

EDITED MINUTES OF THE ANNUAL GENERAL MEETING OF THE LAW SOCIETY OF THE NORTHERN PROVINCES HELD AT SUN CITY, PILANESBERG ON SATURDAY, 8 NOVEMBER 2014 AT 09:00

Discovery proxy Millar paves the way for discoveries attorneys to lobby for his "election "to the law society council and also as its president as predicted by discoveries Jeff Katz to Darren on June 16 2015"

CONSIDERATION OF THE FOLLOWING MOTION OF WHICH DUE NOTICE HAS BEEN GIVEN BY MR A P MILLAR AND MR E B SHIPALANA (RULE 28))

The President referred to the following motion of which due notice had been given by Mr A P Millar and Mr E B Shipalana and after the motion was seconded, it was put to the meeting:

“That the Law Society delete the existing Rule 43.”

MOTIVATION

The current Rule 43 is irreconcilable with a democratic society such as we enjoy in the Republic of South Africa and it is incomprehensible that an election should take place on the basis of no information as to what the candidates stand for, or what stance they may have taken on important issues that affect the profession. All candidates will obviously have to continue to conduct themselves according to the standards generally required of attorneys.

Mr Millar said that the motion dealt with the rule that related to campaigning and advertising of yourself in the event that you decide to stand for election. He said that this was not a motion in isolation but that it was part of three motions that were proposed, two of which, for whatever reason, had not been put before the membership. He said that the two motions were not noted on the agenda but that it was necessary to know what they were and what the motivation was, to

AGM Minutes: 8/11/2014 - 47 -

understand the context of the resolution on which members would vote. Mr Millar said that it was proposed that the suspension of the rules calling for the election of the statutory component, be lifted, which motion was motivated by the fact that the statutory constituent of the Law Society of the Northern Provinces, unlike the BLA and NADEL constituents, had only one election in the last 20 years. He said that the last election of this component was held 10 years ago, but that the status quo remained for 20 years with the suspension of the rules, which was not democratic and which did not allow new ideas or a more energetic approach by the Council to its affairs. He said

that in the absence of regularly elections, the views of the Council did not necessarily reflect those of the members. He said that the current Council endeavoured to represent, as best they could, the views of the members but that elections were the best method by which members could determine whether their representatives were representing their views. He said that the current Rule 43, which was the rule on which members would vote at this meeting, was irreconcilable with the democratic society in that it was incomprehensible that an election should take place on the basis that no information was given as to what the candidate stood for or what stance the candidate might take on important issues that affected the profession. He said that all candidates would obviously have to continue to conduct themselves according to the standards required of attorneys. He said that in regard to the electioneering and in regard to elections, Rule 93 obviously applied and that it was not envisaged that anybody would conduct themselves in a manner that would be unprofessional or disgraceful. Mr Millar said that the second motion related to removing the indefinite suspension of Rule 47(3) and adopting a new Rule 48(a), which envisaged a situation where, if an election was held and a candidate, for whatever reason, did not take up the appointment or retired or resigned, that the next candidate on the list, who had not been elected, would then move up into the position. He said that the current situation which dealt with the statutory component where people were co-opted on the Council without any input from the membership at large, would not be the situation and that whoever was there would have a mandate from the electorate, the members. He said that he was uncertain why these two motions were not noted on the agenda and that, when he requested the reasons, he was advised that it was privileged.

The President said that the last remark by Mr Millar that the only answer that he received was that it was legally privileged, was not entirely correct and that the Law Society had also indicated the reasons in a letter to him, which were based on sound legal advice according to the Council. He said that, rightly or wrongly, it was perceived that it could not be legally tenable from a historical

AGM Minutes: 8/11/2014 - 48 -

perspective and that it was Mr Millar's prerogative to, at any stage, again advance those arguments if need be during a special meeting.

Mr D J de Kock indicated his support for the motion and said that he wished to give notice that he wants to move a motion of order after members had voted on the issue. He expressed the view that it was improper that a motion that was before the Council, was not noted on the agenda of the

meeting.

The President said that although he did not quite understand what Mr De Kock had in mind, the agenda was closed and that motions could not be moved at this late stage.

Mr Bennett said that in reading Rule 43; he endeavoured to place himself in the position of the drafters of the rule when it was made many years ago and to ascertain what inspired them to draft the rule in the way that it was. He said that the number of practitioners at the time was much lower than the current number and that prominent members of the profession that were aspiring to serve on the governing body of the profession were probably better known to members at the time or were easier identified than would be the case today. He said that at the time, the principle of ethics and especially the prohibition on advertising by practitioners were very strictly controlled and monitored, which he presumed also played a role when the rule was drafted in the way it was. He said that there was very strong tradition against promoting yourself in public and that practitioners were not even allowed to address a public meeting without the prior approval of the Council of the Law Society. He agreed that in today's day and age it would perhaps be necessary to make more information available about members aspiring to serve on the governing body of the profession and its committees and that this should at least be done by a proper manifesto or a document of introduction, which could be made available to all members who were eligible to vote, and in which the curriculum vitae of the candidate and more particulars about his/her involvement in matters of the profession could be given. He said that the question however arose as to whether the candidate should be allowed to do canvassing and that the last sentence of the motivation, as put before members, touched on the heart of the problem in the sense that it stated that all candidates would obviously have to continue to conduct themselves according to the standards generally required by attorneys. He said that the question was, what were these standards that were generally required of attorneys? He said that it could entail not bringing the profession into disrepute or that canvassing should not be in bad taste or undermining to the opponents or should not cause a nuisance or an embarrassment to colleagues. One could go on with a list of possible

AGM Minutes: 8/11/2014 - 49 -

prohibitions, but the difficulty was in the vagueness of such requirement. I do not have an obvious or definitive answer to whether we should allow candidates to canvas. He said that the uniform rules, which had been approved by all the provinces and which were in the process of being implemented, did not contain an equivalent to Rule 43 and that it would then in any event fall away,

which was indicative of the fact that the drafters of the new rules perhaps did not feel as strongly as the prohibition that was contained in Rule 43. He said that the Legal Practice Act had also been signed into law and that the Act provided for the members of the Legal Practice Council to be elected to the Council; although the rules governing such elections would still have to be prepared by the National Forum. He said that the chance of a rule similar to Rule 43 being included, was slim and that members should consider whether, at this point in time, it was necessary for the profession or prudent for the Council to approach the Judge President or the Chief Justice with a request to delete Rule 43, as the profession was in the process of approaching them with a whole new set of rules.

Mr C P Fourie said that he did not have an objection to the motion, but that Mr Bennett had raised the important point that a similar Rule had not been included in the new uniform rules and that it would also not form part of the Legal Practice Act dispensation. He said that the uniform rules were about to be passed. He referred to the so-called undemocratic elections of the non-NADEL, non BLA component of the Council which had also featured in press articles recently and said that he took the strongest of exception to that for the simple reason that there was a specific motivation for that, namely to accommodate the 50/25/25 dispensation and also in anticipation of the Legal Practice Act. He said that it was not decided unilaterally, that it was discussed on numerous occasions at annual general meetings and that the statement that the non-BLA, non-NADEL component was not holding democratic elections, but the BLA and NADEL were, was also incorrect. He said that if members wanted an election, it should be an election for all by all members.

Mr De Broglio said that it was clear that members were of the view that Rule 43 did not have a place anymore and that good housekeeping required that it be removed and that the matter not be left in abeyance pending the introduction of the uniform rules. He added that Gauteng Law Council had incorporated by reference Rule 43 into its constitution and that, if Gauteng Law Council held elections, they would have to comply with the rule, notwithstanding agreement that the rule did not have a place anymore.

AGM Minutes: 8/11/2014 - 50 -

Mr Mabunda said that he was inclined to talk on this particular issue to clarify the position in his capacity as the President of the Black Lawyers Association. He referred to the statement that the non-holding of elections was to accommodate NADEL and the BLA and said that, assuming that

that was so, it did not detract from democratic exercises being done by certain of the constituencies. He said that he was not the one who talked about the language of democracy or non-democracy in other constituencies, but that he would reaffirm and reiterate the fact that there had been and that there continued to be democracy within NADEL and the BLA. He emphasised that if other constituencies were accommodated, it did not mean that democracy should not be practised during that particular juncture.

Mr Millar said that a situation of 50% of the Council not holding elections and 50% of the Council being composed of delegates who had been elected and then claiming that 100% of the Council represented the interest and the views of all the members, was not acceptable. He said that the non-BLA and non-NADEL members should be given the privilege of having a vote. He said that many members had never participated in a Law Society election. He said that anyone who subscribed to any sort of democratic approach would appreciate the need for elections across the entire Council, which had to be done as soon as possible. He said that the deletion of Rule 43 would be every important if the Law Society had elections, as it would affect all those who were eligible to take part in those elections. He said that he intended calling for a special meeting in due course to deal specifically with this issue.

The President requested members to, by a show of hands, indicate their support for the motion for the deletion of Rule 43 and it was noted that the overwhelming majority supported the motion. The motion was therefore carried.

Mr D J de Kock said that members were not aware that certain items were put before the Council, which had not been noted on the agenda of the annual general meeting and that it was impossible for them to speak on any matter that was not on the agenda. He said that this was the members' meeting and not a Council meeting and that the Council could not decide which motions would serve at the meeting and which ones not. He moved for a motion that this motion was at least put on the table today or that the President furnish members with an explanation why it was removed and whether a legal opinion to that effect was obtained, in which instance it should have been put to members with the motions concerned. He moved that that motion be put on the agenda of the meeting.

AGM Minutes: 8/11/2014 - 51 -

The President said that Mr De Kock's concern was noted but that, in his capacity as President and Chairperson of the, he could unfortunately not entertain an item that was not noted on the agenda.

He said that Mr Millar had indicated that he would call for a special meeting on the issue. The President said that the reasoning behind not including those motions on the agenda was as a result of obtaining legal advice from the Law Society's attorneys, which would be explained in due course when the debate takes place with regard to those issues.