e-MANTSHI

A KZNJETCOM Newsletter

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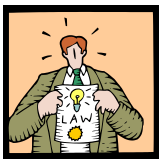
Welcome to the seventy third issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. There is now a search facility available on the Justice Forum website which can be used to search back issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.
Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments, contributions and suggestions – these can be sent to Gerhard van Rooyen at gvanrooyen@justice.gov.za.



New Legislation

1. The Regulations published in terms of the Magistrates Act, Act 90 of 1993 have been amended. The amended regulation was published in Government Gazette no 34969 dated 26 January 2012. The amended regulation now makes provision for maternity leave, adoption leave and family responsibility leave for Magistrates. Schedule E to the regulations was also amended by the substitution of Paragraph 13 which now reads as follows:

"13. A magistrate may only permit the proceedings in his or her court to be televised, broadcast or taped for these purposes, or photographs to be taken or television cameras or similar apparatus to be used in his or her court during a court session, during recess or immediately prior to or after the court session, on the conditions that he or she may deem fit-

(a) after hearing argument by the applicant and any other party involved in the proceedings who may wish to oppose the application;

(b) after due consideration of-

(i) the rights of all the parties, including their legal representatives, witnesses and court personnel Involved in the proceedings; and

(ii) the interests of the administration of justice; and

(c) if he or she is satisfied that it is in the public interest to do so."

2. Interested parties have been invited to comment on the Protection from Harassment Regulations (the Regulations). Written comments to the Department of Justice and Constitutional Development were due on or before 29 February 2012. Any queries should be directed for the attention of S J Robbertse at srobbertse@justice.gov.za .The draft regulations can be accessed at http://www.justice.gov.za/legislation/invitations/invites.htm .

3. In Government Gazette no 35047 dated 17 February 2012 a notice was published In terms of section 54 of the Firearms Control Amendment Act, 2006 (Act No. 28 of 2006), whereby the said amendment Act will come into operation on 1 March 2012.The following sections are amended by this Act:

(a) the following paragraphs of section 1: Paragraph (c) (the definition of "calibre"); paragraph (f) (amendment of the definition for **"firearm")**; paragraph (h) (substitution for the definition of **"juristic person")**; and paragraph (I) (the insertion for the definition of **"professional hunter");** and

(b) sections 3; 6; 7; 12; 13; 14; 15; 19; 26; *27;* 49; 50 and 51.

Section 3 of the Act will now read as follows:

"3. General prohibition in respect of firearms and muzzle loading firearms.—

(1) No person may possess a firearm unless he or she holds for that firearm—

(*a*) a licence, permit or authorisation issued in terms of this Act; or

(*b*) a licence, permit, authorisation or registration certificate contemplated in item 1, 2, 3, 4, 4A or 5 of Schedule 1.

(2) No person may possess a muzzle loading firearm unless he or she has been issued with the relevant competency certificate.

[S. 3 substituted by s. 2 of Act No. 28 of 2006 with effect from 10 January, 2011.]"

The Minister of Police has also under section 145 of the Firearms Control Act, 2000 (Act No. 60 of 2000), amended the Firearms Control Regulations, 2004, as published in the Schedule to Government Notice No. R. 345, dated 26 March 2004 which will also come into operation on 1 March 2012.

Recent Court Cases

1. S v NKUNA 2012 (1) SACR 167 (BPD)

The production or discovery of the deceased's body is not necessary for a conviction of murder.

To require the production or discovery of the body (*corpus delicti*) in all cases of murder would be unreasonable and unrealistic and in certain cases would lead to absurdities. It would lead to a gross injustice particularly in cases where a discovery of the body is rendered impossible by the act of the offender himself. It is thus proper for a court to convict an accused on circumstantial evidence provided it has the necessary probative force to warrant a conviction: that death can be inferred from circumstances that leave no ground for a reasonable doubt. The absence of the body is not an insurmountable bar to finding an accused guilty of murder. It is not correct that it must always be a prerequisite that a satisfactory explanation be provided as to why the body is missing; the circumstances may vary from case to case and each case must be decided on its own merits. A conviction of murder can therefore be sustained on the basis that there are facts so incriminating and so incapable of any reasonable or innocent explanation as to be incompatible with any hypothesis other than a finding that the accused has in fact killed the person who has disappeared. (Paragraphs [111]-[112], [116] and [119] – [120] at 169i- 170a, 170f-g and 170j- 171 b)

2. MKHIZE v UMVOTI MUNICIPALITY AND OTHERS 2012 (1) SA 1 (SCA)

Judicial oversight is required in all cases of execution against immovable property conducted under s 66(1)*(a)* of the Magistrates' Courts Act 32 of 1944.

Judicial oversight is required in all cases of execution against immovable property conducted under s 66(1)*(a)* of the Magistrates' Courts Act 32 of 1944. The sole object of such oversight is to establish whether the constitutional right to adequate housing was breached by the order granted, and it is required also in the absence of formal opposition and where the debtor is in default or ignorant of his or her rights. Since invalidity will only follow if it is found that the right to adequate housing was in fact compromised, past executions granted in the absence of judicial oversight will stand until set aside. (Paragraphs [19] and [26] – [27] at 13A – D and 14F – I.)

From The Legal Journals

Verrier, C

"Things fall apart in the criminal court room"

De Rebus January/February 2012

(Electronic copies of any of the above articles can be requested from gvanrooyen@justice.gov.za)

Contributions from the Law School

Teaching legal ethics

Nicci Whitear-Nel*

Introduction

'This is a call for a deeper sense of purpose, a broader sense of responsibility and accountability, a more proactive spirit, and a more encompassing set of questions, rigorously reasoned (Piper, Gentile and Parks, Can Ethics be taught?: Perspectives, Challenges and Approaches from Harvard Business School 1993 at p 7)

This paper is a reflection on my personal observations and experiences of teaching legal ethics to final year students in a stand-alone course in the LLB degree. It

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grapples with various pertinent issues intrinsic to teaching legal ethics at tertiary institutions.

The South African context

An analysis of law schools in South Africa reveals that approaches to teaching legal ethics tend to be of a number of broad types, or a combination thereof. Some faculties favour a strongly philosophical approach, focused on abstract notions of justice and the role of the lawyer in society, typically in modules commonly labeled 'Jurisprudence'. Others confine their courses to the consideration of the rules, regulations and guidelines governing a legal practitioner, often referred to as the black-letter law of lawyering. Some delegate the teaching of their legal ethics course to one or other faculty in the Humanities who generally teach applied ethics which in and of itself may be a valuable course, but which is not appropriate to preparing law students for their professional role. Some law schools advocate a 'pervasive' approach to teaching legal ethics – infusing all substantive law courses with the flavour of professional responsibility – but this approach is difficult to truly achieve, because it stands or falls by the commitment and vision of all staff members. Clinical Legal Education is also a commonly punted vehicle for teaching legal ethics, but resources prevent Clinical Legal Education from being available to all law students. Some law schools require their students to perform community service with the aim of teaching professional ethical behaviour by "doing": Arguably this illustrates more commitment to justice and accessibility, and thus the law school's attitude to ethics, than any single course could ever hope to instill in its students.

What follows is a discussion of my personal experiences and observations developed from teaching a stand-alone course in Professional Responsibility, of which a large portion deals with 'legal ethics'. The Faulty of Law at the University of KwaZulu-Natal does include ethics issues in other courses, for example in Jurisprudence and Clinical Law. Students also complete a Humanities ethics course. In addition, the faculty requires students to complete a period of community service before graduating. It seeks generally to infuse the curriculum with an awareness of ethics issues. The UKZN Law Faculty mission statement refers expressly to the ethical dimension of legal education. It is: 'To be a faculty committed to excellent, effective, ethical and socially relevant legal education.'

This paper, however, focuses on the Professional Responsibility course and not with broader faculty initiatives to inculcate appropriate ethical values into students.

The traditional approach

Traditional approaches to teaching legal ethics largely reflect the idea that there is no real need to devote precious curriculum space to teaching legal ethics, as students will be socialised into an appropriate professional ethic when they enter practice and the vocational stage of their education. Concern about the already burdensome curriculum is especially significant given that South Africa has adopted the four-year undergraduate LLB structure (as compared to the two year post-graduate degree of the past.)

Of course, the law school experience is itself a hugely influential socialising process – and it is a crucial stage in the development of the professional identity of every young aspirant lawyer – which will ultimately determine (at least in significant part)

how they practise law. Students should thus be socialised into the appropriate professional ethic from the first moment they enter the law school.

The 'traditional view' of legal ethics is not a unique feature of South African law faculties. It is a global phenomenon, as a review of the relevant literature from (inter alia) the United States of America, the United Kingdom and Australia shows.

However, there has been rapid development in the area of educating students in legal ethics, which has been largely pioneered in American law schools. There is now a significant body of literature and scholarship on the subject. Much of what has been written resonates strongly with my own South African experience, although it must be noted that there are significant differences between the law school experiences and the structure of legal education in the different jurisdictions.

Problems associated with 'traditional' approaches

1. **The "Hidden" Curriculum**

Where a law faculty does not have a dedicated ethics module – or even where one exists but is afforded a lower academic weighting than other courses – the message sent to students is that ethics issues are not important. As Piper,Gentile and Parks point out:

Students … wonder what is rewarded? What has legitimacy and authority? …What faculty is silent about and what they omit send a powerful signal to students. Omission of discourse is not value-neutral education. There is no such thing. Omission is a powerful even if unintended signal that these issues are unimportant. (Piper,Gentile,Parks at p 6)

2. **A stand-alone ethics module**

Teaching a stand-alone ethics course is, however, itself associated with special difficulties. These can be attributed largely to the fact that legal ethics courses tend to be taught in the same way as any other substantive law course. To exacerbate the problem, such courses are routinely given lower credit point ratings than other substantive law courses. Again, South Africa is not alone in this. Burridge and Webb from the United Kingdom write:

When legal ethics courses focus exclusively on the law of lawyering, they can convey a sense that an attorney's behaviour is bounded only by sanctions such as the threat of a malpractice charges and give the impression that most practising lawyers are motivated primarily by self interest and will refrain from unethical behavior only when it is in their immediate self interest to do … such a narrow focus misses an important dimension of ethical development – the capacity and inclination to notice moral issues when they are embedded in complex and ambiguous situations, as they usually are in legal practice. This capacity is critical because ethical challenges cannot be addressed until they are noticed and taken seriously… By defining legal ethics as narrowly as most legal ethics courses do, these courses are likely to limit the scope of what graduates perceive to be ethical issues. (Burridge and Webb, The Values of Common Law Legal Education : Rethinking Rules,

Responsibilities, Relationships and Roles in the Law School 2007 10 *Legal Ethics* 72 at 149)

3. Scepticism and resistance by learners

Students tend to be very sceptical about having to attend a course in legal ethics, generally anticipating that it will be 'empty' preaching of limited value in the real world. Even when such a course is has a weighty title, for example 'professional training', students can quickly become impatient with anything which is not clearly orientated to the 'hard' skills they require for practice.

That ethics has no – or, at best, a limited – place in the real world is reinforced to a large degree by the popular media which students tend to lap up. Movies, TV series and books commonly romanticise the lawyer who ignores the rules to achieve 'justice'; and lawyer jokes reinforce the notion that lawyers are amoral, self-centered and willing to win-at-all-costs. Think, in the prosecuting context, of the television series "Shark" for example.

Many practitioners are also guilty of giving the impression that it is necessary to be a devious operator to succeed in the field. That the legal profession is facing a crisis of identity and ethics is well known, and my own anecdotal evidence confirms that unethical behavior by lawyers, together with reduced disciplinary rigour, is the norm. In particular I draw on personal conversations with lawyers, as well as information gathered from candidate attorneys who are mid-way through their legal studies, as well as stories related to me by former students and other legal practitioners, including those within the NPA.

The perception that the legal profession is open to unscrupulous behaviour is supported by lecturers who do not engage with learners around ethical issues, or, in trying to be humorous, 'joke' about the cut-throat, self-interested nature of the profession. Although no doubt unintended, these actions (or lack thereof) have the profound yet subtle effect of eroding confidence in the profession, and creating the belief and expectation that unethical conduct in daily practice is the norm. The 'win at all costs' approach to prosecuting was pertinently addressed by the court in the case of *S v Rozani, Rozani v DPP, Western Cape* 2009 (1) SACR 540 C. Another interesting case dealing with the ethics of prosecutors is Van der Westhuizen v S 2011(2) SACR 26 (SCA).

4. It is too late to teach ethics in higher education

Another problem with traditional approaches to teaching legal ethics develops out of the belief that a person's ethical development takes place early on in life and that no amount of teaching, especially teaching that takes place after the formal schooling years, is going to change an individual's moral outlook. Research has, however, shown that a person's moral development is not static but dynamic and that it has the power to change and develop at any stage with the appropriate stimulus. Thus law students entering university are ripe for developing more mature sophisticated moral reasoning. This is possibly only if it is fostered in an appropriate way, and reinforced by everything within the law school experience. If 'preaching' in the legal ethics course is not consistent with all other aspects of the law school experience, or if it is not taught properly, there is a real risk of doing more harm than good.

The comments by academics in the context of an ethics experiment at the Harvard Business school are equally relevant to law students:

These students [entering a tertiary education programme] are at a critical stage of the development of their perceptions about … the appropriate resolution of ethical dilemmas…. This is a period for inquiry; extended time is necessary to develop sufficient strength and sophistication to acknowledge the presence of ethical dilemmas, to imagine what could be, to recognize explicitly avoidable and unavoidable harms. It takes time to develop tough minded individuals with the courage to act- especially when it is so much easier to take refuge in the psychological safety of distant analytics, and of remote but comforting rationalization. (Piper,Gentile,Parks (supra) at p 5-6)

5. Skepticism and resistance by teachers

Some legal academics steer clear of ethics issues with their students, arguing that they do not want to indoctrinate students with their own moral values or to devalue the students' own personal belief systems. They appear to believe that moral relativism is the 'politically correct' option.

6. Perceived low academic value

There is a common belief, held by both academics and students, that legal ethics is a low grade course, requiring students to simply memorise the code(s) of practice in order to pass. Another criticism is that in such courses, the focus is invariably on the attorneys profession, to the exclusion of the ethics of other branches of the legal profession. For example, in South Africa, The Code of Conduct for members of the NPA (GN R 1257, GG 33907 of 29/10/10) is rarely discussed. This is an entirely inappropriate approach. In any event, memorising the 'rules' provides very little guidance for a lawyer grappling with real-life ethical dilemmas, as at best the rules provide a minimum standard to avoid being struck from the roll or being subject to disciplinary sanction. In any event, the rules are the least helpful when guidance is most necessary, for example, in those instances when rules conflict, such as when the lawyer's duty is at odds with her obligations to the justice system, society at large or even her own integrity. While they might provide guidance, however, there are no strict rules that can resolve ultimately these fundamental conflicts, and, in fact, common attitudes and beliefs in this regard are rare. The messy detail is left to the discretion of the lawyer whose task is made all the more difficult because many of the rules are vague, and, some would say, at times even encourage profoundly anti-social behaviour.

An enormous amount of work needs to be done to get young people to think straight about [difficult] questions which defy facile pseudo-moralistic answers; a clear headed understanding of … conflicting responsibilities … responsibilities that often come down to some agonizingly difficult trade-offs. (Piper,Gentile,Parks (supra) at p 6)

7. Systemic issues

A bare teaching of the 'law of lawyering' presupposes that the context in which they operate – that is the legal profession – and the manner in which the profession is structured and regulated is beyond criticism. Globally, the status quo of the legal profession is being challenged. In South Africa the imperative to 'transform' to meet

the needs of society is perhaps the most important contemporary challenge facing the profession. The nature of the legal profession has changed, as have those who practise law. However, it seems that the power of those seeking to entrench the status quo of the existing profession outweighs the ability of others to challenge it on a meaningful basis. The government has been forced to take the lead in discussions around the restructuring of the profession in the form of the proposed Legal Practice Bill; and it initiated the development of the Legal Services Sector Charter (which has yet to be gazetted).

My argument is that we need to do much more than simply take seriously the teaching of a legal ethics training module. Our systems, institutions and practices are far from perfect, and there is vast dissatisfaction with the profession being voiced by government, the public and, increasingly, members of the profession itself. In the latest edition of De Rebus (Jan/Feb 2012), a provocative featured article is entitled "Things fall apart in the criminal court room". It contains the following opening paragraph:

"Criminal trials have become a farce, but one in which the players are all so absorbed in their respective roles that none of them is able to see the theater of the occasion: They play on as if it were real. They fail to see that it has nothing to do with arriving at the truth and dispensing justice; that it is, in truth, some kind of silliness."

Whether the perception is accurate or not, it is telling that this is the perception by a South African advocate, published in the national attorney's magazine. One can only guess at the perceptions of the average person in the street. But it is telling also that in a recent survey, 31% of South Africans polled indicated that they did not believe the judiciary was impartial (Sunday Times 26/02/12).

Students must be provided with an opportunity to engage critically with these issues, and the role of the law school in teaching legal ethics/professional responsibility is thus multi layered.

A multi-layered approach

In the first place, law schools need to teach the rules governing practice so that students are properly equipped with their professional degree. They need to teach the values and principles underlying the rules of legal ethics so that students internalise them and are thus empowered to challenge, reject and change rules when they do not serve their purpose or have become outdated.

Universities are uniquely placed to critically examine the legal system and its professional associations, structural determinants and institutional incentives with more of an objective standpoint than those who make a living from it do, and with more insight than many politicians.

In the South African context, the heavy criticism leveled at the legal profession by government provides an opportunity for law teachers to engage with students over broader issues like the socio-economic underpinnings of the legal profession, its identity and its responsibilities.

University law schools are also uniquely placed to examine how lawyers' differentiated role morality can be reconciled, if at all, with principles of ordinary morality.

Society as a whole needs to question seriously whether the work that lawyers do serves the interests of justice, and delivers access to justice to all.

This approach also has its own difficulties, however. Law is regarded as a 'social practice': it builds on the collective wisdom and best practice of generations of practitioners. The ethics teacher needs to strike a fine balance between promoting pride in, and respect for, the profession while at the same time critically engaging with it.

As Arthurs has expressed:
If legal ethics are taught rigorously and honourably, this must be done with the full understanding of the context, with an appreciation of how professional discipline is actually administered and, more generally, of the professional's role in society. However, to contextualize it is to subvert it…(Arthurs (1998) 'Why Canadian law schools do not teach legal ethics' in Economides (ed) Ethical challenges to legal education and conduct

Ethical literacy/skills

Law school graduates who enter legal practice … need the capacity to recognize the ethical issue their cases raise, even when those questions are obscured by other issues and not therefore particularly salient. They need wise judgement when values conflict, as well as the integrity to keep self interest from clouding their judgement. (Sullivan, Colby, Wegner, Bond and Shulman *Educating Lawyers: Preparation for the Profession of Law* 2007 at p146)

Students need to be prepared for ethical complexity well before they face the overwhelming experience of entering practice as a 'newbie' lawyer. It is widely recognized that ethical orientation is only partly internal disposition. Much more important are the structures, pressures and incentives embedded in the professional market, its institutions and practices. It is widely accepted that the pressures on lawyers to engage in questionable behaviour comes primarily from external sources. Like, for example, competition among firms for clients, and the need to maintain a 'winning' court record for promotional purposes. Overwhelming anecdotal evidence backs this up. By all accounts the dog-eat-dog culture prevails more so now than ever before. Even the most ethically-minded young lawyers find themselves challenged to "go with the flow". Lawyers entering the profession need to be aware of the pressures they will face, and they need to be equipped with strategies to resist such pressures as well as the motivation to change what should be changed. If we do not sensitise out students to alternatives to current practice, current practice will not change. We should strive to see our young lawyers lobbying at law society meetings, and participating in political processes in support of and to encourage the good and ethical behaviour of all members of the profession.

How do we achieve this?
To foster proper moral development, students need opportunities to practice complex moral decision-making, and to reflect on the consequences of their choices in a safe environment. This will of necessity be context-embedded, experiential learning, which will usually involve simulated or live client experiences, or even by creating opportunities to engage with popular media and story telling.

Although the task of educating lawyers for the ethical dimension of practice is a significantly difficult and complex task, there is no alternative. It must be done, and it must be done properly.

As stated by Derek Bok,
[T]he consequences of doing nothing are intolerable. A university that refuses to take ethical dilemmas seriously violates its basic obligations to society…. [A]ny… that fails to discuss such questions openly and in detail will allow the campus debate to degenerate into slogans and oversimplification unworthy of an institution dedicated to the rigorous exploration of ideas. (Derek Bok, Beyond the Ivory Tower (Cambridge), 1982 at p 126).

Matters of Interest to Magistrates

Launch of court-based mediation pilot project

Approximately seven years of hard work has culminated in the Rules Board for Courts of Law celebrating the launch of its Mediation Pilot Project, which will see the introduction of mandatory mediation in civil court matters. The chairperson of the Rules Board, Justice Bess Nkabinde, said this when she opened the evening's programme at the launch of the project in Magaliesburg, Gauteng in December. Other speakers at the event included Deputy Minister of the Department of Justice and Constitutional Development Andries Nel, who was the keynote speaker, and Daryl Burman, a representative of the attorneys' profession.

Chief Director and secretary to the Rules Board, Raj Daya, later explained that the move to court-based mediation meant that attempts to resolve a litigious case via mediation would no longer be voluntary, but would be a compulsory step in the litigation process. The Rules Board issued a draft set of rules for the envisaged court-based mediation late last year. The rules provide that when a civil matter

before court is opposed, it will be referred to mediation. Parties who refuse to participate in this mediation process face punitive costs orders.

Mr Daya said that court-based mediation would achieve the following benefits in access to and administration of justice in the civil justice system:

- Disputes between litigants would be more expeditiously and cost effectively disposed of.
- Court rolls would be less crowded as cases will be settled or taken out of the litigation process, even if temporarily.
- Relationships between litigants would be preserved rather than strained by the adversarial nature of litigation.
- The process would be more creative than adversarial proceedings and would provide resolution options beyond the scope and functions of judicial officers.

At the launch, Justice Nkabinde expanded on some of the benefits of court-based mediation. She said that a challenge was that the adversarial system was dominated by those whose services were not equally available to all segments of society. 'Despite our glorified Constitution, certain interest groups have easier access to use litigation to defend their rights and advance their interests, while others cannot. It is thus not surprising that the Ministry of Justice has identified a project regarding court-based mediation. This was met with scepticism and resistance from different groups. After extensive research and debate, the Rules Board has now formulated and approved mediation rules. Fundamentally these rules seek to advance access to justice and to reduce litigation costs and delays in the resolution of disputes between litigants. They seek to encourage peace between litigants without having to fight in court. As former Chief Justice Pius Langa once said: "Changing mindsets should not just happen in a court room, parliament or government. It is indispensible to our society because if there is no reconciliation amongst ourselves and those who surround us, we will simply have changed the material conditions and the legal culture of society remains fractured and divided by bitterness and hate".'

Justice Nkabinde concluded her address by thanking members of the legal profession for their contribution. She said the board would not have optimally achieved what it was mandated to do had it not been for their contribution and support.

Deputy Minister Nel used the opportunity of the launch to highlight some of the significant announcements and interventions that were made in 2011 concerning the administration of justice. He said that at the 2011 Access to Justice Conference the Minister of Justice reaffirmed the importance for alternative dispute resolution to be introduced into the civil justice system to enhance access to justice.

Mr Burman said that the attorneys' profession associated itself with the principles of the initiative of the Rules Board and offered support from three major levels, namely

- working with the Rules Board in shaping the draft rules to ensure success;
- making available trained mediators; and
- offering training and accreditation of mediators.

Mr Burman said that the draft rules represent a radical departure from the adversarial system in South Africa. There are many techniques for intervening in a conflict dispute, the most notable being mediation, he said, adding that countries such as Canada and Australia have provided for a prohibition on matters such as domestic matters not being heard by a trial court unless the parties had attended some sessions by court-appointed and court-paid skilled mediators.

'Mediation can take litigants from a lose-lose to a win-win situation. The people in the dispute voluntarily agree to participate, which makes them concentrate on their best interests rather than enforcing their rights. An independent and skilled third person intervenes in the dispute on a private and confidential basis. This can assist the parties so that they themselves can achieve the least expensive and creative result without either of them losing face,' Mr Burman said. He suggested that mediators should be paid by the state so as to not to cripple the poor with additional costs, and that the parties should also have the option of appointing their choice of mediator at their own cost.

Mr Daya told *De Rebus* that the pilot project would be rolled out in the next couple of months. 'The Mediation Pilot Project will introduce mandatory mediation into civil court proceedings, within a controlled environment. The pilot project will be conducted from selected High Courts, regional courts and magistrates' courts throughout the country and its implementation will be carefully monitored. The identified courts will be gazetted by the Minister. The project is expected to be rolled out from April 2012. The interpretation of statistics gained from the project will enable the Department of Justice to assess difficulties in and responses to the process by court users, and thereafter develop and perfect the process. The outcomes of the pilot project will enable the Department of Justice to extend court-based mediation to all courts thereafter,' said Mr Daya.

Mr Daya said that the draft rules were sent to stakeholders for comment and input and, once these were received, the draft rules were amended. The Rules Board then approved the amended draft rules and presented them to the Deputy Minister of Justice and Constitutional Development and the Minister approved them as working rules for the pilot project. The rules will be available in final operational form for the pilot project to commence, but will be amended based on the outcomes of the pilot project.

Mr Daya further said that the project is part of a broader review of the civil justice system that will extend to both the magistrates' courts and High Court rules. Review of the civil justice system was approved by cabinet on 5 May 2010 and includes, among other aspects, the introduction of alternative dispute resolution mechanisms, in particular mediation.

(The above article appeared in the February edition of *De Rebus.)*

A Last Thought

"It is a bad business to put too much trust in lawyers, judges and the law. Doing so mistakes the value of legal regulation, which is not to plan or initiate social change, or make the public policy choices essential to it. It is rather to resolve conflicts, and to protect against mistakes in the exercise of power by measuring decisions against a framework of public values. To trust legal regulation and legal rights too much overloads the legal system. It may strain, crack or even break under the resultant political and social burden."

"What you can do with rights". Edwin Cameron , Constitutional Court of South Africa *The Fourth Leslie Scarman Lecture, Middle Temple Hall, London Wednesday 25 January 2012*