



**LEGAL ASSISTANCE CENTRE**  
*Fighting for human rights in Namibia since 1988*



# *Pro* Bono

## **INFORMATION ABOUT NAMIBIA'S LAW**

### **The powers and duties of the Law Society of Namibia**

The recent Fishrot scandal has led to some concerns about the Law Society of Namibia (LSN), as question marks about possible related activities of several lawyers and law firms.

After several calls for action from the public in this regard, the LSN released two press statements at the beginning of December 2019.

On 3 December, the LSN noted that it had not received any written complaints about any legal practitioner in connection with Fishrot – but also stated that it has the power to launch an investigation on the Council's own motion "if the Council reasonably believes that any member is guilty of unsatisfactory conduct". It announced that it was "collecting further information and engaging other institutions to deliberate on the matter and make a decision in this regard".

On 13 December, the LSN announced that it had "formally commenced investigations into (i) the trust accounts of implicated legal practitioners; and (ii) the professional conduct of the legal practitioners involved". It also stated that it would take "formal action" against all legal practitioners who acted contrary to the Legal Practitioners Act 15 of 1995.

Now, more than three months since this statement was released, no result of the LSN investigations has become public.

In general, every person enrolled as a legal practitioner under the Legal Practitioners Act is a member of the LSN.

The Legal Practitioners Act sets out several objectives of the LSN, including "to maintain and enhance the standards of conduct and integrity of all members of the legal profession".

The LSN has been granted several powers to achieve its objectives. The Council, which consists of eight members elected by the Law Society for two-year terms, executes these powers. According to a recent press statement of the LSN, the current Council members are Eldorette Harmse, Etuna Josua, Eliaser Nekwaya, Meyer van den Berg, Vanessa Boesak, Gilroy Kasper, Jo-mari Koekemoer and Appolos Shimakeleni.

If a legal practitioner is accused of unprofessional, dishonourable or unworthy conduct, the Council can start investigations into the case. (The Act includes some examples of this kind of conduct, but it does not provide an exhaustive list.) As the LSN has acknowledged, the Council can institute an investigation either on its own motion or after receiving a complaint.

Any complaints received by the LSN from the public are referred to its Legal Ethics and Investigatory Committee, which will decide if the complaint should be taken further by submitting it to the Disciplinary Committee created under the Legal Practitioner's Act.

If the Council suspects that a legal practitioner has behaved improperly, it can conduct an investigation itself or refer the matter to the Legal Ethics and Investigatory Committee, which will report back to the Council.

In either case, if the preliminary investigation finds that the concern is warranted, the matter can be referred to the Disciplinary Committee, which can conduct further investigation and take appropriate

action. The Disciplinary Committee consists of four members appointed by the Council and one member appointed by the Minister of Justice. (In terms of the Act, if the Council fails to appoint the necessary members, the Minister can make the appointments instead.)

The Disciplinary Committee has the power to reprimand the legal practitioner and/or impose upon him or her a penalty not exceeding N\$10 000. It may also decide to refer the case to the High Court if it is of the opinion that the legal practitioner should be suspended or struck off the roll. If the High Court agrees with the opinion of the Committee, it can suspend a legal practitioner or remove his or her name from the roll. Removal from the roll means that the person in question is not allowed to act as a legal practitioner any more. The High Court may also decide to reprimand the legal practitioner and/or order him or her to pay a fine.

Only the High Court can suspend a legal practitioner. However, if a complaint has been lodged against a legal practitioner with the Disciplinary Committee, the Law Society has the power to apply to the High Court for the temporary suspension of the legal practitioner in question pending the determination of the complaint. The Court can order a temporary suspension if it is satisfied that there are reasonable grounds to believe that the legal practitioner is guilty of unprofessional or dishonourable or unworthy conduct, and that the alleged misconduct is “of such serious nature” that a temporary suspension would be in the public interest or the interest of the clients affected. An order of temporary suspension can remain in place for a maximum of 30 days, but it can be extended for an additional 30-day period by the Court on further application by the Law Society if a good reason is shown for this.

Given the importance of the LSN’s duty to maintain the standards of the legal profession, one would assume that this responsibility would be taken very seriously. However, there have been several cases where the Disciplinary Committee and the LSN as a whole have not followed the correct procedures in carrying out their important responsibilities.

One such case, *Disciplinary Committee for Legal Practitioners v Murorua & Another*, was decided in 2012. In this case, the Disciplinary Committee lodged an appeal against the decision of the High Court on the appropriate sanction after a finding of unprofessional or dishonourable or unworthy conduct. The Committee initially lodged its appeal on time, but then realising that the term of office of two of its members had expired. By the time the Committee got its procedures in order, the appeal was lodged a year too late. The Supreme Court of Namibia called this a “slipshod performance” and stated that “the members of the Disciplinary Committee failed to act in the manner one would expect of legal practitioners carrying out an important mandate in the public interest”. It refused to excuse the delay and dismissed the Disciplinary Committee’s appeal.

Similarly, in the case of *Makando vs Disciplinary Committee for Legal Practitioners and Others* decided in 2016, the Disciplinary Committee and the Law Society itself were both late in filing their paperwork in an appeal. Although the Supreme Court allowed the appeal to proceed in this case, it stated that “it is not acceptable for an institution charged with the responsibility of regulating the conduct of legal practitioners itself to fail to observe the rules”.

In the past, delays appear to have been a particular problem. While it is understood that complex investigations may take time, the public has a strong interest in the conclusion of any Fishrot-related investigations as expeditiously as possible. It would also be of great public interest to know if temporary suspensions of any of the legal practitioners under investigation were considered, and why this avenue has not been taken.

The recent scandal has shaken public confidence in public institutions. We urge the LSN to act promptly, procedurally, and transparently to help restore confidence in the legal profession.

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