

## Willem van der Linde and *Advocate*

by **Frank Snyckers SC**

Chair, editorial committee

There is a special and present relationship between *Advocate* and Willem van der Linde. The April 2002 edition features Willem as the new chair of the editorial committee and me as a newbie, the (now) current chair railroaded into the project by the (then) new chair. Willem served as chair of the editorial committee, with the late Hennie Mellet as editor, from April 2002 to August 2007. Willem liked, and encouraged the birth and continued flight of, *Fly on the Wall* from the December 2002 edition onwards. He was the first to let Fly know when a particular

landing was pleasing or perhaps slightly less so. He also, *sua sponte*, and *mero motu*, advised Fly which *grappies* worked and which bombed in one of Fly's rarer Afrikaans efforts in April 2007 (*nou weer gaan kyk, Willem, en ek dink dit werk nogal mooi – dankie vir "oersonde"*). For what *Advocate* still tries to achieve, Willem's main contributions were his recognition of the need for different perspectives and his sense that we should welcome polemic. *Advocate* and its present editorial committee chair are grateful to be able to publish these tributes to Willem.

# REMEMBERING JUDGE WILLEM VAN DER LINDE

by **André Gautschi SC**

It happens on occasion that a person is taken from this life all too early, having already contributed enormously, and with a promise to contribute so much more in the future. Judge Willem van der Linde, who died of a heart attack on 9 November 2019, was such a person.

Willem Hendrik Gabriel van der Linde, born on 29 March 1956 in Port Elizabeth, joined the Johannesburg Society of Advocates on 5 December 1983, having been admitted as an advocate on 29 July 1983. He had done pupillage with Johan (Groot Dup) du Plessis, who practised in a different group to mine, and so I did not know Willem until he made his impression on me in court as a young practitioner.

It must have been in 1984. I was plying my trade in the unopposed motion court in the Johannesburg High Court, when a counsel unknown to me stood up to move his matter. It was Willem, and he made an immediate impression. He had a presence which was tangible, a command of his papers and of the matter, and he was so obviously able and competent, even in a matter as mundane as an unopposed application. Therein lies a lesson for young juniors; we make a name for ourselves by the way we perform in our profession, whether in consultation or in court, and if you are well prepared and perform well, your colleagues will take notice. A short while later, I happened to be in the presence of our Group leader, Clive Cohen SC, who was discussing potential new members with a few of our other Group members. I mentioned the impression Willem had

made on me in the unopposed motion court. As a result he was invited to join Group 621.

Willem's presence and ability would characterise his career at the Bar from the beginning until he was elevated to the Bench in 2016. He built up a formidable commercial practice, was well regarded by his peers, his juniors, his attorneys and his clients alike. He took silk in 1996. As counsel he appeared in at least 61 reported judgments, 31 of which were in the then Appellate Division or the Supreme Court of Appeal, as it is now known, and three as lead counsel in the Constitutional Court. The latter are well known to legal practitioners, namely *Mansingh v General Council of the Bar and Others* 2014 (2) SA 26 (CC), *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC), and *Loureira and Others v Invula Quality Protection (Pty) Ltd* 2014 (3) SA 394 (CC).

Such was his standing in the Group, and his obvious leadership qualities, that when Clive Cohen SC stepped down as Group Leader, and the Group introduced rotational leadership with effect from 2008, Willem was the first to take over as Group Leader.

Willem played his role as Bar leader as few have done before or since. He served on the Johannesburg Bar Council from 1991 to 2001, from 2000 to 2001 as its chairperson. He served on the General Council of the Bar from July 2002 to July 2004 as its chairperson. He was a champion of transformation and gender representivity at the Bar. He was instrumental in shared governance in the advocates' profession being adopted by the

GCB for all its constituent Bars. For about 10 years he served on the editorial board for this magazine, five of which as its chairperson.

Willem had a heart condition which caused him to have a heart attack at the young age of 39. This drove him to lead a healthy lifestyle after that. He ate healthily, and exercised diligently. I do not think that I know of another human being who was more disciplined in those spheres. He once told me, when we were in our forties, that exercise is not a luxury, but a necessity. Wise words. Although one might be tempted to say that it did not ultimately assist him, because he was still taken from this world at the relatively tender age of 63, that would be a false way of looking at things. The fact is that he extended his life despite his heart condition for almost 25 years, enjoying good quality life in that period.

Although he was a natural runner, Willem's quest for fitness also led him to swim, and for a while we trained together at the Zoo Lake swimming pool. I wanted him to swim the Midmar Mile in one of the Johannesburg Bar teams, and indeed he did swim the Midmar Mile one year, but with his brothers as a family team. I don't think that he enjoyed the experience, because I could never tempt him to swim the Midmar Mile again.

In August 2000 Willem and I found ourselves as part of a group of 18 men who set off to conquer Mount Kilimanjaro, led by Panayiotis Stais (now SC). We spent the first night in a rudimentary hostel type building, sharing rooms two-two. The next morning Willem came to me and asked if we could share from then on, because the chap he had shared with on the first night had snored as if he had swallowed a chainsaw, and Willem said he had not slept a wink. This was obviously true, because one could hear this chap snoring through the tented camps every night after that. So for the next six nights, Willem and I shared a tent as we slowly ascended Mount Kilimanjaro. He was a pleasant companion and considerate. I do not remember what we chatted about at night in the tent, but in retrospect I realise that he never spoke about his own achievements, for instance as an athlete and student leader, of which I learnt for the first time through the eulogies at his memorial service and the commemorative events held in his honour. He was a modest man, self-assured, but never boastful.

In 2010, Willem applied to become a judge on the Johannesburg High Court Bench. He had an unfortunate interview in front of the Judicial Service Commission, where he was criticised for his membership of the "Ruiterwag", a secret Afrikaans youth organisation, which he had joined as a student, and had remained a member of until 1988. Apparently on the strength of that former membership, he was turned down for judicial appointment. The decision meant that the judiciary was



deprived of an otherwise worthwhile candidate, since not only did Willem clearly have legal ability but by that time he had more than proved himself as a champion of transformation and our constitutional values, both at Group level, and as a leader of the Bar.

To his credit, Willem applied again in 2015, and this time he was accepted, being appointed with effect from 1 January 2016. He was an asset to the Bench in his short four years there, diligently hearing matters assigned to him, never ducking a matter on some pretext of non-urgency or for some other spurious reason. He delivered at least 163 judgments during his time on the Bench, reported in various mainstream and on-line law reports, 12 of which are reported in the South Africa Law Reports. An impressive record indeed.

Although he was a no-nonsense person, and did not suffer fools gladly, he always gave legal representatives who appeared before him a courteous hearing, testing their arguments, but

never in a demeaning or rude manner. I experienced this firsthand in three matters in which I appeared before him, one of which went in my favour, and the other two not. His conduct and work ethic as a judge was exemplary, and he will be sorely missed as a member of the judiciary.

Willem is survived by his wife Iza, and two daughters from his previous marriage, Yvonne and Carien.

A fine epitaph for Willem lies in a poem composed by Les Morison SC, which he read at the commemorative event held at Group 621 in honour of Willem on 22 November 2019:

#### On the death of Willem van der Linde

Is it too much to ask for him back?  
Tell me that this is all dream, that I'm just out of whack.  
Tell me that he will walk into tea, tall, robed and smiling,  
I'll believe, I'll believe, no need for beguiling.  
Come, let us do some lying, yes lying,  
instead of this crying.  
Look, I can see him now – his long strides,

his little gold glasses, his eyes twinkling a tease.  
Do you think that he's planning a soirée, or perhaps a trip  
overseas?

Do you know that he loves literature, music, theatre and wine?  
Yes, he's a good friend, a good friend of mine.  
I'll sure have him and Iza over for supper again soon,  
we'll sing old Afrikaans songs – he knew all the tunes.  
What fun we will have if only you knew,  
if only, if only, if only it were true.

What is true is that he had weathered rejection, pain, and  
dismay,  
had come fighting back onto the field to show us the way.  
Colleagues, take note, his was the way of the heart grown  
stronger.

But if I cannot ask for him back then I'll ask questions no longer  
but for one more my Lord, if you will permit,  
I will try not to be long ... my question? this is it:  
why him, why Willem, why he who was so strong,  
why in Your name was it he who had to be gone?

## Tribute to the late Willem van der Linde as bar leader

by Judge Owen Rogers

Our late colleague, Willem van der Linde, will rightly be remembered for his forensic skills as an advocate and his incisiveness as a judge, in the latter capacity for all too short a season. I wish, however, to pay tribute to the hours of tireless service he dedicated to bar affairs, starting as a member of the Johannesburg Bar Council, progressing to the chair of that council and culminating in his chairmanship of the General Council of the Bar over the period July 2002-July 2004. This coincided more or less with my chairmanship of the Cape Bar Council.

Those unacquainted with bar service may not appreciate quite how much time such work occupies. I dare say that if one were to lump together all the time Willem spent on bar council work, from the time he joined the Johannesburg Bar Council until he laid down the chairmanship of the GCB, it would fill two or three solid years – years taken out of his professional practice for the benefit of the profession as a whole and indeed the administration of justice in general.

Willem would have been the last person to point this out to anyone. He never sought the limelight or public applause. He brought to his chairmanship of the GCB a no-frills determination of purpose and a steely and principled dedication to duty. My impression of him, both in practice and in bar affairs, was that in a milieu characterised by structured contestation he abhorred personal confrontation. He was perhaps one of the GCB's least 'political' leaders. What you saw was what you got; he never spoke less than his mind, but he did so without giving offence.

Willem's annual reports and contributions to *Advocate* reflect some of the matters which occupied his attention as

leader of the bar. It was during his term that the constituent bars were first required to take concrete steps to advance racial transformation. He wrote of the need to attract and retain a broad spectrum of members, not least so that the bar could supply judicial candidates in accordance with a transformative agenda. (At Willem's interview by the Judicial Service Commission in 2015, Ishmael Semanya SC remarked that he had yet to encounter a more cooperative colleague on the issue of transformation than Willem.)

Willem expressed concern at the lack of gender representivity at the bar. Gender-neutral semantics and discounted bar fees during pregnancy would, he wrote, count for little, and might even be condescending, unless they were 'evidence of attempts to pull straight the skewed practices of law, a function of years if not decades of male dominance'. He had to speak out against attacks on the judiciary in Zimbabwe and Swaziland and even against some intemperate outbursts in this country. He spoke frankly with the chief justice about the perceived ill-treatment by the Judicial Service Commission of some bar candidates for judicial office. He had to bear his fair share of the Legal Practice Bill's long gestation.

An important development inaugurated under his chairmanship was the extension of pupillage from six months to one year, something which has improved pass rates and helped to turn out better young practitioners. And he was able to view with satisfaction the first readmission to the roll of advocates under the Reinstatement of Enrolment of Certain Deceased Legal Practitioners Act 32 of 2002 – that of Bram Fischer. 