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EDITOR: Chris Davies

COVER DESIGNER: Sybil Basson Smit

LAYOUT ARTIST: Sybil Basson Smit

## Chapter 14: Auditing's closed society

*There is a big gap between what an audit is in reality and what could reasonably be expected of an audit. –Rick Cotterel, former joint managing director of Coopers Theron du Toit in August 1991.<sup>1</sup>*

*Without compromising our principles we would go a long way not to qualify the audit report of a bank. –the late Jurie Visagie, former joint managing director of Coopers Theron du Toit in August 1991.<sup>2</sup>*

*Sophistication as a result of the development of the technology and the general decline in business morality put more pressure on auditors. –Lucas van Vuuren, former executive director of the Public Accountants' and Auditors' Board in August 1991.<sup>3</sup>*

With the turn of the 21<sup>st</sup> century the auditing profession internationally has entered a revolutionary phase in its illustrious history. The central dilemma facing the profession is this: is it merely a capitalist tool, making the directors of audit firms and their corporate clients immensely wealthy, or can it also be an agent on the side of public interest?

Early warnings that the profession was not sufficiently independent to face the challenges of looming corporate scandals both here in South Africa and internationally, were met with disdain and disregard by regulators and

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<sup>1</sup> Basson, Deon, *Kan jy dit glo?* Finansies & Tegniek, 2 Augustus 1991, p. 13 ,

<sup>2</sup> Ibid

<sup>3</sup> Ibid

professional bodies alike. This denialist reaction was of such magnitude that the disturbing events playing themselves out at the University of Pretoria<sup>4</sup> in 1997 raised serious questions about the organized auditing profession's commitment to the principles of an open society.

Sadly, the lessons of these and other traumatic events a decade ago seem to have been forgotten. Not even the harsh words spoken about the profession in the report of the Nel Commission in 1997 have had an enduring impact. This is evident if one follows the history of a new wave of property syndications that has been promoted in South Africa since 1997. Unfortunately this is but one example among many.

Once the phalanx of institutions supposed to regulate property syndications had failed to protect the public's interests<sup>5</sup> the reasonable expectation was that the auditing profession, as an essential and 'independent' check and balance, would in some way fill the gap left by the regulators.

By 2008 various attempts by the liquidators of Oude Molen No. 6, and investors in various Oude Molen<sup>6</sup> companies, to have the actions of audit firm Venter de Jager and certain of its partners thoroughly investigated by the Independent Regulatory Board for Auditors (IRBA), had not yet met with any success. Formal complaints had been registered with the IRBA's predecessor, the Public Accountants' and Auditors' Board, as far back as 2005.<sup>7</sup>

To date the IRBA has declined to comment on the state of play with regard to a potential investigation. It would be unfair for me to comment in detail before such an investigation has been completed. But in the meantime the public, and especially the elderly investors who lost their hard-earned savings, will be kept in the dark until such investigation is completed. Even once the investigation is

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<sup>4</sup> The author was appointed honorary professor in auditing at the University of Pretoria in March 2007

<sup>5</sup> See chapters 12 and 13

<sup>6</sup> See chapter 4

<sup>7</sup> Author is in possession of correspondence related to this matter but is not at liberty to identify sources.

finally completed they might still not know because, in the time-honoured tradition of self-regulated professions, there is a better than even probability that the names of the audit firm and its partners will be kept secret.<sup>8</sup>

Capitalising on the lessons learned from his Oude Molen experience<sup>9</sup> Sharemax MD Willie Botha and his colleagues decided to go for one of the heavies when it appointed PriceWaterhouse Coopers (PwC) as the auditor of its various syndication companies in 2003. After signing off unqualified audit reports for all syndication companies it audited during the period 2003-2005, and having not reported any material irregularity, PwC resigned on 7 November 2005. In the letter of resignation addressed to the directors of Sharemax, PwC director André Venter recorded:

"On your request we confirm that we have resigned as auditors of all the syndication companies for which Sharemax Investments (Pty) Ltd is the promoter and manager.

"We were informed that your decision to no longer use our services was based on the fact that the services of Price Waterhouse Coopers were no longer economically viable.

"Under these circumstances we confirm that we have agreed with you to resign as auditors and that the above-mentioned is the only reason for our resignation as auditors..."<sup>10</sup>

Earlier, in 2003 and 2004, PwC failed to report a material irregularity in terms of the section 20 (5) of the then Public Accountants' and Auditors' Act.

At that stage many of the syndications operated as trusts that had raised funds from the public in contravention with section 30 (1) of the Companies Act. In fact, by doing so these trusts sidestepped the entire Companies Act and its pertinent disclosure requirements.<sup>11</sup>

Nevertheless, PwC confirmed that unqualified audit reports had been signed for 2004. "PwC discussed the section 30 (1)

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<sup>8</sup> See previous findings of the Independent Regulatory Board for Auditors indicating that the names of the auditing firms and partners in question are often not disclosed.

<http://www.paab.co.za/content.asp?Page=109> retrieved on 5 August 2008

<sup>9</sup> See chapter 4

<sup>10</sup> Paginated version of court papers in Transvaal Provincial Division of High Court. *Sharemax Investments (Pty) Ltd vs Deon Basson*. Case number 3208/2006, p. 304

<sup>11</sup> See chapter 5

issue with its client and believes that the particular section in the Companies Act is not relevant to trusts. A qualified audit opinion and reporting the matter to the Public Accountants' & Auditors' Board were not necessary in the opinion of PwC and had been confirmed by internal technical advice."<sup>12</sup> However, PwC did not get independent legal advice on the matter.<sup>13</sup>

Before publishing an article in November 2004 I sent it to Faan Coetzee, media and corporate lawyer at Hofmeyr, Herbstein & Gihwala for his opinion. The article dealt extensively with the section 30 (1) issue and criticized the trust structure as a method to raise funds from the public without the required disclosure.<sup>14</sup> Coetzee's terse comment was: "I agree."

University of Pretoria Professor of auditing, Herman de Jager, stated at the time that it was apparent to him that the trust had more than 20 beneficiaries and profit was the motive. The use of trusts therefore looked to him like a violation of the Companies Act.<sup>15</sup>

He said the auditors should have considered whether the trust structure constituted a material irregularity. With the limited information at his disposal it looked as if it was indeed an essential and material irregularity because it had all the characteristics it.<sup>16</sup>

Up until resigning in 2005 PwC's various audit reports had not highlighted the extensive network of loan accounts and guarantee payments between Sharemax and the syndication companies by way of a statement of emphasis. However, the network of loans was highlighted in the director's reports and by way of notes in the various financial statements.

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<sup>12</sup>Letter from Stefan Fourie, chief operating officer of PricewaterhouseCoopers to Deon Basson, 27 October 2004

<sup>13</sup>Telephonic conversation between the author and Stefan Fourie on 26 October 2006.

<sup>14</sup>Basson, Deon. *Twists and turns*. Finance Week, 3 November 2004 [www.finweek.co.za](http://www.finweek.co.za)

<sup>15</sup>Ibid

<sup>16</sup>Ibid

This gentle approach had been chosen despite the earlier critical tone in the Nel Commission's report which labeled the practice 'subvention'.<sup>17</sup>

The Nel Commission said that the auditors should have insisted that, in view of the intended rental subvention<sup>18</sup>, procedures were disclosed fully to shareholders when the invitation to participate was issued. No such upfront disclosure was made by Sharemax in prospectuses or preliminary marketing brochures during the trust era. During that time Sharemax boasted openly that PwC was its business partner and PwC's name was even included in the marketing brochures.

The Nel Commission also said that the auditors of Masterbond's syndication schemes should have insisted on the full disclosure of the effect of the subventions in the annual financial statements of the company in terms of paragraph 1 of the 4<sup>th</sup> schedule of the Companies Act.<sup>19</sup>

In more recent times Venter's carefully phrased letter of resignation is interesting because my informed source told me that the several loan accounts between Sharemax and syndication companies, and the guarantee payments to syndication companies<sup>20</sup> had caused the tension that contributed to PwC's resignation. In simple terms, the letter of resignation didn't tell the full story. Alternatively, it told a story only marginally related to the essential facts.

The fact that the loan accounts and guarantee payments were not cited as a reason for the resignation conforms to earlier findings from research conducted in the United Kingdom by Prof. Prem Sikka and his co-researcher John Dunn. Their research highlighted the reluctance of auditors

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<sup>17</sup>See annexure 10

<sup>18</sup> Rental subvention and 'guarantee payments' are essentially the same thing

<sup>19</sup> Nel, Mr Justice H.C. *The first report of the Commission of Inquiry into the affairs of the Masterbond Group and investor protection in South Africa*. Vol. 4, pp. 784-785. Par. 1 of the 4<sup>th</sup> schedule of the Companies Act states: "This Schedule sets out in the disclosure requirements in terms of sections 286 (3), 289, 303 and 304 (1) of the Companies Act. The disclosure is required where material."

<sup>20</sup> See Appendix 13.1

to clearly identify the real reason for them resigning as auditors.<sup>21</sup>

A letter by one Mr P.L. Ainger, audit partner of the then PriceWaterhouse to a Mr Smith, chairman of Bryanston, a company where an audit failure occurred, illustrates the mindset of the resigning auditor:

Dear Mr. Smith

As arranged I am writing to let you know in advance of the Annual General Meeting on 26 July the replies I will give if I am asked by a shareholder for the reasons why my firm is not seeking re-election as auditors. If no questions are asked, then of course, no further information in addition to that contained in the Annual Report need be provided.

However, if a shareholder asks further information I propose to reply as follows:

"In recent years we have experienced certain difficulties in obtaining necessary information for our audit and being sure that all relevant explanation[s] have been provided to us. In the final outcome we have been satisfied that we have received all such information and explanation; otherwise this would have been reflected in our audit report. However the situation created by these difficulties caused us to agree with the directors that we would not seek re-election at this meeting, a step we are permitted to take under the provisions of the Companies Act."

If there should be a follow-up question asking for more information about the difficulties referred to in the foregoing statement I would propose to reply as follows:

"There was no one matter which in itself caused us to reach this agreement with the directors. In view of this, there is nothing more that can be added to the answer that has already been given".

I would not intend to give any more information nor to respond to any other question.

Yours sincerely

PL Ainger

**Source:** Department of Trade and Industry, 1983, p. 283<sup>28</sup>.

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<sup>21</sup> Dunn, John & Sikka, Prof. Prem. *Auditors keeping the public in the dark*. Association for Accountancy and Business Affairs, 1999.

<sup>28</sup> Quoted by Dunn & Sikka, p. 6

Even before PwC formally resigned, PKF (Pretoria) had been appointed as auditors of Sharemax's new syndication companies (see table 14.1). The total fees paid were in certain instances materially lower than those charged by PwC, but in other instances they were higher than what PwC had charged. The interesting phenomenon was that for companies such as Davenport Square and Montana Crossing the bulk of the fees were for "other services" and not for the audit.

**Table 14.1: Audit fees in 2005<sup>29</sup>**

PricewaterhouseCoopers	Compensation for audit	Compensation for other services	Prior-year under-provision	Total
148 Leeuwpoort Street	32 200	Nil	Nil	32 200
Centurion Hazel	41 750	16 132	20 053	77 935
Centurion Home Front	41 750	Nil	15 621	57 371
Clubview Holdings	41 750	3 310	15 621	60 681
Glen Gables	44 550	2 080	19 554	66 184
Olive Wood	41 750	2 371	18 621	62 742
Oxford Gate	41 750	6 700	17 264	65 714
St Georges Square	44 550	Nil	15 620	60 170
Tyger Valley Omniplace	41 750	620	21 264	63 634
Van Riebeeckshof	44 550	2 075	14 914	61 539
The Bluff Holdings	44 550	6 371	15 473	66 394
Comaro Crossing Holdings	41 860	4 195		46 055
C-Max Holdings	44 025			44 025
<b>PKF (Pretoria)</b>				
Davenport Square <sup>30</sup>	11 379	45 014		56 393
Midway Mews <sup>31</sup>	16 803	6 191		22 994
Montana Crossing <sup>32</sup>	15 000	53 051		68 051
Northpark Mall <sup>33</sup>	15 000	2 394		17 394
The Village <sup>34</sup>	15 000	1 350		16 350

Then from 2006 PKF (Pretoria) was phased out as auditor of most of Sharemax's syndication companies and ACT Solutions stepped forward as the new auditor. However, PKF

<sup>29</sup> Source: Various financial statements for 2005. See note dealing with operating loss.

<sup>30</sup> Period of 9 months

<sup>31</sup> Period of 5 months

<sup>32</sup> Period of 11 months

<sup>33</sup> Period of 8 months

<sup>34</sup> Period of 3 months

( Pretoria) continued to act as auditor of certain syndication companies.

Strangely, as table 14.2 shows, PKF (Pretoria) didn't disclose any audit fees for certain companies. It's hard to believe that they received no audit fee as they did indeed sign the respective unqualified audit reports.

**Table 14.2: Fees to ACT Audit Solutions & PKF (Pretoria)**

<b>Public Company</b>	<b>2006</b>	<b>2007</b>
<b>Properties sold</b>		
Centurion Office Park Holdings	71 172	72 536
Clubview Holdings	24 174	24 000
Tyger Valley Omniplace Holdings	77 255	
Van Riebeeckshof Holdings	51 967	56 710
St Georges Square Holdings	55 112	35 454
Olive Wood Holdings	50 716	
The Bluff Holdings	61 895	
C-Max Holdings	48 892	
Comarao Crossing	53 526	8 504
Montana Crossing Holdings	Nil	27 873
Davenport Square Holdings*	35 432	69 750
Northpark Mall Holdings	Nil	27 930
Midway Mews Holdings	2 702	27 775
<b>Properties not sold</b>		
Centurion Hazel Holdings	30 112	24 000
Oxford Gate Holdings	21 174	
The Village Holdings	30 832	75 649
Witbank Highveld Holdings	19 000	13 473
Tarentaal Centre Holdings	19 000	13 473
Magalieskruin Holdings	19 000	16 750
Flora Centre Holdings	19 000	17 059
Silverwater Crossing Centre Holdings	Nil	57 250
Waterglen Shopping Centre Holdings	Nil	27 075
Carletonville Centre Holdings		Nil
De Marionette Centre Holdings		16 750
Canterbury Crossing Holdings		25 186
Athlone Park Shopping Centre		Nil
Shopmakers Village Holdings		3 500

ACT Audit Solutions
PKF (Pretoria)

The failure to disclose audit remuneration is a contravention of section 283 (2) of the Companies Act. In respect of the various audits undertaken by ACT Audit Solutions the various syndication companies did not distinguish between



remuneration for the audit and remuneration for other specified services, again a contravention of the Act.

Some of the fees charged by ACT Audit Solutions (table 14.2) were so much lower than that charged by PwC that questions may very well be asked about the depth of the audit.

This is a bit of historic irony because the issues related to section 283 (2) had been raised on various occasions by Prof. Herman de Jager (not related to Venter de Jager mentioned earlier) and his colleague Prof. Dieter Gloeck of the University of Pretoria. One of their comprehensive research reports on this topic was published in 1997. The report focused on the Financial Mail Top 300 companies.<sup>35</sup>

One of Gloeck's key findings was that among the companies surveyed only 14% fully adhered to the requirements of the Companies Act with regard to the disclosure of remuneration paid to the auditor.<sup>36</sup>

"The most common reason for non-adherence stems from the fact that other services provided by auditors are not specified and the practice is not to show amounts paid under separate headings... ..this information is vital to assessing auditors' independence and the companies' reliance on outsiders (the auditor) to provide certain services."<sup>37</sup>

Although no payments for "other services" are disclosed by Sharemax syndication companies being audited by ACT Solutions, it is common cause that ACT Solutions continue to provide "other services" to Sharemax as promoter.

One of these "other services" is to act as expert witness for Sharemax in its court case against me. In that respect ACT Audit Solutions director Jacques van der Merwe prepared an expert witness statement<sup>38</sup> where key aspects of the business model were defended. I do not wish to interfere with his evidence, but the question has to be asked whether

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<sup>35</sup> Gloeck, Prof. Dieter. *The disclosure of remunerations paid to the external auditor by listed companies*. University of Pretoria Research Series No. 14 (1997).

<sup>36</sup> Ibid, p. 38

<sup>37</sup> Ibid

<sup>38</sup> Transvaal Provincial Division of the High Court. *Sharemax Investments (Pty) Ltd vs Deon Basson*. Case number 2492/2005. *Expert summary – rule 36 (9)(b) – Jacques van der Merwe*, 31 March 2008

his various audit reports have not been influenced by the stance he took in an earlier report dealing with the same issues.<sup>39</sup>

In this earlier impromptu report his defense of cash flow shortfall funds as making “good business sense”<sup>40</sup> is interesting in view of the fact that Waterglen Shopping Centre had already exhausted these funds within 18 months although they were supposed to be used over a period of 4 years.<sup>41</sup>

Nothing is said about this exhaustion in the financial statements. Neither does the audit report nor Van der Merwe’s later “expert witness” statement say anything about the future funding of interest payments in the light of the exhaustion of the cash flow shortfall fund.<sup>42</sup>

These shenanigans create the uneasy feeling that, at least in the murky world of unlisted investments, the new Audit Profession Act<sup>43</sup> has not achieved the desired impact to ensure independence. Globally<sup>44</sup> and here in South Africa<sup>45</sup> the audit profession went through a crisis where lack of sufficient independence lead to various major fall-outs.

Certainly legislation is an integral ingredient of the recipe to enforce auditor independence. Of at least equal importance is the need for a cultural revolution to change deep-rooted historical beliefs and practices. Understanding history is an integral part of finding a solution and to that end it is useful to record the saga involving two Tukkies professors and certain audit profession moguls in 1997.

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<sup>39</sup> ACT Audit Solutions. *Report from the independent auditors to the directors of Sharemax Investments (Pty) Ltd*, 6 November 2006

<sup>40</sup> Van der Merwe, op cit, par. 15.14

<sup>41</sup> See annexure 12

<sup>42</sup> Financial statements of Waterglen Shopping Centre Holdings, 2007

<sup>43</sup> Act 26 of 2005

<sup>44</sup> Prof. Prem Sikka is a prolific researcher and author about the audit profession. Consult his curriculum vitae for his impressive list of publications at

<http://www.essex.ac.uk/AFM/staff/PremSikkaCVMay2008.pdf>

<sup>45</sup> See Basson, Deon. *Non-audit services: How it affects the independence of the auditor*. Auditing SA, Summer 2004/2005 [http://www.saiga.co.za/documents/publications/summer2004/03\\_Deon\\_Basson.pdf](http://www.saiga.co.za/documents/publications/summer2004/03_Deon_Basson.pdf)

See annexure 15

In essence the saga hinged on two divergent value systems, with the University of Pretoria unwittingly providing the battleground. On the one side auditing professors Herman de Jager and Dieter Gloeck made a choice for open debate, freedom of expression and support for the public interest. The organized auditing profession, through certain individuals, acted in a manner suggesting opposition to the values professed by De Jager and Gloeck, and favouring censorship and the self-interest of the profession.

Not too long afterwards this mindset exploded in the faces of the profession internationally and in South Africa, as various major audit failures became public knowledge.<sup>46</sup>

The trigger for the 1997 confrontation was the publication of the 12th draft of the proposed *Accountancy Profession Act* which was issued by the Public Accountants' and Auditors' Board (PAAB). The deadline for comments was set for 7 February 1997.<sup>47</sup>

Gloeck had completed his doctoral thesis<sup>48</sup> in 1993 at the age of 37. His doctoral research gave impetus to further research and, together with De Jager and at times other colleagues, various critical research reports were published.<sup>49</sup>

This angered the profession and led to some fierce debates between SAICA and the two professors. A SAICA press release labeling one of their reports as "grossly misleading", "unrepentant", "underplaying important aspects", "clearly ridiculous" and "highly misleading" led De Jager and Gloeck to the following conclusion:

"Against the above background and in the context of the correspondence and remark made, we submit that the actions by the person (s) responsible for

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<sup>46</sup>See notes 44 and 45 above

<sup>47</sup>De Jager Prof. Herman & Gloeck Prof. Dieter. *Synopsis of events – Actions by the Public Accountants' and Auditors' Board and The South African Institute of Chartered Accountants*. Pretoria, 21 November 1997, p. 2

<sup>48</sup>Gloeck, Prof. Dieter. *Die verwagtingsgap ten opsigte van die ouditeursprofessie in die Republiek van Suid-Afrika*. Universiteit van Pretoria, 1993. (Translation: *The audit expectation gap in the Republic of South Africa*)

<sup>49</sup>See bibliography. In 1993 the two professors published a report *The audit expectation gap in the Republic of South Africa*,. School of Accountancy Research Series Research Report 93 (1).which invoked quite a response in the auditing fraternity.

issuing the press release and the actions of the President of the South African Institute of Chartered Accountants, in particular, are contrary to the Institute's own constitution, biased, and not in the public interest."<sup>50</sup>

This prelude was a Sunday School picnic compared to what was to follow. Considering academic freedom, freedom of expression as enshrined in section 16 of the Constitution of the Republic of South Africa, and De Jager and Gloeck's longstanding commitment to in depth research, the two Tukkies professors were well qualified to make a contribution to the debate concerning the proposed *Accountancy Profession Act*.

Their wide-ranging comments were published in a report<sup>51</sup> and sent by courier to PAAB during the first week of February 1997.<sup>52</sup>

The two professors didn't mince their words and they were to reverberate through the events that followed: "The knowledge base of accounting and the claims to expertise of its practitioners have increasingly been shaped outside of the law. The process is generally referred to as the system of self-regulation. The proposed *Accountancy Profession Act* in its current form seeks the ultimate form of self-regulation and takes the concept, which is currently under world-wide scrutiny and criticism, to new heights."<sup>53</sup>

"It seems as if the proposed *Accounting Profession Act* disregards world-wide trends of increased accountability and a reassessment of certain aspects of self-regulation. This is particularly applicable to the external audit function... ..it is regrettable that the proposed *Accountancy Profession Act* marginalizes the audit function. This is a very disturbing aspect."<sup>54</sup>

The report emphasized that the investment community and users of auditing services had expressed concerns that

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<sup>50</sup> Letter from Proff. Dieter Gloeck & Herman de Jager to Ken Mockler, executive director of SAICA, 17 May 1994

<sup>51</sup> Gloeck, Prof. Dieter & De Jager, Prof. Herman. *Comments on the Proposed Accountancy Profession Act which is to supersede the current Public Accountants' and Auditors' Act*. University of Pretoria. Research Series No. 16 (1997).

<sup>52</sup> Synopsis, op cit, p. 2

<sup>53</sup> Accountancy Profession Act, op cit, p. 8

<sup>54</sup> Ibid

auditors were not meeting the reasonable needs and demands of society. The historic disasters at Supreme Holdings, Prima Bank, Crulife, IGI Insurance, Masterbond, Tollgate, Nedbank, TrustBank, Alpha Bank, Pretoria Bank, Sechold, Cape Investments Bank, Milly's NEI Africa, Drop Inn, Bankorp, Unidev, Furngro, Brokers and Kofkor were cited as examples.<sup>55</sup>

"If the audit profession is to successfully justify its exclusive position, enacted in the statutory monopoly, it will have to respond more accommodatingly to the needs of society which actually grants the auditors their exclusive privileges."<sup>56</sup>

Two years later the views of the two Tukkies professors were amplified in an international context by Prof. Prem Sikka and John Dunn:

"The auditing industry is the private police force of capitalism. It is hired, fired and paid by company management, the very people it is supposed to invigilate. Auditors enjoy more rights than the police...Yet auditors prefer 'silence' and easy fees. As stakeholders in BCCI, Maxwell, Polly Peck and other scandals discovered auditors issue meaningless audit reports..."<sup>57</sup>

Gloeck and De Jager also criticized the fact that the draft Act didn't subject the provisions relating the reporting of material irregularities by auditors to candid scrutiny and fundamental analysis. Overlooking this aspect "raises concerns about the sincerity of the profession to act in the public interest."<sup>58</sup>

Then the report comprehensively addressed the controversial issue of so-called 'other services' provided by auditors and concluded: "There is no other satisfactory alternative but to prohibit the auditor from abetting the management of the companies that she/he audits. The proposed *Accountancy Profession Act* must address this

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<sup>55</sup>Ibid, pp. 16-17

<sup>56</sup> Ibid, p. 17

<sup>57</sup> Dunn, John and Sikka, Prem. *Auditors: Keeping the public in the dark*. Association for Accountancy & Business Affairs. Essex, 1999, p. 2 <http://visar.csustan.edu/aaba/dunn&Sikka.pdf> retrieved on 23 April 2007

<sup>58</sup> Ibid, p. 19

matter comprehensively as the current provisions are also seemingly contradicting the existing *Companies Act* requirements (section 275).<sup>59</sup>

Sikka and Dunn highlighted the same issue two years later:

"In addition, using audit as a market stall from which other services are sold also compromises auditor independence. The present auditors are expected to serve company directors, shareholders, creditors, state regulators (e.g. banks) whilst also simultaneously pursuing their narrow economic interest. The consequences are failure and 'silence'.<sup>60</sup>

Once released, De Jager and Gloeck's report became a matter of public record and as such various financial publications followed the story with articles in *Sake-Beeld*, *Finansies & Tegniek*, *F&T Weekly* and *Business Report*.<sup>61</sup>

The fat was now in the fire. Soon after its publication Lucas van Vuuren, executive director of PAAB, and a mysterious third party who's name has to this day not been disclosed, visited Prof. Johan van Zyl, rector of the University of Pretoria, to lodge their complaints.<sup>62</sup>

Van Zyl later<sup>63</sup> informed de Jager and Gloeck that PAAB had been angered by their report and had mentioned the possibility of legal action against the University of Pretoria. They also raised the issue of the wide distribution of research findings and ongoing research<sup>64</sup> which indicated that registered accountants and auditors were not adhering to auditing standards and certain sections of the *Companies Act*. Van Vuuren also stated that De Jager and Gloeck stood alone in their criticism of the proposed Act.<sup>65</sup>

Van Zyl told De Jager and Gloeck that he had asked Van Vuuren and the mysterious third party to submit their complaints in writing. Gloeck insisted that he wished to

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<sup>59</sup> Ibid, p. 31

<sup>60</sup> Sikka & Dunn, op cit, p. 58

<sup>61</sup> Synopsis, op cit, p. 2

<sup>62</sup> Ibid

<sup>63</sup> On 6 March 1997

<sup>64</sup> *The disclosure of remuneration paid to the external auditor by listed companies*, op cit

<sup>65</sup> Synopsis, op cit, p. 3

know who the mysterious person was but no clear answer has been forthcoming until this day.

In the meantime Gloeck and De Jager had arranged a meeting in Cape Town with Gill Marcus, Deputy-Minister of Finance, where she sought their assistance regarding aspects related to the proposed Act.<sup>66</sup>

Subsequently Marcus voiced her dissatisfaction with proposed legislation designed to regulate the accounting and auditing professions in Parliament. She wanted accountants and auditors to play a greater enforcement role to prevent financial irregularities and fraud.<sup>67</sup>

Marcus further indicated that she was not satisfied with the approach adopted in the proposed Act and said she wanted the accounting and auditing professions to have a "much higher profile".<sup>68</sup>

Later in the same week Gloeck requested from Van Vuuren details of his complaint to Van Zyl during their meeting of 17 February 1997.<sup>69</sup>

Van Vuuren replied: "I regard any discussions I have had with the rector of your university in my capacity as a representative of the Public Accountants' and Auditors' Board or in any other capacity as confidential."<sup>70</sup>

"I am sure that the rector would have related the details of our discussions if he had deemed it necessary."<sup>71</sup>

The next day Gloeck pointed out to Van Zyl that Van Vuuren had failed to present him (Van Zyl) with any concrete facts or written representations which clearly set out his complaint or 'problem'. "In the absence of any such commitment on his part, I can only conclude that his visit was a blatant attempt to silence critical independent voices which are based on objective reasoning, research and analysis."<sup>72</sup>

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<sup>66</sup> Letter from Prof. Dieter Gloeck to Prof. Johan van Zyl, rector of the University of Pretoria, 9 June 1997

<sup>67</sup> Ensor, Linda. *Marcus unhappy with accountancy proposals*. Business Day, 6 June 1997, p. 2

<sup>68</sup> Ibid

<sup>69</sup> Letter from Prof. Dieter Gloeck to Lucas van Vuuren, executive director of PAAB, 6 June 1997

<sup>70</sup> Letter from Lucas van Vuuren, executive director of PAAB to Prof. Dieter Gloeck, 8 July 1997

<sup>71</sup> Ibid

<sup>72</sup> Letter from Prof. Dieter Gloeck to Prof. Johan van Zyl, 9 June 1997

"Such actions bear close resemblance to tactics which were often employed in our pre-democratic society. They certainly do not support claims of open and inclusive processes..."<sup>73</sup>

Van Zyl requested Kobus Scheepers, a seemingly independent person, to investigate Van Vuuren's complaints. Scheepers retired from PricewaterhouseCoopers in 1999 after having been a partner for 30 years. He was also a member of PAAB's board from 1988 to 1993, including a stint as chairman in 1992.<sup>74</sup> During that time Van Vuuren was his executive director. In that sense his status as an independent investigator is debatable.

He later reported back on a letterhead of Coopers & Lybrand that the 'person' who raised his concerns (seemingly Van Vuuren) "was not prepared to formulate a charge".<sup>75</sup> Logically speaking his investigation could or should for that reason not go any further. Nevertheless, his brief report rambled on and he passed a number of vague comments that could quite easily be misinterpreted.

One of these was that, due to the circumstances, an 'emotional condition' had developed. However, he didn't identify the emotional party or parties. He also mentioned "personality clashes" without identifying the "personalities" involved in or responsible for such clashes.<sup>76</sup>

He went ahead: "It is to be believed that the methodology of the research cannot easily be questioned. It will require comprehensive investigation by experts... ..rather than to question the methodology it would appear that the interpretation and the way in which it is communicated give rise to concern... ..the 'allegation *may* (author's emphasis) be made' that the 'person' [without saying exactly who – was it Gloeck, de Jager, both of them or perhaps Chuck Norris?] is acting unprofessionally when interpreting and

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<sup>73</sup> Ibid

<sup>74</sup> Case number 3208/2006, op cit, *Curriculum vitae of JFJ (Kobus) Scheepers*. Paginated papers, p. 222

<sup>75</sup> Letter from Kobus Scheepers on letterhead of Coopers & Lybrand to Prof. Johan van Zyl, 26 June 1997

<sup>76</sup> Ibid



communicating the research. If so, it is a matter to be dealt with by the professional association (s)."<sup>77</sup>

It's an historic co-incidence (some would say a predisposition) that Scheepers later became the chairman of Sharemax's audit committee. In court papers Sharemax MD Willie Botha stated:

"...the applicant (Sharemax) and the entities concerned with each syndication are also *assisted* (author's emphasis)<sup>78</sup> by auditors *including* (author's emphasis) an *independent* (author's emphasis) audit committee which is chaired by Mr Scheepers."<sup>79</sup>

At the time of Botha's affidavit Scheepers' old firm PwC had just resigned as auditors of various Sharemax syndication companies. As part of discovery proceedings I'd asked for Scheepers' letter of appointment and/or engagement and/or agreement with him as chairman of the audit committee.<sup>80</sup>

Botha stated that no such document existed,<sup>81</sup> which is a bit odd for someone of Scheepers' background and experience.

Neither did letters of appointment for other members of the audit committee exist<sup>82</sup> (their names are unknown to me).

Surprisingly, the audit committee has kept no minutes.<sup>83</sup>

According to Botha, Scheepers has not 'formally' resigned. The next audit committee meeting was to have taken place in June 2008.<sup>84</sup>

But let's go back to history-in-the-making on the Tukkies campus. Van Zyl informed Gloeck only a month later that the 'committee' found that his research was not under question and that the basis for a complaint is 'clearly unfounded'.

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<sup>77</sup> Ibid

<sup>78</sup> It's unclear whether '*assisted*' refers to the respective audits or 'other services' rendered.

<sup>79</sup> Case number 3208/2006, op cit, Willie Botha's founding affidavit, 1 February 2006, par. 18. Paged papers, p. 16

<sup>80</sup> Transvaal Provincial Division of the High Court. Case number 2492/2006. Sharemax Investments (Pty) Ltd vs Deon Basson. *Notice by defendant in terms of rule 35 (3)*, 18 February 2008, par. 23.1

<sup>81</sup> Ibid. *Plaintiff's reply under rule 35 (3)*, 27 March 2008, par. 76.

<sup>82</sup> Ibid, par. 77

<sup>83</sup> Ibid, par. 78

<sup>84</sup> Ibid, par. 79

"I am delighted that we could bring this matter to finality and that your name has been cleared. I will convey this to the persons [plural] who complained in the first instance." (the second complaining party of course remained a mystery).

With storm clouds gathering about the audit profession, the research of the two Tukkies professors had caught the attention of the Nel Commission who was investigating the collapse of Masterbond. Gloeck was called as an expert witness.<sup>85</sup>

A few days later Gloeck was informed by the Nel Commission that PAAB had requested a copy of his testimony.<sup>86</sup> Asking for the evidence in itself was not strange. But the Nel Commission had by then been operational for three years and had heard shocking evidence about the role auditors had played, without PAAB taking any interest in what was happening there.

The transcribed version of Gloeck's evidence<sup>87</sup> ran into 47 pages and covered a wide range of topics. Several research reports (some mentioned above) and his doctoral thesis were handed in as evidence. During his evidence the 'other services' provided by audit firms featured strongly and Gloeck was asked whether providing these would compromise an audit firm's independence. Gloeck replied:

"...If the auditor renders other services or wishes to render other services, and he makes a presentation of how well he can do that, and you know, in terms of normal practices auditors or firms are requested to make presentations as to the extent and the expertise and so they have to convince management that they are the correct or the proper persons to be appointed. If that would happen in the morning, at any specific day and the auditor would be told look, this afternoon we will decide on this, the board will decide on this and we will let you know tomorrow, the auditor might in the afternoon find something during the course of his audit, that involves fraud in management. I cannot see how the auditor can keep an independent mind, knowing that the board who is now supposed to tell about their fraudulent activities, how he can do that, knowing that the board will also sit and decide upon whether to grant their special job for him or not. So I think the indications are that the auditor

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<sup>85</sup> Synopsis, op cit, p. 3. Prof. Gloeck testified on Thursday 5 June 1997 before the Nel Commission.

<sup>86</sup> Ibid, p.4

<sup>87</sup> Nel Commission of Inquiry into the Masterbond Group. *Evidence of Prof. J.D. Gloeck*, 5 June 1997, pp. 11747-11793

would be under tremendous pressure there to compromise some of the – some of his objectivity and independence.”<sup>88</sup>

Shortly after Scheepers made his finding Gloeck published an article in *Business Day*<sup>89</sup> which lifted blood pressure levels in the Bruma based headquarters of PAAB. The article was in essence a synopsis of the issues Gloeck and De Jager had researched through much of their academic lives, and should have contained no surprises for the PAAB.

Having exhausted the option of joining his ghostly accomplice for tea and a discussion with the rector, Van Vuuren wasn't really in a position to set his sights as high as *Die Skip*<sup>90</sup> for a second time in a few months.

Instead, he compromised by writing a letter to Gloeck's colleague Prof. Herman de Jager who was at the time director of the School for Accountancy Training: "You must be aware of this article and informed about its contents. The Board (PAAB) is upset and concerned about the statements and allegations now been [sic] made in the public domain."<sup>91</sup>

Van Vuuren asked De Jager whether his School associated itself with or distanced itself from Gloeck's article. He also wished to know who the chairperson and members of the School's advisory council were.<sup>92</sup> The latter question was loaded. De Jager and Gloeck would soon find out why.

De Jager stressed that research and the publication thereof was an integral part of any academic staff member's job. Academics take responsibility for their own research. They don't publish on behalf of a department or a specific university.<sup>93</sup>

"Therefore your request that the school must either associate or disassociate itself from the article in question is irrelevant."<sup>94</sup>

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<sup>88</sup> Ibid, p. 11760

<sup>89</sup> Gloeck, Prof. Dieter. *Audit industry needs independent probe*. *Business Day*, 16 July 1997, p. 15

<sup>90</sup> *Die Skip* is the administrative headquarters of the University of Pretoria where the rector is based. It is situated in the south-western corner of the campus. The building was built in the shape of a ship.

<sup>91</sup> Letter from Lucas van Vuuren, executive director of PAAB to Prof. Herman de Jager, 23 July 1997

<sup>92</sup> Ibid

<sup>93</sup> Letter from Prof. Herman de Jager to Lucas van Vuuren, 28 July 1997

<sup>94</sup> Ibid

De Jager also addressed Van Vuuren's question relating to the advisory council and pointed out that an advisory panel consisting of several interest groups had been put together. Previously the advisory council had met twice a year and had only consisted of accounting and audit practitioners.<sup>95</sup>

The new panel included representatives of student bodies, education departments, public sector, researchers and publications, information technology and the accounting profession itself.<sup>96</sup>

"If your Board identifies specific problems in the article under question, I will refer it to the division who advises me on the accounting profession..." De Jager also named the persons in question, of which only one was a chartered accountant. Among others the panel included an authority on literature who had previously served on the committee, and who had adjudicated several literature awards.<sup>97</sup>

Now van Vuuren had to show his hand. First he demonstrated his disregard<sup>98</sup> for the School's diversely composed panel: "With the exception of Mr van der Laan the Board (PAAB) has at this stage no basis to talk with the members of your panel."<sup>99</sup> (Van der Laan was the only chartered accountant on the panel).

Slowly PAAB's agenda became transparent: "The National Educational Fund Committee recently met to consider financial allocations to participating universities. In the meantime the Board has indicated that it would like to communicate with the university about matters involving the School. The committee has asked me to inform you that your allocation for 1997 will provisionally not be made until such time that the talks had [sic] taken place."<sup>100</sup>

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<sup>95</sup> Ibid

<sup>96</sup> Ibid

<sup>97</sup> Ibid

<sup>98</sup> Exclusivity and the maintenance of privilege were key features of the proposed Accounting Profession Act. In *Comments on the proposed Accountancy Profession Act*, op cit, p. 21 it is stated: "The accounting establishment (the self-regulators), however, have either marginalized or neglected the fact that accounting and auditing are at least as much distinctive principles of social, political and economic organization as they are technical practices."

<sup>99</sup> Letter from Lucas van Vuuren to Prof. Herman de Jager, 13 August 1997.

<sup>100</sup> Ibid

It seemed as if it was time to organise another tea-party in *Die Skip*: "The Board (PAAB) will officially ask the rector for an appointment and I will keep you updated on the matter."<sup>101</sup>

Earlier Scheepers and Van Zyl had encouraged Gloeck and De Jager to communicate with PAAB and other parties. In line with this Gloeck urged Van Vuuren to formulate the problems he was experiencing. Alternatively he was invited to visit the School and to discuss them with Gloeck and members of the various research teams.<sup>102</sup>

But van Vuuren indeed had his sights on the next tea-party in *Die Skip*: "...this matter has now reached proportions which need to be dealt with by the Board and your rectorate." He blamed attacks on his personal integrity for his unwillingness to talk with researchers<sup>103</sup> although a thorough read of Gloeck's letter couldn't identify any such attack and Van Vuuren didn't reply to an invitation by Gloeck to point out such an attack.

Present at the high-powered tea-party at *Die Skip*<sup>104</sup> were Van Zyl, vice-principle Prof. Chris de Beer, the dean of the faculty of economic and management sciences, Prof. Chris Thornhill, the chairman of PAAB, Herman Wessels, Van Vuuren and De Jager. Gloeck was not invited for tea.<sup>105</sup> Van Vuuren's secret accomplice during the previous meeting was not invited either.

PAAB reiterated its earlier threat of legal action against the University of Pretoria and/or individual researchers. The question was posed whether the researchers, and in particular Gloeck, would be able to afford law suits running into millions.<sup>106</sup>

PAAB unashamedly advocated censorship and closed society philosophies by stating it was not content with the fact that research reports landed in the hands of financial journalists

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<sup>101</sup> Ibid

<sup>102</sup> Letter from Prof. Dieter Gloeck to Lucas van Vuuren, 7 August 1997

<sup>103</sup> Letter from Lucas van Vuuren to Prof. Dieter Gloeck, 28 August 1997

<sup>104</sup> On 10 September 1997

<sup>105</sup> Synopsis, op cit, p. 5

<sup>106</sup> Ibid

or even cabinet ministers. Gloeck's article in *Business Day* was a case in point and PAAB found such articles totally unacceptable.<sup>107</sup>

More guests attended the next tea-party at *Die Skip* five weeks later. However, it would appear that Van Zyl was not present. The university was represented by De Beer, Thornhill, De Jager and Gloeck. This time the SA Institute of Chartered Accountants (SAICA) was also represented in the person of its deputy executive Graham Terry, with Van Vuuren and Wessels representing PAAB.<sup>108</sup>

SAICA and PAAB were clearly on the same wavelength and intent on curtailing freedom of expression. Terry told the meeting that SAICA members were paying the subventions and since the training of accountants and auditors had been transferred to SAICA, the subventions would shortly become a matter to be dealt with by SAICA directly.<sup>109</sup>

Wessels made the big *Jannie Kruger*<sup>110</sup> statement. According to him PAAB didn't wish to apply censorship, but the 'good name' of the profession needed to be protected and there was therefore a need to 'scrutinise' publications.<sup>111</sup>

Wessels went on to suggest that a committee or something similar, manned by members of PAAB and SAICA be set up and that this committee would review and scrutinize the research reports and certain other publications emanating from the School.<sup>112</sup>

The pinnacle of this attempt to kill off independent thought was the suggestion that researchers should be 'accountable' to the proposed committee. Quite suspiciously, it was suggested by the accounting moguls (PAAB and SAICA) that only publications of the University of Pretoria would be scrutinized.<sup>113</sup>

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<sup>107</sup> Ibid

<sup>108</sup> Ibid, p. 6

<sup>109</sup> Ibid

<sup>110</sup> Jannie Kruger was South Africa's chief censor in the 1970's

<sup>111</sup> Synopsis, op cit, p. 6

<sup>112</sup> Ibid

<sup>113</sup> Ibid, pp. 6-7

Not too long after this last tea-party De Jager requested a set of the rules and regulations of PAAB's National Education Fund (NEFCO). By the end of October 1997 these documents were delivered to the School of Accountancy. The School had had a copy of the rules on record since 1995. The cover pages of both the 1995 and the 1997 documents stated the following:

"These rules and regulations of the National Educational Fund were approved by the Board on 7 August 1995 and replace all previous resolutions regarding the fund."<sup>114</sup>

This clearly created the impression that there were no amendments to the rules after 7 August 1995. Curiously, the '1997 version' had the following paragraph inserted in it:

"Once a department is a participating and subvented department the members of that department will be required to act in such a manner so as to not to bring the profession in disrepute. Where NEFCO is of the opinion that the profession has been brought into disrepute due to actions of such department or members of that department, NEFCO will have the right to withhold any or all such subventions previously agreed."<sup>115</sup>

Shortly afterwards a colleague of de Jager and Gloeck, Prof. Marius Koen, was en route to a conference of the International Federation of Accountants in Paris (26 October 1997). He raised the matter of withholding the subventions with the educational director of PAAB, Ms Chantyl Mulder. She also served on the subvention committee.<sup>116</sup>

Mulder told him that PAAB hoped that by withholding subventions for the whole department this would create peer pressure, resulting in the audit researchers taking a low profile.<sup>117</sup>

Shortly afterwards Gloeck challenged Wessels in a letter: "During the mentioned meeting (16 October 1997) you stated that PAAB received 'numerous complaints' from

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<sup>114</sup> Public Accountants' and Auditors' Board. *National Education Fund – Rules and regulations*, 7 August 1995

<sup>115</sup> Ibid, par. 8.4. It is unclear at what meeting of NEFCO this paragraph had been approved.

<sup>116</sup> Synopsis, op cit, p. 8

<sup>117</sup> Ibid

'members'; that *members* are in fact *rebelling* ('ons lede is in opstand') and that *complaints* ('klagtes") were also received from PAAB's regional societies...<sup>118</sup>

"In view of the above I urge PAAB to make available to me the exact and full details of these complaints, so as to allow me to study them, verify them for correctness, check the accuracy and validity of the evidence presented and to allow me to challenge or to refute them through presentation of evidence, argumentation and, if necessary, to obtain legal advice in respect of allegations/complaints against me."<sup>119</sup>

Later-on in the same letter Gloeck challenged Wessels directly: "...your firm (Coopers & Lybrand) also features in our reports. This fact alone raises the question whether you can be *seen* to be completely independent and objective in your assessment of our research."<sup>120</sup>

Shortly before, in a letter to Marcus, De Jager and Gloeck pointed out that an open climate, free of intimidation and suppression was not prevailing. Their letter followed a PAAB publication entitled *Transformation of the Registered Accountancy Profession* where a consultation process was outlined. Among others it entailed the appointment of a judge of the High Court, a secretariat, public forums and invitations to the public to comment.<sup>121</sup>

De Jager and Gloeck summarized the events of the preceding months, and informed Marcus that they were hesitant to participate in the proposed process in fear of further actions by PAAB and SAICA. They then requested:

"We would therefore be grateful if you, as *patron* of the democratic process proposed in shaping the new Accountancy and Auditing Acts, could provide assurances that participation in the processes will be free of intimidation, restriction, punitive measures and other covert pressures."<sup>122</sup>

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<sup>118</sup> Letter from Prof. Dieter Gloeck to Herman Wessels, chairman of PAAB, 7 November 1997

<sup>119</sup> Ibid

<sup>120</sup> Ibid

<sup>121</sup> Letter from Proff. Herman de Jager and Dieter Gloeck to Gill Marcus, deputy-minister of finance, 5 November 1997

<sup>122</sup> Ibid



Two days later PAAB phoned the School of Accountancy to hold a meeting regarding the subventions. The meeting took place on 12 November. Despite what happened in preceding weeks the School's proposals as to how the subventions should be allocated to individual lecturers was discussed and approved.<sup>123</sup>

Marcus' private secretary Howard Veale replied to Gloeck and De Jager's letter saying that "the deputy minister was most concerned at, what appeared to be, actions most prejudicial to free and open debate and contrary to the interest of the public."<sup>124</sup>

Veale revealed that Marcus had requested that the allegations be investigated by Mr Justice Corbett ( a former chief justice) and Adv. Selby Baqwa.<sup>125</sup> Shortly afterwards the meeting with the parties was arranged for 21 November 1997.<sup>126</sup>

Present at the meeting held at the Financial Services Board (FSB) were Judge Corbett, Adv. Baqwa, Van Vuuren, Wessels, a Mr Waya also from PAAB, De Jager and Gloeck. A Mr Gumede of the FSB kept the minutes.<sup>127</sup>

The minutes were in many ways a summary of events in preceding months. The meeting was nevertheless remarkable because PAAB abandoned its earlier stance to withhold its subvention for the School of Accountancy. Furthermore it was agreed among the parties that "there will not be any hindrance to the free and open presentation of views at the forum."<sup>128</sup>

Further correspondence took place between De Jager and Judge Corbett about an idea being mooted to establish a

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<sup>123</sup> Synopsis, op cit, p. 7

<sup>124</sup> Letter from Howard Veale (private secretary to Gill Marcus) to Proff. Herman de Jager and Dieter Gloeck, 11 November 1997

<sup>125</sup> Ibid

<sup>126</sup> Letter from Howard Veale (private secretary to Gill Marcus) to Proff. Herman de Jager and Dieter Gloeck, 19 November 1997

<sup>127</sup> Report on the meeting [between representatives of PAAB and the School of Accountancy in the presence of Judge MM. Corbett and Adv. S.A. Baqwa] that took place at the premises of the Financial Services Board, Pretoria on 21 November 1997, p. 1

<sup>128</sup> Ibid, p. 6

'gespreksform' or a liaison forum but this became moot because the idea was not really taken forward.

Wessels, in the meantime, chose not to respond to Gloeck's earlier challenge to make available the details of PAAB's complaint: "...further discussions on this matter would serve no purpose and as far as I am concerned the matter is closed."<sup>129</sup>

Subsequently Wessels paid a visit to Gloeck "in order to speak about PAAB members' perceptions created by your articles in the lay press."<sup>130</sup> Wessels told Gloeck that he had sidelined himself and that he would soon not be able to do research in South Africa.

"I can publish my research internationally", Gloeck rebuffed. "Don't be so sure about that, we are everywhere", Wessels warned.

In yet another letter Gloeck pointed Wessels to the report of the Nel Commission which had been published a few weeks earlier:

"The Masterbond report has introduced a new perspective to our opposing viewpoints. No longer can one talk of allegations, incorrect facts and other deterrents. The report is a factually based *verdict* - and an alarming one. Our research until now, only reported the transgressions and non-adherences by auditors; we could not elaborate on why they had been committed. The Masterbond report has changed that and I am sure you have also read the detailed account of the Commission's findings."<sup>131</sup>

Shortly after these events Van Vuuren retired. The School of Accountancy closed at the end of 2001. De Jager became head of the Department of Auditing and Gloeck a professor in the same department.

Gloeck also heads a research unit focusing on auditing and accountability. The department's focus shifted strongly to public sector auditing. Gloeck became President of the Southern African Institute of Government Auditors.

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<sup>129</sup> Letter from Herman Wessels, chairman of PAAB, to Prof. Dieter Gloeck, 26 November 1997

<sup>130</sup> Letter from Herman Wessels to Prof. Dieter Gloeck, 14 December 1997. The meeting took place on 3 December 1997

<sup>131</sup> Letter from Prof. Dieter Gloeck to Herman Wessels, 12 December 1997

Marcus moved to the Reserve Bank as deputy governor but later stepped down and is now chairperson of Absa.

In 2002 Minister of Finance Trevor Manuel told Parliament during his Budget speech:

The issue of corporate governance and in particular the role of the auditing firms has once again dominated the headlines. The Enron debacle has brought into sharp relief a number of key issues – weak or non-existent governance structures, the fiduciary responsibility of directors, negligent and sometimes reckless management, ineffective auditing, independence of auditors and conflicts of interest arising from inadequate separation between auditing and consultancy. Closer to home a number of corporate failures – Macmed, Leisurennet, Regal Treasury, Unifer – to name but a few, have raised a similar set of issues. Many of these weaknesses were highlighted in the Nel Commission's Report. The Minister of Finance has responsibility for the legislation governing the audit profession in South Africa. Last year the National Accountancy and Consultative Forum presented me with a draft Accountancy Professions Bill to replace the existing Public Accounting and Auditors Act of 1991. Having considered the draft legislation and taking account of recent developments both nationally and globally, it is my view that the Bill does not go far enough. Over the coming months we will actively engage with all the role players to ensure that the Bill addresses our country's needs in this regard.<sup>132</sup>

Almost a decade after the squabbles at the University of Pretoria President Thabo Mbeki signed the *Auditing Profession Act*<sup>133</sup> into law. It introduced the new Independent Regulatory Board for Auditors.

Ironically, only a month later, the Consumer Affairs Committee concluded that the withholding of information from consumers in relation to property syndications is an unfair business practice and cannot be justified in the public interest.<sup>134</sup>

As argued earlier, we have seen little action by the auditing profession to protect the public interest in relation to property syndication. Certainly the profession doesn't wish to see another Masterbond. But so far the two pillars that are supposed to protect the public, namely auditors and

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<sup>132</sup> Budget speech, Parliament Minister Trevor Manuel, 20 February 2002, p. 25

<sup>133</sup> Act 26 of 2005. It was signed by Pres. Thabo Mbeki on 12 January 2006.

<sup>134</sup> Consumer Affairs Committee. *Report in terms of section 10 (1) of the Consumer Affairs (Unfair Business Practices) Act, 1988, Report 121*. Government Gazette 28496, p. 12

regulators, have been tame to say the least. How is the third pillar, the so-called fourth estate, performing?