

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, MBOMBELA
(MAIN SEAT)

CASE NUMBERS:

2313/19; 2748/19; 2749/19; 1623/19; 2166/19; 2140/19; 2588/19
3054/19; 2136/19; 3043/19; 4011/19; 2078/19 AND 3366/19

In the *ex parte* applications of:

MARIETTE STEYN

Applicant

AND 12 OTHER APPLICANTS

(For admission as Legal Practitioners)

JUDGMENT

Roelofse AJ

[1] Out with the old – in with the new. The Legal Practice Act, 2014 (*“the Act”*)¹ introduced an entirely new regime for the legal profession in South Africa. In addition, the Act introduced significant changes for persons who wish to apply to be admitted and authorized to be enrolled² by the court³ to act as legal practitioners.⁴ The Act came into operation in stages on 1 February 2015, 31 October 2018 and 1 November 2018.⁵ The entire Act is now in operation.

[2] This judgment concerns Chapters 2⁶, 3⁷, 9⁸ and 10⁹ of the Act. It visits the powers and functions of: the South African Legal Practice Council (*“the LPC”*), the Provincial Councils (*the “PC” or “the PC’s”*) and the Minister. It sets out the changes

brought about by the Act and explains the requirements for the admission of legal practitioners by this court in terms of the Act. At the end of it all, this judgment seeks to provide a guideline for applications to court for the admission of legal practitioners under the provisions of the Act and those who assist them.

[3] Ms. Mariette Steyn¹⁰ and four other applicants¹¹ launched applications (*“the initial applications”*) to be admitted and authorized to be enrolled as legal practitioners in terms of the provisions of the Act.¹² They applied to be admitted as attorneys.¹³

[4] On 9 September 2019, this court heard the initial applications¹⁴. The court made similar orders in all the initial applications as follows (*“the first order”*):

- “1. The application is hereby postponed to the 28th day of October 2019;
2. The Applicant is hereby directed to serve a copy of the application to the Legal Practice Council: Mpumalanga Provincial Office as well as the National Office of the Legal Practice Council in Midrand.
3. The Applicant is hereby directed to serve the copy of the application before the 13th day of September 2019.”

[5] On 17 September 2019, His Lordship Mr. Justice Legodi JP handed down reasons for the first order. Principally, the court was not satisfied that the requirement of service of the applications provided for in section 24(2)(d) of the Act was met.¹⁵

THE DIRECTIVE

[6] On 20 September 2019, His Lordship Mr. Justice Legodi issued a directive to the applicants’ legal practitioners, the Mpumalanga Provincial Council (*“the Mpumalanga Council”*), the Mpumalanga Society of Advocates (*“the Bar”*) and the South African Legal Council (*“the LPC”*) (*“the directive”*).¹⁶ The directive reads as follows:

“On 9 September 2019 the following admission applications were postponed to 28 October 2019 for service on the Council after the Court not having been satisfied with service and the authority of the Gauteng and Mpumalanga

Provincial Offices or Councils to pronounce themselves on the fitness or otherwise of the applicants to be admitted as legal practitioners:

- *N Mostert*
- *KN Lwandle*
- *CS Mdluli*
- *M Steyn*
- *TP Motha*

The reasons for the order were handed down on 17 September 2019. In as much as there might be a suggestion that the Minister in terms of Regulation 5 promulgated in terms of Section 109(1)(a) of the Act, the applicants are hereby directed to file written heads of argument by no later than 14 October 2019 to deal with the following issues:

1. *I regulation 5 not ultra vires the empowering legislation for the performance of the powers and functions of the Council established in terms of section 4.*
2. *If the answer is that regulation 5 ultra vires [sic] the empowering legislation, what is [sic] legislative authority under which powers and functions are conferred on the Provincial Councils by way of regulation?*
 - 2.1 *Put differently, does the Minister have legislative authority to confer such powers and functions without delegation by the Council to the Provincial Council the [sic] context of the following provisions [sic] the Act:*
 - (a) *Section 6(1)(a)(x)(aa) and (bb)*
 - (b) *Section 21(1)(d)*
 - (c) *Section 23(1)*
 - 2.2 *Related to section 6(1)(a)(x), does regulation 5 not divest the Council of its powers or functions to delegate? (see para (aa)). And does the regulation 5 [sic] not preclude the Council from varying or setting aside any decision by the Provincial Council in respect of powers or functions supposed to have been delegated as the Council is legislatively so empowered to do in terms of the sections referred to in paragraph 2.1 above.*
3. *The applicants are further requested to deal with the following questions:*
 - 3.1 *Does Rule 17 of Government Notice 401 of 20 July 2018 apply to the applicants?;*

- 3.2 *If the Rule does apply, did the applicants comply therewith;*
- 3.3 *Is Rule 17.1.2 not ultra vires the provision of section 30(1)(a) insofar as it requires simultaneous lodging of the application in terms of section 30(1)(a);*
- 3.4 *Is section 26 applicable to the present applications? And if so, did the applicants comply therewith.*

Seen in the light of the interest other professional bodies may have in the outcome of these applications and the need for clarity as to how to deal with future applications, the Mpumalanga Society of Advocates, Mpumalanga Provincial Council, the South African Legal Practice Council are hereby directed to file heads of argument by no later than 14 October 2019 dealing with the questions raised above.”

[7] Pursuant to the directive, the Bar, Seymore Du Toit Attorneys¹⁷ and the LPC filed their heads of argument.¹⁸ No heads of argument were filed by MT Silinda and Associates¹⁹.

[8] In addition, the LPC filed an affidavit deposed to by Mr. Jan Petrus Stemmett, a member of the Executive Committee of the LPC, to “.....address the issues and questions raised in the Directive, to traverse a number of factual issues”. Mr. Stemmett says that the LPC considered it appropriate to present relevant facts in order to be of assistance to the court. Mr. Stemmett requested the court’s indulgence in accepting and considering the LPC’s affidavit in that spirit.²⁰

[9] The directive seeks to address the legislative scheme in terms of which legal practitioners are admitted to practice in terms of the Act. In particular, they query directly, sections 4, 6, 21, 23, 24, 30, 109 of the Act, the Regulations that were promulgated by the Minister²¹ (in particular, Regulation 5) and the Rules that was published by the National Forum (in particular, Rule 17).²²

[10] Although not referred to directly in the directive, sections 94, 95, 97, 105 and 120

of the Act are also traversed in this judgment.

[11] Subsequent to the order and the judgment, further applications were delivered for admission in terms of section 24(1) of the Act.²³ In view of the order, the judgment and the directive, the various courts who heard the further applications, postponed the them to 28 October 2019.

[12] The initial applications and the further applications were before the court on 28 October 2019. The LPC, the Bar and the applicants were represented and heard.

[13] During the LPC's address at the hearing, much of debate focused over the legality of the Regulations. The debate was whether the Minister followed the procedure provided for in section 109(1) of the Act prior to the promulgation of the Regulation. Rightly so, for if the Minister did not follow the prescripts, the Regulation may have been *ultra vires*. The parties agreed that Rule 17 applies to the applicants.

[14] After hearing argument, the court admitted all the applicants who applied to be admitted and enrolled as attorneys. The applications for admission as advocates were not granted. Orders were made so that those applicants were given an opportunity to amend their papers. The court reserved judgment in respect of Regulation 5.

[15] In addition, the court ordered as follows (*"the second order"*):

"2. The National Council is hereby directed to file an affidavit with information regarding:

(i) Whether Regulation 5 was properly promulgated in compliance with section 109(1)(a) with specific reference whether National Forum did make recommendations as envisaged in sub-section (1)(a) and if so when were the recommendations made and what recommendations entailed with reference to applications for admissions as legal practitioners;

(ii) The information referred to in 2(i) above must be submitted by no later than 21 November 2019 seen in the light of the urgency of the matter for future applications for admission as legal representatives;

3. *As to what must happen to applications that might be enrolled for hearing before clarity is found in the appropriateness of regulation 5, it is hereby directed that the powers and functions that National Council must consider in the mean time, conferring in general terms to the Provincial Council, with the authority not only to have the applications served on it, but also to make such recommendations as it might find necessary for the purpose of assisting the court in consideration of the applications before it”*

[16] On 19 October 2019, in compliance with the second order, the LPC filed a supplementary affidavit, once again deposed to by Mr. Stemmett. We shall deal with the supplementary affidavit below.

THE OLD SCHEME

[17] Before dealing with the new scheme, we briefly, to a limited extent, traverse the old scheme²⁴ that regulated the admission of advocates and attorneys to practice. We purposefully quote extensively from the now repealed acts for the readers of this judgment might want to compare the requirements for admission of both attorneys and advocates under the old and the new scheme more accurately.

[18] Attorneys were admitted and enrolled in terms of section 15 of the Attorneys Act.²⁵ Section 15 sets out the requirements for such an admission and enrollment. The court had to be satisfied that the applicant has met the requirements in section 15 of the Attorneys Act through evidence on affidavit in support of the application for admission. An important feature of the old scheme was that the court both admitted and enrolled a person to act as attorney upon application in terms of the Attorneys Act.

[19] In terms of the provisions of section 19 of the Attorneys Act, any person who applied to court to be admitted as a practitioner or re-admitted must “.....*deliver to the*

secretary of the society having jurisdiction in the area in which the court to which such application is made, is situated, together with his or her notice of application, a copy of his or her application for admission or readmission and copies of all affidavits, certificates and other documents or papers which are referred to therein or connected therewith.....". The 'society' referred to in section 19 is the law societies that existed before the Act.²⁶

[20] Advocates were admitted in terms of section 3 of the Advocates Act.²⁷ Section 3A(1)(c) of the Advocates Act required the applicant to "*.....serve a copy of the documents and affidavit referred to in paragraphs (a), (b) and (bA) on the Secretary of the Bar Council or the Society of Advocates of the division concerned.*".²⁸

[21] The Advocates Act did not define "Bar Council" but Rule 3A of the Uniform Rules echoed the provisions of Section 3A(1)(c) of the Advocates Act. In practice, applications for admission as an advocate were served upon the Society of Advocates in the division the applicant intended to practice.

[22] Under the old scheme, just as in the instance of attorneys, the court admitted persons to act as advocates and also authorized their enrolment upon application to court in terms of the Advocates Act.

[23] The involvement of the supervisory institutions in the jurisdictions where both attorneys and advocates intended to practice was therefore mandatory. Under the old scheme, there was no central authority which regulated attorneys and advocates, their admission and enrolment.

THE NEW SCHEME

[24] In Ex Parte: Goosen and Others²⁹, the following was said regarding the new scheme:

“On 1 November 2018 the LPA came into force and the Admission of Advocates Act 74 of 1964 (AAA) and the Attorneys Act 53 of 1979 (ATT) were repealed. Axiomatically, henceforth, the only route to admission to practice law in South Africa. was to be admitted as a "Legal Practitioner" (LP) by a High Court pursuant to section 24(1) and (2) of the LPA.[2] Section 24 of the LPA is the gateway to admission and consequent enrolment and is satisfied by, in turn, satisfying the provisions of section 26(1).The LPA retains the distinction between advocates and attorneys through a subsidiary regime of enrolment performed by the LPC in which the LPC "enrols" LPs on separate attorneys' and advocates' rolls.”

[25] We proceed to set out the new scheme that governs the admission of attorneys and advocates and their enrolment. We shall firstly dwell on those provisions in the Act that are relevant for purposes of the directive and the second order. Thereafter we address the requirements for admission and enrolment under the new scheme.

The Act

[26] Section 3(c) provides that one of the objects of the Act is to “[c]reate a single unified statutory body to regulate the affairs of all legal practitioners and all candidate legal practitioners in pursuit of the goal of an accountable, efficient and independent legal profession”.

[27] That unified statutory body is the LPC.³⁰ Section 4 establishes the LPC as a body corporate with full legal capacity, and, provides that the LPC exercises jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in the Act.

[28] Section 5(d) provides that one of the objectives of the LPC is to regulate all legal practitioners and all candidate legal practitioners.

[29] Section 6 provides the powers and functions of the LPC. Section 6(1)(a)(xx) is pertinent in this matter. It provides for the delegation of the LPC’s powers to the PC’s as follows:

[The LPC may] *“delegate any of its powers and functions to its committees or Provincial Councils, subject to any conditions it may impose, which delegation does not—*

(aa) divest the Council of the power or function so delegated; and

(bb) preclude the Council from varying or setting aside any decision made under a delegation;.....”

[30] Section 21 provides for a general delegation (including to PC's) of powers and the assignment of functions of the LPC. In terms of sub-section 21(1)(d), [a delegation or assignment in terms of subsection (1)] *“....does not divest the Council of the responsibility for the exercise of the power or the performance of the duty or function.”*

[31] Section 23(1) provides as follows:

“The Council must establish Provincial Councils the areas of jurisdiction of which must correspond with the areas under the jurisdiction of the Divisions of the High Court of South Africa as determined by the Minister, from time to time, in terms of section 6 (3) of the Superior Courts Act, 2013 (Act No. 10 of 2013), and may delegate to the Provincial Councils such powers and functions which, in the interests of the legal profession are better performed at provincial level.”

[32] The admission of legal practitioners is provided for in Section 24(1) as follows:

“Admission and enrolment.—(1) A person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.”

[33] Sub-section (2)(d) of section 24 provides as follows:

“(2) The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she—

.....

(d) has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in

the rules.”

[34] Section 26(1) sets the minimum requirements for admission and vocational training. It provides as follows:

“Minimum qualifications and practical vocational training.—(1) A person qualifies to be admitted and enrolled as a legal practitioner, if that person has—

- (a) satisfied all the requirements for the LLB degree obtained at any university registered in the Republic, after pursuing for that degree—*
 - (i) a course of study of not less than four years; or*
 - (ii) a course of study of not less than five years if the LLB degree is preceded by a bachelor’s degree other than the LLB degree, as determined in the rules of the university in question and approved by the Council; or*
- (b) subject to section 24 (2) (b), satisfied all the requirements for a law degree obtained in a foreign country, which is equivalent to the LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and*
- (c) undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister, including—*
 - (i) community service as contemplated in section 29, and*
 - (ii) a legal practice management course for candidate legal practitioners who intend to practise as attorneys or as advocates referred to in section 34 (2) (b); and*
- (d) passed a competency-based examination or assessment for candidate legal practitioners as may be determined in the rules.”*

[35] Section 26 introduces community service and, for the first time (in the case of advocates), for vocational training and a competency-based examination or assessment as requirements for admission and enrolment. The old scheme had no such requirements. The Constituent Bars of the General Bar Counsel of South Africa provided vocational training and examinations for purposes of admission to the respective Bars. The absence of vocational training and a competency-based examination therefore did not prevent a person from being admitted as an advocate

under the old scheme. Under the new scheme, a person may not be admitted or enrolled without undergoing vocational training and without passing a competency-based examination.

[36] Section 29 provides that the Minister must, after consultation with the LPC, prescribe the requirements for community service from a date to be determined by the Minister. The minimum requirements that may be included are set out in sub-section (1)(a) and (b) and sub-section 2(a) to (e).³¹ In terms of section 29(3), the LPC may on application and on good cause shown, exempt any candidate legal practitioner or legal practitioner from performing community service, as set out in the rules. Although section 29 came in operation on 1 November 2018, the Minister is yet to prescribe the requirements for community service. Therefore, none of the applicants could therefore comply with the provisions of section 29(1) and (2).

[37] Section 30 provides for enrolment of a legal practitioner with the LPC. Sub-section (1) provides as follows:

- “(a) A person duly admitted by the High Court and authorised to be enrolled to practise as a legal practitioner must apply to the Council in the manner determined in the rules, for the enrolment of his or her name on the Roll.*
- (b) The application referred to in paragraph (a) must—*
- (i) be accompanied by the fee determined in the rules;*
 - (ii) indicate whether the applicant intends to practise as an attorney or an advocate and, in the case of an advocate, whether he or she intends practising with or without a Fidelity Fund certificate; and*
 - (iii) be submitted to the Council in the manner determined in the rules through the Provincial Council where the legal practitioner intends to practise.”*

[38] Sub-section (2) of section 30 provides as follows:

“The Council must enrol the applicant as an attorney, advocate, notary or conveyancer, as the case may be, if he or she complies with the provisions of

this Act.”

[39] Section 94 empowers the Minister to make regulations. It provides as follows, in relevant part:

“(1) The Minister may, and where required in the circumstances, must, subject to subsection (2), make regulations relating to—

(a)

(b)

.....

(o) any other matter in respect of which regulations may or must be made in terms of this Act; or

(p) any other ancillary or administrative matter that is necessary to be prescribed for the proper implementation or administration of this Act.

(2) The regulations contemplated in subsection (1) must—

(a) in the case of subsection (1) (a) to (l) and (o) and (p), be made after consultation with the Council, unless otherwise indicated; and

(b) in the case of subsection (1) (m) and (n), be made after consultation with the Council and the Board.

(3) Any regulation made under subsection (1) must, before publication thereof in the Gazette, be approved by Parliament.”

[40] Section 95, in relevant part, provides that the LPC may make rules as follows:

“(1) The Council may, and where required in the circumstances, must by publication in the Gazette, make rules relating to—

(a)

.....

(k) the information which must be submitted to the Council when a person applies to court for admission as a legal practitioner and the time period

within which that information must be submitted as contemplated in section 24 (2) (d);

- (t) the manner in which an application by a person admitted by the court as a legal practitioner must be submitted to the Council through the Provincial Council in question for the enrolment of his or her name on the Roll as contemplated in section 30 (1) (a) and (b) (iii);*
- (u) the fee to be paid by a person applying to the Council for enrolment as contemplated in section 30 (1) (b) (i);*
- (v) the manner in which the Council must keep the Roll of legal practitioners as contemplated in section 30 (3);*

(4) (a).....”

”

[41] Section 97 deals with the National Forum.³² In relevant part, it reads as follows:

“Terms of reference of National Forum.—(1) The National Forum must, within 24 months after the commencement of this Chapter—

(a) make recommendations to the Minister on the following:

.....

(iii) the composition, powers and functions of the Provincial Councils;

(b)

(c) make rules, as provided for in section 109 (2) and (3).

The Regulation

[42] Section 109 of the Act empowers the Minister to make regulations and rules. In relevant part, it provides as follows:

“Rules and regulations.—(1) (a) The Minister must, within six months after receiving recommendations from the National Forum as provided for in section 97 (1) (a), make regulations by publication in the Gazette, in consultation with the National Forum, in order to give effect to the recommendations of the National Forum as contemplated in section 97 (1) (a).

(b) If the National Forum fails to make recommendations as provided for in paragraph (a), within the timeframe provided for in section 97, the Minister must, within six months, make the regulations in question, after consultation with the National Forum.

(bA) The Minister must, after receiving recommendations from the National Forum as contemplated in section 97 (6), and in consultation with the National Forum, make the regulations contemplated in section 94 by publication in the Gazette, before the date of commencement of Chapter 2.

(c) Any regulation made under this subsection must, before publication thereof in the Gazette, be approved by Parliament.”

[43] During the debate at the hearing, the court raised its concern whether the Minister has complied with the prescripts of section 109(1) of the Act. Paragraphs 2(i) and (ii) of the second order seeks to address the concern.

[44] The LPC’s supplementary affidavit addresses the court’s concerns. In the supplementary affidavit, Mr. Stemmet deals with the process that was followed before the regulation was promulgated by the Minister. We have taken into account what Mr. Stemmet alleges and accept his evidence. It appears that the prescripts of section 109(1)(a) were followed by the Minister save that, according to Mr. Stemmet, the Minister received the Forum’s recommendations on 27 October 2017.³³ The Regulation was published on 31 August 2018, i.e out of the six months-time period prescribed by section 109(1)(a) of the Act. Does the Minister’s delay impact upon the lawfulness of the Regulation? We say no because to declare the Regulation *ultra vires* on account of this score would not only cause a serious predicament with regards to all matters the Regulation seeks to regulate but it will also serve no purpose to do so. Although the delay ought to be criticized, the Regulation was ultimately made and must remain in force.

[45] The directive raises the lawfulness of Regulation 5. The relevant part of Regulation 5 reads as follows:

“Powers and functions of Provincial Councils.—(1) A legal practitioner and a candidate legal practitioner who has registered a business address within the area of jurisdiction of a Provincial Council falls within the jurisdiction of that Provincial Council.

(2) A Provincial Council has the following powers and functions—

(a)

.....

(d) to receive and process applications for admission by persons within the jurisdiction of that Provincial Council to practise as legal practitioners, conveyancers or notaries, pursuant to the provisions of section 24 (2) of the Act;”

[46] The concern was this. Section 24(2)(d) of the Act prescribes that an application for admission and enrolment must be served on the LPC. Regulation 5 entitles the PC’s to receive and process applications for admission. Therefore, does Regulation 5 offend the provisions of section 6(1)(a)(xx) and section 21 of the Act - i.e, does Regulation 5 divest the LPC of its function to receive service of an application for admission?

[47] The LPC and the Bar LPC maintained that the Minister lawfully made Regulation 5.³⁴ Seymore and Du Toit says: “[R]egulation 5 could be viewed as *ultra vires* but maintain that the PC had delegated power to receive applications for admission.”³⁵

[48] Is Regulation 5 *ultra vires* for the reasons raised in the query? We also say no because, Regulation 5 must be interpreted purposefully, having regard to the purpose and objects of the Act. We see no reason why it would benefit access to the profession if aspiring legal practitioners may serve their applications on PC’s instead of the LPC. To require them to serve on the LPC who is situated in Midrand Gauteng would simply be too onerous. In any event Regulation 5 does not trespass on the ill section sub-section 6(1)(a)(xx)(aa) and section 21 of the Act seeks to prevent. By regulating that the PC’s are to receive and process applications for admissions in terms of section 24, supports the purpose and objectives of the Act as set out in sub-section 3(b)(ii).³⁶ In any event, surely service and receipt of applications for admission constitute any other ancillary or administrative matter that is necessary to be prescribed for the proper

implementation or administration of this Act for which the Minister is entitled to regulate.³⁷

[49] In conclusion, we find that the Regulation inclusive of Regulation 5 was lawfully promulgated and are in full force and effect.

The Rules

[50] The Rules were published by the National Forum.³⁸ The National forum was established under Chapter 10 of the Act as a body corporate with full legal capacity.³⁹ The National Forum ceased to exist on 31 October 2018 when section 120(4) of the Act came in operation.

[51] On 20 July 2018, the National Forum, in Government Notice 401, published the Rules. The Notional Forum, in the notice, recorded as follows:

“The National Forum on the Legal Profession (“the National Forum”), a transitional body established in terms of Chapter 10 of the Legal Practice Act 28 of 2014 (“the Act”), hereby publishes the Rules required by sections 95 (1), 95 (3) and 109 (2) (a) of the Act.

The National Forum considered the comments received from interested parties after publishing a draft of the Rules in Government Gazette No. 41419 dated 2 February 2018, as required by sections 95 (4) and 109 (2) (b) read with sections 97 (1) and 109 (2) and (3) of the Act as amended by the Legal Practice Amendment Act 16 of 2017.

The Rules will be applied by the Legal Practice Council after its establishment in terms of Chapter 2 of the Act and will apply to all legal practitioners (attorneys and advocates) as well as all candidate legal practitioners and juristic entities as defined in the Act [The National Forum’s emphasis].”

[52] Paragraph 3.3 of the directive raises the issue of the lawfulness of the Rules insofar as Rule 17 requires a simultaneous lodging of the application in terms of section 30(1)(a).

[53] The Bar argued that a requirement that admission applications must be served on the LPC will defeat the objectives of the Act. The Bar submits⁴⁰ that:

“In this case, we respectfully submit, that the effect of an interpretation that holds Rule 17.1 ultra vires will render ineffective and inefficient the processes of applying to become a legal practitioner, taking into account:

34.1 the vast distances that applicants would be required to traverse from their places of residence to Johannesburg in order to properly serve their applications;

34.2 cost implications for the applicants (who are invariably unemployed) or their parents; and

34.3 rendering the Provincial Councils completely useless.

35. The legislature could not have intended such circumstances to prevail. We bolster our contention by making reference to the intended purpose of the Act which intends to usher equal opportunities for aspirant legal practitioners. An interpretation that requires aspirant legal practitioners to serve applications in Johannesburg will be oblivious to the objects of the Act.”

[54] The Bar’s view is sensible. Ultimately, the answer to this question is simple. The application under section 30 of the Act is an application to the LPC for enrolment. It is not an application for admission in terms of section 24 of the Act. The section 30 application is lodged with the PC’s and the section 24 application is an application to court. A section 24 application and a section 30 application are therefore two different things. The outcome of the section 30 application is dependent upon the outcome of the section 24 application. All Rule 17 requires is that an applicant who wishes to be admitted to practise and authorised to be enrolled must, with his/her application in terms of section 24 of the Act, also lodge his/her application in terms of section 30 of the Act.

[55] The Rules are valid and from 1 November 2018, all applications to be admitted to practise and authorised to be enrolled must comply with Rule 17.

REQUIREMENTS OF THE APPLICATION FOR ADMISSION AND FOR ENROLMENT

[56] Rule 17 sets out the requirements for admission and for enrolment. The Rule is recited in its entirety. It reads as follows:

“17.1 A person seeking to be admitted to practise and to be authorised to be enrolled as an attorney or as an advocate under the Act—

17.1.1 must apply to a High Court in terms of the provisions of section 24(2) of the Act; and

17.1.2 must simultaneously lodge an application in terms of sections 30 (1) (a) and 30 (b) (iii) of the Act with the Council, through the Provincial Council where the applicant intends to practise (or in the case of a person who does not intend to practise, where that person is ordinarily resident), for the enrolment of his or her name on the roll of attorneys or advocates, or on the roll of non-practising attorneys or advocates, as the case may be, which application shall be treated as an application subject to the condition that the applicant is duly admitted by the High Court and authorised to be enrolled as a legal practitioner in terms of section 30 of the Act.”

17.2 An application for admission and enrolment in terms of rule 17.1 must be in writing and must be accompanied by an affidavit by the applicant setting out the following information supported, where applicable, by documentary evidence:

17.2.1 confirmation of the jurisdiction of the Court;

17.2.2 his or her full names, date of birth, identity number and residential address;

17.2.3 confirmation that the applicant is a South African citizen or is a permanent resident of the Republic;

17.2.4 confirmation that the applicant has satisfied all the requirements for a degree referred to in section 26 (1) of the Act after pursuing for that degree a course of study referred to in that section;

17.2.5 a statement whether the applicant intends to be enrolled and to practise as an attorney or as an advocate and, in the case of an advocate, whether the applicant intends practising with or without a fidelity fund certificate, or whether the applicant does not intend to practise;

- 17.2.6 *the physical address of his or her main office and of every branch office and of every building at and from which he or she practises, and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;*
- 17.2.7 *in the case of an attorney, whether he or she conducts practice—*
- 17.2.7.1 *for his or her own account and if so, whether alone or in partnership (stating the full names of his or her partners) or as a member of a commercial juristic entity (stating the full names of his or her co-members); or*
 - 17.2.7.2 *as an employee.*
- 17.2.8 *the name under which the firm of which he or she is the proprietor or a member, or by which he or she is employed, conducts practice;*
- 17.2.9 *confirmation that the applicant had no pecuniary interest in any law practice and that he or she held no other position than that of candidate legal practitioner during the period of service under the contract of practical vocational training or supervision, or proof that the applicant had such pecuniary interest or held such other position with the prior written approval of the Council;*
- 17.2.10 *confirmation that the applicant has undergone all the prescribed practical vocational training requirements as a candidate legal practitioner, referred to in section 26 (1) (c) of the Act;*
- 17.2.11 *confirmation that the applicant has passed the competency-based examination or assessment for candidate legal practitioners, referred to in section 26 (1) (d) of the Act;*
- 17.2.12 *confirmation that the applicant has complied with the requirements for community service, if applicable, where that community service is a component of practical vocational training by candidate legal practitioners, pursuant to the provisions of section 29 of the Act, or proof that the applicant has been exempted from performing community service;*
- 17.2.13 *if a period of more than one year has elapsed between the date of completion of the practical vocational training contract and the*

date of the application, a statement as to the activities of the applicant during that period;

17.2.14 confirmation that the applicant is a fit and proper person to be admitted, including a statement as to whether—

17.2.14.1 the applicant has any previous criminal convictions or has any criminal investigations pending. If there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant shall set out full details thereof;

17.2.14.2 the applicant has been subjected to previous disciplinary proceedings by the Council or any law society, university or employer, or whether any such disciplinary proceedings are pending. If there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant shall set out full details thereof;

17.2.14.3 the estate of the applicant has been sequestered, provisionally or finally, or whether there is any application for the sequestration of his or her estate which is pending; where the estate of the applicant has been sequestered, the applicant must state whether or not he or she has been rehabilitated.

17.2.15 confirmation that the originals of all attachments to the affidavit will be made available to the Court on the date of the hearing of the application.

17.3 A person seeking to be admitted to practise and to be authorised to be enrolled as an attorney must include in the affidavit in support of the application (in addition to any other information to be provided in terms of this rule)—

17.3.1 confirmation that the applicant has served under a practical vocational training contract, stating the dates of filing and registration of that contract and the period served by the applicant under that contract;

17.3.2 confirmation by the applicant that his or her principal was entitled to enter into the contract of practical vocational training;

- 17.3.3 *confirmation by the applicant that service under the contract of practical vocational training was performed under the direct supervision of the principal or of another attorney in the firm of the principal;*
- 17.3.4 *confirmation that the applicant was not absent for more than 30 working days during any one year of service under the contract of practical vocational training;*
- 17.3.5 *confirmation by the applicant of the exact dates served under the practical vocational training contract;*
- 17.3.6 *a statement as to the type of legal experience gained by the applicant whilst serving under the contract of practical vocational training.*
- 17.4 *An applicant for admission to practise and to be authorised to be enrolled as an attorney shall attach to his or her application a supporting affidavit by the applicant's principal containing the following information—*
 - 17.4.1 *confirmation of the exact dates that the applicant served under his or her supervision or that of another attorney in terms of the contract of practical vocational training;*
 - 17.4.2 *in relation to the principal—*
 - 17.4.2.1 *a statement that he or she—*
 - 17.4.2.1.1 *has been practising as an attorney for his or her own account or as a partner in a firm of attorneys or as a member of a professional company continuously for three years or for periods of three years in the aggregate during the preceding four years; or*
 - 17.4.2.1.2 *has practised as a professional assistant in a firm for a period of five years within the preceding six years; or*
 - 17.4.2.1.3 *has practised as a professional assistant in a firm for a period of two years in the preceding five years and has practised as an attorney for his or her own account or as a partner in a firm or as a member of a professional company continuously for two*

years or for periods of two years in the aggregate during the preceding four years at the date of commencement of the contract of practical vocational training;

17.4.2.2 where the applicant has undergone practical vocational training with a law clinic or with Legal Aid South Africa, or with another entity accredited by the Council to provide practical vocational training, that his or her principal is or at all relevant times was in the full time employment of the law clinic or of Legal Aid South Africa or with such other entity, and has practised as an attorney or advocate, as the case may be continuously for three years, or for periods of three years in the aggregate during the preceding four years, prior to the date of commencement of the practical vocational training contract;

17.4.2.3 where the applicant has undergone practical vocational training with the State Attorney, that his or her principal has practised the profession of an attorney as the State Attorney, Deputy State Attorney, Senior Assistant State Attorney or Assistant State Attorney in the office of the State Attorney or any branch thereof continuously for four years at the date of commencement of the practical vocational training contract;

17.4.3 that he or she has continued to practise as aforesaid during the period of the contract of practical vocational training;

17.4.4 that he or she was at no time during the course of the contract of the practical vocational training in question a principal to more than three candidate attorneys, or where the principal was employed at a law clinic or at Legal Aid South Africa that he or she was at no time during the course of the contract of the practical vocational training in question a principal to more than six candidate attorneys;

17.4.5 confirmation that in his or her view the applicant is a fit and proper person to be admitted and enrolled as an attorney.

17.5 An applicant for admission to practise and to be authorised to be enrolled as an advocate shall attach to his or her application (in addition to any

further information to be included in terms of this rule) a supporting affidavit by the applicant's training supervisor containing the following information—

- 17.5.1 confirmation that he or she is a practising advocate, or has been accredited by the Council to act as a training supervisor of pupils for purposes of practical vocational training or is employed by an entity which has been accredited to provide supervisors who are qualified to act as training supervisors to pupils;
 - 17.5.2 confirmation of the exact dates that the applicant served under the supervision of his or her training supervisor;
 - 17.5.3 confirmation that in his or her view the applicant is a fit and proper person to be admitted and enrolled as an advocate.
- 17.6 Copies of the following documents must be attached to the founding affidavit of the applicant, whether for admission as an attorney or as an advocate, and must be certified as being true copies of the originals by a notary public or by a commissioner of oaths—
- 17.6.1 identity document of the applicant;
 - 17.6.2 where the surname of the applicant does not correspond with the applicant's name in the application, or with any other documents attached to the application, a marriage certificate or other proof to reflect the reason for the discrepancy;
 - 17.6.3 degree certificate or certificates of the applicant;
 - 17.6.4 the relevant practical vocational training contract (in the case of an application for admission as an attorney) or written confirmation that the applicant has registered with a person or entity accredited by the Council to supervise the practical vocational training of pupils (in the case of application for admission as an advocate);
 - 17.6.5 written confirmation from the Council confirming that the contract of practical vocational training or of supervision, as the case may be, has been registered with the Council;
 - 17.6.6 where applicable, an agreement relating to the cession of the contract if practical vocational training and written confirmation

from the Council that the cession of the contract has been registered;

17.6.7 in the case of an application for admission as an advocate intending to practise with a Fidelity Fund certificate, proof that the applicant has satisfied the requirements of the Council in terms of section 85 (1) (b) of the Act in relation to a legal practice management course, and has passed the examination required to be passed by attorneys so as to reflect that the applicant has the required knowledge of accounting for the keeping of accounting records referred to in section 87 of the Act and for compliance with the accounting rules published by the Council from time to time;

17.6.8 attendance report issued in respect of attendance of the applicant at a practical legal training course approved by the Council.

17.7 The original and two copies of the application must lie for inspection with the Council for a period of not less than one month. The application must be properly prepared and bound with an index, all pages of the application must be paginated at the top right hand corner of every page, and all attachments must be clearly marked when the application is served on the Council.

17.8 The Council may require that the information referred to in this rule 17 be submitted in a form to be determined by the Council.

17.9 An application in terms of this rule 17 must be accompanied by proof of payment of the fee payable in terms of rule 2.

17.10 Subject to compliance with rules 27.1 to 27.9, and upon receipt by the Council of a copy of an order by the High Court admitting the applicant to practise and authorising him or her to be enrolled as a legal practitioner, the Council shall place the name of the applicant on the roll of attorneys or of advocates, or on the roll of non-practising attorneys or advocates, as the case may be, to be kept in terms of rule 28.

17.11 The Council must cause to be enrolled as an attorney or as an advocate, as the case may be, every person who is to be regarded in terms of section 114 (1) of the Act as having been admitted to practice as an attorney or as an advocate, subject to any condition imposed by the High Court in relation to the admission of that person and subject to the terms

of any order of court whereby any such person has been suspended from practice as an attorney or as an advocate, as the case may be.”

[57] Persons applying to practice as legal practitioners all, irrespective of whether they wish to be admitted as attorneys or advocates, must comply with the provisions of Rule 17.1 to 17.2.6, 17.6.8 to 7.2.15, 17.7 and 17.9.

[58] Prospective attorneys must include in the affidavit in support of their application the items listed in Rule 17.3 to 17.4.5. Prospective advocates, must in addition, comply with Rules 17.5 to 17.5.3. Rules 17.10 and 17.11 are obligations on the LPC.

[59] Compliance with these requirements must appear from the evidence before the court when hearing the application. The court hearing an application must satisfy itself that all the requirements in sections 24 and 26 of the Act and Rule 17 have been met by the applicant.

[60] The manner in which an applicant shows compliance is through primary and secondary facts. Primary facts are evidence which in admission applications are disclosed on affidavit. Secondary facts are presented through documents that are presented to court, whether they form part of the annexures to the affidavit or not. Secondary facts might include proof of service upon those that must be served with the section 24 and section 30 applications, the documents referred to in sub-rules 17(2) and 17(6). Where the words “confirmation” or “confirm” or “statement” is used in the Rule, that which must be confirmed or stated must be confirmed or stated under oath, obviously, in the founding affidavit or affidavits that must accompany the application to court.

[61] Prospective legal practitioners and those who guide and assist them are referred to what Jacobs AJ said in Ex Parte: Gawula (31371/2019) [2019] ZAGPPHC 310 (4 July 2019):

[6] *In the assessment of evidence our Courts distinguish between primary facts and secondary facts. Secondary facts do not constitute evidence. Inference and conclusions can only be drawn from primary facts in the context of legal principles. Along these principles a Court considering an application for the admission of a legal practitioner is obliged to make a value judgment on the primary evidence placed before it when asked to conclude that an applicant is a fit and proper person to practise as an officer of the Court.*

[7] *The sole question a Court has to consider when it considers an application for admission of a legal practitioner is whether the facts placed before the Court show the applicant to be of such a character that he or she is worthy to be in the ranks of an honourable profession. The question of a person's fitness to practise as a legal practitioner is one of discretion. The discretion of the Court in this regard is unfettered under common law and in terms of the LPA.” [Footnotes omitted]*

[62] Finally, we impress upon applicants in admission applications that the prayer for admission (either as attorney, advocate, conveyancer or notary) in the Notice of Motion must read as follows:

“That the applicant be admitted to practice and authorized to be enrolled as a legal practitioner (attorney) [or advocate, or conveyancer, or notary, as the case may be].

[63] We make no order as none is required in light of the ultimate orders that were already made in the applications that were before us.

JH ROELOFSE AJ

I agree and it is so ordered.

MF LEGODI JP

DATE OF HEARING: 28 October 2019
DATE OF JUDGMENT: 13 December 2019

APPEARANCES

FOR THE APPLICANTS:

SEYMORE DU TOIT AND BASSON ATTORNEYS
MT SILINDA ATTORNEYS INC.
Adv. T Ngwenya
Mr. Matlala
LEGAL AID BOARD SOUTH AFRICA
Mr. Sing

FOR THE SOUTH AFRICAN
LEGAL PRACTICE COUNCIL AND
THE MPUMALANGA PROVINCIAL
LEGAL PRACTICE COUNCIL:

Adv. Richard Moultrie and Adv. Ziyaad Minty
Instructed by Damons Magardie Richardson Attorneys

FOR THE MPUMALANGA SOCIETY OF
ADVOCATES:
Adv. M Makoti and Adv. S Lubisi

¹ Act No. 28 of 2014.

² In terms of Section 30 of the Act.

³ In terms of Section 24 of the Act.

⁴ Section 1 of the Act defines a 'legal practitioner' as "*....an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30 [of the Act], respectively*".

⁵ Parts 1 and 2 of Chapter 10 came into operation on 1 February 2015. Chapter 2 (except for section 14) came into operation on 31 October 2018. Chapter 1, Chapter 3, with the exclusion of sections 35 (1), (2), (3) and (7) up to and including (12), Chapter 4 with the exclusion of sections 37 (5) (e) (ii), 40 (1) (b) (ii) and (7) (b), 41 and 42, Chapters 6 and 7, Chapter 8, with the exclusion of section 93 (5), Chapter 9, with the exclusion of section 95 (2) and Parts 3 and 4 of Chapter 10 came into operation on 1 November 2018.

See: Section 120 of the Act; Proclamation No. R.2 in Government Gazette 38412 on 23 January 2015 and Proclamation R.31 in Government Gazette 42003 on 29 October 2018.

⁶ The South African Legal Practice Council.

⁷ The Regulation of Legal Practitioners and Candidate Legal Practitioners.

⁸ Rules and Regulations.

⁹ National Forum and Transitional Provisions.

¹⁰ Under Case No. 2313/19.

¹¹ Natassja Mostert, Kate Nonkululeko Lwandile, Thembisile Promise Motha, Sonto Cynthia Mdluli.

¹² The provisions of the Act apply to the applications because they were filed after 1 November 2018.

¹³ Their applications were to be considered in terms of the new scheme.

¹⁴ Legodi JP and Kgoele J sitting.

¹⁵ Paragraph 2 of the judgment.

¹⁶ The applicants' legal practitioners, the Mpumalanga Provincial Council, the Mpumalanga Society of Advocates and the South African Legal Council shall be referred to as "*the directed parties*".

¹⁷ In respect of Ex parte Steyn (2313/19), Ex parte Mostert (2748/19) and Ex parte Lwandle (2749/2019).

¹⁸ The LPC filed its heads of argument also on the Mpumalanga Council's behalf.

¹⁹ In Ex parte Motha (1623/19).

²⁰ Paragraph 12 of Mr. Stemmett's affidavit at page 6 thereof.

²¹ The Minister of Minister of Justice and Constitutional Development: The definition of 'minister' under section 1 of the Act.

²² GN 401 of 20 July 2018: Final rules as per section 95 (1), 95 (3) and 109 (2) of the Act (*Government Gazette* No. 41781)

²³ Ex Parte Ceko (2140/19), Ex Parte Ngwenya (2588/19); Ex Parte Thobela (3054/19); Ex Parte Mabuza (2136/19); Ex Parte Sifunda (3043/19) (Mr. Sifunda applied to be admitted as an advocate in terms of his notice of motion.); Ex Parte Mnisi (4011/19); Ex Parte Maphanga (2078/19) and Ex Parte Nkosi (3366/19).

²⁴ The Attorneys Act No. 53 of 1979 ("the Attorneys Act") and the Admission of Advocates Act No. 74 of 1964 ("the Advocates Act"). Both of these acts were repealed by section 119(1) of the Act with effect from 1 November 2018.

²⁵ “15. Admission and re-admission of attorneys.—(1) Unless cause to the contrary to its satisfaction is shown, the court shall on application in accordance with this Act, admit and enrol any person as an attorney if—

(a) such person, in the discretion of the court, is a fit and proper person to be so admitted and enrolled; and

(b) the court is satisfied that such person has satisfied the following requirements or, where applicable, has been exempted therefrom in terms of the provisions of this Act, namely that such person—

(i) is 21 years of age or older;

(ii) (aa) is a South African citizen or has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic; or

(bb) is a citizen of a state the territory of which formerly formed part of the Republic, and belongs to such category of persons, and complies with such conditions, as may be determined by the Minister, after consultation with the presidents of the various societies, by notice in the Gazette;

(iii)

(aa) has satisfied all the requirements for the degree referred to in paragraph (a) of section 2(1), or for the degrees referred to in paragraph (aA) of that section, after pursuing for that degree or degrees a course of study referred to in paragraph (a) or (aA) of that section, as the case may be; or

(bb) has satisfied all the requirements for a degree or degrees referred to in paragraph (aB) of section 2 (1) in respect of which a certification in accordance with that paragraph has been done; or

(cc) has previously been admitted as an advocate.

(iv) has passed the practical examinations referred to in section 14 (1) (a), (b) and (c);

(ivA)

(aa) during his or her term of service under articles or contract of service, or after the expiry of his or her articles or contract of service; or

(bb) after he or she has been exempted in terms of this Act from service under articles of clerkship, has attended a training course approved by the society having jurisdiction in the area in which he or she completed his or her service under articles or contract of service, or, in the case of section 2A (c), has attended a training course approved by the society having jurisdiction in the area in which the candidate attorney intends to practise, and has completed such training course to the satisfaction of that society: Provided that this subparagraph shall not apply to a person who attended a training course referred to in section 2 (1A) (a) or 2A (a) (i) and who has completed such course to the satisfaction of the society concerned; and

(v)

(vi) *completed his or her service under articles or contract of service, or has complied with the provisions of section 2 (1A), within the period of three years preceding his or her application to the court or within the further period allowed by the court in terms of subsection (2)."*

²⁶ The definition of "society" in section 1 read with section 54 of the Attorneys Act.

²⁷ Section 3 of the Admission of Advocates Act, in relevant part, provided as follows:

"Admission of persons to practice as advocates.—(1) Subject to the provisions of any other law, any division shall admit to practice and authorize to be enrolled as an advocate any person who upon application made by him satisfies the court—

(a) *that he is over the age of twenty-one years and is a fit and proper person to be so admitted and authorized;*

(b) *that he is duly qualified;*

(c) *that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;*

(d) *in the case of any person who has at any time been admitted to practise as an attorney in any court in the Republic or elsewhere, that his name has been removed from the roll of attorneys on his own application; and*

(e)

(2) *The following persons shall for the purposes of paragraph (b) of subsection (1) be deemed to be duly qualified, namely:*

(a) *Any person who—*

(i)

(aa) *has satisfied all the requirements for the degree of baccalaureus legum of any university in the Republic after completing a period of study of not less than four years for that degree; or*

(bb) *after he or she has satisfied all the requirements for the degree of bachelor other than the degree of baccalaureus legum, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of baccalaureus legum of any such university after completing a period of study for such degrees of not less than five years in the aggregate; or*

(ii) *has satisfied all the requirements for a degree or degrees of a university in a country which has been designated by the Minister, after consultation with the*

General Council of the Bar of South Africa, by notice in the Gazette, and in respect of which a university in the Republic with a faculty of law has certified that the syllabus and standard of instruction are equal or superior to those required for the degree of baccalaureus legum of a university in the Republic;

- (b) *any person who before the commencement of this Act passed any examination or satisfied all the requirements for any degree which in terms of any law repealed by section thirteen would immediately before such commencement have entitled him to be admitted to practise as an advocate of any division on compliance with any other requirement of the said law with regard to matters other than such examination or degree;*
- (c) *any person who—*
 - (i) *at the commencement of this Act was registered as a student at a university referred to in section one of the Admission of Advocates Act, 1921 (Act No. 19 of 1921), and was engaged in a course of study with a view to obtaining a certificate, diploma or degree referred to in the said section; and*
 - (ii) *has satisfied all the requirements for the said certificate, diploma or degree and has on or before the thirty-first day of December, 1974, passed the examination in Roman-Dutch law and the statute law of the Republic referred to in section two of the said Act or is in terms of the said section not required to pass the examination in both or either of the said subjects;*
- (d) *any person who—*
 - (i) *at the commencement of this Act was registered as a student at any university or university college in the Republic for the degree of baccalaureus legum; and*
 - (ii) *has satisfied all the requirements for the said degree;*
- (e) *any person who—*
 - (i) *at the commencement of this Act was registered as a student at any university or university college in the Republic for a degree in any faculty and was engaged in a course of study for such degree, the successful completion of which would in accordance with the regulations of such university or university college then in force, entitled him to be exempted from a portion of the examination for the degree of baccalaureus legum; and*
 - (ii) *has satisfied all the requirements for the said degree and the said degree of baccalaureus legum.*

(3)”

²⁸ These documents included the Notice of Set Down, the application, certification of the applicant's identity document and if he/she previously was admitted or practiced as an attorney, submit to the registrar a certificate from the law society of the province in which he was so admitted or practiced to the effect that, in the opinion of the law society concerned, he is a fit and proper person.

²⁹ 2019 (3) SA 489 (GJ) at para. 8. Also see: Ex Parte: Mokoena (26189/2019) [2019] ZAGPPHC 256 (27 June 2019)

³⁰ Under section 1, 'Council' [LPC] means the South African Legal Practice Council established in terms of section 4.

³¹ Those sub-sections read as follows:

- “(a) *community service as a component of practical vocational training by candidate legal practitioners; or*
- (b) *a minimum period of recurring community service by practising legal practitioners upon which continued enrolment as a legal practitioner is dependent.*

(2) *Community service for the purposes of this section may include, but is not limited, to the following:*

- (a) *Service in the State, approved by the Minister, in consultation with the Council;*
- (b) *service at the South African Human Rights Commission;*
- (c) *service, without any remuneration, as a judicial officer in the case of legal practitioners, including as a commissioner in the small claims courts;*
- (d) *the provision of legal education and training on behalf of the Council, or on behalf of an academic institution or non-governmental organisation; or*
- (e) *any other service which the candidate legal practitioner or the legal practitioner may want to perform, with the approval of the Minister.”*

³² The Notional Forum was established in terms of section 96, clearly intended as an interim body which ceased to exist on the date of the meeting with the Council as envisaged in section 105 (3), which date may not be later than 31 October 2018. Sub-section (3) of section 105 of the Act, in relevant part, reads as follows: “*The National Forum must, before its dissolution, meet with the Council contemplated in section 4 for the purposes of handing over.*”

³³ Paragraph 12 of Mr. Stemmet's supplementary affidavit.

³⁴ The Bar sets out why the regulation is lawful in paragraphs 19 to 25 of their heads of argument. The LPC sets out the lawfulness of the regulation in paragraphs 7 to 14 and 16 of their heads of argument.

³⁵ Paragraph 4.1 of their heads of argument.

³⁶ Section 3(b)(ii) reads as follows:

“[The purpose of this Act is to broaden access to justice by putting in place (iii) measures that provide equal opportunities for all aspirant legal practitioners in order to have a legal profession that broadly reflects the demographics of the Republic;”

³⁷ Section 94(1)(p).

³⁸ GN 401 of 20 July 2018: Final rules as per section 95 (1), 95 (3) and 109 (2) of the Act. (Government Gazette No. 41781)

³⁹ Section 96 of the Act.

⁴⁰ In paragraphs 34 and 35 of its heads of argument.