an extreme financial crisis or a fundamental disequilibrium in public finances.'[25]

The legal conundrum, therefore, is not that the decisions of the courts have financial implications for the State. The State is obliged to respect rights which are constitutionally guaranteed, whatever the cost. What is objectionable is that the courts should, under the guise of protection of rights, trespass into the reserved domain of policy making and order the legislative and judicial organs of government to expend the funds provided by the taxpayer in ways specified by judges. There the Rubicon flows along an undefined and sometimes shifting border.

Endnotes

[1] Judge of the High Court of Ireland from 1977 to 1997 (President from 1994).
[2] Per Costello J in *O'Reilly v Limerick Corporation* [1989] ILRM 181 at 195.
[3] Article 15.2.1 of the Constitution of Ireland.
[4] Per Denham J in *Tierney v North Eastern Health Board* [2010] IESC 43, 9th July 2010.
[5] Professor Jeffrey Jowell in *Tom Bingham and the Transformation of the Law; a Liber Amicorum (*Oxford University Press, 2009) 129.
[6] See Brennan J in *Baker v Carr* (1962) 369 US 186, referring to 'several formulations which vary slightly according to the settings in which the questions arise…'
[7] Article 6 of the Constitution.
8 Per O'Byrne J in *Buckley and Ors (Sinn Féin) v Attorney General and Another* [1950] 1 I.R. 67 at 81.
[9] O'Higgins CJ in *Norris v Attorney General* [1984] I.R. 36 at 60.
[10] Henchy J at page 78.
[11] *O'Reilly v Limerick Corporation,* cited above page 193 to 194.
[12] Brian Foley, *Deference and the Presumption of Constitutionalit* (Institution of Public Administration, 2008).
[13] Per Finlay C.J. in *MacMathúna v Attorney General* [1995] 1 I.R. 484 at 499.
[14] Gerard Hogan, 'Directive Principles, Socio-Economic Rights and the Constitution.'
[15] Per Geoghegan J in *F.N. v Minister for Education* [1995] 1 I.R. 409 at 413.
[16] Per Kelly J in *D.B. v Minister for Justice* [1999] 1 I.R. 29.
[17] The judge cited authority to the effect that the powersof the courts 'are as ample as the defence of the Constitution requires.' (per O'Dalaigh C.J. in *State(Quinn) v Ryan* [1965] I.R. 122.
[18] See Blathna Ruans, 'The Separation of powers; Grant of Mandatory Orders to Enforce Constitutional Rights' *Bar Review* Vol 5 Issue 8, June 2000.
[19] Gerry White, 'Constitutional Adjudication, Ideology and Access to the Courts,' in *Law and liberty in Ireland* (Oak Tree Press, Dublin, 1993).
[20] Bhajwati J in *State of Himachal Pradesh v Students' Parents Medical College, Simla* [1986] L.R.C. (Const.) S.C. at page 213.
[21] [2001] 2 I.R. 545.
[22] Denham J at page 668 in *Sinnott.*
[23] Page 774..
[24] *Carmody v Minister for Justice Equality & Law Reform* [2009] IESC 71 23rd October 2009.
[25] *In re Article 26 & Health Amendment (no 2) Bill 2004* [2005] 1 I.R. 105.

The independence of the Bar

By Baroness Deech, chairman, Bar Standards Board, England and Wales

The topic I am addressing is not a new one for those of you steeped in the history of the constitution and the rule of law. For me, it was new, and I felt as if I had discovered its value for myself, until I did my research. I joined the Bar Standards Board, admittedly as a legal academic of long standing, and a seasoned government committee person, expecting simply to usher in a slightly modified way of working for the Bar, as facilitated under the Legal Services Act 2007. From the start, however, I was assailed with pressures that bore on my task, pressures based on beliefs that came not so much from the legislation but from modern and generally accepted perceptions of how a profession should operate. I was also struck by the altruistic activities of the Bar, such as the pro bono work, and the attention paid to ensuring that the most able young pupils can come to the Bar with financial assistance from the Inns and chambers. In an age when social mobility is a trope: when it has been impeded by government policies in education and yet is demanded of the professions, the Bar of England and Wales has a proud record. The most recent figures indicate that 23% of new pupillages are given to BME graduates and that women, as in other professions, form a good half of the entrants. Retention is another matter, and its shortcomings are not confined to the legal profession.

The importance of independence

Lest you think that I am suffering from regulatory capture, let me first list why it is so widely believed that the governance of the Bar should be taken out of the cloisters of the Inns and the Bar Council and led blinking into the daylight of Westminster and Whitehall. First of all, legal advice is too expensive. It has moved out of the reach of the middle classes. The advice of a top barrister is affordable by government, by corporate bodies and by wealthy individuals, especially on divorce. This has been and is even today ameliorated by legal aid, insurance, pro bono, conditional fees and better use of technology, but there is still a void. Legal aid has been cut and will be cut even

more in the management of the UK budget deficit, and I will return to this issue as it bears on the independence of the legal profession. So there are many, perhaps the majority of the population, who could never contemplate accessing the individual advice of a barrister or a city solicitor. It is reported, often with pride (certainly by the journals of the solicitors' profession) that partners in city firms make £1m a year, and that some barristers make similar sums from criminal legal aid[1]. We know that there are barristers, many of them women and BME, who undertake publicly-funded work in criminal and family issues and make only the most modest of livings, but their pleas are undermined by the excesses at the other end. In the past, the need for wealth in order to secure or become a lawyer was conveniently overlooked in protestations of universal justice and independence.[2]

The calls for change

Turning to the critical aspects, there is no doubt that over the last few decades the Law Society has been not only tardy in handling complaints but unresponsive. Solicitors have also been tainted by the outcome of the monopolising of work by a few firms representing unionised claimants, for example, miners suffering from lung diseases caused by their work in the mines. Those firms succumbed to temptation by taking more for themselves than for their clients and even in a few cases taking what was not theirs at all. The reports of those failings made an indelible impression[3].

Quite rightly, the call has gone up for affordability, access and competence. It has been asked why the changes that have affected business globally should not transform the business of the lawyer. IT, flexiworking, outsourcing should make advice more readily obtainable and cheaper. Other businesses have been affected by, or improved by deregulation, free market competition, the dominance of client choice and consumer sovereignty. So too should the provision of legal services change. This is, of course, to ignore the financial crises of this century, the reasons for and the results of which are still working themselves out, and where the part played by liberalisation of the market has yet to be analysed. It also sits uneasily with the demand, voiced on behalf of the consumer, for accountability and regulation, often where trust was once sufficient (*cf* the medical profession and hospitals, banks and lawyers). On the one hand, there are calls for ever greater integrity and competence, with accountability; on the other for deregulation, liberalisation and entry into the professions of competitors with different training. This is all hard to square: we have yet to work out the reconciliation of consumerism and ethics.

The rule of law

That is the bad side, and it is that image that has driven reform. Taking into account, however, the historic role played by lawyers and the independent judiciary in the enduring constitutional stability of the UK, there are important values to be retained no matter how much reform is implemented and needed. This conference is concerned with the rule of law and the part played in it by the independence of the legal profession. We common lawyers take for granted the rule of law, but there have been recent attempts to spell it out, more so in times of crisis for the law. It is widely agreed that it means inter alia that no one shall be denied the benefit of the law nor its consequences.[4] Lord Bingham has devoted some of his recent writing to the rule of law and amongst the seven defining principles he identifies is included the independence of judges and lawyers. Gordon Turriff QC of Canada puts it like this: '[T]he judgment of lawyers should not be influenced by any consideration other than the need for them to discharge the loyalty they owe each of their clients, subject to the higher duty to themselves, the court, the state and fellow lawyers.' There are several potential conflicts here which could bear analysis, but the general meaning is that the lawyer needs to be independent in her handling of her client's case and also of the government.

Lord Bingham is by no means uncritical of the profession. He says that there should be unimpeded access to the courts in order to secure human rights and the rule of law and that there can be no judicial development of these concepts unless the cases are brought to them by the lawyers, often acting under the cab rank rule. He also acknowledges the detrimental effect of excess earnings and the shrinking of legal aid. He concludes that lawyers are necessary to the rule of law but that they are also guilty of impeding it if they price themselves out of reach.[5]

It is widely alleged that independence entails that the legal profession should be independent of outside regulation, and be able to regulate its own affairs, conduct its own disciplinary issues and determine its own entrance standards (the evil otherwise being government decisions about who may or may not practice - witness the persecution of lawyers in Nazi Germany, which was the first act of Hitler, in Iran today and in certain African countries. Indeed the first act of a dictator who wishes to subdue protest is likely to be the control of the lawyers.[6]

Lest this be thought to be professional self serving, it is echoed in international conventions. The UN *Basic Principles on the Role of Lawyers* 1990, [7]*The Code of Conduct for Lawyers in the European Union* (1988) and the International Bar Association (*Standards for Independence of the Legal Profession,* 1990) have all laid down principles of self regulation and unimpeded access to clients.

Why does independence matter?[8] It is to enable clients and organisations to challenge the government of the day; it is to secure interpretation and application of the legislation by persons without conflicting loyalties.[9] It is inseparable from the enforcement of human rights. No less a person than Sydney Kentridge has said that in apartheid South Africa there were frequent threats from the government to place the Bar under the control of a central council with government nominated members. He said that his fears were reawakened by the proposals in the UK that were the forerunners of the Legal Services Act 2007, because 'they would obviously increase the power of the government to control the legal profession and … in the hands of another Lord Chancellor less committed to the independence of the Bar, destroy it.'[10] It also follows from this assertion that the Bar should control the education that fits its recruits. The nature of the job that they do clearly requires knowledge of the law and procedure, and skill in advocacy, which abilities will not be found in every candidate and therefore need to be tested.

Even Richard Abel, a writer who casts a critical eye over this high-minded approach [11] accepts the need for a profession that mediates between citizen and state, redresses civil wrongs, manages family disputes and articulates human rights. He points out that while the Bar claims to need a distance between the advocate and her client in order to meet conflicting obligations to adversaries and the legal system, this is inconsistent with the demand of the Bar in the last 20 years for more direct access (simply in order to compete with solicitors). He also comments that there is no evidence that employed barristers' independence is compromised.

The judiciary

A very important product of the independence of the Bar is the consequent independence of the judiciary, both in terms of mindset and

in action. Each protects the other, and neither can be independent on its own, contradictory though that sounds. In fact, in the current legal climate the judges face state disparagement as a result of their decisions in cases involving immigrants and terrorists, and their independence is especially important. It should be of assistance that the Inns of Court surround them as they defend the citizen from the government or from ill thought out legislation. The connection is vital as long as the judges are appointed from the Bar. The independence of solicitors is equally important as and when more judges are appointed from that branch. Their independence is less frequently mentioned but has occasionally been regarded as under threat, in particular since the reforms brought about by their own past conduct. It may be that it has irretrievably gone, because solicitors' actions are circumscribed by the need of their firm to make a living for all its members. That is why it is legitimate to be concerned about the possible move of many lawyers, barristers, solicitors, conveyancers, legal executives, into corporate entities, where the corporate personality might be perceived to be the dominant one.

A short history of regulation

Independence has a history, and it took centuries to reach its peak, which is past. Given the controversial part played by lawyers and, in particular the impact of modern business methods, it is not surprising that the arguments rehearsed here are not new. The tussle between independence on the one side and on the other cost control, anticompetitiveness, consumerism and government regulation, goes back some decades. Or it may be termed 'professionalism' versus 'the market.' The Royal Commission on Legal Services (1979)[12] considered all these issues. Its report ruled out partnerships, came down in favour of a two-branch profession and stressed independence and self-regulation. But the perception of lawyers by the public and in the media remained adverse, little though that may matter. Reform has been formulated expressly to curb the independence of the legal profession.

The genesis, as with so much of English law today, was partly European. The European Commission Competition Directorate wanted to make the professions more competitive[13]. And the Office of Fair Trading wanted the same, both organisations aiming at existing restrictions on forms of business organisation and conduct.[14] I note that there has been no similar onslaught on the practices of doctors, albeit that their effectiveness has been weakened by the European restrictions placed on their working hours and the inability to test their working command of the English language. As the proposals for regulation developed, there came to be taken into account not only the clients' interests, but also the legal system and consumerism, allegedly for the benefit of society.

The profession was changing in any case. It had grown, and more barristers were working in employment, competing with solicitors for the business of price conscious clients. Many depend on a few large firms for much of their work, or on legal aid. The curbs on the Bar are, in reality, shrinking legal aid, lower remuneration, more young people seeking to come to the Bar and the reduction of reserved services, for example will writing. (The record of will writers and claims handlers is not particularly good.) Insurers, too, have great power because the rise in premiums might prevent lawyers doing cheaper or more adventurous work.

Despite the very real responses of the Bar to the needs of clients, the government has played the consumer card (if you wish to be cynical). Some argue that the claim to regulate in the interests of 'consumers' is a ploy to enable the government to curb the freedom of the Bar ostensibly in the interests of society, and this is evidenced by disagreement over who the consumer is. On the governmental side, she is depicted as the woman in the street needing advice about a divorce or her tenancy. On the professional side, the consumer is seen as a broader group of those with an interest in, or affected by the law – the judges, the government departments, business, solicitors, the rule of law itself. There is a genuine need to make legal services more widely available in terms of price, method and competence. This may be pitted directly against lawyer independence. The Legal Services Act 2007 however has put the consumer first, following the report by Sir David Clementi.[15]

The Legal Services Act 2007

The Clementi recommendations, are, by and large, enacted in the 2007 Act and carried out by its creature, the Legal Services Board (LSB), which has hardly any lawyers on it. In brief, they are incremental relaxation of the structures within which barristers and solicitors may work, leading to multi-disciplinary partnerships; overarching regulation by the LSB, with the Solicitors Regulation Authority and the BSB doing their specialised tasks under it. Hardly a year had passed before the solicitors commissioned the Hunt Report to review the regulation of their branch of the profession.[16] Lord Neuberger in a recent speech[17] drew attention to the uneasy compromises, saying that: 'the ethos of consumer society is not necessarily ethical.' The mechanisms of government control are now in place. The LSB and its Consumer Panel (headed by a politician) are appointed with the approval of the Lord Chancellor, who is now firmly a politician himself after his removal from the woolsack.[18] The Consumer Panel and the OFT are to advise the LSB on the appointment of approved regulators of the new legal entities. The LSB can cancel the designation of an approved regulator, such as the Bar Council, and the Lord Chancellor could appoint the LSB as an approved regulator, so the LSB could seize control of parts of the profession with government approval. The LSB can recommend cancellation of designation as an approved regulator if the regulator has not observed the regulatory objectives listed in the Act, which include the interests of consumers. It is not clear from the Act whose view is to prevail if the LSB and the front line regulators disagree over the meaning of those objectives. This is important, given that the LSB has the power to fine, and to levy fees for its support from the profession, which has no way of challenging the budget, save through – the Ministry of Justice! There is therefore a real threat, with only the wafer thin possibility of judicial review as a shield.

The two branches of the legal profession

There is also a move to fragment the professions within themselves and against each other. This takes the form of gradual obliteration of the dividing lines, while solicitors have high court advocacy rights. So the Bar wishes to move to more direct access and the ability to undertake litigation. The boundaries between the two branches of the profession are now perceived to be shifting to meet the new needs of clients, albeit that fusion is not on the agenda of the BSB for the moment. A new scheme of quality advocacy assessment has been proposed, placing barristers in one of four grades, and even including existing QCs in the assessment system. There will be greater distance between the employed and the self-employed Bar, as more of the latter join the former in entities, either because they see new opportunities or because economic needs must. Although successive

Chairmen of the Bar Council have promoted 'One Bar', this is becoming difficult to perceive. Solidarity is weakening.

The Bar is also weakened by its lack of ongoing governance. The Chairman is in place for one year only: no sooner has he grasped the situation and responded to the priority needs of that year, than he is retired in favour of another. This system urgently needs change but it is hampered by the fact that no barrister wishes to take more than one year out of practice. I believe that efforts should be made to find a senior barrister on the verge of retirement, who does not wish to continue to the Bench, and who is willing to assume the post for longer. The same lack of continuity is apparent even in the Inns. Despite their ancient nature there is not much of a mechanism for them to act together or with a long term strategy, for example in relation to possibilities such as including solicitor advocates in their number, or making common cause in relation to the distribution of students and the admission of foreign members. Their flank is exposed.

Balancing the needs

The response of the BSB has been to implement the Act incrementally, with plentiful consultation, but also firstly, to preserve what remains of self regulation and secondly, to promote entities that will be barrister oriented, that is specialising in advocacy. The BSB is unlikely to compete with the SRA in regulating new multidisciplinary entities that provide the entire spectrum of legal services, but will try to preserve the Bar as a separate profession with a distinct task expressed in excellence in advocacy.

Self regulation used to be totally appropriate because of the relatively small size of the Bar, its concentration in London and a few other centres, and the constant surveillance by peers, judges and solicitors. This obviated the need for outside regulation. Now self regulation has a bad name. Self regulation, if left unchecked, can become self interest. That is the risk that must be guarded against. We need appropriate checks and balances in place to ensure that self regulation does what is necessary to reinforce independence, that is, organise the profession to ensure that its members genuinely support the rule of law and the proper administration of justice. It was thought in England and Wales that self regulation had indeed got too close to being self interest in practice. Arguably, the LSA reforms go too far to control self interest in that they may restrict independence. The pendulum may swing too far in the opposite direction. Proper self regulation ought to be possible and effective if the profession follows the Nolan principles of integrity in public service and above all controls misconduct swiftly and decently. Self regulation is symbolised by the continuing majority of barristers on the Board of the BSB, although this profile is under attack by the LSB, on no more than the ground of 'perception.' The Bar has firmly separated the representative and regulatory arms of its governance, and did so even in advance of the 2007 Act. The BSB has achieved a satisfactory level of independence from the Bar Council and it needs to get this message over to the public. The Bar still controls who becomes a barrister, through the Inns and by the BSB's authorisation of providers of the Bar Professional Training Course, subject of course to the law of the land in relation to discrimination and equality.

The Bar is subject to further *de facto* controls: there is a new Judicial Appointments Commission, the Code of Conduct is growing in bulk; its work is moulded by the requirements of legal aid; advancement to the position of QC is also through a commission, and another external body will administer the proposed new scheme of advocacy assessment. Complaints about poor service will be handled by the new Office for Legal Complaints, leaving only misconduct complaints under the jurisdiction of the BSB. Third party payers, insurance premiums and the media all play a part in holding the Bar to account to the outside world.

I have said that fusion is not on the agenda. It may be difficult for non-lawyers to appreciate why there is virtue in the separateness of the Bar, especially when other common law countries have fused professions and make equally valid claims to independence. My impression as a non-practitioner, but a student and teacher of the law is that there is great merit in the division. It fosters independence, not just of practice but of spirit, the shouldering of responsibility for the decision, regardless of anything except the client and the court; it allows for the most advanced development of the skill of advocacy; it ensures that even the most unpopular of clients has representation; it provides a system whereby a barrister may stand up to the government on behalf of, say, a terrorist, without being identified with the client; it fosters the highest standards because each barrister is the object of her fellow barristers' inspection and competitive spirit; it provides the collegiality and protection of the Inns; its very existence is a guarantee of the rule of law because the loyalty is to the client and the court, not to the earning capacity of the entity. Those qualities militate against fusion, even though solicitors are practising advocacy.

The right education

Having said that, I think that the education of barristers ought to change, in ways that will ensure the continued supply of the best young people for tenancies, despite difficult economic circumstances. I am not the first to propose a unified professional course for both intending solicitors and barristers after graduation from an undergraduate law course at university. Arguably undergraduate law courses have not adapted to the new world, let alone to that of entities, in part because they still rightly regard education in law at university as a good general liberal degree, valuable for all sorts of future careers, and not directed solely at practice. At the moment intending solicitors take one postgraduate professional course and intending barristers another. The solicitors receive little, if any, training in advocacy and the barristers learn next to nothing about litigation and managing a practice. In the new world of entities and the imminent ability to switch from one branch to another or to practise at the Bar in a dual capacity, this has to change.

In the past too many students made the wrong choice at the age of 21, at a time when they might be unaware of their future talents and might have chosen to follow one branch or the other because of financial duress. Switching over later is still too difficult, and it is distressing for those who have spent a great deal on the Bar course and cannot find a pupillage (success is likely for only one in six) to have to start again to become a solicitor. In 1971 the Ormrod Report[19] recommended bringing the two courses together. The Law Society in *Succeeding in the 90s: The Law Society Strategy for the Decade* (1991) recommended a merged professional course, common entry followed by specialisation in e.g. advocacy; so did the Royal Commission on Criminal Justice.[20] Likewise the 1996 First Report on Legal Education and Training of the Lord Chancellor's Advisory Committee on Legal Education and Training. A proposal that has been repeated over 40 years deserves to be seriously considered in these new times. It could provide a way to encourage students to choose to come to the Bar, or at least keep open that option, even when they may be unsure about its future or of their own advocacy skills. It is encouraging to see the many thousands every year who

set out on that path, even when the Benchers do their best to deter them!

The Bar Standard Board's mission

So the task of the BSB is to understand the role of the Bar, to protect is independence, and to preserve what is distinctive and best about it in the interests of the rule of law and of society, while allowing it to modernise, indeed to survive. It is, after all, one of the stated objectives of the LSA 2007 to encourage a strong diverse and independent legal profession. If we ever become downhearted, we have but to remember what Erskine said on representing Tom Paine in 1792: 'From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject in the court where he daily sits to practise, from that moment the liberties of England are at an end.' We have very good reason in the current climate to be grateful to the Bar for its ability to defend the citizen from her government in many countries of the world. And we hope that the spirit of independence is infectious.

Endnotes

[1] The amount is disputed and sometimes refers to fees earned over a period of years or shared between several legal professionals.

[2] In passing, I suggest that the legitimate complaints by the Bar Council that legal aid is being devastated with ill effect on the young Bar and on clients, might be more persuasive if chambers helped each other out. From my own experience, I cite the way in which the richer Oxford and Cambridge colleges help the poorer, the latter group being poor not through any fault of their own but simply because they came relatively late on the scene. The poorer colleges in general came into existence in the 19th century to educate those whom the older colleges would not – graduates, non-conformists, women – and thus the newer colleges which carried out those useful purposes were not the ones to whom had been bequeathed great tracts of valuable land by grateful alumni of the middle ages. They deserve help, and they receive it. There are parallels here.

[3] For example, solicitors taking far more in fees than the miners received in compensation: http://www.timesonline.co.uk/tol/news/politics/article1657755.ece.

[4] Bingham 'The Rule of Law' [2007] *CLJ* 67.

[5] Subject to the limited provision of *pro bono* work.

[6] Joerges & Ghaleigh *Darker Legacies of Law in Europe* (2003); 'The first thing we do, let's kill all the lawyers' *Henry VI, Part 2*; Gordon 'The independence of lawyers' (1988) 68 *Boston University Law Review* 1.

[7] 'All persons [should] have effective access to legal services provided by an independent legal profession … lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity.'

[8] Turriff *The Consumption of Lawyer Independence* (2010).

[9] The Law Society of Upper Canada *Task Force on the rule of law and the independence of the Bar* 2006 para. 1.

[10] Gauntlett, http://www.sabar.co.za/law-journals/2001/april/2001-april-vol014-no1-pp05-06.pdf.

[11] Abel, *English Lawyers between Market and State* (2004).

[12] Cmnd 7648.

[13] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0083:EN:NOT.

[14] *Competiton in the Professions* A Report by the DG of Fair Trading, 2001.

[15] *Report of the Review of the Regulatory Framework for Legal Services in England and Wales* 2004.

[16] www.legalregulationreview.com/files/Legal%20Regulation%20Report%20FINAL.pdf.

[17] 'The Ethics of Professionalism in the 21st century' Inner Temple 22 February 2010, www.judiciary.gov.uk/publications_media.

[18] This change was made to effect the separation of powers: Constitutional Reform Act 2005. The Lord Chancellor is no longer the Speaker of the House of Lords but functions as the head of the Ministry of Justice.

[19] Cmnd 4595.

[20] Cm 2263, 1993.

The rule of law and an independent legal profession:

a South African perspective*

Jeremy Gauntlett SC ,* member of the Cape and Johannesburg Bars, and of the Bar of England and Wales

On the morning of 5 May 2010 the Minister of Justice of South Africa tabled in Cabinet a Legal Practice Bill.[1] It was approved immediately. The Minister announced in his Budget Speech to Parliament its tabling that same afternoon.

The Bill states its primary purpose as the creation of 'a unified body to regulate the affairs of legal practitioners.' Its preamble refers to a need to 'transform and unite the legal profession' and to 'regulate the legal profession, in the public interest, by means of a single statute'.

The 'unified body to regulate the affairs of legal practitioners' is of course the key to the new dispensation. This body is to be 'the South African Legal Practice Council'. It is not to have parity in its membership as between attorneys and advocates - although the Law Society of South Africa and the General Council of the Bar had themselves agreed upon this - but a two-thirds preponderance of attorneys. Neither branch of the wider profession is to have the right to elect its own representatives: the Minister will select them, in his discretion, from nominations.[2]

Law societies shall cease to exist and their assets are to be transferred to new Regional Councils.[3] That the notion of 'law society' - not defined in the Bill - is intended to include the Bars is suggested by a blunt provision that all employees of the General Council of the Bar 'or an existing society' shall be transferred to the service of the Council.[4]

The Bill takes 96 pages and 124 clauses to provide for the winding up of the legal profession which has evolved in South Africa