINE

115. An aspect not specifically canvassed in the LPA is provision for rules regarding who is responsible for discipline of pupils undergoing PVT.

116. The constitutions of the GCB and its constituent bars provide that pupils are subject to the ethical code and disciplinary strictures and proceedings of the bars. These are necessary measures to provide for discipline in the event of misconduct and unprofessional conduct during the course of pupillage.

117. We propose that the rules under the LPC provide that pupils be subject to the rules of ethics applicable to advocates and the disciplinary structures and procedures of the LPC during pupillage.

F: THE GCB PROPOSAL IS NOT A LOWERING OF STANDARDS BUT THE SETTING OF A UNIFORM STANDARD

118. We understand that there will be those who will compare what the GCB bars currently offer to its pupils and what is proposed here and will complain that the proposal is a lowering of the current standards which is not in the interests of the profession or the members of the public it is meant to serve.
119. Whilst we accept that the GCB proposal is not equivalent to the level of pupillage presently offered by the GCB, we wish to stress that the proposal presents an improvement on the current position in many respects.
120. The Admission of Advocates Act allows many advocates to be admitted and practice without any form of training or assessment means. In the result there is in fact no standard of competence or knowledge required of advocates before admission.
121. Far from lowering standards for the advocates' profession, the GCB proposal sets a uniform standard for the first time. That represents a significant and important improvement on the present *status quo*.
122. In addition, shortening the period of pupillage allows two intakes a year, doubling the number of pupils who can be trained whilst halving the time aspirant advocates are without income. That initiative alone is likely to make pupillage a possibility for persons who have been working in the legal profession or in the legal field for some time, whilst at present the prospect of being without income for an entire year is prohibitive.

123. The programme proposed has been formulated in a manner which allows standardised training to be offered across the board which will equip and empower aspirant advocates to provide access to justice to the public at large and bring down barriers to entry to the profession.

E: COST AND OTHER PRACTICAL IMPLICATIONS OF THE PROPOSAL

124. A significant implication of this proposed model which must be brought to the attention of the National Forum and the Minister, is the cost implications thereof.

125. Whereas all training presently offered to pupils is free of charge, the nature of this model and the increase in the numbers it permits, requires infrastructure and training services which will need to be paid for. Once the model has been agreed therefore it will be necessary for it to be costed so that appropriate budgetary and other provisions can be made and approaches to various sources for funding can be made.

GCB & AFT

November 2016