



COMMONWEALTH LAW CONFERENCE

**“BEST PRACTICE IN REGULATIONS,
ENTRY AND EXIT TO THE BAR”**

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THE ZAMBIA INSTITUTE OF ADVANCED LEGAL EDUCATION (ZIALE)

- ZIALE is a statutory body created by the ZIALE Act Chapter 49 of the Laws of Zambia.
- It falls under the umbrella of the Ministry of Justice
- Its mandate is to provide postgraduate legal education.
- Its main course is the Legal Practitioners Qualifying Examination (LPQE) Course, a course designed to prepare Law Graduates for the practice of law, and admission to the Zambian Bar.

REGULATION – ZIALE’S ROLE

- I have been asked to speak about regulation, entry and exit to the Bar, and as the gate keepers of the profession we are the initial stages of the regulatory process for entry to the Bar. I must emphasize that ours is an extremely crucial role in its contribution to regulating the profession
- Our aim at ZIALE is to provide practical, comprehensive legal education and training for those seeking to enter the legal profession.
- This level of training prepares lawyers for practice and ensures that they appreciate the complex legal and ethical obligations associated with the practice of law, and that they are able to undertake their duties and responsibilities in line with their ethical and professional obligations
- The International Commission of Jurists (ICJ) in their country report titled “Myanmar: Independence of the Legal Profession” noted that in states where the legal education is weak or ineffective, graduates are generally ill-prepared to practice law after completing their studies – they are unable to appreciate important concepts that underpin the profession, let alone apply them in practice. They are unable to provide competent, intelligent and independent legal advice. They undermine the Rule of Law.

- lack of proper education and training weakens the profession from the outset, and undermines its ability to withstand the pressures that threaten its independence and its very existence.
- Principal 9 of the UN Basic Principles on the Role of Lawyers, calls for the imposition of a duty on governments, educational institutions, which includes the universities offering law as a degree, and bar associations to ensure that lawyers receive appropriate education and training.
- As with other commonwealth jurisdictions, Zambia requires a certain level of academic and vocational stages of training before admission to practice as a lawyer.

ROUTES TO ADMISSION

1. LPQE COURSE

- CURRENTLY A 9 MONTH COURSE
- TO QUALIFY ONE MUST HAVE 5 O'LEVELS WITH CREDITS AND ABOVE INCLUDING ENGLISH

2. ARTICLED CLERK

- WORK AND EVIDENCED BASED ROUTE TO QUALIFY
- CANDIDATES MUST MEET THE SAME ENTRY REQUIREMENTS AS THOSE ON THE LPQE COURSE
- CANDIDATES ARE EXPECTED TO SIT FOR AND PASS UNDERGRADUATE LAW COURSES
- CANDIDATES ARE EXPECTED TO SIT FOR AND PASS THE LPQE COURSE EXAMINATIONS

THE LPQE COURSE

1. PROFESSIONAL CONDUCT AND ETHICS
2. BOOKKEEPING AND ACCOUNTS
3. CONVEYANCING AND LEGAL DRAFTING
4. PROBATE AND SUCCESSION
5. COMMERCIAL TRANSACTIONS
6. COMPANY LAW
7. CIVIL PROCEDURE
 - i. HIGH COURT CIVIL PROCEDURE
 - ii. SUBORDINATE COURT PROCEDURE
8. DOMESTIC RELATIONS
9. CRIMINAL PROCEDURE
10. EVIDENCE AND PRACTICE

- these are listed under the STUDENT RULES CHAPTER 30 RULE 23(1)
- In total students sit for 11 heads at two summative examinations i.e. mid years and final examinations.
- Once a student clears all examinations, they are eligible to petition and be called to the bar

REFORMS

- We are currently reviewing the Student Rules and some of the changes and best practices we are looking at are overhauling the curriculum for Bookkeeping and Accounts and renaming it Law Firm Management and Accounts, and Civil Procedure will now have two independent courses namely Superior Court Procedure (to take into account the procedure in the High Court, the newly established Court of Appeal and Constitutional Courts, as well as the Supreme Court) and Subordinate Court Procedure.

- ZIALE is due to start a pilot stream which commences at the start of May, 2019 which has a new delivery mode.
- This stream will be full-time and not only have the usual lectures, but will now have emphasis on practical training and will include Tutorials, Moot and Trial Advocacy Sessions.
- The aim is not only to ensure that the teaching and learning is effective, but also to produce a more well rounded practitioner ready for the rigorous demands of practice.

MEMBERSHIP LAZ

- a. The Legal Practitioners Act in Part III states that only a qualified person shall be admitted as a legal practitioner.
- b. Section 11 spells out the professional and academic qualifications needed which, aside from a law degree, a person must have attended the ZIALE and obtained the LPQC or has served in Zambia as an articulated clerk and has passed the Legal Practitioners Qualifying Examination.
- c. A qualified person is also stated as being a qualified lawyer from a Commonwealth country which predominantly applies common law.

PRE CALL DAY

1. CANDIDATES PETITION ZIALE TO BE ADMITTED TO THE BAR (K625.00/ USD52.00 / £40.00)
2. CANDIDATES MUST PAY THE LAW ASSOCIATION OF ZAMBIA (LAZ) A MEMBERSHIP FEE (K5,600.00 / USD465.00 / £365.00).
3. THE REGISTRAR OF THE HIGH COURT IS ALSO PAID AN ADMINITRATIVE FEE (K327.00 / USD27.00 / £21.00)

REGULATION OF ENTRY TO THE BAR

- The LP Act Part III Section 11 and 12 describes the person that shall be admitted to the Bar as a legal practitioner.
- ZIALE plays its part in ensuring that only “**qualified candidates**” enter and complete the LPQE Course.
- LAZ and the Judiciary rely on our academic checks and teaching and learning to ensure that only qualified persons are called to the Bar
- Problems in regulation (and generally within the legal fraternity) stem from low admission standards as those who enter the profession are not always able to provide competent, intelligent and independent legal advice – they are generally ill-prepared to practice law and this can lead to the disruption of any regulatory system

POST CALL DAY

- THE LEGAL FRAMEWORK
 - i. THE LAW ASSOCIATION OF ZAMBIA ACT, CHAPTER 31 OF THE LAWS OF ZAMBIA
 - ii. THE LEGAL PRACTITIONERS ACT, CHAPTER 30 OF THE LAWS OF ZAMBIA

REGULATION – POST CALL DAY

- Like other Jurisdictions in the Commonwealth, Zambia has the **Legal Practitioners Act** which covers qualifications, admissions, removal from and restoration to the Bar and the general practice of practitioners on one hand and the **Law Association of Zambia and its Act** which deals with *inter alia* membership to the body.
- After one has undergone the training provided by ZIALE and has been admitted as a lawyer of the courts of Zambia, one then qualifies to be a member of the Law Association of Zambia.
- LAZ issues Practicing Certificates to qualified lawyers and is the representative body for all lawyers, practicing and non-practicing and *inter alia* assumes the power to regulate the profession and its members.
- It is an organisation run by lawyers for lawyers with the view to enhancing the rule of law, access to justice and legal education.

REGULATIONS – EXITING THE BAR

- This will cover suspension, removal or expulsion.
- This is covered by Part IV of the Legal Practitioners Act and by Part III of the Law Association of Zambia Act

THE LAW ASSOCIATION OF ZAMBIA ACT

- A qualified lawyer can exit the LAZ by ceasing to be qualified either by non-subscription, resigning, or being expelled or suspended.
- A lawyer no longer “qualifies” and ceases to be a member if:
 1. Their name is removed from the Roll of Practitioners, and
 2. Their degree is revoked by university.

- LAZ management is made up of an elected Executive Committee (the Council) from amongst the legal fraternity in Zambia.
- The Executive Committee/Council appoints various committees who exercise its functions as outlined in Part II Section 4 of the Act.
- One of these committees is the Legal Practitioners Committee (the LPC).
- The LPC functions cover *inter alia* the issuing of practicing certificates and disciplinary proceedings.

- The Committee deals with complaints of alleged professional misconduct against Legal Practitioners as follows:
- Conflict of interest;
- Poor communication between the Practitioner and his client;
- Failing to account for monies received by the Practitioner on behalf of or from the client;
- Failing to execute or acting contrary to the clients instructions and not taking written instructions from clients causing misunderstanding between Practitioner and client;
- Complaints on alleged unjustified bills for the services rendered not agreed upon by the parties prior to acting upon client's instructions;
- Failure by Practitioner to hand back files to client after withdrawal of instructions;
- Alleged harassment from Practitioners where refund of monies and deposits paid are requested for, when instructions are withdrawn by a client;
- Complaints against Practitioner in respect of alleged unprofessional language used to clients and fellow Practitioners; and
- Complaints on costs awarded and out of pocket expenses.

- The complaints handling procedure is as follows:
 - i. The complainant lodges a formal written complaint by way of an affidavit attaching all relevant documentation in support of the complaint addressed to the Honorary Secretary, or
 - ii. 3 full members of the Association present a signed requisition to the Council that a member is guilty of misconduct and therefore, unfit to remain a member,
 - iii. The matter is heard by the LPC where the erring member is given an opportunity to exculpate or defend him/herself,
 - iv. If there is merit, the LPC may suspend the legal practitioner and/or refer the matter to the LAZ Disciplinary Committee.

LAZ DISCIPLINARY COMMITTEE (DC)

- The DC deals with removal from and restoration to the Roll, and they can make recommendations to the LPC.
- The DC is established under Part IV of the Legal Practitioners Act.
- The DC is made up of:
 - the Attorney General (with the Solicitor General as his alternate);
 - 5 practitioners who are referred to as nominated members because they are nominated by LAZ and appointed by the Minister of Justice

- Section 21 (1) of the LP Act states as follows:

“Any application –

- a) By a practitioner to procure his name to be removed from the Roll; or
- b) By any person to strike the name of a practitioner off the Roll, or to require a practitioner to answer allegations made in an affidavit;

shall be made to and heard by the Disciplinary Committee...”

- An application is only refused where it does not disclose any *prima facie* case.
- If there is a case and the application is heard, the DC may do the following:
 - Admonish the practitioner;
 - Impose a fine or both;
 - Advise the LPC to suspend the practicing license or certificate of the practitioner for a period; or
 - recommend to the Chief Justice that the name of the practitioner be removed from the Roll.

- The practitioner so charged may appeal to the court.
- The court will consider the evidence taken by the DC, hear counsel for both the DC and the practitioner and may decide as follows:
 - To admonish the practitioner;
 - Order to remove or strike the practitioner's name from the Roll;
 - Suspend the practitioner from practice;
 - Order the practitioner to pay a fine; or
 - Exonerate the practitioner.
- The decision will be noted on the Roll.

THE COURTS

- The courts can refer matters to the LPC to consider the misconduct of a practitioner.
- In the case of **Grace Chaila Chima vs Phillip Kafusha Chibundi T/A Chibundi and Company 2015/HPC/0336**, the erring practitioner had breached certain rules of the court and misconducted himself. The Judge in his ruling *inter alia* referred the ruling the LAZ to investigate the breaches of the rules.

RESTORATION TO THE BAR

- According to Section 33 of the LP Act, the Chief Justice may, by her own initiative or by recommendation of the DC, order the registrar to replace on the Roll the name of a practitioner whose name has been removed or struck off the Roll.

CONCLUSION

- In my presentation today, I have covered how the legal profession is regulated by both the LAZ and its committees and the partnership in the process of regulating the profession that LAZ has with the Judiciary and the MOJ.
- For me, the best practice in regulating the profession begins with the educational and training institutions. A half baked lawyer is a problem and a liability, not only on him/herself but the public at large

- As stated earlier, without proper education both at undergraduate and at ZIALE, misconduct amongst lawyers is rife.
- Imparting the importance of the Rule of Law to students ensures that trainee lawyers fully understand their obligation to the profession and are able to execute their duties accordingly.
- Any jurisdiction which does not educate its lawyers adequately will be unable to regulate itself and is more likely to have breaches of fundamental human and constitutional rights that govern not only the profession but the entire population of the country.