



The four-year undergraduate LLB: where to from here?

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1 Introduction

Fifteen years have passed since the four-year undergraduate *Baccalaureus Legum* (“LLB”) degree was first introduced in 1998. This degree was introduced by the Qualification of Legal Practitioners Amendment Act 78 of 1997 “as the minimum academic qualification for admission to practice as an advocate or an attorney ... [to] ensure a level of equality between all practising lawyers.”¹ The justification for the introduction of the four-year LLB programme was twofold: First, there were too few black South Africans represented in the legal profession and, secondly, the country’s previous *apartheid* policy had resulted in a distinction between the law degree that could be obtained by whites and that which could be obtained by non-whites.² To address these problems, Government introduced a single law degree, which was intended in one fell-swoop to remedy both the problem of under-representivity as well as provide equal qualifications for all.

Despite the noble intentions of the democratic Government, the “symbolic gesture which was intended to herald a transformative shift has been a hollow victory.”³ On the surface, Government succeeded in remedying the problem with which it was faced: the new LLB did produce more black law graduates. However, the quality of graduates entering the legal profession is poor.⁴ In fact, the graduates that have been born from this initiative are not worthy of the qualification that they have obtained as many of them are unable to read, write and count at the level required by the legal profession. (Here it should be emphasized that we are not talking about “plain old reading and writing”, as Boughey puts it, “rather much more specific kinds of literacy.” She adds that “[u]niversities require students to make inferences and draw conclusions from what they read, and to use reading of other texts and their knowledge of the world to question what they are reading”. This in her opinion does not render “reading at university more difficult, rather that reading at university requires the reader to take up a different position in relation to what he/she

¹ Department of Justice and Constitutional Development *Discussion Paper on Transformation of the Legal Profession* (1999) 4

² Greenbaum “The Four-year Undergraduate LLB: Progress and Pitfalls” 2010 35 *Journal of Juridical Science* 1 2.

³ Greenbaum 2010 *Journal of Juridical Science* 2

⁴ Anonymous “Law Society Again Raises LLB Concerns” 6 July 2012 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20120706085751453> (accessed 2013-06-20); Anonymous “Law Deans, Profession to Meet on LLB Failure” 31 January 2013 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20130131085141951> (accessed 2013-06-20)

reads.”⁵ This requires a depth which in my opinion students in the undergraduate LLB degree lack because their knowledge of the world is very limited, despite being in possession of a degree which should indicate the contrary. This is problematic because poorly literate candidate attorneys and lawyers may hinder their clients’ access to justice (Law Society of South Africa Press Release “Law Society welcomes LLB Curriculum Review – Repeats concern at Law Graduates’ Lack of Basic Skills”⁶ and ultimately reduce people’s faith in the legal system in the long term if lawyers are less able to perform effectively. This is the legacy that has been left by the four-year undergraduate LLB degree.

As a result of the repeated “dissatisfaction regarding the quality of law graduates raised by members of the legal profession, Government and academics”⁷, the question that keeps rearing its head is how to address this problem. Two suggestions have been made: the first is for an extended undergraduate LLB degree to remedy the defects of the four-year degree; and the other for a return to the old post-graduate LLB degree. This note considers the four-year degree, in particular its content and pitfalls, as well as the reasons therefore. It also considers recent developments surrounding the law curriculum, the alternatives proposed and whether these are feasible. Lastly, suggestions are made for the way forward.

2 The problem

Recently there have been concerns raised regarding the quality of the graduates who have completed the four-year undergraduate LLB degree. The concerns vary but the basic tenet is that graduates are poorly prepared to meet the demands of practice and are unable to count, read and write in appropriate ways.⁸ This is by no means the first time that these concerns have been raised. In 2007 there were calls for the reintroduction of the post-

⁵ Boughey “South Africa: University Students Can’t Read?” 30 August 2009 Issue 90 *University World News* <http://www.universityworldnews.com/article.php?story=20090827173247724> (accessed 2013-06-20)).

⁶ 22 November 2010 http://www.lssa.org.za/upload/LSSA%20Press%20Release%20LLB%20report_22_11_2010.pdf (accessed 2013-06-20); and De Vos “Law Society Bemoans ‘Lack of Basic Skills’ of Law Graduates” 23 November 2010 *Constitutionally Speaking* <http://constitutionallyspeaking.co.za/law-society-bemoans-lack-of-basic-skills-of-law-graduates/> (accessed 2013-05-13))

⁷ Greenbaum “Current Issues in Legal Education: A Comparative Review” 2012 1 *Stell LR* 16 32

⁸ See generally, Domanski “Ulric Huber’s Programme for Legal Education – What Lessons for Today?” 2011 17 *Fundamina* 46 55; Nair “LLB Report Urges Numeracy, Literacy Training” 6 June 2012 *Timeslive.co.za* <http://www.timeslive.co.za/thetimes/2012/07/06/llb-report-urges-numeracy-literacy-training> (accessed 2012-07-12); Anonymous “SA Attorneys Concerned About the Quality of the LLB Degree” 4 July 2012 *Financial and Advisory News* http://www.fanews.co.za/article.asp?People_and_Companies~12,News~1163,SA_Attorneysconcerned_about_quality_of_LL_B_Degree~12159 (accessed 2012-07-09); Hlangani “LLB Degree Under Scrutiny” 4 July 2012 *The New Age* <http://www.thenewage.co.za/mobi/Detail.aspx?NewsID=55215&CatID=1007> (accessed 2012-07-12); Anonymous “Many LLB Graduates out of their Depth – Judge” 30 July 2012 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20120730085518253> (accessed 2013-06-20); Anonymous “Law Society wants LLB Revamp” 8 July 2012 *News 24* <http://www.news24.com/SouthAfrica/News/Law-society-wants-LLB-revamp-20120708> (accessed 2013-06-20); Nair “Law Graduates: Heat on Varsities” 9 July 2012 *Timeslive.co.za* <http://www.timeslive.co.za/thetimes/2012/07/09/law-graduates-heat-on-varsities> (accessed 2012-07-12); Anonymous 6 July 2012 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20120706085751453> (accessed 2013-06-20); Jansen “Law Degree does Not Measure Up” 5 July 2012 *The Mercury* <http://www.iol.co.za/mercury/law-degree-does-not-measure-up-1.1334939> (accessed 2013-06-20); and Nel “Prokureurs Bekommerd oor LLB-graad” 5 July 2012 *Die Burger* <http://152.111.1.87/argief/berigte/dieburger/2012/07/05/SK/6,7/caprokureurs.html> (accessed 2013-06-20)).

graduate LLB⁹ and in 2010 various stakeholders in the legal profession again raised their concerns regarding the effectiveness of the LLB degree.¹⁰ All of these concerns were in response to the poor quality of graduates that were entering the legal profession.

The South African Law Deans' Association ("SALDA"), in particular, raised concerns regarding the duration of the four-year undergraduate degree which in their opinion was too short a period to produce a graduate of the calibre required to meet the demands of practice.¹¹ Recent data collected seem to confirm this point: students are taking five to six years to complete the four-year programme.¹² This is alarming because it is at odds with the justification behind the introduction of the four-year undergraduate LLB which was to produce more representative law graduates without the expense of having to pursue a post-graduate degree.¹³ In this respect, the four-year degree is failing to deliver. This view has recently been confirmed by the joint press statement released by SALDA, The Law Society of South Africa ("LSSA") and the General Council of the Bar ("GCB") dated 22 January 2013, who state that "[a]lthough it was thought that the four-year LLB degree would increase access to the legal profession by disadvantaged groups, it appears to have failed to do this."¹⁴

Another concern raised regarding the current LLB emanates from the LSSA which highlights the "lack of basic numeracy and literacy skills" evidenced among many graduates (Jansen 5 July 2012 *The Mercury* [http:// www.iol.co.za/mercury/law-degree-does-not-measure-up-1.1334939](http://www.iol.co.za/mercury/law-degree-does-not-measure-up-1.1334939) (accessed 2013-06-20)). In a profession that oft-times requires advanced numeracy and literacy skills, it is unthinkable that graduates can enter into practice without them.

These concerns raised are peculiar to the four-year LLB. This begs the question: what in the current LLB curriculum is producing these results? In order to answer this question, one would first need to look at the process that gave rise to this particular creature as well as its content.

⁹ (Jansen 5 July 2012 *The Mercury* 5 July 2012 <http://www.iol.co.za/mercury/law-degree-does-not-measure-up-1.1334939> (accessed 2013-06-20))

¹⁰ (Nair 6 June 2012 *Timeslive.co.za* <http://www.timeslive.co.za/thetimes/2012/07/06/llb-report-urges-numeracy-literacy-training> (accessed 2012-07-12)).

¹¹ (Jansen 5 July 2012 *The Mercury* <http://www.iol.co.za/mercury/law-degree-does-not-measure-up-1.1334939> (accessed 2013-06-20)).

¹² (Scott, Yeld and Hendry "Higher Education Monitor: A Case for Improving Teaching and Learning in Higher Education" 2007 *Council on Higher Education* 45–46).

¹³ (Greenbaum 2012 *Stell LR* 33 notes that the "four year qualification [was intended to] reduce the cost of qualifying as a lawyer, thereby enhancing the access of economically disadvantaged citizens, by enabling them to more easily gain admission to the legal profession")

¹⁴ (South African Law Deans Association, the Law Society of South Africa and the General Council of the Bar "Legal Education in Crisis? Law Deans and the Legal Profession set to discuss refinement of the LLB degree" January 2013 <http://www.lssa.org.za/upload/LLB%20SUMMIT%20PRESS%20RELEASE.pdf> (accessed 2013-06-21)).

3 The current four-year LLB degree

As mentioned above, the four-year undergraduate degree was introduced as part of Government's transformative agenda to remedy the defects of the *apartheid* past which had excluded certain portions of the population from attaining access to legal education and training and which had resulted in the existence of three "different-quality degrees" catering for the various races (Greenbaum 2010 *Journal for Juridical Science* 8 notes that "in 1994, an estimated 85% of the legal profession in South Africa consisted of white lawyers"). The new degree, in particular, had to provide access to a profession that had for decades – if not longer – been dominated by whites, who were predominantly male (Greenbaum 2010 *Journal for Juridical Science* 8).

A distinction was made between a *Baccalaureus Procuratoris* ("BProc") degree, a *Baccalaureus Iuris* ("BIuris") degree and a post-graduate LLB degree. The first degree, the BProc, entitled the holder to practise as an attorney only. The second option, the BIuris, a three-year bachelor's degree, entitled the holder to practise as a prosecutor or magistrate in the lower courts; and the post-graduate LLB degree entitled the holder to practise in both the lower and higher courts. The latter was clearly seen as being the superior qualification. In order to obtain the latter degree, the student first had to complete an undergraduate degree which in most cases was either a *Bachelor of Arts* ("BA") or a *Bachelor of Commerce* ("BCom") degree, before embarking on a post-graduate law degree. This option was predominantly followed by white individuals, who had access to the requisite financial resources to enable them to complete two degrees. In comparison the BProc degree was reserved for everyone else who could not follow that route. In this respect, the BProc degree was thought to be the "poor man's choice".

As part of a transformative agenda, the new degree was intended to make access to a law qualification available to all and to increase the representivity of black South Africans or graduates in the legal profession. This degree was intended to place all graduates on an equal footing, where no one is either inferior or superior. Citing an article published in *The Mercury*, KZN Judge Achmat Jappie opines that while "one could [not] be critical of the motive for reducing the length of the LLB from five years to four years ... [he] felt that [this] decision was now hampering graduates."¹⁵ In this respect he is correct. The motive for introducing the four-year degree is noble, but we now have to recognize the truth, which is that this degree is failing in its purpose, and decide on a way forward. In other words, the aim behind this new undergraduate LLB degree was to foster equality in the legal profession. In this respect, the Government's agenda has been a success, although this view is not shared by all. A recent article in *Legalbrief Today* suggests that the four-year LLB degree "has failed to increase access to the legal profession by previously disadvantaged groups."¹⁶ A legal qualification is now more accessible to all who wish to

¹⁵ (Anonymous 30 July 2012 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20120730085518253> (accessed 2013-06-20)).

¹⁶ (Anonymous 31 January 2013 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20130131085141951> (accessed 2013-06-20)).

pursue it. However, as far as the quality of law graduates is concerned, the Government's agenda has failed.¹⁷

This realization raises the crucial question of where it all went wrong. The answer to this question appears to be: in the beginning. When the transformation of the legal profession and restructuring of legal education were tabled during the 1990s it was decided that the four-year undergraduate LLB degree would be the "sole qualifying degree for entry into the legal profession."¹⁸ A one-size-fits-all solution, if you will. However, universities would still have the option of retaining the postgraduate LLB, which a few have done.

This one-size-fits-all solution is in itself a problem, because it assumes that all students who enter tertiary education are at the same level and will be able to meet the demands imposed by the new degree. It failed to take into account the remnants left by the Outcomes Based Education ("OBE") system adopted in primary and secondary institutions which would need to be addressed. In particular the fact that "people were emerging from high school without the requisite numeracy and literacy skills."¹⁹ In this respect the four-year undergraduate degree is deficient. The blame for this could be laid at the door of the Ministry of Justice, which established a Task Group on Legal Education for the Restructuring of Legal Education. It was this body that recommended the current four-year undergraduate LLB programme as the single solution to address the challenge of under-representivity facing the legal profession. In the name of academic freedom each university was permitted "to interpret the degree requirements as they saw fit."²⁰ Hence no consensus was reached regarding the curriculum of the new undergraduate degree.²¹ As a result some universities followed one route, while others followed another. Interestingly enough many universities follow a similar pattern where the second, third and fourth years are concerned.²² The disparities, however, appear with regard to the manner in which the curriculum for the first year is designed.²³ In *The LLB Curriculum Research Report* produced by the Council on Higher Education,²⁴ Pickett notes that a large number of universities offer very few law courses in the first year of study. Instead students are required to pursue courses offered in other faculties.²⁵ These courses are often in the humanities where students acquire "generic skills such as reading, writing,

¹⁷ (Anonymous 31 January 2013 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20130131085141951> (accessed 2013-06-20)).

¹⁸ (Pickett "The LLB Curriculum Research Report" November 2010

¹² <http://www.lssa.org.za/upload/Report%20on%20LLB%20Research%20Findings.pdf> (accessed 2012-07-16)).

¹⁹ (see Nair 6 June 2012 *Timeslive.co.za* <http://www.timeslive.co.za/thetimes/2012/07/06/ilb-report-urges-numeracy-literacy-training> (accessed 2012-07-12)).

²⁰ (Greenbaum 2010 *Journal for Juridical Science* 10).

²¹ (Pickett November 2010 12 <http://www.lssa.org.za/upload/Report%20on%20LLB%20Research%20Findings.pdf> (accessed 2012-07-16)).

²² (Pickett November 2010 129 <http://www.lssa.org.za/upload/Report%20on%20LLB%20Research%20Findings.pdf> (accessed 2012-07-16)).

²³ (Pickett November 2010 130 <http://www.lssa.org.za/upload/Report%20on%20LLB%20Research%20Findings.pdf> (accessed 2012-07-16)).

²⁴ ("CHE", a statutory body which advises the Minister of Higher Education on policy)

²⁵ (Pickett November 2010 130 <http://www.lssa.org.za/upload/Report%20on%20LLB%20Research%20Findings.pdf> (accessed 2012-07-16)).

comprehension and critical thinking,”²⁶ while a number of universities commence the first year with a number of law courses – ranging between four and ten courses.²⁷ This distinction in the way the first year curriculum is designed is clearly having an impact on the quality of student that is produced.

Despite the fact that the disparities appear in the first year of study, the effects thereof are feeding through the entire degree programme so that law students who are not equipped at the foundation level continue to struggle beyond graduation. The result is the lack of basic literacy and numeracy skills currently being complained of. This “[d]issatisfaction with the quality of South African law graduates has been expressed by members of the legal profession, members of the Government and academics for some time.”²⁸ The next section considers what is being done to address the problem.

4 Recent developments in legal education

As mentioned, the criticisms directed at the four-year LLB have been around for some time. In response to these criticisms, a survey was conducted in 2010 by the CHE.²⁹ The results of this survey were released in November 2010. However, it was found that “the survey was of limited value and the report on the results of such a poor quality that it could not be published.”³⁰ As a consequence, the policy-makers were no closer to finding a solution to the four-year undergraduate programme.

In January 2013, SALDA, the LSSA and the GCB issued a joint press statement in which they announced their intention to host a summit in May, aptly titled “LLB Summit: Legal Education in Crisis”. The aim of the summit was “to ensure that adequately prepared law graduates move from law faculties into the legal profession” with the focus being on “problems around the LLB curriculum, quality assurance, new models for legal education and community service.”³¹ At the summit it was agreed that the CHE would conduct a standard-setting process under the supervision of a national task team which will act as liaison between the law profession and law faculties. This standard-setting process is intended to be concluded by June 2014 and will focus on the required graduate attributes identified at the summit. These attributes include “knowledge of substantive law, generic skills such as literacy, numeracy, research, analytical, IT, ethics, a commitment to social justice, the requirements of the workplace, and resources.”³²

²⁶ Jansen 5 July 2012 *The Mercury* <http://www.iol.co.za/mercury/law-degree-does-not-measure-up-1.1334939> (accessed 2013-06-20)

²⁷ Jansen 5 July 2012 *The Mercury* <http://www.iol.co.za/mercury/law-degree-does-not-measure-up-1.1334939> (accessed 2013-06-20)

²⁸ Greenbaum 2012 *Stell LR* 32

²⁹ Greenbaum 2012 *Stell LR* 32) on the effectiveness of the LLB degree (Greenbaum 2012 *Stell LR* 32).

³⁰ Nair *Timeslive.co.za* 6 June 2012

<http://www.timeslive.co.za/thetimes/2012/07/06/llb-report-urges-numeracy-literacy-training> (accessed 2012-07-12)

³¹ South African Law Deans Association, the Law Society and the General Council of the Bar “Legal Education in Crisis? Law Deans and the Legal Profession set to discuss refinement of the LLB degree” January 2013 <http://www.lssa.org.za/upload/LLB%20SUMMIT%20PRESS%20RELEASE.pdf> (accessed 2013-06-21)).

³² Anonymous “Plan Outlined to Beef up LLB Degree” 7 June 2013 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20130607085406161> (accessed 2013-06-10)

The challenge posed by the proposed review process is that it is planned for completion by June 2014, which is some months away. In the meantime, universities continue to graduate students with questionable skills, which only serves to perpetuate the problem. What follows next is a discussion of the various alternatives to the four-year undergraduate LLB and the feasibility thereof.

5 The alternatives and the way forward

Primarily, two alternatives have been suggested for remedying the deficiencies of the current four-year LLB. The first is an extension of the four-year programme and will be similar to what some universities already offer to “at risk” students. These students are those who have been identified – to use the words of Boughey – as ones “who can succeed if some additional support is provided.”³³ The University of the Western Cape for example offers an extended programme which includes a foundation year where students acquire various numeracy and literacy skills to assist them in their transition to legal studies. The second is a return to the post-graduate LLB which is still offered by some institutions that opted to retain the post-graduate degree when they first introduced the four-year curriculum, for example UCT. There is of course a third option: the possibility that the four-year programme may be retained. Although, whether or not it will continue to be the single qualification is questionable in light of the concerns that have been raised.

Of the two alternatives mentioned, the second appears to draw more favour, although the first option seems more practical as it only requires students to register for one degree instead of two. A recent report in *Legalbrief Today* titled “Five-year LLB mooted to beat literacy issue” notes that “lawyers and some universities want to see the LLB degree redesigned as a post-graduate qualification.”³⁴ These comments were made after a recent survey conducted by the Professional Provident Society of South Africa (“PPS”, a financial-services provider) alluded to the fact that law graduates experience numerous problems with numeracy, reading and reasoning despite the fact that they have a university degree.³⁵

Clearly there is some concern that extending the current undergraduate LLB by one year will not provide much in the way of a solution to the problems currently experienced. In some respect this argument may be correct: the duration of a degree of this nature – be it four years or five - is immaterial. Given the criticisms that have been raised, the central issue clearly concerns the curriculum and how it is not meeting the demands of practice.

Once again, curriculum issues are unsurprising given the fact that each university was allowed academic freedom regarding the content of the current four-year LLB degree. So it

³³ Boughey 30 August 2009 Issue 90 *University World News* <http://www.universityworldnews.com/article.php?story=20090827173247724> (accessed 2013-06-20)

³⁴ Anonymous “Five-year LLB Mooted to Beat Literacy Issue” 9 July 2012 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20120709085439656> (accessed 2013-06-21)

³⁵ Anonymous 9 July 2012 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20120709085439656> (accessed 2013-06-21)

would seem that the recommendation made by the Task Group on Legal Education was an erroneous one. Perhaps if “core courses, practical skills training or non-law courses for inclusion in the curricula” had been identified from the outset instead of a mere “list of recommended ‘core subjects’,”³⁶ legal education would be in a different position today. Clearly the notion of academic freedom which backed this recommendation by the Task Group on Legal Education was ill-placed. But where does this leave the future of legal education in South Africa? The criticism levelled against the four-year undergraduate degree would seem to suggest that it was doomed to fail, especially in light of the fact that it was poorly researched³⁷ Does this, however, automatically mean that the extended undergraduate LLB will follow a similar fate and that a return to a post-graduate LLB is the only solution?

Not necessarily. In the Joint Press Statement released by SALDA, the LSSA and the GCB, the legal profession and the law deans indicated that “an extended LLB will not incorporate more in the curriculum. Instead the focus would be on developing the generic skills required to utilise a law degree” (South African Law Deans Association, the Law Society of South Africa and the General Council of the Bar “Legal Education in Crisis? Law Deans and the Legal Profession which set to discuss refinement of the LLB degree.”³⁸ If the suggestions proposed were to be followed, the extended LLB may provide the answer; provided that it is applied uniformly at all institutions offering an LLB degree. This view was confirmed by Nic Swart, CEO of the LSSA, who maintains that “it is necessary to set standards in place so that all law schools can be on the same page.” This comment came in response to the fact that “law graduates from certain universities are of a higher calibre than others” which makes them more marketable.³⁹

A suggestion that a return to the postgraduate LLB is the only way forward would be extremely short-sighted and forgetful on the part of stakeholders in the profession and Government. Not so long ago, the post-graduate LLB was criticized for contributing to the under-representivity of blacks mainly because of the expense attached to obtaining two degrees instead of one. Has the situation in South Africa changed so much that this is no longer a concern? As it stands, students are already struggling to get through one degree. Would a return to the post-graduate LLB necessarily mean that students are better equipped to complete a second degree? Or does the fact that the undergraduate degree is in Arts or Commerce means that students who pursue legal studies are in fact suited to do so? If the answer to this last question is in the affirmative, would this not amount to more under-representivity in the long run? Regardless of the option of pursuing a second degree

³⁶ Greenbaum 2010 *Journal of Juridical Science* 10)

³⁷ Woolman, Watson and Smith “‘Toto, I Have a Feeling We’re Not in Kansas Anymore’: A Reply to Professor Motala and Others on the Transformation of Legal Education in South Africa 1997 114 *SALJ* 30 55).

³⁸ January 2013 <http://www.lssa.org.za/upload/LLB%20SUMMIT%20PRESS%20RELEASE.pdf> (accessed 2013-06-21)

³⁹ see Du Plessis “White Men Still Rule the Roost at Law Firms.”³⁹ 9 June 2013 *City Press* <http://www.citypress.co.za/news/white-men-still-rule-the-roost-at-law-firms/> (accessed 2013-06-21); and Peyper “The Declining South African LLB” 15 October 2012 *Finweek* <http://finweek.com/2012/10/15/the-declining-south-african-llb/> (accessed 2013-06-21)

being available to all, the reality in this country is still that it would only be utilized by an elite few who are in a financial position to do so. This factor takes one right back to where it all started, when the four-year LLB was considered the only solution to address the socio-economic inequalities of the past.

There is of course the option of retaining the current four-year LLB, which some academics are convinced is here to stay. If this is the case something will have to be done to address the concerns that have been raised. At present, some institutions are attempting to build a skills component into their courses to address the lack of literacy and numeracy skills complained of. This solution is, however, not adopted for all courses and most often depends on the inclination of the lecturer concerned. What is needed is a solution that is applied consistently by all tertiary institutions.

Whichever option is chosen, it will have to be well-researched, which was not the case with the introduction of the current LLB programme.⁴⁰ In addition, the new option would need to address the myriad questions that the various options invariably bring with them. One such question, which is not unique to any one of the options, is the question of whose input is required to make these decisions and what are the factors that should be considered during this process. When the Ministry of Justice considered the future of legal education in South Africa in 1995, it elected a group consisting of Law Deans and representatives from the legal profession. It was this group that made a decision in favour of academic freedom and institutional autonomy, which many have come to regret. When the CHE conducted its survey into the effectiveness of the LLB in 2010, it requested submissions from a number of key stakeholders. The following organizations responded:

- Department of Defence: Defence Legal Services Division
- Independent Association of Advocates of South Africa
- LSSA
- National Prosecuting Authority
- Society of Law Teachers of Southern Africa
- SALDA, and
- Varsity College⁴¹

The standard-setting process to be completed by 30 June 2014 will once again include many of the stakeholders listed above.⁴² However, when the idea of such a process was first raised it was suggested that only academics will be included. According to the chief executive of the CHE, Ahmed Essop, “the opinions of professional organisations on the requirements needed by graduates would not necessarily be taken into account in the

⁴⁰ Greenbaum 2012 *Stell LR* 35

⁴¹ Pickett November 2010 135 <http://www.lssa.org.za/upload/Report%20on%20LLB%20Research%20Findings.pdf> (accessed 2012-07-16)

⁴² Anonymous 7 June 2013 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20130607085406161> (accessed 2013-06-10)

proposed LLB review.”⁴³ This suggestion would appear to be in line with the notions of institutional autonomy and academic freedom, which is protected by section 16 of the Constitution under freedom of expression and includes three aspects, namely, freedom of research and publication, freedom of teaching and freedom of extra-mural utterance. It is the second aspect that is relevant here. According to Lange, the second aspect does not “consist so much of teaching students what to know, but how to know,” and that “despite claims to the contrary, teaching and learning are to a large extent becoming so concerned about the acquisition of skills and the measurement of outcomes from a market perspective that the space for learning ‘how to know’ is being substantially reduced” (Lange “Academic Freedom and the Purpose of the University” http://web.up.ac.za/sitefiles/file/Humanities/events/Academic_Freedom-L_LangeE.pdf (accessed 2013-08-28)). The position in legal education is no different. All the criticisms raised by the legal profession centre around the need for the introduction of more skills, with the result that the issue of academic freedom is side-lined. (The notions of academic freedom and institutional autonomy in effect mean that universities should be granted the freedom to determine their own curricula and that this process should be free from outside involvement.) Clearly, those present at the summit have thought better of the initial suggestion, which is to be welcomed given that the future of the legal profession in South Africa is at stake.

The mere fact that the idea of “academics only” being involved raises an important – and sometimes lost – question (Henderson “Asking the Lost Question: What is the Purpose of Law School?” 2003 53 *Journal of Legal Education* 48 52), namely, what are we training lawyers for?

6 The lost question: What are we training lawyers for?

The entire question about how to resolve the problem emanating from the graduate LLB is best answered by the question: “what are we training lawyers for?” It is in answering this question that one is able to determine whether the current LLB should be altered or retained. And depending on whom one asks, the answers will potentially be different.

Legal academics would undoubtedly say that we are training graduates not only for entry into the legal profession – because the reality is that many graduates use their law degrees in other ways – but for entry into a broad spectrum of careers. Legal practitioners may disagree and argue that law students should be trained for the profession. This difference in viewpoints is by no means unique to South Africa. Greenbaum notes that in the last 15 years in England, the purpose of tertiary legal education has repeatedly come under scrutiny as, there too, there has been a shift in the purpose of legal education.⁴⁴ The “doctrine-laden approach” advocated by legal academics aims at teaching lawyers what they

⁴³ see Van der Berg “LLB Fails to Prepare Students to be Lawyers” 10 July 2012 *The Witness* http://www.witness.co.za/index.php?showcontent&global%5B_id%5D=84116 (accessed 2013-06-21); and Anonymous “LLB Review Proposal in Hands of Academics” 10 July 2012 *Legalbrief Today* <http://www.legalbrief.co.za/article.php?story=20120710085056285> (accessed 2013-06-21)

⁴⁴ Greenbaum 2012 *Stell Law Review* 23

need to know so that they can enter into any career, whereas the approach favoured by legal practitioners centres on “what lawyers need to be able to do”. If one is inclined to agree with legal practitioners, their involvement may provide an unwanted inroad into academic freedom, but perhaps this is a necessary evil for the greater good, which is to produce better quality graduates. Midgley appears to agree. He notes that for purposes of improving the quality of law graduates legal practitioners should be involved in determining the future of legal education in South Africa.⁴⁵

The reality at present is that law graduates are not all entering the legal profession on completion of their studies. However, a large percentage of them are. In a research report titled “Law Professionals: Scarce and Critical Skills Research Project,”⁴⁶ which had been commissioned by the Department of Labour, South Africa, the authors note that Nic Swart, the LSSA’s Director of Legal Education and Development, estimated that “50% of law graduates become attorneys, 5% become advocates, 10% go into the public sector, and 35% go into commerce”. This estimate is confirmed by statistics released by the LSSA,⁴⁷ which notes that of the 3576 graduates recorded for 2011 from across South Africa, 2292 registered for articles of clerkship in 2012 and 184 were taken in for pupillage during the same period. It therefore follows that the legal profession should make a commensurate contribution to the future of legal education. That said, a balance must be struck between the demands of academia and those of the profession, one that produces the best possible quality graduate.

7 Where to from here?

Regardless of the option that is chosen, whether it is the retention of the current four-year programme or the introduction of an extended under-graduate programme or even a return to the postgraduate LLB, there needs to be a consensus of all the stakeholders concerned regarding the curriculum that will be offered. No longer should each tertiary institution be left to decide its own curricula. There needs to be uniformity about what is being taught so that the graduates that are produced are of an equal quality regardless of their prior educational background. In the end, regardless of the career path that a graduate chooses, he or she should be equipped with the same skills and knowledge as other law graduates. Where and how graduates choose to use their skills should be a secondary concern.

8 Conclusion

The debate surrounding the undergraduate LLB has raged for some time. No doubt it will continue to do so in the future especially in light of the standard-setting process conducted by the CHE. Perhaps this process will put an end to all the uncertainty surrounding the future of legal education in this country. The reality that exists is that

⁴⁵ Midgley “South Africa: Legal Education in a Transitional Society.” in Cownie (ed) *Stakeholders in the Law School* (2010) 97 124

⁴⁶ Midgley and Godfrey 2008 51

⁴⁷ “Attendance Figures (All Centres): Courses, Seminars and School for Legal Practice” May 2013 <http://www.lssalead.org.za/upload/STATSDOC%202013%20-%20May.pdf> (accessed 2013-10-29)

graduates are being produced who lack basic numeracy and literacy skills. Clearly this situation cannot be allowed to continue indefinitely. To do so will be a deadly blow not only to the legal profession but also to the future administration of justice. Any solution chosen in future will need to address the concerns raised regarding the poor quality of law graduates and the ways in which this situation can be remedied.