

PUPILLAGE SELECTION POLICY

OBJECTIVES

1. The pupillage selection policy of the Cape Bar supports and gives practical effect to three key, interrelated objectives. These objectives are to:
 - (a) support the overall goal of the pupillage programme of producing skilled practitioners;
 - (b) help make the Cape Bar more representative; and
 - (c) have a fair selection process.

(a) Skilled practitioners

2. The pupillage selection policy aims to underpin the overall goal of the pupillage programme of empowering every pupil to pass the National Bar Examination Board (NBEB) examinations and equipping them with the competencies and skills to succeed in practice thereafter within the values and ethos of the Cape Bar. The provision of skilled practitioners is a fundamental component of the right of the public and other consumers of legal services to have access to justice.
3. Accordingly, the selection criteria and process seek to identify the best applicants. In the case of inexperienced applicants, the aim is to identify persons with a demonstrable potential to succeed.
4. The pupillage selection policy is intrinsically related to the Cape Bar's training programme.
5. Aside from mentoring during office hours, the Cape Bar has a comprehensive formal training programme. That formal programme currently comprises a number of tutorials and advocacy training sessions, which cover a wide range of practice. Every pupil performs and is reviewed and assessed at each advocacy training session. Pupils are also required to follow the workbook programme after hours.
6. Constraints on the training capacity of the Cape Bar are imposed by limited training resources, including the number of qualified and willing tutors and advocacy trainers, appropriate mentors, suitable training venues and administrative capacity.
7. The Cape Bar accepts only as many pupils as it can train effectively. The selection policy recognises that exceeding the Bar's training capacity would jeopardise the sustainability of what is currently a successful training programme. Therefore, every year, in consultation with the Training Committee, the Pupillage Committee determines a cap on the number of pupils that it will accept.

8. Limiting the number of pupils enables the Bar to maintain a comprehensive and supportive training programme. This is especially important for the Cape Bar's transformation objective as historically disadvantaged pupils tend to benefit most from quality training.
9. The Cape Bar will not accept an applicant who, even with support and training, is unlikely to pass the NBEB examinations or establish a successful practice, or is otherwise unsuitable to be a pupil member of the Cape Bar.

(b) A more representative Cape Bar

10. The pupillage selection policy seeks to help make the Cape Bar more representative of society, particularly in terms of race and gender. In selecting who should be accepted into the pupillage programme, preference is therefore given to black¹, women and disabled applicants ('HDI applicants').²
11. The pupillage programme actively strives to equip HDI pupils with the skills to not only pass the exams but also to succeed in practice. Active monitoring of pupils' performance, including regular quantitative assessment of advocacy training performance from early in the pupillage programme, is used to identify pupils who may need additional training support.
12. For transformation to be sustainable, historically disadvantaged juniors need to establish successful practices after pupillage. The selection policy therefore aims to identify all historically disadvantaged applicants who have the potential to succeed at the Bar.
13. Currently, the greatest impediment to increasing the proportion of black pupils at the Cape Bar is the relatively small number of black applicants for pupillage. More work must be done to recruit and attract a greater number of black potential advocates to apply for pupillage.
14. The pupillage selection policy and training programme complement a number of other transformation policies and initiatives of the Cape Bar. Those include transformation bursaries for black pupils and junior members and policies aimed at promoting equitable briefing and the use of black juniors as a second junior.

(c) Fair selection process

15. The pupillage selection process is fair. Each applicant is evaluated using a standardised scoring system. Some of the criteria, such as academic results and relevant previous experience are assessed entirely objectively. Qualitative criteria, such as aptitude to be an advocate and motivation to be an advocate are assessed on the basis of an applicant's performance at his or her interview and his or her writing ability, which is assessed in an entrance examination. Those criteria are assessed as objectively as possible and the scoring process contains mechanisms to reduce the possible effect of unconscious bias. The assessment

¹ 'Black' is used here to refer to African, Coloured and Indian individuals.

² Preference is given only to an applicant who is a South African citizen by (i) naturalisation before 27 April 1994; or (ii) birth or descent.

criteria are weighted to provide a balanced measure of the merit of each applicant and his or her potential to succeed.

THRESHOLD REQUIREMENTS

16. Irrespective of the number of available places and applications, the Cape Bar will turn down an applicant who is, for any reason, not a suitable candidate for pupillage. Particular regard will be had to the applicant's aptitude and the disclosures which each applicant is required to make in their application.
17. Absent exceptional circumstances, a person who has previously commenced but failed to successfully complete pupillage at any bar ('a repeat applicant') will not be considered for pupillage if –
 - 17.1. the reapplication is submitted after the Pupillage Committee has made the selection decision – even if the reason for the delay is not the fault of the repeat applicant, such as a delay by the NBEB in releasing any examination result; or
 - 17.2. the repeat applicant has, at any bar:
 - 17.2.1. previously commenced but failed to successfully complete pupillage two or more times;
 - 17.2.2. failed a subject in the NBEB examinations without an oral or supplementary examination; or
 - 17.2.3. in the assessment of the Pupillage Committee failed to apply themselves diligently during a previous pupillage.

SELECTION CRITERIA

18. In accordance with the guidance from the General Council of the Bar, the Cape Bar's selection criteria are:
 - (a) academic results;
 - (b) relevant previous experience;
 - (c) aptitude to be an advocate;
 - (d) motivation to be an advocate (which includes a proper understanding of what it is to be an advocate); and
 - (e) race, sex and disability status.

SELECTION PROCESS

19. Applicants who meet the threshold requirements will be evaluated in two phases.
20. In the first phase of the selection process, the merit of each applicant is assessed according to (a) academic results; (b) relevant previous experience; (c) aptitude

to be an advocate; and (d) motivation to be an advocate. Each applicant is assigned a merit score and all of the applicants are ranked based on the results of the first phase, without regard to race, sex and disability.

21. In the second phase of the selection process, HDI status is taken into account to adjust the order of applicants so as to prefer historically disadvantaged applicants. Positions are offered to the top applicants who fall within the pupillage programme's capacity limit.
22. Further details of the assessment methods for phases 1 and 2 are provided below.

PHASE 1: MERIT RANKING (EXCLUDING HDI STATUS)

(a) Academic results

23. The main component of the academic results criterion is the applicant's average LLB result.
24. Additional credit is given for academic achievements other than an LLB. These include LLM and other postgraduate legal qualifications, successful completion of the Attorney's Admission Examination, legal publications in peer-reviewed, accredited journals or books, and certain academic awards.
25. The scoring method for academic results is described in annexure 1 (p 8).

(b) Relevant previous experience

26. The score for relevant previous experience is a factor of the duration of the experience and the extent of its relevance to the practice of an advocate. Each activity is allocated points according to the extent of its relevance.
27. The score for relevant previous experience is capped in order not to over-emphasise this consideration.
28. The scoring method for relevant previous experience is described in annexure 2 (p 10).

(c) Aptitude to be an advocate

29. The aptitude of each applicant to be an advocate is assessed based on the extent to which he or she has the following qualities:

Written communication skills

- Able to effectively communicate in writing
- Understands fundamental legal concepts

Oral communication skills

- Fluent and articulate speaker
- Able to get to the point
- Able to convey an idea

Personal attributes

- Confident
- Independent thinker
- Not easily intimidated
- Mature

30. Written communication skills are assessed on the basis of an applicant's performance in the Cape Bar pupillage entrance examination. Oral communication skills and personal attributes are assessed in the interview (see annexure 3, p 11) and on the basis of their written application.

(d) Motivation to be an advocate

31. The interview is also used to assess the following attributes:

Understanding of what it is to be an advocate

- Knowledgeable about the work of an advocate
- Can explain why they want to be an advocate

Reasons for wanting to practice as an advocate

- Pupillage more than just 'option of last resort'
- Has opportunities other than the Bar (more opportunities = higher score)

Weighting

32. The weighting of scores for the selection criteria (a) to (d) is set out in the scoring matrix in annexure 4 (p 12).

PHASE 2: FINAL RANKING (INCLUDING HDI STATUS)

33. Once all the applicants have been ranked based on the results of the first phase, HDI status is then considered. In particular, consideration is given to historically disadvantaged applicants who fall below the capacity cut-off line. In deciding on the extent of preference, consideration is given to the demographic profiles of (a) all the applicants; (b) the applicants in qualifying positions based on merit; (c) members of the Cape Bar; and (d) the regional and national populations.
34. The Pupillage Committee engages in a balancing exercise in which HDI applicants are promoted up the ranking to qualifying positions. Based on their respective merit ranking from phase 1, the strongest non-qualifying HDI applicants are compared with the weakest qualifying non-HDI applicants. The Pupillage Committee would tend to give preference to an HDI applicant who has the potential to succeed over a non-HDI applicant who is good but not excellent. The Pupillage Committee would tend not give preference to an HDI applicant who is unlikely to succeed over a non-HDI applicant who is excellent or where the difference between the two applicants is disproportionate.
35. The balancing exercise has regard to a broader range of considerations than just the factors which make up the merit scores.

36. This approach allows some flexibility and the exercise of a value judgment, which is necessary in fairly balancing the sometimes competing considerations of the need for transformation and continued access to the profession for all people, regardless of race, sex or physical ability.
37. The phase 2 process happens in three steps.
 - 37.1. First, based on their respective merit ranking from phase 1, the strongest, non-qualifying, black, HDI applicants (male or female) are compared with the weakest, qualifying, white or non-HDI black applicants (male or female). Similar consideration is given to the identity and ranking of applicants on the reserve list of candidates, who fall just below the capacity cut-off line. A place may be offered to an applicant on the reserve list should a vacancy in the programme arise.
 - 37.2. Second, the Pupillage Committee considers the resultant proportion of women applicants in qualifying positions. Where this proportion is below 50%, the Pupillage Committee considers promoting non-qualifying white, HDI women in place of qualifying white men, and promoting non-qualifying black, HDI women in place of qualifying black men by conducting a similar balancing exercise described in the previous sub-paragraph.
 - 37.3. Third, the Pupillage Committee considers promoting any disabled candidates in non-qualifying positions.

REAPPLICATION

38. A person who is not disqualified in terms of paragraph 17 may apply to repeat pupillage.
39. A repeat applicant must submit a completed standard application form immediately after the results of the NBEB examination and any supplementary and oral examinations are available.
40. A repeat applicant does not have a right to repeat pupillage. There is no guarantee that a reapplication will succeed.
41. The assessment of the merits of a repeat application is not dependent on a merit score or merit ranking. Instead, the Pupillage Committee will have particular regard to the repeat applicant's performance during their previous period of pupillage.
42. Subject to paragraph 17, in considering a repeat application, the Pupillage Committee will consider the following considerations:
 - 42.1. the repeat applicant's NBEB examination results;

- 42.2. the Pupillage Committee's assessment of the likely reasons for the repeat applicant's failure;
 - 42.3. the Pupillage Committee's assessment of the conduct and performance of the repeat applicant and the experience and knowledge gained during the previous period of pupillage;
 - 42.4. the Pupillage Committee's assessment of the repeat applicant's likely potential to establish and sustain a successful practice;
 - 42.5. considering the likelihood of establishing and sustaining a successful practice, the repeat applicant's potential contribution to making the Cape Bar more representative in terms of race and gender;
 - 42.6. the training capacity of the Cape Bar in the year in which the applicant wishes to repeat pupillage;
 - 42.7. the level of competition for places in the pupillage programme for that year;
 - 42.8. if the reapplication is not for the year following the failed pupillage, the conduct and performance of the applicant and their experience and knowledge gained during the intervening period;
 - 42.9. the information provided by the applicant in the written application form;
 - 42.10. the results of an interview; and
 - 42.11. other relevant considerations.
43. The Pupillage Committee has the discretion to decide the weight that should be given to each of the above considerations.

FURTHER DEVELOPMENT OF THE PUPILLAGE SELECTION POLICY

44. The Pupillage Committee regularly reviews this policy to consider how it may more effectively meet the policy's objectives. This policy is accordingly subject to changes as may be approved by the Bar Council.

ANNEXURE 1. SCORING OF ACADEMIC RESULTS

45. Points are awarded separately for LLB results and other academic achievements.
46. With regard to LLB results, the following rules are applied:
 - 46.1. Where a student has degrees in addition to an LLB, only the marks from the law subjects in those other degrees are counted.
 - 46.2. Non-law subjects (e.g. German, Psychology, etc.) done during the LLB are excluded, although English and Afrikaans at first year level are counted.
 - 46.3. All LLB subjects are given equal weighting (as it is difficult to ascertain from an academic transcript which subjects are full credits and which are half credits).
 - 46.4. Marks for subjects which count as credits towards the LLB from another university are counted.
 - 46.5. Marks obtained in an LLM are excluded from the LLB result calculation. As appears below, the fact that an applicant has obtained an LLM is taken into account in a separate part of the evaluation process.
 - 46.6. Both the failure mark for a subject (if any) and the eventual pass mark for that subject, are counted (thus repeated failures are factored into the score of the LLB). It is for this reason that a full academic record is required.
 - 46.7. Where an applicant has received zero for a subject, for example, if the applicant did not attend or qualify to write an exam, that is not counted. Counting such score could distort the average of an applicant unfairly – for example if there was good reason that the applicant could not write. Instead the mark eventually obtained for that subject is counted.
 - 46.8. Different universities are treated equally.
47. After the academic results have been captured, a single committee member is responsible for checking that the data has been captured correctly and consistently. The reason that the same member performs this task in respect of all of the applications is to ensure the consistent application of the rules.
48. The average of the marks recorded for each applicant is then divided by 10 to arrive at a score out of 10.
49. With regard to other academic achievements, the following guidelines apply:
 - 49.1. A complete LLM is allocated a score of 0.5. An incomplete LLM is not counted.
 - 49.2. Successful completion of Attorneys Admission Examinations (or equivalent) is allocated a score of 0.33.
 - 49.3. A legal journal publication (or similar calibre of publication) is allocated a score of 0.25.
 - 49.4. A popular media publication (including De Rebus) is not counted.
 - 49.5. Inclusion on the Dean's merit list is not counted (since this would entail double counting LLB results).
 - 49.6. The achievement of academic awards (excluding for LLB subjects) may be allocated 0.25, depending on the nature of the award and its relevance to the practice of an advocate.

- 49.7. Non-LLB degree(s) (including any LLM) completed with distinction ('cum laude' or 'suma cum laude') are allocated 0.25.
 - 49.8. Postgraduate diplomas in law subjects, for example, a tax diploma is allocated 0.25.
 - 49.9. A completed Practical Legal Training course (such as that offered at UCT) is allocated 0.25.
50. The maximum score that an applicant may be allocated for other academic achievements is 1.

ANNEXURE 2. SCORING OF RELEVANT PREVIOUS EXPERIENCE

51. The number of points allocated for relevant previous experience is a product of the duration of experience and the degree of relevance of an activity to the practice of an advocate.
52. Relevance factor is assessed and allocated a score per year between 0 and 1, based on the following guidelines:

Band	Examples	Score per year
0 – no relevance	non-legal work; gap-year travelling overseas	0
1 – non-professional legal job	para-legal; court interpreter; legal secretary; job shadow	$\frac{1}{4}$
2 – trainee / assistant	candidate attorney; judge's clerk/registrar; legal research assistant; legal researcher; pupil	$\frac{1}{2}$
3 – non-litigation lawyer	non-litigation practising attorney (eg conveyancer); legal advisor to a corporation or government; legal academic	$\frac{3}{4}$
4 – litigation lawyer	litigation attorney; prosecutor (including state advocate and DDPP etc); magistrate	1

53. For example, two years of being a candidate attorney would count 1 point ($\frac{1}{2}$ point per year x 2 years), while two years of practice as a litigation attorney would count 2 points (1 point per year x 2 years).
54. If the nature of an activity is not clear from the application, this must be clarified at the interview.
55. A litigation attorney is one whose practice involves 50% or more litigious work.
56. The number of years (or part thereof) of experience is then determined. Experience of even a short duration is counted and expressed in units of years (eg 3 weeks = 0.058 years).
57. If the applicant performed the work part-time, that must be factored into this part of the equation. For example if an applicant was an assistant legal researcher who was employed for two and a half days a week for a year, then the total duration of experience would be half a year (0.5).
58. The number of years is then multiplied by the score in paragraph 52 above. The result of this equation is capped at 4. In other words, an applicant with 20 years of experience as a magistrate would not be allocated a score of 20 (20 x 1), but rather, the maximum possible score of 4.

ANNEXURE 3. PUPILLAGE APPLICATION INTERVIEW

59. The purposes of the interview are among other things:
- 59.1. for the interview panel to score the selection criteria which are based on the interview, namely the applicant's:
 - 59.1.1. oral communication skills;
 - 59.1.2. personal attributes;
 - 59.1.3. understanding of what it is to be an advocate; and
 - 59.1.4. reasons for wanting to practice as an advocate;
 - 59.2. for the interview panel to address any aspect of the written application which is unclear, including questions concerning previous relevant experience or academic results; and
 - 59.3. for the applicant to clarify anything about the selection process or pupillage.

Scoring method during interviews

60. Each interviewer is required during or immediately after each interview to score each applicant out of 10 for each of the sub-categories which must be assessed and to enter those scores on a copy of the applicant's interview scoring sheet.
61. Each member of the interview panel scores every applicant independently.
62. After each interview, the panellists compare their respective scores for each of the four sub-categories and, if the scores of different interviewers for any sub-category diverge by more than 2 points, the panellists confer and discuss the reasons for the difference. After the discussion, interviewers may choose to modify their score, but need not do so if they are satisfied with their original score.

Post-interview analysis

63. The scores for academic results and relevant previous experience may be adjusted if aspects relating to them were clarified during interviews. The scores are then weighted according to the scoring matrix above. The panellists' scores in respect of each of the four sub-categories assessed at the interviews are averaged and weighted according to the scoring matrix (annexure 4, p 12).
64. The applicants are ranked on the basis of the resultant merit score.
65. The members of the interview panel will generally then meet in order to discuss and make recommendations to the full pupillage committee as to the HDI preference to be given to non-qualifying candidates.

ANNEXURE 4. SCORING MATRIX

CRITERIA (EXCLUDING HDI STATUS)	SUB TOTAL	WEIGHT	POINTS
Academic			
LLB (or equivalent) results % ÷ 10		x 5	
Other academic achievements (maximum 1 additional point)		x 3	
Relevant previous experience	(sum)		
<i>Previous relevant work</i> <i>duration (yrs)</i> <i>x score/yr</i> <i>(0 - 1)</i> = score	(cap of 4)	x 2	
Aptitude to be an advocate	score (/10)	(avg)	
Written communication skills <ul style="list-style-type: none"> • Able to effectively communicate in writing • Understands fundamental legal concepts 			
Oral communication skills <ul style="list-style-type: none"> • Fluent and articulate speaker • Able to get to the point • Able to convey an idea 		x 2	
Personal attributes <ul style="list-style-type: none"> • Confident • Independent thinker • Not easily intimidated • Mature 			
Motivation to be an advocate	score (/10)	(avg)	
Understanding of what it is to be an advocate <ul style="list-style-type: none"> • Knowledgeable about the work of an advocate • Can explain why they want to be an advocate 			
Reasons for wanting to practice as an advocate <ul style="list-style-type: none"> • Pupillage more than just 'option of last resort' • Has opportunities other than the Bar (more opportunities = higher score) 		x 1	
Total:			