The 14th May 1975 was a significant day in the history of the legal profession in South Africa. On that day the Law Societies Act, 41 of 1975, was promulgated and immediately became law. The Act, almost affectionately known during the period of its gestation as the “Umbrella Bill”, brings the four provincial law societies and the Law Society of South West Africa under the umbrella of a single piece of legislation. It repeals all the pre-Union, Union and Republican statute law under which these five societies were previously constituted. Its promulgation marks a clear and welcome stride forward in the long process of evolution of our organised attorneys’ profession.

In its long title the Act is called an act “to consolidate and amend the laws relating to societies established in the Republic and the territory of South West Africa in respect of the profession of Attorney, Notary or Conveyancer; and to provide for matters connected therewith”. Its short title is simply “The Law Societies Act, 1975,” and, in Afrikaans, “Die Wet op Prokureursordes, 1975”.

Unilingual legislation
Our law societies in the Republic are venerable institutions, independently created by statute in the colonies and republics of the day, and boast of a proud history extending up to a century and more. Each jealous, sometimes fiercely, of its autonomy and traditions, the societies have survived and flourished under the old constitutions, each of which has, to its considerable credit, required only slight amendment over the decades. But, with the growth of closer association among the societies, a point was reached – probably inevitably – where the decision was taken to operate under one modernised and improved statute. Nevertheless, the societies might well have continued to operate indefinitely under the old order, had it not been for the catalyst of Government policy which put a stop to the amendment of unilingual legislation pending its translation and re-enactment in both official languages. The constituting statutes of the law societies of the Orange Free State, the Transvaal and Natal were all in English only and it was obviously desirable to avoid the danger of stagnation which lurked in the embargo on amendment.

Gratifying co-operation between the then Minister of Justice, the late Mr P C Pelser, and his Department, on the one hand, and the law societies, on the other, and among the law societies themselves led to the acceptance in principle of the concept of one statute for all the societies. Thereafter it remained to work out draft legislation to the approval of all the parties concerned and this was achieved after some years of negotiation and collaborative effort.

In moving the second reading of the Bill in the Senate the Minister of Justice said:**

“This Bill may be regarded as a milestone in the history of the legal profession in South Africa. Through excellent co-operation legislation has now been successfully introduced which will indicate to all interested parties, clearly and on a uniform basis, what the objects and functions of the law societies are. I hope that the prestige, status and dignity of the legal profession will be enhanced and promoted by this measure.”

Supporting the Bill on behalf of the opposition Senator Crook said:**

“The attorneys’ profession has, from its very beginning in this country, sought to organize itself on a proper footing by,
firstly, exercising control over its own members; secondly, raising professional standards and, thirdly, subjecting its members to strict discipline . . . This has had the effect of furthering the status of the legal profession, of improving the standard of its service to the community, as well as protecting the interests of the public in general."

An area in which the societies agreed to disagree was in the naming of the societies in Afrikaans. The Transvaal, Free State and South West African societies chose to revert from the literal translation “Wetsgenootskap” to what is believed to be the etymologically more acceptable designation “Prokureursorde”. In English too, the Act brings about a simplification in names, the five societies being now known as “The Law Society of the Cape of Good Hope”, “The Law Society of the Orange Free State”, “The Law Society of the Transvaal”, “The Natal Law Society” and “The Law Society of South West Africa”. The somewhat tautologous adjective “Incorporated” has rightly been assigned to the scrap-heap.

Regulatory power

Each society is given wide regulatory powers. This is a strong feature of the Act in that, while providing the uniform legislative framework within which all societies will operate, it nevertheless preserves the autonomy of each society by empowering it to prescribe rules and make determinations for its own regulation and the conduct of its own affairs. Substantially each society remains master of its own house and the profession in each province and in the territory of South West Africa will continue to control itself. The authority of the supreme court over the profession is however rightly recognised by the requirement of section 21 of the Act of consultation in the matter of proposed rules by each council with the judges president and chief justices in its particular province and of the approval of all draft rules by the Chief Justice of South Africa. The public interest is protected by the requirement that the State President also approve any draft rule which, in the opinion of the Chief Justice of South Africa, may adversely affect the interests of the public. The shape of things to come is foreshadowed in the provision made for the jurisdiction of the Homeland high courts, the area of jurisdiction of each society being at the same time recognised as including the areas of territorial jurisdiction of those high courts which are within its area.

While the power of prescription of rules by each society individually recognises the existence of regional differences, it is to be sincerely hoped that the societies will find so much common ground that substantially uniform rules will before long see the light of day. This is particularly important in the case of rules regulating disciplinary procedures. It is encouraging to know that the Association of Law Societies has already set up a joint committee consisting of representatives of each society charged with the task of endeavouring to achieve uniformity in this regard.

The sections of the Act dealing with the disciplinary powers of councils are important. They provide for updated procedures and wider and clearer powers of investigation, trial and punishment. An important innovation is to be found in s 18(5) which gives statutory authorisation to the publication of disciplinary proceedings. It is also made clear in the proviso to s 13(2) that disciplinary committees may be set up with the power to make decisions which are not subject to amendment or withdrawal by the council and are subject only to the right of appeal to the supreme court given by s 20. Councils and their disciplinary committees are given additional teeth by the powers to summon witnesses and to hear evidence on oath (s 17) and the penalties provided by s 19. The non-exhaustive definition in s 1 of “unprofessional or dishonourable or unworthy” in relation to conduct stresses the concept that conduct on the part of an attorney is not unprofessional or dishonourable or unworthy only when and because it is prescribed as such.

Taxation of fees

Another innovation of great significance is the power given by s 15(h) of assessment by a council of fees for non-litigious work. This will remove the taxation of such fees from the taxing masters, but the prescription of the manner of their assessment will have to await the contemplated amendment of rule 70 of the supreme court rules so as to eliminate
the conflict which would otherwise be set up with that rule. Under s 21(5) any assessment of fees by a council will be subject to review by the supreme court.

Councils will now also be able to regulate the manner of practice by practitioners in association with one another within the Republic and South West Africa and of practice by a South African practitioner in association with a foreign practitioner (s 15(k)). Under s 21(1)(c) Councils also are given power to regulate and control the conduct and activities of unqualified assistants employed by practitioners. This remedies a distinct shortcoming of the earlier and now repealed legislation.

"The King is dead. Long live the King!"

While properly and certainly with some nostalgia mourning the demise of the old statutes which served the profession long and well, it is fitting to hail the advent of the new Act. Under its wing the profession moves into the future endowed with solidarity and strength and the determination to uphold its integrity and high standards.

The degree of co-operation achieved among the societies in helping to bring about this controlling statute is a matter for self-congratulation. The close and sympathetic collaboration of the Minister of Justice and the Secretary for Justice and senior officials of the Department, particularly Mr B J Parsons, Mr C M van Niekerk and Mr R P Rossouw, was of enormous value to the profession. And finally the profession owes its gratitude to our legislators of all political parties for affording the Bill a smooth and speedy passage through Parliament.

How does a nation grow?

Most would agree that the strength of a nation lies in its people and resources. But how does it grow? Luck? Geography? History? We believe that a nation grows as the talents and skills of its people develop and grow. In this belief we have built the St Nicolas Home for boys.

Our objectives?
The boys we help are "in need of care"; through family break-ups, poverty or neglect they have no homes. Having provided them with a home, we aim to guide, educate and provide opportunity for them. To help them take their place as contributing and useful members of our society.

This is not an appeal to you for funds
The St Nicolas Home is established. Among our Patrons we number many leading citizens and business houses. Seventy boys are already benefiting from a better education than their parents could provide. We are building. But we need to go on building. All we ask is that when charitable institutions are considered as beneficiaries of a will, the St Nicolas Home for Boys is not overlooked.

Will you help?
Not by sending a donation but by making your colleagues and clients aware of our work. We do need funds; every institution of this nature does. We believe that our appeal is not to charity but to men of vision who believe as we do that if the nation is to grow no potential talents must be overlooked. Why not call on us and see what we are building? Our address?

St Nicolas Home, Dowling Avenue, Western Coloured Township, Johannesburg (Postal Address is PO Box 58138, Newville, Transvaal, 2114).