

Address By

Honourable Judge President Tshabalala (Natal Provincial Division)

At the Inter-Provincial State Law Advisors Forum

Date: 04 July 2008

The Chief State Law Advisor, Mr Daniels,

The Provincial State Law Advisor of Kwa-Zulu Natal, Advocate Wolmarans,

Delegates from all the provinces,

Ladies and Gentlemen,

I am honoured to have been invited here today to deliver the keynote address.

The Public Service has undergone various transformation processes since the advent of democratic rule in 1994. The Public Service remains a key institution through which government can realise its commitment to bettering the lives of citizens.

Therefore we must ask ourselves, what is, actually, the role of a legal advisor/lawyer within the public service? The first thing to note is that in our environment in South Africa, being a lawyer is more than just a profession or status, it is a form of service to the public, an undertaking to get alongside our people, especially in their time of need. To do so effectively lawyers need

to be trustworthy men and women of untarnished reputation. They must be people who understand and empathise with the people they seek to represent in order to be able to guide and assist in the making and realisation of justice.

As already mentioned, lawyers play a critical role in our society, but I think that legal advisors within the public service play an even more important role. They are tasked with the responsibility of ensuring that the state delivers on its promises, promotes the rule of law and gives effect to the values enshrined in the Constitution. It becomes important, in the interests of society as a whole, as well as in the interests of individual citizens, for legal advisors to be trained to recognise the implications of their work, so that they can perform their duties with sensitivity, with regards for the rights of citizens in accordance with the general expectations that the values of society are upheld and, indeed advanced.

It can be said that legal advisors must aim to serve both those that govern and those that are governed.

We need to strive to ensure that justice and the rule of law will prevail. Therefore legal advisors must advise their superiors/employers in accordance with the law and their conscience. The worst conceivable kind of relationship (and results) is that of an employer surrounded by "yes-men" and accustomed to that, expecting the same attitude from his legal advisor. It is not surprising that, in the end, the employer will get what he wants. But in doing so, "the boss" loses the very best that a legal advisor can provide: his penetrating, critical, analytic, discriminating mind. Furthermore, legal advisors must be able to express their opinions freely, as it is only by doing this that they can be able to perform their jobs adequately.

Each government department and even provincial department has its own legal services component. Legal advisors within the various departments of the public service have different roles and functions to play. For example the role of the state law advisers within the department of justice are to provide legal opinions for all organs of state, scrutinise and amend international agreements, draft legislation and subordinate legislation and attend relevant parliamentary portfolio committees as legal advisers for all national departments. In addition to its core functions, legal advice is also often rendered to provinces and municipalities. The State Attorneys brief the State Law Advisers to render opinions to client departments that would normally be outsourced to private counsel. This process saves a considerable amount of money, which would otherwise have been disbursed to private counsel. Research conducted in the Office of the Chief State Law Adviser suggests that the division saved the State about R92 million in private legal fees in 2006.

State law advisers are also actively involved in the certification of Bills, which are eventually passed by Parliament. Similarly, State Law Advisors attached to the Chief Directorate: State Law Advisory Services are responsible for legally editing and certifying all legislation emanating from all provincial Departments for submission to the Cabinet and the Provincial Legislature. The State Law Advisors also legally edit and certify other provincial legislation such as Proclamations and Regulations.

According to the Budget vote of the Office of the Premier delivered by the Honourable Sibusiso Ndebele on 15 April 2008, nine pieces of legislation were certified for introduction in the Provincial Legislature during the past financial year. Pieces of legislation, be it on provincial or national level, often deal with complex social, political and economic issues. In this way, the State Law

Advisers make a significant contribution towards the development of our constitutional jurisprudence.

Few South Africans have the financial resources to afford an attorney. The Legal Aid Board's mandate is to provide accessible legal services and effective access to justice for the poor. However, it is not many people who are aware of the crucial role that the Legal Aid Board plays in the South African legal system. The Legal Aid Board lawyers, who act as public defenders for those who cannot afford private legal representation, stand between the majority of poor people brought before court on criminal charges, and jail. Last year these lawyers provided legal assistance to more than 350 000 indigent South Africans and defended 90% of all matters in the High Courts. Legal advisors and lawyers within this institution must be applauded.

Bulelani Ngcuka, then head of National Prosecuting Authority, speaking at South Africa's first national public prosecutors' conference, August 1998, sternly suggested: "We need prosecutors who see themselves as 'lawyers for the people'."

This statement should be extended to all public service lawyers.

Whilst I have only chosen to speak on some of the legal advisors within the public service, there appears to be a common purpose running through all legal advisors within the public service, and that is to provide comprehensive, quality and professional legal services to the departments in which they are situated.

At this point I would like to say that I am delighted that the KwaZulu - Natal Association of Public Sector Lawyer's (KAPSL) has been established, and even more so that its Constitution was adopted on 3 June 2008. The Association is an independent voluntary association regulated by its own Constitution dedicated to serving and upholding the values and principles of constitutionalism and the rule of law. The Association aims to be the representative body of the organised legal profession in the public sector in Kwa-Zulu Natal.

The Code of Ethics contained in the Association's constitution is also worth mentioning, as it provides guidelines by which public sector lawyers should conduct themselves. Legal advisors, in fulfilling their collective and individual role as guardians of the law, must fully understand their importance and function in our society. In fulfilling this role, they must be courageous and must maintain the highest standards of ethical conduct.

Our province has, fortunately, followed other organisations that make it a duty to assist public sector lawyers. One such example is that of The Commonwealth Association of Public Sector Lawyers which exists to support lawyers in providing an efficient and professional service to governments, both national and local, and other public sector bodies throughout the Commonwealth for the benefit of the communities they serve.

In South Africa we have various organisations that govern its members, such as the Corporate Lawyers Association of South Africa (formerly known as the Association of Legal Advisers of South Africa – ALASA) which was formed in 1982, the various Bar Council's for Advocates as well as law societies for Attorneys. However there was nothing for the public service lawyer.

Therefore the establishment of the KAPLS must be commended. Although there is at present, no national organisation for public servant lawyers, I do hope that in due course such an association is established.

Sir Shridath Ramphal QC delivered one of the Keynote addresses for the 50th Anniversary of the initial Commonwealth and Empire Law Conference. He extracted from speeches and toasts made in 1955, in the period of recovery after World War II. It is somewhat chilling to consider how the words he quoted resonate so loudly today. He quoted from Sir Hartley Shawcross' speeches and toasts made at the closing dinner of that first conference, 50 years before:

“The law and the state are made for man and however powerful, however far-reaching the activities of the state may become, ultimately the rights and freedoms of the individual are fundamental. Those rights are best safeguarded by the traditional respect for law, impartially and honestly administered, which is the firm basis of society in all the countries of the Commonwealth... So just as in the 17th century in particular, lawyers protected liberty against the encroachments of the executive, so perhaps today, in quite different circumstances, lawyers may be able to help, not in frustrating the activities of the state decided upon by parliament, but in assisting the state to conduct those activities without impinging upon individual freedom and justice.”

Whilst relevant to all lawyers, I believe the warning by Sir Shridath Ramphal has special meaning and relevance to public sector lawyers who have a unique role to play in the rule of law. I commend Sir Shridath Ramphal's words to all. Lawyers must not be mere custodians of the law, but developers of it too. The circumstances today are different than they were when Sir

Hartley addressed the banquet, but the duty to assist the state to conduct its activities without impinging on individual freedom and justice could be even more pressing now.

We need to ensure that we have an appropriately qualified cohort of legal advisors. Legal advisors must not only know the law in terms of its content and application, but they must also understand law; its nuances, its impact on society and its immense inherent value and potential to do well and to embed and sustain order and peace in society. The English, have gone to the extent of offering a course for legal professionals working in the public sector. This is a highly specialised programme designed for lawyers working in the state or public sector, either in central government departments, ministries and authorities, or for regional or local government. It is also good to see that incorporated into the Association's constitution, in terms of section 2(m), one of its aims and objects is to facilitate and promote training, formal and informal, for public sector lawyers. It is very refreshing to note that the Association has gone to great lengths to ensure that the public service is filled with well trained individuals.

I would also briefly like to mention that government's introduction of the Occupation Specific Dispensation (OSD) will significantly enhance the remuneration and career prospects of legal professionals within the public service. This indicates government's commitment to attracting and retaining skills. The Public Service must become the employer of choice for the finest talents that this country produces.

One of the commitments of the newly founded KAPSL is to provide professional, non-partisan legal services and legal advice to government. Let's hope that this commitment becomes a reality. I have been advised that the motto for the KAPLS is "*Umthetho ungaphezu kwakho konke*", which

means "The Law reigns supreme". This is very befitting for an association that has been established specifically for the public sector lawyers, as these lawyers need to know that their first priority should be the upholding of the rule of law.

So, these are just some of my thoughts on the role of legal advisors in today's public service. My own, completely unbiased view, is that these legal advisors make an absolutely essential contribution to the effective government of South Africa. South Africa's public sector legal advisors have performed well, often under tremendous pressure, for which they deserve great appreciation. Put simply, while there are areas in which legal advisors can improve, as in all professions and occupations, government could not function without lawyers.

I wish you well in your deliberations for the rest of this meeting.

Thank you ever so much for your kind invitation and attention.