



29 June 2020

Via e-mail [rules@ipc.org.za](mailto:rules@ipc.org.za)

Legal Practice Council National Office  
Thornhill Office Park Building  
94 Bekker Road  
Vorna Valley  
Midrand

Dear Sirs

**COMMENT ON THE DRAFT CRITERIA AND PROCEDURES FOR THE CONFERMENT OF SENIOR COUNSEL AND SENIOR ATTORNEY STATUS**

We refer to your request for comment dated 27 March 2020 and enclose herewith comments by the Law Society of South Africa.

Kindly acknowledge receipt hereof.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Lizette Burger".

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The Law Society of South Africa brings together the Black Lawyers Association, the National Association of Democratic Lawyers and provincial attorneys' associations, in representing the attorneys' profession in South Africa.



## **COMMENT ON THE DRAFT CRITERIA AND PROCEDURES FOR THE CONFERMENT OF SENIOR COUNSEL AND SENIOR ATTORNEY STATUS**

The LSSA would like to make the following submissions in respect of the invitation for comment on the draft criteria and procedures for the conferment of senior counsel and senior attorneys status, which appeared in Government Gazette 43145, dated 27 March 2020.

The LSSA is pleased to see that there has been some movement to recognise all deserving Legal Practitioners for their contribution to the legal profession, but there are some concerns regarding the criteria and procedures to be applied.

### **1. DISTINCTION BETWEEN DIFFERENT CATEGORIES OF LEGAL PRACTITIONERS**

Paragraphs 2.2 and 2.3 respectively provide for the status of Senior Council in respect of advocates and Senior Attorney in respect of attorneys.

The LSSA finds this distinction between Senior Counsel and Senior Attorney disconcerting. Although the Legal Practice Act still distinguishes between attorneys and advocates, we believe that this is for the purpose of expediency. The very foundation of the Act was to unify the profession and place all lawyers in South Africa on equal footing.

To avoid any further distinction in the profession and confusion in the eyes of the public, we believe that it would make sense to confer a single unified status, based on the same set of criteria. All legal practitioners are meant to serve the same society and the same courts.

What lies at the heart of the conferral of senior status is the recognition by the President as the Head of the State, of the esteem in which the recipients are held in their profession by reason of

their integrity and of their experience and excellence in advocacy. (*Mansingh v General Council of the Bar and Others (CCT 43/13) [2013] ZACC 40*). The same holds true for advocates and attorneys.

As such, it is recommended that deserving Legal Practitioners (both attorneys and advocates) should have bestowed upon them the status of Senior Legal Practitioner. If the term “Senior Counsel” is preferred, this should include attorneys and advocates. The word “counsel” is not only restricted to advocates, but include attorneys.

## 2. CRITERIA FOR CONFERMENT

Paragraph 3 deals with the criteria for conferment. We support the notion that the guidelines are not definitive or exhaustive, and that no single factor will be regarded as dominant, as long as there is uniformity and transparency in their application.

Paragraphs 3.1.1 and 3.1.2 state that *there may be more suitable candidates in any given year than can be accommodated and this means that persons who may otherwise have satisfied the criteria may not be recommended for appointment in a particular year*.

It is unclear who will make the decision as to how many candidates can be accommodated, when, and on what basis the decision is made. It is suggested that, for the sake of transparency, the notice to legal practitioners calling for nominations should include the maximum number of candidates that can be accommodated.

Regarding the criterion of *the nature of practice*, we have the following comments / queries:

- *The practice of a candidate must be a large one comprising good quality work, having regard, in particular, to the complexity of the work.*

Does this mean that a single practitioner or practitioners serving a small niche market will not be considered, noting that “advocates” are sole practitioners.?

- *Although preference will be given to practices which embody the whole spectrum of senior work available to legal practitioners, due regard will be given to the experience, expertise*

*and pre-eminence of a candidate in a specialised area of practice, which is not restricted to advocacy but may encompass expertise and pre-eminence in any generally recognised area of legal practice.*

and

- *No particular area or type of practice (for example, a commercial practice) will be accorded any more or any less weight than any other area or type of practice.*

Concern was raised by many practitioners in the field of conveyancing, that they will be disregarded. On our reading of the document, conveyancers will indeed be able to qualify, but, for clarity, it is recommended that specific reference be made to conveyancers, possibly by including them in the example.

- *Due weight will be given to the record of service of the candidate to the legal profession and to the community at large, including, without limitation, service to and leadership positions held in professional structures, commitment to pro bono work, and community service in any respects.*

The LSSA supports this holistic approach. It should be clear that the conferment of senior status is not an automatic progression, but that it is based on the outstanding performance of a legal practitioner in the legal field and the community.

In respect of the criterion regarding *years in practice*, although it is an important factor, this should not be elevated above the other criteria. Therefore, we suggest that reference to any period in practice be removed.

### **3. APPLICATION PROCEDURE**

Paragraph 4.1 deals with the *composition of the Committee* to consider applications. One half of the Committee must be practising advocates and one half practising attorneys, with the proviso that “... where the candidate is a candidate for Senior Counsel status the majority of the members ... must be advocates, and where the candidate is a candidate for Senior Attorney status the majority of the members ... must be attorneys.”

Paragraphs 6 deals with the *quorum* of meetings and paragraph 9 with the manner in which *decisions* are taken.

The document is scant on the composition of the Committee. No provision is made for a minimum or maximum number of members to deliberate on an application, or the expertise required from members. This can be problematic if the candidate is, for example, a conveyancer or commercial practitioner and the members of the Committee are all litigation practitioners. Given the Committee's mandate, it is recommended that the composition of the Committee be set out clearly. Consideration should also be given to the inclusion of any other suitable persons to serve on the Committee, pursuant to section 18(1)(ii) of the LPA.

Paragraph 12 provides that the *decision of the Committee* is final and there shall be no debate with the candidate or with any other person. Furthermore, the *Chairperson* shall publish a notice with the names of the successful candidates.

This paragraph appears to be *ultra vires* the LPA, which provides in Section 6(1)(a)(x) that the Council may delegate any of its powers and functions, but that the delegation does not preclude the Council from *varying or setting aside any decision made under a delegation*. It is recommended that this paragraph be reconsidered.