



Human Sciences
Research Council



Development Policy
Research Unit



Sociology of Work
Unit

RESEARCH CONSORTIUM

LAW PROFESSIONALS

**Scarce and critical skills
Research Project**

MARCH 2008

**RESEARCH COMMISSIONED BY
DEPARTMENT OF LABOUR
SOUTH AFRICA**

Research Report

SCARCE AND CRITICAL SKILLS: LAW PROFESSIONALS

Shane Godfrey with Rob Midgley

**Labour and Enterprise Policy Research Group
Institute of Development and Labour Law/Sociology Department
University of Cape Town**

December 2007

TABLE OF CONTENTS

INTRODUCTION: PRIORITISING SCARCE AND CRITICAL SKILLS	4
Background to the research project.....	4
Scarce and critical skills in the legal profession.....	6
Research objectives	8
Research design and methodology	9
Structure of the report	10
THE LEGAL PROFESSION AND LAW PROFESSIONALS IN SOUTH AFRICA.....	11
An outline of the legal profession and its regulatory framework	11
A brief historical background and current policy developments.....	21
The shape of the legal profession post-transformation.....	33
THE SUPPLY OF SKILLED LAW PROFESSIONALS	35
Historical background.....	35
A quantitative analysis of the supply of law professionals	40
Further and specialist legal education and training	56
THE DEMAND FOR LAW PROFESSIONALS.....	61
Employment of law professionals	63
Vacancies in the legal profession	73
SCARCE AND CRITICAL SKILLS IN THE LEGAL PROFESSION	76
Investigating absolute scarcity in the legal profession.....	76
Race and the supply of and demand for law professionals	80
Gender and the supply of and demand for law professionals.....	82
Other perspectives on scarce and critical skills	83
CONCLUSION	87
REFERENCES	89

LIST OF TABLES

Table 1 Advertisements by sector: 2004-2007.....	74
Table 2 Advertisements for law professionals by main occupation	74
Table 3 Advertisements for law professionals by province: 2004-2007	75
Table 4 Experience required in advertisements for law professionals	75
Table 5 Professional occupations in DoJ with high vacancy rates	76

LIST OF FIGURES

Figure 1 First-time first-year registrations for a law degree: 1998-2007	41
Figure 2 First-time, first-year registrations by race: 2003-2007.....	42
Figure 3 Final-year enrolments: 1991-2007	43
Figure 4 Final-year LLB enrolments by race: 2003 and 2007	44
Figure 5 LLB graduates: 1991-2006	44
Figure 6 LLB graduates by race: 2002-2006.....	45
Figure 7 Articles registered: 1991-2006	46
Figure 8 Articles registered by race: 2006	47
Figure 9 Practical Legal Training: Full-time and part-time courses	48
Figure 10 Attendance at School for Legal Practice: 1990-2006.....	48

Figure 11	School for Legal Practice by race: 1999, 2002 and 2006	49
Figure 12	School for Legal Practice by gender: 1998-2006	50
Figure 13	Attorneys admitted: 1999-2006	50
Figure 14	Attorneys admitted by race: 1998-2006	51
Figure 15	Attorneys admitted by gender: 1998-2006	52
Figure 16	Throughput in the pupillage system: 2001, 2003 and 2005	53
Figure 17	Pupils sitting the Bar examination by gender	53
Figure 18	Pupils that passed the Bar examination by race	54
Figure 19	Pupils that failed the Bar examination by race	55
Figure 20	Failures from historically disadvantaged universities	55
Figure 21	Employment of law professionals by main sector	63
Figure 22	Employment of law professionals by main occupation.....	65
Figure 23	Practicing attorneys: 1999-2007	65
Figure 24	Total advocates at Bar Councils: 1994, 2000 and 2006	66
Figure 25	Total advocates at Bar Councils: 2005-2007	66
Figure 26	Employment of law professionals by race: 1996-2005.....	67
Figure 27	Practicing attorneys by race: 2007.....	68
Figure 28	Advocates at Bar Councils by race: 2005-2007	69
Figure 29	Employment of law professionals by gender: 1996-2005	70
Figure 30	Practicing attorneys by gender: 2007	70
Figure 31	Advocates at Bar Councils by gender: 2005-2007.....	71
Figure 32	Employment of law professionals by age: 2005.....	72
Figure 33	The Class of 2000: From registration to admission.....	77
Figure 34	LLB graduates and articles registered: 1991-2006	78
Figure 35	LLB graduates, articles registered and attorneys admitted	79

INTRODUCTION: PRIORITISING SCARCE AND CRITICAL SKILLS

Background to the research project

It is well known that South Africa has a serious skills shortage. The apartheid education and training systems laid the foundation for this shortage. On-going problems in the new education system and the inability of the government to deliver effective solutions, have contributed further to the shortage. The emigration of skilled whites has almost certainly added to it.

In 1998 the government introduced an entirely new skills development dispensation to address the skills backlog. The new dispensation is underpinned by the Skills Development Act (97 of 1998), which enabled the new training infrastructure and institutions, and the Skills Development Levies Act (9 of 1999), which deals with the funding of training. Implementation has been driven by two successive national skills development strategies. However, the new system has experienced numerous 'teething' problems and after almost a decade the skills shortage appears as intractable as ever. The latest macroeconomic growth strategy, the Accelerated and Shared Growth Initiative (Asgisa), has focused attention on the shortage, making its elimination a priority in order to achieve the 6% economic growth rate that it has set as a target for the country in order to halve unemployment and poverty by 2014.¹

A key aspect of the aim to eradicate the skills shortage is to identify and measure what have been variously described as 'scarce', or 'critical', or 'scarce and critical', or 'priority', or 'critically scarce' skills (Umhlaba Skills Services, 2007: 1). The second National Skills Development Strategy (NSDS) for the period 2005 to 2010 accordingly focuses attention on scarce and critical skills. Two of the NSDS's five objectives, each of which has one or more 'levers' and 'success indicators', deal with such skills. The first objective of the NSDS is:

- Prioritising and communicating critical skills for sustainable growth, development and equity.

To achieve this objective Sector Education and Training Authorities (SETAs) are tasked with using their discretionary funds to identify critical skills in their sectors. Skills development bodies at national level will seek to address these critical skills in accordance with projected demand. Furthermore, information on critical skills will be made available to learners and the impact of such information dissemination will be measured to establish the rising entry, completion and placement rate of learners (Department of Labour, 2005: 4-5).

The fourth objective of the NSDS is:

- Assisting designated groups, including new entrants, to participate in accredited work, integrated learning and work-based programmes to acquire critical skills to enter the labour market and self-employment.

The target in this case is for 125 000 unemployed people to be assisted to enter and at least 50% complete programmes leading to basic entry, intermediate and high level scarce skills. The deadline is March 2010 and the impact of such assistance is to be measured. In order to achieve the target SETA discretionary grants will be used to provide funding for learnerships, bursaries, internship and study support to acquire the skills identified as scarce in the relevant sectors. A further aspect of this objective is the intention to assist all learners in critical skills programmes covered by sector agreements from Further Education and Training (FET) and Higher Education and Training (HET) institutions to gain work experience. The aim is for 70% of these learners to find placement in employment or self-employment (Department of Labour, 2005: 12-13).

Before one can identify, measure and tackle scarce and critical skills it is necessary to understand what the terms 'scarce' and 'critical' skills mean. Unfortunately, there has been and still is a great deal of confusion in this regard. The NSDS, for example, uses the terms interchangeably, despite the fact that in 2005 the Department of Labour, in an effort to clarify the meaning of the terms, proposed the following definitions:

- Scarce skill refers to the inability to find suitably qualified and experienced people to fill occupational vacancies either at an *absolute* level of scarcity (no suitable people available) or at a relative level of scarcity (i.e. no suitable equity candidates available or no suitable people available in certain regions); and,
- Critical skill refers to the lack of ability of people to perform to the level of occupational competence required because of gaps in their skills profiles (Umhlaba Skills Services, 2007: 4).

The Department's Draft Framework for Identifying and Monitoring Scarce Skills defines the term 'scarce skills' in much the same way as above. Scarce skills occur in "those occupations in which there is a scarcity of qualified and experienced people – current and anticipated". Such scarcity has the advantage of being relatively easily measured in terms of qualifications and experience. This is not the case with 'critical' skills, which are defined in the Draft Framework as "particular skills needed within an occupation in keeping up with international trends". The latter definition is only loosely comparable to the version quoted above and in general there is less agreement regarding the meaning of this term. Not surprisingly, this confusion makes identification and measurement even more difficult. The problem is compounded by disagreement within government about the Department of Labour's definitions, which has led to a blurring of any difference between the two terms (Umhlaba Skills Services, 2007: 3-4).

Following the adoption of the second NSDS the National Skills Authority and the Department of Labour began developing a list of scarce and critical skills throughout the economy. The list draws primarily on the SETA Sector Skills Plans as well as on data supplied by various government departments. The further round of Sector Skills Plans in terms of the second NSDS is being used to update the list. The initial list indicated a total scarcity of about 300 000, comprising 58 000 managers, 106 000 professionals, and over 40 000 artisans. The updated list sees the total scarcity rise to 968 000. The huge jump in the numbers is only partly accounted for by higher economic growth and increased demand for labour; it is probable that much of the rise reflects a far greater awareness and concern on the part of employers and SETAs with skills needs, which has led them to conflate needs with scarcity (Umhlaba Skills Services, 2007: 2).

Scarce and critical skills in the legal profession

Much of the publicity given to the skills shortage has focused on artisans. When professionals have been mentioned the reference points are usually engineers and medical doctors. While law professionals are arguably as important for economic development and redistribution, it is transformation of, rather than skills in the legal profession that has got all the press. However, as we shall see below, transformation and skills are inextricably bound up with one another in the legal profession. One cannot therefore discuss scarce and critical skills without dealing with the transformation of the legal profession.

Before one can discuss scarce and critical skills amongst law professionals, however, it is necessary to define what is meant by the legal profession. In the absence of a hard and fast rule about the scope of the profession, the tendency appears to be to adopt either a narrow or broad definition. The narrow definition includes, in the private sector, attorneys and advocates; and in the public sector, prosecutors, state attorneys, state advocates, magistrates and judges. The key element in this definition is the ability of all its members to appear on behalf of a client (including the state) in a court or courts, or to sit in judgement in a court. The wider definition of the legal profession includes legal advisers in both the private and public sectors. In the private sector most legal advisers are employed by large corporations, and in the public sector most national government departments, especially the Department of Justice and Constitutional Development (DoJ) and Department of Safety and Security, have a number of legal advisers. Legal advisers are also employed in the public sector at the provincial and municipal levels. In this report reference to the legal profession generally refers to the broadly defined profession.

The above discussion of the definition of the legal profession raises a critical issue for any study of skills, viz. that the legal profession has a deep private/public division running through it. In the past the division began on the supply side with the type of university degrees needed to practice in either segment of the profession, albeit with some overlap. The new four-year LLB degree has largely removed this division. However, once qualified a graduate

generally has two broad options, to join the public sector or practice in the private sector. The employer in the public sector will in most cases be the DoJ, but could be any other government department at national, provincial or municipal level. In the private sector the employer could be a firm of attorneys or a large corporation, or the graduate could opt to practice on his/her own account as an advocate. The routes represented by these options have different requirements in terms of vocational training and professional examinations, and training programmes and training providers differ. This division therefore runs through much of what follows below.

An academic qualification forms the basis for practice in the legal profession. But key parts of the profession have well-established systems of vocational training (i.e. articles of clerkship for attorneys and pupillage for advocates). These vocational training systems bridge supply and demand in the profession, providing skills but also acting as recruitment routes on the part of law firms. There is also provision of further education and training in both the private and public sectors of the profession. In the report that follows the academic qualification, the vocational training and the further education and training will all be dealt with as part of the supply side.

What do scarce and critical skills mean in the context of the legal profession? The following example is probably the best way of explaining and distinguishing the terms. A 'scarce skill' in the legal profession would be a shortage of qualified attorneys and/or advocates in the private sector, and a shortage of prosecutors and/or magistrates in the public sector. It would be measured primarily by the number of vacancies or purported vacancies, backed by evidence of difficulty in finding qualified people to fill the positions. While identifying a scarce skill might appear to simply require an arithmetic exercise, in practice it can be more complicated. For example, it might be that the number of qualified attorneys overall does not register as a scarce skill, but the distribution of qualified attorneys between major centres and rural areas reveals a shortage in the latter. This would be a case of relative scarcity as opposed to absolute scarcity.

A 'critical skill' can probably be broken down into two categories. First, there are those skills that should form a part of the skills profile of a law professional but do not. For example, it might be that 'practice management' is an important skill for attorneys but it is not one that they acquire as part of the academic education or in their vocational training. Low levels of literacy and numeracy amongst candidate attorneys (the term used to describe articled clerks) is another example. In other words, it is an important gap or weakness in a law professional's skill that needs to be filled with further training.

Second, there are specialist skills that the legal profession needs to be generating to meet the demands of the economy and society. A good example is the growing need for experienced intellectual property attorneys. An example in the public sector is provided by the Criminal Law Amendment Bill, which proposes to give regional magistrates the authority to impose life sentences. This will create a critical skill, i.e. magistrates are qualified and

very experienced but do not have the specific skills required in respect of such sentences.

The identification and measurement of scarce skills can be complicated but it is evident that measuring critical skills will usually require a much more intensive investigation. It requires a skills audit, probably backed by qualitative research, to put numbers on gaps in skills profiles and shortages in specialist skills. But one needs to go further than measuring the current problem areas. It is also necessary to project estimates of scarce and critical skills due to replacement demand and economic growth as well as factor in employment equity requirements and the affects of changing occupational requirements. This adds considerably to the complexity of the exercise.

There are further challenges to measuring scarce and critical professional skills. First, such skills are usually portable and in demand internationally. An excess supply might therefore still fall short of domestic demand when one factors in outward migration or emigration (as well as the return of graduates to home countries). The perception that employment equity will constrain employment opportunities for white graduates further increases the attractiveness of the international market. Second, as noted above, on the demand side of the market for most professional skills there is a public/private divide. In most cases the private sector offers higher rewards but it tends to be more competitive, which means that it will attract those professionals perceived to be more highly skilled or better qualified. The implication is that the public sector gets what is left of the pool after the private sector has had its pick. Third, the apartheid social and educational legacy has not worked itself out of the labour market, especially the market for professionals, despite a number of years of employment equity legislation. Racial segmentation of the market for professionals therefore still exists.

Research objectives

The Department of Labour has commissioned a Research Consortium (comprising the Human Sciences Research Council, the Development Policy Research Unit, and the Sociology of Work Unit) to undertake a range of research projects on aspects of the second NSDS and on aspects of the labour market and skills development policies of the Department of Labour (DoL).

One of the research projects involves the identification and verification of scarce and critical skills in the South African labour market. Its objective is to identify, collate, interpret and verify information on scarce and critical skills currently available within the South African labour market. A secondary objective is to identify future occupational employment prospects, particularly in those occupations where scarcity is suspected (Erasmus, 2006).

The proposed process for the research project can be divided into five non-sequential phases:

- Quantitative occupational and sectoral profiling;
- Case studies of occupations or occupational ‘families’;
- A survey of employers with vacancies;
- Documentary research; and
- Verification synthesis report writing.

Phases 1, 4 and 5 rely on database and documentary research, while phases 2 and 3 rely on empirical research. The review of secondary information will form the basis for identifying information gaps and determining which occupations to focus on and which enterprises/economic sectors and industry experts/stakeholders should be interviewed and consulted. Hence it will inform the design of the primary research. The objective with the empirical data collection and analysis is to verify the findings of the desktop research. This will be done by means of surveys and in-depth interviews with a selection of enterprises to supplement the desktop study.

This research project falls within Phase 2, i.e. case studies of occupations or occupational ‘families’. Its objective is to establish what scarce and critical skills exist in the legal profession. A further objective is to identify the gaps or blockages on the supply side that contribute to the emergence of scarce and critical skills, as well as trends with respect to demand that require adjustments to the supply of law professionals. These objectives will be examined within the context of the regulatory framework of the profession, established by statute and professional bodies, and the changes the framework is in the process of undergoing. The likely trajectory of the legal profession, given the changing regulatory framework and trends within the profession, will allow for some projection of future trends with regard to scarce and critical skills. Brief recommendations will be made to guide possible policy interventions to remedy any problems in the skills pipeline.

Research design and methodology

The methodology suggested by the Human Sciences Research Council (HSRC) involves the collection of data from a number of sources using a variety of methods:

- Review literature relating to the profession and professional education in South Africa and internationally, including histories and current approaches to education.
- Analyse statistics on current demand and supply, i.e. enrolments and graduates in terms of age, race and gender as well as vacancies and demand.
- A policy review that encompasses legislation and regulations in respect of the profession, as well as reports, documents and statements emanating from relevant government departments and statutory bodies.
- Survey the media and newspaper articles on issues related to the profession and, in particular, skills in the profession.

- Review labour market studies on the profession.
- Interviews with key informants, including academics/administrators and students; professional bodies/associations and employers; and government departments, and training and standards authorities.

All the above steps have been followed in this study of the legal profession.

There are two layers to the analysis of the subject matter. The outer layer is provided by primary and secondary data on the nature and development of the legal profession. In labour market terms this constitutes the demand side, although the vocational training and examinations for attorneys and advocates overlaps with the supply side. The legal profession is currently in the process of transformation, so there are a number of statutes as well as bills and policy documents that outline the current state of the profession, the main issues being faced in the transformation process, and the likely direction the profession is going to take. Newspaper reports highlight some of the tensions being generated in the process.

The inner layer comprises an analysis of data on the labour market for law professionals. This provides a quantitative view of the supply of law professionals as well as demand for law professionals from the practicing profession (private and public) and from outside the profession.

Permeating and running through both layers is qualitative data obtained from interviews conducted at law firms, professional organisations, state agencies, and government departments. The interviews seek to provide depth to the quantitative data, linking the trends to the transformation taking place in the sector.

Structure of the report

The section that follows outlines the architecture of the regulatory framework for the legal profession as well as the direction in which changes to the framework are steering the profession. The section deals with the statutes that regulate the profession and introduces the main stakeholders in the profession (i.e. attorneys, advocates, legal advisers and law professionals in the DoJ and other government agencies, together with the organisations that represent them). The SETA for the sector and other training institutions are also briefly introduced.

The next two sections present data on supply and demand in the legal profession. The section on the supply of law professionals draws extensively on a paper by Rob Midgley, Dean of Law at Rhodes University and chairperson of the South African Law Deans Association, and on data produced by the Legal Education and Development (LEAD) section of the Law Society of South Africa. This data allows one to produce trends in respect of registrations and graduations as well as attendance at practical legal training schools, passes of the admission examinations, and admission of attorneys. Some of this data is broken down by gender and race.

The section on demand is based on data from the October Household Survey (OHS) and Labour Force Survey (LFS) that allows one to establish employment trends for certain occupational categories in the legal profession. This provides an indication of either growing or declining demand. Further data on demand comes from LEAD and statistics supplied by the General Council of the Bar of South Africa. The section also draws on a database of advertisements for positions in the legal profession that has been established by the Department of Labour. These vacancies provide further information regarding the demand side of the labour market for law professionals.

The penultimate section seeks to draw together the data presented in the above three sections, allowing for analysis of demand and supply data within the context of the changing professional environment. In this section an effort is made to identify scarce and critical skills and sketch out trends with regard to such skills. The final section comprises a short conclusion and some policy recommendations.

THE LEGAL PROFESSION AND LAW PROFESSIONALS IN SOUTH AFRICA

Since 1994 the legal profession has been under great pressure to transform. There have been a number of reform initiatives, some of which have resulted in concrete changes, but there are still a lot of issues under discussion. In this section we shall briefly outline the current regulatory framework for the legal profession and the main components of the profession. We then give a brief account of the policy initiatives that have been launched in the period since 1994. This account will indicate what changes have taken place as part of the transformation process as well as the key issues that are still the subject of discussion. It also deals with how changes in the market for legal services and the structure of firms are impacting on the occupational requirements of the profession. The final section will briefly draw conclusions as to how proposed reforms will impact on the nature and shape of the legal profession as well as supply of skills to the profession.

An outline of the legal profession and its regulatory framework

For many years different law degrees would allow a person entrance to separate parts of the legal profession (discussed further below). This changed in 1998 with the introduction of the four-year LLB degree. This is now the minimum requirement to enter most branches of the practicing legal profession, i.e. the narrowly defined profession comprising attorneys, advocates, state attorneys, state advocates and regional court magistrates. The minimum requirement for prosecutors and district court magistrates remains a three-year legal degree, i.e. the BJuris or BProc. At this point many

incumbent and some prospective prosecutors and district magistrates will have one of the latter degrees. But, given that these degrees are no longer being offered by universities, it is only a matter of time before the four-year LLB will *de facto* be the minimum requirement.

As is evident from the above, once a person graduates there are various routes that he/she can follow into the different parts of the profession. Some of the routes involve compulsory vocational training and a professional examination while others do not. To practice as an attorney a person must do a minimum of two years articles of clerkship and pass the attorneys admission examination set by the Law Society of South Africa. To practice as advocate a person must enter a pupillage for one year and pass the examination set by the General Council of the Bar of South Africa. Most branches of the profession in the public sector do not require vocational training or an admission examination, although a six-month Aspirant Prosecutor training programme has been introduced for entry-level prosecutors, and magistrates receive training at the Justice College and are mentored thereafter by a senior magistrate for at least six months. Legal advisers in the private and public sectors require only the academic qualification. In the private sector, however, it appears that the general practice is to recruit only qualified attorneys with three to five years' experience to work as a legal adviser.

The legal profession in the private sector

A certain amount of flexibility has been built into the vocational training dispensation for attorneys and advocates. Aspirant attorneys can attend one of the Schools of Legal Practice for practical training that fall under LEAD, which will shorten the period of their articles by one year (there is also a distance course offered by the University of South Africa). Alternatively, a candidate attorney can attend practical legal training courses offered by LEAD, either on a part-time basis or in two full-time teaching blocks totalling five weeks. This will assist them with regard to the attorneys' admission examination but does not reduce the period of their articles.

Aspirant advocates need to enter a pupillage of one year and write the Bar examination only if they want to join one of the Bar Councils. A graduate that does not wish to join a Bar Council can therefore begin to practice immediately upon graduating with a four-year LLB.

The key formal distinction between attorneys and advocates is their different rights with regard to the courts in which they may appear. For many years attorneys had the right to appear only in the lower courts, i.e. district and regional magistrates' courts. However, in terms of the Right of Appearance in Courts Act, 62 of 1995, attorneys can acquire the right of appearance in the superior courts, i.e. the High Court, Supreme Court of Appeal and Constitutional Court, by applying to the registrar of the provincial division of the relevant High Court. In addition to having an LLB or equivalent degree the attorney must have three years' experience in order to obtain such a right of appearance.

Advocates have the right to appear in any court. However, while advocates have no restrictions on their right of appearance, they can only do so on instructions from an attorney, i.e. they are not entitled to take instructions direct from a member of the public. This requirement has led to a number of other differences in the work of attorneys and advocates, the most important of which is probably that attorneys have trust accounts in which they hold funds on behalf of clients. As a consequence all practicing attorneys are required to have a Fidelity Fund certificate.

In practice the work of most attorneys and advocates is quite different. Advocates are court specialists, with some of their work comprising researching and writing legal opinions. Over time they will tend to gain expertise in and specialise in particular areas of the law. Attorneys, on the other hand, provide a much wider range of legal services, many of which are of a more administrative character, i.e. debt collection, the administration of deceased estates, and conveyancing. Small legal practices might try to do all of the above or will specialise in certain services. Larger practices – the current trend in South African and internationally is for some practices to become much larger, usually through a process of mergers – allow for greater specialisation. While the practice as a whole will offer the full range of legal services, its size will mean that attorneys will specialise and develop expertise in a particular branch of the law. Only those attorneys that specialise in litigation come close to the work of advocates, although there are still significant differences in their day-to-day practice.

The two branches of the profession have historically had different professional organisations. Attorneys must belong to one of the four law societies in the country, all of which are members of the Law Society of South Africa. The constituent members of the Law Society of South Africa are the Cape Law Society, the Free State Law Society, the KwaZulu-Natal Law Society, the Law Society of the Northern Provinces, the Black Lawyers Association, and the National Association of Democratic Lawyers; but membership is compulsory for only the four law societies. Membership of a Bar Council is not compulsory for advocates but most belong to one of the twelve Bar Councils at one of the divisions of the High Court. The umbrella body for these councils is the General Council of the Bar of South Africa. It is not known how many advocates are practicing outside the bar councils.

The Law Society of South Africa is the most active of the two professional organisations, particularly with regard to skills development. LEAD provides an extensive range of pre- and post-admission vocational training; about 6 000 students a year go through various LEAD courses. It also maintains close links with universities and has substantial influence in moulding curricula. Furthermore, the Law Society of South Africa coordinates and finances an annual Liaison Meeting between stakeholders in legal education, its representatives sit on the boards of some law faculties, it has been invited to attend meetings of the South African Law Deans Association (SALDA) as an observer, and it conducts joint courses with some universities. It also participates actively in the Attorneys Fidelity Fund's educational committees.

LEAD's main aim is to improve the practical skills of attorneys and aspirant attorneys, and it lobbies sedulously for the inclusion of more practical and professional skills training in university curricula. The General Council of the Bar is not nearly as active with respect to the LLB curricula, but it has the ability to wield considerable influence if it wishes to (Midgley, 2007: 20-21).

The Attorneys Fidelity Fund is established to protect members of the public from losses resulting from theft of trust funds by attorneys. However, the Attorneys Fidelity Fund also plays an important role in legal education and training, primarily through the provision of funding. It provides funds to the Law Society of South Africa for its practical legal training and educational development programmes, to the Black Lawyers Association for its Legal Education Centre, and to all the universities to assist their legal aid clinics, with library holdings, and with projects that could enhance the practical skills of students as well as improve numeracy. It also has an extensive bursary scheme for students and makes a significant contribution to funding the All Africa Moot Competition (Midgley, 2007: 22).

As the struggle against apartheid gained momentum alternative professional bodies for black law professionals were established. The Black Lawyers Association (BLA) was formally constituted in 1980. One of the objectives of the BLA is to provide continuing legal education to black lawyers and it has run trial advocacy programmes for black lawyers since 1986. It also runs programmes on constitutional litigation and immigration and refugee law. Its educational flagship programme is the Legal Education Centre, which is "aimed at building capacity and making the study of law accessible to all aspirant Black legal practitioners" (Midgley, 2007: 23).

A second body, the National Association of Democratic Lawyers (NADEL), was formed in 1987 as an off-shoot of the BLA with the aim of being accessible to a broader group of people. It operates a Human Rights Advocacy Project and makes representations to government regarding legislation. Its main educational interest appears to lie in professional training for practitioners (Midgley, 2007: 23).

It was noted above that the broad legal profession includes legal advisers. A person would generally require only a legal qualification to become a legal adviser. This could be either a three-year degree, such as the BA(Law) and BComm(Law), or a four-year LLB, or the five year combination of the former with the latter. In practice it appears that employers seek qualified attorneys with some experience to employ as legal advisers. There are about 2 000 legal advisers in the private and public sectors, although this is a very rough estimate. It is not known what the split is between the two sectors. Legal advisers have established an organisation, the Corporate Lawyers Association, which has a membership of about 500, mostly from the private sector.

The legal profession in the public sector

In the public sector law professionals practice as state attorneys, prosecutors, or state advocates, or they become magistrates or judges. There are also state legal advisors and departmental legal advisers. State attorneys face exactly the same requirements as attorneys in the private sector. They must have a minimum of a four-year LLB degree, must complete two years of articles (this can be done either at the State Attorney or at a private law firm), and they must pass the attorneys' admission examination. They can also attend LEAD's Schools of Legal Practice, which will reduce their period of articles by a year, or they can attend the part-time and evening courses. They therefore follow exactly the same course as attorneys in private practice. In fact, they are in the curious position of being employed by the DoJ (although operationally they function autonomously) while also falling under the professional control of one of the constituent members of the Law Society of South Africa.

State attorneys act for the state mainly in civil law matters. If they instruct an advocate it will be an advocate practicing at the Bar. State advocates do not act in civil law matters. They are employed by the National Prosecuting Authority (NPA) and prosecute criminal matters in the superior courts, while the prosecutors employed by the NPA attend to criminal matters in the magistrates' courts. State advocates need to have the right to appear in the High Court as contemplated in the Right of Appearance in Courts Act, 62 of 1995. This means they need to have the minimum of a four-year LLB degree, but they do not need to have done a pupillage or have passed the Bar examination (as noted above, the latter is only a requirement to become a member of one of the Bar Councils).

Prosecutors need only an appropriate three-year legal degree. This could be a BA(Law) or BComm(Law), as long as the degrees include Criminal Law, Criminal Procedure, Law of Evidence, Civil Procedure, and Interpretation of Statutes; but those people with a BJuris or BProc would also qualify (although the degrees have been discontinued). Of course, the four-year LLB would also qualify.

The qualification for an entry-level magistrate is much the same as for a prosecutor, i.e. a three-year legal qualification. However, a BA(Law) or BComm(Law) is generally not acceptable (but could be depending on the law subjects in the degree). A BJuris and a BProc are acceptable and many applicants still have one of these degrees; but, as mentioned above, the degrees have been discontinued so it is only a matter of time before the four-year LLB becomes the *de facto* requirement. A regional court magistrate, however, must have a minimum of a four-year LLB. The subsequent rung on the ladder, i.e. Regional Court President, by implication requires a four-year LLB.

As noted above, there is no period of compulsory vocational training for practicing as a prosecutor, state advocate or magistrate. However, a six-month training period for aspirant prosecutors has been introduced by the

NPA. Furthermore, to be appointed as a magistrate requires considerable legal experience. An entry-level magistrate, for example, needs to have five years' experience in the legal field (this could include articles of clerkship, practice as a prosecutor or attorney, or lecturing in law). A regional court magistrate must have seven years experience. In addition, we noted above that entry-level magistrates must on appointment complete a training course of about two months at the Justice College and are thereafter assigned a senior magistrate as a mentor for a period of at least six months.

It is somewhat anomalous that there is no legal qualification required for appointment of a judge. All that the Constitution requires is that the person must be 'appropriately qualified' and must be 'fit and proper'. For many years, however, the convention was for senior advocates (referred to as Senior Council) to be appointed to the Bench. This convention meant that there was no need to stipulate a legal qualification. But the pressures of transformation have undermined the convention, although to date appointments have still been from the legal profession (e.g. in the last three years about six magistrates have been appointed as judges).

A person requires an LLB to become a state law adviser (i.e. employed in the office of the State Law Advisor), but a person employed as a legal adviser in a government department or at provincial or local government levels requires only a legal qualification (i.e. an LLB, or BProc, or BJuris, or possibly a BA(Law) or BComm(Law)). There is no compulsory vocational training for a state law adviser or any other legal adviser in the public sector. Training for state law advisers is done in-house by the office of the State Law Advisor.

In certain respects the public sector legal profession mirrors the private sector quite closely. As noted above, state attorneys are to all intents and purposes exactly the same as attorneys in private practice, except that their client will almost always be the state or one of its agencies. The work of prosecutors also bears similarity to that of attorneys who specialise in criminal work, just as the work of state advocates is similar to advocates at one of the Bars that specialises in criminal work. Magistrates and judges are clearly something apart, performing a judicial function rather than performing work for a client or acting on behalf of a client.

A large proportion of law professionals in the public sector fall under the DoJ, either directly or in the various independent sections, bodies and commissions that formally fall within the ambit of the DoJ. Below we briefly outline the structure of the DoJ, highlighting those branches or sections that employ reasonable numbers of law professionals (and in such cases supply number of the law professionals).

The DoJ is responsible for providing legal services to government and for the administration of justice and constitutional development. Its activities are organised into four core branches: Court Services, Master of the High Court, Legal Advisory Services, and Legislation and Constitutional Development. A fifth branch, Corporate Services, supports the work of the core branches. The National Prosecuting Authority (NPA) is the responsibility of the Minister of

Justice and Constitutional Development but functions almost entirely separately from the DoJ. The NPA, Court Services and the Master of the High Court have established provincial and local structures linked to the courts to ensure accessibility and efficiency in the delivery of their services. Legal Advisory Services has also established state attorney offices in the main centres of the country in order to decentralise its services (GCIS, 2007: 387).

In addition, the DoJ comprises a number of constitutional bodies: the South African Human Rights Commission, the Commission on Gender Equality, and the Public Protector; and it administers the Legal Aid Board and the Special Investigating Unit (GCIS, 2007: 387).

The court system is extensive. The Constitution makes provision for the Constitutional Court, the Supreme Court of Appeal, high courts (there are currently 10 high court divisions as well as three local divisions), magistrates' courts, and other courts established by an Act of Parliament. The latter include special income tax courts, the Labour Court and Labour Appeal Court, the Land Claims Court, the Competition Appeal Court, the Electoral Court, divorce courts, and equality courts. A number of community courts have also been established (by the end of 2005 there were 13 community courts) as well as family (or maintenance) courts, and small claims courts (GCIS, 2007: 388-392).

In terms of access to justice for the majority of the population the most important courts are the magistrates' courts. The courts are either regional courts or district courts. District magistrates' courts are established for magisterial districts, all of which have been grouped into 13 clusters under chief magistrates. Regional magistrates' courts are established for regional divisions, which comprise a number of magisterial districts. By early 2005 there was a total of 1 833 magistrates employed at 366 magistrates' courts, 50 detached courts, 98 branch courts, and 228 periodical courts. A further 25 district magistrates' courts were expected to be opened and an additional 15 regional court magistrates were appointed in 2006 (GCIS, 2007: 389-390).

The court system includes the Office of the Family Advocate and family courts. The Family Advocate is authorised to serve the best interests of children affected by divorce actions and ancillary matters (this function has been extended to include maintenance and domestic violence cases). Family advocates operate in the provincial and local divisions of the High Court as well as in the lower courts. In addition, the Office of the Family Advocate provides support for family court projects, including mediation training for social workers and other mental-health professionals, and co-ordinates community outreach programmes to assist children involved in family disputes (GCIS, 2007: 404).

The Legal Advisory Services branch of the DoJ, which includes the Office of the Chief State Law Adviser and the State Attorney, provides legal and legislative services to government. The function of the State Attorney is to be attorney, notary and conveyancer for government. They will also represent elected and appointed officials against whom actions have been instituted

when acting in their official capacities (this could entail defending such officials against prosecution by the state). There are currently about 200 state attorneys. State law advisers draft legislation and subordinate legislation, provide legal opinions for government and state agencies, and deal with international agreements as well as act as legal advisors for all national departments. There are currently 42 state law advisers employed in the office of the State Law Advisor. It is not known how many legal advisers are employed by departments of national government or by provincial and local governments (GCIS, 2007: 402).

The Master of the High Court is responsible for controlling the administration of deceased and insolvent estates as well as estates under curatorship. The Master also oversees the liquidation of close corporations and companies, controls the registration and administration of testamentary and *inter vivos* trusts, and manages the Guardian's Fund, which is entrusted with the funds of minors, mentally challenged persons, and unknown or absent heirs. There are Masters' offices in all cities in which the High Court has a seat and sub-offices in a number of other cities and towns (GCIS, 2007: 403).

The fourth branch is Legislative and Constitutional Development. This includes the secretariat of the Rules Board for Courts of Law, which is a statutory body with the authority to make or amend rules for the district and regional magistrates' courts, the high courts, and the Supreme Court of Appeal. The Legislative and Constitutional Development branch also encompasses the South African Law Reform Commission. This is an independent statutory body that is responsible for research in respect of the law of South Africa with a view to advising government on the development, improvement, modernisation and reform of the law. It conducts legal research, develops proposals for law reform, and promotes uniformity in the law where appropriate (GCIS, 2007: 401).

The fifth branch of the DoJ is Corporate Services, which includes Information and Systems Management, Communication Services, Financial Management, and Human Resources.

The restructuring that the DoJ has undergone over the last decade has seen the separation of the prosecuting function through the establishment of the NPA, which functions as the sole prosecuting authority within the support framework of the DoJ. It is responsible for instituting criminal proceedings on behalf of the state, providing a coordinated prosecutorial service, protecting certain witnesses, and investigating serious organised crime. At the head of the NPA is the National Director of Public Prosecutions and it includes the National Prosecuting Services, the Directorate: Special Operations, the Witness Protection Programme, the Asset Forfeiture Unit and various specialised units such as the Sexual Offences and Community Affairs Unit, the Specialised Commercial Crime Unit, the Priority Crimes Litigation Unit and the Integrity Management Unit (GCIS, 2007: 394).

Legal professionals are spread across the NPA but the biggest concentration is prosecutors. In 2006/2007 the NPA employed 2 187 prosecutors and 196

senior prosecutors. It was envisaged that a further 890 prosecutor posts would be created within three years, allowing for the deployment of at least two prosecutors per court (GCIS, 2007: 394). In addition, there are 498 state advocates to prosecute matters in the high courts, with a further 207 posts in the process of being filled.

It was noted above that prosecutors function relatively autonomously of the DoJ, while magistrates and judges are independent of its control. This is facilitated by the establishment of respectively the NPA, the Magistrates Commission and the Judicial Services Commission. The Magistrate's Commission ensures that the appointment, promotion, transfer or discharge of judicial officers in the lower courts takes place without favour or prejudice, and that the applicable laws in connection with such actions are applied. It also attends to grievances, complaints and misconduct investigations against magistrates. It advises the Minister of Justice on matters such as the appointment of magistrates, promotions and salaries. The Commission has established committees to deal with appointments and promotions, misconduct, disciplinary inquiries and incapacity, grievances, salary and service conditions, and the training of magistrates (GCIS, 2007: 405).

The Judicial Service Commission was established in terms of the Constitution and is consulted by the President in the appointment of the Chief Justice, Deputy Chief Justice, and the President and Deputy President of the Supreme Court of Appeal. Other judges are appointed by the President on the advice of the Judicial Service Commission. It also advises the government on any matters relating to the judiciary or to the administration of justice (GCIS, 2007: 405).

The Legal Aid Board (LAB) is administered by the DoJ. The LAB was established by the Legal Aid Act, 22 of 1969. From its inception it relied primarily on judicare to deliver legal aid services, i.e. private practitioners are instructed by the LAB to provide services and are paid according to a LAB tariff of fees. Initially it had very little impact because of a very small budget and bureaucratic procedures. In the late 1980s the budget of the LAB was increased and it became more active, initiating a pilot public defender office and joint-venture legal aid clinics (DoJ, 1999: 12).

The new constitutional dispensation ushered in after 1994 increased the pressure on the LAB. In terms of the Bill of Rights the state is obliged to provide a legal practitioner to represent accused persons in every case that would otherwise result in substantial injustice. Additional funds have been allocated to the LAB to meet this obligation but by the late 1990s it was not doing so and was in a financial crisis. A National Legal Aid Forum took place in early 1998 at which consensus was reached that the judicare system, which was seen as too expensive and difficult to administer, be scaled down. It was envisaged that the LAB would rather use full-time employees to deliver legal aid services in clinics, public defender offices and advice offices (DoJ, 1999: 11-12).

Since then the LAB has increasingly moved away from judicare and rolled out a new infrastructure with a national office at the pinnacle and four regional offices. It currently employs 782 attorneys and 652 candidate attorneys. They deliver legal aid services from 58 Justice Centres and 41 satellite offices attached to the Centres. In addition, the LAB enters co-operation agreements with accredited institutions and funds them in full or in part to deliver legal aid services. Finally, the scaled-down judicare system utilises attorneys in private practice. The bulk of the LAB's work involves the defence of accused persons in the criminal courts, but its broad objective remains to provide legal services to the indigent, with an emphasis on women and children, the rural poor and the landless. It also does civil work for amongst others the latter.

The workload of the LAB is considerable and rising. In 2005 it handled 340 244 cases, well up from the 115 000 cases dealt with in 2001. Of the former, 42 000 were referred to attorneys in private practice (i.e. the judicare system) and the rest were dealt with by the LAB's staff and its co-operation partners (GCIS, 2007: 404).

As noted above, a number of other agencies or commissions fall under the DoJ. These are the South African Human Rights Commission, the Commission on Gender Equality, and the Public Protector. Below we briefly explain the functions of these bodies, all of which probably employ small numbers of legal professionals.

The South African Human Rights Commission (HRC) is responsible for promoting respect of human rights and a culture of human rights, promoting the protection, development and attainment of human rights, and monitoring and assessing the observance of human rights in SA. It has a number of sections, including Legal Services, which investigates individual and systemic human rights violations and provides appropriate redress; and Research and Documentation, which monitors and assesses the observance of human rights, in particular economic and social rights, the right to equality and the right of access to information. The Education and Training section conducts educational interventions on human rights and the Commission's focus areas, conducts community outreach and awareness programmes, develops human-rights education and training material, and ensures the institutionalisation of human rights education. The outreach activities focus on poverty-stricken communities in rural and peri-urban areas (GCIS, 2007: 406).

The Commission on Gender Equality was established in terms of the Constitution with the purpose of promoting respect for gender equality as well as to protect, develop and attain gender equality. Its functions include developing and conducting education programmes, and monitoring and evaluating the policies and practices of state organs, statutory and public bodies, as well as the private sector, to promote gender equality (GCIS, 2007: 407).

The Public Protector investigates complaints from the public or institutes investigations on its own initiative against government at any level, its officials,

people performing public functions, statutory councils, and corporations or companies in which the state is involved (GCIS, 2007: 405).

A brief historical background and current policy developments

Race has to be at the foreground of any discussion of the legal profession and law professionals in South Africa because the legacy of apartheid continues to segment and divide the labour market for the profession. The gender composition of the profession is also an important consideration.

Under apartheid all education was divided along racial and ethnic lines by the Bantu Education Act of 1953. The system that developed provided inferior education and poorly resourced training institutions for black people. This system was extended to the tertiary education sector by the University Education Act of 1959, which restricted entry to universities on the basis of race. In order for a black person to be admitted to a white university he/she had to get a special ministerial permit certifying that no equivalent programmes were offered at black universities. A number of universities were subsequently established in the so-called 'homelands' in order to provide tertiary education there for blacks and limit the number of applications made to white universities (Iya, 2000: 2).

The practice of law was in theory open to all race groups under apartheid. However, in reality black attorneys faced much the same segregated system that they had confronted in qualifying at a local university. Black attorneys were restricted to practicing law in townships and the 'homeland' areas. In order to practice in an 'urban' area a black attorney had to obtain a government permit (Midgley, 2007: 5).

Given the above it is not surprising that the practice of law came to be dominated by whites, in particular white males. The dominance was both in terms of the number of white males and their ownership of the most financially rewarding practices. Black practitioners for the most part had criminal law practices and in some cases were involved in human rights law. Furthermore, the judiciary was overwhelmingly white, as were the legal personnel in the lower courts. It was only in the 'homelands' that most magistrates were black and male (Midgley, 2007: 5).

The foundation for transformation: Justice Vision 2000

The transformation of the legal profession was a key issue in the years following the political reforms in 1990, and again after the first democratic elections in 1994. The DoJ was at the forefront of the transformation process. Following the establishment of a National Consultative Forum in 1994 by the Minister of Justice, the DoJ's newly-formed Planning Unit published a strategic plan for transformation of the justice system called Justice Vision 2000. In terms of this document the vision of the DoJ was "to transform the

justice system so that it reflects the basic constitutional ideals, as well as the goals of the government policies on reconstruction and development". Such a justice system would:

- Provide fair and equal access to justice for all South Africans;
- Ensure justice processes that are fast, effective and cheap as well as being sensitive to the needs of all users;
- Provide legal services to the government that are efficient and cost effective; and,
- Be able to gain the confidence of the public in the administration of justice (Ministry of Justice, 1995: 7).

With regard to the last objective, seven key result areas were identified for transformation:

- An integrated, efficient and representative Department of Justice;
- A legitimate, service-oriented and efficient system of courts and other structures administering justice that has a representative staff;
- Safety, security and freedom from crime for everybody;
- Fair and equal access to justice for all, taking into account the diversity of people's needs;
- Effective and efficient human resource development systems;
- A well-trained, broadly representative, accessible and evenly distributed legal profession; and,
- Effective and efficient provision of legal and legislative services to the state (Ministry of Justice, 1995: 7).

In the section dealing with the legal profession Justice Vision 2000 states that there are four broad aims for the profession:

- To make it easier for people to use their services;
- To make their services more affordable;
- To ensure that the profession is sensitive and responsive to peoples' different needs; and,
- To make the profession representative of all the people who live in South Africa (Ministry of Justice, 1995: 108).

The representivity of the profession and access to lawyers were highlighted as the two key issues. With regard to the former, Justice Vision 2000 held that:

At present the legal profession does not reflect the diverse nature of the South African society. Disadvantaged groups, especially black people, are not well represented in the legal profession. Few black graduates are able to enter the profession. To a lesser extent, the same is true of white female graduates. Of those that do enter the profession, only a few develop specialised expertise in areas like corporate law, tax law, commercial law and constitutional practice (Ministry of Justice, 1995: 108).

Lawyers would, amongst other things, need to remove “the constraints that make access to the profession unduly difficult, and sometimes impossible”, and improve “professional training programmes and strengthen the capacity of existing training institutions” (Ministry of Justice, 1995: 108).

With respect to the issue of access, the document stated:

Most people cannot afford legal representation or legal advice. This is partly because court cases take a long time, and partly because lawyers charge excessive fees. This situation is made worse by the stratified nature of the legal profession. A client who has a case in a high court usually still has to pay for the services of both an attorney and an advocate or sometimes two advocates, despite the fact that attorneys can now get right of appearance in the high courts (Ministry of Justice, 1995: 109).

Furthermore, access to lawyers was made difficult by the “concentration of lawyers in urban centres” which left “rural communities with very few professional legal services” (Ministry of Justice, 1995: 109).

Although Justice Vision 2000 did not deal explicitly with legal education, it was clearly conceived to be critically important. The document asked a series of questions in this regard:

- Should legal education be primarily geared towards private practice or should it focus more on the public sector?
- How should legal education be standardised and harmonised among the various training institutions, and in a way that does not undermine each institution’s academic freedom?
- How should public money be allocated to law schools to ensure that lawyers from disadvantaged groups are able to enter and develop careers within the profession? (Ministry of Justice, 1995: 109)

It went on to state that there was a challenge “to remove the present artificial barriers to entry into the profession, and to make reasonable arrangements for practical post-graduate training of advocates and attorneys” (Ministry of Justice, 1995: 109).

The DoJ recognised that there were limits to how much it could ‘interfere’ in the legal profession. However, it believed that transformation of the profession was essential and that it was necessary to address the composition of the profession and its governing bodies. This would require the Department to engage with the governing bodies as well as other role players in the legal profession on the nature of transformation (Ministry of Justice, 1995: 109). The objective of these discussions would be to facilitate the Department’s strategies of transformation, which were set out as follows:

- We will support training programmes for people, especially for historically disadvantaged people, so that they will be able to enter the legal profession, and to be promoted in it.

- We will develop policies to make sure that legal services are evenly distributed in all areas, and to all people.
- We will develop policies to make sure that people can afford to use legal services.
- We will review the way that the legal profession works, and develop policies to protect people who use it and to make it more accountable to the public (Ministry of Justice, 1995: 5-6).

After the publication of Justice Vision 2000 the pace of transformation was slow. The only major development was the introduction of the four-year undergraduate LLB degree. This is discussed further below.

Transformation still under discussion

A follow-up discussion document on the legal profession produced in 1999 by the Policy Unit at the DoJ again highlighted many of the above problems. The legal profession was unrepresentative of the population of South Africa, although changes had taken place to the controlling bodies of the Bar Councils and Law Societies. Disadvantaged law graduates still struggled to get into and establish themselves in the legal profession. Lawyers remained concentrated in urban areas; and the majority of attorneys in rural areas were white and Afrikaans, and tended to serve mainly white farmers and local businesses (DoJ, 1999: 1-2).

The document pointed to additional problem areas: practising lawyers were not sufficiently involved in providing legal aid services; prosecutors, especially those in the lower courts, were not recognised as a fully-fledged branch of the profession; lawyers employed by commercial corporations, governmental agencies and non-governmental organisations, were not recognised or regulated by statute as members of the practising legal profession; and the latter was also the case with regard to paralegal practitioners (DoJ, 1999: 1-2).

The discussion paper also identified “anomalous differences in the way in which and rules according to which the various branches of the profession are regulated”. These were, amongst others, that:

- Membership of law societies was compulsory for attorneys, whereas membership of societies for advocates was voluntary and many advocates were practicing without being subject to the control of any regulatory body other than the High Courts;
- Attorneys were required by statute to undergo a two-year period of vocational training (i.e. articles of clerkship), which could be reduced to 18 months if they attended the Practical Training School; whereas the vocational training period for advocates (i.e. pupillage) was only applicable if they wanted to become members of the constituent Bars of the General Council of the Bar, and then the period was six months or less;

- Attorneys were obliged by statute to pass an admission exam before they could be admitted to practice, whereas advocates could practice without sitting an examination, although those wanting to be members of one of the constituent Bars of the General Council of the Bar had to pass the Bar examination;
- Advocates could not accept an instruction direct from a member of the public, irrespective of whether the advocate was a member of one of the constituent Bars of the General Council of the Bar;
- Attorneys had been precluded from appearing in the High Court and still had to apply to the Registrar of the High Court for right of appearance;
- Corporate legal advisers were not required to do any practical vocational training or pass any admission examinations;
- Corporate legal advisers were not admitted as practitioners of the courts and could not represent their employer in the High Court;
- Lawyers working for the DoJ who represent the state as prosecutors in criminal matters in the lower courts did not have to be admitted as attorneys, and could become magistrates without ever having been admitted; and,
- Judicial office in the superior courts was reserved almost exclusively to advocates who had attained the rank of Senior Counsel (DoJ, 1999: 1-3).

Changes, however, had taken place. The Qualification of Legal Practitioners Amendment Act of 1997 had amended to the Admission of Advocates Act, 74 of 1964, and the Attorneys Act, 53 of 1979, by introducing a four-year undergraduate LLB degree as the minimum academic qualification for admission to practice as an advocate or an attorney. This would ensure a level of equality between all practicing lawyers (DoJ, 1999: 4).

Certain changes had also taken place with regard to vocational training, but these had not been enough to get uniformity between the different branches of the profession. Previously advocates had not had to do vocational training or pass an admission examination, whereas attorneys were required to do two years of articles and pass a “notoriously difficult” admission examination (DoJ, 1999: 4). The position was now that advocates who wanted to become a member of one of the constituent Bars of the General Council of the Bar were required to do a pupillage of four to six months and write a Bar examination (the period of the pupillage was increase to one year from 2004). Aspirant attorneys, on the other hand, could go to one of the practical legal training schools that had been set up, which would prepare them for the admission examination and reduce the period of their articles to 18 months (now one year).

The discussion document proposed that further efforts needed to be made to introduce uniform requirements with respect to the period of vocational training. Furthermore, it argued that consideration be given to the proposal that all aspirant legal practitioners be required to do a period of community service. In this regard the discussion paper put forward three options:

- A uniform period of community service for all aspirant legal practitioners that replaces all forms of vocational training (i.e. pupillage and articles);
- A uniform period of community service for all aspirant legal practitioners plus a period of vocational training, which would be specific to the particular branch the practitioner intends to enter;
- The option to do a uniform period of community service, and/or specific vocational training, and/or an accredited vocational training course offered by a university or professional organisation (DoJ, 1999: 4-5).

The suggestion advanced in the discussion paper with respect to the above options was that the period of vocational training should be a minimum of one year for all aspirant legal practitioners, six months of which would comprise community service. In the remaining six months the person could either continue to perform community service, or could undergo vocational training (either articles or pupillage), or could attend an accredited vocational training course offered by a university or professional organisation (DoJ, 1999: 5).

Community service is an issue in its own right and has been the focus of a lot of debate. The state would benefit from community service because it would be able to employ graduates at low rates to expand legal aid and other services. However, it is argued that any saving would probably be outweighed by the added costs of providing the infrastructure and experienced personnel to supervise and mentor the graduates.

The discussion paper proposed that, in addition to the option of community service for graduates, the LLB degree should include a requirement that students perform 200 hours of un-remunerated community service. This could be performed at law clinics and advice offices, or could involve street law teaching, providing victim support services, acting as intermediaries for child witnesses, or assisting public defenders, prosecutors and family advocates (DoJ, 1999: 12).

The issue of admission examinations had proved difficult to resolve. The Law Societies and the Bar Councils wanted to continue to administer their own examinations. Organisations representing black lawyers insisted that these examinations constituted a barrier to entry to the profession and wanted them to be dropped altogether. The critical issue, according to the discussion paper, was whether the examinations were set to test a minimum standard of proficiency or were set at a higher standard that effectively prevented entry to the profession by aspirant practitioners that would otherwise meet minimum standards of proficiency. The paper argued that if “the object is protection of the public interest, then a minimum standards test is appropriate and may be all that can be justified by way of legislative requirements” (DoJ, 1999: 6).

The question this raised was whether such an examination could be set by voluntary professional organisations? If such was the case, the organisations would in terms of the principle of freedom of association be entitled to set the level of the examination to test whatever level of proficiency they might choose. Another related question was, if there were to be a uniform national

examination that tests minimum standards of proficiency, then who would administer such an examination and would there be one examination for all branches of the profession or separate examinations for different branches? Alternatively, there was the option of not having a statutory admission examination, i.e. a LLB graduate would qualify for admission on completion of the period of vocational training. However, this would probably necessitate the creation of a statutory body to ensure that the LLB degrees offered by the various universities met a minimum standard (DoJ, 1999: 5-6).

Another area in which little progress had been made was the integration of the profession and the establishment of a single statutory controlling body. This was an issue that the DoJ did not want to force, preferring to act more as a facilitator. The main reason for establishing a single statutory body would be to look after the interests of the public, thus avoiding the conflicts of interest experienced by professional organisations that sought to protect the interests of both their members and the public. The following were aspects that needed to be regulated in the public interest:

- Standards of education and training;
- Qualification for admission to the profession;
- Licence to practice;
- Discipline in respect of improper conduct; and
- Public indemnity in respect of the misappropriation of funds.

Only the last of these does not apply to both branches of the profession, but this would change when advocates were given the right to take instructions direct from members of the public (DoJ, 1999: 6).

An alternative would be to create statutory controlling bodies for each of the branches of the profession. In either case, however, it would be necessary to introduce a statutory requirement that would compel every member of the legal profession to belong to the relevant statutory body. According to the discussion paper, this would not mean the end of the Law Societies or the Bar Councils or other lawyers' professional organisations, because they could continue to exist as voluntary associations (DoJ, 1999: 6-7).

Another issue touched upon in the discussion paper was whether there was a need for the establishment of an office of an ombudsman for the legal profession. Such an office would "facilitate access to justice for members of the public" and would be resourced to investigate complaints proactively (DoJ, 1999: 7).

The discussion paper noted, in respect of standards of education and training and qualification for admission to the profession, that the process to establish a Standards Generating Body in terms of the South African Qualifications Authority Act, 58 of 1995, had already commenced. Two options were set out. The first proposed a more limited regulatory framework:

- The establishment of a Standards Generating Body to make recommendations with regard to standards of education and training and qualifications for legal practice;
- A Legal Practice Registrar to maintain a central roll of legal practitioners and paralegal practitioners;
- An ombudsman's office to investigate complaints of malpractice and make recommendations where action was warranted to voluntary professional associations, the Legal Practice Registrar, or the National Director of Public Prosecutions; and,
- A legal practice fidelity fund to compensate members of the public for moneys misappropriated by a member of the legal profession as well as paralegal practitioners (DoJ, 1999: 7-8).

The second option was more interventionist and provided for a stronger regulatory framework:

- A National South African Legal Practice Council appointed by the Minister of Justice comprising persons nominated by the organisations representative of legal and paralegal practitioners as well as persons representing the public interest. The Council would:
 - prescribe qualifications for admission to legal and paralegal practice;
 - maintain a roll of registered legal and paralegal practitioners;
 - prescribe and levy annual fees for licence to practice;
 - collect interest on trust accounts for transmission to the Fidelity Fund and issue Fidelity Fund certificates; and,
 - deal with complaints of malpractice through complaints tribunals and the office of a national ombudsman;
- A South African Legal Practice Fidelity Fund to compensate members of the public for moneys misappropriated by a member of the legal profession as well as paralegal practitioners (DoJ, 1999: 8).

The discussion paper noted that law graduates were becoming increasingly diverse. However, many graduates from previously disadvantaged groups or from historically black universities struggled to gain access to the profession. This problem would need to be addressed if the profession was to transform into one that "represents the diversity of South African society in all branches and at all levels. The paper proposed the following:

- Capacity-building in the historically black universities;
- Black and women graduates to be empowered by being exposed to meaningful legal work in the structures in which they are employed;
- The empowerment of disadvantaged legal practitioners who set up their own practices;
- Ensuring mobility within the profession so that practitioners who do not succeed in a particular branch can change to another;

- Recognising the role played by paralegals, most of whom come from previously disadvantaged groups;
- Diversity sensitisation within the legal profession (including the judiciary); and,
- Diversity sensitisation of consumers of legal services (DoJ, 1999: 9).

It was also noted that there was still a very uneven distribution of lawyers between urban and rural areas. There was little that could be done about this, other than to encourage lawyers to practice in rural areas and empower lawyers from disadvantaged groups who were located in such areas. However, the proposed recognition of paralegal practitioners, many of whom are based in the rural areas, would also play a part in addressing some of the consequences of this problem (DoJ, 1999: 10-11).

At the time that the discussion paper was drafted the Legal Aid Board (LAB) was not functioning effectively. It had been agreed at the National Legal Aid Forum in 1998 that the primary method of delivery of legal aid services, i.e. *judicare*, be scaled down significantly. The *judicare* system had proved to be difficult to administer and was perceived to be expensive, and it was proposed that it should be replaced by salaried employees in legal aid clinics, advice offices and public defender offices. This would free up legal practitioners to play a new role in the provision of legal services to indigent people. In this scenario practitioners “could be employed in law clinics or advice offices, or as public defenders, for part of their working time instead of being given *judicare* instructions”. This would allow for monitoring of the quality of services and also for more accurate budgeting. It was envisaged that practitioners who relied primarily on legal aid work would still get a steady income under the new system (DoJ, 1999: 12).

Taking transformation forward: The Legal Services Charter

Following the discussion paper much of the transformation effort appears to have gone into the process to develop a legal services charter. A series of drafts for a legal services charter have been published in recent years. The latest draft – 3rd Draft Legal Services Charter: October 2007 – deals with a number of the issues raised in the 1999 discussion paper. This is an indication that not a lot of progress has been made with regard to many of the issues in the period since the discussion paper. The Legal Services Charter represents a concerted attempt to take the process forward.

The objectives of the Charter are to facilitate the transformation of the legal services sector, to ensure access to justice in all respects, to encourage the independence of the legal profession, to create an affirming and enabling environment, to promote equality and prevent discrimination, and to provide mechanisms for achieving the above. The Charter defines the legal profession as all persons engaged in the practice of law, specifically including the organised legal profession; public and private institutions or bodies rendering legal services; private and public institutions and persons who consume legal services; and the government (DoJ, 2007: 6).

Under the heading 'Access to the Legal Profession', the Charter identifies as challenges "the shortage of legal practitioners and the cost of legal services in South Africa as a result of barriers to entry into the profession"; ensuring that the legal profession is representative in terms of race and gender so that there is a body of well-trained and competent legal professionals to enable appointments to be made to the judiciary that reflect the demographics of South Africa; and "to ensure that legal training and education includes social context awareness training" (DoJ, 2007: 16).

The Charter indicates that the legal profession is willing to address challenges of entry to the profession, particularly by graduates from previously disadvantaged groups; provide skills development programmes; ensure that legal training and education provides social context awareness training; and develop mentorship programmes and encourage legal practitioners to provide assistance, skills development and the transfer of skills.

A separate chapter deals with 'A Transformed and Unified Legal Profession'. In this chapter the relevant professional bodies commit themselves to "transform the regulatory regime of the profession". However, very few details are given as to how this will be done and what the new regulatory regime will look like. This is left to the envisaged Legal Practice Act (still in the form of an incomplete Bill published for discussion in 2002). The Act must, in addition, address the following:

- A unified legal profession;
- Standards of education and training;
- Qualification criteria for admission to the profession;
- Licence to practice;
- Discipline in respect of unprofessional conduct and misconduct;
- Public indemnity in respect of negligence by practitioners; and,
- A fidelity fund for the legal profession (DoJ, 2007: 17).

The statute must, furthermore, establish a "national regulatory body" that will comprise representatives of legal and paralegal practitioners as well as persons who represent the public interest. The powers of this body will include:

- To prescribe qualifications for admission to legal and paralegal practice in accordance with national legislation;
- Maintain a roll of registered legal and paralegal practitioners;
- Prescribe and levy annual fees for licence to practice;
- Deal with complaints of malpractice and misconduct through tribunals and the office of a legal practice protector or ombudsman; and,
- Collect interest on trust accounts for transmission to the profession's fidelity fund and issue fidelity fund certificates (DoJ, 2007: 18).

Universities, particularly their law faculties and clinics, are included as stakeholders in the Charter. They undertake to provide accessible legal

education and training to prospective legal practitioners. They also commit themselves to providing paralegal training “where appropriate”, giving primary legal advice through law clinics, and working with government in realising community legal services (DoJ, 2007: 13 & 16).

The Charter has a somewhat vague and hopeful tone (although this is the nature of most such documents). This latter point is addressed to some extent in the final chapter, which seeks to put into place mechanisms that will ensure that the stakeholders adhere to the undertakings and commitments recorded in the Charter. This will be mainly through the establishment of a Legal Services Sector Charter Council that will be responsible for oversight and implementation of the Charter (DoJ, 2007: 28). However, it is clear that the achievement of the goals of the Legal Services Charter will depend a great deal on the envisaged Legal Practice Act.

The Legal Practice Bill was published as an incomplete discussion document in 2000.² The Bill followed and is based on consensus reached at the National Legal Forum on Legal Practice in November 1999. The preamble to the Bill noted that consensus was reached at the National Forum on the following:

- All legal practitioners and paralegal practitioners should be regulated in terms of one statute;
- There should be one statutory regulatory body;
- Legal practitioners and paralegal practitioners would be free to practice as members of professional voluntary associations;
- All legal practitioners would be required to complete one year of post-graduate practical vocational training in order to qualify for registration and admission to practice;
- A wide range of practical training options will be provided by regulation;
- Admission examinations should be replaced by a more flexible form of evaluation of the skills acquired during the course of practical vocational training; and,
- Any legal practitioner who receives, holds or handles funds belonging to a client or a member of the public must operate a trust account and be in possession of a Fidelity Fund certificate (Draft Legal Practice Bill, 2000: 1).

In order to implement the above the Bill proposes the establishment of the South African Legal Practice Council as the regulatory body for the legal profession. It will regulate the practice of law; maintain standards of professional practice and ethical conduct; promote high standards of legal education and training; promote access to justice for members of the public; promote access to the legal profession; promote and represent the interests of legal and paralegal practitioners; and advise the Minister regarding matters concerning the practice of law (Draft Legal Practice Bill, 2000: 5-6).

The Bill expands the scope of the profession in two important ways. First, it provides that a legal practitioner employed by a corporation (other than a legal practice), or by an organ of state, or by a non-governmental organisation, who provides legal services only to his or her employer, can apply to be placed on

the roll of legal practitioners. He or she would be entitled to appear in court on behalf of his or her employer if admitted as a legal practitioner. This would bring into the profession the large body of people in the private and public sectors that act as legal advisors. Second, paralegal practitioners may apply for registration. Although they would not be enrolled as legal practitioners they would become a formal adjunct to the profession (Draft Legal Practice Bill, 2000: 9).

The academic qualifications for practice are either a four-year LLB or a five-year degree or degrees that satisfy the requirements of the LLB degree (presumably this refers to the BA(Law) or BComm(Law) degrees combined with the LLB degree). In addition, either degree route must include a period of 200 hours of legal training that involves the delivery of legal services, at least half of which will be in the nature of community service (Draft Legal Practice Bill, 2000: 10).

The vocational training period of aspirant legal practitioners will be one year. This will replace the current minimum period of two years for candidate attorneys and the one year pupillage for aspirant advocates. The vocational training can be done at a legal practice, in the public sector (e.g. supervised by a judge, a magistrate, or a public prosecutor), or at a practical training institute (Draft Legal Practice Bill, 2000: 10-11).

The Panel for the Recognition of Legal Qualifications will be set up as a sub-committee of the Legal Practice Council in order to consider applications from persons not deemed to be duly qualified for registration as legal practitioners (Draft Legal Practice Bill, 2000: 11). This would presumably provide some flexibility for admission of South Africans with experience rather than the necessary qualifications, as well as provide a route to practice for non-South Africans with qualifications from their home or other countries.

The Bill amends the current situation with regard to appearance in courts. All legal practitioners will be entitled to appear in all courts providing they comply with certain formalities. This removes the last vestige of division between advocates and attorneys. Both groups will now be termed legal practitioners, be listed on the same roll, and have the same rights of appearance in the courts (Draft Legal Practice Bill, 2000: 9).

The Bill changes the name of the existing Attorneys' Fidelity Fund to the Legal Practitioners' Fidelity Fund. Every legal practitioner who handles funds belonging to a client or any member of the public must keep a separate trust banking account and must be in possession of a Fidelity Fund certificate (Draft Legal Practice Bill, 2000: 18 & 22).

The Bill envisages the establishment of a legal ombudsman's office to receive complaints about the conduct of a legal practitioner. However, complaints can also be made to the Legal Practice Council and to an Accredited Disciplinary Structure (Draft Legal Practice Bill, 2000: 35).

Although the Bill seems to have made little headway since 2000, the community service aspect has been taken forward by the Attorneys Amendment Bill of 2006. The current situation in terms of the Attorneys Act is that as an alternative to the standard two-year articles of clerkship, an aspirant attorney can do one year of articles, plus attend a training course of at least four months (i.e. the School for Legal Practice) and do community service for one year. However, the Act goes on to provide for exemption from articles for a person that attends a training course of at least four months (i.e. the School for Legal Practice) and does community service for one year, or for a person that does two years' community service. Community service is defined as full-time service at an accredited law clinic or the Legal Aid Board. The Amendment Bill proposes to expand the definition to include a commercial institution or organisation accredited by the relevant law society.

The shape of the legal profession post-transformation

The pressures for transformation of the legal profession in South Africa have certain unique aspects, particularly with regard to changing the racial composition of the profession, but there are also dynamics that are similar to developments in other countries. For example, the role of the state in driving transformation in South Africa resonates with increased intervention in Britain, where there has been a "continuing encroachment on self-regulation by government bodies" (Lane, Potton and Littek, 2000: 8). There are also pressures to erode the divide between attorneys and advocates in other countries, while in Britain the rash of mergers to create very big legal firms is some way ahead of the process in South Africa.³ The latter has resulted in legal work becoming increasingly differentiated into very routine operations and highly specialised areas (Lane *et al*, 2000: 4).

The impact of changing markets and technology as well as a more liberal approach from the state is well captured by Lane *et al*:

The traditional image of professionals, offering their services as sole practitioners to deferential clients in sheltered home markets, protected by state guarantees and immune from the impact of technology, is now only partially applicable. During the last few decades professions have been faced with a rapidly and radically changing market environment: markets have been partially deregulated by the state and, to some extent, by the professions themselves; they have become more international and competitive; clients (customers) have become increasingly knowledgeable, demanding and, in some cases, powerful; and technology is beginning to transform markets (2000: 17).

The control over access to the profession via compulsory education and training is also a feature of the legal profession in other countries, although the degree of control varies. For example, in Britain the professions have a great deal of influence with respect to legal education, particularly for the more vocational part of legal education, whereas in Germany professional education and accreditation are firmly in the hands of universities. South

Africa appears to fall somewhere between, with the state playing a role as well (Lane et al, 2000: 10).

Because the legal profession is undergoing considerable restructuring, with pressures coming from changing markets, new technology and the need to transform, it is very difficult to predict exactly what it is going to look like in future, particularly in the long-term. In some cases the direction mapped out by the policy documents discussed above could be opposed by universities or the legal profession. Or they will run counter to pressures emanating from the market. However, in the short-term one can sum up the main thrust of the transformation process outlined above and propose a probable shape for the profession.

In the private sector there is a trend to greater statutory regulation and more uniformity. This started with greater uniformity with regard to the academic qualification for the profession and is likely to continue with the development of a generic four-year LLB. The uniformity will be carried forward by the likely removal of any formal distinction between advocates and attorneys, as well as by allowing legal advisers to be put on the roll of legal practitioners (the latter will become the name for attorneys, advocates and legal advisers). Cementing the uniformity across these historical divisions will be the establishment of a single statutory regulatory body for legal practitioners. It is likely, however, that while the formal distinction between attorneys and advocates will be removed a division will remain in practice based on specialisation and expertise. This has been the case in other jurisdictions.

It seems that uniformity will also extend to the period and content of articles and pupillages. They are likely to be replaced by a single form of compulsory vocational training over a shorter period, with community service making up a significant proportion of the vocational training. However, there will be tensions in this regard. With community service taking up a greater proportion of the compulsory vocational training period, the legal profession is likely to exert a lot of pressure to keep the duration of vocational training to two years in order to ensure that aspirant legal practitioners get an adequate grounding in all aspects of practice. On the other hand, giving credit for attending the School for Legal Practice might answer the concerns of the profession and allow for the reduction in the duration of vocational training. But whatever the period of the compulsory vocational training it is almost certain that it will be made more flexible by allowing the training to be performed at a much wider range of institutions and organisations. This should make entry to the profession more accessible and will also spread legal skills across more institutions and regions.

The attorneys' admission examination and the Bar examination will come under scrutiny. It is envisaged that they will be replaced by a more flexible type of evaluation of skills acquired during training. But at this point it is unclear what form this evaluation will take or how acquired skills will be recognised.

In the public sector a number of positions require only a three-year legal qualification. However, given that the BJuris and BProc have been discontinued the LLB will over time become the *de facto* minimum qualification. This will mean greater uniformity in the legal profession in the public sector but will also facilitate more uniformity between the public and private sectors of the profession. The uniformity will be entrenched by including law professionals in the public sector on the roll of legal practitioners.

The more diverse set of organisations at which aspirant legal practitioners can do their compulsory vocational training, together with the greater role for community service, is likely to impact positively on the geographical distribution of legal practitioners. The greater recognition of paralegals and more training for paralegals will also help in providing more legal skills in rural areas and therefore facilitate access to justice for everyone. However, it is debateable whether this will be enough. So, while the supply of law professionals will probably increase as a consequence of the above changes, which will put downward pressure on the cost of legal services, it is unlikely that there will be a sufficient migration of law professionals to rural areas.

It is the realisation that more needs to be done that is probably prompting the DoJ to consider establishing Traditional and Community Courts. This would require legislation to give traditional leaders powers to investigate crimes, arrest suspects and sentence those found guilty. Besides bringing the legal system closer to the ground in the rural areas, such an initiative will also impact positively on court backlogs.

The above changes will result in the more uniform and coherent profession. It will also result in a much bigger profession, in that legal advisers and prosecutors will be explicitly included. However, the changes are unlikely to greatly affect the supply of LLB graduates to the profession. It is at the post-university stage that supply will increase. Shorter vocational training, particularly if it can take different forms and can be performed at a much wider variety of institutions, is likely to lead to more graduates entering the profession. Introducing a different form of evaluation to replace the admission and Bar examinations will also facilitate entry. So the numbers coming into the profession will rise. But it remains to be seen whether the changes will lead to more people establishing themselves and remaining in the profession, particularly black attorneys and advocates. In the section below we examine current supply to the profession in more detail.

THE SUPPLY OF SKILLED LAW PROFESSIONALS

Historical background⁴

The first academic qualification for the legal profession was introduced by Act 4 of 1858, which authorised the examination of a certificate of the Higher

Class in Law and Jurisprudence (the so-called Law Certificate). The statute gave impetus to the academic teaching of law, starting at the University of Cape Town (UCT) in 1859.

Initially the development and expansion of academic teaching of law was slow. In 1874 the LLB degree was introduced as a one-year degree with what was described as “quite a respectable curriculum”, although one could still practice as an attorney or enter the public service with the Law Certificate (quoted in Midgley, 2007: 3). By 1918 the LLB had developed into a four-year undergraduate degree at UCT, the same year in which the university established a law faculty (as did Stellenbosch University). By 1926 the five-year BA LLB option was made possible. Thereafter the spread of academic teaching of law was quite rapid. By 1994 there were 20 universities offering law degrees that could lead to entry into legal practice.

Apartheid had a major impact on the development of universities. Broadly, three groupings of universities can be identified in the period after 1959, when university education was formally structured along racial and ethnic lines: the English liberal universities, the Afrikaans universities, and the so-called black universities. The English universities admitted differing numbers of black students, in compliance with the restrictions imposed by the apartheid government, whereas the Afrikaans universities were almost entirely closed to black students. The black universities, some of which had been established in the ‘homelands’, were the only universities that catered for significant numbers of black students, including law students.

Almost from the outset of law teaching there was tension between a practice orientation and a broader academic orientation. The first legal curricula were practice oriented and law was often taught by advocates or academics that also practised at the Bar. Over time, however, curricula developed along two courses. The English universities, which followed a liberal arts approach, emphasised a broader curriculum that included courses from other disciplines. Most Afrikaans and black universities focused their curricula more narrowly on legal subjects to the exclusion of non-law courses (the so-called Unisa model). There was something of a stand-off between these two approaches to legal education, which effectively side-lined the issue of curriculum reform for many years (although some universities did try to find ways around the subjects compelled by statute, i.e. English, Afrikaans and Latin, in the face of strong opposition from the profession).

By the 1970s three legal qualifications had evolved at universities.⁵ The premier degree was the postgraduate LLB degree. This required five years of study, during which a student first obtained either a BA or BComm degree with a law major (three years), followed by a two-year LLB degree.⁶ This combination of undergraduate and postgraduate degrees was offered at all universities and gave a person access to all aspects of legal practice, i.e. as an advocate, an attorney, or as a prosecutor or magistrate in the lower courts and a state advocate in the higher courts. As an alternative, many universities also offered the BProc degree. This was a four-year undergraduate degree that qualified a person to practice as an attorney, or become a prosecutor or a

magistrate in the lower courts. The third qualification, the three-year undergraduate BJuris, was offered at only a few universities, mostly the Afrikaans and black universities. This degree was the basic requirement for prosecutors and magistrates to practice in the lower courts, but it also provided the undergraduate requirement for entry into the LLB degree (i.e. along with the BA and the BComm). On its own, however, it did not qualify a person to practice as an attorney.

Until 1934 the LLB degree had been all that was required to practice law. However, in that year the Attorneys, Notaries and Conveyancers Act, 23 of 1934, was passed, which provided that before a person could practice as an attorney they had to undertake articles of clerkship for two years and also pass the attorneys' admission examinations.⁷ Advocates, on the other hand, had to undergo a pupillage before they could practice, which increased from three months to six months and then to one year. In 1980 a further requirement of passing the Bar examinations was added for prospective advocates that wanted to join one of the Bar Councils. Prosecutors, magistrates and state advocates, were not required to undergo formal on-the-job training and could be admitted with the academic qualification only (although state attorneys had to go through the same steps to qualify as an attorney in the private sector). They did, however, attend training courses at the Justice College in Pretoria.

Prior to 1994 there had been calls for rationalisation of the legal education system and at least one review process was initiated.⁸ However, the political transition leading up to and following the first democratic elections brought much greater pressure to bear on the profession and the education system. Black lawyers, amongst others, saw the traditional five-year qualification and professional examinations as barriers that had been erected to restrict entry to the legal profession by blacks. Proof that a four-year qualification was adequate to practice was provided by the black lawyers that had qualified outside South Africa with three or four year degrees (that included practical components), and who had been able to practice immediately on qualification. Furthermore, the various legal degrees needed to be consolidated into a single, uniform entry qualification for all legal practitioners that would place greater emphasis on practical skills.

Political transformation was not the only source of pressure on the legal education system. Education experts were pushing universities to contextualise their pedagogy in a way that aligned qualifications with the country's needs. The thrust of this approach was that universities should focus on what graduates could do with their education. Curricula should accordingly focus on the improvement of practical skills. At the same time, the Department of National Education introduced and actively promoted outcomes-based education at schools and universities.

The catalyst for change was the DoJ's strategic plan for transformation of the justice system: Justice Vision 2000 (discussed above). The process that unfolded after the strategic plan was published brought attention to bear on the universities' curricula. Most black lawyers pushed strongly for the

introduction of a single four-year undergraduate university qualification with a healthy practical component, and also argued for the scrapping of compulsory vocational training periods (i.e. articles of clerkship and pupillage) and the attorneys' admission and Bar examinations.

The response from the profession and the universities was generally defensive and oriented to maintaining the status quo. But they did not have a uniform position. Some universities, particularly the English universities, were opposed to reducing the length of the degree and also did not like the idea of more emphasis on vocational training. Most Afrikaans universities and the black universities, however, did not see a great deal of difference between the proposed four-year undergraduate LLB degree and the degrees that they already offered (i.e. the three-year undergraduate BJuris and four-year BProc degrees). The profession, on the other hand, was against the introduction of a four-year LLB but was more amenable to the curricula having a greater practical orientation.

The outcome was a compromise. In 1996 the universities accepted the four-year undergraduate LLB degree as the entry qualification for all legal practitioners, including those in the civil service. Thereafter the necessary amendments were made to the relevant statutes by the Qualification of Legal Practitioners Amendment Act, 78 of 1997, and the new degree was offered for the first time in 1998. The other degrees (i.e. the BJuris and BProc) were then phased out; they would not provide entrance to legal practice after 2004. However, combining an undergraduate degree with an LLB degree was not prevented, i.e. the BA LLB and the BComm LLB, but entry into the LLB was not restricted to postgraduates.

The single, one-size-fits-all LLB curriculum was rejected and each university continued to determine its own curriculum,⁹ with varying provision of practical skills training to students. Most black universities as well as the University of South Africa (Unisa) and Potchefstroom University (now the University of the North West) developed curricula that comprised mainly law courses and had a strong focus on practical skills. The Rand Afrikaans University (now the University of Johannesburg) continued with its more academic approach, while Rhodes University, UCT, the University of the Witwatersrand, the University of Natal (now the University of KwaZulu-Natal) and Stellenbosch University devised curricula with strong non-law components. Furthermore, UCT, Stellenbosch and Rhodes, while offering the undergraduate route, promoted a five-year combination of the LLB with a BA or BComm.

Three possibilities now exist. First, there is the four-year undergraduate LLB. Second, students can take a BA or BComm with a certain number of law subjects in the second and third years. The degree they are awarded is referred to as either a BA(Law) or BComm(Law). The students then register for an LLB and join the degree in the third year (i.e. the so-called Intermediate year). They therefore do a two-year LLB and effectively come out with a BA LLB or a BComm LLB. The third route would be where a student takes an undergraduate degree with no law subjects or only one or two law subjects. After qualifying with the undergraduate degree, such a student could join the

LLB in the second year; they do a three-year LLB. The most popular route is the four-year undergraduate LLB.

Wider changes in the tertiary education system have impacted on the delivery of legal education. The National Plan for Higher Education resulted in the Department of Education (DoE) ordering several institutions to merge by January 2004. The mergers led to the reduction in the number of tertiary institutions from 36 to 21. A number of law faculties were affected. Vista University's faculty was split and incorporated into the faculties of the Universities of Pretoria, Johannesburg, the Free State, and the Nelson Mandela Metropolitan University. The law faculties of Potchefstroom University and the University of Boputhatswana were merged under the umbrella of the University of the North West, but operated separately on two campuses. The faculties of the University of Natal and the University of Durban-Westville merged as part and parcel of the merger of the two universities to form the University of KwaZulu-Natal with tuition taking place at two sites, viz. Durban and Pietermaritzburg. The teaching of law at Rhodes University's East London campus was taken over by the University of Fort Hare. Unisa, the University of the Free State and Nelson Mandela Metropolitan University also had to absorb staff and students from technikons. However, the law faculties at UCT, Stellenbosch University, Rhodes University, the University of the Western Cape, University of Zululand, University of Limpopo and Venda University remained unscathed.

The DoE's new funding framework for higher education has also impacted on legal education. The framework allocates teaching subsidies in terms of a funding grid with four levels. The different levels reflect the costs involved in teaching a discipline and the need to attract students to certain fields, particularly those where human resources are scarce. Law, being a low-cost teaching activity and a popular vocational choice, has been placed on the lowest level, which means it receives one unit of funding as opposed to the two, three or four units given to other disciplines.

Time is rapidly running out with regard to the development of a generic LLB curriculum that will be common for all law faculties. When the four-year LLB degree was introduced each university had to apply separately to the University and Technikon Advisory Council for permission to offer the degree. The South African Qualifications Authority (SAQA) began operating soon after and it required universities to re-submit their degrees for registration, although at the same time it registered a generic LLB degree that in theory sets that the standard for all LLB degrees. In practice, however, each university's LLB degree was registered separately so there was no need to comply with the generic criteria. The LLB registrations for all universities were to expire in February 2007, but universities were given a one-year extension. In granting the extension SAQA made it clear that at the end of the extension period only a generic LLB would be recognised. The deadline is fast approaching (Midgley, 2007: 15).

In the section below we examine quantitative data with respect to the supply of law professionals, firstly looking at the pipeline from universities and then examining the situation regarding vocational training for attorneys.

A quantitative analysis of the supply of law professionals

As indicated above, a person must meet three requirements before they can enter the practicing legal profession in the private sector. First, they need to have at least the undergraduate LLB degree. Second, they need to have completed a period of vocational training in terms of articles of clerkship or a pupillage (although the latter is necessary only if they wish to join one of the Bar Councils). The period of articles can vary, depending on whether the person has attended the School for Legal Practice run by LEAD, i.e. this will reduce the period of the articles. Third, prospective attorneys have to pass the attorneys' examination and prospective advocates that wish to become a member of one of the Bar councils must pass a Bar examination. In this section we examine quantitative data on the number of people qualifying in terms of each of the above requirements.

There are two sources of data on academic legal qualifications. The Department of Education maintains the Classification of Educational Study Matter (CESM) database of all graduates from technikons and universities. The database, however, is problematic in that it provides the following broad categories for university qualifications: B degree; Prof B degree; PG Certificate/Diploma; Honours; Masters; and, Doctorate. It is, firstly, unclear into which category the undergraduate LLB fits. Secondly, if the LLB fits into one of the B degree, or Prof B degree, or Honours categories, it will be mixed in with the data for other degrees. For example, the study done by Shapiro and Jacobs, which appears to use the CESM database, includes the Honours category (1999: 86). This category therefore comprises graduates with the LLB degree and all other graduates with Honours degrees in criminology, police science, etc. This will result in a considerable overcount in respect of the LLB degree.

The most likely place for the LLB is the Prof B degree category. However, this has the same problem of probably including data for other degrees; for example, the University of South Africa calls its Bachelor of Arts in Police Science a Professional B degree. Again, using this data will result in an overcount of LLB graduates.

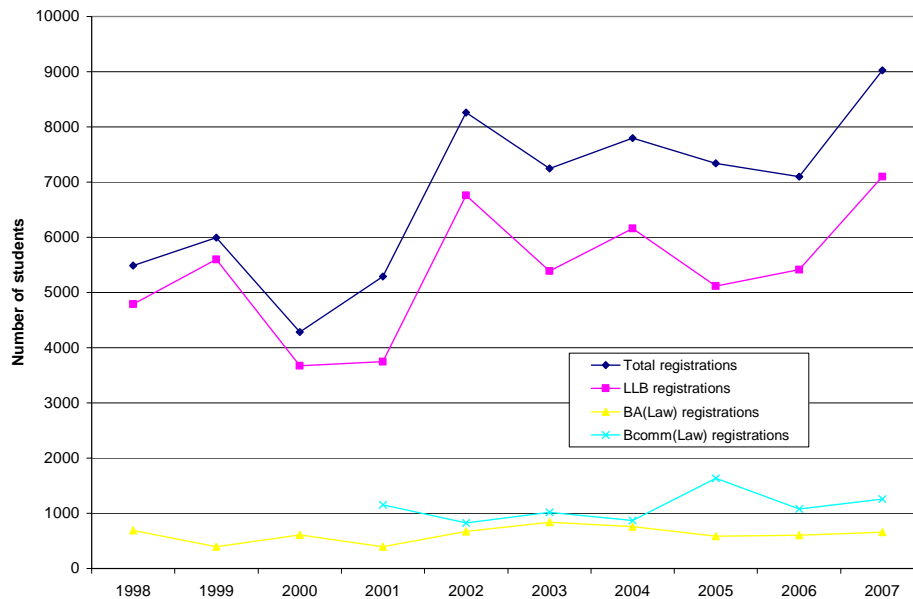
The second source of data on LLB graduates is LEAD. LEAD produces statistical reports that have the advantage of providing data on first-time, first-year registrations for the LLB degree, final year registrations, and graduates. The reports also provide data on attendance at practical legal training courses, the number of articles of clerkship registered, and the number of attorneys admitted and practicing. Recent reports break some of the data down by race and gender. The only disadvantage of the data is that one

university (i.e. the University of Zululand) has seldom provided data, and in some years there might be another university that does not provide data. This means a slight undercount overall and some fluctuation in the data. However, the data appears to be much more reliable than the CESM data and for this reason we have used it in the analysis that follows.

University registrations, final-year enrolments, graduates

In the period 1998 to 2007 the total number of first-time, first-year registrations for the LLB, BA(Law) and B Comm(Law) at South African universities fluctuated between about 5 500 and 9 000, although the fluctuations were around a steadily rising trend. This is displayed in Figure 1 below.

Figure 1 First-time first-year registrations for a law degree: 1998-2007



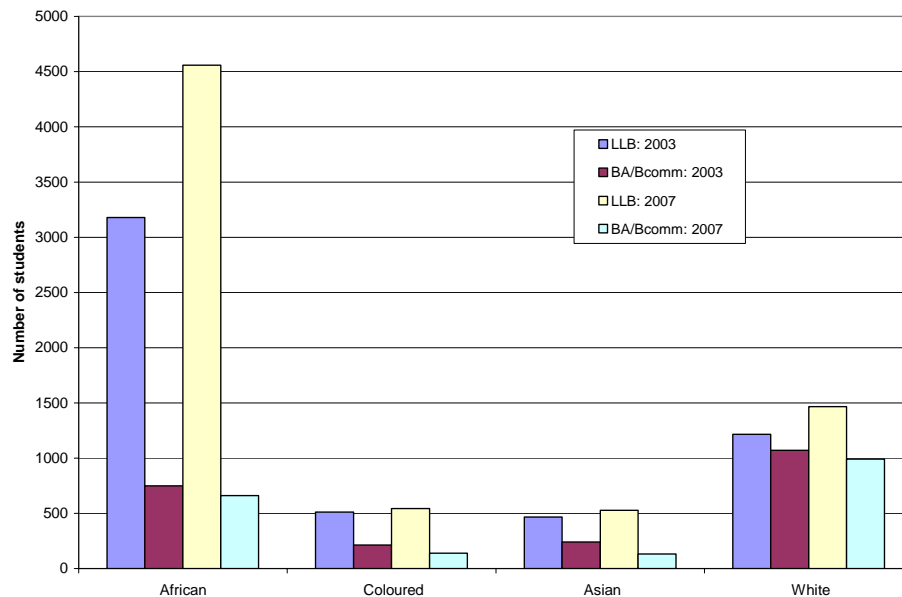
(Source: Data supplied by LEAD)

The figure shows that the vast majority of registrations were for the LLB degree. Registrations for this degree followed a very similar pattern to the total number of registrations, fluctuating between about 5 000 and 7 000, and also ending sharply up. This is an indication of the growing popularity of the degree. Registrations for the BA(Law) and BComm(Law) degrees remained at about the same level over the period.

Figure 2 provides the data for first-time first-year registrations broken down by race for the years 2003 and 2007 (it should be noted that not all students indicate their race on registration). The figure shows that Africans make up the vast majority of registrations and that registration of African students increased significantly over the period. This is a good indication that transformation is taking place from the bottom up. Registrations for all the other race groups also increased over the period.

The BA(Law) or BComm(Law) degrees were much more popular routes for white students than for students from other races. This is probably indicative of the fact that many white students have the financial resources to take five years to qualify. However, it should be noted that registrations for the latter degree declined for all race groups over the period, which attests to the growing popularity of the four-year undergraduate LLB as the route to practice in the legal profession.

Figure 2 First-time, first-year registrations by race: 2003-2007

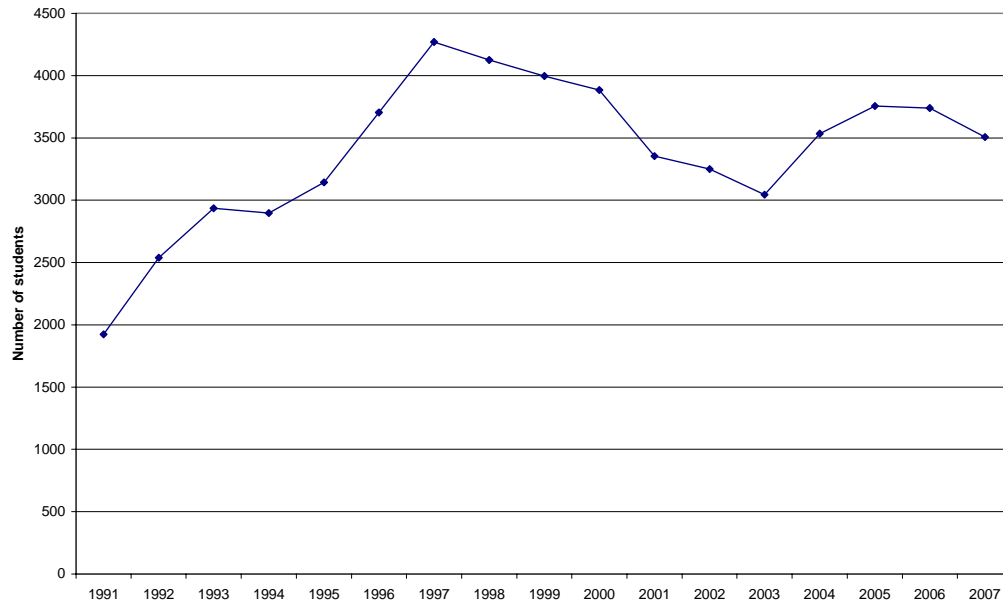


(Source: Data supplied by LEAD)

The LEAD data shows that in 2007 the gender breakdown for first-time first-year registrations for the above three routes to a legal qualification was almost exactly equal. If one cuts the data into the LLB degree as opposed to the other two degrees, one finds slightly more males registering for the LLB degree and a few more females taking the BA(Law) and BComm(Law) degrees.

Figure 3 shows the number of final year enrolments. The data combines numbers for the LLB and BProc degrees up to 2001 and thereafter the data is just for the LLB degree.

Figure 3 Final-year enrolments: 1991-2007

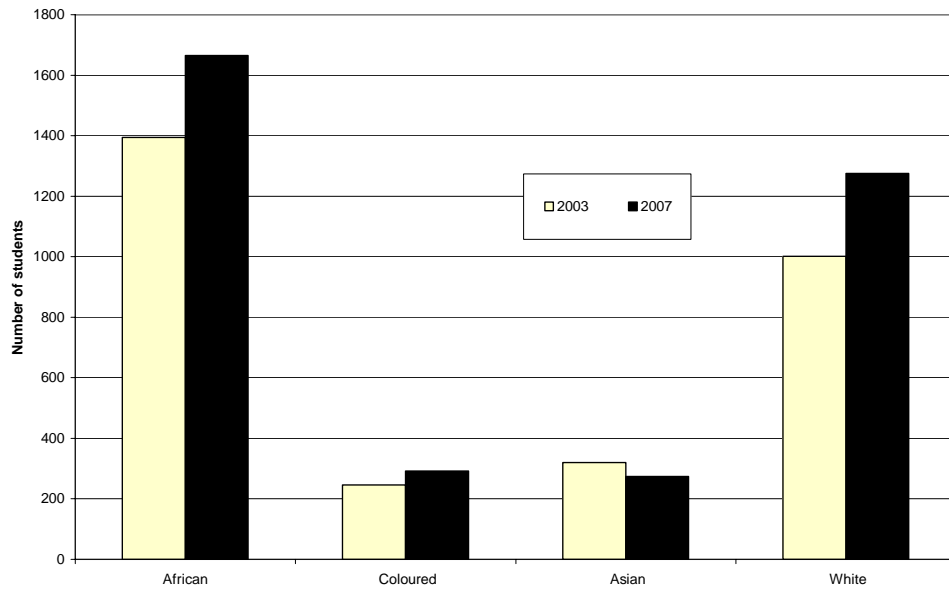


(Source: Data supplied by LEAD)

The figure shows that final year enrolments increased steeply for the period 1991 to 1997, before fluctuating to end at about 3 500. The sharp decline from 2000 to 2003 is probably accounted for by the phasing out of the BProc degree. Thereafter the numbers rise, resulting in a rising trend across the period that matches the rise in first-year registrations.

Figure 4 breaks down final year enrolments for the LLB by race for the years 2003 and 2007. The figure shows that final year enrolments increase for all except the Asian race group. The increase for Africans is significant, but given the increase in white final-year students, enrolments are still not representative of the demographics of the country.

Figure 4 Final-year LLB enrolments by race: 2003 and 2007

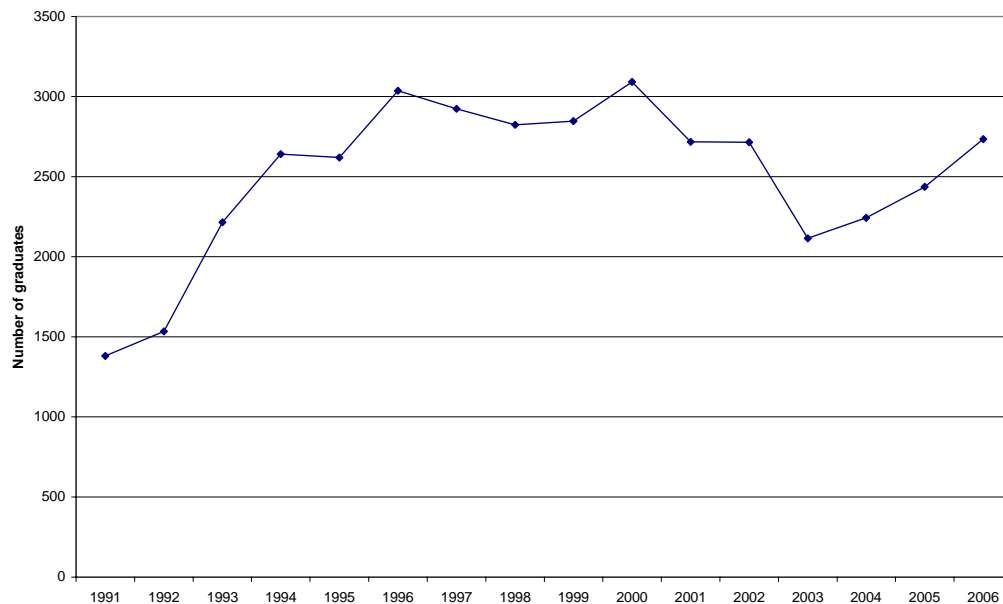


(Source: Data supplied by LEAD)

The data also shows that there is an increasing number of female students reaching the final year of the LLB degree. While the gender breakdown for first-year registrations was almost exactly equal, the picture changes in the final year. In 2003 there were more males (1 614) than females (1 432) enrolled in the final year of the LLB. However, by 2007 females had edged ahead of males.

Figure 5 presents data for LLB graduates for the years 1991 to 2006.

Figure 5 LLB graduates: 1991-2006

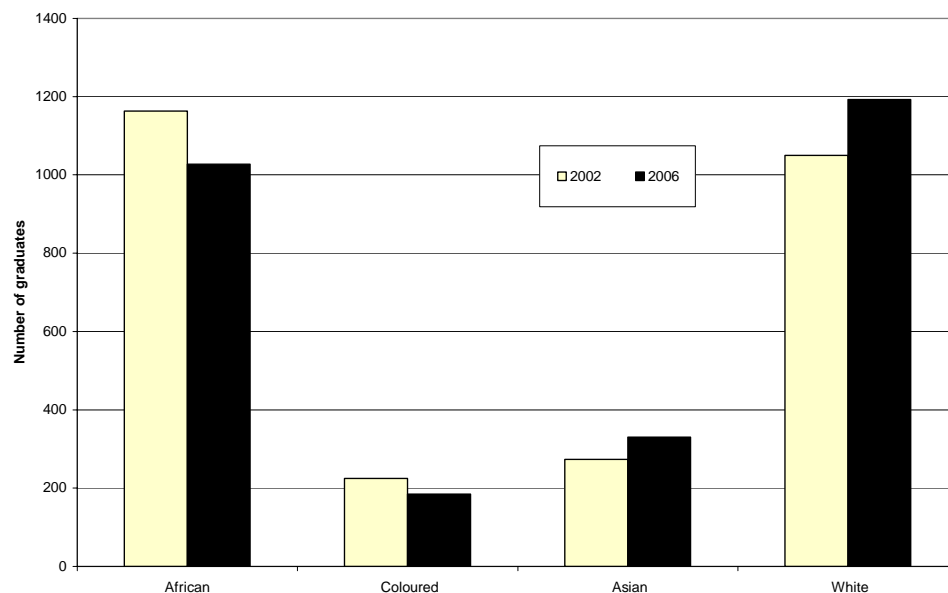


(Source: Data supplied by LEAD)

The figure shows that graduations increased over the period, although with some fluctuations. There is a strong rising trend in graduations until 2000 and then a quite steep decline to 2003. It is probable that the phasing out of the BProc degree in 2002 accounts for the sharp decline after that year. Thereafter the number of graduations increases steadily to 2006, which confirms the growing popularity of the four-year LLB degree displayed in the earlier figures.

In Figure 6 we examine graduations by race for the years 2002 and 2006 (it should be noted that not all students indicate their race).

Figure 6 LLB graduates by race: 2002-2006



(Source: Data supplied by LEAD)

The figure shows that there has been a decline in African and coloured graduations across the period, while the number of graduations of Asian and white students increases. The increases in final-year enrolment for African and coloured students are therefore not translating into increased graduations. It is not clear what the reason is for these trends.

The trend noted in the earlier figures for females to begin to overtake males is repeated. In 2002 there were a few more male graduates than female graduates. However, by 2007 there were significantly more female (1 484) than male (1 251) graduates.

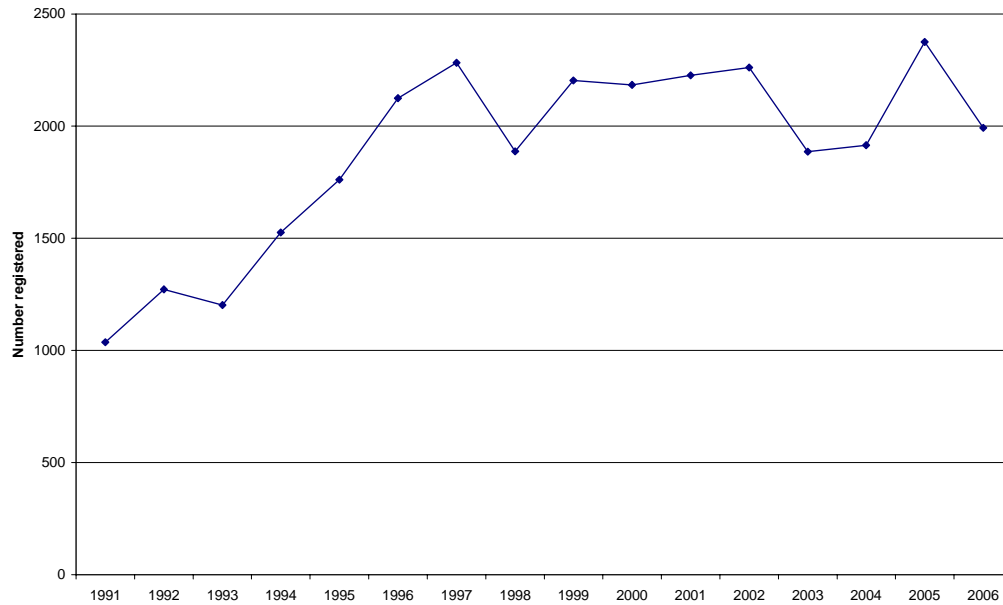
Articles, practical legal training and admission of attorneys

In this section the focus moves to the post-university supply pipeline into the attorneys' profession. This pipeline comprises registration of articles of

clerkship, various forms of practical legal training provided by the Law Society of South Africa, and admission of attorneys.

In Figure 7 we present data on the number of articles of clerkship registered with the various law societies in the country for the period 1991 to 2006.

Figure 7 Articles registered: 1991-2006

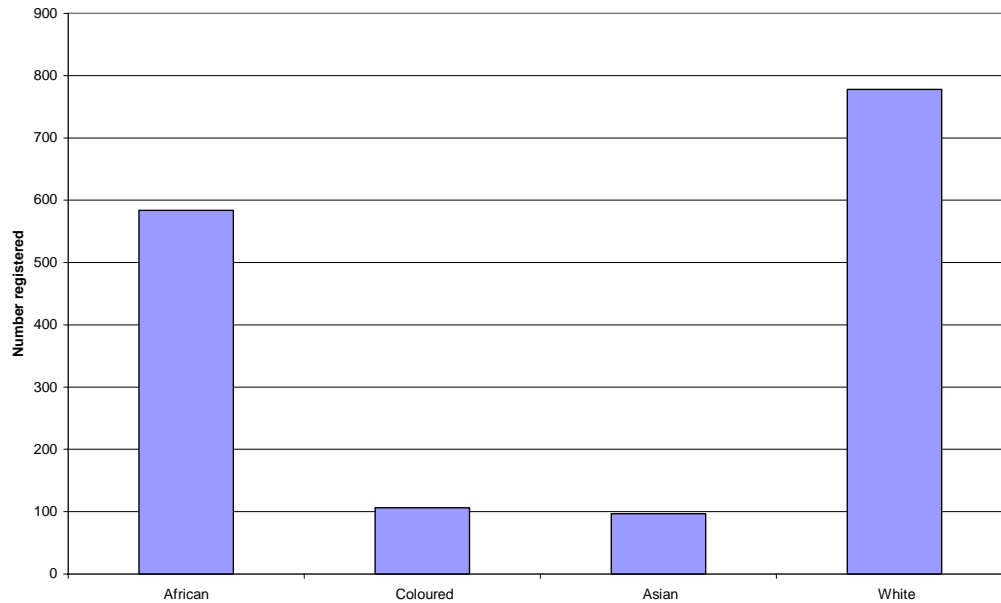


(Source: Data supplied by LEAD)

The figure shows that there is a steeply rising trend in registrations from 1991 to 2002, albeit with some fluctuations. The decline after 2002 is probably the result of the phasing out of the BProc. However, in most years after 1996 more than 2 000 registrations per year take place.

Figure 8 shows the number of articles registered in 2006 broken down by race. It should be noted that data on race was not supplied by the KwaZulu-Natal Law Society. This would alter the data but probably does not affect the overall proportions a great deal. The figure shows that articles registered by whites make up the largest proportion, followed by Africans. Articles registered by Asians and coloureds are low and almost even, but the inclusion of data from KwaZulu-Natal would probably push the Asian registrations up higher.

Figure 8 Articles registered by race: 2006



(Source: Data supplied by LEAD)

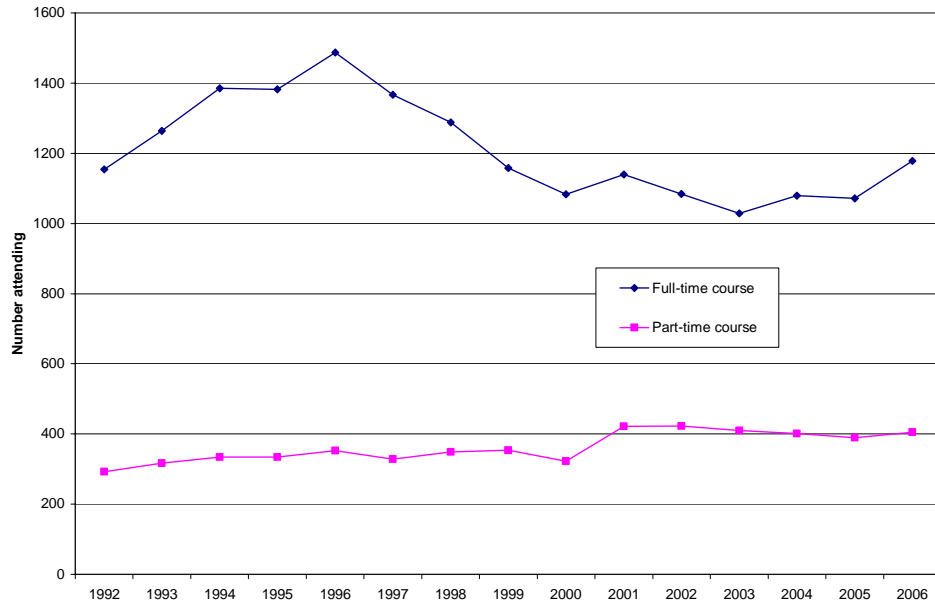
The above figure indicates a worrying trend. While the number of African first-year registrations and final-year enrolments is high and in both cases rising, the number of African graduates is declining and drops beneath the number of white graduates. Registration of African articles of clerkship is considerably below that of whites (although we do not have time series data for the latter so cannot establish what the trend is in this regard). It therefore appears that the impetus of transformation from below begins to weaken at the critical point of entry into the attorney's profession.

The picture with regard to gender, however, is much more promising. The growing number of females taking the LLB degree is being replicated at the level of articles. In 2006 the number of females (1 053) registering for articles significantly exceeded the number of males (884). The data on gender includes all the law societies in the country.

The next series of figures deal with registrations for practical legal training courses. These courses can be done part-time by candidate attorneys, full-time in two teaching blocks in the period of articles of clerkship, or they can be done as a full-time course at the School for Legal Practice prior to registration of articles. In the latter case the period of articles is reduced to one year.

In Figure 9 data is presented for registrations for the full-time and part-time courses for the period 1992 to 2006. The figure reveals that the full-time course is much more popular than the part-time course, but the latter displays a steadily rising trend whereas attendance on the full-time course declines steeply after 1996 before flattening out at just over 1 000 participants.

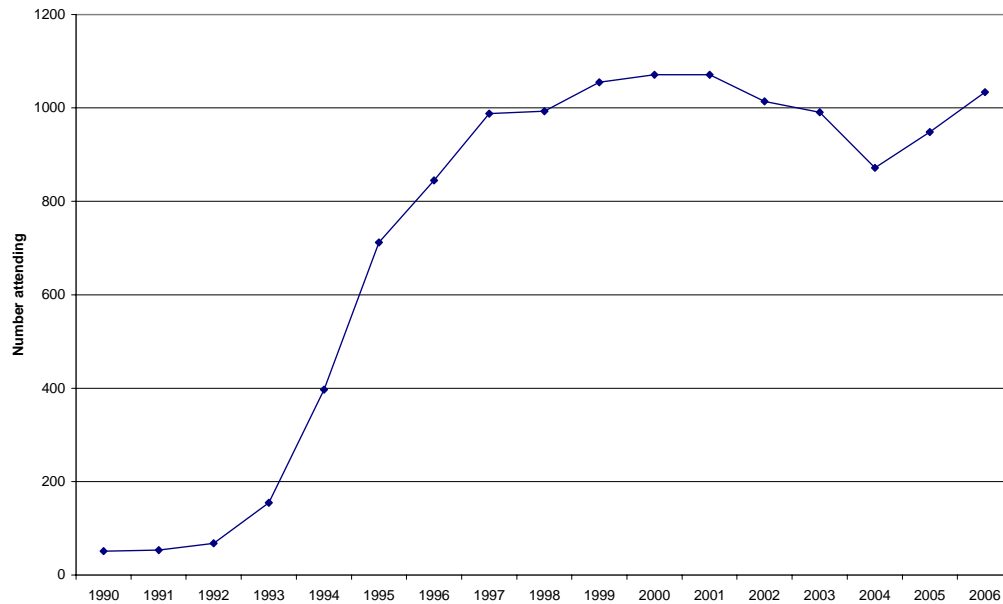
Figure 9 Practical Legal Training: Full-time and part-time courses



(Source: Data supplied by LEAD)

In Figure 10 the attendance at the School for Legal Practice is presented. This is a full-time course done over about six months by graduates prior to entering articles of clerkship.

Figure 10 Attendance at School for Legal Practice: 1990-2006



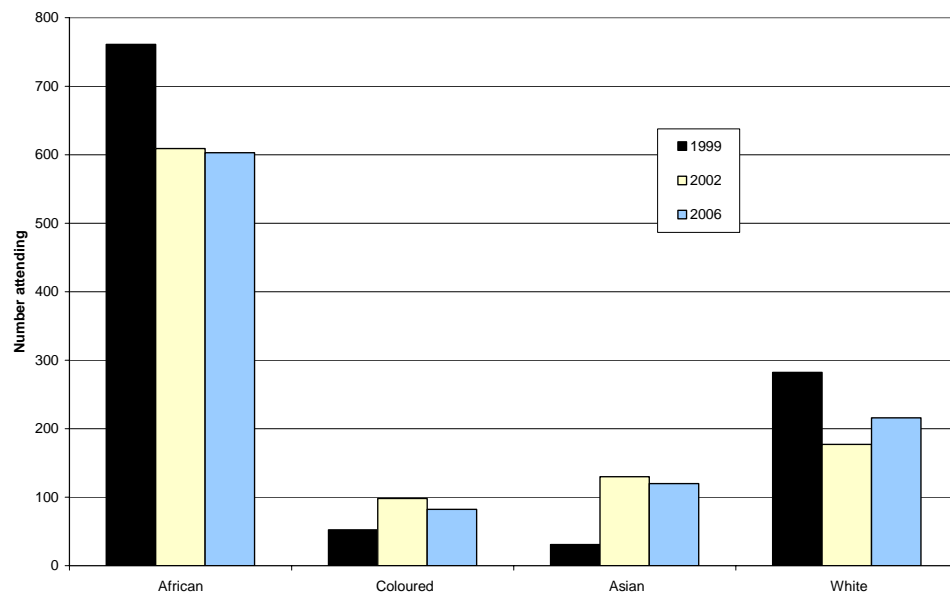
(Source: Data supplied by LEAD)

The figure shows a very steep increase in students attending the School through to 1997, after which attendance flattens to 2001 and then declines. Attendance begins to increase sharply again from 2004. The overall increase

in attendance at the School is reportedly the result of the number of LLB graduates beginning to exceed the number of articles on offer. It has become the practice for many graduates that are not able to get articles immediately upon leaving university to enrol in the School to gain practical experience in order to make them more attractive to legal firms (and to reduce their period of articles). Once they complete the School they again apply for articles for the next year. The flattening out after 1997 and subsequent decline could be the result of demand for articulated clerks increasing, although the phasing out of the BProc probably explains some of it.

In Figure 11 attendance at the School for Legal Practice is broken down by race for the years 1999, 2002 and 2006. The majority of students attending the School are African. However, the number of African attendees decreases quite significantly across the period. This is also the case for white students, although the number rises again in 2006. It is not clear what the reason is for the fluctuations. It might be a positive development, in that larger numbers of African (and other) graduates are finding articles and are doing their practical training on a part-time basis or in the full-time courses (see above). However, the earlier figures dealing with these courses do not support such an analysis.

Figure 11 School for Legal Practice by race: 1999, 2002 and 2006



(Source: Data supplied by LEAD)

In Figure 12 the attendance at the School for Legal Practice is broken down by gender. The figure repeats the trends noted above with respect to other aspects of legal education and training in which females increase relative to males, In this case, however, females close the gap with males but do not overtake them.

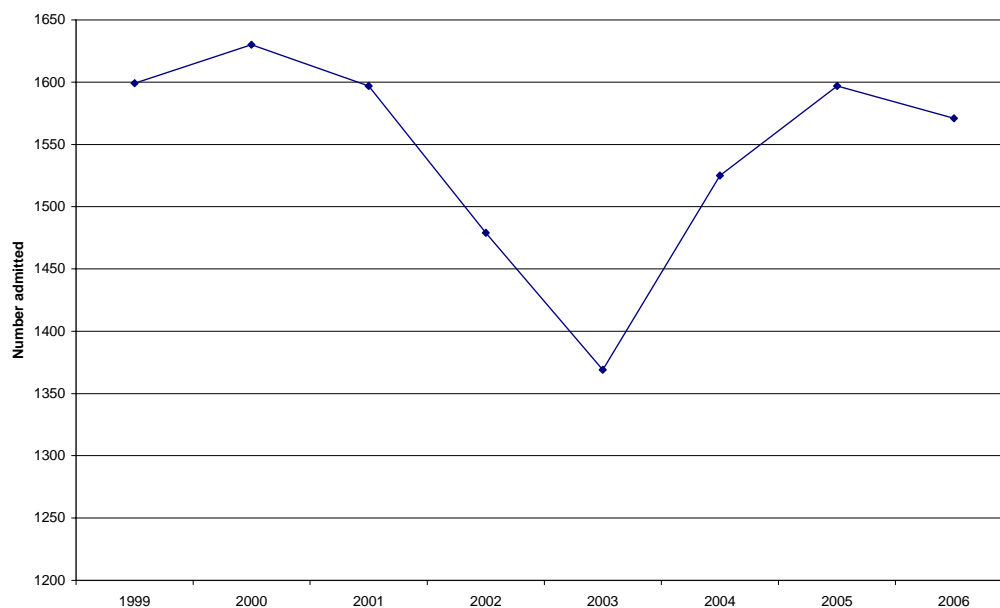
Figure 12 School for Legal Practice by gender: 1998-2006



(Source: Data supplied by LEAD)

Figure 13 presents data in respect of the number of attorneys admitted in the period 1999 to 2006.

Figure 13 Attorneys admitted: 1999-2006



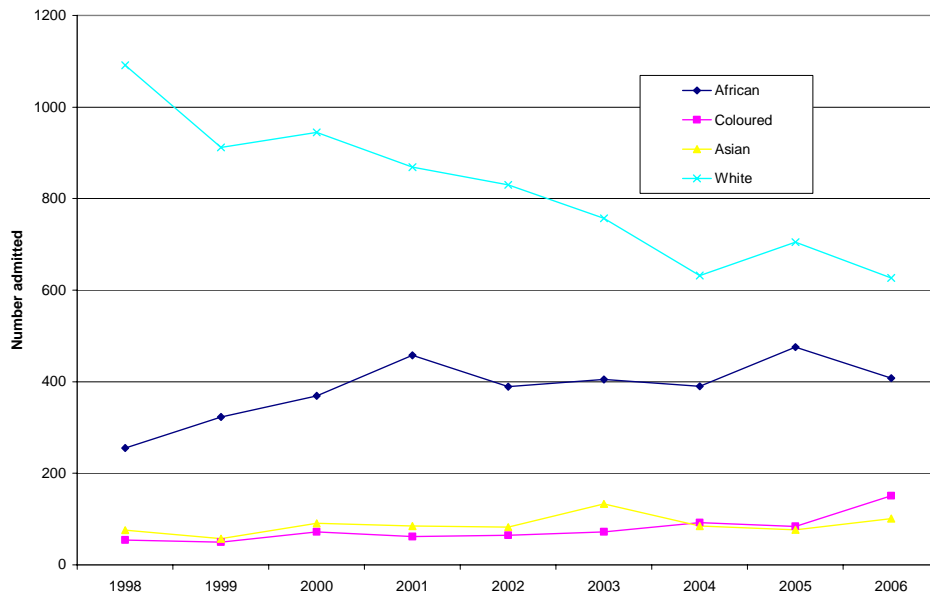
(Source: Data supplied by LEAD)

The figure reveals a steep decline in admissions after 2001. As noted with regard to a similar trend in earlier figures, this probably reflects the effect of

the phasing out of the BProc degree. The decline lasts until 2003, after which there is a sharp increase in admissions to 2005, before a dip in 2006.

In Figure 14 the number of attorneys admitted in the period 1998 to 2006 is broken down by race. The figure shows a rising trend with respect to admissions of African attorneys, as well as slight rises in the number of Asian and coloured attorneys being admitted. On the other hand, admission of white attorneys shows a steep decline across the period.

Figure 14 Attorneys admitted by race: 1998-2006



(Source: Data supplied by LEAD)

The trends appear to contradict some of the earlier figures that showed a decline in the number of African graduates and falling attendance at the School for Legal Practice. The trends also raise the question of where the white LLB graduates go. Nic Swart, the director of LEAD, gave a very rough estimate of the destination of LLB graduates: 50% become attorneys, 5% become advocates, 10% go into the public sector, and 35% go into commerce (not necessarily as legal advisers). The decline in the number of whites being admitted could be because increasing numbers are going into commerce. There is, however, no data to confirm that this is the case. Whatever the explanation, the figure indicates that the composition of the supply of attorneys is changing.

In Figure 15 admissions over the period 1998 to 2006 are broken down by gender. The figure shows that the increase of females relative to males noted repeatedly above is playing out at the stage of admission to practice as an attorney. In 1998 there were considerably more admissions of males than females, but thereafter the gap narrows steadily until females overtake males in 2006.

Figure 15 Attorneys admitted by gender: 1998-2006

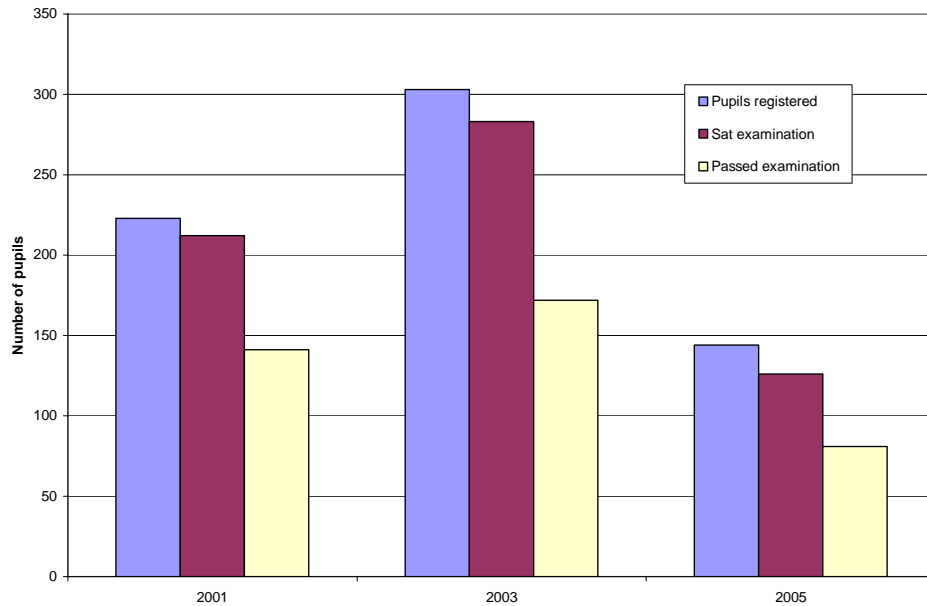


(Source: Data supplied by LEAD)

The above has focused on academic qualifications and the path through to becoming an attorney. The alternative for some LLB graduates is to practice as an advocate. As noted above, aspirant advocates that want to join one of the Bar Councils must do a pupillage of one year and pass a Bar examination (whereas those that do not want to join one of the Bar Councils can begin to practice immediately). The figures that follow are based on data supplied by the General Council of the Bar.

In Figure 16 we show how many aspirant advocates registered as pupils, how many sat the Bar examination at the end of the period of pupillage, and how many passed the examination. It should be noted that until 2004 the length of the pupillage was six months and there were two intakes of pupils per year. From 2004 the period of the pupillage was increased to one year and there was only one intake each year. This accounts for the sharp drop in the number of pupils in 2005.

Figure 16 Throughput in the pupillage system: 2001, 2003 and 2005

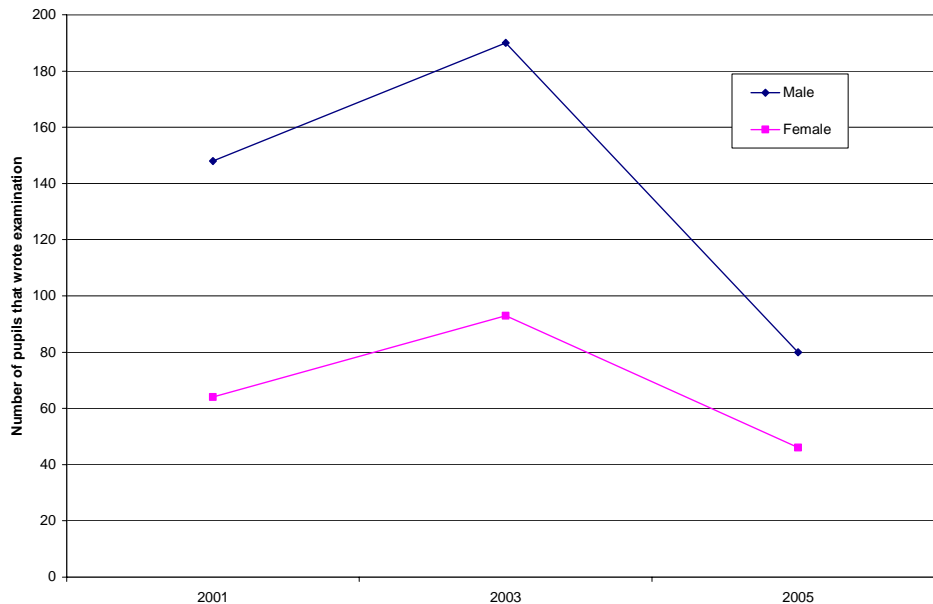


(Source: Data supplied by the General Council of the Bar)

The increased length of the pupillage had a small negative impact on the number of pupils that completed their pupillage and sat the Bar examination (down to 88% in 2005 from 95% in 2001 and 93% in 2003). Surprisingly, the longer pupillage has not impacted positively on the pass rate. This drops from 63% in 2001, to 57% in 2003, and to 56% in 2005.

In Figure 17 we break down the pupils that wrote the Bar examination by gender.

Figure 17 Pupils sitting the Bar examination by gender

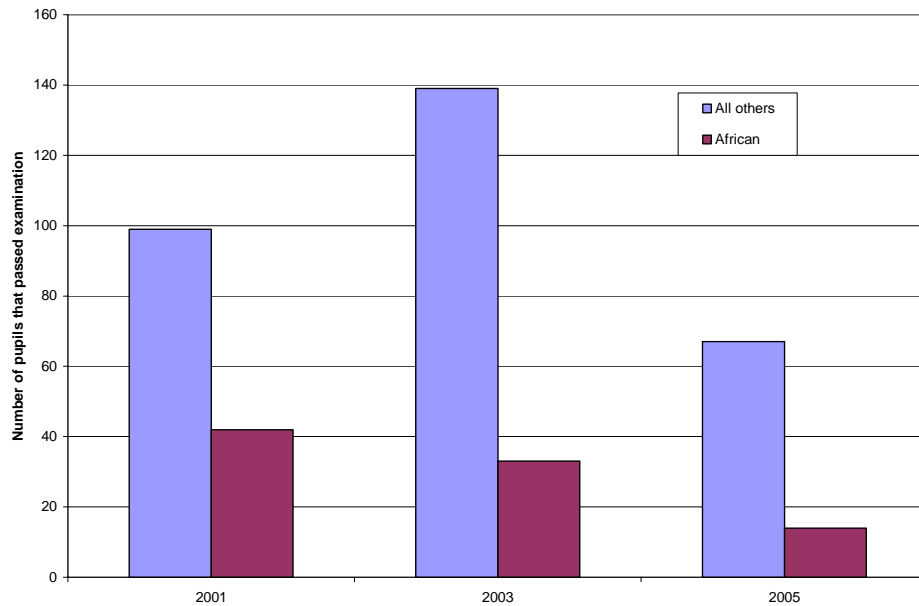


(Source: Data supplied by the General Council of the Bar)

The figure shows that significantly more male pupils sat the examination than females, and that both genders dropped sharply with the increase in the length of the pupillage after 2004. However, across the period there is a moderate increase of female pupils relative to males: in 2001 females made up 30% of pupils writing the Bar examination as against 37% in 2005. Females have therefore not made the same progress in gaining access to the Bar as they have made with respect to the attorneys' profession.

In Figure 18 the pupils that passed the Bar examination are broken down by race. Only two categories are used: African pupils and all other race groups (i.e. white, Asian and coloured). This is how the data has been presented by the General Council of the Bar. The figure shows that African pupils that pass the Bar examination make up a small proportion of all pupils that pass. Furthermore, the proportion of Africans declines across the period: from 30% in 2001, to 19% in 2003, and to 17% in 2005.

Figure 18 Pupils that passed the Bar examination by race

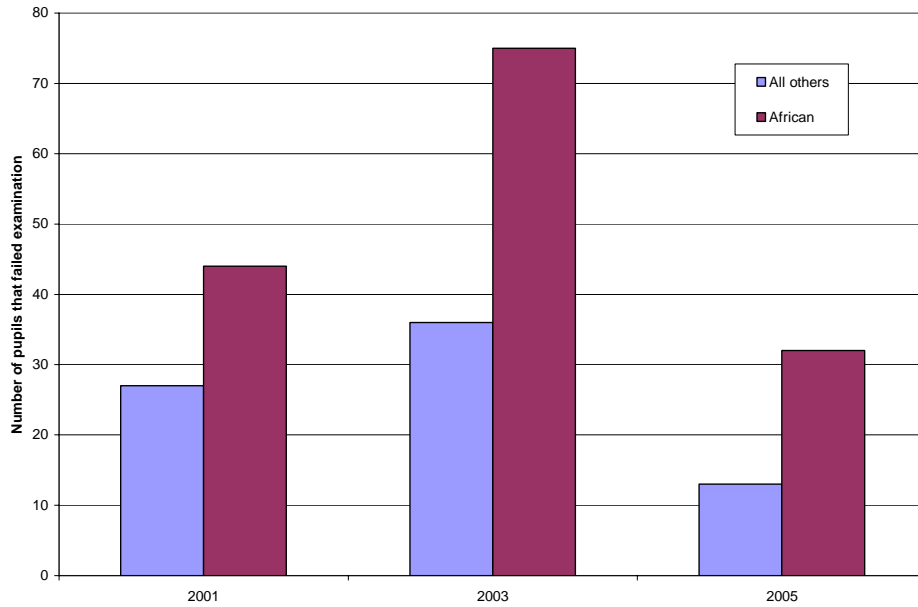


(Source: Data supplied by the General Council of the Bar)

Figure 19 examines the issue of race further. In the figure the race of the pupils that failed the Bar examination is displayed. Again, the data supplied by the General Council of the Bar provides only two categories: African pupils and all others.

The figure shows that a very large proportion of failures was made up of African pupils. The proportion increases across the period: from 62% in 2001 to 71% in 2005. In fact, in each of the years the majority of African students that sat the examination failed; in 2003 and 2005 this was a very large majority.

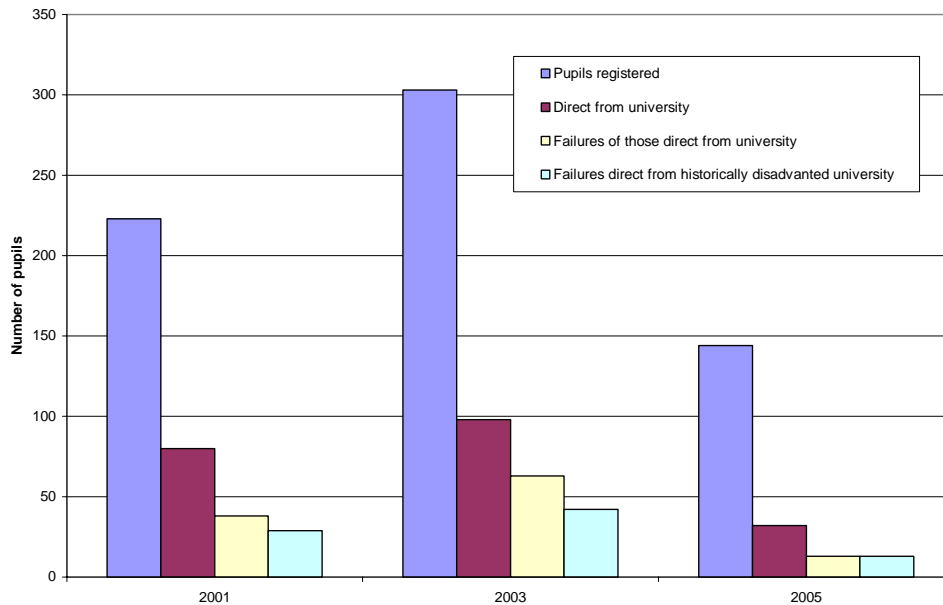
Figure 19 Pupils that failed the Bar examination by race



(Source: Data supplied by the General Council of the Bar)

One reason for the high failure rate of African pupils is suggested by additional data supplied by the General Bar Council. Figure 20 shows the proportion of pupils that enter pupillage direct from university and the proportion of the latter that fail the Bar examination. In addition, the figure displays the proportion of failures that has come direct from a historically disadvantaged university.

Figure 20 Failures from historically disadvantaged universities



(Source: Data supplied by the General Council of the Bar)

In each of the years the proportion of those entering pupillage direct from university is a quite small minority. However, on average about half of these pupils fail the Bar examination and a very large proportion of these failures have come direct from historically disadvantaged universities. The combination of coming straight from university and from a historically disadvantaged university seems to be an important factor in explaining failure.

The increase in the period of the pupillage has clearly had a major negative impact on the number of pupils entering a pupillage, lasting the course of the pupillage, and passing the Bar examination. While females make gains relative to males across the period 2001 to 2005, this is not the case for Africans relative to other races. Africans make up a minority of those entering pupillage and have a much higher failure rate. One reason for the higher failure rate appears to be the education Africans get at historically disadvantaged universities. The implication of the above is that limited numbers of Africans are entering the Bar to practice as advocates, which means that little transformation is taking place with respect to the racial composition of the Bar. We will examine this further in the section that follows.

Further and specialist legal education and training

Further and specialist legal education and training in the private sector

There is extensive further education and training taking place in the legal profession in the private and public sectors. Data was presented above with respect to articles of clerkship and pupillages, as well as the practical legal training provided by LEAD. However, LEAD does not provide training only for articulated clerks. Considerable effort is put into providing additional or specialist skills to attorneys. These courses take various forms: ranging from taught courses, to courses offered on a distance basis, to one-off seminars for the profession.

Attorneys have traditionally been able to acquire two further professional qualifications, i.e. to practice as conveyancers and as notaries. Conveyancing is particularly important in the profession as it is one of the more lucrative aspects of legal practice. LEAD offers courses in Conveyancing Practice and Notarial Practice to prepare attorneys to write the relevant professional examinations. These courses are offered by way of classes and also on a distance basis.

The courses offered by way of classes have seen a considerable increase in attendance over the period from 2000 to 2006. Attendance on the Conveyancing Practice course rose from 248 in 2000 to a high of 517 in 2005, before dipping slightly to 463 in 2006. This increase has probably been influenced by the boom in the property market in recent years and the greater demand for conveyancers that would have resulted. The Notarial Practice course has also attracted more participants, with attendance rising from 138

in 2000 to 231 in 2006. It should be noted that courses on conveyancing and notarial practice are also offered on a distance basis.

LEAD also offers a number of courses through distance education. The courses are: Certificate in Deceased Estates; Diploma in Labour Law; Conveyancing; Notarial Practice; Diploma in Income Tax; Diploma in Corporate Law Practice; and Insolvency. The most popular courses are those in Conveyancing, Notarial Practice and the certificate course in Deceased Estates. The courses are generally taken by attorneys who are seeking specialist skills and to prepare themselves for the conveyancing and notarial examinations. It is also possible that some candidate attorneys take these courses.

A course in Practice Management is a particularly important part of the continuing education focus of LEAD because it is an area not adequately dealt with in the LLB degree. LEAD offers the course via classes, correspondence and the Internet. To date the correspondence option has been the most popular, followed by classes. The Internet option is a more recent offering. Enrolment for the course has fluctuated somewhat, reaching a peak of 202 in 2002. The average enrolment is in the region of 120 per year. However, the Attorneys Act is soon to be amended to make the course mandatory for attorneys that become partners in legal practices and for those that set up their own practices. In future they will have to have completed the course within a year of receiving their Fidelity Fund certificate.

A final aspect of LEAD's continuing education efforts are one-off seminars on a variety of topics. Total attendance per year at such seminars has generally been above 2000.

The Attorneys Fidelity Fund plays a strong supporting role to LEAD and the universities with regard to training. Given that the purpose of the Fund is to reimburse members of the public if an attorney has stolen their money or property, it focuses its support for training on those areas of practice that could lead to such losses. At the university level the Fund provides an amount of R210 000 per year to the law faculties at each university to finance law clinics that provide students with practical training and experience. It also provides funding to law faculties to assist them to provide programmes that deal with practical legal skills, literacy, numeracy, computer skills and research skills. This amounts to about R65 000 per year to each university. The Fund also provides about 300 bursaries a year to LLB students in their third and fourth years based on financial need and academic performance. The amount of the bursaries currently totals R2.7 million per year.

Numeracy is a particular concern of the Fidelity Fund. It has recently commissioned research on the numeracy programmes at all the universities in the country. The aim was to identify the core components of the programmes and assist with capacity as well as funds for those universities that were not offering programmes. The research found that the majority of universities did have numeracy programmes, either as a compulsory course, as an elective, or as a mandatory course for students that fail a numeracy test. These

courses will be taken in the first year of the LLB. In general the courses aim to teach secondary school mathematics, i.e. the starting point is that students are numerate only to the level of a Grade 7 pupil. Most universities will also offer a course in accountancy for attorneys.

At the post-university level the Attorneys Fidelity Fund provides finance to LEAD to support its practical legal training programmes and to the Black Lawyers Association for its Legal Education Centre.

The various Bar Councils also do training, but not on the same scale as LEAD. Pupils receive structured training comprising lectures, programmes, assignments, etc. The Johannesburg Bar also does advocacy training, which it seems is being rolled out to other Bar Councils. The training is aimed at producing trainers, who will conduct role-playing exercises in leading a witness, cross-examining a witness, etc.

The perception in the profession is that law firms are not very good at training. At present there are only about 30 firms that are submitting workplace skills plans to the Policing, Private Security, Justice, Legal, Correctional Services, Defence and Intelligence Sector Education and Training Authority (SASSETA) and claiming for training (see further below). This is mainly because the vast majority of law firms are small and do not have the infrastructure to participate in the new training dispensation. However, it is well known that engagement with SETAs is an extremely time-consuming exercise. Interviews with a number of law firms indicate that they are doing training despite the fact that they have not submitted workplace skills plans. It therefore seems that the obstacle is the infrastructure needed to engage with SASSETA rather than to deliver training. For example, a medium-sized firm that specialises in commercial and corporate work runs weekly in-house training sessions. This involves a firm-wide training session each week, and a further weekly session within each department. The training will generally deal with new cases and new legislative developments. The firm also provides training sessions for its candidate attorneys on finance and research skills using outside consultants. In addition, the firm will fund further study for its law professionals. It has, however, never engaged with SASSETA with regard to training. It does not see the need.

It was noted above that legal advisers have formed the Corporate Lawyers Association. The Association provides quite a few training courses for members. These are generally short courses (one to three days). Current courses include an introductory course on contracts, finance for the non-financial person, and mergers and acquisitions. Because it has begun to attract legal advisers from the public sector, the Association now offers a new course that deals with the Public Finance Management Act and the Municipal Finance Management Act. None of the courses is accredited by the SASSETA. The Association met with officials of the SASSETA some time ago but decided that the administrative requirements were so onerous that it would go it alone.

Further and specialist legal education and training in the public sector

The DoJ states that training is integral to its efforts to widen and improve access to justice for all South Africans. The Justice College is the official training arm of the DoJ. The College delivers training to magistrates, state advocates, prosecutors, family advocates, state attorneys, legislative drafters, court interpreters, court and office support personnel as well as other legal professionals.

The College is currently undergoing major restructuring and transformation. This will result in significant expansion both in terms of its training menu and its target audience. Training will be informed by conducting needs analyses with its existing clients, and it will be targeted towards improving performance in the workplace. New training courses will therefore be informed by the needs of clients and also what court officials are currently being exposed to or could be facing in the near future. For example, the Legal Learning Faculty have added or are in the process of adding the following new courses to its training menu: Organised Crime; Cyber Crimes; Environmental Law; International Agreements; Refugee Law; Human Trafficking; Competition Law; Inquests and Medical Forensics; Computer Law; Immigration Law; Extraditions; Legislative Drafting; the National Credit Act; the Children's Act; and, Intellectual Property.

Two new departments have been added, namely the Leadership, Management and Administrative Learning Department, and the Research and Development unit. The former is responsible for all generic training of DoJ employees, including such courses as Total Quality Management; Project Management, Supply Chain Management, and Change Management. The latter is part of the Academic Learning Faculty and will have the task of scanning the legal, justice and learning environment locally and globally, interpreting the information that it gathers, and feeding this into the design of training. The idea is that it will detect threats to security and the economy so that training can respond.

All courses will be accredited with the SASSETA and participants will therefore earn credits that could over time lead to a qualification or a new qualification.

The Justice College is due for an even more radical restructuring. The South African Judicial Education Institute Bill proposes the establishment of a new judicial training body with the aim of enhancing judicial accountability and to contribute to the transformation of the judiciary. Its predecessor, the South African National Justice Training College Bill, was drafted and discussed at a major Colloquium in April 2005. When this Bill was rejected by the judiciary the issues that had been raised were referred for further consultations. The Advisory Committee on Judicial Education then put this matter on its agenda (this committee had been established by the Chief Justice to advise on judicial

education). After several meetings of the Advisory Committee a draft Bill was decided upon, which subsequently evolved in further consultations into the current Bill.

The focus is on judicial officers, that is magistrates and judges. The aim is to provide proper, appropriate and transformational judicial education and training, having due regard to the legacy of apartheid and the new constitutional dispensation. Training will be given to aspiring and newly appointed judicial officers as well as continued training for experienced judicial officers. All other legal professionals as well as support staff within the DoJ will continue to receive training at the Justice College.

The Legal Aid Board (LAB), which is the largest employer of candidate attorneys, also does training. The majority of candidate attorneys that are employed by the LAB have already completed LEAD's School for Legal Practice. Those that have not are sent on the full-time (five-week) practical legal training course at the LAB's expense. In addition, the LAB provide training to prepare candidate attorneys for the attorneys' admission examination. Furthermore, the performance contract of every candidate attorney stipulates that he or she must attend an average of 56 hours of training provided by the LAB each year. This training is provided by senior staff at the Justice Centres as well as external facilitators contracted by the LAB. There are also structured programmes that ensure that candidate attorneys are ready to appear in court. Other staff at the LAB will receive training according to needs identified as part of the quarterly performance assessment.

The Sector Education and Training Authority for the sector

A third vehicle for training in the legal profession is the Policing, Private Security, Justice, Legal, Correctional Services, Defence and Intelligence Sector Education and Training Authority (SASSETA). As is evident from its title, SASSETA spans the private (Legal) and public sectors (Justice) of the legal profession. It must be emphasised the SASSETA does not itself provide training. It registers learnerships and accredits training providers to deliver the relevant training.

Although the Law Society of South Africa and the Justice College spoke of close cooperation with the SASSETA, and were generally appreciative of its efforts, the SASSETA has taken a long time to put learnerships in place for legal professionals. The most significant learnership is the one for candidate attorneys. This learnership covers the period of the articles, subsidises the candidate attorney's salary by R1 500 per month, and pays for the candidate attorney to attend the practical legal training course offered by LEAD (it is the accredited training provider for the learnership). In 2006/2007 about 100 candidate attorneys participated in the learnership, and in 2007/2008 a further 78 had been selected. The learnership is very attractive for firms (there is also a tax rebate for employers) and it is hoped that there is going to be an exponential increase in the numbers entering it. If there is an emphasis on using the learnership to subsidise articles and training for African candidate

attorneys, it could have a significant impact on the racial composition of practicing attorneys. The SASSETA sector skills plan suggests that this might be the case: it proposes that employment equity in the legal profession be improved by “targeting mandatory and discretionary grants to compliant enterprises” (SASSETA, 2005/6: 57).

Further evidence of the role of the SASSETA in addressing transformation is its funding of LEAD to provide 150 previously disadvantaged legal practitioners with free skills training in commercial and tax law, property law and conveyancing. The training will be provided by the School for Legal Practice (Mail and Guardian SA Legal, 9 to 15 November 2007).

The latter appears to be the way that the legal profession is going to engage with the new training dispensation. In most sectors the primary route for delivering training is for individual firms to submit workplace skills plans and thereafter get refunds from the relevant SETA for training done. In the legal sector, however, only about 30 firms have submitted workplace skills plans. This means that there is a lot more money left in the SASSETA’s discretionary funds, which can be accessed by LEAD and similar organisations to deliver training not specific to particular workplaces. Hence the availability of funding for the 150 previously disadvantaged legal practitioners for training in commercial and tax law, etc. LEAD has also got funding from SASSETA for generic training in advocacy, numeracy and literacy, as well as funding for training of support staff.

In the public sector the Justice College is the primary training provider. The main focus of the Justice College is law professionals in the DoJ and NPA. In 2006/2007 a total of 116 professionals were engaged in these learnerships, while a further 3 125 professionals had been on skills programmes, short courses or other forms of training (with a further 1 923 targeted for training) (DoJ, 2006/2007: 263-264). There is also a court management learnership and one for clerks at the family courts. Besides the above training for professionals at the DoJ, there is considerable training taking place for non-professional staff at the DoJ. The training focuses on three areas: upgrading critical technical skills; understanding the legal framework governing the core mandate of the DoJ; and personnel and other types of administration. There is also life skills training that covers topics such as HIV/AIDS management and counselling, and personal financial management (SASSETA, 2005/6: 41).

THE DEMAND FOR LAW PROFESSIONALS

An earlier study on the labour market conducted by the Human Sciences Research Council (HSRC) shows that the occupational category comprising all professionals grew considerably in the period 1965 to 1994, rising from 227 000 to 751 000 jobs. Growth in this occupational category was well above aggregate growth in labour market demand, as evidenced by the fact that the professional category grew from 6.6% of all employment in 1965 to 13.6% in 1994. This contributed to a strong trend of growth in what the study termed

'high level employment', while there was a decline in employment in lower level occupations (Whiteford, van Zyl, Simkins and Hall, 1999: 11).

By 1998 employment in the professional occupational category had grown to 964 000 and it was predicted that in 2003 it would stand at 1 057 000. The growth of this occupational category continued higher than aggregate growth: in 1998 it made up 16.2% of all employment, which rose to 17.6% in 2003. Much of this growth took place in the private sector, although there was also considerable growth in the professional category in the public sector (Whiteford et al, 1999: 30-31).

The majority of professionals were employed in the finance sector (94 761 in 1998) and the community services sector (which includes the public sector: 725 975 in 1998). Fairly high numbers were also employed in the manufacturing sector (72 813 in 1998) and the trade sector (24 690 in 1998). Significant growth was projected for all the above sectors through to 2003, particularly the finance sector, in which the number of professionals was expected to grow by 32%. Growth of 6.4% was predicted for the community services sector, but this was off a large base so the actual number of jobs was high (46 638) (Whiteford et al, 1999: 32-34).

Within the professional occupational category, the legal profession was identified as a 'moderate-growth occupation', i.e. a growth of 5% to 10% was projected for the period 1998 to 2003, off a base of 18 135 in 1998.¹⁰ This translates into estimated vacancies in the region of 2 000 to 4 999 across the period. These vacancies would be generated almost equally by new demand (46%) and replacement demand (54%). Replacement demand would be due primarily to retirement and death, rather than emigration (Whiteford et al, 1999: 49, 57-59, 75; HSRC, 1999: 31).

The study breaks projected demand down further by sub-sector. Legal professionals are identified as 'moderate growth professionals' for the period 1998 to 2003 in the financial intermediation sub-sector, the insurance sub-sector, and the business services sub-sector. They are classified as 'high growth professionals' in the government sub-sector (SIC 911) (Whiteford et al, 1999: 41-B – 45-B).

A similar but even more detailed HSRC study compiled and edited by Van Zyl provides the number of law professionals in employment in 1998 and the projected growth over the period 1998 to 2003. This study identified the business services and the government sub-sectors as the largest employers of law professionals. These sub-sectors were followed by the insurance, financial intermediation, local government, and community and social services sub-sectors. It was estimated that the government, insurance, and financial intermediation sub-sectors would experience high growth (respectively 18%, 16% and 15%) over the period 1998 to 2003. However, growth in the insurance and financial intermediation sub-sectors would be off very low bases: 650 law professionals were employed in the insurance sub-sector in 1998 and 473 were employed in the financial intermediation sub-sector. Projected growth of law professionals in the government sub-sector would be

off a base of 5 262 in employment in 1998 (Van Zyl, 1999: 13, 15, 52, 63, 96, 101 and 145).

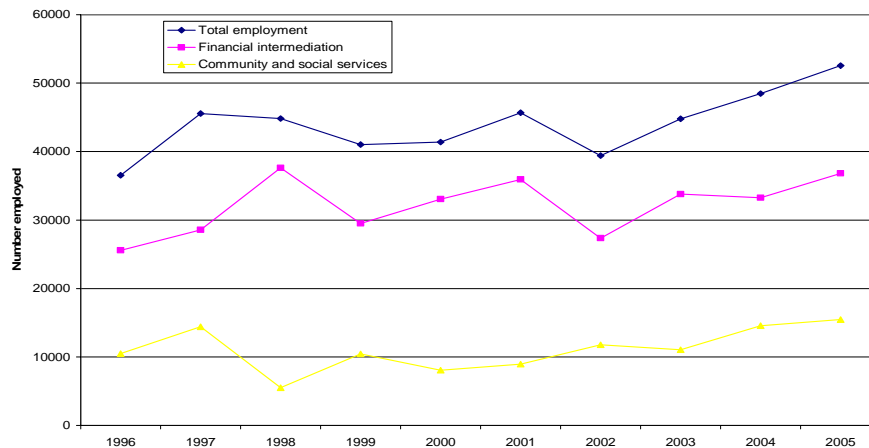
The study identified the business services sub-sector as the biggest employer of law professionals, with 11 161 in employment in 1998, but its growth was projected to be only moderate. Moderate growth was also projected in the local government and the community and social services sub-sectors, both of which would be off very low bases (Van Zyl, 1999: 52, 63 and 101).

Employment of law professionals outside of the above sub-sectors, for example in the mining, manufacturing, construction, trade and transport sectors was non-existent or very limited (Van Zyl, 1999).

Employment of law professionals

As indicated by the studies referred to above, law professionals are employed primarily in the finance sector (private) and within government in the community and social services sector (public). More recent data derived from the October Household Survey (1996-1999) and the Labour Force Survey (2000-2005) tends to confirm the findings and projections of the earlier HSRC studies.¹¹ Figure 21 presents total employment as well as employment in the finance and community services sectors for the years 1996 to 2005.

Figure 21 Employment of law professionals by main sector



(Source: October Household Survey and Labour Force Survey)

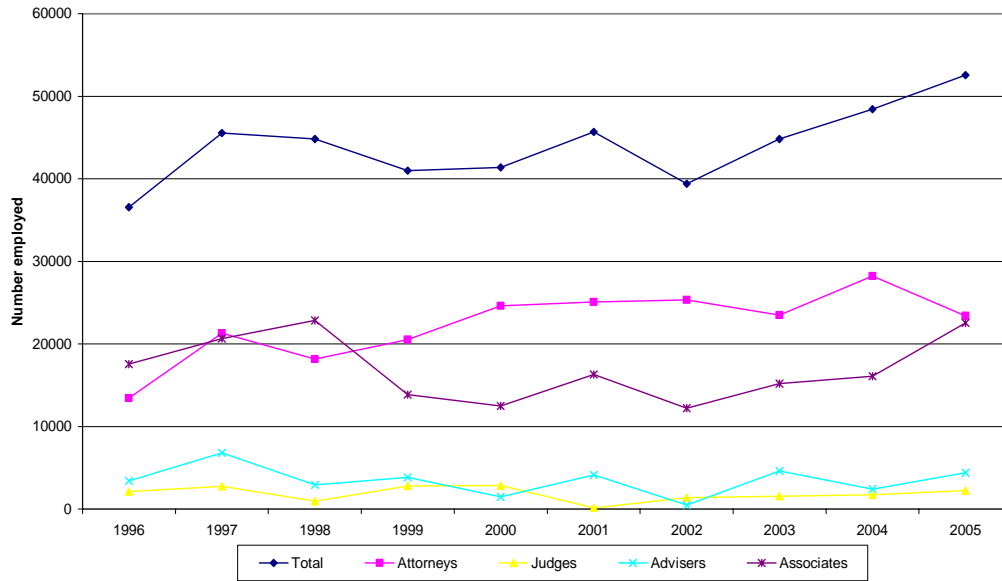
It is evident from the figure that the finance and community sectors make up most of the total employment of law professionals. There is very little employment of law professionals in the other sectors of the economy. The finance sector is by far the biggest employer of law professionals. Growth in this sector largely accounts for overall growth in law professionals. The figure also shows that growth in the employment of law professionals has been moderate, although from 2002 there is a quite strong upward trend. This is probably driven by the sustained period of economic growth in the country.

The above data conflicts with that provided by the SASSETA in its sector skills plan. The private legal profession falls under what the SASSETA terms the legal activities sub-sector. According to the SASSETA, in 2004/5 there were 4 154 enterprises in the sub-sector employing 33 807 people (i.e. all employees rather than professionals). Later in the same report, however, SASSETA states that there were 68 000 employees in the legal activities sub-sector, of which about 16 320 are professionals (they are positioned at NQF level 7). The latter figure is closer to the total of the figures provided by LEAD and the General Council of the Bar for practicing attorneys and advocates (see below), although it is on the low side if one factors in legal advisors in corporations in the finance sector (SASSETA, 2005-6: 5 and 13-14). The confusion with regard to these figures cannot be good for planning for skills development.

The SASSETA report, however, does indirectly confirm a rise in the number of legal professionals in the legal activities sub-sector. It states that in the period 1997 to 2002 there was an increase of 1 850 legal firms (44.5%), which implies an even larger increase in the number of law professionals. It is interesting to note, given the on-going concern at the distribution of law professionals between urban and rural areas, that the majority of legal firms are located in Gauteng (62%), and that much of the growth in the number of legal firms was in Gauteng, KwaZulu-Natal, and the Western Cape, i.e. the provinces with the major metropolitan areas (SASSETA, 2005-6: 13-14).

In Figure 22 total employment of law professionals is broken down by occupation, although the occupational categories are rather wide and somewhat misleading. Attorneys dominate (this category includes articled clerks, advocates and prosecutors), although by 2005 they are caught up by associates (this category includes aspirant advocates in pupillage and legal clerks, i.e. conveyancing clerks, court clerks, judges' clerks, etc.). Both these occupational categories show moderate rising growth trends over the period. There are far fewer judges (including magistrates) and legal advisers, and both of the latter occupations show little or no growth over the period.

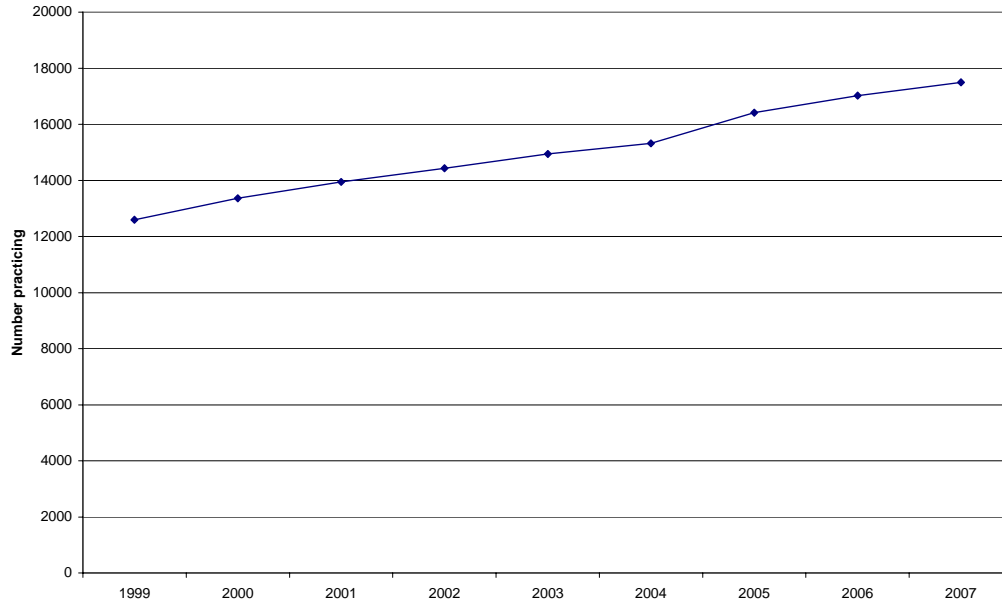
Figure 22 Employment of law professionals by main occupation



(Source: October Household Survey and Labour Force Survey)

The October Household Survey (OHS) and Labour Force Survey (LFS) data is based on household surveys that have been weighted up using census data. The numbers that are produced are therefore estimates. LEAD provides actual numbers of practicing attorneys for the years 1999 to 2007. This data is displayed in Figure 23. It is evident from the figure that the actual numbers are below the estimates produced by the OHS and LFS, while the growth trend is far smoother and also steeper. Growth in the number of attorneys is significant: over the eight year period about 5 000 attorneys join the profession from a base of less than 13 000 attorneys in 1999.

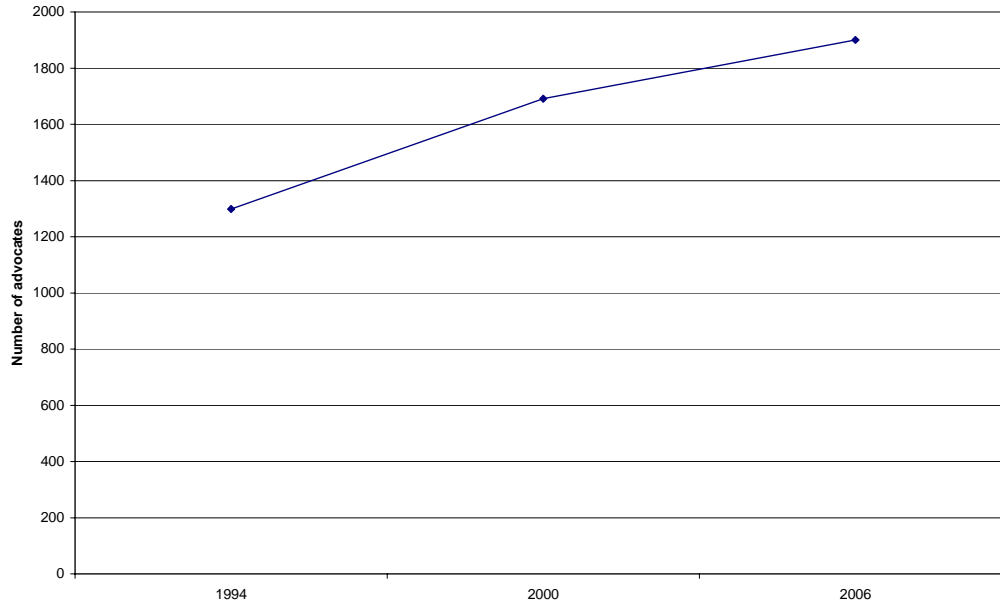
Figure 23 Practicing attorneys: 1999-2007



(Source: Data supplied by LEAD)

Data from the General Council of the Bar of South Africa provides actual numbers of advocates practicing as members of one of the Bar Councils. The data is displayed below in Figure 24 and Figure 25.

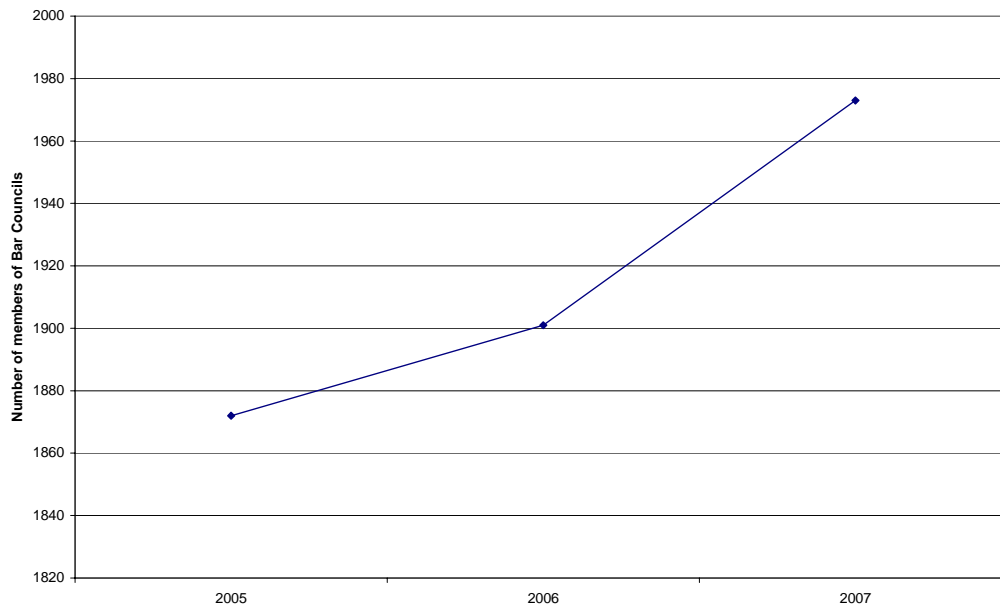
Figure 24 Total advocates at Bar Councils: 1994, 2000 and 2006



(Source: Data supplied by General Council of the Bar)

Figure 24. shows a steady increase in the number of advocates practicing at the Bar Councils. Note that this increase takes into account advocates leaving the Bar Councils. More recently, as Figure 25 shows, the increase of advocates at the Bar Councils has accelerated.

Figure 25 Total advocates at Bar Councils: 2005-2007



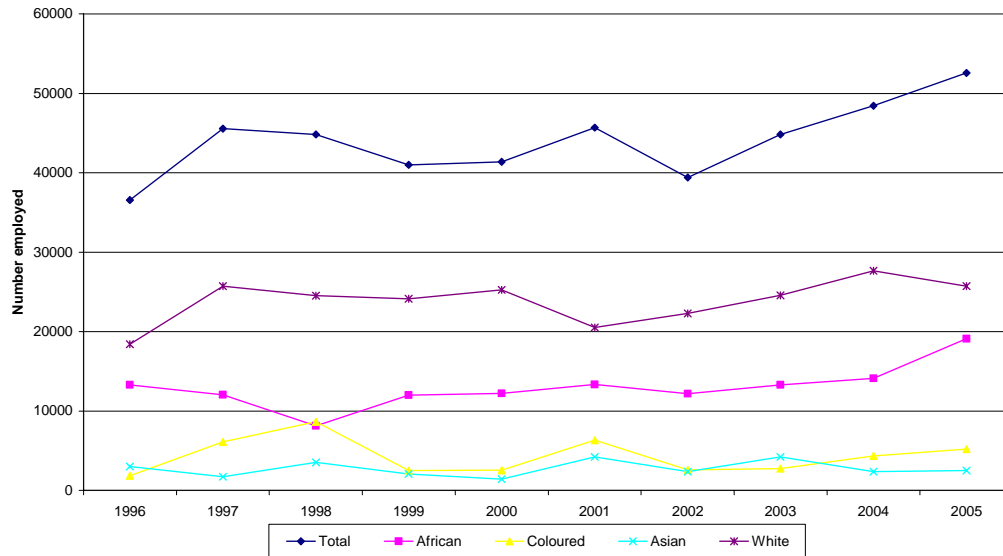
(Source: Data supplied by General Council of the Bar)

The number of advocates increases by about 100 across the three years. This is significant growth given the low base of less than 1 880 in 2005.

The above figures give an indication of strong growth in the employment of law professionals, albeit off quite low bases. In most cases this growth trend becomes steeper over the last year or two. If the economy continues to grow at current rates the demand for law professionals will probably increase further. At the very least there will be continued moderate demand for law professionals over the next few years.

Below we break down the data for law professionals by race and gender. The first figure shows that white law professionals make up a large proportion of all law professionals, and that the number of white law professionals is growing, although growth is slow. The next largest group comprises African law professionals. Their growth is also slow across the period, but rises sharply after 2004. There are relatively small numbers of Asian and coloured law professionals, and in both cases there is very little growth across the period.

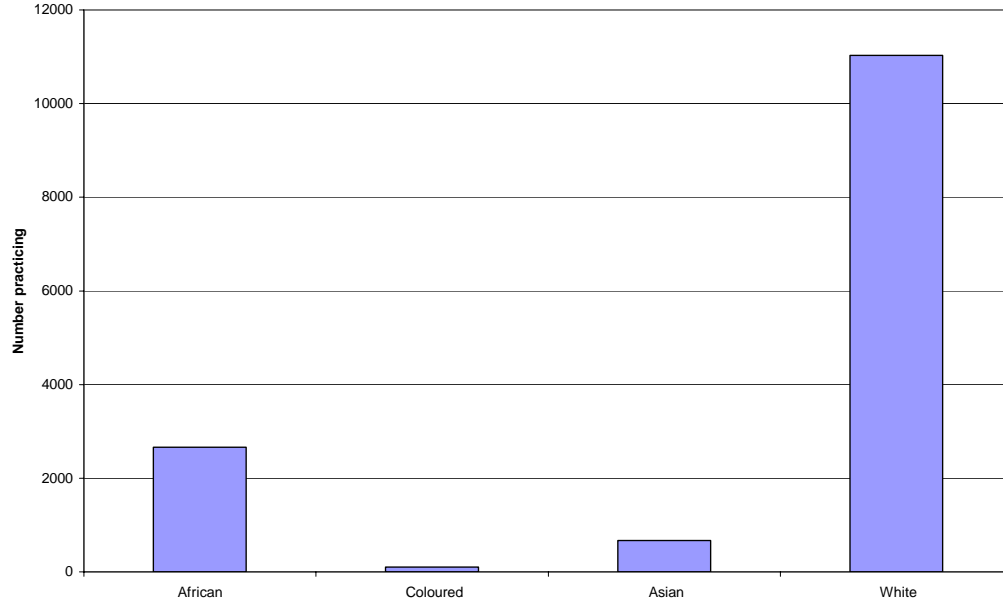
Figure 26 Employment of law professionals by race: 1996-2005



(Source: October Household Survey and Labour Force Survey)

It should be noted that the above data is for all law professionals, including those in the public sector. The LEAD data focuses just on practicing attorneys in the private sector. Figure 26 displays the racial composition of this section of the profession.

Figure 27 Practicing attorneys by race: 2007

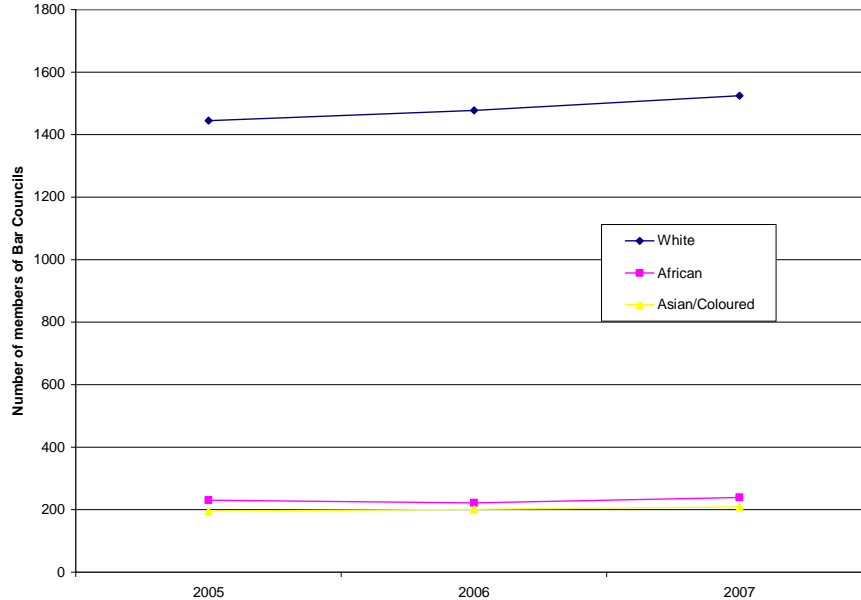


(Source: Data supplied by LEAD)

The figure shows that the attorney's profession is dominated by whites to an even greater extent than the legal profession as a whole. This suggests that much of the growth in the numbers of African law professionals is taking place in the public sector. This is not altogether surprising, but it is disappointing that there has not been greater growth in the private sector. Unfortunately data is not available on practicing attorneys by race for earlier years, so it is not possible to establish trends with regard to the above.

Data from the General Council of the Bar also provides a breakdown of practicing advocates by race (note that the data is for only those advocates that are members of the Bar Councils). The data is displayed below in Figure 28.

Figure 28 Advocates at Bar Councils by race: 2005-2007

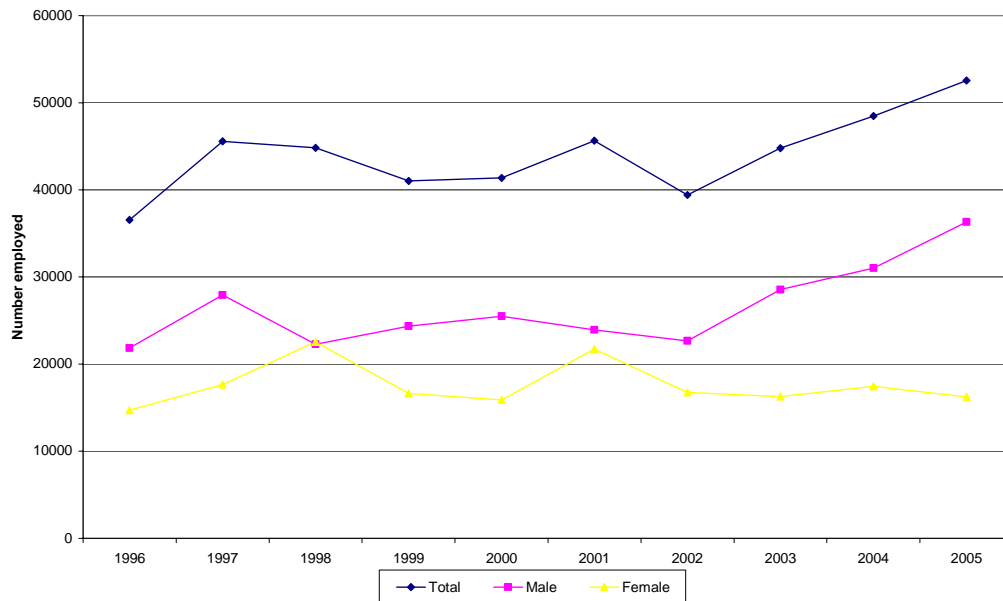


(Source: Data supplied by General Council of the Bar)

The vast majority of the members of the Bar Councils are white. Over the last three years there has been little change in the racial composition of the Bar. In fact, the growth that has taken place in the number of advocates over the three years is largely accounted for by growth in the number of white advocates.

Figure 29 presents data on total employment in the legal profession broken down by gender. Although there are fluctuations, the number of females employed as law professionals was catching up with the number of males until 2002. However, from 2002 the employment of males increases quite rapidly, whereas there is little or no growth in the number of females. This indicates that the increase in the number of female graduates, articled clerks and admitted attorneys is not being sustained in the profession.

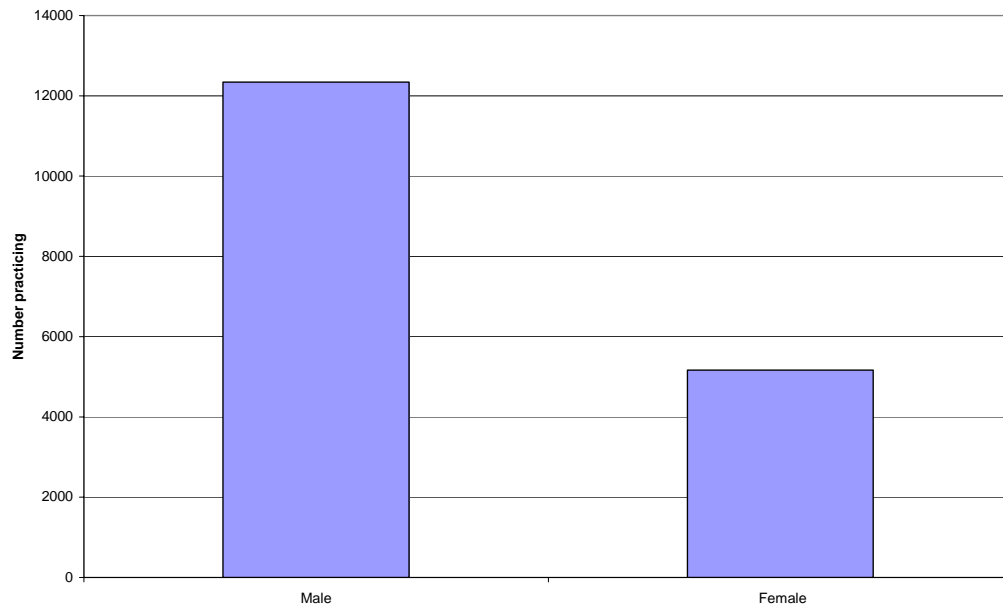
Figure 29 Employment of law professionals by gender: 1996-2005



(Source: October Household Survey and Labour Force Survey)

The LEAD data also allows for a breakdown of practicing attorneys by gender. This is displayed below in Figure 30.

Figure 30 Practicing attorneys by gender: 2007



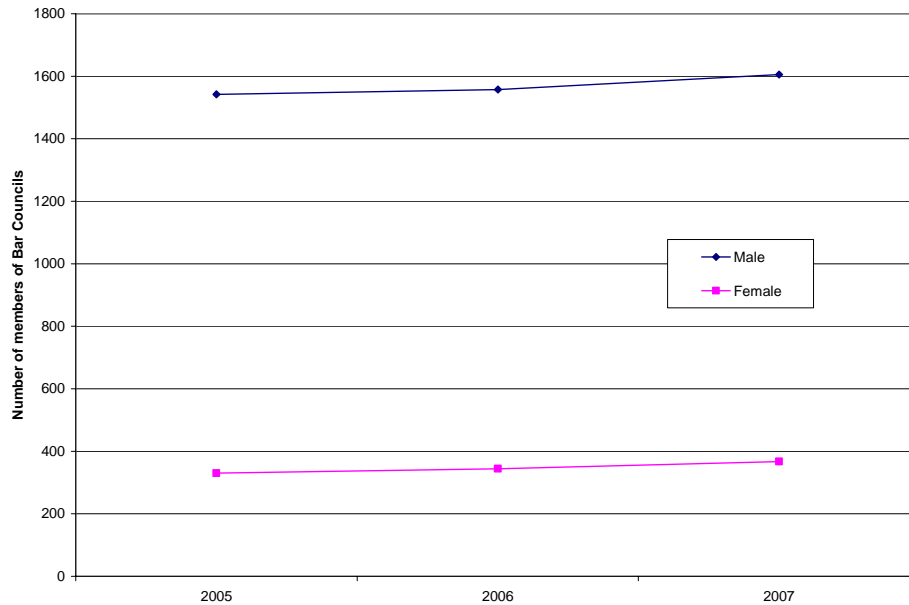
(Source: Data supplied by LEAD)

Unfortunately there is no data for previous years so it is not possible to see whether the above picture represents an improvement. Either way, the figure shows that the vast majority of practicing attorneys are male. There would

need to be a huge influx of females to the profession to get balance between the genders.

In Figure 31 we present data from the General Council of the Bar on the gender of advocates.

Figure 31 Advocates at Bar Councils by gender: 2005-2007

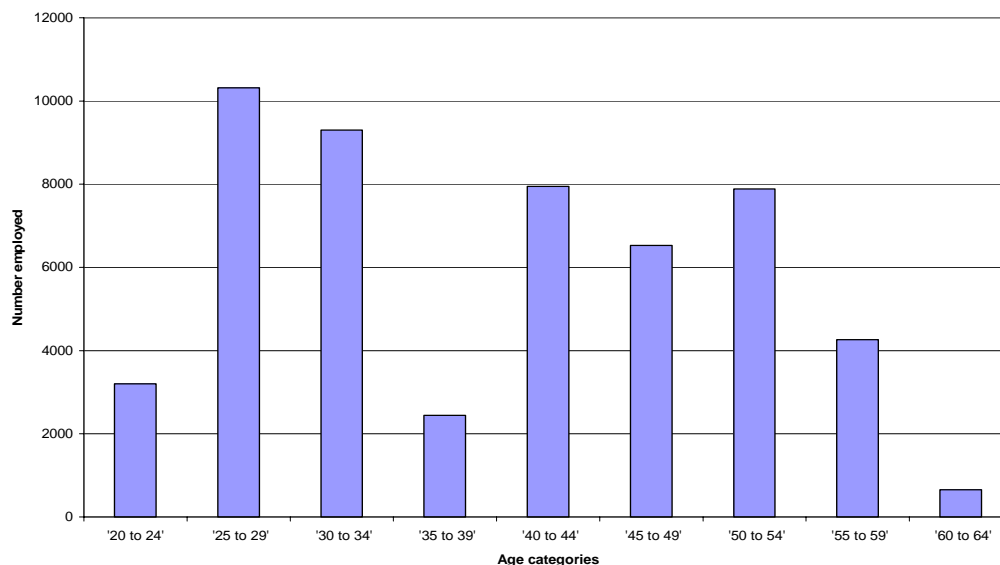


(Source: Data supplied by General Council of the Bar)

The picture is similar to that for attorneys. In this case, however, one is able to establish that there is some growth in the number of female advocates across the three years, although the growth is marginal and is matched by growth in the number of male advocates.

There is a further factor that is very important for the demand for law professionals, namely the age profile of the profession. In Figure 32 law professionals are divided into age categories. The picture portrayed in the figure is quite healthy. There are a large number of law professionals in the 25 to 34 year age categories. This indicates that there is an adequate supply of qualified law professional coming into the profession and it also indicates that there is demand for such people, i.e. the profession is willing to employ young graduates with limited experience. There is a sharp drop in numbers in the 35 to 39 age category for which it is difficult to account. However, thereafter the size categories decline smoothly and as one would expect. The overall impression gained from the figure is that there are more than adequate supplies of law professionals to replace those retiring from the profession.

Figure 32 Employment of law professionals by age: 2005



(Source: October Household Survey and Labour Force Survey)

LEAD and the General Council of the Bar do not have data broken down by age so it is not possible to do such an analysis for the attorneys' profession and for practicing advocates.

The data for the legal profession in the public sector is not broken down in a way that allows for detailed analysis by specific occupational category within the overall legal professional category. However, the data shows that the DoJ has expanded significantly over the last few years and it appears that it is set to continue growing. The racial composition of the staff has also undergone considerable change.

At the end of March 2002 the DoJ had a staff of 11 066, of which about 57% were African, 32% were white, 7% were coloured, and 4% were Asian. The gender split was almost equal. Data was not provided for the number of professionals, but there were 1 669 magistrates and 73 state law advisors in the employ of the DoJ (DoJ, 2001/2002: 11-12).

By 2006/2007 the staff of the DoJ had increased to 16 879 (an increase of 52% over five years). Of the total staff, 66% were African, 21% were white, 9% were coloured, and 4% were Asian. Fifty-seven percent of the staff was female. About one-fifth of the staff was categorised as professional (including prosecutors; magistrates and senior magistrates; advocates, family advocates and senior family advocates; state law advisers and senior state law advisers; as well as legal administrative officers and accountants). There had been less transformation in the racial and gender composition of the professional category: 51% were African, 36% were white, 7% were Asian and 6% were coloured; only 36% were female as against 62% male (DoJ, 2006/2007: 235 and 249).

The professional category included 1 826 magistrates, 205 judges, 198 attorneys, 67 advocates, and five prosecutors (note that state advocates and prosecutors fall under the NPA and are not included in the above; the advocates referred to above are probably in the main family advocates and legal advisors, while it is unclear where the prosecutors are employed). The numbers in almost every one of these categories had increased over the last year; the exception being the judges and prosecutors. The number of magistrates had increased by 157 over five years. The projected posts for most of the professional categories shows that further increases are in the pipeline (see further below) (DoJ, 2006/2007: 238-239 and 249).

The SASSETA sector skills plan confirms that the DoJ would continue growing as its restructuring process advanced. The sector skills plan noted that, given the backlog of cases in the justice system, it is the professional category that needs to increase. According to the sector skills plan the DoJ did not anticipate any difficulties with filling new positions (SASSETA, 2005-6: 5, 9-10, and 74). Data on vacancies points to the scale of the increases that are anticipated.

Vacancies in the legal profession

A database maintained by the Department of Labour (DoL) provides a further perspective on demand for law professionals. The database records advertisements in the Sunday Times for law professionals. Below we present data with regard to the advertisements for the period April 2004 to March 2007 (categorised according to the Organisational Framework for Occupations).

The data shows that the vast majority of advertisements are for positions in the public sector. Across the three years there were 470 (15%) advertised positions in the private sector as against 2 596 (85%) in the public sector. This is to be expected. The nature of the main branches of the legal profession in the private sector is such that people are seldom recruited via advertisements in newspapers. There is, for example, no advertising for advocates in the private sector because they practice for their own account. In the case of the attorneys' profession the system of articles provides a steady stream of new recruits. In this case, advertising is done directly at universities through brochures and posters as well as career days. On the other hand, qualified attorneys are often recruited on the basis of 'word of mouth' within the profession. Another route is De Rebus, the journal of the attorneys' profession. It is therefore not surprising that there was not a great number of advertisements for legal professionals in the private sector and that the vast majority were for positions in the public sector.

The alternative methods of recruitment to the private sector should be borne in mind when examining the data below, i.e. the number of advertisements almost certainly significantly underestimates the total number of vacancies for law professionals and the movement of law professional between jobs.

The concentration of advertisements in the public sector is reflected in Table 1 below, which gives a breakdown of adverts by sector.

Main industry	Number of advertisements
Agriculture	1
Mining	14
Manufacture	22
Utilities	17
Construction	4
Trade	0
Transport	16
Finance	267
Community	2 751

(Source: Data supplied by DoL)

In the above section it was shown that the employment of law professionals is concentrated in the finance sector and the community and social services sector (which includes the public sector). It is therefore not surprising that most advertisements were for positions in these sectors. The reliance on advertisements as a recruiting method for the public sector is evident from the table.

Table 2 shows that most advertisements in the period were for advocates, followed by 'judicial and other legal professionals'. The former must refer to state advocates, while the latter refers to judges and magistrates as well as registrars and legal researchers.

	04/05	05/06	06/07	Total
Advocates	177	284	1 056	1 517
Judicial and other legal professionals	400	273	292	965
Attorneys and paralegals	181	229	211	621
Legal administrative workers	2	21	121	144

(Source: Data supplied by DoL)

It is significant that the number of advertisements for the advocates and attorneys categories end higher in the last period than in the first period. In the case of advocates the increase is huge. This suggests a significant drive by the DoJ and other government departments to recruit law professionals. We

shall examine this drive further below with respect to vacancies and recruitment at the DoJ.

It has been noted above at a number of points that employment in the legal profession is concentrated in major urban areas, particularly at the big cities in Gauteng, KwaZulu-Natal, and the Western Cape. This is because the profession tends to concentrate around the High Courts and the offices of the Masters of the Supreme Court and the Deeds Offices. Table 3 shows that the advertisements follow this pattern, with the vast majority of positions being located in Gauteng, KwaZulu-Natal and the Western Cape.

Province	Number of advertisements
Western Cape	381
Eastern Cape	277
Northern Cape	117
Free State	158
KwaZulu-Natal	474
North West	120
Gauteng	1 068
Mpumalanga	101
Limpopo	105

(Source: Data supplied by DoL)

One of the most interesting aspects of the advertisements is that the majority did not stipulate a great deal of experience as a requirement.

Years of experience required	Number of advertisements
Up to 3 years	457
Up to 5 years	202
Up to 10 years	80
More than 10 years	6

(Source: Data supplied by DoL)

This mirrors the picture in Figure 32 above, which shows that a large proportion of law professionals are young, and confirms the suggestion that there is strong demand for young and relatively inexperienced law professionals.

The number of advertisements for positions in the public sector corresponds to the steady whittling down of the number of vacancies reported by the DoJ.

Since 2004 the DoJ has filled vacancies across all occupational categories, with the exception of judges. The latter is partly explained by the doubling of the number of approved judge posts, with the result that there is a very high vacancy rate (SASSETA, 2005-6: 32). Professional occupations that are still experiencing relatively high vacancy rates are listed in the table below (note that this does not include vacancies in the NPA).

Table 5 Professional occupations in DoJ with high vacancy rates			
Occupation	Number of posts	Posts filled	Vacancy rate (%)
Judges	1 012	205	80
Magistrates	2 088	1 826	13
Advocates	80	67	16
Attorneys	339	198	42

(Source: DoJ, 2006/2007: 238-239)

It should be noted that the above does not necessarily reflect the extent of expansion planned by the DoJ because the table shows current vacancies only. Further expansion could see the creation of new posts, which would require additional recruits. In the meantime, however, the DoJ appears to be moving quite quickly to fill the vacancies. For example, at the time of writing this report all the vacancies for senior magistrates had been advertised and the selection process was underway to fill the positions. Another advertisement was about to be placed for entry-level magistrates. This would eliminate all the vacancies for magistrates.

SCARCE AND CRITICAL SKILLS IN THE LEGAL PROFESSION

In this section we shall sum up the data in respect of the supply of and demand for law professionals. We shall first do this in respect of the overall data and will then examine the data in respect of race and gender. Thereafter we shall draw on other sources to identify a number of key issues regarding skills in the legal profession.

Investigating absolute scarcity in the legal profession

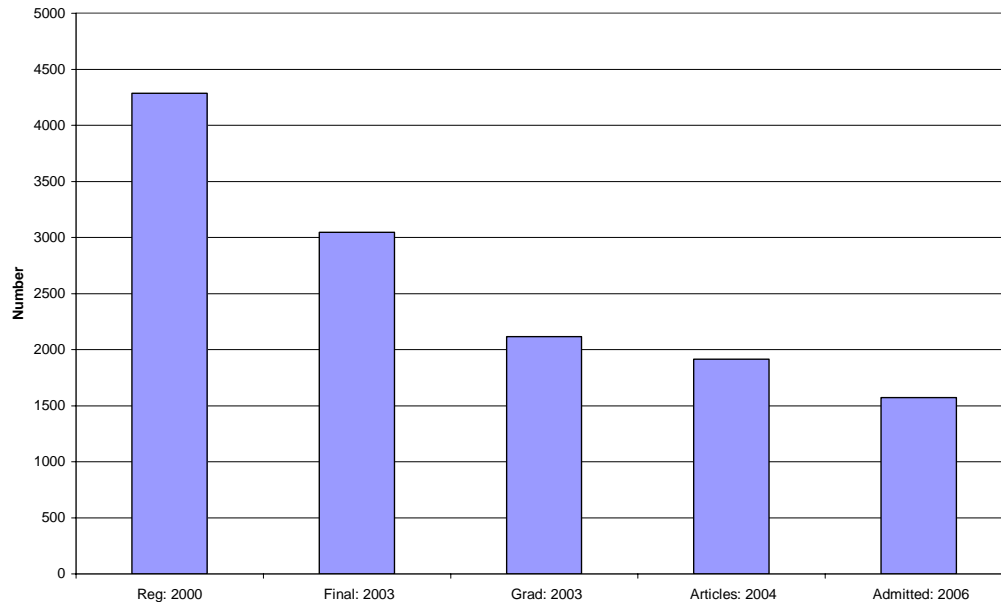
There is a quite healthy supply of law professionals through the university and vocational training pipeline. There are some fluctuations but these are probably accounted for by the discontinuation of the BProc degree when the switch was made to the four-year LLB. However, the negative impact of the changeover lasts only about three to four years, after which the data reveals an upturn at almost every point of the pipeline.

The four-year LLB has proved popular and the number of registrations has risen over the last 10 years. Final-year LLB enrolments and graduations have

also increased, but there is a high drop-out rate between registration and graduation. This is shown in Figure 33, in which an attempt is made to establish what proportion of first-year students that register for an LLB will enter practice as an attorney. It must be stressed that this is a very rough exercise. Students might take more than four years to complete their degrees, while others will go to the School for Legal Practice before entering articles. These and other factors would influence the proportions presented in the figure. However, it does provide some indication of the throughput in the supply pipeline into the attorneys' profession.

The first column represents all those students that register for the first year of an LLB for the first time in 2000. The next column shows all students enrolled in their final year in 2003, i.e. this is the proportion (71%) of first-year students in 2000 that make it through to their final year. The next column shows the number of those students that graduate in 2003. This is almost exactly half (49%) of the number of first-year registrations in 2000. The next column shows the number of articles of clerkship registered in the year following graduation (i.e. 2004); this is 45% of the first year students in the first column. If these students do their two years of articles and pass their admission examination they would be admitted to practice in 2006, which is represented in the last column. So, bearing in mind the caution noted above, the figure indicates that a little over a third (37%) of the students registering for their first year of an LLB will end up practicing as an attorney.

Figure 33 The Class of 2000: From registration to admission



(Source: Data supplied by LEAD)

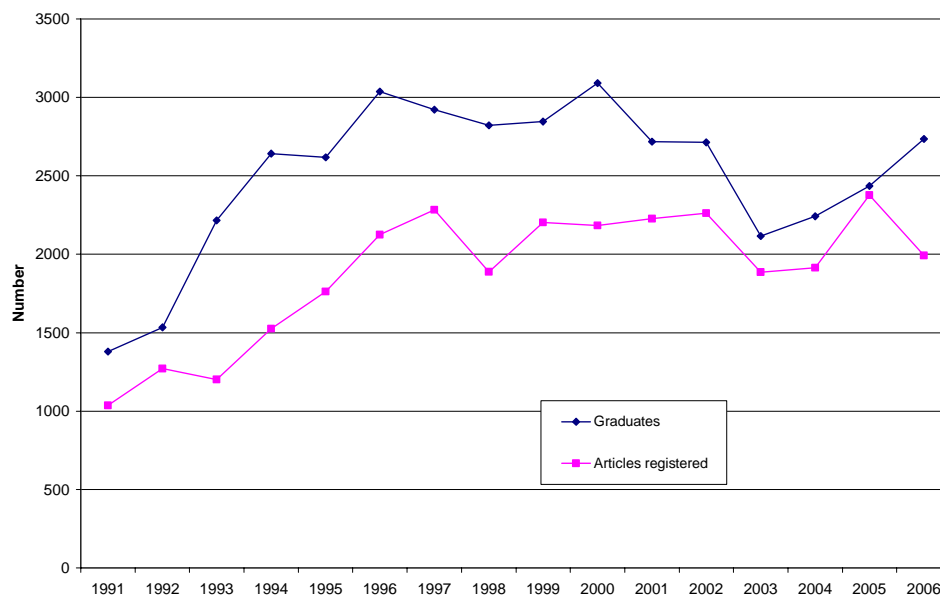
What the graph suggests is that most of the people who leave the pipeline that runs from universities through to the attorneys' profession do so in the course of their university studies (51%). Once they have completed their LLB degree the vast majority of graduates register for articles (91%) and thereafter become admitted as attorneys (82%). The four-year LLB degree therefore still

appears to be a problem for many students that might wish to become attorneys, while articles and the attorneys' admission examination seem to be less of an obstacle. The latter is probably a tribute to the training provided by LEAD.

Figure 33 shows that most LLB graduates enter articles of clerkship. So it is not surprising that the rising number of graduates has resulted in a quite steep increase in the registration of articles of clerkship over the last 15 years. This indicates a healthy demand for articulated clerks and a good supply of graduates willing to enter the profession. The question is whether supply and demand are aligned. There is anecdotal evidence that there is a shortage of demand for articulated clerks, which leads to many graduates that are not able to get articles going to the School for Legal Practice. However, the growing number of articulated clerks tends to discount this evidence.

In Figure 34 we compare the number of LLB graduations in the years 1991 to 2006 with the number of articulated clerks registered in those years. Ideally the data for articles should be staggered by a year, but the figure provides a clear indication of relative proportions.

Figure 34 LLB graduates and articles registered: 1991-2006



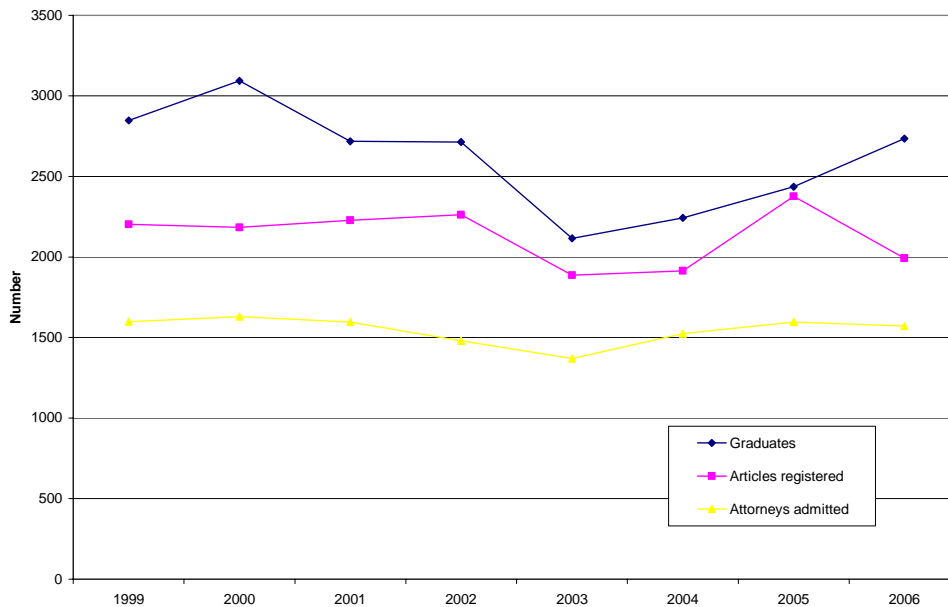
(Source: Data supplied by LEAD)

The figure shows that the number of articles registered tracks the number of graduates quite closely. What is interesting, however, is the narrowing of the gap between the two lines from about 1999, which is an indication that the number of positions being taken up is increasing relative to graduates. One explanation for this is the employment of very large numbers of candidate attorneys by the Legal Aid Board. Given that some graduates will seek to practice as advocates or go directly into the public or commercial sectors, the narrowing gap tends to contradict the perception that articles of clerkship are in short supply, forcing many graduates to enter the School for Legal Practice

before they obtain articles. It might be that the perception has arisen because graduates are not able to get articles at the premier law firms (that pay much better) and are reluctant to take up articles at smaller firms or the Legal Aid Board. If this is the case then the shortage of articles of clerkship is only relative.

While most graduates proceed to do articles there is a gap between the number of articulated clerks registered and the admission of attorneys. As noted above, the registration of articulated clerks increases across the period from 1991 to 2006, albeit with fluctuations. Over the period 1995 to 2006 the number of registrations stays well above 2 000 per year for most years. However, over much the same period the number of attorneys admitted hovers around 1 600 per year, except for a drop between 2001 and 2003. This is shown in Figure 35 below.

Figure 35 LLB graduates, articles registered and attorneys admitted



Over the period about 500 articles clerks per year do not proceed to be admitted as attorneys. On the face of it this suggests a significant misalignment of supply of aspirant attorneys and the demand for admitted attorneys. However, there might be a number of other explanations related to the supply side. Some articulated clerks might fail the admission examination and leave the profession, while others might realise that they do not want to practice law and either leave the profession in the course of their articles or immediately after passing their admission examination and completing their articles. Other articulated clerks might decide that they want to practice as advocates and move over to a pupillage in the course of their articles or after completion. Still others might go across to the public sector.

Figure 23 (above) showed that the demand for attorneys is increasing steadily, although perhaps not as rapidly as the supply of articled clerks. But, given the supply side factors sketched out above, the gap between supply and demand is likely to be less than 500 per year. This means that there is demand for attorneys in the private sector but it is probably on the weak side.

The position of advocates is somewhat different to most attorneys because they work for their own account rather than being employed. Demand is therefore not derived, as in the case of attorneys, but emanates directly from the amount of work there is available for advocates. We noted above that LLB graduates have increased, albeit with fluctuations, which means that the supply to the advocates' profession should have increased. However, there has been a sharp drop in the number of prospective advocates because the period of the pupillage increased in 2004 to one year and at the same time the number of intakes was reduced from two to one. Furthermore, there was also a decline in the number of pupils that completed their pupillage and a slight drop in the number of pupils that passed the Bar examination.

While there has been a decline on the supply side of the advocates profession, the number of practicing advocates has increased steadily over the period 1994 to 2006 (see Figure 24 above). However, this increase (roughly 30 advocates per year) is well below the supply; even the reduced supply after 2004. This suggests that many pupils either do not practice as advocates once completing their pupillages or are unable to sustain a viable practice. However, it should be noted that the above data refers only to those advocates that are members of one of the Bar Councils. It is conceivable that some pupils and advocates leave the Bar Councils and practice as advocates on the 'outside' (what one interviewee referred to as "the rebel Bar"). So it is difficult to come to a definite conclusion about the alignment of supply and demand for the advocates' profession, although the data suggests that supply is exceeding demand.

The above has focused narrowly on supply of and demand for attorneys and advocates. The demand emanating from the public sector should also be factored in. The expansion of the DoJ, particularly the NPA and the Legal Aid Board, has considerably increased demand for law professionals. Interviews indicate, however, that there is still an adequate supply of graduates to meet this demand.

Race and the supply of and demand for law professionals

In this section the focus is on the supply of and demand for African law professionals. Unfortunately, not all of the time series data we obtained is broken down by race. This makes it difficult to establish and compare trends to the extent that we have done above. However, the data does give some useful pointers.

First-year LLB registrations of Africans increases significantly over the period 2003 to 2007. The increase is matched by a quite steep rise in the number of

final year enrolments. However, African LLB graduates decline between 2002 and 2006 (while white and Asian graduates increase). We noted above that there is a significant drop-out rate between registration for an LLB and graduation. African students contribute a lot to the number of drop-outs. There were 3 178 first-time first-year registrations of African students in 2003 and 1 027 African graduates four years later in 2006. This represents a drop-out rate of 68%, which is considerably higher than the overall rate of 51% calculated above (albeit for a different period).

Unfortunately, we are not able to extend the above exercise to include the registration of articles or the admission of attorneys. The KwaZulu-Natal Law Society did not supply data to LEAD on articles and admissions by race, which means the data we have available will significantly undercount the registration of African articulated clerks and the admission of African attorneys. We also do not have time series data for the registration of articles by race. We do, however, have data for 2006 (although with the data for Kwa-Zulu-Natal missing). This data shows that the registration of African articulated clerks is well below white articulated clerks in 2006. On the other hand, Africans are by far the biggest attendees of the School for Legal Practice over the period 1999 to 2006, and there is also a steady increase in the number of African attorneys admitted over the period 1998 to 2006 (while whites decline steeply). But in 2007 whites made up the vast majority of practicing attorneys (see Figure 27 above).

The above data is somewhat contradictory. It suggests that there is a good supply of African LLB students but a much lower supply of graduates (although still a significant number). The declining number of African LLB graduates is reflected in a relatively low number of African articulated clerks being registered. The end result is that there is little change taking place in the demographics of the practicing profession. But it might be that more African graduates are going the route of attending the School for Legal Practice before doing articles. This would account for some of the gap between African graduates and the number of African articulated clerks. It would also explain why there is a steady increase in the number of African attorneys being admitted to practice. However, it is clear that the increase is taking place too slowly to make a significant change to the racial composition of the profession.

Does the problem lie with weak demand for African attorneys or is it a case of insufficient supply? It is difficult to come up with a definitive answer. Clearly there is a problem on the supply side with the high drop-out rate, but there is a significant number of Africans graduating with an LLB. Demand for African articulated clerks appears to be weak, hence the high numbers attending the School for Legal Practice (although this might be by choice in some cases). But the number of African attorneys being admitted is increasing steadily, although in the absence of data on KwaZulu-Natal makes it impossible to say much more. Demand for African attorneys, however, is not making much impact on the demographics of the profession, which means that it is relatively weak.

The position with regard to African advocates is worse than that for attorneys. Africans make up a small proportion of the total number of pupils passing the Bar examination, and their number declines from 2001 to 2005. In 2005 only 17% of those that passed the Bar examination were African. Moreover, the majority of African pupils that sit the Bar examination fail. One reason for this appears to be the number coming direct from historically disadvantaged universities. The implication is, first, that African pupils are not getting the right preparation at these universities, and second, that an intervening period of vocational training or work experience might assist them. The end result is a Bar dominated by white advocates.

The preponderance of white advocates has caused serious tensions with regard to the slow pace of transformation of the judiciary. The furore that has surrounded the Cape Judge President, John Hlophe, for the past year has thrown this issue into stark relief. The controversy has divided the profession, particularly the Bar, along racial lines. Part of the fall-out has been the Johannesburg Bar's recent election of an all-white council (Sunday Independent, 18 November 2007). These events have put the spotlight on the composition of the judiciary, the Bar and the attorneys' profession.

The Bar is of particularly important because it has traditionally provided the pool from which judges are drawn. In the sections above we have shown that African advocates are in a small minority. Furthermore, an interviewee at the General Council of the Bar has pointed to the fact that many African advocates find it difficult to build and sustain a practice because the major (predominantly white) law firms continue to brief white advocates. Lack of transformation in the attorneys' profession and the entrenchment of historical briefing patterns therefore undermine transformation of the Bar. A greater supply of law graduates from universities, a shorter pupillage, and an easier Bar examination are unlikely to make much impact on the racial composition of the Bar in the long term given this problem. This then impacts on transformation of the judiciary. Unfortunately, there does not appear to be an easy solution to the problem.

To some extent, employment of African law professionals in the public sector is ameliorating the above bias. As noted above, in 2006/2007 51% of professionals employed by the DoJ were African, while 7% were Asian and 6% were coloured. But, while there might be stronger demand in the public sector for African law professionals, this does not detract from the size of the problem in the private sector.

Gender and the supply of and demand for law professionals

The data displayed in the above sections shows that there is a reasonable gender balance in most stages of the pipeline, except the most crucial stage, i.e. practicing attorneys and advocates. First-year LLB registrations are about even in terms of gender, females have overtaken males in final year enrolments and graduations (the latter by a considerable margin). In 2006 females also outnumbered males in terms of articles registered and had

overtaken males in admissions to practice as attorneys. However, males make up the vast majority of practicing attorneys.

The picture with regard to advocates is worse. A lot more males sit the Bar examination than females, although females have narrowed the gap since 2001. But the advances that females have made in the pipeline do not translate into progress in terms of practicing advocates, because the vast majority of advocates are male.

Females have therefore made considerable progress in terms of supply of law professionals, but the composition of the private legal profession remains heavily biased to males. It is not clear what can be done to address this problem.

In the public sector females make up 36% of the law professionals employed by the DoJ. Some progress has been made in addressing the gender imbalance in the magistracy, although this is partly explained by a preponderance of female magistrates in the family courts. There is also an attempt underway to increase the number of female judges (at present only 16% of the judges are female). The DoJ has launched a programme to train aspirant women judges. There are currently 19 female legal practitioners participating in the training programme, all of whom were selected from applicants from the magistracy and private practice. The programme is close to completion (Mail and Guardian, 7 to 13 September 2007). However, the participants are not guaranteed a position on the Bench once they complete the training. So it remains to be seen whether these prospective judges make an impact on the gender bias on the bench.

Other perspectives on scarce and critical skills

In broad terms the above data indicates that there is probably an adequate supply of law professionals. There is, however, a relative scarcity of African law professionals and female law professionals. We also know from secondary sources that there is a relative scarcity of law professionals in rural areas. The changes proposed by policy documents will probably have a positive impact in regard to these areas of relative scarcity, but it is unclear whether this will be sufficient. SASSETA could also play a role in this regard by targeting discretionary grants to address these areas of scarcity (SASSETA, 2005-6: 57).

What should also assist in addressing the areas of relative scarcity, particularly given that supply of law professionals is relatively healthy, is that there is steadily increasing demand for attorneys. This is confirmed by the SASSETA sector skills plan, which highlights the rising demand for commercial lawyers and conveyancers. This is because of the growth in the financial services sector and the property boom. Trade mark practice lawyers are also identified as scarce skills. However, demand for criminal attorneys is in decline, partly because of the expanded role of the Legal Aid Board (SASSETA, 2005-6: 33 and 49).

The SASSETA sector skills plan identified a scarcity of law professionals in the public sector with respect to the following: constitutional litigation and all other forms of litigation except criminal work; international trade law; civil magistrates; trade mark practice lawyers; and state legal advisers (2005-6: 48). Other positions are also likely to record shortages as the DoJ continues with its expansion and creates new posts. However, the DoJ does not predict any difficulties with filling new positions, which confirms that supply is not a problem (SASSETA, 2005-6: 9-10).

Tensions are emerging with respect to other aspects of scarce and critical skills in the legal system. The following are the key issues:

- The quality of LLB graduates, particularly poor literacy and numeracy skills;
- The serious case backlog, especially at the level of the superior courts;
- Dissatisfaction with remuneration and working conditions amongst law professionals in the public sector.

The first issue, i.e. the quality of law graduates, highlights a critical skill. The issue has been put under the spotlight by complaints from various sources. An editorial in *De Rebus*, the journal of the attorneys' profession, noted that the Director-General of the DoJ had made mention of the poor quality of law graduates at a workshop on the Legal Services Charter. Graduates, he alleged, were unable to draw affidavits and pleadings. He called on the profession to engage with universities regarding the declining standards. The profession responded that it was aware of the issue and was already engaging with universities. Two particular problems had been identified: literacy and numeracy (*De Rebus*, April 2007: 2). Other areas in which there is a shortfall of skills are computer literacy, bookkeeping knowledge and practice management knowledge (Midgley, 2007: 9). The process to respond to these complaints pointed to the need to re-examine the current LLB. The conclusion appeared to be that "the LLB must be upgraded".

The shortcomings of the current LLB were highlighted again more recently by Bernard Ngoepe, Judge President of the Transvaal High Court, who called on the government and universities to consider the re-introduction of a five-year LLB. He stated that:

There are complaints from many quarters, including the judiciary, that the standards are not as they used to be; I am particularly referring to the younger generation of practitioners.

He believed that too many courses had been dropped from the original five-year LLB (*Mail and Guardian Higher Learning*, November 2007).

The latter has been supported by Midgley, who argued that short courses to address specific vocational skills needs were inadequate:

...the reason for graduates not having numeracy, literacy and organisational skills is a lack of basic formative education, not a lack of specific skills training. No amount of training will improve the situation if the foundations are not in place. If there is a decline in the quality of graduates the problem should be addressed at source: broaden the basic, generic skills that are on offer, improve students' insights by expanding the non-law components of the curriculum, and lengthen, instead of shortening, the academic education for lawyers. The result would be that graduates have core generic skills upon which the profession can build. For example, a course in accounting, which the LSSA advocates, would serve no purpose if students do not have basic numeracy skills. So, too, is there no point in providing a course in practice management to people who have no experience of practice and no context in which to locate their learning. These are courses that more properly belong in professional training courses: the task of universities is to ensure that their graduates have the necessary foundational competencies for the professions to build upon (Midgley, 2007: 22, footnote 117).

However, Midgley cautioned that it was premature to jettison the four-year LLB and revert to the five-year format:

We need to give the four-year programme a chance because the reasons to do it in the first place still outweigh those that suggest that it should be taken back to five years (Mail and Guardian Higher Learning, November 2007).

Ngoepe was also critical of the vocational training received by candidate attorneys. He was supported by Muzi Msimang, president of the Black Lawyers Association, who argued that the blame did not lie with the LLB degree but with the vocational training received after the degree. However, Msimang did not agree with the suggestion of Ngoepe that the period of articles had become too short (Mail and Guardian Higher Learning, November 2007).

The implication of the debate is that the four-year LLB has not got the balance right between maintaining high academic standards and making the profession more accessible. But, despite the complaints, it does not appear that the four-year LLB will be dropped in the short-term. In the meantime a number of initiatives have been launched to address the problems. The Attorneys Fidelity Fund, which has a particular concern regarding numeracy skills, appointed a researcher to investigate numeracy programmes at law faculties at all universities in the country. At the same time the Fund began to direct its funding to only those university projects that served the objectives of the attorneys' profession, i.e. attempts to improve numeracy were targeted for funding (De Rebus, April 2007: 2).

The Law Society of South Africa also investigated the various LLB curricula in SA, focusing on how law faculties were addressing practical skills. Flowing from this investigation was an undertaking by universities to consider ways to remedy the shortcomings that the profession identified. These would focus on

“quality skills training pertaining to oral and written communication, research, problem solving, numeracy and the use of computers”; the formulation by the South African Law Deans Association of “uniform minimum outcomes for such skills training and the sharing of expertise and materials among law schools...”; and the achievement of “the exit level outcomes and assessment criteria of the LLB programme as provided for in the SAQA framework” (quoted in Midgley, 2007: 21, footnote 116).

Interviews conducted with legal practitioners suggest that the problem is deeper and that the fault does not lie with the LLB curriculum or vocational training, but rather with the quality of school education. This was also alluded to in the De Rebus article. Clearly this is beyond the scope of universities to address, but at the same time universities and the legal profession have to find a way of dealing with the consequences. Related to this problem was one key interviewee’s view that there are sharp differences in the quality of the education between different universities. In short, many historically black universities are not producing LLB graduates of the required standard. This was also alluded to in DoJ’s 1999 discussion document (DoJ, 1999: 9). As a result law firms were reluctant to offer articles to graduates from these universities or employ attorneys that had graduated from these universities. This is a very important issue because it provides one explanation for the weak demand for African LLB graduates. Unfortunately, however, most of the data that we obtained does not provide a breakdown by university, which would allow one to examine this perspective quantitatively.

The second area of tension is the backlog of cases in the court system, which has been described as “scary” by the Deputy Minister of Justice. The backlog recommends that a key focus of expansion in the public sector must be the magistracy and judiciary as well as prosecutors. For example, during 2005 a total of 983 407 cases was lodged in the district magistrates’ courts and 81 724 cases were lodged in the regional courts, of which 958 254 and 80 168 cases respectively were dealt with by the end of the year. The excess cases added to an existing backlog to produce a total of 157 251 cases still on the court roll in the district courts and 46 893 on the roll in the regional courts. In the high courts 1 348 cases were registered in 2005, adding to the 1 067 cases carried over from 2004. Of the total, 1 492 were cleared from the roll in the course of the year, leaving 923 cases still to be finalised (GCIS, 2007: 392).

We have noted above that there are plans to increase the number of prosecutors (by 890 posts over three years), and to expand the magistracy (15 additional regional court magistrates were appointed in 2006 and a large number of posts for magistrates are currently being filled). The DoJ has also hugely expanded the number of posts for judges, but the majority remain unfilled. It is unclear why it is taking so long to fill these positions, but the need to transform the judiciary is probably part of the reason for slow progress. For example, the Minister of Justice has been strongly criticised for refusing to appoint two white male advocates to positions as acting judges in the Free State High Court. She has also rejected the call to use retired judges (most of whom would be white) to make inroads into the case backlog, stating that she

would prefer to appoint new judges. The only time she has considered recalling retired judges was for specific projects to address backlogs, as was done in Cape Town, Pretoria, Soweto and Pietermaritzburg in November 2006 (Pretoria News, 22 February 2007; Daily News, 23 February 2007). The programme to train female judges should provide a number of new judges, but there does not appear to be anything similar for aspirant African judges. However, the Justice College and the proposed South African National Justice Training College could play a role in this regard.

The third area of tension that has emerged is with regard to the remuneration and working conditions of law professionals in the public sector. Prosecutors and magistrates, in particular, are unhappy with their pay. It appears that the catalyst was the proposed 65% pay increase for the Chief Justice, which went against the Independent Remuneration Commission's finding that salary gaps between judicial officers be narrowed. While not against a pay increase for the Chief Justice, the Judicial Officers' Association of South Africa argued that the entire remuneration hierarchy needed to be adjusted and gaps narrowed. The higher salaries in the private sector were seen as drawing away experienced professionals from the public sector. This was increasing the workload for those left behind (Mail and Guardian, 22 to 28 June 2007; Beeld, 29 June 2007).

The above appears to contradict information received from interviews and the SASSETA sector skills plan. While there was acknowledgement that vacancies existed, it did not appear that there was any difficulty in filling them. In fact, an interviewee at the Magistrate's Commission stated that a number of magistrates that had left to go into the private sector were keen to return to the magistracy. Intense competition in the private sector was given as the reason. It seems therefore that remuneration and working conditions might be concerns, but that there is sufficient supply of legal professions to override this problem when vacancies need to be filled.

CONCLUSION

The research shows that there is not an absolute scarcity of law professionals but that African and female attorneys and advocates are relatively scarce. There is a similar but less severe relative scarcity of African and female law professionals in the public sector. There is also a relative scarcity of law professionals in rural areas. Even the public sector struggles to fill posts in some of these areas.

The most important critical skill is with regard to the numeracy and literacy abilities of LLB graduates. There also appears to be some unevenness in the quality of graduates between universities (which we were unable to explore in more detail). Interviews reveal other critical skills, such as experienced corporate lawyers and patent attorneys, but the numbers needed do not appear to be high, and it seems that it is more a case of a longer search for suitable candidates rather than a total absence of such law professionals.

The question is whether the existing legal education and training infrastructure will be adequate to address these problem areas? One cannot provide a hard and fast answer to this question. However, the legal profession has an extensive education and training system, comprising law faculties at 19 universities (offering the undergraduate LLB as well as a wide range of specialist post-graduate law courses), LEAD, the Legal Education Centre of the Black Lawyers Association, the Bar Councils, and the Justice College (which will soon be joined by the South African National Justice Training College). In addition, institutions such as the Legal Aid Board are also doing training, while it is evident that some legal firms do significant training over and above the on-the-job training done as part of articles of clerkship. Legal advisers get training via the Corporate Lawyers Association.

The institutions provide education and training that covers generic skills needed in the entire legal profession pipeline as well as a wide range of specialist skills. There are also training initiatives to address problem areas. Furthermore, the institutions are, to a greater or lesser extent, in communication with each other regarding the education and training being offered and the skills being demanded by the profession. There are inevitably some tensions between the institutions given their different interests, but these tensions do not appear to be creating obstacles to skills development.

Ideally, the SASSETA should be facilitating the entire skills development process, coordinating training initiatives, maintaining data on progress with respect to scarce and critical skills, and ensuring that gaps in training are filled. While the SASSETA is performing these functions, it is debatable whether it is doing very effectively. As with the entire SETA system, the SASSETA appears to be ensnared in its own red tape and has not made the impact that it should have. This is not entirely SASSETA's fault. By all accounts most legal firms have historically not done much training, preferring to poach professional and non-professional skills rather than develop them. Many legal firms have not changed this approach despite the introduction of a new training dispensation. It is important that the SASSETA devise ways of engaging with these firms and bringing them on board with regard to skills development at the firm level. It will not be an easy task but it appears that the SASSETA is shifting up a gear so it will hopefully be having a bigger impact in future.

On the other hand, there is a positive aspect to the limited involvement of legal firms in the training dispensation: SASSETA is left with large discretionary funds. Much will depend on it directing these funds at the problem areas and the institutions that are best equipped to deal with the problem areas.

There are limits to what the profession can do in terms of training. Problems such as the uneven distribution of law professionals between urban and rural areas are probably beyond the scope of training institutions to solve. Policy will need to be developed to steer skills to the regions in which they are

needed. As we have seen above, the policy process is moving slowly but surely and is bound to have concrete effects over time.

REFERENCES

Beeld. 29 June 2007. 'Staatsregslui werk in goor toestand'.

Daily News. 23 February 2007. 'Train new judges to tackle backlogs'.

De Rebus. 2007 (April). 'The trouble with LLB graduates...'. Law Society of South Africa: Pretoria.

DoJ (Department of Justice and Constitutional Development). 1999. Discussion Paper on Transformation of the Legal Profession. Department of Justice and Constitutional Development.

DoJ (Department of Justice and Constitutional Development). Annual Report 2001/2002.

DoJ (Department of Justice and Constitutional Development). Annual Report 2006/2007

DoJ (Department of Justice and Constitutional Development). 2007. Draft for Discussion: 3rd Draft Legal Services Charter. Department of Justice and Constitutional Development.

Department of Labour. 2005. National Skills Development Strategy: 2005-2010. Department of Labour.

Erasmus J. 2006. Project 4.1 A multiple source identification and verification of scarce and critical skills in the South African labour market. Research proposal prepared for the Department of Labour.

GCIS (Government Communication and Information Service). 2007. South Africa Yearbook 2006/2007. www.gcis.gov.za/docs/publications/yearbook.htm

HSRC (Human Sciences Research Council). 1999. Skills Needs of the SA Labour Market: 1998-2003. Human Sciences Research Council: Pretoria.

Iya, PF. 2000. Legal System and Legal Education in Southern Africa: An overview of past influences and current challenges. Paper delivered at the Conference of Legal Educators, Florence, 24-27 May. Accessed at <http://www.aals.org/2000international/english/southafrica.htm>.

Lane C and M Potton and W Littek. 2000. The Professions between State and Market: A cross-national study of convergence and divergence. ESRC Centre for Business Research, University of Cambridge, Working Paper No. 189.

Mail and Guardian. 22 to 28 June 2007. 'Magistrates want more'.

Mail and Guardian. 7 to 13 September 2007. 'Gender and the Bar'.

Mail and Guardian. 9 to 15 November 2007. 'Charting new territory'.

Mail and Guardian Higher Learning. 2007 (November). 'Quality of law degrees questioned'.

Midgley R. 2007. 'South Africa: Legal Education in a Transitional Society', Paper presented at Joint Meeting of the Law and Society Association and the Research Committee on the Sociology of Law of the International Sociological Association, Humboldt University, Berlin on 28 July.

Ministry of Justice. 1995. Justice Vision 2000: Five Year National Strategy for Transforming the Administration of Justice and State Legal Affairs.

Pretoria News. 22 February 2007. 'Mabandla wants youngbloods, not old judges'.

SASSETA. 2005-2006. Skills for a Safe and Secure Society: A skills plan for the policing, private security, legal, justice, correctional service, defence and intelligence sector. Sector skills plan submitted to the Department of Labour.

Shapiro Y and J Jacobs. 1999. South African Graduate Statistics: Profiles and recent trends. Human Sciences Research Council: Pretoria.

The Presidency. 2006. Accelerated and Shared Growth Initiative – South Africa (ASGISA): A Summary. Accessed at www.info.gov.za/asgisa.

Umhlaba Skills Services. 2007. National Skills Authority – Briefing Paper: Scarce and Critical Skills. Paper commissioned by the Department of Labour and German Technical Co-operation (GTZ).

Van Zyl E. 1999. The Demand for Labour in South Africa: 1998-2003. Human Sciences Research Council: Pretoria.

Whiteford A and E van Zyl, C Simkins and E Hall. 1999. SA Labour Market Trends and Future Workforce Needs 1998-2003. Human Sciences Research Council: Pretoria.

LEP/SEP/Lawskills/leprep1

Law

F disk

Saved 08.55 on 07.01.2008

Revised final draft sent to Johan Erasmus on 07.01.2008. Extensive revisions to draft (lepprop) sent to Johan Erasmus on 26 November 2007. Also

additions to the later version sent to Johan as well as Hugh and Rob on 14 December 2007.

¹ The target is an average of 4.5% economic growth for the period 2005 to 2009 and an average of 6% for the period 2010 to 2014. Relatively high growth since 1994 has had very little impact on unemployment and poverty, although official statistics indicate that the unemployment rate has declined somewhat in recent years (The Presidency, 2006: 2-3).

² There are apparently a number of versions of this Bill doing the rounds. The version referred to in this paper is the one published in August 2000 and accessed at <http://www.info.gov.za/bills/2000draftlpb.htm>.

³ Although some mergers have taken place, most legal firms in South Africa are small, employing between one and 15 workers. Only 15 firms employ more than 300 workers (SASSETA, 2005-6: 5 and 13-14).

⁴ This section draws extensively Midgley, 2007.

⁵ Until fairly recently Masters and PhD qualifications in law were rare. This was largely the result of the orientation of law teaching towards the practice of law. However, with increasing specialisation taking place within the profession there has been increased demand for Masters and PhD qualifications. The introduction of taught (coursework) Masters degrees in the 1980s was a response to this demand and has fuelled further demand by practitioners and others for post-LLB qualifications.

⁶ In actual fact the LLB was a three-year degree, but it could be reduced to two years if sufficient law courses were taken in the prior bachelor's degree. This was commonly the route followed by students.

⁷ This was the period of the articles of clerkship for an LLB graduate; the period was three years for someone with a BProc and five years for a person without a degree.

⁸ A working committee proposed that a BJuris degree would qualify a person to practice as a prosecutor or a criminal defender, a BProc increased the scope of practice to attorney or magistrate, and the five-year LLB would, in addition, entitle practice in the higher courts. Nothing came of the proposal.

⁹ However, law faculties agreed among themselves on 26 core courses. They also agreed that in formulating curricula and course content they would (a) recognise that law exists and applies in a pluralistic society; (b) try to give students appropriate skills for the practice of law; and (c) endeavour to instil ethical values (Iya, 2000: 4).

¹⁰ The study defines law professionals as judges, magistrates, advocates, attorneys, attorney's clerks (presumably articulated clerks), legal advisers, and legal officers/occupations not elsewhere classifiable (Whiteford et al, 1999: 75).

¹¹ The data from the two surveys has been weighted up using the Census 96 data. The data therefore provides estimates rather than actual numbers. Included in the category of law professionals are: articulated clerks, attorneys, advocates, prosecutors, magistrates, judges, legal advisers, parliamentary drafters, and legal officers not elsewhere classified.