

THE LEGAL PROFESSION: TRANSFORMATION AND SKILLS

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I INTRODUCTION

It is well known that South Africa has a serious skills shortage. The new skills development dispensation introduced by the government in 1998, underpinned by the Skills Development Act,¹ appears to have made little inroad into the shortage. The latest macroeconomic growth strategy, the Accelerated and Shared Growth Initiative (Asgisa), has focused attention on skills, making the elimination of the shortage a priority in order to achieve the 6 per cent economic growth rate that it has set as a target for the country in order to halve unemployment and poverty by 2014.

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.² But before one can measure and tackle scarce and critical skills it is necessary to understand what the terms mean. Unfortunately, there has been, and still is, a great deal of confusion in this regard. In 2005 the Department of Labour (DoL) 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 (that is, 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.³

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¹ Act 97 of 1998.

² Umhlaba Skills Services National Skills Authority *Scarce and Critical Skills*. Briefing paper commissioned by the Department of Labour and German Technical Co-operation (GTZ) (2007) 1 (hereinafter ‘Umhlaba Skills Services’).

³ Umhlaba Skills Services op cit note 2 at 4.

While the above definition seems clear, it is not always adhered to. There is disagreement within government about the DoL's definitions, which has led to a blurring of the difference between the two terms. Not surprisingly, the confusion makes identification and measurement of scarce and critical skills extremely difficult.⁴

The DoL commissioned a very large research project on scarce and critical skills. The objective of this project was to identify, collate, interpret and verify information on scarce and critical skills available within the labour market. A secondary objective was to identify future occupational employment prospects, particularly in those occupations where scarcity was suspected.⁵ The research project had five major components, one of which comprises case studies of occupations or occupational 'families'. A number of professions were selected as case studies. This article draws on research that was done on the legal profession.

What is the legal profession? The tendency is 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 elements in this definition are the requirement to have a legal qualification and the ability to appear on behalf of a client (including the state) in a court or to sit in judgement in a court. The wider definition of the legal profession includes legal advisers. In the private sector most legal advisers are employed by large corporations. In the public sector legal advisers are employed in national government departments, especially the Department of Justice and Constitutional Development (DoJ), as well as at the provincial and municipal levels. This article has adopted the broad definition of the legal profession.

What do scarce and critical skills mean in the context of the legal profession? Examples are probably the best way of explaining and distinguishing the terms:

A 'scarce skill' in the legal profession would be a shortage of qualified attorneys in the private sector or a shortage of prosecutors 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 be a relatively simple exercise, in practice it can be 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' would be not having a skill that should form a part of the skills profile of a law professional. For example, it might be that 'practice

⁴ Ibid at 3–4.

⁵ J Erasmus *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 (Project 4.1).

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 articulated clerks is another example. An example in the public sector is provided by the Criminal Law (Sentencing) Amendment Bill 15B of 2007, which proposes to give regional magistrates the authority to impose life sentences. This will possibly create a critical skill for, despite the fact that magistrates have the requisite qualifications and experience of being regional magistrates generally, some might lack the specific skill required to impose such a sentence.

While it is complicated to identify and measure scarce skills, it usually requires a much more intensive investigation to measure critical skills. One needs to do a skills audit, preferably 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.

The legal profession has not featured in the publicity that has been given to the skills crisis. Instead, it is transformation of the legal profession that has received all the press. However, as we shall see below, transformation and skills are inextricably bound up with one another in the legal profession. This raises a number of questions. Is transformation constraining the supply of skills or is it facilitating an increased supply? Alternatively, is the (short) supply of skills hampering transformation or is demand the culprit?

The article has four main sections. In the next section the legal profession is outlined, including the requirements to enter the profession, the main occupational groupings in the profession, the organizations that regulate the profession, and the legislative framework that governs the profession. This provides the context within which to locate the quantitative data that is examined in the next two sections. The first of these deals with the supply of law professionals, including discussion of the various education and training bodies that are responsible for the provision of skills. This is followed by a section that presents data on the demand 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. The article ends with a short conclusion.

II THE LEGAL PROFESSION AND LAW PROFESSIONALS IN SOUTH AFRICA

(a) A profile of the contemporary legal profession

There are a range of different occupations spread across the private and public sectors of the legal profession. For many years different law degrees

(that is, BJuris [three years], BProc [four years], BA LLB and BCom LLB [both five years], and — at UCT — BBusSci LLB [six years]) constituted the minimum requirements for entering different occupations. This changed in 1998 with the introduction of the four-year undergraduate LLB degree (and the phasing out of the BJuris and BProc degrees). The four-year LLB is now the minimum requirement to enter most occupations in the legal profession, that is, attorney, advocate, state attorney, state advocate and regional court magistrate.⁶ The minimum requirement for prosecutors and district court magistrates remains a three-year legal degree, namely the BJuris. At this point many incumbent and some prospective prosecutors and district magistrates have a BJuris, 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 be the de facto minimum requirement.

(i) *The legal profession in the private sector*

A graduate can follow various routes into the different occupations in the legal profession. Most routes into the private legal profession involve compulsory vocational training and a professional examination. To practise as an attorney a person must do two years articles of clerkship and pass the attorneys admission examination set by the Law Society of South Africa (LSSA). To become a member of one of the Bar Councils, ie an 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 (GCB). However, a person does not have to join a Bar Council to practise as an advocate. In such a case the person needs only an LLB. A legal adviser in the corporate sector also does not need to do vocational training or pass a professional examination.

In recent years some flexibility has been built into the vocational training dispensation for attorneys. Aspirant attorneys can attend the School for Legal Practice, which falls under the Legal Education and Development section (LEAD) of the LSSA. The school provides six-month vocational training courses that shorten the subsequent period of articles by one year. 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.

Attorneys and advocates have historically had different professional organizations. Attorneys *must* belong to one of the four law societies in the country — the Cape Law Society, the Free State Law Society, the KwaZulu-Natal Law Society, and the Law Society of the Northern Provinces — all of which are members of the LSSA. The LSSA has two additional members: the Black Lawyers Association (BLA) and the National

⁶ It should be noted that some students (and at UCT this constitutes the majority of law students) still do a BA or BCom with certain law subjects, which allows them to join the LLB in its third year, effectively giving them a BA(Law) LLB or a BCom-(Law) LLB.

Association of Democratic Lawyers (NADEL). Membership of one of the 12 Bar Councils is voluntary for advocates. The umbrella body for these councils is the GCB. It is not known how many advocates are practising outside the Bar Councils.

(ii) *The legal profession in the public sector*

In the public-sector law professionals practise as state attorneys, prosecutors, or state advocates, or they become magistrates or judges. There are also state legal advisors and departmental legal advisers. Most of these occupations do not require vocational training or an admission examination. State attorneys, however, must go through the same vocational training and write the same examination as attorneys in the private sector, while a six-month aspirant-prosecutor training programme has been introduced for new prosecutors, and entry-level district magistrates receive two months' training at the Justice College and are mentored thereafter by a senior magistrate for at least six months. Regional magistrates must have five years' applicable experience in law to be appointed.

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 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 (eg in the last three years about six magistrates have been appointed as judges).

A large proportion of law professionals in the public sector resort under the Department of Justice and Constitutional Development (DoJ), either directly or in the various independent sections, bodies and commissions that formally fall within the ambit of the DoJ. The most important components are the court system, within which magistrates and judges work, the National Prosecuting Authority (NPA), which employs most of the prosecutors and state advocates, and the Legal Aid Board (LAB), which employs a large number of articulated clerks and attorneys. Other important sections are the State Attorney's Office and the Office of the Chief State Law Adviser. A sprinkling of law professionals are employed in the offices of the Master of the High Court, the secretariat of the Rules Board for Courts of Law, the Law Reform Commission, the Human Rights Commission, the Commission on Gender Equality, and the office of the Public Protector.⁷

(iii) *Further education and training in the legal profession*

As was noted above, LEAD offers a number of vocational training course for aspirant attorneys. LEAD, along with a number of other organisations, also

⁷ Government Communication and Information Service (GCIS) *South Africa Yearbook 2006/2007* (2007) 401–3 available at www.gcis.gov.za/docs/publications/yearbook.07.html (last accessed on 9 May 2009).

provides a great deal of further education and training for law professionals. Some examples of this training are briefly outlined below. It should be stressed that what follows is by no means an exhaustive treatment of the training organizations serving the legal profession.

About 6 000 students a year go through LEAD's extensive range of pre- and post-admission vocational training courses. The courses that offer additional or specialist skills take various forms, ranging from taught courses, to courses offered on a distance basis, to one-off seminars. For example, attorneys have traditionally been able to acquire two further professional qualifications, ie to practise as conveyancers and as notaries. 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. Further courses offered through distance education are: a Certificate in Corporate Law, a Certificate in Deceased Estates, a Certificate in Insolvency Law and Practice, a Certificate in Tax Practice, and a Diploma in Labour Law.⁸

A course in Practice Management is a particularly important part of the continuing education focus of LEAD. The course is offered 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. 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 such attorneys will have to have completed the course within a year of receiving their Fidelity Fund certificates.⁹

The Attorneys Fidelity Fund, which acts to protect members of the public from losses resulting from theft of trust funds by attorneys, plays an important role in legal education and training through the provision of funding. It gives money to LEAD for its practical legal training and continuing education programmes, to the Black Lawyers Association for its Legal Education Centre, and to all the universities to assist their legal aid clinics and to fund projects that could enhance the practical skills of students. It also has an extensive bursary scheme for students.¹⁰

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

⁸ See the section on distance education on the LEAD website available at <http://www.lssalead.org.za/Index.cfm?fuseaction=home.page&PageID=1192411> (last accessed on 13 April 2009).

⁹ See generally the section on practice management on the LEAD website available at <http://www.lssalead.org.za/Index.cfm?fuseaction=home.page&PageID=6170120> (last accessed on 13 April 2009).

¹⁰ Rob Midgley 'South Africa: Legal Education in a Transitional Society' 22. 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 2007.

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.¹¹ 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 also be informed by what court officials could be facing in the near future. For example, the following are some of the new courses being introduced: organised crime; cyber crimes; environmental law; international agreements; refugee law; human trafficking; extraditions; and the National Credit Act.¹² 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 that will focus on magistrates and judges. The aim is to provide 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 South African Safety and Security Sector Education and Training Authority (SASSETA) — consisting of several chambers, namely Policing, Private Security, Justice, Legal, Correctional Services, Defence and Intelligence. — spans the private (the Legal Chamber) and public sectors (the Justice Chamber) of the legal profession.¹³ It must be emphasised the SASSETA does not itself provide training. It registers learnerships and accredits training providers to deliver the relevant training.

Universities are also playing an increasingly important role in providing further education and training for law professionals. 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 greater specialisation taking place within the profession there has been rising demand for Masters and PhD qualifications. The introduction of taught (coursework) Masters degrees in the 1980s was a response to this demand and has in turn fuelled further demand by practitioners and others for post-LLB qualifications. These courses are open to attorneys and advocates as well as law professionals in the corporate and public sectors.

¹¹ See the South African Government Information website at <http://www.info.gov.za/aboutgovt/justice/structures.htm> (last accessed on 13 April 2009).

¹² Ibid.

¹³ See the SASSETA website at <http://www.sasseta.org.za/content.php?pageID=4> (last accessed on 13 April 2009).

(b) *Transformation of the legal profession*

Under apartheid the University Education Act¹⁴ restricted entry to universities on the basis of race. In order for a black person to be admitted to a 'white' university he or 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.¹⁵

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 practising law in townships and the 'homeland' areas. In order to practise in an 'urban' area a black attorney had to obtain a government permit.¹⁶

Not surprisingly, the legal profession came to be dominated by whites, in particular white males. Far more whites qualified and practised law, and their firms monopolised the lucrative branches of legal practice. 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 prosecutors and magistrates in the lower courts. It was only in the 'homelands' that most prosecutors and magistrates were black and male.¹⁷

The transformation of the legal profession was therefore a key issue after the 1994 elections. The DoJ was at the forefront of the transformation process. In 1995 the DoJ's newly-formed Planning Unit published *Justice Vision 2000*, a strategic plan for transformation of the justice system. In the section dealing with the legal profession *Justice Vision 2000* called on the profession to remove 'the constraints that make access to the profession unduly difficult, and sometimes impossible', and to improve 'professional training programmes and strengthen the capacity of existing training institutions'; the document also noted that access to lawyers was made difficult by the 'concentration of lawyers in urban centres' which left 'rural communities with very few professional legal services'.¹⁸

These comments represent an intervention in a debate that had started in the early 1990s regarding the existing legal degrees and the compulsory vocational training requirements of the legal profession. One argument in

¹⁴ Act 45 of 1959.

¹⁵ Philip F Iya 'Legal System and Legal Education in Southern Africa: An overview of past influences and current' 2. Paper delivered at the Conference of Legal Educators, Florence, 24–27 May 2000 available at <http://www.aals.org/2000international/english/southafrica.htm> (last accessed on 13 April 2009).

¹⁶ Midgley op cit note 10 at 5.

¹⁷ Ibid.

¹⁸ Ministry of Justice *Justice Vision 2000: Five Year National Strategy for Transforming the Administration of Justice and State Legal Affairs* (1995) 108–9.

the debate was for the various legal degrees to be consolidated into a single, uniform entry qualification for all legal practitioners that would place greater emphasis on practical skills. Another position, held by many black lawyers, was that the traditional five-year qualification and professional examinations were barriers that had been erected to restrict entry by blacks to the legal profession. They wanted a single four-year undergraduate university qualification with a strong practical component, and also demanded the scrapping of compulsory vocational training and professional examinations. A third view was pushed by education experts, who argued that universities needed to align their teaching with the country's needs. The implication for legal education was that curricula should put greater emphasis on practical skills.

The outcome of the debate was a compromise. It was agreed to introduce a four-year undergraduate LLB degree as the entry qualification for all legal practitioners. Thereafter the necessary amendments were made to the relevant statutes by the Qualification of Legal Practitioners Amendment Act,¹⁹ and the new degree was offered for the first time in 1998 (and the BJuris and BProc degrees were phased out). But a single, generic LLB curriculum was rejected and each university continued to determine its own curriculum, with varying provision of practical skills training to students — and there was no change to the compulsory vocational training requirements of the profession or the need to write professional examinations.

A 1999 discussion document that followed Justice Vision 2000 saw a shift in emphasis. Its concern was with the lack of uniformity with regard to, amongst other things, vocational training and admission examinations, rather than with these requirements per se. The document identified 'anomalous differences in the way in which and rules according to which the various branches of the profession are regulated'. These included the difference in the period of articles of clerkship and pupillage;²⁰ that attorneys had to pass an admission examination while advocates needed to write the Bar examination only if they wanted to practise under the auspices of one of the Bar Councils; the fact that it was compulsory for attorneys to join a Law Society whereas membership of a Bar Council was voluntary; that attorneys could appear in the High Court only after applying to the Registrar of the High Court for right of appearance; and that corporate legal advisers were not required to do any practical vocational training or pass any admission examinations.²¹

While acknowledging that some changes had taken place — the lengthening of the period of the pupillage and the reduction of the period of articles for a person that attended the School for Legal Practice — the discussion document proposed that further efforts needed to be made to introduce

¹⁹ Act 78 of 1997.

²⁰ Department of Justice and Constitutional Development *Discussion Paper on Transformation of the Legal Profession* (1999) 1–3.

²¹ *Ibid.*

uniform requirements with respect to the period of vocational training, which it stated should be a minimum of one year. It also proposed that all aspirant legal practitioners be required to do a period of community service, suggesting that such service could entirely replace the vocational training but had to be at least six months, ie with the remaining six months comprising vocational training (either articles or pupillage) or attendance at an accredited vocational training course offered by a university or professional organisation.²²

The discussion document indicated that there was a deadlock over the issue of admission examinations. The profession wanted to continue to administer its own examinations, while organizations representing black lawyers insisted that the examinations be dropped altogether. The options, according to the discussion document, were for a statutory body to set the examinations, thereby ensuring that they tested a minimum standard of proficiency rather than being set at a level that prevented entry into the profession by aspirant practitioners, or for there to be no admission examination, in which case a statutory body would need to be established to ensure that the LLB degrees offered by the various universities met a minimum standard.²³

It was 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'.²⁴ It was also noted that there was still a very uneven distribution of lawyers between urban and rural 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.²⁵

The next step in the transformation process was the development of a legal services charter. The Third Draft Legal Services Charter (October 2007) represents a concerted attempt to take the transformation process forward. 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'.²⁶

²² Ibid at 5 and 12.

²³ Ibid at 5–6.

²⁴ Ibid at 9–11.

²⁵ Ibid.

²⁶ Department of Justice and Constitutional Development *Draft for Discussion: 3rd Draft Legal Services Charter* (2007). Available at http://www.lssa.org.za/Portals/0/LSC_18Oct07.doc (last accessed on 13 April 2009).

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 apparently left to the envisaged Legal Practice Act, which was published as an incomplete discussion document (the Legal Practice Bill) as long ago as 2000.²⁷

The Legal Practice Bill is concerned with critical issues such as the unification of the legal profession; standards of education and training; qualification criteria for admission to the profession; licence to practise; discipline in respect of unprofessional conduct and misconduct; public indemnity in respect of negligence by practitioners; and, a fidelity fund for the legal profession. The key vehicle for achieving the above will be the South African Legal Practice Council, which will regulate the practice of law; maintain standards of professional practice and ethical conduct; promote high standards of legal education and training; and promote access to the legal profession.²⁸

The Bill proposes formally expanding the scope of the profession in two ways. First, all legal practitioners employed by corporations (other than legal practices), or by the state, or by non-governmental organisations, who provide legal services only to their employers, can apply to be placed on the roll of legal practitioners.²⁹ Thereafter he or she would be entitled to appear in court on behalf of his or her employer.³⁰ 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.³¹

The Bill proposes to make the vocational training period of *all* aspirant legal practitioners one year. This will replace the current minimum period of two years for articled clerks and the one year pupillage for aspirant advocates.³² The vocational training will be done as prescribed by the Minister in consultation with the Council.³³ Furthermore, the Bill proposes that admission examinations be replaced by a more flexible form of evaluation of the skills acquired during the course of practical vocational training.³⁴

²⁷ 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 which is available at <http://www.info.gov.za/bills/2000draftlpb.htm> (last accessed on 13 April 2009). See the Draft Legal Services Charter op cit note 26, section 3.2.

²⁸ See clauses 5 and 6 of the Draft Legal Practice Bill available at <http://www.info.gov.za/bills/2000/draftlpb.htm> (last accessed on 9 May 2009). See the preamble to the Draft Legal Practice Bill (2000) 5–6.

²⁹ *Ibid*, clause 11(3).

³⁰ *Ibid*.

³¹ *Ibid*, clause 11(4).

³² *Ibid*, clause 13(1)(b)(ii).

³³ *Ibid*.

³⁴ *Ibid* at 1 and 10–11.

(c) *The future shape of the legal profession*

The legal profession will in future, so it seems, be characterized by more uniformity and greater statutory regulation. The latter will manifest in the establishment of a single statutory regulatory body for legal practitioners. Increased uniformity, which began with the introduction of the four-year LLB, will continue with the removal of any formal distinction between advocates and attorneys, and with the inclusion of legal advisers on the roll of legal practitioners (the latter will become the name for attorneys, advocates and legal advisers). It is likely, however, that a division will remain between attorneys and advocates based on specialisation and expertise.

Uniformity will also extend to the period and content of articles and pupillage. It is likely that a common form of compulsory vocational training of a year's duration will be introduced for aspirant attorneys and advocates, with community service making up a significant proportion of the training. Furthermore, vocational training will be allowed at a much wider range of institutions and organisations, which will make entry to the profession easier and should also improve the geographical spread of legal skills. However, it is unclear what will happen to the attorneys' admission examination and the Bar examination. Logically, a common form of vocational training means a single examination, but at this point it is unclear what form of evaluation will be used in future, given the intention to introduce a more flexible test of competence.

In the public sector a number of positions require only a three-year legal qualification. But as BJuris and BProc degrees phase out of the system, the four-year LLB will mean greater uniformity within the public sector as well as between the public and private sectors of the legal profession, which will be entrenched by including law professionals in the public sector on the roll of legal practitioners.

In terms of supply, the major impact of the above changes will be at the post-university stage of the pipeline. Shorter vocational training, particularly if it can take a variety of forms and can be performed at a wider range 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 a question-mark remains as to whether new attorneys and advocates can establish themselves (and stay) in the profession. Bearing this in mind, the next section examines data on current supply to the legal profession.

III THE SUPPLY OF SKILLED LAW PROFESSIONALS

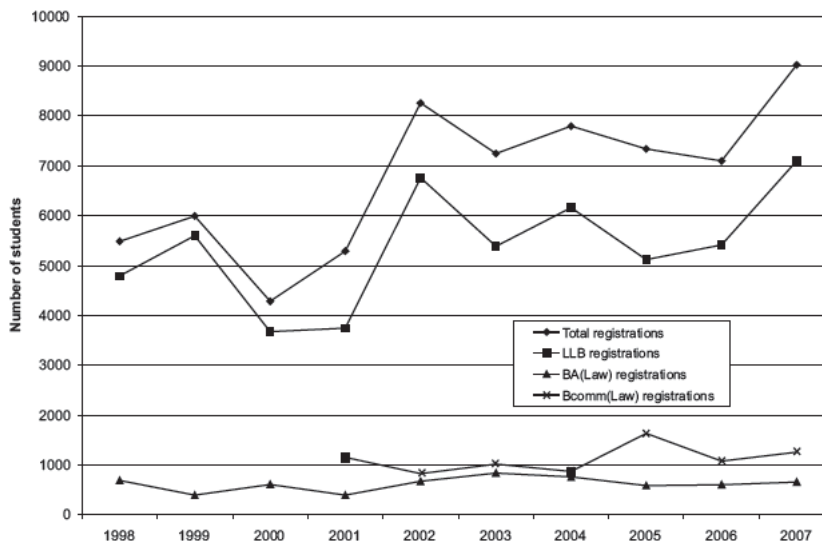
As indicated above, a person must meet three requirements before they can enter the practising legal profession in the private sector. First, they need to have at least the undergraduate LLB degree. Secondly, they need to have completed a period of vocational training, either articles of clerkship or 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, ie this will reduce the period of the articles. Thirdly, 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. This section examines quantitative data in respect of the various stages of the pipeline that supplies the attorneys' and advocates' professions.

(a) *A quantitative analysis of the supply of law professionals*

In the period 1998 to 2007 the total number of first-time, first-year registrations for the LLB, BA(Law) and BCom(Law) degrees fluctuated between about 5 500 and 9 000, although the fluctuations were around a steadily rising trend. This is displayed in figure 3.1 below.

Figure 3.1 First-time first-year registrations for a law degree: 1998–2007



(Source: Data supplied by LEAD)

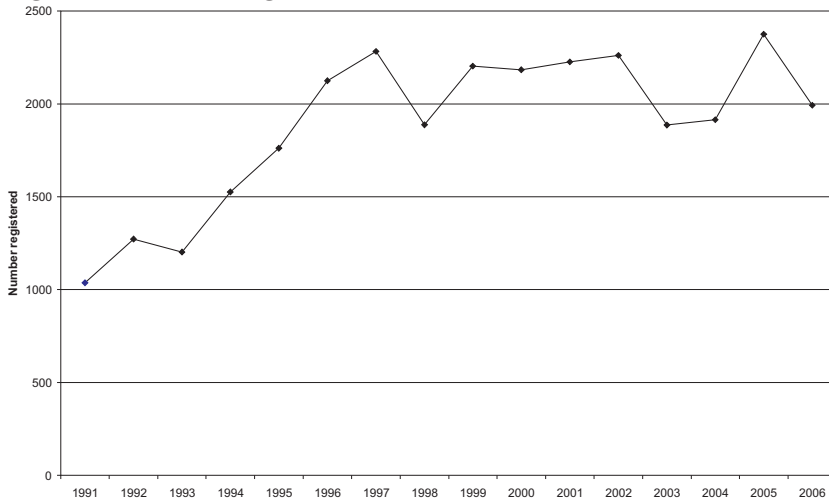
The figure shows that the vast majority of registrations were for the LLB degree. Registrations for this degree followed a very similar pattern to the total number of registrations, fluctuating between about 5 000 and 7 000, and also ending sharply up. This indicates the growing popularity of the degree.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

Figure 3.2 presents data for LLB graduates for the years 1991 to 2006. There is a strong rising trend in graduations until 2000 and then a quite steep decline to 2003, which is probably the result of the phasing out of the BProc degree in 2002. Thereafter the number of graduations increases steadily to 2006, which confirms the growing popularity of the four-year LLB degree displayed in figure 3.1.

Figure 3.2 LLB graduates: 1991–2006

(Source: Data supplied by LEAD)

In figure 3.3 data is presented on the number of articles of clerkship registered with the various law societies in the country for the period 1991 to 2006. 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.

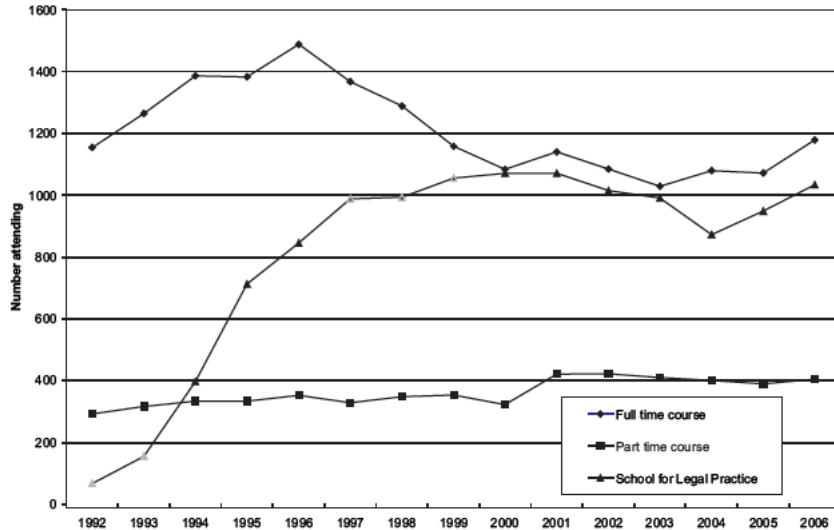
Figure 3.3 Articles registered: 1991–2006

(Source: Data supplied by LEAD)

Figure 3.4 deals with registrations for the School for Legal Practice and the full-time and part-time practical legal training courses. The figure reveals that the full-time course is the most popular option for articled clerks,

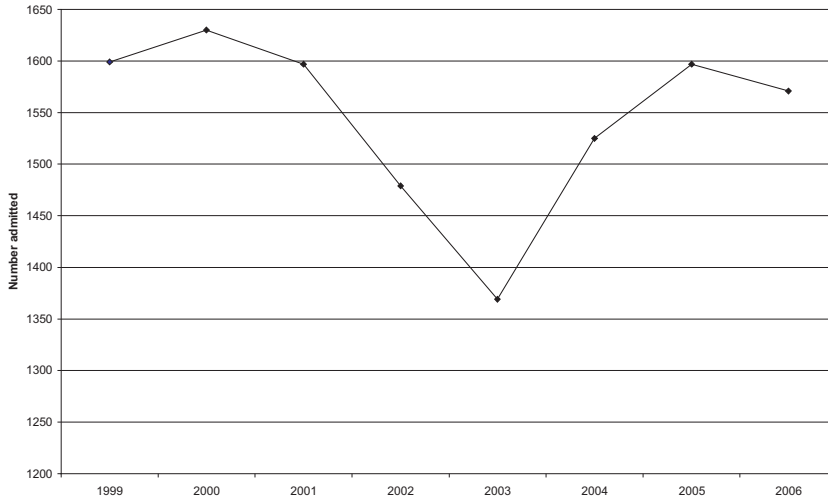
although attendance on the course declines after 1996. Attendance at the School for Legal Practice increases hugely from 1992 to 2000, then reaches a plateau before rising again from 2004. The part-time course is the least popular but attendance on the course increases steadily over the period.

Figure 3.4 Attendance at the School for Legal Practice and practical legal training courses: 1992–2006



(Source: Data supplied by LEAD)

Figure 3.5 presents data in respect of the number of attorneys admitted in the period 1999 to 2006. 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.

Figure 3.5 Attorneys admitted: 1999–2006

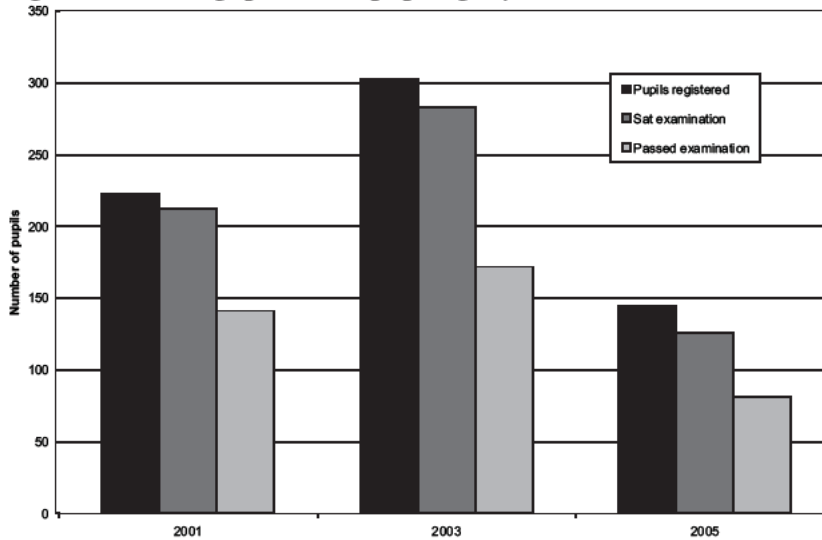
(Source: Data supplied by LEAD)

The section above has dealt with the supply-line through to becoming an attorney. The alternative for some LLB graduates is to practise as an advocate. Aspirant advocates who 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 practise immediately).

In Figure 3.6 we show the number of pupils registered, the number sitting the Bar examination, 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.

The figure shows that most pupils complete their pupillage and sit the examination, but the last column for each year indicates that the failure rate is high. It is also evident that the increased length of the pupillage has had a small negative impact on the number of pupils that completed their pupillage and sat the examination (down to 88% per cent in 2005 from 95 per cent in 2001 and 93 per cent in 2003). Surprisingly, however, the longer pupillage has not impacted positively on the pass rate. This drops from 63 per cent in 2001, to 57 per cent in 2003, and to 56 per cent in 2005.

Figure 3.6 Throughput in the pupillage system: 2001, 2003 and 2005



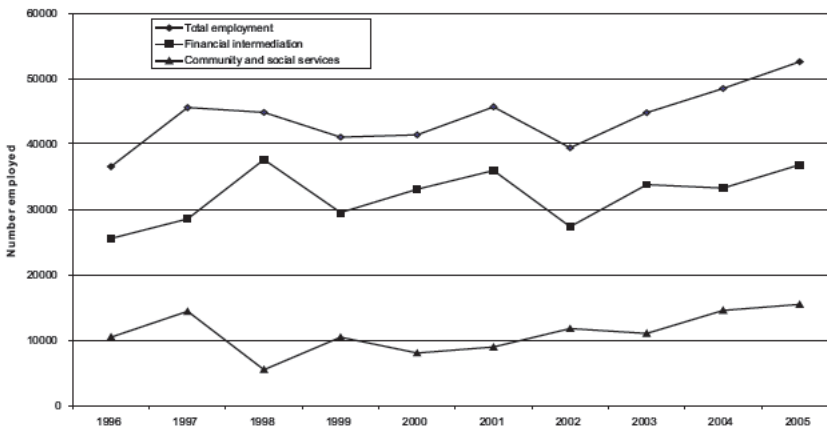
(Source: Data supplied by the GCB)

IV THE DEMAND FOR LAW PROFESSIONALS

(a) *A quantitative analysis of the employment of law professionals*

Data derived from the October Household Survey (1996–1999) and the Labour Force Survey (2000–2005) shows that the vast majority of law professionals are employed in the finance and community services sectors. Figure 4.1 shows that there are very few law professionals in the other sectors of the economy.

Figure 4.1 Employment of law professionals by main sector: 1996–2005



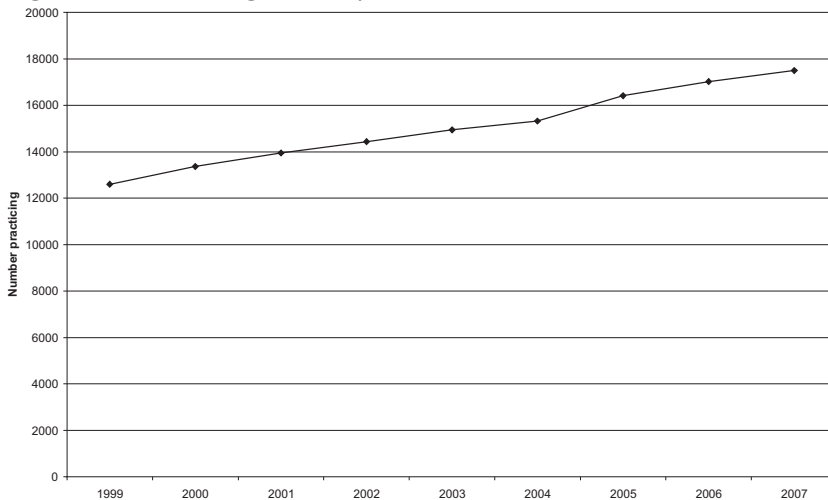
(Source: October Household Survey and Labour Force Survey)

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 has probably been driven by the sustained period of economic growth in the country.

The SASSETA sector skills plan indirectly confirms the rise in the number of legal professionals. It states that in the period 1997 to 2002 there was an increase of 1 850 legal firms (44.5 per cent), which implies an even larger increase in the number of law professionals. It is interesting to note, given the concern at the distribution of law professionals between urban and rural areas, that the majority of legal firms are located in Gauteng (62 per cent), and that much of the growth in the number of legal firms was in Gauteng, KwaZulu-Natal, and the Western Cape, ie the provinces with the major metropolitan areas.³⁵

LEAD provides actual numbers of practising attorneys for the years 1999 to 2007. This data is displayed in Figure 4.3. Growth in the number of attorneys is significant: over the eight year period about 5 000 attorneys join the profession. Given that there were less than 13 000 attorneys in 1999, this is a major increase.

Figure 4.3 Practising attorneys: 1999–2007

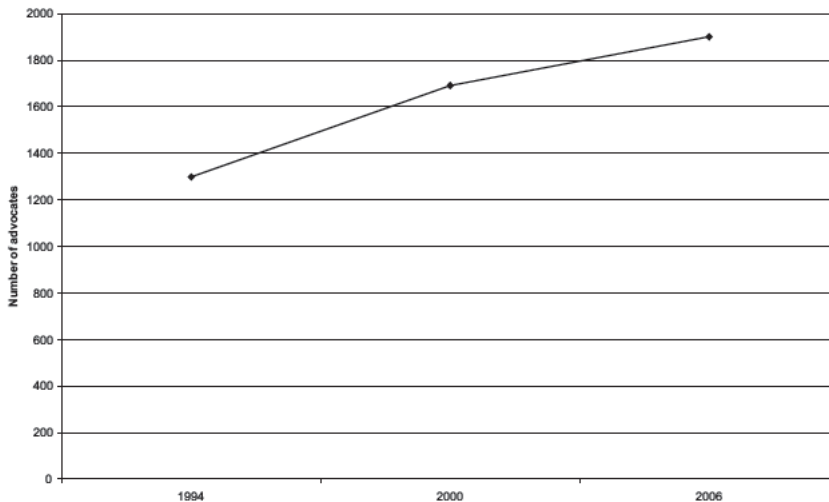


(Source: Data supplied by LEAD)

³⁵ South African Safety and Security Sector Education and Training Authority (SASSETA) *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 (2005–2006).*

Data from the GCB provides actual numbers of advocates practising as members of one of the Bar Councils (there is no data available for advocates practising outside the Bar Councils). Figure 4.4 shows a steady increase in the number of advocates practising at the Bar Councils. Note that this increase takes into account advocates leaving the Bar Councils. More recently, as figure 4.5 shows, the rate of increase of advocates at the Bar Councils has declined slightly.

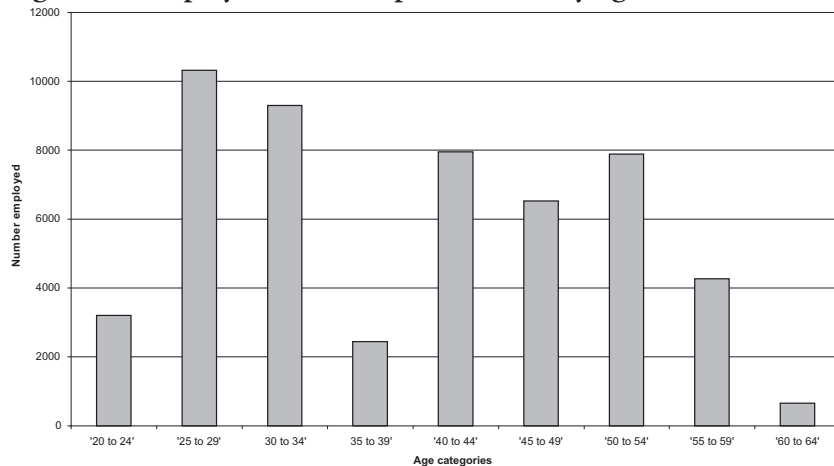
Figure 4.4 Total advocates at Bar Councils: 1994, 2000 and 2006



(Source: Data supplied by the GCB)

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.

There is a further factor that is important for the demand for law professionals, namely the age profile of the profession. In figure 4.5 law professionals are divided into age categories.

Figure 4.5 Employment of law professionals by age: 2005

(Source: October Household Survey and Labour Force Survey)

Figure 4.5 shows that there are a large number of law professionals in the 25-year to 34-year age categories. This suggests that there is a healthy demand for qualified law professionals coming into the profession and that the profession is willing to employ young graduates with limited experience. There is a sharp drop in numbers in the 35-year to 39-year 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.

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. At the end of March 2002 the DoJ had a staff of 11 066. Data was not provided for the number of professionals, but there were 1 669 magistrates and 73 state law advisors.³⁶ By 2006/2007 the staff of the DoJ had increased to 16 879 (an increase of 52 per cent over five years). About one-fifth of the staff was categorized as professional, including 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; with the exception of judges and prosecutors. Projections for most of the professional categories show that

³⁶ Department of Justice and Constitutional Development *Annual Report (2001/2002)* 11–12.

further increases are in the pipeline. The DoJ did not anticipate any difficulties with filling new positions.³⁷

Data on vacancies confirms the growing demand for law professionals but is particularly useful in shedding light on the expansion of employment in the public sector. Drawing on a database maintained by the Department of Labour (DoL) that records advertisements in the *Sunday Times* for law professionals, we are able to examine advertisements for law professionals 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 per cent) advertised positions in the private sector as against 2 596 (85 per cent) 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. When one breaks down the advertisements one finds that most 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. Significantly, the number of advertisements for advocates increases enormously over the period, which confirms the drive by the DoJ and other government departments to recruit law professionals. This drive will be examined further below with respect to vacancies and recruitment at the DoJ.

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

Table 4.1 Experience required in advertisements for law professionals

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 4.5 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

³⁷ Department of Justice and Constitutional Development *Annual Report (2006/2007)* 235, 238–9 and 249. SASSETA op cit note 35 at 5, 9–10 and 74.

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.³⁸ 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 4.2 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 *Annual report (2006/2007)* 238–9)

Table 4.2 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 the DoJ appears to be moving quite quickly to fill the vacancies. For example, at the time of conducting this research all the vacancies for senior magistrates had been advertised and the process was underway to select people to fill the positions. Another advertisement was about to be placed for entry-level magistrates. This would eliminate all the vacancies for magistrates.

V SCARCE AND CRITICAL SKILLS IN THE LEGAL PROFESSION

This section sums up the data in respect of the supply of, and demand for, law professionals and analyses it in respect of race and gender. Thereafter other sources are drawn on to identify a number of key issues regarding skills in the legal profession.

(a) *Investigating absolute scarcity in the legal profession*

There is a 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.

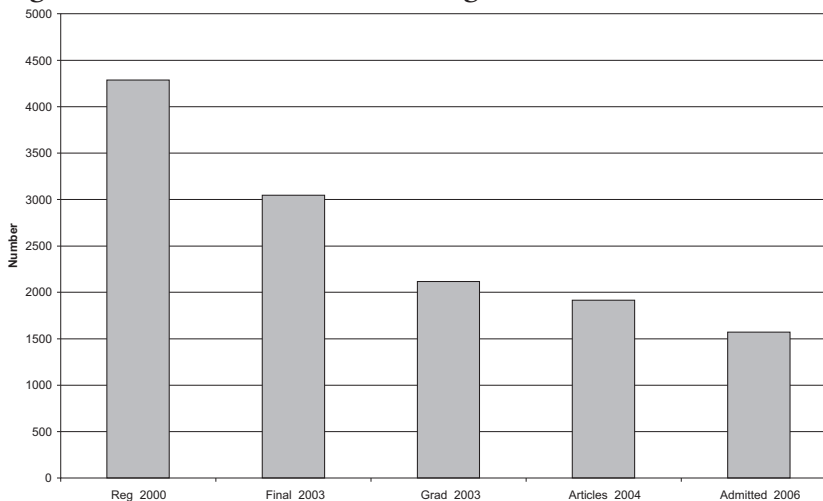
The four-year LLB has proved popular and the number of registrations has risen over the last ten years. But there is a high drop-out rate between registration and graduation. This is shown in figure 5.1, in which an

³⁸ SASSETA op cit note 35 at 32.

indication is given of the proportion of first-year students registering for an LLB that will enter practice as an attorney. It must be stressed that this is a very rough exercise. Students may 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 registered 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, in other words, this is the proportion (71 per cent) of first-year students in 2000 that reached their final year. The next column shows the number of students that graduated in 2003. This is almost half (49 per cent) 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; which is 45 per cent of the first-year students in the first column. If these students were to have done their two years of articles and passed their admission examination, they would have been admitted to practice in 2006, which is represented in the last column. The figure indicates that a little over a third (37 per cent) of the students registering for their first year of an LLB will end up practising as an attorney.

Figure 5.1 The class of 2000: From registration to admission



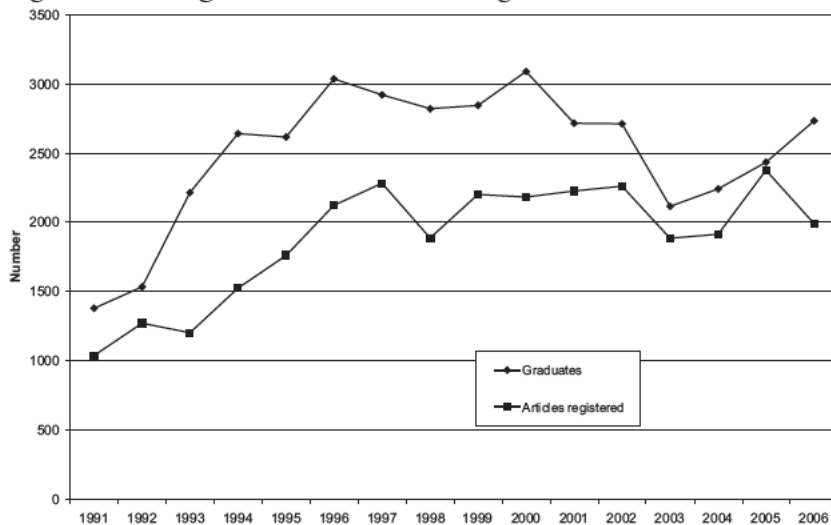
(Source: Data supplied by LEAD)

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 per cent). Once they have completed their LLB degree the vast majority of graduates register for articles (91 per cent) and thereafter become admitted as attorneys (82 per cent). The four-year LLB degree therefore 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.

Despite the high drop-out and failure rate, the number of LLB graduates is now considerably higher than in 1991, which has resulted in a concomitant increase in the registration of articles of clerkship over the last fifteen years. This indicates a healthy demand for articulated clerks. 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 5.2 the number of LLB graduations in the years 1991 to 2006 is compared 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 5.2 LLB graduates and articles registered: 1991–2006



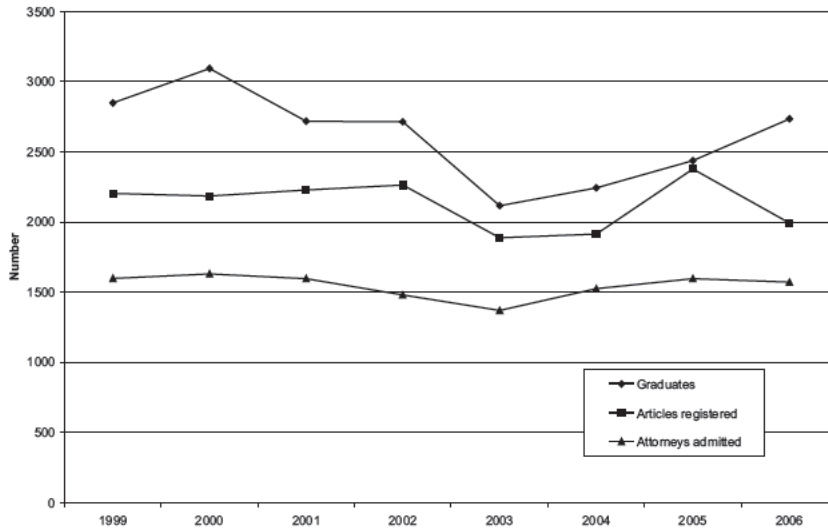
(Source: Data supplied by LEAD)

The figure shows that the number of articles registered tracks the number of graduates quite closely, but from about 1999 the gap narrows significantly, 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 practise 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.

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 5.3 below.

Figure 5.3 LLB graduates, articles registered and attorneys admitted



Over the period about 500 articulated 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 leave the profession in the course of their articles. Others might leave after passing their admission examination and completing their articles and some might decide to practise as advocates and move over to a pupillage or go into the public sector.

Figure 4.3 (above) showed that the demand for attorneys is increasing steadily, although perhaps not as rapidly as the supply of articulated 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 because they work for their own account rather than being employed. Demand therefore emanates directly from the amount of work that 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 and the number of intakes was reduced. 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.

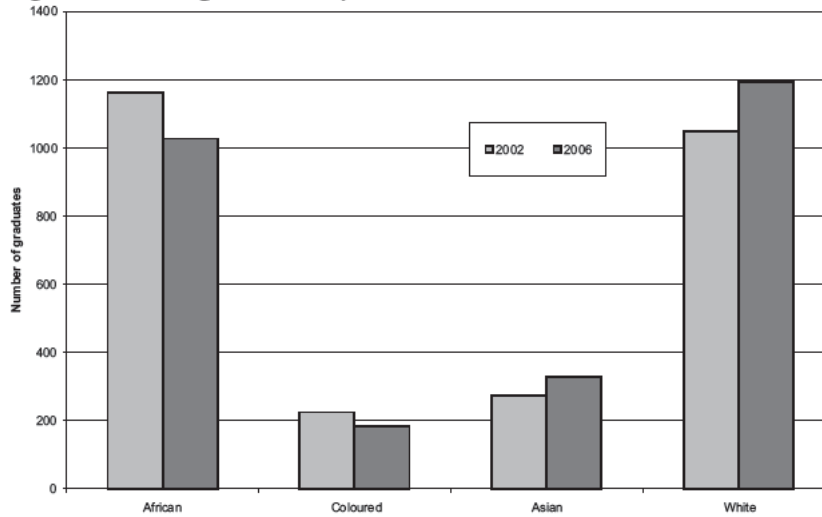
While there has been a decline on the supply side of the advocates profession, the number of practising advocates has increased steadily over the period 1994 to 2006 (see figure 4.4 above). However, this increase (roughly 30 advocates per year) is well below the supply (even the reduced supply after 2004). This suggests that many pupils either do not practice as advocates once completing their pupillage or are unable to sustain a viable practice. But it must be noted that the above data refer 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 practise as advocates on the 'outside' (what one interviewee referred to as 'the rebel Bar'). It is therefore 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 information given above has focused narrowly on the 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 an adequate supply of graduates to meet this demand.

(b) Race and the supply of and demand for law professionals

Given that there appears to be an adequate supply of skills to the profession, both at the entry level and in terms of continuing and specialist education and training, has transformation had an impact on the labour market for law professionals? This question is examined below, with a focus on African law professionals. Unfortunately, not all of the time series data we obtained is broken down by race, which makes it difficult to compare trends to the extent done above. However, the data does give some useful pointers.

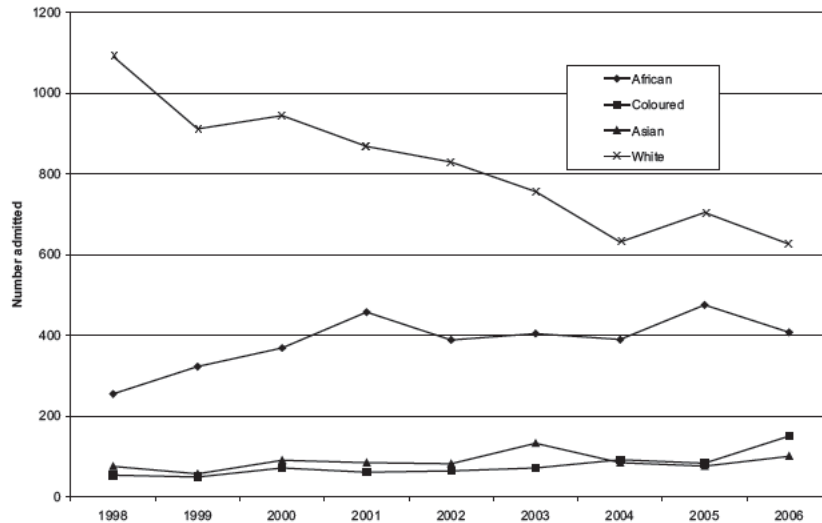
First-year LLB registrations of Africans increased significantly over the period 2003 to 2007. The increase is matched by a quite steep rise in the number of final year enrolments. However, African LLB graduates decline between 2002 and 2006 (while white and Asian graduates increase).

Figure 5.4 LLB graduates by race: 2002–2006

(Source: Data supplied by LEAD)

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 per cent, which is considerably higher than the overall rate of 51 per cent calculated above (albeit for a different period).

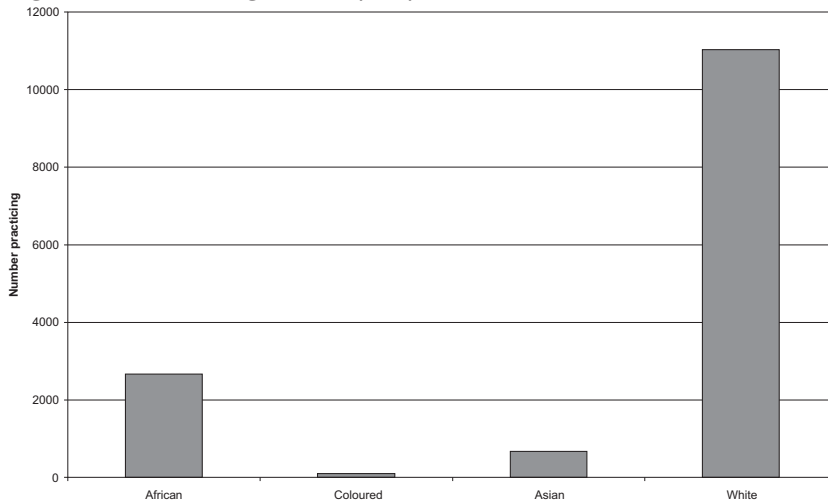
Unfortunately, we are not able to extend the above exercise to include the registration of articles or the admission of attorneys, because the KwaZulu-Natal Law Society did not supply data to LEAD on articles and admissions by race. We also do not have time series data for the registration of articles by race. However, data for 2006 (although with data for KwaZulu-Natal missing) shows that the registration of African articulated clerks is well below white articulated clerks. On the other hand, Africans are by far the biggest group attending 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 2001, with the numbers remaining steady from 2001 to 2006, while whites decline steeply.

Figure 5.5 Attorneys admitted by race: 1998–2006

(Source: Data supplied by LEAD)

It is unclear why there is such a steep decline in the number of whites being admitted as attorneys, given that the number of white LLB graduates is increasing and the number of white articulated clerks is high. On the other hand, the number of African graduates is decreasing and the number of African articulated clerks is relatively low, but the number of Africans admitted as attorneys is increasing. One explanation that more or less fits the data is that African graduates are successfully using the School for Legal Practice to ensure a rising pass rate in the attorneys' admission examination. But, whatever the explanation, the figure indicates that the composition of the supply of attorneys is changing.

However, the rising number of Africans being admitted as attorneys has made little impact on the composition of the attorneys' profession. Figure 5.6 shows that the vast majority of practising attorneys is still white.

Figure 5.6 Practising attorneys by race: 2007

(Source: Data supplied by LEAD)

The question is whether the problem lies 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 articled 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 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.³⁹

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 per cent of those that passed the Bar examination were African. Moreover, the majority of African pupils who 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 secondly, that an intervening period of vocational training or work experience might assist them. The end-result is a Bar dominated by white advocates.

³⁹ It should be noted that the gender picture is very similar. Women have made even more progress in catching up (and sometimes exceeding) males at a number of points in the supply pipeline to the legal profession. However, they remain a small minority of practising attorneys and 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 or two 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.⁴⁰ These events have put the spotlight on the composition of the judiciary, the Bar and the attorneys' profession.

The Bar is particularly important because it has traditionally provided the pool from which judges are drawn. However, African advocates are in a small minority at the Bar. Furthermore, an interviewee at the GCB 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.

To some extent, employment of African law professionals in the public sector is ameliorating the above bias. As noted above, in 2006 to 2007 51 per cent of professionals employed by the DoJ were African, while 7 per cent were Asian and 6 per cent 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.

(c) Other perspectives on scarce and critical skills

In broad terms the above data indicate that there is an adequate supply of law professionals. There is, however, a relative scarcity of African law professionals. We also know from secondary sources that there is a relative scarcity of law professionals in rural areas. Policy changes 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.⁴¹

The SASSETA sector skills plan identifies trade-mark-practice lawyers as scarce skills. In the public sector it identifies a scarcity with respect to the following: constitutional litigation and all other forms of litigation except criminal work; international trade law; civil magistrates; and state legal advisers.⁴² Other positions are also likely to record shortages as the DoJ continues with its expansion and creates new posts. However, the DoJ does

⁴⁰ *Sunday Independent*, 18 November 2007.

⁴¹ *Ibid* at 57.

⁴² SASSETA op cit note 35 at 48.

not predict any difficulties with filling new positions, which confirms that supply is not a problem.⁴³

However, while the number of LLB graduates has increased, a lot of criticism has been directed at the quality of graduates, in particular poor literacy and numeracy skills. This raises the spectre of critical skills and the adequacy of the four-year LLB. The complaints have emanated from various sources. The Director-General of Justice has referred to the poor quality of law graduates, who, he alleged, were unable to draw affidavits and pleadings. He called on the profession to engage with universities regarding the declining standards. In the debate that ensued an argument was made that the LLB needed to be upgraded.⁴⁴

The shortcomings of the LLB were highlighted again by Bernard Ngoepe, Judge President of the Transvaal High Court (as it then was) who called on the government and universities to consider the re-introduction of a five-year LLB. He argued that too many courses had been dropped in making the shift to the four-year LLB and even proposed that the period of articles had become too short.⁴⁵ Professor Rob Midgley, then the chairperson of the South African Law Deans Association (SALDA), has taken a more nuanced position. He recognizes that there is a need for a firmer academic foundation for graduates, including expanding the non-law components of the LLB curriculum,⁴⁶ but 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.'⁴⁷

Muzi Msimang, president of the BLA, has a different view, arguing that the blame did not lie with the LLB degree but with the vocational training received after the degree. However, he disagreed with the claim that the period of articles was too short.⁴⁸

The implication of the debate is that the four-year LLB has not achieved the right balance between maintaining high academic standards and making the profession more accessible (ie increasing supply). But 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 in order to attempt to address the problems. The Attorneys Fidelity Fund, which has a particular concern regarding numeracy skills, commissioned research on the numeracy programmes at law faculties at all universities in the country. It found that most universities were offering numeracy courses in the first year of the LLB.

⁴³ Ibid at 9–10, 33 and 49.

⁴⁴ Philip van der Merwe 'The trouble with LLB graduates . . .' (2007) April *De Rebus* 3.

⁴⁵ *Mail and Guardian* (Higher Learning) November 2007.

⁴⁶ Midgley op cit note 10 at 22n117.

⁴⁷ Monako Dibetle 'Quality of law degrees questioned' *Mail and Guardian* 14 November 2007.

⁴⁸ Ibid.

Those that are not doing so will be assisted by the Fidelity Fund to introduce such courses. The Fidelity Fund is also directing funding to those university projects that attempt to improve the numeracy and practical skills of graduates.⁴⁹

Interviews conducted with legal practitioners suggest that the problem lies with the quality of school education rather than with the LLB curriculum and vocational training. 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 of poor schooling. Related to this problem was one key interviewee's opinion 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.⁵⁰ This is an important point because it could provide an explanation for the low number of African articles clerks and weak demand for African attorneys. Unfortunately, however, most of the data that we obtained does not provide a breakdown by university, which would allow for a quantitative examination of this contention.

VI CONCLUSION

The research shows that there is not an absolute scarcity of law professionals but that African attorneys and advocates are relatively scarce. There is a similar but less severe relative scarcity of African law professionals in the public sector. There is also a relative scarcity of law professionals in rural areas, although this is not quantifiable. The SASSETA sector skills plan and interviews reveal other critical skills shortages, such as experienced corporate lawyers and patent and trade-mark attorneys, as well as specialists in the public sector. But the numbers needed do not appear to be high; 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 most important critical skill is with regard to the numeracy and literacy abilities of LLB graduates. There also appears to be unevenness in the quality of graduates between universities (which we were unable to explore in more detail).

One question these findings raise is whether the existing legal education and training infrastructure will be adequate to address these problem areas? A second set of questions also arise in relation to transformation: Has transformation contributed to some of these shortages or are these shortages slowing transformation?

There is no hard and fast answer to the first question. On the face of it the legal profession has an extensive education and training system, comprising, on the one hand, law faculties at nineteen universities, and on the other hand, LEAD, the BLA's Legal Education Centre, the Bar Councils, and the

⁴⁹ Van der Merwe op cit note 44 at 3.

⁵⁰ Department of Justice and Constitutional Development op cit note 20 at 9.

Justice College (which will soon be joined by the South African National Justice Training College). In addition, a number of professional bodies in the private and public sectors provide specialist training in, amongst other things, corporate law, intellectual property law, and public financial management. These institutions provide education and training that cover generic skills needed across the legal profession as well as a wide range of specialist skills. There are also training initiatives to address problem areas such as numeracy and literacy.

The above appears to be an adequate education and training infrastructure. It certainly seems to be sufficient to compensate for the historical tendency of law firms not to do any training, other than on-the-job vocational training.

The second of the above questions is much more difficult to answer. Transformation, including the introduction of the four-year LLB, appears to have increased supply to the profession. Then the picture begins to get complicated. It seems that the quality of graduates being supplied is not the same, mainly because of differences in the capacities of universities. Given historical patterns of university attendance, the quality difference assumes a racial guise, ie historically black universities are producing LLB graduates that are not as well-prepared as graduates from the other universities. While demand has been increasing it appears to be well below supply, which means that legal firms have the luxury of picking articled clerks and admitted attorneys that are perceived to be the best qualified. In other words, African graduates from historically black universities are forming a surplus. Increased supply is therefore not changing the demographics of the profession.

It is ironic that this has led to a backlash against the four-year LLB. The LLB does not appear to be the main problem. Neither does the period of vocational training. The root causes are a school system that is not functioning properly and a university system that remains unequal. While demand increases moderately relative to supply, these factors will hamper transformation, whether demand is based on perception or reality.