

Artificial Barriers that Prevent Underprivileged Law Graduates to Access the Legal Profession

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Abstract

This article highlights the plight of underprivileged law graduates in South Africa in relation to the difficulties they experience when they attempt to access the legal profession. It demonstrates that, in addition to legislated requirements that they need to meet, they are also met with artificial requirements which are meant to effectively prevent them from accessing the legal profession. This article argues that, while underprivileged law graduates are not entitled to receive practical vocational training by merely having graduated with a law degree, they are nonetheless entitled to be treated equitably when responding to invitations for practical vocational training from law firms. This article makes an argument that, while the Legal Practice Council (LPC) has attempted to deal with this issue, much still needs to be done to ensure that the dictates of social justice guide legal practitioners in South Africa to eradicate barriers that make it difficult for underprivileged law graduates to access the legal profession.

Keywords

access; artificial barriers; candidate legal practitioners; legal profession; social justice

1. Introduction

The preamble to the Constitution of the Republic of South African, 1996 emphatically provides that

[w]e, the people of South Africa, [r]ecognise the injustices of our past; [h]onour those who suffered for justice and freedom in our land; [r]espect those who have worked to build and develop our country; and [b]elieve that South Africa belongs to all who live in it, united in our diversity.

The preamble is given effect by section 1 of the Constitution which identifies human dignity, the achievement of equality and advancement of human rights and freedoms as

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the founding values of South Africa.¹ These foundational values should enable the creation of an environment for the attainment of the rights contained in the Bill of Rights. The late Chief Justice Langa pointed out that there is need to ensure that the Bill of Rights is used as a tool that can empower people who have been subjected to patterns of discrimination in the past.² While much has been achieved, nonetheless, economic inclusion and social cohesion through lack of transformation remains a challenge in South Africa. This is particularly evident within the legal profession.

The South African government has identified access to the legal profession, representativity and diversity as some of the major challenges facing the legal profession.³ In its 2014 report, the Centre for Applied Legal Studies observed that '[t]he South African legal profession continues to face the challenge of meaningful transformation'.⁴ One of the major issues that leads to lack of transformation is artificial barriers that are placed by members of the profession that prevent access to the legal profession. Some law firms, when inviting law graduates to apply to be trained to become legal practitioners, require artificial requirements which do not amount to inherent requirements of practical vocational training.⁵ It is even more worrying when these artificial requirements are required by public interest institutions that one would expect to have a better sense of social justice.⁶

In this article, I discuss some of the artificial requirements that law graduates are usually expected to satisfy in order to receive practical vocational training contracts. I demonstrate that some of these requirements are effectively preventing underprivileged law graduates generally, graduates from African descent and those living with disabilities, in particular, from accessing the legal profession. I will be arguing that these requirements demonstrate clear racial and class disconnect and reflect lack of commitment to social justice in South Africa. Further, while the Legal Practice Council (LPC) has attempted to

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- 1 See the *United Democratic Movement v President of the Republic of South Africa* 2002 11 BCLR (CC) para 19 where it was held that '[t]hese founding values have an important place in our constitution. They inform the interpretation of the Constitution and other law, and set positive standards with which all law must comply in order to be valid'. See also *Minister of Home Affairs v National Institute for Crime Prevention and the Re-integration of Offenders (NICRO)* 2005 (3) SA 280 (CC) para 21 where it was held that '[t]he values enunciated in section 1 of the Constitution are of fundamental importance. They inform and give substance to all the provisions of the Constitution. They do not, however, give rise to discrete and enforceable rights in themselves. This is clear not only from the language of section 1 itself, but also from the way the Constitution is structured and in particular the provisions of Chapter 2 which contains the Bill of Rights'.
 - 2 Langa, P 'A new Constitution and the Bill of Rights' (2000) 4(2) *Law Democracy and Development* 115, 117.
 - 3 South African Government 'Transformation of the legal profession: Discussion Paper' <<https://bit.ly/3xNqgcj>> accessed 30 March 2020.
 - 4 Centre for Applied Legal Studies 'Transformation of the Legal Profession' (2014) 6 <<https://bit.ly/3yN53cp>>. The report further observes that '[t]he top positions in the profession, from senior partners of law firms, to senior counsel at the bar and senior members of the judiciary, remain largely homogenous. These positions are dominated by white men, with a marked absence of diversity on the basis of race, gender and other marginalising characterisation'.
 - 5 The Legal Practice Council 'Vacancies – Candidate Attorneys – Articles' <<https://bit.ly/3CDqRZC>> accessed 30 March 2020.
 - 6 Marumoagae, M 'The role of candidate attorneys in the legal profession' (2014) *De Rebus* 54.

address this issue, there is still a need for the profession to commit itself to eradicate these barriers in practice. First, I start with a deconstruction of the content of the phrase 'social justice' in a constitutional state. Herein I will argue that social justice drives transformation and the deliberate disregard thereof will delay the project of transformation of the legal profession. Further, that there is need for the members of legal profession, regardless of their race and class, to understand the social conditions of the majority of law graduates in South Africa, particularly those from poor backgrounds who often graduate with extensive debts behind their names.

Second, I reflect on specific artificial barriers that have the effect of preventing access to the legal profession. Herein, I will demonstrate how these barriers infringes on the Constitution and different provisions of the Legal Practice Act (LPA).⁷ I will argue that the imposition of these artificial barriers to the extent to which they prevent access to the legal profession is unlawful. I will further reflect on the initiative taken by the LPC regarding drivers' licences with a view to determine whether this will effectively deter law firm from preventing law graduates without licences from accessing the legal profession. Throughout the article, I will make recommendations for law reform.

2. The legal profession and social justice

2.1 Contextual meaning of social justice

There is no doubt that freedom of trade and equality of justice are some of the most important ideals that seek to ensure that the benefits of democracy are not enjoyed only by certain citizens while others continue to endure perpetual economic systematic exclusions.⁸ In South Africa, given the racial, gender and class divide, there is a constant cry for equality of opportunities, not only for the currently underprivileged, but also those who were denied such opportunities in the past by virtue of their natural involuntary membership of certain groups that were seen as unworthy of such opportunities. Since South Africa has committed to be guided by democratic principles, human interaction has increasingly highlighted the duty of the state, its organs and private persons to act in a just manner and ensure that everyone in the country is treated in an equitable manner. The concept of social justice plays an important role in assisting us to determine when a particular conduct can be referred to as unjust or when a particular person can be said to have been treated in an unjust manner. Nkoane convincingly argues:

Socio-political tensions and inequalities in South Africa created by colonialism crystallised in apartheid and, boosted by neo-colonial and neo-liberal modes of governments, seems to perpetuate social injustice.⁹

Unfortunately, while many may claim to be progressive and point to some or other initiatives that they have been engaged in, their thinking suggests that they are comfortable with the status quo. There are South Africans with financial resources whose sense of comfort

7 28 of 2014.

8 Smith, RH *Justice and the Poor* (The Academy of Political Science, 1919) 3.

9 Nkoane, MM 'Critical emancipatory research for social justice and democratic citizenship' (2012) 30(4) *Perspectives in Education* 98.

with their privilege has made them oblivious of the realities of inequality in the country and the role that they can play in eradicating these inequalities. Some of these people are direct or indirect beneficiaries of racial laws that ensured that there is perpetual economic and class division in South Africa, wherein some live in abject poverty and others continue to enjoy the economic fruits of the country. In many countries class differences are usually fortuitous in line with historical reasons and access to opportunities, and South Africa is no exception.¹⁰ Class divisions usually lead to instances where other persons are benefiting whereas others are suffering. The demand for social justice is a call for equity in relation to access to available opportunities that would enable members of every class to survive.

Social justice provides everyone the confidence to claim an equitable share which is proportional to his or her efforts to the advantages which are generally desired and conducive to his or her well-being.¹¹ When such a person is preparing him/herself to claim such advantages or when he or she actually claims such advantages, social justice dictates that such a person must not be denied such advantages because of their underprivileged personal circumstances or involuntary membership of a particular group of people.

Social justice can be described as the branch of the virtue of justice that encourages conscious persons to use their best efforts to foster a just society wherein people's needs are more fully met irrespective of the groups they belong.¹² According to Madonsela, social justice 'is about just and fair access to and equitable distribution of opportunities, resources, privileges and burdens in a group or between groups'.¹³ She further argues that social justice 'is ultimately about equal enjoyment of all rights and freedoms by all regardless of human diversity and historical injustices'.¹⁴ Social justice is supposed to be an effective weapon against those who wish to deny others equitable access to opportunities through ostracism and exclusionary practices.¹⁵ A proper understanding of social justice should lead to a society that is willing to constantly eradicate deliberately created and enforced inequalities that have privileged some at the expense of other.¹⁶ This is in line with the practice of democracy which embraces the inclusion of the diverse populations, particularly those from marginalised, subordinated and underrepresented groups.¹⁷

There is a need for a contextual understanding of social justice in South Africa which takes into account the plight of those who are less privileged. Lack of such an understanding relegates social justice to mere sloganeering concept that is wonderful and popular to use by those who are privileged but totally meaningless in practice. In South Africa, the concept of social justice is actually rooted directly in the Constitution. Apart

10 Rodes, RE, Jr 'Social Justice and Liberation' (1996) 71(4) *Notre Dame Law Review* 619, 626.

11 Honore, AM 'Social Justice' (1962) 8(2) *McGill Law Journal* 77, 78.

12 Rodes, RE Jr 'Social Justice and Liberation' (1996) 71(4) *Notre Dame Law Review* 619, 620.

13 Madonsela T 'Social Justice: What Are We Doing Wrong?' (2018) 7 <<https://bit.ly/3CSwffj>> accessed 30 March 2020.

14 *Ibid* 8.

15 Hlalele, D 'Social justice and rural education in South Africa' (2012) 30(1) *Perspectives in Education* 111.

16 Calderwood, PE 'Toward a professional community for social justice' (2003) 4(1) *Journal of Transformative Education* 301.

17 Wildman, SM 'Democracy and Social Justice: Founding Centers for Social Justice in Law Schools' (2005) 55(1) *Journal of Legal Education* 252.

from express reference in the preamble, the Bill of Rights enjoin everyone to practice social justice by recognising and respecting other people's rights to life,¹⁸ dignity,¹⁹ equality,²⁰ freedom of trade²¹ and association.²² It is imperative that this understanding of social justice is reflected more particularly by the legal fraternity, members of which are often called upon to assist community members, businesses and government to assert their rights. It is important that members of the legal profession are at the forefront of entrenching social justice in South Africa. Unfortunately, as it will be demonstrated below, this is sadly not the case when it comes to the training of future legal practitioners.

2.2 Social justice and transformation of the legal profession

The preamble of the Constitution recognises the need to '[h]eal the divisions of the past and [to] establish a society based on democratic values, social justice and fundamental human rights'. This is a clear recognition that respect for democratic values – equality, dignity and freedom, as well as the basic human right to be treated equally with dignity – are fundamentally linked to the concept of social justice. Without the values espoused in the Constitution generally and the rights enshrined in the Bill of Rights in particular, it will be easy to disregard the demands of social justice. In order for social justice to materialise, it is important for members of the legal profession to become obedient students of the Bill of Rights and to be committed to the fundamental rights enshrined therein. In 1992, before the adoption of the Constitution, Dlamini forcefully argued that

[e]xperience in Africa and elsewhere has taught that to provide a Bill of Rights is one thing, but to make it work is another. To make a Bill of Rights work depends on massive education of the public in general on the role of the Bill of Rights and the rights it contains; it also depends on the development of a rights culture and on the commitment on the part of those in power to the values that underpin a Bill of Rights.²³

Post-1996, after the adoption of the Constitution, it became apparent that education of the rights contained in the Bill of Rights was not enough to ensure transformation of the legal profession. It was more important that members of the profession were willing to practice social justice that would ensure that the rights enshrined in the Bill of Rights are not infringed. However, it is disappointing that there has been silence from those with relevant expertise on the dynamics of social justice and equality studies on the issue of transformation of the legal profession.

This silence might be because some may have been at the forefront of the injustices and inequalities that have delayed the transformation of the legal profession. Some may have been part of the project that ensured that opportunities within the legal profession

18 Section 11 of the Constitution.

19 Section 10 of the Constitution.

20 Section 9 of the Constitution.

21 Section 22 of the Constitution.

22 Section 18 of the Constitution.

23 Dlamini, CRM 'Towards a new legal order for a new South Africa' (1992) 16 *Legal Studies Forum* 131, 139.

are not equitably distributed. Members of the legal profession who engage in career limiting antics of their colleagues, or future colleagues in the form of candidate legal practitioners, demonstrate that education of the rights in the Bill of Rights without a contextual understanding of the ideals of social justice is meaningless. To transform the legal profession, which is in desperate need for transformation, there is an urgent need for all the members of the legal profession to be true advocates of social justice.

The Centre of Applied Legal Studies (CALS) has explained the ideal of transformation in the context of the legal profession in line with social justice as the process of removing barriers that hinder talented legal practitioners from opportunities which would enable them to develop the necessary skills and experience that would enable them to excel within the legal profession.²⁴ In this sense, awareness of social justice imperatives empower those with the ability to transform the legal profession to take conscious decisions that would advance, as opposed to hinder, constitutional values and rights by ensuring that the path to access the legal profession is not reserved only for the selected few from privileged groups and classes of people. A transformative understanding of social justice would ensure that many barriers of difference that exist not only to hinder progress within the legal profession but also to prevent access to this profession are actively eradicated.

Lack of appreciation of social justice ideals is at the heart of lack of transformation of the legal profession. Those with a sense of social justice would immediately appreciate their own privilege and use it to assist others who are less privileged to access the legal profession without regard to artificial barriers. Awareness of social justice will also encourage them to use human and financial resources available to them to ensure that those who need legal training are adequately trained to succeed. According to Phama and Nase, 'the sustained lack of transformation in the legal profession has less to do with lack of awareness, and more to do with the fact that no one is willing to take bold enough steps to do anything about it.'²⁵

This suggests that members of the legal profession are aware of the demands of social justice, but their comfort has made it difficult for them to be agents of social justice orientated change that will transform the legal profession. Deliberate disregard of the dictates of social justice has delayed the much talked about transformation of the legal profession. Transformation of the legal profession will continue to delay for as long as those with the means to bring about change do not appreciate social justice and ignore the impact of their decisions on those who are not as privileged and fortunate as they are.

The South African government has also pronounced itself in the slow pace of the transformation of the legal profession. In 2000, the Department of Justice (as it was then) released a document titled 'Justice Vision 2000: Five year National Strategy for Transforming the Administration of Justice and the State Legal Affairs' (hereinafter "Justice Vision 2000").²⁶ This document was released by the late Minister of Justice,

24 Centre for Applied Legal Studies (CALS) 'Transformation of the legal profession' (2014) 10 <<https://bit.ly/3CQzcty>> accessed 10 April 2020.

25 'Transformation of the legal profession: To betray or fulfil the mission' (5 November 2015) <<https://bit.ly/3zJXfHY>> accessed 10 April 2020.

26 Ministry of Justice 'Justice Vision 2000' 1997 <<https://bit.ly/3xQBtRU>> accessed 10 April 2020.

Dr Dullah Omar. The vision of this document was to provide a system of justice that gives everyone fair and equal access to justice while also guaranteeing their dignity and security of person irrespective of their race, gender and any other difference.²⁷ This document recognises that '[t]he legal profession will play a critical role in fulfilling the transformation of the administration of justice'.²⁸ The document enjoins legal practitioners to develop knowledge, awareness and understanding of diversity, changes in society and human rights.²⁹ This document also called upon the legal profession, not only to be sensitive and responsive to people's different needs, but to also make the profession representative of all the people who live in South Africa.³⁰

Most importantly, this document made a self-evaluation appeal to all legal practitioners by requiring them to '... start a process of internal self-appraisal, and also one that will make the profession itself more representative'.³¹ This was perhaps the most important part of the document in relation to the transformation of the legal profession. This was a clear recognition of the reality that the required change cannot take place mechanically, but it required self-realisation of the role that each member of the legal profession played in either advancing or hindering the required transformation.

This was a direct challenge to those who were actively preventing transformation to repent, change their ways and start contributing towards transforming the legal profession. Unfortunately, this call was ignored by many and the legal profession remains largely untransformed, particularly in relation to the distribution and access to the quality of work by legal practitioners from previously disadvantaged groups. One of the unfortunate observations that were made in this document that was true then and unfortunately is also true now is that

... the [legal] profession does not reflect the diverse nature of the South African society. Disadvantaged groups, especially black people, are not well represented in the legal profession. Few black graduates are able to enter the profession. To a lesser extent, the same is true of white female graduates. Of those that do enter the profession, only a few develop specialised expertise in areas like corporate law, tax, commercial law and constitutional practice.³²

There are those who might be inclined to argue that there has been progress since the release of this report and that many people have been able to enter the legal profession. While this might be true to some extent, available evidence clearly indicates the structural challenges for those who are lucky enough to be 'allowed' into the legal profession. These challenges includes: difficulty in making connections which are necessary for briefings; payment of excessive bar fees; cultural alienation; racial stereotypes; shameless racism; sexism; lack of adequate training; being treated as BEE candidates; deliberate

27 *Ibid* iii.

28 *Ibid* 108.

29 *Ibid*.

30 *Ibid*.

31 *Ibid*.

32 *Ibid*.

undermining of the intellectual capital and ability; as well as a lack of exposure to specialised areas of law.³³

There are those who were 'allowed' into big law firms who have found the strength to share their unfortunate experiences and provide personal accounts of concerted exclusionary practices adopted by members of the legal profession who are not conscious of the ideals of social justice to delay the transformation of the legal profession. Reflecting on his own experiences with a big law firm, Ramashia tells what appears to be a hypothetical story between a black candidate attorney (himself) and a white candidate attorney, who he refers to as 'Cathy'.³⁴

According to Ramashia, a black candidate attorney with superior academic record to his white counterpart who, unlike the white counterpart, does not have a car, may find it challenging to cope within a big law firm.³⁵ He explains that a black candidate attorney will be provided several tasks, including servicing documents at other locations away from the offices of his or her law firm.³⁶ Ordinarily, without having to serve these documents or, at the very least, having access to a reliable transport which could be used to serve these documents and return back to the firm on time, he or she would stand a better chance of completing all the tasks given to him or her.³⁷ Unfortunately, usually the mode of transport that the black candidate attorney must utilise to serve documents is a taxi, whereas the white candidate attorney has a car and is able to serve and return to the office on time to complete all the tasks given to her.³⁸

It is true that not all black candidate attorneys do not have cars and that not all white candidate attorneys have cars. The point here is that there will be an underprivileged candidate who has to compete with a privileged one, and mostly, black candidates of African descent complete university without cars. This forces them, at times, to work overnight at the office in order to make up time which was lost while using public transport to serve documents. Further, that personal circumstances of candidates who are forced to spend more time servicing documents may deliver substandard work which will ordinarily be criticised by their supervisors who often fail to take into account their personal circumstances. Ramashia explains that this practice can break underprivileged candidate attorneys to an extent of thinking that they are intellectually inferior to privileged candidates who had more time to do their work at the office.³⁹

33 CALS (n 23 above). See also Ramashia MG 'Law firm racism' *Culture Review* (2019) <<https://bit.ly/3AAuZsH>> accessed 10 April 2020.

34 *Ibid.*

35 *Ibid.*

36 *Ibid.*

37 *Ibid.*

38 *Ibid.*

39 *Ibid.* The Constitutional Court has reflected on negative perception against black people in *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC) para 2 where it stated that 'South Africa is literally the last African country to be liberated from the system that found nothing wrong with the institutionalised oppression of one racial group by another for no other reason but the colour of their skin, shape of their nose and the length or texture of their hair. The underlying reason advanced for this irrational differentiation was that African people in particular and black people in general, were intellectually inferior, lazy and lesser beings in every respect of consequence.'

Ramashia's account demonstrates the need for appreciation of diversity and recognition that, for underprivileged candidates to perform at the required level, their personal circumstances, which have the effect of preventing them from providing the expected quality of work which they are capable of producing, must always be taken into account. Legal practitioners who are supervisors at law firms with adequate financial and human resources should have human conversation with their underprivileged candidate attorneys to assess how such candidates could be assisted to perform at the required level. For instance, big law firms have messengers who could easily serve whatever needs to be served to allow candidate attorneys the time to deliver the required tasks.

While there are those who might argue that Ramashia's experience amounts to an isolated experience and that this is not a general trend in big law firms, nonetheless, it is concerning that such practices are possible within law firms regardless of their size. It is concerning that there are members of the legal profession who are tasked with the training of future legal practitioners who are oblivious of the practical realities of underprivileged law graduates that they are tasked to empower. These experiences are usually not recorded in academic research. In fact, '[a] dearth of published information and analytical literature exist on the South African legal profession. There is also a real scarcity of data on its demographics and other features.'⁴⁰ Notwithstanding, the lack of research on this topic, more underprivileged persons continue to express their unfortunate experiences that demonstrate total lack understanding of social justice within the legal profession.⁴¹ Social justice requires all members of the legal profession to invest time and understand the circumstances of those that they have been called upon to train to become legal practitioners. Awareness of social justice would enable members of the profession who are tasked with training future legal practitioners to understand that their duty is to the profession. In other words, they have the duty not to burden the legal profession with half cooked legal practitioners but to ensure that they employ their knowledge and experience to transfer the relevant skills without regard to artificial considerations such as race, gender or class. These artificial considerations have the effect of making access to the legal profession unduly difficult and at times impossible.⁴²

South African government issued another document titled 'Transformation of the Legal Profession: Discussion Paper'⁴³ (hereinafter "discussion paper"). The discussion paper started with a concession that a number of challenges relating to the legal profession that were identified in the Justice Vision 2000 document still exist. The discussion paper, amongst others, highlighted that the legal profession does not represent the diversity of the

40 Pruitt, LR 'No black names on the letterhead? Efficient discrimination and the South African Legal profession' (2002) 23(2) *Michigan Journal of International Law* 545, 549.

41 See Hlongwane, BH 'Plight of a black law graduate' *GoLegal* (2016). <<https://bit.ly/2XIIOHp>> accessed 20 April 2020. He reflects on his personal experience and states that '[n]ow, in the field where black graduates hardly get a nod, it becomes impossible to have a large pool of practicing black lawyers. Thus it will always be dominated by whites if the status quo remains unchanged. As it stands it's a slippery slope for black graduates. Start at the bottom, not enough black Law graduates secure articles let alone get admitted as lawyers.'

42 Ministry of Justice (note 25 above) 108.

43 South African Government 'Transformation of the legal profession: Discussion Paper' <<https://bit.ly/3xNqqcj>> accessed 20 April 2020.

South African society and disadvantaged graduates experience difficulty in entering the legal profession and establishing themselves as successful lawyers.⁴⁴ Surprisingly, unlike Justice Vision 2000 document, the discussion document does not call upon members of the legal profession to self-evaluate with a view of doing their part to transform the legal profession. In fact, the stated purpose of the discussion document is to stimulate debates of these issues.

I am of the view that no amount of consultation and debates would encourage anyone who is not committed to social justice to be party to the project of transforming the legal profession. There is a need for government working together with the regulator of the legal profession, the Legal Practice Council to deal decisively with all those who are committed to delaying the project of transformation. Conduct that is intended to delay the national project of transforming the legal profession clearly reflected by various law firms in South Africa who continuously impose artificial requirements when inviting law graduates to apply for practical vocational training. As it will be shown below, these artificial requirement cannot be regarded as inherent requirements of the process of legal training. All these practices are a clear indication of lack of appreciation of the dictates of social justice in a democratic country which requires opportunities to be equitably distributed.

3. Practical vocational training contracts

Legal practitioners have a right to decide to train law graduates that they believe will add economic value and efficiency to their firms. It cannot be denied that practical vocational training is an important step in the overall picture of access to the legal profession. The process of training mostly include provision of personal services in exchange for remuneration. Section 1 of the repealed Attorneys Act⁴⁵ used the phrase ‘articles of clerkship’, which was defined as ‘any contract in writing under which any person is bound to serve an attorney for a specified period in accordance with this Act’. This definition only referred to the duty of the candidate to serve and did not refer to any duty that the legal practitioner had towards the candidate legal practitioner.

In *Ex parte Natal Law Society*,⁴⁶ it was held that ‘[t]he object of articles is to provide a clerk with the legal training and experience to carry on his proposed profession of attorney’. It has always been accepted that the legal practitioner has a duty to train the candidate and expose such candidate to the process of lawyering as much as possible. The definition also did not provide for the legal practitioner’s duty to provide remuneration. However, most law firms do remunerate their candidate legal practitioners for their services. Zondo J (as he then was) was convinced that articles of clerkship amounted to employment contract. It cannot be denied that if articles of clerkship are regarded as employment, the ‘employer’ must derive economic value from ‘employed’ candidates.

44 *Ibid.*

45 53 of 1979.

46 1989 (2) SA 461 (N) 464.

Zondo J (as he then was) held that

[i]n fact [a]nyone who is familiar with the side bar will know that the reality is that many attorneys take on candidate attorneys primarily because they need the services of someone in their firms who will do a lot of the work which the attorney would have had to do himself – of course after some training.⁴⁷

While it is accepted that, generally, legal practitioners train candidate legal practitioners by exposing them to legal work, nonetheless, there have been allegations that some law firms have made their candidate legal practitioners messengers without providing them with contextual legal training.⁴⁸ It is worth noting that the LPA does not use the phrase ‘articles of clerkship’. It has adopted the phrase ‘practical vocational training’ which is defined as the ‘training required ... to Act to qualify as a candidate attorney or pupil in order to be admitted and enrolled as an attorney or advocate’.⁴⁹ Regulation 6(5) of the regulations to the LPA provides that ‘[a] candidate attorney may be engaged or retained under a practical vocational training contract by an attorney’. The legal practitioners and the candidate legal practitioners enter into a practical vocational training contracts. Regulations 6(1) and 7(1) of the regulations to the LPA stipulate that the duration of the practical vocational training should be an uninterrupted period of 24 months (for attorneys) and 12 months (pupils). While LPA and its regulations clearly define the practical vocational training as training as opposed to employment, they nonetheless do recognise that candidate legal practitioners will be rendering services to the law firms that offer them training.⁵⁰

Some legal practitioners are themselves not adequately trained and thus lack the capacity to provide adequate practical vocational training to candidate legal practitioners. Unfortunately, there are no initiatives that provide ongoing training to legal practitioners that would assist them to develop the necessary training skills which will capacitate them to adequately transfer skills to candidate legal practitioners. There is no requirement of competency or capacity when legal practitioners decide to train candidate legal practitioners. All that practitioners need is to comply with the requirement provided for in Regulation 6(6) of the regulations to the LPA which provides that ‘[an] attorney engaging a candidate attorney ... must have practised as an attorney for a period of not less than three years in aggregate, during the preceding four years’.

This demonstrated that the only important requirement for training candidate legal practitioners is for the legal practitioner to have been in legal practice for at least the period of three years. The assumption appears to be that during the prescribed period,

47 *Mashaba v Cuzen and Woods* (J236/97) [1998] ZALC (26 June 1998) para 19.

48 See Marumoagae, M ‘The role of candidate attorneys in the legal profession’ (2014) *Jul De Rebus* 54, who argues that ‘even though administrative work is part of the candidate attorney’s learning process, it should nonetheless not be seen as the most decisive part of it. This perpetuates a stereotype that there are law firms that are not particularly interested in adequately training candidate attorneys, but rather use them as part of their administration work system. Candidate attorneys at these law firms become masters of photocopying machines. They run around serving and collecting documents without any real practical legal training. Further, these candidate attorneys are employed to boost these law firms’ BEE ratings’.

49 Section 1 of the LPA.

50 See Regulations 6(5), 6(7) and 7 of the regulations to the LPA.

legal practitioners would have acquired the necessary knowledge that they can pass to future legal practitioners. Which is not necessarily the case in all cases.

4. Artificial requirements for articles of clerkship

It is beyond doubt that social justice demands transformative leadership from law firm directors and supervising legal practitioners that explicitly focuses on inclusion, equity and excellence without regard to exclusionary considerations such as race, gender and class. Transformative leadership is conscious and intolerant of inequitable practices and strives to contribute to the development of individual candidate legal practitioners by equipping them with the necessary skills that they can use to better themselves and contribute positively to society.⁵¹ While the rhetoric of transformation has been on the agenda in the legal fraternity since South Africa embraced democratic ideals, nonetheless, there are exclusionary practices within the legal profession that do not take into account the need to achieve social justice through transformative leadership. Some law firms continue to conduct themselves in a manner that seek to perpetuate the culture of exclusion when inviting law graduate to apply for articles of clerkship.

4.1 Soft barriers

Before addressing this exclusionary conduct, it is perhaps fitting to first outline the requirements that law graduates are expected to meet for them to be trained to become legal practitioners. In terms of section 26(1)(a) of the LPA, to be trained to become a legal practitioner, the candidate must possess an LLB degree. This is the only substantive requirement that any person who wishes to become a legal practitioner needs to meet in order for an admitted legal practitioner to provide him or her with practical vocational training.⁵² It is, however, customary within the legal profession to class or categorise law graduates in terms of what is usually perceived as their quality or lack thereof through unwritten requirements which are often decisive on whether they will be offered or denied practical vocational training.

Law graduates' quality is usually assessed in relation to the grades that they attained at university, as well as the university that they attained their degree from. There is a general perception within the legal fraternity that big law firms, in particular, are sceptical to provide training opportunities to candidates who graduated from previously disadvantaged universities because their education is viewed as inferior to that of those who graduated from previously English and Afrikaans universities.⁵³ This is an effective barrier for graduates who are denied training based on where they obtained their

51 Shield, CM and Hesbol, KA 'Transformative leadership approaches to inclusion, equity, social justice' (2020) 30(1) *Journal of Social Leadership* 3, 5.

52 See sections 26 and 27 of the LPA read with Regulations 6 and 7 of the regulations issued in terms of section 109 of the LPA. A thorough discussion of the contents of these regulations is beyond the scope of this article. It suffices to merely indicate that the Legal Practice Council, which is the body that is authorised by this Act to regulate the legal profession in South Africa, has the power to determine the conditions and procedures for the registration and administration of the practical vocational training.

53 Pruitt (n 39 above) 616.

education. The perception creates an unfortunate stereotype that the university that you went to will determine your success in the legal profession.

Another important criteria which is usually adopted by law firms to determine the quality of the graduate is the academic record of the graduate. Law graduates who attained what is perceived as 'good marks' stand a better chance of attaining practical vocational training with big law firms than those who are viewed as having obtained 'bad marks'. The obsession with marks when the graduate who is thought to have performed well at university does not perform as expected within the law firm, leads to the obvious scapegoat of questioning of the quality of the law curriculum generally.⁵⁴ The quality of teaching at university is also put on the spotlight with no one addressing the quality of training that law firms (and advocate bars) provide to candidate legal practitioners. There appears to be no debate on the quality of legal practitioners that are entrusted with the training of candidate legal practitioners. While this is definitely not applicable to all law firms, nonetheless, the issue of discrimination based on the university where the candidate attained the degree and the candidate's academic performance are indeed factors that are considered when decisions are taken to train candidate attorneys.

Sometimes, those who feel like they were discriminated based on these grounds start discriminating against candidates with perceived good marks who are from white and former Afrikaans universities. They start giving opportunities to those that they perceive to be like them, those from previously disadvantaged universities. All these prejudices are totally unacceptable in a democratic society. There are candidates with perceived bad grades who were provided opportunities and went on to become leaders in their fields. It is submitted that these discriminatory practices should be discouraged, and applications should be assessed on their merits. Interviews, even though they are far from perfect themselves, should nonetheless be used to meet those who have applied so that they can be fairly and equitably assessed.

4.2 Automatically unlawful barriers

The ability to respond to the demands of the law firm and the requirements of the clients of the firm usually necessitate the imposition of requirements such as the need to possess drivers' licences and the ability to speak a particular language, most notably Afrikaans. A typical invitation in a form of an advert either in the law firm's website, newspaper, notice board in court or attorneys' magazine would read as follows:

Criteria:

- LLB degree or final year LLB and sound knowledge of the law.
- Hardworking, self-motivated and able to work independently.
- Valid drivers' licence and own vehicle (or own reliable transport).
- Speak fluent Afrikaans (sometimes they include English).⁵⁵

54 See Sedutla, M 'LLB Summit: Legal Education in Crisis?' (2013) 8 *De Rebus* 113, for arguments for and against the need to retain the four-year LLB curriculum, the discussion of which is beyond the scope of this article.

55 See De Rebus 'classified' <<https://bit.ly/3AyV3o7>> accessed 20 April 2020. See also Job Placements 'Candidate attorney (Afrikaans speaking)' <<https://bit.ly/3nZJhzE>> accessed 20 April 2020.

The first two listed requirements are uncontroversial. The only challenge with these requirements is that they may attract discrimination based on the university where the candidate graduated and grades that he or she attained when determining whether such candidate is hardworking. The last two requirements are controversial and merits critical discussion. The most concerning conduct of some law firms which is an effective barrier for underprivileged students, irrespective of their race, to access the legal profession is the requirement that applicants should possess drivers' licences and in certain instances a car. Another equally concerning requirement that has gained popularity is the requirement that the candidate should be fluent in a particular language, especially Afrikaans. The justification is always that there are good economic reasons for imposing these requirements, which are at times taken as fundamental to the training that candidate legal practitioners will receive.

4.2.1 *Drivers licences*

With regards to the drivers' licence, this requirement effectively prevents law graduates who do not have drivers' licences from attaining practical vocational training. Practitioners from time to time attempt to provide what they regard as a practical and rational justification for imposing this requirement. According to Aupiais:

[O]wn transport does not necessarily need to be a car, it can be a motorcycle, etc. The fact is, many candidate attorneys are required to act as messengers, serve, file, arrive at courts timeously and predictably, and to even be involved in evictions, etc. Without reliable, efficient, transport you cannot do the job of the average candidate attorney. It is of course possible to be a candidate attorney and not own or rent a vehicle, I know many who are in just that predicament. They use public transport to get by, and take the bus or taxi to and from courts etc. It is possible, but it is a whole lot more difficult.⁵⁶

It is unfortunate that when this debate arises, it is normally engaged from the point of view of the immediate structural and economic needs of law firms, simply because they offer practical vocational training and are expected to remunerate candidate legal practitioners. The hidden argument here is, when hiring candidate legal practitioners, law firms generally look at the economy of scale and hire candidates who will advance their economic efficiency. As such, one should be reluctant to unfairly criticise law firms which simply wish to become efficient when serving their clients.

However, South African society is not a normal society, and this economic efficiency model is oblivious to the fact that this approach is not only exclusionary but has the effect of denying talented and worthy candidates an equitable opportunity to be trained to be legal practitioners. I concede that this economy of scale model does not expect candidates to have licences and cars, but merely provides opportunities to those that possess these enablers to access the profession. Prospective candidate legal practitioners with reliable transport who come from former English or Afrikaans universities have an economic urge

56 Aupiais ME 'A considered reply to a "Plight of a Black Law Graduate" who spent unlucky "years" seeking after articles of clerkship' (2017) <<https://bit.ly/3i0PUh9>> accessed 20 April 2020.

over their counterparts that come from same universities with no cars and those that come from previously disadvantaged universities.

The difficulty with this approach is lack of appreciation that practical vocational training is an initiative that can transform candidate legal practitioners' lives who have worked hard at university and hope to change their lives and those of people who contributed to the attainment of their degrees. Unfortunately, invitations for training that are similar to the above advert automatically disqualified them, not because they are bad candidates but on the basis of not having cars. While it is true that law firms are not welfare institutions and do not have to take on candidate legal practitioners as charity cases, nonetheless, South African law firms are constitutionally required to empathise with the less fortunate and desist from placing requirements that make it difficult for them to access the legal profession. It is disheartening for any law graduate who comes from a poor family, economically struggled through university and at times slept in libraries and computer laboratories, that when he or she conquers the challenges of his or her degree, probably still owing those that financially assisted him or her, to realise that he cannot get training simply because he or she does not have a licence, let alone a car. This requirement denies the legal profession of future lawyers who can contribute positively to humanity.

I am of the view that all legal practitioners should have a contextual understanding of social justice in order not to ignore transformative needs of the South African society. This will assist in ensuring that law firms' economic imperatives do not blind practitioners to the real challenges that some of the candidate legal practitioners have to endure in order to become legal practitioners. The drivers' licence requirement does not only affect black students of African descent, but also poor students from all other races.

However, while it is true that not all white people in South Africa are rich or have their own transport, nonetheless, the reality is that the majority of them drive cars, even those who are not rich. Indeed, there are black law graduates who come from rich or middle class families who also have their own transport. They too should never be treated more favourably than underprivileged law graduates from all the races. Having said that, the incontestable reality is that the drivers' licence requirement is more likely to exclude more black students of African descent than any other race from being trained to become lawyers because of their socio-economic conditions. It is difficult not to view the drivers' licence requirement with a racial glance. Available empirical research clearly demonstrates that

... difficulties persons of colour ... have experienced in obtaining articles of clerkship are often attributed to racism and sexism of admitted attorneys, upon whom the opportunity to qualify for admission as an attorney has typically depended. White attorneys have usually trained white candidates, while black attorneys have trained black candidates. Because relatively few black attorneys were admitted to practice at any given time ... the number of blacks being admitted to practice was naturally limited.⁵⁷

57 Pruitt (n 39 above) 549.

Surely, a racialised situation where legal practitioners resort to training candidates from their own races is unsustainable in a constitutional democracy. However, by requiring drivers' licences, which are mostly required by white established law firms, this will result in legal training being provided on racial basis. To some extent this does exist, *albeit* not openly. Given the socio-economic disparities between those who graduate with law degrees, it is clear that South Africa is not ready for an artificial requirement of a drivers' licence because of the potential or real impact that it would have on those who are equally deserving but underprivileged. It is also clear that the drivers' licence requirement has the effect of discriminating unfairly against underprivileged law graduates who neither possess licences nor cars. It is difficult to see how, if this requirement is challenged, it can pass the constitutional muster.⁵⁸

The drivers' licence requirement for practical vocational training does not only discriminate against those who do not have cars, but also insensitively directly discriminates against those who cannot drive, not because they do not have drivers' licences but because of their disability. It is absolutely clear that with this requirement, people who cannot see and those whose bodies are such that they cannot drive will be permanently excluded from joining all the firms that consistently rely on this requirement. While these firms have a right to appoint whoever they feel will advance their economic agenda, they certainly do not have a right to discriminate on the basis of disability in South Africa.

It has been argued that 'discrimination against people with disabilities is one of the worst social stigmas that society has not been able to overcome'.⁵⁹ Section 9(4) of the Constitution clearly provides that '[n]o one may unfairly discriminate directly or indirectly against anyone on the basis of disability'. Section 6 of the Employment Equity Act⁶⁰ also prohibits unfair discrimination against employees on the basis of disability. The South African Labour Court has defined an employee to also include potential or prospective employees. The court has held that the employer should not have practices and policies that discriminates unfairly against job applicants.⁶¹ Given the rich equality jurisprudence in South Africa, it is difficult to see how the drivers' licence requirement can be justified.⁶²

I am of the view that the inability to recognise what is required by social justice by making drivers' licences a requirement for attaining practical vocational training lead some legal practitioners to act in manner that unfairly discriminates against law graduates from under privileged backgrounds and disabled candidates. This conduct is clearly

58 See Marumoagae, C 'Driver's licence: A barrier preventing entry into the attorneys' profession' (2017) (November) *De Rebus* 42.

59 Marumoagae C 'Disability discrimination and the rights of disabled persons to access the labour market' (2012) 15(1) *PER/PELJ* 345, 346.

60 55 of 1998.

61 *Mahwanga v South African Human Rights Commission* (11208/2014) [2019] ZAGPJHC 125 (21 February 2019) para 20.

62 See generally *Harksen v Lane* NO 1998 (1) SA 300 (CC) para 53 and *Prinsloo v Van der Linde and Another* 1997(4) SA 1 (CC) paras 28-31. See also Smith, A 'Equality constitutional adjudication in South Africa' (2014) 14 *AHRLJ* 609, 616.

invalid and unlawful. Drivers' licences have been turned into an effective requirement which is not prescribed by the LPA for attaining practical vocational training. The LPC has also cautioned legal practitioners against making drivers' licences the requirement for attaining practical vocational training.⁶³ However, it does not appear as if all the legal practitioners that run law firms have heeded the call because invitations for training which include this requirement continue to be issued.

It must be noted, however, that the LPC has attempted to address the issue of law firms requesting law graduates to have drivers' licences when calling upon them to apply for practical vocational training (PVT). On 15 January 2021, the LPC published a notice in the Government Gazette⁶⁴ to amend its rules by inserting rule 22.1.11 which, amongst others, makes it misconduct for any attorney that seeks to enter into a PVT contract with a candidate legal practitioner to enquire whether such candidate is in possession of a driver's licence or own a vehicle.⁶⁵ This rule further makes it misconduct for attorneys to enquire whether candidates have access to vehicles which could be used to render services once contracted for PVT.⁶⁶ This appears to be a positive initiative which would lead to the LPC taking disciplinary action against any attorney who infringes this rule. To prove whether this rule has been infringed, one would merely look at the contents of the advertisement.

It is submitted that this is not enough to prevent attorneys who wish to offer PVT from enquiring whether prospective candidate have drivers' licences or have access to vehicles which they could use to carry out their work once contracted. It is however, comforting that the LPC in its rules has made it a misconduct for any attorney who enters into a PVT contract with any candidate to incorporate the requirement that such candidate must have a driver's licence, own a vehicle or have access to a vehicle during the period of his or her PVT period in that contract.⁶⁷ In fact, the LPC has declared these requirements to be 'unreasonable or unusual terms'.⁶⁸ In my view, these requirements are not only unreasonable, but they are also indicative of the ahistorical approach by some within the legal profession who choose to 'pretend' that the playing fields have been levelled and that opportunities in law are equitably available to all graduates, irrespective of their backgrounds.

While advertisements may be silent on drivers' licences and vehicles, there is nothing preventing such enquiries from being made during interviews which are held in private. To address this potential challenge, rule 22.2.9 was also inserted into the LPC rules. This rule makes it a misconduct for attorneys during interviews to enquire whether candidates possess drivers' licences, own or have access to vehicles which they could use during their

63 See Legal Practice Council 'The Legal Practice Council concerned with barriers to the legal profession' <<https://bit.ly/3iKEVcw>> accessed 21 April 2020, where the regulator stated that it 'has noted with concern that it is now becoming a trend that some law firms are making a driver's license and or ownership of a motor vehicle as one of the key requirements for graduates to be considered for practical vocational training (PVT) contracts. A driver's license and or ownership of a motor vehicle is and cannot be an inherent requirement for attaining a PVT contract.'

64 Notice No. 44068.

65 Rule 22.1.11.1 of the Legal Practice Council Rules.

66 *Ibid.*

67 Rule 22.1.11.2 of the Legal Practice Council Rules.

68 *Ibid.*

PVT period.⁶⁹ Thus, candidates asked by attorneys whether they have drivers' licence, own vehicles or have access to vehicles can report these matters to the LPC to investigate the extent to which such questions played a role in not being provided PVT.

Even though these rules will, to some extent, play a role in addressing the challenge identified by the LPC, they will not adequately prevent attorneys from rejecting candidates' applications based on lack of drivers' licence or possession of vehicles. For instance, when a candidate arrives without a vehicle at the interview, it may be an indication that he or she may not have a vehicle. That candidate could be treated differently from those who arrive with vehicles at the same interviews even where no questions are put to the candidate without a vehicle regarding drivers' licences and vehicles.

This challenge can effectively only be addressed when all attorneys recognise these requirements as barriers to the transformation of the legal profession and commit themselves to ensuring that they are not used to deny underprivileged graduate opportunities to be trained as legal practitioners. On 2 February 2021, on its official twitter account '[t]he LPC ... noted with concern that some law firms have continued to make a driver's licence & or ownership of a vehicle as one of the key requirements for graduates to be considered for PVT contracts, despite the publication of the amendment to the Rules.'⁷⁰ This indicates that some legal practitioners either wish to preserve the status quo where underprivileged law graduates continue to be faced with unnecessary barriers that unfairly prevent them from accessing the legal profession, or they are totally oblivious of the social justice imperatives that requires the eradication of these barriers.

4.2.2 Language preferences

In terms of section 6(1) of the Constitution, the official languages in South Africa are Setswana, Sepedi, Sesotho, isiSwati, Tshivenda, Xitsonga, Afrikaans, English, isiXhosa and isiZulu. In terms of section 6(5)(b) of the Constitution, all languages commonly used within South African communities must be promoted and respected. Every law firm in South Africa has a right to adopt any of the official languages as its official language which they intend to use to conduct their business. In principle, there is no hierarchy of languages in South Africa. The law firm's location and the type of clients it serves may induce those running that firm to seek out human capital that is able to speak the languages which are mostly spoken by their clients. It will be difficult to criticise such a decision which is taken having regard to genuine operational needs of the firm.

However, irrespective of how genuine the decision to adopt a particular language is, it may have severe discriminatory repercussions. If an organisation like Legal Aid South Africa takes a policy decision that it will recruit candidate legal practitioners on the basis of the languages that are commonly spoken where the positions arise, this will result in most of the Afrikaans and English speaking law graduates being automatically prevented from accessing the vocational practical training that is offered by Legal Aid South Africa. Because there is no such policy consideration, any law graduate in South

⁶⁹ Rule 22.2.9.1 of the Legal Practice Council Rules.

⁷⁰ Legal Practice Council (@CouncilPractice) Twitter (2 February 2021) <<https://bit.ly/3u1iDax>> accessed 23 May 2021.

Africa, irrespective of their race, gender and class has a chance of being provided practical vocational training by Legal Aid South Africa. It does not matter which language they speak and the place where training space arose.

For instance, a Setswana speaking law graduate can be trained in the Legal Aid South Africa local centre that is based at Durban, where isiZulu is the predominant language. Equally so, an Afrikaans speaking law graduate may be placed at Legal Aid South Africa centre that is based at Soweto were different African languages are spoken, even if that graduate cannot speak any of those languages.

As the biggest law firm in South Africa which is established as one of the institutions of social justice, Legal Aid South Africa cannot have policies that discriminate against any law graduate in South Africa who meets the requirements to be contracted for practical vocational training. Legal Aid South Africa does not use the fact that the majority of the clients that they serve speak African languages as a way to exclude law graduates who do not speak African languages from their practical vocational training. Such a policy would amount to unfair discrimination based on language. However, it cannot be guaranteed that all Legal Aid South Africa managers at local level do not have personal biases that have the effect of discriminating on racial and tribal basis by denying law graduates, who speak languages other than those that are dominant where their offices are situated, the opportunity to be trained. Nonetheless, this is something which Legal Aid South Africa does not subscribe to.

It appears as if it is only private law firms that seem to believe that they have a right to explicitly impose language restrictions when inviting law graduates to apply for practical vocational training. Most of the firms that impose language restrictions make it absolutely clear that any law graduate that applies must be able to speak the identified language. In most instances, the required language is Afrikaans. Other firms have also insisted on isiZulu and English, the implementation of which can also amount to unfair discrimination. Most law firms are conscious of the fact that they cannot, in South Africa, require that only white law graduates should apply. As such, they have resorted to use language to exclude black people. While there are black law graduates that can speak Afrikaans, in most instances, invitations that require fluency in Afrikaans have the practical effect of restricting training opportunities to only white law graduates who can speak Afrikaans. This renders such invitation to be discriminatory to the extent that it excludes other law graduates based on language.

While Afrikaans is one of the official languages which those who speak it cannot be blamed for ensuring that it is preserved, it is nonetheless seen by some South Africans as a language of oppression. The Constitutional Court has also indicated the need to preserve Afrikaans which is a South African cultural treasure with outstanding literature, as well as rich scientific and legal vocabulary.⁷¹ In order for Afrikaans to be viewed as a cultural treasure by all South Africans without negative perceptions that are generally associated

71 *Ex Parte Gauteng Provincial Legislature: In Re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995* 1996 (3) SA 165 (CC) para 49. The Constitutional court further held that 'Its protection and development is therefore the concern not only of its speakers but of the whole South African nation. In approaching the question of the future of the Afrikaans

with it based on historical events, it will depend on how those who speak it continue to use it in the legal profession. It cannot be denied that if those who speak Afrikaans can strip this language of racial, economic and political dominance, it will be easy for those who have oppressive scars of this language to relate with and advocate for its protection.⁷²

Such advocacy will be difficult when legal practitioners are using Afrikaans as a means of denying underprivileged law graduates, with the legacy of being oppressed through the use of Afrikaans, the opportunity to economically emancipate themselves when they are denied practical vocational training on the basis that they cannot speak Afrikaans.⁷³ Imposing Afrikaans as a requirement for attaining practical vocational training resembles colonialism and apartheid attitudes which are divisive and ‘... harmful and continue to plague us and retard our progress as a nation more than two decades into our hard-earned constitutional democracy.’⁷⁴ The unfortunate history is that ‘Afrikaans was being used as an instrument of control, exploitation and systematic humiliation.’⁷⁵

Seen in this context, an obsession with the requirement of Afrikaans for the purposes of training candidate legal practitioners can be seen not only as a sign of exclusionary racial economic dominance, but also a humiliating conduct which is unacceptable in a democratic society that is conscious of social justice. It can be argued that this conduct limits opportunities for underprivileged law graduates to be trained so that they can economically emancipate themselves and their loved ones. To the extent that Afrikaans is used to deny underprivileged law graduates an equitable opportunity to be trained to become legal practitioners, its usage as a requirement for practical vocational training amounts to an invalid and unlawful artificial requirement to access the legal profession.

Finally, the LPA is an instrument of social justice that the South African legislature has promulgated to ensure, amongst others, the transformations of the legal profession. It is important to note that the preamble to the LPA recognises the need for the legal profession to transform and restructure in line with the constitutional principles. This preamble further notes that the LPA envisages a legal profession that is reflective of the diversity and the demographics of South Africa. Most importantly, the preamble to LPA also recognises the need to remove any unnecessary or artificial barriers that prohibit law graduates from entering the legal profession. In particular, section 3 of the LPA states that one of the purposes of this Act is to ‘provide a legislative framework for

language, then the issue should not be regarded as simply one of satisfying the self-centred wishes, legitimate or otherwise, of a particular group, but as a question of promoting the rich development of an integral part of the variegated South African national character contemplated by the Constitution’ (para 49). <<https://bit.ly/3lMM0cV>>.

72 *Ex Parte Gauteng Provincial Legislature: In Re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995* 1996 (3) SA 165 (CC) para 49. <<https://bit.ly/3CE7Cik>>.

73 *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC) para 45, where it was held that ‘Apartheid has left us with many scars. The worst of these must be the vast discrepancy in access to public and private resources. The cardinal fault line of our past oppression ran along race, class and gender. It authorised a hierarchy of privilege and disadvantage. Unequal access to opportunity prevailed in every domain’.

74 *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC) para 4.

75 *AfriForum and Another v University of the Free State* 2018 (2) SA 185 (CC) para 5.

the transformation and restructuring of the legal profession that embraces the values underpinning the Constitution and ensures that the rule of law is upheld. I am of the view that the imposition of artificial requirements discussed in this article runs contrary to this purpose and have the practical effect of delaying the process of the transformation of the legal profession.

5. Conclusion

This article highlighted the plight of underprivileged law graduates in South Africa in relation to the difficulties they experience when they attempt to access the legal profession. It was argued that, in addition to legislated requirements that they need to meet, they are also met with artificial requirements which are meant to effectively prevent them from accessing the legal profession. While underprivileged law graduates are not entitled to receive practical vocational training by merely having graduated with a law degree, they are, nonetheless, entitled to be treated equitably when responding to invitations from law firms that aim to train candidate legal practitioners.⁷⁶ Law graduates are aware that even though they have a right to apply for practical vocational training, this is not a claim that they can directly enforce against law firms. In other words, they are conscious of the fact that they cannot force any law firm to train them to become legal practitioners.

However, when law firms declare that they have capacity to train candidate legal practitioners and invite law graduates to apply to be trained, then law graduates have a legitimate claim towards those law firms to be treated equitably without regard to their race, gender and class. While law firm owners do not owe law graduates practical vocational training, they nonetheless owe them a conducive environment where they can equitably have access to such training as and when positions become available. The legal profession at large owes all law graduates a transformed legal profession that considers not only unfortunate historical reasons that led to their underprivileged status but also their current circumstances.

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76 See Honore, AM 'Social Justice' (1962) 8(2) *McGill Law Journal* 77, 59 who adequately explains the principle of entitlement.