

Lawyers as peacemakers conference

By Kevin O' Reilly

On 14 and 15 October the Lawyers as peacemakers conference took place at Unisa main campus in Pretoria.

The purpose of the conference was to facilitate knowledge exchange on integrative law and to allow those working towards developing this system to network with like-minded attorneys.

Integrative law movement

Amanda Lamond from the Centre for Integrative Law spoke on the 'Future of law: The integrative law movement'.

'Integrative law' is an umbrella term, which Ms Lamond said emerged as new practices of law to deal with the current unsustainable legal system.

Restorative justice

Justice Lebotsang Bosielo delivered the keynote address. He spoke on 'Restorative justice as a viable and effective sentence'.

Referring to the judgment *Director of Public Prosecutions v Thabethe* 2011 (2) SACR 567 (SCA) (he formed part of the coram) he noted how he was faced with the dilemma surrounding the debate of restorative justice, namely its 'desirability, viability and effectiveness'.

Justice Bosielo noted that restorative justice had not been 'enthusiastically' embraced by our courts.

He said: 'Although restorative justice has received a somewhat lukewarm reception by the judiciary ... it has in the last years grown in its stature and impact I have no doubt about the advantages of restorative justice as a viable alternative sentencing option provided it is applied in appropriate cases.'

He stated that it is a fact that crime, including violent crime, in the country had reached 'alarming and endemic proportions'. Justice Bosielo said: 'Truth be told, our criminal system can no longer cope'.

Prosecutors aim for maximum sentences, our correctional centers are overcrowded and we have a high rate of recidivism among inmates. This tells us that 'the conventional methods of sentencing have failed us', Justice Bosielo said. He added that we, therefore, need to explore alternatives such as restorative justice.

Referencing the *Dikoko v Mokhatla* 2007 (1) BCLR 1 (CC) and *M v S (Centre for Child Law Amicus Curiae)* 2007 (12) BCLR 1312 (CC), Justice Bosielo said: 'The [Constitutional Court] found that many times an apology might be more effective than a monetary award to bring about a healing of the hurt feelings and restoration of social harmony'.

Justice Bosielo said society needs to see if restorative justice will have the desired effect of 'rehabilitating offenders, reducing the correction centers' population, offering offenders the opportunity to confess, own up to their misdeeds, thereby showing insight into their wayward behavior, giving them an opportunity to converse with their victims, offering healing and reparation/compensation and, ultimately forgiveness and restoration of peace and harmony'.

Lawyers as peacemakers

Kim Wright, author of *Lawyers as Peacemakers: Practicing Holistic, Problem-Solving Law* (American Bar Association 2010), spoke on 'Lawyers as Healers, Peacemakers and Change Makers: The Worldwide Integrative Law Movement'.

Ms Wright said she sees the law as evolving and believes we are moving from the court model to a more peacemaking model such as mediation. 'The [alternative dispute resolution] movement is not the end of the path, I think the integrative law movement is what is next,' she said.

She cites United States Chief Justice Warren Burger who in 1984 said 'lawyers should be healers', suggesting that the legal system was 'broken'.

To deal with the dissatisfaction with the old system, which no longer worked, holistic law was developed, the term 'integrative law' was then coined in 2010, said Ms Wright.

She gave the example of Australian attorney, Michael Bradley, the managing partner of the firm Marque Lawyers, who sought to reshape the way law was practiced and decided to open a firm based on 'happiness'. One of the first things the firm did was to get rid of billable hours as 'they do not make anybody happy'.

Ms Wright said she believes that the new system is a 'consciousness' that can be brought to different ways of practicing law such as: Restorative justice, therapeutic jurisprudence, problem solving courts, collaborative law, proactive law and community law, etcetera.

Collaborative law

Bev Loubser, a matrimonial and family law practitioner, recounted an incident in her career where an opponent in a divorce matter almost physically assaulted her, she decided that there had to be another way to practise law that was less adversarial.

Ms Loubser became a family law mediator in 2008 and saw situations where a passive observer/facilitator just would not work. 'In certain situations individuals needed a lawyer,' she said.

With the fear that this would lead right back into litigation, she was happy to find out that this was not the case, she said.

This is when she came across collaborative law. Ms Loubser then attended a course by Pauline Tesler on collaborative law, and Ms Wright's training on collaborative divorce.

Ms Loubser described collaborative law – also known as collaborative practice – as a 'non-adversarial problem solving approach to resolving legal disputes. Enabling couples who have decided to separate or end their marriage to work with their attorneys and on occasion other family professionals in order to avoid the uncertain outcome of taking the matter to court and to achieve settlement that best fits and meets the specific needs of both parties and their children with the underlying threat of litigation removed'.

Ms Loubser described the collaborative divorce process as one that 'utilises the services of a interdisciplinary team approach that integrates legal, emotional and financial aspects of the divorce'.

Meditation

Chamundai (Jackie) Curran spoke on 'Lawyers as peacemakers: Mindfulness, compassion and much more'.

Ms Curran, a former lawyer, is a mediator, and Laughter Yoga teacher (laughterlawyer.com.au), spoke on using meditation to deal with the stress that lawyers experience; and by way of example, she guided the audience through a variety of different meditation techniques.

Ms Curran said while in the early days of her practice she became disillusioned and felt she was not helping her clients enough. This led her to learn about counselling, alternative dispute resolution and restorative justice. She began to incorporate these into her practice, all the while searching for spirituality and peace in her life.

‘As lawyers we have a big focus on our clients and what we need to do in order to look after them, and it can be easy to lose that sense of what is happening within us,’ said Ms Curran.

When she started her spiritual learning such as: Yoga, chanting and meditation (which she describes as ‘tools for inner peace’), she noticed she started to become a different person.

‘I was more settled, confident, more relaxed, did not get so stressed or angry,’ she said. Ms Curran said: ‘It was very much in my work as a lawyer I was having a different experience and I was having different solutions to my legal problems because I was different inside.’

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