



BAR/BALIE

BRIEF/NUUS

THE PERIODIC NEWSLETTER OF THE CAPE BAR

AGONY ADVOCATE

**We have appointed an Agony Advocate to address the specific challenges faced by women - and occasionally men, lest we be accused of sexism - at the Bar. Please send your letters to the editor. Only true stories, such as the ones below, will receive a response from our Agony Advocate.*

Dear Agony Advocate,

I keep being mistaken for the support staff on my floor, and clients and attorneys keep asking me to make tea – is there anything I can do?

Best,

Desperate-to-fit-in Dorothy

Dear Desperate-to-fit-in Dorothy

Don't despair dear/darling/lady/girly/skattie, this is a common thing for women in the workplace – but there are solutions.

First, have you considered your wardrobe? Dressing appropriately to your station is critical. Don't be afraid of high heels – they show you mean business. Nothing screams successful lady-advocate like a crisp suit. Wear proper shirts though (or good quality, flattering silk blouses), else you may be mistaken for a divorce client or worse, a candidate attorney.

Second, and most important, whatever you do, do not be friendly to people you don't know. For that matter, don't be friendly. Kindness can be mistaken for weakness. (Just ask some of the more senior female members of the Bar who are tough as nails and didn't need any special help in their day *thank you very much*.)

Finally, never drink tea. If you are seen with a cup of tea or any tea paraphernalia near you, you only have yourself to blame.

Hugs and kisses,

Agony Advocate

Dear Agony Advocate,

I left a senior counsel's chambers in Huguenot one evening after 5pm. He had kept an attorney and client waiting in reception for their scheduled appointment, as our consultation had overrun. When I got to the lifts to leave and once he had invited them into his chambers, I heard one of the charming fellows say to him – 'we saw what just what walked out of your office! Hah, and they told us you were CONSULTING late (snigger snigger)'. I wasn't sure whether to jump down the lift shaft, hide in the pot plant or join in the laughter just to ensure they wouldn't feel any discomfort, should they (horror of horrors) have discovered I was still within earshot. Any advice if it happens again?

Best,

Too-sexy-Suzy*

Dear Too-Sexy-Suzy

Well firstly, what a compliment! I hope you took it as it was meant? No need to be hyper-sensitive about these things. Did they call you a peach? I was once called a peach, and everyone loves peaches. But never mind that – back to your little issue. I think I know the silk you're talking about – that must have been a commercial brief. I do hope you know how lucky you are to be getting commercial work. Look at you, shattering glass ceilings. You have now joined the ranks of the few truly exceptional and very many average men who do almost exclusively commercial work and who got there ON MERIT ALONE.

What is it with you white women anyway? Be grateful - a bit of objectification is a small price to pay for commercial briefs. Do you know how hard it was for [insert name of senior female advocate / ex-advocate-now-Judge] in their day?

Although, don't go out for too many lunches with said senior counsel – you know how idle minds like to gossip, and really you'd just be bringing it upon yourself in that case.

Also, stop complaining and spare a thought for your LGBTQ colleagues – they suffer terribly at the hands of the attorneys at the top law firms that regularly brief them, and you don't see them complaining much.

So in short, I think the best thing you can do is adjust your attitude Miss. Show some gratitude, and be sure not to complain - no one likes a nag, even if she does look like a peach.

Hugs and kisses,

Agony Advocate

Dear Agony Advocate,

In light of the #metoomovement, can I even talk to women any more?

Best,

Clueless

Dear Clueless

If you have to ask, then no. You can't.

Agony Advocate

A BEGINNER'S GUIDE TO THE LEGAL PRACTICE ACT

Since 1 November 2018, the largest part of the Legal Practice Act, 28 of 2014, ("the Act") has been in operation. A Legal Practice Council ("the Council") has been elected and Regional Councils will be elected in 2019. All legal practitioners must be enrolled with the Council (s 34). Whilst they are collectively referred to as legal practitioners, the Act clearly distinguishes between attorneys and advocates. Their vocational training differs and, to a large extent, advocates will continue to practise as before. The majority of members of the Council (16 of the total of 23) are legal practitioners. Ten of them are attorneys and six advocates – s 7. The Regional Council in the Western Cape will consist of six attorneys and four advocates – Regulation 4. Section 23(7) contemplates a sub-committee consisting of only advocates to deal with matters relating exclusively to the advocates' profession at Regional Council level.

Voluntary associations such as the GCB, Constituent Bars and the Law Society of South Africa continue to exist. Only the statutory Law Societies were dissolved and their assets were transferred to the Council – s 97(2) (a). Whilst regulatory powers are vested in the Council, voluntary associations will continue to serve "trade union" functions relating to aspects such as accommodation, library facilities, vocational training and liaising with the Council and Regional Councils. The constitutions and rules of voluntary associations must, of course, be aligned with the provisions of the Act, read with the Regulations, Rules and Code of Conduct in terms of the Act. On 14 November 2018, the Council suspended the Code of Conduct and announced that it is embarking on a process of developing a new Code. A draft will be published for comments.

Admission as an advocate

Any person who, before 1 November 2018, was not entitled to be admitted as an advocate, must first complete the vocational training required by the Act in order to be admitted as an advocate – s 26 and 115.

Vocational training (s 27-28; Regulation 7)

Pupillage must be done with an advocate of not less than three years' experience who is enrolled and practising as such or in full-time employ of Legal Aid South Africa, a Legal Aid institution approved by the Council, or any other institution approved by the Council – Regulation 7(4). The uninterrupted duration of pupillage will be 12 months. It will include a programme of structured course work,

comprising compulsory modules, of not less than 400 hours over a period of no longer than 6 months – Regulation 7(1). The compulsory course work will include advocacy skills (including trial and motion court proceedings and attendance of court proceedings), alternative dispute resolution, civil procedure, criminal procedure, professional conduct and legal ethics of advocates, legal writing and drafting, constitutional law, customary law, information and communication technology for practice and associated aspects of cyber law – Regulation 7(9). For pupils intending to be admitted as advocates with a Fidelity Fund certificate, an assessment will also be conducted in respect of trust practice and accounting – Rule 21.5. The Council shall appoint persons to determine the structure and process of assessment and to arrange, control and conduct assessments – s 28; s 95(1)(r); Rule 25. Pupils will be entitled to remuneration determined by the Council – s 27(2); Rule 22.4.

Chambers

Paragraphs 17.7 and 17.8 of the suspended Code of Conduct provided that counsel shall ordinarily consult with instructing attorneys, clients and witnesses at the chambers of counsel and to that end shall be obliged to keep chambers at a place suitable for the practice of an advocate. It further provided that, in circumstances which reasonably indicate that consultations cannot conveniently be held at the chambers of counsel, counsel may exercise a discretion to consult at some other place appropriate to the circumstances, which places include the home of counsel or the offices of the instructing attorney or the offices of the client. This leaves the impression that the status quo is to be retained. It remains to be seen how the new Code of Conduct will deal with the issue of chambers.

Referral

An advocate may only render services upon receipt of a request directly from a member of the public if the advocate is in possession of a Fidelity Fund certificate and has notified the Council thereof. Otherwise, an advocate may only render services upon receipt of a brief from an attorney or a Justice Centre (Legal Aid South Africa) – s 34.

Fees

The South African Law Reform Commission must, within two years after 31 October 2018, investigate and report back to the Minister with recommendations on fees

charged by legal practitioners – s 35(4). The Minister, by notice in the Gazette, may determine maximum tariffs payable to legal practitioners who are instructed by any State Department or Provincial or Local Government – s 35(6).

Ethics

The Code of Conduct will serve as the prevailing standard of conduct which legal practitioners must adhere to – s 36. The suspended Code of Conduct incorporated a substantial part of existing rules of ethics applicable to advocates, such as rules relating to the independence of counsel, the cab-rank rule, pro bono services, advertising, acceptance of gifts, submitting invoices and recovery of fees. It remains to be seen to what extent the new Code of Conduct will deal with those aspects. In the meantime, existing rules of ethics remain in place.

Community Service

The Minister must, after consultation with the Council, prescribe the requirement for community service which may include, but is not limited to, service to the State approved by the Minister, service at the South African Human Rights Commission, service, without any remuneration, as a judicial officer (including as a commissioner in the Small Claims Courts) and the provision of legal education and training on behalf of the Council – s 29.

Discipline

The Council must establish disciplinary bodies and must make rules to determine the procedure to be followed by those bodies – s 37-44.

Ombud

A Legal Services Ombud will protect and promote the public interest in relation to the rendering of legal services – Chapter 5 (which is not in operation yet).

Silk

The only reference in the Act to the status of senior counsel is in s 114(4) which provides that every person who on 1 November 2018 has the status of senior counsel retains that status. The suspended Code of Conduct provided that applications for silk shall be dealt with in accordance with a procedure to be prescribed by the Council. It remains to be seen to what extent, if any, a new Code of Conduct will deal with applications for silk. □

FITNESS BITS



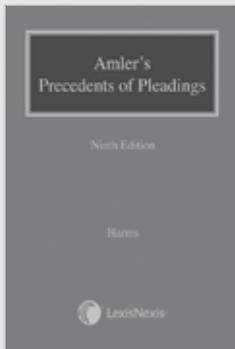
Rank in this category		
144 out of 145	All of the members who have completed the Argus Cycle Tour	Yes, it's not that special.
80 out of 145	Janisch SC	Completed the Berlin Marathon in 3:40
75 out of 145	De Villiers, C, Baartman, and Quixley	Completed many marathons, triathlons and trail runs
70 out of 145	Janisch SC and Cooper	Completed the Comrades marathon
69 out of 145	Randall and Coughlan	Completed the Iron Man
65 out of 145	Dickerson SC	Completed many, many crossings from Robben Island to Blaauwberg, and almost the Channel, twice
46 out of 145	Watson and Cawood	Will ride from Cape Town to Komani, Eastern Cape, to raise money for orphans from 5 April
45 out of 145	Sholto-Douglas SC and Rose-Innes SC S W Burger and his brother, J Burger R van Riet and his partner	Completed the Cape Epic
1 out of 145	Vasti Manser (née Geldenhuys)	Rowed across the Pacific Ocean. Yes, really.

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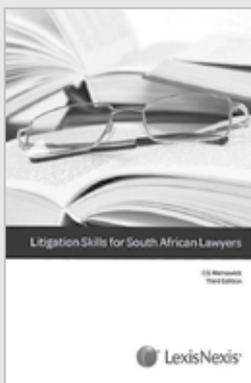
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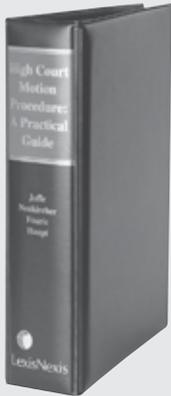
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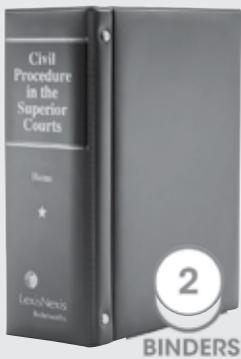
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TRIBUTE TO HENRI VILJOEN

Henri Viljoen SC sadly passed away on 23 November 2018, six days before his 86th birthday. Henri practised at the Cape Bar from January 1982 and will be sorely missed.

Henri initially ran a men's outfitter in Bloemfontein, started by his father. The business was conducted by a company, Henri Viljoen (Pty) Ltd the applicant in the well known matter of *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) 151 (OPD). He also did a stint as a reporter for the Bloemfontein newspaper, *The Friend*.

His good friend and later the Deputy Chief Justice of South Africa, Judge Hennie van Heerden convinced him that the law was a more rewarding career than selling suits to businessmen. Henri started studying part time attending evening classes at the University of the Free State. He qualified and was admitted to the Bar on 31 July 1958. He started practising at the Free State Bar and it was soon obvious that the legal fraternity gained an excellent prospect in the ex-salesman. Over the years he built up a successful practise and he took silk on 22 July 1976.

At the beginning of 1982, Henri moved to Cape Town and joined the Cape Bar where he soon established himself as a respected silk. He acted in the courts in South Africa and the neighbouring countries on a regular basis.

Henri took an active interest in all matters that concerned the Bar and served as vice-chair and chair of the General Council of the Bar (Chair from 1985 to 1988).

Through the years he appeared in many high profile and complicated matters such as the *Rail Commuter Group and Others v Transnet t/a MetroRail and Others* 2003 (5) SA 518 (C) and in the so-called "Witdoeke" case as lead counsel for the Plaintiffs against the Minister for Law and Order.

Henri was known as a tough but fair opponent. He was scrupulously honest and an extremely loyal friend. His love for life was an inspiration to all who knew him. He was veteran of the Argus cycle race and did his last Argus when he was already in his eighties. His exploits on his motorbike are well known, including leaving the younger riders in his wake on a breakfast run to the Overberg, as was his love for French Champagne.

As one judge remarked on Henri's passing: "They do not make them like that anymore".

Amongst the things that Henri will be remembered for include the following:

- His classic Jaguars - an XK 150 Coupe and an immaculate E-Type - which he always drove with the roof down, wearing brown leather gloves;
- His jump from the cliffs at Suicide Gorge, where he fractured a vertebra (Russell MacWilliam was with him).
- Matters he did in Lesotho, including a long running court martial which had its origin in the Lesotho uprising of some members of the defence force (which led to South Africa's intervention);
- Being a raconteur of note - relating stories in his booming voice; and
- Always being immaculately dressed, as an ex-outfitter should.

Henri is survived by his wife, Maureen, and their three children.

Francois van Zyl SC

Tribute given by Hanri Loots at the memorial service of Pete Mihalik on 12 November 2018

I met Pete Mihalik on 8 June 2000 in what is now my chambers. I say what is now my chambers because, for those of us who have been around for a few years, it was then the pub of the Five Flies Restaurant, the Cape Bar's meeting place.

It was late afternoon on the day I was told by the ever severe Heima Porter, the Bar Council's then administrator, that I had passed the Bar exam. Such news was cause for celebration. So those of us who had passed, promptly made our way to the Flies to spend what little money we had.

As I walked up to bar Pete introduced himself and, having established my status (and no doubt pecuniary inability), ordered me a double Jack Daniels, for which he paid.

He then asked me in which area of law I specialised. Since I wanted to specialise in paying briefs, I told him that was I not afraid of anything, and will gladly wash his car if he paid me my hourly rate.

Approximately six weeks later, at about 7 o'clock on a Saturday morning, I got my chance. My cell phone rang. It was Pete, asking me what I knew of insolvency practice. I must have made some appropriate noises because he asked me to come into chambers to assist him with a matter where his, soon to be our, client had apparently managed to commit 88 counts of fraud and theft from the trust account of the appointed liquidator of her business, which business he had allowed her to continue conducting. Pete was more successful on the criminal side than we were on the insolvency front, as the case of *Muller Terblanche v Offshore Design Company* 2001 (1) SA 824 (C) will show. But come the end of the case, Pete asked me for my account, which I produced, and promptly told me that I was selling myself too cheaply. I am sure that the attorney, George de Beer, to whom Pete had introduced me, and with whom I still work 18 years later, thought otherwise. But without batting an eyelid George paid my account and I was on my way in practice. Also immediately being able to repay the pocket money my wife had given me during pupillage.

From what I have said you will notice that my story is unsurprisingly similar to those of many of us here today.

Over the years many counsel, like me, were the recipients of Pete's generosity. Be it free advice, time, being pulled into matters, or having work referred to you. Many of us were reminded of this, when we heard of his death. And I was told many stories like mine. The last was this morning when a colleague of ours related to me how Pete had involved him in a few run of the mill matters to keep him busy during a quiet patch. And then, that Pete had shared his fee with him on those matters. When the quiet patch was over, not expecting anything in return, Pete was only happy that he could help.

I was also reminded of Pete's dedication to his work which, let's be honest, is considered by many to be the coal mining of legal

work. Hard, unrelenting, dirty, and thankless. Never complaining Pete was however always there for his clients, be it for a late night bail application, after hours consultations, or in any court. From the highest to the most humble, and this is a reference to both the courts in which he appeared, and his clients. Without fear or favour. Everybody was entitled to the best defence, and the same dedication.

Maybe one could ascribe his dedication to his craft to his checkered childhood. From Pretoria, where he was born on 3 June 1968, to Uruguay (from age 9 to 12). Yes, he even spoke Spanish. And boarding school in Bloemfontein (where he matriculated with honours). Maybe one could ascribe the dedication to him having had to fend for himself at university, paying for his studies by bartending and working as a bouncer. Maybe it was the time he spent sitting outside the chief magistrate's office in Cape Town, until after three weeks the magistrate offered him a prosecuting job in Moorreesburg. I may just mention that every time the magistrate told Pete that there were no jobs Pete replied that, having no job, he had nothing better to do than to sit outside the magistrate's office. Maybe it was his time as a prosecutor in Moorreesburg and then Wynberg, or his time at the Cape Bar from 1996 (where his first big challenge was the bail application of the late Gavin Carolus), or the many clients he had defended, and cases he handled over the years, those which made the headlines (as his own death did) and those which went past unnoticed except by those involved.

Or maybe it was just who he was, someone, drawing from life and its challenges (and there were more than a few) who passionately believed in what he did, no matter what anyone else thought of it, or him, professionally or personally.

On a personal front, Pete was a dedicated father to Cassidy and Daniel who both survive him and their mother, Karen, whom they had lost in 2015. As a testament to the person he was, and to a side of him which not all of us necessarily saw, his friend Jonathan Walters, whom he met when he was working as an investigator for the opposite side in a case in which Pete was involved, has (together with his extended family) without question taken on the task of caring for, raising, and guiding both Cassidy and Daniel in their parents' stead. Something for which I thank them.

Thus, as Pete's life gave cause for reflection, so did his death.

It is also not only about us as individuals re-evaluating our lives going forward, but about us as legal practitioners.

Once you look past the sensation, the speculation, and the amateur sleuthing we again have to ask ourselves: Are we, no matter what role we play in the judicial system, prepared to act without fear or favour, even if it is uncomfortable, unpleasant, or downright dangerous? Or put slightly differently - is there a point where I can stand by, no matter what? Or will I, as the oath I took so many years ago require me to do, act truly and honestly according to the best of my knowledge and ability, while being faithful to the Republic of South Africa?

I am truly sorry that this question, however one phrases it has again been brought into stark relief by the death of one us, but I trust that we have all been able to take something from the life and death of Pete Mihalik, and that somehow we are all richer for having known him.

Thank You.

NEW MEMBERS

SURNAME	NAME	
Bezuidenhout	Lana	
Booyesen	Lorraine	
Coleridge	Clint	
De Wet	Megan	
De Wet	Rudi	
Gabriel	Paula	
Gagiano	Gert	
Gallant	Nabeelah	
Graham	Renee	

NEW MEMBERS

SURNAME	NAME	
Janssen	Janine	
Kruyer	Catherine	
Moodley	Jo-Ann	
Naidoo	Jared	
Naidoo	Shaina	
Ngqata	Khanyisa	
Nogantshi	Xolani	
Omar	Fazlin	
Pietersen	Dirk	

SURNAME	NAME	
Potgieter	Guan	
Rudolph	Darren	
Slingers	Gabi	
Titus	Madoda	
Tsele	Michael	
Van Aswegen	Andries	
Van Dyk	Lizani	
Van Zyl	Lourens	