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Transformation within law firms – how far have we come?

Most South African law firms have transformation policies as part of their strategy across their operation today. We should still ask, though, how far have we come as an industry in the 28 years of democratic South Africa.

When one examines purely the numerical complement of attorneys, as of January 2019, there were 31 031 reported attorneys, of which 14 941 were black, representing 48% of attorneys in practice. This means 52% of attorneys are white, whilst the white population constitutes around 9% of the national population. This is not to say that the number of black attorneys we have is insignificant. One must still acknowledge that there has been an increase in the representation of black practitioners over the last few years.

According to the 2021/2022 LexisNexis Legal Tech Report, the number of fully Black African-owned law firms has increased to 19%, from just 11% in 2016. This is a notable change considering the barriers to entry for black legal practitioners that still persist in the legal sector. This change in black ownership has also seen an 11% decrease in traditionally fully white-owned firms, over the same period. The report also indicates that from 2016 to date, only 19% of firms have mixed ownership. This is indicative of the lack of collaborations between white and black practitioners and further exacerbates the racial disparity within the profession. The report further states that nearly 45% of law firms do not have a BEE rating, which perpetuates the idea that there is lack of intention from fully white-owned firms to integrate black practitioners into the fold.

The above statistics also indicate that, although there has been progress, there is still much to be done to increase the participation of black attorneys within the legal fraternity. However, increasing the number of black attorneys alone is not sufficient to successfully transform the legal industry – a critical requirement in this regard is to break down the barriers in the areas that impede effective economic transformation of the profession.

I would like to share some thoughts on where we can increase efforts which in my view will do more to advance transformation than simply increase the number of black attorneys.

TRAINING AND DEVELOPMENT

We must actively create learning environments that seek to continuously train and develop black lawyers. The most critical aspect of this is to ensure that we do on-the-job training which invariably means that we must create an enabling work environment that allows for this. In my career, I have often witnessed scenarios where black lawyers are not given proper feedback on their work or direction on how to improve. Too often young black talent is written off without adequate effort being put in by senior practitioners to provide constructive feedback.

We should take the approach of developing attorneys through continuous feedback and allowing them the opportunities to improve and develop. These steps require time and effort – and, in a world where lawyers sell time, these steps are often compromised. This comes at a cost that impedes the transformation efforts of the legal profession, which limits the success of the profession as a whole.

ACCESS TO QUALITY WORK

The legal market is highly competitive and, in a market where firms are constantly competing with one another, access to quality and complex work can be challenging – this is even more so because most law firm's compensation models are driven by what lawyers can bill. However, access to good quality work is critical to the development of black lawyers and firms should be actively looking for opportunities to ensure a more even spread of good work. One way of doing this is to incentivise lawyers who provide such access and develop a culture within law firms that drives this transformative objective.

Another focus area should be changing briefing patterns within clients. We have seen in recent years that many legal departments within corporates have taken a more active role in ensuring that black lawyers are briefed

on their matters or that teams that work on those matters are diverse; however, the pace at which this is happening is still slow and often in a fast-paced commercial environment the desire to switch lawyers or the inconvenience in getting someone new familiar with what is required poses a deterrent to creating the much-needed access. Clients should be encouraged to re-evaluate their briefing patterns and aid in creating access that will ultimately further transform the legal sector. Government should also play a key role in this endeavour – it should matter less whether the law firm is BEE-compliant but more that access is given to black lawyers.

SPONSORSHIP AND LEADERSHIP

It is important that we build a culture of sponsorship within law firms. This means more than mentoring and training black lawyers. Sponsorship is championing someone through their careers and actively assisting them to build their profiles within the market. This is often very effective as it allows clients to get comfortable working with new talent where already established practitioners are endorsing their work. Another critical area that requires development is ensuring that black professionals are being given leadership opportunities with real decision-making power within firms. This is essential if we want to create the next generation of black successful leaders.

The above thoughts are not exhaustive, and the legal profession has much navel-gazing to do to achieve meaningful transformation in the legal sector. In July this year, President Cyril Ramaphosa's Cabinet approved the publication of the Draft Legal Sector Code ("Draft LSC") for public comment. The Draft LSC is intended to address the imbalances and inequalities within the profession. The hope is that with the introduction of this Code, there is renewed focus on improving transformation within the legal sector. But transformation cannot just be a numbers game – creating good quality black attorneys who have the access to good quality work to create successful and sustainable practices must be the goal. 