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NORTH WEST PROVINCIAL LEGISLATURE

Office of the Speaker

Legislature Building
Dr. James Moroka Ave
Private Bag X2018
Mmabatho, 2735

Tel: (018) 392 7001
Fax: (018) 392 7166

NEGOTIATING MANDATE [SECTION 5]

TO : HON. T.H. MOFOKENG
CHAIRPERSON OF THE SELECT
COMMITTEE ON JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

NAME OF BILL : LEGAL PRACTICE BILL

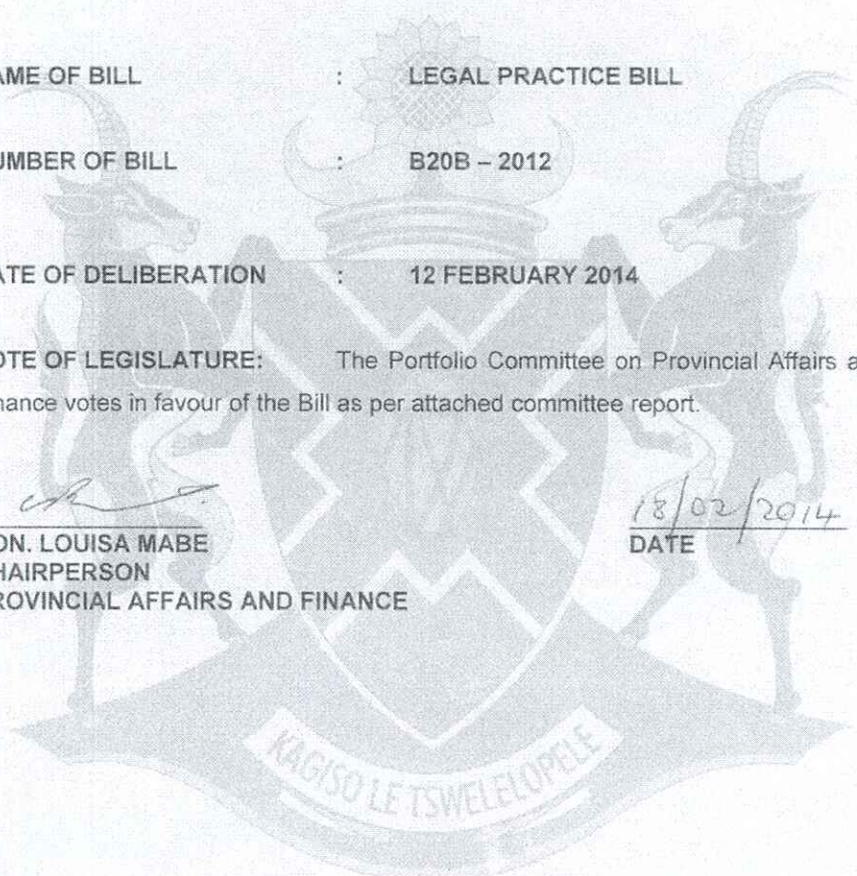
NUMBER OF BILL : B20B – 2012

DATE OF DELIBERATION : 12 FEBRUARY 2014

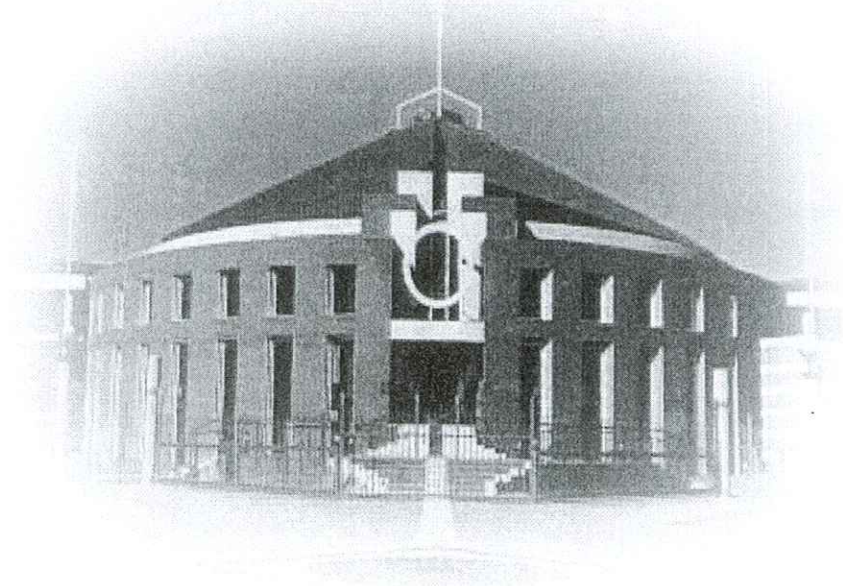
VOTE OF LEGISLATURE: The Portfolio Committee on Provincial Affairs and
Finance votes in favour of the Bill as per attached committee report.


HON. LOUISA MABE
CHAIRPERSON
PROVINCIAL AFFAIRS AND FINANCE

18/02/2014
DATE



NORTH WEST PROVINCIAL LEGISLATURE
PORTFOLIO COMMITTEE ON PROVINCIAL AFFAIRS & FINANCE



**REPORT ON THE
LEGAL PRACTICE BILL
[B20B - 2012]**

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1. INTRODUCTION

On the 04th February 2014, the Portfolio Committee on Provincial Affairs held a public hearing on the Legal Practice Bill whereby the communities from all the districts across the province gathered in the Legislature Chamber to participate on the bill. The stakeholders from legal fraternity were also invited to participate as the bill affects them in one way or the other.

2. BACKGROUND

The Legal Practice Bill has been in Parliament since May 2012 and was approved by the National Assembly in November 2013. The bill was referred to National Council of Provinces for in-depth deliberations by all nine provincial legislatures in terms of section 76 of the Constitution.

3. PURPOSE OF THE BILL

The bill seeks to address the following:-

- Rationalise the current fragmented legislative framework in terms of which the former RSA and former homeland laws, still in operation in various parts of the country and will be repealed and replaced by a single statute regulating the profession in its entirety.
- Transform and restructure (democratise) the regulatory bodies in the legal profession by establishing a single national body with Provincial Councils.
- Broaden access to justice by making access to legal services easier in terms of affordability and by enhancing access to legal profession.

- Promote and protect the public interests, establish an office of legal service Ombudsman and make the legal profession more accountable in terms of the disciplining of legal practitioners.

4. PRESENTATION BY THE PORTFOLIO COMMITTEE

In the presentation, the committee presented the bill to the public highlighting the purpose of the bill as indicated above. It was also pointed out that the bill does not bring about the fusion of attorneys and advocates but recognizes the two existing categories of legal practitioners, namely the attorneys and advocates with their own areas of expertise. The bill does not also deal with the paralegals and it has been agreed that these persons will be regulated at a later stage.

Chapter 2 of bill establishes a single **National South African Legal Practice Council** and the objects of the council which includes inter alia, regulation of, and jurisdiction over all legal practitioners (attorneys, advocates, candidates attorneys and pupils). Enhance and maintain the integrity and status of the legal profession and appropriate standards practice and ethical conduct. This includes promoting access to the legal profession and ensuring accessible and sustainable training of law graduates.

Chapter 2, clause 6 indicates the **powers and functions** of the council as well as its composition wherein the council may delegate any of its powers and functions to its committee or provincial councils as per clause 23 which requires the establishment of provincial councils. It also highlight that the council may provide the financial support to organizations providing legal education and training to non-profit organizations and institutions promoting access to justice for poor people.

The **composition of the council** will consist of 16 legal practitioners, 10 practicing attorneys and 6 practicing advocates and will report to the Minister on its activities with particular reference to measures to enhance access to justice. Two (2) legal academics designated by law faculties and three (3) persons designated by the Minister who may not be public servants or persons with party-political affiliations who can bring expertise and experience relating to the objects

of the bill and one (1) person from Legal Aid SA as well as one (1) person designated by the Board of the Fidelity Fund, the latter responsible for the financial implications arising from the implementation of the bill also constitutes the members of the council.

The Minister has the power to dissolve the council if it becomes dysfunctional but only if the authority of an order of the High Court after the Ombudsman has investigated the circumstances giving rise to the dysfunctionality.

At least four (4) the provincial councils must be increased progressively as funds and capacity become available. **Representation** of legal practitioners on these provincial councils is in proportion to the number of attorneys and advocates practicing in each of the provinces in question.

Chapter 3 requires all persons who wish to practice as legal practitioners to be admitted by the High Court, as is currently the position. In terms of the **criteria** in order to get admission, before being admitted by the court, aspirant legal practitioners must comply with certain criteria i.e. at least an LLB degree obtained in South African University, completed vocational training and served community service as part of the vocational training and passed admission exam, either for attorneys or advocates.

With regard to the **regulation of legal practitioners**, admitted attorneys and advocates can practise throughout the country and must, as it is the case at present, have been practising as such for at least three (3) years before they can get the right to appear in the superior courts and they must apply at the high court for a certificate to get such right. Clause 33 provides that no person other than a legal practitioner who has been admitted and enrolled as such may, in expectation of any fee, commission, gain or reward:- appear in any court of law or before any board, tribunal or similar institution in which only legal practitioners are entitled to appear.

The bill is premised on the general rule that advocates must take briefs from attorneys and it also allows them to take briefs directly from the members of the public but in the public interest, only if they are in possession of a **Fidelity Fund certificate**, and if they operate their practices with trust account as required by

attorneys. Advocates must decide whether they wish to practice with or without fidelity fund certificate and they will be enrolled accordingly. This is a significant departure from the current position and hopefully it will contribute positively to cutting legal fees.

When determining fees, the Rules Board must take into account a number of factors such as the complexity of the matter at hand and the seniority and experience of the legal practitioner involved as well as the amount of work involved which includes the financial implications. In terms of the bill, the legal practitioners will be required to give their clients upfront cost estimates for legal services required and the cost must include the processes involved and mention the client's right to negotiate the fees. Failure to comply with this by the legal practitioners constitutes misconduct and allows the client to refuse to pay until the matter has been resolved by the Council.

With regard to **professional conduct and discipline**, Chapter 4 requires the Council to compile a code of conduct for all legal practitioners and candidate legal practitioners recognizing the difference between attorneys and advocates. Three different structures are established by the Council to deal with the matters of professional conduct and discipline, namely:-

- 1) **Investigating committees** being the structure which must investigate complaints against lawyers and make recommendations to the Council on whether to proceed with the matter or reject the complaint.
- 2) **Disciplinary Committees** being the structure which must adjudicate on matters that the investigating committees recommend be taken further on the basis of available evidence and
- 3) **Appeal Tribunals** being the structure to which legal practitioners or complainants who are aggrieved by the outcome of an investigating committee or a disciplinary committee can appeal. These structures do not preclude the intervention of the High Court in serious allegations.

In order to enhance transparency and accountability, all disciplinary committee and appeal tribunal proceedings must be held in public and the following must be made public:- the allegations being dealt with, the members of the disciplinary

committees and appeal tribunal, legal practitioners involved and the outcome of the proceedings including any sanctions imposed.

Chapter 5 of the bill provides for the establishment of an **Office of Legal Service Ombudsman** and indicates that Ombudsman must be a judge discharged from active service and holds office for seven years which is renewable once.

The Ombudsman will protect and promote the public interest in relation to the rendering of legal services and ensure the proper investigation and disposal of complaints against legal practitioners as well as promoting high standards of integrity in the profession. However, the Ombudsman will not have decision-making powers but recommendatory powers, similar to those of the Public Protector.

Chapter 10 of the bill provides for the establishment of **National Forum** which its mandate is to deliberate and make recommendations on a number of aspects that still require resolving and in respect of which there has been no consensus. Among other things, National Forum must negotiate and reach an agreement with the existing provincial and homeland statutory law societies in respect of the transfer of assets, liabilities, rights, obligations and staff to either the Council or Provincial Councils. In terms of chapter 10 of the bill, the existing legal practitioners will be deemed to have been admitted and enrolled under the bill and advocates with senior counsel status will retain this status although the bill is silent on the future conferment of this status, pending the eventual outcome of litigation in this regard.

5. INPUTS BY THE NORTH WEST ATTORNEYS COUNCIL

North West Attorneys council raised the following concerns pertaining to the bill:-

- The practical implication of the implementation of clause 35 of the bill in context of small law firms. In this instance reference was made to matters relating to divorce cases and conveyancing cases, whereby legal practitioners will have a challenge in giving verbal cost estimate to the client as required in terms of clause 35 (7).
- The council also raised a concern regarding the power given to the Minister in terms of chapter 9 of the bill regarding making of the

regulations that seek to cap the fees that may be charged by the legal practitioners. Their motivation in this regard being that, it will drive the small law firms out of business.

For further details, the submission by the council is hereby attached and bears the heading "North West Attorney's Council representation to the NCOP on the Legal Practice Bill".

6. INPUTS BY THE GENERAL COUNCIL OF BAR OF SOUTH AFRICA (GCB)

- Before the provisions of the bill are considered individually, it is essential to consider and contextualise the interaction between regulation, governance, independence of the profession, unity, and the specialised roles of attorneys and advocates respectively.
- Due to the falsification of foreign degree certificates, courts in certain instances have refused to admit persons who allegedly had a law degree obtained in a foreign countries and recognised by the South African Qualification Authority. This provision therefore ought to be reconsidered.

For further details, the submission by the council is hereby attached and bears the heading "GCB Submissions to the National Council of Provinces February 2014".

7. INPUT BY THE BLACK LAWYERS ASSOCIATION (BLA)

- The BLA submitted that, it was in support of the Bill.

8. INPUTS BY THE COMMUNITIES

The communities welcomed the bill and indicated that, it is long overdue as there is a need for the legal practitioners in legal fraternity to make their profession accessible to the members of the public which in most cases is not easily accessed due to high costs. They further indicated that members of the public need to be educated on their rights as they are always taken from pillar to post without getting the assistance they need from the legal practitioners, particularly in the mining sector.

9. RECOMMENDATION OF THE PORTFOLIO COMMITTEE

The North West Provincial Legislature is in support of the bill.

10. CONCLUSION

The committee concludes that the House approve the passing of the Legal Practice Bill [B20B-2012].



HON. L. MABE
CHAIRPERSON: PROVINCIAL AFFAIRS & FINANCE

18/02/2014
DATE

