



Established in 1977

## OFFICE OF THE PRESIDENT BLACK LAWYERS ASSOCIATION

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# BLA SUBMISSIONS TO THE PORTFOLIO COMMITTEE OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT ON THE LEGAL PRACTICE BILL

## INTRODUCTION

The Black Lawyers Association has been invited to make its own contribution regarding the bill. In its quest to do so, the BLA has consulted broadly within its own members and other ordinary stake holders who are or may be affected by the bill. In its own general meeting held at Nelspruit in May 2012, the BLA took certain resolutions which in turn guided this submission.

As it is commonly known, the BLA is a component structure of the Law Society of South Africa and is also a component of all the Provincial Law Societies.

The Legal Practice Bill was discussed in all the five structures in which the BLA is a member and there was indeed adequate consensus on a majority of issues.

As a result, this separate submission is not an indication of some unhappiness with the process followed at the Law Society of South Africa (hereinafter called the "LSSA").

This submission is aimed at addressing issues in which the BLA holds a different opinion on certain salient issues, which as the BLA believes, are very important given the historical background within which the Bill is formulated.

Other views, which the organisation is in contrast with certain components within the "LSSA", will be elaborated upon during the latter's submissions to the committee.

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**National Executive Council:** Mr. Pritzman Busani Mabunda (President), Mrs. Hlaleleni Kathleen Matolo-Dlepu (Deputy President), Mrs. Nonduduzo Samukelisiwe Kheswa (General Secretary), Mr. Lutendo Benedict Sigogo (Deputy Secretary General), Mrs. Martha Nolubabalo Mbhele (Treasurer), Mr. Sithembele Lawrence Mgxaji (Additional Member), Mr. Thulani M.N Kgomo (Additional Member), Mr. Nano Matlala (Ex officio Past President)

## **SPECIFIC ISSUES**

### **1. REPRESENTATIVITY OF THE CONSTITUENCIES TO THE STRUCTURES.**

Composition of the Transitional Council, the Legal Practice Council, Regional Councils and all Committees which may be formed thereafter should mirror or reflect the demographics of the country. Further to the requirements of race, gender and disability as provided for under Section 7(2)(b) of the Bill, BLA is of the firm view that age must also be a relevant requirement to be considered.

#### **1.1 Regional Councils (Section 23)**

- 1.1.1 It is submitted that the number of the Regional Councils must be informed by the powers of the Regional Councils, which powers must be defined and or formulated by the Transitional Council;
- 1.1.2 The costs of running the Regional Councils should as well be taken into account;
- 1.1.3 The Minister, in determining the areas of jurisdiction of the Regional Councils in consultation with the Council, must be guided by the number of the Provinces at the time of establishment of the Regional Council; and



- 1.1.4 BLA recommends that the current number of Provinces should be followed so that each Province should have a Regional Council.

## 1.2 Powers of the Minister (Section 14)

- 1.2.1 BLA endorses and supports the powers of the Minister to dissolve the Legal Practice Council as contemplated under Section 14 of the Bill and that such powers must extend to the Transitional Council;
- 1.2.2 The guidelines for the exercise of these powers must, however, properly be defined in the Act or under the Rules;
- 1.2.3 BLA welcomes the *audi alteram partem* Rule as proposed under paragraph (c) of Subsection (2) and Subsection (3) of this Section ;
- 1.2.4 BLA is of the view that a period of up to 21 days for the appointment of an interim Council is too long a period for the profession to operate without the necessary Council and thus resolved that the interim Council must be appointed within a period of 14 days from the date of the dissolution of the Council; and
- 1.2.5 BLA recommends that the period, to be determined by the Minister, not exceeding 6 months, must not be extended.

### 1.3 Prescription of Community Service (Section 29)

1.3.1 BLA agrees with and supports the principle of Community Service in respect of the Candidate Attorneys and Legal Practitioners;

1.3.2 The guidelines for the requirements for community service in respect of Legal Practitioners must, however, be properly defined in the Act or under the Rules, but such Community service should not recur and should not be a *sine qua non* for the continued registration of a legal practitioner.

1.3.3 BLA holds that when structuring the community service, the Minister must take into account that unlike the Doctors (Medical Practitioners) Legal Practitioners are not, as a matter of fact, funded by the Government for their studies.

### 1.4 Training and Development

1.4.1 It is submitted that the profession should participate/contribute in the formulation of Higher Legal Education curriculum as it is believed that standards and/or relevancy of Legal Education may be compromised; and

1.4.2 It is recommended that Council for Higher Education (CHE) should include Conveyancing and Notary as

substance courses and/or disciplines in the curriculum for the Higher Education Legal Education Level.

## **1.5 Fees (Section 35)**

**1.5.1** BLA does not agree with the capping of Fees charged by Legal Practitioners as proposed under section 35 of the Bill, but market forces should dictate the payable fees; and

**1.5.2** Legal Fees should remain to be determined by agreement between a Legal Practitioner and client, provided same is within the dictates of the Competition Commission and/or not contrary to the public policy.

## **1.6 BBBEE**

**1.6.1** BLA holds that the Legal Services Charter should dictate the Application of BBBEE.

## **1.7 Ministerial Appointees (Section 7(1)(c) and 96(1)(c))**

**1.7.1** BLA supports that the Minister must appoint two and three members to the TC and the LPC, respectively.

## **1.8 Disciplinary Matters**



**1.8.1** BLA believes that there should be transparency, fairness, equity and consistency from Disciplinary Committees nationally.

## **1.9 Consultative Forum (CF)**

**1.9.1** BLA welcomes the proposal that prior to the LPB is passed into law the affected stakeholders should constitute a consultative forum; and BLA undertakes to fully participate in the CF.

## **1.10 Property Transfer (Section 97(2))**

**1.10.1** BLA holds that there should be a proper due diligence conducted in the four (current) Law Societies, as all Assets and Liabilities should be accounted for during the formation of the TC and LPC.

The most contentious issue in the bill, according to some in the Legal Profession is the power of the Minister to appoint two or three representatives in the Transactional Council and Legal Practice Council respectively. Another issue is the power of the Minister to dissolve the Council.

It is our considered view as the BLA that the two provisions are progressive and relevant to the current dispensation.


We have noted the following in particular:

- (i) That the Minister (representing Government) will appoint only two or three people to the Council. It is squarely within his constitutional mandate to protect the rights of the ordinary people within the legal profession. Such appointees will be representing the views of the public.
- (ii) It is also fair to acknowledge that the two or three people are but a fraction of the number of the legal practitioners who will be represented in the Council as such, those Ministerial appointee's will never hold or sway o any process in the Council.
- (iii) As a result, the two or three people will not compromise the independence of the profession given the numbers referred to above.
- (iv) The other critical issue which the bill deals with is the powers of the Minister to dissolve the Council in case it is dysfunctional. To ignore the possibility of the Council at one point becoming dysfunctional will only be a short-sighted decision by those who feel that such will not occur.
- (v)As BLA, we therefore agreed with the proposed powers as we believe that the bill is currently not affording any alternative remedy to such powers should the Council be dysfunctional for one reason or another.
- (vi) In essence, the process to be followed by the Minister before dissolving the Council is fair and democratic.

- (vii) In any event, the right of any interested or affected party to exercise any right, including an application for dissolution of Council is not ousted by the statutory provisions empowering the Minister to dissolve Council. This right is firmly entrenched, especially in our democratic dispensation.
- (viii) When one compares the Legal Practice Bill with the Legal Services Regulation Bill 2011 of the Republic of Ireland, particularly PART 2 of the said bill, it is easy then to appreciate how democratic, fair and reasonable the South African Legal Practice Bill is. We refer specifically to the aforesaid Irish bill in order to compare the two. In order to avoid making this submission voluminous, we refer the interested parties to the said bill.
- (ix) To the extent which the Attorneys Amendment Bill may not be expedited and become law before this Bill becomes law, the amendments relating to the abolition of Venda and Bophuthatswana Law Societies may have to be incorporated and passed through this Bill.

It is therefore our submission that the above issues be interrogated with a clear focus of ensuring that the legal professional remains independent, consumers remains protected and legal development is not stifled.

Dated on this 11th day of February 2013

  
P. B Mabunda - BLA President

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