



HOW WIDE IS A PENSION FUND LAWYER'S WORLD: REFLECTIONS OF A NOT SO PUZZLED ONLOOKER

Presented by: Francisco Jabulani Khoza
Partner
Bowman Gilfillan Inc

Midnight
in the
garden of good and evil

INTRODUCTION

The purpose of the presentation is to:

- share some of my observations regarding the pensions world following my sojourn in the United Kingdom
- explore whether there is scope for broadening the scope of our pension law practices in order to offer clients a comprehensive service



PAST SOUTH AFRICAN EXPERIENCE

- Practiced in the area of employment and employee benefits
- The pension practice was (still is) a component of the employment and employee benefits practice group
- The above reflects the origins of pension laws as a practice area in South Africa
- Broadly a pensions law practice covers the following areas:
 - Legal research and general advice
 - Regulatory work
 - Pensions litigation
 - Corporate transitional work (depending on size of firm)



TYPICAL PENSION LAW PRACTICE IN SOUTH AFRICA

Of the top 5 large firms in South Africa-

- 4 have pensions as part of their employment and employee benefits group
- 1 appears to practice pensions as a stand alone practice area
- A more recent development is that of specialist firms that are focusing on employee benefits and pensions law.
- The question is what is the scope of work that they do?



UK EXPERIENCE

- UK pensions law is based on trust law
- UK law also influenced by EU Legislation / Jurisprudence
- The pensions practice was a stand alone practice group within the corporate department
- That the pensions practice is a specialists corporate practice area explains the scope of the issues covered by the pensions practice group



SCOPE OF PENSIONS PRACTICE IN THE UK

- General pensions advisory work
- Regulatory work
- Corporate transaction work
- Public sector pensions issues
- Setting up of pensions schemes
- Drafting of various services agreements
- Scheme mergers
- Cross border issues
- Investment management
- Trustee training
- Tax
- Litigation
- ❖ It appears that in SA there is one specialist firm that almost offers the above range of legal services



THE CHALLENGE TO EXPLORING OUR WORLD AS SA PENSION LAWYERS

- Circular PF No 130, dealing with Good Governance of Retirement Funds. Paragraph 39 of that circular states that,

“Board members are not obliged to have all the expert skills necessary for the day-to-day operation of a fund. It is reasonable for the board to engage professional accounting, actuarial, investment, legal and other experts for advice on issues which are the responsibility of the board, and to pay the professionals involved for that advice. However, the expert advice or opinions obtained by the board should be considered by the board and assessed independently and the board should always be free to procure a second opinion where it is not comfortable with the advice that it has received”



THE CHALLENGE TO EXPLORING OUR WORLD AS SA PENSION LAWYERS

- Is there a case for re-thinking the positioning of the pensions practice?
- The scope of our pensions law practices may be informed by the local economic and regulatory environment
- There is also the challenge of skills development. Do SA pensions lawyers have the requisite skills to offer a full range of the services required by clients
- There are pockets of experience among SA pensions lawyers in SA that can be harnessed in order to broaden the service offered by pensions lawyers in SA.
- Have we understood what clients need from us?

