



RESEARCH REPORT

ASSESSMENT OF LEARNING CONDITIONS OF CANDIDATE ATTORNEYS DURING A TRANSFORMATION ATTEMPT

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EXECUTIVE SUMMARY

Introduction

Candidate attorneys play a significant role in the development and functioning of law firms in South Africa. This study shows that candidate attorneys have a range of responsibilities in terms of assisting law firms to execute their legal functions. The study focuses on candidate attorneys with a particular reference to their learning conditions and conditions of employment in private law firms. In essence, the broader aim of the study is to assess the learning conditions of candidate attorneys in private law firms, assess the conditions of employment in which candidate attorneys are serving their candidacy and to assess how transformation is affecting their learning conditions.

Previous research indicates that there is a slow transformation in the legal profession, particularly with regards to the learning and employment conditions of candidate attorneys. The current study sought to contribute to the existing body of knowledge by expanding on previous studies and by delving into the conditions of candidate attorneys in private law firms.

Research methodology

The study utilized the qualitative method to collect data.

Findings of the study

The findings of the current study show that candidate attorneys experience numerous challenges with regards to inequality, discrimination based on gender and favoritism, among others. These corroborate findings from previous studies that focused on transformation in the law profession. Moreover, the current study also reflect negatively on the legal profession, particularly private law firms which are perceived by other legal researchers as organisations that are incapable of prioritising and advancing transformation in the legal profession.

Despite the findings on the challenges that candidate attorneys experience in private law firms. The study showed that other private law firms do recognize the importance of transformation and strive to improve learning conditions of candidate attorneys. This included, amongst other, providing valuable knowledge and exposing candidate attorneys to numerous specialisations in the legal profession, providing in-house libraries and preparing candidates for board exams and dismantling inequality.

Recommendations

The study current outlines recommendations intended to effectively improve the learning conditions of candidate attorneys and to address transformational challenges. The study further proposes, *inter alia*, the establishment of a council for candidate attorneys. The proposed council would serve as a platform to enable candidate attorneys to deliberate about work-related challenges. Additionally, the study recommends that law firms should adopt transformation policies as a model of progressively advancing change in the legal profession.

List of acronyms

Acronym	Description
HRDS	Human Resources Development Strategy
LASA	Legal Aid South Africa
LLB (degree)	Bachelor of Laws (degree)
NSDS III	National Skills Development Strategy
PVT	Practical Vocational Training
SASSETA	Safety and Security Sector Education and Training Authority
SSP	Sector Skills Plan

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1. INTRODUCTION AND BACKGROUND

1.1 Introduction

The South African legal profession continues to face the challenge of meaningful transformation¹. There has been a range of transformational issues looming in the legal profession since the dawn of democracy post 1994. According to the 2013 South African Legal Fellows Network survey, the majority of South Africa's corporate law firms are dominated by white men, with a marked absence of diversity on the basis of race, gender and other marginalising characteristics². Moreover, there are racial and gender imbalances in private law firms in terms of professionals that occupy senior positions. Reports indicate that the majority of executives in private law firms are white male³. These transformational challenges contribute to a circle of skewedness in terms of race and gender and continue to impede transformation in the legal profession.

1.2 Background

In the first ten years of democracy (i.e. from 1994 to 2004), the legal profession, like a number of other professions, had to grapple with the issue of transformation and adapt to the new demands of a democratic dispensation⁴. The gazetting of the Legal Practice Bill of 2012 (now the Legal Practice Act of 2014) was but one of the attempts by the South African government to transform the legal profession. The transformation of the judicial and legal services sectors is therefore part of the larger process of nation-building that has been ushered in by the Constitution. At the core of transformation is the restructuring and re-orientation of institutions of the law institutions to serve the interests of a constitutional democracy and to effectively contribute to the delivery better legal services to all the South Africans.

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Centre for Applied Legal Studies. (2014). Transformation of the legal profession. Johannesburg: Foundation for Human Rights

² Ibid

³ Ibid

⁴ Department of Justice and Constitutional Development. 2015. A Framework for the Transformation of the State Legal Service: Opening the Doors to Equal and Affordable Justice for All. Do & CJ. South Africa: Pretoria

The transformation of the administration of justice, which includes the restructuring of legal services forms part of the broader societal transformation agenda aimed at changing institutions of governance and society. This process involves aligning all aspects of governance with South Africa's post-apartheid Constitution and with regards to transforming public and private entities, including private law firms so that they are reflective of South Africa's democratic values.

Candidate attorneys (i.e. recent law graduates that serve articles) are central to the development and transformation of the judicial system. The current study recognises that the advancement of transformation in the legal profession in South Africa begins with addressing the challenges of the legal professional from an entry level. Hence, the current study sought to assess learning conditions of candidate attorneys at private law firms, to examine their conditions of employment and also assess the effects of transformation on the development of candidate attorneys at private law firms.

1.3 Problem statement

The learning conditions of candidate attorneys in private law firms are characterised by transformational challenges. Evidence shows that candidate attorneys at private law firms are still exposed to challenges which include amongst others, gender and racial inequality, favouritism and exploitation. These challenges impede transformation in private law firms and in the legal profession at large. Most importantly, such transformational challenges have been reported to affect the learning conditions of candidate attorneys negatively.

1.4 Research aim

The main aim of the study was to explore the learning of candidate attorneys at private law firms during a transformation of the legal profession. The study sought to gather the opinions of the candidate attorneys on how transformation has affected their learning conditions. The study also sought to assess the learning conditions and examine conditions of employment for candidate attorneys at private law firms.

1.5 Research objectives

The current study sought to:

- Assess learning conditions of candidate attorneys at private law firms,
- Examine conditions of employment for candidate attorneys at private law firms, and
- Assess the effects of transformation on the development of candidate attorneys at private law firms.

1.6 Research questions

The study sought to address the following research questions:

- What challenges confront candidate attorneys during their training in private law firms?
- How has transformation in private law firms affected the learning conditions of candidate attorneys?

1.7 Summary

The current section (section 1) provided a detailed introduction and background on transformation of the legal profession. The section further outlined the problem statement underpinning the study, the research aim, objectives of the study and the research questions guiding the study. The next section outlines the literature review.

2. LITERATURE REVIEW

2.1 Introduction

A review of literature is essential to critique and identify what has been previously written by scholars to understand the substance of learning conditions at private law firms during a transformation attempt. A literature review provides an insight on a particular topic and a greater understanding of the phenomenon at hand⁵. In the current study, the review literature was therefore used as a point of departure that guided the formulation of the research questions and the analysis of data. The current section will explore the learning conditions of candidate attorneys at private law firms during the transformation of the legal profession in South Africa. In particular, the section discusses, definition of key concepts, transformation in the workplace, the structure and the role of the judiciary in South Africa, transformation of the legal profession in South Africa, the development of candidate attorneys in relation to training and transformational challenges affecting candidate attorneys.

2.2 Definition of key concepts

2.2.1 Transformation

Transformation is a profound and radical change that orients an organisation in a new direction and takes it to a different levels of effectiveness. Hence, in this study, transformation refers to an open, bias-free and non-hierarchical profession which sees the removal of prejudices so that talent can flourish, unhindered by the assumptions that are often linked to the characteristics of race, sex, gender and sexual orientation, among others⁶. In this study, transformation is assessed as it pertains to the learning conditions of candidate attorneys in private law firms.

⁵ Leedy, P. (1989). *Practical Research: Planning and design*. New York: Macmillan

⁶ Centre for Applied Legal Studies. (2014). *Transformation of the legal profession*. Johannesburg: Foundation for Human Rights.

2.2.2 Candidate attorneys

The Legal Profession Act (Act no. 28 of 2014) defines candidate attorneys as persons undergoing practical vocational training (PVT) with a view to be admitted and enrolled as attorneys. Essentially, a candidate attorney is considered to be persons who engage a private law firm or a public legal entity on a 24 months' contractual agreement to serve articles of clerkship which are equivalent to PVT. Prior commencing with PVT or articles of clerkship, candidate attorneys must have satisfied all the requirements of an LLB degree or an equivalent degree. Hence, in this study candidate attorneys are those individuals undergoing a PVT or serving articles of clerkship in private law firms.

Furthermore, the Legal Practice Act outlines changes in terms of making reference of candidate attorneys. Under the Act, candidate attorneys are referred to as candidate legal practitioners, that is, persons undergoing practical vocational training, either as a candidate attorney or as a pupil. In this study, candidate attorneys and candidate legal practitioners are such persons undergoing PVT in private law firms.

2.2.3 Private law firms

Private law firms are defined as private legal entities that render legal services to clients. The services include and are not limited to advising clients on legal matters, representing clients (Individuals or corporates) in court on legal matters and other consultations which require legal expertise or services.

2.3 Transformation in the workplace

Transformation in the workplace is defined by the *Centre for Applied Legal Studies* as an open, bias-free and non-hierarchical profession which sees the removal of prejudices so that talent can flourish, unhindered by the assumptions that are often linked to the characteristics of race, sex, gender and sexual orientation, among others⁷.

⁷ Centre for Applied Legal Studies. (2014). Transformation of the legal profession. Johannesburg: Foundation for Human Rights

Transformation essentially serves as a base for organisational growth and success. The work that institutions or organisations need to accomplish as guided by their mandate is in most instances characteristically unstructured and complex⁸. Hence, there is a transformational need for organisations to provide workplaces that are inclusive and which promote representability in terms of expertise, race and gender as this will ensure that the complexity and workload is attended to from different perspectives.

In terms of the law profession, the *Centre for Applied Legal Studies* posits that transformation is not merely the act of facilitating appointment to less qualified black lawyers to senior positions but, rather, is it about the removal of barriers that impede talented lawyers from opportunities to develop and gain skills, experience and knowledge within the legal profession. Furthermore, the *Centre for Applied Legal Studies* is of the conviction that transformation in the law profession should incorporate better working conditions, race and gender equality as this will enhance, not only the image of the organisation but also the efficiency of the organisation.

Transformation is therefore recognised as a vital process because it has the potential to yield positive employment results and thereby providing young skilled professionals the opportunity to excel in their field of work. In terms of the legal profession, transformation is essential because it will unveil new skills and talent into the profession, and this may ultimately contribute to an effective legal system which is responsive to the industry needs.

⁸ Red Thread. (2019, February 11). What is a workplace transformation and why is it important? Retrieved from Red Thread: <https://www.red-thread.com/blog/workplace-transformation/>

2.4 Judiciary of South Africa

The Judiciary of South Africa comprises of magistrates and judges who sit in the courts of South Africa. The judiciary is an independent arm of state, subject to the Constitution of South Africa and the laws of the country. The primary mandate of the judiciary is to oversee and interpret the law of South Africa in accordance with laws established by the South African parliament⁹. The judiciary of South Africa consists of the Chief Justice, the deputy chief justice and Constitutional Court judges, the president, the deputy president and judges of the Supreme Court of Appeal. Other members of the judiciary include the judge president, deputy judge president, judges of the High Courts, regional and district magistrates of the Magistrate's Courts¹⁰. In South Africa, the judiciary has an important role of safe guarding and protecting the Constitution and its values and to promote democracy for the betterment of the lives of the citizenry¹¹.

2.5 The transformation of the legal profession in South Africa

The legal profession must be viewed holistically in order to understand transformation and the conditions of candidate attorneys in private law firms. There has been an ongoing debate about the transformation of the legal profession in South Africa. The South African legal profession continues to face challenges relating to transformation. A number of positions in the legal profession, from senior partners of law firms, to senior counsel at the Bar counsel of South Africa and members of the judiciary remain largely homogeneous post 1994¹².

Legal researchers claim that the legal profession in South Africa is skewed in terms of human resource. According to researchers, the South African legal profession still caters largely for white legal professionals than black professionals in terms of

⁹ Constitution of the Republic of South Africa NO. 108 of 1996. (1996). Statutes of the Republic of the South Africa Constitutional law. Parliament of the Republic of South Africa.

¹⁰ Ibid

¹¹ The Department of Justice and Constitutional Development. (2012). Role of Judiciary in the developmental South African state. Cape Town: Parliamentary Monitoring Group.

¹² Centre for Applied Legal Studies. (2014). Transformation of the legal profession. Johannesburg: Foundation for Human Rights.

employment¹³. Moreover, most law societies remain white and male dominated¹⁴. As a result, more black professionals, particularly candidate attorneys have limited economic opportunities to practice as lawyers. To a great extent, this is reflective of the pre-democracy employment patterns in the legal fraternity.

There has been a general outcry within the legal profession that previously disadvantaged individuals are not accommodated by the profession¹⁵. Reports reveal that black candidate attorneys encounter multiple challenges in relation to transformation in law firms in South Africa. The challenges include amongst other things, low wages, lack of gender and race representability and limited exposure to legal procedures¹⁶.

Candidate attorneys still find it difficult to enrol in various law societies due to the prevailing old racial preferences¹⁷. Additionally, black candidate attorneys find it more difficult to be admitted as attorneys than their white counterparts, this translates into racialized patterns of employment in the legal profession¹⁸. Moreover, these factors contribute to a slow transformation in the legal profession and affect the efficiency of the legal system to serve the citizenry.

Women, particularly black women are still marginalised in the legal profession. According to (Pritt, 2002), females are still subjected to gender stereotypes and prejudices that marginalises them from practicing the law profession. The *Centre for Applied Legal Studies* discovered that gender tends to be seen as less important in the process of transformation than race¹⁹. This creates limited opportunities for women and further creates gender imbalances in the law profession. Academics argue that

¹³ Pritt, L. R. (2002). No black names on the letter head? Efficient discrimination and the South African legal profession. *Michigan Journal of International Law*, 545-675.

¹⁴ Nzimande, B. (2018, January 18). Transformation of legal fraternity the key challenge. Retrieved from Politicsweb: <https://www.politicsweb.co.za/documents/transformation-of-legal-fraternity-the-key-challen>

¹⁵ Department of Justice and Constitutional Development. (2014). Government Gazette. Pretoria: The Presidency.

¹⁶ Ibid

¹⁷ Nzimande, B. (2018, January 18). Transformation of legal fraternity the key challenge. Retrieved from Politicsweb: <https://www.politicsweb.co.za/documents/transformation-of-legal-fraternity-the-key-challen>

¹⁸ Ibid

¹⁹ Centre for Applied Legal Studies. (2014). Transformation of the legal profession. Johannesburg: Foundation for Human Rights.

male and female candidates in the law profession must be equalised as this will ensure a well-functioning, transformed judiciary and the justice system²⁰.

Low levels of income are another challenge facing candidate attorneys in their training. Candidate attorneys are absorbed into small law firms where they receive minimal remuneration, as a result they struggle to sustain themselves during their training. This makes it difficult for law firms to retain the candidate attorneys²¹, and ultimately disrupt their training.

Incidents of sexual harassment have been reported in the law profession. According to the reports on transformation in the law profession by the *Centre for Applied Legal Studies* and Department of Trade and Industry, women are oppressed in multiple ways and this includes amongst other things reports on sexual harassment such as insults which make reference to women's physicality²²²³. Sexual harassment impedes advancement in the legal profession and takes away the dignity and confidence of the woman in the law profession. A report supporting claims of sexual harassment also suggest that issues of sexual harassment in the workplace of junior women legal practitioners and candidate attorneys are not being dealt with openly and transparently, and that there is a fear of victimization for those who report incidents of sexual harassment²⁴, such incidents discourage young women with potential from remaining in the law profession.

There is a general consensus among legal professionals that there is a slow transformation in the legal profession in terms of gender equality, race, admission, remuneration and other issues relating to the law training. Researchers attribute the lack of transformation in the legal profession to lack of willingness from legal professionals and civil society to commit to social justice work (i.e. prioritising

²⁰Nzimande, B. (2018, January 18). Transformation of legal fraternity the key challenge. Retrieved from Politicsweb: <https://www.politicsweb.co.za/documents/transformation-of-legal-fraternity-the-key-challen>

²¹ Firms, P. H. (2015). Transformation report for 2015. East London: Drake Flemmer & Orsmond Attorneys.
²²

Centre for Applied Legal Studies. (2014). Transformation of the legal profession. Johannesburg: Foundation for Human Rights.

²³ Department of Trade and Industry. (2018). Discussion document on gender transformation in the judiciary and the legal sector. Government Gazette.

²⁴ Ibid

transformation in public and private organisations)²⁵. The Department of Justice and Constitutional Development indicates that transformation is important in the legal profession, and further suggests that the goal of transformation in South Africa should be to have an effective legal system that represents the diversity of the South African society across all the levels of the profession²⁶.

The legal profession plays an important role in serving the people of South Africa across all the structures of the society, hence, a need to have a transformed justice system is warranted.

2.6 Understanding the development of candidate attorneys in South Africa

In order to be admitted as an attorney in South Africa, Bachelor of Laws graduates are required to serve articles of clerkship. Articles of clerkship are a work experiential training intervention for individuals that seek practical exposure to the practice of law²⁷. This training is obtained under the guidance or supervision of a principal attorney at the law firm where the articles are served. “LLB graduates will not emerge from university as ready-made legal practitioners”²⁸. According to the report, law graduates should be able to demonstrate an acceptable level of generic workplace skills which they can apply in the workplace as candidate attorneys²⁹. The candidate attorney’s programme is designed to equip law graduates with the necessary workplace skills so that they can become competent members of the legal profession.

The candidate attorney’s programme is extensive and involves work experiential learning that seeks to hone the necessary skills of candidate attorneys and prepare them for the workplace as attorneys. The training of candidate attorneys involves the following: proper consultations with clients (this includes an adequate way of recording

²⁵ Phama, W., & Nase, J. (2015, November 5). Transformation of the legal profession: To betray or fulfil the mission? Retrieved from Daily Maverick : <https://www.dailymaverick.co.za/opinionista/2015-11-05-transformation-of-the-legal-profession-to-betray-or-fulfill-the-mission/>

²⁶ Department of Justice and Constitutional Development. (2014). Government gazette. Pretoria: The presidency.

²⁷ Fund, A. F. (2015). The value of mentoring candidate attorneys. De Rebus. Law Society of South Africa.

²⁸ Hawker, D. (2014, May 31). Law degree crisis: Five-year degree proposed. Retrieved from Enca.com: <http://www.enca.com/south-africa/law-degree-crisis>

²⁹ Ibid

client's instructions and management of client's expectations), advanced legal research techniques, file arrangement and management, briefing of counsel, how to conduct a trial properly, court etiquette, how to correspond properly with opponents, ethics required in legal practice, how to run a practice effectively, how to bill a client properly and preparing for the admission examination³⁰.

These tasks are essential to the development of candidate attorneys and affords them with a necessary foundation to becoming admitted as attorneys. Hence, law firms should empower candidate attorneys and expose them to all the important exercises of the legal profession as this is vital for their career development³¹.

2.7 Measures to transform the legal profession in South Africa

2.7.1 The Legal Practice Act

In response to the multi-layered challenges of transformation facing the South African legal profession, particularly in relation to candidate attorneys. The Department of Justice and Constitutional Development, through the Presidency, gazetted the Legal Practice Act of 2014 which sought to provide a legislative framework for the transformation and restructuring of the legal profession in line with constitutional imperatives so as to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of the Republic. Among other things, the Act further sought to provide for the establishment, powers and functions of a single South African Legal Practice Council and Provincial Councils in order to regulate the affairs of legal practitioners and to set norms and standards, and to provide for the admission and enrolment of legal practitioners³².

The Legal Practise Act of 2014 essentially serves as a strategic framework which seeks to promote accessibility into the legal profession, to pave a way for candidate attorneys in terms of accessing quality legal training as means to get admission.

³⁰ Marumuagae, C. (2014, July). The role of candidate attorneys in the legal profession. Retrieved from De Rebus: <http://www.saflii.org/za/journals/DEREBUS/2014/136.html>

³¹ Ibid

³² Department of Justice and Constitutional Development. (2014). Government gazette. Pretoria: The presidency.

Additionally, the Act serves to restructure the legal profession across all the specialities so that there's a broader representability, redress and efficiency in terms of improving the training of candidate attorneys.

2.7.2 Research studies intended to monitor the career paths of black law graduates

In addition to the above, and as a means to transform the legal profession, the Department of Justice and Constitutional Development should initiate research projects to monitor the career paths of black graduates to determine their conditions in their training as law professionals³³. Moreover, the novice law professionals should encourage the department to take responsibility for all forms of discrimination emerging in the profession³⁴.

2.7.3 Dealing with gender imbalance in the legal profession

Leadership positions in the legal profession are occupied mostly by males and succession planning seems to exclude women from occupying these positions. The Department of Trade and Industry proposes that there should be specified quotas that reflects gender equity and that there should be mentorship programmes facilitated to women by other leading woman law professionals³⁵. These proposals are important as they will make a provision for women professionals to navigate the law profession.

2.7.4 Transformation in the legal profession

The challenges found in the law profession in terms of transformation, particularly as they apply to candidate attorneys emanate from different factors and cannot be addressed using a single method. Hence The Department of Trade and Industry further proposes that legal professional stakeholders should initiate a national summit

³³ Centre for Applied Legal Studies. (2014). Transformation of the legal profession. Johannesburg: Foundation for Human Rights.

³⁴ Ibid

³⁵ Ibid

as an appropriate forum to further interrogate the challenges that affect candidate attorneys in the workplace³⁶.

2.8 Role of SASSETA in the development of candidate attorneys

The Safety and Security Sector Education and Training Authority (SASSETA) is a public entity established to address skills development through provision of quality learning in the safety and security sector by the implementation of learnerships and disbursement of grants.

SASSETA is mandated by the Skills Development Act (Act no. 97 of 1998). The same Act empowers the SETA to implement and support the skills aligned to the safety and security sector. As an entity, SASSETA has stakeholder relations with private and public institutions including the legal services subsector. In terms of law firms, the SETA offers support to through the disbursement of discretionary funds to encourage the law firms to offer PVT to candidate attorneys. This is effected in order to contribute towards the achievement of the objectives of the Human Resources Development Strategy (HRDS), the National Skills Development Strategy (NSDSIII) and the Sector Skills Plan (SSP) of the SETA.

2.9 Conclusion

Transformation in the South African legal profession is important as it would enable more opportunities for professional growth and opportunities for young legal professionals. Additionally, transformation, as envisaged by Legal Practice Act of 2014 is necessary as it will afford and promote gender and race equity in the legal profession. Moreover, the working conditions of candidate attorneys may improve in terms of equity, remuneration and more exposure to the legal procedures. This may contribute to an efficient, unbiased and responsive legal system in South Africa.

³⁶ Ibid

3. RESEARCH DESIGN AND METHODOLOGY

3.1 Introduction

The purpose of this section is to outline the research design that was utilized to execute the current study. The section also discusses the units of analysis, sampling, data collection and analysis, ethical considerations, as well as the limitations of the study.

3.2 Qualitative research design

The present study was framed within a qualitative research design. Qualitative research involves exploring and understanding the meaning that individuals or groups ascribe to a particular phenomenon³⁷. This takes place in a form of an interactive process between the researcher and the participants. In qualitative research, the researcher is usually present in the intensive story sharing experience with participants.

The present study sought to explore the learning conditions of candidate attorneys in private law firms during a transformation attempt. Therefore, an exploratory research approach was used in order to elicit information from the participants. An explorative research approach seeks to explore the research questions at hand and helps to give a better understanding of the problem³⁸.

There are limited studies focusing on the learning conditions of candidate attorneys in private law firms during a transformation attempt in South Africa. Hence, the use of exploratory research approach in this research was warranted. According to *The Business Dictionary*, exploratory research approach is important in research studies where small amounts of information exist about the research topic³⁹.

³⁷ Creswell, J. W. (2009) Research design: Qualitative, quantitative and mixed method approaches: London: Sage Publications.

³⁸ Bhati, A. (2019, February 19). Exploratory research: Definition, methods, types, and examples. Retrieved from Question Pro: <https://www.questionpro.com/blog/exploratory-research/>

³⁹ Business Dictionary. (2019, January 19). Exploratory research. Retrieved from Business dictionary: <http://www.businessdictionary.com/definition/exploratory-research.html>

Furthermore, the study used focus groups and one-on-one interviews to gather information, thus the use of exploratory research approach was necessary since the approach uses a variety of methods such as interviews and group discussions to elicit information⁴⁰.

3.3 Unit of analysis

Unit of analysis is the most basic element of a research project, it is the subject of the study about which an analyst may generalise⁴¹. The unit of analysis helps the researcher to define what is being studied and also to inform the recommendations of the study⁴². In this study the unit of analysis were candidate attorneys, principal attorneys at private law firms and personnel from SASSETA (Safety and Security Sector Education and Training Authority).

3.4 Sample and sample type

The current study sought to assess the learning conditions of candidate attorneys during a transformation attempt in private law firms. Hence, the sample for the study was obtained from two private law firms situated in Pretoria and Johannesburg respectively. These two private law firms employed candidate attorneys for serving articles. Other participants were sourced from SASSETA. SASSETA facilitates opportunities of skills development for all South Africans in the safety and security sector including the legal services sub-sector with which SASSETA has stakeholders. In terms of reaching out to participants, purposive sampling method was used. Purposive sampling is a subjective sampling method used by researchers when they want to produce a sample that can be logically assumed to be representative of the population⁴³. Purposive sampling was considered appropriate for this study because

⁴⁰ Ibid

⁴¹ Lewis-Beck, M. S., Bryman, A., & Futing, L. (2004). *The SAGE encyclopaedia of social science research methods*. Thousand Oaks, CA: Sage Publications, Inc.

⁴² Higher Education Professor . (2018, May 14). What is unit of analysis and why is it important for qualitative dissertations. Retrieved from Professor Higher Education: <http://higheredprofessor.com/2018/05/14/what-is-unit-of-analysis-and-why-is-it-important-for-qualitative-dissertations>

⁴³ Lavrakas, J (2008). Convenience sampling. <http://methods.sagepub.com/reference/encyclopedia-of-survey-research-methods/n105.xml>

the selected organisations were assumed by the researcher to be representatives of the legal profession since they practice law and offer training to candidate attorneys. There is a variety of purposive sampling techniques⁴⁴. In this study, purposive maximum variation sampling was used. This method is used to capture a wide range of perspectives relating to a particular topic that the researcher is interested in, it is a search for variation in perspectives which may range from ones' experience of organisational conditions to incidental situations⁴⁵⁴⁶. The current study sought to gather a variety of perspectives from different candidate attorneys and principal attorneys about organisational conditions relating to transformation and therefore, purposive maximum sampling was considered useful for the study.

3.5 Data collection

The data were collected through one-on-one semi-structured interviews with principal attorneys. Semi-structured interviews afforded the interviewer the opportunity to probe further and explore informative themes that emerged during the discussions. Additionally, data were collected through focus group discussions with candidate attorneys. In this study, focus group discussions provided the interviewer with a broader range of perspectives from different participants, moreover, the focus groups offered the interviewer the opportunity to seek clarification on themes that emerged during the discussions. All the interview discussions were audio-recorded and transcribed verbatim⁴⁷. This was followed by the data analysis phase.

3.6 Data analysis

Data analysis was carried out using content analysis method. Content analysis is a method of analysing data which involves a subjective interpretation of the content of text data through a process of coding and identifying themes or patterns⁴⁸. The use of

⁴⁴ Ptton, M. (1990). *Qualitative evaluation and research methods*. Beverly Hills, CA: Sage.

⁴⁵ Lund Research Ltd. (2012, February 19). Purposive sampling. Retrieved from Laerd Dissertation: <http://dissertation.laerd.com/purposive-sampling.php#maximum-variation-sampling>

⁴⁶ Ptton, M. (1990). *Qualitative evaluation and research methods*. Beverly Hills, CA: Sage.

⁴⁷ Bailey, J. (2008). First steps in qualitative data analysis: transcribing. *Family practice*, 27 (2). 127-121. <https://doi.org/10.1093/fampra/cmn003>

⁴⁸ Shanon, E & Hsieh, H. (2005). Three approaches to qualitative content analysis. *Quality Health Research*, 15 (9). 1277-88.

content analysis enabled the researcher to take a volume of qualitative material and identify consistencies and meanings⁴⁹. That is, content analysis was used to break down the transcribed data systematically into codes, categories and themes in order to generate meaning.

3.7 Ethical considerations

3.7.1 Informed consent

Prior data collection, a permission to conduct the study was sought in writing from the organisations that participated in study. Additionally, before data collection, the participants were made aware of what the study entail and what the process of participating in the study will involve. Participants were also made aware, through an informed consent letter, that participating in this study is voluntary and that they may refuse or withdraw their consent to participate at any time during the course of the study should they wish to do so⁵⁰. Moreover, the participants were informed that there will be no penalty for withdrawing their consent.

3.7.2 Protection of identity

In order to protect the identity of the participants and the organisations that took part in this study, the SASSETA research department took the onus not to disclose the participants nor the organisations that took part in the study⁵¹. Additionally, all the information gathered and material used to collect the data are kept in strict confidence at the SETA in the research department. Each member of the research team has signed a confidentiality clause which bind them from not disclosing confidential material and to protect the research participants.

3.8 Limitations of the study

As with most research studies, this study also has limitations.

⁴⁹ Patton, M. Q. (2002) *Qualitative research and evaluation methods*. CA: Sage: Thousand Oaks

⁵⁰ Willig, C. (2001). *Introducing qualitative research in psychology*. Philadelphia: Open University Press.

⁵¹ Ibid

3.8.1 Data collection method

Data was sourced from two private law firms, one based in Pretoria and one based in Johannesburg. Hence, the findings of the study cannot be considered to be conclusive and cannot be generalised to all private law firms. This implies that findings of the study may only be interpreted in the context in which the study was carried out.

Furthermore, a focus group interview was used to collect data from candidate attorneys, hence, other participants may have been reluctant to share some information during the interview session out of fear. This may be a limitation in that participants may have distorted or omitted some information.

3.8.2 Reluctance to participate in the study

Some private law firms were reluctant to participate and there were also challenges with regards to obtaining permission to conduct the study. As a result, this contributed to a limited sampling and participation.

4. PRESENTATION AND DISCUSSION OF THE FINDINGS

4.1 Introduction

It is worth noting that the current study was not conceptualised to yield conclusive evidence regarding transformation in the legal profession. Rather, to test the assumptions on transformation in the legal profession and to contribute to the phenomenon of transformation in the legal profession by means of gathering insight. Section 4 focuses on presentation of the findings of the current study

4.2 Presentation of the findings of the study

The findings of the current study will be presented according to the following themes as guided by the research questions:

- The role SASSETA: Candidate Attorney's initiative,
- Challenges experienced by SASSETA in the implementation the candidate attorney's initiative,
- Learning conditions of candidate attorneys,
- *Challenges experienced by principal attorneys,*
- *Transformation in the legal profession: Lack of support,*
- *Positive aspects of candidacy, and*
- *Challenges of candidacy.*

4.2.1 The role SASSETA: Candidate Attorney's initiative

The first theme explored the contribution of SASSETA to the development of candidate attorneys. The participant from the SETA shared that the entity contributes to the development of candidate attorneys by disbursing grants and ensuring weather candidate receive their monthly stipends. This is effected by a tripartite contractual agreement between the candidate attorney, the nominated law firm and SASSETA. Additionally, SASSETA monitors the implementation of the internships in order to ensure that they are in line with legislation.

Moreover, SASSETA carries out monthly audits at private law firms. “We have a frequent contact with law firms on month to month basis and quarterly site visits by the Monitoring and Evaluations department”. The participant indicated that SASSETA has a close working relationship with private law firms, wherein the SETA assess and evaluates the working conditions of candidate attorneys to ensure that they are conducive for learning. In addition to this, SASSETA evaluates the learning of candidate attorneys by requiring candidate attorneys to submit self-assessment reports.

The role of the SETA and its’ relationship with private law firms encompasses a range of responsibilities. The participant outlined that in addition to self-assessment reports submitted by candidate attorneys, SASSETA uses annually and quarterly management report to monitor private law firms that offer training to candidate attorneys. The SETA also monitors the number of candidate attorneys that have entered into the system to serve articles and the number of candidate attorneys that have completed their articles.

4.2.2 Challenges experienced by SASSETA in the implementation the candidate attorney’s initiative

This theme deals with the standard of training, inequality and poor stakeholder relations.

a) Sub-standard training for candidate attorneys

The study established that some law firms do not comply with training requirements. “Not all law firms provide learners with workplace experience”. The participant revealed that some law firms do not provide candidate attorneys with the necessary or required workplace experience. Some candidate attorneys are only limited to doing menial jobs which do not amount to any workplace experience relevant for attorneys.

b) Inequality

It was established that there are disparities in terms of remuneration of candidate attorneys based on race. The study found that black candidate attorneys are paid less than their white counterparts. Black candidate attorneys only receive a stipend from SASSETA, whereas their counterparts get the stipend from SASSETA and a top-up salary from the private law firm. "This create problems between us and the law firms", said the respondent. The participant further indicated that black candidate attorneys are given an indifferent treatment in the workplace whereas white candidate attorneys are given a preferential treatment. This leads black candidate attorneys to dropout from their candidacy. "We have received reports informing us about dropouts due to working environments not being conducive".

It was also found that "there is a problem of racial inclusivity". The participant indicated that the legal profession is white dominated and that this is due to the previous dispensation patterns of employment in the legal profession. Hence, this skewed patterns of employment in race contribute to a circle of inequality.

c) Poor stakeholder relations

The current study established that there are no stakeholder forums between SASSETA, employers, law societies and other stakeholders to discuss the challenges facing candidate attorneys. Therefore, there are no official platforms to discuss aspects that candidate attorneys have to be trained on or template of activities that need to be covered during the course of the internship. This makes it difficult for SASSETA to address challenges facing candidate attorneys, as and when there are discovered or brought to the attention of the SETA.

4.2.3 Learning conditions of candidate attorneys

This theme is divided into the roles of and duties allocated candidate attorneys.

a) Roles of candidate attorneys

The study enquired about the role of candidate attorneys from the principal attorneys in order to understand the functions of former. According to principal attorneys, candidate attorneys have an overarching role and play an essential function in most law firms. The study established that candidate attorneys perform all the functions of an attorney, however, they do so under the supervision of principals. For example, one principal attorney posited that “candidate attorneys appear in magistrates courts”. In addition to this, the principal attorney conjectured that “you just channel them [candidate attorneys] into what attorneys are doing on daily basis” while simultaneously supervising their work.

Supervision of candidate attorneys is the important part in the development of attorneys because the principal attorney assists, guides and verify the work of candidate attorney in order to ensure that all the necessary aspects of the work are done ethically and procedurally. One principal posited that candidate attorneys are essential to the growth and development of law firms because post their candidacy, some [candidate attorneys] remain at the firms and at later stage practise as advocates.

b) Duties allocated to candidate attorneys

Law firms specialise in different matters or cases. The duties of candidate attorneys are determined by the principal attorney and the type of work that a designated law firm does. Principal attorneys shared that the duties of candidate attorneys involve filing legal documents, consultation with clients, counsels and preparing cases. Other duties include drafting of client’s statements and other legal documents.

4.2.4 Challenges experienced by principal attorneys

This themes focuses on the work ethic of candidate attorneys, inefficiency and the skills gap.

a) The work ethic of candidate attorneys

The current study explored the challenges that principal attorneys experience when working with candidate attorneys. One respondent indicated that: *“Well there is quite a few [challenges] that I can share with you...you know...you experience your usual problems of employer employee”*.

A participant [principal attorney] expressed particular concerns with regards to time management and absconding from work by some candidate attorneys. Based on their experience in working with candidate attorneys, the participant revealed that some candidate attorneys are constantly late for work and that they also tend to develop a habit of absconding from work.

It was further mentioned that: *“Candidate attorneys most of the time are young people and young people with no experience somehow tend to show you glimpses of irresponsible behaviour”*. The participant detailed that some candidate attorneys do not adhere to the rules of the workplace and that they come to work not looking presentable. For example, a candidate attorney may come to work dressed in casual clothing.

b) Inefficiency

“Yah well sometimes you are lucky you get a candidate attorney who has initiative, sometimes you find characters that always wanting to be pushed you know”. One contributor indicated that it is very difficult to find candidate attorneys that are efficient in terms of work delivery. *“They are not as firm and hard on deadlines as we were”*.

The participant shared that some candidate attorneys are very sloppy, do not take the initiative and have a tendency of postponing tasks. Furthermore, the participant shared that some do not take the initiative because they always wait to be told what to do and they forget to do some of tasks dedicated for them. *“People are less serious these days man you know....and I think is because they are more focused on enjoying the freedoms that we have beyond the limit rather than putting emphasis on discipline”*.

The participant mentioned that some candidate attorneys do not take their work seriously and that they do not put effort in their work.

c) Skills gap

Candidate attorneys are not a homogenous where legal skills sets are concerned. The study established that there is a noticeable skills gaps among the candidates. One principal attorney who works in the real estate department shared that “candidate attorneys have insufficient amount of practical knowledge to grasp what the real estate department does and what is required of them [candidate attorneys]”. According to the principal, insufficient knowledge could be attributed to lack of exposure to other field of law at university and this creates a “problem”.

Furthermore, the principal posits that the problem lies in the type of training that candidate attorneys receive at university. According to the principal, there is a gap between the university training and workplace practical training. Hence, the university does not prepare candidate attorneys for work based training.

4.2.5 Transformation in the legal profession: Lack of support

“As much as government is preaching transformation, there is a problem in that the very same government departments are killing small businesses and small black law firms”, said a black senior partner in a law firm. Most successful law firms are white, hence, there is a need to support and uplift emerging black law firms as a means of advancing transformation in the law profession.

A participant stressed that government departments slow the process of transformation in that they do not support black law firms. The participant mentioned that black law firms are not taken serious by the government. “A certain government department has been owing my firm a substantial amount of money for more than a year and they don’t seem to bother paying us”. According to the same respondent, government departments make it difficult for small law firms to thrive because of non-payment of their invoices. This affects the viability of law firms. Additionally, this affects

the intake of candidate attorneys and in turn contribute to lack of transformation as a result of the law firm's inability to train candidate attorneys.

4.2.6 Learning conditions of candidate attorneys

The current study explored the insights and perspectives of candidate attorneys about their learning conditions, these included an inquiry about their perceived roles, duties and transformational issues in the workplace.

a) The role of candidate attorneys

Candidate attorneys mentioned that their roles differ and are mostly prescribed by their principal attorneys. For example, one participant [candidate attorney] indicated that they model and carry out functions of a principal attorney, but under instruction or supervision of the latter. Moreover, the role of a candidate attorney is that of a learner in respective law firms.

b) Duties of candidate attorneys

"I do whatever that they say I must do". The duties of candidate attorneys vary in terms of scope. One participant indicated that their role is to draft, serve and file pleadings. In addition, the respondent also indicated that their duties include setting matters down, consulting with clients and advocates. "Basically I do everything that a lawyer does, it is only when it comes to the question of a signature that I cannot put my signature on professional pleadings". The participant also indicated that they write letters, communicate with clients and advocates, go to courts and draft invoices.

4.2.7 Positive aspects of candidacy

a) Learning

One participant expressed that the experience of serving articles is a positive learning aspect on its own. "Consulting from advocates who have been doing this for more than 10 years and more than 15 years that is a positive learning experience for me".

According to the participant, being in the company of experienced lawyers and being exposed to a variety of legal processes was a good learning experience for them.

4.2.8 Challenges of candidacy

This section addresses perceptions presented by candidate attorneys about being undervalued and being on the wrong side of favouritism.

a) Being undervalued

One candidate attorney expressed a concern about not being valued for the work that they do. According to the participant, principal attorneys do not take candidate attorneys serious and their [candidate attorneys] worth is not recognised. The same respondent also indicated that despite having worked hard to help the law firm “win numerous court cases”, their contribution was not acknowledged. They further mentioned that *“I worked on many matters and successfully assisted them [principal attorney] win the cases and yet I was not acknowledged”*. The participant revealed that they would put more effort at work but were never valued.

“I did the work, sometimes I would leave there [office] at 7 or 8 O’clock in the evening, I never felt valued”. The participant revealed that they tried hard to impress their principal by working hard and yet their efforts to impress were in vain.

b) Favouritism

Favouritism is one of the challenges that candidate attorneys experience during their training. One participant shared that principal attorneys tend show preference and are partial with candidate attorneys. *“The principal wouldn’t take the instructions and give them to me, he [principal attorney] would take every instruction and give it to other candidates”*.

The candidate attorney indicated that there was bias in terms of work delegation and that principal attorneys preferred delegating work to a particular candidate over others. This limited the exposure and the learning experience of other candidate attorneys.

One candidate also revealed that others were offered bonuses clandestinely for working on matters, whereas others did not get a similar treatment for winning cases. In addition, the candidate attorney indicated that they were accused of not working hard hence they could not get bonuses like other candidate attorneys. According to the participant (candidate attorney), there was no fairness in the workplace in terms of salary and work responsibilities.

c) Lack of transformation: Racial inequality

There is lack of transformation in terms of race. One Principal attorney who works in the estate department indicated that the real estate department is not transformed. “Our real estate department is not transformed enough and there is a need and demand for black property practitioners”. The principal attorney indicated that they specifically prefer to mentor black candidate attorneys as a means to advance transformation in the property department. According to the principal, there is a need and a potential for growth for black candidates and attorneys in property law. The principal further indicated that most of black candidate attorneys have no interest in specialities such as property or real estate practice or tax law. According to the principal, most black candidate attorneys are interested in litigation practice and commercial law. The principal attorney emphasised that this needed to change.

The principal further indicated that the property market is untransformed and that it is dominated by white males. The principal further added that in terms of doing business, the market favours white practitioners than black practitioners and that this creates a limited exposure for black practitioners. One principal also indicated that some law firms have preference with regards to exposing candidate attorneys into work. According to the respondent, white candidate attorneys are exposed to more and better quality of work than their black counterparts during their candidacy. “Unfortunately I’ve seen and heard black candidate attorneys saying look, we don’t get better quality work that our white counterparts are getting”. According to the principal, this creates a problem further down the line because by the end of the training, black candidate attorneys will not have the skills that their white counterparts have. According to the principal, this puts black candidate attorneys at a disadvantages because they are most likely to be unemployable.

d) Lack of transformation: Gender inequality

There is slow gender transformation in private law firms. According to one principal attorney who work in the property department, there is gender transformation in the department but only at the junior level positions. However, the noted transformation in terms of gender is not racially inclusive. “In the junior level we have lot of female attorneys or conveyancers, but out of about 10 female attorneys 2 of them are non-white”. In addition to this, the principal shared that although there is a lot of women occupying senior position at property companies and banks, on the background, it is white male that control these institutions. A concept referred to by *Centre for Applied Legal Studies* as Window dressing.

e) Unstructured working conditions

Some candidate attorneys indicated that there is a challenge in terms of the working hours. For example, the candidate attorneys indicated they do not have contracts of employment and hence do not know how their working hours are structured. “It would be definitely nice if they could be more structured. Like today, we don’t know what time we will leave work”. The candidates indicated that not having structured hours is problematic because they do not know when to report for work and when to leave work and that this compromised their daily plan.

4.3 Conclusion

The section focused presenting findings for the current study. This was presented in terms of various themes, that is, the role SASSETA in the candidate attorney’s initiative, challenges experienced by the SETA in the implementation the candidate attorney’s initiative, learning conditions of candidate attorneys, challenges experienced by principal attorneys, transformation in the legal profession, positive aspects of candidacy, as well as challenges of candidacy. Whereas there are positive observations in terms of preparing candidates to practice as legal practitioners, other factors that negatively impact on learning conditions and transformation in the legal profession were uncovered.

5. CONCLUSION AND RECOMMENDATIONS

5.1 The purpose of the study

The purpose of the current study was firstly, to assess the learning conditions for candidate attorneys at private law firms. Secondly, the study sought to examine conditions of employment for candidate attorneys at private law firms. Finally, the study intended to assess the effects of transformation on the development of candidate attorneys at private law firms.

5.2 Summary and review of findings

The participants of the study detailed the conditions of their learning at private law firms. The results indicate that candidate attorneys have encountered negative and positive aspects during their tenure as candidate attorneys. For example, candidate attorneys expressed concern for being overworked and undervalued. In addition to that and in terms of positive aspects, candidate attorneys expressed satisfaction with regards to the exposure and the training that they have received. For example, going to court, attending briefings and drafting statements.

Data was also collected from principal attorneys in order to establish a comprehensive understanding of the learning conditions of candidate attorneys. The results indicated that principal attorneys recognised the importance and the roles of candidate attorneys. According to principal attorneys, candidate attorneys offer essential support to law firms by assisting in court matters while at the same time they accumulate workplace experience. Principal attorneys shared that candidate attorneys are virtually critical to the growth and development of any law firm because some of them are absorbed to the firms after serving their articles.

Participants from SASSETA were also interviewed. The participants detailed the role of SASSETA is to offer support to law firms by means of disbursing grants to candidate attorneys. Additionally, the participants shared that the role of SASSETA is to monitor

and evaluate the learning of candidate attorneys and to ensure that candidate attorneys are exposed to a training which is relevant to their profession.

The findings of the current study has brought about recommendations outlined below.

5.3 Recommendations for empirical findings

5.3.1 Addressing work-related challenges confronting Candidate Attorneys

Candidate attorneys experience a range of work related challenges. For example, sexism and inequality. Thus, the study recommends establishment of a council for candidate attorneys, led by legal professionals. The council would serve as platform to enable candidate attorneys to deliberate about work-related challenges.

5.3.2 Bolstering the role of law associations in relation to candidacy

Additionally, organisations such as the Law Society of South Africa and the Black Lawyers Association of South Africa should have committees that deals with grievances of candidate attorneys. Moreover, these organisations should be bestowed powers to hold private law firms and public entities that host Candidate Attorneys accountable.

5.3.3 Intensifying transformation initiatives in the legal profession

Law firms should consider adopting transformation policies as a model of progressively advancing change in the legal profession, especially in terms of opening opportunities for candidate attorneys and prospective candidate attorneys to practice law. Furthermore, policies initiated should seek to address issues on racism, sexism, favoritism, inequality, exploitation and other challenges that affect candidate attorneys in the workplace.

5.3.4 Establishing a standardised template for assessing the training of candidate attorneys

The findings of the current study revealed that some candidate attorneys receive training which does not prepare them for the workplace as legal practitioners. For

example, the study revealed that some candidate attorneys are only trained on menial tasks such as running errands which are not related to the legal work and administrative tasks which involve minimal or no exposure to legal work. Therefore, it is recommended that there should be a formalised measure or template that guides law firms on aspects of learning which should be covered during the tenure of candidacy. This will serve as a framework that assists law firms to offer work relevant training to candidate attorneys.

5.4 Recommendations for future studies

5.4.1 Sample and sample size

The current study was conducted from firms based in Pretoria and Johannesburg only. Hence, future studies should consider increasing the sample size in order to capture a broader understanding of learning conditions of candidate attorneys from diverse perspectives. Additionally, future studies should gather diverse perspectives from small, medium and large law firms to draw comparisons based on the findings. This will assist in building an insight and identifying existing discrepancies about the learning conditions of candidate attorneys in a variety of law firms.

Moreover, the study was conducted in private law firms, hence, future studies may consider conducting a similar study in public law entities such as the Legal Aid South Africa (LASA). This might contribute towards enhancing an understanding of learning conditions of candidate attorneys in public sector organisations.

5.4.2 Using a different methodological approach

The current study utilised the qualitative research approach to collect data. It is recommended that future studies should consider adopting the mixed research method. This will aid in broadening the understanding of a phenomenon from multiple methodological sources and assist with the enhancement of data quality and corroboration.

5.5 Conclusion

Candidate attorneys play a significant role in private law firms, in the legal profession and ultimately to the society at large. Thus, given the role that they play, there is a need for the legal profession to be transformed in order to better the learning conditions of candidate attorneys. This will in turn contribute to quality output in terms of law professionals. Moreover, transformation may assist to bring about gender and race representability in the law profession and thereby reduce the skills gap in the legal profession.

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