



LAW SOCIETY OF SOUTH AFRICA

PRESS RELEASE

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LAW SOCIETY TO CONTINUE ENGAGEMENT WITH COMPETITION COMMISSION

The Law Society of South Africa (LSSA) is, naturally, disappointed with the decision by the Competition Commission to reject its application, made in 2004, for the exemption of the professional rules of the statutory law societies, as the LSSA and the Commission are both acting to ensure that the public interest is protected. However, the LSSA is encouraged by the Commission's willingness to continue its process of engagement and consultation with the LSSA to facilitate the continued regulation of the attorneys' profession.

'Our continuing engagement with the Commission – particularly on the issues of reserved work and organisational forms and multidisciplinary practices – is founded on the premise that the public interest is best served by ensuring that well-trained, professional legal practitioners are governed by acceptable professional standards,' say LSSA Co-Chairpersons Max Boqwana and Peter Horn.

However, while the LSSA is encouraged by the Commission's willingness to continue its process of engagement and consultation with the LSSA, the LSSA is considering its position and will take a decision on the way forward once the Commission has provided its full reasons to the LSSA for rejecting the exemption application. The ongoing consultation between the Commission and the LSSA to facilitate the continued regulation of the attorneys' profession and in relation to the Legal Practice Bill, will continue.

'In the meantime, we urge all attorneys to note that the Attorneys Act remains in force and that the statutory law societies will continue to regulate the conduct of attorneys in terms of the Act,' say the Co-Chairpersons.

The LSSA filed its exemption application because it recognised the need for attorneys' professional rules and practices to be in line with all legislation in South Africa. The rules that were the subject of the exemption application will soon be replaced or amended by the uniform rules of practice which are anticipated to come into effect by operation of the new Legal Practice Bill when it is enacted by Parliament.

The LSSA applied for exemption for four aspects:

- professional fees;
- work reserved specifically for attorneys;
- organisational forms and multidisciplinary practices; and
- the rules governing advertising, marketing and touting.

Professional rules: Since the application was lodged in 2004, the LSSA – together with the four statutory provincial law societies – has undertaken a review of the four sets of rules of professional conduct in order to draft a uniform national set of rules on the one hand, and on the other, to review the rules and bring them into line with current legislation. That process – which identified a number of rules that were outdated and anti-competitive – is nearing completion and the affected rules are being discussed with the Commission.

Professional fees: As regards professional fees, the LSSA has contended that fee guidelines provide a benchmark for the regulatory bodies in the profession (at this stage the statutory regional law societies) to gauge when an attorney is overcharging. 'The LSSA has noted that the Commission has indicated that the setting of price caps or ceilings could be considered as a mechanism to protect the public from exorbitant legal fees,' say Mr Boqwana and Mr Horn.

Forms of practice: The LSSA has, in principle, had no objection to multidisciplinary practices and has supported an enabling clause in the Legal Practice Bill that empowers the Minister of Justice and Constitutional Development to investigate such practices and organisational forms. 'We remain of the view, however, that these new forms of practice and their implications for the public must first be discussed jointly by the profession, the Justice Department and the Department of Trade and Industry,' say the Co-Chairpersons.

Reserved work: As regards reserving certain types of work for attorneys, the LSSA and the Commission have agreed on a period of engagement until mid-2011 when the LSSA will make submissions on this to the Commission. Mr Boqwana and Mr Horn explain: 'The LSSA maintains that the public is assured of quality legal services by well-trained and qualified, professional and properly regulated legal practitioners. Also, the attorneys' profession is the only profession that ensures that members of the public are automatically covered against negligence by an attorney through the Attorneys Indemnity Insurance Fund (AIIF), which provides indemnity insurance cover to attorneys at no cost. In addition, the Attorneys Fidelity Fund (AFF) protects the public against loss as a result of the theft of trust funds by attorneys. The protection provided by these two Funds encourages the public to use services provided by attorneys with confidence.'

ISSUED ON BEHALF OF THE CO-CHAIRPERSONS OF THE LAW SOCIETY OF SOUTH AFRICA, MAX BOQWANA AND PETER HORN

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Editor's note:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 20 000 attorneys and 5 000 candidate attorneys.

In Afrikaans items, please refer to the 'Prokureursorde van Suid-Afrika'.