The Law Society of the Northern Provinces (LSNP) held its annual general meeting (AGM) on 31 October at Sun City. Speakers at the conference included Chief Justice Mogoeng Mogoeng; Deputy Minister of Justice and Constitutional Development, John Jeffreys; and Judge Thokozile Masipa of the Gauteng Local division of the High Court.

Transforming the legal environment

Justice Masipa’s address, titled ‘The Legal Profession in Effectively Transforming the Legal Environment’, was an abbreviation of an address she presented at the Johannesburg Attorneys Association AGM held on 9 September (see ‘Transformation discussed at JAA AGM’ 2015 (Oct) DR 19). Justice Masipa began her address by saying that more than 20 years into democracy, South Africans are still struggling with the concept of transformation. She added that this was surprising because South Africa has one of the most progressive constitutions in the world.

Justice Masipa went on further to say: ‘Now, what is transformation? Transformation is different things to different people and perhaps that is where the problem lies. Some people may look at numbers, large numbers of people who previously were not in the profession, and decide that, well, we have made it, there is nothing to worry about. Other people may look at the quality of the people that we have and feel dissatisfied. … Numbers of university graduates may look impressive but where do these graduates go after they qualify? We do not see enough black people in the High Court, for example. We do not see enough of them in motion court and certainly there is hardly any in commercial matters. Even though there may be a number of previously disadvantaged individuals entering the legal profession, these figures should be viewed with caution.

Justice Masipa said that transformation and empowerment go together. ‘Transformation without empowerment, therefore, is of no value at all. Real transformation must be coupled with a motivation and the willingness to empower,’ she said. She demonstrated her point by way of example, namely mergers.

‘Over the past few years this country has seen a number of law firms merging across colour lines. … A merger is like a marriage relationship between two people in the sense that it is a matter of give and take. If one party feels that he is being short-changed, that marriage will not last. Let me give you an example. Firm A, a large commercial firm in Rosebank, merges with firm B, a one-man law firm downtown in Johannesburg in Market Street. The firm is managed by Mr X, a divorce lawyer of many years. Firm A is hoping that through the merger it will increase its revenue and has its eye on lucrative government work. It is confident that if it can prove that it has a BEE partner, such work is guaranteed. On the other hand Mr X from firm B sees the merger as a great opportunity for him to grow in an area that hitherto was not open to him. … In due course Mr X says goodbye to his humble downtown office and moves to the suburbs of Rosebank. … He attends all important meetings, his fellow partners are wonderful people and are very helpful, and he settles in quite quickly. But his happiness is short-lived. Six months later Mr X has not worked on a single commercial case nor has he seen any government work, which he knows for sure has reached his new firm. He expresses his dissatisfaction about this to his partners but to no avail. He is told, amongst other things, that the clients have no confidence in him because he has no experience in commercial work and will not have him touch any of their work. It is therefore not surprising that 12 months later the merger is no more.

What was lacking in this relationship? … The Bar may and in fact should as a profession appeal to the profession to get serious about radical transformation and empowerment.’

Speaking about briefing patterns, Justice Masipa said that briefing patterns have not changed much since she was at the Bar many years ago. ‘Soon after I joined the Bar I had an opportunity to successfully argue a funeral interdict in the Urgent Court. I was elated therefore when soon thereafter I was given another brief of a similar kind, and then another, and then another. Soon I became an expert in the field. However, what I failed to realise at the time was that the label “funeral interdict expert” had stuck with me and unwittingly disqualified me for any other work, especially meaningful work. I was not the only one with that disadvantage. I saw many of my black colleagues, capable women, being briefed only on unopposed divorce matters. At the same time I saw my white colleagues, irrespective of how many cases they were losing, growing by leaps and bounds simply because they were given an opportunity to do meaningful work. Now, that was then.

What about today, 2015? Yes, a small number of black counsel and female counsel are getting varied briefs but I think there is lots of room for improvement. Concerns about skewed briefing patterns are still being shared by advocates throughout the country, just as they did a little more than 20 years ago. … The Bar may and in fact should assist in transformation by ensuring that
counsel rope in black women, black and women junior counsel. Although this is very helpful as it might expose the junior counsel to potential clients, it ought to be noted that the Bar has a limited role in this regard as it is not a briefing entity. The power to make the policy on fair equitable briefing patterns workable rests mainly in the hands of attorneys,’ she said.

In conclusion Justice Masipa noted that South Africa has adequate resources in the country but ‘we must be willing to share them wisely. It does not matter how much we spend on the education and training of lawyers, if we do not follow this up with transfer of skills we are wasting our precious resources. We need a change of heart. We need to change our mind-set and we need commitment. We owe it to ourselves to transform the legal profession and we also owe it to those who will come after us. If we do not, the coming generations will rightly accuse us of dereliction of duty and of cowardice’. 

A time for reflection
Mr Jeffrey said that AGMs bring with them an opportunity for reflection, a time to assess the successes of an organisation and to contemplate areas of possible improvement. He went on to speak about the image of the profession and said that the question we need to ask ourselves is: Why is there this attitude towards the legal profession and what can be done to correct it? ‘The conduct of a few rotten apples is largely to blame. Factors such as their behaviour in Road Accident Fund cases and in terms of unlawful contingency fees, their behaviour in terms of certain debt collecting practices are particularly to blame. … And then there are also perceptions amongst the public that law societies are not able to discipline their own members, and that is something that needs to be in particular addressed,’ he said.

Speaking on transformation, Mr Jeffrey said that: ‘While transformation has taken place, there is much more to be done. It is a transformation of the practices of the Bar. It is not just about the membership of the Bar. But it is also about the image of the profession.’

Radical transformation
Chief Justice Mogoeng, delivering the keynote address, said that one of the most topical issues in South Africa, at the moment, is radical transformation. And added that the broader legal fraternity, including law students, the organised profession and the judiciary have not escaped attention in this connection. ‘Transformation is the end product of an elaborate process that is foundationally facilitated by the registration for and completion of a law degree,’ he said.

Addressing the issue of adding a year to the LLB degree, Chief Justice Mogoeng said: ‘Universities are considering adding one more year to our first law degree, but many are struggling to pay for a four-year law degree already. Expanding the programme to five years, if that will eventuate, is certainly bound to make it more difficult for us to have as many law graduates as we need. … My challenge to you is this; as stakeholders in the law products or law graduates what are we going to have going forward, is it about duration or quality? If it does not have to take long for it to be a degree of quality then maybe we should look at other jurisdictions. I begin with a very small country, which is a city-state, Singapore. The National University of Singapore, the law school, is counted among the top 25 worldwide, and their law degree takes four years to complete. But there is an even better example; in the whole of Europe it takes only three years to complete a good law degree. From there you can proceed either with your master’s degree, depending on your area of interest, but if you want to be a practitioner of the law then there is just one more year. I know in the UK for instance there is a college that you will be required to go to, just so that you familiarise yourself with the practi-
there is some superiority, intellectual or otherwise, attached to sheer pigmentation, needs to have his or her head examined. Otherwise, how do you explain Martin Luther King junior, how do you explain Kofi Anan, how do you explain Barack Obama, how do you explain Ben Carson, how do you explain Nelson Mandela? As exceptions? We have got to move away from the prejudice and the refusal to change that is informed by nothing else but colour. For my black compatriots, refuse to be like my father.’

Chief Justice Mogoeng appealed to the profession to get serious about empowerment. ‘Let us all make time, black and white, to empower our article clerks. I know of attorneys who do not have time for article clerks, they must make money. Article clerks used to complain to us, some of them were nothing but messengers, and they are supposed to pass exams. Let us make time to empower our article clerks so that they like us can turn out to be the good attorneys that we have turned out to be… I have never said black attorneys should never brief white male advocates. I have never said the state or any institution should never brief our white male compatriots. They have a right to be briefed, too. They are South Africans. But I have said, and I will continue to say, when you have a matter that justifies briefing a senior advocate, and at times it is even three seniors and three juniors, remember women, both white and black women. It cannot just be white women all the time, no. Remember black practitioners who are junior. Afford them the opportunity to learn. That is all I am pushing for. It cannot be that the State Attorney briefs everybody except our white compatriots. That is another level of racism,’ he said.

Afternoon sessions
During the afternoon sessions, other speakers addressed delegates on a variety of topics:
- Director for Southern Africa Amnesty International, Deprosa Muchena, spoke on the role the organisation plays on advocating for the rule of law (see ‘Perspectives on the role of the profession in promoting the rule of law and democracy’ 2015 (Oct) DR 8).
- Co-chairperson of the Law Society of South Africa, Busani Mabunda, gave an address on the 2015 Co-chairperson’s Mid-Term Report. He also spoke on the issue of the profession forming a voluntary association for all legal practitioners that will serve trade union functions for the profession (see ‘KwaZulu-Natal Law Society AGM: Legal Practice Act at the core of deliberations’ in this issue).
- Chairperson of the Attorneys Fidelity Fund (AFF), Nonduduzo Khanyile-Kheswa, gave a report on behalf of the AFF (see ‘KwaZulu-Natal Law Society AGM: Legal Practice Act at the core of deliberations’ in this issue).

Adopted motion
The following motion was adopted: ‘Any person who gets admitted to practice as an attorney during the financial year of the society shall pay a portion of the subscription fees calculated pro-rata over the remaining number of months (including the month in which the attorney becomes a member) in that financial year, which shall be paid within one month of becoming admitted’ (see ‘A tip for candidate attorneys applying to be admitted as an attorney’ 2015 (Aug) DR 4).

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