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# noseweek

134

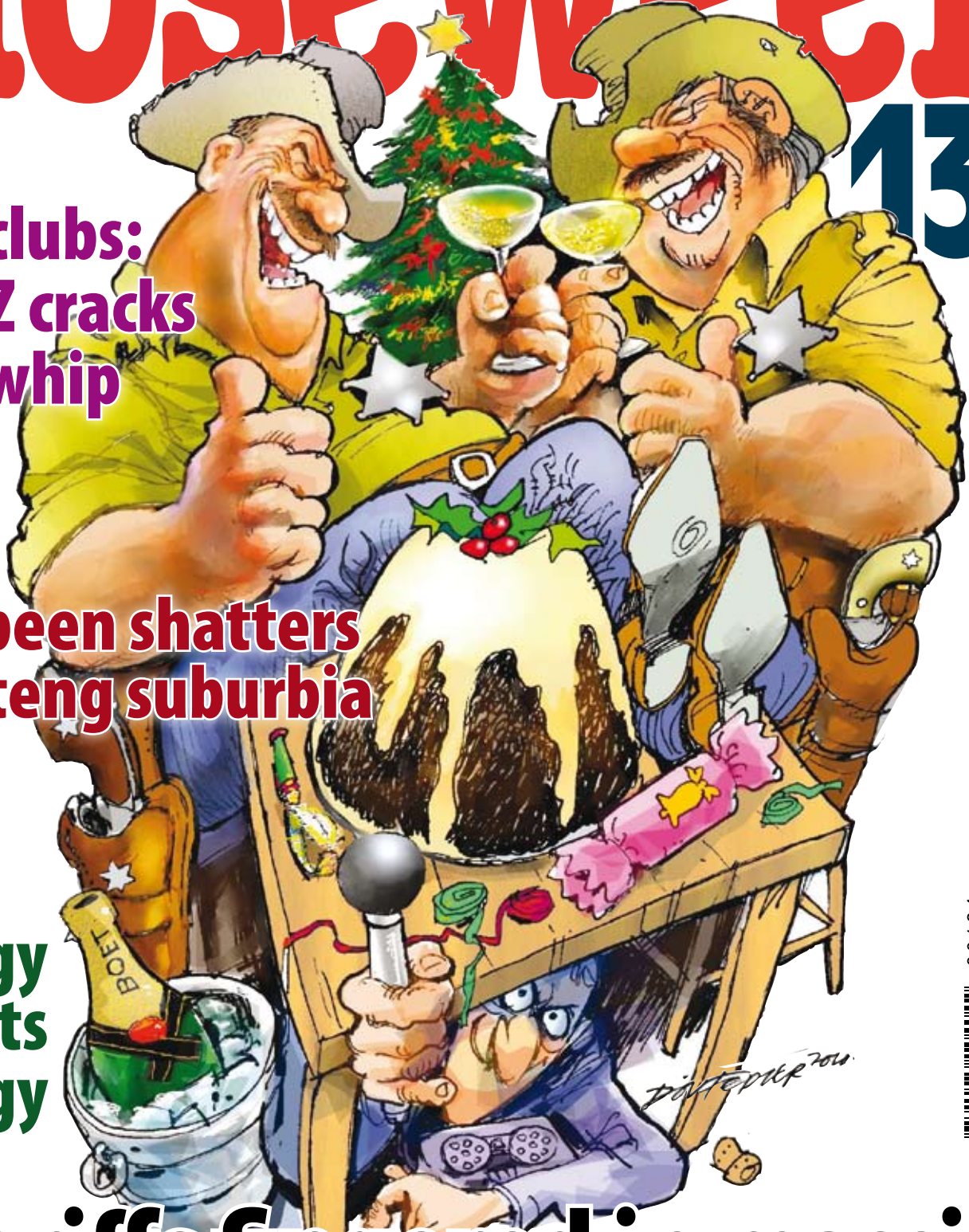
DECEMBER 2010


**Sex clubs:  
Mrs Z cracks  
the whip**

**Shebeen shatters  
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**Podgy  
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**Sheriffs fingered in massive  
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## Stranger than fiction

With reference to “Robert Smit’s deadly bombshell” (Editorial *nose 133*), years ago the late Hans Strydom (who, with Ivor Wilkins, wrote the definitive book on the Broederbond), while news editor at the *Sunday Times*, had a small publishing house and I used to help edit manuscripts.

One day Hans gave me a large carton containing a manuscript that, judging by the notes on many of the pages and its dog-eared state, had been read by a number of other people.

It had been written by Secretary for Information Eschel Rhoodie, and though it was a work of fiction it dealt with the murder of Dr Smit, and you could quite easily identify the characters. Among them were finance minister Nico Diederichs, head of the Bureau of State Security (BOSS) General Hendrik van den Bergh, and others whom Rhoodie hinted were responsible for Dr Smit’s death.

I recall that it was a well-written “thriller”, but sadly it was never published. I believe that Hans Strydom’s son now has it and from time to time stories about the book and its

explosive contents appear in the press.

**Brian Joss**  
Milnerton

## Barfly by night

Johan Swart, the man behind the KZN ponzi scheme (“Too good to be true”, *nose133*) is definitely not in hiding.

Tell the Hawks to do a bit of low flying at Luyt Breweries in Ballito where they are bound to find him at the bar,

especially on Fridays around 17h00. (His wife has apparently left for Australia.)

PS: He took my mate for R400,000.

**Ken**  
Ballito

## Spammers in the works

You complain about companies – such as Leisure Books,

a Media24 subsidiary – that sell their clients’ telephone numbers and email address lists to spammers (*nose133*), but what about friends or clubs that carelessly disclose all email addresses on their lists when sending jokes, club letters, chain letter rubbish and special offers? The spammers get hold of these and one is bombarded with spam mail purporting to come from banks, marketers and companies.

caller accordingly. The caller expresses amazement at my forgetfulness, but I am promised instant forgiveness if I would just agree to help them out this time.

Experience has taught that it is a waste of time to ask pertinent questions, such as: How I can be assured that the caller is genuine? or Are you registered as a welfare entity? What works best is a firm “No!”. Three repetitions of this usually does the trick.

## Does Harold Strachan really believe the US should have prolonged the war?

Which brings a related issue to mind: Spam mail purportedly from one or other of the Big Four banks, keeps pouring in, requesting one to update one’s banking details. Nobody seems able to nail them, but surely these criminals can be caught?

**Brian**  
Parkview

What’s really disquieting about these calls is their identical structure, and that they come in batches: If I receive one, I can be sure there will be four or five similar ones within a span of weeks. The inference is irresistible that this is a well-organised scam.

**Johan Muller**  
Jeffreys Bay

*Or a commercial fundraising company with a team of hard-sell telemarketers using the same address list to market for various clients. – Ed.*

## Soft soap or hard sell?

It could be that I am getting paranoid about calls that claim to emanate from charitable institutions, but it’s rather strange.

The caller, always a lady, tells my receptionist that the call is of a personal nature. The call is put through to me. When I pick up, a confident voice tells me it is Veronica or Mary or whoever – the subtle insinuation is that I should already know the caller.

After a concerned enquiry about my well-being, it’s down to business: Do I remember that on a date (say) six months ago, I promised to pay her organisation R200 for street children or Down’s syndrome persons of the Romanian, Chilian or Venda group, or chronic incontinence patients with leprosy? And will I do so again?

I have no recollection whatsoever of an earlier promise or giving previous assistance as alleged, and I inform the

## Use less stuff

Hilary Venables is to be congratulated for the most dispassionate article that I’ve read about what we humans are doing to destroy our own species (*nose133*). This letter is written on the day that Americans go to the polls. Thanks to huge backing from the likes of the Koch brothers, it seems likely that the Tea Party and its agenda is set to be a formative force in US environmental politics. I tremble to think of the consequences for my grandchildren.

What to do about all this? Robert Lilienfeld, author of the book *Use Less Stuff* says it all in that title. Recycling is not an adequate answer: a promise to clean up afterwards is too easily treated as a licence to generate still more of a mess.

**Gus**



“I’m really worried, his drawing just gets worse and worse!”



Finally, to expect politicians to solve the problem is just wishful thinking. "Poli" is a Greek word meaning "many" and "tics" – well, they're parasites. So what we all have to do is use less – and continue to speak out until politicians are shamed into real action.

**Mike Young**  
Sedgefield

### Strachan aftershock

Harold Strachan's diatribe against the use of the atom bomb in Japan would, I think, have been less one-sided if he'd actually fought against, been imprisoned by, or even been a citizen of one of the many countries which were overrun and devastated by the Japanese army.

Does he really believe the Americans should have prolonged the war and condemned thousands of their soldiers to unnecessary death or disablement when, after years of development, they finally had a weapon which could end it within days?

One thing is for sure – if he had been one of the American GIs waiting for the order to invade Japan he would not have the jaundiced view he expressed in his article.

**John Harding**  
Constantia

### Nuclear reaction

How can South Africa spend billions of rands on the re-



search of a pebble bed modular reactor (PBMR), then scrap the work and go for a nuclear reactor contract with a Korean company costing about R450 billion rand instead? Someone who I believe is in the know, claims that they needed only about 5% of the R450bn to complete the work on the PBMR.

**Alan van Bergen**  
By Email

*Noseweek approached, Prof Stephen Thomas, professor of Energy Policy at the Business School of the University of Greenwich, who is an expert on the subject, for comment: After the abandonment of the PBMR and the collapse of the call for tenders for nuclear capacity in 2008 – when the lowest bid (for the French Areva EPR reactor) was so high it was unfinanceable –*

the government and Eskom have been looking around for "affordable" reactors. They seem to have an unshakeable faith that there are cheap reactors to be had and just need to find them. One option is the Korean design, the APR1400. This won a tender in UAE last December when it bid US\$20bn for four reactors against the US\$36bn bid by Areva. Problem is, the APR1400 has a single skin which would not stop a civil airliner, a requirement in Europe and USA and it does not have a "core-catcher" so that if the reactor vessel fails, the core will be held and won't burn down into the earth and contaminate everywhere. (Core-catchers are the subject of huge dispute: the Americans don't ask for them, Europeans do and Areva's EPR has both a double skin and a core catcher.) Anyway,

if SA were to buy two reactors from Korea, it would cost something like R450bn – but SA is miles away from placing an order.

It is true that 5% of R450bn is about the expected cost of building the demo PBMR, but that would get you only a dodgy 165MW reactor – 2.6% of the Korean reactor's 6400MW capacity.



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# Dear Reader

## Banks: Where does the buck stop?

**W**E WERE THE FIRST to disclose dishonest bookkeeping by the FirstRand banking group, when, three years ago, *noseweek* unpacked the fraudulent goings-on at their offshore subsidiary, Ansbachers. Besides the ill-devised and illegal offshore “structures” they were selling their clients, and the money laundering on behalf of the likes of Discovery’s directors or the channellers of arms-deal bribes, it was the shady, bottom-drawer bookkeeping that really shook us – to the point where we posed the question: Are you running a whorehouse or a bank?

Even faced with the evidence, many did not believe us. Our own chairman, the kindly Dr Van Zyl Slabbert resigned from the *noseweek* board in scandalised disbelief. Those who did believe us did not appear to care very much.

Since then the international banking crisis has broken, triggering a world depression that has seen millions out of their jobs and many more millions starving and ready to riot. All triggered by the greed and shady dealings of the world’s biggest banks.

That is apparently what it takes to make people think the unthinkable. Now, suddenly, no-one trusts the banks and everyone cares a lot.

Mr and Mrs Average were deeply shocked by last month’s *Carte Blanche* disclosures about how FNB has persisted with the fraudulent bookkeeping that has seen tens of thousands of erstwhile Saambou home loan clients robbed of their homes and life savings (first revealed in *noses40&41* – in 2002). Now, it seems, FirstRand may finally have gone beyond what public opinion will tolerate.

But how much more is it going to take to make our bankers stop? The raving intervention of a Julius Malema? Because if that’s what it takes, that’s what they – and we – are going to get.

As we went to press there was a story doing the rounds that, having bought the bond originator Bond Choice from Nedbank, and having then established an entity called Findex, ABSA has told estate agents that, in effect, anyone wanting an ABSA bond will have to go through Findex/Bond Choice. (ABSA will allow no other bond originator more than a 40% bond – the vast majority of home buyers need a loan of 80% or more of the purchase price.)

Also part of the scheme: ABSA intend to force all estate agents who apply for ABSA bonds on behalf of their clients to sign some sort of preferential or exclusive use contract with Findex/Bond Choice. Anything to squeeze another fee from customers.

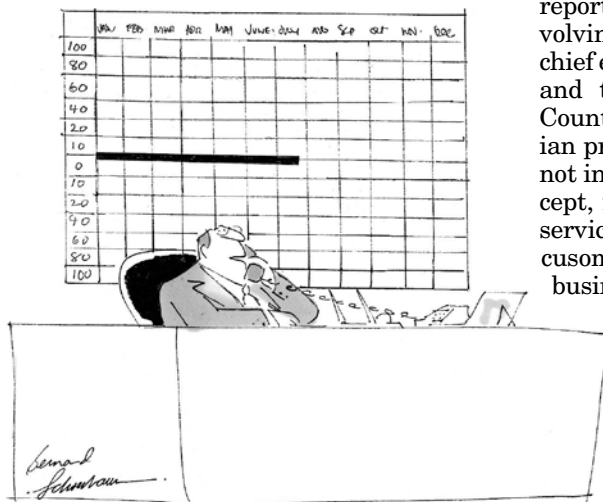
ABSA is by far the biggest player in the home loans market and this amounts to a clear abuse of power in the marketplace. Surely this raises a whole lot of ethical issues and calls for the attention of the competition board? In any event, some of the big players in the estate agency business are not pleased and are likely to find rare common cause on this one. So it’s early days yet, even if ABSA’s plan comes into force on 1 December.

ABSA clients should not be surprised – they need only recall how their new chairman, the deceptively petite Ms Ramos, was unmoved at seeing Transnet’s pensioners in the gutter in order to up her annual bonus by a couple of million.

Enough of banks and on to Woolies. News reports of some suspect offshore dealings involving Woolworths’ directors (its departing chief executive and his about-to-be successor) and the company’s Australian subsidiary, Country Road, have featured in the Australian press over the past month but, curiously, not in the South African business press. (Except, it must be said, on *Moneyweb’s* online service – where the average Woolworths customer is unlikely to see it.) Go to [www.businessspectator.com.au](http://www.businessspectator.com.au) and search for “country+road”. Interesting.

Finally, it’s the festive season, a time of giving and community. We wish you much happiness. And, yes, be generous (but not foolish) in your giving – especially to those in need. What better than to spread around a bit of happiness!

**The Editor**



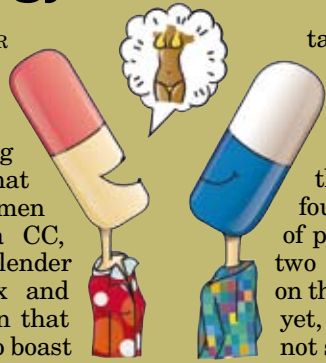
“Not much, what’s new with you?”



## Podgy meets dodgy

SOME OF OUR readers may not read *Vroukeur*, so we would like to bring to their attention that the snake oil salesmen at Planet Hoodia CC, who advertise Slender Gel, Slender Max and Hoodia Gordonii in that magazine, and who boast that these products “target stubborn fat”, “guarantee weight loss”, and result in a “noticeable reduction in cellulite”, were, on 29 October, ordered by the Advertising Standards Authority to place the following statement in *Vroukeur*:

“The Authority noted that since February 2009 the respondent has had more than ten rulings issued in relation to its advertising. Of these ten, two required voluntary under-



takings to change its advertising, three were upheld on the merits, four were instances where the respondent was found to be in breach of previous rulings, and two imposed a sanction on the respondent... As of yet, the directorate has not seen any proof of the claimed weight loss and cellulite reduction effects.”

Translation: these are dodgy characters and the products should be avoided.

Who might the dodgy characters behind Planet Hoodia be? None other than Christopher and Jasmine Anne Grindlay who live in style on the back end of Table Mountain, at 11 Fisherman’s Bend Road, Llandudno.

Just thought you should know.

## Exactly what it’s about

SOUTH AFRICAN Rugby Players Association (SARPA) executive committee member Ross van Reenen has called to correct *noseweek’s* version of his role in the difficulties between insurance broker Andre van Rensburg and the CEO of SARPA, Piet Heymans (*nose* 133).

*Noseweek* wrote that Van Rensburg claimed Heymans asked Van Reenen to get competing insurance quotes from the UK to establish if SARPA was actually getting the best deal from Van Rensburg, and that Van Reenen used UK-based coach Brendan Venter as his link man.

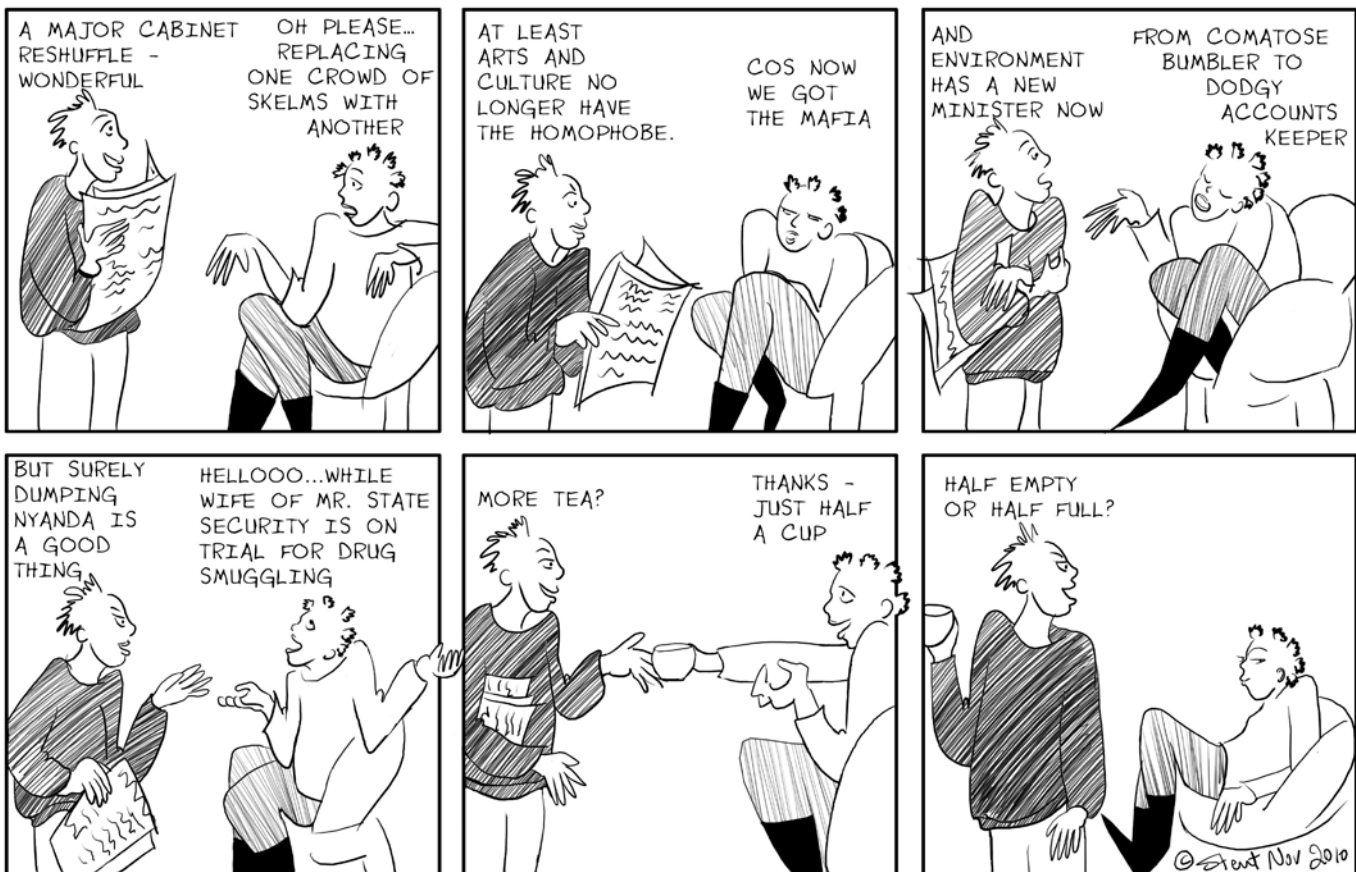
Van Reenen tells *noseweek* that he did get quotes, but that Venter was not involved.

The report also said that

Van Rensburg claimed SARPA wasn’t reflecting in its accounts the income received from his company (which seems to have been something between a kickback and a fee for helping to administer the insurance claims), and that he once gave Heymans an envelope with R7,000 in cash.

However, we prefaced this by saying that Heymans laughed off Van Rensburg’s insinuation with the following statement: “Van Reenen knows exactly what that’s about”. There we got our Vans mixed up; it should of course have read: “Van Rensburg knows exactly what that’s about.”

*Noseweek* apologises for the errors.



Stent

# HIGH NOON FOR ROTTEN SHERIFFS



South Africans have lost billions through corrupt auctions – but now detectives are ready to pounce on the guilty

**F**OR DECADES the authorities have turned a blind eye to fraud and corruption in sheriffs' offices, particularly in the area of sales in execution. But last month, in the first of a series of country-wide raids, police and the SA Revenue Service swooped on six sheriffs' premises in the greater Durban area.

Why the sudden diligence on the part of the previously tardy enforcement agencies? Well, their hands were forced. *Noseweek* can reveal that the *prima facie* evidence of crime that forced the November raids came, not as the result of diligent investigation by government agencies, but from a devastating dossier produced by the home loans chief of a leading bank.

Now, say colleagues, this executive is living in fear of the criminal syn-

dicates that his secret dossier has exposed. In an attempt to distance himself and his bank from vengeance, lawyers have been appointed to pass on the dramatic evidence, and liaise with the authorities.

Jan Kleynhans is the chief executive of FNB's home loans division. Previously head of the bank's card division, Kleynhans moved to home loans a couple of years ago and it swiftly became clear that he had a bee in his bonnet about sheriffs of the court and their sales in execution.

Sheriffs, formerly part of the Master's office at high courts, were privatised in the 1980s. Although officers of the court, South Africa's 254 sheriffs operate in effect as individual franchises – each sheriff owns and runs an allocated area. Appointed by the

department of justice, they're there for life – ex-cops, ex-lawyers. In theory they answer to the SA Board for Sheriffs. But in practice each is lord of a fiefdom.

When a repossessed house is sold at auction, up to 80% of its value is usually achieved. This figure plummets to 55% or lower when sold in execution by a sheriff. Readers may recall how, in 2008, Sandton's perennial assistant sheriff, Marie de Kock, knocked down the late Miko Rwayitare's R100m Sandhurst mansion to a happy buyer with inside knowledge, for just R400,000 (*nose101*).

Last year, in an unprecedented challenge to the power of the sheriffs, Jan Kleynhans did two things – one openly and the other strictly not for publication. Publicly, he launched FNB's



Quick Sell Plan, a private sale option that enables debt-laden customers to sell their property voluntarily through FNB-nominated estate agents. Since its launch in February 2009, more than 3,500 of the bank's customers have taken advantage of Quick Sell.

And in the utmost secrecy, Kleynhans launched Part Two. Millions of rands of FNB funds were quietly allocated to retain teams of private investigators in a covert operation to infiltrate sheriffs' offices and monitor goings-on at sales in execution throughout the country.

The result is an explosive dossier of wrongdoing – backed up by a fly-on-the-wall 30-minute video showing sheriffs and their gangster-conspirators committing a plethora of offences. The filming was done by private detectives with mini video cameras concealed in their caps.

The undercover operation was conducted over some 18 months and recently the heads of credit of the major

■ The video shows that when crime syndicate members buy a property, no one asks for payment. When a genuine buyer happens to make a purchase, however, cash or a bank guaranteed cheque is demanded then and there. Which is almost an impossibility to produce, since no one knows what the end prices at these sales are going to be.

"We were amazed to see all this," says the banker who attended Kleynhans' secret viewing.

Also featuring in the Kleynhans dossier: All sheriffs of the court are supposed to have trust accounts, into which money from sales in execution must go. The interest goes to the SA Board for Sheriffs to support national admin costs. But all too often the money goes into separate business accounts operated by the sheriffs – who keep the interest for themselves.

There was high drama during the filming of the video. Criminals caught on to one private detective, who fled

Kleynhans: "Again, I can't give comment."

Why the secrecy?

Kleynhans: "There's more than the video. There's a lot of work we've done in this area to understand the *modus operandi*."

*Noseweek*: Any charges made?

Kleynhans: "I can't comment. I don't want to compromise what the authorities are doing. We've dealt with it as a corporate citizen in the best way we can, involving the authorities by bringing the matter to their attention. If at some point the authorities don't deal with things, then maybe there's another discussion to be had. We'll talk when the time is right."

The FNB official delegated to handle the entire undercover operation was Erras Lintvelt, then with FNB home loans at Fairlands and now promoted to the international department at Bank City headquarters. He's still running the sheriffs' probe, though.



## Millions of rands were secretly allocated to retain teams of private investigators

banks were invited to Kleynhans' offices in Johannesburg's Fairlands for a private viewing of the top-secret video. According to a banker who attended, here are some of its highlights:

■ In the Western Cape, members of a criminal syndicate are shown threatening genuine bidders and ordering them to stop bidding, leaving the way clear for the syndicate to pick up properties at knock-down prices. The video shows the sheriff turning a blind eye and pretending not to see this intimidation;

■ In Durban a sheriff is filmed sitting at a table, head in hands, while another man conducts the bidding. The pseudo sheriff accepts bids only from a syndicate member and ignores frantic bids by genuine buyers wanting to up the bidding;

■ In Johannesburg, luxury apartments at Melrose Arch are auctioned by the sheriff in out-of-the-way locations that are unlikely to attract genuine buyers;

the scene; they gave chase and forced his car off the road.

Jan Kleynhans clearly does not want FNB to be publicly associated with the multi-million rand dossier and video that he commissioned.

*Noseweek*: Can I see that video you had made?

Kleynhans: "What video?"

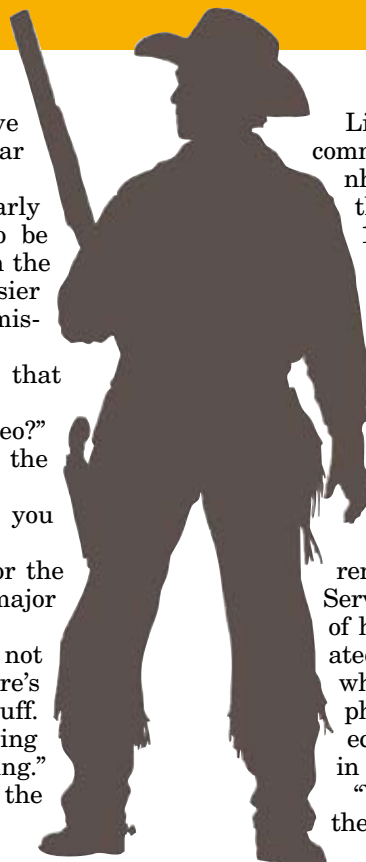
The video made by the private detectives.

Kleynhans: "How do you know about this?"

You had a showing for the heads of credit for the major banks.

Kleynhans: "I'd rather not say a lot, because there's quite a lot of sensitive stuff. I can't do or say anything now, or show you anything."

Has it been passed to the police or NPA?



Lintvelt is rather more communicative than Kleynhans. "We've been at this thing for the last 18 months," he says. "We're at a very precarious stage now, having brought in a whole host of different bodies – National Prosecuting Authority, the Hawks, the police's commercial crimes unit."

He confirms that one of the private eye agencies used was Warren Goldblatt's Specialised Services Group, born out of his controversial Associated Intelligence Network, whose dubious illegal phone-tapping for Investec in 1997 was recounted in *nose130*.

"Yes, Goldblatt is one of the vendors – though we



# Who needs a badge?

## Sheriff guilty of professional misconduct

did use a whole host of different vendors," says Lintvelt.

This chap who was run off the road? "Look, when there's that amount of money involved – one has to appreciate this racketeering system has been going on since the 60s. There's big money involved." Can *noseweek* have a couple of horror stories from the video? "Essentially, on numerous occasions, where hypothetically a property is worth R1m, it ends up selling at a sale in execution for R500,000 and via various syndicates and gangs it changes hands and is finally charged over for, say, R750,000," says Lintvelt. The SA Board for Sheriffs will be the first to admit that there are a lot of discrepancies within the structures in which the sheriffs operate."

The attorney appointed by FNB to distance the bank from the authorities is Jenny Smit at Werksmans. She does not return *noseweek's* calls.

Why is FNB keeping out of the limelight? "I think that they and Jan Kley-nhans are a bit scared of these gangs," says a player. "They're bankers and don't want to be having fights with the Sexy Boys."

Certainly, the other banks are cautious – and keeping their distance. Says a spokesman for one: "No one's going to chat to you; no one's going to give you a call. Our bank has been targeted by the syndicates. This thing is sensitive because of the shady figures involved.

"We were vaguely aware that FNB were preparing a dossier, but we haven't seen the video. FNB are charging for people to see it." How much? "I'm not going to tell you."

A spokesperson for the SA Board for Sheriffs says: "We do not know anything about a dossier or video prepared by one of the banks. If we get any information we will communicate it to you.

"The issue of criminal gangs attending auctions and threatening bidders is currently under investigation by both the SA Board for Sheriffs and the SAPS. The criminal elements are not only threatening the sheriffs' auctions, but also target auctions facilitated by auctioneers."

■ The Board for Sheriffs may or may not have been aware of the FNB video, but they are well aware they'll soon be in the spotlight, explaining how come criminals have taken control of the business. *Noseweek* went sniffing and discovered how the Board has rushed to make its first clean-up moves – in Durban North (see the adjoining report). ▣

**F**NB HAS BEEN desperately discreet in conducting its behind-the-scenes investigation of South Africa's corrupt sheriffs. Once again, *noseweek* is left to do the public naming and shaming.

Mr REO Bruwer retired as sheriff for Durban North in September 2005 at age 65, but, like many others reluctant to relinquish such a lucrative position, with its opportunities for underhand property dealing, he was back a month later, as acting sheriff.

He has been acting ever since – in more ways than one. Bruwer, it transpires, is one of a countrywide network of rotten sheriffs who, for decades, have been enriching themselves by rigging the property auctions entrusted to them by the courts. In the process these sheriffs and their associates in organised crime have destroyed lives, defrauded banks of vast sums – estimated at R2bn – and happily aided the collapse of the judicial system. (Not without the help, it must be said, of lawyers and bankers who directed these sales in execution their way.)

But all good things come to an end. By the close of last year the flood of complaints reaching the Board for Sheriffs from angry members of the public who have lost their homes and life savings as a result of increasingly brazen corrupt dealing by sheriffs of the court was such that it could be ignored only at the Board's peril. Not to speak of the rumblings of discontent from the banks, which discovered that besides collecting a big whack of the losses they were also getting a disproportionate share of the bad publicity.

*Noseweek* has documents to prove that the police, the tax authorities, the banks and several attorneys have known about Bruwer's shady associations and property dealings for more than a decade. None bothered to do anything about it, so he may be excused for regarding himself as invincible.

When, in November last year, Bruwer's fidelity fund certificate expired and he failed to renew it or pay the penalty for late renewal, the Board for Sheriffs finally decided to act, and did not renew his fidelity fund certificate – officially putting him out of business. But Sheriff Bruwer apparently took no notice, and the Board dispatched its internal inspector, Mr Mbuso Maseko, to conduct an investigation at Bruwer's premises in Durban. On 11 February, Maseko witnessed sales in execution in full swing and the office in full operation, despite it being illegal for a sheriff to operate without a fidelity fund certificate.

Even more ominous – Maseko reported that he had "observed some irregularities in the sales in execution and in the records of the sheriff's books of account". Here it is worth noting that allowing Bruwer to operate without a fidelity fund certificate has exposed the Board for Sheriffs to massive claims from members of the public should they suffer damages resulting from his unlawful actions. The courts have ruled that all sales, attachments and service-of-court process carried out by a sheriff without a current fidelity certificate are invalid and must be redone.

At a disciplinary hearing Bruwer cheekily argued that he had operated many times before without a fidelity certificate and nothing had come of it. He could not, he said, be accused of bringing his profession into disrepute, since the public at large knew nothing about his unlawful conduct. (The disciplinary tribunal dismissed these arguments as "somehow mischievous".)

The inspectors who visited Bruwer's offices found he had not kept records for many of the sales of immovable property he had conducted. They reported that, on asking Bruwer's staff about them, they were introduced to one Mr Naidoo, Bruwer's "spokesperson".



Naidoo, it transpired, was not quite in the employ of Bruwer; he was his partner in crime – or, as the tribunal quaintly noted, “there was a connection” between Bruwer and Naidoo “on the same day there was a sale”.

One of the cases investigated by the Board's inspectors related to the sale of a property attached in execution of a judgment for debt, in the matter of Absa Bank vs Lungile Xhakaza. At the auction, conducted by Bruwer on 6 November 2008, the property was knocked down to Mr Simon Drycott for R1m. After the sale Drycott was informed that his bid had been rejected because he had failed to pay the deposit immediately. Some time later the sale price on the offer to purchase was “privately” altered (as was the name of the purchaser), first to R856,000 and later to R600,000 – without the initial sale being legally cancelled (by a judge), or the property being re-auctioned, as required by law.

Similar irregularities were suspected in a sale held on 12 November last year, in the case of Standard Bank vs Mlotshwa, but the relevant documents were missing from Bruwer's file.

In an attempt to clarify the matter, inspector Maseko spoke to Ms Seema Rughabeer, the person in Bruwer's office responsible for keeping records of fixed property sales. She reported that the file had been taken by the sheriff “and returned with certain information missing”. This was confirmed by office bookkeeper Daphne White. When confronted, Bruwer denied all knowledge of the file. It later transpired that the purchaser of the property had been “Jesse” Naidoo, the man introduced as the spokesperson for the sheriff.

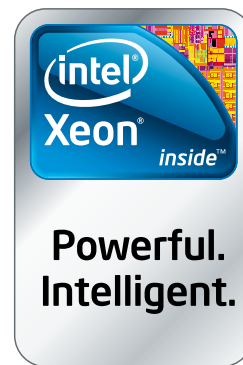
Staff members reported that “Jesse” Naidoo (his first name is actually Ravindra), had free access to Bruwer's files in the office, and has at least 19 properties registered in his name – all acquired at rigged execution sales conducted by Bruwer as sheriff for Durban North. The Board inspectors would conclude that the sheriff had colluded with Naidoo in illegally interfering in and influencing the outcome of auctions. (*Noseweek* has established that Bruwer also shared in the profits of crime.)

A Mr De Jongh, an attorney appointed as a special inspector, testified that a sheriff's file should contain the warrant of execution, the signed conditions of sale (or deed of sale), and a

conveyancer's certificate. The attorney of record should also record all details of the sale and be able to produce proof that the bond holder has been informed of the sale in execution. In the files De Jongh examined at Bruwer's office, none of the relevant information was found: no record of what happened to the money, or of any costs incurred. The bookkeeper told De Jongh that when the money was received a proper receipt would be made out, although copy receipts had been made. De Jongh suspected fraud.

At the hearing Bruwer's legal representatives insisted he had the relevant documents, but produced none during the proceedings. In their findings the tribunal noted: “If the sheriff conducts himself in this fashion, one wonders how many members of the public have been prejudiced.” Indeed.

Meanwhile the Board for Sheriffs has found Bruwer guilty on six charges of professional misconduct. He has been suspended and the Board has applied to the Minister of Justice to confirm his removal from office. **W**



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# FUJITSU

# DA's Bredell plays pass-the-parcel

**W**ESTERN CAPE LOCAL DEVELOPMENT MEC Anton Bredell is fast developing a nasty reputation for himself, as the following whistle-stop tour of the Western Cape shows.

**FIRST STOP: HERMANUS.** The DA was decidedly slow to act over the controversy surrounding the DA-controlled Overstrand Municipal Council, but when the calls for an enquiry got too loud to be ignored, Bredell finally gave in (he never acknowledged that Hermanus residents had written asking him to intervene).

So an investigation was conducted into matters Hermanus: the highly controversial Fernkloof golf course development (*noses*110&114); the shameful Schulphoek development (*nose*130); and the underlying problem of a private company, Rabcay, having secured, in 1999, the right to tell the council what land to sell and to make a private fortune out of that land by building housing and golf estates on it (*nose*104).

As fast as you can say a shortish English word, something like "whitewash" maybe, Bredell's report was out. His findings were summarised in a piece in the local paper: "There were no irregularities found and both deals were above-

Somebody senior has been playing naughty games with the Overstrand land development folk





board. The deals have been in the pipeline since 1999 and went through all the necessary procedures... It is a basic principle of contract law that agreements must be kept by influence of the legal maxim *pacta sunt servanda*.”

Dealing with Schulphoek, Bredell declared: “It is a misconception that Zwelihle will be cut off from the sea. I am a huge proponent that access to the sea must not be restricted. The sea must never be exclusive to the rich.” And then he did that thing so beloved of all politicians – he had a good go at those asking the questions.

On the issue of the Hermanus Ratepayers Association (HRA), the body that requested the enquiry, the newspaper report said: “According to Bredell he is disappointed that the HRA did not participate in the investigation. If they felt so strongly about the issue they should have used all means possible to be part of the process. By not participating, the

unavailable but I would like to advise you that this email only arrived in the office after 5pm on Tuesday. We have received no invitation, please advise accordingly.”

At 10.21am Griffiths followed up: “I have not received any request or invitation from any provincial authorities to meet with them today. Who are the persons in this delegation? There is no mention of a time nor a venue either. My executive committee would have liked to meet with the delegation if we had been given adequate time to prepare for such an important meeting. I ask the delegation to refer to all correspondence that the HRA have already sent to various persons.”

*Noseweek* doesn't know whether or not Bredell was given sight of this correspondence, but a recent development raises serious doubts about his investigation. On 11 October former Appeal Court Judge Johan Conradie sent

the opinion had been brought to the attention of Bredell. His astonishing response: “This was private correspondence which really doesn't concern you. You are welcome to obtain my response from the gentleman concerned.”

Legal opinion from some of the country's top legal brains questioning the validity of disposals of municipal land are “private”? But, somehow, a very cursory opinion Zybrands subsequently obtained from local attorney Mariki Chin is a little less private – and ends up being the one shown to Mr Bredell? Guess Why: Because Ms Chin's one-and-a-half pager concludes: “Rabcav has the right to purchase the Schulphoek land and Consultant [the municipality] is obliged to sell it to them. Consultant is not obliged to follow any formal processes other than entering into a written sale agreement.”

Judge Conradie sent *noseweek* a copy

## Speak to the Hermanus Ratepayers Association and you'll find out why they didn't participate

*bona fides* of the HRA need to be taken into question.”

But speak to the HRA and you'll discover why they didn't participate – they weren't invited. The email trail backs this up. On Tuesday 7 September at 5.32pm an email was sent to the HRA by municipal manager Werner Zybrands, saying: “I have requested the provincial authorities to also afford you and your organisation an opportunity to present factual information when they visit us on Thursday 9 September... I trust you will use this opportunity.” The email was opened at 8am on Thursday 9 September by a secretary (the HRA's offices are open only on Tuesdays and Thursdays from 8am to 10am).

An hour later another email came from the municipal manager: “I have not, as yet, had a response from you requesting your attendance... You are urgently requested to avail yourself of this opportunity as the delegation has indicated that they can only receive such evidence today.” The secretary then responded: “Mrs Griffiths, the chairperson of the HRA, is currently

an email to someone in Hermanus, in which he revealed that on 10 March 2009 he and two other lawyers, Gys Hofmeyr, formerly of the Cape Bar, and former Cape Town attorney Joe Brink, prepared an opinion in which they concluded that the 1999 Development Facilitation Agreement between the municipality and Rabcav was invalid. Why? Essentially because it had terminated in 2004, and the purported reactivation had not been in compliance with legislation that had come into force in the interim, which, for example required tendering.

In his email of 11 October Judge Conradie said: “I attach an opinion ... prepared for the Overstrand Municipality and sent to Werner Zybrands (municipal manager) in relation to the aborted Voelklip development. It may, however, because it is wide-ranging, have some relevance to the Schulphoek development as well.”

Indeed it may. As soon as the Hermanus Ratepayers Association became aware of this opinion they asked municipal manager Zybrands to show them his response, and to confirm that

of Zybrands' response to Conradie's opinion. Interesting stuff: “We have decided to get an advocate's opinion. Your efforts have thus been deemed worthy of further investigation. Thanks therefore! For obvious reasons, I would appreciate it if you could keep this information to yourself and your co-authors.”

At last it's all begun to come together. It's been clear for some time to the powers-that-be that the Rabcav agreement was invalid, and that Rabcav had absolutely no right to insist on developing either Schulphoek or the Voelklip site. This may well have suited people living in Voelklip (a grouping that includes ex-mayor Theo Beyleveldt and municipal manager Zybrands). But this wouldn't have suited Rabcav, the strangely powerful consortium between the Rabie Group and Leslie Viljoen's Cavcor. So a deal was done: We'll give Rabcav a golden handshake by allowing it to do the Schulphoek development in far-away Zwelihle. Then we'll tell the public that we negotiated a great deal for them – we persuaded Rabcav to forfeit its rights under the legal but controversial facilitation

agreement in return for the Schulphoek deal. That way we look strong, while Zwelihle township residents get the finger (No more seaside for you, darkies!), and our nice lily-white Voëlklip remains untouched. Nice one DA – just like the old days.

In the meantime, the black community of Hermanus, whose access to the sea will certainly be restricted, irrespective of what Bredell declares, says that its views were also ignored, and that the matter now needs the personal attention of Helen Zille, failing which it must go to national government or the courts.

Zwelihle Development Trust member Bobby von Doring says that Bredell's report is totally inadequate, because it deals simply with the "largely technical" objections raised by the HRA, and none of the "social" objections raised by the black community. Says ward councillor, Makhaya Ponoane: "Our land is

councillors, who have no other form of income, than it was for most of the DA councillors, for whom public service simply supplements their pensions). Judge Bozalek, who earlier had found for the objectors to the Arabella golf development (*nose122*), found for the ANC/NPP councillors.

*Noseweek* wasn't surprised – the dissolution of the council had all the hallmarks of an orchestrated plan to take control of an opposition-controlled municipality (It remains to be seen whether this was for political reasons or, as many in the coloured community believe, it was an attempt to transfer land from the Overberg municipality to the nearby Overstrand municipality so that a "coloured cemetery" could be provided away from Hermanus).

**LAST STOP: ASHTON.** Mr Bredell didn't get too vexed about a complaint about nepotism, jobs for pals, and a decidedly *laissez faire* attitude towards BEE at

cre white men, Anton Bredell, who promptly passed it on to the extraordinarily useless Public Protector.

The Public Protector's Office decided there was something there, but that it didn't want to deal with it, and, on 19 November 2009, passed the matter back to Bredell, with these words: "The Office of the Public Protector has received a complaint ... that raises serious issues of alleged non-compliance with national legislation on employment equity and municipal policies on selection and recruitment policy. The complaint was lodged by a former employee of the municipality who has asked to remain anonymous. The complainant is willing to disclose her identity to whoever will be attending to the matter, provided that it is not disclosed to the municipality. Cliffe Dekker made certain negative findings against municipal manager Mr Mokweni and director of corporate services Mr Everson, and accordingly advocated that a preliminary investigation be conducted in relation to the actions of said officials, to establish whether disciplinary action should be taken. This complaint is referred to you in terms of Section 106 of the Local Government Municipal Systems Act 2000."

So what does this piece of legislation require Mr Bredell to do? Well, it says that if there is any reason to believe that "maladministration, fraud, corruption or any other serious malpractice has occurred in the province", he must either ask the municipal manager for an explanation or conduct an investigation. Which option did Bredell choose? Did he send in a crack team? Purleeze.

On 2 February Bredell sent the mayor of Langeberg a lugubrious letter: "Attached you will find communiqué from the Public Protector to the Minister of Local Government. Your formal response in this matter needs to be directed to..." That's it – no reply date, no suggestion of urgency.

So, unsurprisingly, the mayor replied at his leisure. On 11 March, councillor SJ Ngonvama told Bredell: "We would like to place on record that the issues raised by the anonymous complainant have all been investigated and dealt with by the municipal council and/or the relevant authority, as the case may be. There was no need to re-advertise the positions. Attorneys Cliffe Dekker [were] appointed to investigate the matter. They did not find any wrongdoing in the re-alignment and the

## Bredell wasn't too vexed about a complaint of nepotism

being raped. We use the milkwood forest as an area where our boys are circumcised. Now they want to fence it off and keep us out."

**NEXT STOP FOR THE BREDELL EXPRESS: BREDASDORP.** As told in *nose132*, Mr Bredell was very quick to intervene when he saw signs of "dysfunctional behaviour" in the ANC/NPP-controlled municipal council of Overberg (Bredasdorp and surrounds). Readers will recall how the council couldn't comply with its legal obligation to submit a budget because it didn't have a speaker to formally convene the required council meeting.

The ANC/NPP councillors asked Bredell to assist but he declined (he claimed he didn't receive their letter). Instead, he opted to dissolve the council and bring in an administrator, claiming he was entitled to do so under the Constitution and the legislation relating to municipalities.

The ANC/NPP councillors applied to the Western Cape High Court for an order setting aside Bredell's decision (being suddenly jobless was more of a hardship for many of the ANC/NPP

the Langeberg municipality (formerly known as Breede River, and covering towns like Robertson and Ashton).

A few years back, municipal employees started getting aggro about perceived abuses by municipal officials, so the deputy municipal manager commissioned a forensic report by Cape Town law firm Cliffe Dekker. The lawyers found that certain employees had been promoted without regard to the council's BEE plan and its recruitment and selection policy, and concluded: "It is our view therefore that a preliminary investigation should be undertaken into the conduct of Everson [director of administration] and municipal manager Mokweni in relation to the realignment and the salary adjustments."

But the mayor declined to act, claiming lack of funds, so a former municipal employee, Pat Holmes, took the matter right to the top. But the response from the office of The One Who Shouldn't Dance was curt: "The Premier's office is ... not in a position to deal with this matter". The matter thus ended up with one of Helen Zille's medio-



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council, after applying its mind, did not see any need to take steps in this matter."

That's not quite what the Cliffe Dekker report said of course, but it was enough for Bredell. On 9 April Bredell sent a report to the Public Protector's Office that was no more than a re-hash of the mayor's letter, plus the predictable have-a-go-at-the-person-making-waves bit, despite the fact that Patricia Holmes specifically requested anonymity.

Said Bredell to the Public Protector: "In conclusion, the mayor noted that the complainant was an employee of the municipality and was dismissed for abusing council facilities and unauthorised disclosure of information that could compromise the municipality. The mayor further notes that it is not helpful to hide the complainant's identity whilst she is making defamatory statements on senior officials, the administration and the municipality council.

"He further stated that irresponsible and unfounded allegations made by the anonymous complainant clearly undermine the credibility and the good reputation of the municipality."

A really thorough investigation then.

*Noseweek* asked Bredell if he did anything more than play pass-the-parcel, but he didn't bother responding – just as he didn't bother responding to the Hermanus residents or the Overberg councillors.

As a former small town mayor (Swartland), Bredell's sympathies no doubt lie with those who govern rather than with the governed, but people of his ilk simply add to the perception that the DA in these parts has become an ugly and reactionary party, a party of intolerance and *kragdadigheid*. The sort of grouping that only survives in this brain-drained land because the other lot is every bit as useless. ▮

## A heady cocktail of figures

**A**S WE WENT TO PRESS, millionaire businessman Moses Marole – husband of President Zuma's latest recruit to his Presidential State-Owned Enterprises Review Committee, Dawn Marole – had still managed to avoid the dock after ploughing his Mercedes S class into seven cars and severely injuring a woman after an evening celebrating his 67th birthday (*nose131*).

His good fortune probably has something to do with the statements made by two police officers who arrived on the scene at Benmore Shopping Centre on the evening of 12 April. Sergeant Maswansanyi testified that Marole "looks like under the influence of liquor", but after taking the suspect to the Randburg traffic department for breath testing added "the suspect is under the limit, 0.14".

0.14g/100ml was indeed the measurement recorded that evening by operator Stella Maleka on her Drager Alcotest 7110 Mk III. Which is however not "under the limit" (of .05), but, nearly three times over it!

Another helpful statement came from Constable Tshepo Seakgwa, who arrested Marole. He stated that Marole "was co-operating. He was smelling of alcohol but did not look drunk to me".

But now compare the sworn statements of owners of cars wrecked in the tired and emotional millionaire's dodgems spree, taken by investigating officer Inspector Jacob Nkosi – after the prosecutor initially withdrew charges against Marole.

■ Joanne McLeod (damage of R102,054.34 to her blue Merc CL500): "He appeared to be under the influence of alcohol or something intoxicating";

■ Gareth McGregor (damage of R16,932.26 to his Volvo XC90): "He was very incoherent, which made me suspect that he was under the influence";

■ Christopher Coombe (damage of R15,227.25 to his Volvo XC90): R15,227.25): "Moses Marole did not even know where his car key was. He seemed very confused and intoxicated".

■ Miss Selaelo Mmethi (damage of R43,792.91 to her Volkswagen Polo): "He could not stand straight nor could he talk well nor sensibly. He said that he was not driving and he smelled of alcohol";

■ Michael Potts (damage of R7,998.43 to his Hertz Toyota Yaris rental): "I saw him get out of his vehicle stumbling, he could not walk properly and was slurring his speech". ▮





**T**HERE WAS A REAL BROUHAHA A FEW years back when a US company claimed a patent to rooibos tea and threatened to sue South African companies exporting it to the US, for trade mark infringement. The government made silly noises about US cultural imperialism, and the matter was eventually resolved through an out-of-court settlement. You might, therefore, find it odd that the authorities have allowed a local company to register what can only be described as some sort of rooibos patent.

Red Espresso, a company that sells espresso-style rooibos tea and other sorts of coffee-style rooibos teas, is the owner of South African patent number 2007/6988. There are applications to extend the patent to a large number of foreign countries, including the US and all of Europe.

The patent, titled “A Bush Tea Product”, makes it clear why so few patent attorneys become literary authors. The patent summary describes the product thus: “A bush tea product is a bush tea [that is] subject to... optionally removing oversized particles and so-called dust [and] has included therein at least 10% by weight of bush tea in a pulverised form [although] preferably all of the bush tea present is in a pulverised form... Typically at least 50% by weight of the pulverised tea has a particle size selected to pass a 0.5mm mesh screen, and at least 10% by weight is in powder form that passes a 0.15mm mesh screen.”

Rooibos or bulldust, the patent isn't gathering dust – it's being waved with relish at anyone that threatens Red Espresso's position in the local market. Companies like TeaSpresso, the brainchild of Mike Prinsloo – Red Espresso is making things difficult for Prinsloo, scaring off even Woolworths and Mugg & Bean. In each case, says

# Rooibos dustup

War breaks out over the lucrative herbal tea espresso market

Prinsloo, the company decided not to stock TeaSpresso's competing product, after Red Espresso said it infringed the patent. This has cost Teaspreso dearly – Prinsloo says the Woolworths deal was worth R12,000 a week, and the Mugg & Bean, R14,000 a week.

Red Espresso is now suing Prinsloo for patent infringement. Prinsloo's defending and counterclaiming for cancellation of the patent. Red Espresso has hit back by requiring TeaSpresso to lodge security for costs, but Prinsloo doesn't have the money, effectively putting an end to his counterclaim.

Despite this, Red Espresso seems to be in no great hurry to have its infringement case heard. Nor has it followed up on its threat to sue Prinsloo for trademark infringement and hasn't followed up on its threat to take Prinsloo to the Advertising Standards Authority for contravening the prohi-

bition on dissing competitors – Prinsloo had the temerity to say this on his website: “There are only two suppliers in the world, my little company and a big fat one who makes lots of money.”

Playground talk. So why's Red Espresso holding back? One reason, Prinsloo thinks, is his product doesn't infringe the patent: he's had two independent tests done which both found his product does not fall within the percentages specified in the patent. Prinsloo has no doubt the patent is invalid – he has a letter from leading patent attorney Brian Bacon saying that, in his view, the patent's a dud.

For starters, Bacon thinks the patent's incomprehensible. “What are the parameters for the screening process?” he asks in exasperation. He also believes the critical requirements of novelty and an “inventive step” are missing. In other words, there's nothing new in this.

Prinsloo says he has plenty to back up such a view. He has invoices issued by the largest player in the rooibos market, Rooibos Ltd, for “Rooibos Sticks and Dust”, dated 2003, as well as a document signed by Rooibos Ltd's MD, saying: “Rooibos Limited hereby confirm that Rooibos Limited has milled and ground rooibos prior to 2004. The purpose of such action is to reduce the size of oversized rooibos particles.”

Prinsloo also has reason to believe that the MD of Rooibos Ltd advised Red Espresso years ago not to register a patent as the product wasn't unique, but the MD was unwilling to discuss this with *noseweek*. He also has a copy of an invoice issued by another big player in the rooibos market, Coetzee & Coetzee, for “Rooibos Dust”, dated 2004. (MD Niel Coetzee told *noseweek* this patent lark was “quite amusing”.)

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Lastly, Prinsloo has a document signed by the MD of a third big player in the rooibos market, Cape Natural Tea Products, saying: "Please be informed that Cape Natural Tea Products first used a hammer mill in 1997 to pulverise rooibos. We have been selling rooibos dust since then."

Why then is Red Espresso so keen to clear the market? The answer, Prinsloo believes, can be seen on Red Espresso's website: "From our humble beginnings of working out of the spare room of our MD's apartment and selling our very first pack of red espresso to a coffee shop in Cape Town, it is now sold in 12 countries. The product has also won a number of international awards for innovation for being the first tea to play by coffee's rules. The same small team of people who started red espresso are still at the helm of what we call 'the café revolution' – orchestrating the spread of healthy culture across the globe, and having a really fun time doing so." Yes, says Prinsloo, in an increasingly health-obsessed world, rooibos tea espresso may well be the next big thing.

*Noseweek* discussed the matter with Red Espresso MD Pete Ethelston. He explained that his partner, Carl Pretorius, was once a coffee addict who started getting the shakes, so set out to create an espresso without caffeine. The product eventually patented was, he said, the result of much trial and error. Ethelston explained that to get rooibos for an espresso, you need a mixture of rough and smooth: if you simply use the dust it clogs; if you use rough "short cuts" (as used in tea bags) the water goes straight through.

Ethelston feels that his company's patent is misunderstood, and that it simply covers a combination of different sized particles of rooibos tea used to create an espresso product. The fact that pulverised rooibos and rooibos dust are old hat is irrelevant – it's the combination that's new.

Ethelston waxed lyrical about the awards the product has won, and the steps his company has taken to build a reputation throughout the world, having to establish not simply a brand but an entire product category. He claims his company has spent a fortune protecting its rights around the world.

When it got to the topic of TeaSpreso, it became clear Prinsloo has got under Ethelston's skin. "His product certainly does infringe our patent," he said. "The man's small fry; he hasn't got a fixed address – look at the stuff

he puts on his website; he's clearly trying to link his product with ours."

So we looked, and found cheeky statements like this: "Espresso tea featured on the front page of the Oprah Winfrey magazine last year. The editor wrote 'the future of espresso is red' (the espresso tea has a slight tint of red to it). Espresso tea also won the international coffee convention's '10 best new products' category last year."

Ethelston was less convincing when asked specific questions. Did you suggest to Woolworths and Mugg & Bean that they would be infringing your patent if they sold TeaSpreso? "I don't deal with Mugg & Bean, but I can tell you that Woolworths is not Prinsloo's client, it's ours. Woolworths told us Prinsloo was offering a cheaper product, and we simply asked Woolworths to do a blind test and see which one they preferred – they chose ours."

Did the MD of Rooibos Ltd counsel against patenting? "No, we told him about our patent after the fact – in fact we told everyone in the industry, just to inform them of our rights." You've spent a fortune protecting your product, why don't you complete your case against Prinsloo? "Oh you know how it is, the only winners are the lawyers."

Prinsloo's not the first to realise that the South African patent system, being a "non-examination" system, is a bit of a joke: you can basically patent anything, and it's up to someone who is sued for infringement to challenge its validity, which few can afford (Prinsloo reckons you need at least R250,000 to challenge a patent).

He's also discovered that our government agencies are extremely keen to pass tricky matters on to someone else. When Prinsloo wrote to the Competition Commission complaining that a company was using an illegally acquired patent to wipe out opposition, he got this response: "Generally the determining test for prohibited practices is whether or not the conduct in question has the effect of substantially lessening or preventing competition in a market. Intellectual property rights such as patents may possibly raise competition concerns relating to abuse of dominance. Insofar as your complaint relates to fraudulent acquisition of the patent, the matter may fall under the Office of Company and Intellectual Property Enforcement."

Prinsloo was given a number to ring, but it's simply never answered. ■







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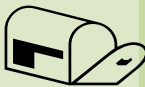
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**L**UCKILY FOR SOUTH AFRICANS, Dr Nkosazana Dlamini-Zuma and her new team at Home Affairs seem to be among those public officials now speaking out against corruption – and even daring to do something about it. The minister's determination to rid Home Affairs of corrupt practices and deal with offending officials has now seen her embroiled in a legal tussle with strip club Mavericks Revue.

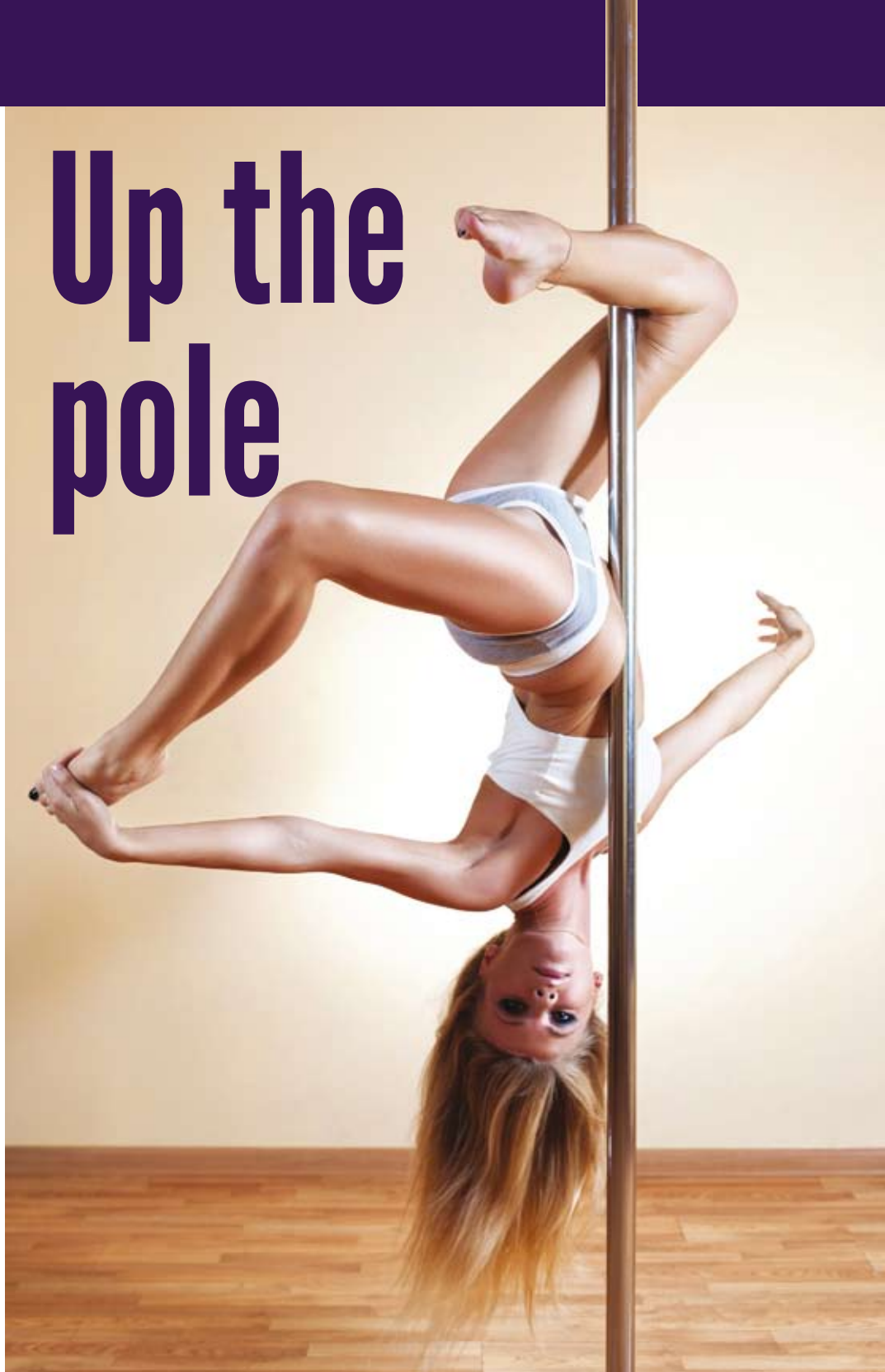
The battle is rooted in Section 21 of the Immigration Act of 2002, the section which decrees that foreign workers may be brought into the country under corporate permits. The legislation was enacted during the tenure of IFP leader Mangosuthu Buthelezi, with his "special advisor", Dr Mario Gaspare Oriani-Ambrosini (see *nose117*), taking credit for its drafting.

However, Dr Oriani-Ambrosini and his team failed to specify on what grounds such corporate permits may or may not be issued. No mention, for example, of relating the thing to skills essential to the country. Issue of permits under Section 21 was simply left to the discretion of government officials – hence the widespread abuse allegedly committed under its rubric.

Mavericks, owned by Shane Harrison, took advantage of the situation and applied for two permits which gave the club the right to bring into the country, in all, 200 foreign strip/pole/exotic dancers. Should a dancer quit, Harrison simply applied to Home Affairs for a certificate to bring in a replacement. According to the legislation such a certificate should be granted only on confirmation that the previous incumbent has left the country – but, here again, Home Affairs officials bent the rules to suit their pockets, and Harrison's.

On taking over at Home Affairs, Minister Dlamini-Zuma was immediately appraised of serious problems surrounding the issue of work permits, and went all out to deal with the situation, and centralised the processing

# Up the pole



Home Affairs faces slippery moves by strip clubs exploiting a legal loophole to import 'essential human resources'

# Viva the Constitution!

**T**HE EXTENT TO WHICH the “exotic dancing” business is nothing short of modern day slavery comes out in a recent decision of the Constitutional Court. Tatiana Malachi, a young woman from Moldova, arrived in South Africa in March 2009 to work as an exotic dancer in a club called The House of Rasputin, in Cape Town. Prior to arriving in sunny South Africa, Malachi signed an agreement with an agent in Moldova. In terms of this, Rasputin agreed to pay for Malachi’s visa and travel arrangements, and to provide her with accommodation in South Africa, but Malachi agreed to repay all the amounts laid out by Rasputin.

When Malachi arrived in Cape Town, she was told by the owner of Rasputin, Mark Kozhanov, that he needed her passport for 30 days, supposedly for registration with the authorities. But the passport wasn’t returned and when Malachi, who was unhappy in her job, began asking questions, Kozhanov told her that she could have it back if she paid him \$2,000 for her air ticket and a R20,000 “levy”. Malachi couldn’t afford either amount and things got nasty. As she says in an affidavit: “Kozhanov personally threatened me, and sent certain of his representatives to me who swore and threatened me with violence.”

In desperation Malachi approached the Russian Consul (who also represents Moldova), who helped her buy an air ticket to get back to Moldova. Rasputin got wind of what was going on, and on 9 July 2009, just before Malachi was due to fly out, she was arrested and locked in Pollsmoor.

She was arrested under a procedure known as a *tanquam suspectus de fuga*, an order that a creditor can get against a debtor if the creditor thinks the debtor is about to flee the country to escape a debt of R40 (no zeroes missing) or more – even though the debt has yet to be proved in court. The basis of the arrest was that Malachi allegedly owed Rasputin R100,000, and she was told that if she could find security for this amount she would be released. As this was totally impossible, she could, technically, be indefinitely detained.

On 22 July 2009, again with the help of the Russian consul, Malachi brought an urgent application to the Cape High Court. She sought an order for her release and wanted the court to declare the arrest *tanquam suspectus de fuga* to be unconstitutional and invalid. Malachi was released on 24 August 2009 by agreement with Rasputin, but the application went ahead.

On 7 January this year Judge John Hlophe gave judgment, holding that the procedure was unconstitutional as it violated the constitutional right to equality. The judge pointed out that, as there is no obligation to bring a person arrested under this procedure to court within a specific time, anyone arrested under this procedure has fewer rights than someone detained under criminal law. He went on to hold that the procedure also violates the right to dignity, the right to freedom of movement, and the right to freedom and security of the person. Judge Hlophe concluded that Section 36, which allows limitations on these rights that are “reasonable and justifiable in an open and democratic society based on human dignity,

equality and freedom”, did not come into play.

Judge Hlophe referred his order to the Constitutional Court for confirmation, and judgment was delivered on 24 August, by Judge Mogoeng wa Mogoeng. The judge upheld Hlophe’s judgment, concentrating on the right to freedom and security contained in Section 12, which, he said, was “designed to bury our painful history of random, unjust and arbitrary deprivation of physical liberty and to ensure that abuse of state power never again rears its ugly head”. He said to limit a person’s freedom there had to be both just cause and a fair procedure. He did not have to go beyond the matter of just cause: there was none.

Judge Mogoeng went on to point out various absurdities in the law which allowed for the arrest of an allegedly fleeing debtor. For starters, it doesn’t secure payment – the arrest ensures that the debtor stays in the country until judgment is given, but on the very day judgment is given the debtor can fly off, avoiding payment. This means that the right to freedom is limited for no just reason.

Secondly, it allows the arrest of someone where no liability has been established, yet there is no basis for arresting someone who has actually been found civilly liable. The harm done by an arrest is, therefore, irreparable – and strikes not only at people who don’t want to pay, but also at those who can’t. Using a quaintly African example, Judge Mogoeng said: “A paltry amount of R40, which is the threshold for the deprivation of a person’s liberty, probably the cost of two small chickens, highlights the disproportionality of the means and the purpose.”

The judge had no hesitation in finding the procedure unconstitutional. Lest there be any doubt about the effect of his finding, he said that “potential debtors who are presently incarcerated in terms of this law will have to be released with immediate effect”. Viva the Constitution.

of work permit applications. This took decisions about who was or wasn’t eligible out of the control of local officials, upsetting many regular applicants – including Mavericks Revue.

Various immigration practitioners, on the other hand, have hailed the minister’s move. Julia Willand, managing director of Immigration and Consulting South Africa, told

*noseweek*: “To hear the minister admitting that there have been problems within the department is encouraging. Rarely do we find public officials openly saying that the department they lead has corrupt elements – and trying to do something about it.”

When *noseweek* questioned Dr Am-brosini about why his team had failed to designate essential conditions for

the issue of corporate permits under Section 21, he suggested that abuses of the legislation could be blamed on government officials and insisted that “As long as strip clubs remain legal, I don’t see why they should not qualify for corporate work permits”.

In September last year Mavericks Revue brought a high court application against the minister and her



director general, demanding the replacement of various authorisation certificates the club claimed it was entitled to as replacements for "lost" certificates.

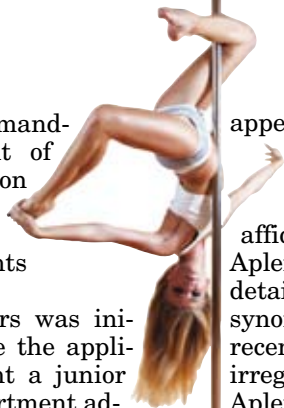
While Home Affairs was initially keen to oppose the application, at some point a junior officer from the department advised the state attorney to withdraw their opposition, and in March Mavericks was granted a default judgment. However, Mavericks decided not to execute the court order, apparently hoping to enter into some sort of understanding with their contacts at the department.

Then, on 3 May, all hell broke loose, when the department began an internal review, headed by the new director of immigration services for the Western Cape, Patric Tariq Mellet, to ensure that officials comply with de-

appeared in the Cape High Court with guns blazing, ready to put an end to the shenanigans.

In his 190-paragraph answering affidavit, Director General Mkuseli Apleni took no prisoners, exposing in detail the corruption that has become synonymous with the department in recent years. Disclosing that many irregularities had been discovered, Apleni said the department had invited the Hawks to assist with investigations.

Among other matters, the DG disclosed how, in September, the Ukrainian embassy and Interpol had contacted the Directorate for Priority Crimes Investigations, Home Affairs and the Department of International Relations and Cooperation, concerning a case of alleged human trafficking involving two women who had been given an order to leave the country at the time of the Arabesque raid. The families of these women allege that they



## All hell broke loose when the department began an internal review

partmental procedures and directives. A number of officials and immigration practitioners involved in malpractices were caught in the net.

The review shook various establishments in the Western Cape, including Arabesque Revue Bar (another gentleman's club, in central Cape Town). Some 70 corporate workers' authorisation certificates had been illegally issued to Arabesque in February – probably in readiness for the World Cup.

It was only after the raid on Arabesque Revue that Mavericks wrote to Home Affairs demanding the enforcement of the court order. But, sensing that the department was reluctant to do this, the club soon went back to the Cape High Court to seek a declaration order against the director general and the minister, for ignoring the earlier court order.

Little did they know that things had changed. Whoever had instructed the state attorney's office not to oppose Mavericks' initial application was by now under investigation, and this time the department's representatives

have not left South Africa and are being held against their will at unknown premises by individuals named by the families (see "Viva The Constitution", pg20).

The DG also took issue with Mavericks' claim that the authorisation certificates for which the club was seeking replacement had been mislaid, stolen or lost in circumstances beyond Mavericks' control. He cited several instances where Mavericks had sought replacement certificates for dancers who had allegedly left the country – but Home Affairs own investigations had discovered that the dancers in question were still in the country, now either married to club patrons or working at other clubs.

In both of its applications Mavericks was represented by top Cape Town immigration attorney Gary Eisenberg. The DG disclosed what would appear to be intimidation and harassment by attorney Eisenberg. He said it was "inexplicable" that, having already referred Mavericks' queries to the minister, Eisenberg began



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bombarding new Western Cape immigration director Patric Mellet with the same queries, repeatedly demanding a response. Said DG Apleni: "In his first 88 days of service, Mellet received 49 letters from Eisenberg – all in regard to Mavericks."

When *noseweek* asked Eisenberg why he had to send so many letters, he said: "Previously we only needed to pick up the phone and call the department's officials to have answers or our clients' applications processed, but Mellet instructed me that he wanted

permit for good and reasonable cause." Home Affairs was within its rights to ignore Mavericks' claim to entitlement. What is at issue is further clarified by immigration consultant Julia Willand: "It should not be just a matter of scarce skills, but of those which are also essential to the country."

As it turned out, Mavericks Reue apparently weren't ready for the tough opposition or the exposure aris-

Immigration Directive 22/2007, dated 5 June 2007, announced: "Mindful of the objectives of the Immigration Act of 2002, it is important to note that a corporate permit [for a foreign worker] may only be considered ... provided that such foreigner complies with the aims of the Act, namely to increase skilled human resources. (It is for this reason that employers who wish to employ exotic dancers, for instance, do not qualify for corporate permits)." This was signed by GB Joseph, Director, Immigration Policy and Directives.

However, exactly a year later, the Acting Chief Director, Admission, sought legal opinion on whether a corporate permit could be granted to Lolly Jackson's Teazers, to import exotic dancers. In a six-page opinion, the Acting Director, Drafting and the Chief Director, Legal Services, advised: "With regard

to whether or not the Department may issue a corporate permit to Teazers ... the question is to be answered in the positive."

Will Minister Dlamini-Zuma and her team be granted adequate powers to address the loopholes in the Immigration Act that her department has inherited from Drs Buthelezi and Oriani-Ambrosini? Your guess is as good as *noseweek's*. ■

## Home Affairs was within its rights to ignore Mavericks' claim to entitlement

everything in writing, so I did. Was that clogging the system at the expense of other applicants? Hell no – I do what I have to within the law to assist my clients. As the law stands, every legal business is entitled to the corporate permits."

Attorney Eisenberg would seem to be simply ignoring a point made in Section 21(3): "The Department may withdraw or modify the corporate

ing from their court application, and they quickly withdrew their application.

From the evidence of documents accumulated by *noseweek* during its investigations, identifying malpractices in relation to Section 21 within Home Affairs is no easy matter – among complicating factors are contradictory directives issued to officials dealing with corporate permits.

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# Megabuck bullies

THEY PART WITH MEGABUCKS to secure decent education for their grade seven kids, so parents whose young attend Crawford School in Sandton hardly expect their progeny to be subjected to psychological and physical abuse at the hands of school bullies. But there it is. Why should things be different in Sandton, after all?

Apparently the bullies in question form a gang around a domineering character *noseweek* will refer to as “Strangler-Brat”. The other hard character in the group, “Cyber-Brat”, has been using his Facebook account to launch nasty attacks on fellow pupils, which his bully friends then expand in their own postings.

The abusive Facebook postings have outraged parents, but Crawford school appears to think they aren’t worth investigating properly. (Technically, the boys are excluded from setting up Facebook accounts as they’re under age.)

Cyber-Brat, for instance, is credited with a stream of Facebook postings aimed at shaming kids he doesn’t like or who have declined invitation into his gang of brats. His Facebook profile lists his friends as his siblings and his enemies as his children. He also says he is the “CEO of myself”, a position he has apparently held since July 1955.

Cyber-Brat seems to spend a great deal of time posting crap aimed at his victims – many of which are blocked by Facebook. This of course has not been much of a deterrent.

Chief bully Strangler-Brat appears to prefer using his athletic build to harass his victims physically. A few months ago he picked on a schoolmate and “almost squeezed the life out of him”, as one of the kids who witnessed the incident told *noseweek*. The victim had apparently refused to break off his friendship

with a boy who had been the target of Cyber-Brat’s Facebook postings. To the horror of those who witnessed the attack, Strangler-Brat grabbed his victim by the throat and held him, choking, against a wall.

After the actions of the bullies were reported to Crawford Sandton principal Mr De Klerk, he announced that action had been taken against the boys involved – and that was the end of the matter. De Klerk would not disclose to the complainants what action his administration had taken.

Not long after, to everyone’s surprise, the names of the bullies were to be found among those announced in the school’s 10 August newsletter as recipients of various awards. Three of the bullies were listed under “Service Awards: Soccer”, with Strangler-Brat topping the list.

Some parents were so incensed by this that there was talk of finding an-

other school for their kids. One went so far as laying charges, which led to the opening of a case of assault against Strangler-Brat at Sandton Police Station. Apparently a group of concerned parents are also looking into making a civil suit against the school for failing to protect children in its care.

One Sandton detective familiar with the matter, though not directly involved, told *noseweek*: “It’s hectic, these kids are worse than their parents, who are trying to shield them and stop our investigation.”

Many parents are angry. Said one: “What kind of message is the school administration sending out? Are they saying bullies will be rewarded?” A parent whose daughter witnessed the strangling incident told *noseweek* she’s had to pay for counselling for her child: “These are grade seven kids committing acts of violence – what will they turn to as young adults? The school is letting the kids down and I’ve decided to take my daughter to another school where she will be able to learn without fear.”

Principal De Klerk would not speak to *noseweek*. According to Marthie van der Wat, marketing manager at holding company Advtech (see *nose132*) “The principals of our schools are not allowed to talk to the media. All queries must be addressed to me”. Yes folks, only the marketing manager of the holding company may answer queries pertaining to discipline at Crawford schools. Nice one.

Advtech is, however, aware of the incident: Van der Wat confirmed the name of the boy accused, but was unable to say what action had been taken against him, or what would be done to reassure worried parents that such an incident would not happen again. After all, she’s only the marketing manager. ▣



**T**HERE'S MUCH NEGATIVITY about BEE, and the way it requires companies to farm out work to people who have little to offer other than the approved skin pigmentation. But naysayers overlook the fact that BEE holds numerous benefits for the economy: a few well-connected people become obscenely rich very quickly; employment is created, firstly within the public sector, in the form of functionaries whose lot it is to check whether companies are complying with BEE, and secondly in the private sector, in the form of the gofers (compliance officers – or whatever they're called) who get to tick little boxes for their employers; and, of course, prices go up as companies pass on the cost of all this excess to consumers. Then there's that oft-overlooked benefit to companies – they get to pass the buck when things go belly up.

When MTN embarked on a R510m construction project to build “cell-phone remote hubs” in East London, Kimberley and Worcester, they might have been expected to appoint a large one-stop shop like Murray & Roberts or Grinaker to run the project. But no, MTN chose as its main contractor an outfit called Umbutho Civil and Electrical CC.

A strange choice, because at the time Umbutho had a Construction Industry Development Board level two grading, which allowed it to handle public sector construction projects to the value of R600,000. (Umbutho now has a grading of six, allowing it to handle such projects to a value of R10m, still far short of the value of the MTN project, which requires a top grading of nine.)

Another peculiarity of Umbutho is that its membership is on the small side – as in one person. The lonely man is Diau April Mokoena, though it appears he is more commonly known as Casca. What exactly his construction qualifications are we can't say, because he refused to talk to *noseweek*.

We do know that he relies heavily on an employee called Elias Mabitsela, who's been involved in a number of MTN projects over the years, and who's been connected with various companies: Dilhase Consulting Engineers, Tiger Projects, 3D and Mothapo Consulting Engineers. Mabitsela was the guy who signed up Umbutho's various sub-contractors for the MTN project (in other words, the companies that actually did the work), although he apparently didn't spend too much time on site.

# BEE n there



## Much finger-pointing took place when MTN's R510m contract to build cell hubs went spectacularly wrong

*Noseweek* wasn't allowed to talk to Mabitsela either, but we understand that he enjoys the finer things in life – until recently he had an Aston Martin, but has recently upgraded to a R2.5m Maserati.

One of the people Mabitsela signed up as a sub-contractor for the Worcester hub (worth R170m of the R510m) was Pieter Swart, who has a small civil engineering business called Smartcon. Swart's business has an annual turnover of some R2m, so when on 26 November 2008 he landed a R14m contract to build a 200sqm MTN building that would house power generators and electrical, telephone and computer equipment, he was very happy indeed.

But not everyone lived happily ever after. Although Smartcon finished the work it was contracted to do, Umbutho short-changed it by a testicle-squeezing R1.8m. And, although an MTN project manager by the name of Thys van der

Merwe did at some point assure Swart that all would be paid, new project manager Stefaans Potgieter subsequently made it very clear to Swart that he would have to sort out his beef with the business he contracted with, Umbutho.

So arbitration proceedings are underway, with Swart alleging that Umbutho failed to do much right: it failed to make building plans available; it refused to attend site meetings; it prevented Smartcon's access to the architect and quantity surveyor; it prevented the principal agent from approving works done by Smartcon; it failed to make payments; it refused to approve works for payment; it failed to do inspections; it interfered with Smartcon's building operation; and, when the relationship soured, it refused Smartcon access to site.

Umbutho's defence is predictable enough: the work wasn't done



properly and, even though Umbutho owes Smartcon a small amount, Smartcon owes Umbutho much more. Now Umbutho's giving Swart the run-around, claiming that the arbitrator, quantity surveyor John Powell, must be replaced, and that the matter should go the legal route. So yes, the kind of tactics that the party with the greater resources adopts when it wants to wear the other one out.

Things haven't gone too smoothly in East London either, where Umbutho sub-contracted civil engineering work to a business called Inyati Construction. Once again Mabitsela was the front man, and once again he didn't spend too much time on site, leaving supervision to a fellow called Wilson Javangwe.

According to Inyati's Collan Nicholas, Inyati's experience with Umbutho was as frustrating as Smartcon's – the quantity surveyor appointed by Umbutho, one Sibusiso Mthembu, didn't come up to scratch; complaints made to Umbutho were simply ignored; and it was made very clear to Nicholas that no complaints were to be addressed to MTN. Nicholas says that his company's down by some R400,000. Not only did Umbutho withhold retention money of R250,000 for a mere R15,000 dispute, but Inyati has also been landed with all sorts of special materials that it ordered at Umbutho's request and which it then rejected. Nicholas says that if the matter isn't resolved soon he'll have to sue. He also reckons that the East London project is at least five months behind schedule.

Noseweek asked MTN about the appointment of Umbutho, about rumours of the dismissal of an MTN procurement manager, and about rumours that MTN has had to bail out one main contractor who failed to perform (not

Umbutho), to the tune of R21m. MTN communications head Bridget Bhengu responded thus: "The appointment of Umbutho was preceded by a transparent, fair and rigorous tender process... Seven contractors were invited to submit tenders as per our normal BEE procurement guidelines... The evaluation was based on the following criteria: technical specification, price and BEE... Umbutho were awarded three sites on the basis of having satisfied the criteria... With regard to contractors meeting certain CIBD grading before they can be awarded certain value contracts please note that this requirement only applies to the public sector... With regard to MTN taking responsibility for complaints ... MTN is not party to the sub-contracting contractual arrangements entered into between Umbutho and its sub-contractors and cannot be involved in their disputes... With regard to whether a procurement director was fired within the past two years, we would like to confirm that two procurement general managers resigned from their positions over the past two years and their resignations were normal and amicable."

Nothing on the claim that MTN had had to bail out a main contractor to the tune of R21m.

Despite MTN's failure to take responsibility for Umbutho, Swart has reason to believe that the company is keen to sort his case out and that some offer will be made. MTN's lawyer, Quinton Pieterse of Bowman Gilfillan, Cape Town, was not prepared to confirm this.

Perhaps MTN will be a bit more sceptical next time it has a big project on the cards, as in "BEE'n There, Done That". Next time you go through your MTN bill, you'll have a slightly better idea of why you're paying so much. **W**

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**(Hout Bay & Llandudno)**

**M**OST WEEKENDS – Fridays, Saturdays and Sundays, all night until dawn – the long-suffering residents of Midrand’s President Park endure sleepless nights as high decibel music pounds non-stop at Lot Maceve’s Mbafi Lodge. They complain at their peril – and after some alarming goings-on many are in fear for their lives.

Mbafi has been going for two years now – much of the time without a legal liquor licence – trying the owners of the surrounding 8000 sq m-plus plots beyond endurance; people who have lived in the once-tranquil backwater for years have put their properties on the market. But no one’s buying; who wants to live in a paradise that Lot Maceve has turned into a litter-strewn hell?

Readers may recall (*nose108*) Maceve’s previous ill-fated venture. In 2007 he teamed up with Rosie and Starr Geaney to be the BEE partner and operator of the sisters’ African Sun watering hole for what Starr called “high-falutin’ local blacks of the higher order” in Midrand’s Glen Austin. It didn’t work out and Rosie and Starr decided to regain possession.

With the aid of Solly, their loyal Zulu bodyguard, the sisters routed Lot, his four minders and subsequent reinforcements of 10 armed bullyboys, before finally yielding to ten R5 rifle-wielding officers mobilised by Maceve from his pals at Midrand police station. It was all too much for the Geaney sisters. Rosie died of a heart attack in 2008; months later Starr committed suicide.

It was on 19 December 2008, just four months after Starr’s death, that Lot Maceve held the grand opening of his Mbafi Lodge.

So who is Lot Maceve? The flashily-dressed Midrand businessman made his first killing installing 55 containers housing public telephones in the townships, in partnership with Cell C, Vodacom and MTN. When he bought two adjoining plots from Eugene Nel in President Park’s Pretorius Road, he presented himself as a quiet country gentleman.

“You see somebody, you don’t know how they’re going to turn out,” says Nel. “When he made an offer to the estate agent there was no talk about a shebeen.” The purchase price was R2.5m. Maceve raised a bond of R2.3m, leaving R200,000 owing. His offer to pay R150,000 in six months in settlement was accepted. Nearly three years after transfer, Nel is still waiting.



A reveller performs the Heimlich Manoeuvre at Mbafi Lodge

# The shebeen next door

## Former paradise turns into noisy, litter-strewn hell

On his newly-acquired land, still zoned for agricultural use only, Maceve began building a massive illegal (no planning permission) edifice, which alarmed his immediate neighbours, an elderly retired Scottish couple named Willie and Mary Stewart. The Stewarts had lived there for 18 happy years, for eight of which they ran the Thistle guest house on the plot. “We had a wonderful smallholding,” says Mary Stewart. “We never had a burglar bar, never needed an alarm.

“But when we saw what was going on next door, this huge structure he was building, we became anxious.” In June 2008 the Stewarts put their property on the market at R2.8m.

In the early hours of Friday 10 November 2008 the light clicked on in the Stewarts’ bedroom as four armed men

burst in. Willie, 64, was tied up and Mary’s jewellery and perfumes were seized. “They were going to bite Willie’s finger off for his wedding ring – he’d had it on for 45 years,” says Mary Stewart. “He eventually got it off.”

Downstairs, the gunmen seized Willie’s collection of rare single malt whiskies, including two bottles of 21-year-old Chivas Regal Royal Salute (R1,860 apiece), a 12-year-old Glen Mora, a Singleton and a Johnnie Walker Sling.

“Although it was a stormy night their clothes were bone dry,” says Willie. “You could see where they came through the fence from Lot’s property.” Willie remarks on a strange coincidence – the very same range of rare whisky blends were subsequently photographed on a shelf in Lot Maceve’s bar at Mbafi Lodge.



On the Sunday, as the shaken retirees struggled to recover from the shock, there was a phone call from Lot Maceve, saying he'd like to come and look round their property. He arrived with a bunch of hangers-on, said the place was very nice, but even at the reduced price of R2.5m was "far too expensive".

The next morning, the Monday, Jacques Kriel, the Re/Max estate agent handling the Stewarts' property, was on the doorstep. Says Mary: "He said he'd had an offer from the guy next door. It was R1.5m and the agent said: 'take it or leave it, because in six months we'd be begging Lot to take it off our hands'.

"Willie and I knew we had to just take the offer," she says. "We'd had a taste of Lot's music, so we knew what was coming. We'd never be able to sell this place."

Today the Stewarts have retreated to Gansbaai, in the Western Cape. Re/Max's Jacques Kriel tells *noseweek* that he never knew about the Friday early-hours armed robbery, or of Maceve and his mob's Sunday visit to the shaken elderly couple. He agrees that when he made the R1.5m offer he delivered what amounted to "a veiled threat" from Maceve.

"He said 'Tell them if they don't accept this they're going to regret it'," says Kriel. "Yes, that is a veiled threat. Not because they were going to rob them or anything like that, but because of the so-called tavern licence he was bragging about."

The grand opening of Mbafi Lodge (*mbafi* means battle axe to the Lunda people in Zambia's Luapula province) went ahead on 19 December 2008. Next door is the private Olive Leigh school, whose owners Rob and Lesley

decided that residents should form a forum and approach Lot Maceve. Two days later Ritchie received a "frantic" call from his wife, saying Maceve was at the gate.

He rushed back, and says he holds a recording of their exchange: "Lot told me he's here to stay, that he's here to protect the community and if people go up against him then he will organise stuff to happen to them. I said we don't mind – as long as you're legal. If you rezone your property, get clearance cer-

## HE AGREES THAT THE R1.5M OFFER AMOUNTED TO A VEILED THREAT

Ritchie lived on the premises with their daughters. "That's when we were first confronted with this noise," says Rob Ritchie.

The following morning, accompanied by fellow plot-owner Louis Selekane, who was chief executive of the South African Diamond and Precious Metals Regulator, Ritchie called on other neighbours to discuss the din. It was

tificates from the fire department and the health department, get a liquor licence and keep the noise down. Then we don't have a problem with you.

"Lot said 'Don't worry about that and don't worry about the police, I've got them sorted out'. He said he was an ANC councillor – this was the run-up to the April 2009 general election and there were ANC banners strewn all

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over his place.”

Ritchie’s middle daughter Beth, then aged 19, told Maceve that she was recording him. Maceve ranted at her: “I will have you on your hands and knees, begging for mercy!”

The Ritchies considered this a serious threat and went to Randburg magistrates court and obtained a Peace Letter, a form of protection order. Early the following year, after the music “got worse and worse” the family moved out to rented premises. After several moves, they now rent in Lonehill, with Lesley Ritchie commuting daily to run Olive Leigh school.

In February 2009 the police raided Mbafi Lodge on the orders of station commander Superintendent Maharaj.

The raid was led by police reservist Captain Ivan Monsieur. (In office hours Monsieur was MD of Pretoria arms and ammunition manufacturer New Generation Ammunition. In 2004 he exposed the approval of then defence minister

The following month, on 6 April, a number of residents, including Louis Selekane, met at Cheryl Reyneke’s house to give “our side of the Lot Maceve story” to representatives of the *Midrand Reporter*. Police reservist Ivan Monsieur also attended, to confirm the residents’ presentation of the facts.

By a twist of fate, within weeks, Louis Selekane and Ivan Monsieur, two of the biggest thorns in Lot Maceve’s side, had both died violent deaths. On 30 May Diamond Regulator boss Selekane and two others died, and his wife Catherine was seriously injured, in Diepsloot, when a BMW skipped a stop sign and smashed into them. The driver of the BMW was slightly injured.

Three days later, on 2 June, Monsieur was shot dead, execution-style, by two men in Metro Police uniform after they pulled him over as he drove along Olifantsfontein Road, Midrand, after dropping his son off at school. The only thing taken was his gun.

Ros, whose family has lived on their 15,000sqm plot for 23 years. “We’ve got a tennis court and a pool and we’ve had horses and lots of dogs. We moved here because of the serenity of the area.

“Since Lot Maceve arrived life has changed dramatically. We’re about 180m away and when the music plays our windows shake and it’s impossible to sleep. I phoned one Saturday evening and left a message asking him to please turn the music down. The following day he phones and says he’s got two beautiful stands in Tembisa he’s going to move me to, so I can see what it’s like to live with black people.”

To escape the noise and hassle, the Toontas family has now bought a plot at nearby Randjiesfontein. Their extensive property in Pretorius Road has been on the market at R5.9m. “I’ve told my agent I’d accept R5m, but there have been no takers,” says Ros.

Bang next door to Mbafi Lodge are Daniel Molusi, wife Patricia and their two college-age children aged 19 and 23. They’ve lived there more than 16 years. Molusi, an attorney in the Department of Justice in Pretoria says: “I’m in the mouth of the firing squad! The noise is a problem to each and every sensible person in this area. Whenever my curtains are open I see police cars there. Whether they are on police business, or socially, I would not know. I’ve tried to sell, but I have to stay here for the moment, until I get a buyer.”

Catherine Selekane, widow of Louis, says the noise from Mbafi Lodge is “quite disturbing”. She adds: “But it’s not everyone who can get up and leave. It’s not a decision you take and act on immediately.” Sonja Le Roux, her husband Thinus and their children aged 11 and 14 live just two doors from Mbafi Lodge – and they’re being forced out. “At 4am and 5am the lodge patrons hold car races up and down the road outside,” says Sonja. “It’s really very bad. Broken bottles everywhere and twice we’ve had shootings right in front of our house. It’s really not safe.”

Asked for comment, Lot Maceve says: “They are saying I’m making noise. There is no noise in the area. I went to that area, I bought five plots. They’ve got a problem with that. They don’t want to mix with a black person.”

Has he ever threatened any of these people? “I haven’t spoken to one of them. Never in my life. The problem is not about the noise, it’s about mixing themselves with a black person. There’s no black person who’s complaining.” ■

## THREE DAYS LATER MONSIEUR WAS SHOT DEAD EXECUTION-STYLE

Mosuoia Lekota for Armscor to sell 950 million rounds of surplus ammunition, instead of destroying it in line with a cabinet memorandum. See *nose69*.)

Mbafi Lodge had no valid liquor licence. All the alcohol was seized and taken to Midrand police station. The following day Maceve called at the station and the liquor was signed out and returned to him by an unknown officer with an indecipherable signature.

On 28 March last year Ivan Monsieur led a second raid on Mbafi Lodge, backed up by a reservist warrant officer and four Midrand police officers. When they arrived at the lodge the four policemen refused to get out of the car and participate in the raid. Supt Maharaj was called to the scene and eventually the snoop went ahead. Again all the liquor was seized and this time it remained in the station evidence room. An infuriated Maceve arrived and had heated words with Monsieur. “You people are no longer in charge!” he screamed at the reservist captain.

At this time, says a reservist colleague, death threats were made against Monsieur within the Midrand police station.

Colonel Steven Moodley had just taken over as Midrand area commander at the time. “There’s nothing that proves that these two incidents were linked to Mbafi Lodge,” says Moodley. “These people say that serious crimes are occurring in the area because of Mbafi, but those comments are made out of frustration.

“The community expects us to shut Lot Maceve down, but we don’t have any grounds. In March this year the liquor board refused to grant him a licence, but since then he’s been getting a casual licence, occasional licences, week to week.” (These are supposed to be for one-off events, like weddings.)

“The persons that really need to get their act together are the City of Johannesburg’s officials. Like town planning and the health department – the noise that emanates from there must be dealt with by their noise abatement unit.”

The beleaguered plot-owners of Pretorius Road spoke to *noseweek* about the racist bully who has destroyed their tranquil way of life.

Roslyn and Vic Toontas have four children, the eldest 16. “It’s been a lovely place to bring up a family,” says



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**R**UBBING OR FONDLING someone's genitalia may be a perfectly agreeable way to spend a lazy Sunday afternoon, but is it legal? It isn't if the someone doesn't agree to being so rubbed or fondled – this makes it an offence once known as indecent assault, but now called sexual assault in the form of sexual violation. This new offence was created by an Act of Parliament that replaced the common law on sexual offences with statutory offences – the Sexual Offences and Related Matters Amendment Act of 2007.

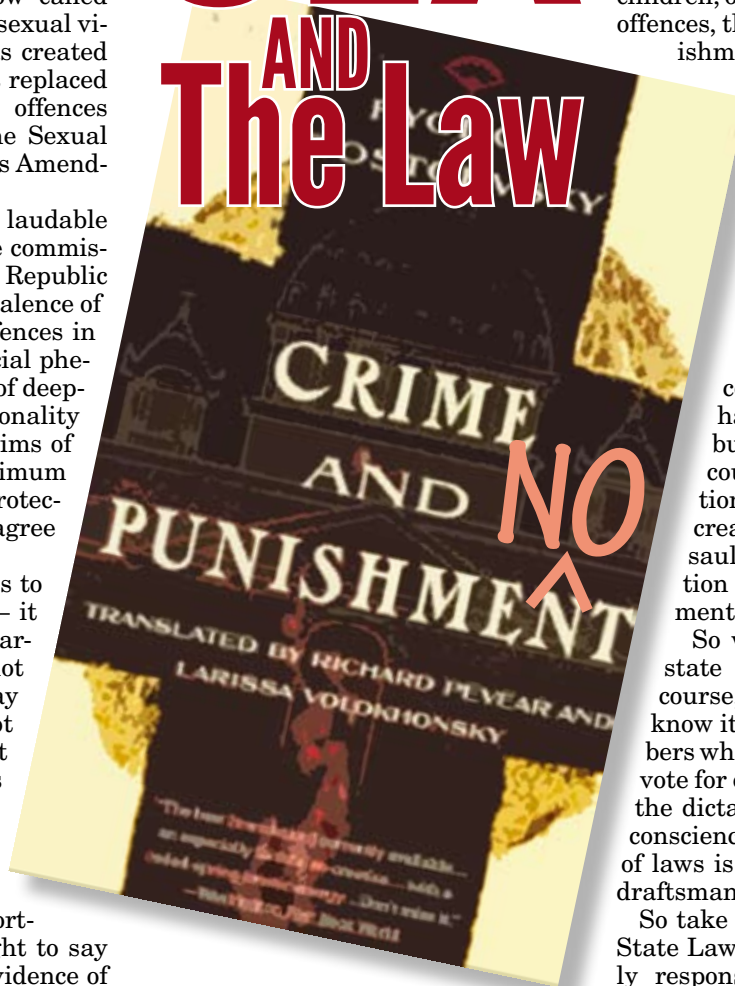
The Act was created for laudable purposes: the blurb says “the commission of sexual offences in the Republic is of grave concern... the prevalence of the commission of sexual offences in our society is primarily a social phenomenon which is reflective of deep-seated, systemic dysfunctionality in our society”, and that victims of such offences need the “maximum and least traumatising protection”. *Noseweek* couldn't disagree less.

The clever lawmaker seems to have thought of everything – it thought to say that being married to the complainant is not a defence; it thought to say that a person under 12 cannot consent to a sexual act; that evidence relating to previous statements by a complainant should be admissible; that no negative inference should be drawn if the complainant delays in reporting the matter; and it thought to say that a court may not treat evidence of a complainant in a sexual offence with caution on account of the nature of the offence. Thorough or what?

So what's the punishment for this aberrant behaviour? Well, here's the rub (no pun intended): it seems this is the one thing the lawmaker forgot. Yes, as a result of some almighty cock-up (no pun intended), it seems the lawmaker forgot to insert one (sorry). And now that the word's getting around, more and more people who are charged with the whole fondling, touching and rubbing without consent thing are arguing the toss (sorry).

*Noseweek* hears that whenever this point is raised the state tends to withdraw the charges, and we've heard of a case where the magistrate said “I wondered when somebody would

# SEX AND The Law



finally pick up on this”.

There is, however, a sexual assault case in Riversdale in the Western Cape where the matter has been argued fully, and a judgment is expected shortly. The accused's legal team argued that, as the Act makes it quite clear that it was intended to consolidate the laws on sexual offences in one statute, the common law on indecent assault was repealed. So, the argument went, as this particular offence was committed after the Act came into effect, the court cannot apply punishments that were used for the common law offence of indecent assault, nor can it simply speculate on what punishment the lawmaker intended.

It would be an absurdity, argued the

lawyers, if someone could be charged with an offence without having any idea what the penalty might be. The lawyers pointed out that, although the Act does provide minimum punishments for offences like rape or failing to report sexual offences involving children, or aiding and abetting sexual offences, there's simply no talk of punishment for sexual assault. They

argued that it's well established that there can be no effective law without a penalty, citing fancy Latin maxims like *nulla poena sine lege* (there can be no punishment without a law) and *nullum crimen sine lege* (there can be no crime without a law).

The State was forced to concede that no punishment has been set out in the Act, but furiously argued that the court should look at the intention of the Act – which was to create an offence of sexual assault – and then use its discretion when it comes to punishment.

So who's to blame for this sad state of affairs? Parliament, of course, is the lawmaker, but we all know it's not the Honourable Members who write the law – they simply vote for or against them according to the dictates of their parties' ... er ... consciences. No, the actual drafting of laws is done by the parliamentary draftsman.

So take a bow Enver Daniels, Chief State Law Adviser, the man ultimately responsible for the never-ending stream of poorly-drafted legislation we seem to get, including the recent Protection of Information Bill. But then Mr Daniels was appointed to this important post on the basis of his connections rather than on the basis of any legal brilliance (see *nose24* on how then Minister of Justice Dullah Omar appointed pals to top legal positions).

So what will it mean if a court finds that there's no punishment that can be imposed, so therefore no offence? Well obviously it would be great news for pervy types facing charges right now. And what of those who have been charged and found guilty and been sentenced to whatever terms the presiding magistrate felt was appropriate? Have they been wrongfully convicted? Intriguing stuff. ▣



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# Dulled by evil

SOME DAY, some sunny day, a wise president will confer the Order of Luthuli on a certain tenacious Irishman who has displayed more courage and idealism in the face of heinous crime than the entire South African establishment. Fat hope.

Paul O'Sullivan does not resemble Superman. He is a bald, middle-aged gent who single-handedly and efficiently took on the entire Selebi criminal hierarchy. And won.

Author Adriaan Basson's bracing and workmanlike journalistic documentation of the trials and tribulations of Jackie Selebi, our erstwhile Chief of Police, rightly devotes a chapter to the vivid character and astonishing feats of O'Sullivan, who defied menacing gangsters and crooked cops to produce a meticulously researched dossier of mind-boggling villainy which, after surviving official and criminal obstacles that would have tested Hercules, vindicated his relentless pursuit of Selebi and his seedy cohorts.

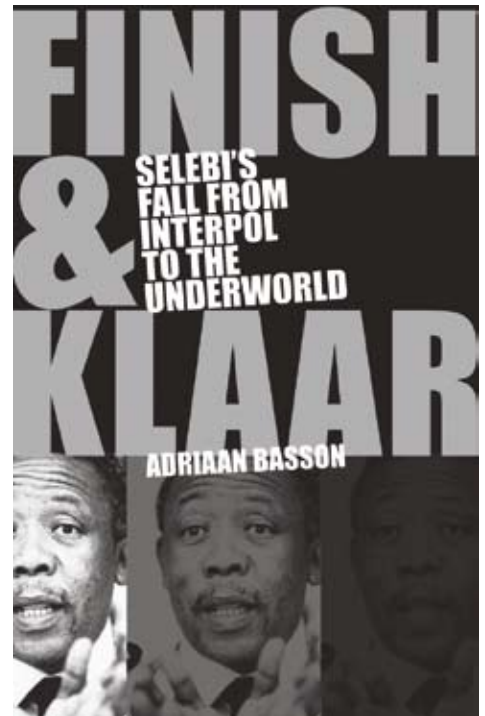
No wonder the crooks tried to portray O'Sullivan as demented: they believed they were above the law. How dare an impertinent foreigner challenge their immensely powerful empire of sleaze?

Len Ashton  
Reviews  
**Finish & Klaar**  
(Tafelberg)  
by Adriaan Basson

While civil society numbly surveyed the rumbling volcano of filth, O'Sullivan acted, and defied equally dangerous ANC party heavies and known criminals to produce incontrovertible evidence of collusion between national figures and their drug-dealing, thieving mates.

As Selebi so poetically observed of his gangster friend Glenn Agliotti: "He is my friend – finish and *klaar*".

Yea! and so, eventually, it was. But not quite as the comically arrogant Selebi had envisaged. Agliotti's evidence revealing the Chief's gracious acceptance of cash-and-kind bribes could surely not be conducive to eternal friendship.



And Selebi's 15-year prison sentence is certainly not *klaar*. Mind you, there are precedents for the early release of social hooligans. The names of Shaik and Yengeni come to mind. They, too, disgraced South Africa, and proved that apparently party loyalty superseded the national interest.

For dramatic purposes, the plot ramifications revealed by investigative journalists of Basson's hard-working ilk almost defies dramatic exposition. It's too rich for Hollywood. There is the entire rogues' gallery of nogoodniks,



Cartoon: Zapiro

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from petty thieves at OR Tambo airport to foolish political interference by the ex-president of the land. The “story” seems over the top. Too big, brassy and complicated for star casting. Vulgar, in fact.

Perhaps an enterprising movie director of the Oliver Stone persuasion could digest chunks of the action for a series.

*Selebi I: The Horror* might feature the black humour of three bungled murder attempts on the suicidally willing victim, ex-tycoon Brett Kebble. (Friend Agliotti received fat sums from the Kebble family for “access” to Selebi). The dialogue, repeated in court, is pure Stone. A flustered and incompetent would-be killer said he had admired Kebble’s furious resignation – despite three incompetent attempts on his life.

This leaves ample material for *Selebi II: The Trap*, and *Selebi III: Doom*. Maybe a bronzed Woody Allen would play

the lead. Talk of the banality of evil...

Sometimes facetiousness is the only defensive response to such theatrically absurd excesses of wickedness. The case was such an overwhelmingly unpleasant invasion of the public consciousness that there were reactions of evil fatigue. It was all too much to take on board. That kind of fatigue is an increasingly alarming factor in this society.

And knights in shining armour are in short supply.

Which is why the record of *Finish & Klaar* is important. As the tide of sleaze continues to surge around our lives and institutions, ordinary citizens are becoming dulled by evil. It is too much to absorb without losing heart.

But that acceptance is what the bad-dies are counting on. So we must, albeit wearily, continue to shout the odds when sin is detected. We can’t count on bloody-minded Irishmen to show us the way in future. **W**

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**Harold Strachan**

**P**ON MY SOUL, I met an old bok recently who told me that World War Two happened because Hitler was mad. He even gave me that horseshit old piece from 1940 that at a meeting of diplomats Hitler became so enraged he fell writhing to the floor and started tearing up the carpet with his teeth. Such was the crudity of our propaganda, alas, and I'm ashamed to say we were eager enough to believe it all. Well he was many things, was Adolf, most of them plain evil and that's a fact, but mad he was not, just plain bloody clumsy, that's all; I mean he really believed the Brits would make gentlemanly peace with him since they'd done their gentlemanly best for France and failed. That's what Dunkirk was about. Surely nobody over the Channel there would now be so daft as to hang on in the hope that President FD Roosevelt and his jiggery-pokerists would provoke a war with A Hitler, and rescue the Brits, and win this war, and

# Loony

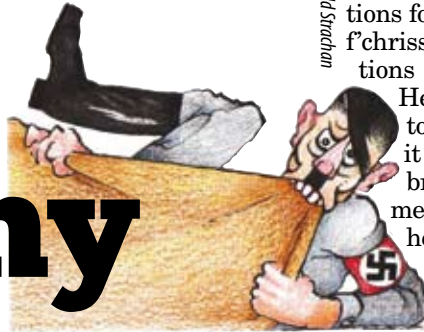


Illustration: Harold Strachan

make Uncle Sam top imperial dog of the 20th Century.

I bring up this sombre old stuff because I am invited to believe the same schpiel all over again in the case of a certain Robert Mugabe. Now there's a nasty bastard for you, the man who massacred twenty thousand souls around Bulawayo, but that doesn't make him mad, it just makes him murderous, like Pol Pot. Well okay, like Hitler then. And amongst other experts on lunacy there's a certain Professor Jubejubeson of Constantia who for sure has become the authority on Zimbabwe because he's been there many times for first-hand observation and political analysis, and after much such observation and analysis, also psychologocobble insight, he declares that what is wrong with Zim is that Mugabe is mad. It is dangerous work indeed the Professor does, let me tell you; he flies to the Vic Falls as tourists do and takes a taxi to Harare, see, I mean Mugabe's blockhead political police would never guess that even a man as dangerous as he could ever devise such a devilish cunning plan. And does he book in at a hotel, where by law a register must be kept, or even a small unnoticeable BnB? Hell no he does not! He moves in with the Rhodesians, blends craftily in with the background of the caucasian suburbs as it were, whence he makes sorties into town to interview trustworthy persons about Mugabe's nasties. Trustworthy like the gent who's been acrimoniously dumped from Mugabe's Central Intelligence Office, he should provide first-hand truths about the evils of the régime, and back cosy in Constantia ou

**Trouble was,  
Germany had  
come late to  
the business  
of empire**

Proffie feverishly emails his report to his London newspaper: Mugabe is mad. Well it's true 26,587 other newspersons have said this, but after all it IS true, SEE, so one just HAS to say it again. Henceforth Mugabe will be known as MAD BOB, as flows trippingly off the tongue, it's sort of catchy, which newspersons like.

But to get back to Europe; maybe it is I who am going loony, or did I really see/hear on the dish that the Germans this very month of Oct 2010 have now finished paying off their reparations to France? I don't mean reparations for WW2, Lord love you no, I mean WW1 f'chrissakes, 1914-1918 jy weet mos, reparations as awarded at the Treaty of Versailles.

Heavy reparations, man, punitive stuff: together with the Great Depression it brought the Boche to the brimstone brink. That important Frogische government dude whose name I forget declared he would turn Germany into a simple agricultural country where today's industrial proles could go yodelling 'mongst their cows and cabbages.

Trouble was Germany had come late to the business of empire-snatching; no such country existed when the Brits and French snatched theirs, you see, but now Germany had overtaken both industrially and had a better product to sell, and they demanded an empire in which to sell it, and THAT'S what two million healthy young lads died for. Profit. For the predatory élite\*. All the German people could hope for now was to find a Strong Man, a tough unbending politician to defy all comers and save them, and just their fucken luck to find a criminal politician. Ummm... no, make that a political criminal.

Well I can understand why the media don't after nigh a century give the public a straight view of imperialists and their World Wars, I mean the buggers are still at it with other sorts of war, I mean it's sort of nice if you can sort of forget the WMDs after a bit and you can tell the world you're engaged in Operation Iraqi Freedom, that sort of thing, and never mind the oil. But surely they can tell us common folks why Tony Blair tears up the carpet with his 64 teeth at the mere mention of Mugabe's name, and what Mugabe means when his big banners declare ZIMBABWE WILL NEVER AGAIN BE A COLONY. It is because of Mad Bob's paranoia, says Proffie Jubejubeson, and Pshaw! says he when you mention mineral wealth, but I tell you dear readers, if there's anybody I like less than Mugabe it's a no-good sonofabitch neo-imperial Pom.

\* I just love the way Zwelinzima Vavi avoids Marxist words. This is his term for the Ruling Class. ▣

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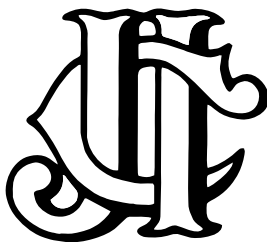




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