

## **NOTES / AANTEKENINGE**

### **The Creation of the Legal Services Ombud – How to Make It Effective**

#### **1 Introduction**

The Legal Services Ombud is the creation of the Legal Practice Act (LPA) (s 47 of Act 28 of 2014). The law came into full operation in November 2018 with the main purpose and function being to bring about a unitary regulatory regime for the legal profession. Prior to the enactment of the LPA, the legal profession was regulated under laws (the Attorneys Act 53 of 1979 sets out the rules relating to the admission of attorneys and practice in South Africa, whereas the Admission of Advocates Act 74 of 1964 regulates the admission and removal of advocates in South Africa) and regulatory bodies (s 56 of 25 of 1979 established provincial law societies tasked with regulating the practice of attorneys in their respective provinces, including developing codes of conduct and rules on enforcing discipline among members. The General Council of the Bar is a body established in terms of the Advocates Act 74 of 1964 and mandated to regulate the advocacy profession and establish a code of conduct for the advocacy profession) that imposed their own respective requirements in relation to matters such as qualification requirements, standards and conduct of legal practitioners. (The LPA sets out its purpose in the Preamble, which includes: “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; to provide for the admission and enrolment of legal practitioners; to regulate the professional conduct of legal practitioners so as to ensure accountable conduct.”)

This brief article intends to discuss the creation of the new Legal Services Ombud, including its role and function and where it fits in with the Legal Practice Council (a national statutory body established in terms of s 4 of the Legal Practice Act 28 of 2014 “as a body corporate with full legal capacity, and exercises jurisdiction over all legal practitioners and candidate legal practitioners”). The Council is the statutory regulatory body of the unitary legal profession that regulates the practice of law in the country in terms of the LPA.

Within this context, the article explores the term “legal ombud” or “ombud” and whether it is appropriate in the regulation of the legal profession with all its complexities and intricacies. Since establishing the Ombud appears to add an additional layer of regulation, what purpose does this serve for consumers of legal services in our country?

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## 1 1 *Meaning and purpose of an ombudsman*

“Ombud” or “ombudsman” is defined as an official appointed to investigate complaints against a company or an organisation, especially a public authority, with the aim and purpose of ensuring that these complaints are resolved speedily and confidentially (“Ombudsman” *Oxford Languages Dictionary*).

The use of the ombudsman system originated in around 1809 in the Scandinavian country of Sweden (see Cheng “The Emergence and Spread of the Ombudsman Institution” 1968 377(1) *The Annals of the American Academy of Political and Social Sciences* 20–30), the idea behind its establishment being to “safeguard individual rights against governmental encroachment” (see Cheng 1968 *The Annals of the American Academy of Political and Social Sciences* 21). Subsequently, this system was widely adopted across different countries and different systems.

The original purpose of an ombudsman institution was to provide individuals with an office where they could lodge complaints about bad administrative decisions, express grievances and have their grievances addressed. However, what has become clear in the growth and development of the ombudsman system is that it has been used to control and check the executive arm of government’s abuse of powers when it comes to dealing with the public.

Our country’s recognition of the ombudsman system is entrenched in the Constitution of the Republic of South Africa, 1996 (Constitution). Under Chapter 9, several institutions or bodies have been created with the dual purpose of ensuring that the exercise of public power by the executive arm of the government is kept in check, and providing a process or procedure in terms of which the public can lodge a complaint against executive conduct and obtain redress (see Ch 9 of the Constitution on the creation of the Office of the Public Protector, the South Africa Human Rights Commission and the Commission for Gender Equality, among the most prominent of these institutions).

Although these institutions have varied responsibilities and roles, their common role is to ensure that the executive arm of government and its officials exercise their powers appropriately and, therefore, do not abuse their powers. At the same time, the institutions provide the public with an opportunity to lodge a complaint should there be such an abuse – be it the failure to provide services to a community, the abuse of basic human rights by the police or any government institution, or the failure of government to use the funds entrusted to it efficiently (see s 188 of the Constitution, which sets out the purpose of the Office of the Auditor-General, one of the Chapter 9 institutions required to report on the finances of all national provincial and local government administrations and also to audit how they use these financial resources).

The most prominent of these institutions is the office of the Public Protector established under section 181 of the Constitution. As provided under section 182, the function of the Public Protector is to investigate any conduct in state affairs or in the public administration of any government

department that is alleged to be improper or that results in any impropriety or prejudice to members of society (see s 182(1)(a) and (b) of the Constitution, where it states that in addition to these powers to investigate, the Public Protector can also make findings and take appropriate remedial action). This ensures there is a remedy in the event of public unhappiness at the conduct of public servants, including government officials and administrators.

It is not the purpose of this article to discuss the powers of the Public Protector in detail, and whether the outcome of its investigations has a binding effect. However, the latter was made abundantly clear in the Constitutional Court judgment of *Economic Freedom Fighters v Speaker of The National Assembly; Democratic Alliance v Speaker of the National Assembly* (2016 (3) SA 580 (CC)). The court held that the remedial action recommended by the Public Protector in terms of section 182 remains binding and must be enforced by the party to whom it is addressed, unless set aside by the court (see *Economic Freedom Fighters v Speaker of The National Assembly supra* par 75, where the court states the rule that demands that decisions made by institutions with legal authority to make them must be obeyed by those they were made against unless they have them set aside; therefore, that they are binding unless these steps are taken).

In coming to this conclusion, the court recognised that the Public Protector's role is to attend to complaints and, in doing so, to cure incidents of impropriety, prejudice, unlawful enrichment, or corruption in government circles. This is done not only to observe the constitutional values and principles necessary to ensure that the "efficient, economic and effective use of resources [is] promoted" (see *Economic Freedom Fighters v Speaker of The National Assembly supra* par 64–66) but also to ensure that the Public Protector is able to do so as the powers of the office are sourced from the Constitution as the supreme law of our country.

As is evident, the role of the ombudsman in society in the protection of individual rights is recognised and respected in terms of our laws and, most importantly, the South African Constitution. Therefore, it is important that the creation of the Legal Services Ombud by the LPA is viewed in this light. The discussion that follows clarifies the role and powers of the Legal Services Ombud in the context of our constitutional order.

## 1.2 *Creation of the Legal Services Ombud: Its role and purpose*

As indicated, the Legal Services Ombud is established in terms of the LPA. Section 45 of the Act provides as follows:

- "(1) The Office of the Legal Services Ombud for the Republic is hereby established, as a juristic person.
- (2)(a) The Ombud must, in consultation with the Minister, determine the seat of the Office of the Ombud.
- (b) The Office of the Ombud may, with the approval of the Minister, conduct its activities away from its seat."

Section 46 sets out the following objectives of the Office of the Legal Services Ombud:

“The objects of the Ombud are to–

- (a) protect and promote the public interest in relation to the rendering of legal services as contemplated in this Act;
- (b) ensure the fair, efficient and effective investigation of complaints of alleged misconduct against legal practitioners;
- (c) promote high standards of integrity in the legal profession; and
- (d) promote the independence of the legal profession.”

Section 47 provides for the appointment of the Legal Services Ombud or ombudsman by stating that the incumbent must be a retired judge discharged from service in line with the Judges’ Remuneration and Conditions of Employment Act 47 of 2001. The Ombud’s office is regarded as independent and is subject only to the Constitution (see s 47 of the LPA, which further creates an obligation on the part of the Legal Practice Council to assist and protect the office and the Ombud to ensure their independence, impartiality and effectiveness).

It is important to note that in ensuring that the office of the Legal Services Ombud is able to act independently and without any fear or favour, the LPA under section 47(4) provides: “No person may interfere with the functioning of the Ombud.” This provision does not, however, go to the extent of section 9 of the Public Protector Act (23 of 1994) (PPA), which provides under section 9(1) that no person shall insult the Public Protector or the Deputy Public Protector, or do anything in an investigation that, in a court of law, would constitute contempt of court (see s 9 of the PPA).

It is evident that the office of Legal Services Ombud established by the LPA has extensive powers to investigate complaints in the broader legal profession where there are concerns of maladministration and prejudice, particularly complaints that relate to how legal services are rendered and how individuals involved in the rendering of legal services conduct themselves. From a reading of section 46, it is clear that this is directly aimed at the conduct of legal practitioners, as emphasised by the Minister of Justice during a speech to inaugurate the office of the Legal Services Ombud (see Joubert “Launch of the Office of the Legal Services Ombud” 2022 (July) *De Rebus* 6–8. The Minister is quoted as follows: “[T]he moral standards [in the profession] have to be restored and I believe the Ombud will play a big role to restore those standards.”)

The question, therefore, is what the relationship is between the Legal Practice Council and the Legal Services Ombud when it comes to holding legal practitioners to account for their conduct.

## **2 Legal Practice Council’s Code of Conduct**

The provisions of the LPA dealing with the establishment of the Legal Practice Council fall under Chapter 4 of the Act. This chapter contains provisions that deal with matters that relate to the professional conduct of legal practitioners and the establishment of disciplinary bodies to ensure that legal practitioners are held accountable for instances of misconduct (s 36 of

the LPA calls for the establishment of a code of conduct for all legal practitioners).

The Legal Practice Council, a regulatory body of legal practitioners established in terms of the LPA, has a code of conduct that was developed following an extensive consultation process (see Code of Conduct in GG 42337 of 2019-03-29). The code of conduct was published in 2019 and applies to all legal practitioners, including attorneys and advocates and, where applicable, legal practitioners who are not in legal practice (see s 2 of the Code of Conduct in GG 42337 of 2019-03-29). The principal aim of the code is to regulate legal practitioners' conduct in relation to their clients, the justice system and their colleagues (see Code of Conduct in GG 42337 of 2019-03-29).

The code has clear provisions requiring and expecting that all legal practitioners at all times act and display honest and ethical conduct in their dealings with clients and the courts. They must always maintain and retain independence to ensure that they provide unbiased service to their clients, and they must further ensure that they maintain confidentiality at all times (see s 3 of the Code of Conduct in GG 42337 of 2019-03-29).

Section 37 of the LPA further contains provisions designed to facilitate the investigation of alleged misconduct and the conduct of disciplinary processes against legal practitioners accused of such misconduct. Even though this is not explicit in the LPA, it is clear that such investigations will emanate from any party who brings a complaint before the Legal Practice Council. However, such complaints must relate to misconduct only in relation to the code of conduct and an alleged breach committed by a legal practitioner.

The mandate of the Legal Services Ombud appears to be wider than that of the Legal Practice Council – in that it has as its main object “to protect and promote the public interest in relation to the rendering of legal services as well as to promote high standards of integrity and independence of the legal profession” (see s 46 of the LPA). This is far greater than the investigation of complaints that appears to be the main role and function of the Legal Practice Council – as demonstrated in section 37 of the LPA.

Section 46(b) provides that the Legal Services Ombud must “ensure the fair, efficient and effective investigation of complaints of alleged misconduct against legal practitioners”. This effectively means that the Legal Services Ombud has the power to investigate any complaints arising out of how the Legal Practice Council deals with complaints of misconduct against its members. Complaints could be varied and may relate to maladministration, bias, or unfairness in how the Legal Practice Council dealt with a complaint against one of its own.

As stated above, the Legal Services Ombud has greater powers to deal with complaints involving the conduct of legal practitioners, including complaints of misconduct. However, such complaints must first be referred to the Legal Practice Council. Should there be any concerns about how complaints have been handled, they may be referred to the Legal Services Ombud. This view is in line with the recognised function of an ombudsman, which is ensuring that government, public officials, and bodies are held

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accountable for how they treat and provide services to members of the public.

Having indicated all of the above, it is important to understand the powers of the Legal Services Ombud and their extent, in fulfilling this crucial role of promoting accountability in the legal profession.

### **3 Powers and functions of the Legal Services Ombud**

The powers of the Legal Services Ombud are found under section 48(1) of the LPA. From these provisions, it is evident that the Legal Services Ombud has been provided with extensive powers, which are centred on conducting investigations of its own accord and/or upon receiving a complaint.

From a reading of the LPA, it is clear that an investigation conducted by the Legal Services Ombud will revolve around matters and institutions that fall under its purview. These matters are discussed below.

#### *3.1 Maladministration in the application of the Legal Practice Act*

Maladministration, in its simplest terms, refers to the actions of a government or a public body that are seen as causing injustice to the general public (see Caiden “What Really is Public Maladministration?” 1991 51(6) *Public Administration Review* 486–493, where the author describes maladministration (public) as failure or mistakes in the normal functioning of public administration and when justifiable grievances or concerns raised by the public are ignored and/or not dealt with). As demonstrated here, the office of an ombudsman is the ideal body for addressing and dealing with such complaints, and for providing recommendations and/or rulings on how the injustice suffered can be cured (see also UK Parliament Local Government Ombudsman Briefing 04117 of 2017, where the author discusses the importance of the ombudsman as being responsible for investigating complaints relating to injustice suffered by members of the public; <http://researchbriefings.files.parliament.uk/documents/SN04117/SN04117.pdf> (accessed 2023-08-11)).

Section 48 of the LPA provides that the Ombud is competent to investigate “maladministration in the application of this Act” but does not, however, provide further detail on what would constitute maladministration in the context of legal services. One would assume that it could relate to failures in how the Legal Practice Council, a statutory body formed to regulate the legal profession, conducts itself in regulating the profession. This includes a concern that: the Council has structures in place that speak to or are able to ensure fairness in how it applies various aspects of the LPA; that these structures are functioning optimally; and that failure to have these in place might amount to maladministration. An example of what might be expected of the Council could be providing structures and/or processes relating to the assessment of vocational training of aspirant legal practitioners, and further ensuring that candidates seeking to enter the

profession are not subject to concerns and/or allegations of impropriety or injustice.

A related aspect is the perennial issues relating to the transformation of the legal profession (the Preamble of the LPA contains the following statement on transformation: “to provide a legislative framework for the transformation and restructuring of the legal profession in line with the constitutional imperatives so as to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of the Republic”) and ensuring that practising legal practitioners who are Black and, in particular, women are provided with sufficient opportunities and exposure to more diverse and complex commercial as well as government-related work to help expand and grow their practices and stature in the profession.

It can, therefore, be argued that the office of Legal Services Ombud is now a body or institution that will be able to investigate these matters. It may do so on its own initiative or through a complaint, received from individuals and/or representative bodies, about the conduct of the responsible government body (such as the Legal Practice Council) and its responsibilities in ensuring that the legal profession is inclusive and representative of the population of South Africa.

### *3.2 Abuse, unjustifiable exercise of power or undue delay in performing a function*

Section 48(1)(a) of the LPA provides that the Ombud may investigate “abuse or unjustifiable exercise of power or unfair or other improper conduct or undue delay in performing a function in terms of this Act”. Abuse or unjustifiable exercise of power or undue delay in performing a function in terms of the LPA is closely related to the previous point, but it is clear that it is directly aimed at the regulatory body – in particular, where ordinary people have lodged complaints against certain legal practitioners that have not been acted upon, or where there have been delays in handling complaints, or where the outcome of a complaint is not correct.

The complaints lodged against legal practitioners relate mainly to unprofessional conduct. The LPA granted the Legal Practice Council the powers to produce and implement a professional code of conduct (see Code of Conduct in GG 32337 of 2019-03-29). It is mandatory for every legal practitioner to adhere to the code of conduct (s 36(2) of the LPA states that the code of conduct serves as the prevailing standard of conduct to which all legal practitioners and candidate legal practitioners must adhere) in their dealings with the general public, as well as with their colleagues and other applicable stakeholders.

It is, therefore, important that an independent body exists that is able to investigate concerns on how a regulatory body establishes a code of conduct, that same is implemented, and that there are systems in place to ensure that the members of the legal profession are taken through proper disciplinary processes and that such matters are resolved without unnecessary delays (see also s 37 of the LPA, referring to the establishment

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of disciplinary bodies. Section 41 deals with appeals against findings of the disciplinary committee; an appeal may be referred to an appeal tribunal. Section 41 also includes a list of persons who are approved by the Legal Practice Council to serve on an appeal tribunal).

It is well known that the Legal Practice Council, through its provincial structures, receives a volume of complaints from the general public and that there is a backlog in dealing with these complaints (see Moosa “Legal Services Ombud Will Protect the Public Against Crooked Lawyers” (13 June 2023) *Business Day* <https://www.businesslive.co.za/bd/national/2023-06-13-legal-services-ombud-will-protect-public-against-crooked-lawyers-desai-says/> (accessed 2023-08-25)). The incumbent Legal Services Ombud is quoted as saying that there is still a “huge backlog of matters” relating to the conduct of practitioners before the Legal Practice Council and that it is the responsibility of his office to ensure that these are resolved by ensuring that the Appeals Tribunals are also set up and working optimally”). In this instance, on its own initiative, the Legal Services Ombud is in a position to commence an investigation on this issue and to provide guidance to the Legal Practice Council on how these complaints can be handled and how investigations may be sped up to ensure proper accountability of the legal profession and justice to the general public.

### 3 3 *Acts or omissions resulting in unlawful or improper prejudice*

Section 48(1)(a) of the LPA empowers the Ombud to investigate any alleged “act or omission which results in unlawful or improper prejudice to any person, which the Ombud considers may affect the integrity and independence of the legal profession and public perceptions in respect thereof”. Such an act or omission is an all-encompassing complaint. One can deduce that it is aimed at ensuring that the legal profession be protected and insulated from individuals and/or institutions that seek to cause it harm. Examples of such conduct could include acts of certain individuals who may enjoy prominence in politics or society unfairly attacking the legal profession and its members to an extent that it has an effect on the integrity of the profession.

At the same time, the provision creates a positive obligation on the Legal Services Ombud to ensure that it investigates any act or omission by any party that may seek to tarnish and/or question the integrity and/or reputation of the legal profession. This could emanate from the manner in which certain sections or members of the profession conduct themselves in their dealings with courts and/or their fellow professionals. The Legal Services Ombud is not required to wait for a complaint to be lodged with the Legal Practice Council before taking action to investigate such matters and produce findings to prevent a recurrence of such matters.

### 3 4 *Further powers*

As demonstrated above, the Legal Services Ombud is granted extensive powers aimed solely at ensuring that there is absolute integrity,



transparency, inclusivity as well as fairness when it comes to the provision of legal services in South Africa. The Legal Services Ombud achieves this through the extensive powers and functions that it has been granted by the LPA.

In addition to these powers and in an effort to ensure that complaints are dealt with promptly, the LPA under section 48(1)(c) promotes the use of alternative dispute resolution mechanisms to ensure that matters are resolved amicably. This includes the Legal Services Ombud advising the complainant on any appropriate remedies they can follow to seek redress (s 48(1)(b)(ii) and (iii) of the LPA). Furthermore, where a criminal offence is alleged, this may be referred to the relevant authorities for further investigation and prosecution (s 48(1)(c)(i) of the LPA).

The Legal Services Ombud is further empowered to make suitable recommendations, including sanctions. Any party, including a legal practitioner against whom a sanction has been imposed, may be referred to the relevant body responsible for their conduct in order for the respective body to take whatever disciplinary action it deems appropriate against the individual (s 48(1)(c)(ii) of the LPA).

#### **4 Obligations related to findings of the Legal Services Ombud**

The question arises whether the findings of the Legal Services Ombud are binding. The LPA is clear that the Legal Services Ombud may at any time during and/or at the conclusion of its investigation refer a matter and/or its findings for criminal prosecution should it determine that a criminal offence has been committed (s 48(1)(b) of the LPA). The findings may also be referred to an appropriate body or authority to take disciplinary steps, where applicable.

An important point to consider, as clearly appears under section 48(1)(c)(ii), is that the Legal Services Ombud may make an appropriate recommendation regarding redress of the prejudice in question or any other appropriate recommendation that the Ombud deems expedient to the affected body or authority. However, the LPA does not state – either directly or indirectly – whether the recommendations or findings made by the Legal Services Ombud have a binding effect on the public body or official against whom it was made. The importance of clarity on this issue cannot be overstated when one considers the nature and purpose of the Legal Services Ombud as established by statute.

As is the case with any ombudsman office established, the main purpose is to ensure that government and/or public bodies be compelled to account to the members of the public they serve (s 48 of the LPA). The Legal Services Ombud achieves this task by receiving or initiating complaints against acts of maladministration, fraud or corruption, or inadequate service delivery by public bodies (ss 46 and 48 of the LPA).

The importance of the office of the Legal Services Ombud in these circumstances is signified; it is there to ensure the individual rights enshrined in our Constitution are respected and adhered to – for example, the right of

access to justice, including but not limited to section 34, which provides for the right to have one's dispute dealt with in a fair public hearing before a court or an independent body or forum (see s 35(1) of the Constitution).

The LPA ensures the independence of the Legal Services Ombud by emphatically stating that the institution is independent and only subject to the Constitution and the law (s 47(1) of the LPA). This effectively means that decisions, recommendations, or findings must be tested against the Constitution and, if found to be sound, the question remains whether they can be regarded as binding. As indicated, the LPA is silent on the matter, but it is clear that the Legal Services Ombud as an independent body, enjoying the protection of the Constitution, should have the means within the law to ensure that it is taken seriously.

To answer this question, one has to rely on court decisions on the status of the findings of another equally (or more) important ombudsman office – that of the Public Protector. In the decision of the *South African Broadcasting Corporation v Democratic Alliance* (2016 (2) SA 522 (SCA)), the Supreme Court of Appeal, taking into account the nature and purpose of the office of the Public Protector in the Constitution (*South African Broadcasting Corporation v Democratic Alliance supra* par 52. The court stated that the Public Protector as a Chapter 9 institution established in terms of the Constitution cannot be second-guessed in its decision. See also par 53, where it held that remedial action of the Public Protector (absent review) was to be followed and implemented) and as a body that was designed to “support democracy” and to ensure that public bodies meant to protect the general interests of the public remain accountable, held that the decisions of the Public Protector remain binding and must be followed and implemented unless they are taken on review by the public body against whom they were made (*South African Broadcasting Corporation v Democratic Alliance supra* par 53).

The decision of the Supreme Court of Appeal was reiterated in the Constitutional Court case of *Economic Freedom Fighters v Speaker of National Assembly; Democratic Alliance v Speaker of National Assembly* (*supra*). The court held that the findings of the Public Protector have a binding effect and that “compliance is not optional and remedial action taken against those under investigation cannot be ignored without legal consequences” (see also the discussion of the case by CJT Mbiada “The Public Protector as a Mechanism of Political Accountability: The Extent of Its Contribution to the Realisation of the Right to Access Adequate Housing in South Africa” 2017 *PER/PELJ* 20).

It is probably too ambitious to equate the office of the Public Protector and the Legal Services Ombud in terms of reach, status and impact, considering that the latter is primarily focused on ensuring fairness and justice in the administration of justice. The Legal Services Ombud must ensure that the actors regulating the legal profession apply the laws, act fairly at all times and provide necessary protections to the public they serve. In contrast, the office of the Public Protector is there to ensure that government institutions as a whole do not embark on conduct that threatens our democracy or seek to avoid accountability for their actions. However, both institutions are clearly independent and accountable only to the Constitution. Their

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recommendations/findings must be respected and followed unless reviewed by a court of law.

## 5 General provisions

Sections 49 to 51 of the LPA are general provisions dealing with the term of the Ombud, the Office of the Ombud comprising its administrative functions and the financing of the Legal Service Ombud. The provisions, and the manner in which they have been drafted, reinforce the point that the Office of the Ombud is viewed as independent. It is subject only to the Constitution, and the seat of its office must be determined in consultation with the Minister (see s 45(2) of the LPA, where it is clear that the Ombud and their office must operate independently, in substance and in form, meaning they are not required to share space). Furthermore, the allocation of a budget to the Legal Services Ombud must be determined by Parliament (s 51(6) of the LPA; these monies also include the establishment of the administrative functions of the Legal Services Ombud) and not by the relevant minister, once more emphasising the independence of the Legal Services Ombud. (The office of the Legal Services Ombud is not an organ of state and functions outside of the public service administration; see s 48 of the LPA).

The administrative functions of the Legal Services Ombud are run by a director appointed by the Ombud for a renewable period of five years, and the director's remuneration and allowances are determined by the relevant minister in consultation with the Minister of Finance. In contrast, the Legal Services Ombud is appointed for a renewable period of seven years, which once more demonstrates that they act independently.

As indicated, the President is responsible for appointing the Legal Services Ombud. Since the appointment must be a judge who has been discharged from active service in terms of the Judges' Remuneration and Conditions of Employment Act (see s 5(1) of 47 of 2001, which contains a formula to be applied in calculating the salary of a judge discharged from active service in terms of the Act), their salary will be determined in terms of this Act. The LPA is, however, silent on the removal of a Legal Services Ombud. Therefore, reliance must be placed on the provisions of the Judicial Services Commission Act 9 of 1994 and, in particular, the definition of "judge", which effectively includes a judge discharged from active service in terms of the Judges' Remuneration and Conditions of Employment Act (see s 7(1)(g) of 47 of 2001 for the definition of "Judge" in terms of the Act).

The Judicial Services Commission regulates the conduct of judges appointed in terms of the laws of the country, which includes the ability of any person to lodge a complaint about a judge. Such a complaint must be handled in terms of the procedures set out in the Judicial Services Commission Act (s 14 of 9 of 1994, which sets out the grounds as well as the procedures for handling disciplinary matters against judges). This further demonstrates the intention of the legislature to insulate and protect the Legal Services Ombud and the office of the Ombud from external threats to its independence. The Legal Services Ombud, appointed as a judge in terms of the Judicial Services Commission Act can only be reprimanded by a chairperson of the judicial conduct committee (the committee is established

in terms of s 8 of 9 of 1994. It has powers to reprimand the judge, including requiring an apology to the complainant and providing a written warning in instances where the misconduct is not deemed to amount to an impeachable offence) or even removed from their position (s 19 of 9 of 1994; where it appears that the judge suffers from incapacity or is grossly incompetent, a tribunal is convened. Where it finds that this is the case, it will prepare a report to be sent to the Judicial Services Commission, which can then vote to refer the matter to the Speaker of the National Assembly for the National Assembly to decide and vote on the impeachment of the judge) after an exhaustive disciplinary process that may involve the appointment of an independent tribunal depending on the severity of the charges that the judge faces at the time.

## 6 Concluding remarks

The article was prepared in order to understand the nature and purpose of establishing the Legal Services Ombud. Through a discussion of the meaning of “ombudsman” as a concept, and what it seeks to achieve, it has become clear that the role of the Legal Services Ombud operates in the sphere of the already existing Legal Practice Council responsible for regulating the legal profession.

It is clear that the Office of the Legal Services Ombud plays an important role in the promotion of access to justice for all South Africans, and further plays a crucial role in ensuring that the legal profession continues to be held to a higher standard, and become fully transformed. As the Minister of Justice remarked during the launch of the Office (see South African Government “Minister Ronald Lamola: Launch of the Legal Ombuds” (10 June 2022) <https://www.gov.za/speeches/minister-ronald-lamola-launch-legal-ombuds-2-jun-2022-0000> (accessed 2023-08-25):

“It will address the systematic injustices within the legal profession, foster accountability and provide redress. Our people have a right to be treated with respect and integrity.”

He further mentioned in his concluding remarks, importantly, that

“the rule of law and constitutionalism are the cornerstones of our democracy. Legal professionals play a pivotal role in strengthening the rule of law, let us must work together to deepen democracy and make South Africa a great and prosperous nation.”

These remarks from the Minister comprehensively demonstrate that the office of the Legal Services Ombud is a crucial block of our democracy.

It is important that South Africans are educated about its existence and that the Office itself be resourced and supported properly in the same way as the Office of the Public Protector and other constitutionally protected bodies formed to protect human rights and access to justice are protected.

These measures, in addition to providing clarity on whether the decisions of the Legal Services Ombud are binding will ensure the Office of the Legal Service Ombud is effective and also create confidence in the eyes of the public that they have an independent body that will ensure proper

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accountability for all institutions involved in the administration of justice in our country, including the Legal Practice Council.

As the saying goes, “the proof of the pudding is in the eating”.

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