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152 JUNE 2012

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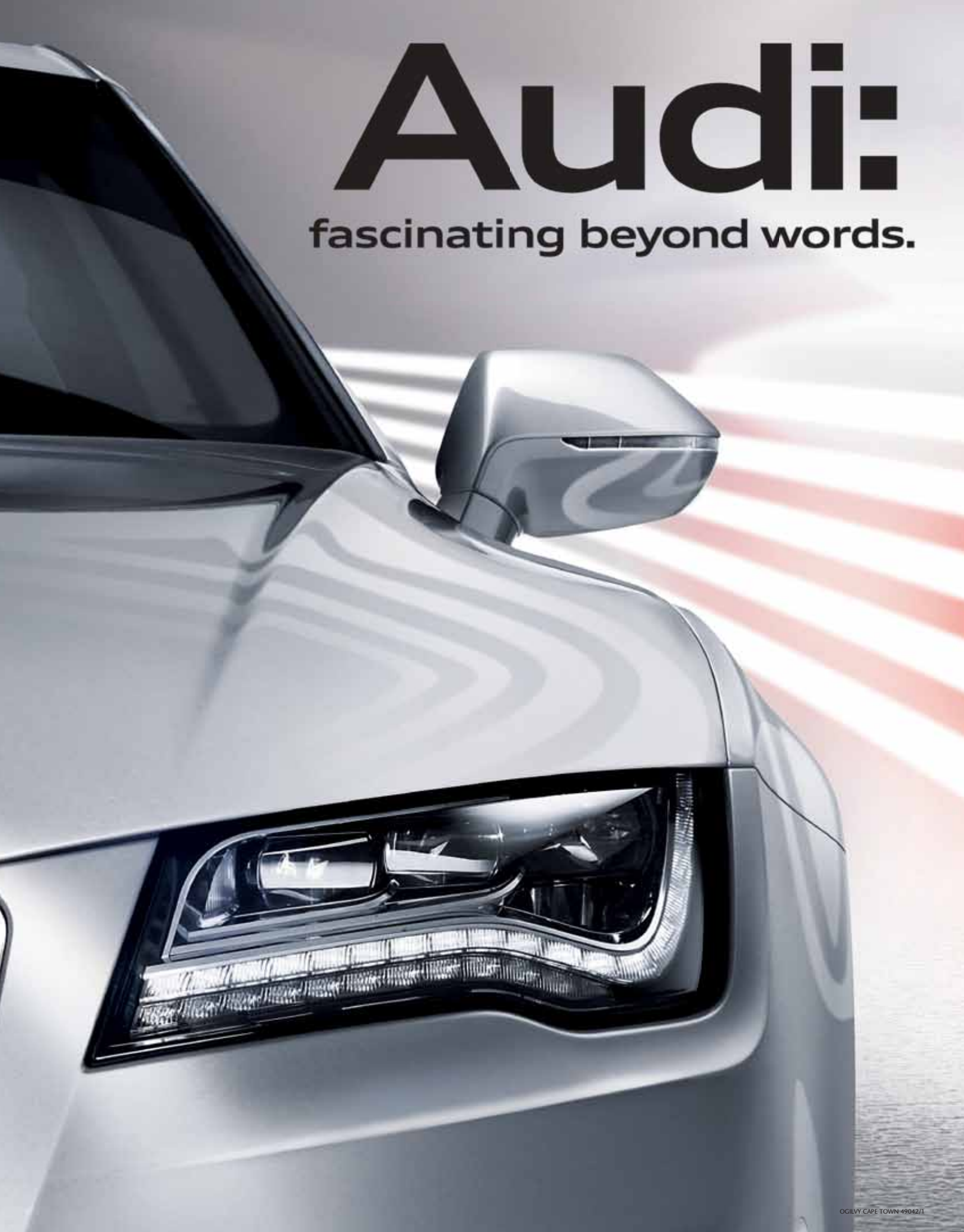
BY GRAHAM BECK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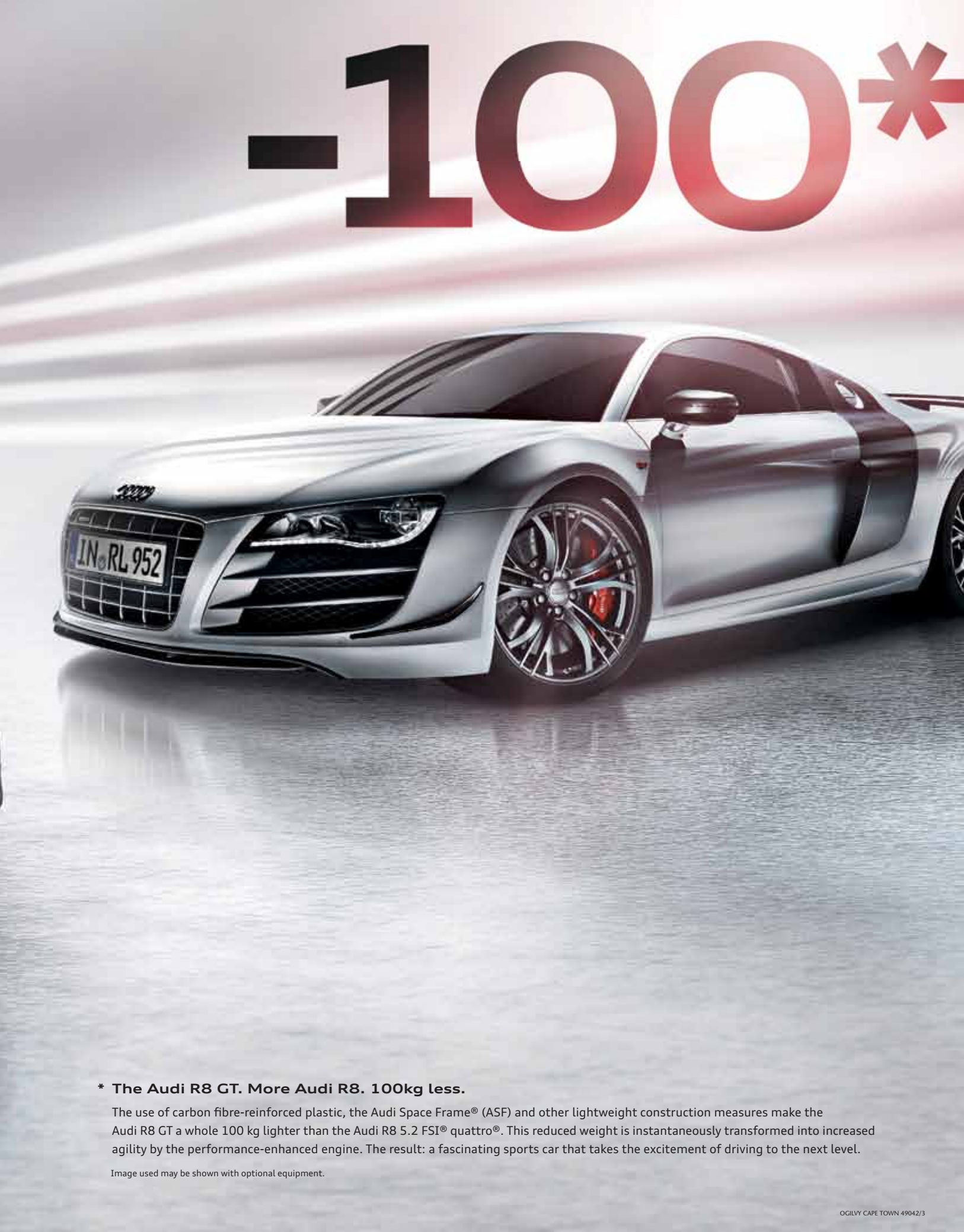

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8/4*

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Audi
Vorsprung durch Technik
S8
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noseweek

JUNE 2012 ISSUE152

Press freedom gets legal lift

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Suitable spot

THE WHITE River Concerned Citizens Committee supports the proposed Waterval, White River, site for the new Mpumalanga University campus.

Although we do not for one moment, approve the manner in which this land was acquired, we acknowledge it is now state-owned and should thus be used to benefit the greater White River community. The campus would enhance the town's reputation for schools of academic excellence.

The site is in easy commuting distance of dormitory areas from Hazyview to Kyanamazane and Kabokweni and it is close to many feeder schools serving former homeland communities, a proximity that would trigger a continuous stimulating interaction between the university and the schools.

Naturally the planned upgrade of the White River KMI Airport road would have to be implemented and the financing of other services coordinated with the municipality – not insurmountable obstacles for such a prestige institution.

Paul Clark
Chairman, White River Concerned Citizens

See campus row, page 40

Two for the price

AFTER struggling to find a copy of *nose*150, why do I now get two for the price of one – the missing issue packaged with the May issue I've just bought?

I'm surprised *nose*151 contains neither explanation nor apology. Did a last-minute threat of legal action stop the presses?

J C Mould,
ex MD, Sunday Times

We appreciate your concern. See page 14. – Ed.

Lurking dangers

WHILST enjoying the cover cartoon of your May edition, I thought something was missing – till it struck me: somebody so clinging to his traditional beliefs and values (multiple wives, ritual slaughters, leopard-skin adornment etc) would also be scared of the Tokoloshe and his bed would have been raised, standing on bricks, empty paint tins, etc.

Johan du Preez
Robertson

No, on designer-branded, gold-plated bricks. – Ed.

Chasing windmills

WE REFER to a letter written by "Donald Quixote" regarding the new energy-saving building regulations.

The National Regulator of Compulsory Standards (NRCS) proposed the wording of the regulation to the Minister of Trade and Industry. The regulations were duly published on 9 September 2011 and became effective two months later.

The NRCS consulted with relevant government departments, CSIR, Agrément, SAIA, Construction Industry Development Board, SABS, industry stakeholders and prominent consulting engineers prior to publication of the regulations for public comment.

Comments received were duly considered. SABS followed the same procedures in its drafting and publishing of SANS I0400:XA and SANS 204.

To state that one individual has influenced decisions in the above process to further industry interest is ridiculous and amounts to chasing windmills.

Hans Schefferlie
Executive Director , Association of Architectural Aluminium Manufacturers of SA

Rose-tinted rules

DURING the discussion at the SA Glass and Glazing Association meeting, the presenter said profits and turnover would increase due to the new energy-saving building regulations – which I found a little mercenary, considering our population demographics (see *nose*151).

But it is obvious that RDP, low-cost, sub-economic and economic housing will not proceed in terms of the new regulations reported on by your correspondent; because of cost criteria: "when the penny finally drops" the government will simply ignore its own regulations.

The government does not have the mental capacity to foresee the implications of its promulgations, programmes and policies. (E-tolling is a typical example.) The fact is, we have two distinct worlds in South Africa: a Third World which simply cannot comply and a First World that aspires to comply.

Our regulations must be adapted to suit both realities – not only one of these vastly different societies.

People protesting about sewage in front of their shacks couldn't care less about double glazing.

Intentions might have been good, but the process is questionable.

Barry Gould,
Capco, Durban

Packing for Mangaung

YOUR editorial "Drowning in a tsunami of corruption" (*nose*151) reads well to any non-ANC voter – not the ones who need to take note and who have the power to turn into reality your "first hope that Mangaung will see Zuma and his corrupt cohorts packing".

I suspect most of your readers are not ANC supporters, so how do you get the message to those who continue to support the ANC and who live in the hope of a miracle that will never be? That's the challenge we face in South Africa. On that note, well done Dr Siva Pillay.

Max Leipold
Hermanus

Right of way?

IF THE toll-road interdict really holds water, why is Sanral still selling etags? I thought the interdict included a whole review of the collection model.

Sounds as though it's yet

another smokescreen and it will be business as usual after the six-month period. Either that, or Sanral is still the arrogant company that it always has been.

William Cooper
Sandton

Saving Siva

I HAVE serious concerns about the continued health of Dr Siva Pillay (*nose*151) – not only is he doing an excellent job but he is exposing the poor (crooked) cadres who have been in place in the Eastern Cape for too long.

As a taxpayer, I would be more than happy to see funds channelled into serious security for Dr Pillay, rather than seeing good money thrown after bad for our "spooked" president and his cronies.

John Binns
Cape Town

Landmark case

THE HISTORIC houses of Port Elizabeth's Donkin Row, a renowned national monument and landmark for tourists, have now been so altered that they will soon no longer be distinctive or original.

The original lattice and distinctive wood balconies, many still with original wood from the 1860s, are being sent to the scrap heap. The service alley behind the houses, clearly representing the history of the built environment, is no more; the backs of the houses, with their kitchen chimneys, structural and yard walls and windows are gone, to be replaced with "modernised" replicas of the front facades!

All of this is illegal.

Each house had unique and subtle differences which the previous owner, Dr Nic Woolfe, lovingly and painstakingly researched and retained for future generations. Now this restoration work, completed just 10 years before the present owner, Irish developer and property speculator Ken Denton, bought in 1998, is almost totally destroyed.

Where does the newly reformed local heritage authority (ECPHRA) fit in and when and how will they deal with this flagrant disregard for the National Heritage Resources Act of 1999?

This should be a landmark case worthy of the most drastic and ruthless legal action by ECPHRA: enforced reinstatement of these grade-two listed buildings within defined timeframes – or else expropriation.

The South Africa Heritage Resources Agency (SAHRA) also needs to back the local authority and empower the municipality to stop errant property developers.

Number 55 Donkin Street was well renovated in 2009, and then "redone" this year. Clearly it is cheaper to fix them all in a "simpler style". This would not measure up to any acceptable heritage standard for any self-respecting country.

Donkin Street terrace before renovation

Other local developers are taking full advantage of the lack of law enforcement by demolishing Victorian and Edwardian houses or at least think they are entitled to do so very soon.

Various houses, such as houses in Walmer and Central: Numbers 12/14/16 Cape Road, the oldest house in PE (Jonathan Board's Farmhome – 1824); Girdlestone Road (South End); old settler homes in Theescombe and Bushy Park, to name but a few, are in imminent danger of demolition or collapse. Others are already gone, among these, graded buildings and national monuments.

"Colonial" built heritage is merely the face of a far greater problem, the destruction of all of our cultures. The destruction of heritage objects and structures across the cultural divide means destruction of the points of reference which define who we are and the stories of our different pasts.

I must add that there are responsible developers, who have seen the value of their properties and have taken the moral high ground by respecting the laws of our land. Through this, they acknowledge the custodianship of the history of our city for us. We salute you!

Estate agents, the local building inspectorate, local government, members of the public and the police service all need to be informed and remain vigilant – as they have a role in making sure the law is enforced – and prevent this destruction for monetary gain.

Andrew Reed
Port Elizabeth

noseweek

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Dispatches from the Front

EIGHTEEN years into South Africa's democracy, the Bill of Rights, which was to have heralded a new era of accountability and justification for the country, has yet to have any impact on how our public institutions conduct themselves. Our story on page 23 about how the affairs of a company in liquidation were handled by the Master's office in Cape Town – and the legal and other professions whose work is inextricably linked to it, demonstrates the point. They appear to have remained impervious to the demands of justice and public opinion.

There is no reason to believe that matters are any better in similar institutions in other parts of the country.

Perhaps the liquidators and trustees, the judicial managers, executors, attorneys, accountants, trust companies and, yes, auctioneers – all those entrusted with looking after the financial affairs and interests of folk less capable – ask themselves: Why comply with the requirements of the Bill of Rights when, in the face of public opinion and clear evidence of outrageous greed and dishonesty, Masters of the High Court continue year after year to appoint the likes of Enver Motala as trustees and liquidators of insolvent estates under the guise of transformation?

But this year, it seems, the growing outrage of a *gatvol* public has reached a level where it can no longer be ignored. A brave Pretoria Master has finally got Motala thrown off the roll of liquidators. The professional career of attorney-curator Dines Gihwala hangs by a thread. Auction Alliance is a shadow of its former self. Many big time lawyers are no longer sleeping that well at night.

Similar developments are taking place on other fronts: decent citizens have gone to court to get the Arms Deal investigation reopened and now, also to get a corrupt police chief fired – because a corrupt government won't do what an honest one would.

For too long we've swallowed the argument that our president was probably no more on the take from arms dealers than were the British, French and German presidents at the time. True. But "we are no worse" is not an argument.

The whole point of our struggle was that we wanted to be able to herald a new era for our country – and for the world.

The real struggle for the dignity of *all* our people has only just begun. And *Noseweek* intends being amongst the troops on the frontline.

☆☆☆

BUT GETTING to the front, recent experience has shown, is not always that easy. Our April edition failed to reach most of Gauteng, those who live there may have noticed. The entire consignment for the region was loaded on a truck in Cape Town but, mysteriously, did not arrive in Joburg – and has yet to be traced or accounted for. Noseweek's distributors, Media24 subsidiary On The Dot, only discovered a week later that *Noseweek* was missing, when regular readers started complaining – too late to reprint and redistribute. As a gesture of goodwill, we reprinted the April issue and packaged them with those copies of the May issue destined for Johannesburg. We hope you enjoyed the read, even if it was late.

☆☆☆

STOP PRESS: Ominous news for shareholders of JSE-listed Resilient has just been received from the Limpopo Municipality of Burgersfort: in a letter from the council's attorneys, dated 7 May, the company was informed of the final decision by the municipality to reject the company's plans for its much-promoted R1-billion-plus shopping mall development on the outskirts of the town.

The extent of the omissions and malpractice unearthed in the course of an expert investigation commissioned by the municipality was such that the town council could not possibly approve the plans submitted by Resilient Properties (Pty) Ltd.

Just in summary, they fill an eight-page letter which we might have described as unbelievably shocking, were it not that *Noseweek* readers will find it easy to believe, already knowing as they do about the dirty secret history of the company and some of its directors and shareholders (see *noses*136,137,138,143,&145).

Several of the grounds for the municipality's refusal are so fundamental that it is unlikely that such a development will ever be approved on the site – or, in any event, be financially viable.

Noseweek will have a much closer look at all that went wrong there, in our next issue. In the meantime, we thought investors would appreciate an early cautionary warning.

The Editor

Absa won't laugh it off

"HAS ABSA triggered the Streisand Effect?", asks former Shuttleworth Foundation IP man Andrew Rens on his blogsite (www.aliquidnovi.org).

With a bit of help from Rens, they have. He reports that Absa is threatening to take the South African trade union Solidarity to court for its reworking of the Absa slogan "Today, tomorrow, together" as "Today, tomorrow, goodbye", and that the offending parody appears on a website run by the union called www.stopabsa.co.za to protest retrenchments of staff by Absa.

Like the actress Barbra Streisand who many years ago sought a court order to prevent a newspaper publishing a picture of her seaside mansion – in the process, making absolutely certain that the whole world got to hear about it – attorneys representing Absa reportedly sent a letter to Solidarity threatening to obtain a court order to force Solidarity to stop using the slogan and shut down its website.

What could have prompted Absa to be so foolish? Are they simply being brand bullies? Can't be: in 2004 Laugh it Off produced an Absa parody T-shirt, saying, "Papsak: Getting Drunk Today. Tomorrow. Whenever", on which the Absa logo had been manipulated to reflect a drunk person grasping for the toilet before hurling. That, for some reason, didn't offend Absa.

Mr Nose suspects that Absa's threat to Solidarity merely confirms the old adage: Truth hurts.

StEnT

Old debts, new tricks

NOSEWEEK has written in great detail about the big debt-collecting firms. VVM, MBD – any old acronym that disguises the fact that these are basically whities operating in a world where you need to be dark if you want to get the work (see *noses*124, 128 and 149 on VVM, and *noses*149, 150 and 151 on MBD). There's growing unhappiness about how these firms – which seem to buy or in some other way take over the debt books of large corporations, municipalities and parastatal organisations – pursue "debts" mercilessly, negligently or even deliberately overlooking rather important issues like the fact that the debt may have prescribed, or that the person being hounded is not the same person who incurred the liability.

The other big complaint is that, once these firms start hounding you, it's impossible to speak to anyone who doesn't appear to have had a lobotomy. You never get beyond a call centre that's operated by poorly-trained staff.

VVM (Van de Venter Mojapelo, if you're wondering) has come to *Noseweek's* attention again. This time they sent a reader a letter about a Telkom account. It's the usual illiterate rubbish, but with a little twist.

"Despite our numerous efforts to obtain payment from you, you have neglected and/or refused to make any effort to settle your arrears in respect of this account. This has resulted in our client now proceeding with further action. Having regard to the above, further action and cost can be avoided if you make a minimum payment of R100.00 on or before 30 April 2012.

"Upon receipt of the minimum payment you will be automatically entered into a draw where you will stand a chance of having the full outstanding balance of your account settled/paid up courtesy of VVM Inc. The draw will take place on the 1st May 2012. Should you accept this offer, this may allow you to start the month of May with reduced debt."

Two striking things about this latest act of desperation: first, it looked like a fairly blatant attempt to trick the supposed debtor into interrupting the prescription period (the period of time after which a debt is automatically written off and is unenforceable by law). Section 14 of the Prescription Act says that the prescription period is interrupted if there is any express or tacit acknowledgment of liability.

Presumably quite a few people will feel so intimidated by these threats that they will gladly pay a small amount, hoping the matter will go away – in the process, unwittingly acknowledging the debt, thereby destroying a defence they may have had.

Noseweek also suspects that this offer might well fall within the definition of a promotional competition under the Consumer Protection Act which imposes all sorts of requirements and restrictions relating to, *inter alia*, the payment of a consideration for entry to the competition, the publication and accessibility of the full rules and the announcement of winners.

Asked to comment on these two matters, VVM's response came from chief operating officer Lior Woznica. It avoided the issues completely, of course.

"Our campaign is to encourage debtors to settle their accounts. Incentives for settlement, whether by discount or otherwise, are common practice in any creditor/debtor relationship. I am sure that you have taken advantage of early settlement discounts and/or offers, whether personally or otherwise!

"As you would be well aware, creditors are entitled to collect on their outstanding accounts, as would debtors be entitled to raise the defence of prescription."

It's no answer of course. A competition is a far cry from a discount. Perhaps the National Consumer Commission will take a look at this.

And perhaps the Law Society will finally stop sitting on its arse (as reported in *nose*124, it did very little about a complaint from a member of the public about VVM) since lawyers themselves are starting to make a noise about these firms who like to operate as ordinary businesses most of the time, but still like to be attorneys when it suits them.

The April issue of the attorneys' magazine, *De Rebus*, carried a letter from a Durban lawyer, Alison Wixley, headed "Bullying Tactics – VVM Inc". In it Wixley sets out in detail exactly how she had been harassed by VVM.

She ended her letter saying, "Behaviour like this is a blight on the attorneys' profession, and sadly these are the attorneys to whom a large number of the public are exposed. It does nothing for the image of attorneys and should not be tolerated."

One Krause Botha of VVM sent a testy response that concentrated on the minutiae, disputing some of the events as related by Wixley. The bigger issues were, of course, ignored. N

Rubbing salt into wounds

RAMPANT corruption in the Eastern Cape Health Department is not the only problem faced by its much acclaimed head, Dr Siva Pillay (*nose*151). Equally problematic are the politicians who promise voters a utopian health service while simultaneously cutting Pillay's over-committed budget by 20%.

Earlier this year, in an interview with *The Herald*, Eastern Cape Health MEC, Sicelo Gqobana, described the province's health department as "lazy, out of touch, obsessed with planning and unable to make even the smallest changes that would improve the delivery of basic healthcare".

The MEC has negligence lawsuits calculated to involve close to R100 million hanging over his department, but good news came early in the year when protracted negotiations with the national Department of Health led to the busy Dora Nginza Hospital being allowed to retain its tertiary status. Elsewhere in the province, hospital visits by Gqobana revealed cockroach infestations, malfunctioning equipment, procurement problems, dire doctor shortages and service providers not being paid on time.

Then the Auditor-General filed a damning report indicating, on paper at least, a 44% shortage of doctors, nurses and other medical professionals in the health department and that the province would need an extra R9 billlion to fill these vacancies – triple its budget.

The health department then suffered a R424m cut to its latest annual budget – preceded by a stern Treasury order for drastic expenses cuts and a severe tightening of personnel costs (so much for filling vacant posts). It concluded by warning that "ignoring these measures can place the province in an untenable position". Bankruptcy, for short.

Soon afterwards, the crack surgical unit at PE's Livingstone Hospital, set up with fanfare to respond to any emergency that the 2010 World Cup could present, was closed after an angry email exchange between the unit's head, renowned surgeon Dr Sats Pillay, and Livingstone Hospital management over staffing. By then the provincial health department had also taken over the emergency room at Dora Nginza Hospital after a surprise visit by (Siva) Pillay found not a single doctor on duty.

In response to his staffing crisis, Dr Sats Pillay created a "Surgeon on Call Unit" that, he declared, will NOT treat stab wounds, chest wounds or drain abscesses and will not attend to the resuscitation of patients or accept references from "interns" or take medico-legal responsibility for patients, leaving it to the hospital's understaffed casualty department to carry out emergency surgery.

Sats Pillay's "Acute Surgical Unit" was established in 2010 shortly before the World Cup – described then by the Health Department as "a breakthrough concept leading to quicker response times, saved lives and a powerful tool to reduce hospital overcrowding".

Earlier in May, 29 doctors were removed from the duty roster at Port Elizabeth's clinics after the Health Department failed to pay their salaries. This came as just another consequence of a much-bungled takeover of Port Elizabeth's clinics by the provincial health department – a takeover since abandoned by Gqobana, who said his department had neither money nor the staff to handle the city's clinics.

– Estelle Ellis

Elephants in every room

Seen but not herd: Kotze clan gathering

By **Estelle Ellis**

AFTER A year of silence, serial fraudster, rogue building contractor and infamous house squatter, St Michael Pierre Kotze, (*noses*122,136) has struck again – this time in Port Elizabeth – where he has resurfaced with a repeat of his elaborate property "buying" scheme, followed by the usual protracted legal battles to get him evicted.

When Port Elizabeth teacher Denise Halbert sold her house in Ralston Road to Zoloblox (Pty) Ltd in November last year, she had no inkling of the character that lurked behind the shelf company – nor did she think to enquire. She accepted the offer from Zoloblox on condition that a deposit of R10,000 was paid when the sale agreement was signed and another payment of R400,000 was made before December 2011. She also instructed Johannesburg conveyancing attorneys, Snymans Inc, not to allow the house to be occupied before the R10,000 deposit was paid.

The balance of the purchase price was to be paid on transfer.

Signing for Zoloblox was Carline Landman who, it transpires, is Kotze's sister-in-law.

Not surprisingly, no payments were made as stipulated – or at all. But in December, Snymans Inc, who quite clearly also did not know who they were dealing with, did only a fleeting check of payments received in their trust account – a colossal and a very expensive mistake – before handing Kotze the keys to the house. It turned out that the R10,000 payment they had mistakenly thought was from him, had in fact come from another client.

By the end of January it had become patently clear to Halbert that the sale was not going to go through. She cancelled the deal.

It was only when attorney Morne Struwig became involved that they discovered who it was they were up against: a serial fraudster who not only had a long list of previous convictions, but who had been involved in drawn-out eviction battles in both the Western Cape High Court and the High Court, Pietermaritzburg.

By now Kotze is a dab hand at court procedure and knows a thing or two about occupation rights. He has had several judgments given against him for faulty building work, plus more than the odd skirmish in the criminal division. (Kotze has been convicted of 15 charges, including theft, assault and contravening the Insolvency Act [the first in 1982] and has served a three-year prison sentence for fraud. On his release from prison he changed his name to St Michael Pierre Kotze.)

In both previous eviction cases, one in Gordon's Bay in the Western Cape, the other in Mtunzini in KwaZulu-Natal, he followed the same scheme to snag unwitting home-sellers.

Retired Scottish airline engineer Dave Cater faced financial ruin and four years of arduous legal battles with Kotze and his brother JP before eventually regaining possession of his farm in 2010. In that case, *Noseweek* readers may recall, Kotze gained early occupation of the property on the pretext that he wanted to do "some tiling work", and used a forged bond document, obtained by threatening an employee of Bond Choice, to show that he had the necessary funding in place for the transaction.

Cater received not a single payment. The eviction saga that followed continued for years, culminating in Kotze's brother JP arriving at court claiming that he had, in the meantime, rented the property from his brother, had paid [Kotze] the rent – and that he now had the right to stay in the house.

It took another few months to get

brother JP evicted, but only after a violent altercation with a security guard and with the help of armed neighbours.

St Michael had meanwhile moved on to Mtunzini on the KwaZulu-Natal North Coast where he "bought" the house of local pharmacist Etienne Vermaak for R2 million.

Kotze said he would have the money in six months' time but wanted to move in right away "to do some repairs". Vermaak agreed, on condition that Kotze paid a non-refundable deposit of R100,000 and rent of R7,500 per month. The deposit cheque never went through – and he never paid the rent. He also refused to move out.

In January last year Vermaak finally obtained an eviction order against Kotze. Which explains his move to Port Elizabeth and the current sadnesses of Halbert.

On discovering that Kotze had made none of the payments agreed upon in the deed of sale, Halbert gave Kotze notice to vacate her house. He was unmoved.

Instead, in the middle of January he wrote to tell her he needed some things in the house fixed. The letter also contained barely concealed threats that he would report her to the Department of Education for the abuse of her housing allowance: "Also find a copy of the Terms and Conditions of Employment of Educators hereby which is for your reading. Look at paragraph 68 to 87, I'm sure you will find it interesting, I did.

"I will not do anything but I do suggest that we meet at your earliest convenience so that we can resolve all the outstanding issues. You want to sell the house, and we want to buy it. So let us meet and see how we can find a way forward."

By then he had closed off the back part of the house and brought in two huge carved wooden elephants to flank the front door. (Kotze's obsession with elephants is well-known: he renamed Cater's property Elephant's Rest.)

Halbert's lawyers have learned a thing or two from their reading of *Noseweek*: to prevent brother JP – or some other relative – making an entrance from the wings should the court rule against St Michael, they have sought an elaborate eviction order that includes "all the occupiers of the home".

They also know, in the light of history, that the battle has just begun.

Judge's ruling is real downer for tax expert

High times: Castle Lester in Kenton (above) and (below) Matthew Lester

RHODES University Business School Professor Matthew Lester has been ordered to demolish his R7-million dune-top mansion in Kenton-on-Sea, or the Ndlambe Municipality will do it for him, the *Daily Dispatch* has reported.

A mammoth court case spanning almost a decade (see *noses* 59,79,95,117&120), brought by the municipality against Lester over his "illegal structure" – which locals have described as "a cross between a McDondalds and an aircraft hangar" – has culminated in the Eastern Cape High Court in Grahamstown giving Lester 180 days to demolish his house.

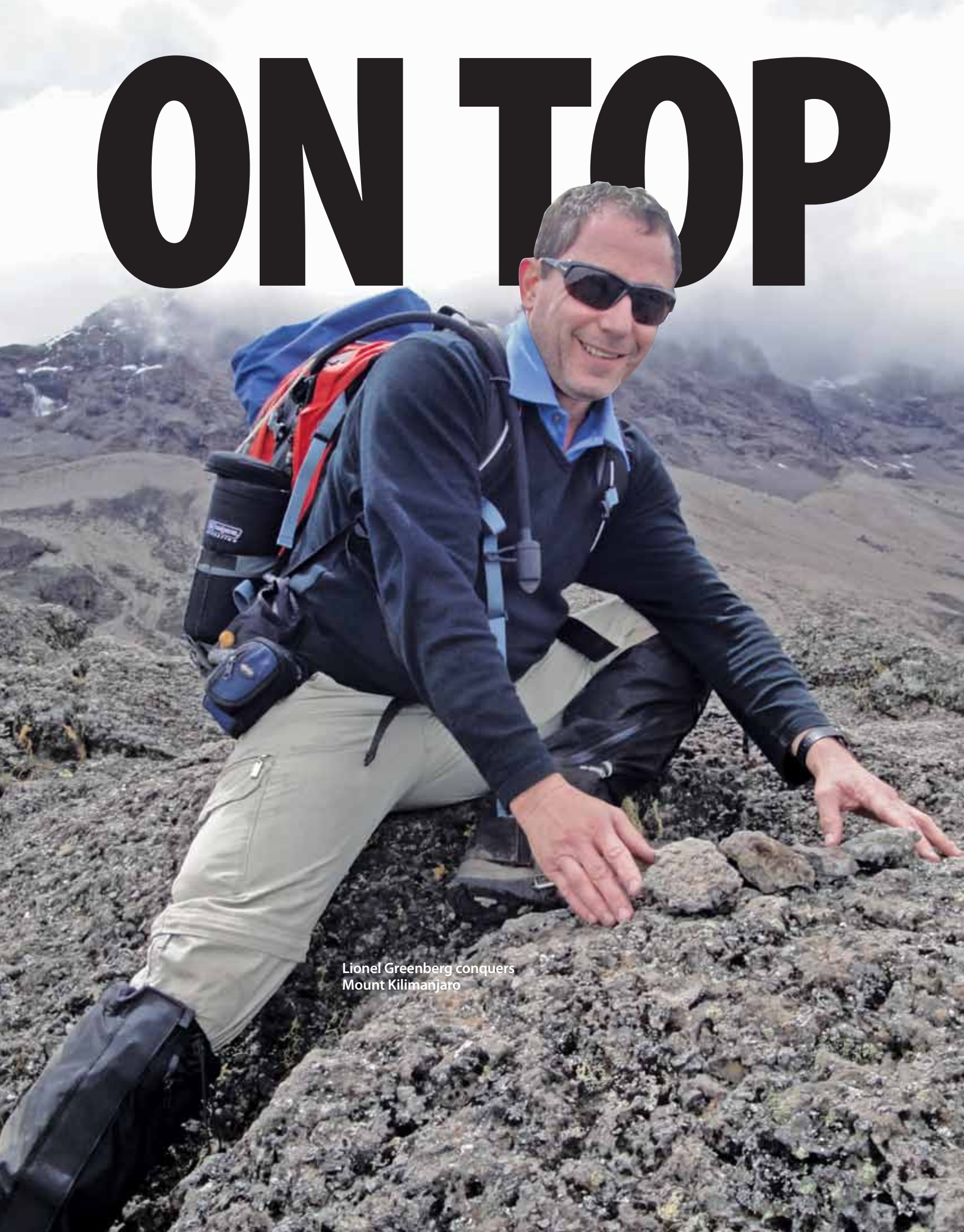
The Ndlambe Municipality had argued that the mansion was built without proper approval, while in separate legal battles, Lester's neighbours argued that the multi-storey structure was too wide, too high, and crossed building lines.

In his judgment, Judge Sytze Alkema said Lester could apply to the court for more time to undertake the demolition, provided he had good reason.

The report notes that the judgment is a boost for James Haslam, whose sea views were obscured when Lester's tall mansion was built in the early 2000s.

Explaining his decision, Judge Alkema said the financial loss to Lester as a result of the demolition order would most likely be devastating. "On the other hand, if a demolition order is not made, I will be condoning the continued use of a dwelling found to be unlawfully erected".

ON TOP



Lionel Greenberg conquers Mount Kilimanjaro

Lionel Greenberg is the ultimate comeback-man. An angry ex-wife had him arrested (unlawfully) 15 times in seven years – but he's sued the cops and won fat sums in damages. The war isn't over yet ... three cases are pending

LIONEL Greenberg has clearly taken an old bit of Yiddish wisdom to heart: When shit keeps coming your way, don't turn your back on it; open your arms to receive it, then ask yourself: who can I sell this fertilizer to?

At the instigation of his angry ex-wife, various policemen with a deficient knowledge of the law arrested and detained him – unlawfully – no fewer than seven times over a seven-year period. The first in 2000, the last in 2007. This resulted in Lionel's spending a total of 42 days and nights in prison or police cells, generally over weekends. (The trick was to get him arrested on a Friday afternoon, so that he could only get help and negotiate his release come Monday morning. On one such occasion he barely managed to secure his release on a Saturday in time to attend his son's barmitzvah.)

Did he collapse in a heap under the weight of all this shit? No. He set out to conquer Kilimanjaro instead. Then, on his return (with the required photograph to prove he'd made it to the summit) he set about the more serious business of suing the police who'd arrested him, all on bad warrants or without reasonable cause, for damages. And their boss, the Minister, naturally. One case after the other.

By now Greenberg is four cases down (he won all four), with another three to go. (He's confident he will win all of those too.) But he's in no rush.

The State Attorney went to court to try to get two of them disqualified on the grounds that they were out of time, but Greenberg took him on, and, against what we might have presumed to be serious odds, the South Gauteng High Court (in a reported judgment by Acting Judge Reenen Potgieter) found in Greenberg's favour, and the cases will now proceed, the first on 29 November.

It all began in June 2000, when Greenberg was arrested for the first time by a Sergeant Du Preez and detained at Edenvale Police Station.

Greenberg's claim for damages is set for trial later this year.

In July 2000 he was arrested for the second time – this time by Police Inspector Margaret Gouws, also from Edenvale – and held overnight. Greenberg managed to secure his release the next morning, just in time to attend his son's barmitzvah. Lionel sued for unlawful arrest in the high court in Johannesburg, won, and was awarded R30,000 in damages, plus costs, by Judge R Mokgoatlheng.

In August it was Police Inspector Kumalo's turn to arrest him, on a charge of having stolen his brother-in-law's cellphone. The criminal case against him was subsequently dismissed by the court without his having to present a defence, because the State's case was so deficient.

"A trumped-up charge" Greenberg calls it. He's suing the National Prosecuting Authority (NPA) for R40,000 plus legal fees of R26,000. The case is still pending.

In September 2000 Inspector Gouws was back on the job. She and the Minister of Police got sued for that and Judge Franklin ordered them to pay Greenberg R75,000 plus costs. The Minister appealed – and lost the appeal.

Greenberg was arrested twice in February 2001. For the first arrest and subsequent court appearance he is suing prosecutor Minka Erasmus for R75,000, in a case which is expected to go to trial only next year.

Later that month he was arrested again – this time they wanted to get him committed to Sterkfontein Psychiatric Hospital for psychological observation. They failed to make a case.

"That's how irrationally desperate they were to nail me," he says.

By now the Edenvale police had lost their taste for the Greenberg saga – but in April 2001, poor Sgt De Beer of


Lionel Greenberg

Johannesburg Central was persuaded to "arrest the bastard" yet again.

Greenberg sued, and this time Judge Masipa heard the case – and awarded him R115,000, plus costs (which totalled another R200,000).

In September he was arrested together with his 72-year-old mother for allegedly having fraudulently alienated assets that had already been attached by a creditor.

(For the next six years the NPA tried to assemble a case and eventually in 2008 the Specialised Commercial Crimes Unit in Pretoria decided to abandon ship. For that, Greenberg is suing the NPA in the high court Pretoria for R298,000 for malicious prosecution and wasted legal costs.)

The year 2001 ended with Greenberg being declared bankrupt.

An arrest in 2003 culminated in Greenberg's again suing the NPA for malicious prosecution, but when the trial dragged on for six days and looked as though it would continue for another 20, both sides agreed to call it a day. Each paid their own costs.

Maybe for old time's sake, in May 2007 Greenberg was arrested for allegedly contravening the Domestic Violence Act – and spent a day and a night in Boksburg Prison. This time he sued in the Germiston Magistrate's Court and was awarded R50,000 for unlawful arrest and a further R50,000 for malicious prosecution.

While we're on a roll, why not sue the Minister of Correctional Services for contravening the Tobacco Products Control Act for allowing smoking in prisons that have no designated smoking areas as required by the Act?

Yes. He's done that too.

By now, being a pretty smart guy, he has a fair amount of experience, to the point where you might call it expertise, in how the legal system works when it comes to charges under the Domestic Violence Act, arrests and detention.

And, having spent so much time in police charge offices, detention cells and


"Do you have this in a cat?"

prisons, he's got to meet a good number of victims of the same unhappy system eager to benefit from his experience.

Which is when shit turns to fertilizer. Greenberg has spent most of his life in business, manufacturing music and software CDs. He still does. But a major sideline has developed in providing advice to all those unfortunates who end up being unnecessarily or unlawfully arrested or detained because so many policemen and prosecutors don't know their jobs.

Greenberg now runs a website called *unlawfularrest.co.za* where you can find out all about the subject – and where to find him for advice.

He is no longer an insolvent and last year, at the age of 52, he registered as a student at Unisa to study for an LLB degree, a project he takes very seriously.

When Noseweek interviewed him for this article, he was taking time out from all his litigation to study for his mid-year exams, which he hopes will see all his first-year courses behind him.

"With no money for lawyers, I've had to read up so much law to defend myself, that I reckoned I might as well go on and get myself a law degree," he laughs. He says it could take him five years.

PILLAGE in the fine print

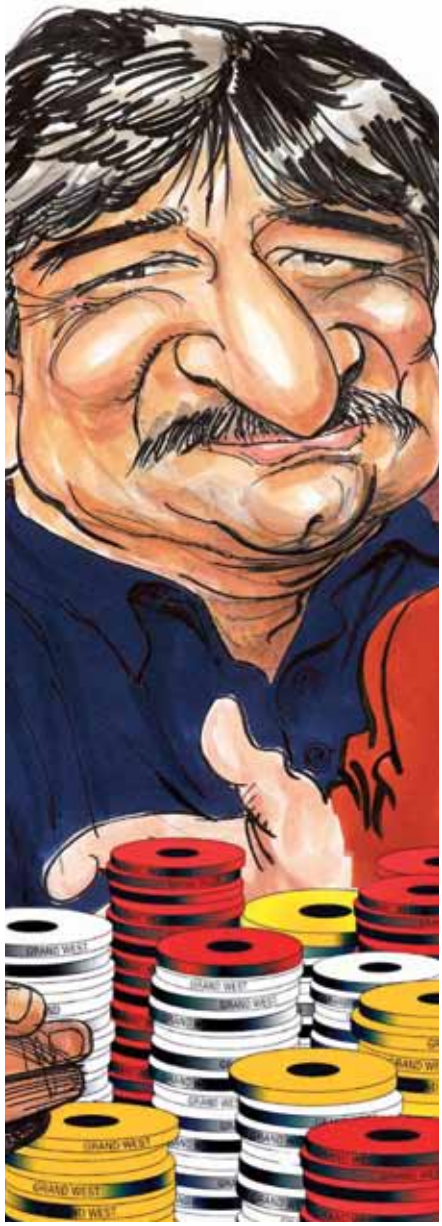
HERE'S A story that probably tells you all you need to know about what's really been going down in major commercial law firms when it comes to their relationship with friends in the (equally greed-driven) liquidation business.

Asch Professional Consultants was founded in 1995, with offices in Cape Town and Johannesburg, providing consultancy and project management in the area of structural, civil and transport engineering. One of the founders was Hassen Adams, a businessman, professional technologist and structural designer whose name and activities have graced the pages of *Noseweek* almost as often as those of attorneys Edward Nathan Sonnenbergs (ENS).

So when *Noseweek* came across a 2010 Western Cape High Court file containing an affidavit by Adams in support of an application for the company's liquidation, we were naturally curious. It all revolved around a dispute between the director-partners.

In professional firms of lawyers, accountants, architects, doctors and the like, the partners – apart from being directors – usually hold equity in the company in the form of shares. And so it was with Asch. From 1995 to 2010 various partners joined and left the firm. By 2009 the directors were Hassen Adams, Mogamat Samaai, Gavin Cooper as CEO, Ganief Fish, Omar Jakoet, Yousuf Ismail and Bruce Erlangsen.

It was allegedly decided in 2006 that Samaai of Cape Town would replace Cooper of Johannesburg as CEO. In his affidavit, Adams gives a long and



Hassen Adams: allegations of fraud – again
Illustration: Colin Daniel

Liquidators' fees amounted to more than double their entitlement

detailed explanation as to why the change of CEO was necessary. In brief, there were two camps in the firm: the "Cooper Camp" in Joburg, which was comprised of Cooper, Jakoet and Fish (they held 57% of the shares), and the smaller "Adams Camp" in Cape Town, consisting of Adams and Samaai (they held 43%). Ismail and Erlangsen had not yet acquired shares, so they enjoyed the luxury of sitting on the fence, so to speak.

Adams alleges in his affidavit that the relationship between the two camps had irretrievably broken down, therefore it would be "just and equitable" for Asch to be wound up. In terms of the Companies Act this is sufficient reason for a company to be liquidated. It need not be insolvent. In fact, Asch had about R14.5 million in the bank at the time, plus a healthy debtor's book and only a few trade creditors.

Judge André Blignault acceded to the request and placed Asch under provisional liquidation on 13 July 2010.

The liquidation vultures were already

circling. Within no time the Master of the High Court had appointed Christopher Peter van Zyl, Natasha Amanda Sansom and Rene-Lynne Barry-Kleinhans as provisional liquidators of the company.

A month later, while they were still just provisional liquidators – in effect, temporary caretakers of the business – they approached the court asking to be granted astonishingly wide powers to do various things; powers that would be regarded as downright improper even if they'd been granted to final liquidators who actually had the job of winding up the business.

Judge Jimmy Yekiso granted the order as they requested. Perhaps in the rush of motion court proceedings (a written request asking the court to take a specific action) he failed to notice just how out-of-the-ordinary was the draft order put before him.

The order commences: "Having heard counsel for the applicants and having read the documents filed of record, it is ordered that…" Had the judge actually read paragraph 2.3 of the draft order presented to him by counsel before he endorsed it?

It reads: [*The provisional liquidators have the power to appoint attorneys and/or counsel, and*] "to agree with such attorneys and/or counsel on the tariff or scale of fees to be charged by and paid to such attorneys and/or counsel for the rendering of services to Asch and to conclude written agreements with attorneys and/or counsel on the basis that the costs incurred by the applicants... shall not be subject to taxation by the taxing master if the applicants have entered into a written agreement in terms of which the fees of any attorneys or counsel will be determined in accordance with a specific tariff, provided only that no contingency fee arrangements shall be entered into without prior written consent of the creditors".

In plain English: the liquidators could agree to pay their lawyers any fee, no matter how exorbitant or outrageous, with no legal restraint – they would not face the risk of having these bills checked ("taxed") by the court officials normally appointed to the task. They were asking for – and got – license to pillage the company they were supposed to be liquidating in the interests of its creditors and shareholders.

And pillage it the liquidators and their appointed attorneys appear to have done – apparently without having to account for it. The status of the three provisional liquidators changed to that of final liquidators on 20 December 2011. By May this year, less than five months later, they were ready to wrap up the liquidation. They filed their final liquidation and distribution (L&D) account with the Master for official approval on May 3.

Noseweek has had sight of the liquidators' final accounting of their administration and some of the vouchers filed in support of it. By our reckoning, they don't always tally.

The documentary evidence shows the liquidators transferred R14,418,525.88 from the bank accounts of Asch to the liquidation bank account for distribution to the creditors. According to the prescribed tariff, liquidators are entitled to charge a fee equal to 1% of the value of such "liquid" assets – which, by the book, in this case should have amounted to R144,185.26. Then there's the money recovered from the Asch's debtors.

This appears to *Noseweek* to have totalled R13,411,621.12. On this type of collection the liquidators are entitled to 10%, being R1,341,162.11. Add the two, and the total liquidators' fee should have been R1,485,311.47 – fair recompense for six months' pretty ordinary admin work. But, according to the L&D account that they filed with the Master, the liquidators' fees amounted to R3,109,349.32 – more than double the amount they were entitled to charge, by our calculation.

In the L&D account, their explanation of how their fees were calculated appears to be at odds with the supporting documentation. It reflects R26,341,147.00 as "debtor collection" on which a 10% fee can be charged – and only R1,500,000.00 as "pre-liquidation current account" on which the fee is just 1%. (R1,500,000 is a peculiarly round figure for a trading company's bank account, but perhaps not glaring enough to raise the Master's auditing antenna?)

Next item to attract *Noseweek's* attention was the amount of fees charged by ENS, bespoke law firm to liquidators. For their – on the face it, simple – non-litigious work in advising the liquidators of Asch, they charged an astounding R2,256,742.29. But then maybe that's the sort of fee you'd expect ENS to charge, given the invitation held out by the "pillage clause" in Judge Yekiso's authorising order. (*Was it drafted on ENS's advice?* – Ed.)

Noseweek will have a look in future editions at all the other snouts that were in the Asch feeding trough.

Meanwhile, what were the "Cooper group" of shareholders making of all this? It transpires that throughout the liquidation process they were in the dark. They were told and knew nothing about an L&D account having been filed until July last year, and before they could do something about it, the liquidators' accounts had been approved and confirmed by the Master of the High Court in Cape Town.

How come they did not get to check the liquidators' L&D account in time? They say it was not shown to them and they were not told it was open for inspection at the Master's office.

It transpires that all the liquidators did to comply with the strict letter of the law was to advertise the account for inspection... in one issue of the *Government Gazette* published in June last year.

(*The Gazette is, of course, what we all read every morning, cover to cover, over breakfast. You missed the ad? Why, it appeared at the bottom of page 130. Obviously.* – Ed.) No courtesy phone-call, no letter, no email to all creditors and shareholders advising them that the final L&D account was open for their inspection – what one might have termed fair and transparent administrative action. (Shareholders too: they had a direct financial interest in how

The liquidators could agree to pay their lawyers any fee, no matter how exorbitant

Déjà vu

Previously seen in Noseweek:

Hassen Adams: *noses*57,58,59,61,64 and 77

Christopher Peter van Zyl:

*noses*8,122 and 141

ENS: *noses*133 and 135; and in it's previous incarnation, as **Sonnenberg, Hoffman & Galombik**: *noses*1, 13, 31, 32, 106, 130 and 135

the liquidation was managed, since the company was not insolvent.)

On 5 December last year, they addressed a letter to the liquidators and on 13 December, another to Mrs Zureena Agulhas, the chief Master ["*Mistress"?*] of the High Court herself, demanding answers and explanations from all of them.

The liquidators immediately handed the letter to their extremely well-paid attorneys, ENS, for reply. ENS director in the insolvency department is Juliette Langford. Here follow two extracts from her arrogant reply:

"The liquidators were not under any obligation to provide [*you*] with notice that the account was lying open for inspection other than the requisite advertising of same, which was duly attended to. [*You*] have only yourselves to blame if you did not inspect the account."

(Common sense, let alone courtesy or a sense of justice are clearly not part of the corporate culture at ENS. "What's the Bill of Rights got to do with it?" *Noseweek* hears them ask.)

"The liquidators are not required to tax bills of costs in regard to their fees or to submit same to the Master to justify legal costs. Our clients obtained leave of the court to engage the services of attorneys and counsel on the tariff of fees to be charged and paid on the basis that such costs would not be subject to taxation if the liquidators entered into an appropriate written agreement."

The second sentence reads like obfuscating gobbledegook – and probably had Judge Yekiso foxed – but the first is clear enough: We were free to charge what we liked, so you can eff off.

If ENS are correct in their contention that Judge Yekiso dispensed with their having to account to the Master, then there is an interesting conundrum: a High Court Judge, or a civil servant – the Master – effectively condoning pillage of a company in liquidation.

If there is no accountability, why bother to have Masters of the High Court involved in the liquidation process? Of course! It disguises and legitimates the pillage!

Which clearly suits the likes of the liquidators, ENS and the firm's insolvency director, Langford. Could they be among those who believe that money sitting in an insolvent estate's bank account ought never, ever to be wasted on creditors or shareholders?

The Master (Agulhas) responded that she was regrettably *functus officio* – a Latin legal phrase meaning that the person or body who made the decision (to approve the L&D account) was legally unable to revisit it.

The only route open to the Cooper Camp was an appeal or review application to the Western Cape High Court.

All this is explained in papers filed in the court on 27 March of this year in support of their application, in which they question the figures and the liquidators' conduct and ask for the Master's approval of the L&D account to be set aside.

Their contention is summed up in the words of Omar Jakoet: "I respectfully state that the only reasonable inference to be drawn from all the above facts and circumstances, is that the misrepresentation by the liquidators to the Master in the L&D account was deliberate and wilful, and was in the circumstances fraudulent."

Cooper's affidavit handed to the Master is equally forthright: "In the light of the evidence… I hereby require criminal investigation against the joint liquidators for fraud, theft and corruption. The liquidators knowingly and intentionally defrauded the estate as they were not entitled to payment of these fees amounting to R3,013,224.82, amongst others, as they did not collect the money."

He notes further, "The inescapable inference and conclusion is that the misrepresentations were made with the purpose of achieving payment to the liquidators of a fee/remuneration to which they were not entitled."

At the time of going to press, the Master filed a notice at court indicating that she would not oppose the application. The liquidators had yet to file their answering affidavits.

New traffic fine collections are suspiciously complicated

Some questionable names figure in new deal

THE Road Traffic Infringement Agency (RTIA), set up to oversee the collection of fines from South Africa's errant motorists, recently awarded a multi-million-rand contract for the collection of traffic fines to three companies, Matlaweng Magolego Troskie (MMT) Attorneys, New Integrated Credit Solutions (Nics) and a debt- collection company already well-known to *Noseweek* readers, Munnik Basson Dagama (MBD) Inc. This was done without tenders having been called for. How was this possible?

Treasury Regulations require any contract in excess of R500,000 to be awarded through open tender. However, according to a source close to the agency, the RTIA apparently believed it had found a route around the rule by arguing that the collection of each individual fine was a separate contract. No traffic fine gets near that threshold.

Underlying it all was the spectacular collapse of the RTIA's own efforts over the past four years to collect traffic fines in accordance with new procedures prescribed by the Administrative Adjudication of Road Traffic Offences Act (Aarto).

Which leads to the second big question: are the debt-collection companies now appointed, fair or foul, likely to be any better at it? Already the signs are there that they won't be: the system prescribed by the Aarto Act is simply too elaborate. (See box.)

In response to an inquiry from Howard Dembovsky, chairman of the Justice Project SA, as to why the agency had chosen to bring debt-collection firms on board at a collection commission rate of 15%, RTIA registrar Japh Chuwe quoted Section 5(1) of the Aarto Act, which states "the agency may, subject to the business plan approved by the board, appoint agents, or contract with any person, to perform any function vested in it in terms of

this Act or any other law".

Noseweek has in the past reported on MBD, which seems to have a thriving business extracting money from unwitting members of the public for debts that have prescribed (*nose*149).

MBD Credit Solutions is owned by Transaction Capital. Other companies owned by Transaction capital include:

- SA Taxi Finance, the company that has been involved in disputes with various taxi owners (see *nose*113). Considering that most traffic fine debts are owed by members of the taxi industry, it's ironic that a company associated with the country's largest taxi financiers is also mandated to collect their traffic fines.

- Rand Trust, a trust used by the king of South African ponzi schemes, Barry Tannenbaum, and until very recently, owner of at least 25% of Auction Alliance.

MBD was embroiled in a dispute with Telkom, which suspected that the firm sold or lost a confidential database of unlisted telephone numbers that it had entrusted to the firm.

In 2002, TelkomSA accused online directory provider EasyInfo of having illegally acquired thousands of unlisted – and therefore confidential – telephone numbers which it put on its website, EasyPeople, for all to see.

Unlisted Telkom subscribers demanded answers from Telkom. Among them were some important people: former Gauteng Premier and Cope co-founder Mbhazima Shilowa, Gauteng Premier Nomvula Mokonyane, Albertina Sisulu, businessman Richard Maponya and radio personality John Robbie, to name a few.

Their outrage, *Noseweek* recently learnt, led to an out-of-court settlement by EasyInfo's owners, Interface Media and its partner Umfowize. The company agreed to remove Telkom's clients' contact details from their online directory and pay Telkom R10 million in a confidential damages settlement. Part of the deal was that Interface disclose to Telkom the source of the prized database. All that *Noseweek* can report about that, is that Telkom subsequently blacklisted MBD.

When *Noseweek* enquired from MBD executive director Christopher Guy Harradine, he began by informing us: "The executive directors and shareholders of Munnik Basson Dagama Inc as at 2002 are no longer involved in any form or capacity with the company."

He went on to state that the company "do not sell data to anybody and are not aware of any sale of data ever having occurred."

But, said Harradine: "...we have established contacts with the then Managing Director, Frans Basson (whose name is still on the company's letterhead) who advised as follows:

"Telkom was a client of Munnik Basson Dagama Incorporated.

"MBD was given the Telkom database in order to collect outstanding debt owed to Telkom.

"With a view to minimising collection costs for Telkom, MBD employed 'The Knowledge Factory', a subsidiary of Primedia Limited, specialising in data analytics, to analyse whether individual Telkom debtors were duplicated in different geographic areas.

"Unbeknown to MBD, an executive director of the Knowledge Factory (who to the best of Mr Basson's knowledge was consequently dismissed) sold the Telkom data to Interface Media."

Now, to enable them to collect traffic fines, RTIA has handed MBD the entire eNaTIS's database. Can motorists be assured that MBD will not hand over personal data mined from eNaTIS system to subcontractors with questionable morals? Just asking.

Threats compounded

The RTIA has been ineffective in implementing the Administrative Adjudication of Road Traffic Offences (Aarto) Act.

The Aarto Act makes provision for a sequence of notices and other measures designed to encourage traffic offenders to pay their fines sooner rather than later – by offering a bit of carrot, followed by a lot of stick.

This Act lays down that if an infringement notice is paid within 32 days, you're entitled to a 50% discount; if not, a Courtesy Letter should be issued, incurring an additional penalty of R60. If it still hasn't been paid a further 32 days from the service date of the Courtesy Letter, an Enforcement Order must be issued (again, with a R60 penalty fee) plus the additional threat of having the renewal of a driving licence and all vehicle licences registered under that ID number blocked.

If that doesn't extract payment, then 32 days after service of an Enforcement Order, a Warrant of Execution is supposed to be issued and, seven days later, the Sheriff is supposed to come to your premises and seize goods to the value of the compounded penalties plus his fees for executing the warrant.

Clear enough. So why has RTIA handed everything over to private contractors? Simple: the system is too complicated and unmanageable. The vast majority of infringement notices being chased up by these debt collectors are still classified as "infringement notices" and a few are still at the "courtesy letter" stage – up to four years after they were incurred.

The threats levelled in letters from MMT and Nics that *Noseweek* has seen, warning of escalation to Enforcement Orders and Warrants of Execution if the "debt" is not paid within 28 days, are simply extortion tactics. They won't materialise because the system isn't up to it.

So far, because of the slow rollout of the Act, the RTIA has only been claiming fines from traffic violators in Tshwane and Joburg. Many of those who have received letters and text messages from the debt collectors claim they have never received an initial notification, while several others say they may vaguely remember having received a fine that was so indecipherable that it looked like a bad attempt at a 419 scam.

The latter, issued by one of the Johannesburg Metro Police Department (JMPD) contractors in 2010 and starting with numbers "02-4099" were definitively labelled "illegal" by JMPD director Gerrie Gerneke. He assured the public they would be cancelled. They weren't, and now form part of the "outstanding debt" that the RTIA has handed over to the debt collectors.

Unlike debts, traffic fines do not prescribe (become unenforceable after three years). But the threats made in the letters sent by the debt collectors cannot lawfully be carried out unless they have strictly followed the elaborate sequence of letters prescribed by the law.

Judges give lift to press freedom

THE GOVERNMENT may be determined to muzzle the press, but it's good to see that our judges are doing everything in their power to protect press freedom – as two recent judgments have shown.

Inge Peacock v *Noseweek* and Martin Welz

BUSINESSWOMAN and boutique owner Inge Peacock applied for an interdict to force *Noseweek* to remove a story about her from its website and Facebook page. (The magazine was already in the stores, so there was no point in asking for an order to stop distribution).

The article suggested that Peacock, whilst maintaining a wealthy lifestyle, had failed to pay her debts – including rent owed – and had done a runner from leased premises.

Noseweek admitted that the article was defamatory in that it clearly lowered Peacock's esteem, but raised defences of truth and public interest.

Investigative journalist and *Noseweek* news editor Mark Thomas submitted an affidavit to show exactly what enquiries he had made when writing the story.

The matter was heard as an urgent application and Judge Andre le Grange handed down judgment on 6 March in the Western Cape High Court. The judge said that "two constitutional rights – freedom of expression and dignity – are at odds and have to be balanced against each other". A person who claims they've been defamed can still get an award of damages even if an interdict is refused, he said, adding, "it is now well accepted that cases involving an attempt to restrain publication must be approached with the necessary caution".

The judge found that Thomas had not been reckless or negligent and that publication could not be regarded as "inappropriate and/or inconsistent with the demands of freedom of expression as contemplated in our constitution".

As Peacock could pursue a claim for damages if she had in fact been wrongfully defamed, and as "news, on the other hand, by its very nature is a commodity which has a diminishing value", he felt that "the common good will be best served by the free flow of information", so the request for an interdict was refused with costs.

In his judgment, Judge Le Grange came up with some stirring stuff: "In South Africa's new constitutional democracy, freedom of expression and of the press are potent and absolute necessary tools in the creation and maintenance of a democratic society.

"The press has a vital role and function to play… to make available to the community information and criticism about every aspect of public, social and economic activity, and thus to contribute to the formation of public opinion... The press and the rest of the media provide the means by which useful and sometimes vital information about the daily affairs of the nation is conveyed to its citizens – from the highest to the lowest ranks... The press therefore often becomes the voice of the people, who are sometimes relatively powerless."

Bosasa v Adriaan Basson and *Mail & Guardian*

THE *Mail & Guardian* published a story written by Adriaan Basson, in which he claimed there'd been a corrupt relationship between Bosasa Operations and Correctional Services over the supply of equipment: tender fraud, basically.

Bosasa sued for defamation and various defences were raised, including truth and public benefit, fair comment on a matter of public interest, and reasonable publication in good faith.

Bosasa then brought an interlocutory application to force Basson and the

M&G to reveal their source, so the issue was simply whether Basson and the *M&G* had a valid objection to revealing their sources. The objection to revealing sources was twofold. First, section 16 of the constitution enshrines freedom of expression: "Everyone has the right of freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas..." Second, Basson and the *M&G* had promised their source or sources anonymity. Bosasa's response was that the failure to reveal sources infringed their right to a fair trial.

Judge Moroa Tsoka in the South Gauteng High Court quoted liberally from both local and foreign sources. He started with some big-picture stuff, like this quote on the role of the press from Judge Joffe in a 1995 case involving the *Sunday Times*: "It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and expose the perpetrators." And this quote from a 2002 Constitutional Court decision in the case of Khumalo v Holomisa: "In a democratic society, then, the mass media play a role of undeniable importance... If the media are scrupulous and reliable in the performance of their constitutional obligations, they will invigorate and strengthen our fledgling democracy. If they vacillate in the performance of their duties, the constitutional goals will be imperilled." And this one from a 2007 Constitutional Court decision involving e.tv: "To abridge the freedom of the press is to abridge the rights of all citizens and not merely the rights of the press itself."

On to the issue of the protection of sources, Judge Tsoka managed to find a surprisingly apt quote going all the way back to 1910, in the South African case Spies v Vorster: "If an editor were bound to disclose the name of his correspondent there would be an end of confidential relationship between correspondent and newspaper which has existed for generations, to the advantage of the public, and many an abuse would go unremedied and many a grievance unredressed... However much it may be abused, as it often is, to air personal grievances and to injure, there can be no doubt many anonymous communications have been the means of effecting valuable and far-reaching reforms."

And then this succinct quote from Lord Denning in a 1981 UK case involving British Steel and Granada TV: "If they (newspapers) were compelled to disclose their source, they would soon be bereft of information which they ought to have. Their sources would dry up. Wrongdoing would not be disclosed. Charlatans would not be exposed. Unfairness would go unremedied. Misdeeds in the corridors of power – in companies or government departments – would never be known."

A further quote came from a recent UK case: "Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible... unless it is justified by an overriding requirement in the public interest." And another: "The fact that journalists' sources can be reasonably confident that their identity will not be disclosed makes a significant contribution to the ability of the press to perform their role in society of making information available to the public." And finally

Back to pigeon post

RECENT high court judgments have shown a new understanding of what legal protection the news media need in order to be able to play their role in sustaining a democracy. They have contained the risk of litigation and protected the identity of whistleblowers and other vulnerable sources of information.

But there's still at least one gap in the law that leaves the news media and their confidential sources vulnerable: the laws that regulate the issuing of witness subpoenas allow pretty well anyone who wants a peek, to gain unfettered access to any reporter's – in fact, to anyone's – supposedly private telephone records. Without their getting to know about it. And it doesn't require anyone's permission either.

Anglo Platinum boss Barry Davison did just that, after *Noseweek* reported on the proceedings in his divorce case in 2004. We might never have got to know about it, had we not by chance happened to be in court when a "fraud specialist" from Vodacom was called to hand in their record of all *Noseweek* editor Martin Welz's cellphone calls.

Her file had printed in large type across it: "Call Data is Confidential and Cannot be Divulged to Any Other Party".

Which is what we'd all thought – until then.

Already some time before that, the entire file had been made available to Davison and his legal team. In it was listed the date and the time of each outgoing and incoming call; the duration in seconds; the number dialled or the caller's number and, finally, the tower that received the call, effectively indicating where the caller was at the time.

As frightening: Davison and his lawyers need not have raised it in court, but could simply have kept it for their own private purposes.

Welz objected, argued that the law relating to subpoenas conflicted with the constitutional rights of the press, but was told that to challenge the law on constitutional grounds, he'd have to bring a separate application to court, with formal notice to all interested parties including the Ministers of Justice and Telecommunications and all telephone service providers. Legal fees: R200,000 or more. Multiples of that if you happen to lose.

Which explains why *Noseweek* has reverted to pigeon post and messenger with cleft stick.

For the full report see *nose*65.

Media conveys vital information to citizens

this one from a 2010 South Gauteng High Court case involving Avusa: "The court accepts that one of the most valuable assets of a journalist is his or her sources. Sources enable journalists to provide accurate and reliable information. Sources are often in possession of sensitive facts which they would be unwilling to disclose without a guarantee that their identities will not be revealed. The protection of journalists' sources is fundamental to the protection of press freedom."

Judge Tsoka went on to add some thoughts of his own: "If indeed freedom of the press is fundamental and *sine qua non* for democracy, it is essential that in carrying out this public duty for the public good, the identity of their sources should not be revealed, particularly when the information so revealed would not have been publicly known. This essential and critical role of the media, which is more pronounced in our nascent democracy, founded on openness, where corruption has become cancerous, needs to be fostered rather than denuded."

Judge Tsoka went on to find that Basson had followed the *Mail & Guardian's* policy of only using off-the-record sources where it's absolutely necessary. The sources, employees of Bosasa, had been promised anonymity because they were fearful of reprisals. There was no need for Bosasa to know the sources' identities in order to deal with the case. Bosasa would be entitled to damages were it to win the matter. He said there was no blanket journalists' privilege on sources, that it all depends on the facts, and would not apply if a journalist had information on the commission of a serious crime.

He concluded that, because the story related to a tender from a government department which "is expected to comply" with the constitution, and which is expected to act "fairly, equitably, transparently and in the most competitive and cost-effective way", the sources had acted laudably – "out of civic duty, to expose, what in their view, constitutes corruption".

Judge Tsoka concluded: "Had it not been for the defendants' sources, the public's right to know whether the plaintiff won the tender fairly would never have been known. The public would be poorer for it. The public interest will be served by not revealing the identity of the defendants' sources at this stage. The defendants have a valid objection to revealing their sources." N

Schoolyard SCRAP

Standard Bank and FNB have been engaged in a petulant dust-up over each other's advertising

HOW BAD must things be in banking when its big guns squabble about the tiniest details in the adverts of their competitors? Is it the Great Recession again? Is it that Capitec is making serious inroads? Or are banks just bloody childish? On 23 April the Advertising Standards Authority (ASA) ruled on a number of tit-for-tat complaints lodged by FNB and Standard Bank. The clash ended as a stale draw. Here's what they were fighting about:

FNB has a go at Standard

FNB felt aggrieved that Standard Bank put the following statements on lamppost posters: "Free Cellphone Banking; Free Telephone Banking; and Free Internet Banking."

All untrue, said FNB. These services may not involve subscription or access fees, but there are still transaction fees to be paid. So it's not exactly free banking, is it? Which means it contravenes the clause of the ASA Code that says you can't engage in misleading advertising, as well as the clause that bans the use of the word "free" if there are charges involved, unless those charges are very clearly spelled out. And your ads are also misleading because the services are only available to your private customers, they're not available to your business customers.

Get a life, said Standard. No one in their right minds would interpret these ads as meaning totally free banking. People know they simply relate to subscription or access charges. And no business person would imagine that the offers apply to them.

You're overestimating the South African populace, ruled the ASA which, for our purposes, is the "hypothetical reasonable customer". The ads are ambiguous because you can't actually do banking without paying for it, so the claim, "if interpreted literally, does not match reality". Also, there are no terms and conditions in your ads relating to business customers. So you need to pull the ads, Standard.

FNB lodged a second complaint about a "Myth and Fact" campaign used by Standard. The first went

as follows: Myth: All banks are increasing their fees. Fact: Standard Bank is helping customers save up to 50% on bank fees (more exciting news on 2 April 2012).

When news is this exciting it does have to be rationed. But, complained FNB, it's not even clear what this means. Will customers save 50% on bank fees as compared to other banks, or simply as compared to former Standard Bank rates?

It is unclear, agreed the ASA, but either way it is something that can be objectively verified or substantiated. And as Standard has failed to substantiate this claim in any way, it must be withdrawn.

The second "Myth and Fact" read: Myth: Banks never offer anything that's free, there's always a hidden cost. Fact: Standard Bank offers internet, cellphone and telephone banking all for R0.00 (we even pay your network charges).

Not true, said FNB, producing a Standard Bank customer's statement that showed a banking subscription fee. But this statement related to a period before the advertising campaign started, so the ASA felt it was irrelevant. And as FNB's entire complaint was based on that bank statement, it had to fail. The ASA did feel the claim about network charges was misleading but it accepted an undertaking by Standard to change the claim to read: "We even pay your mobile charges when you dial *120*2345#."

Standard has a go at FNB

STANDARD then complained about various FNB ads such as: "First from FNB – Smart Account Zero – Open an account with a Zero monthly fee."

Not true, said Standard. All banks offer accounts with no monthly or administration fees – they're known as Mzansi accounts.

Ah yes, but Mzansi accounts are Mickey Mouse accounts, replied FNB. Ours is the first no-fee account that is a proper "full transaction/full functionality" account.

But your ad doesn't actually say that, said the ASA, and there's no reason to suppose consumers would interpret it that way. So your ad's misleading, and you need to pull it.

And this one: Only from FNB – Self-service Banking – Get Free Online Cellphone and Telephone Banking.

Said Standard: We ourselves introduced free online and telephone banking before FNB did.

Yes, agreed FNB, but we're the first to offer all these options as "a basket".

But that's not what your ad says, said the ASA, so once again it's misleading, and once again it needs to be pulled.

And this: Only from FNB – Share Investing – Start investing in JSE shares and Krugerrands safely, online.

All banks offer online share trading said Standard.

Indeed they do, said FNB, but we're the first to offer banking and online share trading within a "single integrated platform".

Well why don't you ever say what you mean, said the ASA. This is also misleading. It, too, needs to be pulled.

Also this one: Only from FNB – Prepaid Services – Buy prepaid airtime, SMS or data bundles, electricity and insurance anywhere, anytime.

Other banks like Absa and Nedbank offered prepaid services long ago, whined Standard.

Yes but we're the first to offer a whole basket of services said FNB.

It's not clear that this is what you're saying, said the ASA, so pull this too.

And finally: Only from FNB – Online Banking – Change your bank PIN online.

Other banks offer this, said Standard.

Maybe, replied FNB, but only we offer the customer the option of changing a PIN number online. Others only allow you to change login details online.

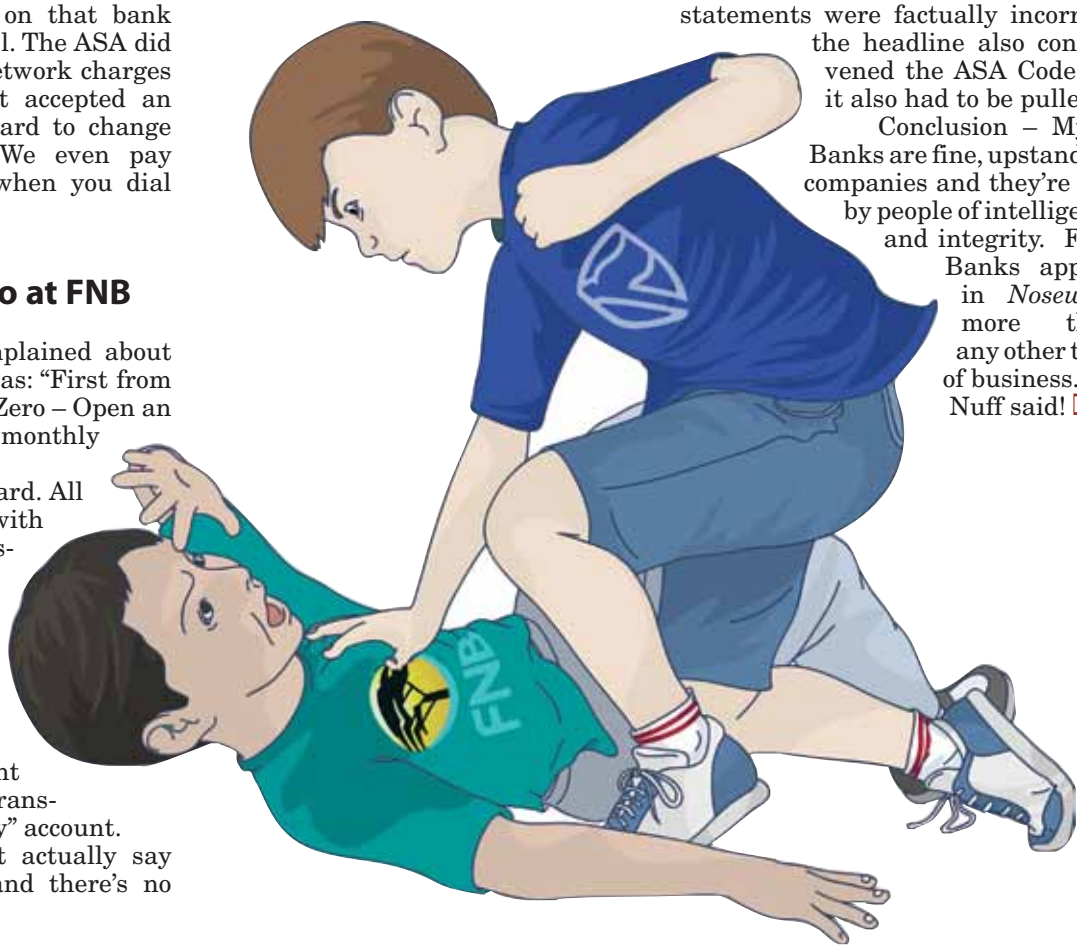
Yes, said the ASA, but your ad's ambiguous because, although it refers to a bank PIN, it doesn't make it clear that this service refers only to a card PIN or an ATM PIN. So your ad's ambiguous and it needs to go too.

And, for good measure, Standard complained about a headline that FNB used in connection with these various advertising statements. It read: "Be with FNB, the bank that Leads in saving you Money.

The ASA ruled that, as the various statements were factually incorrect, the headline also contravened the ASA Code. So it also had to be pulled.

Conclusion – Myth: Banks are fine, upstanding companies and they're run by people of intelligence and integrity. Fact: Banks appear in *Noseweek* more than any other type of business.

Nuff said! N



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Issue 152

SUBSCRIBERS CAN WIN!

Apart from having SA's top investigative magazine delivered to your door, you could also win one of five Ken Forrester wine packs. Subscribe now and stand in line to score.

CONGRATULATIONS TO THIS MONTH'S WINNERS:

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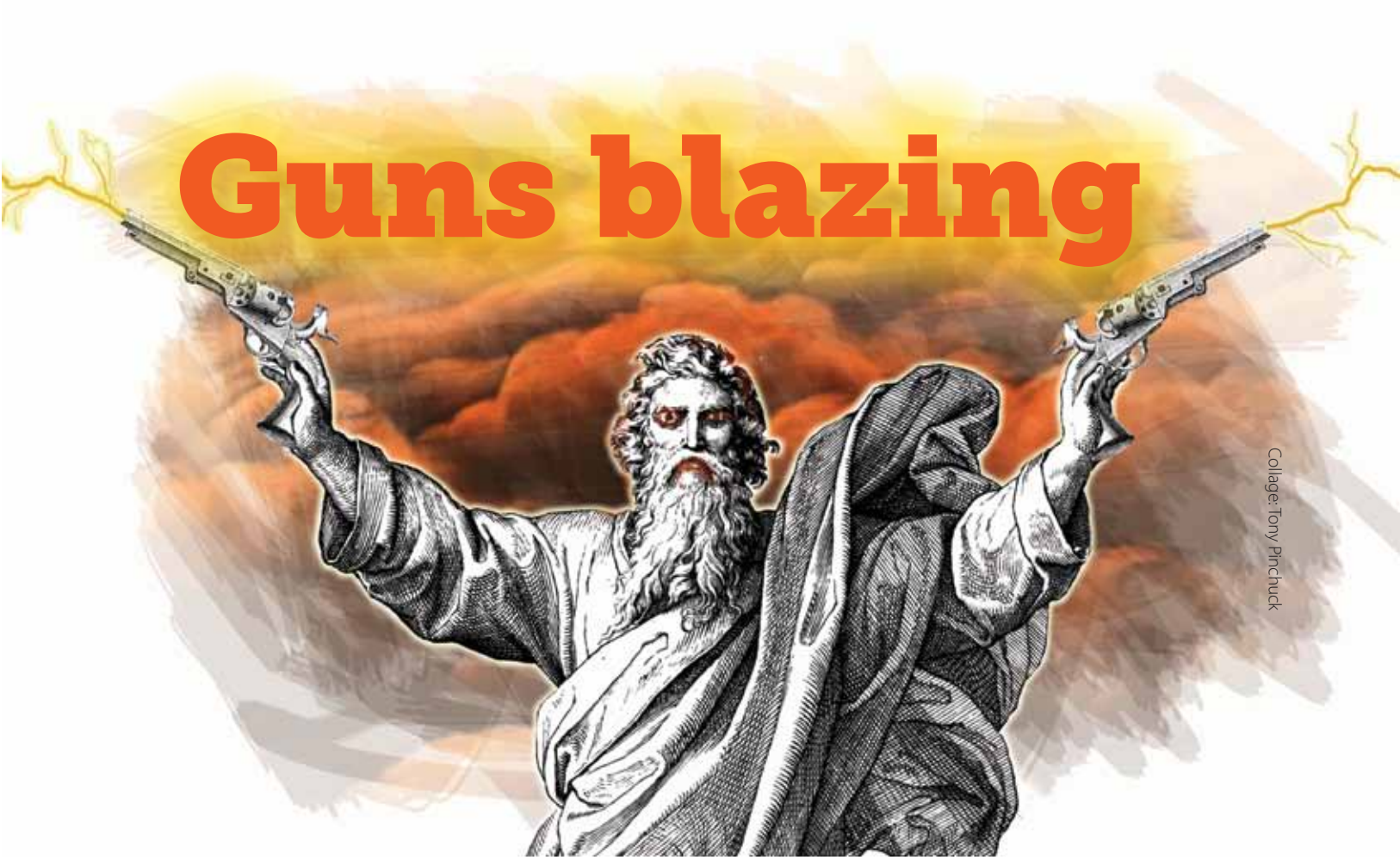
Guns blazing



Collage: Tony Pinchuck

ALL GOLD products have been so well marketed by parent company Tiger Brands that they have become a ubiquitous part of our national cuisine and cultural headspace. What more can a brand owner want?

Of course the major threat to big brands is not so much trademark dilution but the destruction factor: overzealous intellectual property lawyers who act on a retainer from their clients and are, truth be told, more interested in lining their grubby pockets than protecting the brand over which they ostensibly stand guard.

Which is not to say that prudence and a bit of plain common sense can be dispensed with when poaching in big-brand waters.

Red Bull recently learned, through the auspices of the Advertising Standards Authority (ASA), that "God" is not to be messed with.

(If God is not going to come out guns blazing, those who purport to act in his name certainly will – notwithstanding the exhortation by the Apostle Paul in Romans: "Do not take revenge, my friends, but leave room for God's wrath, for it is written: 'It is mine to avenge; I will repay,' says the Lord.")

But is it OK for God's followers to trade using another's well-known brand? "All God – available here in family size," declares the billboard outside the evangelical Christian Life Church Camps Bay, mimicking one of Tiger Brand's oldest and best-known brands. So they appear to think it is OK – as did their, brothers and sisters at Celestial Studios some time back (*nose*100).

Hayes Cunningham, director of Celestial, told *Noseweek* at the time that Celestial elevates brands by associating them with the highest name in the universe. No-one dared argue with that – at the time.

But now? What are Tiger Brands' IP lawyers Spoor & Fisher going to do about this latest gross infringement of their client's rights in its top brand?

Only recently they threatened a small-time carpentry shop calling itself All Wood with high court injunctions if it did not immediately change its name and signage. Have they got the courage of their convictions to tackle God's people with the same vigour? Or will they hold back, for fear that All Gold might find themselves "Tinners in the Hands of an Angry God" (the title of a rousing sermon delivered by American preacher Jonathan Edwards on 8 July 1741 – thank you Google). N

Hot tub: Le Chardon

COLD COMFORT

By **Hans Muhlberg**

THE EDITOR wasn't a happy bunny when a prior engagement forced him to turn down an invitation to check out some luxurious hotels in Europe. But fortunately I was able to take up the offer. The benefactor: the Mantis Collection – a South African company, started by Port Elizabeth businessman Adrian Gardiner, that has hotel interests in various countries including the UK, France, South Africa and Zambia. So yes, a sponsored trip, and yes, you must make of that what you will!

Le Chardon, Val d'Isère

FIRST stop, the ski resort of Val d'Isère in the French Alps. I flew from Heathrow to Geneva, where a guide, a driver and a luxury vehicle awaited. The two-and-a-half-hour drive to the resort whizzed by – the scenery's great, particularly the town and lake of Annecy, and the *padkos* (smoked salmon croissants and two bottles of excellent champagne) wasn't half bad either.

As for Le Chardon, the less unsaid the better. There are five separate chalets, the largest of which sleeps 20. Each chalet has its own chef, and the food – breakfast, lunch, afternoon tea, early evening canapés and signature dinner – is outstanding. The bedrooms are *trés confortable*, there are sitting rooms and dining rooms with spectacular views and jacuzzis on the patios where uninhibited guests have their last drinks of the evening.

There are rooms where people provide massages and beauty treatments. In fact there are people who see to your every need ("Another drink Hans, you South Africans really can put it away can't you?"). But the nicest thing about Le Chardon is the relaxed atmosphere. The whole thing's designed to get people talking and interacting (very few TVs), and the staff are genuinely nice – all young Brits. There was disagreement about whether the failure to employ locals was because the French are full of shit or because their labour laws are so rigid.

As for the village of Val d'Isére, it's pretty, has a lovely Baroque church, is clean (antiseptically so) and there's not an ugly person or an election poster to be seen.

Yes, a resort for the very well-heeled. By all accounts, more and more of the heels belong to Russians, Arabs and Chinese – new money, desperate to appear old. And the poor old locals now actually have to think before they can scowl and say *Je ne parle pas*. Is it Anglaise, Russe, Arabique or Chinois that we don't *parle*? And I heard some stories that made even my hardened ears prick: Arab princes who will gladly pay €100,000 for a week's rental, provided it comes with the kind of discretion they demand (turning a blind eye to the accompanying harem despite the presence of the wife and kids); Arabs who pay chalet girls tips of €10,000; and new rich alpha males who, on being told they can't have a mountain to themselves, insist on being surrounded by a phalanx of bodyguards when they finally take to the slopes. And how's this for a variation of

the holiday snap? Some visitors think nothing of engaging a top photographer-cum-expert-skier at €500 per day to follow them around for their entire stay, taking their holiday snaps.

Even if you don't ski, there's loads to do. Fancy ice driving (the *Top Gear* crowd were there recently), ice-diving, husky sledging, snow-shoe hiking, para-skiing, ice polo, or helicopter flips? There's also a state-of-the-art indoor sports centre that looks just too contrived. In summer you can go for nice free walks – all the way into Italy if you're fit enough.

The most memorable thing in Val d'Isére is undoubtedly La Folie Douche. It's is one of those après ski things high up in the mountains. But this is après ski with a difference: every afternoon it becomes a kind of open-air club, where skiers – high on mountain air, and higher still on the Moët that flows so freely (they spray as much of the stuff as they drink) – dance on tables to the sounds of a group of musos who play booming music that's really quite good. It's surreal (Financial crisis? What financial crisis?), but it's really good-natured and the exuberance of it all makes it enormously enjoyable. The most startling thing is that these party animals – many the worse for wear – then ski all the way back down again to their chalets at Le Chardon. Check out La Folie Douche on YouTube to see what this is about.

South Africans with cash to burn may find this a very pleasant place to do so. Or local corporates who believe in pampering their executives might follow the lead of the South African coal company that came to Le Chardon recently for a corporate getaway. So much more civilised than that shitty little game lodge near Bela Bela!

Everything gonna be all white at Le Chardon

The Draycott Hotel, London

LE CHARDON was followed by two nights at a five-star London hotel called The Draycott. But not before enduring the indignity that is immigration at Heathrow – the Brits preparing for the Olympics by running their immigration service into the ground, with the result that this correspondent, the proud holder of an EU passport, watched in horror as the small number of "Other Passport" holders sailed through, whilst he and the hundreds of Brits and Euro-types waited for over an hour to clear immigration. [*Makes for a nice change!* – Ed.]

The Draycott is very English and decidedly old-school. The building is Edwardian and the interior was done by Nina Campbell (not a name that means anything to a boorish hack unfortunately, but one that no doubt has enormous significance to the cultured *Noseweek* reader). Anyway, it's all wallpaper, heavy drapes, dark furniture, bookcases (with real books), writing tables and fireplaces. The rooms don't have numbers but the names of authors and actors: CS Lewis, Enid Blyton, JM Barrie, Olivier, Gielgud, Redgrave (I found myself in the Richardson, as in Sir Ralph).

It's a small establishment and the breakfast room seats just 13. There's no dining room, but room service is available 24 hours a day and there are literally hundreds of restaurants in the area. The wines of *Noseweek's* old friend, Ken Forrester, are available, although at prices that will make you blanch. There is a lovely sitting room where complimentary tea is served in the afternoon, champagne in the early evening, and hot chocolate at night. What's nice about it is that strangers talk to one another. What's not so nice is the lift, possibly the smallest in the world. There are two ways to deal with this lift: the first is to go it alone, in which event you'll probably have a panic attack, while the alternative is to squeeze in a second person. Although this may not sound very logical, you will then technically be having sex, and that will at least distract you from the claustrophobia. If you're Khulubuse Zuma, however, you must demand a room on the ground floor.

Johan Rupert apparently lives next door to the hotel, so if you don't have much on, you can, of course, stand on the street with a loud hailer and shout "Tobacco kills". If you're not a house guest of the Ruperts, you

Every day it becomes a club where skiers high on Moët dance on tables

Spaced out : The Draycott Hotel

Elegant sufficiency: Ellenborough Park

might actually want to know where this place is. It's in Cadogan Gardens, which is very close to Sloane Square. Which, of course, means that if shopping is your thing, this is the place to be. Peter Jones (replete with Queen's 60th Jubilee tat) is just around the corner, as, of course, is the King's Road, whereas Knightsbridge, with Harrods and Harvey Nicks, is close too. Names that even I recognised are everywhere: Calvin Klein, Chanel, Christian Dior, Dolce & Gabbana, Gucci, Hermes, Hugo Boss, Jimmy Choo, and Louis Vuitton.

If you're one of those people who believes shopping is something you do only in an emergency – for example, when you run out of wine – don't despair, the area has many other attractions. The Saatchi Gallery (modern art) is within spitting distance, but spitting is unfortunately all that's good for. Rather take a walk down the King's Road and just do some looking: check out the John Sandoe bookshop (remember bookshops?); the shoe store with the great name, R Soles; a shop called Classic Prints (if you're a supporter of Chelsea Football Club, you might be inclined to part with £130 for a very old black and white picture of Stamford Bridge).

Eat a pancake at My Old Dutch. Walk down Chelsea Old Church Street to the Old Church with the statue of Sir Thomas More. Check out the very smart streets in the area: Justice Walk; Swan Walk; Paradise Walk; Cheyne Row; Cheyne Walk (where George Elliot died but apparently didn't live for very long); and Tite Street (where Oscar Wilde lived but didn't die).

Marvel at the extraordinary number of Aston Martins and Bentleys, belonging to people who don't even have off-street parking. Pop your head into an estate agents – you'll either laugh or cry, indifference is impossible. Go to the National Army Museum (the *War Horse* exhibition was on), walk past the substantial grounds of The Royal Hospital (home of the Chelsea pensioners and the Chelsea Flower Show) and the Chelsea Physic Garden.

If none of this appeals to you, walk the other way, towards the palace, through the very smart area of Belgravia. Check out Eaton Square and Chester Square where, one understands, that demented old biddy who won the 2012 Oscar for Best Actress lives. Then walk through London's nicest park, St James's Park and enjoy the lovely architecture in Queen Anne's Gate and Dartmouth Street (where the left-wing think tank, the Fabian Society, has its offices). Go to the beautiful Blewcoat School in Caxton Street, once a school for poor boys, now a National Trust gift shop. Try out The Old Star Pub opposite the St James's Park tube station. And do go to Westminster Cathedral, every bit as lovely as the more famous Abbey, but free. You can even get your theatre fix in Victoria – *Billy Elliot* is still running at the Victoria Palace.

Cannizaro House, Wimbledon

THE stay at The Draycott was interspersed with a trip to Wimbledon, for a spot of lunch at the 4-star (what a come down!) Cannizaro House hotel, just off the Wimbledon Common. I knew this hotel from my younger days, and I was much surprised to see that it had changed from a stuffy old-farts establishment to something that's quite light and airy, quirky almost – modern art (childish-looking shit really) all over the place, a glitzy cocktail bar.

If you want to see the sights of London, this probably isn't the best place to stay – not only is Wimbledon quite far out, but Cannizaro House is a serious hike from the tube/train station. But if you're visiting your offspring who live in Wimbledon (and an extraordinary number of young South Africans now do), but can't quite bring yourself to stay in their two-up and two-down semi, you could do far worse than Cannizaro House.

Blewcoat School, once a school for poor boys, is now a gift shop

Ellenborough Park, Cheltenham

LAST stop Cheltenham, a two-hour train journey from London's Paddington Station. Cheltenham is a pretty little Regency town, and both the buildings and the locals are far prettier than they are in many English towns. The town is home to a number of well-known schools that work on the *Quis paget entrat* (who pays gets in) principle, where, in return for hefty fees, you can ensure that your children never learn to think for themselves.

The town also has a vigorous arts

scene, with literary and musical festivals aplenty. And it hosts the annual invasion of the Irish, aka the Cheltenham Gold Cup (horse racing). A few miles out of town is the rather remarkable Ellenborough Park, the closest you may ever come to *Downton Abbey*. The building dates back to the 16th century and it's been through various incarnations, including the home of a former Governor General of India and the 1st Earl Ellenborough, and a public school for girls. Now it's a very upmarket hotel.

Everything is super-sized – the grounds are vast, the hotel is huge (60 rooms spread over three buildings), the rooms are enormous and the bathrooms even more so. There's a sitting room (the Great Hall), a snug where you can go for intimate chats, a very stiff and formal dining room called the Beaufort where you really might expect to see Mr Carson, a slightly more casual brasserie, and various private dining rooms.

Should you be homesick, you can order the produce of another *Noseweek* friend, Graham Beck. There's also a boot room where you can get wellies and jackets, should you want to go for a serious walk, and a state-of-the-art spa where all sorts of treatments and pampering are on offer (I was hoping to get a complimentary treatment, but the manageress clearly decided that this was a job beyond her capabilities). The hotel's manager is a South African called Graham Vass.

Who goes there? People with money obviously and, judging by the accents, elderly merchants of the northern persuasion. Vass believes the hotel is perfectly placed for South Africans who want a weekend away from London – with Bath, Oxford and Stratford all within striking distance. As, of course, are the Cotswolds and Wales. And Sudely Castle, home of Henry VIII's sixth wife, Katherine Parr (who kept her head when all around her were losing theirs) is just up the road.

The only disappointing aspect of Ellenborough Park is the world's smarmiest welcome letter: "Welcome... your arrival has been the one event we have anticipated all day..." Please!

Swanning around in five-star establishments is much more fun than following paper trails. I have already abandoned my career as an investigative journalist and embarked on a new one as a travel writer.

THE BOTTOM LINE

AT LE CHARDON you rent an entire chalet. The smallest chalet sleeps eight and prices range from £8,600 a week to £27,800. The largest chalet sleeps 20 and week rates range from £20,900 a week to £49,000.

Rates at The Draycott are £160 a night for a single room, £260 for a double, £325 for a "deluxe double", and £390 for a suite.

Among lots of packages available at Ellenborough Park is a weekend special for two in a standard room with breakfast, dinner and one spa treatment per person, at £895.

Everything's going to be all right

Len Ashton
reviews
MEGACHANGE: THE WORLD IN 2050
(The Economist in association with Profile Books Ltd)
Edited by **Daniel Franklin**
with **John Andrews**

CAST OFF the sackcloth and ashes. Cut the doom-saying. Forget the melodrama. The world may not be paradise, but there's no sense in getting hysterical.

So say the authors of *Megachange*, a formidable cast of 20 intelligent and witty Economist writers and contributors. Tasked with doing a little soothsaying on the coming half-century or so, their message is clear: breast-beating is pointless. And things are not as bad as they are painted by sensation-hungry media.

Besides, all that hellfire and brimstone stuff is, by and large, unjustified. The planet proceeds on it's stately way, largely indifferent to the efforts of the short-term solution crowd. Most social change, despite political rhetoric, is incremental. It takes time to nudge human beings into acceptance of social, medical, and technological advances.

And changes there will be.

Matt Ridley puts the prediction game into perspective with a profundity by American baseball star Yogi Berra: "I never make predictions, especially about the future". And then Ridley blithely prophesies that the coming 40 years "will not see the end of anything: not history, science, oil, war, capitalism, books or love".

The grown-ups of 40 years ago warned darkly that the lives of teenagers of those times would be blighted by population explosion, famine, cancer epidemics caused by pesticides, nuclear fallout and all manner of ghastly visitations. Not to forget plunging sperm counts, mad cow disease and devastated ecosystems.

But, says Ridley, 40 years after, population growth has halved, lifespan increased by 25% globally and two-thirds of nuclear weapons have been dismantled. He denies cherry-picking cases to suit his argument. True, Arctic summer sea ice retreated in the first years of this century, faster than expected. But Antarctic summer sea ice increased slightly over the same period. "The seasonal ozone hole over Antarctica failed to recover... but the resulting skin cancer and cataract epidemic in Patagonia or New Zealand turned out to be entirely pseudoscientific."

Global warming generally between 1970 and 2010 was measured at half a degree Centigrade and was slowest in the last decade of the four.

Unsurprisingly, it turns out that Ridley is the author of a book titled *The Rational Optimist: How Prosperity Evolves*. He is Washington editor of *The Economist*.

Daniel Franklin, *The Economist* executive editor, notes that one of the twin aims of *Megachange* is to identify and explore the great trends that are transforming the world, in everything from health to wealth. The other is to discuss the possible effects of these developments. The idea is to supply a helicopter view, and this lively tome certainly does that.

Despite the generally sane and sanguine tone of the contributors, they make sure to load their own prognostications with choice erroneous forecasts from the past. Sample: In 1914 British journalist H N Brailsford opined: "My own belief is that there will be no more wars among the six Great Powers."

Megachange comes in four parts – People and Relationships, Heaven and Earth, Economy and Business, Knowledge and Progress. It's an engrossing read, not least because, for a welcome change, it offers hope to a gloomy world. And it's sophisticated relief from the jeremiads of the gloomsters.

A tale of two varsities

QUITE NATURALLY, all Mpumalanga rejoiced at President Jacob Zuma's announcement in his 2012 State of the Nation Address that the government would establish universities in two provinces, the Northern Cape and Mpumalanga. No community could have welcomed the news with as much ecstatic jubilation as Barberton; after all, there had been a well-organised lobbying effort for the establishment of a university in Mpumalanga since 1994 – with a strong case made for this institution of learning to be located in our town.

Chief lobbyist was local businessman Dr Younus Vawda, who went on to form the Umjindi University Forum-Barberton (UUFB). The forum would spend a considerable amount of time and money compiling a presentation, generating support – including persuading the municipality to donate land – and recently securing an undertaking from the local Agnes Gold Mine to include the university in its water project by providing the campus with free water – a resource, as we all know, that is very scarce in many municipalities.

The mine is developing a water project that will benefit communities situated at the foot of its mountain range which will have water pumped down to them. The land donated by the municipality is also close to the mine's mountain site.

So, with this in mind, Barberton people from all walks of life – business, students and the regular man and woman on the street – were incensed when Mpumalanga Premier David Mabuza announced in his February 2012 State of the Province Address that land had been identified in White River and that that was where the university's main campus would be.

Not only could Mabuza give no "valid" reasons for preferring White River; he went as far as refusing to give his approval for the Barberton Municipality's allocation of land for a university. Later he side-stepped in-depth questions from journalists at a media briefing following his address. He and his spokesperson, Lebona Mosia, referred additional queries to the Department of Higher Education and Training (DHET).

In his announcement, Mabuza went on to say there would be other campuses in other parts of the province such as Nkangala (Witbank). But no mention of a possible satellite campus for Barberton. To this injury

TO THOSE who missed Bheki Mashile's column in the past two issues of *Noseweek*, he writes: "My apologies: my journalism has been interrupted by mandatory agricultural courses that I've had to attend in keeping with the government's farm recapitalisation programme. It has been a tough balancing act which forced me to hold off on publishing the *Umjindi Guardian* – and on writing this column – for a few months. Nonetheless that has not stopped the flood of very good stories that constantly comes my way.

Farm or no farm, I have to find a balance to get these stories out, they are too important. With this one, what should be a cause to celebrate for the people of the province of the rising sun, Mpumalanga, has turned out to be a thorny issue that instils anger rather than joy, and an increased sense of mistrust of Mpumalanga Premier David Mabuza – and which has everyone nervously awaiting the next move. Everyone in Barberton, at any rate. The cause of the trouble? The establishment of a university in the province and its potential for lucrative land deals and development contracts."

was added the matching insult: Mabuza was reported on Nelspruit-based SABC Radio station, Ligwalagwala (Never heard of it?), to have said in reply to a question regarding this omission: "We cannot put a university in a forest".

The insult angered the Barberton community so much that many stayed away from the ANC's centenary celebrations held at the Umjindi Stadium soon afterwards. Mabuza was scheduled to be the main speaker but he didn't pitch up.

The Barberton community concluded that Mabuza had politicised the university location process. And rumours were rife that he had a "personal monetary motive" for the establishment of the main campus in White River. More particularly, it is widely believed he has a "direct or indirect" interest in the White River land – a suspicion you can't blame them for harbouring. After all, the memory of the Mbombela 2010 Stadium development riches grab is still fresh. And recently two Barberton businessmen made national headlines for becoming instant multi-millionaires after buying a farm in Ermelo for roughly R11 million then selling it soon afterwards for a whopping R28m – to the Department of Human Settlements.

[*The Pubic Protector has been persuaded to investigate a spate of suspicious Mpumalanga land deals in which front companies have bought and immediately re-sold land to provincial agencies at vastly inflated prices, generating profits of well over R200m*. – Ed.]

Suffice it to say, a development of the magnitude of a university campus would offer ample riches to those who have a stake in the land. And, adding strength to the suspicions of "personal monetary motivation" was Mabuza's initial refusal to identify the "identified" White River site.

It was later revealed that the land in question had been designated for the development of RDP housing by the Department of Human Settlements. This only served to have the Barberton community ask why the government would sacrifice an RDP housing project for the university when there is such demand for housing – and when Barberton has offered free land that has not been designated for any other development.

"We need to know who owns the land around or near it. Could it be Mabuza and his cronies?" said a comrade who asked not to be identified.

Meanwhile, in addition to the lobbying of the UUFB, the community was confident that Barberton had a strong case based on merit.

The area has long been a centre of geological study, frequented by both international and local scientists and academics. The Barberton Greenbelt, more commonly known as the Barberton Mountain Lands, is famous all over the world. Geologists in many countries know that it contains the world's best examples of ancient volcanic and sedimentary rock dating back to the first quarter of the earth's history, and that some of these rocks have traces of the earliest living things.

For 70 years geologists have come to Barberton to study the rocks, and in more recent years this work has gained momentum. The idea of organising a drilling project was conceived in May 2006. This led to a series of meetings – sponsored by the European Science Foundation – to discuss the choice of targets, drilling strategies and scientific goals.

The first of these meetings was held at the University of the Witwatersrand in October 2006, followed by other meetings in San Francisco, USA (2006), Berlin, Germany (2007), Vienna, Austria (2008) and a one-week field conference in the Barberton belt (2007). The project was approved by the International Continental Drilling Programme (ICDP) in August 2009.

Naturally, the community was asking how Barberton could be sidelined when its suitability was strengthened by its reputation as a field of study by both international and local scientists and academics.


Mpumalanga Premier David Mabuza

'We cannot put a university in a forest'

Just a few days after Mabuza's announcement, the people of Barberton were given a slight glimmer of hope when Higher Education and Training Minister Blade Nzimande, rubbished Mabuza's announcement, saying "the decision where the university is to be situated has yet to be made".

A fresh angle was put on that statement days later when an official from DHET said on Radio 2000 that the location decision was still under discussion and would have to get the approval of the president before being finalised.

Mabuza is known to be a "Zuma Man" so the question is, will the president base his input on merit, or on rewarding Mabuza for his support?After all, there is the ANC conference in Manguang coming up in December.

Now, while we wait with anxious anticipation for the official location announcement from the DHET, Barberton is asking itself whether the decision would be made on merit or whether Barberton would be screwed by Mabuza's suspected political and "personal" motivations.

I know you'll be wondering too.

Eighty plus

WHEN I HIT 80 years of age I thought, Well, now, I reckon I can call myself mature and settle down comfortably with quiet old folks and drink cups of tea and smile a lot. Except there weren't any other old folks around where I lived, for some reason or another there were only people's grandchildren, who didn't drink tea, plus their friends who played guitars just all the time, man, I mean there wasn't a moment's silence, day or night. Restless youth, people called them, though being now mature I saw them as plain fidgety. All this I explained to my grandson.

Jamie, said I, I yearn for the remote silence of the wilderness, the comfort of Mother Nature, to sit in peace and hear the grass rustling and small birds cosily chatting to each other in small chirps, that sort of thing. Privacy in the vastness of the Universe. I understand, said he. Perfectly. Therefore you should come with me and my mates of the University Mountain Club to scale Champagne Castle next week, you can't beat the top of the escarpment for all those comforts of the human spirit you talk of. Three days, easy, says he. One up, one down and one in between meditating at the top. Are you bloody mad or what? say I, I can walk only as far as the Pick n Pay these days. Two blocks away. Flat. Ah! said he, this is no problem, we will catch a lift with the Mountain Club to the Monk's Cowl campsite and there take leave of them and hike about the flattish part of the wilderness and play nature-music on this my guitar and hitch-hike home when we feel like it.

You are indeed bloody mad, say I, I haven't done any hitch-hiking since I was 20, when I hitched from Pietermaritzburg to London in eight months, and all I dreamed of all the way was nice comfortable train journeys the length of Africa, as envisioned by Cecil Rhodes, and Istanbul to Paris on the Orient Express.

But we go. I haul out from somewhere my old mountain boots with sporty red laces and rub them down with a bit of dubbin and we're OFF with a couple of 4x4s full of yodelling youth. Tyrol, Tyrol, Tyrol, they sing, *du bist mein Heimatland*! By midday they are halfway to the top, Holdrioholdrioholdrioholdrio-kuku! whilst down here below, the small birds of the Gondwanaland wilderness emerge and cosily chirp to each other. Nunus rustle about in the African grass. Lovely, sporty, I feel but half my age sleeping on a piece of foam plastic on a whole lot of rocks, feeding on dehydrated food, boiled, no gravy.

I'm about ready for the hitch-hiking adventure on day three. Jamie, my boy, say I, I am ready for the h/h adventure but filled with foreboding, indeed I foresee our bones ground up as Chinese medicine on a shelf in Hong Kong and our organs dried up on wire hooks in a sangoma's surgery. I mean hitch-hiking is not the romantic thing it used to be.

It is in your own aged mind that romance has shrivelled up on a wire hook, he replies. Your normal motorist is enchanted at the sight of roadside folks playing peaceful guitar music and maybe singing small personal songs. You'll see. Come along now. So we're off, and catch our first lift to Nottingham Road with a couple from the campsite, and there we sit hour after hour on the old road across KZN, a good thing because hitching on a freeway is unlawful, but a bad thing because there is no traffic to speak of. Getting on in the afternoon with Jamie patiently twanging away, myself seeing us sleeping rough in a donga, suddenly there's one hell of a blast on an air horn across the landscape behind us and there, of all things, stands a train, with the driver beckoning us across. A full-on goods train, bloody nigh a kilometre long, I reckon, and two great throbbing electric locomotives noisily roaring their impatience as we struggle through a barbed wire fence and pound across the veld. Getting aboard from ground level is not easy. A huge hand reaches down and heaves me up, more or less bodily. I seen your guitar, says the owner. Me, I play the konsertina. This ou here is Zondi, he's the driver. Me, I am Viljoen, but they call me Biltong. I am the fireman. There isn't a fire any more, hey, that is from old steam days, it really mean I am the second driver in case ou Zondi drop dead, laaik.

I dreamed of comfortable train journeys as envisioned by Cecil Rhodes

Good musicians fall easily into companionship. Well, compatibility I suppose I should say. In two twos, three at the most, Jamie and Biltong have got the Boeremusiek going; this is a waltz in the key of e-minor, the sentimental one. Zondi smiles, he and Biltong have spent the long lonely hours together. I am once again 20, hitching as the sun went down in the Northern Transvaal, hearing the far-off nostalgic voice of the concertina, wistful and a little bit sad in that key, and going off-road to the distant house lit by paraffin lamps, where always there is a handshake and an easy smile for the lonely traveller, and a bed, for that is our history and our heritage.

We arrive in Durban in the middle of the night, way out in some remote shunting yard. *En toe*? What now? How to get eight kays across Durbs to our home? There are two bunks in the second loco, says Zondi. You can sleep there if you like.

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