news you're not supposed to know

# noseweek

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107 SEPTEMBER 2008

## Saints or sinners?

### Did Trevor bless Investec and Fedbond's looting of pension funds?

The Douw Steyn soapie: Part II

Nigerians down our manholes

Kick up the arse for Hlophe

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# noseweek

SEPTEMBER2008 ISSUE107


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# Letters

**Go get that Tiger!**
There is much I could tell you about the loathsome Mr Dennis ("Put Tiger bosses in the tronk", *nose*106), most of it unflattering.

I have heard him say (on more than one occasion): "I deal with management positions; it's just unfortunate that people fill them."

He loved to glare at one or other senior manager and scornfully ask: "Must I come there and show you how to do your job?".

On each occasion he addressed that question to me, I was tempted to take him up on his offer: he would have encountered the same untenable situation I was in at the time, thanks to his and his team's ill-considered actions.

I wish you well in your pursuit of this man; he deserves to be publicly disembowelled.

**Bitten**
Bedfordview

■ Judging by his remuneration and other monetary benefits (I can't even add them up they're so huge!) it is no wonder that Nick Dennis, CEO of Tiger Brands, was all powerful and "ruthlessly autocratic" (*nose*106). That's when most of their customers could hardly afford a loaf. I'm disgusted.

**Pam Herr**
Fish Hoek

**I wish you well in your pursuit of Tiger CEO Nick Dennis – he deserves to be publicly disembowelled**

**Rootman – the facts**
Where did you get the notion that Frans Rootman (*nose*106) had been either a Parabat or in the Special Forces?

As far as I know, Frans Rootman was attached to Military Intelligence and was involved in diamond sorting for Unita.

Before that, he was with the Panzers, which could mean Special Services Battalion (SSB), but not Special Forces.

**Mike McWilliams**
Johannesburg

*From Frans Rootman himself. – Ed.*

## Gus

Ecumenism lives

*"I lost five kilos during Lent, two at Yom Kippur, and seven during Ramadaan"*

**Nseleni toxic shock**
Thank you for your article on the toxic production plant planned for Nseleni (*nose*105). I really hope it will persuade the authorities to think again.

**Mark Doherty**
Nseleni Tree Nursery, KZN

**Horns and dilemmas**
As a long-time reader and subscriber to *noseweek*, I have followed the Investec saga with interest. I am naturally horrified at still more plundering of pension funds.

Your call to boycott Investec leaves me with a moral dilemma. I am, and have been for many years, a client of Investec Private Bank. Their service and professionalism surpasses any of the other banks I have dealt with, including Standard Bank, Nedbank, First National, RMB Private Bank and Ansbacher (I know, sorry!) And all of this for a very reasonable monthly fee – with absolutely no hidden charges.

In the past week alone, this contrast has been sharply illustrated in my dealings with Investec and Standard Bank: I managed to seriously mess up my current account with Investec. One phone call, and ten minutes later – problem solved. Any dealings I need to have with Investec can be done telephonically, or else my banker pops in to visit me.

On the other hand, I had occasion to deal with Standard Bank recently. My mother's credit card statement arrived in the post a week after the due date. As a result, not only did she get charged interest at an extortionate rate (which we all know is the price of not paying your credit card bill on time), but Standard Bank has also implemented a marvellous little sleight of hand called a "late fee", of R110. Forgive my ignorance, but I always assumed the interest on the entire outstanding amount (in this case R123) *was* the penalty for late payment.

As mentioned before, the only retail bank I have not done business with is Absa, but I don't for a moment believe they are any different to the rest of the money-grubbing banks out there.

So you will see the conundrum I am faced with. If I take the moral high ground and close my Investec accounts, what are my options? Get screwed without getting any service (my experience with all the other banks I have dealt with)? Put my money under my mattress? The choices in the banking sector seem to range from slim to nothing!

**Estelle**
By email

*Isn't that a bit like hanging in with Mussolini because he made the trains run on time? As we've said before, as far as general banking is concerned the choice is between bad and worse. But to be effective, one must choose a target and an issue and then make a stand. Maybe Investec are particularly offensive because they're so devilishly clever at it. Secretly pocketing billions belonging to working class pensioners is the issue, not whether a bank failed to answer your phone call promptly and sneaked an extra R100 penalty on your overdue credit card account. Methinks. – Ed.*

**Here's to Tim 'n' Meg**
Tim James's piece on Jerepigo (*nose*105) was excellent. I am now a bit better informed. Also great was the Meg Jordi sketch that gave it the finishing touch.

**Jem Bardsley**
Krugersdorp

**Misunderstood Derek Wille**
Your negative reporting on attorney Derek Wille (*nose*105) refers.

I own the Lamberts Bay Hotel, which was threatened with closure by unlawful building by the Dept of Public

Works next to the hotel. Thanks to the professional support and advice of Mr Wille we succeeded in stopping the Department from carrying out its plans and saved my business.

For me he did a great job.

**Mariette Breytenbach**
Lamberts Bay

*How nice! – Ed.*

### Distasteful Strachan

I read with acute distaste Mr Strachan's piece of juvenile condescension (*nose*105. If he wishes to justify his attempts at multiple murder on the basis of a political ideology let him do so – but without his childish "rockspider" attitude, one I thought dead 30 years ago even in Durban schools.

To place this in a current context: if he did this here and now in the UK he would also be arrested at gunpoint, held for up to 28 days without charge and would face 15 to 20 years in jail; while his mooning friends would be facing up to seven years for aiding or supporting terrorism.

His total lack of insight into his own actions however is unwittingly revealed by his naming of the one policeman Van der Gruweldaad. An interesting role reversal, or transfer.

**D N Wade**
Reading, UK

*Ever heard of fantasy, satire, humour? A short story? Your crudely literal reading has provided a sharp reminder of why we generally steer away from satire: it's an aspect of English culture that is completely lost on most South Africans. As for Strachan's alleged "attempts at multiple murder": while his skills at manufacturing explosives were legendary – and they did land him in jail – he has, to our certain knowledge, never in his life attempted a single murder. Which should tell you something about Harold. – Ed.*

### Free Lunch Mike

Check what Durban's beloved Municipal Manager, Metro Mike, is up to these days: He's the food critic for the *Metro Magazine*! What with all the free lunches and helping out in his brother's construction business, there isn't enough time left for such mundane matters as ensuring that potholes in the city's roads are attended to.

There's a new test here for driving under the influence: Those that drive in a straight line are assumed to be drunk. Sober drivers swerve all over the show, avoiding the potholes!

**Willie Schultz**
Durban

## Honestly, Abe!

### Abe Swersky 1927–2008

**MANY READERS** have called *noseweek* demanding an obituary for Abe Swersky, who died in August. We have decided to honour history by doing so on these letters pages where our most memorable encounter with him took place, in September 2003 (*nose*49).

Abe wasn't the legal hero he was too often cracked up to be. He was a "good", even famous, divorce lawyer, if what you were looking for was in fact a shyster lawyer. But, let's face it, he was possibly the last of those larger-than-life characters that walked the streets, race tracks and golf courses of Cape Town in a now bygone era. He could be mean and devious as hell – and as unexpectedly generous.

He was a divorce lawyer who, wisely, was never himself divorced. Or maybe he was just lucky on that score, because in every other way he was a gambler. A cowboy of the kind, he once reminded us, who don't cry when they lose a bet or fall off a wild mount.

And now we are bracing ourselves for the reading of his will. We can already hear the words being worthily read in the oak-panelled boardroom: "To Mr Nose, who was so certain he would not be remembered in my will: Fuck off!"

Ah yes, we will miss him.

*– The Editor*

## Join the banned

**IN DECEMBER 1997**, on application by casino magnate Sol Kerzner, Judge Flemming of the Johannesburg High Court prohibited publication of the book *Kerzner Unauthorised*. The author, former *Finance Week* editor Allan Greenblo, and publisher Jonathan Ball, were persuaded by their legal advisors to abandon an appeal against the banning order, and every copy of the book was pulped. Perhaps the single most significant act of censorship in the post-apartheid era. All that remains of Greenblo's book is to be found in the archived pages of *nose*21.

You are invited to go to the *noseweek* website, to judge whether or not Greenblo's book contained a (critical) view of the relationship between business and politics in the apartheid era that you, by democratic right, should be able to read.

Ten years later a new book which takes a critical view of big business and politics in the present era, also by a leading financial journalist, will run the legal gauntlet.

Licensed financial service provider and billion rand participation-bond manager Sharemax (*noses*98&99) has brought an urgent application to the Johannesburg High Court to order ex-*Fin-Week* writer Deon Basson's book, *Public Interest Warriors* – partially published on the internet – removed from his website and banned from further publication.

If you're interested in what's happened in the financial services industry since Masterbond, hurry while stocks last! Go to itinews.co.za/newsletters/arc_newsletters.aspx, read *Take the money and run* and get wise.

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# A kick in the arse for Hlophe

**COUNSEL FOR CAPE JUDGE PRESIDENT** John Hlophe argued last month in the Johannesburg High Court that the judges of the Constitutional Court had acted unlawfully when they released a media statement charging him with having attempted to influence judges of that court to find in ANC president Jacob Zuma's favour. Advocate Dumisa Ntsebeza SC said the Concourt judges should have offered Hlophe the opportunity to respond to the allegations before going public.

"As a result of these untested claims [being published] the applicant has suffered unremitting public ridicule, and public calls from political parties and professional legal organisations, that he vacate his judicial office," said Ntsebeza.

Wrong. Judge Hlophe has been the subject of public ridicule for the past three years, and, for the past two, faced demands that he leave the bench. His injudicious behaviour has featured in no less than nine previous issues of *noseweek* alone.

A satirical tale about Hlophe doing the rounds on the internet provides a pointer to what's at stake for us all:

The Cape Judge President went duck hunting – out of season – in rural Limpopo, so the tale goes. He shot one, but it fell into a farmer's field on the other side of a fence.

As the judge climbed over the fence, an elderly Afrikaner farmer drove up on his tractor and asked him what he was doing...

The judge responded: "I shot a duck and it fell in this field, and now I'm going to retrieve it.

The farmer replied: "No way! This is my property, and it's not hunting season."

Said the indignant judge: "I am one of the most important judges in South Africa. If you don't let me get that duck, I'll sue you and take everything you own."

The old farmer smiled. "In Limpopo Province we settle small disagreements like this by the kick method."

"And what," asked the judge. "is that?"

The farmer replied: "Well, because the dispute occurs on my land, I get to kick your backside first. Then you kick mine and so on, back and forth until someone gives up."

The Judge thought about it and decided that he could easily take on the old codger. He also rather liked the idea of kicking a boer's arse, so he agreed to abide by the local custom.

The old farmer slowly climbed down from the tractor, walked up to the judge and planted a hefty kick with his heavy work boot to the judge's rear end, sending him face-first into a fresh cow pat.

Summoning every bit of his will and remaining strength the judge very slowly managed to get to his feet. "Okay, you old poep," he growled, "now it's my turn!"

The farmer smiled. "*Nee*, I give up. You can have the duck."

Now the fear is that the Judicial Services Commission will decide that, since we have all had the satisfaction of seeing Judge Hlophe publicly humiliated as a conniving, scheming liar, on the take and extremely ambitious to boot, it will avoid popular backlash by once again letting him climb through the fence and keep the forbidden duck.

The racism implicit in that proposition is preposterous. Are we required to accept that black judges, and other public office bearers, are lesser mortals, with low moral and ethical standards? People who will steal whenever the opportunity presents itself? And that that's how it's going to be?

The JSC have so far appeared determined to reinforce that old white racist stereotype. Judge Hlophe has himself helped it along with his stupid but peculiarly arrogant denials.

Maybe the only solution is to charge him with defeating the ends of justice – and if found guilty, send him to jail. That would relieve the bench of his tainted presence – and let the thieves in Parliament, who would otherwise have to impeach him, off the hook.

**NEXT MONTH MAX DU PREEZ**, who acquired any number of stripes, medals and battle scars as editor of *Vryeweekblad,* and then as head of SATV's *Special Assignment*, takes over for a three-month stint as editor of *noseweek*. He hasn't even arrived yet and he's already in trouble for suggesting that maybe there ought to be a general amnesty for all the ANC bosses – Jacob Zuma included – who confess their role in arms deal-related shenanigans. I don't happen to agree, but maybe there is more to the argument than immediately meets the eye. In the light of the latest developments, it does look increasingly like the Zuma prosecution has served as a red herring to distract the media and the public from the bigger unhappy picture.

There's undoubtedly dirt on him – and politicians must expect their opponents to use any dirt that comes to hand against them. It's a phenomenon that serves the cause of democracy: when thieves fall out the truth will out.

But there could be potential for even greater benefit, should the NPA be inclined to offer Mbeki, Zuma and the party treasury indemnity from prosecution in return for their evidence required to prosecute the corrupting European arms dealers. Both Zuma and Mbeki could redeem themselves with one stroke – and go down in history as fallible men who did great things for their country.

I look forward to Max's arrival.

**The Editor**

# Picture imperfect

**EARLY ADOPTERS, ACCORDING** to Mr Nose's marketing pals, are the type of people who rush out to buy the latest Playstations, iPhones and other hi-tech toys while everyone else in their circle is still getting to grips with last year's Blackberry.

But it's a high-risk practice, as Don Bennet of KwaZulu Natal has discovered.

Don thought he was one step ahead of the pack when last Christmas he splashed out on a new high-definition, plasma screen TV in anticipation of the switch-over to the super-duper, extra sharp picture technology which will be foisted on the rest of us, willy nilly and at considerable expense, over the next few years.

He also bought a fancy new decoder, called a personal video recorder or PVR, which enables him to record, pause during programmes and enjoy a host of other functions indispensable to the trend-conscious TV viewer.

With this new gadgetry unpacked and plugged in, he thought he was all set for the dawn of the new technological age. But no. He now discovers a little detail that the salesman failed to mention: actually the fancy decoder he'd bought was, well, already obsolete. To access all the miracles his new TV set is designed to deliver, just six months later he's had to buy a new, upgraded decoder from DSTV which they've only now started advertising at "just" R2499! And that's a bit of a shlenter too: you buy this latest decoder only to discover it won't do its thing unless you also buy an extra thingummy that you need to attach to your satelite dish – for "just" another R800. Oddly, the DSTV salesman who talked him into buying a non-HD ready PVR decoder did not think, among all the acronyms, to mention all these wonders in the pipeline. But then, of course, had he done so, unsuspecting DSTV customers like Don might have opted to wait another month or three before replacing their old decoders, and not so kindly have volunteered to relieve the company of its obsolete stock.

Don, now better known as Pissed Off of KZN, was rather hoping to see an exposé of this one on *Carte Blanche* – but Mr Nose is not holding his breath on that: they're part of the DSTV family.

Which explains why Mr Nose is determined to hang on to his old cathode ray tube TV until it goes permanently black.

# Join the dots...

**NOSE104 REFERRED** to a Cecil Simon, who was president of Radcliffes Trustees when that Geneva-based trust company was sold to Investec for an outrageous sum, on the pretext that Investec could manage all its assets. Cecil is, of course, better known by his second name, Lyddon – he signs himself C Lyddon Simon. Our story failed to mention that this self-proclaimed doyen of South African offshore tax avoidance trusts had, shockingly soon thereafter, left Investec's newly acquired Swiss offshoot (with a hefty cheque), only to pop up next day as president of Swiss Independent Trustees. Rumour has it that he "moved on" from Investec as, while employed there, he may have enticed various clients to join his new company.

Our Cecil – sorry, Lyddon – was once upon a time an advisor to the Peregrine Group's Citadel business (which has just bought a share of Stenhams in London). Mr Simon's fellow director at Swiss Independent is Steven Stein, a consultant in Joburg and also a director of Peregrine. Connect the dots – then let us know what you see ...

# Nigerians down our manholes

**PEOPLE WHO MOVE TO FISH HOEK** to get away from demon drink and other temptations may find themselves more isolated than they planned. Like Mr Nose's friend Pat Dougherty, who discovered that her newly-installed Telkom line does not connect her to family and friends in the UK.

Pat dialled three UK numbers repeatedly over a number of days and got nothing but the engaged signal. So she called Telkom 20109 (orders and new lines) to be told that the entire Fish Hoek exchange was blocked for international calls because the area was a hot spot for "clip-on" fraud.

It transpires it's all the fault of some of Mr Nose's Nigerian friends who keep breaking into Telkom manholes and using crocodile clips to connect their "illegal instruments" to other people's phone lines.

Telkom also told Pat that they'd be happy to provide Pat with an international service, as long as she's prepared to pay for any illegal calls made on her line.

That sounded a bit rough, even for Telkom. So Mr Nose asked the parastatal monopoly's media department for an explanation.

Within minutes, an email arrived announcing that, although clip-on fraud was "still very widespread", it was on the decline due to the sterling efforts of Telkom's fraud management system (and some stern words from Mr Nose).

More good news, especially for Fish Hoek subscribers, is the assurance that customers are in little danger of having to pay for calls made from nearby manholes. Apparently, Telkom's fraud busters are so quick off the mark that call-cheats barely have time to say "hello" before they are bust. (So that's why Telkom haven't been answering my calls of late!)

If they do manage to have a long enough conversation to register on the subscriber's bill "there are processes in place that could result in reimbursement to the customer".

Could result? OK, so it's no guarantee, but it sounds a lot less scary than the warning Pat was given by the orders and new lines department that she'd be liable for payment.

Not for the first time, Mr Nose scratches his head at the inability of a communications company to communicate with itself.

# Fedbond

**The founder of Auto & General insurance is embroiled in a lurid tale of passion, violence and wild extravagance**

Donné Botha leaves Wynberg Magistate's Court, where she faces attempted murder charges after allegedly slashing love rival Bianca Ferrante with a broken champagne bottle

XXXXXXXXXX

Bedtime in the Nelson Mandela Suite at the Saxon in Jo'burg , voted the World's Leading Boutique Hotel

Bad Brad Wood with former Miss Teen Gina Athanassiou

*Around 4am all hell broke loose. 'I was awakened by a crazy woman*

# Head on

**Last month the Road Accident Fund's proposal to pay compensation direct to accident victims instead of via their attorneys was put on hold by a high court judge. Noseweek reveals the lawyers' secret fear – losing out on massive and illegal contingency fees…**

**REFILOE MONAMODI COMES** from a poor family in Daveyton on the East Rand. She left school at 18, with a so-so matric, to work as a cashier at Checkers, but her dream had always been to be a lawyer.

At 26 she enrolled to re-write her matric; a bursary from the Finnish embassy saw her through a BA at the University of Cape Town; legal publishers Butterworths funded her through her LLB; she did her articles at a legal aid board and in November 2000, a month before her 37th birthday, Refiloe moved to Johannesburg and was admitted as an advocate in the high court. She took chambers and at the beginning of 2002 was accepted as a full member by the Bridge Group.

After travelling a very long road, Refiloe had achieved her dream. But it was to be short-lived. Just months later, on 19 April 2002, her dream ended when the car she was driving was in a head-on collision with another vehicle. Refiloe suffered devastating body, head and brain injuries, from which doctors say she will never fully recover. She will never plead a case again.

For her compensation claim against the Road Accident Fund, Refiloe was referred to a personal injury specialist attorney in Rosebank, Johannesburg, Deon Goldschmidt.

"When this lady had her accident she was driving on the wrong side of the road," says Goldschmidt. "She had been to numerous other attorneys and they had all refused to take on her case. A few days before the matter prescribed [ran out of time] she came to me. I turned her away; I said 'The merits aren't good, unless you're able to pay me an hourly rate I can't take on the matter'.

"She came back a week later in tears. She wouldn't leave my office. She said 'Deon, if you don't take this matter on for me I'm on the street'. My heartstrings were somewhat pulled. I said: 'OK, I'll take it on a contingency basis – 25%.' She signed an agreement to that effect.

"In the ordinary course of business, if it wasn't a colleague [fellow lawyer] and I didn't have heartfelt sympathy for her, I would have told her no, because the prospect in my view was that she would not succeed."

Contingency fees are an emotive subject. In 1999, to give the poorest of the poor their constitutional right to have any dispute resolved in a court of law, the Contingency Fees Act 66 of 1997 came into operation. This laid down two forms of contingency fee agreements that attorneys and advocates could enter into with their clients.

- A "no-win-no-fee" agreement;
- A percentage not exceeding 25% of any award (excluding costs) or double the attorney's normal fees, whichever is the lower.

An official five-page Contingency Fees Agreement prescribed by the Minister of Justice must be (but as it now transpires, often isn't) completed. The form contains provisos such as: before

signing, clients must be advised of any other ways they could fund the litigation; they must be aware that if they are unsuccessful they may have to pay their opponent's costs; the attorney must clearly state his normal fees rate on an attorney and own client basis; there is a 14-day cooling off period during which the client can cancel the agreement.

In Refiloe's case, she signed Goldschmidt's own "common law" contingency agreement which simply stated: "The Attorney will charge an Agreed Fee in respect of the Mandate given by the Client of 25% of the Capital of the claim paid by the Road Accident Fund together with VAT thereon." It added that this was a "no-win-no-fee" agreement.

In the 2002 Supreme Court of Appeal case of Price Waterhouse v National Potato Growers Association, Judge Brian Southwood ruled: "The [Contingency Fees] Act was enacted to legitimise contingency fee agreements between legal practitioners and their clients which would otherwise be prohibited by the common law. Any contingency fee agreement between such parties which is not covered by the Act is therefore illegal."

First they went to trial on the merits (whether Refiloe had a valid claim for compensation). In March 2006 after a two-day trial in Johannesburg high court, liability was settled on a 50/50 basis. The RAF would pay Refiloe 50% of her agreed or proven damages.

Trial on the quantum (how much Refiloe would get) came before Acting Judge Bernard Ancer that November. In his February 2007 judgment Ancer awarded Refiloe R4,028,232 – half the R8m total damages award, since she was judged to be half to blame for the accident. She was also awarded costs and the judge ordered the RAF to furnish an undertaking to pay half her future medical expenses.

Refiloe Monamodi with daughter Lerato

Judge Ancer ordered the RAF to pay the R4m to attorney Goldschmidt, who should keep it in trust for Refiloe pending the appointment by the court of a *curator bonis* to handle her affairs. The entire R4m was then to be paid over to the curator.

The following month attorney Goldschmidt duly prepared an application for the curator's appointment. But just weeks later he filed an amended notice of motion seeking an order that the R4m be held by his firm in an interest-bearing account, pending the formation of a trust for Refiloe.

Brain-damaged Refiloe duly signed an affidavit confirming that she opposed the appointment of a *curator bonis* and had no objection to a trust being established to protect her R4m.

Trustees were Goldschmidt, a fellow-attorney named Philip Bourbon, and Refiloe. In court papers Goldschmidt claims that an order for the creation of a trust was given by Judge Tshiqi, but the court file was missing. (In fact the order was made by Judge Mathopo on 17 April 2007).

Before the RAF paid out the R4m, Goldschmidt arranged a R126,000 loan for Refiloe with Blue Label. R100,000 of this was for her to buy herself a car; the other R26,000 went to pay two medical experts who were baying for their fees (and we thought it was a no-win-no-fee arrangement, with Goldschmidt taking all the risk!)

When the RAF finally paid the R4m to Goldschmidt on 14 March last year, the attorney didn't hold anything for Refiloe's trust – he proceeded to distribute the capital. The R126,000 Blue Label loan was repaid – plus R57,317 in interest; R984,774 went for the purchase of a house Refiloe had found in Kempton Park; Goldschmidt took a cool R1m (R877,192 plus VAT) for himself; Advocate Ian Zidel SC received R341,544; his junior Chris Prinsloo got R135,660; the remaining medical experts were paid for their medico legal reports.

After all this, there was just R1.3m left. Goldschmidt persuaded Refiloe to place R1.2m of this, via insurance broker Ian Feinstein, with Momentum, in a guaranteed endowment policy and an annuity which pays her R7584/month.

So with the house and the R1.3m, Refiloe got just over R2.2m of her R4m award which Judge Ancer had ordered should be held in trust and paid in total to her curator. However, she comforted herself, the court had ordered the RAF to pay her costs and since Goldschmidt had already paid all these out of her capital, she would get the costs money when it arrived.

Wrong. When the taxed costs of R403,656 arrived, Goldschmidt took a further R76,185 for himself and disbursed some more for additional medico-legal reports. Refiloe received a cheque for just R268,870 – which should have been paid to her newly-formed trust.

Of the R403,656, the amount that the RAF considered that Goldschmidt was due in total for his attorney's fees – on the R500/hour tariff – was just R67,256. In fact he had taken R1,076,185!

Court papers claim that when Refiloe queried his fees, Goldschmidt said: "Why are you asking me all these questions? Don't you trust me? Do you think I am some sort of crook? If it wasn't for me

## Cheap at the price?

Highlights from attorney Deon Goldschmidt's R588 260 fee claim:

- Travelling time for the 10-minute drive from his Rosebank office to advocate's chambers in Sandton, and return: R1500 each time;
- Coffee with client (Refiloe Monamodi) at court before the quantum trial started: R2000;
- Going to court for copy of Judge Ancer's judgment (junior advocates charge R500 for this service): R10,000;
- Two-hour discussion with insurance broker Ivan Feinstein on the investment of client's money: R4000;
- Telephone calls to broker, client and RAF: R3000;
- Perusal of client's ID: R50;
- Perusal of client's driving licence: R50;
- Perusal of client's school and academic records (9 pages): R450.

*And so on for 23 pages...*

you would have got nothing."

Refiloe turned to fellow members of the bar. Acting Judge Ancer got involved; the judge went to deputy Judge President Phineas Mojapelo, pointing out that the express purpose of his order was to protect the award of money made to Refiloe. Funds, said Ancer, had been disbursed out of the capital and fees recovered without the involvement of a *curator bonis*, whose function would have been to protect the award.

Mojapelo wrote to the Law Society of the Northern Provinces asking its professional affairs office to look into the matter. Judge Ancer, he said, was "concerned that the action of the plaintiff's [Refiloe's] attorneys in failing to comply with the court order was possibly not only contempt of court but may also amount to professional misconduct.

"The reasonableness of fees charged against the capital award may also need to be put under objective scrutiny." The Law Society did nothing.

Deon Goldschmidt is unrepentant. "There is a judgment by Southwood that common law contingency is illegal," he admits. "But in law we call that an obiter decision – it's not binding.

"Mrs Monamodi in her argument says I induced her into that contingency agreement. I didn't. She had a choice: enter into that agreement with me, go to another attorney, or pay me an hourly rate of R1500 which I offered her. She said she had no money. She got representation, she got monies out of the matter. A good job was done on tick.

"When we went to trial on the merits I was on huge risk. Had we lost that case I would have been R120,000 out of pocket. Although my common law contingency agreement doesn't meet with the strict requirements of the Contingency Fees Act, it's not rendered unenforceable merely as a result of that."

Refiloe fired Deon Goldschmidt and retained a new attorney, Anthony Millar of Norman Berger.

Says Millar: "It is disgraceful that a person who was so obviously brain injured and disabled as Refiloe, was given documents to sign, time and time again, in circumstances where a so-called specialist personal injury lawyer knew that she was not in a position to fully appreciate the full consequences of signature.

"The only person who appreciated the significance of the so-called common law contingency and subsequent documents to frustrate compliance with Judge Ancer's order was Mr Goldschmidt.

"It is astounding that he now claims that Refiloe's case never had any merit and that he only took the job on because he felt sorry for her."

Advocate Refiloe Monamodi is now 44. Her marriage foundered after her horrifying accident, and at home in Kempton Park she is cared for by her 24-year-old student daughter Lerato. Since January she's had a *curator-ad-litem* (a curator to handle litigation), advocate Eric Myhill, who is seeking a high court order that the fee agreement between Refiloe and Goldschmidt is illegal and should be declared invalid, void and of no force.

Myhill wants the R1,076,185 that Goldschmidt paid himself in fees to be paid into Norman Berger's trust account, then forwarded to an already-appointed (long term) *curator bonis*. Goldschmidt should submit to the curator a fully itemised and detailed account, supported by vouchers, reflecting his reasonable fees and disbursements incurred.

In June this year Goldschmidt filed a basic account of his "normal" fees to the high court. The total comes to R588,260 (see Box). Refiloe's new attorney Anthony Millar challenges this figure. "Based on the documents that we have obtained from court, his final fee is unlikely to exceed R200,000," says Millar. "In those circumstances the *curator bonis* will recover at least R876,000 for Refiloe."

It promises to be an epic courtroom clash. Goldschmidt is supported by the Law Society of the Northern Provinces, whose Council in 2002 resolved that notwithstanding the Contingency Fees Act, common law contingency fee arrangements may be validly entered into by attorneys.

"The restrictions to be found in the Contingency Fees Act will probably resonate in various guises in judicial scrutiny of a common law contingency fee agreement," said the Law Society's vice president, Carel Fourie, at the time.

The South African Association of Personal Injury Lawyers (which with the Law Society of South Africa brought last month's successful urgent interdict application to the Cape High Court for a hold on the RAF's proposed direct payment of damages to victims), has applied to intervene in curator Myhill's Johannesburg High Court action against Goldschdidt. "Since common law contingency fees have been permitted by the Law Society of the Northern Provinces since 2001, SAAPIL is also involved in protecting attorneys' rights to free contracting between themselves and their clients," says its president, Monique Woods.

Deon Goldschmidt, 39, is a member of SAAPIL, and most of his fellow-members, it seems, also operate on an "illegal" common law contingency basis. No wonder they didn't like the RAF's idea of direct compensation payments to victims. If the payouts no longer came to them to disburse, how would they ever get their 25%?

In support of Refiloe and her new legal team, the RAF is applying to intervene as *amicus curiae*, and has retained the formidable advocate Wim Trengrove SC. The fund is strongly opposed to these common law contingency fees; it estimates that of R6.6bn paid out in respect of claims last year, R2.9bn – 44% – was channelled to attorneys.

RAF's top panel attorney Trevor Fagri of Brugmans has been instructed to comb the records so that examples of massive contingency payouts to attorneys can be placed before the court.

## Permanent and irreversible

**REFILOE MONAMODI WILL NEVER** take the wheel of a car again. Her caregiver daughter Lerato has to drive her everywhere.

A report by clinical neuropsychologist Digby Ormond-Brown concluded that Mrs Monamodi had sustained a "very severe traumatic brain injury". The specialist added: "She has problems with basic sensory functions, perceptual functioning, motor functioning, cognitive functioning and emotional functions and the combination of all her injuries has created a massive level of impairment.

"She is incapable to adequately fending for herself and requires a full-time caregiver. I do not believe that she is in a position to adequately manage her own financial and legal affairs."

Psychiatrist Dr David Shevel found that Mrs Monamodi's organic brain syndrome injuries "must be considered permanent and irreversible".

It was his clinical opinion that a curator-ad-litem must be appointed and that Mrs Monamodi must be considered "a vulnerable individual who can be easily and unduly influenced by outside sources".

Neurosurgeon Percy Miller reported that Mrs Monamodi was permanently disabled with hemiplegia (partial paralysis) of left arm, left face and left leg; severe headaches; memory, forgetfulness and concentration; and severe depression. "The patient is not going to be able to fulfil her professional duties ever again."

# Sanlam's BEE snarl-up

**LAST MONTH *NOSEWEEK* REPORTED** that the BEE share deal which pharmaceutical giant Aspen concluded in 2002 with the Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union (CEPPWAWU), and which was funded through a R108m investment by the Chemical Industries National Provident Fund, was highly flawed – and that a Financial Services Board report had revealed a series of irresponsible and illegal actions by various legal and financial bodies administrating and consulting on the deal.

This month *noseweek* takes the investigation further – to reveal distortions in the FSB report itself, which effectively serve to cover up Sanlam's larger role in papering over the dirty dealings, and which also effectively protect the interests of, among others, BEE dealmaker Isaac Shongwe, who set up the whole scheme.

Shongwe, who holds a postgraduate degree in management from Oxford University, was, in June 2008, placed among "the 200 young South Africans you must take to lunch" by the *Mail and Guardian*. Perhaps the public should be more interested in who Shongwe takes to lunch, than the other way round.

**A cloud of illegal actions, evasions and confusions casts suspicion on the validity of a major empowerment deal**

Picture: Financial Mail

Chairman of Letsema Holdings Isaac Shongwe

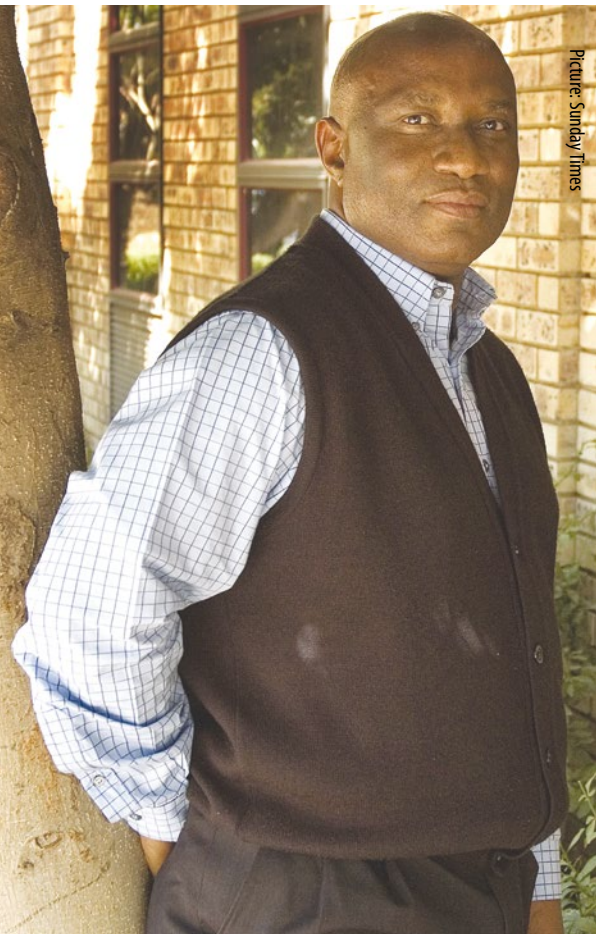
## To recap...

- In the late 1990s Aspen Pharmaceuticals begins the search for a BEE partner, in order to secure large government contracts.
- Around April 1999 Isaac Shongwe approaches CEPPWAWU national officials Pasco Piliso Dyani (president), Mzobanzi (Muzi) Buthelezi (secretary general) and Nelile Nolingo (deputy secretary general) to propose the creation of a CEPPWAWU investment company to take advantage of Aspen's BEE share offer.
- CEPPWAWU Investments (Pty) Ltd (CI) is registered, and the Chemical Industry Provident Fund is approached to bring funding into the deal.
- CI is disqualified from operating the deal because, with Shongwe and other non-union members on the board, it is not a legitimate investment arm of the union.
- The Provident Fund agrees to invest R108m in a second investment company, CEPPWAWU Pharmaceutical Investments (CPI) (which has only one union official as a member), which amount will be secured by CPI issuing the Fund with preferential shares.
- Aspen releases R158m worth of shares to CEPPWAWU/CI – the tale of the added R50m is now told in the present story. (Although it is represented by Sanlam and the Fund that CPI owns the shares, both parties report this as a direct investment in employer participant Aspen – i.e. an illegal investment.)
- When the Fund tries to redeem its preferential shares in CPI (which have massively grown in tandem with the Aspen shares), it discovers that CPI never issued any such shares. The Fund is told that, at most, it could recover the R108m as an amount "loaned" to CEPPWAWU.
- The Fund complains to the Registrar of Pension Funds, which asks the FSB to conduct a financial audit of the deal.

The FSB report, which formed the basis of the *nose*106 story, while clarifying the role of some parties, obscures crucial aspects of what took place. *Inter alia*, the report does not systematically separate Shongwe's CI from CEPPWAWU's CPI, but treats them at times as the same entity. But they are not: CPI is the legitimate CEPPWAWU investment vehicle, whereas CI is not, because it has non-union members, like Shongwe himself, on its board. For the deal to be a legitimate CEPPWAWU/Aspen deal it had to be concluded with CPI, not CI.

Aspen seem not to have been aware of this, as they have consistently presented their deal as having been concluded with CI, whereas investment portfolio holder Sanlam has always presented the deal as being between CPI and Aspen.

Sanlam should know? Why then do



Picture: Sunday Times

FSB executive officer Dube Tshidi

they refuse to discuss the issue? *Noseweek* could get no-one to say who actually owns the BEE-deal Aspen shares, now worth some R550m. So if the shares are indeed held by CI, no-one is coming forward to say who instructed that to be done.

So the FSB report, in failing to clarify who actually owns the shares, maintains the confusion surrounding the deal, and allows it to keep its status as a legitimate BEE deal.

It might be argued that, either way, the deal was still with CEPPWAWU – but CI has no contractual obligations to the Provident Fund. And if CI owns the shares, do they belong to the CI board, which includes union officials who have just been voted out of their positions in the CEPPWAWU national leadership?

Ultimately, of course, in terms of the deal between CPI and the Provident Fund, which supplied the money to buy the shares, the investment is due to return to the Fund – minus a 25% commission to CPI. And CI and CPI have a contractual agreement which ties CI to bailing out CPI when the Provident Fund want to redeem their investment in CPI/Aspen. Presently the bodies are arguing out the situation among themselves as to who is entitled to what.

However, the FSB report, instead of clarifying the mechanics of the deal, recommends that the agreement between the Provident Fund and CPI be treated as a loan. As such, the Fund has no claim to redeeming the R551m that their R108m would now be worth had it been an investment.

There are obvious reasons to be highly surprised at this recommendation – not least because it implies that the deal, which was brokered by Sanlam, was from the start a deliberate fabrication. It suggests that the Provident Fund may have been fraudulently led, by Sanlam (who reported the R108m as an investment in Aspen) and others, to believe that their loan was an investment.

After all, didn't Sanlam open an Absa cheque account for the Fund, where they deposited the dividends earned from the Aspen shares?

The FSB sidesteps the implication that Sanlam is at fault here by blaming the Fund's trustees for not ensuring that CPI issued the preference shares that were to function as security for their investment. It also blames the Fund's administrators, NBC (Negotiated Benefits Consultants) – claiming that NBC "promoted the transaction", and were at fault for reporting the loan as an investment in Aspen.

NBC give a completely different version of the situation, pointing out that NBC were at the time simply the administrators, i.e. the Fund's "bookkeepers", and insisting that they had no part in the deal and were not consulted on it. In fact it was NBC who pointed out that the Fund could not enter into financial arrangements with Shongwe's CI because he was not a CEPPWAWU member.

Furthermore, it was Sanlam that promoted and arranged the "transaction", and Sanlam, not NBC, which "consistently reported" the deal as a direct investment in Aspen. NBC simply reflected what Sanlam, as the deal's investment broker, told them. (NBC claim that Fund trustees threatened to replace them as adminstrators if they didn't unquestingly follow Sanlam's instructions.)

Although Sanlam do feature negatively in the report, as having not checked if the CPI preference shares had been issued, the foregoing points make clear that it is Sanlam, and not the trustees and NBC, who should appear among the main culprits in the FSB report.

Confirming to *noseweek* that he first approached the union officials with the Aspen deal in 1999, Isaac Shongwe agreed that the deal had gone sour for the Provident Fund: "We were very new in BEE dealings so we relied entirely on Sanlam and NBC. [...] I must also agree that something went really wrong with this deal, but that lies squarely between Sanlam and NBC."

The whole issue of why the CPI preference shares were never issued to the Fund is never clarified in the report.

And when Sanlam supposedly requested CPI's auditors, JR Hollis & Co, to issue the shares, why did they not follow up to see that it was done? The report implies negligence. But what if everyone in on the mechanics of the deal was aware of one sticky little point – because the whole deal had been motivated and steered by Isaac Shongwe the Aspen shares went to his CI, and this fact had to be covered up? CI could not issue shares to the Fund because it had been disqualified from participating in the deal, due precisely to Shongwe's presence. Pointing this out would have brought the whole facade of an important "worker-benefiting" BEE deal between Aspen and CEPPWAWU crashing down.

If indeed the shares are held by CI, then Sanlam must have issued the instruction to Aspen. CI and CPI were held in the same investment portfolio by Sanlam, which crafted the deal, administrated the investment, and reported on it – except that Sanlam financial reports for the first three years of the deal show (falsely, if *noseweek's* contention is right) that the Aspen shares were held directly by the Provident Fund.

In short: Sanlam and Aspen treated CI and CPI, in their public presentations, including financial reports, as a single entity, in order to maintain the fiction of a BEE deal with "the workers". The Fund for its part seems to have been unaware that the shares were not held by CEPPWAWU's legitimate investment company (CPI), but by Isaac Shongwe's CI, which has no financial obligations or responsibilities to the Union.

The upshot of this is, for a start, that the FSB thereby becomes complicit in maintaining a fiction created by Sanlam in order to broker the Aspen deal – namely that the Union was a legitimate BEE partner for Aspen.

The FSB report does point out that there is a further issue with the whole deal, namely that, no matter what channels were used to convey money to Aspen, the Provident Fund was illegally investing in an employer participant.

And: BEE deals may not be concluded with direct investment from pension funds in employer-related companies.

But Sanlam's role in this is never questioned...

The further issue which the FSB report only touches on, but doesn't go into,

concerns the fact that the Aspen/CEPPWAWU BEE deal involved the sale of 26.7 million shares worth R158m. Since only R108m came from the Fund, who supplied the additional R50m? Again, the answer indicts Sanlam, pointing to a much bigger role for that corporation in the illegitimate mechanics of the deal than is indicated by the FSB.

On 15 January 2002, without consulting the Fund, another investment arm, CEPPWAWU Pharmaceutical Investments Two (CPI 2), was registered by JR Hollis & Co.

Sanlam then used R50m from R92m invested by the Provident Fund in Sanlam's Monthly Bonus Fund to pay for the additional 8.7 million Aspen shares.

The Provident Fund was never told of this additional deal and FSB's inspectors never explored this second arrangement. The inspectors simply report: "The role of Sanlam needs to be investigated in relation to the investment of R50,000,000 in CPI 2 and the purchase of 8,620,690 shares in Aspen by CPI 2."

Clearly the FSB would rather see other investigators handling Sanlam's role.

*Noseweek* has established that CPI 2's listed directors were: Mzobanzi Buthelezi, Christian Gouws and Pieter Slabbert Kriel. Kriel just happened to be Sanlam Private Equity's chief executive.

Once again, if shares were bought from Aspen by this company, CPI 2, the BEE deal is suspect.

*Noseweek* approached Sanlam Investment Management for clarification, but none of the senior officials from whom comment was sought responded. Instead, *noseweek* was referred to Sanlam's attorneys, Sonnenberg Hoffman Galombik.

*The answer indicts Sanlam, pointing to a much bigger role for that corporation in the illegitimate mechanics of the deal*

The FSB also hasn't questioned the exorbitant (1%) annual fee charged by Sanlam on the investment. The market rate for asset management ranges between 0.01% and 0.25%. For the six years, at a rate of 1%, Sanlam made at least R12.72m in commission.

FSB chief executive Tshidi Dube told *noseweek* that he could not disclose the FSB's present line of inquiry into the deal, but they would consider *noseweek's* findings.

When all that had been pledged was delivered, Aspen rewarded the players by appointing Shongwe as a trustee of the Aspen Institute, while Buthelezi, and Shongwe's Letsema Holdings chief executive, Derek Thomas, were appointed as Aspen directors. (Thomas was also listed as CI's chief executive.)

So Mzobanzi Buthelezi, the trade union secretary general who helped set up the deal, crossed the floor to Aspen. What would happen if union members working at Aspen had an issue with the management? This is the essence of forbidding investment in a participating employer.

In 2005, the Industrial Development Corporation (IDC) provided some R120.9m to Imithi Consortium in which CI held 50.4% stake, with the rest going to other empowerment entities. Representing CI in the Consortium were trade union officials Buthelezi and Nolingo, and Shongwe and his man Thomas.

The IDC was told by Aspen's chief executive Stephen Saad: "...the lead participant in Imithi Consortium, COSATU affiliated CEPPWAWU Investments, the investment arm of CEPPWAWU which represents Aspen's unionised employees, has a 50,4% stake in the Imithi Consortium."

The IDC simply took Aspen's word for it that CI was the trade union's holding company.

Nine months later when Buthelezi died of diabetes, his position on the Aspen board was taken over by Nelile Nolingo, who also replaced him as the union's secretary general. An additional seat on the Aspen board was created for CEPPWAWU president Pasco Dyani, who also stepped in as sole director of CPI and joined Sanlam's Pieter Kriel at CPI 2.

Aspen isn't the only deal Sanlam has stitched together for Shongwe's CI. Still claiming to be the trade union's holding company, CI joined Letsema Holdings to form a consortium that acquired a R118m, 25% stake in Barloworld Logistics Africa (Pty) Ltd. Could those funds have been acquired, via Sanlam, from a pension fund?

■ As *nose*107 was going to press, Derek Thomas, chief executive of Shongwe's Letsema Holdings, confirmed *noseweek's* deduction that the Aspen shares are indeed held by CI: "CI created CPI with the sole intention of obtaining funding from the Provident Fund. We then used the money to buy the Aspen shares."

■ In August a CEPPWAWU conference in Cape Town saw the ejection of the union's entire national office. Although there is talk that this was because of their support for President Mbeki in the run-up to Polokwane, union members swear it was because of their mismanagement of the union's resources over the past ten years. The union's new national officials, led by their president, Jacob Mabena, are under pressure to resolve the issue of the Provident Fund's investment in Aspen.

Picture: Financial Mail

Aspen chief executive Stephen Saad

# Bid to Scotch SA hooch


**PATENT AND TRADE MARK** attorneys DM Kisch seem to have a habit of making silly demands (*noses* 37&44). Their latest is addressed to Dirk van der Walt, the feisty West Rand bottle store owner who took SABMiller to the Competition Commission for being a bit snoep with the Castle Scrumpacks during last year's Rugby World Cup (*nose*97).

Realising some time back that the real money is in making the stuff, Dirk got himself a liquor manufacturing licence and started producing his own hooch – like Generaal de la Rey Old Brown Sherry, which, he says, is doing very nicely, despite a sniffy "It's a bit heavy on the nose" observation by Makro's chief buyer. "At under R20 a bottle what was she expecting – vanilla?" counters Dirk. (*Noseweek* politely declined his offer of a free case.)

Next on Dirk's agenda, apparently, is a liquor to be called Umshini Wami, that will come with a toy AK 47.

Now, a while ago, Dirk picked up some old London taxis on the cheap at a Customs and Excise auction in Durban, and once he'd fixed them up, got to thinking they'd make great promotional vehicles. Which got him thinking he should make a gin called London Taxi. So off he goes to the Companies and Intellectual Properties Registration Office to register London Taxi as a trade mark for alcoholic beverages.

But it's not too long before a letter arrives from attorneys DM Kisch, who say they're acting on behalf of the Scotch Whisky Association. Dirk's South African trade mark application is of concern, it seems, to a scrum of kilt-wearing, Highland caber-tossers, because, according to DM Kisch, the trade mark is likely to "deceive or confuse customers as to the source of origin of the goods sold under this trade mark". So the application must be opposed.

But dinna worry wee Dirk, comes the assurance, we'll happily withdraw the threat if you undertake not to use the name London Taxi "in any country of the world in relation to whisky and/or products having the appearance of whisky, unless these are products wholly produced in Scotland".

**The Jocks are trying to gain control over the use of the word 'whisky', just as the French are determined to control the word 'champagne'**

What gives? asks Dirk. I'm planning to make gin, not whisky. And should I some day wish to make whisky, that would be done right here, way down south, and be marketed as such.

Och aye, comes the reply, but "the name London Taxi quite clearly refers to the internationally famous black cabs in the capital city of the UK, and is therefore evocative of the United Kingdom. On account of this, and the United Kingdom's reputation for Scotch whisky, consumers are likely to believe that any whisky upon which this trade mark is used is Scotch whisky".

And indicating that your product is made right here in South Africa wouldn't help said Kisch, because the high court held, in a case involving MacLean's Gold Label whisky, that anyone spotting MacLean's on the shelves would automatically assume it's from Scotland, even if it does carry a "Produced in South Africa" label.

But stop making such a fuss laddie, because "in the event that you do not wish to use your trade marks in respect of Scotch whiskies or Scotch whisky based liqueurs, then you will suffer no prejudice by agreeing to sign and comply with the terms of the undertaking that we sent you".

Now, while "London Taxi" evokes London and taxis it hardly, unlike "MacLeans", evokes Scotland. And to say that Dirk will suffer no harm in

*A man who takes on the mighty SABMiller obviously marches to his own drum*

signing the undertaking, provided that he doesn't use the name for Scotch whisky, overlooks that signing it will also prevent him from calling his own West Rand whisky London Taxi.

A man who takes on the mighty SABMiller obviously marches to his own drum, so it's no surprise that Dirk was hardly overawed. He bypassed the geographically challenged lawyers, and went straight to the top, to Gavin Hewitt, CEO of the Scotch Whisky Association in Edinburgh. In his email to Hewitt, Dirk says:

"I have absolutely no intention whatsoever of making South African consumers believe that South African whisky or any other blend is Scotch whisky, or of indulging in any passing off or creating confusion in the mind of customers. I undertake to use the phrase Scotch Whisky only when the whisky product origin is Scotland".

The email neatly identifies the real issue – the jocks are trying to gain control over the use of the word "whisky" itself, much in the same way as the French are determined to control the use of the word "champagne", the Spanish of "sherry" and the Portuguese of "port" (there are many more examples).

*Time* magazine reported last June that Indian billionaire Vijay Mallya had caused a stir by taking control of some 9% of the Scotch whisky business, when his Bangalore-based United Breweries bought out Scotland's famous Whyte & Mackay group, thereby acquiring some major brands, including Whyte & Mackay, Isle of Jura and Dalmore (by delicious irony, the United Breweries was itself founded by a Scot, back in 1915). Mallya was planning to double production at Whyte & Mackay's Invergordon distillery, thereby creating the world's largest whisky plant.

Apparently India is now the world's biggest consumer of whisky and, though it imports around 20 million bottles from Scotland each year, 99% of the whisky drunk in India is in fact made right there. Because India imposes crippling import duties (which SWA CEO Hewitt himself calls "discriminatory"'and "pure protectionism"), Scotch whisky is beyond the pocket of the average Indian tippler. In retaliation the EU won't let the Indian stuff be sold as whisky – much of it being made from sugar molasses and marketed under traditional Indian names, like Bagpiper and McDowell No 1.

One of Mallya's executives claims that the Indians are up against an "invisible barrier", that "there should be no definitional barriers based on geography". He says that "whisky cannot ring-fence itself". As the controversy heated up Mallya himself began raging about a new "British Imperialism", and a spokesperson for India's Ministry of Commerce challenged the EU thus: "You want to dismantle tariffs? Let's dismantle intellectual barriers".

Here's hoping Hewitt won't countenance his lawyers engaging in "discriminatory" practices which really amount to little less than "pure protectionism". Perhaps he'll come to his senses, and realise that, in today's world, not too many people are misguided enough to think that a whisky called London Taxi, and clearly labelled "Produced and bottled in South Africa", was actually brought to smooth perfection on the green bonny banks.

But then again, who knows what follows after a glass or three?

# Playing with fire

**A FEW YEARS BACK**, the Parastove received widespread public attention – this leak-proof paraffin stove with an automatic shut-off mechanism would drastically reduce the number of fires and burns resulting from paraffin stoves being accidentally knocked over.

Colin Vale's Parastove design didn't win the R500,000 prize offered by the Paraffin Safety Association – despite meeting all the criteria in their competition – but the retired international relations lecturer's design did win a R100,000 prize for the Goodyear Invention of the Year.

The invention should have resulted in Vale rapidly joining the ranks of the financially blessed, but, partly thanks to a major law firm turning a blind eye to the transgressions of a wealthy client, things haven't quite turned out like that. In fact, our local hero has lost out big time,

Following the advice of the Paraffin Safety Association, in January 2005 Vale filed an application for a provisional South African patent, a relatively cheap way to begin the patenting process, and one which gives the inventor a year to decide whether it's worth incurring the vastly greater expense of filing a final or "complete" patent.

Vale then took up the tedious task of talking to the suits, and found himself dealing with Mario Ambrosini (a legal type who made a name for himself advising Chief Mangosuthu Buthelezi). Ambrosini introduced Vale to American venture capitalist Peter Knop – who describes himself as a "philanthropist" – and negotiations began.

They eventually agreed that in return for a 20% stake in a South African company controlled by the moneymen Vale would transfer his intellectual property (IP) to the company, and it would then take care of the patent protection and handle manufacture. On the face of it a fair enough deal.

**A South African inventor has lost his rights to the safe paraffin stove he designed, because a lawyer agreed to draw up an illegal transaction and refused to correct the error**

Ambrosini and Knop did a similar 10% deal with George Long, relating to his wick stove (see sidebar).

Before Vale filed his provisional patent application, he had consulted Phil Pla-Pillans of patent attorneys Adams & Adams, so, in November 2005, when it came to looking for international patent protection, Vale took Ambrosini to see Pla-Pillans. At that meeting it was decided to apply for a Patent Cooperation Treaty (PCT), which is a way of getting patent protection through the offices of the World Intellectual Property Organisation (WIPO).

After the meeting, Pla-Pillans confirmed to Vale in writing that he would be filing a PCT in Vale's name: the application would be based on Vale's South African provisional application and he would be listed as the sole inventor.

Pla-Pillans later billed Vale for R25,000 on an invoice made out to a South African company with which Ambrosini was associated, and which would eventually be known as Promethea Corporation (Pty) Ltd. The PCT application was filed on 21 December 2005.

In February 2006 Vale was asked to sign an agreement transferring his rights to the intellectual property to the Promethea Corporation, a company which had been registered that same day in the Pacific tax haven of Vanuatu. In return, Vale would get a shareholding in Promethea Vanuatu.

But Vale was uneasy – he'd recently learned from an article in the *Financial Mail* that it was unlawful for South Africans to transfer intellectual property to

*Ambrosini tried to brush aside Vale's concerns, assuring him that he would get Reserve Bank approval*

foreigners without prior approval from the Reserve Bank. Apparently, in a 2004 high court judgment in a case involving Reddot International, Judge Jajbhay had held that patent rights are akin to capital or rights in capital, and therefore subject to regulation 10(1)(c) of the Exchange Control Regulations, which says that "no person may, except with permission granted by the Treasury and in accordance with such conditions as the Treasury may impose ... enter into any transaction whereby capital or any right to capital is directly or indirectly exported from the Republic".

Ambrosini tried to brush aside Vale's concerns, assuring him that he would get Reserve Bank approval when, and if, it was in fact required. Ambrosini did agree to insert a clause which partly reassured Vale: "Should for any reason this transfer be impaired by or invalidated by or contravene South African law or authorities, this transfer shall be deemed to have been made to Promethea Corporation (Pty) Ltd, a South African subsidiary of Promethea."

During May 2006, Vale and Ambrosini consulted Chris Bull of patent attorneys Spoor & Fisher, an expert on the exchange control issues surrounding IP, who confirmed that the transfer was null and void from the outset. Despite this, on 12 May 2006, Pla-Pillans went ahead to record the transfer of the PCT application from Vale to Promethea Vanuatu. Pla-Pillans must have known that it was illegal – not only would the clause have alerted him to the problem, but there was at that time (and still is) an article on the website of his own firm, Adams & Adams, entitled "Watch out for the Reddot when going international", in which partner Bruce Lister, writes that "any such assignment would be void and proprietorship would remain with the South African company".

Following that transfer, Promethea Vanuatu began manufacturing in Vietnam safe pressure stoves based on Vale's design, and marketing them in developing countries, including South Africa. In September 2006, 100,000 Parasafe branded stoves were sent to Promethea Vanuatu's South African subsidiary, Promethea South Africa, which sold the stoves to Pick n Pay.

These sales, as well as an offer from BP to buy Promethea Vanuatu for US$3.2 million (the offer eventually fell through because BP was worried about the legality of the IP) were making Vale even more uneasy – he was worried that if his IP had been illegally transferred out of the country, there would be problems with getting paid.

So he approached the Reserve Bank, and the reply was quite clear – no approval had been granted so the transfer was invalid. During December 2006, Vale told Pla-Pillans about the Reserve Bank's response and asked him to re-register the PCT application in the name of the South African company in terms of clause 4, or in his own name. On 11 January 2007 Pla-Pillans sent Vale an unexpected response: "You are not my client... please direct your queries to Mario Ambrosini of Promethea Corporation (Pty) Ltd which is my client in this matter".

On 23 January 2007, Vale announced that he was cancelling the assignment and instructed Cliffe Dekker to represent him in the matter. But on 7 February 2007, Pla-Pillans wrote to Cliffe Dekker that: "In light of independent legal advice which our client (Mario Ambrosini) has sought on the matter, our client is of the opinion that the assignment concluded between Colin Vale and Promethea Corporation (Vanuatu corporation) purporting to assign his IP rights to Promethea Corporation is valid."

Ambrosini, it emerged, had obtained an opinion, from Durban advocate Max du Plessis, that assignments of IP did not need Reserve Bank approval, notwithstanding the Reddot case.

Two points stand out here. Firstly, this legal opinion is dated 2 February 2007 – i.e. it was made some nine months after Pla-Pillans recorded the transfer from Vale to Promethea Vanuatu. Secondly, Pla-Pillans clearly didn't think the opinion had any merit, because on 21 February 2007, less than three weeks after the opinion was written and a mere fortnight after the letter to Cliffe Decker, Pla-Pillans faxed WIPO asking that the applicant for the PCT




**Forresters Wine Pack Winners**
Mr Gary Vink, Observatory 7925
Mrs Anne Beedle, Parkmore 2196
Greg Distiller, Devil's Peak Est 8001
Mr MLG Stones, Westmead 3608
Mr S Motaln, Kyalami 1684

application be amended from Promethea Vanuatu to Promethea South Africa, on the basis that "the necessary exchange control approval for the assignment of Colin Vale's intellectual property rights to Promethea (Vanuatu) has not been granted...in the circumstances the assignment is deemed to have been made to Promethea Corporation (Pty) Ltd, the South African subsidiary of Promethea Corporation".

Vale was astounded by Adams & Adams's attitude and he lodged a complaint with the Cape Law Society about Pla-Pillans' conduct. On 15 June 2007, senior Adams & Adams partner Alan Smith responded to the Law Society, and his response is a salutary reminder that what lawyers don't say is often more important than what they do – Smith put the complaint down to Vale's "lack of knowledge and understanding".

As regards Reserve Bank approval, Smith said that the PCT application was filed in the name of Vale, so there was no Exchange Control issue (true), that Vale signed a document transferring the IP to a Vanuatu company subject to the fall-back that if this was illegal it would go to a South African company (true), and that it now stood in the name of a South African company (true).

But Smith was simply glossing over the fact that his firm had, in the intervening period, recorded the unlawful transfer to the Vanuatu company. Perhaps sensing that he should cover all the bases, Smith said that Adams & Adams didn't draft the transfer document, weren't asked to advise on its legality, and had simply carried out an instruction.

He went on to imply that Pla-Pillans' decision had been based on an opinion from an "eminent counsel", and that a transfer of IP to a foreigner doesn't need approval. He didn't attach the opinion to his letter, claiming that it was "privileged" – which is a neat way of saying it was written long after the transfer was actually recorded.

Asked for his version of the events, Pla-Pillans replies: "Our client expected that the necessary foreign exchange control approval would be obtained, and instructed us to substitute Colin Vale for Promethea (Vanuatu) as applicant... We were then advised by our client that its application for Exchange Control approval was not granted. Our client therefore instructed us to send a letter to WIPO requesting that Promethea Corporation (Vanuatu) be substituted by Promethea Corporation (Pty) Ltd."

Needless to say, the Law Society dismissed the complaint (if any reader has ever been successful with a Law Society complaint, please let us know...).

In the meantime, Ambrosini had been trying to persuade the Reserve Bank that the transfer was perfectly valid and that no Exchange Control approval was required. In his correspondence, which became increasingly acrimonious, Ambrosini threatened to "tear apart" how the Reserve Bank operates. Unsurprisingly, the Reserve Bank laughed off his ranting and in July 2007 issued a very clear ruling – the transfer of IP to Promethea Vanuatu by Vale in return for shares in that company was void from the outset, and the transaction had to be undone within 30 days.

In response, on 15 January 2008, Promethea Vanuatu and Promethea South Africa filed an application in the Cape High Court, citing the Minister of Finance and the South African Reserve Bank as respondents, along with Vale and Long. Their application seeks a number of orders, including one to review and set aside the Reserve Bank decision that the transfer of the IP rights to Promethea Vanuatu was null and void, and one declaring that the Reserve Bank is not constitutionally empowered to take such decisions.

The man behind Promethea Vanuatu, Peter Knop, submitted an affidavit in which, somewhat predictably, he tries to minimise the inventions of Vale and Long, claiming that the technology which his company bought from them was at a preliminary stage, and that the inventors had done no more than file provisional patents without first determining whether or not their inventions were new or even patentable. He also claims that, were it not for the deal with Promethea Vanuatu, neither invention would have got off the ground, as neither of the inventors had the funds to take them further.

In fact, says Knop, the inventions

# Nothing sinister

**GEORGE LONG IS ANOTHER** inventor very pissed off with attorney Pla-Pillans of Adams & Adams. Promethea South Africa filed a South African provisional patent for Long's wick stove in George Long's name. (Long's invention was celebrated on the cover of *nose*68.)

Pla-Pillans then filed a PCT patent application based on Long's provisional patent, but added American venture capitalist Peter Knop's name as a "co-inventor". Pla-Pillans says there was "nothing sinister" in this, and justifies it by saying that "we were advised by our client that Knop had made further developments to George Long's basic wick stove design... these developments were incorporated into the complete specification which accompanied the PCT application".

Long contends that, if any changes were made, they were made by a South African engineer and shareholder of Promethea South Africa, Nico Smit, and not Peter Knop.

Was Knop's name added to evade any Exchange Control issues asks Long? Long has been told by a CIPRO official that the addition of Knop's name was fraudulent, and he has laid a charge of fraud (which has gone nowhere) against Pla-Pillans, and lodged a professional complaint with the South African Institute of Intellectual Property Practitioners – this was discussed at a meeting on 4 August 2008, and Long has been told to expect a written response from President Mike du Toit.

*If the Reserve Bank is so worried about intellectual property leaving the country, why did it do absolutely nothing when it became aware of the transfer to Promethea*

were practically worthless. He supports this extraordinary claim by attaching a valuation from "South Africa's possibly most senior and qualified chartered accountant", one Godfrey Shev of Cape Town, who claimed that, at the time of the assignments, the value of each invention was negligible, certainly no more than US$100, this being the par value of the 10% of the shares issued (around the same time BP was prepared to pay some US$3.2 million for the company, whose main asset was the two patents).

Knop also claims that, as the inventors will repatriate any money made out of the deal to South Africa, there's no financial loss to the country. And he claims that, if the court finds that the transfers to Promethea Vanuatu were invalid, it must hold that the later transfers to Promethea South Africa were valid, in which event Knop will transfer shares in the South African company to both Vale and Long.

Knop's arguments to get around the inconvenient Reddot judgment mirror those of the advocate who gave the opinion, Max du Plessis, and include the following claims: that South Africa is not entitled to discriminate against foreigners when it comes to acquiring IP rights; that, even if Reserve Bank approval is required, the transfer shouldn't be regarded as null and void, but rather the South African transferring the IP should be punished (how's that for dropping your partners in the shit); and that, as there is no express mention of IP in the Exchange Control Regulations, it's quite clear that the lawmakers never intended to place restrictions on the transfer of IP.

Knop goes on to argue that, although the Reserve Bank is an "organ of state" under the Constitution and subject to the principle of legality, it acts as though it isn't bound by these legal strictures, as it is owned by individuals and banks, conducts its deliberations in secret, does not deal with the public but only with authorised dealers like banks, is not subject to the Public Finance Management Act, and does not report to Parliament. In short, says, Knop, the Reserve Bank is unconstitutionally established.

Although Vale and Long have indicated that they don't intend to oppose the application, the Reserve Bank and the Minister are opposing.

It remains to be seen whether the application will in fact ever be heard – Promethea Vanuatu has been asked to lodge security for the respondents' legal costs, which seems to have delayed things somewhat.

So what's at stake here? Apparently there's a database of at least 400 US and European patents with foreign applicants and South African inventors, and the Reserve Bank is planning to look at these in some detail. Presumably the Reserve Bank is keen to get a definitive ruling (preferably from the Supreme Court of Appeal) on whether Reserve Bank approval is needed for IP transfers from South Africa but, if so, applying for security for costs was probably not the way to go, as this invariably delays or brings legal proceedings to a standstill.

And, if the Reserve Bank is so worried about IP leaving the country, why did it do absolutely nothing when it became aware of the transfer to Promethea Vanuatu in 2006, simply sitting back and waiting for the company to institute proceedings in 2008?

In short, local hero Colin Vale, who had the brains to design a safe paraffin stove, has lost out big time. He's lost his IP and, because his relationship with Promethea Vanuatu has broken down completely, he's made absolutely no money out of the sales of the stove. He's incurred legal costs of some R95,000 in trying to sort this out, and there's always the possibility that the Reserve Bank will come knocking at his door.

All because an attorney agreed to record an illegal transaction, and then refused to accept an instruction to undo what he had done.



# Black disempowerment

**BACK IN 2005** *noseweek* told the story of the New Protector Group and the black empowerment deal that never was (*noses*68,69&73). In 2004 the black guys were cheated out of their much-trumpeted BEE inheritance. Now they face bankruptcy as the Industrial Development Corporation hits them for R42.7m.

At the beginning of this year, in what now seems a highly dubious move, the IDC obtained a high court default judgment against Dr Clarence Mini and the other six members of his BEE consortium. Summonses had been nailed to the door of Protector's deserted offices in Pretoria the previous June, but since none of them had set foot there for four years, they were blissfully unaware of the claim or judgment – until the sheriff arrived at their homes a few weeks ago to attach their worldly goods.

The big question: since the IDC has had all their home addresses on file because they provided surety for loans totalling R70m back in 2004, why did the corporation instruct the sheriff to serve the summonses at long-abandoned offices?

To remind readers of the background: Back in 2003 insurance brokers Glenrand MIB announced a much-lauded black empowerment deal – it was selling (offloading, as it transpired) its 65% stake in Protector Health Care group to a small empowerment consortium called Tradeworx.

The IDC, which exists to make, not break, the previously disadvantaged, agreed to provide funding of R130m. Initially the plan was for Tradeworx to use R60m of this to pay off Glenrand bank guarantees (which the IDC took over from Nedbank); R20m to buy 35% of the shares in old Protector held by management members; and R50m in cash to Glenrand for its 65% Protector stake. Before the deal was concluded, it was agreed that Tradeworx would instead establish a new company which would buy the "old" Protector's businesses, not the company itself.

In theory this should have given the BEE consortium 51% of a fresh entity called New Protector, which would acquire the old Protector's four hospitals, 34 pharmacies and a medical aid administration contract. The remaining 49% was to be held by a company called Freefall, owned by old Protector's former chief executive Leon van Rensburg and Marc Seelenbinder (group financial director).

**Directors face bankruptcy as the Industrial Development Corporation hits them with a R42.7m demand**

Dr Clarence Mini

Instead, it later emerged, the IDC's R50m to buy Glenrand's shares found its way to Freefall, which duly paid for and took delivery of the shares – giving Van Rensburg and Seelenbinder a then-unsuspected and secret 100% ownership of New Protector!

It soon appeared that the businesses acquired from Van Rensburg and Seelenbinder's old Protector were in dire straits: the 34 pharmacies owed creditors R18m and had a R24m bank overdraft – debts somehow overlooked by the IDC when it did its due diligence; the medical aid contract was mysteriously lost the day after Clarence Mini moved in as executive chairman. Total group debt rapidly soared to R280m.

New Protector went into provisional liquidation and liquidator Theo van der Heever sold the hospitals to MediClinic for R120m.

Having fondly imagined that they

owned 51% of New Protector, it was only after the group's collapse that Mini & Co discovered that they owned none of it.

However, since all seven of them signed surety, back in 2004, for 51% of the IDC's R70m loans, the IDC is now hitting them, jointly and severally, for R42.7m – 51% of the total of R97,5m claimed (R70m loans plus R27.5m in interest to 28 March 2007). More interest will be claimed from that date until date of payment.

Van Rensburg and Seelenbinder, ostensibly only 49% owners of New Protector, are being hit with a joint and several default judgment of R41m. The balance of the R97.5m is claimed from New Protector (in liquidation), Tradeworx and Freefall.

Summonses were also technically served, but not received, on the BEE consortium members for the R60m (R59.4m in the event) that went to Glenrand to pay off its bank guarantees. Plus interest of R24.4m – R83.8m in all.

But the IDC did not seek default judgment against Mini & Co for this. New Protector's liquidator Theo van der Heever tells *noseweek* that the R83.8m is being claimed from Glenrand ("for receiving money it was not due"). That high court trial, says Van der Heever, is scheduled for November.

Clarence Mini is a respected 56-year-old medical doctor who co-authored the ANC health care policy document that was forerunner of the Green Book that guides health policy in South Africa. Mini recalls the day, about six weeks ago, when the sheriff arrived at his house to attach his worldly possessions: "I was at a conference in Durban. My son phoned to say there was a guy talking about an IDC loan. All the other members of our BEE consortium have had their property attached. Everybody's upset. We all face bankruptcy."

The day after the July attachments, Mini retained Webber Wentzel attorney Chris Holfeld to challenge the default judgment. The IDC's attorneys, Mothle Jooma Sabdia, agreed to stay the warrant of execution "for now", giving Mini & Co until 13 August to apply to court for a Recission of Judgment.

Mini is livid with the IDC for invoking the deeds of suretyship he and his consortium members signed as "BEE shareholders" when the IDC knows full well that New Protector was *de facto* 100% owned by Freefall and its Leon van Rensburg and Marc Seelenbinder. "Freefall was the only entity to profit out of this," says Mini. "Everybody knows what happened. If anyone owes the R97m it's Van Rensburg and Seelenbinder."

*Mini recalls the day about six weeks ago when the sheriff arrived at his house to attach his worldly possessions*

Mini also criticises the IDC and its lawyers for obtaining default judgment by serving summonses on long-abandoned premises. The court papers filed by Mothle Jooma Sabdia have key pages mysteriously missing. Such as page 66, which presumably contains the name of the individual at the IDC who recorded, in a supporting affidavit, that when signing their deeds of suretyship the defendants gave their address as "corner of Church and Beatrix Streets, Arcadia, Pretoria" – and that he had instructed the sheriff to serve all the summonses at the *domicilium citandi et executandi* of Protector Group, namely First Floor, Kingsley Centre, corner Church and Beatrix Streets.

The registrar was not happy and ordered that new summonses be served on the registered addresses of Protector, Tradeworx and Freefall. This was done last December – except that there was no one there either. "Yet when it came to attaching our possessions the IDC was able to give the sheriff our home addresses, which they had had on file for years," says Mini. "Why didn't they serve their summonses on these home addresses as well?"

The massive R97.5m default judgment and recent attachments has spurred the Scorpions into reviving its four-year, less-than-vigorous, investigation into the whole Protector Group fiasco – and the role played by Leon van Rensburg and Marc Seelenbinder. Handling the probe is the Directorate of Special Operations' advocate Erasmus, who, after hearing about the IDC's attachment of Mini & Co's possessions, sent investigators last month to the IDC to demand an explanation.

The Scorpions are intrigued by the IDC's procedures in its original funding. In particular they would like to know how come the corporation's due diligence of old Protector, scheduled to take four to six weeks, was completed within a week? Why did the IDC persistently refuse to show this due diligence report to Mini's consortium? Why did those conducting the due diligence not uncover the massive debts of the group's 34 pharmacies? Was someone at the IDC induced to turn a blind eye to the parlous state of old Protector? Did the IDC recklessly commit taxpayers' money to a project it should have known was doomed to fail?

■ The BEE consortium members being hit jointly and severally for R42.7m are Dr Clarence Mini, Wandile Motlana (34-year-old businessman son of New Africa Investments founder Dr Ntatho Motlana), Kevin Wotshela, Zandisile Pase, Nosipo Pambuka, Pat Manana and Timothy Thulo.

# Steyn soap opera continues

## Prima Donné changes her tune on marriage

**INSURANCE BILLIONAIRE DOUW STEYN** can expect some harsh questions when he enters the witness box in November in the much-delayed trial of his former fiancée Donné Botha on a charge of attempted murder.

In *nose*106 we painted the background to the case: how 55-year-old Steyn bust up with Donné Botha in 2006 and immediately embarked on a passionate wooing of Sicilian beauty Bianca Ferrante. How an alcohol-fuelled Donné burst into Steyn's suite at his luxury Johannesburg boutique hotel The Saxon and attacked Bianca with a broken champagne bottle as she slumbered with Steyn. And how Steyn tried to avoid giving evidence at Donné's trial on the untrue grounds that they had married – a husband is not compelled to give evidence against his wife.

The lie was also swallowed by criminal psychologist Dr Micky Pistorius, hired by Steyn to produce a report in which she expresses the opinion that Donné was not accountable for her actions since the glamorous 40-year-old blonde had lost conscious control in the 4am mayhem and was functioning like a robot. The report refers to Donné as "Mrs Steyn" throughout.

Steyn's lawyers, headed by advocate Barry Roux SC, have told the Wynberg (Johannesburg) magistrate's court that Steyn will be there to give evidence when Donné's trial resumes on November 27 and 28.

Magistrate Renier Boshoff and prosecutor Adele Barnard will be anxious to hear from the London-based mogul how the court, the prosecutor and the defence expert came to be told that he and Donné Botha were married.

In our last issue Donné, out on R2000 bail, continued the lie. "Yes, we definitely got married," she assured us. "We had the most unbelievable wedding in London in August last year. We had a minister and a hotel and family and guests and a R100,000 dress and lots of beautiful gifts."

A close friend of Steyn's, however, let the cat out of the bag: the "wedding" was just a spectacular show devised by Douw Steyn, with probably an actor standing in as the "minister".

After our last issue hit the streets there was much huffing and puffing from Steyn in London, with several calls from his butler asking us to hold on to talk to Mr Steyn. But apart from lengthy silences, broken only by the distant clink of bottle against glass, the great man never uttered a word.

However, we have received a letter from Donné, with a *volte-face* which clears up the wedding riddle once and for all. "I am not married to Douw Steyn," she now states.

The letter was forwarded to *noseweek*'s editor by Annie Laughton, who is described as PA to the general manager, The Saxon Boutique Hotel and Spa. Laughton writes: "Mr Douw Steyn has requested that I forward you

Picture: The Times

Ms Donné Botha

the attached letter, as written by Ms Donné Botha, for your information."

Donné's odd way of thinking is illustrated as her letter unfolds. "I have not seen him [Steyn] in three months," she writes. "However, we were involved in a long-term relationship which ultimately broke down as a result of the situation described hereunder.

"Douw Steyn, who had nothing to do with the incident, hence no criminal charges against him, was kind enough to pay Bianca Ferrante's medical expenses and has offered to pay any future medical expenses, although he has nothing to do with the incident."

Donné's letter continues: "I am annoyed that I should be caught up in a court case, as I'm sure Bianca is as well, as in my estimation we are both pawns in the extortion case of Mr Brad Wood and his accomplice Mr Ian Levitt, who demanded R3m from Douw Steyn to guarantee that Bianca will withdraw the case against me."

(Attorney Levitt was retained by Bianca to bring criminal charges against Donné and to commence a civil action against Steyn, Bianca and The Saxon, claiming R1.2m in damages. Of this, R450,000 is against Steyn for breach of promise of marriage.)

According to Donné, Steyn is the hero of the piece: If "Douw" had paid the "blackmail money" to Wood and Levitt, she claims in her letter, she and he would not now be involved in a criminal case. "Instead he, on principle, despite bad publicity which he knew he would have, went and laid criminal charges for blackmail and extortion against Brad Wood and Ian Levitt."

She concludes by emphasizing the point: "Douw is still not prepared to pay any extortion fees. I am sure these extortionists will come up with more stories now. The real villains in this saga in my opinion are Mr Brad Wood and Mr Ian Levitt."

*Noseweek's* last issue reported how Steyn's advocate, Barry Roux SC, had told Guy Hoffman SC (representing Bianca) that Steyn had told him he had plenty of time on his hands, that he was bored and intent on laying charges against Levitt. However, if Bianca withdrew her action against him he would not take steps against her attorney.

Senior state prosecutors are now considering just who deserves to face trial for attempted extortion.

Donné Botha's letter ends: "I shall send you a photo of myself if you wish, but am not prepared to enter into any further discussion about this."

# Bench to decide fate of tree

**THE FATE OF THAT** long-treasured Bryanston oak tree once again hangs in the balance. In *nose*103 we told how the Johannesburg High Court threw out the application of abrasive attorney Alec Brooks for an order to have the 25m tree cut down, simply because he objects to the tight turn around the tree as he drives in and out of his townhouse garage in the upmarket complex.

The champions of the 30-year-old pin oak, Brooks's neighbours Cara and Greg Reilly, were cautiously celebrating their courtroom victory (with costs), when Brooks hit back with an application for leave to appeal. Trial Judge Phillip Boruchowitz has duly given leave – but to the amazement of all has ordered that the fate of the majestic tree must be decided by a full bench of five senior judges at the Supreme Court of Appeal in Bloemfontein!

Normally an argument over servitude would be heard, at comparatively reasonable cost, by a three-judge bench in the provincial division – in this case the Johannesburg High Court. Supreme Court of Appeal cases, on the other hand, are costly enterprises; the loser in Bloemfontein in the oak tree case could easily face combined costs of up to R500,000.

This amount is chickenfeed to wealthy 56-year-old Brooks with his own successful insolvency firm of Brooks & Brand. But it would be a daunting penalty to pay for struggling car salesman Greg Reilly, 33, and his 31-year-old marketing manager wife Cara.

The actual tree

Despite this, Cara remains in fighting mode. "We remain committed to the oak tree," she tells *noseweek*. "The tree is still the tree and we are dedicated to not having it cut down." She says that she and Greg were "completely irritated beyond belief" when they learned that the appeal would be heard at Supreme Court of Appeal level. "To be honest, part of me wanted to burst into tears and say: 'well cut the bloody tree down'. But then the other part of me says: 'we're not prepared to be bullied'."

Greg told friends that the ongoing battle with his neighbour – latest spat is Brooks's opposition to the Reillys' plan to extend their garden patio – has made him consider selling the dream home that he and Cara built in the exclusive Hans Crescent complex three years ago. "It's on a bit of a knife edge at the moment," says Greg. "I haven't decided what to do yet."

Their attorney Andrew Miller has been urging them to fight on. "I've said to them they must hang in here. We're not going to be intimidated by this kind of thing." (*But then, of course, he's not the one who risks being landed with a R500,000 legal bill in the national legal lottery*. – Ed.)

# Has Hermanus got the fools it deserves?

**WHITHER DEMOCRACY** under the ANC? What with the Scorpions being disbanded, the judiciary under sustained attack, and plenty of foolish talk about counter-revolutionaries (people with minds, apparently) being "eliminated", the question is troubling, to say the least.

But then again – how different would things be were the DA, by some miracle, to get into power?

Maybe not much, if the DA-controlled Overstrand municipality and its executive mayor, Theo Beyleveldt, are any yardstick (maybe not a fair basis for comparison, but then the DA is stuck in the paddling pool). The present Overstrand council's idea of democracy sometimes looks like it comes straight from a Zanu PF handbook.

As reported in *noses*97,98&102 a group of Hermanus residents ended up seeking a judicial review of a municipality decision, later endorsed by the Western Cape Provincial government, to allow Checkers to build a monster supermarket on a prime piece of land in the middle of the town. Various players in this drama might recently have seen their arses – among them Western Cape Premier Ebrahim Rasool, his environment minister Tasneem Essop, and Overstrand municipal manager Jan Koekemoer – but the fun and games isn't about to vanish along with them.

The court case has been postponed several times, apparently because the municipality was persuaded that it did make a massive balls-up: There are laws regarding the disposal of municipal land? Yes indeed your Worships: local authorities are required to consider not only the market value of the land, but also its wider economic and community value. They should also ensure that decisions to sell land are taken at meetings that are open to the public. Oh! Now you tell us.

The municipality duly commissioned all manner of assessments and valuations, and scheduled a full council meeting (open to the public), in order to ratify or reject the decision to sell the land to Checkers. In turn, residents opposed to the development invited municipal councillors to a public meeting to hear their point of view. Except that only the DA's Louis van Heerden turned up.

While it might be assumed that the minority parties, like the ANC, simply don't care at this point, the community did wonder at such a poor showing by the DA – until a reliable source reported that Mayor Beyleveldt had told DA councillors he didn't want them attending the meeting because it might influence them.

So what did the rebel Van Heerden hear at that meeting that his fellow councillors did not? An advocate involved in the legal proceedings claimed that, contrary to reports in the local press, the municipality could walk away from the deal without incurring

any liability; a town planner explained that as 80% of the permanent population of greater Hermanus lives to the west of the town centre, it would make much better sense to put a supermarket out there rather than in the middle of the town; property evaluator Erwin Rode was heard questioning why the council had based its acceptance of the Checkers deal on a valuation of R12.9m when he valued the property at R30m, and a local developer thought it was worth some R38m; a hotelier said that as Hermanus is first and foremost a tourist town, a prime piece of central land should see an upmarket hotel and conference centre and not a tacky shopping centre; a somewhat pretentious international property consultant declared that the land could easily be sold to international developers if the process were more transparent; and a leader of the "coloured" community from nearby Hawston said it was absurd for the council to spend millions on the road that's required for the centre when so many people living just outside Hermanus don't yet have basic services.

Happily Van Heerden's presence resulted in another shred of proof that exposure to new ideas does in fact broaden the mind – and that Mayor Beyleveldt was quite right to be concerned. When Van Heerden attended a portfolio meeting, which was held to confirm that the committee would recommend a full council ratification of the Checkers deal, he asked whether they shouldn't be looking at other uses for the land. By all accounts the fellow was shat on from a dizzy height by his fellow DA councillors, and advised that such insubordination could result in disciplinary proceedings. Van Heerden resigned in protest – and the following day the full council rubber stamped the Checkers deal.

So the ANC's not too bad then? We wouldn't go that far! At the full council meeting an ANC councillor (who minutes later voted in favour of the Checkers deal) asked a question which made it horribly apparent that he didn't have the foggiest idea about what was going on...

And the leader of the ANC in the council, ex-mayor Willie Smuts, gave a blunt warning to those opposing the development: the ANC regards your opposition as racist and, should the court case go the wrong way, the ANC will do everything in its power to ensure that the land is used for "gap housing" (in English: low-cost housing), which will make the centre of Hermanus much blacker.

Perhaps it's just our lot to be governed by fools.

# Cell C client sees red

**NOT LONG AFTER** we published the story about a reader who inadvertently transferred R6,000 into Cell C's bank account (*nose* 104) *noseweek* received a call from the big red C itself

They didn't want to speak to *noseweek*, but to their aggrieved former customer. Ketsia Motlhabane.

With Motlhabane's permission, *noseweek* gave Cell C her contact details, and asked her to let us know how things turned out.

Not so well, we heard later. Motlhabane tells *noseweek* Cell C offered to give her back just R1,000 of the R6,000 they owe her. It seems they

intend keeping the rest as payment for the two-year contract she took out but never used because the phone that came with it didn't work and the company refused to replace it.

The only reason they have R6,000 to bargain with is that Motlhabane mistook the Cell C account number for her bond account when she was making an electronic transfer.

"I told them I want a full refund," Motlhabane says. "My family needs the R6,000. It is our money. Cell C doesn't need it. It's a drop in the ocean for them."

This year, the company posted a profit of more than R320 million.

While Cell C's alacrity in responding to our story is to be commended, we are still waiting for them to answer *noseweek*'s emailed request for a formal explanation of their behaviour. Don't hold your breath.

# Barking up the wrong tree

**A NOSEWEEK REPORT** on a series of highly irregular decisions made by the Gauteng Department of Agriculture, Conservation and the Environment (GDACE) last year introduced readers to that rotten government department (*nose*100).

With the acquiescence of MEC Khabisi Mosunkutu and senior members of GDACE, including HOD Steven Cornelius, wealthy ANC-connected property developers were breaking laws and regulations, and destroying valuable natural heritage.

That story sent the top brass into a flat panic, but lacking the balls to set their taxpayer-funded lawyers on *noseweek* they're now harassing the public servants whom they suspect of leaking the information.

At least seven of GDACE's professional staff are being targeted: they've been subjected to intimidating "interviews" by HOD Cornelius, had their desks searched and papers rearranged while out of the office, and, on the pretext of being investigated for not working a full 40 hours per week, been made to hand over copies of their diaries.

"They were trying to figure out if we had made time to speak to the media," said one. "Actually, we normally work far more than 40 hours a week".

Some also believe that they're being followed by investigators.

**Gauteng environment officials are going after all the wrong people in an attempt to silence whistleblowers**

The single common factor among them is that they are "white", and hence thought to be more inclined towards protecting the environment. (MEC Mosunkutu is apparently blind to the possibility that "black" people might also care about the wellbeing of future generations, and the rule of law.)

The GDACE human resources department also told some of those under investigation that they were not allowed to speak to lawyers about the investigations or about the disciplinary procedures being inflicted on them (it's of course illegal to deny anyone the right to consult a lawyer). They were only allowed to approach their union, which said it could do nothing until later in the proceedings.

More recently the first department-wide memo in living memory has been circulated to all GDACE email addresses, and stuck up on all notice boards. In East German Stasi tradition – or perhaps, Keystone Kops tradition – it encourages staff to rat on colleagues suspected of leaking information to the media. Mosunkutu's investigations are clearly getting nowhere, and he's getting desperate.

Five of the suspected whistle-blowers, sick of the nonsense, have left the department. (It hurts to admit it, but *noseweek* only got the names of all of those seven suspects very recently,

and no brown envelopes stuffed with incriminating documents have arrived from any of them.)

Following the *nose*100 story, and having received additional information, the Democratic Alliance in Gauteng called on Premier Sam Shilowa to investigate GDACE. Shilowa then requested a written report on the suspect decisions from MEC Mosunkutu.

True to the ANC tradition of transparent democracy, Shilowa has refused to let anyone outside his office see this report. He told the DA there were no irregularities, and hence nothing to investigate. (Gauteng's Integrity Commissioner, Advocate Jules Browde, disagrees – he wants a proper enquiry.)

Mosunkutu called a media conference in April to explain why his department approved environmentally-damaging developments, but the MEC's charm session quickly turned to farce. As a keen student of the Mango Buthelezi school of speechmaking, he droned on for ages without saying anything, much less clarifying any specifics. In between avoiding the topic and boring his audience, he had various "undesirables" ejected from the room, including two DA Members of the Provincial Legislature.

He then threatened those he'd booted out, forgetting that the journalists he'd invited to record his words of wisdom were happy to do just that. The following transcription of an audio recording of Mosunkutu in threat mode wonderfully illustrates his refined intelligence and sophisticated manner:

"Now, I must also point out that we are considering various options that may be available to us, to make those responsible for what we consider libellous public statements. Such tendencies must not be allowed to flourish.

"Now, you know I am the sort of person who does not issue a warning and not carry it out. I hope, I hope friends, you have... eh ... sufficient resources. Because, if you don't, and go and lose, and you lose spectacularly, possibility is that I might take your house. I will also help you, that you'll look for an alternative for your kids in some orphanage, that's fair, because that's the responsibility I have. But I might just take your house, or your car, if you don't have sufficient resources. So I hope you have enough."

The DA promptly reported the threat, and Gauteng's Integrity Commissioner recommended that he be "severely reprimanded" by the Legislature. In the event Mosunkutu apologised for unintentionally causing offence.

Whereas MEC Mosunkutu has somewhat restrained his thuggish inclinations, his son hasn't mastered the same level of self-control. Sechaba Mosunkutu is currently serving 15 years for a 2003 armed robbery committed in Rivonia. The youngster's transport to the crime scene? Daddy's taxpayer-funded car, stripped of numberplates for the occasion.

***The department's legal man, John Nesidoni, was photographed by the Southern Courier 'buying' a plot in the dodgy Eye of Africa estate – after he had helped facilitate its authorisation***

Although the media controversy has focussed on Mosunkutu and his senior staff members, the department's investigations have pointedly avoided scrutinising their actions. For example the public still awaits an explanation for how the department's legal man, John Nesidoni, came to be photographed by the *Southern Courier* "buying" a plot in the dodgy Eye of Africa estate – after he had helped facilitate its authorisation, in violation of provincial planning guidelines, from within GDACE.

Nesidoni has been involved in intimidation of staffers, and is widely suspected to be the brains behind some of the irregular arrangements with unethical developers (the MEC simply isn't bright enough to set them up, according to some). His reward? A promotion to Deputy Director-General, right underneath the HOD.

Another property that's received *noseweek* attention is the so-called Waterfall Farm near Midrand, owned by the wealthy Mia family. GDACE had identified this area as being rare Egoli Granite Grassland of extremely high conservation value, but was nonetheless allowing it to be destroyed (*noses*100 & 101). GDACE's story was that the Mias were to buy another piece of conservation land elsewhere, as a so-called "offset" – despite there being no such equivalent outside Waterfall Farm of Egoli Granite Grassland, nor an offset policy, and that one of the signatures on the highly irregular offset contract was not identifiable.

These mere technicalities haven't slowed down the Mias or GDACE HOD Steven Cornelius. No fully-fledged EIA has been conducted and the supposed offset site has yet to be identified, let alone purchased, but the Mias have begun work on the Waterfall Farm site with Cornelius's consent. Clearly a case of "Our natural heritage, and the law, be damned!". Environmental consultants Strategic Environmental Focus have facilitated the irregular process.

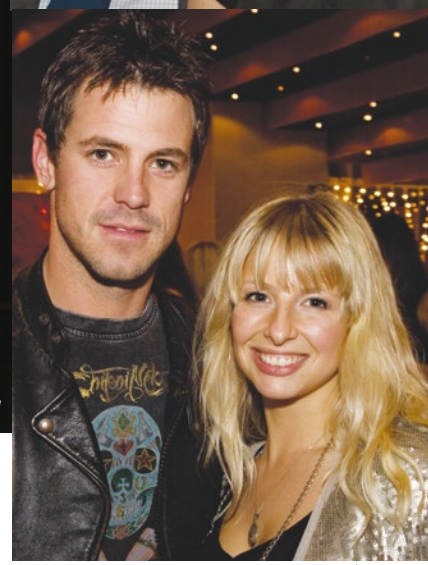
One result of the ongoing staff exodus from GDACE is that there are now very few people in the department who can competently evaluate the Environmental Impact Assessments (EIAs) that property developers have to submit in order to get environmental authorisation for projects.

Because more and more GDACE staff do not have the required background to interrogate the substance of EIAs, there's a growing tendency to nitpick irrelevancies. One EIA consultant told us that he'd had reports rejected because the page format wasn't exactly right (although the research in it wasn't queried) but we've seen fundamentally bad EIAs pass through the department without a murmur. Because of staff inexperience, good EIAs for law-abiding developers get held up in the system far longer than they should, but the crooks get a look-in.

There is currently no obligation on "independent" environmental assessors to be registered with any professional organisation, or show any job-related qualifications. If there's no-one in government experienced enough to catch out bad assessment work, we can expect things to get a lot worse.

As a stopgap measure, a group of EIA consultants are compiling an unofficial blacklist of their colleagues who conduct substandard studies – expect some of those mentioned in *noseweek* to be on it.

Pictures: NIKKI BARLOW



Above right: Francis Kasasa, the Consul of Monaco, and wife Barbara van Duuren Kasasa; below right: Colin Moss and girlfriend Tamrin Kaplan

**DO I DETECT A CREEPING** sense of tedium pervading this year's Cape Town Fashion Week? Certainly the four-day event at the Convention Centre is nowhere near as electrifying as previous Cape Town Fashion Weeks.

For starters it's been scaled down considerably. Not even a third of the usual number of designers. A lot of them newcomers, and not enough of the experienced designers who give the affair clout with their marquee names and ability to wow audiences with their ramp pizzazz as well as their clothing.

Perhaps it's a move by South Africa's beautiful new fashion show boss, Precious Moloi-Motsepe, to sideline Cape Town? Certainly, in the context of her far-flung African Fashion International empire – she now controls four of South Africa's five fashion weeks – the Cape Town show feels rather like a sad border post. An event set up to fly her AFI flag with a fraction of the usual passion and cash.

Nor are many tickets being sold to the public. The bums on seats belong mainly to the friends, employees and customers of the designers, as well as the mates and staff of AFI and the other sponsors. Virgin Mobile. The Department of Trade and Industry. And the Cape Town Fashion Council, whose rag-trade gurus make up the selection committee.

Which means it's become a bit of an insider event. Or non-event. Even media invitations have been thin on the ground, unlike the days when Gavin Rajah ran the show, and managed to get the attention of half the fashion press of Europe.

It's vital of course, and in everyone's interests, for South Africa's newcomers to get a leg up. Especially when they're talents like Khayelitsha's Peacemaker Hliso, a determined 27-year-old who not only produced a spicy range in summer colours like lime and lilac and peach, but has an unforgettable label. Goat Clothing.

But why should a Kenyan group get a platform for its nice-but-not-sensational LaLesso beach range that's already in a London retail chain, while so many local designers get rejected, including some previously disadvantaged if not actually emerging talents? Malick for example, who was deemed good enough to open an Audi Fashion Week in Joburg, was one of several designers who begged to show in Cape Town but got turned down. No wonder the knives are out.

As it happens some big names had other fish to fry. The eminently watchable Kluk duo decided to do Joburg instead this year because they got a big sponsor. Money talks.

And for Habits' Jenny le Roux, whose shows are always world-class, it's been a year in which she lost her husband. So instead she's putting her energies into launching her summer collection online with a bang.

# Pieces

## Hilary Prendini Toffoli

It's what she describes as South Africa's First-Ever Virtual Fashion Week and it's coupled with an ongoing in-store party at the beginning of September. Clients watch the ramp pictures while nibbling chocolates and sipping De Grendel wines.

"Thank God this year I don't have to worry about who didn't get to sit in the front row, and who got seated next to someone they're not talking to," she tells me gleefully when I bump into her at the Media Room's cash bar. She's wearing signature red and having a drink with Virgin Mobile's head of corporate affairs, Nicholas Maweni, a genial charmer with film star looks and Brit accent.

Maweni is in the front row at Rajah's show, next to *Elle's* relentlessly stylish editor Jackie Burger, a major Fashion Council mover. It's another jolly Rajah extravaganza – 25 models doing the slow-paced, crossover-leg giraffe strut on manic silver heels. Fake painted eyelashes curling up to their eyebrows, and a reckless variety of bows and fan thingies on their heads.

Some outfits are fiendishly alluring (black net over alabaster flesh) and some your granny would love (frowsy brown velour, with way too much beading.) But generally lacking is that sense-of-occasion feel that Rajah is normally so good at. Perhaps he's been too busy with his new range of velvety black designer furniture, which is being promoted in the Media Room, complete with his large curlicued gold initials.

Easygoing glamour is rampant at the Hip Hop show, where Cheryl Arthur has opted for roses of every shade and shape – on her matador pants, long drifty summer skirts and Empire line dresses. Her funky new wedding range is like no bridal gear you've ever seen. Pants suits, micro-minis, elegant coats, sparkling frocks bedecked in white sequins, floaty voluminous numbers for shotgun marriages, and even a swimsuit complete with veil and long train...

Bemused by it all in the audience is Precious's elusive gazillionaire husband Patrice, like a model himself in white. It's a status-packed line-up that includes the Consul of Monaco and a slew of Cheryl's heavyweight friends – writers like her husband Craig Tyson, editor of *GQ*.

Among them are best-selling thriller whizz Margie Orford, *Sunday Times* columnist Andrew Donaldson, novelist Shaun Johnson, *Fairlady* editor Suzy Brokensha, *noseweek* reporter Hilary Venables and *Mail and Guardian* columnist and law professor Richard Calland, author of *Anatomy of South Africa*. Not your usual airhead fashion freaks, but they manage to appear enchanted.

Left to right: Jackie l'Ange, Margie Orford and Andrew Donaldson

Marike Roth

# Slaves to ideology

**IF YOU'VE EVER SPENT** much time online, you've undoubtedly run into "libertarians". I'm not sure why, but these strange creatures are vastly over-represented on the web.

I was first introduced to computers via the business world, and for a long time I swore that the computer was simply a tool of international conspiracists intent on making everyone's job more difficult by the forced introduction of planned inefficiency. If that was the plan, it did backfire rather delightfully.

I'd like to make a full confession: when I began exploring cyberspace, I was getting paid for it. But one can spend only so much time being frivolous with the boss's dime. So though I'm probably the world's foremost authority on Princess Di jokes, from perusing bulletin boards, I soon began to feel guilty and began to use my stolen time for self-improvement.

Thus I discovered political chat rooms, and there encountered my first "libertarian" – they're more numerous there than wrinkles in a geriatric ward.

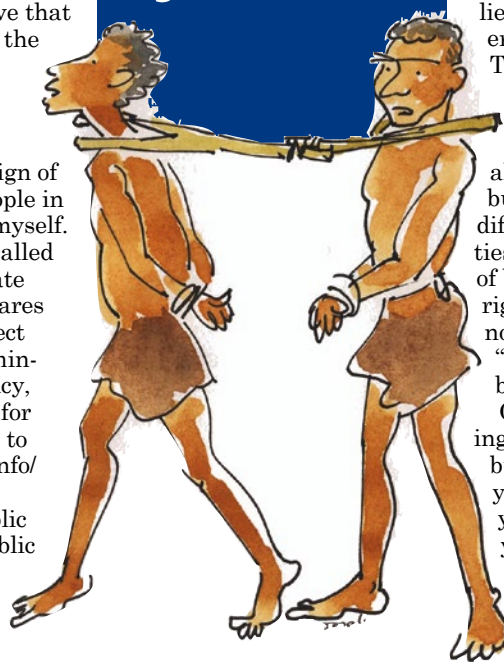
Initially, I assumed that any group defining itself by a word rooted in something as inherently good as "liberty" had to be a pretty nice bunch of people. I couldn't have been more mistaken. As a chat-room neophyte I was astounded by the views expressed by those I had initially assumed valued freedom.

My true education in "libertarianism" began when I first heard a "libertarian" defend the practice of slavery. I'm not kidding... honest. It seems that many "libertarians" believe that governments have no business denying the individual "right" of selling oneself into long-term servitude.

Neither does the "libertarian" believe in public education. As Noam Chomsky puts it: "The public school system is a sign of solidarity, sympathy and concern of people in general – even if it doesn't benefit me, myself. There's a pathological brand of what's called Libertarianism, which wants to eliminate that and turn you into a monster who cares only about yourself. And that's one aspect of undermining democracy, and undermining the attitudes that underlie democracy, namely, that there should be a concern for others and a communal way of reacting to community concerns." (www.chomsky.info/interviews/20080519.htm)

Nor does "libertarians" believe in public parks, public pools, public toilets, or public anything. According to "libertarian" dogma only individuals can own property. The "public" can't own anything.

***Libertarianism really boils down to one simple statement: Property rights are the only rights which should be enforced by government***



"Libertarians" are called "Marxists of the right" for good reason.

These so-called "libertarians" are also very fond of quoting a deceased author of self-absorbed prose who bore the strange name of Ayn Rand. I once tried to read an Ayn Rand novel and found that I was too fond of good literature to endure the punishment. But I read enough to understand that her views could be very seductive to the intellectually immature, and to victims of that brand of egocentrism common to socially ostracized adolescents.

"Libertarianism" really boils down to one simple statement: Property rights are the only rights which should be enforced by government. "Libertarians" divide human rights into two categories – positive rights and negative rights. And they seek to abolish the former by government diktat. Yet it is their unmitigated audacity to claim to be anti-authoritarian. In reality "libertarianism" is the most authoritarian scheme of government ever devised by twisted minds.

Luckily, there are no "libertarian" governments on the face of our little planet. But "libertarian" influence has been felt in governments and in modern schools of economic thought. For those wanting to peruse the ins and outs of this strange "philosophy", I highly recommend *Critiques of Libertarianism* by Mike Huben (world.std.com/~mhuben/lib-index.html).

One Huben quote regarding "libertarian" beliefs really says it all: "Inviolate private property is the only true measure of freedom. Those without property have the freedom to try to acquire it. If they can't, let them find somebody else's property to complain on".

Did I mention that the "libertarian" also has no problem whatsoever with a business which refuse to serve those of different nationalities, creeds, or ethnicities? After all, businesses are the property of business owners and it is their "inviolate right" to choose with whom they will or will not transact business. This belief makes "libertarianism" a magnet for racists and bigots of all stripes.

One can find a myriad of websites espousing the supposed virtues of "libertarianism", but I won't bother to list any here. Should you be curious enough to seek them out yourself and subsequently discover that you are in any way attracted to this backward and authoritarian school of political thought, do consider finding yourself a good psychiatrist.

# Seasonal miracles

**JADED THOUGH I AM**, two aspects of the Cape winter unfailingly stir me. As a winelover, knowing that those bleak, sodden vineyards harbour life and future pleasure in branch, root and soil. As a cosy suburbanite disgruntled by a week of downpour and irritated by sticking doors, seeing the streams of people emerging clean, dry and well-ironed from taxis and trains that have brought them from precarious shacks in bleak sodden settlements. This triumph of (mostly female, I'd guess) ingenuity, pride and dogged effort, puts the seasonal miracles of the vineyard in their place.

July and August are also the months when fifteen Platter Guide tasters are at what we laughingly call work. Less glamorously and more soberly labouring are the team of people (known as "the elves") organising the flow of wines from the producers (some more, some less efficient and some so downright dizzy that one wonders how they coax a living out of making and selling wines).

Then there's the publisher organising things and finding advertisers, journalists writing the introductions to each winery and sub-editors enlivening some wine descriptions and taming down others. And above all the editor, Philip van Zyl, who disappears around June, to be seen again only in September when he staggers out of his study like a pit pony, haggard and pale, clutching (we all hope) the electronic data that Singaporean gnomes will transform into 60,000 copies of Platter.

But of course my main concern with the torrent of five or six thousand tasting samples is the trickle that's diverted my way. There's a bitter little school of thought (although "thought" is rather over-complimentary) that suggests that the Platter taster's task is to allocate a rating according to the price of the wine and its distance from the posh Cape wine heartland, not to mention suggesting that we're all deeply corrupt or prejudiced. It doesn't feel as easy as that to me, while I struggle over half-stars, but as I'm going to praise some wines it's as well you rate my ratings and take them whence they come.

I will stick here to a few ranges rather than individual wines, because what is most pleasing is to sign off on a producer with an overall sigh of pleasure and interest, having swallowed more and spat less than is sometimes the case.

***My main concern with the torrent of five or six thousand tasting samples is the trickle that's diverted my way***

Illustration: *Meg Jordi*

(After sniffing one wine this year, I had to force myself to take a bee-eater's sip – but certainly didn't swallow.)

Stellenbosch winery L'Avenir was acquired in 2005 by famous French winemaker Michel Laroche and, no doubt with his support and prodding, is doing some really good things which are comparatively unusual in the modern Cape – notably cutting down the amount of oak being used. The lightly wooded Chardonnay is a great joy, for example. They're all good, though I have my doubts about how often tasting panels busy appraising a hundred wines in a morning will pick out L'Avenir's subtle and immensely drinkable wines – and if it's blockbusters and oak flavours you want, go elsewhere. Most of the reds are priced in that tricky and over-subscribed area around R85, and worth every cent.

While I can happily claim that Neethlingshof's wines are also good value, I can't pretend that the reds, especially, are very subtle (or that some wouldn't be better with a touch less oak). They're too big in alcohol and power for elegance, but they make up for it in other ways, particularly the grand reds in the top Lord Neethling range. The lower range wines are good too, but the Lord Neethlings are serious stuff. Even a touch old-fashioned in the element of austerity, of uncompromising tannic sternness which accompanies the lovely depth of fruit. Fortunately the owners have the sense to release these a few years later than the norm – they've even recently uncaged a splendid, quite youthful 2001 Cabernet. It goes for a ridulous R100, as does the Laurentius 2003 (an even finer bargain).

The only white in the Lord Neethling range is the Weisser Riesling Noble Late Harvest 2006 – a lovely apricotty bit of silky gorgeousness available soonish. R80 a half-bottle the price list promises. To quote my own blog: if I didn't say Gosh! before, I'll say it now.

I wanted to enthuse about all levels of much-improved Nederburg too, but there isn't space. Suffice it to say that when you're in one of those restaurants where Distell appears to control the winelist, you should complain, but can then happily sit back and enjoy the wines.

# ASA tells Steers: Burger off!

**I AM MORTIFIED AT** having provided you with the wrong web address for the Advertising Standards Authority in the last issue. Apologies all round and thanks to those who alerted us to the error. The correct address, for anyone who still hasn't tracked it down, is www.asasa.org.za.

It's worth visiting, not just to complain, but to see who else is complaining and which complaints have been upheld. Among the rulings you can read there is the one against the recently-pulled Steers TV ad – the one which compares the relative tastiness of young, semi-naked women to that of a fast food meal.

The ASA upheld complaints that the ad was offensive because it "objectifies women by placing them in competition with meat".

For those who missed its brief existence, the commercial uses the device of a split screen featuring, on the one side, a succession of scantily dressed dolly birds desperately trying to draw attention to their assets, and on the other, a beauty shot of a passive hamburger.

According to the voiceover, the green cursor, which bounces from boobs to bum to burger, is following the viewer's eye movements.

I hope no-one was fooled by that. A gullible heterosexual woman, homosexual man or vegetarian viewer would have been surprised at where their gaze wandered. Even the credulous heterosexual teenage male at whom the ad is clearly targeted may have been confused by his sudden preference for ground beef over a girl's bits.

So it's a joke, right? A spoof. A satire. A merry jape. Just not a very good one. Still, the creative team obviously thought it was funny enough to allow them to press some very gender-sensitive buttons. But women and meat? What were they thinking?

The complainants were not amused and nor was the ASA.

"The fact that images of the women are shown alongside a burger, with the cursor focussing on their cleavages and buttocks, draws a comparison that women's bodies are objects of consumption," the ruling says.

"The use of a cursor ... further perpetuates the communication that a woman is only worth looking at in parts traditionally associated with sex or lust. This undoubtedly portrays them in a manner which depicts them as sexual objects."

***Comparing women to meat was bound to spark outrage. But there's even worse out there in adland***

Schalk: Another tasty Burger

Fair enough, but if you take away the meat and the cursor, that covers an awful lot of advertising, to say nothing of all the other images of panting, pouting women openly displayed in everything from daily papers to music videos.

In fact, in a media world awash with women's bodies presented as objects of consumption, the Steers ad is pretty tame stuff.

But the ASA makes another, rather garbled, point: "Furthermore, the women are used in a sexualised and gratuitous manner as they are irrelevant to the product being advertised."

It's not clear how crucial the aspect of relevance was to their decision, but it does raise the point of whether using woman's bodies to sell motor cars or power tools or, particularly, hamburgers is less acceptable than using them to sell their own flesh.

The ads flighted during e-tv's late night rumpy-pumpy programme certainly portray women as sexual objects. But then, they are trying to shift soft porn cellphone downloads.

Also, these ads are only shown during "adult programming", which, as we all know, is only watched by adults. But is that a sufficient defence?

Perhaps not. The ASA set a possible precedent when it turned down Steers' offer to flight its ad "more selectively".

"Flighting it at a later time and in more 'mature' programming may potentially remove the concern as far as children is concerned, but it would not address issues of gender objectification and offense (sic) as identified by the complainants."

If gender objectification is unacceptable, regardless of its relevance to the product, the age of the audience or the lateness of the hour, there's a lot worse material than the Steers ad to complain about.

But that would require at least one gender sensitive person sitting through a load of bad porn waiting to be even more offended during the ad break. No wonder the ASA hasn't been overwhelmed.



# Sced

**NUH, SAYS NOËLEEN**, he sced of coz. But come on ducky, say I, even if he is scared of cars, that doesn't mean you've got to carry your dog around in a rucksack everywhere you go, does it? Nemmarn, says she, he kwart lart. Yes but even if he is quite light I mean surely he needs a bit of exercise now and then, hey? And what about his mental condition, hey, and his bowels? What if he needs a doo-doo? Nuh, says Noëleen, he got a injection for his mental and the vet give him a laxitative for nart tarm then we squeeze him in the morneen and he orrart all day. Like a toothpaste tube, hey? say I. But why not just leave him at home then so he can run around with no cars and do his doo-doos on the grass? Nuh, says Noëleen, mar ma say if Ar go to the shops and a tsotsi come to rob me Ar must kick him in the nuts and warl Ar'm kickeen him in the nuts Rex wool jump out and bart his legs, lark. I look Rex straight in the eye and he buries his head in his bag. Nemmarn, says Noëleen, the tsotsis sced of him. Not the tsotsis I have known, think I, but let it pass. You will make somebody a wonderful wife one day, say I to Noëleen.

Noëleen, now, is only twelve, but brother Hector is sixteen and he's got a whole lot of pimples and a great big German Shepherd dog name of White Fang. White Fang isn't sced of any coz nor anything else anywhere and anyway he would need a supermarket trolley for transport, but he can't go on a lead either, because when he does his doo-doos they're right in the middle of the pavement from choice, irregardless of laxitatives, and God help any law-enforcer who tries to say him nay. And then too, dogs are not allowed at Hector's school and anyway it's a whole kilometre from home so his pa has to drive him to school and fetch him in the afternoon and he never goes anywhere else on foot because certain Nigerians will capture him and sell him to a witchdoctor who will turn him into mooty and dry out his genitalia and grind them up into powder for old mens' sexual problems.

Of course White Fang goes with Hector and his pa to school and back. He roams unrestrained inside the 4x4 so if any hijacker tries to seize the keys or grab the bag from Hector's lap White Fang will take his hand off at the wrist. Also of course when Hector's pa gets home there's a bit of danger twixt outer and inner portcullises when the 4x4 must be totally locked up while Pa inside checks both gates, and if some scabenger has sneaked in behind it hoping to grab the remote for the inner gate so he can rob the house White Fang can be released at the press of a button to take off this scabenger's leg at the buttock. Hector's pa also carries a nine mil Beretta parabellum pistol with a fifteen-round magazine so if the scabenger tries to run away on one leg he can shoot him sixteen times. In the back yard Hector's pa has one of those stands for a printed cardboard picture of a terrorist for target practice, and he shoots at this with his 80kg-draw crossbow for silence, so other terrorists in the front yard won't know this one is dead. And as the bow goes twang White Fang leaps forward and tears up the whole target plenty small. Just practice for now until one day it's a real live terrorist. White Fang also doubles as bodyguard for Ma, who does teacup readings for that famed mystical personage the Hon Doc Ian Palaver Saviour of the White Rhinoceros, who sends an armed karate driver to fetch her off to his mystical retreat in the Drakensberg so she can read his palm too and do his stars while she's about it, but also she does top mystics of the English Upper Class, who email to her scanned photographs of their tea leaves, so things are okay for security except now and then there's a Zimbabwean type of face at the street security camera who might claim he wants his leaves done, but if he's an imposter White Fang will take off all his limbs but not kill him entirely because he might just be an ordinary Zulu come to read the water meter.

**White Fang roams unrestrained inside the 4x4 so if any hijacker tries to seize the keys, Fang will take his hand off at the wrist**

So the whole family has attained a certain kind of calm known as Ubuntu. Zulu criminals rob mainly Indians so that's okay we're all South Africans and a man must make a living you know and feed his children, and anyway always remember your Zulu, however dof, is actually a manly figure deep inside whatever misfortune may have come his way of late. I mean remember how manly they all were at Isandlwana, even noble, kind of.

# Smalls

**PAYMENT & TERMS FOR SMALLS**

Deadline for smalls is the 1st of the month prior to publication.

Smalls ads are prepaid at R120 for up to 15 words, thereafter R15 per word.

Boxed ads are R200 per column cm ex VAT (min 3cm deep).

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## PERSONAL

**Cros** (Anne Crosby), ex E.O.H. Witwatersrand University, turns 80 this year. Friends contact at ernest@baseltd.co.za

**Harrod has been elected** geriatric marathon champion of Monaco. Congratulations from Gerber, Watkins and Fehrsen.

**Tshwane Metro Council** reappoints previous Metro Police Chief who left under a cloud. Why? – JS vZ.

**Megan**, thanks for all the hospital visits and breakfast at Royal Johannesburg. Ivan

Yvonne and Eric enjoy your cruise. – Maureen.

**I have seen** who you are and I love you – Maatjie.

## LONELY HEARTS

**Will & Courage** is a confidential matchmaking service – discreet, upmarket & professional intros. Contact Sharon on 082 350 1648 or email consultant@willandcourage.co.za. All enquiries are treated confidentially.

**Good-looking**, independent, young 60 Jewish lady wishes to meet similar unattached man. annans@iafrica.com.

## HOLIDAY ACCOMMODATION

**Arniston** Stunning seafront home perched on clifftop overlooking beach. Breathtaking position and panoramic sea views. 5 Bedrooms, 3 en-suite, serviced. 082 706 5902.

**Clarens** Near Golden Gate in the beautiful Eastern Free State: Rosewood Corner B&B offers all you want for a break from it all. 058 256 1252.

**Marina Da Gama, Cape Town** Self-catering apartment on water's edge. www.cootslanding.co.za.

**Europe's best kept skiing secret** – Stunning newly renovated 7 bedroom private chalet with brand new furnishings, available near Chamonix Valley; www.chalet-montblanc.net or Susan 084 870 4436.

**Friston Lodge Guest House B&B** Centrally situated, Upper Newlands near Kirstenbosch Gardens, UCT and the Waterfront. Comfortable affordable accommodation, in garden setting. Solar heated pool, DSTV. Sabine 076 156 2381; Sabine@capestay.com.

**Constantia** Comfortable self catering unit. Safe parking.Suitable for holidays or commuting businessman. 082 298 8873.

**Umhlanga** Next to the Sands,2 bed/2bath stunning, serviced, sea facing apartment withDSTV putz@icon.co.za 082 900 1202.

**Visit Swakopmund** And stay at Cornerstone Guest House. It's wonderful. 00 264 64 462 468.

**Plettenberg Bay** Anlin Beach House B&B/Self-Catering. Four Star luxury 100m from Robberg Beach. 044 533 3694; www.anlinbeachhouse.co.za; stay@anlinbeachhouse.co.za.

**Kenilworth, Cape Town** Charming very comfortable guesthouse excellent for holidays and commuting businessmen. Priscilla 083 266 9457.

## PROPERTY TO BUY, SELL OR RENT

**Port Edward** 4bed 3bath brand new dream home. 300m from seashore. R1.65m. Phone Jill 082 257 1198.

**Ceres, Karoo** Undeveloped 1027ha farm 70km from Ceres. Has comfortable house. R1.4m Call Jos 082 770 9171.

**London** Upmarket residential UK blue chip properties. Excellent "hard currency" investments. Contact Ken 082 370 4221.

**Bryanston** Secure, upmarket office park 85 square m available. Share receptionist, suits small business. Call 011 463 0417.

**George** 65 square m two-bedroom apartment, carport and swimming pools in complex etc. R680 000. Theuns 082 381 7653.

**Koue Bokkeveld** getaway farm. Beautiful setting. 25 percent share for sale. Contact Jos 082 770 9171.

**Vredehoek, Cape Town** Luxury 3-bed townhouse, all en suite, sunroom, about 240 square m, garage. R2.1 m. 083 452 2916.

**San Lameer** Villa to rent. 2 bath, 3 bedroom, sleeps 6. Golf member. Contact Lullu at 082 935 1835 or wesselsjlb@mweb.co.za.

**Nature's Valley** Self-catering accommodation. Phone 044 531 6681.

**Garden Route** Luxurious holiday home and B&B overlooking the ocean. www.dolphinshill.co.za. 044 381 0527.

**KwaZulu-Natal** Superb seafront properties from Denton-Miller Estates. View www.natal-south-coast-estates.co.za.

**Swellendam** R750 000. Own your own log home with 2 bedrooms and open-plan lounge/kitchen near dam suitable for water skiing with stunning views of the Langeberg Mountain.Contact Carina 082 353 2660.

## COMMERCIAL PROPERTY

**Durban** 2 Sectional Title Shops (57sqm each) with prime Morningside road frontage, presently antique shops. Reluctant seller retiring after 40 years, before becoming stock herself. 031 312 5696.

**For all your commercial**, residential, industrial property needs, rentals or purchases in Limpopo, contact Solly Noor Properties on 015 516 1535.

**For commercial** and industrial property requirements in Cape Town's southern suburbs, call Wall & Smith 021 797 2552.

## TRAVEL & LEISURE

**Guided casual walking** in beautiful south-west France. Be our house guests enjoying excellent cuisine. www.frenchcooks.com. +44 20 8776 2045.

**Paris, France** Beautiful sunny apartment 5 mins from Champs Elysees, fully equipped, sleeps 2 putz@icon.co.za; +33 617 045 290.

## BUILDING SERVICES

**For building plans**, call Karl Winter t/a Jenwin Designs, PO Box 219, Onrus River, 7201.

**Penetron** for concrete waterproofing. Call 021 511 8590. www.penetron.com.

**SHF Projects** Construction: Civils Renovations. 083 3402112.

**Hardwood flooring** and skirting boards. Call Gus on 082 772 1610 (Durban).

## BUSINESS OPPORTUNITIES

**Magazine publisher** Specialist in Sales and Marketing short and long-term assignments. 083 252 8380.

**Brisbane, Australia Business Migration Opportunity**

**High Profile Business For Sale**
**Fabrication / Building Industry**
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**e-mail: dewaal@bigpond.net.au**

## LEGAL, INSURANCE & FINANCIAL

**Muhlberg Attorneys**, intellectual property law specialists. 011 465 5600 or 083 947 0903. mail@muhlberg.co.za.

**Final Accounts & Claims** For contractors. Martin 082 900 1410.

**Adrian Gary Skuy Attorneys**, Johannesburg. Specialising in litigation,commercial,labour, tax,matrimonial. 011 882 3778 or 082 451 5779. taxlaw@telkomsa.net.

**Unhappy** with your fund administrators? Linda 011 444 0546.

**Legal costs** We put lawyers in their place. Rene P. Lion-Cachet. 011 793 3729.

**Still number 1** after all these years John Fisher for life assurance and group benefits. 011 444 2824.

## FOR SALE

**Tinus & Gabriel de Jongh** paintings bought sold and valued. Art prints sold. Gallery open by appointment; dejongh@yebo.co.za; www.tinusdejongh.co.za; 021 686 4141

**Office chairs and desks** New and second hand. Gary 011 792 1117; gary@totaloffice.co.za.

**Koi** Boutique 15 year old private collection 32 gorgeous fish including Tanchos, Kohakus, Ogons. Medium to large. Western Cape seller 083 626 1522.
**Bolex movie camera**, perfect condition, in own case. Alvin 021 685 4607.

## COURSES

**Art Classes, Muizenberg** General art & drawing skills. Meg: 021 788 5974 or 082 926 7666; jordi@telkomsa.net.

## MISCELLANEOUS SERVICES

**Flying Dutchman** For all your graphic design work – logos, adverts, print, packaging, corporate ID. Contact Mich 072 141 8854.
**Silver Spoon Function Hire** Hiring of cutlery, crockery, linen, glasses, marquees, heaters etc. For all your hiring requirements 011 262 2227.
**Translations** English to Afrikaans. Ina 082 978 9846.
**Goosebump** video production A name to remember. www.goosebump.co.za.
**Handwriting analysis** Recognise your strengths and understand areas of insecurity. Knowledge is power! Call Andrea on 082 927 0855,
**Don't sweat**, call in the writing experts. Suzanne Brenner 082 491 0699. email prowrite@mweb.co.za; web: www.prowrite.co.za.
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**Joypak** sachet and bottle filling requirements. No job too big or too small. Call 021 511 6605.
**Knysna** Businessman's airport shuttle. Four passengers max. Ample luggage room. Call 083 631 9259.
**Support SA Soccer Ball** for 2010 details. joslurie@global.co.za.
**Fun quiz** for corporate team-building, fund-raiser or just for fun. Call Liz 082 658 4084.
**Do you know** what your competitors are up to? Our Competitive Intelligence and Research is Legal and is even better than *noseweek*'s! Contact: Dr Herman van Niekerk. Suritec info@suritec.co.za; 021 683 3624.
**Tent Pro cc** for New and Used Army Tents, Tel 082 537 2694 Fax (011) 316 1053
**East Cape Hand Tools cc** Suppliers of quality hand tools. Call 041 374 1929.
**150 upmarket wines** (Private collection). Includes Rubicon, Kanonkop, Overgaauw. 2 X 1947 KWV Port. 072 373 1307.
**Mother-in-law problem?** London Pie franchise will solve. Call Bob 082 808 8136.
**Umjindi Jewellery Project**, Barberton. Community development in action. 013 712 5807 or 082 294 1163.

## HEALTH & FITNESS

**Fight the flab** Reduce stress with your own personal fitness training programme, one-to-one with master personal trainer. Lose weight. Correct body alignment and posture, at Sandton's newest gym. Free assessment. Pilates, sports training and rehabilitation, comprehensive stretching. Stressed out overweight execs a speciality! 082 373 2409.
**Chiropractor** Dr David Dyson (USA) Treatment of neuro-muscular-skeletal disorders. Need a bed? www.chirobed.co.za or call 031 469 4192.

## PUBLICATIONS

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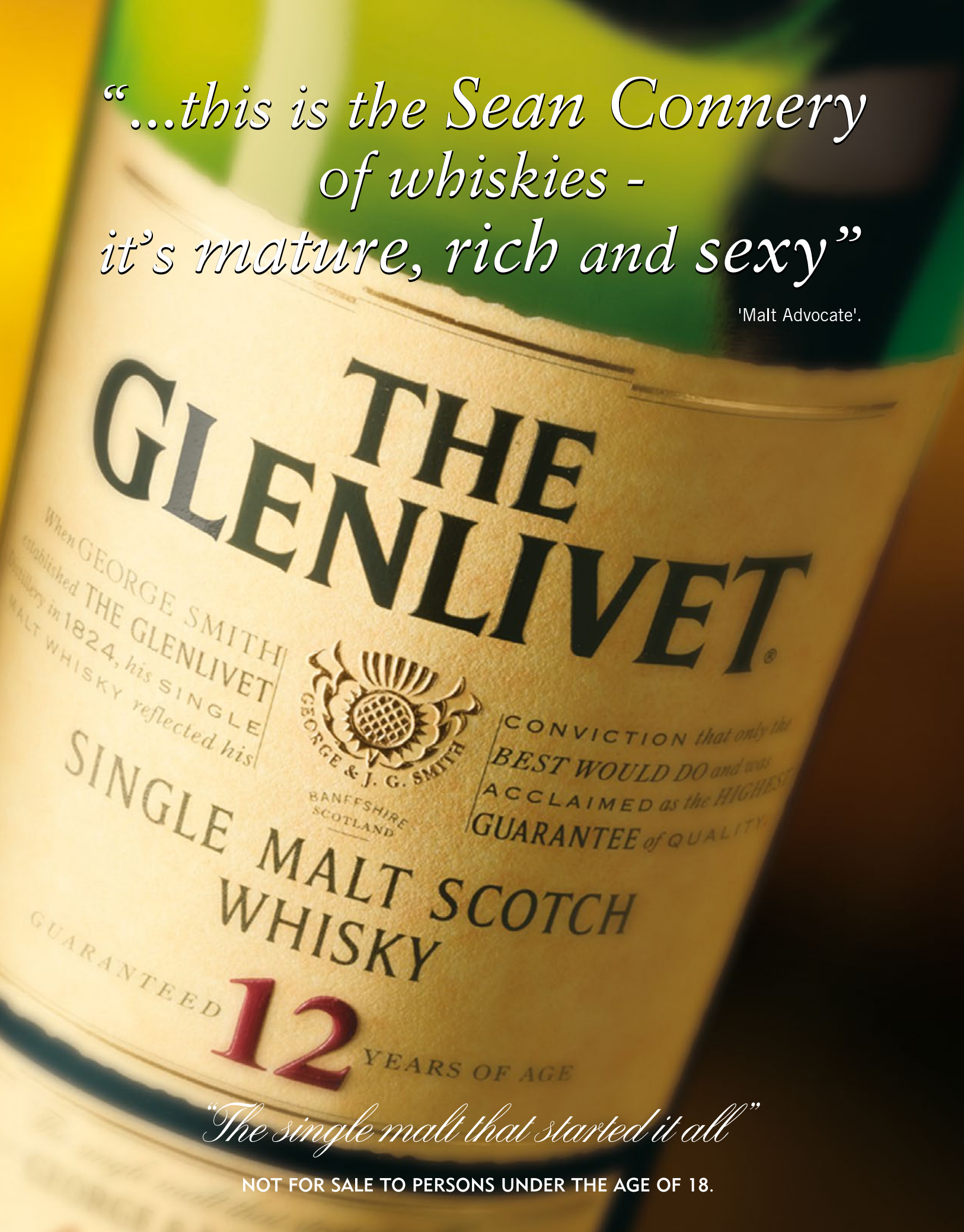
**Sonny Kleus Bookshop** 39 Main Street, Strand for widest selection of pre-read books.

## WANTED

**Well-cellared 1996 vintage** Cloete Christina sauvignon blanc. Call 083 656 1785.
**Military and police medals** bought by collector. Illustrated price list available. Henk Loots 082 412 2689.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