

PRESS STATEMENT
24 November 2015

1. Recent media reports have highlighted the disproportionately small number of black and female senior counsel at the Cape Bar.
2. This was one of several transformation issues addressed in the recent report of the Cape Bar's Transformation Committee to the General Council of the Bar, dated 9 November 2015. A copy is attached.
3. Transformation objectives have been addressed in the last decade through the implementation of policies and initiatives relating to selection of pupils; financial assistance for pupils and new members; maternity benefits; briefing patterns; fee-sharing; housing; and recommendations for the conferral of silk status.
4. As is evident from the Transformation Committee Report, the Cape Bar recognises that while there has been a steady increase over the last ten years in the numbers of black and female members and senior counsel, the statistics reflect the ongoing impact of historic disadvantage and demonstrate a critical need for serious transformation measures directed at advancing and achieving demographic representivity at the Cape Bar. These need to be implemented in collaboration with Advocates for Transformation (AFT), the National Democratic Lawyers Association (Nadel) and the Black Lawyers' Association (BLA).
5. Since April 2002, 50% of the elected members of the Cape Bar Council have been black members of the Cape Bar, the majority of whom have been members of AFT. As recently as 2012/2013 the current chairperson of AFT served on the Bar Council and subsequent thereto certain members of the current AFT executive have served on the Bar Council.
6. Efforts to recruit black and female members to the profession have included a preferential pupil selection programme and the provision of financial assistance to new members. Last year approximately R 900 000 was paid in bursaries to Black members, funded by members of the Bar. 71% of the pupils selected during the last five years were black and/or female (50% were black and 42% were female). As a result of these efforts of the 104 black members of the Bar, more than 50 fall in the under 5 year category.
7. The major transformation challenge is promoting the sustainability of new members' practices and very importantly ensuring that the aforementioned very junior Bar have access to non-State work. This is significantly influenced by private attorney briefing patterns, which continue to favour white male counsel. Efforts have been made in the past to meet with individual law firms to address this.

8. The Cape Bar's Transformation Committee has prioritised the promotion of briefing criteria which advance transformation at the Bar and fee-sharing initiatives whereby senior members include black and female juniors in briefs on a fee-sharing (ie fee sacrifice by the senior) basis. To encourage private firms to do so remains an ongoing initiative.
9. An indication of the efforts to retain black members is evident from the following table, which sets out the statistics of members who have resigned from the Bar in the last 3 years, by demographic categories.

Black ¹ male	0
Black female	1
Coloured ² male	1
Coloured female	3
White male	38
White female	18

10. Members are required to apply for silk status. Eligibility for silk status depends significantly upon excellence, and the length of a member's years of experience. The disproportionately small number of more senior black and female counsel at the Cape Bar arises from the historic lack of representivity as well as briefing patterns, as a result of which black and female members have often not had access to the relevant experience. Admittedly there have been some delays in addressing this which has resulted in an under-representation in the over 5-year category and more Black members being in the under 5-year category, and who are thus not eligible for consideration for silk status.
11. The committee which makes the recommendation in relation to the applications for silk has for many years already been demographically representative. It is apparent from the following statistics that neither the process followed nor the criteria used in the Cape Bar's silk recommendation process have been an impediment to black and female counsel being recommended for silk:
- 11.1. In the last 5 years (on average), the ultimate success rate of black counsel applying for silk has been 100% (compared with 52% for white males).

¹ Black denotes African

² Coloured denotes Coloured and/or Indian

- 11.2. In the process followed in respect of the 17 silks recently appointed by the President, all black applicants were recommended for silk by the Cape Bar Council. (It was incorrectly stated in the *Weekend Argus* of 22 November 2015 that the four black members recently granted silk would not have been granted silk without the intervention of the Minister of Justice. In fact all four members were recommended for silk by the Cape Bar Council, which had recommended for silk all of the candidates who were ultimately approved.)
 - 11.3. In the last 5 years the average seniority of successful black counsel was 13 years (compared with 21 years for white males, and 15 years for white females).
 - 11.4. Two of the four candidates who were recommended for silk during the last ten years before they attained the generally required 14 years' seniority, were black African male candidates. Each had approximately six years' domestic seniority.
12. The Cape Bar acknowledges that there is much that still needs to be done to achieve meaningful transformation, in the interests of all of its members, and is committed to identifying and implementing appropriate and effective transformation measures in collaboration with AFT, Nadel and the BLA and with the support of the attorneys' profession.

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