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noseweek

149 MARCH 2012

**Oasis:
it can't
be true!**

**Sunday
Times
conned by
criminals**

**Racist FNB
overcharges
black clients**



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noseweek

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Borderline

YOUR article “The Judge and the stripper” (nose148) refers. Why should border officials let any “stripper” into our country? So that Gary Eisenberg and his buddies can get their rocks off while watching her strut her stuff at his client’s bar?

“Mukhamdieva failed to convince border officers that she met all the criteria to qualify for entry. She did not have the required letter from Eisenberg’s client confirming her employment by them”.

In fact, according to your article, Eisenberg’s client was not even her “employer”.

That should have been the end of the story. What followed was a farce. The “joke” is on Eisenberg for trying to screw the border control system.

Michael Katz
Sea Point

■ RE YOUR report on the Mavericks application before Judge Davis (nose148): it is of course human trafficking.

Who are the proprietors of Mavericks? Surely they need naming and shaming?

Roger Stephenson
Doha, Qatar

■ IT HAS become quite fashionable of late to take a dig at the country’s judiciary; however, I believe that the dignity of the person or the institution he/she represents should not be impugned.

Unfortunately, in your latest article regarding “The Judge and the stripper” (nose148) the line was crossed: you were not fair to Judge Davis in seeking to portray his conduct as misinformed and amateurish.

Sean Bozalek
De Rust

We have generally held Judge Davis in extremely high regard. But our report suggests not that the judge was misinformed and amateurish but rather that – regrettably, on this occasion – he may have crossed the line by being opinionated, condescending and careless of proper procedure. And that he might have been persuaded to enter the arena to favour a lawyer he was eager to please. – Ed.

Provide proof

I DID not know your magazine at all before a friend brought me a copy of issue 131 (September 2010) with the article, “What are they hiding?”

In it you state I was involved in arrangements for a meeting in Washington to ship huge amounts of money out of South Africa, or which is in banks in the US, Panama and other countries.

I would like to know who has given you this information, where the proof is that I was involved in these arrangements and what my role is/was in this whole ridiculous fantasy.

I have consulted my attorney in South Africa and my attorney in the United States to file a law suit against Noseweek for “Deformation [sic] of Character and Publishing Unproven Statements” in the amount of US\$20 000 000-00.

You have until February 10 to respond and clarify in detail your article’s statement about my name and company, Seal Bureau of Investigation, from September 2010.

Klaus Otto Weber
Intelligence, Law Enforcement & Military Consultant
Ciprointernational Ltd, UK
Regional Office for Africa, South America & Middle East: Constantia Intelligence Consultants
Johannesburg

Unbecoming

READING your article about Allen Jones who took moneys illegally from the UIF, “High-flier takes the low road” (nose147) shocked me.

Fraudulently drawing R39 000 when you have everything in life is just criminal.

I sincerely hope that he does not get away with it – and that the Noseweek article will discourage similar acts of fraud. A man like this worked for 40 years for top financial institutions?

Unbelievable.

Craig
Garsfontein

Only bluffing

Noseweek reported in nose148 how accountant Asim Qaiser, once rated the star employee of Cape-based financial services group, Oasis, was denigrated in a six-page rant by his Oasis bosses when he left their employ – and was refused his provident fund payout. This was despite the fact that Qaiser left with a folder of glowing testimonials, including one from Oasis’s auditors, PriceWaterhouseCoopers.

Noseweek’s story prompted the following extraordinary letter from PWC:

I REFER to my [testimonial] letter of 30 March 2011 in respect of Asim Qaiser (Mr Qaiser).

This letter was requested by Mr Qaiser for the purposes of applying for employment opportunities in Pakistan following our professional interaction with him during an audit of the Oasis Crescent Property Fund in May 2010.

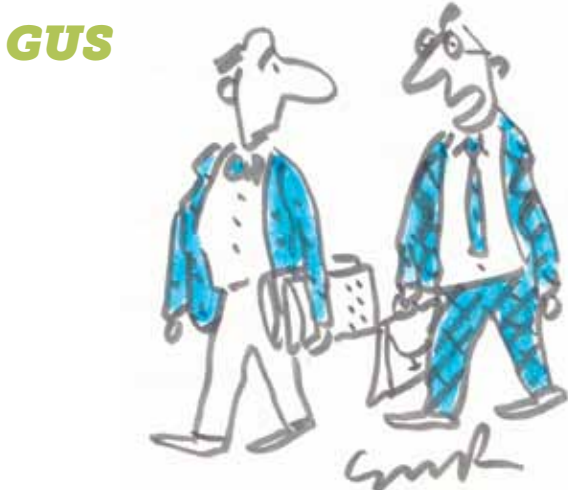
The letter was not intended for use in any pending or threatened litigation nor for any purpose other than seeking employment outside of South Africa.

I request that Mr Qaiser informs all parties who may have received my letter of 30 March 2011 accordingly.

Peet Burger
Director,
PriceWaterhouseCoopers,
Cape Town

In our most recent issue, Noseweek had occasion to describe a former Netcare executive as a “rat”; by comparison, Mr Burger warrants only the designation “wee mousie”.

Anyone need a tame accountant? – Ed.



“Postmodernism began when the first photocopy surpassed the original”

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A MATTER OF PRINCIPLE

FNB's racist bond rates

ARE PRINCIPLES really necessary if one wishes to lead a good and stress-free life? Jo Maxwell, a long-time reader posed the question in *nose*148. She went on to relate how one of her early principles had come about through the shenanigans of the lotto board, which held on to the money as if it were glued to their fingers – and managed to distribute millions to a well-known sports club, while those feeding the hungry were left to find other means of keeping people from starving.

“I swore I’d never buy another lotto ticket. And I have stuck to that principle,” she said.

At one stage she thought to change her bank, but then found – through *Noseweek* – that every bank, perhaps not Capitec, is ripping us off, so decided one devil is as bad as the next. “Hard to make an on-principle choice when there are no choices,” she quite rightly observed.

More recently, having just read in *nose*147 how Coca-Cola screwed a much smaller guy and left him penniless, she decided not to allow another sip of Coke past her lips. (Although she did admit this was not too difficult as she hardly drinks Coke, Appletiser or Valpré.)

Oh, and she doesn’t fill her car with fracking Shell.

She concluded with a plea: “Please, *Noseweek*, keep me on my toes. I’d hate to miss out on making more on-principle choices.”

Jo Maxwell has put her finger on something – something peculiar about *Noseweek* and most of its readers: we hang on, for dear life, to our freedom, our right to choose – we believe the good life, the life well led is, ultimately, a life of principle.

We won’t eat dogs. On principle: dogs are man’s best friend.

We won’t eat meat culled from cruelly confined and abused chickens and pigs. Goodbye KFC. (I have received more emails from readers alerting me to that grotesque video on YouTube about the cruel culling of egg-laying hens than on any subject under the sun, ever.)

We choose not to buy or use products that have been tested on rabbits and dogs in cruel and bizarre pseudo-scientific “trials” devised by sadists.

We won’t buy ginger beer and “traditional” drinks from Woolworths because

they stole the idea from the legitimate originator, a small guy like most of us. (To their credit, Woolies got the message and have stopped production.)

We don’t tolerate liars and cheats. Or pompous old farts. On principle. We have at least one good laugh a day – on principle.

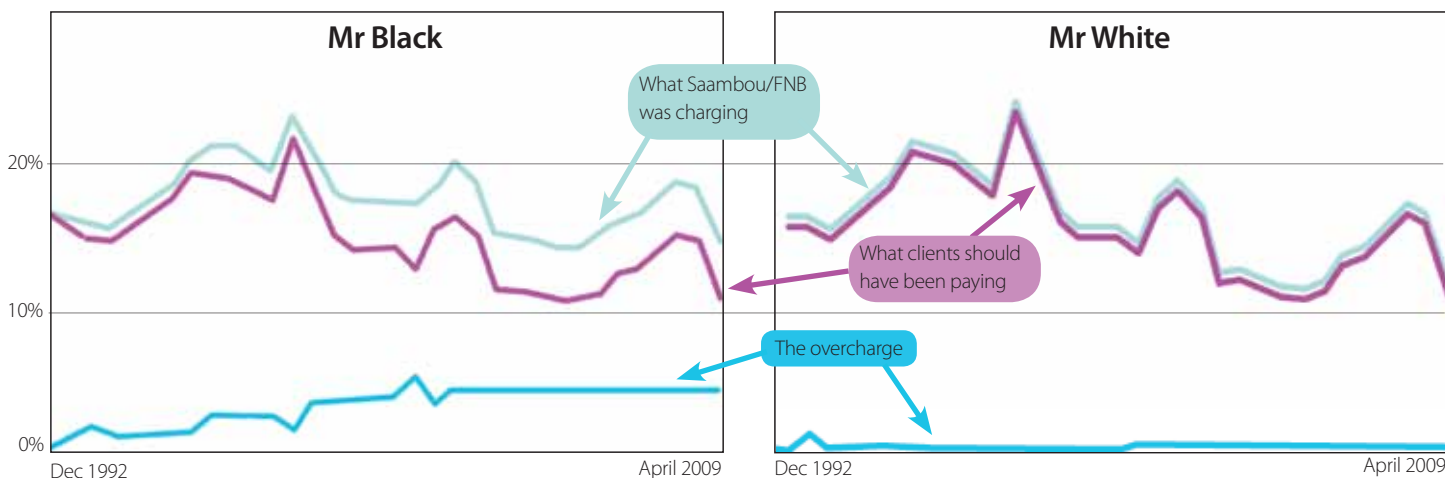
Which brings us back to the subject of which bank to choose; we have recently found serious reason to reconsider our position on that one. Until now we have rated one pretty much as bad as the other – you may have noticed, they all choose not to advertise in *Noseweek* – making our reasons for choosing or staying with one rather than another all fairly arbitrary. Mostly its “now we’re there, we may as well stay.”

In our case it’s been FNB since the day we started up in 1993. In all that time we have had no serious reason to complain. On the news front we have had huge fights culminating in a showdown in the high court. But then we have had equally damning things to report about the business ethics of Investec, Nedbank, Standard Wank and Absa. Until now, not much for choice. They all steal, lie, cook the books and abuse their financial power and controlling grip on the legal profession. But there is one sin that you dare not commit in South Africa: you dare not be racist. The wounds are too raw, too deep.

FNB, as hard as it is to believe, has remained racist. It has actually set up its systems to steal – consistently – more from its black bond clients than it dares steal from its white bond clients.

FNB lied from day one about the position of the 80 000 bond clients it took over from Saambou. That, *Noseweek* readers have known almost from day one. We told you all about it in August 2002. Saambou had for years been charging their bond clients an illegally inflated interest rate, and been calculating the interest in an illegal manner, resulting in all these accounts reflecting hugely inflated outstanding balances.

FNB has for the past 10 years failed to rectify the position, regularly proceeding to seize clients’ homes and sell them in execution, based on false outstanding balances – which they know to be false – when, as often, the client has in fact



long paid off his or her loan and it is the bank that owes the client tens, if not hundreds, of thousands of rands. That part of the scandal we knew. (Everyone knows it. The government knows it. Even the courts know it: on 28 January in the High Court in Pretoria yet another FNB sale in execution was stopped on the basis of the bank's fraudulent interest calculation. This was the 179th such case. On each occasion FNB was forced to withdraw. But still it carries on, presumably because enough clients are too uninformed to know that they have been robbed by a bank and don't resist when the sheriff arrives.

What we did not know is that the victims are almost exclusively black – as in black-black. And that they have been deliberately targeted with illegally inflated interest rates that are substantially higher than the rates the bank charged its white bond clients.

Look at the two graphs above: the one on the right, a white client, is charged an interest rate very close to the prime bank rate, which is regularly adjusted up or down in tandem with the Reserve Bank's repo rate. The one on the left, a black client, signs up at a rate much the

same as his white compatriot, but very soon the bank secretly starts upping the rate above the rate it charges white clients. When the repo rate drops, it reduces the rate it charges black clients later and by less, exploiting the opportunity to open the gap even more.

In this particular case, the black client ended up paying R150 000 more than he should have paid. Proof that the racial discrimination is deliberate is found when the Saambou/FNB bond accounts are examined by suburb. An analysis of the bond accounts of over 2 000 white clients in four Pretoria suburbs with a similar number in four of the city's black townships in 2002, shows that black clients were charged on average 2.5 percentage points more than white clients. In Monument Park, Pretoria, an overwhelmingly white suburb, most clients were charged between 13.5% and 15%. But the two obviously black clients living there, a Mr Phoshoko and a Mr Sibeko were charged 16.5%.

The decision to target black clients with an illegally inflated interest rate was taken in December 1993. Even when Saambou was under curatorship instituted by the Reserve Bank, the

practice persisted: white clients paid 5% above prime, black clients were charged 6.5% above prime in March 1992. The gap was further widened in August 2004. By these devious means, the bank managed to up the bond clients' debt by as much as 32%. The suffering they have inflicted on innumerable households is immeasurable.

FNB has to date refused to rectify the matter. The total amount it owes the 80 000 bond clients it acquired from Saambou could total billions. Most of it is owed to its black clients.

We are putting FNB on notice: unless it comes clean and declares its willingness to voluntarily rectify this outrageous wrong before our next issue goes to press, we will be closing all our FNB accounts, and inviting our readers to do the same. We have a choice and we intend exercising it.

On principle.

The Editor

■ In December it was reported that the Bank of America was fined \$335 million for minority discrimination for charging higher interest rates on loans to African-American and Hispanic American borrowers.



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Friends in high places

NOT SO MANY moons ago an 18-year-old schoolboy in matric at a top Johannesburg private school received hideous facial injuries – the photographs are stomach-churning – when an older man viciously stabbed him with a broken glass in an unprovoked attack at a local night club.

The attacker, in his twenties, is an up-and-coming star in local golfing circles.

The mother of the now-disfigured boy quite naturally wanted her son's assailant to be criminally charged. Expensive lawyers were retained. But curiously no charges have been brought. Why?

It emerges that a prominent

Johannesburg silk, brought on board to represent the injured boy's interests, received a phone call from a woman lawyer of high rank in the Pretoria office of the National Prosecuting Authority (NPA).

The decision on whether to prosecute was hers. However, she told the advocate that the parents of the golfer were very good friends of hers, and she was calling to enquire how the whole thing could be discreetly disposed of to the satisfaction of all parties.

At the request of the advocate, the boy's attorney penned a letter to the golfer's attorney with a list of suggestions as to how the matter could be "satisfactorily disposed of".

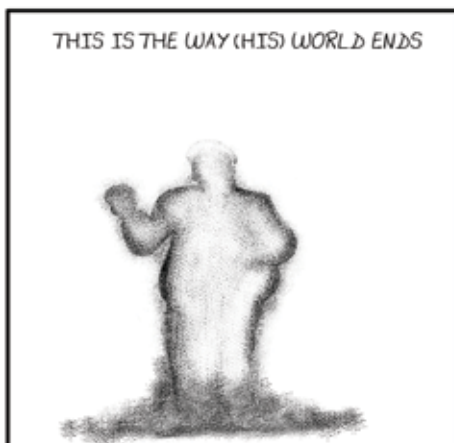
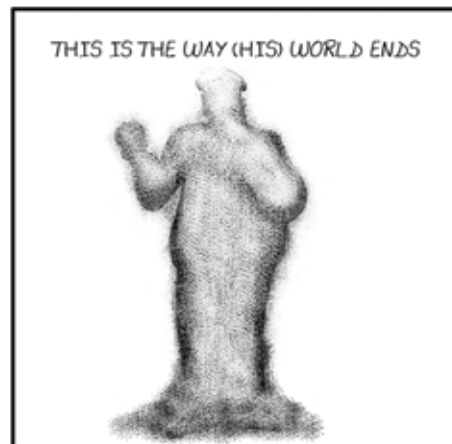
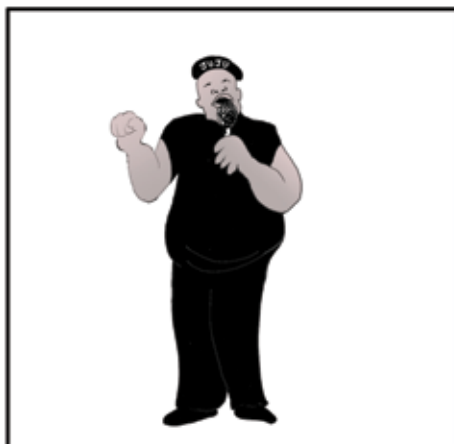
These (this after all is Joburg) revolved around financial compensation totalling millions – for medical bills, plastic surgeon's costs, general damages and, of course, legal fees.

But weeks have passed, with naught but a deafening silence in response from the golfer, his well-connected relatives, and his legal reptiles (Oops).

Criminal advocates, by the nature of their work, have on-going dealings with their counterparts among senior staff of the NPA, and it's important to maintain cordial relations with these mandarins. But, by the same token, betrayal of trust is a bad, bad, bad, bad thing. So what happens next? ■

StEnt

THE HOLLOW MEN



(with thanks and apologies to t.s. eliot)



FRENCH President Nicolas Paul Stéphane Sarközy de Nagy-Bocsa – you may want simply to call him Sarko – made waves at the end of January when he attempted to justify a 1.6% rise in the VAT rate.

According to a report in the British newspaper, *The Telegraph*, a journalist pointed out to Sarko that in Britain price increases had followed hot on the heels of an increase in the VAT rate.

Sarko's dismissive retort: "The United Kingdom has no industry any more."

This, in turn, aroused the indignation of an unidentified senior British civil servant who countered, "In the UK the percentage of GDP that is manufacturing is 11%, the same as in France. UK industrial production as a share of GDP was 15%, compared to 12.5% in France in the same year. What the French president said is not true. He has got an election."

The 108-year-old *Entente Cordiale*, the diplomatic bond of friendship between the two nations, was stirred but not shaken. (France's presidential elections will be conducted over two days, between 22 April and 6 May this year.)

What *The Telegraph* report did not point out is that a significant part of the relic of industry left in both countries is made up of the arms industry – which is carefully nurtured and cosseted by both French and

British politicians alike.

The *Entente* took even more strain recently when the time came for the Indian government to decide from whom it would buy a bunch of new fighter jets.

India is the recipient of four annual

£280-million (R3.38 billion) grants-in-aid from Britain – and four concurrent grants of only £18.5m (R224.8m) from France, so the Brits were rather relying on the outcome of the contest being a foregone conclusion. Hence a certain measure of public outrage when the Indians announced that they had decided against Britain's Typhoon Eurofighter and would rather go with the Rafale fighter jet manufactured by France's Dassault Aviation – for no less than £11bn (R133bn).

There has been a question mark hanging over the future of the Rafale but if this contract is signed and sealed its future is assured. That will also be a massive shot-in-the-arm for the French economy – and for Sarko.

British outrage was further fanned by India's Minister of Finance, Pranab Mukherjee, who proceeded to dismiss British aid as "an unwanted peanut" in the greater scheme of India's development spending.

He and other cabinet ministers had tried on numerous occasions to tell Britain that, although they were the world's biggest recipients of Britain's largesse, in fact, they had a booming economy, experiencing economic growth rates of up to 10% each year. India will very soon have a bigger economy than that of their biggest benefactor.

Clearly there are no kindly rich uncles among the armaments-producing nations. But it is nice, once in a while, to see one of them getting stung. Even if it is only a question of the French having paid the bigger, er... consultancy fees. ■

Cheque in the post

A YEAR AGO, *nose136* reported the appearance, in December 2010, in the Southwark Crown Court, London, of representatives of UK armaments company BAE Systems for sentencing, after the company had pleaded guilty to a charge of "failing to keep accurate accounting records" of its arms dealings with the Tanzanian government.

Mr Justice Bean sentenced the company to a fine of £500 000 and ordered it to contribute £225 000 towards the prosecution costs.

Not entirely stupid, the judge did inquire why there was no corruption charge, when the obvious inference was that bribes, amounting to £12.4 million had been paid by BAE's agent in Tanzania. But he then reluctantly had to accept that the prosecution had

no evidence that BAE took part in a conspiracy to corrupt decision makers in Tanzania or that the agent had paid bribes.

Last month, almost exactly a year later, *The Telegraph* reported: "A question in the House of Commons by Labour MP Hugh Bayley has revealed that BAE is expected to sign a memorandum of understanding with the government of Tanzania this month (February 2012) about the £30m payment."

Now that BAE Systems have found their cheque book – two years after the plea bargain agreement was concluded and more than a year after the sentencing – Mr Nose does wonder: for how long do we expect the cheque to be in the post?

The Silk Route

JOHANNESBURG Advocate Roshnee Mansingh's court bid to have the whole Senior Counsel system scrapped was related in "By a thread", (nose140). Respondents in the case included the President, the General Council of the Bar of South Africa (GCB), and the Law Society of South Africa – a society that is made up of the various provincial law societies as well as those two anachronisms, the Black Lawyers' Association and the National Association of Democratic Lawyers.

The matter was argued in November in the North Gauteng High Court, Pretoria, before Judge Legodi Phatudi. And on 9 February judgment was handed down in favour of Advocate Mansingh. The court's decision: "The President has no power in terms of section 84(2)(k) of the Constitution to confer the status of Senior Counsel on practising advocates."

This means that an age-old legal anachronism is no more. In fact, if the judgment is upheld, it will mean that all presidential appointments of SCs from 27 April 1994 onwards are of no force or effect.

They have traditionally been referred to as "silks", and juniors as "stuff" – because a senior's robe was originally made of silk and a junior's was made of, well, stuff.

So, there, Mr Nose has explained, albeit briefly, what stuff is. Now for the nonsense.

Arguing for the Independent Association of Advocates of South Africa (aka the Rebel Bar), were two of its own members, Adv Carla van Veenendal and a certain Adv Govender.

The forceful but unpersuasive Van Veenendal's argument was summarised by the judge, himself a former attorney from Polokwane, and he clearly wasn't intimidated by her reasoning: "Counsel submits that the institution of "Senior Counsel" should be retained because Senior Counsel "intimidates" judges when advancing arguments in court. She persists with her usage of the word instead of "persuades".

Do practising advocates really apply for the status of Senior Counsel for the purpose of intimidating judges? Do judges-president and the Minister of Justice and Constitutional Development really recommend the President appoint Senior Counsel to intimidate judges?"

Maybe not, but their briefing (paying) clients often do have just that in mind. London barrister Jonathan Sumption QC, who is ranked among the UK's top silks and has been described as "the cleverest man in England with "a brain the size of a planet", had the following to say about the "judicial intimidation" factor during a *Five Minutes* interview with the BBC's Matt Stadlen:

MS: Do you think that judges are intimidated by you?

JC: No.

MS: Why not?

JC: Why should they be? I am only trying to help them.

Ouch! – but there you are, then! Mr Nose has personally observed cowering judges whimpering their "deep appreciation" for the beating, or "admirable guidance" they have received from arrogantly confident senior counsel. ■

Hard times at Denel

SURE AS HELL, things are not going well at Denel. In fact the state-owned defence conglomerate has been suffering a serious cash drought – so severe, Mr Nose has been told, that all cash income has been diverted from its various subsidiaries' bank accounts to a central account controlled by Denel head office in Irene, all in order to meet the past two months' salary bills.

"Whether it's strictly correct or not doesn't matter; it's an emergency," one finance manager is said to have declared. This has meant that since January even the creditors of profitable subsidiaries such

as Pretoria Metal Pressings have either received no payments, or mere dribbles of cash – just enough to prevent panic.

The shortage is said to have been particularly severe in the "aero" structures, because of cancelled Airbus contracts – for which the government last year provided an emergency bailout of billions, but not enough to see Denel through to the end of the financial year and on to the next budget. On budget day all hopes were on Pravin Gordhan raining cash on their patch.

More cutbacks and retrenchments loom. Why else would Mr Nose's joints ache so? ■

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Parking space invaders

FOR YEARS, parking in the suburbs of Johannesburg has been regulated by a combination of meters and informal car guards, while in the CBD and Braamfontein a more rigorous system – policed by parking marshals – has ruled for some time. Now their dominion has suddenly embraced Parkhurst as well – and it's spreading.

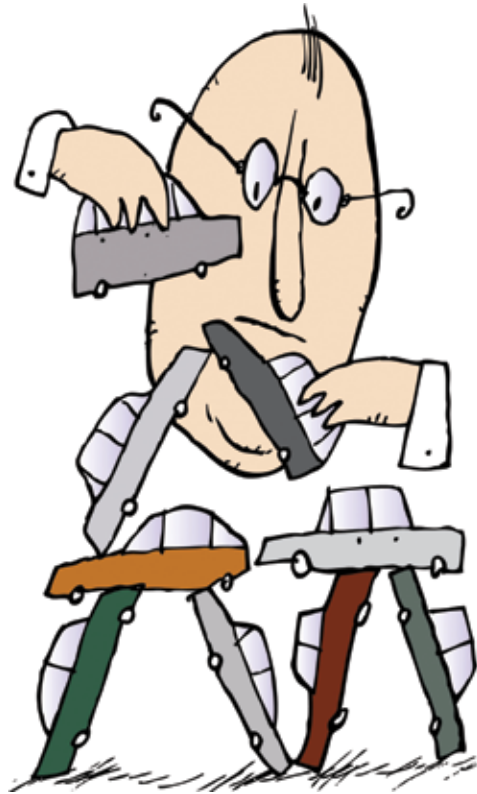
The people of Parkhurst are very unhappy, especially the traders, because the new system is limited to the two streets where all the businesses are – 4th Avenue and 6th Street – although it extends some way into residential streets that lead into these thoroughfares.

Two organisations, the Parkhurst Village Residents' and Business Owners' Association and 4th Avenue Traders, have raised lots of very reasonable-sounding objections. They say there was no public participation; the infrastructure is inadequate; pavements and kerbs are in bad way; and they complain that the system takes no account of pedestrian crossings, disabled parking bays, loading bays, and parking areas for cyclists.

They predict that businesses will lose out as customers opt to shop instead in malls where they will at least get security with their paid parking. They also warn there is no reason to presume any of the revenue will flow back into the community.

If they have to put up with the new arrangement, the Parkhurst groups have requested a free half-hour parking concession, pointing out that Parkhurst has many elderly residents; concessions for people who live in flats above shops or in houses in the affected streets; as well as discounted parking for shop owners.

When the system was introduced in Braamfontein, Catherine Corry, who works for a property developer in the area, complained to Johannesburg Traffic Police Chief Wayne Minnaar that the marshals were poorly trained and should be advising motorists that they must display their parking receipts on their windscreens or be fined; that the parking time is limited to one hour, which cannot be paid in arrears if the hour is exceeded and will also lead to a fine. She complained, too, about their uniforms – which, she said, were not distinctive enough for motorists to be sure whether they were dealing with a genuine marshal or a casual imposter.



She complained that guards urinate on the street because there were no public toilets in the vicinity and that, at R8 an hour, parking in Braamfontein was more expensive than in Sandton City.

Corry also pointed out that marshals must be pocketing money because they were charging people who double-parked or who parked in places where bays were not numbered. She warned that the system was killing businesses, suggesting a rental option for people who worked in the area.

Her input was ignored.

In Parkhurst, the malcontents' biggest concern is that the parking contract has gone to a private company that keeps 75% of revenue raised. The deal is between the municipality (represented by Metro Police Chief, Chris Ngcobo) and Ace Parking Services (Pty) Ltd. The preamble to their contract makes it clear that it is all about only one thing – raising revenue: "This agreement aims to ensure compliance with parking bylaws in the city, particularly to ensure motorists pay for the use of parking bays by increasing the efficiency and effectiveness of fining for parking offences, and the collection of fines for such offences."

Ace Parking has the right to operate its

parking marshal system in Joburg for a three-year period – which began on 1 July 2011 – in a number of areas (see separate list), covering at least 4 500 parking bays. Motorists will be able to pay with cash or by way of a CashCard. The minimum hourly rate – to be reviewed annually – is set down at R7.50 if paying by CashCard and R8.00 for those who use cash.

Ace Parking also has contracts in East London, Gordon's Bay, King William's Town, Klerksdorp, Kokstad, Margate, Oudtshoorn, Paarl, Port Shepstone, Randfontein, Somerset West, Stellenbosch and Strand.

The company's website suggests it is owned by one person, Juliet Paulsen, who joined a parking meter manufacturing firm as an admin assistant, worked her way up and eventually bought out the firm. The Companies and Intellectual Properties Commission (CIPC) records show that there is one other director, a Michael Clark).

Noseweek was told by Joburg's communications director Gabu Tugwana that the tender was won by Ace after a very strict evaluation process.

Asked why Ace had been given such a generous profit share, Tugwana said: "JMPD does not think that this pricing structure is unfair as the costing of the handheld parking meters, uniforms, employee-related costs including road traffic signage and marking, is borne by the company."

He said the city's quarter-share of the revenue formed "part of the budgeted income for JMPD. Once the project has been rolled out, JMPD will consider ring-fencing this income to assist in the upkeep of traffic signs, markings and general upkeep of the parking facilities within the city".

Paulsen sent Noseweek a short statement saying about her company's generous profit share: "We were awarded the contract after a full tender process, the share was also subject to the tender process and therefore clearly competitive." Asked whether other municipalities had shown similar generosity, she said: "We cannot discuss other contracts without the sanction of the other parties to those."

■ Areas covered by the agreement are: Braamfontein; Jhb CBD; Parkhurst; Norwood; Melville; Corlett Drive (including Melrose Arch); Brixton; Emmarentia; Rosebank; Roodepoort; Birnam; Parkview; Sandton; Florida; Fordsburg; Greenside; Linden; Rivonia; Craighall Park; and Northcliff. ■



Major-General Johan Booysen

The **wrong** man

Rogue cops conned press with doctored dossier

Pictures: Independent Newspapers KZN

A SHOCK exposé by the *SundayTimes* in December of what was alleged to be a police “death squad” based in Durban, has effectively closed down the Organised Crime Unit that deals with serious violent crimes such as cash-in-transit heists, armed robberies, serial killers and serial rapists. Given that KwaZulu-Natal has frequently topped the list of South Africa’s most murderous provinces, by all accounts this is a serious setback for crime prevention. The unit is part of the Directorate of Priority Crime Investigation, better known as the Hawks.

■ The *Sunday Times* claimed its report was the result of an independent probe conducted over several months by its investigative team. However *Noseweek* has discovered that the report was, in fact, based on a “package” of material compiled and

supplied to *Sunday Times* reporters by a group of Durban crime suspects who had a direct personal interest in derailing the unit.

■ The report repeatedly makes the point that the unit they describe as an assassination or “death squad” falls under the ultimate control of Major-General Johan Booysen. But he was not the unit’s commander. Booysen, it transpires, was the prime target of the newspaper’s informants as he had been personally driving their prosecution on serious corruption charges.

■ Curiously, the exposé failed to name or even mention the officer directly in command of the unit at the time of the alleged “hit-squad” killings – a man of dubious character who is no longer in command of the unit, thanks to Booysen.

The unit the *SundayTimes* describes as a death squad had indeed, over the past three years, been responsible for

the killing of around 45 crime suspects. But the number of deaths attributed to the Cato Manor-based unit may not be disproportionate to the tally of 527 who died at police hands in the whole of KZN in the same period, particularly in view of the violent nature of the crimes involved.

The newspaper’s “scoop” was based almost exclusively on the “package” they had been “sold” by a certain Thoshan Panday. Panday had been released on R100 000 bail after his arrest, along with his corruption co-accused police Colonel Navin Madhoe. And Madhoe is the *Sunday Times*’s main quoted source.

He and Panday are accused of being the main movers behind a R60-million fraud in which police were billed for hotel rooms that were not occupied during the soccer World Cup.

Madhoe and Panday appear to have seen the media as their last hope to



Thoshan Panday

save them from justice. If they fail to discredit Booysen, both risk lengthy jail terms. Madhoe, by virtue of being a policeman accused of serious corruption, faces at least 15 years in jail. Panday risks financial ruin through asset forfeiture.

KZN police commissioner, Mamunye Ngobeni, who is also accused in the scam, managed to stop investigations into Panday three times. It did not go unnoticed that, after halting the probe for the third time, her husband, Brigadier Lucas Ngobeni, enjoyed a massive birthday party at a Durban restaurant with everything, including the DJ, paid for by Panday.

But the celebrations were short-lived; Booysen managed to get the investigation going again by having his Hawks take over the probe, with the approval of the national commissioner of the Hawks, Anwar Dramat.

It took only a few weeks of the docket being in Booysen's hands before Madhoe was interviewed and warned he was a suspect in the alleged scam. Shortly afterwards, Mamunye Ngobeni herself was interviewed under caution about her suspected involvement.

At roughly the same time another police officer, Colonel Rajen Aiyer, was also having some problems with Booysen. Until recently Aiyer had day-to-day command of the Cato Manor branch of the Organised Crime Unit – a position he held during most of the “death squad” shootings the *Sunday Times* wrote about – yet the

report did not once mention Aiyer's name.

Days after his formal interrogation, Madhoe is alleged to have called Booysen and asked to meet him. At this meeting Madhoe, who works in police logistics, produced a CD, a memory stick and a hard drive full of photos that were taken off computers belonging to the Hawks.

Police sources well-disposed to Booysen allege that the files have been deliberately manipulated or re-arranged to support the contention that the Hawks unit acted as a death squad – or at least were stupidly callous. Files of photos appear to show policemen celebrating after shooting suspects.

■ In one, an unidentified elderly woman appears to be weeping as policemen smile and raise their arms in celebration.

■ A photograph purported to have been taken at a party thrown to celebrate the shooting of several armed robbery and murder suspects was in fact a bachelor party for a captain in the unit. The picture of the cop's bachelor party was moved from one file on the original hard drive to another file containing rather morbid photos of a crime scene and the new file was captioned: “Shooting and after-party”.

■ Knocking another hole in the claim that the CD proves that a death squad was operating under Booysen, not all the photos on the dossier relate to the Organised Crime Unit. At least one photograph printed by the *Sunday Times* as proof of their “probe” shows seven armed robbers shot dead by members of the Durban Flying Squad, Dog Unit and Durban Metro Police following an armed robbery in broad daylight in February 2009.

■ Some of the pictures showed guns that appeared to be relatively new and clean lying next to suspects' bodies and the *Sunday Times* report quotes forensic experts describing the guns as suspiciously clean, and suggesting that investigations were needed to establish whether the guns had been planted on the scene. “Images show close-ups of three of the suspects shot in the head. That's troubling. With head shots, you want to look closely for evidence that suggests execution,” said a senior pathologist. “You would expect more body and limb shots.”

The paper quotes more unnamed sources saying: “This was confirmed

by the ballistics expert and two senior police officials who said head shots of fleeing suspects were ‘highly unusual’. The experts all referred to images of weapons as “highly suspicious”. They cited unusually clean guns in pools of blood and improbable positioning of suspects' fire-arms.

Approached by *Noseweek* for comment, independent forensic expert Dr David Klatzow advises caution before arriving at any conclusion based only on the photographs. “Head shots are not often what one expects in a gunfight. That said, they are not necessarily suspicious and not ‘highly suspicious’ on their own. If we are talking about incidents where people are shot at varying distances and at varying angles, then this may well be indicative of a fluid situation such as one would expect in a gunfight.

“Secondly, at the distances that these incidents took place, it is very possible for someone to place all their shots inside a circle the size of a fist – especially if rifles are being used.”

Klatzow says about the “unusually clean” guns in the Madhoe photographs: “I don't know what they mean by this. Is there evidence that armed robbers don't clean and maintain their firearms? If they are referring to guns being clean of blood-splatter, if the suspect is holding a firearm at the time he is shot, and especially if he is shot with a high-velocity bullet,



**KZN police commissioner
Mamunye Ngobeni**

then there might well be some blood splatter on the gun. I doubt, however, that you would see it in your average crime-scene photograph. You certainly cannot tell if a gun is clean or not from a photograph. You cannot see the inside of the barrel.”

Klatzow continued: “If a gun is lying in a pool of blood and the blood is from a deceased person who held the gun, then one would expect all the blood to be under the firearm and not visible. The gun would fall to the ground and blood would eventually seep out of the body and pool under it.”

Noseweek’s police sources say that Madhoe showed Booysen his files, then let it be known what he wanted: he asked Booysen to back-date official investigation reports to make it appear that search warrants used to access bank accounts were unlawfully obtained – making it possible for Madhoe and company to have most of the alleged evidence against them ruled inadmissible in court. The request came with a threat: if Booysen refused, someone would leak the CD to the media and the Independent Complaints Directorate.

When Booysen ignored the CD threat, Madhoe is alleged to have again contacted Booysen – this time



Colonel Navin Madhoe

He asked Booysen to make it appear that warrants were obtained illegally

to offer him a bribe. Booysen agreed to take the bribe, then called the National Prosecuting Authority and organised a “sting” at the meeting, which took place in a parking garage. Madhoe is alleged to have placed nearly R1.3m in Booysen’s car boot and was promptly arrested. (Sources note with amusement that Madhoe appears to have delivered nearly R200 000 less than he had promised.)

Madhoe was held for nearly three weeks until he won a bail application – supported by his affidavit alleging he was a pawn in the whole matter and that the investigation into him had as its real target Provincial Commissioner Ngobeni. Madhoe hinted he was being victimised because he’d refused to agree to testify against the province’s top cop.

Why Ngobeni would be (presumably

unfairly) targeted by Booysen is not made clear. Madhoe also claims that he was probing Booysen for running a death squad – and hints he was arrested to halt this probe. The *Sunday Times* appears to have accepted this claim uncritically. However, veteran cops point out that Madhoe has never worked as an investigator or a detective. He is a senior administration worker at the SAPS Supply Chain Management Unit, had no authority or mandate to probe Booysen and, by law, should have reported any evidence he had to either the provincial commissioner, the national commissioner or the Independent Complaints Directorate. Madhoe had never registered a docket in the matter.

The images Madhoe showed to Booysen before the bribe attempt

were copied directly from hard drives of Organised Crime Unit computers in a secure complex behind the Cato Manor police station. Madhoe had no access.

But his friend, Colonel Rajen Aiyer, the Organised Crime Unit’s commander, had total and unfettered access to the offices from which the computer images were allegedly stolen. He denies having anything to do with the theft of images. However in police circles he remains a prime suspect: besides having had the opportunity, he also had a very powerful motive: like Madhoe and Panday, Aiyer was investigated by Booysen for dishonesty – and eventually lost his job because of Booysen.

Madhoe was arrested in mid-September and Panday, a week later. Within weeks of Madhoe’s release on

bail, the package of pictures was being hawked about the press in KZN.

The *Sunday Times* team almost certainly doesn't know it, but the newspaper was not the first to be offered the Madhoe dossier. Panday's associates only approached the paper after they had failed in their attempts to "sell" the story and pictures to at least three KZN newspapers. All three have told *Noseweek* they rejected the story when they realised they were being recruited into a smear campaign being run by crime suspects.

In September last year Aiyer left the Hawks after pleading guilty to some dodgy business dealings involving the transportation of butchered game carcasses in police cars and all-night parties at a game farm (where he was supposed to be investigating poaching) with a young woman called Rose he'd met at a nightclub on Point Road.

He holds the distinction of being the first senior officer of the Hawks to have faced serious disciplinary charges – at a hearing ordered by Booysen.

Hawks spokesman McIntosh Polela told *Noseweek* that half-way through Aiyer's disciplinary hearing

photographs, he did confirm: "There is an investigation into how photographs were stolen and allegedly passed on to the *Sunday Times*. We respect the *Sunday Times*'s right to publish but, to take crime-scene photos then claim they are evidence of a death squad, is regrettable."

Approached by *Noseweek*, Aiyer denied he was the source of the stolen photos. He also denied having been sacked from the Hawks, saying he left because of "victimisation". And, he claimed to have a "flawless" record as a police investigator.

Madhoe won't say where he got the images – though he doesn't deny having them.

Panday doesn't want to talk about any of it: "I am caught up in the middle of a horrible mess. I cannot talk to you about this, but I can tell you I am a victim and not the criminal here," he told *Noseweek*.

Innocent Khuba, the head of the Independent Complaints Directorate (ICD) in Limpopo Province, arrived in Durban early in January to begin investigations into the Cato Manor unit in the wake of the *Sunday Times*

the ICD was still seeking witnesses to alleged murders committed by the Cato Manor unit.

The *Sunday Times* report contained several accounts provided by witnesses who were not willing to be named in print. The ICD has apparently not been able to locate them.

Several of the cases mentioned in the *Sunday Times* report have already been – or still are – the subject of court proceedings.

In all cases, inquests are held. Not all have been concluded.

As *Noseweek* was going to press, Minister of Police Nathi Mthethwa, announced the permanent closure of the Cato Manor unit due to the "stigma given to it by press reports".

"We can't have a situation where you are told there is a problem but you have not had one single police officer facing the music, and no police have been arrested to date in connection with those things," said Mthethwa.

One member of the unit (who is clearly too smart for his own good) observed: "Those are interesting grounds to close us down. When will parliament be closed down due to the

The newspaper was not the first to be offered the Madhoe dossier

– having had several witnesses testify against him – Aiyer cut a deal that he hoped would prevent his being fired. "However, after he had decided to plead guilty, Lieutenant-General Dramat wrote to Aiyer asking him to explain why, in any event, he should not be dismissed or required to resign. We suspect he saw the writing on the wall and decided to move on. By moving back to the police, Aiyer saved his job and probably his pension or other benefits," the Hawks spokesman said. (He now works at the SAPS's provincial headquarters.)

Aiyer is also currently deprived of a firearm after threatening to murder his sister and brother-in-law in a dispute over a will. Jayakanthie Roopchand, Aiyer's sister, said: "I am sorry, this is a private family matter that is obviously very hurtful and sensitive. I don't want to discuss it."

While Polela won't confirm that Aiyer is the number one suspect for having "lifted" the crime scene

exposé.

Asked whether Madhoe and Aiyer had been co-operative, Khuba said: "We have begun our investigations but I cannot tell you anything about the work so far. We have had meetings with various people but I cannot disclose what was discussed or with whom. We have to maintain absolute integrity and confidentiality in our investigations."

The ICD, while investigating the claims made by the *Sunday Times*, has made it clear it will not be looking into the alleged criminality, or unethical behaviour of Aiyer and Madhoe – or even of Thoshan Panday in allegedly bribing police officials. The ICD says the Hawks are already probing these cases. The ICD is tasked purely with investigating allegations against certain individual Hawks members.

Khuba told *Noseweek* there were no indications that Booysen's men were acting as an organised "death squad, in the manner of Vlakplaas". He said

stigma given to it by press reports?"

Meanwhile two ICD officials who were given until 13 February to explain why they should not be suspended were still at work in mid-February.

Said one: "I have already taken legal advice. It has been put to me that this might be a witch-hunt in order to get rid of people for no good reason. There may be something in it. It seems ridiculous that politicians demand arrests and prosecutions without any regard to the evidence. This is not at all about investigating murders, this is all about getting rid of Johan Booysen."

At the same time, General Booysen was given notice of his proposed suspension (for unknown reasons) presumably for not firing someone – anyone – to satisfy public opinion whipped up by the *Sunday Times* report.

Panday and Madhoe can congratulate themselves on a mission well accomplished. But what of the *Sunday Times*? ■

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Extortion, by another name



Shady lawyers are at it again, demanding debt payments that have prescribed

JOHANNESBURG law firm Munnik Basson Dagama Inc (MBD) is having a fine old time with job lots of prescribed debts bought from companies that have written them off – for their associated collections company, MBD Credit Solutions, to pursue. Several aggrieved recipients of letters of demand have voiced their outrage on internet complaints sites, while one reader turned to *Noseweek*.

On 30 January, he received a demand with a difference, framed as a special offer: “We offer you an opportunity of settling your debt at a reduced amount, FNB Card will grant you a discount of % [sic] on your outstanding balance. Contact us today to find out what your final discounted balance will be.”

It was an offer our reader most certainly would refuse, responding: “Please stop pestering me with this rubbish. As I have explained when I phoned you at my cost, if I had an FNB card, it was so long ago, this debt has long since prescribed.”

“When I asked you for details of this claim, you said you had none, just a balance going back many years ago. This is total rubbish, with the banks scraping the bottom of the barrel for more consumers to rip off with their bully tactics.”

Noseweek phoned the call centre number on the letter of demand and an operator told us that R4 710 was owing. It related to an FNB account where the last payment was made on 9 January 2003.

“But surely the debt has long prescribed?” we asked. This was followed by the kind of silence

you might expect if you ask someone to explain Einstein’s theory of relativity. Eventually it was broken: “I can offer you a discount – pay R3 297 and we’ll close the file.”

Noseweek then phoned the law firm and asked for one of the partners. We were put through to partner, Philemon Magolego, who intimated that this was not the first complaint he had received.

He took our details and promised that someone would get back to us.

That someone turned out to be an employee of MBD Credit Solutions, Stephan Venter. He quickly dropped out of the picture when he realised our questions dealt with tricky stuff like ethics and morality.

Then on 7 February our reader received a letter from Munnik Basson Dagama, signed Tediya Mathibe, saying that the firm was acting for MBD Securitisation (Pty) Ltd, a company “who acquired the rights, title and interest in above mentioned account”. The letter went on to say that “we have since received an instruction from our client to close our collection file herein, which we have duly done.” Problem solved.

On the same day, *Noseweek* received a letter from Christopher Harradine, Executive Director of Munnik Basson Dagama, saying: “The question of prescription is of a technical legal nature and it is apparent that the relevant call centre agent did not address this

adequately in this instance which is regrettable [*he didn't have a clue what it meant, more likely!*]... As soon as the query, including the question of prescription, reached the required level within our structures [*in other words, as soon as we heard that Noseweek was involved*], the correct procedures were followed in order to inform our client of the situation and obtain instructions on the account in question. Once this was communicated, our instructions were to close the account, which we duly did."

Certainly no suggestion that any screening of claims will take place before demands are sent out in future. And curiously, Harradine said that "we act on behalf of First National Bank", with no mention of their subsidiary MBD Securitisation having bought the debt.

So, one person's problem has been solved because of media involvement. And it's a massive relief to know that in future all of MBD's call centre staff will be fully apprised of the rules of prescription – and be in a position to confirm to irate callers that those debts that were incurred more than three years ago have fallen away.

But the letter MBD sent our reader certainly proves what we at *Noseweek* have long suspected – that law firms specialising in collections buy the debtors' books of major corporations, presumably at heavily discounted prices. MBD Credit Solutions boasts on its website that the company offers "debt sale and acquisition solutions", and describes itself as "a substantial buyer of consumer debt in South Africa".

This does, of course, explain why these attorneys have no interest

Not for the first time

BACK in 2010, *Noseweek* reported that a Randburg law firm-cum-collections company, Van de Venter Mojapelo Inc (VVM), had been sending out threatening SMSes and emails for debts that had clearly prescribed or been incurred by people other than those to whom the demands were sent (*noses124, 138*).

One reader had received a demand for rates owing on a house registered in her husband's name which had been sold nearly 40 years earlier, while another reader, David Wolpert, had received a demand for the debt of a company with whom he had merely been associated – (an inconvenient truth that VVM tried to get around by sending out the demand nonsensically to "Business David Wolpert").

People receiving these demands had found it impossible to get beyond VVM's call centre, and the firm's hard-nosed approach went along the lines of, "We're in possession of your ID and you must pay unless you can prove you're not liable".

VVM came back with some rubbish about providing a public service because South Africa was "being held hostage by a culture of non-payment".

The firm boasted about having created an enormous collections operation – every month it processed more than 10 million transactions, received over 150 000 calls and made over two million outbound calls.

The firm's website provided a fascinating look at a law firm that saw itself as a business rather than a provider of professional legal services, with all the dull obligations entailed.

The firm made it clear that it saw no obligation to screen the claims it was being instructed to collect or to satisfy itself that they were in fact owing: "VVM's clients have established processes in place to screen arrear accounts prior to handover to VVM, the ultimate onus on proving the claim vests with the particular client".

Wolpert had asked the Law Society to help him "stop this unlawful terrorising of an uninvolved citizen", but he was given short shrift, and told that attorneys are simply middlemen acting on their clients' instructions and "representing their clients regarding a claim that their client alleges they have against a debtor".

When *Noseweek* approached the Northern Provinces Law Society, the response was a little less extreme, with the secretary admitting that the society had considered the issue of "misleading and unacceptable letters of demand used by attorneys to intimidate debtors", and that "the Law Society has, on occasion, discussed the contents of the letters of demand sent by attorneys Van de Venter Mojapelo Inc with members of this firm".

'Please stop pestering me with this rubbish!'

in weeding out claims that have prescribed, or those that for other reasons are unenforceable.

The attorneys have a direct financial interest in recovering as many claims as possible, and they will have no compunction about sending out claims that are bad in law when

they know that a significant number of people will simply pay up because they don't know better.

There's the usual disconnect between what's said and what's done. MBD – the law firm that sends out demands for debts that have prescribed and employs call centre staff who believe

that prescription is something you get at the pharmacy – boasts on its website of "maintaining the highest levels of ethics and integrity", "compliance with all laws and regulations", and "highly competent management and staff". And MBD Credit Solutions boasts on its website that it upholds "a zero-tolerance approach to any form of unethical behaviour", and that it is "compliant with the letter and spirit of the law".

Attorneys, who like to describe themselves as "officers of the court", have a duty to uphold the law And a duty not to intimidate people into paying money that they don't owe. ■

When medics miss the mark



A woman dies, and doctors pass the buck

HANDS UP if you're one of those cynics who, when you heard about the proposed National Health Insurance, immediately thought, great: I'm going to be paying even more for something that will be so crap I'll never be able to use it. Don't be embarrassed, as this story shows, you're probably spot on.

When Joyce Ndzundzu, a 58-year-old domestic worker, complained to her employer, Jenny du Toit, of a persistent cough, night sweats and a loss of weight, she was urged to see a doctor urgently. That's because Du Toit, a nurse, suspected she might have TB. So Ndzundzu went off to her

local clinic, the Michael Mapongwana Community Hospital in Khayelitsha, Cape Town – not just once, but on three separate occasions between December and early January.

Ndzundzu was at least seen by a doctor – but one who refused her request for a chest X-ray, which Du Toit had told her to insist upon – and who didn't even bother to pull out a stethoscope. He told Ndzundzu that she had a cat allergy, was suffering from a bit of depression, and prescribed an antidepressant and a bronchodilator.

Needless to say, Ndzundzu didn't get better; she got worse. When it

became clear to Du Toit that there was a serious problem, she arranged for Ndzundzu to be examined at the private Life Claremont Hospital where she was seen by a physician and a radiologist, and tests were done by a pathologist. She was found to be riddled with TB. The report of Dr Jatin Morkar, specialist physician, was clear: the symptoms were “highly suggestive of TB” – a diagnosis “confirmed on sputum”. “Kindly initiate and monitor TB therapy,” he wrote.

Ndzundzu was taken by ambulance to a state hospital, Groote Schuur, where, although she responded well

to treatment for TB, she developed secondary pneumonia.

On 14 January Ndzundzu died.

Groote Schuur doctors made it clear to Du Toit that they were sick and tired of having to deal with the results of absolute incompetence on the part of doctors in community hospitals.

Groote Schuur's files said: "Family advised to have the grandchildren (aged 4 and 7) screened for tuberculosis. [It is, of course, well known that TB sufferers can infect a large number of people.] We have been informed after the patient's demise that the patient had visited the local day hospital on three occasions, with no apparent investigation in an attempt to exclude tuberculosis."

Du Toit was outraged by the treatment Joyce had received – she'd not been simply an employee but also a friend. Du Toit, who'd initially thought that the clinic was run by the City of Cape Town, sent an email for the attention of Dr Bromfield of Cape Town's health department. When it was brought to her attention that the Michael Mapongwana Community Hospital was, in fact, a provincial facility, she wrote to provincial leader Helen Zille. The email was forwarded by public liaison officer Hayley Adams to provincial health minister Theuns Botha.

But apart from acknowledging Du Toit's email and assuring her that the matter had gone even further down the line to the Western Cape Superintendent of Health, Herman van der Westhuizen, he had nothing to say. Perhaps this litigious-sounding line from Du Toit spooked him: "Please let me know what information you can get with the information I have given you about the patient. The only way I will be allowed to access this is if we subpoena the folder, which is a privileged document, and I would like to find out the facts and hopefully not have to go that route."

Certainly *Noseweek's* request to Van der Westhuizen for copies of the file notes prepared at the Michael Mapongwana Community Hospital Clinic for Ndzundzu was ignored, as was the request for confirmation that the name of the doctor in charge of the facility was Dr Ndlumbini.

On 2 February a thoroughly fed-up Du Toit wrote to Van der Westhuizen saying, "It has been three weeks since I reported this matter. Please can you let me know what measures you have

taken to investigate. I will find it hard to believe that in this new democracy poor black people who cannot afford legal fees and attorneys will be ignored and that the doctors the state employs – and that my tax money pays for – are allowed to practise without accountability or responsibility because they can hide behind a minister of health who in turn hides behind a mound of paperwork and says these matters can take months.

"Why should it take months? If you cannot do it, please give me the doctor's name and I will take the matter further. I will report him to the Medical and Dental Council, assuming he is actually registered by the council to practise medicine. But, as you know, without the doctor's name this is going to be very difficult.

"I will continue to try and find justice for this family. I would appreciate some feedback, unless of course one black life is just not worth his time. I have the name Dr Ndlumbini from Sister Jonas from the clinic, so unless I hear anything further from your department I will assume this is the doctor who treated Mrs Ndzundzu."

Van der Westhuizen's vacuous reply: "I did indicate to you telephonically that this is a sensitive issue because someone died. [Code for "we face a potential claim"?] The issue is now in the hands of our competent staff who know how to deal with a case like this [How the hell can we believe you? – Ed] but it is time consuming and I kindly ask you to be patient."

When *Noseweek* called the Khayelitsha clinic, someone who described herself as a senior sister answered and told us she could not give us her name or inform us how many doctors did duty at the clinic as they had been instructed not to divulge any information. A second call was put through to Dr S Ndlumbini, who was a great deal more cooperative. He said he was medical officer at the hospital but one of only eight doctors who work there. Informed of the nature of the inquiry, he said this was the first he had heard of it. He asked for the patient's name and ID number to enable him to track the clinic dossier. He said he would then consult "management" before answering any of our questions although he, personally, had no problem with doing so.

At the time of going to press *Noseweek* had not received a return call from him. ■



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Where did all those pensions go?

Information on the investment of Trilinear funds is still thin on the ground

THE NAMES Trilinear, Sam Buthelezi, Sactwu, Canyon Springs, Enoch Godongwana and Pinnacle Point have been all over the news of late. It's a pretty complex story that basically goes like this: a man by the name of Sam Buthelezi had an asset management company called Trilinear Capital and he persuaded the South African Clothing and Textile Workers' Union (Sactwu) to invest pension funds in his company's Trilinear Empowerment Trust – R460 million in total. Trilinear invested (as in lost) R93m of this money in Canyon Springs Investment 12, a company that was 50% owned by Enoch

Godongwana and his wife, Thandiwe, and which is now in liquidation and the subject of an insolvency inquiry.

Godongwana recently resigned as Deputy Minister of Economic Development for reasons he insists are totally unrelated to the scandal.

Trilinear used some more of Sactwu's funds to invest heavily in an underperforming listed company called Pinnacle Point, a property company with golf developments in South Africa, Nigeria and Seychelles. (It, too, is now in liquidation and the subject of an insolvency inquiry.)

Trilinear took out an initial investment of R100m then upped this to

R250m when it bought out Absa's share for R150m. (Absa appears to have got lucky in managing to divest itself of these shares. As reported in *nose126*, Absa had burnt its fingers heavily in the Pinnacle Point "single stock futures" debacle, and it is now suing Nedbank for R773m.)

In short, a lot of pension fund money has gone missing. But who's to blame?

Up front, Buthelezi is, and he has already been arrested – as has Richard Kawie, a former union member-turned-consultant, while a former Sactwu deputy general-secretary, Wayne van der Rheede, has been suspended.

Buthelezi, in what looks very much like a desperate attempt to pass the buck, has been reported as saying: “Our brief was to find them a strategy of high-risk, high-return to make sure that the members have a bigger kitty upon retirement.”

And at one stage Jurgen Boyd, deputy director of the Financial Services Board (FSB), questioned the trustees of five provident funds to establish why they had invested in Trilinear. Afterwards, Boyd was quoted as saying: “Some claim they were misrepresented by Trilinear over investments, while others say they placed their trust in Trilinear which was given a mandate for the collective investment scheme.” But that might simply be the FSB’s attempt to pass the buck in case anyone should get the idea that the buck stops with them.

Minutes of meetings of the board of the Cape Clothing Industry Provident Fund, a major Sactwu provident fund, which took place between December 2006 and December 2010, show that the provident fund trustees – despite

which is recorded in the minutes as follows: “The Trilinear Empowerment Fund had been established specifically to be involved in the transformation process. Benefits of investing in the Fund would include attractive risk adjusted returns (and) provide investors with a diversified portfolio of assets. The Fund will invest in: a) companies with a high sustainable impact in previously disadvantaged communities, including broad-based BEE transactions; b) all sectors of the economy.”

All very bland, all very vague. But apparently enormously exciting to the trustees, with the minutes reflecting a lot of gushing about “the uniqueness of the opportunity” and concluding that the Fund should invest R120 million, subject to an acceptable “agreement document” being endorsed by the trustees.

Absolutely no attention was paid to various concerns raised by the fund’s actuary, F Petersen, including the fact that the investment involved a 15-year lock-in period, about which she said: “Should the fund disinvest

raised. The minutes record that the Regional Secretary said: “Trilinear had been requested to provide a schedule of draw-downs from the investment to their BEE partners. This document was still awaited. His concern was that the money be paid over to Trilinear but not be invested as envisaged.”

They record that actuary F Petersen said: “Trilinear now needed to negotiate the investment of R120 million with BEE companies and they had been requested to provide the Regional Secretary with details and to annex the document to the investment contract. Trilinear were reluctant to provide the information and the document was still awaited.”

The minutes conclude: “In view of the foregoing, it was AGREED that Trilinear be requested to provide the Regional Secretary with the business plan and, upon approval by the Trustees, the transfer of R120 million could be authorised.”

So it’s quite clear, a formal agreement must be signed and Trilinear must provide the trustees with a

Our brief was to make sure members have **a bigger kitty**

using the expression “due diligence” – did little or nothing to establish whether or not Trilinear was in fact kosher. A cynic might even think that some of them were working hand in glove with Trilinear. And the minutes show that the trustees had absolutely no idea what Trilinear was doing with the fund’s money.

The minutes don’t list the attendees of the various meetings, but names are mentioned in relation to particular questions asked and answered. Names that come up are Wayne van der Rhee, J A Baard, J Meyer, M Maurer, A Kannemeyer and F Petersen (the fund’s actuary). There are also frequent references to the “Regional Secretary”, understood to be an Andre Davids.

At the meeting of 14 December 2006, Wayne van der Rhee proposed that Trilinear be invited to do a presentation to the trustees. On 26 October 2007 Buthelezi gave his presentation,

before the end of the lock-in period, the fund would only receive the initial investment less fees.” And the fact that Trilinear’s 1.5% fee was “a bit excessive” – to which Buthelezi responded in words that, in hindsight, are laughable: “The skills and expertise involved in securing and managing the investments was acquired at high cost, and the significant returns realised should be borne in mind when considering the fee structure.”

The following month, on 5 November, the trustees met again. The minutes record: “The Trustees have formally approved the placement of R120 million with Trilinear; mandated the Actuary and Principal Officer to conduct due diligence on the contracts and correct where appropriate; agreed the amended contracts be tabled at the next Provident Fund meeting.” That meeting took place on 6 December 2007. More flags were



document (business plan) setting out exactly what investments it’s going to make. So it’s very strange that the following “Secretarial Note” was added to the minutes: “The information on when and how the funds would be invested was furnished to

the Regional Secretary who advised the Principal Trustees that it had been provided to him on a confidential basis with the request that the information not be divulged. He had satisfied himself that the investments were bona fide, whereupon the Principal Trustees approved the payment of the R120m to the bank account of Trilinear.” And that’s the last time any agreement or business plan was mentioned!

Fast forward to 2010, by which time things had gone badly awry. On 18 May 2010, Buthelezi was again invited to address the board of trustees, but this time to explain why Trilinear’s investments had gone so spectacularly wrong. Buthelezi brought a colleague by the name of David Duval along for support, and the two told the

consortium, is it a Pty Ltd, what is its structure?”

One trustee desperately asked the two to confirm that “we shouldn’t be put off by the share price because that’s probably more sentiment than the underlying value proposition,” and to confirm that “was far greater than the share price suggested.

Buthelezi assured the trustees that Pinnacle Point’s “hardcore assets” – in other words, its land assets – were worth R6 billion. But he went on to caution: “The break-up value of the thing, so if tomorrow Pinnacle Point was liquidated, if you were doing a fast sale, at worst you would raise something like R2 billion.”

There was worse to come. Trilinear had invested another R55m of the provident fund’s money in a certain

least what we’ve invested from the investment.”

The Group Five directors’ annual report for the year ended 30 June 2011 includes the following statement: “The group announced in June 2009 that its BEE ownership transaction with the iLima Consortium portion of the iLima Mvela Transaction would unwind and that this would entail the return of the shares held by iLima Consortium to the group. This is a result of iLima’s not fulfilling certain conditions and/or breaching certain terms to which the original BEE transaction was subject.

In April 2010 the High Court in Johannesburg, found in favour of Group Five [and ordered] that the 11 015 959 Group Five shares held by iLima will be returned to Group Five

‘The share price is probably more **sentiment** than value proposition’

trustees how Trilinear had acquired Absa’s share in Pinnacle Point, how this would give Trilinear a 48% stake in Pinnacle Point (although Competition Commission approval was still required), how the Cape Clothing Industry Provident Fund was in for R55 million, how Pinnacle Point’s share price had dropped to a mere five cents, and how this was largely down to the fact that “Pinnacle Point obviously had terrible press”.

Certain trustees made it quite clear that they had absolutely no idea what Pinnacle Point was all about, with one asking: “Can you give us a little bit; is this a Mossel Bay golf course and all that?,” and another asking “What is the nature of Pinnacle Point, is it a

iLima Consortium, which had apparently bought shares in Group 5 but then got involved in legal dispute with that company about the purchase.

One trustee asked: “Can I ask a silly question? Let’s assume that you are ordered to give the shares back to Group 5 and you don’t sit with any shares, what happens to our R55m?”

Buthelezi: “Worst case scenario is that we end up with nothing.”

Trustee: “Why?”

Buthelezi: “Because the deal went wrong.”

But he hastened to add: “Yes, at the moment it looks like the investment will yield zero. But I am saying that the probability is high that it won’t reach zero. We will get back at

and cancelled.

[But] At 30 June 2011 the shares held by iLima had not been returned to the group, and ...the group [now] expects the return of its shares in the 2012 financial year, once legal formalities have been concluded.

The unwinding of the BEE transaction with iLima is a disappointment to Group Five as the group remains committed to the advancement of broad-based black economic empowerment.”

With all that regret and diplomacy, no explanation is offered as to what exactly went wrong, or how it could have entailed the loss of the pensioners’ R55 million cash investment. ■

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Oasis boss used rod to discomfit staff

Uncle Nazeem threatened employee with jolly rogering and Samurai sword



HOPING TO attract the *crème de la crème* of the Pakistani accounting profession, Oasis Group Holdings in Cape Town advertised in the magazine of the Institute of Chartered Accountants of Pakistan (Icap) back in 2005, capturing the interest of Naresh Karia, 36, of Karachi.

Karia: "Icap is the gateway to the chartered accountancy profession in Pakistan; it is also one of the most prestigious accountancy bodies in the world. Icap-qualified CAs are in high demand in many parts of the world, but primarily in the Middle East. The demand for Pakistani CAs is driven by the fact that they are experts in the implementation of IFRS." What's more, Karia explains, "Pakistanis work hard, they work like donkeys".

IFRS – International Financial Reporting Standards – is an accounting benchmark developed by the International Accounting Standards

Board (IASB) for the preparation of public company financial statements.

From time to time Naresh Karia – like so many before him – had considered calling time on his employment relationship with Oasis but stuck it out. After all, he enjoyed great camaraderie with his colleagues, had some good salary increases, was deemed to be an "outperformer" and had been declared Oasis Employee of the Year at a glitzy gala function presided over by the three Oasis Uncles (*nose147*).

The start of 2010 was particularly stressful for Karia. With his wife Pamela pregnant, back home in Pakistan his father had been diagnosed with an advanced stage of cardiovascular disease and he needed to get back to be with his father. But he'd seen how other ex-employees invariably had to fight with Oasis owners, the Ebrahim brothers, for a year or two, after they left their employ, to get

their hands on their provident funds.

In Karia's mind there was a big question mark over his future: he and other young professionals had been coerced into working on Saturdays and Sundays even though they realised there was no prospect of moving up the hierarchy in the company. Simply put, there were the three uncles on one hand and the rest of the employees – treated as their slaves – on the other. He was in a cleft stick.

On 29 April 2010, soon after 4pm, Karia finally bit the bullet and emailed his resignation to Oasis HR boss, Professor Mohamed Saheed Bayat. (By handing over a letter, he thought, he would have no proof that it had been received.)

"Uncle" Nazeem Ebrahim [*nose147*], characteristically flew into a rage when he heard of the resignation. He got hold of Karia and scheduled an evening meeting.

“Evening meetings are a feature of employment at Oasis – especially if they know that you have a family waiting at home. Generally scheduled for 6pm, these meetings are then intentionally delayed by 30 minutes at a time in order to stuff one around. By 7pm, Uncle Nazeem had assembled his assault team: his older brother and Oasis chairman ‘Uncle’ Shaheen Ebrahim, and Jay P Khailan, their IT manager [who featured in *Noseweek’s* story about Rizqa Abdullah in *nose147*].

Our Shariah-compliant Uncle Shaheen kicked off by branding Karia “a pig”. Uncle Nazeem took over the dishing out of abuse saying he would stop Karia’s salary forthwith so that he would be put into financial difficulties or declared bankrupt. It was what Karia described as “a horrible, hostile meeting”.

wielded to keep staff in line. Karia had been threatened by Nazeem with this sword on several occasions.

Karia, now safely back in Pakistan, says he was terrified. “I honestly believed that Nazeem might kill me at any time.”

On 28 July 2010, on the eve of his departure from Oasis, having worked out his three-month notice period, Karia sent an email to HR boss Prof Bayat in contemplation of his own death. In part, it reads:

“Please note that one of Director already threat me that he want to and will kill me in Cape Town. He had taken the sword in front of other staff and say he will kill me if I join other company. The director also informed me that he will send Pakistan army in to my house in Pakistan as he has cousin in Pakistan army. He informed

this in the marketing meeting where Mr S Bayat was present. Mr Bayat please remembers that I was going to kitchen and you called me to come to legal board room.

“Please note that I am the only earner of my family and my last wish is that please send my body to Pakistan if your wish (to kill me) is done, so my family can do my last process as per my religious process. I may not fight with you, as you are powerful and got political, financial and military connections.

“I pray to Allah that to give success to you, your family and this Company.”

Noseweek is in awe of such saintly charity.

Then again, maybe he still had to learn that the pen is mightier than both the penis and the sword. ■

(See opposite page and Letters)

Shariah-compliant Shaheen kicked off by branding Karia ‘a pig’

In the presence of Uncle Shaheen and Jay, Uncle Nazeem ordered Karia to withdraw his resignation right away. If not, Uncle Nazeem would “fuck him over” – metaphorically, of course.

Steeling himself, Karia thought: “This situation is unusual but pre-eminently manageable,” so he breathed deep and he remained calm but unyielding.

But he was wrong in his assessment of the situation: 25 minutes into the meeting, Uncle Nazeem, near his wits’ end due to Karia’s calmness, unzipped his trousers telling Karia that he (Nazeem) could do as he wished anywhere in South Africa, and particularly in Cape Town. That included fucking Karia.

The disbelieving look on Karia’s face apparently led Uncle Nazeem to believe that he had not been understood, because he found it necessary to undo his fly twice more.

There was another unconventional corporate weapon that Nazeem had wielded many times before – one which made him look like a slightly less obvious prick: a Samurai sword. Oasis staff are familiar with this weapon as it is frequently retrieved from its resting place in Nazeem’s office and



Employee of the year: How did Naresh Karia (green outfit), flanked by Oasis chairman Shaheen Ebrahim (black suit), CEO Adam Ismail Ebrahim (black shirt), and zipless wonder Nazeem Ebrahim (orange frock), plummet from Oasis star staffer to persona non grata?

Oasis retort to gutter press

COMPLAINTS of abusive behaviour by Oasis executives (see facing page) are denied in a round-robin letter to their clients:

THIS LETTER is in reference to...the *Noseweek* article... We have preferred not to comment publicly as we do not wish to stoop to the letter of the gutter press involved and be drawn into a mudslinging match.

This is not a well-researched article appearing in a respected publication, but in a magazine that thrives on emotion and sensationalism and has never contacted us to verify any facts... this same publication often publishes articles accusing other companies in our industry of acting in an improper manner with client funds. Even though their article was a clear attack and the tone was putrid, they were unable to find any angle to accuse us of mismanagement, so they had to resort to gossip. We were successful in 2011 where the Press Ombudsman took action against Newspapers and Reporters that printed inaccurate information about Oasis. We do not ...believe it is worth our while to engage with the Press Ombudsman on this issue.

There is a saying that one must take matters "from whence they come". Miss Abdullah and Mr Khan are painted as glowing examples of young humans... Miss Abdullah was not a good influence in the workplace. We had to take disciplinary action against her for racist behaviour. She called her black colleagues "baboons" which is entirely unacceptable... This is completely against the tolerant ethos at Oasis. We also came to learn that she was involved with unbecoming activities. So she was not the innocent young lady that the article made her out to be.

Mr Mohamed Khan [nose147] was indeed involved in Project Beta. It was not under resourced... Any stress he may have felt was as a result of his inability to perform the work with any degree of competence. He was highly paid... but he was incapable of performing his function... Without even replacing him, those left behind in his department have been able to make massive advances in what was

supposed to be his area.

It is an absolute lie to say there was a tirade against him. In fact, the business was extremely generous to him and assisted him when he over-extended himself financially... by feigning illness he did not work out his notice period, thereby disregarding his fiduciary duties to our clients.

...No reasonable person would be offended by having to sit at a different desk during their notice period...

With regards to Prof Bhayat, [his] employment at Oasis was not continued.

We groom and develop [our staff] so they can benefit from the fruits of a

successful career of a finance professional. This requires dedication, commitment and a real interest in the client, something these two were lacking. We are pleased that they are no longer with the business.

...We can state with the utmost conviction that no staff member at Oasis has ever been threatened...

Regards

Jay Henning

CA(SA), CFA, MBA, B.Compt (Hons)

Eden Court Advisory Services Pty Ltd

Cape Town

(Eden Court Advisory Services is a wholly-owned subsidiary of Oasis. Henning is Oasis Group spokesman.)

Noseweek responds from the gutter

AT THE CCMA hearing "Prof" Bhayat testified that Oasis employee Kagiso Shakoane had lodged a grievance against Abdullah for calling him fat and a "baboon" in the presence of a colleague. Bhayat declared that racial intolerance was prohibited at the company; that it was a "first incidence of such a thing", and that Abdullah was under investigation in regard to the matter at the time she resigned.

In reply, Abdullah testified that she had explained her relationship with Kagiso to director Nazeem Ebrahim when she was called into a meeting several weeks before she resigned. She had also written to the Oasis director recording her side of the story, and thought the matter closed. Her letter read, in part: "Kagiso and I have been calling each other names for as long as I can remember. I would tease him about his weight and he would call me a monkey or loser from Loserville. On 1 June 2010 he was walking through the investment admin department with Rutendo and in passing called me a monkey. I then did the same. On returning to my desk I received an email [from Kagiso] stating that I "probably felt good" calling him a monkey. In the email he then called me a baboon, which I found very amusing.


"A few days later I knocked on a glass door [to be admitted] but he

ignored me. I thought he was doing it to tease me. I then called Tariq and asked him to please tell this baboon to open the door. It was only since he called me a baboon that I started using that name."

The CCMA commissioner summed up: "The issue of Kagiso is a red herring. It was the last thing on Abdullah's mind when she handed in her notice. The matter had been put to bed in early July 2010. She gave notice of her intention to resign at the end of August. There was no further action taken by the company after the letter of Abdullah to Nazeem setting out her version. I do not believe that the company had any further intention of disciplining her. Bhayat's words that the company "deals with such behaviour in a very firm and responsible manner" was not borne out by its conduct of inaction for several weeks".

Asked about Henning's reference in his letter to her alleged "unbecoming activities", Abdullah said it was the first she'd heard of such a thing. Had there been any substance to it, she had no doubt they would have raised it at the CCMA hearing.

Henning's mention of it must be dismissed as yet another bit of malicious invention designed to injure an employee who has dared to leave Oasis. – The Editor



Waiting: Zainab Bohardien is one of many suppliers scammed by unscrupulous businesswoman Inge Peacock

Fashion victim

Boutique queen's pattern of non-payment wears thin

CHEAP CHINESE imports are flooding the country and consumers are choosing to buy cheap. Clothing factories have closed down and thousands of textile workers have been retrenched. In an attempt to save the industry, the South African Clothing and Textile Workers' Union has been making sacrifices on behalf of its members: in October, the union agreed to a 30% reduction in wages for new employees.

A *Noseweek* investigation, however, reveals how futile such concessions are unless major stores like Stuttafords are more discriminating about those with whom they choose to do business.

Cape Town garment factory R&R Anonymous Knitwear, is not as incognito as its name may suggest; it produces high-end apparel for nearly every major South African design and retail label. And its factory-door pricing would give the Chinese a run for their money any day. But the business is now on the verge of closure because one of their clients, Lulu TanTan's Inge Peacock, refuses to settle their account.

Towards the end of 2010 Peacock commissioned Zainab Bohardien, the owner of R&R Anonymous, to produce samples for a seemingly lucrative order for Stuttafords' 2011 winter collection. Bohardien dedicated her resources to the rather demanding commission – Peacock had been quite specific on what she expected the end products to

look like.

"Certain yarns in particular colours had to be sourced, with most having to be imported. It was a relief when the various samples my staff had produced were finally accepted," said Bohardien. (*Noseweek* has a copy of the acceptance documents, dated February last year, for various approved samples to be sold under Stuttafords' Oaktree label. She also has several emails from Peacock to Bohardien regarding the order.)

After Bohardien's workers clocked up overtime to meet the strict delivery dates, the products were delivered to Peacock on time – and in time for onward delivery to Stuttafords on various stipulated dates between April 6 and May 3, 2011.

But Inge Peacock – she, who complained to *Noseweek* back in 2008 that Sylvia and Stuart Ireland had failed to settle her R342 000 bill run up at Lulu TanTan in the V&A Waterfront (see "Fashion, passion and the shrink", *nose109*) – just would not pay.

Bohardien began to think the whole deal was some kind of scam and that, perhaps, there'd been no order from Stuttafords. To reassure herself she drove to Stuttafords, Canal Walk, in September, five months after delivery. There, to her delight, she found her handiwork on display, but at a 50% discount as the winter season had ended. Bohardien decided to buy one of her cheapest products – on offer

for R899.95 (sale price) – the same garment for which she had invoiced Peacock for R246.00 apiece.

With confirmation that her products had actually been sold on to Stuttafords, her next suspicion was that Stuttafords had failed to pay Peacock and her company. (The store had previously bought garments directly from R&R but a few years ago curtailed that relationship, telling Bohardien her prices were too high.)

It turned out that Stuttafords could not be responsible for the non-payment: Inge Peacock uses Merchant Factors's invoice discounting service, which pays clients a percentage of the invoice value immediately upon submission of a copy of the invoice and delivery note.

Peacock – effectively acting as a wholesaler – marked-up her invoice to the department store by over 100%. (So much for Stuttafords's complaint that Bohardien over-priced her products!)

When Bohardien initially questioned Peacock about the delayed payments, more than a month after the first delivery, she responded: "I did agree to pay 50% for the cream and army [items] and this payment would have been made on Monday had you allowed us to get there and do it without your performance in the morning..." That "performance" was a phone call from Bohardien's assistant inquiring about the status of payment.

Peacock went on to write: "The balance of the money, as far as I am concerned, is 30 days and it would have been paid at the end of May, as this is how terms normally work for anyone and everyone unless negotiated differently up front..." She concluded her email confirming: "We owe R&R money for the orders delivered and it will be paid, but I will not be bullied or harassed into doing it and you have to take responsibility for the way you have treated us."

While major stores bankroll Peacock's wealthy lifestyle, she chooses to settle her own accounts only when she pleases. The promised end of May came and went without any dent being made in the total debt of R90 136.80.

And while R&R Anonymous struggles to keep its head above water, Peacock has been closing down her Lulu TanTan boutiques in several upmarket malls, leaving, in at least two instances, huge rental bills unpaid.

Noseweek has reliably learnt that attorneys at Cliffe Dekker Hofmeyr

have been trying to recover nearly R2 million in rent owing to the V&A Waterfront. And Peacock did a bunk when vacating her Newlands boutique – engaging a removal firm to pitch up in the dead of night to remove her stock. She is also in debt to a Canadian fabric supplier, Brian International, to the tune of R11 000 for some samples Peacock commissioned.

Peacock now operates from her Hout Bay home, a property registered in her husband's name (Juane Leroy Peacock, who is the coastal managing director for Datacentrix). When *Noseweek* finally got hold of her on her home phone, she complained about being contacted “in the privacy of my home”.

“Since you’ve closed down all your stores, where else would we find you to explain why you have failed to pay for products you commissioned from R&R Anonymous – despite Stuttafords having paid you?”

That took her aback somewhat and when she rallied, she threatened to unleash her attorneys on *Noseweek*. Then, to really scare the journalist, she warned that she knew the *Noseweek*

being dealt with by the parties’ respective legal representatives. In the circumstances we believe it is wholly inappropriate to respond in any further detail to yourselves”.

Tamasa?

Coetzee was clearly attempting to distinguish between Inge Peacock and Tamasa Trading 527cc. But that tactic backfired because it led *Noseweek* to the nitty-gritty of Peacock’s modus operandi.

Peacock has eight companies and close corporations registered in her name: Toast Clothing & Accessories cc; Advanced Clothing cc; Advance Sportswear Retail (Pty) Ltd; Flowerdew 180 cc; Izazi Retailers 119 cc; Lulu Tantan Design cc; Tamasa Trading 527 cc; and Turnstone Trading 158 cc.

While negotiating with her suppliers, Peacock signs her communication as Lulu TanTan – an unregistered company. But while selling, she uses Tamasa Trading 527 cc. The Lulu Tantan Design cc is the entity that operated her boutiques.

In the case of Canadian Brian International, when their agent tried

Tantan, which would have been of great benefit to consumers.

In response to our queries as to why Stuttafords opts to deal with brokers at high cost to consumers, the company’s Executive Chairman, Hilton Mer, responded: “As a prominent retailer we make efforts to purchase, and in turn make available to our customers, merchandise which would be desirable for them. These considerations bear in mind a range of qualities, prices and styles. This hopefully enables different needs to be fulfilled. Multiple sourcing options are considered from time to time and, in the nature of businesses like ours, some sources for products will vary over time or from season to season...”

“...Many aspects influence the sourcing of product and the selection of supply chain options. In some instances local agents or intermediaries are utilised because of, for example, limited volume requirements which we may have and the commercial considerations which accompany that. At retail level we try to ensure that our prices are competitive for similar offerings,

Attorneys are trying to recover **R2m in rent owing** to the V&A Waterfront

editor. (A contact that dates back to 2008 and her mention in the “Fashion, passion and the shrink” story in which she was an aggrieved victim whose bill had not been paid.)

Further attempts to reach her via email were futile as all emails were returned, so *Noseweek* asked the attorney, Charl Coetzee of Louw Coetzee & Malan Inc, to pass on a list of questions.

Coetzee responded on behalf of his client. In typical lawyer-speak he denied that Peacock owed R&R Anonymous any money. He referred to exchanges he’d had with R&R’s attorneys, pointing out that Peacock was of a mind to counterclaim R350 000 from R&R for loss of business – because Stuttafords had rejected some of the samples (rejection of a percentage of samples is standard in the business).

The attorney concluded by stating: “The above clearly illustrates that a valid dispute exists between R&R and Tamasa, which dispute is currently

to claim the amount owed by Tamasa Trading 527, Peacock reminded her attorney, Coetzee, that she did not trade as Tamasa. In essence, she was saying that if anybody had a claim they should approach the correct corporation. (Kiss your payment goodbye.)

Similarly, in the case of R&R Anonymous, Peacock did all her negotiations through the unregistered Lulu TanTan. But when it came to submitting the confirmed order form, she called herself Tamasa Trading. Since there are about 379 firms by the name of Tamasa Trading registered with the Companies and Intellectual Property Registration Office, you’d be on a hiding to nothing unless you suffixed the correct number to the end (527 in this instance) – a deceptive way to cushion oneself from suppliers and their payment claims.

Had Stuttafords bought directly from R&R Knitwear, their selling price could have been lower than they retailed at after the mark-ups created by Lulu

across a vast range of merchandise.” Might the payment of a fair wage be an “aspect” which influences the sourcing of a product?

Now that Stuttafords know they are buying goods from Peacock, who effectively makes use of slave labour – workers she chooses not to pay – is that OK?

Mer then confirms what we already knew: “Insofar as our dealings with Tamasa Trading [Peacock] are concerned, we have paid for all supplies which have been delivered and are payable, including any which originated from R&R Knitwear.” In other words, if Inge Peacock refuses to pay what she owes to those responsible for the products, then that’s too bad.

Is expecting Stuttafords customers to be kind to laboratory animals and factory workers at the same time simply asking too much? Maybe, but other, more scrupulous consumers might wish to avoid doing business with Inge Peacock and any of her companies. ■



MTN's secret plan

Mark Olivier says the cell company is quietly eliminating its countrywide franchise stores

MTN IS secretly planning to eliminate the countrywide franchise stores that sell its cellphone products, believes Mark Olivier, who's in the midst of a legal battle with the JSE-listed giant after being forced to close his six MTN stores and retrench 21 workers as a result of "inadvertently" selling R299-worth of rival Vodacom's airtime.

Olivier is now preparing a R50m-plus damages claim against MTN. He is convinced that one of the reasons MTN's 2008 and 2009 \$24-billion alliance talks with India's Bharti Airtel foundered because MTN does not have firm control of its distribution channels.

Olivier is convinced MTN's secret plan is to get rid of the 70-odd surviving franchise dealers and replace them with in-house managers. And, he says, MTN bosses are snatching at slap-on-the-wrist offences by franchise holders to achieve this end.

The 52-year-old's association with MTN had spanned 12 years when his dealer agreement was abruptly terminated late last year. Three weeks earlier another MTN franchise dealer, Benni Letebele, had had his contract terminated as well – because his two Belet Industries dealer stores in Pretoria had dealt in non-MTN "grey stock" that they'd received from insurance companies in settlement of their customers' cellphone-theft claims.

Letebele, who declines to discuss his case, has filed a high court damages claim for R50m against MTN, alleging unlawful termination of his contract. A feature of both his and Olivier's suspensions is that both men had bitter rows with MTN staffer Dunjsha Allers, their senior accounts manager and main contact point with MTN. Olivier, who admits to being "an aggressive person who likes things my way" had ranted about MTN's appalling service delivery; Letebele had infuriated Allers by questioning her qualifications for the job.

So let's examine the case of Mark Olivier and his claim that he was "set up" by Dunjsha Allers and MTN.

At the beginning of last year, Nigel-based Olivier operated four exclusively MTN franchise dealerships around his home base. And last July and August he opened two more, in Balfour and Westonaria.

The deal was that MTN built the stores; Olivier's Brilliant Cellular CC owned the lease; MTN subsidised the rent by 80%; Olivier employed the

staff whose sales people received R1 000 bonuses for meeting personal targets; store managers got R5 000 if the monthly shop target was reached. A sweet deal that yielded turnover of R4.2m for Brilliant Cellular last year, at a growth rate of 71%.

In exchange, Olivier signed a tough exclusivity agreement tying himself to MTN and its products and expressly forbidding dealing with any competing third party.

Olivier complains that when he opened his two new stores he had long endured endless problems with MTN's entire online system controlling cellphone contracts, activations and added-value items like SMS bundles.

The bulk of his business was selling postpaid cellphone contracts, while MTN's prepaid phones and airtime were a tiny – perhaps 1% – part of his business. MTN's "voucher system" for selling airtime was "a nightmare

abysmal service delivery. Olivier's admin manager, Elsabe van Rensburg, complained in an email to MTN that the Oracle system was still not working and she'd been unable "to access iReceivables for our credit memos and this has a major impact on our financial side... We cannot run our business without proper financial access and control".

Just days later, on September 14, Allers belatedly reported the existence of the CellAir terminals in Olivier's stores to MTN's national franchise manager Jody Forrester – who ordered a mystery shop audit, that took place five days later, when one of the sleuths took video footage of Olivier's sales staff selling Vodacom airtime in the Balfour store.

In all, Brilliant Cellular sold R39 worth of Vodacom airtime (R29 of it to MTN's own mystery shopper) at Westonaria and R260 over two months

tells *Noseweek*: "Mark Olivier ordered the terminals. But he didn't ask us to deactivate them.

"Then somebody walked in and he sold some Vodacom airtime and he wasn't supposed to do that because he's an MTN shop, and MTN didn't like that. He should have told his workers not to sell Vodacom. And then he said to me: 'What can we do about the Vodacom vouchers not to come out?' So I said 'We've got a programme that can deactivate certain buttons'. Then we deactivated."

From this, it seems that Olivier had not asked CellAir to deactivate the rivals' keys at the start; only after MTN had discovered the jointly installed Vodacom airtime facility. He had just been talking about an "overlay".

MTN informed Olivier that it was terminating their association on November 18. On November 11 Olivier took the matter to the High Court,

He signed a **tough exclusivity agreement** tying himself to MTN

to control", so in desperation Olivier brought in two independent terminals from a Nigel company called CellAir – to sell MTN airtime. The terminals were duly installed in the back room of the new stores at Balfour and Westonaria. Fatefully, these terminals were capable of selling not only MTN airtime, but that of Vodacom, Cell C, Virgin Mobile, NewTel – and household electricity. Olivier says that when he acquired the terminals he instructed CellAir to deactivate the keys of MTN's competitors so that only MTN vouchers could be bought.

Soon after the two new stores opened they were inspected by MTN's Dunjsha Allers and regional accounts manager Anton Kapp. Olivier says he explained to Kapp that the CellAir system was faster and more stable than MTN's for selling prepaid airtime; and that CellAir was making an overlay to cover everyone else's keys. Kapp, maintains Olivier in his court papers, responded that once the overlay was made, Olivier should present the terminal to MTN management for possible wider use.

That was on August 12. The following month brought Olivier's showdown with his senior accounts manager Dunjsha Allers over MTN's

at Balfour. A grand total of R299.

A week later, on September 26, Jody Forrester wrote to Olivier stating that unless he came up with satisfactory evidence that he had not been selling prepaid airtime of competing third parties within four days, his dealer agreement would be terminated.

One of the first things Olivier did was secure a letter from Arend Jansen, owner of CellAir, the company that supplied the terminals which had caused all the fuss. Jansen's unsigned letter, dated September 28, reads: "A CellAir vending terminal was installed in an MTN outlet on a trial basis. Our technology are [sic] designed to deactivate certain buttons on our touchpad to enable the outlet to sell only certain vouchers. Due to human error certain buttons were not deactivated. We apologise for any inconvenience."

According to this unsigned letter, "human error" by CellAir had landed Mark Olivier in deep shit with MTN, making CellAir potentially liable for a massive damages claim by Olivier's Brilliant Cellular. However, Jansen has since changed his tune. He now

Joburg, claiming the termination was unlawful. Acting Judge Laurance Hodes dismissed Olivier's application (with costs) the same day, finding that Olivier had "evinced a clear intention no longer to be bound by the contract to exclusively stock and supply MTN's products". MTN, he ruled, was entitled to cancel the agreement.

Olivier argued that his agreement with MTN contained a clause allowing a breaching party seven days to remedy a breach, and he had done so by removing the two CellAir terminals from the stores the day after receiving Forrester's letter of September 26.

However, MTN countered, saying that selling Vodacom products from its MTN branded and licensed stores



went against “every basic principle of trust and integrity underlying the Dealer Agreement”. It was this breach of the relationship of trust which was irremediable.

Judge Hodes did not provide his reasons within seven days as promised, so Olivier brought an urgent application to stay MTN’s termination of his agreement before Judge Mayet. She struck it out, saying the pending loss of employment of 21 workers was of no consequence.

On November 18, when closure loomed, Olivier wrote to MTN’s general manager Karel Pienaar: “I have spent 12 years of my life building the MTN brand. Can we please meet privately?”

“Very happy to meet, specially as you are an integral part of the MTN family. I’m not sure if I can help, but let’s try,” responded Pienaar the same day. But on November 22 Pienaar’s PA emailed: “Unfortunately Karel’s diary is very challenging. The first available slot is week of the 16th January.”

November 28: Olivier to Pienaar: “Our systems have been switched off so this is the end. I am very disappointed and my staff are devastated. 21 loyal consultants are now unemployed.”

MTN’s general manager: branded channels, Eleanor Mitrovich, refuses to comment on suggestions that the group is deliberately running down its franchise stores. Jody Forrester, MTN’s national franchise manager and the man who terminated Mark Olivier’s contract, tells us: “MTN is incredibly focused in maintaining high customer service and along with that goes a well-run and trusted partner franchise.

“When that partner franchise does not live up to its requirements we do institute action. The trust that was entered into between a franchisee and a franchisor was irreparably broken by Mr Olivier’s actions. If a Mercedes-Benz garage starts selling BMWs, you can take the BMWs out of the garage, but what damage has already been done by that kind of action?”

Really? Surely the better comparison would be a Mercedes car dealer having, in a quiet corner of his showroom, a tray with a pre-supplied selection of branded car licence discs (including Mercedes), from which he – naturally – sells mostly the Mercedes licence disks, but occasionally also one of the others. Irreparable damage? Irreparably broken trust? ■



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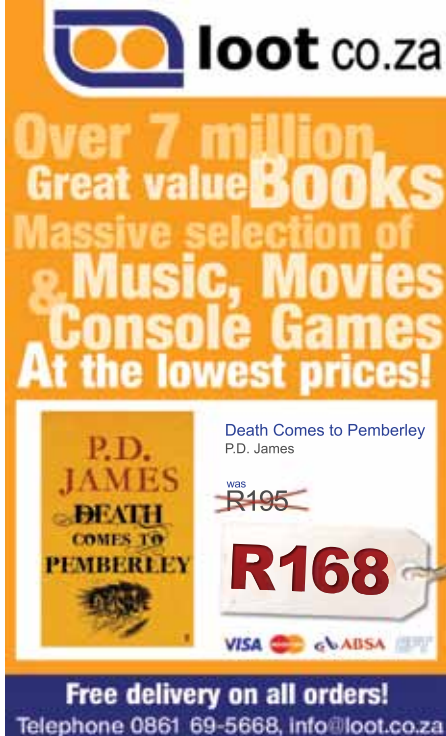
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Pride without prejudice

IT IS A truth universally acknowledged that an artist in search of inspiration may ransack glorious precedents in hopes of stimulus. Nevertheless, P D James made a particularly daring decision in attempting to create a sequel to Jane Austen's *Pride and Prejudice*.

Has P D, heavy with international crime-writing honours, managed to sustain the crystalline prose, the subtlety and insight, of the matchless Jane? Well, it ain't perfect, but it is an engaging thriller and a formidable accomplishment.

James takes the sensible precaution of apologising in advance for her temerity. In a foreword, she conveys regrets to the ghost of Austen for involving her beloved Elizabeth Bennet character in the trauma of a murder investigation. Especially as Austen, in *Mansfield Park*, stated her position clearly in such matters:

"Let other pens dwell on guilt and misery. I quit such odious subjects as soon as I can, impatient as I am to restore everybody not greatly in fault themselves to tolerable comfort, and to have done with all the rest."

P D James notes: "No doubt she would have replied to my apology by saying that, had she wished to dwell on such odious subjects, she would have written this story herself, and done it better." And then James confidently reintroduces the reader to the eventful lives of the now married Bennet sisters.

It is no surprise that the prolific author has researched the period meticulously, and that she kindly refrains from emphasising her diligence. Period protocol is observed.

The eldest sister Jane is properly recalled in flashbacks as Miss Bennet, while the younger siblings suffer the usage of their first names – with surnames, of course. Once married, the ladies are addressed by their married honorifics. Mrs Bingley is Mrs Bingley to the entire world, except in the intimacy of the immediate family circle.

Marriage was the only possible significant social elevation for women, and the parents of the five famous daughters

Len Ashton
reviews

DEATH COMES TO PEMBERLEY

(Faber & Faber)

by P D James



P D James

are shown to be properly grateful for the security of decent husbands. Except, of course, for the sad case of the impetuous young teenager Lydia, who notoriously ran off with the wicked George (Lieutenant) Wickham. Mustn't forget the formalities, must we?

Brothers-in-law are accorded the status of blood relations in a show of family solidarity that makes modern life look crudely discourteous. Everybody in *Pemberley* knows their place in the scheme of things, and maybe P D James betrays a hint of nostalgia for more ordered times. She does, however, record the horror of a faithful retainer at the magnificent Pemberley estate when it is suggested that his clever daughter might gain advancement if she received formal education. "She might get ideas above her station!" he protests.

(Austen fans will recall that Miss Elizabeth Bennet, that was, vaulted

a vast social chasm when she married the lord of Pemberley. James amusingly records the astonishment of the local worthies that she should have succeeded to such grandeur. There is no notion of romance in their assessment: Elizabeth must have plotted to catch Darcy of Pemberley, they



J Austen

believe, thereby cheekily confounding the iron rules).

P D James sustains the gentilities with knowledgeable wit. But, curiously, her knowledge of police methods and courtrooms, so atmospheric in her innumerable thrillers, is at odds with the development of the plot. At one moment she is slyly observing the exquisite refinements of the ruling classes, and then exhibiting knowledge of sordid reality behind bars. Nevertheless, she contains the necessary tension for a surprising whodunit.

Miss Austen might have dispatched a servant to inquire about the outcome of the legal proceedings resulting from the murder plot of *Pemberton*. But heaven forbid that she had first-hand experience of squalid Dickensian prison circumstances and characters.

Let other pens dwell on guilt and misery. ■



WHEN news of the arrest of one Matthew “Mans” Khumalo was brought to the attention of the *Umjindi Guardian*, I dismissed it as just another government fraudster busted, big deal. And anyway Christmas was fast approaching and I needed a break. But my source kept insisting: just go and see the house Khumalo’s built – at extension 12 Emjindini Township – and eventually I relented.

Upon seeing the pile, I had to laugh: what (allegedly) corrupt blithering idiot would go and build this palatial abode for all to see? There was nothing for it, I’d have to work over Christmas. Within days I’d discovered that Khumalo’s arrest by the Hawks on December 23 on charges of fraud and corruption, related to possibly the biggest scam yet perpetrated in Mpumalanga. Sources allege the scam also involved several more senior officials.

The 30-year-old Khumalo was appointed on 1 June 2007, as a relatively lowly administrative officer on a basic salary of R13 048.50, netting R9 808.08 after deductions – hardly enough to build a R6m-R8m house, and buy three nearby stands and a fourth plot in another part of Emjindini, as well as a house in town.

Khumalo’s home and other assets have been seized since his arrest, and he has been suspended from his job. He is also accused of using municipal vehicles for private purposes and of receiving kickbacks. In addition, he faces a charge of fraud surrounding the submission of fake qualifications to secure the job with the Enhlanzeni District Municipality.

The Umjindi Municipality appointed him as an accountant (expenditure) officer in March 2007, then withdrew the appointment. Three months later, the district municipality employed him as an administrative officer.

Umjindi says Khumalo was never on their staff: “information submitted on his CV relating to his qualifications was questionable and he was unable to submit proof of qualifications...”

Khumalo’s appointment by the district municipality appears to have been orchestrated. His CV is so ludicrous it defies logic that the district could not have come to the same conclusion as Umjindi Municipality.



The house Khumalo built

In it, Khumalo declares: “I am innovative, reliable, honest, loyal and self-motivated.” Under qualifications, he lists: Quantitative Micro and Macro economics; Project Selection & Evaluation; Public Administration; Public Expenditure Analysis; Project Appraisal; Financial Administration in Public Sector; Money and Finance; and Agricultural Economics – all supposedly obtained while studying for a BCom in Economics at the University of Zululand in 2005, and for a one-year Development Economics course at the Unisa in 2007.

To substantiate his academic achievements, Khumalo’s CV states that he studied a whopping 40 modules related, one way or another, to his key qualifications. Certified copies of these modules are included in his CV package.

But, surprise, surprise, no BCom in Economics from the University of Zululand and no certificate from the year-long course in Development Economics from Unisa. Equally suspect is the CV’s list of former employers. They include the Umjindi Municipality, the Umjindi Resource Centre and Statistics SA. The Umjindi Municipality says he was never employed there. The Umjindi Resource Centre says the same – quite apart from the fact that it is little more than an internet café in the basement of the Barberton Town

Library, staffed by volunteer students or recent graduates. Statistics SA, for whom Khumalo claimed he was a field worker in 2001, had not responded to my query before going to press.

On December 12, roughly 10 days before Khumalo was nabbed, the National Education Health & Allied Workers Union (Nehawu) asked the district’s finance manager, Andries J Khoza, for printouts of all procurements made for Umjindi Cost Centre between April 2010 and December 2011. The union said this would enable it to submit evidence of suspected fraud and corruption (allegedly by Khumalo and others) to their senior manager.

The district’s reply came from senior manager Ms Mafalda Khumalo. “I regretfully am unable to provide you with the information you are requesting, the reason being that, as a union, you informed management of the alleged fraud and corruption at Umjindi Office and indicated, when asked, that you have evidence that you can produce. You were then requested to submit it to [us to] enable the department to investigate. Your request is thus not approved.”

To its credit, the provincial Department of Public Works, Roads and Transport has launched a probe into Khumalo’s alleged fraud and corruption as well as into his appointment. ■



Storybooks

WELL, AFTER much time in Segregation we are given permission to use the prison library, Ben and I, callooh callay, but I don't mean physically, GO to the library and browse around hum-te-tum for something cheerful to pass the time, Lord love you no! The librarian is an A-group bandiet with matric so he knows what he's doing and he has a couple of trustee bandiete with clean records because they don't smuggle stuff and if you want light reading they go to the shelves saying Storybooks and send two of them to your cell. I opt for one Storybook and one Studybook, and a ou name of Poesie de Kadt does the delivery. Ja, men, seg ou Poesie, if you got snout I can smokkel it for a hel of nice book all about Gaaard and where's eternity and all that goeters, it come from a ou who got hung. Ag nee wat, ou Poesie, 'ksê, where from must I get snout in Seg, man, and anyway I gave up Gaaard and eternity when I was still in school. I'll just stay with the Storybook and Studybook.

The Studybook is a slim volume on how to get a driver's licence in the City of Pretoria in 1932, with pen-and-ink drawings of an Austin 7 (horsepower, that is, in case you thought it was litres) with the canvas top down so you can see the driver with suit, tie and high-speed motoring goggles making hand signals as he prepares to overtake an ox wagon with a full span of 16 beasts. That sort of thing. How never to blow your hooter at a horse. The Pretoria Public Library had a clean-out some time round 1950.

The Storybook has been a handsome volume in its time, on good paper, presently it looks like the mouth of an old pensioner whose false teeth have gone overboard on a rough ocean voyage. Few pages remain, the rest got smoked with gesmokkelde snout in consequence of being good paper, as described. A straight history, it turns out to be, about a certain Captain Whatshisname R.N. sailing up a Canadian river in colonial days, only which river, which colonial Frogs he was shooting his cannons at, and what their gripe was anyway, such details are anybody's guess. All has gone up in smoke. But never to worry, day and night over the next couple of months I fill in all the missing bits inside my head, and somewhere in there the tutti exists to this day as a full-on novel, and come to think of it why don't I stick it all on a CD and sell it? Which matter I'll come back to, but first let me tell you about Ben and his studies.

Studies, now, are a great privilege. After much agitation outside, see, we are allowed to sign up with Unisa for a BA, and Ben opts for English. Literature. The history of the English novel. That sort of esoterica. Jesus, Ben,

say I, you're going to do that in boep? Are you trying to break your spirit or your heart or what, man? He looks down his proverbial nose at me and quietly says: Watch me. Which I do. And after six weeks or so he says to me, he says, You know, says he, I'm getting a bit anxious about books I've sent for from the Unisa library.

I'm supposed to be critically reading roughly one novel a week by my calculation and after two months I haven't received one. Go straight to the top, say I. Speak to the Super when he comes on inspection tomorrow. Which he does.

The Superintendent is a fat fart name of Colonel Aucamp and he says to Ben he says Ja, says he, you are allowed Studybooks from the university library but no Storybooks.

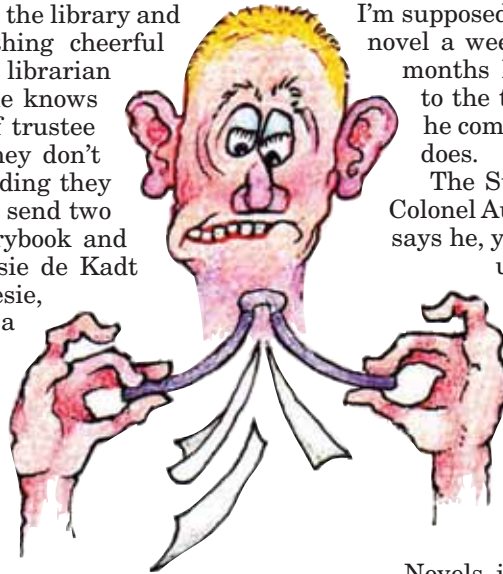
Maar Meneer, says Ben, his voice rising in pitch but not in volume because if he shouts at the Super he will go three days without food, Meneer, he stammers, I am studying the novel. Aucamp narrows his eyes and looks at Ben sort of sideways and foxily grins like nobody's going to fool him after 30 years in the Prison Service, hey?

Novels is Storybooks, says he, we got five thousand in our library here and you can have two a week. Maar... maar... maar... says Ben. Aucamp is losing patience. You got nine books in your cell, man, says he, personal books for your study privileges. What next? Ben wants to hit him next. I make silently with the eyebrows. Do that, say these brows, and your bum will be turned to solid scar tissue with a long thick malucca cane soaked in salt water. No novels, no storybooks! says Aucamp, and wobbles off.

The problem, say I to Ben bimeby when he's stopped boiling, is that a novel IS a storybook. Well, ought to be, and a story is only as good as the skill of its telling. Telling it in homogenised pasteurised officialised proper grammaticalised language as if one is in a court of goddam law is a certain death sentence to a good story. In those old days of

the troubadour, the wandering minstrel, there was also the wandering raconteur, the story-teller, and he could tell you all right what makes a good yarn, joke, story, all art, and it is presentation. He could also tell you all right what would happen if he got the presentation wrong. His audience would throw their bloody shoes at him.

All art arises out of technique. It is the brushstroke that gives a Van Gogh its final meaning. The Japs know this, it is Zen, that's why they pay seven million dollars for a vase of sunflowers. Being now an old toppie, I should be permitted to throw my shoes at sententious puffed-up exhibits of Coarse Art. I should also be permitted to perform public book-burnings of lousy pretentious laboured squeezed-out constipated novels. ■



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PERSONAL

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