

Editor
Franny Rabkin
franny.rabkin@gcbisa.co.za

Editorial committee
Frank Snyckers SC (chair)
Nathi Dwayi
Marilena Maddison
Sandhya Mahabeer SC
Loyiso Makapela
Jean Meiring
Lwandile Sisilana
Muhammad Zakaria Suleman
Myron Dewrance SC
(ex officio – GCB chair)

BAR REPRESENTATIVES
Cape: Gregory Solik
Free State: Inga Macakati
Grahamstown: Thomas Miller
Johannesburg: Quentin du Plessis
KwaZulu-Natal: Lisa Olsen and
Nooreen Nursoo
Namibia: Esi Schimming-Chase
Northern Cape: Albert Eillert
North West: John Stander
Polokwane: Nathi Gaisa
Qoqobane: James Ramsay
Pretoria: Megan Moodley
Bhisho: Bayethe Maswazi

EDITORIAL INFORMATION
Advocate is the journal of the General Council of the Bar (GCB). Except in the case of official press releases or statements, published as such, the views expressed by individual contributors of articles and items in Advocate do not purport to be the views of the editorial committee of Advocate, or the official views of the GCB, but remain the views of the individual contributors. This applies also to the views expressed by the editor in her contributions.

Correspondence and enquiries relating to contents, contributions and advertising:
The Editor, Advocate,
PO Box 786878,
Sandton 2146
082 927 5536
franny.rabkin@gcbisa.co.za

Street address: Grindrod Tower,
2nd Floor, 8A Protea Place,
Sandown,
Sandton 2146

Subscriptions
Annual subscriptions R450 (VAT incl.)
Advocate, PO Box 786878,
SANDTON 2146
Tel: +27 (011) 784 0175
E-mail: christine.baek@gcbisa.co.za

Website: <https://www.gcbisa.co.za>

Proofread by Refiloe Seiboko
Design by Hond CC
Printed by Hansa Print
Cover photo by Ekaterina Bolovtsova

ISSN 1683-2566
© General Council of the Bar
of South Africa

Volume 36, number 1 ■ April 2023

advocate

Iphaphabhuku labameli basemajajini baseNingizimu Afrika
Dzhenala ya dzangamo la vhaadivokati vha Afrika Tshipembe
Die Suid-Afrikaanse Balleiyskrif ■ The South African Bar Journal
Kgatisobaka ya boadivokati ya Afrika-Borwa
Jenali ya magwetha ya vavanyisi van Afrika-Dzonga



FROM THE EDITOR

Back in 2015, when I was still a reporter at Business Day, I wrote a column about acting judges. I was troubled because there had been four acting judges appointed, at the same time, to the Constitutional Court. That many acting judges at the apex court was unheard of then.

I made it clear that no law was being broken by the appointments. Nor did I have any reason to doubt the integrity or quality of the appointees. My concern was not about lawfulness, it was about desirability. I said we need to be careful when it came to acting judges.

It is one thing if there are only one or two acting judges at the Constitutional Court at any given time; Constitutional Court judges are human beings, after all, and must be allowed to go on leave, and do other things, I argued.

But my view was (and remains) that there is a material difference between two acting judges and four. Two are unlikely to change the outcome of a case one way or another. The quorum for a Constitutional Court judgment is eight. The spectre of half the apex court comprising of acting judges weighed heavily with me.

Little did I know that seeing three or more acting justices on the bench of the Constitutional Court was, in later years, to become a common sight.

I don't need to repeat what I said because my concerns, and others, are more lucidly articulated and explored in this edition of *Advocate* in our Forum section; in two submissions – one by retired justice of appeal Malcolm Wallis and one by Bayethe Maswazi of the Bhisho bar. From Justice Wallis's contribution, I see that my disquiet about the over-utilisation of acting judges at the Constitutional Court applies equally at the Supreme Court of Appeal. Though it is not the final court of appeal, it is for many litigants.

Maswazi's contribution explores a different, also troubling, aspect of the practice of using acting judges: the way they are appointed. He laments that a mooted policy for the appointment of acting judges by the justice minister seems to be gathering dust. I would add that when there is no policy in place, and when acting gives candidates such an edge for appointment, discriminatory briefing patterns in practice will inevitably be reinforced in judicial appointments.

But it's not an easy issue. The certification judgment approved of the use of acting judges as constitutional. And one cannot deny the practicality and efficacy of using acting judges – when the need arises, they can be called upon to step in quickly without too much red tape. The administration of justice benefits. A too cumbersome policy, with too many hoops to jump through, would erode that. The thought of the JSC being hands-on in the appointment of acting judges frankly fills me with horror. The JSC has many positive qualities. Speed and agility are not among them.

Otherwise, this edition of *Advocate* is brimming with bar news and my overall sense is that our bars are finally returning to some kind of normal after the isolation of the Covid-19 pandemic. It's nice to see people at bar dinners, pupils doing their training in real life, and not via Zoom. And not a single mask.

Every edition of *Advocate* I have put together has had its stresses and its joys. This edition was a difficult one for me. But a surprise moment of joy came with the poem submitted by Knox D'arcy. I was moved by its honesty and its optimism – that there is indeed something called truth and it is worth seeking. That there are laws that protect me and you. And that there are advocates that seek the truth and guard these laws. **A**

The editor contributes to *Advocate* as an autonomous author. The views she expresses are entirely her own, and do not purport to represent any view or position of *Advocate* or of the GCB.