



The 2013 LLB summit

By **Leon Dicker**, Pretoria Bar



On 29 May 2013, the Law Society of South Africa [LSSA] hosted a well attended conference entitled **Legal Education in a Crisis?** Participants included representatives of the GCB and of the constituent Bars, the organised attorneys' profession, the judiciary and magistracy, the South African Law Deans Association [SALDA], law teachers, the Council for Higher Education [CHE], law students and the Department of Justice and Constitutional Development. In what follows below, I make liberal use of the official report of the conference, as issued by the LSSA.

The co-chairperson of the LSSA, Ms Kathleen Matolo-Dlepu, opened the conference. She pointed out that the legal profession faced several challenges in respect of the present South African LLB. She mentioned the need to achieve equality and to develop the higher-education system in order to produce knowledgeable, skilled and value-driven law students and professionals. The objectives for the conference she said, were to address the LLB crisis, to consider the root causes of the crisis and to develop recommendations and solutions for improving the South African LLB. Additionally, she said, the conference should also serve as a platform for strengthening existing networks and facilitating the improvement of students' professional development.

Keynote address: Justice LO Bosielo

In his keynote address, acting Constitutional Court Justice Bosielo said that he had been among those who had pressed for the introduction of the four-year LLB. However, the time had come to consider whether the original goals in shortening the LLB degree had indeed been achieved. If not, delegates should determine where the problems lay and how these could be remedied.

Referring to the well-known words of Baker J in his foreword to the first edition of *Herbstein & van Winsen** almost sixty years ago, Justice Bosielo said that the practice of the law was an honourable profession. In that spirit, members of the profession should therefore seek to serve their community and the pursuit of justice and truth. They should not be driven by the acquisition of wealth, since this undermined the values demanded by the legal profession. Where the aims of the profession had not been fully realised, the education system should be considered as part of the problem.

On South Africa's constitutional dispensation, Justice Bosielo said that lawyers were constitutionally mandated to overcome the dark history of apartheid and its deep-rooted legacy and to assist in transforming the country into a constitutional democracy that espoused egalitarian values. Without lawyers taking a stand

in realising fundamental rights, the content of the Constitution and its Bill of Rights would be reduced to idle words and sterile promises. Recognising that the judiciary depended on the quality of the legal profession, Justice Bosielo stressed the necessity for lawyers with high standards who were directed by a constitutional ethos; anything to the contrary would reflect in the decisions reached by the courts.

Turning to the LLB, Justice Bosielo posed questions that should be answered during the course of the conference:

- 1 Is the present four-year LLB degree appropriate for producing the kind of lawyers needed today?
- 2 Is the content of the present curriculum relevant and appropriate to enable law students to play a meaningful role in society?
- 3 Is enough being done to teach law students ethics?
- 4 Is enough being done to instil an understanding of the Constitution and to develop an appreciation on the part of students of the role they will play in contributing to building and sustaining South Africa's constitutional democracy?
- 5 Is enough being done to inculcate the spirit of Ubuntu and the willingness to serve our communities, as opposed to pursuing selfish interests based on self-enrichment?
- 6 Is enough being done to develop a social consciousness, particularly with reference to the poor, the marginalised, the illiterate, and vulnerable members of society?
- 7 Is an ethos of 'people first' and a willingness to serve being developed?

Reflecting on the numerous complaints received from all quarters regarding the quality of four-year LLB graduates, Justice Bosielo asserted that drastic measures were needed to remedy this situation. Given that the law, society, and the world at large were in a constant state of change, it was necessary to adapt and to keep pace with developments or face the consequences.

Perspectives on the LLB – Law faculties and the profession: Mr K Govender, past co-chairperson of the LSSA

In commencing the panel discussion on various perspectives of the LLB, Mr Krish Govender indicated that law faculties should be seen as functioning within a wider university setting, and that, as such, universities should also shoulder some responsibility for the kind of professional being produced. It also needed to be kept in mind that the type of student entering university was the product of broader societal trends and that some students were more privileged than others. The current value system was different from that of the liberation struggle, with the legal system changing from one seeking justice and rights to one characterised

* That foreword is reprinted in Cilliers, Loots & Nel *Herbstein & Van Winsen The Civil Practice of the High Courts of South Africa volume 1 at pp xiv–xvii.*

by disrespect and a drive for wealth and luxury. In this perspective, law faculties were not producing the type of graduate required to further a justice and rights culture.

Dr Lesley Greenbaum, senior lecturer, University of Cape Town

In introducing the session, Dr Greenbaum briefly outlined the reasons for introducing an abbreviated undergraduate qualification, suggesting that, as a result of numerous factors (both symbolic and political), very little attention had been given to the pedagogical soundness of the decision. Fifteen years later, the consequences of this oversight had left the country facing some harsh realities. In this regard, she quoted the following statistics: only 22% of LLB students entering university for the first time completed the degree in four years; and only 30% of LLB students entering university for the first time graduated within five years. Further, although first-year registration of black LLB students had increased, these figures were not reflected in the number of black LLB students graduating, which was not the case with regard to the registration and graduation of white students. The disparity between registration and graduation figures had links to the poor quality of primary and secondary schooling, to under preparedness for tertiary education, and to poor literacy and numeracy levels among those entering university.

Dr Greenbaum observed that, although the LLB had been transformed into a more accessible four-year degree, the curriculum had essentially remained the same. There was a sense of 'business as usual' in many faculties. Substantial quantities of doctrinal knowledge had merely been compressed in order to accord with the four-year duration, thereby causing students to experience a sense of alienation. The untransformed curriculum had also led to a 'reproductive pattern of disadvantage,' since, in its current form, the curriculum had failed to address personal transformation to ensure wider social reconstruction, particularly among disadvantaged LLB graduates.

Although the LLB curriculum seemed to ensure adequate development of academic skills, it was not clear whether it in fact led to the development of legal skills. Dr Greenbaum pointed to the fact that there was agreement among practitioners and academics that LLB graduates needed well-developed generic skills (such as the ability to analyse, investigate and solve problems; proficiency in reading, writing and speaking English; the ability to read and interpret statutes and legal documents; and the ability to construct and communicate an argument). However, the ability of faculties to realise this aim was constrained by lack of funding and reductions in resource allocation. Further, a deficient secondary-education system was problematic, particularly as regards literacy levels. Dr Greenbaum therefore called for the adoption of equity-related educational strategies in order to instil these essential skills. She also called for the reintegration of conceptual knowledge, skills practice, and ethical social values of professional responsibility into the curriculum. It was essential to perform an urgent appraisal of legal education and to adopt a holistic approach in addressing these deficiencies.

Professor Vivian Lawack, chairperson of SALDA

Prof Lawack summarised the activities of law faculties as being the provision of opportunities that would allow students to familiarise themselves with the discipline of law, the generation of new knowledge and the development of a 'disciplinary lens' that would guide graduates through problems and issues that

may arise in their professional careers. It was recognised that LLB graduates' professional opportunities extended beyond the practice of law, although more than 50% of graduates proceeded to practise law as attorneys or advocates, or became part of the criminal justice system.

In the context of these responsibilities on the part of faculties, Prof Lawack acknowledged that a consequence of reducing the LLB to four years had been the limitation of disciplinary diversity and a reduction in opportunities for developing the requisite generic skills. Despite increased efforts to ensure the acquisition of qualitative generic skills by graduates, this had been hindered by the scarcity of resources. She highlighted two areas of concern: inadequate funding and a dysfunctional school system. As to funding, Prof Lawack pointed out that law faculties were subsidised at the lowest funding band, despite them having the highest ratio of students to staff. She said that law clinics, smaller tutorials, and libraries were the 'laboratories' of legal education.* These essential laboratories could not function successfully in terms of the current funding scheme. As to the school system, Prof Lawack said that students coming to university lacked the requisite skills required for tertiary education.

To overcome this crisis, Prof Lawack recommended changing the LLB to a five-year programme, subject to the following provisos:

- 1 That the curriculum not be extended to include additional modules, but rather aim to develop the requisite skills, with non-law subjects being introduced to give students a contextual understanding of the law's place;
- 2 That law faculties be able to put their own stamp on their LLB degrees, and, further, that faculties be able to structure BA Law and BCom Law degrees, followed by a two-year LLB degree which would enable students to complete the LLB over a period of five years;
- 3 That the role of law clinics be intensified, with all final-year LLB students participating in training in such clinics;
- 4 That law faculties receive proper funding for at least the minimum resources required to ensure that there were appropriately qualified staff, lower student-staff ratios, law libraries that facilitated the development of research skills and information technology support (access to computers and relevant legal databases).

In concluding, Prof Lawack called on the profession to support SALDA's recommendation of a five-year LLB programme and to assist in lobbying the government for increased funding.

Professor Engela Schlemmer, vice president of the Society of Law Teachers of Southern Africa [SLTSA]

Prof Schlemmer said that the Society did not have one harmonious view as to what the LLB should be. However, there was concern about the effectiveness of the four-year LLB in producing quality graduates.

The SLTSA's members had identified a number of issues concerning the poor quality of LLB students. Among these are the fact that students entering the faculties lack the requisite level of skills and competencies needed for tertiary education. Consequently, students were 'spoon-fed' and thus lacked the

* This was in reference to the fact that for funding purposes, the need for laboratories and, for example, clinical work, made academic training more expensive; a fact recognised in funding for science or medical degrees.

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ability to engage with the law and legal problems independently. Moreover, students lacked a knowledge of basic legal principles and core concepts, and were unable to conduct basic research or interpret legal texts independently. In response to this dilemma, standards were lowered and examination papers set with the aim of reaching the prescribed pass-rate levels rather than testing students' legal knowledge and skills.

Pre-admission testing had therefore been suggested. Further, more time was needed to present subjects at a more meaningful and advanced level, and to assist students in learning through increased assessment opportunities. A minority of SLTSA members advocated retaining the LLB as a four-year programme, but with more stringent access requirements. The majority of members, however, called for the extension of the LLB to five years, but there was no consensus as to whether this should take the form of a three-year undergraduate degree followed by a two-year postgraduate degree or merely lengthening the duration of the current four-year LLB.

Despite these disparities, stated Prof Schlemmer, there was strong support for requiring an undergraduate degree for entry to the LLB, as well as for increasing the number of years of study. Taking law as a major in an undergraduate degree was supported by some. Others, however, considered it important *not* to include substantive law courses in the undergraduate degree. The thinking was that if students were being taught the relevant skills to enable them to deal better with law subjects while they were actually studying these subjects, they would not grasp the concepts and intricacies of those subjects. The result would be that the necessary foundation would be lacking. Students and the profession could only benefit by postponing the scientific study of these substantive courses to the postgraduate level. She said that there were numerous benefits to this approach, including prior acquisition of skills needed for the effective study of law, increased funding opportunities for faculties, and the opportunity to present modules at a more engaged and advanced level. These considerations, in her view, make a postgraduate LLB a more academically sound option.

Prof Schlemmer concluded by saying that it was not the length of study that was at issue, but rather the quality of students entering the programme, the complexity of law as a field of study, and the way in which law was taught.

Mr Nic Swart, director of the LSSA and LEAD (Legal Education and Development department of the LSSA)

Mr Swart commenced by identifying a number of assumptions: the profession served the public; the public had to be satisfied with the quality of services on offer; young lawyers had to be equipped to enter practice and to develop effectively; more than 50% of graduates entered legal practice [as attorneys or advocates or as part of the criminal justice system], so all branches of the profession must participate in the process; and inequality posed a serious challenge.

Concerning the needs of the profession, Mr Swart stated that the LSSA's position paper listed a number of core topics, elective modules and certain key skills that the profession wished to see included and developed in the LLB curriculum. He stressed that students needed a greater knowledge of ethics, professional conduct, social responsibility, the legal profession's constitutional obligations, and the role of information technology in the legal profession. Further, career guidance should be provided that

instilled in students an understanding of the demands and pressures faced when entering the profession and of what was required to be a successful practitioner.

In the course of conducting vocational training, graduates were found to lack a basic knowledge of core subjects. This, and issues linked to graduates' inadequate writing, reading and numeracy skills, as well as a poor research ability, hindered successful vocational training. Consequently, English writing and numeracy classes were being included in professional training programmes, which took time away from actual vocational training. Owing to time constraints, not all vocational training programmes could accommodate these extra classes, thus leading to attorneys being admitted despite their lack of essential requisite skills. In recent studies conducted under the auspices of LEAD, all these problem areas were highlighted and in fact acknowledged by the graduates themselves.

In endeavouring to arrive at a solution, stated Mr Swart, a number of possibilities could be considered. For instance, there was a strongly held view that the four-year LLB should be lengthened. However, if the LLB was extended to five-year professional degree or a postgraduate degree, there should be an opportunity to introduce students to other disciplines and to provide them with an opportunity to engage with more advanced legal topics. Law clinics should be considered an important means of advancing the aims of legal education. It had also been suggested that 'minimum knowledge requirements' be developed and applied across the board. Stakeholders were also called on to consider the issue of LLB admission requirements. If this was not done at faculty level, it might, stated Mr Swart, be worthwhile to do so at a professional level. Moreover, he called for the establishment of a forum by the close of the conference, and that the present conference be reconvened in three years' time to evaluate progress.

GCB contribution: Leon Dicker, Pretoria Bar

I addressed the conference on behalf of the GCB. No matter how the LLB crisis was addressed, I said, we could not attempt merely to turn the clock back. Quoting Holmes J, I said that to do so would be 'like trying to return an oak tree to its acorn. It is looking ever backwards. Lot's wife looked back. Our national jurisprudence moves forward where necessary, laying aside its swaddling clothes' [*Ex Parte De Winnaar* 1959 (1) SA 837 (N) at 839E]. The legal landscape had undergone critical and irrevocable changes. This had to be recognised in deciding how to shape the legal qualification.

There was a broad consensus that LLB graduates' literacy, numeracy and computer literacy were in need of vast improvement. This need applied equally to legal reading and writing ability. There had been a failure to recognise the importance of sufficiently developing language skills, thereby severely compromising graduates' critical and analytical abilities. Graduates standing on the threshold of practice could not express themselves in the language of the legal profession; this threatened their successful participation in the profession. In addition, information technology was no longer of subsidiary importance. Graduates who were not computer-literate were seriously disadvantaged in practice.

The GCB agreed with the LSSA regarding the extension of the LLB to five years of study. However, in common with other areas in the legal profession, there appeared to be a lack of

consensus on a number of issues concerning this extension. Firstly, what would the content (core subjects and competencies) of the qualification be? Secondly, what form would this take (i.e. would it be a postgraduate degree)? Thirdly, would different qualifications be available for different career paths within the field of law (ie for those looking to enter the civil service)? And, fourthly, how would government and Parliament be persuaded to change, and how long would this take?

Reflecting on the fact that change bound to be slow, I called for interim measures to be considered. In this respect, I suggested lobbying for a review and accreditation procedure to be adopted by the CHE, like the one done with the MBA. Where universities were found to fall below standard and failed to remedy their underperformance, they should be prohibited from offering legal qualifications.

Quality assurance of the LLB: Prof Ahmed Essop, Chief Executive Officer of the CHE

Prof Ahmed Essop said that in the past year, the CHE and SALDA had been discussing the question of whether the CHE should undertake a national review of the LLB qualification. In principle there was agreement that this needed to be done. The process could be expected to begin towards the end of 2014.

The call for a national review process had arisen owing to the outcome of an unpublished survey of the four-year LLB. This survey had indicated that there were a number of inconsistencies between universities in the structure of the LLB. A national review, stated Mr Essop, was in fact the re-accreditation of a qualification. It was a peer-driven process and was undertaken by academics involved in the qualification under review. The point of departure was agreement amongst the academic peers on the minimum criteria for the qualification. The criteria included issues such as staff qualifications, coherence of the curriculum, infrastructure and resources required. Thereafter, institutions offering the qualification were required to submit a self-evaluation report against these criteria. The self-evaluation report formed the basis of an assessment undertaken by peer panels that visited and engaged with each institution. Possible outcomes included (i) full re-accreditation; (ii) accreditation with conditions where there were shortcomings which could be addressed; and (iii) de-accreditation, where the qualification did not meet the minimum criteria and there was no possibility of improvement. Further, he emphasised that the outcome of a national review could assist institutions in making a case for additional funding should this be required to meet the minimum criteria.

In addition to national reviews, as the Quality Council for Higher Education in terms of the National Qualifications Act, the CHE was now also required to develop standards for higher education qualifications. The development of qualification standards facilitated clarity on the underlying purpose of the qualification and the associated outcomes in terms of knowledge, skills and competencies that a graduate should obtain. Standards development aimed at transparency by determining both the purpose of the qualification and the outcomes expected of an LLB graduate. His view was that given the issues raised at the Conference, a standards development process should precede a national review of the LLB. His view, as an outsider, was that there appeared to be a noticeable lack of consensus concerning what was expected of an LLB graduate. In this respect, he emphasised that the starting point should not be extending the

duration of the LLB degree but rather the development of standards for law graduates. Only then could the structure and duration of the LLB curriculum properly be determined.

Prof Essop indicated that like the national review process, the CHE's approach to the development of qualifications standards was peer-driven, that is, the applicable standards should be developed by academics in the first instance and then subject to scrutiny in terms of the requirements of the profession.

Prof Essop also placed the issue of under-prepared students in wider context. He made the point that not only black students from dysfunctional school systems failed to complete their qualifications in the prescribed time. This phenomenon cut across the education system, including students who were recipients of a more privileged education. Studies showed that 50% of young people entering university left without a qualification after five or six years of study, with only 30% completing their degrees in regulation time.

This indicated a gap between school and university that went deeper than mere under-preparedness. Only those faculties that were highly selective (e.g. medical and engineering faculties) had larger numbers of students graduating within the prescribed time. Consequently, using under-preparedness of disadvantaged students as the starting point to justify extending the LLB was flawed.

Prof Essop said that the CHE had established a Task Team to investigate the appropriateness of the current undergraduate diploma and degree structure. The report of the Task Team was anticipated to be released in mid-July.

He concluded his presentation by submitting that the CHE had a role to play in contributing to addressing concerns about the LLB qualification through the national review and standards development processes.

Discussion: a model for the future

Delegates were divided into ten groups and requested to discuss and give feedback on five questions:

- 1 What are the three most critical issues relating to the quality of the LLB?
- 2 What is expected of law graduates?
- 3 Is structural change (such as duration) necessary? If so, in what way should it be undertaken?
- 4 How can universities and the profession work together so as to understand the needs of universities and the profession? What format should this collaboration take?
- 5 What is the way forward?

What follows is a summary of the perspectives of the various groups, as well as of diverging views.

Critical issues relating to the quality of the LLB

Groups highlighted the shortage of staff, major funding issues, inequitable resource allocation, and the lack of uniform standards pertaining to the LLB curriculum as some of the issues of concern.

Further, it was stated that there was too great a focus on the quantity of subjects being taught rather than the quality of the subject content. Moreover, students lacked language, literacy and reading skills, and non-law subjects were not included, there was a lack of workplace experience and the integration of practice into the academic components of the LLB, and students lacked research skills.

What is expected of law graduates

There was general agreement that graduates must have good English-language communication and literacy skills, well-developed reading, writing and legal drafting skills, sound analytical and critical-reasoning skills, numeracy skills, and research skills, as well as be computer-literate. Further, graduates needed to have a basic understanding of practice and procedure, a sound understanding of substantive law, and the ability to integrate different spheres of the law. It was also essential that students be attuned to aspects such as ethics and professionalism. Moreover, they must be socially conscious, strive for social justice, and contribute to the constitutional imperative of access to justice. Going beyond the law, graduates should have had exposure to other disciplines such as psychology, philosophy and political science.

Suggested structural changes

There was agreement that a change in the structure of the LLB was needed, with the four-year LLB being extended to embrace five years of legal education. However, there was no agreement as to how the extended LLB should be structured. The groups appeared to favour the structure of a three-year undergraduate degree followed by a two-year postgraduate LLB degree. Further, some groups recommended introducing admission tests for entry to the LLB degree. There was a clear call for the re-evaluation of funding structures and resource allocation. There was also a call for standards development and for a national review of the LLB by the CHE. Groups also suggested that there be increased generic and vocational skills training, and that law clinics and practical experience needed increased attention. Extending the role of law clinics would, however, require that funding structures be addressed.

It was recommended that legal practitioners play a greater role in teaching undergraduates, that vocational and vacation training be made available to students, and that practitioners act as mentors.

Collaboration between universities and the profession, and proposed method of collaboration

All groups agreed that there needed to be increased contact and collaboration among universities, the legal profession and other stakeholders that play a role in the South African legal system.

The groups considered increased contact important in the light of the fact that all stakeholders needed to understand what vocational skills were required of LLB graduates, needed to determine where graduates fell short, and had to formulate methods to address these shortcomings. Most importantly, it was stated, it was necessary to determine whether it was the professions or the universities that should remedy these shortcomings. It was also essential that universities were aware of what was being done at the level of professional training to avoid a duplication of efforts.

Contact between stakeholders had to be ongoing and on an equal footing, with such contact taking place by way of a formal, national liaison committee or forum, since this would allow structured communication by all parties and ensure that the aims of the present conference were realised. Further, it was proposed that the committee or forum also drive standards development.

Proposals as to the way forward

It was recommended that a liaison committee be established before the conclusion of the conference, with an appropriate agenda being drafted as well. The following issues were identified for consideration: arriving at a consensus on the extension of legal education; investigation of the undergraduate as opposed to postgraduate model of legal education; lobbying for increased funding, particularly for law clinics; and standards development and a national review.

After further discussion, the conference adopted the resolution set out below.

Resolution

1. The CHE is requested by the conference to conduct a standard setting process for the LLB.

- 1.1 The process must be instituted by 30 September 2013 and concluded by 30 June 2014.
- 1.2 The exercise must include stakeholders in consultation with the Steering Committee of the conference.
- 1.3 The exercise will attend to:
 - The graduate attributes identified at the conference eg:
 - Knowledge of substantive law.
 - Generic skills (language, literacy, numeracy, research, analytical, IT etc.).
 - Ethics.
 - Commitment towards social justice.
 - Workplace requirements.
 - Resources.
 - Problem areas identified by the conference.
- 1.4 Standard setting will include wide consultation.

2. Ongoing liaison will take place.

- 2.1 An LLB National Task Team will be convened to monitor this process and facilitate ongoing liaison between universities and the profession.
- 2.2 Two members each will be nominated by:
 - SALDA
 - GCB
 - LSSA
 - DOJ
 - DOHET
 - SLTSA
 - And any other relevant stakeholder
- 2.3 This committee will be convened by SALDA and LSSA before 31 August 2013.
- 2.4 The agenda will be set by the current steering committee, taking into account the outcome of the conference. The structure of the LLB (bearing in mind the substantial consensus that the duration should be five years) as well the issue of funding in particular with regard to law clinics, will be the first two items on the agenda of the task team.

3. Immediate action.

Law faculties and the profession will take due notice of concerns raised at the conference, introduce methods to address same and report to the LLB National Task Team. 