The Legal Practice Bill – a wake-up call for ordinary attorneys

Kim Hawkey – Editor

The Legal Practice Bill (B20 of 2012) will drastically affect the governance, structure and regulation of the legal profession and, with the currently strong political will to enact the legislation, the Bill is likely to be on our statute books soon.

Yet, to date, the Bill seems to have weighed on the minds of only a relatively small number of members of the legal profession. This is reflected in the dearth of debate and discussion on the draft legislation and the submissions to parliament relating to it. It does not appear that its reach has extended broadly to most of the 20 000-odd attorneys practising in the country, despite many efforts to highlight its magnitude, including by the Law Society of South Africa (LSSA) and its various constituents.

So important is the Bill that the late former Chief Justice Arthur Chaskalson dedicated what was to be his last public speech to concerns he had about the legislation and its potential negative impact on the independence of the profession, and therefore on the judiciary, as well as the rule of law.

While the Justice Portfolio Committee received a number of submissions on the Bill, it appears that only two of these were by law firms – both falling into the category of large firms – and three were by individual attorneys. The many voices of average attorneys – those from small, medium or large firms, those practising in urban or rural areas, those with 500 employees or those with no employees – were missing.

This stance could possibly be due to the view that 'this Bill will never be passed', especially due to the lack of major movement on the draft legislation for over a decade, or it could be that attorneys have what they perceive as more pressing demands on their time and attention.

Whatever the reason, now is the time for individual attorneys in the legal profession to wake up to the reality of the Bill being passed soon – possibly this year, regardless of whether the attorneys' and advocates' branches of the profession reach consensus on its core issues.

During the recent hearings on the Bill by the Justice Portfolio Committee, the committee made it clear that it was less than impressed by the lack of consensus among attorneys and advocates on the Bill and emphasised that it would not tolerate any further unnecessary delays in the passage of the legislation. However, it added that it welcomed further submissions and engagement on the Bill by all who may be impacted by its provisions. But, if those affected do not come to the fore, parliament will step in and legislate on their behalf.

During the hearings, committee member John Jeffery remarked that, while having the buy-in of the profession was important, the absence of this would not be allowed to scupper the Bill's progress – it will move forward in 2013. In this regard, he said:

'We would like to produce a Bill that has the support from all sectors of society, not just the legal profession. … The buy-in from the Bar Council, among others, is very important. I think we should give you the opportunity for further engagement. However, we delayed these hearings to give you that opportunity. It did not result in anything. I suspect that the only reason that the small concessions coming at the end of the 15 years is because of the pressure. … We are going to be settling this Bill this year. We would like to be settling it with your support … but we are going to be finalising this Bill. … We are not particularly impressed by the advocates or the attorneys not being able to find each other and we hope you find each other soon, because otherwise we will come up with something for you' (see p 22 and p 38).

Having attended the hearings, one thing is clear – the Justice Portfolio Committee will not abrogate its duty to thoroughly interrogate the Bill, as well as the submissions it receives relating to it.

There are a number of important aspects that require input from members of the profession, not only in respect of questions of independence and transformation, but those relating to practical aspects that will affect the day-to-day practice of practitioners, such as capping of practitioners' fees, with maximum permissible charges; funding the new structures established in terms of the Bill, including the regional councils (which may well increasingly fall on the shoulders of individual practitioners if funding from the Attorneys Fidelity Fund is capped or removed, and practitioners could see their dues increase significantly); forms of legal practice; rendering of community

service; and the lack of provision in the Bill for a unitary body to look after the interests of practitioners. These are but some of the issues that require input from members of the profession. In order to reach a Bill that caters for both the public interest and the interests of the profession, it is essential that ordinary attorneys engage with parliament now – and not take it for granted that their views are being canvassed or to rely on one organisation or another to challenge the legislation once enacted. A fair comment from any court considering such a challenge would be: Where were the voices of individual attorneys during the engagement period afforded? Why did they not stand up when they were given the opportunity to do so?

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