

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

Editorial committee

Frank Snyckers SC (chair)
Sechaba Mohapi
Gregory Solik
Zandile Qono
Songo Ntsaluba
Quentin du Plessis
Sandhya Mahabeer SC
Loyiso Makapela
Jean Meiring
Nevenka Ristik
Muhammad Zakaria Suleman
Ahditya Kissoon Singh SC
(ex officio – GCB chair)

BAR REPRESENTATIVES

Cape: Gregory Solik
Free State: Amelia Swanepoel
Makhanda: Julian Barker
Johannesburg: Sibongile Mathe
KwaZulu-Natal: Zandile Qono
Mpumalanga: Gertruida Gomes
De Jesus, Denise Greyling-Coetzer
and Zodwa Gumede
Namibia: Retha Steinmann
Northern Cape: Albert Eillert
North West: Thabile Sebillo
Polokwane: Nathi Gaisa
Gqeberha: James Ramsay
Pretoria: Megan Moodley

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 Tri-Star Print Services

ISSN 1683-2566

© General Council of the Bar
of South Africa

Volume 38, number 3 ■ December 2025

advocate

Iphaphabhuku labameli basemajajini baseNingizimu Afrika
Dzhenala ya dzangano la vhaadivokati vha Afrika Tshipembe
Die Suid-Afrikaanse Baltydskrif ■ The South African Bar Journal
Kgatisobaka ya boadifokata ya Africa-Borwa
Jenali ya magwetha ya vaavanyisi va Afrika-Dzonga



FROM THE EDITOR

Franny Rabkin

The idea of AI-assisted writing appeals me. I write every day for a living. I love writing. I love it with a passion that is hard to articulate; even when it is hard and despite not being nearly as good at it as I want to be.

Writing is a personal, quintessentially human, endeavour. It is so personal that when I started out as a journalist, I didn't sleep well for the first few months because I felt vulnerable and exposed. And mind you, all I was writing about was court cases; not exactly baring my soul.

Writing is so personal that there is a game I play with myself when I am reading your affidavits: Match-the-Counsel-to-the-Papers. I read your affidavits, I guess who drafted and then I chuckle when the heads of argument come and I see I am right. I am not always right but I often am.

I don't like the flat, plastic, writing these AI tools produce either. Naïve at first, I am getting better at detecting AI writing – often on the very scientific basis that something just feels off.

In short, my considered view: to hell with generative AI writing tools.

However, I was recently told I am a luddite and must get with the AI programme. I was told there are other cool things we can do with AI – like research. I thought ok, let me try this AI business for research. An opportunity presented itself: I was trying to write a piece assessing the tenure of Shamila Batohi as NDPP. This meant, amongst other things, reading seven years' worth of NPA annual reports. So, I put all the reports into Google's AI tool, Notebook, and asked it specific questions – like, how has the NPA fared on GBV prosecutions? And various other questions.

Wow. It was like magic. What would have taken me three or four days of reading took a few hours. The answers just came. And all with notations, so I could check the original source. It felt like a revelation; the clouds opened, the sun's rays poured forth, the angels sang. For a day, I was on a high. This AI business is fantastic, I thought.

But then I started fretting about what I could have missed. The tool will answer specific questions, but what about the questions I didn't think to ask, but could have cropped up as I read? What about the overall sense one gets when one reads a document in full: the NPA is upbeat, it's under siege, that kind of sense. Worse, a couple of days later I couldn't remember much of what my AI-assisted research

produced. I realised that reading, properly reading, is about more than getting answers. It is part of thinking; of processing information, of evaluating and reaching conclusions. These machines are going to kill our ability to think, I thought, aghast. Panicky, I went back and read the annual reports. It took days. It was not fun. This AI business is the devil, I thought.

The submissions in this edition reveal that the dangers of AI for legal practice are far more serious than bad writing. AI tools can come up with come up with case law that doesn't exist – misleading the court and wasting everyone's time as counsel and attorneys rush around trying to find these non-existent judgments. Worse, and excruciatingly embarrassing, busy judges can include these non-existent court cases in their judgments. I recently saw a circular about this from the Cape Bar Council – "members are informed that the following three cases on SAFLII all cite a judgment ... which does not exist".

On the other hand, the submissions argue that there can be real advantages to using AI, if it is used responsibly. It can save time and therefore money for clients. It can help navigate voluminous records. AI can assist lay litigants draft their papers and so make justice more accessible.

More fundamentally, some of our authors argue, AI is here to stay. In this brave new world, the challenge is to learn how to use it ethically. Fair enough. It is good that the GCB has set up a committee to grapple with this complex issue. We at Advocate have also had to face it: our Forum authors must now sign a declaration that their submissions were not the product of generative AI.

This edition is about a relatively new phenomenon in legal practice but I want to end by saying a word about our last edition, on sexual harassment – an old and depressingly ongoing phenomenon. We had an overwhelming response to the August edition. Most gratifying to me was the people who contacted me to say that, after many years, the edition made them feel seen and heard. I would like to, again, thank all those who wrote for the edition and who participated in our survey. I would like to ask that we keep this important issue on the agenda.

Enjoy the festive season and all the best for 2026. 

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.

ERRATUM

In the August 2025 edition of Advocate, in an article entitled "In Defence of the Common Law" we reproduced Justice Cachalia's address at the annual bar dinner of the Eastern Cape Society of Advocates and erroneously referred to the Grahamstown Society of Advocates. We regret the error.