



JUST SOME THOUGHTS

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A few weeks ago I received a call from Franny Rabkin (and for those who do not know who she is, shame on you! Please look at the first page of *Advocate*), who enquired of me as to when she could expect my contribution to the next edition of *Advocate*. I was taken aback. I did not know that I had to pen an article. This despite several years at the General Council of the Bar (GCB). (Shame on me! But in my defence, liaison with the editor was not within my portfolios).

What am I to write about, I enquired? When is it due? More importantly, why me? Those were some of my responses. I could almost see her smile at the end of the telephone when she replied: "Because you are the new chair of the GCB and it is customary for the new chair to do so. It is already due". My heart sank. How was I to pen an article which was already due, especially in circumstances where I was imminently off to Mexico to represent the GCB at the then upcoming IBA conference? I tried my best to avoid having to write this article. I tried to duck and dive. She would have none of it. I could have an extension of time until the editorial committee of *Advocate* meets in mid-October. But what should I write about? "Anything you like. You are the chair. Just put down some of your thoughts."

Hence the title I have chosen.

SO: JUST SOME THOUGHTS.

Franny suggested I might introduce myself – there are members of constituent bars across South Africa who want to know something of their new chair, she said. I wanted to tell her that when I wake in the mornings I look in the mirror and I wonder: "Quo Vadis!" Sometimes barely recognise myself. I pause to remark that people who do know me either love me, hate me or tolerate me. I guess there are some who are indifferent. After you read this article, you may choose in to which category I fall as far as you are concerned, but please remember that, irrespective, I will always do my best to put you and the GCB first.

WHO AM I?

I came to the Bar straight out of university close to 44 years ago, way back in 1981, when I sat in the second bar examination that was set. Did you pass? I hear some colleagues asking (in my head). Of course, or I couldn't be in the GCB. I went straight into practice, toiled long and hard – so I would like to think – and was eventually awarded Silk in the year 2000. I continue to do my best for my attorneys and clients and if you think I am just another old codger (some prefer dinosaur) at the Bar, please bear in mind that I started at the Bar at the ripe old age of 22!

Over the years I have served the Society of Advocates of KwaZulu-Natal in just about every category possible, including secretary, treasurer and chair. I was requested to make myself available for the EXCO of the GCB, which I did in 2016 (although I did have a spell on GCB Council from 2012 to 2014) and I have served at the pleasure of the membership of the GCB, on its EXCO, from that time, firstly as a committee member, then as the vice-chair for four years, the deputy-chair for two years and the treasurer, simultaneously for some six years. I was fortunate enough to have confidence reposed in me by the Annual General Meeting of the membership of the GCB in July this year – hence my position as the chair.

I have also served on the National Bar Examination Board (the NBEB) from the 1990s first as an oral examiner, then as the KwaZulu-Natal Provincial Convenor from 2001 to 2024 and finally as its National Convenor for a short spell earlier this year.

WHERE DO I SEE THE GCB IN THE FUTURE

Although dark clouds have already gathered and are still gathering over the future of the GCB, I do NOT see those clouds turning to doom and gloom for us. It is true that we are under constant siege, with the independence and control of the advocates' profession being chipped away. The government, in its wisdom, saw fit to pass the Legal Practice Act and the

Legal Practice Council (LPC) was born. The LPC has, as it is now entitled to, taken control of many functions which were exclusively in our domain. I could write an entire chapter on the difficulties now being experienced by the GCB. However, I think we are all aware of them. Notwithstanding, I will refer, in passing, to some of these below.

Fortunately, the higher courts have commented on our right to bring matters before the high courts, the Supreme Court of Appeal and the Constitutional Court. But even those judgments are still under attack by advocates whom we seek to have removed from the roll of advocates. Nevertheless we still stand strong. Our functions may have been diminished but we fight on valiantly nonetheless.

THE NATIONAL BAR EXAMINATIONS

We were initially accredited by the LPC to conduct the prescribed statutory examinations but our accreditation was discontinued about three years ago. This despite the NBEB standing tall amongst all others and being able to lay claim to the services of some eight judges of the High Court and of the Supreme Court of Appeal. In addition, the range of expertise brought to the table by the advocates who serve on the NBEB and by the examiners demonstrates the strength and ability of the NBEB to maintain an appropriate standard and that it ought to be accredited. Requests for accreditation have been repeatedly denied. We still persist. Once the LPC elections are over and the relevant committees appointed, the GCB intends to re-open negotiations with the LPC for accreditation.

There was some talk of doing away entirely with the NBEB examinations. At a symposium held in Pretoria on 4 to 6 October 2024, it was unanimously resolved that the examinations would continue for the foreseeable future. We are, after all, no longer the body exercising statutory powers (we can be likened to a trade union) and we can thus determine who should and should not become a member of a GCB-affiliated bar. Nonetheless the hardship on pupils having to write two and sometimes three examinations was recognised and the NBEB has undertaken to see if such hardship can be ameliorated. I believe the symposium showed complete confidence in the NBEB, which will now continue with its functions, hopefully without further setbacks. This, too, in circumstances where hardly a word of thanks is given to the members of the NBEB and the examiners who often set examination papers and mark well into the late hours of the night and over weekends whilst juggling same with their practices and court appearances.

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RECOGNITION OF THE QUALITY OF ADVOCACY SKILLS TRAINING

Very little can be said in addition to the praises already heaped upon the advocacy skills training component of the GCB. The trainers frequently work long hours (at their personal expense with their work suffering) to teach pupils and new members of the profession the skills which set us apart from other practitioners. There can be no doubt that the standard of training is world class and is clearly superior (in my unashamedly biased view) from other institutions conducting training. Long may this continue. It is my personal view that the advocacy skills that we impart to the pupils and young professionals demonstrate that we should be the first choice litigators engaged to represent clients in not only the preparation of opinions and pleadings, but also in court appearances.

It emerged at the abovementioned symposium that the advocacy trainers have voluntarily enlarged the scope of their courses and not only do they teach LPC prescribed aspects but they go well beyond that to turn out better advocates, sometimes teaching aspects of substantive law. No wonder then that the LPC has accredited us with the task of conducting the statutory training for advocacy. I am one of those unfortunate few who have never attended an advocacy training session. I am not an advocacy trainer. This is because of a ruling of the NBEB that those who serve on the NBEB should not engage in undue contact with pupils (as the NBEB has to determine which pupils pass or fail) and for that reason we were discouraged, nay, prohibited from becoming advocacy trainers. What a pity! I would have loved to be a trainer. As the past treasurer of the GCB I ensured that requests made by the advocacy training convenor were always given my full support both in financial and personal aspects and I believe that this is an extremely important component of the work undertaken by the GCB, which will ensure that we remain competitive and at the forefront of the advocates profession in South Africa.



ATTACK THROUGH THE USE OF ARTIFICIAL INTELLIGENCE (“AI”)

This is a frightening area. Leaving aside that I am probably ineducable in the field of hi-tech, it is not only people like me who are not sufficiently computer literate who fear this. My attendance at two international conferences this year, one in Ireland and Northern Ireland in May and one in Mexico in September, have revealed to me that AI is an area we should be greatly concerned about. I have also learned that some of the publishers of legal material in this country are also infusing their offerings with AI, without having consulted the profession at all. This is concerning. AI utilised by those who do not understand its full extent and what safeguards should be taken when utilising it can be an extremely dangerous weapon of self destruction. As it is, the large firms of lawyers abroad are already utilising AI and have to find ways and means of overcoming issues such as client confidentiality, privilege and false information. In one matter heard by a New York court, false authority was inserted into a brief submitted to the judge and the lawyers were fined and referred for disciplinary enquiry.

Nonetheless, one must accept that AI in the legal profession has already got a toe-hold in this country and will accelerate its presence at a phenomenal rate (regard being had to what has transpired overseas). In many foreign jurisdictions, firms of lawyers are utilising AI software to write opinions, draft pleadings, affidavits, statements and the like and, more frighteningly for us, to prepare for court trials and arguments, even going so far as using AI to generate lists of questions, prepared in advance for cross-examination (after statements and depositions have been analysed). I have heard of teams of lawyers utilising different AI technology hubs to prepare cross-examination and to even modify questions in the court room whilst witnesses are being cross-examined. If this is so, what does the future hold for us? If lawyers using AI can do all of the foregoing where will we find a place to continue our practices. And what of clients? Many of them aspire to be their own lawyers and, I fear, will soon use AI software to attempt to achieve this.

It is a challenge that the GCB must assist in trying to overcome. I have it in mind to seek approval to set up a specialised committee to deal with the issue of AI and to delegate to that committee the power to enquire from the legal publishers who are utilising AI in their offerings precisely how this is being undertaken. There must be differences in the manner in which information is processed. If that were not so there would be no more court cases. All AI hubs would give up the same answers but they apparently do not do so. Which ones can be trusted? How should we meet the challenges of AI? One of the great concerns expressed by barristers and advocates overseas is that despite our utilising hubs with AI, we will always be outpowered by large firms of attorneys who will utilise more than one hub and perhaps more developed hubs than we, as single practitioners, will have access to. So we must not sleep on this issue. We must act. Now.

WHITHER (NOT WITHER) THE GCB?

Will we have any role to play in the future? The answer is undoubtedly yes. We still represent the views of the largest block of advocates at recognised bars. Just over half the registered advocates in the country come from the folds of the GCB. We still have a role to play in giving input to government and in giving input on bills which are to be laws governing us in the future. We also make input on which judges should grace our benches by having representatives on the Judicial Service Commission. We have active committees including those involved with transformation, the rule of law and human rights. We have representatives from our fold sitting on the LPC and giving input (even though heavily outnumbered) to protect our profession and to enlighten those who do not know precisely how we function. We are involved in negotiations with the attorneys’ profession on a regular basis. We are ever there to take up the cudgels on behalf of our members and challenge issues which affect us (such as recently when we went to court against the Solicitor-General when he published tenders for work from the state). We continue with our education programmes for members seeking entry into the bars affiliated to the GCB. We maintain our standards through advocacy training and the NBEB. We are engaged in continuing legal education. We do our best to make our presence felt amongst other advocates’ and barristers’ professions internationally (through the International Bar Association and its Forum for Barristers and Advocates and through the International Council for Advocates and Barristers). Need I say more? I think not. If anyone had any doubts about whether the bars and the GCB would continue in existence and are relevant institutions, surely these must by now be dispelled.

CONCLUSION

The above are “just some thoughts”. Thank you to those of you who read them. If I came across in the opening paragraphs as being unnecessarily jocular, my hope was to keep you reading to the end. Please remember that whilst a joker is typically a jester, in a deck of cards it also can be used as an important trump card which can win the day. If any of you (and I doubt that there will be many) would like to know more about my thoughts expressed in this article, or about other thoughts which I have, your curiosity will be addressed upon receipt of communication from you. As I said earlier, you and the GCB will always come first. **A**

