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# noseweek

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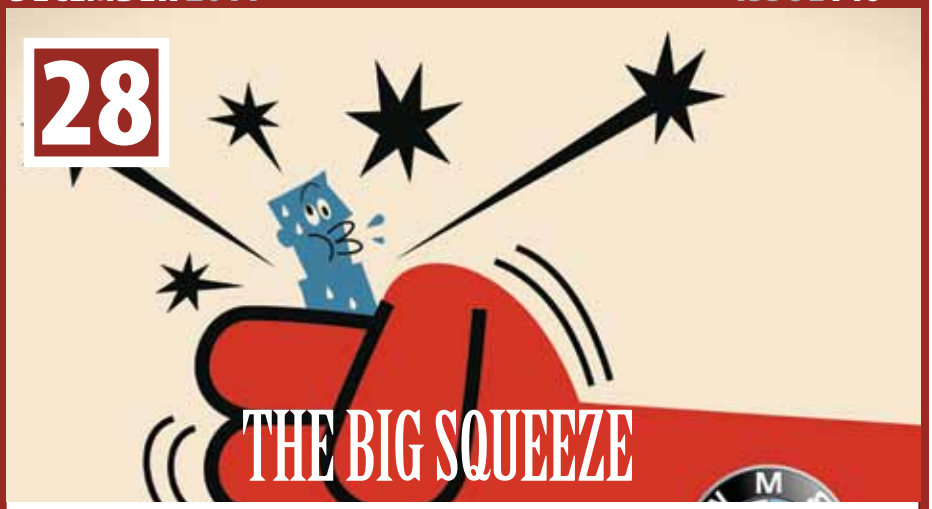
# noseweek

DECEMBER 2011 ISSUE 146

## Moral mix-up

MAYBE Zuma was also told: "God helps those who help themselves"; because those running the ANC have not stopped helping themselves to everything they can lay their hands on – no matter if it was meant for the poor who voted them in, or not.

**Charlotte Caine**
Claremont

## Hillbilly Club

IS LAUREN FINE, the lawyer of Sylvia Ireland in "Sex and the Psychiatrist" (*nose*144), the same lawyer who is referred to in "Trivial Pursuit" in *nose*143?

It's weird and creepy how the same names keep cropping up time and again. Do they belong to a secret hillbilly club that the rest of us don't know about and how do they find one another?

**Shelley Bryant**
Knysna

*The same Lauren Fine. We don't know about the hillbilly club, but we're investigating. We'll keep you posted.* – Ed.

## Break-down nerve

IT'S NOT just Merc and BMW dealerships that are into the big repair rip-off.

Karen Hofmann's Voyager got stuck in Bryanston. As Chrysler Rivonia was just up the road, the AA towed the car to them. Two days later, they quoted R26,000 to fix it – which was ludicrous, so Karen had it towed to Dave at Parkhurst Auto who repaired the car for R1,700.

After six months, the car is still going perfectly.

How does that old advert go? "Makes ya think!"

**Clive Varejes**
Johannesburg

*Mr Nose has been thinking those thoughts for a good long while. Now see the BMW parts case story on page 28 for the other half of the scam.* – Ed.

## Censusless stats

WHEN the census enumerator came to our house, she had seven people to list, aged from 82 to 15. Straightforward: start with the oldest and work down.

Eventually we got to Section C: General Health and Functioning. Answers were to be rated 1 = No difficulty; 2 = Some difficulty; 3 = A lot of difficulty; 4 = Cannot do at all; 5 = Do not know; 6 = Cannot yet be determined.

Number 1 on our list has macular degeneration and, as the first question was about "Seeing", our census gal printed 3 next to this, then proceeded to put a 3 next to each and every answer in that section for all of us: "Hearing; Communicating; Walking/Climbing; Remembering/Concentrating; Self-care" – all of us have a lot of difficulty in each of these fields.

Then came "Assistive Devices and Medication": 1 = Yes; 2 = No and 3 = Do not know.

Persons number 1,2,3 and 5 all wear glasses. But, guess what, the enumerator decided she'd just mark everything with a 1, so now we're all wearing glasses, have hearing aids, a walking stick/frame, are in wheelchairs and are on chronic medication.

She asked Mum (aged 75) and me (52) all the info about the births of our children – when the form specifically says only ask females aged 12 to 50.

What kind of statistics is the government really hoping to gain from these farcical forms?

**Nicci**
Pinelands

*With luck: 1. Number of people; 2. Age distribution; 3. Sex; 4. that they'd designed a farcical form (they forgot, less is more); 5. that something has to be done about education – urgently. The extent of the farce should leave us in no doubt about that.* – Ed.

## GUS

# Eighty years old and still active

YOUR current account is about to be labelled inactive and declared dormant, Frank Helm was warned in July when called by a Nedbank Private Bank official who identified himself as "Jash 53695327". Once dormant, he said, Helm would be denied access to it because no money had been deposited into the account for 30 days.

Helm's account is always in funds. His pension fund makes quarterly payments into it, and has done so for several years. Far from being dormant, it is used on an almost daily basis to withdraw cash or make payments.

"I am in my 80th year and my wife is 72 and we do not appreciate some (I suspect minor) official posing a threat to our wellbeing," Helm told Nedbank.

He established that Nedbank's published "Terms and Conditions of Transactional Current Account" were being blatantly ignored by its officials.

In response to his demand for an explanation, Helm received an email from Jashveer Ramautar of Nedbank Private Bank Client Services saying:

"…once an account goes into an inactive status after 35 days of no deposits being made… we make contact with the account holder to advise accordingly. The call was made to inform you that, should no deposit be made, the account will fall into a dormant status. To have the dormant status removed, a small deposit as well as a written instruction will be required. I trust the above clarifies your concerns raised."

It didn't. Helm demanded to know who this "transactional accounts specialist" was – and his qualifications.

Ramautar ignored the question and instead attempted a more elaborate explanation: "In the interests of security and to avoid fraudulent activity on your account, our transactional accounts are programmed to [stop] access for the withdrawal of funds if no credit transaction has been made for a period of 180 days. After the first 30 days without a credit going through the account, an alert is placed but withdrawals are still permitted, only once the 180 days has elapsed do we freeze the account and request a deposit to be made as we need to confirm that this account has not fallen into the wrong hands and that all is in order. This practice is not to annoy or inconvenience our clients at all, but is purely placed for the protection of their funds."

Helm informed Ramautar he did not accept this explanation. "A phone call from you informing me of your intention to render my account inactive after a period of two months, due to no deposit being made, is clearly contrary to Nedbank's published Terms and Conditions of Transactional Current Accounts, in particular the section headed 'Dormant Accounts'. You have no right to deviate from them.

"The security of my account could easily have been checked by phone or email. Movements on my account show clearly that it is in use almost daily, making your submission of inactive or of protecting my funds nonsensical.

"Apart from the distress caused to my wife and myself by the threat of losing access to our pension, I have had to undertake the expense of time and mileage [to sort out the matter] for which I expect reasonable compensation. My account is here submitted to you for journeys made [to the nearest branch of Nedbank] and time wasted by me, due to your non-compliance with Nedbank's published terms.

"Any attempt to move moneys in my account/accounts by Nedbank Private Bank or its employees to any place beyond my immediate control will result in legal action."

That brought Niren Kara, Nedbank's internal ombudsman into the fray. "Good Day Mr Helm," he began hopefully. "We refer to [your] complaint and hereby advise that it has been dealt with by Kumbi Kowo (Product Manager) and myself. According to Kumbi you accepted her explanation regarding the inactive status on your account. Kumbi offered you a Pamper Package as a gesture of goodwill, purely because of the misunderstanding between yourself and the call agent. We believe Nedbank was being proactive by calling and advising you regarding the status of the account.

"…you have now decided to demand monetary compensation. Regrettably we are unable to entertain your claim as you have not suffered any financial loss whatsoever."

Now Mr Nose has a question for Nedbank: a deposit can be made without the depositor identifying himself or herself, so how can a deposit possibly satisfy the bank that withdrawals made from the account – which require identification, passwords and pin numbers – are not being made by a fraudster? Or is the bank a bit short of cash and simply hussling for more deposits? ■

## BEE watch

MR NOSE is one of those who strongly suspects that BEE at best, is simply the latest fashion rip-off or at worst, a "sanitised" bribe route to the hearts and bank accounts of the Friends Of Luthuli House Association. He had little reason to change his mind when he received an invitation to attend the Fifth Annual BEE conference held in Joburg in the last week of October.

Especially when he got to the bit about the cost of admission: a two-day ticket came at R8 350 per delegate; a three-day ticket cost just R10 325 per delegate. BEE illiterates were encouraged to also sign up for a one-day pre-conference workshop, adding a mere R2 850 per delegate to the bill.

This was beginning to sound more and more like good training for BEE: you got to know the drift even before you got to attend the course.

Also available was a "separately bookable", exclusive one-day session for Senior Executives, at the senior executive price of R4 175 for the day – just to ensure that those senior executives didn't waste their time and got straight to meeting the Bs wearing Armani suits and Breitling watches, you understand. ■

noseweek

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# Two-timing advocates

READ about the double-dealing advocates and you will quickly appreciate that it is not just the individual cases that are shocking; it is the scale of it and the institutionalised culture of greed they represent that calls for the most radical action.

To put some necessary perspective on the matter: four Pakistani cricketers – players in just a game, I might emphasise – in the same month were given jail sentences for deliberately bowling no-balls to favour certain gambling interests.

The lawyers *Noseweek* features have been playing with lives and imperilling the road accident fund – let's not even talk about undermining public respect for the legal profession.

Then there is the implied subtext to all of this: where are the attorneys who were favouring the advocates with multiple briefs – and, no doubt, themselves inevitably doing a shoddy job in the process? What's to become of them?

In contrast to such stories, some people found the cover story in *nose*143 about the trivialising of domestic violence a bit too *You*. (And, dare we suggest, a bit too young?) They are wrong. The victim of such an abuse of institutional power is as entitled to *Noseweek's* attention and support as is a road accident victim, or a client wronged in business by a bank or insurance company. It is the secrecy surrounding the institutions that deal with domestic violence that invites scrutiny.

Meanwhile, good news: in the Western Cape, the provincial legal services department of the SAPS has, for the past two months, had two senior lawyers travelling the length and breadth of the province to re-train and update police station managements in how to deal with domestic violence matters. One of them, advocate Martell van Lill told *Noseweek*: "Because of a constant influx of new members, we constantly need to be training them in the peculiarities of Domestic Violence orders.

"How we are going to deal with the growing incidence of abuse of the Act by unscrupulous applicants and lawyers, is another matter that requires attention. Perhaps, for a start, we should be reminding applicants for such orders that to lie in a statement of complaint is itself a serious criminal offence."

In *nose*143 we put the spotlight on the problem with a report on how Colin Chaplin had had a Domestic Violence order served on him at work, based on a pestering woman's complaint that she was "frightened of what he might do to her" – because he'd threatened to "unfriend" her on Facebook.

Even more bewildering was that designer Danielle Vermaas said she'd been advised to seek the order by his ex-girlfriend, well-connected Cape Town attorney Lauren Fine.

Subsequently, between February and May this year Fine's Facebook friends started receiving abusive messages about her, all apparently emanating from Vermaas's Facebook address. When Fine confronted Vermaas, she claimed that someone had pirated her Facebook site and that she had reported the matter to the police.

(The Facebook messages stopped – only to be replaced with even more offensive printed messages delivered by mail – as many as 50 of them in a month.)

Soon after that edition appeared, it emerged that Lauren Fine had persuaded the police to investigate Colin Chaplin: on what charge is still not clear.

Obviously, both women were determined to use the police to somehow – anyhow – vindicate their otherwise-indefensible prior actions.

A policemen called on a friend of Chaplin to enquire about his character. Captain Leon Marx of the detective branch called *Noseweek*, asking how we'd accessed the picture of Vermaas we'd used, when it was "kept only on a closed website in Australia". Easy to answer: go to Google images, and type in her name.

On October 6, five policemen accompanied by Yvette Palm, a forensic specialist allegedly hired by Fine, arrived at Chaplin's home with a search and seizure warrant. It was not authorised by a magistrate and was therefore not valid, but they proceeded anyway to seize his computer, cellphone and various items of stationery. Oddly, they were also looking for copies of *Farmers' Weekly*.

They illegally seized his passport as well. At his parents' home, they seized his mother's laptop (which she uses constantly for her work) and a printer and cellphone.

It emerged that the offensive printed notes sent to Fine and her attorney partners were printed on a particular type of paper, using a certain type of printer – and included offensive animal pictures cut from *Farmers' Weekly*.

A week later everything was returned – with nothing having been found to incriminate Chaplin or even suggest he was the author of the offensive letters.

Fine has closed down her Facebook page; Vermaas has renamed hers Danielle Margaux.

**The Editor**

# Marney can't buy you bail

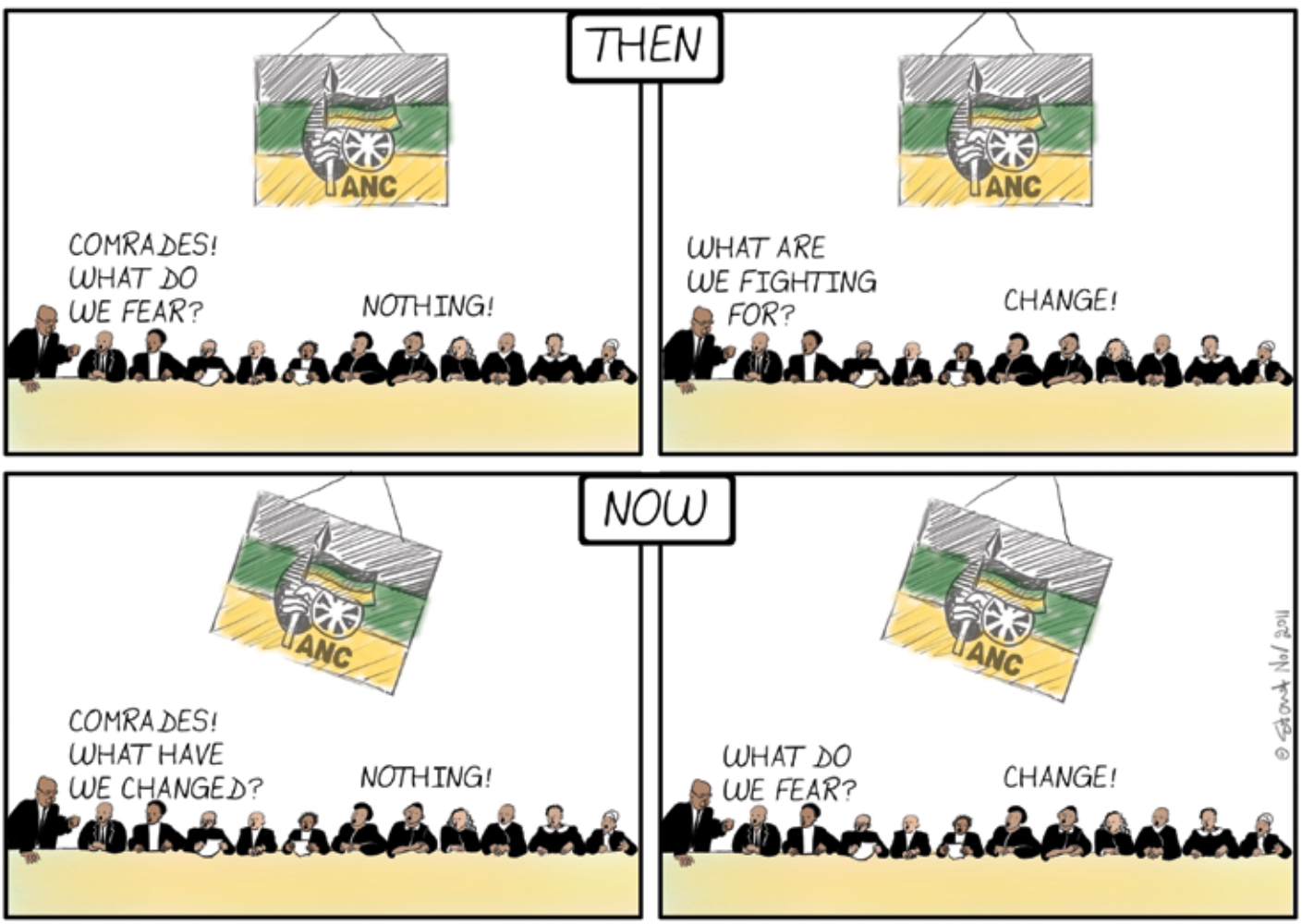
MARNEY van Zyl, the silver-tongued scoundrel whose antics and their resultant trails of devastation were recorded in *nose*143 and *nose*144, has been arrested and reunited with the inmates of Sun City (Johannesburg prison). The build-up to his latest incarceration makes a continuing lively tale.

Readers will recall how sympathetic magistrate Lalitha Chetty gave Marney a 24-month or R20 000 fine, suspended for three years, when he pleaded guilty at Randburg Magistrate's Court in July to stealing R40 000 worth of items from former soulmate Brenda Margach. The prosecution did not proceed with charges of defrauding 17 guest-house owners of more than R100 000.

Latest sighting of the lanky 55-year-old was at the Hurlingham Manor home of Maria Hunter, 68, whose monthly income of R1 200 from a state pension is augmented only by the R6 800 rent she gets from the furnished cottage in her garden.

Last month the cottage fell vacant and following

## STENT



an ad in the *Sandton Chronicle* Mrs Hunter received a phone call from a man describing himself as Dr Marcus Gouws, a surgeon at Groote Schuur Hospital in Cape Town. Dr Gouws, who said he spent much of his time doing good works in Somalia for the United Nations, was interested in renting her cottage for three years to accommodate visiting doctors undergoing training. As a sign of good faith, he could offer three months' rent in advance, and there would be no problems, since the money would be coming from his sponsor, the UN.

A couple of days later Mrs Hunter received another email from "Dr Gouws". Unfortunately he was on his way to Israel for a conference and couldn't sign the lease and pay the advance rental until his return at the end of October. But in the meantime the UN's top money man Mr Marney van Zyl was coming to Joburg and needed a place to stay immediately. Could he move into the cottage and everything would be sorted out when he (Gouws) got back from Israel? Of course, of course, said Mrs Hunter.

On October 18 the UN's money man arrived on foot at her gate. "I'm Marney van Zyl and I believe I'm to stay here with you until Dr Gouws comes up," he announced. Marney quickly won over Mrs Hunter with his beautifully-spoken Afrikaans and stories of his life in Cape Town, where he had a beautiful home, jogged 15km on the beach every day and had single-handedly raised four children after his wife died of cancer.

Next morning Marney was up early and off, he told Mrs Hunter, for a meeting at Melrose Arch. Later she got an SMS from him, saying he was at a game farm and asked her to take in his washing – jeans, socks and a couple of shirts – from the line. Mrs Hunter did so, and thought it odd that a man working for the UN should have socks full of holes. Inside the cottage, she found an empty bottle of "the cheapest wine you can buy" and a small packet of mealie meal.

She was mulling over this when a detective appeared at her gate, waving a copy of *Noseweek* with a page-length picture of Marney. He had been arrested in a Sandton mall and had given Mrs Hunter's cottage as his address, the detective said excitedly.

It emerged that Marney had been relaxing in a coffee shop when he was spotted by a woman named Mary, who had very recently rented him her garden cottage in Bryanston, with unfortunate results.

"Arrest this man!" screamed Mary and a Zulu security guard obliged, while Mary hurried to Sandton Police Station – where she promptly had a heart attack. (Friends say she's made a good recovery).

Marney was taken off to "Sun City" and when he appeared at Randburg Magistrate's Court for a bail application he must have been surprised to see his one-time friend Fred Boltman, director of Phoenix College in Braamfontein, sitting in court (*nose*145). It transpires that police from the commercial branch had asked Boltman to attend to identify Marney.

His bail application was adjourned.

Sandton police tell *Noseweek*: "There are two cases linked against him. A Sandton case for fraud of R8 000 in October, and an old commercial branch one from 2008 involving fraud to the value of more than R100 000."

More charges could follow.

# Tiffindell leaves Bank of India R19m out of pocket

WHEN wide boys David Taylor and Andre le Roux acquired a majority shareholding in Tiffindell Ski in 2007, they then ensured that the company sold the land and assets to their own outfit, Tiffski, with the promise of further developing the resort, which they would lease back to Tiffindell Ski.

But Tiffski paid only 50% of the R22 million purchase price and then, overnight, upped Tiffindell Ski's rental from R10 000 to R370 000 a month.

On the basis of that fraudulent lease, the State Bank of India lent Tiffski R19m against the security of a bond registered against the property on the date of transfer (see *nose*119).

In October 2008 a creditor of Tiffindell Ski applied to liquidate the company and the liquidators then brought a high court application to set aside the sale to Tiffski, and to declare the bond in favour of the Indian bank void – because the winding up, which was deemed to occur on the application date, was within six months of the transfer of the property.

The court application was opposed by Tiffski and the State Bank of India. The bank claimed it had acted in good faith without any knowledge of Tiffindell Ski's financial difficulties, and claimed the registration of a bond gave it real security. The bank also argued that if the bond were declared void it would amount to a deprivation of property in breach of section 25 (1) of the Constitution.

The matter went all the way to the Supreme Court of Appeal, which handed down its judgment on 30 September this year. The main issue was whether the six-month period within which land transfers can be set aside runs from the sale-contract date or the date of registration of transfer.

This was critical – the contract was dated 17 July 2007 (more than six months prior to the liquidation date), whereas the transfer was registered on 16 September 2008 (just one month before liquidation date). Tiffski and the bank obviously argued it should be from the date of contract.

The Supreme Court of Appeal held that the critical date was that of registration of transfer, and that any other finding would render ineffective the protection given by Section 34 to creditors against the fraudulent disposal of assets by traders who are going bust.

The bank's defence failed because no property had been acquired because of the illegality.

The court held that the bond had to be cancelled because no legal consequences can flow from a void act.

So the land's been recovered by the liquidators, and the bank is out of pocket to the tune of some R19m.

Perhaps it will try to recover the money from Taylor and Le Roux. But even if it does, this case won't do much to persuade foreign companies, who are still shaking their heads at the Walmart fiasco, that this is a place to invest – not only are our unions and government departments totally unpredictable, but many of our businessmen are pretty dodgy too. ■

# Farewell, Baby Michael

Baby Michael

BABY MICHAEL, blinded and crippled both physically and mentally after ferocious assaults in the family home only months after his birth, has died, aged eight.

Michael's death – of broncho-pneumonia, on 16 October – came just a month before his parents, Malinda Marshall and Bradley Connor, were due to face judgment on November 21 in the Johannesburg Regional Court, on charges of attempted murder and assault on their infant son.

Their case, which has been extensively reported in *Noseweek* (*noses*108, 121, 130 etc) has been dragging on for years, with one legal ploy after another used to delay the day of reckoning. Magistrate Frans Booyens has had to come out of retirement to conclude the case in Court 17.

Senior prosecutor Carina Coetzee says it was too late to change the assault charges to murder as Michael's death came long after the original assaults.

Baby Michael, born on 11 July 2003, was taken into care in 2007 at Avril Elizabeth, a private residential home in Germiston for the mentally disabled. He lived in a section of the home called the Nursery, where he received 24-hour care. He attended physiotherapy daily, and although he didn't progress much, did not deteriorate.

Officially, after his beatings at age two to four months, Michael had Shaken Baby Syndrome. In addition to being blind he was spastic, quadriplegic and was profoundly mentally handicapped. He was confined to a wheelchair but after prolonged physiotherapy was able to hold up his head without support, albeit for short periods of time.

Nursing sister Stephanie says: "Although profoundly mentally and physically handicapped, he was comfortable and had a reasonable quality of life for four-and-a-half years at Avril Elizabeth. He seldom cried for no reason and seemed content."

Michael had a host mother, Gwen Hedges, who has a mentally challenged child. Gwen visited Michael frequently at Avril Elizabeth, and took him out for family birthdays and celebrations. "We were shattered by the news, but we rest in the peace that Mickey is finally free," she says.

Michael's parents never saw him again – Avril Elizabeth only agreed to accept him on condition they were banned from the premises.

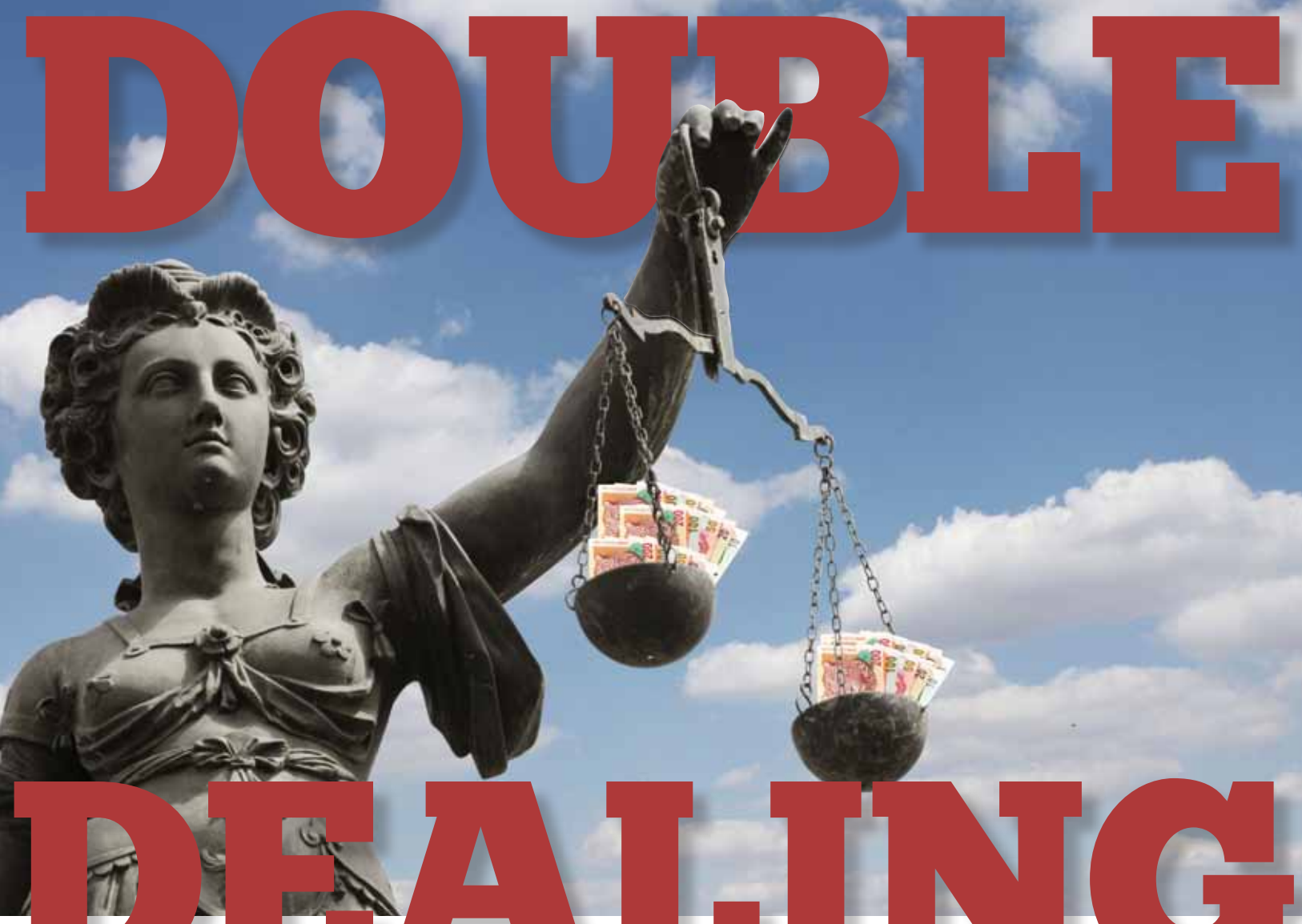
Because of Michael's mental and physical condition he was unable to move. This immobility caused build-ups of phlegm in his lungs, leaving the boy susceptible to chest infections, resulting in bronchitis or pneumonia. As with many mentally-handicapped people who are unable to communicate other than by crying, it was often difficult to establish what the problem was, and nursing staff would go through a process of elimination.

From August this year, Michael had not been well, and spent several sessions in Avril Elizabeth's sick bay, the Life Healthcare Roseacres Hospital (where he had a CT scan), and at Charlotte Maxeke Academic Hospital. Staff remember Michael as a generally happy little boy, "our treasured little angel" much loved by all.

Baby Michael's story has highlighted the dedication and commitment of charitable institutions such as Avril Elizabeth and their belief that every life has value, even that of a grievously brain-damaged child – if only for his uplifting smile.

A *Noseweek* staff member who visited Baby Michael recalls the boy's beautiful smile. "Look!" would cry the nursing attendant, "he knows it's you!" ■

# DOUBLE DEALING



## Probe could cause 'partial collapse' of Joburg Bar, says advocate

"PEOPLE ARE going to be struck off. People are going to be ordered to pay back thousands and thousands of rands. It's going to change the way in which the Bar works. Twenty-five percent of the black practitioners in this bar will be struck off. You'll have a partial collapse of the Johannesburg Bar."

That's a senior advocate at the Johannesburg Bar speaking, one whose name appears on The List and who is under investigation for double briefing and overreaching.

His argument sounds rather like that which the Reserve Bank uses to explain why banks should not be prosecuted for their wrongdoing: because public exposure of their thieving ways would "undermine public confidence in the banking system". As if we didn't know the odds are that they're robbing us every day of the week.

The only difference here is that the clever lawyer has added the race card to give the argument that extra bit of up-to-date oomph.

Double briefing is the practice whereby advocates accept more than one court brief in a day. It's forbidden for fairly obvious reasons *inter alia*, that it is fraud. Overreaching is overbilling: typically accepting, say, four trial briefs for the same day, settling them, then charging a full day's trial fee for each, at a rate of between R6 000 and R28 000 for the day, depending on the counsel's seniority.

The highly confidential investigation by the Johannesburg Bar follows sensational court proceedings in Pretoria in September when 13 advocates were struck off the role.

As in Pretoria, the Johannesburg purge involves advocates who have acted in Road Accident Fund (RAF) matters. But whereas in Pretoria its

Bar Council took pot luck, investigating advocates on suspicion and rumour – in the process leaving not a few persistent offenders amazed at their lucky escape – in Johannesburg, the approach has been more methodical, through The List.

The List was compiled with the assistance of the Deputy Judge President (DJP) of the South Gauteng High Court, Phineas Mojapelo. It names 83 members of the Johannesburg Bar who appear to have double-briefed in 2008.

Daily, advocates attend the DJP's roll call, and Mojapelo would have noticed some advocates repeatedly standing up for more than one matter. Written evidence of this came from Practice Notes that advocates are obliged to submit to the DJP registrar's clerk, setting out the circumstances of all their cases.

The List of 83 does not mean that 83 advocates are in the frame, let alone guilty. For example, Mojapelo's office only gave surnames of suspected double-briefers. If there were five advocates at the Bar with the surname of Pretorius, all five received a letter from Advocate Gerrie Pretorius SC, chairman of the Bar Council's RAF sub-committee, requesting details of their high court appearances.

Advocates, supposed pillars of society, are a sensitive and privileged bunch, often puffed up by the sense of their perceived importance. Confidential correspondence of the Johannesburg Bar Council shows that Joburg's "briefs" were not amused at being asked to open their books.

"The sub-committee of the Professional Committee tasked with investigating suspected instances of double briefing and overreaching has received no co-operation from the attorneys, RAF or members of the Bar," wrote Pretorius in a General Notice to all members on October 3.

The only information forthcoming, he said, was that obtained from the office of the Deputy Judge President. The council had sought information from the DJP for 2008, 2009 and 2010. To date only The List for 2008 had been furnished.

Fifteen days later, another Bar Council missive to suspected miscreants expands the probe: "The sub-committee has since received information from a credible source that you may have made yourself guilty of double briefing and possible overreaching in RAF matters from 2009 to date," reads the October 18 letter. In addition to the information already sought for 2008, recipients were required to furnish full details of all RAF matters attended from 1 January 2009 to date.

Required information includes the name of instructing attorney, date of trial, date of settlement (if applicable), whether the brief was held on trial or settlement, fees marked on trial or settlement, hourly rate for preparation, duration of the trial and "proof of payment of your fees". The letter ends: "You are also requested to furnish your fee journal/book/invoices for the period."

What do the prime suspects on The List make of all this? *Noseweek* has spoken to several – who argue their case with vigour, albeit speaking only on promise of anonymity.

# Prime suspects argue their case with vigour – on promise of anonymity

It's clear they're scared. The only silk on The List, Ian Zidel SC, did not respond to our request for a chat, instead reporting our overture to the Bar Council, whose advocate George Kairinos wrote informing us that the "current investigations are at this stage highly confidential" and that to publish the names of members now may "tarnish the good name of many an innocent member".

Anonymous Advocate A: "If the Bar Council is not acting on a complaint from the RAF, nor the client, nor the attorney, on what basis are they investigating other counsel, other than from collegial jealousy? What motivated them to investigate RAF counsel? Why not investigate senior counsel who regularly and openly charge for hours spent on matters by juniors? [*Now we're on to the "everyone's stealing, so why not us" argument.* – Ed.]

"At the Bar there's a general snobbery; people look down on counsel that are involved in RAF work. It's regarded as sub-standard work, the lower end of the advocacy industry. It's supposedly not an intellectual arm of the profession. So there's this rivalry at the Bar between those who do personal injury work and who seem to make large amounts of money, and those who are far more academically oriented in fields which are less commercially viable.

"RAF practitioners, because they seem to be doing sub-standard law and earning large amounts of money, are not the most-liked individuals. They're an easy target to attack."

Advocate A believes that the reason the Bar Council is conducting this investigation so "wholeheartedly" is a last-ditch attempt to show the government that they can self-regulate and there's no need for an independent body to control advocates, as proposed in the forthcoming Legal Practice Bill.

This advocate agrees that double briefing is a serious offence if several trial fees are billed for the same day. "Correct. But there are legitimate circumstances in terms of which one is entitled to do that. Say I've been briefed a month before trial; I've prepared for trial of that matter and it settles within three days of trial. Because I've reserved myself for that day, I'm entitled to charge a day's trial fee. Now when I've settled that matter and I get briefed for another trial on the same day, I'd be entitled to charge a day's trial fee for that as well. Otherwise I might as well sit at home.

"Even if I settled that second matter, say, two days before trial, I'd be entitled to charge a day fee in that. And let's say that when I appear on the day of trial, another attorney comes up to me and says: 'a settlement negotiation has just gone awry, I'd like you to attend to my matter'. I could take on this third matter, or a fourth, for the day. As long as they're sequential.

"In other words, one settles and you take on the next. There's an unlimited amount of day fees that you could charge. The problem the Bar Council has is, if you know the trial date is coming up, and you accept one brief and take on other briefs before they've settled. In that situation they're uncomfortable with your charging more than

one day's trial fee because you haven't taken them on sequentially."

Anonymous Advocate B. "We would like to co-operate and explain our position. I've drawn my conduct to the attention of the Bar Council and I'm co-operating with them. There are extenuating circumstances. The RAF's standard policy is to brief counsel in their trials only on the day before, believe it or not. Let's say one matter settles at 2pm the day before trial and at 4pm I get a phone call from one of the RAF attorneys saying: 'I've a brain-damage matter tomorrow for R5 million, can you please help me?' So you appear at court the next morning with one matter on settlement, one matter on trial. And now you're double briefed!

"If the RAF applied its mind to matters and did what it has to do and made you an offer timeously, none of this would happen.

"The test in the Bar is that your client must not be prejudiced; you should not be standing up in court with two clients sitting there in anticipation, thinking that you're going to run their trial, and suddenly you dump one. That brings the profession into disrepute.

"A senior counsel is allowed to run two trials with two juniors in the court. He can go between two courts and he can charge two trial-day fees. That has been the practice for some time. So it's ambiguous and the difficulty is that the Bar itself has to go and get opinion and clarification."

Advocate B reckons that by the time a second List is drawn up – for 2009 to date – there will be some 150 Johannesburg advocates under intense investigation for double briefing and overreaching.

In 2007 the Johannesburg Bar Council issued a policy ruling on double briefing. It was "generally unprofessional to hold, at the same time, two or more briefs to appear on the same day", though rule 1.3 allowed an exception "where the attorney and client relating to the second brief are aware of and have consented to the risk of non-availability, provided that the arrangement is not objectively prejudicial to the client's interest and not inherently likely to inconvenience the court."

The Johannesburg Bar Council's investigating chief, Advocate Gerrie Pretorius SC, declines to speak to *Noseweek* on record. But a senior source on the council speaks angrily of how double-briefers have "deliberately misinterpreted" rule 1.3.

"The RAF crooks say: 'now we have carte blanche, we can do 10, 20, 30 matters a day'. That was not what that rule ever meant."

The Bar Council plans to have all its demanded information from members in by the end of this law term (the beginning of December). Pretorius will spend his December holiday weeding out the innocent from the seemingly guilty. What he considers grievous offences will bring striking-off applications; where striking off is not thought to be justified, the matter will be dealt with internally. ■

# NON-DELIVERY FOR A FAT FEE

WE COULD have guessed it. Durban Advocate Sthembiso Mdladla's failure to deliver – for a fat fee – appears not to have done him any harm. He's all set for some more "nice work": Judge Willie Seriti, who heads the new Arms Deal Commission, has appointed Mdladla to the inquiry's secretariat – his main job being to sift all the evidence presented to the commission. A sign of the result we are to expect?

Back in 2004, when a government imbizo in KwaNongoma, KwaZulu-Natal was stormed by an unruly crowd and a few ANC heavyweights were pushed around, it resulted in then-KZN MEC Bheki Cele lashing out at the cops and the provincial police commissioner for not doing their jobs.

Cele then announced that the provincial government would be appointing a commission of inquiry into the incident. By the time the commission was established by promulgation in the *Government Gazette* on 4 March 2005, it had transmogrified into a commission of inquiry "into alleged police inefficiency and ineffectiveness" in the whole of KwaZulu-Natal.

The appointed chairperson was Mdladla, while Ilan Lax and Salochni Pillay were his co-commissioners. The commission almost immediately embarked on a number of hearings across the province – but just as soon ran into trouble.

Cele, in his usual bull-in-a-china-shop style, had clearly not run the idea past the SAPS top brass. Then-national Police Commissioner Jackie Selebi and KZN Provincial Commissioner Hamilton Ngidi refused to co-operate.

Meanwhile, all three commissioners were on hefty retainers (for that time, anyway).

With or without the co-operation of the police, the commission continued its work and on 25 January 2006, it asked for an extension, indicating that its final report would be ready at the end of October that year.

Now here's a strange thing: five years after that deadline, Advocate Mdladla

**MR NON-DELIVERY:** Advocate Sthembiso Mdladla

has still not produced his final report – and everybody appears simply to have forgotten about it.

A well-informed source has told *Noseweek* that just before the 2009 elections the ANC got jumpy about the matter, fearing it would become an election issue but this did not happen, much to their relief.

In September 2009, DA MPL John Steenhuisen tabled several questions about the matter in the KZN legislature. MEC for Transport, Community Safety and Liaison, T W Mchunu's reply: "I am informed that the chairperson of the commission has been requested in writing on several occasions to submit the final report, however, no written response has been received. Numerous telephone enquiries resulted in repeated broken promises to submit the final report. The department has also not received any written reasons for the non-submission, despite same having been requested in writing. The chairperson has indicated that the reasons will accompany the final report.

"The department informed me that the chairperson has indicated that the final report will be submitted on 28 August 2009."

But more than two years later, still no word.

Essentially a considerable sum of public money has been wasted on this commission. *Noseweek's* sources claim a final report has not even been written, let alone released to MPLs and the public.

When *Noseweek* contacted Steenhuisen, now a DA member of the National Assembly, he said he could hardly recall the matter. "I've been out of the loop there for some time. I suspect they've simply abandoned all hope of ever getting a report which, in any event, by now would be so out of date as to be irrelevant."

It all looks more and more like just another whimsical political adventure of Cele's who, some have alleged, hoped at the time to use the report to oust provincial commissioner Hamilton Ngidi and replace him with a more pro-ANC commissioner.

However that may be, all the drama generated by his appointment of the commission certainly appears to have earned Cele kudos in the right places: he got himself appointed Selebi's successor as National Commissioner.

By the time the DA got to asking questions, Advocate Mdladla had personally been paid R2 375 016 for his professional services; his fellow commissioners, Lax and Pillay, had been paid R1 454 316 and R2 132 424 respectively. Their extra expenses had included R42 800 for hotel accommodation and R154 359 for vehicle hire. In total, the commission cost the taxpayer R9 836 212, for which, said Steenhuisen, the public had received no result or benefit. "The only persons who have benefited in any way from this commission are the commissioners who were paid handsomely." Nice work if you can get it.

A source close to the enquiry told *Noseweek* that the two co-commissioners completed certain sections of the report and submitted them to Mdladla, but he never wrote – or completed – his part. The source then volunteered: "I don't know what deals were struck with whom about what."

*Noseweek* called advocate Mdladla at his Durban chambers for his comment. "I'm in a consultation right now. Call me back in 30 minutes," he said. We called after 30 minutes, and after one hour, and after two hours – each time getting his recorded message.

The two co-commissioners' responses were short and sharp. Attorney Lax: "I signed an oath of confidentiality when I was appointed to the commission, so unfortunately cannot discuss the matter with you."

Pillay returned our call. On discovering it was *Noseweek*, she declared "This is a mistake," and hung up. ■

# BAG MEN

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## Different strokes for different blokes in judgments on advocates' crime

IF YOUR attorney tells you that you need an advocate to represent you, you consult one and find yourself talking to a confident and assured individual who tells you that your case is a winner.

On the day of the trial, however, you meet a very different person – one who's nervous and irritable and who's very keen for you to settle because, you must understand, this is a tricky case and it could go either way.

Angry and confused, you agree to a settlement that you don't much like, even though you desperately wanted your day in court. So what happened?

It's simple really. Advocates are keen to settle matters on the steps of court, because they charge the same fee for a matter that's settled by 9.30am as for one that drags on all day until 4pm. On top of that, there's a fair chance your advocate may have had two briefs for that day, having calculated that at least one of them


# In the words of the judges: advocates chose to "mount the steed of greed"

would be settled. Welcome to litigation, South African style.

On 29 September three judges of the North Gauteng High Court (Van Dijkhorst, Combrinck and De Villiers) delivered judgment on the 13 Pretoria advocates who, in the colourful language of the judges, chose "to mount the steed of greed" and "clear the hurdle of their professional rules".

But you have to read the full 73-page judgment, rather than the press release, to realise how absurd the legal system is; how amoral are advocates who blatantly overcharge – knowing the money's coming from a fund intended to compensate victims of motor vehicle accidents (the RAF, Road Accident Fund) – and how toothless are the professional bodies.

All 13 advocates were found guilty of multiple charges of double briefing and overreaching (overcharging, in normal parlance). All were ordered to repay the amounts by which they had benefited by their actions – which in each case was significantly more than the rather paltry fines imposed by the Pretoria Bar Council. Seven advocates – Brenton Geach SC, Stef Guldenpfennig, Mark Upton, Don Williams SC, Ephraim Seima, Cassie Jordaan and Colin von Onselen – were suspended from practice for effectively very short periods (six months maximum). The remaining six: Thillay Pillay; Mattheus (Theuns) Botha; Toy de Klerk; Percy Leopeng; Daniel Mogagabe; and French Bezuidenhout were struck off the roll by the court.

So why the variances? Perhaps grey hair was seen as an extenuating circumstance in some cases. In the case of Brenton Geach SC (35 years' experience) for example, the judges said: "As a man of mature years with years of practice behind him, we do not consider that there is any prospect of him again breaching the rules."

But experience did not help others, like French Bezuidenhout (25 years)

**Double entry bookkeeping: 1. Leonard Francois Bezuidenhout; 2 & 3. Brenton Geach bagged and unbagged; 4. Daniel Mogagabe** (Pictures: Lisa Hnatowicz/Foto24)

## A SLAP ON THE WRIST FOR:

- **Brenton Geach SC**, 35 years' experience, 82 counts, profit R984 000. Ordered to repay profit to the RAF, and suspended from practice for 12 months, six months of which was suspended for three years.
- **Stef Guldenpfennig**, 28 years' experience, 90 counts, profit R864 000. Ordered to repay profit to the RAF, and suspended from practice for 12 months, six months of which was suspended for three years.
- **Mark Upton**, 13 years' experience, 16 counts, profit R166 400. Ordered to repay profit to the RAF, and suspended from practice for 12 months, six months of which was suspended for three years.
- **Don Williams SC**, 22 years' experience, six counts, profit R864 000. Ordered to repay profit to the RAF, and suspended from practice for 12 months, seven months of which was suspended for three years.
- **Ephraim Seima**, 14 years' experience, 33 counts, profit R141 900. Ordered to repay profit to the RAF, and suspended from practice for six months, suspended for three years.
- **Cassie Jordaan**, nine years' experience, 20 counts, profit R94 000. Ordered to repay profit to the RAF, and suspended from practice for six months, suspended for three years.
- **Colin van Onselen**, 15 years' experience, 133 counts, profit R967 800. Ordered to repay profit to the RAF, and suspended from practice for 12 months, six months of which was suspended for three years.

## A KICK UP THE BACKSIDE FOR:

- **Thillay Pillay**, nine years' experience, 28 counts, profit R268 800. Ordered to repay profit to the RAF and struck off the roll.
- **Mattheus Botha**, 26 years' experience, 170 counts, profit R984 000. Ordered to repay profit to the RAF and struck off the roll.
- **Toy de Klerk**, 14 years' experience, 74 counts, profit R310 800. Ordered to repay the profit to the RAF and struck off the roll.
- **Percy Leopeng,** experience not mentioned, 315 counts, profit R1 323 000. Ordered to repay profit to the RAF and struck off the roll.
- **Daniel Mogagabe**, 10 years' experience, 461 counts, profit R1 916 800. Ordered to repay profit to the RAF and struck off the roll.
- **Leonard Francois (French) Bezuidenhout**, 25 years' experience, 819 counts, profit R5 992 400. Ordered to repay profit to the RAF and struck off the roll.

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and Theuns Botha (26 years), who were both struck off. Inexperience, on the other hand, was seen as an extenuating circumstance in the case of Mark Upton (13 years) and Cassie Jordaan (nine years), of whom the judges said: "He went with the flow and was influenced by his more senior colleagues." But it didn't help Thillay Pillay (also nine years), who was struck off.

One of the major factors that swayed the judges was the attitude displayed by the advocates, with contrition playing a major role. The judges were impressed that Brenton Geach "appears not to have been actuated by greed" (really!); that Mark Upton "blew the whistle on himself"; that Ephraim Seima "got caught up in the web"; that Cassie Jordaan "expressed regret and contrition"; and that Colin von Onselen had told the court "I feel ashamed". The judges weren't even put off by the fact that Don Williams SC admitted he had been motivated by greed, because he was frank and open, using the quaint expression "*As dit pap reen moet jy skep*" (When it rains porridge you must help yourself). The fact that he managed to get a character reference describing him as "one of the Pretoria Bar's greatest assets" seems to have done him no harm either.

On the other hand, the judges were clearly unimpressed that some advocates chose not to cooperate with the enquiry. Like Theuns Botha: "His reluctance to furnish details of his earlier transgressions negates any suggestion that he is contrite... only once caught, did he come clean." Or Toy de Klerk who denied having received a circular reminding advocates that double briefing was illegal: "We are a bit puzzled by the emphasis De Klerk placed on the receipt of the circular. Every advocate knows that there is a rule against double billing... he has no remorse as to what he has done... instead of showing remorse, he requested that he be expelled from the Pretoria Bar, intending to set up practice as an independent advocate untrammelled by the rules against double briefing." Or French Bezuidenhout, who described the rules as "antiquated: it's no longer what happens in day-to-day life".

The judges also looked closely at the extent of the double briefing and overreaching. They were shocked that Thillay Pillay, on various occasions, charged a day fee as well as hourly rates, non-stop from 7.00am until midnight. And that Theuns Botha debited for more than 18 hours on some days in addition to one or more trial briefs: "He always noted times but unfortunately not the date of his work... it is probable that Botha did not work the hours he recorded. This is nothing less than fraud."

They frowned on the fact that Toy de Klerk on one day accepted briefs for seven trials. And that Percy Leopeng on three days billed 27.5 hours, 31 hours and 35 hours respectively: "The irresistible inference is that Leopeng could not possibly have worked the hours he has claimed".

They took a dim view of the fact that Daniel Mogagabe once billed 49 hours in a day: "Surely the longest day in his life." And that French Bezuidenhout, over 152 days, supposedly appeared in 803 trials, averaging 5.25 trials per day, and on one day had no fewer than 19 trials, for which he billed R237 400 (Yes, for the day!) In 2009 Bezuidenhout billed R10 208 500 for 871 trials, about which the shocked judges had this to say: "Bezuidenhout… has relegated the Bar to a mere money-getting trade. He is not a person of integrity. He is not fit to be an advocate."

## Daniel Mogagabe once billed 49 hours in a day

Other factors that played a role were that Thillay Pillay had, on one occasion, lied to a Johannesburg judge when he denied that his failure to appear in court had been due to his doing another trial in Pretoria; that Daniel Mogagabe had stupidly played the race card (he withdrew it when it dawned on him that the 13 advocates formed a veritable cross-section of South African society). Mogagabe had also raised the fact that he had come from a poor background, to which the judges responded: "It is sad when one who has striven so hard to reach the top, slips and falls into a crevasse. In this case, one so deep that we are unable to pull him out."

Ephraim Seima, on the other hand, can be grateful that he was judged by like-minded individuals, who regarded the fact that he was "a devout Christian and a member of the Presbyterian Church Midrand" as an extenuating circumstance.

The judges made it clear that other parties were complicit. Dealing with attorneys (who have, of course, furiously resisted changes to the RAF

system on the basis that it cannot possibly function without them), the judges said: "How could Bezuidenhout take the risk of double briefing on the scale he did? What if he were found out by his instructing attorney? There was a group of attorneys who regularly – over the same period of time – briefed him on trial on behalf of (almost exclusively) plaintiffs. Often with numerous matters for one day. They patently did not intend their matters to go on trial either. If the instructing attorney was not a problem, what about the attorney and counsel acting on behalf of the other party? They were in the same boat. It is only natural that they would help each other out. The one hand washes the other. All in the knowledge that codes of conduct are not complied with."

And, as regards the RAF itself, the court mentioned that two advocates, Cassie Jordaan (a former RAF employee) and Theuns Botha were pressurised to accept multiple briefs by the RAF. In the case of Botha, this was regarded as very serious: "He was under pressure from the RAF, in particular head office, to assist them in multiple briefs daily... by not being able to withstand this type of pressure, he has shown himself to be a person who does not live up to the high standards required for an advocate... an advocate may not permit himself to become an attorney's lackey or factotum."

Leonard Francois Bezuidenhout, a member of the Pretoria Bar since 1986, was the star of what is known as the Millionaire's Club – the loosely-knit group of 13 Pretoria advocates who fleeced the Road Accident Fund.

Bezuidenhout pleaded guilty to 819 counts of both double billing and overreaching over just eight months. His ill-gotten gain was estimated at R5 992 400 – far outstripping the others. Throughout the hearing the veteran advocate's attitude was defiant and obstructive. His view was that the relevant rules on double briefing were antiquated and that they were "no longer what happens in day-to-day life".

A spreadsheet revealed that over 152 court days in 2009 Bezuidenhout appeared in 803 trials. Only on eight of these 152 days did he not double brief. On 11 days he had 10 or more trials. The high-water mark was on 9 September 2009, when 19 additional trials brought a fee total for the day



**Double trouble: 5. Percy Leopeng; 6. Toy de Klerk; and 7. Thillay Pillay** (Pictures: Lisa Hnatowicz/Foto24)

of R237 400. A chartered accountant's correction analysis increased Bezuidenhout's 2009 trial total to 871, for which he debited fees of R10 208 500 excluding VAT. VAT invoices reflected a daily trial fee of R12 000 (when appearing for a plaintiff) and R5 600 when appearing for the RAF.

Judges Van Dijkhorst, Combrinck and De Villiers found: "He should have debited on an hourly basis which is the correct basis in respect of settlement. The main thrust of his argument seems to be that he, amongst other colleagues, did a public duty in assisting in an unbearable situation resulting from the clogging of the roll.

"The simple answer to such an approach is that he could have done so within the rules of the Bar by accepting a brief or briefs on settlement. Had he done so, there would have been no double briefing and no overreaching. He didn't do so, because it would have been to his financial prejudice."

Even when under investigation by the Pretoria Bar Council, Bezuidenhout "continued with his misconduct" up to June this year. "Bezuidenhout has discredited the profession of advocates," says the judgment. "He has relegated the Bar to a mere money-getting trade. He is not a person of integrity. He is not fit to be an advocate. There is no indication that he will rehabilitate himself."

Bezuidenhout was ordered to repay the R5 992 400 "wages of sin" he earned over the eight-month period to the Road Accident Fund.

The General Council of the Bar of South Africa, the umbrella body of its constituent Bars, horrified at the leniency of fines and suspensions that were handed down, is considering approaching the Supreme Court of Appeal to have all the offending advocates struck off the roll. ■

# Accusation and counter-accusation as magistrates clash in John Block country

# BENCH PRESS

John Block

LAST YEAR *Noseweek* reported that Kimberley magistrate Phumelele Hole had laid a complaint with the Magistrates' Commission about his boss, Northern Cape Regional Court President Khandilizwe Nqadala (*nose*130).

Hole claimed that Nqadala was a John Block man, who not only ran the courts in the Northern Cape with an iron fist, but also had extraordinary influence over the local police, thereby ensuring that Block was not charged with offences and that, even if he was, he wasn't convicted. Block is Provincial Chairman of the ANC in the Northern Cape, Chairman of the ANC Youth League in Upington and MEC for Finance, Economic Development and Tourism in the Northern Cape.

Hole also claimed that Nqadala abused his position and that he interfered with cases that other magistrates were hearing.

He said Nqadala had a real grudge against him, and had even once arranged for the police to intimidate him, by falsely claiming that his car had been used in a crime.

In his complaint to the Magistrates' Commission, Hole went so far as to say he feared for his life. But even this didn't stir the commission into any action. When *Noseweek* spoke to them at the time, they denied having received any complaint from Hole.

*Noseweek* followed up (*nose*131) reporting that Nqadala had, in turn, lodged a complaint about Hole with the Magistrates' Commission. We ended that piece with the remark: "You have to wonder: where could our justice system go next?"

Even further downhill, it turns out.

On 10 October this year Justice Minister Jeff Radebe announced in Parliament that Magistrate Hole had been provisionally suspended pending an investigation by the Magistrates' Commission into his conduct. Radebe's justification was contained in a nine-page document that is inordinately opaque. But what it seems to say is that Hole committed two offences. First, he "caused a matter which was no longer on his roll to be placed before him". This is seemingly a reference to the fact that Hole took over a trial that had previously been heard by another magistrate.

Secondly, in his document, Radebe described as "an abuse of power" the fact that Hole had subpoenaed Nqadala to appear in his court and explain his conduct. This was after Nqadala had sent him some information on the accused in a case Hole was hearing.

The document contains extracts from the transcript of the case where Hole subpoenaed Nqadala. Extracts show that Hole certainly gave his boss a rough ride. For example:

**Hole** (in response to Nqadala's objection to being called as a witness): "Please don't try and lead us astray. Your objections have no substance whatsoever. I shall not waste this Court's time by hearing this further."

**Hole:** "Mr Nqadala, what qualifications do you hold? ...And your knowledge of fair trial rights of Accused includes – or does not exclude – the possibility of a Regional Court President writing to a junior magistrate under him and saying things like these about people that I try... Do you know anything about the residual

rights of an Accused to a fair trial?"

"Do you think your inclusion of a letter which discloses information that paints the Accused in a bad light amounts to an abomination?"

**Nqadala:** "A what?"

**Hole:** "An abomination."

**Nqadala:** "Abomination of what?"

**Hole:** "Do you need an interpreter?

"And you call yourself a Regional Court President… Please Mr Nqadala, you will show absolute respect for this court. You understand Sir? Don't come here with an attitude. Do you understand Sir? You will address me properly as a judicial officer sitting in this case. And please wipe that smile off your face."

**Hole:** "Don't you think Mr Nqadala, you are a disgrace to the profession?"

What was this exchange all about?

Radebe chose not to explain, simply going on to say that the Magistrates' Commission had instructed two magistrates, Louw and Baloyi, to investigate complaints lodged by Nqadala about Hole, and that the commission had recommended Hole's provisional suspension pending the finalisation of that investigation.

But absolutely no mention of the investigation into the complaints lodged by Hole about Nqadala.

*The Sowetan* picked up on this and asked the Magistrates' Commission whether they had investigated Hole's complaint, and whether there had been any pressure "to shelve the complaints about Nqadala and just suspend Hole".

Danie Schoeman of the commission simply replied that both investigations were still ongoing.

Why was only Hole suspended, asked *The Sowetan* journalist. No answer – nor to the follow-up question: "Can you explain why Magistrates Masinga and Rambau were only provisionally suspended for nine months, after being criminally charged with attempted murder and corruption respectively, yet Magistrate Hole had been provisionally suspended for insulting the regional court president?"

Justice spokesman Tlali Tlali, then entered the fray, assuring the journalist that the minister had considered the fact that there was a complaint pending against Nqadala, but without explaining why Nqadala had not been provisionally suspended.

There's a background story that Radebe chose not to tell Parliament – *Noseweek* doesn't know about the matter that Hole is supposed to have hijacked, but in the case for which he subpoenaed Nqadala, he felt that Nqadala had compromised his impartiality by giving him certain information about the accused in a rape trial he was hearing. And that he would need to recuse himself, which would delay the matter even further.

He was so incensed by this that he subpoenaed Nqadala to explain his conduct before both the accused and the complainant. And, claimed Hole, this was not the first time Nqadala had interfered in his matters. At one stage he had asked Hole to let him have the transcript of a case Hole had heard, in which the prosecution had messed up. Nqadala had said this was so that he could bring it to the attention of the newly-appointed head of the National Prosecuting Authority, Menzi Simelane. This was not because he was concerned about any miscarriage of justice, but because he wanted to build bridges with a man with whom he had clashed before, and who now suddenly held a very senior position. Hole said this was one of many matters involving Nqadala that he had brought to the attention of the Magistrates' Commission.

The problem of Nqadala's interfering with Hole's work went on until recently. Last month Hole emailed Nqadala to say he was "distressed that I once again have to address your contemptuous conduct towards my court... You will recall that once before I warned you against sending your secretary, Mrs Burger, to deliver letters to me while I sat on the bench... If this should happen again I will deal with you as I had to do in July of this year".

Nqadala immediately sent this on to Schoeman at the Magistrates' Commission, saying: "Herewith an email dated 4 October from Mr Hole. The accusations are false, insulting and intimidating in the extreme... The accusations and their tenor reflect discourtesy and lack of self-control, do not promote the good name, dignity and esteem of the office of magistrate… I therefore request the commission to charge Mr Hole with misconduct... Seeing that Mr Hole again threatens to abuse the court process so as to humiliate me as he did in July, the Commission is also requested to provisionally suspend Mr Hole."

Six days later Hole's suspension was announced.

Now – like cabinet ministers and directors-general aplenty – Hole is suspended on full pay, pending the resolution of the complaint that Nqadala filed against him more than a year ago.

As for the complaint that Hole lodged against Nqadala over a year ago, who knows! Certainly not Hole, who's been interviewed by two sets of magistrates (Baloyi and Louw) in relation to Nqadala's complaint, and two others in relation to his own complaint, but has not been given any updates.

It looks very much as though one is being tackled with far more interest than the other. On 31 August this year, Hole's attorney sent a letter to the Minister of Justice, saying: "We no longer have confidence that the Commission will act fairly and impartially due to the manner it has conducted our investigation."

*Noseweek* was unwittingly drawn into the complaint lodged by Nqadala when one of the two magistrates investigating the matter, Hein Louw of Johannesburg, started putting real pressure on the magazine to tell us who our source had been in the *nose*130 story – seemingly with the sole intention of establishing that it was Mr Hole, and that he had therefore breached the Magistrates' Code of Conduct by going to the press, and that he could therefore be dismissed.

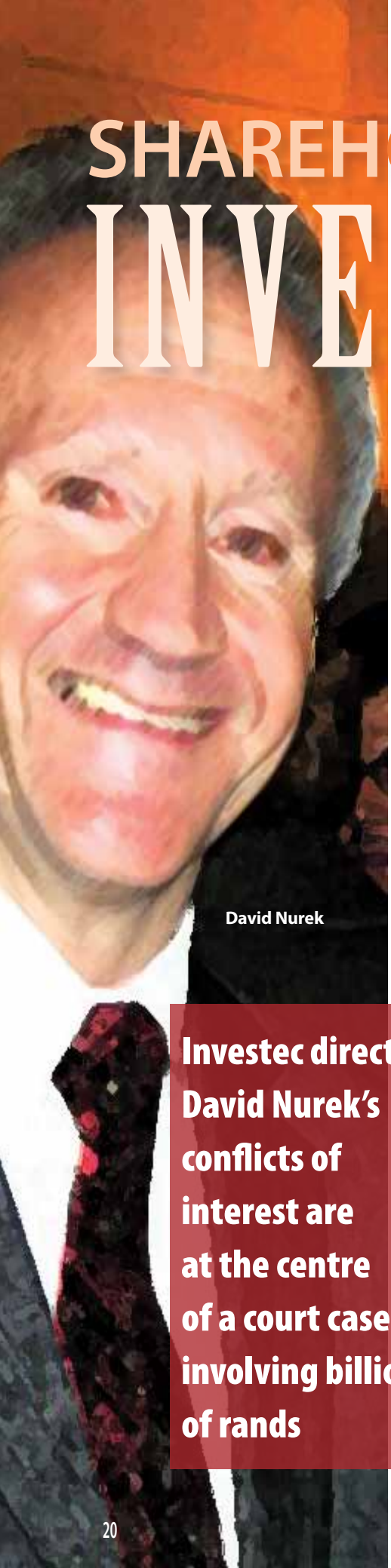
Obviously *Noseweek* refuses to reveal sources, and at one stage it looked very much as though the magazine would be subpoenaed by Louw. That may still happen.

Should readers need more proof that the justice system is going one way, check out the bit of illiteracy that appears in Radebe's document – it's a note that was apparently recorded by a Magistrate Kgopa in the matter that Hole apparently took over: "Reason that matter is on roll bcos accuseds where requisitioned for today by control."

Or two little snippets from the Law Society of the Northern Provinces' *Newsflash* of 24 October this year. One said that magistrates were likely to strike over pay, with 80% of them supporting industrial action. The other said that five magistrates' salaries were being withheld because they had been convicted of offences ranging from attempted murder to molestation of colleagues.

And we have to call these people "Your Worship". ■

# SHAREHOLDERS STAND UP TO INVESTEC BULLIES



David Nurek

**Investec director David Nurek's conflicts of interest are at the centre of a court case involving billions of rands**

SEVEN minority shareholders of Randgold and Exploration Company Ltd are suing Investec Bank Ltd for a billion rand in damages which they claim they suffered as a consequence of Investec's having gained effective control of the company following the collapse of Brett Kebble's criminal empire.

Should more minority shareholders join the case – and the applicants anticipate they will – it is estimated that their total damages claims against Investec could exceed R7 billion.

Quite apart from the sums involved, there is every reason to take the case seriously: the applicants' legal team is headed by advocate Chris Loxton SC, who frequently represents the Anglo American Corporation in court proceedings. He also acted for Trinity Holdings against Investec in a matter arising from the Kebble saga. Investec took the matter all the way to the Supreme Court of Appeal – and lost.

By its own admission in the court papers, Investec is taking the matter extremely seriously. It has had a team of attorneys from one of the largest and most expensive law firms in Johannesburg, Werksmans, as well as four advocates who have been working full-time on the case for the past four months. It claims already to have spent nearly R6 million in legal fees just in preparing the answering papers to the application brought against it by the Randgold minority shareholders in the North Gauteng High Court, Pretoria, in March this year.

In terms of normal court procedure, Investec should have filed its answering papers by April 15. It had still not done so when *Noseweek* went to press – seven months later – and has, in the meantime, gone to considerable lengths to avoid having to do so.

(*While the sums the bank claims to have spent on lawyers no doubt will astound ordinary citizens, they are as likely meant to terrorise the litigants into submission.* – Ed.)

The minority shareholders who were brave enough to bring the case are D J Smyth; P C Smyth; Anglorand Securities Limited (stockbrokers and portfolio managers of Parktown, Joburg); Mr and Mrs J G W Gubb of Bishopscourt, Cape Town; Milkwood Investments Ltd of Hong Kong; and Jag Investments (Pty) Ltd.

They have applied to court in terms of section 252 of the Companies Act, which allows minority shareholders who have been unfairly disadvantaged by a dominant shareholder to demand that that shareholder buy the minority shareholders' shares as well as compensate them for losses suffered as a result of the "oppressive" conduct.

They allege that Investec acted oppressively with regard to minorities by orchestrating two agreements concluded between gold mining companies Randgold and JCI Ltd in January last year, and which became binding when they were ratified by JCI shareholders at a general meeting in June last year.

The applicants contend that the conclusion of those agreements was "unfairly prejudicial, unjust or inequitable" and that it would be just and equitable for the court to order Investec to purchase their Randgold shares for R288.56 per share (the pro-rata loss attributable to each share), plus the ruling Randgold share price at the time of such purchase.

Should they succeed on this basis, it could cost Investec over R1 billion just to settle up these seven minority shareholders.

The minority shareholders claim that the agreements concluded by Randgold and JCI – while both were effectively under Investec's control – served to put an end to several legal claims that Randgold had against JCI and others, totalling many billions of rands, to the direct prejudice of minority shareholders. (But, equally, to the direct advantage of Investec.) They

limit their case to four such claims which Randgold had against JCI or third parties but which were either formally withdrawn or rendered ineffective by the agreements engineered by Investec.

■ Randgold's claims against JCI, totalling R21.3bn, relate largely to (Kebble's) thefts of Randgold's shares;

■ Claims against Investec and Investec Bank Plc (Investec UK) which had been instituted by Randgold, firstly, against Investec in the High Court, Joburg, in 2008 – totalling R270.8 million – and secondly, against Investec and Investec UK, in the (UK) High Court of Justice, Chancery Division, for the delivery of 5 460 000 shares in Randgold Resources Ltd, with a total "highest value" of R4.08bn;

■ Claims against Goldfields (formerly Western Areas Ltd) for thefts of shares belonging to Randgold totalling (at highest closing value to date) R18.21bn.

■ A claim for an unauthorised transfer from Randgold to JCI of R80m in cash, arranged by Peter Henry Gray the then-CEO of both JCI and Randgold, during July 2006.

When Randgold's claims against JCI arose – between April 2002 and August 2005 – both JCI and Randgold were, to all intents and purposes, controlled by the late Brett Kebble and his father Roger Kebble. Notwithstanding the fact that the Kebbles held a mere 1.81% of the issued share capital of Randgold, Brett had became CEO of Randgold with effect from 24 July 2003 and held the position until his resignation from the Randgold board on 24 August 2005. Roger had been chairman of the Randgold board since 5 March 1998 and also resigned on 24 August 2005.

The Kebble era came to an end in August 2005, when Investec, with the support of Allan Gray, donned the mantle of control which Brett Kebble and his father had exercised over these companies – one of the preconditions for the bank's agreeing to lend JCI an additional R460m. (*Noseweek* subsequently reported these events under the headline "Investec exploited Kebble's weakness".)

The conclusion of the Investec Loan Agreement resulted in the reconstitution by Investec of *inter alia* the Randgold and JCI boards of directors, which boards in turn separately appointed forensic auditors to investigate claims of wholesale thefts and frauds perpetrated by JCI over Randgold during the Kebble era.

The forensic auditors found that the Kebbles had orchestrated:

■ the theft by JCI of the bulk of Randgold's portfolio of listed shares, largely through the conduit of a brokerage firm known as Tlotlisa Securities (T-Sec), of which Gray was the CEO – but also with the assistance of Investec and Investec UK; and

■ the fraudulent issue of new Randgold shares for no value, based on bogus agreements which purported to give rise to liabilities on the part of Randgold to third parties. These liabilities were wholly fictitious.

**WORTH NOTING:**

**WHILE there is legal precedent which might allow "oppressed" minority shareholders to claim damages from Investec based on the highest rand value to date of the stolen shares – in excess of R20 billion – the Kebbles sold the stolen shares for R1.9 billion.**

**Also worth noting: according to a forensic report later commissioned by Randgold – see below – the R1.9bn derived from the sale of the stolen shares was divided amongst four major recipients: R926.2m went to JCI accounts, R450m went to Western Areas, R419.6m went to the Kebbles "and related parties" and, finally, R106m went to Investec – incidentally making the bank the recipient of the proceeds of crime.**

"It would have been expected in the circumstances that Randgold would have instituted action against JCI as soon as the minimum facts regarding the fraud became known. Instead... a settlement (the Revised Settlement Agreement) which was deeply prejudicial to Randgold's minority shareholders, was concluded on 20 January last year and ratified by the majority of Randgold's shareholders – due to the effective control which Investec exercises over Randgold," says Smyth in his founding affidavit

As a result, Randgold received from JCI in full and final settlement of its R21bn claim against JCI, shares with a net worth of just R648m.

Randgold's claims against Investec and Investec UK focused on the misappropriation of 5 460 000 shares held by Randgold in the company known as Randgold Resources Limited. In the actions instituted against Investec and Investec UK, Randgold sought to hold these banks liable for their role in the implementation of the "Overseas Securities Lending Agreement" which resulted ultimately in the theft by JCI of Randgold's 5 460 000 Randgold Resources shares.

All Randgold's claims against Investec and Investec UK also formed part of Randgold's total claim against JCI in the sum of R21 290 687 750.

During 2002, Gray – at the request of the Kebbles and on their behalf – assumed control of the takeover of a stockbroking business which was renamed Tlotlisa Securities (Pty) Ltd (or T-Sec). Gray was installed as the new CEO of T-Sec. It was T-Sec which, according to the forensic reports, brokered the bulk of the shares stolen from Randgold. Gray allowed T-Sec to deposit the proceeds of such sales into accounts controlled by JCI, Western Areas Limited, the Kebbles – and Investec.

Gray would subsequently become the "hand-picked" appointee of Investec as CEO of both Randgold and JCI – in circumstances where Investec, in the light of the provisions of the Investec Loan Agreement – had *carte blanche* to reconstitute the boards of both companies in a manner acceptable to them and where the natural inclination of Investec was clearly to prop up and support JCI to which it (Investec) was exposed. In this way Investec "contrived to ensure Randgold was thwarted from properly pursuing its claims against JCI, Investec and Investec UK and... Gray in his personal capacity".

"This, notwithstanding the fact that Randgold was in no way indebted to Investec, nor did it receive any benefit whatsoever from the Investec loan."

The reconstruction of the Randgold board was never ratified by the Randgold shareholders.

"There was a patent conflict of interest insofar as the composition of the boards of JCI and Randgold had the same chairman [Investec Head of Legal Risk, David Nurek] and the same CEO and financial director [both previously worked for the Kebbles]".

And Randgold was by far the largest creditor of JCI, while JCI was by far the largest debtor of Randgold.

These directors, *inter alia*, refused to provide material information to Randgold's minority shareholders regarding the forensic reports and the claims submitted by Randgold... for a period of almost two years, despite a formal request for the information. They also ignored the crucial finding of the Mediators, as early as 28 February 2007, that the value of sustainable Randgold claims against JCI might well exceed the net asset value of JCI (ie: that JCI was in fact insolvent).

From December 2008, following the resignation from the Randgold board of Nurek and Gray, Investec built up a 26.6% shareholding in Randgold which, together with the 24.35% held by Allan Gray Asset Management, cemented Investec's effective control over Randgold.

The Revised Settlement Agreement concluded last year ensured that Investec was "the clear and only winner" in that it ensured that JCI – to which Investec was exposed in terms of the Investec Loan Agreement – emerged as a solvent company with some 32.8% of its net asset value intact and in a position not only to pay Investec every cent of its loan plus interest thereon, but also a handsome "raising fee" of R309 268 000.

Investec has yet to answer to all these charges. Instead, in October it launched an "interlocutory" application in the proceedings – in which it asks the court to order the applicant shareholders in the main case to provide security for Investec's legal costs – and that they should not be allowed to proceed with their case until they have done so – on the grounds that their case is "vexatious and amounts to an abuse of court process".

Werksmans partner Avrom Nathan Krengel, acting for Investec, declares in an affidavit that these costs already amount to R5.9m.

Investec also wants the court to rule that the applicants have no legal standing ("*locus standi*") to bring the case, since none of their names appear on what Investec contends constitutes Randgold's "register of members". According to Investec, this register includes only the names of nominees and not those of the beneficial shareholders. (All the applicants hold "dematerialised" shares that exist in electronic form only, and are held – as is common practice – in the name of bank nominee companies.)

Lastly, Investec wants the court to rule in advance on these issues, and to allow Investec to withhold its answers to the main charges brought against it until the court has decided on the technical issues it is raising.

The applicant shareholders are opposing Investec's application on all points, alleging it's just a stalling tactic.

The preliminary case is not likely to be argued in court before the new year. ■

# VANITY PUBLISHING

## Defence Minister Sisulu's duplication

WHENEVER the ghosts of the Arms Deal are asleep and when Defence and Military Veterans Minister Lindiwe Sisulu gets a break from explaining away gravy jets, she appears to jump at the chance to polish her image. And in that worthy cause she and her advisors recently decided to alter the Annual Report of The Castle of Good Hope, one of the state corporations in her charge.

The Castle, built 346 years ago, is the second-oldest building still standing in South Africa (beaten by the Posthuys in Muizenberg) and a valuable part of South Africa's heritage. Its preservation and upkeep is the task of the Castle Control Board, chaired by Major General J T Nkonyane. Nkonyane and his board have repeatedly called on the minister to make appointments to fill key posts – especially those of CEO and a Chief Financial Officer (CFO) – that have been vacant ever since 1994.

The matter of these vacant posts has been flagged repeatedly by the Auditor-General, who has, however, always given the castle's annual reports a clean bill of health.

But this year, when Sisulu decided to produce a second, amended Annual Report off her own bat, irregularly and without the approval of the impeccable board, some board members were incensed and protested, fearing their reputations could be tarnished. One of them, Roland Hudson-Bennett, went so far as to resign.

Hudson-Bennett, who served as the vice-chairman of the board while doubling as acting CFO, wrote in his letter of resignation: "The Minister, has, in my opinion, been ill-advised over the production of a second Annual Report for 2010/11 for the Castle Control Board. The Annual Report is the responsibility of the Castle Control Board and not the Minister."

**Defence Minister Lindiwe Sisulu**

In his letter to Sisulu – of which *Noseweek* has a copy – Hudson-Bennett goes on to point out that the second report was produced on the instruction of the minister, without full knowledge and approval of the board or of the Castle's Audit and Risk Committee, or of KPMG, which carried out the audit on behalf of the Auditor-General, or of the AG himself.

"When a Revised Annual Report is issued, all copies of the old report should be recalled. This was not done," said Hudson-Bennett. "Certain matters included in the Annual Report were excluded in the revised version, because it would look bad. Non-compliant matters such as the appointment of a CEO and a CFO were among those items excluded."

He also reminds Sisulu in the letter that an annual report must bear an ISBN number, which is missing in the minister's sanctioned report.

Hudson-Bennett, when asked for comment, refused to elaborate, saying that if *Noseweek* had a copy of his letter, then he had nothing more to add.

Having obtained copies of the two reports, *Noseweek* can confirm that a two-page foreword has been inserted – one, featuring a head-and-shoulders picture of Sisulu and the other, a full-length portrait of the minister in a glamorous purple outfit (showing a good pair of pins) and flanked by two military men.

While both the chairperson and the vice-chairperson (Hudson-Bennett) signed the first report, the second one only bears the signature of Major General J T Nkonyane.

The text is full of praise for the minister and the department and reads like a political campaign brochure.

Sources told *Noseweek* that the minister has never attended any board meetings so they found her praise laughable. They also confirmed that Hudson-Bennett had lamented the minister's failure to request permission from the Treasury for the board to retain their accumulated funds that amount to R11 459 000.

Sisulu sent a draft copy of her amended report to the Castle's Audit and Risk Committee for comments on Friday October 21. Committee members met over that weekend and conveyed their reservations on Sunday October 23. Yet the minister's (own) published annual report was delivered to the board early the next day – apparently without any cognisance given to the committee's comments.

Unfortunately for Sisulu and her advisors, the parliamentary portfolio committee on defence is no pushover and, having already received copies of the first report, they pressed the minister to explain the duplication and reasons for submitting an invalid Annual Report.

Sisulu reportedly told them it had been important to amend the report for marketing purposes.

*Noseweek* cannot work out which part of the second report would aid marketing – the photos or the watered-down contents? ■

# HOLIDAYS NOBODY WANTS

## Two sad tales: there's no life after debt for unwary buyers who fall victim to vacation club schemes

### SAD TALE 1

IN A COUNTRY like South Africa, where consumer protection laws are weakly enforced, signing up for time-share and vacation clubs is like going swimming with sharks. Too late came the warning from a reader five years ago (*nose*85) of the perils of joining the Quality Vacation Club. Allan Youens had already joined QVC five years before that.

He'd agreed to pay a membership fee of R2 500-odd per year, for which he got 30 "units" of holiday accommodation, to be chosen from a list – "not all that exciting" – of holiday resorts. (The best ones were invariably booked up 18 months in advance.)

Last year his financial circumstances had deteriorated to the extent that he could no longer afford the annual membership fee, which by then had risen to more than R3 000 a year. He was also getting pretty bored with QVC's holiday options.

"I phoned them around July to tell them I had deliberately not renewed my membership, so they could stop sending me monthly statements. Whoever I spoke to suggested that I might like to sell my contract to someone else. The person gave me the contact details of some QVC resale agents.

"I contacted two of them. Both intimated that the demand for these units was 'not great'. Neither came back to me with any potential buyers," he tells *Noseweek*, so Youens decided to let QVC sell their own product. He notified them of this decision by email, and on 18 July received the following reply:

"We have forwarded your request for cancellation, due to affordability, to the relevant cancellation department, who will revert back to you. Please be so kind as to rate the service you received today, by email or fax, in order for us to improve on our client services delivery and should you require any further information or assistance, do not hesitate to contact us as we will be more than willing to assist. Have a wonderful day and a blessed week."

The "cancellation department" did not get back to him as promised. Instead he started receiving threatening SMSes from a debt collection agency – which he ignored, as he'd already informed QVC that he had no intention of renewing.

However, he got a nasty surprise when, in September, he tried to take out a cell phone contract with Vodacom. The application was turned down because, it emerged, he'd been blacklisted with a credit-rating agency. When he called QVC, he was informed by Jan van Vuuren that he could not "just" stop renewing his membership, he would have to sell it to someone else, who would continue paying the membership fee – into eternity. It was all in the small print of their contract.

"He assured me that a summons had been both emailed and posted to me, neither of which I had received. He said I did not have to sign acknowledgement of receipt of such summons.

"I then told him I intended referring the matter to *Noseweek*, so the public should be warned of what they would be letting themselves in for if they became a member of QVC. He seemed not to care less."

Youens has had an unblemished credit record as a Vodacom subscriber for more than 15 years through Nashua Mobile, and has never been in default. And, since Nashua Mobile have closed their Hermanus branch, he decided to renew with another local agent and chose Chatz Connect – which is where his application was rejected out of hand as a result of his blacklisting by QVC.

"Chatz's manager said that, as a special favour, he would make representations to Vodacom on my behalf. No luck.

"I have a Gold Card and a Consolidator current account at Standard Bank, where I have been a customer in good standing for in excess of 15 years.

"I have no debt or mortgage bonds

whatsoever. I find it difficult to understand why Vodacom, that spends billions on their new image, can treat a customer of long standing so shabbily, due to a total inability to think out of the box."

## SAD TALE 2

BLAKE and Wendy Wilkins, both in their sixties, are desperate to cancel a 40-year contract Wendy signed three years ago with a company offering bargain discounts for holiday accommodation and car hire. But their pleas have fallen on deaf ears – Leisure Travel International is holding them to the full 40-year term and continues to extract an ever-escalating annual "membership fee" by debit order from Wendy's bank account. The couple fear that if they cancel the debit order the company will have them black-listed.

Semi-retired PR consultant Blake, 64, and former Nedbank branch manager Wendy, 65, accepted an invitation for "a sociable hour of finger snacks, refreshments and relaxation" on 29 June 2009 at Montecasino in Fourways, Joburg. There they heard all about the amazing bargains offered by Leisure Travel International's Travel Quest operation, with its 600 000 discounted holiday options around the globe, unlimited travel, leisure and discount benefits – plus an array of "gratuity gifts" such as Go Dining (to the value of R5 000) and Go Away (R15 000).

Living in Lonehill, and with three grown-up daughters scattered in London, Australia and New Zealand, the Wilkinses thought the benefits would be well worth the R12 150 joining fee and the first year's membership fee of R796.86.

But Travel Quest did not come up to expectations, and last December Blake wrote to terminate their membership. They had received "absolutely no value" from joining; had been unable to redeem vouchers given them when they signed up; and Travel Quest's website quoted prices "higher than what we have researched using other media".

The following day they received a reply from Nick van Straaten, client services manager. "I regret to advise that we do not cancel or suspend memberships after the five-day cooling off period as provided by the South African Consumer Act. This is a binding contract from both our sides for the duration of the membership term.

"Furthermore you are contractually obliged to pay the membership fees that become due on the anniversary of your joining date each year."

Van Straaten added that membership could be transferred to family members or friends, enabling the recipient to "take over all the benefits as well as the yearly membership fee".

Five months earlier Leisure Travel had extracted the second year's membership fee – up by 10% to R876.55 – from Wendy's bank account. And on 1 July this year the debit order whipped away her third year's membership – up by a further 10% to R964.21. At this rate of escalation, the couple calculated, by 2020 the annual fee would be R2 273. And goodness knows what it would be by the time the contract expired in 37 years – when they would both be over 100.

Blake Wilkins continued to insist that he was terminating the contract. Nick van Straaten wrote that his directors were not willing to do so. By April this year the Wilkinses were dealing with admin manager Charmaine Oglesby ("Nick is no longer with the company"), who repeated the company line that their membership was binding.

Why on earth don't they cancel the debit order and tell Leisure Travel International to Foxtrot Oscar?

"It's not so easy," says Blake. "Wendy used to be a branch manager at Nedbank and she knows the system very well. The banks don't like it when you cancel a stop order. And even if we do, Leisure Travel International could have us blacklisted."

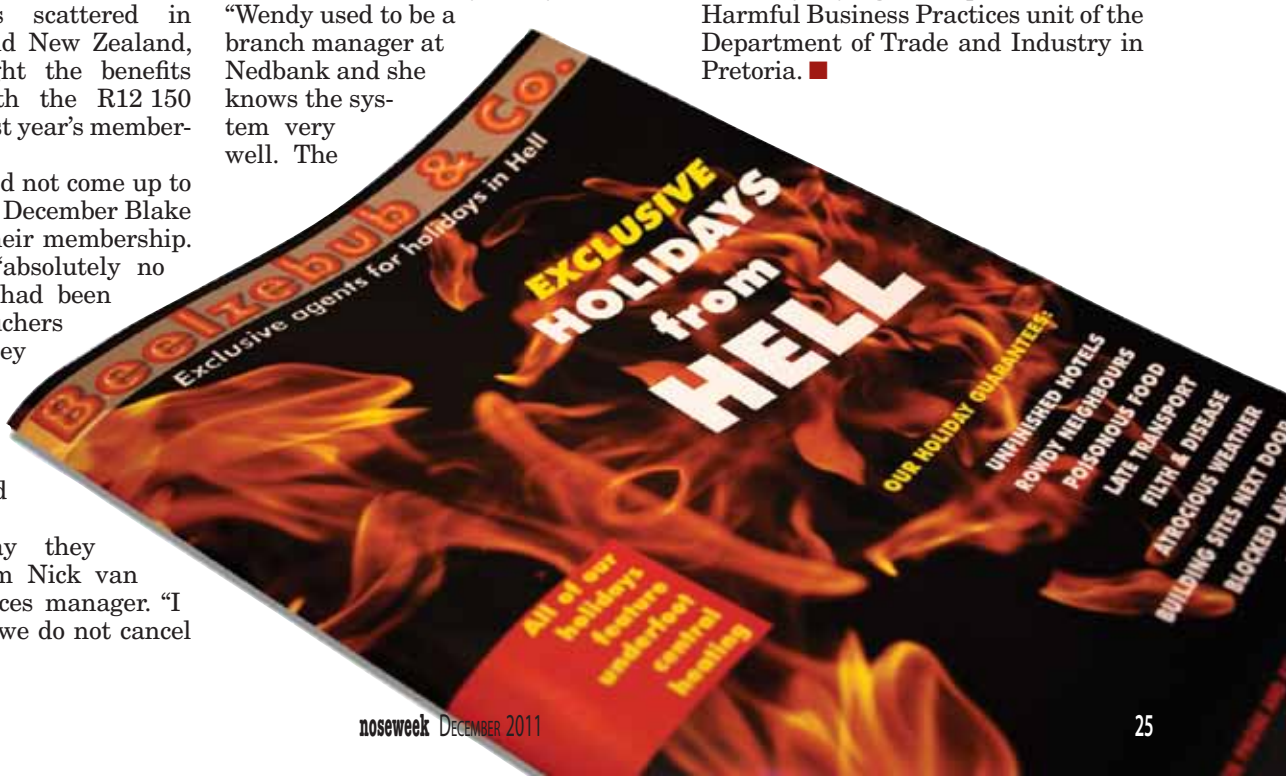
Charmaine Oglesby was unable to take *Noseweek's* call, so we emailed her asking: How could her company justify holding a couple in their 60s to a 40-year-contract? Why does the membership fee increase by 10% every year? Does her company intend to take this fee for the next 37 years from the Wilkins bank account by that debit order? No response.

Nedbank is sympathetic to the Wilkins's plight. Louanne de Waal of the bank's executive service support, comments: "It does not seem correct that a 60-year-old (sic) is given a 40-year contract. The client [Wendy Wilkins] can approach her nearest Nedbank branch once the debit order has been presented and sign a stop payment.

"The stop payment can only be done provided the amount matches, rand-for-rand and cent-for-cent. This process does not stop the service provider [Leisure Travel International] from re-debiting the account on a different day, with a different amount; some service providers re-debit the account with an unpaid fee."

■ Leisure Travel International (Pty) Ltd gives its address as Suite 1102, The Courtyard, Gants Centre, Strand, Cape Town. Its sole listed director is André Gustav Claasen, aged 47, residential address: 10th Avenue, Kleinmond.

■ If you're already out of your depth with the sharks and are desperate, you could try laying a complaint with the Harmful Business Practices unit of the Department of Trade and Industry in Pretoria. ■



# STALLING FOR PROFIT

## Security firm fat cats demand lion's share of tenders, writes **Mark Thomas**

NELSON Mandela Bay Metropolitan Municipality, instead of hanging its head in shame at successive qualified audits, continues to haemorrhage public money. And while would-be tenderpreneurs eagerly wait for their turn to gorge, the old fat cats – never satiated – are unwilling to let go of their tasty catches without a fight.

For nearly two years, the Nelson Mandela Bay Municipality has made irregular payments of between R3.5 million and R4m to Nationwide Security (Pty) Ltd, a company owned by Yusuf Adam and his wife Tashreequah – the same couple who benefited from a questionable lease deal with Pretoria Public Works (*nose*142).

Nationwide Security, which brags that it is 100% black-owned, says on its website that it has grown "from humble beginnings, with a few small guarding contracts, to a national competitive player in the security industry with a number of blue-chip contracts and a full range of integrated security solutions". It achieved this growth "through focusing on sound management, service delivery, staff welfare and working with clients who share these values…" underpinning a reputation for "reliability, integrity and professional levels of service".

Their impressive list of clientele includes MTN national installations; Shoprite Checkers Group; the Department of Transport; the Department of Health; Eskom; Nelson Mandela Bay Municipality (NMBM); Pine Lodge Resorts; and the South African Police Services (SAPS).

Although *Noseweek* has not uncovered any reason why SAPS would hire a private security firm, we did discover that nearly all the state security contracts awarded to Nationwide have expired and now run on a month-on-month basis – including NMBM whose security contract expired on September 7, 2009. A few months beforehand, the municipality called for bids – which were received from several firms, including Fidelity Security Services; Sizwe Risk Consultants; Nationwide

Security Holdings; Umsimbithi Security Services; and Metro Security Services (MSS).

Bidders were invited to a meeting with the municipality's security director on January 5 last year at which MSS was named as the successful winner of the three-year contract worth R94m for provision of protection, access control and escort services.

But within days, on January 13, T Motatsi, the municipality's acting director for supply chain management dispatched a letter informing Metro Security that the announcement had been made prematurely and that, since the value of the contract was in excess of R10m, it had to be approved by the Municipal Manager.

In the meantime, while the municipality awaited this approval, Nationwide Security continued to provide services at a minimum cost of R3.5m per month. All told, between September 2009 and April, Nationwide Security collected at least R24.5m (if the reported month-on-month figure is accurate).

Mystified as to why approval was taking so long, Metro Security requested reasons for the delay but none were forthcoming, so the security firm approached the high court on December 23 last year, to compel the municipality to provide records that justified the delay. The NMBM had until January 4 this year to file its notice of opposition, and until January 7 for answering affidavits, if any. These were not filed. Instead, Advocate Richard Buchanan SC (*nose*145) appearing for the municipality, assisted by Nzamo Nobatana, tried to dissuade the court from granting access to documents, offering that their client, NMBM, would deliver all relevant documents within five days.

This offer was rejected by the advocates representing Metro Security.

The municipality was ordered to hand over all their papers pertaining to the tender. And, despite their earlier offer to produce the records within five days, the NMBM decided to appeal the judgment – an appeal that was set down for ruling on November 24.

If the municipality manages to drag the matter out for the full three-year term of the contract, then Nationwide Security will have made in excess of R126m, based on the irregular month-on-month contract.

And should the municipality lose, the cost to the public coffer will be even more, counting damages and costs plus the R94m contract.

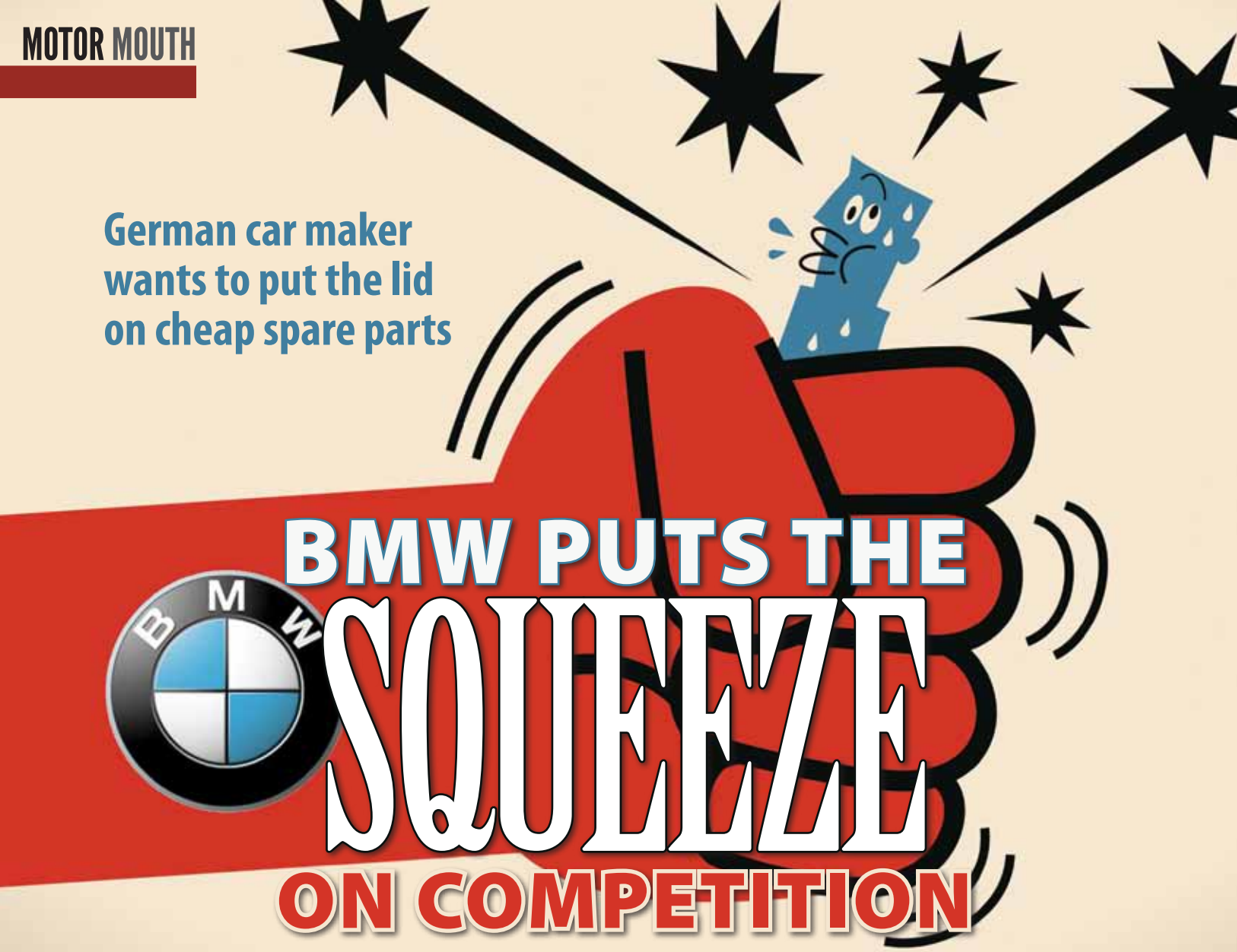
If this isn't wasteful expenditure from a cash-strapped council, then the municipality isn't as broke as it would prefer the public to believe. ■

# The right to know

**THE FULL forensic report undertaken by Kabuso cc into maladministration in the Nelson Mandela Bay Municipality must be handed over to the PE Herald within a week, ruled Acting Judge Nceba Dukada in a widely hailed judgment in October.**

**Even though the report was paid for by public funds, the municipality had decided to withhold its contents from journalists – and the public – forcing the newspaper to apply to the high court.**

**Several court applications later, at huge expense to the public, Judge Dukada's ruling confirms the public's right to know how their funds are spent.**



## German car maker wants to put the lid on cheap spare parts

# BMW PUTS THE SQUEEZE ON COMPETITION

CAPE TOWN'S designation as World Design Capital 2014 has thrown the spotlight on product design. A case that's recently been argued in the North Gauteng High Court is likely to do the same thing. And it has the potential to get people thinking about intellectual property (IP) in a way that they haven't since Justin Nurse won his freedom of expression battle with SABMiller at the Constitutional Court in 2005. (Remember the Black Label trademark v Black Labour spoof T-shirt case?)

The case deals with the relationship between IP rights and competition law. It's high time the issue was examined, because, at the risk of gross oversimplification, IP law is about creating monopolies, whereas competition law is about breaking them down.

The case involves serial IP rights litigators BMW and a company that sells what are sometimes known as "replacement" car parts, Grandmark. Now, if you don't know what replacement car parts are, you're probably one of those who think that car parts do seem very pricey but, what the hell, the insurance company will pick up the tab. However, if you're one who pays your own way, you'll know there are huge savings to be had by buying parts that were not manufactured by the car maker (Original Equipment Manufacturer, or OEM) but by a company that makes perfectly good replicas.

Are these replacement parts actually legal? Nein says BMW, und ve vill rid South Africa of the dreadful scourge of affordable car parts.

After finding replacement BMW parts at Grandmark's premises in a search-and-seizure exercise, BMW sued Grandmark for infringement of certain design registrations BMW has for its E46 model – for a bonnet, a headlight assembly, a grille and a front fender. On top of that, BMW claimed that Grandmark was in contempt of a court order that BMW obtained against it 12 years ago, when Grandmark agreed not to infringe a large number of BMW's registered designs. Grandmark defended the proceedings by claiming that BMW's registrations are invalid and that they should be cancelled.

Time for a bit of detail: designs can be registered for product shapes. You can get a so-called "Aesthetic Design" registration for a design that is new and original, and that has features which "appeal to and are judged solely by the eye", and you can also get a so-called "Functional Design" registration for a design that is new and that has "features that are necessitated by the function" that the product is to perform. The law specifically excludes vehicle parts from protection as Functional Designs, so car manufacturers register their car parts as Aesthetic Designs.

And, of course, they also register the shape of the entire car as a separate Aesthetic Design.

That's a nonsense, says Grandmark, because, although a car may be aesthetic in its entirety, individual parts like bonnets and fenders are not judged visually but are dictated by function.

Grandmark's Allan Ho says in the papers: "The bonnet, front fender, grille and headlight assembly of an E46 BMW can only look one way if it is to perform its function as a replacement part for a BMW E46 vehicle".

BMW, says Ho, inadvertently admits in its papers that these parts are functional when it says – in aiming to establish that Grandmark's products are the same as theirs – "They [Grandmark's parts] must of necessity have embodied designs substantially the same as those covered by BMW's E36 and E46 designs. Had they not, they would not have been fit for purpose and would not have fitted and matched the E36 and E46 car bodies."

It's interesting, says Ho, that BMW seems unable to tell the court what eye-catching features its body parts have. He says if South Africa had a system whereby applications for design registrations were properly examined, BMW would never have obtained these registrations.

Grandmark also claims the designs are invalid as they're not new, being very similar to older BMW designs. The "kidney-shaped" grille, for example, has been around for ages, he says.

Grandmark goes on to argue that, if the registrations are not cancelled, the matter should be referred to the Competition Tribunal. Grandmark gives examples of some of the price differences between BMW original and BMW replacement parts:

- Bonnet R3 088 v R1 150
- Grille R649 v R135
- Headlight assembly R2 471 v R1 250

Grandmark then develops an argument that's quite involved. It claims that BMW, to maintain its policy of charging exorbitant prices for its spares, has employed a strategy to eliminate competition in spare parts. There are two legs to this strategy. The first is to provide that the warranty falls away if replacement parts are used, ensuring that drivers only buy genuine parts while the car is still under warranty. The second is to ensure that even when the car is out of warranty, genuine parts are bought because replacement parts simply aren't available. This is achieved by abusing the design registration system in two ways: one is by registering designs for all the parts, irrespective of whether or not they are aesthetic or new; the other is through a highly aggressive and intimidatory enforcement policy that involves bullying companies into accepting blanket court orders prohibiting them from supplying any BMW replacement parts, even where's there's no evidence that they have ever dealt in those parts. The overall plan: to ensure that no-one else sells BMW replacement parts.

The argument goes on: BMW's conduct contravenes the abuse of dominance provisions, with the market being brand-specific – in other words, the market for BMW spares, where BMW clearly has more than 45% of the market and market power (the power to control prices and exclude competition).

BMW's conduct cannot even be justified in terms of superior quality, because the parts that Grandmark sells are of a high quality, being SABS certified, and manufactured by Chinese companies that also produce genuine parts for companies like GM in India, Ford in Venezuela, Nissan in the USA, Honda in Taiwan and Chrysler in UK.

One highly undesirable effect of BMW's strategy is that an unnecessarily high number of cars are written off in South Africa because they are simply too expensive to repair with "genuine" parts, leading to an increase in insurance premiums.

Grandmark claims that its referral to the Competition Tribunal is warranted because if the Tribunal finds that the manner in which BMW is trying to exercise its design rights is unlawful, that will put an end to the court proceedings.

Grandmark concludes by saying that, while competition law will generally respect the rights given by IP, it won't do so if there is an abuse of the system, with the sole intention being to exclude competition.

BMW is acutely aware that the implications are huge. A finding in favour of Grandmark will open the door to the wholesale importation of replacement car parts, so BMW was keen to persuade the court that the matter should be resolved simply on the basis that Grandmark was in contempt of the earlier court order, that it had "unclean hands", and that there was therefore no need to deal with all the other stuff.

Recognising that the court was unlikely to fall for this (especially as many of the registrations covered by the earlier order have since expired), it did deal with the various issues raised by Grandmark. On whether or not the designs were aesthetic, it said in its Heads of Argument: "In the competitive luxury car market, outer-body car design is an essential and important aspect of the ability to market and sell the vehicles and achieve sales which will afford a reasonable return on the enormous investment involved in the development and design of each model... the aesthetic or 'eye appeal' of the car body design is central... The parts don't lose their aesthetic character or eye appeal based on the fact that they constitute parts of the vehicle."

BMW also argued that its designs were new, differing significantly from the designs of its earlier models. But it reserved its strongest attack for the request that the matter be referred to the Competition Tribunal. It argued there was no merit in this call, saying the tribunal has no power to cancel design registrations, and that if the registrations aren't cancelled, there can be no question of any abuse of rights.

It also queried why Grandmark had not approached the tribunal before, nor applied for a "compulsory licence" under the design legislation. And, as for the alleged abuse of a dominant position, BMW argued that the relevant market was the entire car market, not simply the BMW spare-part market, which means that BMW is not in any dominant position.

While we await Judge Natvarial Ranchod's ruling, a thought: perhaps a beauty-without-cruelty campaign should be launched against certain luxury car manufacturers? ■

## BMW seems unable to tell the court what eye-catching features its body parts have

# THE GARAGE HELD MY CAR HOSTAGE!

PERSONAL fitness trainer Daniel Tuval of Lonehill, Joburg thought he'd made a good buy when, in October, he bought a 2002 model Mercedes Smart car, with 90 000km on the clock, a complete service history and maintenance plan directly from its original owner for just R35 000.

Before concluding the deal, he'd taken the car to Sandown Motors (also known as Mercedes Bryanston) to check it out. They checked and confirmed its perfect service history. Then, to be doubly sure, Tuval took it to the AA's workshop for their 20-point check. They found it to be in perfect order. Only then did he sign with the seller and pay over the R35 000 purchase price.

Imagine his distress when, just two weeks later, he detected a strange noise coming from the engine. He took it straight to Sandown Motors to check it out. On his arrival, they kept him waiting while they rushed to attend to a later arrival in a larger, newer Mercedes that was obviously still on full maintenance plan.

When they eventually got round to listen to the strange noise coming from his engine, they said they couldn't make out what it was and suggested he just keep on driving it until something further developed.

Next day the noise was considerably worse. Back at Sandown Motors they suggested this time that he leave the car with them to investigate. Three days later when he called to inquire what they'd discovered, they told him "we are just looking at it now". An hour or two later they called him in – to tell him they would need to take the engine apart to establish for certain what the problem was and that, just taking the engine apart would cost R6 000, to be paid up front, please.

What else to do but pay? They warned him that it could be a faulty timing chain which would cost a further R3 400 to replace. It could also, they speculated, be the knuckle bearing.

Four hours later they called Tuval. Bad news: the main bearing was "gone", and they'd have to replace the cam shaft – which only comes with a complete new engine, total cost R51 000. All in all, to repair the car would cost nearly twice as much as he'd just paid for it – tested and found to be in good order just three weeks before.

They agreed this was ridiculous and suggested he claim his money back from the seller. Tuval consulted his lawyer, then called the seller to confront him with the bad news.

The seller, clearly innocent of any subterfuge, went into shock. "He was hyperventilating, his wife was in tears," reports Tuval.

They agreed he'd get a second opinion. But then Sandown Motors announced they would only release the car if he first paid them a R1 300 "diagnostic fee".

Next day, at an independent mechanic's workshop (manned by an ex-Mercedes mechanic), it took just 30 minutes to establish there was nothing wrong with the engine, cam shaft or bearings. The noise was coming from a faulty water pump, which cost R1 600 to fix.

Two days later Tuval got a call from Mercedes Bryanston's call centre, asking him to rate their service.

He rated them off the chart for bad manners, incompetence and plain thievery. ■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# Tripping over the fine print

WHEN POLICE Warrant Officer Amos Shibambu responded to an ad selling Carprehensive insurance – offered by a crowd called Prime Meridian, part of the RMB Group – he received a call from a salesman who persuaded him to switch from his insurer to Carprehensive. The bait: Shibambu would get a fixed-for-life premium of R450 per month as opposed to the R500-plus he was paying. And there would be no excess.

The policy commenced on 28 February this year, and on 30 March Shibambu was involved in a car crash in which his Renault Modus was written off. Shibambu put in his claim – but it was promptly rejected. Prime Meridian told him the contract provides that there will be no cover until such time as three premiums have been paid.

I was not told about this, complained Shibambu to the Ombudsman for Short Term Insurance.

Not true, replied Prime Meridian's claims manager, Pauline Nieuwoudt. Shibambu was "clearly advised of the provision". To prove her point she submitted an excerpt from the transcript of the telephone recording in which Shibambu agreed to take out the insurance. This showed that three minutes, 39 seconds into the conversation the salesman said to Shibambu: "…with us after two months once we've received your third successful premium can you submit a claim, sir".

She also submitted the written contract, the so-called Comprehensive Policy Schedule, with a clause that says: "Commencement of Cover: Cover commences after three consecutive premiums have been paid when due."

All quite true. But if you listen to the recording (of what really was your classic smarmy young salesman and dignified older man struggling to keep up with the jargon-riddled conversation) it becomes clear that what the salesman said – all very quickly and without any hesitation – was: "…with us after two months once we've received your third successful premium can you submit a claim, sir, and remember that you must be 25 years of age or older to qualify successfully for this particular insurance."

In a submission to the Ombudsman, Shibambu's agent, Verity Granger of the firm Accolade, said: "It is patently clear that it was not the intention of the salesperson that Mr Shibambu understood what he was saying. He went on to talk about needing to be older than 25 and did not at any point ask Mr Shibambu if he understood…

"No person in their right mind would accept an insurance policy for their vehicle where the cover did not commence immediately. I have never heard of such a policy."

Nieuwoudt also didn't mention that Shibambu only received the Comprehensive Policy Schedule after the accident. Nor did she mention that, before receiving the Comprehensive Policy Schedule, Shibambu received an acceptance letter saying: "As long as your premiums are paid when due, you may rest assured that Carprehensive will provide the cover you want."

The Ombudsman agreed that Shibambu had not been properly notified about the three-month hiatus and ordered Prime Meridian to pay out. That's when the next dodge came up: the insurer agreed to pay the "trade value" rather than the "retail value", which in this case was R55 000 rather than R64 000.

Again, Prime Meridian pointed to the fact that this term was used in both the phone conversation and the document. Correct. But what this meant was never explained to Shibambu. Which, says Granger, contravenes the Financial Advisory and Intermediary Services (FAIS) Act, which says "the provider must ensure that the client understands the advice and is in a position to make an informed decision".

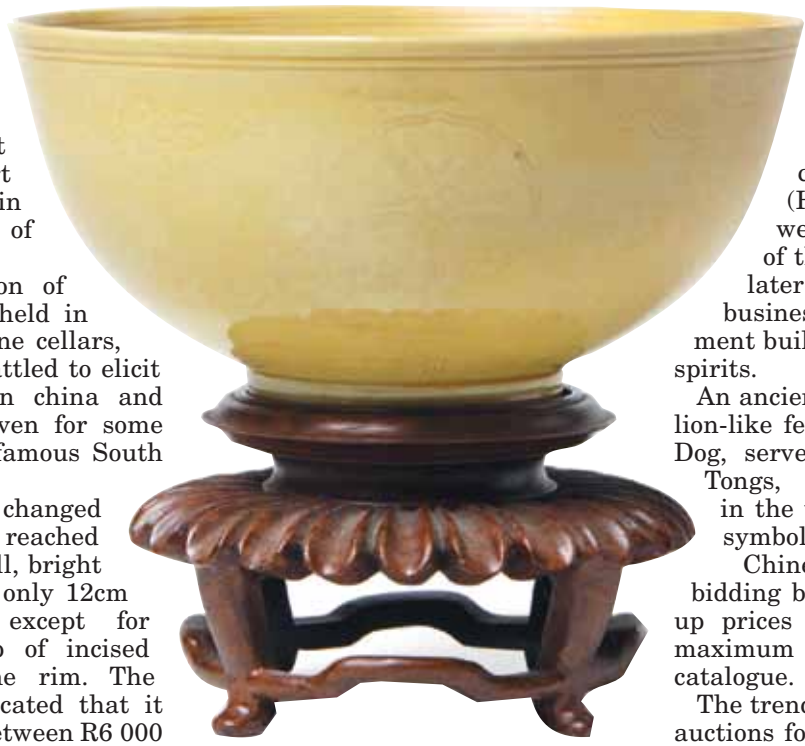
So, unless Prime Meridian changes its tune, Shibambu will need to go back to the Ombudsman for another determination. Wouldn't it be nice if these companies could just do the right thing? ■

# Chinese takeaway fetches R112 000

AS THE West goes into financial decline, so China's boom continues, there's just no escaping that fact – not even at an art and antiques auction in the southern suburbs of Cape Town.

At the latest auction of Stephan Welz & Co., held in the historic Alphen wine cellars, the auctioneer often battled to elicit bids for the European china and silverware lots, and even for some splendid artworks by famous South African artists.

But all that suddenly changed when the auctioneer reached lot number 707: a small, bright yellow porcelain bowl, only 12cm across, undecorated except for a barely visible strip of incised patterning around the rim. The auction catalogue indicated that it was expected to fetch between R6 000 and R8 000, so this was clearly no ordinary porridge bowl. But the real clue to what was to happen next was that the bowl was made in China 200 years ago.



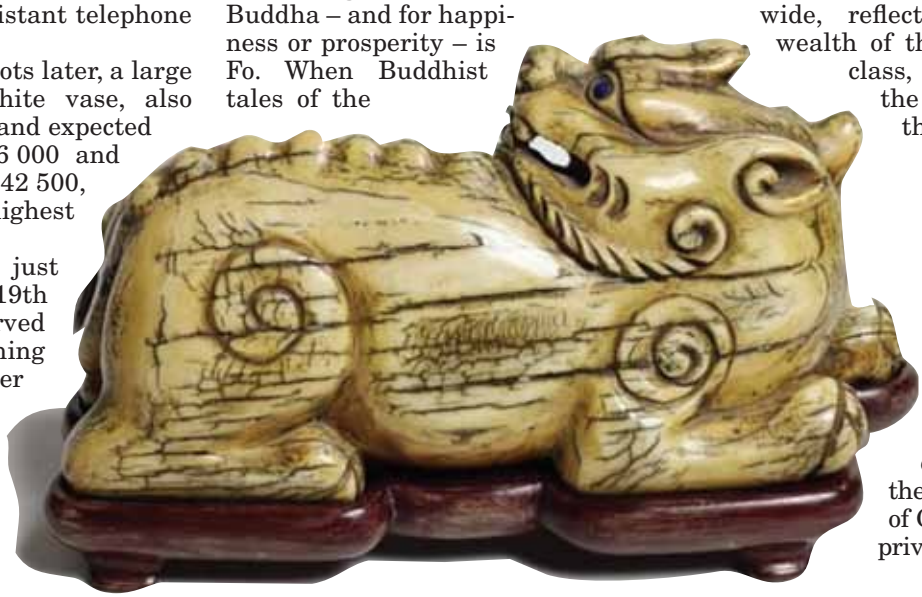
The bidding started at R5 000, after a pause lasting several long seconds went to R5 500 – and then some quick-firing bidders took over and within a minute the bowl had been knocked down to a distant telephone bidder for R31 000.

A minute and five lots later, a large Chinese blue-and-white vase, also about 200 years old, and expected to fetch between R6 000 and R8 000 went for R42 500, five times the highest estimate.

The bidders were just warming up. A 19th century Chinese carved ivory figure of a reclining "Dog of Fo", just over 17cm long, had the packed auction house in breathless suspense as two telephone bidders quickly chased up the price (estimated in the catalogue to reach a maximum of R7 000) to R112 000.

The audience took a breath and broke into spontaneous applause.

A possible explanation for the bidders' enthusiasm: the Buddhist lion is a recurring symbol in Chinese art and legend. The Chinese word for Buddha – and for happiness or prosperity – is Fo. When Buddhist tales of the religious significance of lions reached China (where at this point the animal was unknown), devotional statues of it were modelled after the country's native dogs. (Hence "dog-of-fo".) They were placed on either side of the entrances to temples – later also at the entrances to businesses, homes and government buildings – to scare away evil spirits.



An ancient Chinese dog breed with lion-like features, known as the Foo Dog, serves as the mascot of the Tongs, the oldest secret society in the world, who regard it as a symbol of good fortune.

Chinese bidders – mostly bidding by telephone – had chased up prices to 10-or-more times the maximum estimated in the auction catalogue.

The trend has been evident at such auctions for the past three years. At the equivalent auction last year, a Chinese blue-and-white bowl, high estimate R8 000, sold for R60 000, and a blue-and-white lamp base, just more than 100 years old, that had been expected to go for just R4 000, was knocked down for R80 000.

Said Shona Robie, ceramics expert at Stephan Welz & Co: "This trend has been evident in auction houses worldwide, reflecting the growing wealth of the Chinese middle class, and the desire of the Chinese to take these heritage pieces back to China."

Such treasures have become rare in China, following Madame Mao's cultural revolution when she led rampaging youths on binges of destruction across the country, smashing the ancient treasures of China as symbols of privilege and elitism. ■

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REVIEWED BY LEN ASHTON

# Sex and the single Trekker

Meanwhile, in the back of the wagon...

**Canvas Under the Sky**
by Robin Binckes (30˚ South)

BRACE YOURSELF – enormous cracks are bound to appear in the Voortrekker Monument foundations within days. At the time of going to press, the enormity of Robin Binckes's revisionist tract on the Great Trek had yet to erupt.

But the aftershocks will soon discomfit earnest historians the land over. Never before has the stern image of those brave pioneers been questioned. Now we have *Canvas Under the Sky*, which might, more appropriately, have been titled *Boet Cassidy and the Sondans Kid*.

It retails the exploits of randy young trekkers Rauch and his pal Jan through a *skop skiet en donder* tale that is surely made for Hollywood. Trekker, in this context, is capable of various interpretations. *Canvas* illustrates accurate historical detail with enthusiastic sex; sex with slaves, sex with deep-bosomed settler women, self-service sex... Kamp Draadtrek of curious rugby notoriety had nothing on this lot.

Let it be said at once that the conservatively religious Doppers among the trekker communities are shown to be above that sort of thing. But everyone else in the cast keeps going at it like rabbits, despite war raging around. In fact, there is a distinct impression that perils arising from the Sixth Kaffir War and other hostilities add zest to off-duty activities. Which is, of course, a well-known phenomenon.

The dialogue is peppered with the K-word, since that was the usage of the time. If anything, "British" and "English" are used far more pejoratively. There is trekker sympathy for the 1820 settlers, dumped in the wilderness by the British overlords as a buffer between the restive frontiers with the Xhosa and various other tribes. And not a little condescension. The chiefly urban settlers were, after all, totally unsuited and unprepared to meet the challenges imposed by an irresponsible and unrealistic imperial government. The trekkers are shown as ready to face fierce tribal armies in preference to buckling down to colonial rule. They do, however, accept the British abolition of slavery.

Binckes has undertaken to show that the white trailblazers were both lusty and courageous. The emphasis on sexuality is, perhaps, exaggerated, but nevertheless a relief after years of historic solemnity. Battle scenes have been researched and are rendered with bloodthirsty relish.

*Canvas* has a cast of thousands, from Hintsa to Potgieter, Mzilikazi, Pretorius, Harry Smith, D'Urban, Uncle Tom Cobbley and All. They are all treated with modern familiarity instead of historic reverence. It's a disgracefully entertaining read.

**Monkey Business:**
**The Murder of Anni Dewani**
by Mike Nicol (Umuzi)

OPPORTUNISM? Why else rake over the sensational events before M'Lud had decided whether or not to permit accused Shrien Dewani's extradition to South Africa, to stand trial for the murder of his wife Anni? Surely author Mike Nicol is simply penny-snatching?

Not so. Far from being a ho-hum regurgitation of increasingly bizarre headline horrors, Nicol has cunningly created an unputdownable guide for all those Madame Defarges who wish to bone up in anticipation of the *denouement*. It would be unsurprising if the public benches in the courtroom flourished copies of this little yellow book during the trial. If, that is, there is one. At the time of going to press, the British system had not yet delivered judgment on the extradition question.

It remained to be seen whether President Jacob Zuma's recent suspension of Police Commissioner Bheki Cele would get a mention in the judgment. Cele's little linguistic infelicity about a foreign "monkey" arranging a cut-price murder in South Africa has figured in defence argument. And then there is the unhappy business of Western Cape Judge President John Hlophe's entanglements, mentioned abroad as further evidence of dodgy legal ethics in this our land.

Nicol quotes author Jonny Steinberg on the subject.

Steinberg (of *The Number* prison gang documentary fame) states with icy disdain: "If there is anything that brings South Africa's state apparatus to life, it is the scornful gaze of Europe, the gaze that accuses you of being incompetent because you are an African. Whether the accusation is that Africans cannot stage a World Cup or that they cannot solve a murder, the prospect of racial humiliation turns lethargic institutions into models of excellence.

"A modern state machinery that on a normal day slumbers through one Gugulethu murder after another, roars suddenly to life. Its personnel descend on the uninsured world in anger and with purpose."

Nicol marshals his facts deftly, subtly juxtaposing contradictions, absurdities and oddities. Readers are given every opportunity to draw their own conclusions. And Nicol will doubtless make hay with a further book on the outcome of this fascinatingly provocative scandal.

Dewani is accused of facilitating murder. So is South Africa.

**Hotel K**
by Kathryn Bonella (Quercus)

*Hotel K* justifies its billing as *The Shocking Inside Story of Bali's Most Notorious Jail*, but the endless depravity soon provokes Hannah Arends's disdain for the banality of evil.

Readers – other than hopeless masochists and/or demented thrill-seekers – who contemplate trips to Bali after reading *Hotel K* should immediately be sedated and sequestered for their own good.

There is horror in the fact that, metres beyond the filthy walls of this cesspit, tourists are blithely surfing the hours away off palm-fringed beaches. So resistance builds rapidly against the filthy facts of a prison writhing with starving, drug-crazed humanity, and mindless prostitution.

The Indonesian Government must be mightily displeased with Ms Bonella. Tourism is a vital source of income for Bali, but revelations of the numbers of tourists rotting in Hotel K after drug offences arrests is startling. The arbitrariness of their prison sentences reflects the structure of the bribery system. Suffice it so say that many an Aussie (and a few South African) good-timers suffer the wages of naivety. Particularly those who have been sentenced to life imprisonment for relatively unimportant crimes.

The irony is that the prison's economy depends entirely on a brisk drug trade. It's easier to get a fix behind bars than on the streets of this benighted "resort".

So what to do if you land up in Hotel K? Be rich. Millionaire Australian yachtsman Chris Packer, jailed for having unregistered guns aboard, suffered a bit before realising that he need not wither away in durance vile. He cut a deal, as powerful people do.

A cell upgrade could involve a private room with plasma TV, a soft mattress and internet. VIP prisoners like the Balinese king and the governor of Bali were accommodated in a manner befitting their status, cash and influence.

So are the miserably poor. ■

Harold Strachan

# Infinity

NOW I wonder how the Romans got on with their monumental great engineering feats without a denary system of numbers, just that weird lot of Ms, Cs, Ls, Xs, Vs and Is. I mean how *bejasus* do you do multiplication and division of daft numerals written with letters of the alphabet, never mind calculating square roots? Roman maths are entirely without imagination, while maths we call Arabic seem to be nothing but imagination; well, let's say imaginative logic, if that's not a contradiction in terms. And please to remember there was no such name as Arab thousands of years ago when the system evolved somewhere between the Med and Pakistan.

Writing things down in columns of 10, as we learned to do in primary school because we have 10 fingers, and until the written maths came along, we used to count by sticking them one by one in the air, that takes a bit of imagination for a start, hey? But when there are no hundreds, tens or units in a particular column and you want to indicate the fact, to put forefinger and thumb together to show there's nothing in that hole and then declare this configuration to be the number Zero, nought, boggerol, that's pure fantasy. Anathema to a Roman, who would ask in Jupiter's name how you can have a name for something that doesn't exist? Well, it's Zero that gave us the 10 numbers of the system. Fact is, there are only nine. And none of them can be a minus number. It's absurd to say there is a minus number of apples on the table. But we work with negative numbers all right because we have to get on with the important matter of Life and can't waste time pondering the imponderables of it.

*The most self-hating of the lot was a Boer name of Bram Fischer*

Now we come to the real heavies. By the time Pythagoras and *chabbas* came on the scene they had some really ingenious stuff at their service. Where do parallel lines meet? Why, at infinity, of course. But there's not really any thing, place or time called Infinity, man, you can go on pondering forever, round and round, but we've used the round symbol for Zero so we'll have another, we'll use the figure 8 which goes round and round in opposite directions, left and right, to the past and the future, forever. And we'll lay it on its side ∞ so we don't mix it up with the number 8, and thus we still use it in our maths.

But the trouble is there's no Forever. Before the Big Bang there was no time and no space, and after the Big Crunch there will once again be none. We mere youman beans evolved in a perceived universe of three dimensions plus time. We aren't and never will be equipped to grasp the weirdities of it all, so let's give them a name, use them without understanding and get on with the urgencies of existence.

It's easily done. Zionist Israelis are able to perceive a creature called a Self-hating Jew, whom they don't define because definition gets in the way of… of… well, everything. Looking about, we find no self-hating Inuits or Caucasians or Aboriginals, only Jews. If Inuits, Caucasians or Abboes dislike the behaviour of the Zionist State of Israel, you can call them antisemitic to dodge the issue. But you can't logically call a Jew antisemitic, so you integrate this self-hating one into your system with a label, but without definition for inquisitive people, while you get on with the sanctimonious colonising of Palestine.

But hang on! I remember when we had Self-hating Afrikaners in our own land. Though, well I mean, we shouldn't refer to them as Afrikaners any more, since most Afrikaners have turned out to be unwhite, so let's go to the original gutsy name they were designated, Self-hating Boere. And the most self-hating of the lot was a Boer name of Bram Fischer: traitor, communist, *mislike bliksem*. See him sitting here hating himself in his solitary cell in the *Politieke Witmens Gevangenis* in Pretoria for the rest of his life, which isn't going to be too long, don't worry, because he's got prostate cancer.

And lo! in this very same *politieke boep*, also for life, is another *mislike* self-hating *bliksem* name of Goldberg, Dennis, only he's an S-H Jew who dislikes Zionism and says so, openly, as well as saying openly he dislikes *Witmens* Democracy. Now he says a lot of other things openly to the superintendent of this *boep*, things not allowed on another prisoner's behalf, like: *Meneer, dis onregverdig*, it is unjust, that Fischer is not in intensive care, nor even in a hospital, he can't look after himself any more, he can't find relief from his pain, he can't get up to drink water in the dark, he can't make his way to the lavatory pan. At least let me move into his cell so I can help him at night. Well no, regulations disallow it, because of sodomy, murder etc.

But Goldberg doesn't let go, whilst top post of *Gevangenissuperintendentbeampte* is a soft job, and Goldberg eventually over the months wears down the Super and moves in. And this is what people get for hating themselves: wiping somebody's desperately sweating body with a dry cloth in a solitary prison cell in the dark in the middle of the night in an icy concrete cave on the Transvaal highveld. Nursing a dying man, infinitely. A Self-hating Boer and a Self-hating Jew, what a combination. You asked for it, bastards. ■

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## PERSONAL

**Arlene** Thank you for your love and care for forty five years. Eddie.
**Isabellie** I hope you enjoyed London & Paris as much as I. Pooh.
**Noted** Gaddafi's demise today, should have been Bryce Lawrence. AMS.
**Bruce Taylor** Happy Birthday Oupa from Heather and Benjamino.

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