still known as either barristers or solicitors and they are subject to the control of different bodies, namely, the Law Society or a particular Bar.

## Advantages

This fusion, as one might call it, does have advantages for the Bar. Qualification as a barrister has now become an additional and, it has to be said, a higher qualification to that of a solicitor. A prospective practitioner in NSW, after completion of the practical legal training course, and after having done a management practice course which includes office management and bookkeeping, is entitled to apply for a practising certificate as a solicitor. However, once a person has qualified as a legal practitioner, he or she still has to write the admission examination to the Bar and, if successful, apply to a Bar to do the four week full-time course (the Bar Practice Course) which is followed by an additional eleven months of pupillage with one or more barristers (tutors of no less than seven years standing). The pupillage comprises twelve months in total.

The developments in New South Wales raise interesting questions with regard to South Africa. For instance, we know that people start practising as advocates (eg the so-called *criminal bar* and the *alternative* or *independent advocates*) without being members of a particular Bar and without having done any form of pupillage. Is this a desirable development or should the various Bars in South Africa also insist on the right of controlling the activities of all advocates, including those of non-members, by issuing certificates and insisting on some form of examination prior to commencement of practice?

The fact that there are different rolls, different registration certificates and different controlling bodies for solicitors and barristers in NSW, seems to underline the fact that the Law Society and the Bar represent two distinct professions offering services to the public according to the unique expertise of their members. These two professions are alive and well, despite the introduction of a "Single Legal Practitioner" in NSW.

Therefore, anomalous as it may seem, the introduction of a legal practitioner in South Africa may well have the effect of entrenching the Bar as a recognised and fully fledged referral profession in South Africa.

# Fusion of the legal profession

**Seth Nthai**
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As a result of many challenges and problems besetting the legal profession, there is a growing voice for the Bar and the attorneys' profession to be fused. It is argued that this will result in cutting legal costs, provide access to justice, and ensure uniform training and regulation. (See "Minister foresees single practising profession" 1999 August *De Rebus* 10; Discussion paper on transformation of the legal profession issued for circulation by the Policy Unit of the Department of Justice and Constitutional Development.)

In my view fusion of the profession is not an answer to the challenges facing the profession. The South African legal profession is not the only one debating the issue of fusion. In England solicitors now have the rights of audience before every court in relation to all proceedings. However, many solicitors have not yet applied for the rights of audience in the higher court. Recent studies by the University of Bristol, University of Westminster and the Whittington Working Party Report for the City of London Solicitors Company revealed that:

- the vast majority of solicitors have no intention of applying for higher court rights of audience;
- the present division between the functions of barristers and solicitors operate satisfactorily for most solicitors because the Bar provides a generally efficient service of specialists at cost-effective rates;
- the demands of regular practice as an advocate are seen by most solicitors as inconsistent with litigation practice with its client demands and time pressures; and
- most solicitors regard higher court advocacy as uneconomical. (See Dan Brennan QC "Bar United-V-Solicitors Wanderers" 1999 April *Counsel* 3.)

That is the British experience, but what about South Africa where attorneys could also apply for the rights of audience in the higher court? If a study similar to the British one is undertaken in South Africa, what would be the results? I am convinced beyond a shadow of doubt that the results would be similar. Consequently I believe that the Bar should remain a referral profession and nothing else. Any attempt to interfere with this would sow seeds of confusion within the legal fraternity. One is, however, not totally opposed to the idea of some form of regulation, especially of the "independent advocates" practising at the moment outside the profession . However, any regulation should be kept to a bare minimum (see Seth Nthai "Advocates' ethics: a need for reform"? 1999 June *Consultus* 27).

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