

appointment will be welcomed by the drafters, and will be seriously considered as long as they do not undermine the basic principle that statutory councils of this nature are intended to promote and protect the public interest. A council elected by lawyers, in the way that the statutory law societies were, is out of the question. The provincial statutory law societies were ill conceived for they purported to promote

the interests of their members, while, at the same time, promoting the public interest. This obviously involves an inherent conflict of interest.

At the time of writing this article (25 February), the draft continues to be a draft in progress and the door for comment remains open. The website address for access to the draft Bill and its accompanying explanatory memorandum is <http://www.doj.gov.za/legislation/bills>. It

is in PDF format because this condenses the file and facilitates quick downloading. The Acrobat Reader can be downloaded free of charge from the Adobe website. It is not complicated. Once you have downloaded the Acrobat Reader you will be able to automatically access any document which is in PDF format. It is now standard Internet practice to store large files in PDF format. 

The GCB replies:

The Policy Unit – these matters need not be personalised – suggests that members are being misled. It does so as we go to print, and at great length. There is neither time nor space (nor, one fears, credulity) to deal with everything, but some matters stand out.

It is perhaps necessary first to state what the Policy Unit does **not** say. Members can then draw their own conclusions.

It does **not** acknowledge

- that the first and second drafts of the Bill made no reference to advocates, let alone their continued existence;
- that this was expressly raised, at a special meeting for that purpose, by Sutherland SC and me on 17 July 2000;
- that we pressed for confirmation that the Bar would receive statutory recognition, in letters on 18 July, 10 August and 11 August 2000;
- that the reaction was that there would be no express statutory recognition of the continued existence of the Bar;
- that indeed the Unit's letter to the Competition Commission (opposing the Bar's application for the exemption of some of its rules) also contains this passage, not quoted above: "[t]he

Bill does not perpetuate the statutory recognition of the distinction between advocates and attorneys";

- that the third draft, with the minister's support, now expressly recognises **for the first time** that lawyers may continue to practise on a referral basis.

Members can see all this for themselves. They have not been misled.

The other issues the Unit seeks to argue are dealt with elsewhere in this issue. The attempt to defend a council overwhelmingly appointed by the minister, because he appoints "on nomination", and wants to avoid "a trade association of lawyers", will either impress members or it will not. It did not impress the LSSA/GCB/BLA/Nadel/AFT meeting on 24 February 2001, as members will read elsewhere. We do not choose to "insult" quantity surveyors; we thought it a truism that their legislation is no model for us because their social function is different. We are sorry the Policy Unit sees the world differently.

What really remains is the inaccurate account of the "consultative process" here offered. We have really tried to be part of it: in our August 1999 submissions, our November 1999 Forum attendance, the letters and the meetings which followed.

What has again **not** been explained is how – in the middle of the ostensible operation of the "consultative process" – the Policy Unit, without so much as notice to the GCB, prepared a letter to the Competition Commission

- attacking the Bar's application, in 2000, in terms of the law then in force;
- calling in aid its then draft of the Bill "which will [sic] regulate the practice of law";
- attacking the *De Freitas* decision just weeks before the appeal was to be heard by the SCA.

The Unit does not disclose that the Commission has formally admitted in an affidavit that it itself acted unfairly in receiving this letter in these circumstances, and that in acting upon it, the Commission's ruling is vitiated. It also does not disclose that after the Minister very properly elected to abide the application, just last month it actively sought his intervention against the GCB. Fortunately good judgment prevailed.

It is not surprising that the wider profession – not just the GCB – has turned to itself to seek a solution.

Jeremy Gauntlett SC

Chairman

General Council of the Bar of South Africa 

The independent Bar

"The lawyer's role in every country goes to the heart of delivering justice. Like the independent judge, the independent lawyer is vital. Lawyers must use their skills fearlessly to expose the truth; to serve the needs of their clients; and to ensure that the court can see the case from their client's perspective. They must be independent of the State and committed to the highest ethical standards. I agree with Sir Sydney Kentridge that 'it is the independent Bar inseparably from the independent bench which is the protection of the citizen against the State' . . . where people look to the courts to advance or protect their rights generally they rely on an independent voice to speak for (them). Advocacy, at which the Bar excels, is a practical manifestation of freedom of speech". Lord Irvine of Lairg, Lord Chancellor of Britain (quoted in *CBA: the Criminal Bar Association Newsletter*, December 2000).