



Transformation: 1993–2018

In 25 years what has the Bar achieved on Transformation?

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In this, my penultimate contribution as GCB Chair, I have decided to highlight the path that the Bar has travelled on the Transformation front. The idea is to leave it to members to make up their own minds, based on cold facts, about how we have fared over these past 25 years.

My view is that on Transformation, the Bar has proven itself adept at holding meetings and symposia, taking resolutions, establishing committees and making platitudinous statements such as acknowledging and recognising the slow progress in Transformation but doing nothing of substance to move apace on it. I have come to recognise these for what they are: stalling tactics.

As recently as February 2018, following AFT-sponsored amendments to the GCB Constitution and Rules, the largest Bar now wants “mediation in respect of the amendment of the GCB Constitution”. * This, in the characterisation of Martin Luther King Jr of similar stalling efforts, is a “tranquillising drug of gradualism”.

What will such mediation achieve that 25 years of patient engagement has failed to achieve? I am not fond of drugs, and I shan’t start taking them now.

“In July 2013 the GCB issues a Statement of Intent in which it ‘identifies itself fully with the ideals, aspirations and challenges presented by the new democratic South Africa’ and commits itself to ‘ensuring that the Bar is representative of all sections of the South African population.’

It is exactly the same Statement of Intent it issued in July 1994.”

1993: **October** – “The pace [of Transformation] is too slow. We must take urgent steps to hasten it. We must do so for the sake of the Bar and its credibility.” (GCB Chair, writing in *Consultus*).

1994: **July** – The GCB issues a Statement of Intent committing itself to, among other things, “ensuring that the Bar is representative of all sections of the South African population.”

1995: **April** – “The GCB is at present addressing ways of resolving the problem . . . of firms which dominate commercial litigation . . . adopting a briefing practice which excludes black members of the Bar from access to that commercial work [because] they do themselves no credit and the country a disservice.” (GCB Chair, writing in *Consultus*).

1996: **July** – The GCB AGM adopts Transformation policy decisions including appointment of specialised committees to investigate and prepare position papers on Transformation issues promoted by NADEL and the Dept of Justice.

1997: **July** – A report on the GCB AGM held in Port Elizabeth describes as “a sign of progress” an AGM at which all delegates are male of whom only 3 are black. No women.

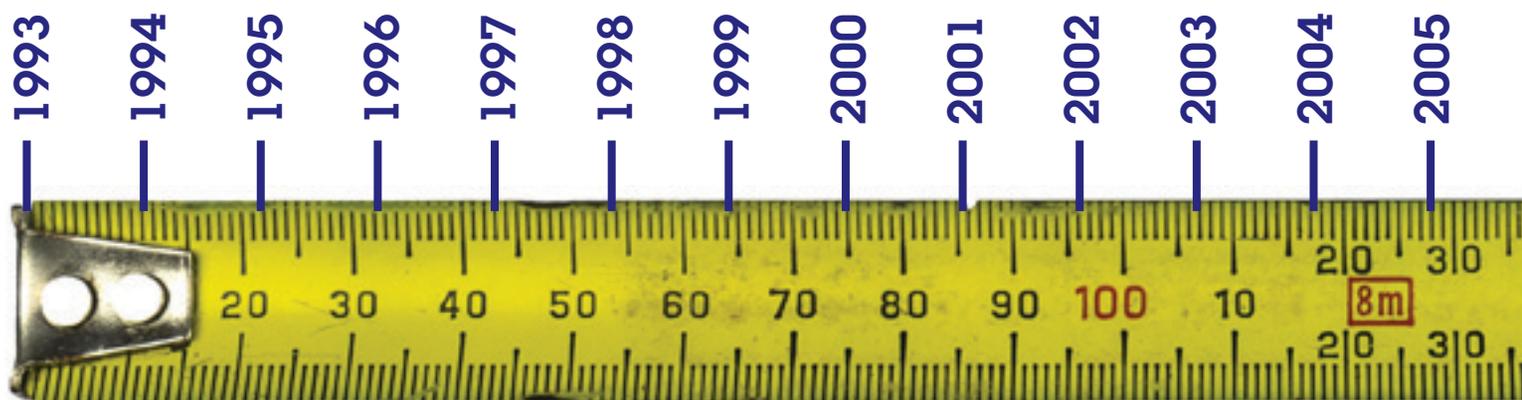
1998: **April** – AFT (Cape) is formed in Cape Town by progressive members (not only black members as reported).

July – AFT (National) is formed.

July – Transformation takes centre stage at the GCB AGM at the instance of AFT (National). GCB and AFT (National) “agree on the need for transformation”. The GCB AGM appoints 2 senior members to collate Transformation issues and route them through to “an appropriate forum” to be established by 30 November 1998.

1999: **April** – The GCB proposes to AFT that AFT becomes a constituent member instead of enjoying a 50% representation on the GCB. AFT rejects this proposal and is asked to explain in writing.

December – Transformation is defined as “change for the better”. (GCB Chair, writing in *Consultus*).



2000: **July** – The GCB AGM adopts the “GCB 2000 Strategy” on Transformation. The GCB Chair cautions that “[w]e should have no illusions that endeavours to make the Bar more representative, and to be the kind of professional organisation which accords with the transformed nature of our society generally, will succeed overnight.”

2001: **January** – “There must be transformation, but it must be transformation in the rigorous sense used by Australia’s High Court Judge Michael Kirby – not simply change, but change for the better. This means a profession more representative of the face of South Africa . . .” (GCB Chair, writing in *The Sunday Times*).

July – The GCB AGM resolves to invite AFT, BAFO, BLA and Nadel to discuss Transformation at a GCB executive committee meeting scheduled for 28 October 2001 and which would be converted to a special GCB general meeting for that purpose.

October – AFT members serve on the GCB executive for the first time.

2002: **July** – GCB AGM resolves that it recognises the skewed briefing patterns against black and women members. It requests all constituent Bars to “take innovative and practical measures to address this” and report on progress at the GCB executive meeting scheduled for October. A report on the October executive meeting simply says briefing patterns was the subject matter “of animated and informative discussion”.

2003: **July** – At its AGM the GCB invites the Chief State Law Advisor to talk briefing patterns. It is resolved that the GCB will prepare a GCB/State Attorney Protocol regulating the process.

2004: **December** – “The commitment of the Bar [to transformation] is recorded in a number of resolutions, making it critically important for those of us in leadership positions to give meaning and effect to those resolutions.” (GCB Chair, writing in *Advocate*).

2005: **July** – The GCB again re-commits itself at the AGM in Port Elizabeth to Transformation.

2006: **March** – a NBEB symposium is held at the Sandton Convention Centre following a high failure rate of black pupils.

2007: **March** – The GCB holds a Transformation Symposium attended by all constituent Bars.

2008: **July** – The GCB again commits itself to Transformation at its AGM. The GCB Chair reports that the Model Briefing Policy adopted in 2006/2007 was delegated to constituent Bars for implementation and that they in turn reported “mixed success” in the implementation.

2009: **July** – The Cape Bar is appointed Model Briefing Policy Committee and requested to report back on recommendations at the next GCB meeting.

2010: **July** – GCB AGM resolves to amend its constitution to reflect equal governance with AFT.

2011: Lull

2012: Lull

2013: **July** – The GCB issues a Statement of Intent in which it “identifies itself fully with the ideals, aspirations and challenges presented by the new democratic South Africa” and commits itself to “ensuring that the Bar is representative of all sections of the South African population.” It is exactly the same Statement of Intent it issued in July 1994.

2014: **August** – GCB Chair reports that the GCB granted 12 bursaries from its National Bursary Fund in the sum of R286,500.

2015: **July** – GCB AGM establishes a Transformation Committee “to collate information from all Constituent Bars, monitor the implementation of the respective transformation initiatives, report thereon and make recommendations on what corrective measures may be undertaken”. This is exactly the same mandate to which the GCB AGM committed itself in July 1998. Yet by July 2016, according to a report dated 10 June 2016, the GCB Transformation Committee had not been populated and had not held a meeting. **July** – GCB AGM also acknowledges that the Bar “remains significantly untransformed in terms of, inter alia, its empowerment culture, representivity, racial and gender barriers, in work flow, skills transfer and the practice of window dressing”. This is the same resolution taken at the July 2002 GCB AGM.

Erratum: our editorial note above, on the mediation between the General Coi