

# CAPE BAR PUPILLAGE SELECTION POLICY

## OBJECTIVES

1. The pupillage selection policy of the Cape Bar supports and gives practical effect to three key, interrelated objectives. These objectives are to:
  - (a) support the overall goal of the pupillage programme of producing skilled practitioners;
  - (b) help make the Cape Bar more representative; and
  - (c) have a fair selection process.

### **(a) Producing skilled practitioners**

2. The pupillage selection policy aims to underpin the overall goal of the pupillage programme of empowering every pupil to pass the national bar examinations and equipping them with the competencies and skills to succeed in practice thereafter within the values and ethos of the Cape Bar. This is consistent with the undertaking of the legal profession in the Legal Services Sector Charter to 'create a body of qualified and competent practitioners'.<sup>1</sup> The provision of skilled practitioners is a fundamental component of the right of the public and other consumers of legal services to have access to justice, which is a cornerstone of the Charter.<sup>2</sup>
3. Accordingly, the selection criteria and process seek to identify the best applicants. In the case of inexperienced applicants, the aim is to identify persons with a demonstrable potential to succeed.
4. The pupillage selection policy is intrinsically related to the Cape Bar's training programme.
5. Aside from mentoring during office hours, the Cape Bar has a comprehensive formal training programme. That formal programme currently comprises a number of tutorials and advocacy training sessions, which covers a wide range of practice. Every pupil performs and is reviewed and assessed at each advocacy training session. Pupils are also required to follow the workbook programme after hours.
6. Constraints on the training capacity of the Cape Bar are imposed by limited training resources, including the number of qualified and willing tutors and advocacy trainers, appropriate mentors, suitable training venues and administrative capacity.
7. The Cape Bar accepts only as many pupils as it can train effectively. The selection policy recognises that exceeding the Bar's training capacity would jeopardise the sustainability of what is currently a successful training programme.

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<sup>1</sup> Paragraph 2.5.2(ii) of the *Legal Services Sector Charter*, December 2007.

<sup>2</sup> Paragraph 2.1(i) of the *Legal Services Sector Charter*, note 1.

Therefore, every year, in consultation with the Training Committee, the Pupillage Committee determines a cap on the number of pupils that it will accept.

8. Maintenance of a comprehensive and supportive training programme is especially important to the Cape Bar's transformation objective. Historically disadvantaged pupils are by definition most in need of and tend to benefit most from quality training. By contrast, pupils from privileged backgrounds are more likely to be able to succeed with more limited support.
9. The Cape Bar will not accept applicants who, even with support and training, are unlikely to pass the National Bar Exam or establish a successful practice, or are otherwise unsuitable to be a pupil member of the Cape Bar.

**(b) A more representative Cape Bar**

10. The pupillage selection policy seeks to help make the Cape Bar more representative of society, particularly in terms of race and gender. In selecting who should be accepted into the pupillage programme, preference is therefore given to Black<sup>3</sup>, women and disabled applicants.<sup>4</sup>
11. The pupillage programme actively strives to equip historically disadvantaged pupils with the skills to not only pass the exams but also to succeed in practice. Active monitoring of pupils' performance, including regular quantitative assessment of advocacy training performance from early in the pupillage programme, is used to identify pupils who may need additional training support.
12. For transformation to be sustainable, historically disadvantaged juniors need to establish successful practices after pupillage. The selection policy therefore aims to identify all historically disadvantaged applicants who have the potential to succeed at the Bar.
13. Currently, the greatest impediment to increasing the proportion of Black pupils at the Cape Bar is the relatively small number of Black applicants for pupillage. More work must be done to recruit and attract a greater number of Black potential advocates to apply for pupillage.
14. The pupillage selection policy and training programme complement a number of other transformation policies and initiatives of the Cape Bar. Those include specific bursaries for African women and policies aimed at promoting equitable briefing and the use of Black juniors as a second junior.

**(c) Fair selection process**

15. The pupillage selection process is fair. Each applicant is evaluated using a standardised scoring system. Some of the criteria, such as academic results and relevant previous experience are assessed entirely objectively. Qualitative

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<sup>3</sup> 'Black' is used here to refer to African, Coloured and Indian people.

<sup>4</sup> Preference is given only to applicants who are a South African citizen by (i) naturalisation before 27 April 1994; or (ii) birth or descent.

criteria, such as aptitude to be an advocate and motivation to be an advocate are assessed on the basis of an applicant's performance at their interview and their writing ability. Those criteria are assessed as objectively as possible and there are mechanisms to reduce the possible effect of unconscious bias. The assessment criteria are weighted to provide a balanced measure of the merit of each applicant and their potential to succeed.

16. Further details of the selection process are set out below.

## **SELECTION CRITERIA**

17. In accordance with the guidance from the General Council of the Bar, the selection criteria are:

- (a) academic results;
- (b) relevant previous experience;
- (c) aptitude to be an advocate;
- (d) motivation to be an advocate (which includes a proper understanding of what it is to be an advocate); and
- (e) race, sex and disability status.

## **SELECTION PROCESS**

18. In overview, the selection process takes place in two phases. First, the merit of each application is assessed without regard to race, sex and disability ('HDI status'). All of the applicants are ranked based on the results of the first phase. In the second phase, HDI status is taken into account to adjust the order of applicants so as to prefer historically disadvantaged applicants. Positions are offered to the top applicants who fall within the pupillage programme's capacity limit. Irrespective of the number of available places and applications, the Cape Bar will turn down an applicant who is not a suitable candidate for pupillage.

### **Phase 1: merit ranking (excluding HDI status)**

19. This phase assesses (a) academic results; (b) relevant previous experience; (c) aptitude to be an advocate; and (d) motivation to be an advocate. The detailed steps to assess this phase are described in the Cape Bar Pupillage Selection Manual. The following is a summary of the process.

#### (a) Academic results

20. The main component of the academic results is the average LLB results. Specific rules have been developed to standardise the assessment across different universities and for applicants who followed different academic routes.

21. Additional credit is given for academic achievements other than an LLB. These include LLM and other postgraduate legal qualifications, successful completion of the Attorney's Admission Examination, legal publications in peer-reviewed, accredited journals or books, and certain academic awards.

(b) Relevant previous experience

22. The score for relevant previous experience is a factor of the duration of the experience and the extent of its relevance to the practice of an advocate. Each activity is allocated points according to the extent of its relevance.
23. The score for relevant previous experience is capped in order not to over-emphasise this consideration.

(c) Aptitude to be an advocate

24. During the interview, the aptitude of each applicant to be an advocate is assessed based on the extent to which they have the following qualities:

**Verbal skills, both oral and written**

- Fluent and articulate speaker
- Able to get to the point
- Able to convey an idea

**Personal attributes**

- Confident
- Independent thinker
- Not easily intimidated
- Mature

(d) Motivation to be an advocate

25. The interview is also used to assess the following attributes, under the heading motivation to be an advocate:
- Knowledgeable about the work of an advocate
  - Can explain why they want to be an advocate
  - Pupillage more than just 'option of last resort'
  - Has opportunities other than the Bar (more opportunities = higher score)

Scoring system

26. The scoring of the academic results and relevant previous experience is based on information contained in the pupillage application form. That form has been adapted to obtain the specific information required to apply this selection system. The application form is also updated every year. The scores for academic results and relevant previous experience are entirely objective.
27. The process is designed to ensure that the assessment of the other criteria, namely aptitude and motivation to be an advocate, are also assessed as objectively as possible. For instance, the criteria are clear and specific. Other methods are also used to ensure consistency.

28. The scores allocated for the above-mentioned selection criteria are weighted as follows.

CRITERIA (EXCLUDING HDI STATUS)	SUB TOTAL	WEIGHT	POINTS
<b>Academic</b>			
LLB (or equivalent) results	$\% \div 10$	x 5	
Other academic achievements (maximum 1 additional point)		x 3	
<b>Previous relevant experience</b>	(sum) (cap of 4)	x 2	
<i>Previous relevant work</i> <i>duration (yrs)</i> <i>x score/yr</i> <i>(0 - 1)</i> = score			
<b>Aptitude to be an advocate</b>	score (/10) (avg)		
Excellent verbal skills, both oral and written <ul style="list-style-type: none"> <li>• Fluent and articulate speaker</li> <li>• Able to get to the point</li> <li>• Able to convey an idea</li> </ul>		x 2	
Personal attributes <ul style="list-style-type: none"> <li>• Confident</li> <li>• Independent thinker</li> <li>• Not easily intimidated</li> <li>• Mature</li> </ul>			
<b>Motivation to be an advocate</b>	score (/10) (avg)		
<ul style="list-style-type: none"> <li>• Knowledgeable about the work of an advocate</li> <li>• Can explain why they want to be an advocate</li> </ul>		x 1	
<ul style="list-style-type: none"> <li>• Pupillage more than just 'option of last resort'</li> <li>• Has opportunities other than the Bar (more opportunities = higher score)</li> </ul>			
<b>Total:</b>			

29. The total score comprises 53 points for academic results, 8 points for relevant previous experience, 20 points for aptitude to be an advocate and 10 points for motivation to be an advocate.

### Phase 2: consideration of HDI status

30. Once all the applicants have been ranked based on the results of the first phase, HDI status is then considered. In particular, consideration is given to historically disadvantaged applicants who fall below the cut-off line. In deciding on the extent of preference, consideration is given to the demographic profiles of (a) all the applicants; (b) the applicants in qualifying positions based on merit; (c) members of the Cape Bar; and (d) the regional and national populations.

31. The Pupillage Committee engages in a balancing exercise in which HDI applicants are promoted up the ranking to qualifying positions. Based on their respective merit ranking from phase 1, the strongest non-qualifying HDI applicants are compared with the weakest qualifying non-HDI applicants. The Pupillage Committee would tend to give preference to an HDI applicant who has the potential to succeed over a non-HDI applicant who is good but not excellent. The Pupillage Committee would tend not give preference to an HDI applicant who

is unlikely to succeed over a non-HDI applicant who is excellent or where the difference between the two applicants is disproportionate.

32. This approach allows some flexibility and the exercise of value judgment, which is necessary in fairly balancing the sometimes competing considerations of the need for transformation and continued access to the profession for all people, regardless of race, sex or physical ability. This method seeks to address the challenge of access to the legal profession, which is described in the Legal Services Charter in the following terms:

‘The transformation of the legal services sector and in particular the legal profession to ensure that it is representative of the racial and gender composition of South African society so as to ensure a body of well-trained and competent professional providers of legal services, and to enable appointments to be made to the judiciary which reflect the demographics of South Africa.’<sup>5</sup>

33. Quantitative methods for deciding preference have been considered, but found to be unsuitable. For instance, the possibility of using formulae which allocate preference points based on race, sex and disability was explored, as were fixed quotas and reserve lists. However, the unpredictable variation from year to year in the numbers and calibre of applicants (both HDI and non-HDI) made for overly complex systems which if applied in practice would produce arbitrary results.

#### **FURTHER DEVELOPMENT OF THE PUPILLAGE SELECTION POLICY**

34. Every year the Pupillage Committee reviews and continues to refine the pupillage selection policy. It actively seeks to find ways in which the Cape Bar can more effectively meet the policy’s three objectives described above. The policy described in this document is accordingly subject to change.

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<sup>5</sup> Paragraph 2.5.1(ii) of the *Legal Services Sector Charter* dated December 2007, as contemplated in s 5 of the Legal Practice Bill.