

# The harsh realities of the regional court bench

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*Thursday, 14 December 2000. Court B, Wynberg Regional Court, Cape Town.* There are four matters on the roll: two in respect of charges of attempted murder; two in respect of murder. Three of these matters are set down for plea and trial. There are in total five accused. All of them are in custody. All the matters have previously been remanded on at least one occasion. None of the matters is ready to proceed to trial. It is requested that all of them be postponed to a date not less than one month later.

*Friday, 15 December 2000. Sexual offences Court J, Wynberg Regional Court, Cape Town.* There are six matters on the roll. All these matters relate to charges of rape: four have been set down for plea and trial; in the other two the accused intend to apply for bail. There are in total six accused. All of them are in custody. Five of these matters have been remanded on at least one occasion for a period of not less than one month. In respect of one of them, the witnesses are present as they had travelled for the past two days from the Transkei to attend the trial. They had been warned on the previous occasion of the consequences of non-attendance. They knew that they had to be present and made the necessary arrangements at their own cost. In one of the bail applications, the accused is not present at court. No explanation is furnished. It is simply requested that the matter stand over to the next court day. None of the matters can proceed to trial. In all of them a postponement is requested to a date not within three months.

Such are the harsh realities of the Wynberg regional court where I acted *pro bono* as regional magistrate with other members of the Cape Bar including Jeremy Gauntlett SC, Les Rose-Innes SC, Anton Veldhuizen SC and Hugo Rossouw.

In this two day period at least eight matters were added to the list of hundreds of cases which could not be concluded on the first or subsequent dates on which they had been set down for trial. These few cases affect the lives of many people – the complainant, the accused, his or her legal representative, the witnesses, the court staff and officials, the Bench, the prison staff and officials. The eleven accused are all in custody and although an attempt was made to determine the cost to the State of these matters when they are eventually resolved, it was impossible to do so. What is certain, is that the government cannot afford it.

One regional court magistrate stated that “regional court trials are part-heard trials”. There is no continuous roll with the result that these matters are likely

to be postponed for trial on at least one further occasion. Sentencing, if necessary, may also require a further postponement. The same prosecutor who has consulted with the complainant and witnesses and has done some preparation for the first trial date, may however not be involved in the matter any longer when it reaches finality. A new prosecutor, or even more than one, will have to repeat some of the preparatory work. A magistrate on the other hand, may have to preside over many part-heard matters, which may each take longer than a year to conclude. It therefore comes as no surprise that the late Piet Theron, the respected Wynberg regional court magistrate, was the presiding magistrate in 73 part-heard trials at the time he was killed.

Can the Bar make any contribution to improve this state of affairs? The Bar can assist and a few members have already made such a contribution. Many others have indicated their willingness to do so. Some members are ex-magistrates and their skill and experience could be usefully applied. The

relevant government authorities have also expressed their sincere appreciation for the Bar’s efforts to date.

But the Bar’s contribution alone can never change the procedural realities of the regional court. Any change must of necessity address the present culture of part-heard trials and in this regard the role of the control prosecutor who regulates the set down of cases becomes essential. A starting point is the introduction of a pilot scheme that provides for a continuous roll. This, utilising acting appointments when necessary, could result in the speedy and effective resolution of regional court cases and may go some way to ensure that every accused is afforded a speedy and fair trial. 

## Howe en politici

Onder die opskrif “Howe bly haaks met politici” gee Paul Pereira in *Finansies en Tegniek*, 19 Januarie 2001, ‘n objektiewe oorsig van die polemieks waarby die regsprofessie en die Departement van Justisie betrokke is. Hy kom tot die gevolgtrekking: “As die onafhanklikheid van die regstelsel aangetas word, hou dit verreikende gevolge vir die sakewêreld in, nie net wat betref die toepassing van byvoorbeeld kontrak- en administratiewe reg nie. Soos lord Rees-Mogg, voormalige redakteur van die Britse koerant *The Times*, gesê het: Hongkong het net soveel op die onwrikbare oppergesag van die regstaatgemaak as op die kapitalisme om ‘n ekonomies sukkelende land in ‘n bastion van groei te verander.

## Attorneys Fidelity Fund

A recent brochure published by the Attorneys Fidelity Fund (LPF) contains interesting figures in regard to the fund’s expenditures. Only 11% (R14,376 million) represented expenditures in respect of trust monies. Approximately 76% (more than R100 million) was spent on various contributions to and subsidies of the attorneys’ profession and related activities – ranging from contributions towards trust account costs to supporting the Law Society of South Africa. (In terms of clause 2 of the Legal Practice Bill: Third Draft the proposed SA Legal Practice Council will inter alia be funded by an annual appropriation by the LPF.)