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# noseweek

160 FEBRUARY 2013



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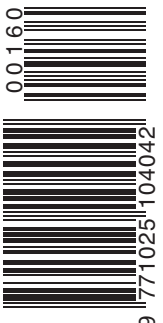
**Financial regulator  
ducks for cover**

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9

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29 Jan, 7.30pm DURBAN, City Hall

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# Letters

## Working on the chain gang

FOLLOWING ON YOUR ARTICLE (IN *NOSE159*) about the unethical behaviour of some health care and service providers: the practice of confidential rebates, discounts and kick-backs is also widespread in the general supermarket and wholesale industries in South Africa.

In order to become a supplier of goods to the supermarket chains, you are forced to comply with their many demands and jump to attention on command. It's common for distributors of foodstuffs to retail chains to add upwards of 20% to the factory price to cover the costs of dealing with the chains.

If consumers knew how the demands and operating procedures of these retail chains pushed up their prices, they would not support them.

The requirements of Section 18A of the Medicines and Related Substances Act should apply to all foods as well.

**Nick McConnell**  
Howick

## Road to ruin

MY HUSBAND RIDES BMW MOTORBIKES, and we read your story about the BMW

dealership in Nelspruit (*nose159*) with interest.

It seems they terminated the Willowbridge dealership (Hamman Motorrad) in a similar way.

**Gisela**  
Cape Town

## Unravelling and in stitches

WHEN IT COMES TO BUYING BELTS FROM Mr Price (Bheki Mashile, *nose159*), I had the same experience just a year ago: the belt started disintegrating after a month or so.

I do enjoy Bheki's column!

**Keyan Tomaselli**  
UKZN, Pietermaritzburg

## Malpractice melée

REGARDING SPIRALLING HEALTH CARE (*nose159*), the exit price on pharmaceuticals merely shifted the claiming of profit by pharmaceutical companies from the state to the private sector – payback for withdrawing litigation.

Also, medical insurance companies devise ingenious ways of not paying for what they consider unacceptable risk. Medical insurance annual premium increases outstrip inflation.

Over-servicing by doctors is another ever-more-serious problem.

State services are crumbling, allowing mercenary medical service providers to step in, armed with a Hippocratic Oath to put patient before profit!

**Fazil**  
Laudium

## Law-law or jaw-jaw?

*The KZN Law Society at last responded to Noseweek's request for information (made in May 2012, with a reminder in October) regarding the extent of malpractice complaints against lawyers in that province and how*

*speedily they are dealt with. In a letter prefaced by a lengthy explanation of how complicated and time-consuming the procedure is, the writer gets to answer our question:*

THERE ARE 1,253 COMPLAINTS BEING investigated, with 11 pending matters involving suspension and strike-off applications in the High Court.

To deal with matters expeditiously and effectively the Society continues to review its procedures and to this end has migrated to electronic operations insofar as practically possible and has employed additional staff.

**Gavin M John**  
Director, Law Society of Kwa-Zulu Natal

## Fishy rhino business

THE BIG PICTURE ON THE ISSUE OF A LEGAL trade in rhino horn is not making sense. Might South Africa's vacillation on the submission of a proposal to CITES (Convention on International Trade in Endangered Species) not be as innocent as it appears?

Last year over 600 rhino were killed illegally. At an average weight of 4kg and at a price of at least \$50,000/kg to the illegal hunter, this horn is worth about R1 billion. With South Africa's track record of corruption, it is almost inconceivable this sort of wealth would go unnoticed – and a squeaky clean legal trade in rhino horn would leave no opportunities for corruption.

For those with corrupt intentions, perpetuating the current situation is the perfect strategy. You are seen to be taking into account the concerns of the international community, while profiting from the status quo.

I put in a lot of work in 2011 preparing South Africa's proposal to CITES. I quote from my report: "I was surprised at the overwhelming consensus among people I met that a legal trade in rhino horn offers the best remedy for the escalating illegal hunting of rhino in South Africa. In Namibia there was a similar consensus in favour of a legal trade. (Namibians see it only as a matter of time before they are subjected to the same problems.)"

GUS

## CHIROPRACTIC FOR SUCCULENTS







**Belt up!** Unravelled and in stitches (facing page)

But I became increasingly puzzled by South Africa's apparent inability to take a decision on submitting a proposal to CITES. South Africa has an established position on sustainable-use issues and submitted a proposal to CITES for a legal trade in rhino horn back in 1992. Yet when Environmental Affairs reported to CITES in July, they failed to mention the groundswell demanding legal rhino horn trade.

Last year I watched a video interview with a Chinese mafia boss on the illegal trade out of South Africa. He said he was exporting about 5 tonnes annually but strongly favoured a legal trade in horn as he was tired of the risks and costs of illegal exports... including bribes to people in high places. Worth a closer look?

**Rowan Martin**  
Zimbabwe

## Chinese cookies

MR KEVIN BLOOM'S LINKING OF THE Chinese arrival in Africa with the spurt in African GDP, takes the fortune cookie!

There is absolutely nothing to link the two. He also asserted that the West has turned it's back on Africa. Not true. The West still provides the bulk of finance to Africa. Mr Bloom seemed more interested in telling his audience how widely he has travelled, than on bringing facts about the Chinese silent invasion to the table.

**Ian Hurst**  
Cape Town

## Give that man a Bells!

AS AN AVID READER OF HAROLD STRACHAN in *Noseweek*, I was aware that he had run the Comrades many years ago.

According to the Comrades Marathon website, runner Strachan, no initials given, born 01/01/26 and wearing number 35, completed the 1949 race in 12th position in a time of 8hrs 37mins, and the 1954 Comrades in 6th position in a time of 7hrs 48mins, earning a gold medal.

There's no record that Strachan ever ran the Comrades again, which is a pity in view of his obvious potential.

His humorous and laid-back "trail-blazing" article (*nose159*) is a true-to-life story of training and running in the "old days" and brought back many happy memories as I was also involved in running the Comrades from 1957 to 2001 – a total of 45 consecutive years – ending up with 42 finisher's medals, only 40 more than Harold!

Further confirmation of Harold's Comrades exploits can be found in the 2nd edition of *The Comrades Marathon Story*, written by fellow runner Morris Alexander, who would be well known to Harold, and also Dart Bousfield, referred to in *nose159*.

In his description of the 1954 race, Alexander mentions Harold Strachan as a "later to be connected with the famous prisons case involving himself and the *Rand Daily Mail*", a reference to Harold's activist days which he

touches on from time to time.

Further on, Alexander states "... while arts lecturer and former South African Air Force Pilot Strachan finishes 6th" and then adds a tribute of sorts:

"Strachan's performance was surprisingly good. At four o'clock that morning, when his attendants came to his Maritzburg home to collect him for the drive down to Durban for the start, he and his wife were perched on high bar-stools breakfasting on gin and vermouth.

"Once out on the road in the race he showed that he was as rugged as he was a colourful personality."

Judging from some of his columns, very little appears to have changed. If Harold was indeed born on 1st Jan 1926, it means he was 87 years old on New Year's Day, which may account for a few minor lapses of memory.

You see Harold, I'm only 81 and don't drink gin.

For your records Harold, my gin-drinking, shad-catching old Comrades china, the race started not in 1926 but on Empire Day 24th May 1921, with 34 starters and 16 official finishers. Give that man a Bells.

Also due to Adolph H and WW II, only five races were lost, not six. There were no Comrades from 1941 to 1945, with only 10 finishers in 1940 and 8 in 1946.

**Clive Crawley**  
Comrades No:1



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## Editorial

# Chinese chequers

**A** READER HAS POINTED OUT THAT A FEW years ago, British reporter Andrew Malone of the *Daily Mail* prefaced a piece on the wave of Chinese migration to Africa with a quote from a letter Charles Darwin's cousin, Sir Francis Galton, had written to *The Times*, way back in 1873.

Galton had outlined a new method to "tame" and colonise the "Dark Continent" – which Malone, with due caution, described as "daring, if by today's standards utterly offensive".

"My proposal," Galton wrote, "is to make the encouragement of Chinese settlements of Africa a part of [Victorian Britain's] national policy, in the belief that the Chinese immigrants would not only maintain their position, but that they would multiply and their descendants supplant the inferior Negro race.

"I should expect that the African seaboard, now sparsely occupied by lazy, palavering savages, might in a few years be tenanted by industrious, order-loving Chinese, living either as a semi-detached dependency of China, or else in perfect freedom under their own law."

Galton was a distinguished African explorer, besides being a statistician of some note. His grand resettlement plan stirred controversy in the Royal Geographical Society, which soon fizzled out because there were much more exciting things going on in Africa at the time.

But, the *Daily Mail* reporter suggested, Galton may simply have been a century or so ahead of his time: "His vision is coming true – if not in the way he imagined: an astonishing Chinese invasion of Africa is now under way.

"Reminiscent of the West's imperial push in the 18th and 19th centuries, China's rulers believe Africa can become a 'satellite' state, solving its own problems of over-population and shortage of natural resources at a stroke.

"With little fanfare, a staggering 750,000 Chinese have settled in Africa over the past decade. [Many more have since arrived – and continue to arrive.]

"The strategy has been carefully devised by officials in Beijing, where one expert has estimated that China will

eventually need to send 300 million people to Africa to solve its problems of over-population and pollution." So reported the *Daily Mail* in 2008.

*Noseweek's* guess is that Malone cribbed the quote from the right-wing US *National Review*, who'd used it in a 2007 report on the subject. Galton's quote got another play, in 2011 on the US online news channel, NewscastMedia.com in relation to the same subject. All of which casts a racist pall over the debate: Galton is the father of Eugenics, the "science" – later also employed by Hitler – to cast Germanic people as "the master race".

So, why might one want to quote Galton's 1873 letter in relation to the current Chinese migration to Africa? First, maybe it's just an intriguing bit of history; second, it's clearly fashionable in certain media circles to do so.

Writers unconditionally in favour of Chinese migration to Africa – for reasons generally unstated, but suspiciously similar to Galton's – might raise Galton's ghost to frighten off decent, liberal-minded people from participating, critically, in the debate.

*Noseweek* entered the debate (in nose157) and intends participating in it for a while yet. So, for the record: we welcome immigrants (and refugees) from China, as from anywhere else, provided they meet our country's immigration criteria, are legally resident and comply with our laws, including our tax and labour laws.

Stereotypically, the vast majority of the current immigrants from China are obviously well funded and organised, but meet none of the above criteria, prompting the suspicion of some or other as-yet-unproven criminal conspiracy.

The strange silence of the ANC and Cosatu on the subject lends credence to the suspicion that their leadership have a secret, lucrative relationship with the Chinese. Which might be in their own interests – but not in the interests of their members, the country and its people. Not a good thing – unless, of course, you subscribe to Galton's theory.

**The Editor**



## Disgraced Louis Group splutters on in SA

**T**HE UNRAVELLING OF THE LOUIS Group of property companies in Europe – and South Africa – has been long in the process, although the company succeeded miraculously in keeping the bad news from its unfortunate investors for more than a year.

Only now have they learned that after a year-long investigation by its inspectors, the Financial Services Board on 19 September 2011 gave notice that it was withdrawing Louis Group SA Ltd's (LGSA) authorisation to act as a financial services provider.

At the same time the FSB gave notice that it was debaring 12 Louis Group directors from “rendering any financial services to clients, whether directly or on behalf of any authorised financial services provider in terms of Section 14 (a) of the Financial Advisory and Intermediary Services Act”.

However, exactly one month later, LGSA and the 12 debarred directors brought an application in the Western Cape High Court against the Registrar of Financial Services Providers, for an order reviewing and setting aside the FSB's withdrawal of its licence and debarring of its directors.

For unknown reasons the FSB did not oppose the application and instead simply withdrew its September 2011 notices.

Almost immediately, one of the Louis Group's investors, a trust called the Arts Foundation, issued summons out of the Western Cape High Court, seeking to recover its multimillion-rand investment, plus interest.

On the Isle of Man, where the financial authorities did act and closed down the Louis Group activities there in their entirety (see *nose159*), elderly locals have lined up to tell the local

newspaper, the *Isle of Man Examiner*, how they have lost their life savings, having been “missold” an investment in the Louis Group as a “low risk” investment.

Jane Taylor, who worked as a senior investment administrator for the Louis Group in the Isle of Man for two years, invested a total of £25,000.

She said: “They were my employer and I trusted them. I had worked in banking for 35 years and it was not sold as a high risk investment – it was promoted as having no element of risk. There was a Christian ethic. I was told there was no way I would lose my money. They must have known for a long time that things were going wrong.”

They clearly did. Early last year a Namibian citrus plantation owned by the Group, called Komsberg Farming, went into liquidation, without having paid its workers for some time. ■



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16 Ave Bordeaux, burned down May 2012, claim still in dispute January 2013



## Northcliff, Johannesburg

41 Highcliff Way, burned down June 2012, claim still in dispute January 2013





## The smile on the face of the President

**R**EADERS WHO HAVE RECEIVED AN email purportedly written by former Gold Fields CEO Chris Thompson about a meeting with Jacob Zuma about Nkandla have wondered: can it be real?

*Noseweek* reporter Mark Thomas tracked Thompson down to his home near Denver, Colorado, US. Yes, said Thompson, he wrote it. But he had intended it as a private communication to a friend, not for general publication. But now that it had gone viral, “I may as well confirm that I wrote it – and that it’s a true account”.

“Now that it’s to be published, I hope it contributes to widespread efforts to expose and clean out the rot at the top in South Africa’s politics.”

So here’s what the former Gold Fields CEO said in his email to a friend on Saturday, 24 November, 2012:

“When I was CEO of Gold Fields [1999-2002] I got a call from [former President Nelson] Mandela saying we should build a school at Nkandla for Zuma – he was the vice-president at the time. GFL had a foundation, which I headed, and we built schools all over the country but only where there was real need. Nkandla already had a school so I told Madiba we would look into it. The conclusion was that it was marginal but it could be said to have need for a new and bigger school.

“When he called me again to repeat the request a couple of months later, I said I’d go down to Nkandla myself and meet Zuma. I flew down by chopper and Zuma flew in with an entourage, with three military choppers, and put on a big lunch etc for us. He then took us to see the existing school and meet the architects who had designed the proposed new school. It was pretty grand. In the course of discussion I asked what the cost would be and the architect, standing next to me (who absolutely stank of booze) grinned and said ‘R12 to R14 million’. I turned to



our foundation chief and said that that was about three times what we usually spend and asked what should the cost be for the design we were looking at. The answer: ‘about R5 or R6 million’. So I looked at the architect and asked ‘Where does the rest of the money go?’ He looked across the table at Zuma and Zuma just looked at me with this big smile.

“So I flew back to Joburg and called Mandela. ‘Yes we will build a school in Nkandla but there are two conditions: 1) it will be a school that GFL designs and not Zuma’s design, and it will be built by our contractors reporting to us (It ended up costing about R4m). And, 2) we are listing GFL on the New York Stock Exchange in two months and we want you to come and ring the bell for Gold Fields at the launch’ [In *New York on 9 May 2002* – Ed]. He agreed.

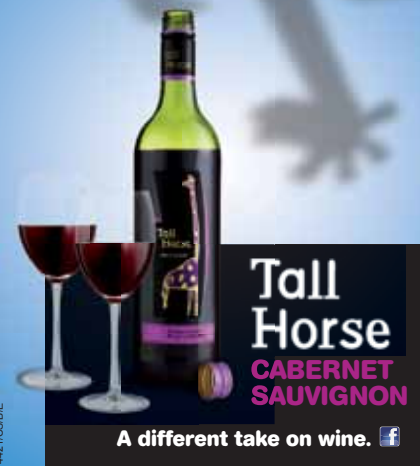
“The reason I asked for him was because Anglo Gold had brought a real live lion (drugged of course) on to the NYSE stage as a very successful publicity stunt, and as long-time rivals we wanted to upstage them.

“The effect of Mandela on the floor was electric. We got huge press around it and the stock went up nicely.”

The new Mnyakanya Secondary School, built by Gold Fields, was opened in March 2004.

Thompson concludes: “But I will never forget that smirk on Zuma’s face. The revelation about the highway and his house scam are all consistent with what we saw that day.” ■

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# On a mission

Respected journalist and film-maker Sylvia Vollenhoven (right) refuses to be intimidated by the panderings of the SABC to its ANC masters. She is determined that the South African public *will* see her gripping and incriminating documentary, *Project Spear* – after it was canned by the lily-livered broadcaster

**T**HE STORY IS NEVER GOING TO GO away. It's only going to get bigger – and I won't rest until my documentary programme gets broadcast to the South Africans who need to see it."

So says TV filmmaker and SABC veteran Sylvia Vollenhoven, creator of the documentary *Project Spear*.

Vollenhoven, who was commissioned last year by the public broadcaster to produce the documentary as part of a new series called *Truth Be Told*, has spent the past six months trying to reason with SABC bosses, who now appear firmly resolved not to flight the documentary and instead, would prefer to sell it to anyone with the guts to broadcast it.

The film is based on a story which first appeared in *Noseweek* more than two years ago. It tells of an ex-MI6 spy who presented the South African government with a plan, dubbed Project Spear, to recover billions of rands misappropriated by apartheid-era bankers, officials and politicians from state coffers.

The key question raised in the film is: Why has the ANC government refrained from taking action to recover the money? It has taken no action even though its Security Services commissioned a top-level London private investigations company, Ciex, to establish how public funds were stolen or misappropriated during the apartheid era and despite the fact that the government has been provided with a

strategic plan to recover the money.

Senior Reserve Bank executives refused to participate in the documentary, despite the bank's having been a key player in the original story.

More than 280 *Noseweek* readers, as well as industry professionals and members of the Right2Know (R2K) movement squeezed into a small basement theatre in December to attend four "guerilla" screenings of *Project Spear* in Cape Town. The special screenings were arranged after it became known that the public broadcaster was determined to pull the documentary, saying that the government would "not take kindly" to it and that the material was "too sophisticated for SABC2 viewers".

As Right2Know activist Mallick Bailey, who watched a screening of the movie at Cosatu House in Cape Town put it: "What an insult. It's easy to understand what's happening here and the SABC should be forced to inform South Africans about this." For Bailey, the film is "highly informative" about the corruption that is taking place in South Africa.

"Most people in the audience were outraged by it. This movie portrays the truth and that is why the SABC won't show it.

"No, there is no way that ordinary South Africans won't understand this movie. What will happen is that people will relate to it – and their eyes will be opened to what is going on. It is the SABC's responsibility to inform

the people – but the ANC cadres there are reluctant to acknowledge that their leaders are not up to scratch, so everybody in the country is living in denial. They should be forced to show it."

Vollenhoven says she was spurred on to make the film after reading the story in *Noseweek* in 2010, and became determined to pursue it in the public interest.

"Many *Noseweek* stories are about an era when I was a very active journalist. When I read about the Tollgate saga and other issues, it rings a lot of







bells. A lot of those stories feel so inconclusive to me, and there is so much unfinished business. For instance, Julian Askin [one-time British chairman of Tollgate] was forced out of South Africa and made to look like the biggest crook ever, but really what happened was something entirely different," she told *Noseweek*. "It was a cover-up of something much bigger and a lot more sinister. I thought if the story intrigued me, it must intrigue a lot of other people. I also really wanted to see how I could take such a complex tale, when

told in print, and turn it into an audiovisual story for a wider audience."

Vollenhoven says her proposal, sent to the SABC in January last year, was based mainly on the research *Noseweek* had done.

"It was very clear the SABC were very interested in the story as they asked a lot of questions about it."

Soon after, the SABC told Vollenhoven they would commission *Project Spear* for their planned new series of documentaries to be called *Truth Be Told*, scheduled to be launched on SABC2 in September. Thrilled, Vollenhoven assembled a team to take the story from the page to the screen.

In April 2012 the "shooting script" was sent to the SABC. The corporation okayed that script and Vollenhoven and her team went ahead with interviews for the documentary.

"More and more information just kept coming in. The challenge was to cut it down so it was not too overwhelming for viewers. But, the story is exactly the same story as told to the SABC right from the start..."

"For 10 years I had been a co-ordinator for INPUT, the International Public Television organisation," said Vollenhoven. "Every year they showcase the best television produced by the public broadcasters of the world in the public interest. One that stood out for me was done by a Norwegian producer on a complicated investigation into the North Sea oil scandal. They used actors coming and going in a room and lots of voice-over as there was very little archive material. I took my cue from that. I had also seen the movie *Bugsy Malone*, which I loved – the characters, with innocent faces and ill-fitting suits, playing gangsters.

"We dressed young street dancers in oversize clothes and gangster fedoras and incorporated their hip-hop pantsula and B-Boy moves to demonstrate that the people we were talking about in the film, although they might be respected members of society, were nothing more than gangsters. That's the strong statement the film wants to make."

By August, Vollenhoven had sent the SABC what is known as a "rough assemble" on a DVD.

"We didn't hear anything from them so we thought, OK, that's fine. Based on that, we went into a final edit at the be-



ginning of September and delivered it by courier in mid-September. But that was when things started getting weird. We got an email from Thando Shozi, acting head of 'factual' commissioning, who said she had a few problems. The first was that the film was too sophisticated for an SABC2 audience. The second was that the dancers were a distraction and another problem was that it was possibly defamatory, especially of Trevor Manuel.

"One of the quotes from her email was that 'The government is not going to take kindly to being asked, why are we walking away from recovering so much money?'"

"I thought that as investigative journalists, we shouldn't be in the business of worrying whether the government will take kindly to it.... If the government's been doing the wrong thing, of course they won't take kindly to it and if you are doing the right thing that should be your desired result."

Nevertheless, Shozi's list was something Vollenhoven thought she could negotiate.

"The discussions were still very amicable. My main objection was that it was coming so late in the process, my budget was finished. There was no

**It was a cover-up of something much bigger and a lot more sinister. If the story intrigued me, it must intrigue a lot of other people**



more money to go back into editing.

“Even at this stage, I remained optimistic, I thought we had enough time, and the documentary would still go out sometime, as the series was scheduled to run until November 4.”

Soon after that, Vollenhoven had a call from Shoji to say the matter had been referred to her boss, the acting head of content enterprises, Gerhard Pretorius. She then heard that he had given a copy to Jimi Matthews, head of news at the SABC.

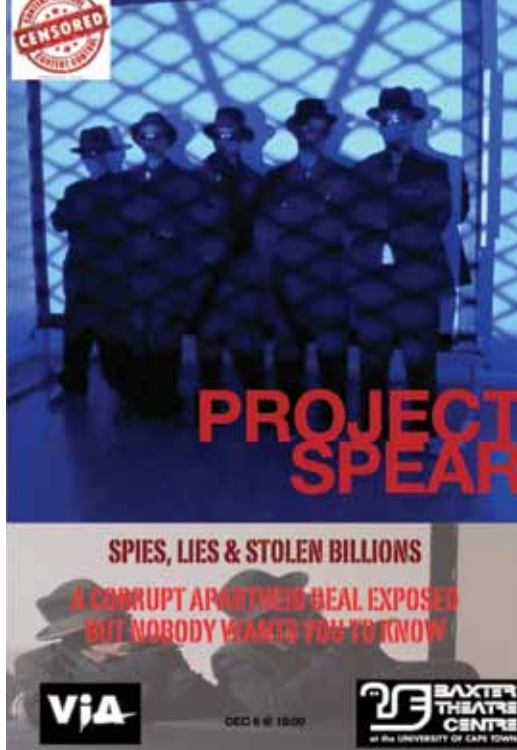
“When I spoke to Jimi on the telephone, it became clear he was not optimistic that this documentary would see the light of day. He told me it had got to the point in the SABC where the legal people have the final say. It didn’t used to be like that. The ‘legal people’ gave us recommendations about how far we could go, but they had reached the point where ‘the legal people’ have the final say. He said this was not the only piece of journalism that was going to be shelved because the government would not play ball.”

Another SABC source, who asked not to be named, explained: “The party bosses have devised an absurdly simple strategy: refuse to comment on stories that are critical of the government, then press the broadcaster not to run stories because ‘they have failed to obtain government comment’. The government has cottoned on to the fact that that’s how it works at the SABC: if they don’t play along, then the broadcaster doesn’t use the story because they’re too scared.”

Vollenhoven then pushed Pretorius for an official response. The reply came from a range of executives in charge of content and of broadcast compliance.

“Now, instead of just those few things Thando had mentioned, they threw the book at me, saying everything was wrong with it and that I was in contravention on so many levels of the SABC’s editorial code... Then they asked me for research information, and for an annotated script – which has never before happened in the history of the SABC – I sat up nights to do it.”

As a last resort, Vollenhoven offered to pull together all the SABC’s objec-



Posters for the private showing

tions and “fix whatever it is, we must be able to fix it”. In the meantime she had been commissioned to do another series for the public broadcaster, a biographical series using musical memories to tell biographical stories, to be called *Striking a Chord*.

“If *Project Spear* was so useless, why would they commission me to do, not just one, but four... but I thought OK, if they’ve run out of money – and I know it’s difficult to get the budget to do this – I will do the changes. I was prepared to bend over backwards and use my own money to fix it. I was prepared to re-look at the script and be more sensitive about the potential litigation, to go easier where it is quite hard-hitting. They had problems with the corporate logos used in the film (including those of Absa, Armscor and the SA Reserve Bank). I thought if we had to lose that, it would be OK, because the main story still stands.”

Still Vollenhoven heard “absolutely nothing at all” from the SABC.

Around November, Vollenhoven got wind of the fact that Public Protector Thuli Madonsela was about to release her preliminary report on her investigation of the very same subject matter as Vollenhoven’s documentary: the government’s failure to follow through on the *Project Spear* recommendations. [Subsequently postponed to the end of January.]

“I wrote to Gerhard Pretorius and suggested if we are going to make changes, we should do them in time

for the documentary to be shown when Advocate Madonsela’s report comes out.

“But I also made it clear that if they were no longer interested, I might try raising the finances to buy the rights back from the SABC.”

She received a terse email from Pretorius: “Dear Sylvia, The Business Plan for the sale of Project Spear is being sent around for signatures. Henk Lamberts will contact you to conclude.”

Vollenhoven believes that for the SABC it’s Hobson’s choice: “If they don’t use the movie it’s a contravention of article 217 of the Constitution in terms of wasteful state expenditure. They’ve commissioned something that didn’t deviate from the original commis-

sion and they are not using it. If they opt to recover their expenses and sell me the rights, what they’re saying is that we, the public broadcaster, are relinquishing our responsibility to inform the South African public and are making it quite plain that our primary concern is money and protecting the government’s image.

“So whichever road they choose, it is equally disastrous.”

Does Vollenhoven believe the SABC received a directive from the powers-that-be to pull the programme?

“No. More than anything, it is sychophantic, scared people who brought

**This story is only going to get bigger and I just want to make sure that the documentary gets out there**

about this debacle. A friend who is a senior official in the ANC begged me to put lots of pressure on the SABC and 'get them to use this bloody thing'. My friend told me the ANC does not want people to think the government is pulling strings at every turn at the SABC 'because we are not'.

"I believe her. That's how bad things are at the SABC. All of the people I have been dealing with are in acting positions... Thando Shozi, Gerhard Pretorius – and others – so everybody is insecure and frightened and, maybe, ambitious."

Determined not to let the matter rest, Vollenhoven's plan of action is to insist the SABC provides the promised business plan, a precursor to the sale of the rights.

"If they do come with a serious offer to sell, I will go out and find funders and start talking to broadcasters. If we raise enough money we can even bypass the broadcasters... If we don't get enough interest – say, from e-TV or DSTV – we can make it go viral on the internet, that's the other option," says Vollenhoven.

"This story is only going to get bigger and I just want to make sure that the documentary gets out there. My first priority is to pressurise the SABC, because it has a responsibility to show this to the people who paid for it. But if they don't, I will make sure that we find an alternative avenue, whether it is the internet or a combination of the internet and other broadcasters, so that all South Africans can see what is happening. This is a story that's indicative of what's wrong with our society, and the kind of stuff we are trying to push under the carpet. This is only one issue. If we just allow it to get pushed under the carpet, there are so many other things we don't know about. I can't possibly give up on it. It's just not possible..."

In the meantime, London solicitor William Humphreys, project manager for John Risley, the Canadian financier who is sponsoring related court cases in various countries, was back in South Africa in December to get the ball rolling on German shareholder Michael Dürr's case against the SA Reserve Bank. He wants the matter taken to the World Bank's ICSID (International Centre for Settlement of Investment Disputes) to prepare for a possible class action suit aimed at recovering the

money on behalf of the citizens of South Africa and to "prepare the ground" for a case in which Michael Oatley will seek to recover the fees he would have earned had the government proceeded to recover the lost billions.



"They are very determined. This story is going to develop into something big," says Vollenhoven. ■



**T**HE OBDURATE STANCE OF THE SABC reinforces the perception that the public broadcaster is nothing more than "His Master's Voice" – demonstrated by a range of recent decisions.

- In 2006, the SABC withdrew an unauthorised documentary on then-President Thabo Mbeki which it had commissioned producers Redi Direko and Ben Cashdan of the production company Broad Daylight Films to produce – prompting the accusation by Direko that this was an "ill-conceived and politically motivated" decision.

- In November last year, two hours before it was scheduled to be flighted for the first time, the SABC banned an animated advertisement for The Fish & Chip Co, which depicted President Jacob Zuma and his large family sitting at an extremely long dining-room table, eating a take-away meal. The advert, which kicked off with the words, "Dinner time at Nkandla", then went on to show a woman, saying in Zulu, "Oh Zuzulicious, we're having fish and chips from Shabba today", to which the animated president answered: "Eat up, honey bunch, there is a lot of good food here. It's from the Fish and Chip

Company. There are many of you in this house, at only R25, even Pravin will approve this."

- Earlier this year, the SABC's head of news, Jimi Matthews, sent an email to his news editors in which he forbade all of news staff, to refer to Zuma's private Nkandla property as a "homestead" or "compound" and banned the use of the words "Nkandlagate" or "Zumaville" in the SABC's reporting, after Zuma's spokesman Mac Maharaj criticised the word compound, saying it was a term from the country's racial past, used by white South Africans to refer to homes for "black migrant workers".

- And, a week or so before the ANC's elective conference in Mangaung, three journalists who were scheduled to discuss media coverage during the run-up to the conference on Metro FM were told they would no longer be taking part in the radio show – because an ANC representative was not part of the panel being interviewed.

- Then, in December, the SABC canned a pre-recorded *Interface* show on SABC3 because it featured an interview with cartoonist Jonathan Shapiro, otherwise known as Zapiro, following "orders from above". ■

# FSB seeks indemnity from its many sins

**P**ARLIAMENT IS PRESENTLY DEBATING a host of amendments to the laws that are meant to regulate the financial services industry. The amendments are sought by the Financial Services Board (FSB), the body created to enforce those laws, as it claims it does not currently have the powers it needs to protect the public from deviants in the industry.

But – we should have guessed it – buried in the 230-page document that sets out the ostensibly well-intentioned Financial Services Laws General Amendment Bill is an item that does anything but protect the public from the miscreants and incompetents in the FSB itself.

The proposed amendment to Section 23 seeks to indemnify the FSB and its officials from claims that might arise as a result of their incompetence or negligence. To escape liability, all that the FSB or its officials need allege is that they acted “in good faith” – something lawyers will tell you is “a frame of mind” that is easy to allege and notoriously difficult to disprove.

The proposed clause reads: “No person shall be liable for any loss sustained by, or damage caused to, any other person as a result of anything done or omitted by that person in the bona fide exercise of any power, or the carrying out of any duty or the performance of any function under or in terms of this Act...”

Simply, it means there is to be no legal recourse against FSB officials when their actions cause financial loss to anyone, including the people they’re supposed to protect from financial loss.

On its website, the FSB is described as “a unique independent institution established by statute to oversee the

South African non-banking financial services industry in the public interest. The FSB is committed to promote and maintain a sound financial investment environment in South Africa.”

If the FSB has indeed been acting in the public interest since its inception in 1994, why would its officers now desperately need to be indemnified? Should the amendment be accepted by parliament and become law, the FSB would be the only South African entity with such protection. Not even the police are held indemnified if they cause damage in execution of their duties.

Several financial institutions, pension funds and individuals have over the past year issued summons against the FSB and individual executives and employees of the FSB in which vast sums are claimed in damages. Others have given notice of their intention to do so. A case in point involves the Southern African Clothing & Textile Workers’ Union (Sactwu), where 20,000 members of five Sactwu provident funds lost up to R500 million in the Trilinear Asset Management debacle. This happened shortly after the FSB had investigated Trilinear, only to lift its suspension and give it a clean bill of health in 2008. The evidence now available suggests the FSB may have failed to act on information from a whistleblower because of the “collegial relationship” at the time between the FSB and the management of Trilinear.

**If the FSB has been acting in the public interest, why would its officers now need to be indemnified from damage caused by their actions?**



# Tony Mostert calls for an apology – and gets it

If you've read this story before, read it again. Some significant changes have been made since you last read it

**S**HORTLY AFTER PUBLICATION, Tony Mostert of Attorneys A L Mostert & Co communicated with *Noseweek* in order to address a number of allegations in the earlier version of this story that, he has pointed out, were false and defamatory, with the most serious prejudicial consequences to his and his firm's reputation. *Noseweek* regrets having published the incorrect allegations relating to Tony Mostert and they are unconditionally withdrawn. Any negative innuendo with regard to Mostert is similarly withdrawn.

**For the errors in our reporting, we apologise not only to him, but also to our readers.**

*Noseweek's* contention in the original version of this story that, to date, nothing had been paid to pensioners from recovered pension-fund surpluses was misleading and insofar as it might have implied that the curator was inappropriately hanging on to these substantial sums, doubly misleading

On 30 January, days after publication of this magazine, Old Mutual Corporate wrote to confirm that payments of surplus benefits to "stakeholders" in eight of the nine pension funds under Mostert's control had in fact commenced [in August 2012]. They stated that as at 28 January 2013, the total of surplus benefits already paid to beneficiaries in all eight funds amounted to R255.3 million and that a balance still to be distributed of R541.5 million re-

mained invested with various financial institutions in the name of the funds.

Beneficiaries of the following pension funds have received payments: Mitchell Cotts, Picbel Group Provident, Prestolite, Lucas SA, Datakor Group, Datakor Group Retirement, Cortech and Sable Industries

However, the frequent references in other media over the past two years to payments being made to "pensioners" was equally misleading. Despite the pensioners' cause having been the driving – and emotive – reason repeatedly given for the whole curatorship and surplus recovery exercise, the substantial sums paid out over the past year have not gone to pensioners. They have been paid to former members of the funds who had left the funds prior to retirement.

Pensioners did not share in the largesse since the overwhelming majority of them received everything they were entitled to – and more when their pensions were transferred out of these funds more than 15 years ago.

The R250m in surplus funds recently paid out has gone only to 6,188 verified former members of the funds. In terms of amendments to the Pension Funds Act made in 2001 – several years after the surpluses were fraudulently stripped out of the funds in question – former members are now entitled to share in a surplus distribution in the form of a "minimum benefit". The pensioners are only taken into account if they did not receive their pensions or minimum benefits.

The actuary supervising the surplus

apportionment, Dr Erich Potgieter confirmed that former members are also the only category of beneficiaries who currently stand to share in the remaining surplus funds, in terms of the surplus apportionment scheme that has been approved by the FSB.

However, most of those former members that are traceable have already been traced and paid in the past six months. The substantial number that remain unpaid are by now regarded as untraceable, or are owed such small amounts that it is uneconomical to hire tracing agents to find them.

Asked for comment, Mostert said the likelihood is that a major part of the recovered millions will eventually be used for a further distribution to stakeholders, at the discretion of the curator in terms of the surplus apportionment Act.

Also contrary to our original belief that no payments had been made from recovered funds, it has also been brought to our attention that, in a general information circular issued by the FSB on 12 October 2012, it was recorded in a footnote that, as at 28 February 2012, R50.058 million had been distributed to "stakeholders" in the Mitchell Cotts pension fund – again, by "stakeholders" was meant former members, not pensioners.

To complete the record, Mostert has pointed out that already in 2008 approximately R70m was expended purchasing a policy to properly secure the pensions of Datakor pensioners.

Asked why the current distribution was taking place only several years

after he was appointed curator of the pension funds, Mostert explained that when he was appointed, most funds had not only been unlawfully stripped of all their assets; all their records had disappeared too.

“Once the surpluses were stripped, the funds were conveniently closed down, so that no records were maintained. We had to go to the administrators, like Sanlam and Alexander Forbes, in the hope of retrieving records, but since they were often involved in the litigation or, due to a paucity of their data, they were not helpful. The Sanlam records have been found to be grossly inadequate.”

In the meantime, to recover the funds, he had had to embark on vigorously contested litigation which continued for years. Most of the misappropriated funds were finally recovered only in 2010. “And only then could the apportionment and distribution process begin – a process that normally takes three years. I had published the statutory notices in anticipation, shortening the process to two years.”

But in the intervening 15 years, people have died or moved on. Former members who had left the funds as far back as in 1980 had to be traced, making the required verification of entitlement extremely onerous.

And then there was the difficult question of how to apportion the recovered money between the various pension funds. Most of the funds were recovered from parties who had played a joint role in various of the stripping exercises. Mostert explained that, ultimately it was decided to devise a formula for distributing the total funds recovered to the various funds, based on the original surplus amounts that were stripped out of them. He submitted his formula to three eminent senior counsel, Lucas van Tonder, Jeremy Gauntlett and Schalk Burger and they found it legally acceptable. The FSB then approved it.

So how much money was, in the end recovered? About R940m, says Mostert. (We had wrongly estimated R1.2 billion, based on FSB reports, but these, said Mostert, had included some recoveries for funds not under his control.)

After deduction of the curator’s contingency fee and legal expenses – the next two bones of contention – and after the recent surplus payouts, the

balance of approximately R541m has been invested with various financial institutions and presumably accrued a fair amount in interest and as a result, outside estimates and comparisons of figures are difficult to make.

Mostert is outraged by our incorrect statement that he and his firm have earned R400m in curators’ and legal fees paid out of pension funds. (We had estimated that he earned R300m in curators’ fees alone – 25% of R1.2bn. Both the percentage and capital sum were wrong, it transpires.)

For a start, he says, his curators’ fees and – where applicable – contingency fees were duly documented and confirmed by court orders. In effect the contingency that he is entitled to and which he has charged is 6.6% as a pre-

mium over the statutory 10% fee on all recoveries, except for the additional 15% he was entitled to in Datakor (but that was limited to recoveries up to R140m). For running the curatorship, litigation and surplus apportionment exercises of nine pension funds – all in disarray at the time – over a period of eight years, embarking on 37 elaborate and contentious court cases with powerful litigants – all with deep pockets (“At one stage I was facing no less than 50 attorneys and advocates against me,” he notes) – and in the process, managing to recover R940m – for all that, his fees and expenses totalled R204m. Which, he points out, equates to an average of R240,000.00 for each fund per month, over the eight years.

*Noseweek’s* report could have created the impression that placing the funds under curatorship was just a “chase after easy money” by the likes of Mostert, aided by the FSB. The true facts don’t support that contention.

In fact it has always been *Noseweek’s* view that it would have been a scandal had they not been placed under curatorship and had the perpetrators not been brought to account. There is also no doubt that Mostert faced unbelievably heavy odds when he took on the task: his opponents included some of the biggest and most powerful financial institutions in the country, including Old Mutual, Sanlam and Alexander Forbes. And that he has been spectacularly successful, and that he had sufficient confidence in his own judgement regarding the liability of the perpetrators to take on such massive and complicated litigation on risk. If he had not done so, or if he had failed, no recoveries would have been made.

Mostert believes that the outrageously inflated fee figure has been put about by those facing criminal charges who wish to gain an advantage by discrediting him and, most particularly, senior officers of the FSB who might be called to testify against them.

While negative speculation has undoubtedly been encouraged by his opponents, it has, in *Noseweek’s* view, been allowed to flourish because of an absence of regular, transparent reporting by the Financial Services Board. No annual accounts have been published for any of the nine funds under Mostert’s control in which the press might have found an accurate account

**Despite the pensioners’ cause having been the driving reason repeatedly given for the whole recovery exercise, the substantial sums paid out over the past year have not gone to pensioners**

of funds recovered, funds spent on curators and legal fees, and funds distributed to victims according to law.

Mostert insists he has regularly furnished up-to-date financial records relating to all recoveries made by him, costs and monies available for surplus distribution and actual distributions to the FSB.

The same applies to references to his wealthy lifestyle, which even *Noseweek* attributed to his pension fund "spoils". He has owned and does own a luxury motor vehicle (but never a Ferrari as claimed in our previous story), and he has more recently bought a luxury apartment in Clifton, "but I had been a successful legal practitioner in the financial services field for 30 years before taking on the curatorship of these funds. I already owned a house in Bantry Bay in addition to my home in Johannesburg. The profits our firm made from these curatorships have not always been great – last year we operated at a loss," he told *Noseweek*.

In the light of the information we have now been given, *Noseweek* has no reason to suggest that Mostert's earnings and assets are not honestly earned.

In the same court order relating to the initial contingency fee, it is noted that "the FSB has agreed to contribute an amount of R1 million towards the costs of the curatorship on the under-

standing that the contribution will be refunded to the FSB from recoveries to be made, if any."

Mostert explains that the FSB contribution was an advance to cover the expenses and costs of the curators as, after some four months into the curatorship, it was found that the Datakor funds had been completely stripped and that there was no money to pay to or refund the curators. He points out that the arrangement was confirmed by a court order and, in any event, only half of the facility was ever used – and it was soon repaid

In an earlier version of this story *Noseweek* referred to the R1m advance as "an irregular R1m loan from the FSB in the form of "seed capital". The negative connotation is regretted and the allegation is withdrawn.

"If we had not undertaken this massive and massively risky project on those terms – and we had been self-funding for months by then – those who had perpetrated these frauds would never have been brought to book, and over R900 million would never have been recovered for the funds. The FSB did not have the budget to fund and take the financial risk of a project of this size. If you take into account that, in most cases, the premium for taking the risk over many years was 6.6% over-and-above the statutory 10% for all contingency fees.

"If you consider that the contingency fee included the services of more than one curator and extensive investigation and litigation on risk, then it becomes clear that our fees were more than reasonable and well below the going-rate of most major law firms that might have undertaken this type of commercial work," Mostert told *Noseweek*.

We can only agree.

Worth emphasising: if Mostert had not taken on the risk, and if he had not succeeded in the litigation and made recoveries, no members would have received a cent. Had he failed, Mostert and his law firm would have been out of pocket to the tune of millions of rands.

With regard to *Noseweek's* having reported that Mostert was accused of "extorting" plea bargains from the accused in criminal cases, and settlements from Alexander Forbes and Sanlam, he points out that, for example, Ghalvalas (the "inventor" of the pension-stripping scheme) resisted claims and defended his scheme, and was assisted by eminent counsel and legal representatives when he eventually entered into a plea-bargain and was found guilty. Similarly, the financial institutions who eventually paid back the surpluses were represented by prominent legal teams locally and abroad representing underwriters. ■

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# Run of bad Luck

Retired businessman sues Nedbank for R6.5m in lost savings, thanks to poor investments made against his instructions by a Nedbank financial planner. **Helen Grange tells the story**

**R**ETIRED BUSINESSMAN TIAAN Lamprecht is heading for the battle of his life with Nedbank after he and his wife lost R1 million of their life savings to a fraudulent investment scheme set up in 2001 by a Nedbank employee, Karl Luck.

This case is apparently the tip of the iceberg, as other Nedbank customers were similarly duped by Luck at the time, and have reportedly lost R20m in investments that, unbeknown to them, were placed in high-risk shares, stocks and derivatives abroad – via Interactive Financial Exchange (IFX), a foreign investment forum.

Nedbank fired Karl Luck in 2001, took him to court and got a judgment against him in 2002 for fraud and theft. To avoid being arrested, Luck fled the country and, according to Lamprecht, now lives the high life in Portugal.

“I issued summons against Nedbank in 2006, and ever since then I’ve been fighting to get my money back. I’ve spent hundreds of thousands of rands on lawyers, and will spend more if I have to.

“The last straw was in October (2012) when, at Nedbank’s suggestion, I agreed to mediation, but at the meeting was offered an insulting settlement of R48,000, and told they were not prepared to ‘horse trade,’” says Lamprecht, who made the investment with his wife Wilhelmina.

“It’s clear they simply used it as a means of tricking me into having me withdraw my case against them off the court roll, so delaying matters by another year – and having me run up massive additional legal expenses.”

Now the case is back on the court roll, with Lamprecht claiming his R1m plus an average bank interest-rate of 15.5% over the past 12 years, totalling R6.5m, including legal costs (one day of legal representation costs R60,000).

“I’m not backing down on this. I want my money back, not for me but for my grandchildren,” says Lamprecht, now living in Witsand in the Western Cape.

The saga began when Lamprecht was advised by Luck, then a business financial planner at Nedbank at its Fox Street headquarters in Johannesburg, to invest off-shore in foreign exchange trading only. At the time, a magazine article appeared warning people to be careful of investing off-shore, and supplied a phone number to verify the companies offering offshore investment opportunities.

Lamprecht got the green light on IFX (the offshore investment vehicle proposed by Nedbank), but also had the foresight to ask Nedbank to guarantee the investment. In a Nedbank letter to Lamprecht dated October 5, 2001, Luck writes: “Nedbank guarantees and underwrites these investments in London with bankers IFX Limited. They have fully investigated the bank and can confirm that your investment will be safe.”

The letter continues: “I have contacted my brother who is active in the London banking fraternity and he confirms that IFX Limited is a reputable bank and a registered banking institution.”

Says Lamprecht: “I was adamant that the foreign exchange investment had to be with a bank and not be used for stocks, shares or equities, because I’d lost out on shares before,” says Lamprecht. Assured in writing that his investment was safe and with a bank, he signed a contract dated October 12, 2001, giving Luck the go-ahead to invest R1m in three tranches of R500,000, R250,000 and R250,000.

Ten days later, on October 22, Lamprecht as well as Hilary and Petronella Clarke – another couple who’d followed Luck’s advice – received a letter from

IFX outlining its terms, which include interest on credit or debit balances at “overnight bank rates” for the relevant currency.

But, days later, Lamprecht received another IFX letter/contract, this time announcing that it would transact “Contracts for Differences” (an equity derivative that allows traders to speculate on share price movements) on US and European equities. “Please note that all CFD positions are re-valued for margin purposes at 21.00 hours each day,” it states.

On receiving this letter, Lamprecht immediately raised the alarm with Nedbank, writing to Luck that this amounts to a “very serious breach of trust by Nedbank as it contradicts totally all the principles on which we agreed when signing the original contract for foreign exchange only”.

“We made it very clear to Nedbank that under no circumstances will we even consider investing our pension money and life savings in stocks/shares/CFDs/equities and, as Nedbank advised us to invest in foreign exchange trading, the contents of this contract are contradictory to our instructions and agreement and we therefore consider it null and void,” he wrote, adding that he wanted the contract cancelled and his money refunded.

CFDs have proved the worst type of investment a private investor could make, as Lamprecht discovered. “The gearing was such that you could be wiped out in one minute,” he says. Yet Lamprecht was held to the contract,





**Tiaan Lamprecht says that Nedbank's Karl Luck failed to follow his express instructions**

and in 2003 discovered his investment had been lost almost in its entirety.

It turned out that after only seven months of forex trading, \$75,000 was lost in a period of 14 days in Vodaphone and BP shares that plummeted. Luck, who'd been creaming huge commissions on these high-risk investments, had run out of luck. "One afternoon we were millionaires, the next morning we were broke," says Lamprecht.

Desperate, Lamprecht tried to resolve the matter through various Nedbank departments, and ended up dealing with Mr Brian Cahill, an investment manager, who advised him that although he had a good case, it was obvious that Karl Luck was a rogue trader and that Nedbank had to fight

in court, as Luck had cost them millions in similar dealings. "He advised me to take the matter to the Banking Ombudsman because of our dire financial situation at the time," Lamprecht recalls.

The Ombudsman found that the complaint was beyond his jurisdiction due to the amount exceeding R500,000 but advised Lamprecht to pursue the matter legally. Ironically, Nedbank had already revealed its attempts at evading responsibility, with a false statement to the Ombudsman that reads: "Karl Luck was at no stage employed by Nedbank as well as never appointed to act on our behalf."

Lamprecht appointed lawyer Julian Meltz and issued summons against Nedbank in March 2006. By now, Lamprecht had established that IFX was not a bank, despite Luck's assurances to the contrary in writing.

"This was a clear misrepresentation by a Nedbank employee, and it is the crux of our case," says Meltz.

Unfortunately, administrative chaos at the High Court in Johannesburg at the time saw Lamprecht's file getting lost twice, resulting in delays and a trial date being set only for November 18, 2010. The four-year delay between summons and court date played directly in Nedbank's favour.

"I've spent a small fortune getting it back on the roll, and the hearing was finally set down for October 9 last year," says Lamprecht. In a pre-trial meeting with Nedbank's lawyers, however, the parties agreed to try to resolve

the matter in a mediation. Nedbank's lawyers suggested that, as a "gesture of goodwill", Lamprecht should in the meantime once again remove his case from the court roll.

In good faith and hoping to stem the tide of legal expenses, Lamprecht agreed. But again he was bitterly disappointed.

"The mediation meeting took place on November 5, at which Nedbank asked me to settle for R48,000. To make it worse, I was arrogantly told they were not there to 'horse trade'. It was an insult, and a complete failure," says Lamprecht.

Now, more determined than ever, Lamprecht has got his case back on the court roll (date yet to be set), with the seasoned silk HB Marais as senior counsel.

"It would be cheaper to pay the R200,000 or R300,000 in court charges than to continue with this farce, because I don't think there is a judge in this world that will not be sympathetic to our cause after studying all the documentation," he says.

Attorney Meltz is confident that Lamprecht's case is strong. "Nedbank is hinging its defence on a technicality – that litigation expired the prescribed window of time. The fact is that my client lost millions in his pension savings due to misrepresentation by a then-employee of Nedbank, and he should be compensated for that," says Meltz.

Nedbank's Dave Macready, Managing Executive: Nedbank Wealth said: "There are various matters pertaining to Mr Lamprecht and Nedbank dating back to 2001. The matter referred to as case 11049/2006 remains outstanding as a result of no agreement reached at mediation and will go to trial. Nedbank is not in a position to provide any further detail.

Jan Steyn, from Nedbank's legal department did, however confirm that the prescription period for litigation was "one aspect" of Nedbank's defence.

● In 1999, Lamprecht had another run-in with Nedbank, after a R590,000 investment in a Fedsure policy (also signed through Luck) went sour, and that round, he won.

The matter was settled after he issued summons against the bank. The terms of that settlement have not been made public as the bank required him to sign a non-disclosure clause. ■

**His case is the tip of the iceberg, as other Nedbank customers were similarly duped and have lost R20m**

# Judge slates top PE lawyer for lies and sloth

Two vulnerable children didn't get the compensation they needed due to the lamentable conduct of their legal adviser

**A** HIGH-PROFILE PORT ELIZABETH attorney has landed in hot water for signing a false affidavit in an effort to shore up her bill – after managing to drag out a simple Road Accident Fund (RAF) case for 11 years. In the process, she effectively denied two minor children the support they needed after their father was killed in an accident.

Eastern Cape High Court Judge Dayalin Chetty has reported Nosidima Doris Ndlovu to the Director of Public Prosecutions and the Law Society for perjury, and barred her from charging a fee for her services in the case.

When asked about the scathing judgment handed down late last year, Ndlovu thanked *Noseweek* for the courtesy of the call, and then ended the conversation with a curt: “Do whatever you please”.

Ndlovu, who has practised in Port Elizabeth as DN Ndlovu Attorneys since 1993, is a former co-chairperson of the South African Law Society and was the first woman president of the National Association of Democratic Lawyers. A Rhodes University graduate, she started her career as a clerk of the court before working as a prosecutor in the then-Transkei.

In a 2008 *Mail & Guardian* special report on private sector women attorneys, she claimed to be a specialist in the administration of estates, motor vehicle accidents, personal and dependant claims and conveyancing and civil litigation. She also boasted having been awarded a Certificate of Recognition for Outstanding Contribution to the Success of the National Bar Asso-

ciation International Affiliate Meeting.

It now seems that she still needs to brush up on her ethics.

Ndlovu was the attorney in charge of a claim filed against the RAF by the Ralawe family in 2001 after their father and breadwinner was killed in a car crash. The children were 13 and 10 at the time.

Chetty said in his judgment that when the case reached his chambers, the court file was “conspicuously sparse”.

“Such dereliction of duty on the part of the Ralawes’ attorney would ordinarily have resulted in the matter being struck from the roll,” he said.

**Chetty scrutinised the papers to discover how such a simple matter could have taken more than a decade to finalise**



Lawyers for the RAF however insisted that, since the matter was already 11 years old, they would like to try to settle it. A few days later the judge was asked to make a settlement offer an order of court.

Because this followed 11 years of postponements, Chetty began to scrutinise the court papers to try to discover how such a relatively simple matter could have taken more than a decade to finalise.

Judge Chetty's summary of events: “Although summons had been issued on 5 December 2001, the notice of intention to defend was only filed on 26 October 2005, and the plea, on 1 February 2006, more than five years later.

Another two years passed before the case was again awoken from its slumbers by the filing of an amended plea.

On 31 March 2008 the RAF then sought trial particulars which were “slothfully” furnished some four months later.

On 8 December 2008 the Registrar gave notice to the parties that the matter had been placed on the roll for hearing on 10 February 2009. It was however promptly removed from the roll at the instance of the plaintiffs’ attorney, set down by the Registrar once more on





**Ethical lapse: Judge Dayalin Chetty (above) has reported attorney Nosidima Doris Ndlovu (left) to the Director of Public Prosecutions and the Law Society for perjury**

4 February 2011 and again summarily removed at the instance of the plaintiffs' attorney.

"On 8 March 2012 the Registrar once more gave the parties notice that the matter had been placed on the civil trial roll on 5 November 2012. By then Mziyanda and Noluvuyo Ralawe had long since passed into adulthood.

"It is evident from the foregoing historical overview that the prolixity [wordiness] of this litigation was occasioned by the laxity of Ndlovu who permitted the matter to stagnate to the prejudice of the Ralawe family."

The judge added that before agreeing to settle the matter he first asked for an affidavit from Thembisa Ralawe to confirm that she had been consulted about the settlement offer. This arrived coupled with an affidavit by Ndlovu setting out why she should be allowed to claim contingency fees in the matter.

In it she said it was anticipated at the pre-trial conference held between the parties that the hearing would take approximately two days.

"In the event of the matter proceeding to trial, Plaintiff would have to call at least two expert witnesses in addition to three lay witnesses, and fur-

ther, there were probably various expert witnesses employed by the RAF, who it is anticipated would also have testified at the trial, and accordingly if the action had proceeded, extra costs would have been incurred," she declared.

Judge Chetty's comment: "The affidavit is replete with falsehoods. It is common cause that no medical reports or opinions were either commissioned or obtained by either party. Notwithstanding, Ndlovu's affidavit records that it had been done."

Chetty then called the parties together and said that due to the "obvious untruths" in the affidavits, he could not make the settlement an order of court.

He postponed the matter to November 19, when he made the RAF offer an order of court.

Ndlovu was barred from levying any fees, pending the furnishing of an explanation of her false affidavit.

Chetty dismissed Ndlovu's subsequent claim that it was a mere oversight, as "lamentable". He said because of the false affidavit deposed to by Ndlovu, he was obliged to refer the matter to the Law Society and the Director of Public Prosecutions. ■

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# It's a ding-dong defamation row

Health muti firm tries to force its bitter pill on consumer campaigner as legal luminaries line up for court battle

**H**EALTH SUPPLEMENTS FIRM SOLAL has instituted defamation proceedings against Kevin Charleston, an e-commerce manager who also describes himself as a “concerned consumer”.

Although Solal is being represented by leading Johannesburg law firm, Fluxmans and a heavyweight Gauteng silk, David Unterhalter, the case will be heard in the Western Cape High Court because Charleston is based in Cape Town. Solal wants damages for injury to its “good name and reputation” in the sum of R350 000.

The case relates to an article that

Charleston wrote about a health magazine, *Health Intelligence*. Charleston claims the magazine is little more than “a mouthpiece and advertising vehicle” for Solal, a company, he says “that has been liberal with the truth and aggressive in the suppression of critics”.

In the article, Charleston points out that the magazine is run by a close corporation whose only member is Alana Moskovitz, the daughter of Solal director, Jacqueline Moskovitz. He points out that eight of the 13 editorial board members are directors or employees of Solal, including Colin Levin and Brent Murphy (see later). He points out that *Health Intelligence* has run articles that are very critical of health and food labelling regulations, which are obviously in the public interest but not in Solal’s.

But what really irked Solal – and what led to the legal proceedings – was Charleston’s statement that the *Health Intelligence* magazine is “a disguised marketing programme for Solal Technologies, a company that actively promotes pseudoscience and aggressively attempts to shut out valid criticism of its advertising”. This, together with the fact that the article was published on two sites that have been critical of Solal. The first of these, Quackdown ([www.quackdown.info](http://www.quackdown.info)) describes itself as one that “Exposes people and companies who sell untested health products”. The second, Camcheck ([www.camcheck.co.za](http://www.camcheck.co.za)), describes itself as “A South African Consumer Guide to scams, pseudoscience and voodoo-science”. And the fact that in each case the article was accompanied by a historic cigarette advert, intended possibly as a spoof or perhaps to emphasise



how companies can blatantly lie to the public.

The ads seem designed to shock. The ad in Quackdown was for “Asthma Cigarettes” and reads: “For Your Health: Asthma Cigarettes... For the temporary relief of paroxysms of asthma... Effectively treats asthma, hayfever, foul breath”. The ad in Camcheck was for “Old Gold Cigarettes” and reads: “Ripley’s... Believe It or Not – Proves it... Throat Doctors pick Old Gold in public test of 4 leading cigarettes”.

Solal argues in court papers that Charleston is trying to compare Solal with tobacco companies who knowingly sold harmful products to the public. And – apparently realising that the judge may be a complete thicko because the Judicial Services Commission consistently refuses to appoint the Western Cape’s brightest advocates to the bench – Solal explains things in great detail.

Solal tells the judge who will eventually hear the case that “pseudoscience” means something that is “false”, “pretending” or “unauthentic”, and that a “quack” is “a person who dishonestly claims to have special knowledge in some field, typically in medicine, or a charlatan”.

Solal expresses the concern that readers of Charleston’s article will be left thinking that the company is “unscrupulous” or that it is “a bully and/or engages in bullying tactics”.



How quackdown.info sees Solal





O Solal mio: Dr Bill Anton (second from left) with Solal luminaries David Arthur, Brent Murphy and Wayne Carson

Charleston is defending the matter, represented by a public interest law centre called Section 27 – and an equally eminent advocate, Gilbert Marcus SC.

However Charleston has not filed a Plea (a defence) but rather an Exception, which is a document in which the Defendant denies that the Plaintiff has made out a case in law. It's fairly technical stuff but basically it relates to the fact that Solal, a trading entity, has no personality right to protect, nor any feelings of hurt or shame that can be compensated by way of general damages.

The argument is that, even if the common law does allow such a claim, the common law is inconsistent with the constitution. First, because trading entities don't have the right to human dignity that's specifically protected by the constitution. And second, because allowing a trading entity to claim damages, will amount to a significant limitation of the right of freedom of expression enjoyed by individuals.

The Exception also points out that Solal has never claimed that Charleston's statement is false. The Exception needs to be decided by a judge before this matter can go any further.

So, is Solal unscrupulous, or a bully?

Let's remind ourselves of some of the company's past exploits. There was the famous story (in *nose139*) which dealt with the fact that Solal was distribut-

ing an eye-care product it claimed was so wonderful that it even had "cardiovascular and anti-carcinogenic effects".

Consumer activist and medical researcher, Harris Steinman, queried this claim on the Camcheck site, which led to some heated correspondence between Steinman and Solal director Brent Murphy. A potential customer then entered the fray and asked Murphy whether any research had been done that justified these claims. Murphy, who was seemingly bored of the

**Solal argues that Charleston is trying to compare Solal with tobacco companies who knowingly sold harmful products**

matter by this stage, responded as follows: "Best is do your own research and make up your own mind".

Then there was the story about a Solal product called Stress Damage Control. Solal's advertising claimed it would protect users from stress damage to the heart and brain, and Charleston lodged an objection with the Advertising Standards Authority (ASA) saying the claim was unsubstantiated.

Solal, ably assisted by Fluxmans, responded by attacking both Charleston and the ASA. Charleston, said Solal, was "vexatious" and had a "vendetta against complementary medicines", particularly Solal's. In fact, said Solal, Charleston was a supporter of the pharmaceutical and sugar industries. As for the ASA, well it was biased against Solal and had defamed it in the past.

The ASA dismissed this nonsense, saying that Solal's claims were "improper and somewhat disingenuous", and that it "had not submitted a shred of evidence" of any commercial interests or improper motives on the part of Charleston. As for its alleged bias, the ASA made the point that simply because it interprets the ASA Code differently to the way in which Solal interprets it does not make it biased.

Meanwhile, on 20 June, the ASA gave a ruling in a matter which really showed what Solal was all about: the case of Colin Levin v Makgato.

Levin, a director of Solal, had lodged a complaint about the advertising of a law firm called Makgato Attorneys, which suggested the firm offered a wide range of legal services but which, said Levin, could not possibly be true.

WTF?

Well, argued Solal's Levin, Makgato was also an employee of the ASA (its legal head), so he couldn't possibly have time to do all that private work. The ASA dismissed the complaint as vexatious, and in its ruling said that Solal had been targeting ASA officials (including our old friend Mervyn King) with all sorts of legal proceedings, seemingly as a punishment for the many adverse rulings the body had made against the company.

That may, of course, be why Charleston – who has lodged quite a number of ASA complaints against Solal – is now being punished with defamation proceedings! ■



# Would the real chief please stand up...?

The man with two faces fooled the public into believing that he was a highly qualified traffic authority.

By Gavin Foster

**O**N PAPER, HE'D BE JUST THE GUY you'd want on your side as an expert witness. He's bamboozled the public, the media, the traffic authorities and the courts for more than 17 years – but Chief Provincial Traffic Officer Dennis Jackson does not exist, and never did.

Jackson's blurb on LinkedIn reads: "In 1971 Dennis Jackson joined the Traffic Training College and completed his final exams with distinctions. He rapidly rose through the ranks to become a Senior Provincial Inspector within five years. Dennis has always been passionate about whatever he's pursued and has earned many merit awards during his career, including a commendation for outstanding service in the inspectorate.

"After leaving the inspectorate, Viacion (Vehicle Incident Analysis & Consulting) was formed specialising in the investigation and reconstruction of road accidents, traffic fine analysis and consultations for fleet managers and motorists. Dennis has often been called to testify as an expert witness in court. His articles have been published regularly in the media. He has appeared on *Carte Blanche* and *Special Assignment*, and has been interviewed on various radio stations. He has exceptional knowledge of the Road Traffic Act and a persistent desire to see even-handedness and correct implementation of road traffic enforcement.

"When AARTO (the Administration and Adjudication of Road Traffic Offences Act) was introduced, Dennis naturally took a very keen interest in it. He has followed its development from AARTO's earliest beginnings... Dennis is undoubtedly one of the country's leading experts in AARTO...

Drawing from vast experience in this sector, he is able to impart knowledge that is up to date, comprehensive, and, above all, easy to implement. Delegates take away with them a good understanding of what AARTO is about... The advanced seminars are more comprehensive and equip delegates with the knowledge to deal with AARTO and its implications for themselves and their companies.

"In addition to fleet seminars Dennis operates a consultancy providing information on the legal rights of the motorist and assists corporate clients and the general motoring public, to legally defend traffic violations."

So far so good. The problem, though, is that when you pay your money you don't get the impressive-sounding Dennis Jackson, "CEO, Executive Principal, Senior Lecturer and Seminar Presenter of AARTO Fleet Solutions", you

**Jackson didn't disgrace himself on camera because nobody questioned his credentials or his logic**



Dennis Jackson  
aka Denleigh de Saxe

get an ex-low-level traffic cop, beach inspector, tow-truck operator, fireman and fully operational charlatan called Denleigh de Saxe dispensing his understanding of the law.

De Saxe first came to my attention in November, when, as a freelance journalist, a potential client in Gauteng asked to see samples of my published work. Rather than scratch around for magazine articles and newspaper cuttings to scan, I googled my name. Up came an e-book, *How to LEGALLY get off your Speeding Fine!* The website [www.speedfinesolutions.co.za](http://www.speedfinesolutions.co.za) offers potential buyers of the R250 book a free download of its first few pages, so of course I did just that.

On the contents page, I was credited with having written the foreword that turned out to be an 1,800-word article written by me for the *Mail & Guardian* in 2005, on the rights of the South African motorist. It was my response to a wave of instances where various traffic departments locked up motorists who had "outstanding fines" until they paid, without properly sum-



moning them or giving them a chance to defend themselves in court. The opening paragraph of my article was altered by De Saxe to make it appear that I had written the story as an endorsement for the book.

I set about tracking down the author and it didn't take too long to discover that Provincial Chief Traffic Officer Dennis Jackson was in fact one Denleigh de Saxe, who had left his job as a Plettenberg Bay beach inspector in 1994 to set up shop as a tow-truck operator in the town. A couple of years later he became a fireman in a nearby one-horse dorpie called Hoekville before moving to Gauteng, where Denleigh de Saxe disappeared and Dennis Jackson suddenly popped up as a retired chief provincial traffic officer who saw the evil in the system and dedicated his retirement years to helping motorists defend themselves against speeding charges.

De Saxe appeared on various television programmes as Dennis Jackson. In 2009 he argued his case on *Carte Blanche*, in a documentary called *Not so candid camera*, representing an organisation he'd formed called SITE (the Institute for the Scrutiny of Inequitable Traffic Enforcement). He was introduced as a former chief provincial traffic cop and executive president of the institute. On the panel with him were fellow SITE members Gerrie Gerneke, director of the Johannesburg Metropolitan Police Department, and the Automobile Association's public

affairs manager Gary Ronald.

Dennis Jackson didn't disgrace himself on camera because nobody questioned his credentials – or his logic. Jackson said that SITE evolved into JPSA (Justice Project of South Africa) under chairman Howard Dembovsky. Jackson said he resigned as JPSA co-chairman because of a personality conflict. Dembovsky doesn't remember things that way, though. "I did indeed contact him after I saw the insert on *Carte Blanche* in 2009 and asked if SITE needed a website. He accepted and that is where the website greedfines was born.

"I sincerely regret falling for Jackson's lies but in my opinion that was addressed when he left. Dennis Jackson was vice-chairman of JPSA, from May 2009 to April 2011. He was never co-chairman and he was never asked to fill in for me. He was certainly pushed to 'jump ship' because I could no longer tolerate his unprofessional behaviour and, to put it bluntly, his idiocy. He kept blaming Alzheimers, which he claims he has, on his inability to grasp the prescripts of the law."

When Jackson was asked for copies of his qualifications he sent a collection of documents including a letter from the SA Defence Force certifying that he'd served in the army from April 1976, and paid tax of R23.30 on his R233.10 earnings, a certificate from The Armoury gunshop in Durban saying he'd completed a course in handguns, a certificate from the army confirming he'd been awarded the Pro Patria medal for serving in the Defence Force and a copy of his ID document – all in the name of De Saxe.

Of greater relevance was a certificate from the Natal Provincial Administration stating that he'd successfully completed his training as a provincial traffic officer in October 1974 – without any hint of the distinctions he claimed – and a 1993 certificate confirming he'd registered as a traffic officer in the Cape, just before he left the

municipal beaches of Plettenberg Bay to start his tow-truck operation.

On the technical front there was a single certificate to the effect that D C de Saxe had completed a course on the Mini Speed-Guard Deluxe speed-measuring device 33 years ago.

Denleigh de Saxe could have brought a whole world of trouble down on his head. His advertised service offering paid consultations to people preparing for court cases looks dangerously like an attempt to practise as a lawyer without the necessary qualifications. But the bigger problem is that, if his evidence in the numerous court cases in which he claims to have been involved as an expert witness was accepted on the strength of his fabricated expertise, qualifications and career, then each and every case could well have to be reviewed.

De Saxe failed to answer most of the questions put to him about his career in traffic law enforcement.

He said: "No, I was not a 'chief' traffic officer. I earned that as a nickname while temporarily in charge (of a station) and facts were distorted along the way."

On qualifications: "At that time I studied many facets of traffic law enforcement but I do not have any formal qualifications as such other than what you have seen."

On awards and accolades: "The various accolades were from a senior officer (H J van Rooyen) that I worked with in the inspectorate. He occasionally verbally commended me on work done. These were not official but were mentioned on the website."

On his claimed 37 years of service: "The 30-odd years were not concurrent. It started as 27 years but got lost in translation somewhere by various journalists and publications. I left the Road Traffic Inspectorate a few times to pursue other interests but returned to traffic when these didn't pan out.

"Perhaps I was a charlatan but I'm trying to make amends," said Jackson.

● In mitigation: there's a whole lot that's good in his book (plus a fair amount that isn't). He cannot have made much money out of it. He appears to be no more harmful than a Walter Mitty character who has enjoyed the respect and stature that Dennis Jackson got, as compared to the lack of interest in Denleigh de Saxe. ■

# Knee jerk reaction

Liquidator blames his professional misconduct on medical problems

**D**R X IS A LEADING ORTHOPAEDIC surgeon. This busy medic runs six orthopaedic procedures simultaneously in six theatres at the same hospital. But he does have a good grip on his underlings as he races from one theatre to the next whilst giving his “oversight”.

The distinguished doctor recently botched a double knee replacement procedure. Now that his patient is suing him, he is at least doing his level best to explain himself: “I am the orthopaedic surgeon of choice for a good many patients and their referring doctors. This places a substantial burden on me and my practice – a burden we discharge skilfully and efficiently. However there is always room for human error and that is what occurred in this instance. Clearly I cannot be expected to attend to all tasks in connection with all the orthopaedic procedures that I oversee. No orthopaedic surgeon is able to do so. We must delegate tasks whilst still maintaining overall control. The error in this case resulted from an oversight by members of my practice who were engaged to attend to the procedure. The error was trivial in nature. The error took place ‘on my watch’ and I take full responsibility for same, but this was an isolated and non-deliberate error that has since been corrected. In addition, I wasn’t feeling very well that day. And I’m a diabetic.”

Dr X is a fictional surgeon.

But why the knee op analogy? *Noseweek* wondered how liquidator Christopher Peter Van Zyl would feel if Dr X were his surgeon and had messed up his double knee op.

Van Zyl, chief liquidator of Progressive Administration, pillaged R2,038,326.77 from the bank account of Asch Professional Services. And although the liquidators have now paid back the amount, plus interest of R111,074.85, they are still at liberty



to use the Asch account to pay their favoured attorneys, ENS, for further “work” in relation to the winding up of the company.

Meanwhile, their submission to court reads: “Mr van Zyl has had a very difficult year from the point of view of his health. He underwent double knee replacement surgery and thereafter contracted an infection that has caused and/or exacerbated both heart and kidney problems. He is also a diabetic, which has complicated his recovery. As you will be aware, in order to ensure that he recovers fully, Mr van Zyl has elected not to take any further appointments as a liquidator or trustee. However, this does not mean that he is retiring, and when his health permits, he may well wish to take further appointments. We accordingly submit that his intention not to take appointments for the time being should not be a factor that you take into account in determining whether or not to suspend Van Zyl.”

Here we have Van Zyl using his ill-health as a reason for the court to go easy on him while at the same time asking the bench not to presume he

was too frail for the task.

When it comes to the worst excuse for improbity in 2012, Van Zyl takes the cake. His joint runners-up are undoubtedly his co-liquidators of Asch: Natasha Sansom and Rene-Lynne Barry-Kleynhans. Both filed statements in the first Asch liquidation account which contained an erroneously – or fraudulently – inflated liquidators’ fee. They then declared under oath that the account was a “full and true” account of their administration of the estate.

Sansom was once PA and secretary to liquidator Craig Hathorn. Once BEE appointees were needed to fulfil the Master’s appointment requirements; she effortlessly metamorphosed into a partner for Hathorn’s insolvency practice. Now, when anyone has an appointment with “liquidator” Sansom, Hathorn shows up and does all the talking – ostensibly as attorney for Sansom’s firm, NLN Trustees.

● For more about Chris van Zyl, his liquidation firm Progressive Administration and about the winding up of Asch Professional Services, see *noses8*, 122, 141, 152, 154, 155 and 157. ■





## An imperfect hero

**S**IR ROGER CASEMENT DIED A HERO AND A martyr – but he was not a model of perfection. Nobel literary prize winner of 2010, Vargas Llosa sets out in *The Dream of the Celt* to present the fantastic biography of the whole man. The book is an appropriately heroic accomplishment, though not an entirely satisfying literary creation.

Vargas Llosa's diligent research cannot be faulted; he pursues the ghost of an extraordinary character who combined saintly idealism, moral and physical courage, and all-too-human weaknesses.

The man whom England executed for high treason in 1916 had been knighted for dedicated service to the crown, was admired internationally for his defence of weak and desperately exploited peoples in Africa, South America and of course, Ireland. He died in disgrace.

Llosa makes no bones about his suspicion that Casement's vilification through publication of excerpts from the so-called *Black Diary* was engineered by the British secret service. He does not deny that this rebellious luminary of the abortive Irish Easter Rising in 1916 was given to sexual adventures with males. But he does have the impression that Casement's diary was at least partly a fantasy record. More to the point, the author believes that British agents may have doctored the text.

Tireless in his inquiry into the nature of the diarist, Llosa tracks Casement's mind-boggling ventures into the Congo and Amazonia, with side-trips to the United States, Belgium, Peru and Germany. The list of acknowledgements in all those countries is awesome. And the detailed record is a huge tribute to the flawed hero, who

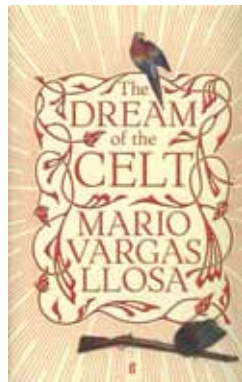
presented meticulous reports – obtained at terrifying risk – to Parliament in London.

The horrors inflicted on indigenous populations in Africa and Peru by mindlessly cruel exploiters of the rush for rubber, was recorded by Casement with grim exactitude. The exposés by the shy, dedicated Irish-born



Roger Casement

**THE DREAM OF THE CELT**  
(Faber and Faber)  
by Mario Vargas Llosa



civil servant, inflamed European opinion and made Casement a public figure.

Not unexpectedly, that anger eventually sparked his growing desire to fight for an independent Ireland. Colonialism in all its forms had to be destroyed. Llosa is clearly also of the opinion that colonialism is the root of all evil, from the Romans on. Which begs the question of what the world would have been like if enterprising explorers had stayed home.

*The Dream of the Celt* opens and closes in the grim condemned cell at Pentonville Prison in London. Between those affecting scenes, and reimagined conversations, lies the ghastly record of pointless cruelty against simple, vulnerable peoples living in remote, dangerous jungles. The record of nauseating destruction of humans and nature becomes overwhelming.

Casement, sickened by what he experienced, unsurprisingly feared he was losing his reason. His health was wrecked but, undaunted, he defied a range of merciless profiteering villains to produce his exemplary reports.

Was his mind failing when he decided to extend his disgust at colonialism to helping the Irish cause? Not according to Llosa. The excitement of encouraging rebellion-minded Irish intellectuals provided a welcome stimulus to the jaded, arthritic explorer.

England was at war with Germany, and the plotters decided to seize the opportunity – they would shed the English yoke by throwing in their lot with the Kaiser. So the British hero was dispatched to Germany to persuade captured Irishmen in P.O.W. camps to join a voluntary corps, to be trained by the Reich, preparatory to a German-backed invasion of Ireland.

It was not a wise course. A limited number of prisoners agreed to join a special unit, but the Germans, after initial enthusiasm, became increasingly evasive. Casement's reservations grew but, eventually, he found himself vomiting miserably inside a German submarine off the coast of Ireland, preparatory to the abortive 1916 Easter Rising. He was soon taken prisoner.

Llosa paints a romantic picture of Casement, a brave and sensitive idealist who died for his ideals. Given his many sufferings and sicknesses in so many benighted lands, he could be said to have died protractedly over years. But the tale goes that he accepted the comfort of the Catholic religion before the hangman did his work. A hangman who, incidentally, subsequently committed suicide.

Casement was a hero, and Llosa does him honour. But the terrible heart of the book, clotted with pain and misery in exotic lands, dominates, rather than exposition of the hero's gentle character. ■



## I have a (bad) dream

**A** DOCTOR RETURNED TO HIS SMALL TOWN practice in California in the 1950s to find that several of his patients had become delusional. The patients believed that their friends had been replaced by identical-looking imposters. Despite the medic's initial scepticism, after further investigation he became convinced that something sinister was afoot and the patients were right after all – their friends and family members had indeed been replaced by identical-looking aliens who were trying to take over the world. This, of course, is the plot of the 1956 screen classic, *Invasion of the Body Snatchers*.

Now imagine a world in which the pharmaceutical industry has replaced your family doctor with a double who no longer relates to patients, diagnoses by numbers from a computer and dispenses drugs that patients may or may not need; and which may or may not work (the doctor doesn't really know one way or the other). Oh yes, and the drugs may or may not have nasty side-effects, such as death. But again the doctor has no way of knowing about these because drug companies are keen on secrecy. For commercial reasons, of course.

The plot of another SF movie? Or a paranoid conspiracy theory, at least? Not according to two books published last year, which argue that this is more-or-less the state of medicine today.

*Bad Pharma* is Ben Goldacre's follow-up to his best-selling *Bad Science* in which he excoriated homeopathy, vitamin pill pushers and snake-oil purveyors of every stripe. In his latest book, the British academic and medical doctor turns his attention to the global pharmaceutical industry, which, he argues, has perverted the practice of "good science on an industrial scale".

If you believe that the drugs your pharmacist dispenses are the best available for your condition, prescribed by a doctor who has weighed up the scientific evidence, and that they are manufactured by drug companies who have undertaken long, well-documented research, Goldacre will swiftly disabuse you of this notion.

In many instances, the drug companies have become the new snake-oil salesmen or, perhaps worse, the new tobacco industry (snake oil contains beneficial omega-3 fatty acids at least) as purveyors of harmful substances to an unsuspecting public, whose product – in the words of one cigarette company executive – is "doubt".

**BAD PHARMA:**  
How drug companies  
mislead doctors and  
harm patients  
(4th Estate)  
by Ben Goldacre



**PHARMAGEDDON**  
(University of  
California Press)  
by David Healy



It is now well-established, says Goldacre, that drug companies do not publish all the data surrounding their research into the pills and potions they push. Unflattering information about side-effects is buried, while negative results are massaged to make dubious drugs look hugely effective. The examples are legion.

"There is no doubt," Goldacre says, "industry-sponsored trials give favourable results, and that is not my opinion, or a hunch from an occasional passing study. This is a very well documented problem." Yet, he points out, no action has been taken to fix this.

Very instructive is an example from his own practice, where he prescribed the anti-depressant Reboxetine: "I'd read the trial data before I wrote the prescription, and I found only well-designed, fair tests, with overwhelmingly positive results. It's approved for use by the Medicines and Healthcare Products Regulatory Agency, which governs all drugs in the UK. Millions of doses are prescribed every year, around the world."

Based on his background reading, he concluded that Reboxetine was definitely safe and effective, only to discover later that he had been misled. In 2010 a group of researchers managed to pull together all the trial data, published and unpublished, relating to the drug. Seven trials had been undertaken, but only one (the one with a positive outcome) was ever published. The other six "showed that Reboxetine was no better than a dummy sugar pill".

Worse still, data about serious side-effects was suppressed. "As a doctor," he concludes, "I did something which on the balance of all the evidence harmed my patient, simply because unflattering data was left unpublished."

This is not an isolated case. "Drug-induced injuries are now the fourth-leading cause of death in hospital settings," says psychiatrist Dr David Healy. "They are possibly the greatest single source of disability in the developed world."

Healy, Professor in Psychological Medicine at Cardiff University School of Medicine, Wales, is a practising psychiatrist and an authority on the history of psychopharmacology. His particular interest in the impact of trials and psychotropic drugs on our culture lies at the heart of *Pharmageddon*, his latest book. In it he traces how, over the past 20 years, the world of health care has been turned upside down. Doctors, because they don't have access to all the findings on a drug, are forced to prescribe according to official guidelines that are based on dubious data that emanates from the pharmaceutical industry.

Care, he says, has all but disappeared from health care, to be replaced by medication, which is increasingly directed by the pharmaceutical

industry. We are now spending more on drugs than ever before: the global pharmaceutical industry in 2010 was worth over \$900 billion – half of it spent in the United States. Yet despite the vast expenditure on prescription drugs, since the 1970s, life expectancy in the US has been progressively falling behind other developed countries.

This coincides, says Healy, with the end of the golden age of pharmaceuticals – the two decades after World War II – when the major breakthroughs were made. With few groundbreaking drugs since then, the pharmaceutical industry has turned to the business of selling rather than innovating; twice as much is spent on marketing and advertising as is spent on research.

As Goldacre points out, the bar for the approval of new drugs is set dismally low, given that all they need is to be better than a sugar-coated pill. They don't have to improve on what exists. As a result, there is a proliferation of new medication that is no better – and often a lot worse – than out-of-patent drugs. The older drugs are cheaper, because competing generics drive prices down. So companies bring out new drugs that they can patent and on which the profit margin can typically soar into the thousands of percent. The feebler the drugs, the harder the sales pitch.

Using their formidable marketing muscle (drug companies spend more than Apple and Microsoft combined on advertising each year) they aggressively promote the new product to doctors as preferable to the cheaper, better alternatives. A staggering \$50,000



(R430,000) is spent per doctor in the US on advertising every year, according to recent estimates. The core business of drug companies is no longer finding chemicals that fight disease.

“The drug companies have outsourced all their operations, from drug development and testing to clinical trials to scientific and academic writing, so that they have become nothing but marketing organisations at their core,” says Healy.

In addition to vigorous marketing, Big Pharma, has been instrumental in redefining disease, so that events previously accepted as part of life have been labelled as conditions that need treating. A glaring example is the case of impotence. This, says Healy, used to mean a near-total inability to function sexually, but has been recast as “sexual dysfunction”, which means anything short of being a total stud. The happy result for Big Pharma is that marketers in the US can now target Viagra at anxious 20-year-olds fretting about their performance on Saturday night.

In a similar vein, the relatively rare diagnosis of manic depression (affecting 10 people per million) disappeared, when a new class of expensive mood-stabilising drugs appeared on the market, which were, according to the pharmaceutical companies, just perfect for treating the much vaguer and more broadly defined condition, bipolar disorder (50,000 people per million). Among the side-effects of mood stabilisers are raised cholesterol levels, arthritis, weight gain and diabetes.

Then there's osteoporosis which only came into vogue in 1988, with the arrival of relatively cheap machines for measuring bone density. Merck, and Procter & Gamble, in their battle to

dominate the market for bisphosphonates, a new class of drugs, vied to provide free bone scanners to doctors. “All of a sudden one-third of postmenopausal women found themselves diseased.” The treatment: bisphosphonates. Yet, according to Healy, these “have been linked to increased rates of fractures of long bones such as the femur”.

And let's not forget those alarming cholesterol figures that mean you need to take statins for life. Healy reminds us that high cholesterol is not (in most cases) in itself, a disease.

“They are not talking about saving our life but giving us a treatment for life.” Several studies indicate that adopting a Mediterranean diet (despite being more likely to increase than reduce cholesterol levels) may bring greater health benefits than taking the drug. Statins are worth \$34 billion a year to Big Pharma.

And the list goes on.

In the 1970s Merck's CEO Henry Gadsden told *Fortune* magazine that his company's potential profits were being hamstrung because they could “only market to sick people”. He wished that Merck could be more like the chewing gum conglomerate Wrigleys. It was his dream, he said, “to make drugs for healthy people”. Four decades later, it looks like his dream has come true. ■

**The bar for the approval of new drugs is dismally low: they just have to be better than a sugar-coated pill**





# Winning hands down

We are here! Where are you?

IT WAS SHORTLY AFTER SOUTH AFRICA bowled out New Zealand for 45 at Newlands that I began to wonder whether Jerry Bruckheimer might be wrong.

Bruckheimer, you will recall, is the American producer who reinvented blockbuster films by removing superfluous cinematic traditions like dialogue and plot, and replacing them with explosions. Some of his biggest hits include *Pearl Harbour*, *Pirates of the Caribbean: The Curse of the Black Pearl*, *Pirates of the Caribbean: Johnny Depp is Wearing Thin*, and *Pirates of the Caribbean: For The Love Of God Please Stop Making These Movies*. His television shows, which include *CSI: Implausible Forensic Technology* and *CSI: Stilted Dialogue*, have also wowed audiences across the globe and have made Bruckheimer a major influence on modern popular culture.

Unsurprisingly, given its appeal to a certain kind of Western adolescent male, the Bruckheimer recipe was seized upon by sports marketers. Their logic was solid: if the modern signifiers of action and excitement are sweaty men running in slow motion, accompanied by portentous but ultimately meaningless orchestral music, then that was how they would sell their product. The Bruckheimerisation of sports had begun, and today it is difficult to remember that once, when an ability to speak was a basic requirement of commentators, it was about fun and skill rather than the carpet-bombing of our senses and the napalming of our critical faculties.

Which brings us back to Newlands, and the New Zealanders dismissed for 45. It was, in the words of Hugh Bladen, unbelievable. This is why broadcasters like *SuperSport* put together Bruckheimeresque highlights reels: like Ben Affleck fighting off the Japanese air force, or the Miami Crime Scene Investigation unit enhancing a

satellite photo of North America to reveal the fingerprints of a killer; these sorts of things just don't happen in real life. And yet they were. Philander had taken the third-fastest five-for in Test history, and South Africa were batting before lunch on day one.

Those of us up in Row Z should have been roaring. There should have been slow-mo high-fives, Bronx-accented yells of "Dat's whut I'm taakin' about!". After all, Jerry Bruckheimer had promised us that wherever unlikely drama met overkill, there we'd find deep, manly satisfaction. But it just wasn't so.

Anyone who survived *Pearl Harbour*, a film that will live in infamy, will understand why. Explosions do not constitute a narrative. What draws us in and makes us care is conflict facing people in whose fates we have taken an interest. Soap operas run for decades on one or two endlessly repeated conflicts. Will she find love or will her possession by Satan get in the way? Will he keep his company or will his evil twin snatch it away? Perhaps this is where the Bruck-

heimers of the world have made their mistake. Perhaps they have mistaken conflict for violence, misunderstanding that violence is just one, rather literal, outcome of conflict.

But go deeper into the nature of conflict, and you find another, far more positive energy: competition.

Biologists and economists tell us that competition lies at the heart of almost all life on earth. It is the oldest magic, and without knowing it, we are all seduced by the bounty that it seems to promise, and motivated by its shadow side – the horror of being conquered by life and circumstances, and falling into obscurity and isolation. We are drawn to competitions wherever they arise. Sometimes they are as mundane as a colleague gossiping about the office oaf, or eccentric as a crowd of adults betting on the outcome of a wrestling match between two stag beetles. And sometimes they are both mundane and eccentric: 13 men in whites, locked in a battle of wills and techniques, stretched over five days.

No, Bruckheimer had it wrong. New Zealand bowled out for 45 wasn't exciting. It wasn't even entertaining. It turns out that the Victorian cliché is true: it really isn't whether you win or lose, but how you play the game.

But why should this be? If competition energises us on so deep a level, and its function is to sort winners from losers, why does an overwhelming victory feel so unsatisfying?

Perhaps the answer lies in the most primitive reptilian parts of our brains. Consider the ritualistic wrestling matches that King Cobras perform to settle arguments over territory. Each could kill the other many times over with a single drop of venom, but evolution has conditioned them to spare one another for the good of the species; and so they twist and turn, each trying to pin the head of the other on the ground. A single touch of hood to dust, and the

**Bruckheimer had it wrong. New Zealand bowled out for 45 wasn't exciting. It wasn't even entertaining.**



duel is over. The competition is fierce but ultimately affirms life and rejects the overkill of death. Perhaps we share this instinct, a deep knowledge that physical competition moderated by rules, ritual and, ultimately, mercy, is a creative force for good.

On *Tweede Nuwejaar* it seemed as though the cavemen had been given the day off and allowed to come to the cricket. Robbed of a satisfying competition by the rout happening before them, bands of young men were popping up all around the Newlands Stadium, chanting “We are here! We are here! We are here! Where are you?” A moment later, a rival band of hominids would leap up, point at their challengers, and reply, “We are here! We are here! We are here! Where are you?” And so on, ad infinitum. It was incredibly stupid, but at the same time, utterly compelling. If a challenge went unanswered, one felt genuine disappointment, as though the opposition had failed to pitch for a crunch match.

I usually get annoyed by the cliché about sport being a symbolic substitute

for war. I doubt that anyone who has survived a mechanised modern war would want anything to do with any activity that resembled it, even in symbolic form. But watching those taunters call each other out, endlessly, bloodlessly, and joyfully, I had to concede that they had something in common with the battle lines of Renaissance Europe, where gaggles of exuberant youths would line up to defend the dubious honour of their plague-infested cities, eager for an extended bar brawl where one might get stabbed once or twice but which would be a small price to pay for the chance to stab a Florentine or a Frenchman or a Turk, or whichever tribe happened to be the bogeyman of the day.

In December a biologist named David Carrier published an article in which he suggested that our hands – clever, nimble, world-changing tools of progress and genius – had in fact evolved to form fists that could punch things without getting too banged up. We are the only primate able to make a fist, he explained, and when we do so, the

delicate bones in our fingers and hands line up to form a remarkable hammer. What sort of things did we evolve to punch? Bony, hard things. Like human faces. If Carrier is right, we have spent the last million years getting in shape for *Fight Club*.

It’s depressing for idealists because it tends to reduce human history to one very tedious Jerry Bruckheimer film in which the protagonists spend a lot of time running away from lions and punching each other in the nose. But look on the bright side. I’d rather have face-punching hands than jugular-slicing hands. It means we have evolved to compete but not to kill. Competition, the life-blood of sport, is part of our physiology. The hands holding this magazine are living proof that you were born to compete; and I find that rather exciting.

The lads at Newlands were right. We are here, we are here. Our drive to thrive, to get there ahead of the rest, may have evolved into the genteel laws of modern sport, but it still runs deep. We are here, still. ■





## Justice delayed

**N**OT LONG AGO I WROTE ABOUT the deployment of fraud accused Paul Mpele to the post of Umjindi Municipality's Chief Financial Officer (CFO) – locally dubbed “chief fraud officer”. Mpele is under investigation for serious fraud – a whopping R3.2 million-worth – allegedly committed while employed at Thaba Chewu Local Municipality (Lydenburg).

These alleged financial indiscretions came to the attention of the good people of Umjindi after Mpele was nabbed by the Hawks. Naturally they called for his immediate dismissal, but up to now there has not even been a suspension, despite the disgust of municipal workers who resorted to frog-marching him out of his office – and out of town.

Who collects the public backlash? The local hard-hitting editor: “Mr Mashile, why is Mpele still here? Mr Mashile, why is Mpele not suspended?”

All the media can do is expose and bring such matters to the public's attention. Other institutions acting in the public interest, such as the Barberton Ratepayers Association, can take such matters further – through the courts – the judiciary being the only institution the powers-that-be seem to respect. Some examples: the Limpopo textbook saga, e-tolling (at least temporarily), and probably the most famous one of them all, the arms deal.

Oh! that politician, Patricia de Lille, of that nobody-little-opposition-party (before joining the DA) and *Noseweek*, and the *Mail & Guardian*, they must have made those who feared being caught in the arms-deal saga, really nervous! But no, they saw De Lille as just some pisswilly opposition and *Nose* and the *M&G* as “just perpetuating the counter-revolutionary stance” that we in the media are known for – until some Joe-shmo do-gooder decided he'd approach the courts and ask for a commission of inquiry. Talk about exciting court actions: local businessman, Fred Daniel, based in the neighbouring rural community of Badplaas where he

owns the Cradle of Life nature conservation centre – which is also home to the Badplaas Tourism Centre, near the Machadodorp turnoff – decided the only way he could get the Mpumalanga government to fulfil its constitutional obligation of economically developing poverty-stricken Badplaas, was to take it to court.

And get this: while taking on DD Mabuza and his government, he followed this up by instituting court action to order President Jacob Zuma to launch a commission of inquiry into corruption and other misdeeds in Mpumalanga.

Judge Ronel Tolmay, sitting in the North Gauteng High Court in Pretoria, ruled on 29 November that the Mpumalanga Tourism and Parks Board must act in terms of their constitutional and statutory obligations to make a positive contribution towards economic development in the Badplaas area.

Daniel and five other applicants instituted the action in March 2010 against DD Mabuza and 21 other government functionaries and departments, in particular the Mpumalanga Tourism and Parks Agency (MTPA).

The case was expected to run for two weeks but it took only three days for the parties to consent to the following interim court order: “The application is postponed... pending the application that was brought by the first applicant in the Constitutional Court... the tenth respondent (Mpumalanga Tourism) shall act in accordance with all its Constitutional and

Statutory obligations...” In effect, it orders the MTPA to do their job.

Daniel's more recent, separate application to the Constitutional Court was prompted by the extent of the corruption, public maladministration, misuse and abuse of power, assassinations of political opponents that the police are somehow unable to investigate and prosecute – the general shambles in which the Mpumalanga government finds itself. He and other concerned citizens wrote to President Zuma on 9 July last year, asking him to invoke his powers under the Constitution and the Commissions Act to appoint a commission of enquiry into these matters.

When the President ignored the request, Daniel applied to the Constitutional Court to compel him to appoint a commission of inquiry. His application was supported by sworn affidavits submitted by a number of prominent leaders within the province, and elsewhere.

The Chief Justice directed the President to file a response to the application by 12 December – after which further directives might be issued by the court.

Both matters are in limbo while the Mpumalanga government and Daniel's lawyers discuss a way forward.

However Zuma – at least for now – hides behind the fact that there is already the North Gauteng High Court case and cannot, will not, consider establishing a commission until the case is concluded.

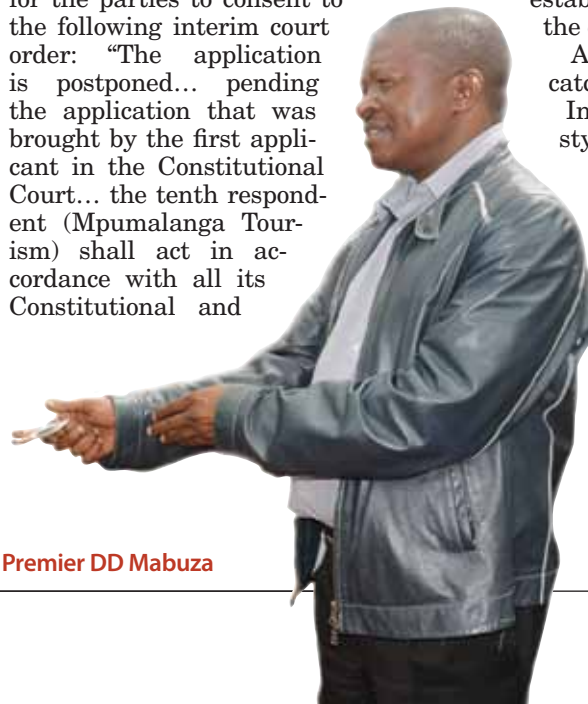
A conveniently constructed catch-22.

In the meantime, in true ANC style, Daniel has been accused of having a political agenda, all because he donated money to COPE when Lekota and his crew were seen by many to offer opposition “hope”.

Now I know why my *Guardian* does not get provincial government advertising – it's because of our “political agenda”.

That's what I get for covering the lost hope launched in 2009 – or was it 2010? Agh, who cares now. ■

Premier DD Mabuza







## Sackcloth and ashes

ONCE SAW ARAB DHOW-BUILDERS AT work on a beach just a bit up the coast from Mombasa; what a joy to see such nimble use of tools, and the whole boat joined without a single metal nail, screw or bolt to corrode in its working life. Everything dovetailed, doweled, plugged with precision, and the tools: mallet, adze, chisel and auger. A wooden hammer, a sideways chopper, the chisel and a *dinges* for drilling holes. I seriously wanted to see such industry up the beach from Durban. I wondered why we've never had Arabs in South Africa, why they never did their slave-trading down here. Maybe the Zulus were a bit fierce, hey? Maybe wind and current?

I put all this to my young road-running pal Hamish as we pound along – there's a test for fitness in the road-running community: if you can hold a comfortable conversation while running you're in form for the marathon.

Now if you think this Hamish was a Scot you'd be dead wrong. This one was an Arab, his father and uncle owned the Arabian Fruit Orchard up near the railway station in Maritzburg, and father named his son after Ham, one of Noah's three sons. They were Shem, Ham and Japheth, you will remember, and the descendants of Shem seized the land of Ham's descendants, the Canaanites, and enslaved them. Then to justify this it was injected into the Hebrew story that the children of Ham were cursed with slavery – by God, no less – and were forever destined to serve their brothers Shem and Japheth. Also God smote them black, *klapatz!* just like that, to show how bloody stupid they were.

But hang on! Arf a mo! After a few thousand years, along comes N Bonaparte and invades Egypt where the Hamites live, and there finds art and architecture and culture quite stunning in its intelligence and its beauty, and instructs his world-top scientists to set to work and prove that the Hamites were really quite white, God regardless. Which they do, with the utmost

jiggery-pokery. Then after 130 years-or-so comes A Hitler and says Bonaparte shtunk! they were not even whitish *bruin-mense* but white like snowflakes and ancestors of his *Herrenvolk*.

I don't know, say I to Hamish, you look sort of café au lait to me. Ja, says he, it staves off the mosquitoes. Also skin cancer. In Bible times we Hamites were spread all along the right-hand-side of the southern Med and up a bit, and that's where my old man comes from, Palestine. From a farm



where they grew oranges, just outside of the village called Hallamish, that's where I got my name. But the Shemites came and built a settlement on the farm, I mean all of it, our farm just disappeared under apartment blocks, a whole town on our land.

About this time a hand-written old-fashioned letter arrived from my uncle in Natal saying apartheid was now *kaput* and my father should join him and grow oranges for the Fruit Orchard in a place called Chase Valley. Ideal for citrus. My father was so the hell-in he upped anchors there and then, says Hamish, and Chase Valley is where I grew up, just outside Pietermaritzburg.

My father laid an artistic general curse on all who had turned dear old Palestine into a vile battlefield of blade wire and blockhouses and concrete walls chopping up the country for oc-

cupation and plunder. His living self would never again go there, he swore, only his funeral ashes were to be cast upon the wind in Palestine.

So eventually everything comes together. Hamish phones me in Durbs and says he seems to have his father's corpse in his garage and how does he go about getting it burned, it's not in his culture. We take Mr Ubaida Snr to a secular atheist Hindu corpse-place and they do a discreet job at a reasonable price and Mr Ubaida comes out in a neat little corrugated cardboard box after only half an hour-or-so. We go to a proper Muslim shop and buy a sensitive card with a quote from the Holy Q'uran in curly Arabic script and stick it on the box and pack it in Hamish's hand luggage and he's off to Palestine the very next day with his South African passport clutched in his hot hand.

No problem getting Mr Ubaida Snr on board the SA plane at OR Tambo, nothing but problems getting him off at Tel Aviv. On top of Hamish's shirts and things stands the box with Arab writing on it. Stand back! cries the customs man. The junior security man hurries over, looks at Hamish's passport. Your name is Hamas, hey! he cries. Senior Security hurries over with the resident Problems Man from the SA Embassy, name of Cohn.

Aaah Maritzburg I know! sighs Cohn, I know your late father's fruit shop! This parcel is kosher, he explains to Senior Security, these are the late Mr Ubaida's ashes. S Security fumbles. Better not to take chances, a great reinforced concrete bomb-disposal vehicle grinds on stage, lights flash, sirens wail, Ubaida Snr is carried to the veld other side the runways, placed above a charge of Semtex and blasted *moertoe* in an ugly brown cloud of smoke.

I'll put you on an SA-bound plane this afternoon, says Mr Cohn, for free. See if you can get a refund for your unused ticket. Sorry about your dad, Sir, and sorry about your spoiled holiday.

My dad couldn't have been better spread over Palestine, some of him is probably right back at Hallamish, and as for the holiday, sucks, this place is a vile battlefield of blade wire and blockhouses and concrete walls chopping up people's property. ■

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**Noseweek should expose** the major banks' rip-off of shareholders/depositors by poor investments record.  
**If anyone knows** where to find Howard Stafford please contact Interpol. 082 570 4589  
**Psst! Have you visited** [www.eloot.co.za](http://www.eloot.co.za) yet?  
**It is a toss-up,** who is worse, the government or banks?  
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**Dearest Bebé,** Kudu House and others wish you a splendid birthday. Much love Dirk.  
**Happy reading Mike.** Lots of love Joan.  
**Sonja,** thank you for being you. Love MGG.

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