

STATUTORY REGULATION OF THE VETERINARY PROFESSION : THE CASE OF
ZAMBIA

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ABSTRACT

Statutory Regulation of the veterinary profession has only been on paper for the past two and a half decades. The Board of Veterinary Surgery responsible for regulating the profession under the Director of Veterinary Services has been defunct since the 1980's. The professional body responsible for promoting the interests of the veterinary professionals (Veterinary Association of Zambia) has also been inactive for a long time. A rather good attempt to alleviate this grave situation has been made by the passing of the Veterinary and Veterinary Para-professions Act No. 45 of 2010 which provides for the Veterinary Council to take over the Board of Veterinary Surgery and the Veterinary Association is established as a statutory body. This Essay looks at the main deficiency under the Act, which is that of the mix up in the roles, functions and structure of the now-called Veterinary Council and the Veterinary Association.

Chapter one gives an overview of the issues to be considered, namely the mix up in the structures of the two institutions as well as their basis while Chapter two extracts the rationale behind the Act by delving into the inefficiencies of the Director's regulatory role in the absence of a functioning Board of Veterinary Surgery. It concludes by bringing to the fore the inconsistencies between the stakeholders' submissions and what is obtaining in the Act. Chapter three goes on to detail the actual anomalies in the Act and concludes that a poor marriage of different concepts drawn from different professional regulatory structures accounts for much of the confusion in the institutions set up under the Act. Chapter four extracts lessons for Zambia from the separate and well instituted Veterinary Council and Association of South Africa. Chapter five recommends, among other things, a proper delineation of roles and functions between the two bodies as well as a revitalization of the advocacy role of the Veterinary Association for the good of its members and all concerned.

DEDICATION

I dedicate this work to my family, my first and eternal loves.

ACKNOWLEDGEMENTS

Mummy, you are a saint and I know I would not have gotten this far without your unwavering faith in me, your constant support and prayers. Every time a mishap in my life is averted, I know it is because God listened to you. Daddy, without your sacrifices, I would not have gained any good education, so thank you for the bigger picture you painted. I assure you, I am getting there even though it has taken longer than any of us would have wanted.

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To my band of sunshine; Sylvia, Ruthee, Malzi, Patience, Cynthia, you are just that, a band of sunshine. Life is all the better when you guys are there.

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Health Professions Act No. 24 of 2009

Law Association of Zambia Act, Chapter 31 of the Laws of Zambia.

Veterinary and Veterinary Para-professions Bill National Assembly Bill No. 39 of 2010

Veterinary and Para-Veterinary Professions Act No. 19 of 1982 – South Africa.

CASE

Pearlman v. Manitoba Law Society Judicial Committee, [1991] 6 W.W.R. 289 (S.C.C.).

GLOSSARY OF ACRONYMS

- BLR: Business Licensing Reforms
- SAVC: South African Veterinary Council
- SAVA: South African Veterinary Association.
- NVZC: New Zealand Veterinary Council.
- NVZA: New Zealand Veterinary Association

CHAPTER ONE

OVERVIEW

1.1 INTRODUCTION

This Essay aims to analyse the efficacy of the two institutions created under the recently passed Veterinary and Para-veterinary Professions Act No. 45 of 2010, namely: the Veterinary Council and Veterinary Association of Zambia. Seeing as the overall purpose of professional bodies is to regulate the profession and/or promote the interests of the members, this Essay looks into the two institutions, detailing their functions and objectives to bring to the fore the legislative mishaps, potential and practical problems that are apparent in the Act.

The long awaited Veterinary and Para-veterinary Professions Act, 2010 was passed to repeal the Veterinary Surgeons Act of 1964. It is against this background that this Paper aims to critically analyse the efficacy of the Act itself, focusing on the functions and roles of the Veterinary Association and the Veterinary Council. It will extract the rationale behind the Act by assessing the Act in the context of the stakeholders submissions, analyse potential problems in the Act as well as their basis. It will conclude with recommendations on the matter.

1.2 A FEW REMARKS ABOUT PROFESSIONAL BODIES.

Professional bodies are organisations whose members are individual professionals. In some professions it is compulsory to be a member of the professional body, in others it is not. This usually depends on whether or not the profession requires the professional to have a

‘licence to practice’, or to be on a professional register, in order to do their job. This is related to how the profession is regulated, that is, who is responsible for making sure that professionals are doing their jobs properly.¹

The differences between a regulatory body and a professional association are set out below.²

A Regulatory Body; Acts in the interest of the public and has processes open and accountable to the public and the profession, is independent of professional bodies, promotes the process of regulation, administers a single register of practitioners who meet agreed criteria, works with the profession to agree and oversee minimum standards, sets requirements for Continuing Professional Development (CPD), publishes Codes of Conduct and/or Ethics, has a 'council' or governing body which includes lay and professional representatives, has published complaints & disciplinary procedures, liaises with the government and other organisations when required.

Association/Professional Body; Acts in the interest of the profession, independent of the regulatory body, promotes and supports the practitioners and the profession, is a membership organisation of professional practitioners, ensures members meet its own standard's which are at least those required by the regulatory body but may exceed them, many professional bodies provide information on insurance for members, ensures members meet requirements for Continuing Professional Development, have codes for members, which would be at least that required by the regulatory body, may also have complaints & disciplinary procedures, if

¹ Ashbridge Communications. Role of Professional bodies. <http://www.totalprofessions.com/profession-finder>, (accessed 03/11/2011.)

² General Council For Complementary Therapies. *Regulator or Association- What is the difference?* (December 2011. <http://www.grcct.org/difference.html>. (accessed 11/04/2012)

necessary will liaise between practitioners and the regulatory body in the case of a complaint, provide information to the public, ensures courses cover the core curriculum, professional bodies may also liaise with other organisations and government, but not as the 'voice' of the discipline.

The role of the veterinary profession is to promote animal health, animal welfare, public health and the protection of the environment. Veterinarians must adhere to high ethical standards and be prepared to apply their specialised knowledge and skills in the interest of others. The organisation, structure and functioning of the Veterinary Statutory Bodies and Veterinary Associations are prerequisites not only for the quality of Veterinary Services but also for private veterinary practice in a country.³

Both organisations provide the necessary infrastructure to ensure that veterinarians in the public and the private sectors have the necessary qualifications, scientific expertise and experience and are free from any financial, commercial, hierarchical, political and other pressures which might affect their competence to make sound professional judgments based on existing scientific data. It is essential that all veterinarians and veterinary para-professionals are licensed to practice by an autonomous Veterinary Statutory Body and subject to legal disciplinary provisions for any professional misconduct. The quality of the Veterinary Services of a country depends on a range of factors which include fundamental principles of an ethical, organisational and technical nature. The integrity of the work of veterinarians, veterinary para-professionals and other members of the veterinary personnel must be guaranteed.⁴

³ Pavlos Economides. The Role of Statutory Bodies and Associations in the Promotion of the Veterinary Profession and Upgrading of Veterinary Services. OIE, 2007.165

⁴ Economides. The Role of Statutory Bodies and Associations. 166

1.3 STATEMENT OF THE PROBLEM

Some Stakeholders had in mind the creation of a Veterinary Council of Zambia which would be responsible for the registration and regulation of the veterinary profession. The Council was to be representative of all stake holders including the public unlike before and registration with this Council was to be mandatory. The Association was to be a body for the furtherance of the interests of the members whose affiliation to it was to be voluntary like most professional associations worldwide. Examples are the South African Veterinary Association⁵ and the New Zealand Veterinary Association⁶ However; some stakeholders were of the view that there should be a merger or hybrid between the Veterinary Association and the Veterinary Council.⁷

To this latter end, the Veterinary and Veterinary Para-professions Act, 2010 (hereinafter referred to as *The Vet Act*) was passed albeit in a hasty manner and lacking submissions from other important stakeholders who either stayed away of their own volition or felt they had no adequate time to make meaningful submissions. Furthermore, the process was largely government driven as the final Act did not reflect clearly or in some instances, at all, the submissions of the stakeholders⁸

The Veterinary Association of Zambia has been established under *The Vet Act* in section 3(1). Its functions relevant for consideration here include to *register* veterinary and

⁵ South African Veterinary Association, "History of the South African Veterinary Association,"(January 2011) <http://www.sava.co.za> (accessed 08/10/2011)

⁶ Veterinary Council of New Zealand, "*The difference between the NZVC and NZVA*," NVZC Newsbrief (October 2011), www.vetcouncil.org.nz (accessed 07/10/2011)

⁷ Interview: Dr.Francis.F. Mulenga; Chief Veterinary Officer, Ministry of Agriculture, Livestock and Fisheries.26/10/2011,Lusaka.

⁸ Interview: Professor Alfred.F. Mwanza. President of Veterinary Association ,Lusaka.25/10/2011

veterinary para-professionals and *regulate their professional conduct* in section 4 (1-a). Other functions are to *investigate allegations of professional misconduct and impose such sanctions* as may be necessary (section 4(1,e)). The Act in section 8 (1) continues the existence of and renames the Board of Veterinary Surgery as the Veterinary Council of Zambia.

The first issue is that the Veterinary Council being the very Board of Veterinary Surgery should normally assume the position of being the overall regulatory authority with the mandate of registering veterinary professionals, para-professionals and regulating the profession. However, it is not clear what role or position either of these institutions created play. Professionals are mandated to register with both the Veterinary Association and the Council. Section 13(1) states, ‘a person who wishes to be registered as a veterinary surgeon or veterinary para-professional, shall apply to the council for registration in the prescribed manner and form upon payment of the prescribed fee.’ However, the functions of the Council stipulated under section 10 do not include the registration of professionals. The functions of the Association on the other hand in section 4 (1) clearly include to register veterinary and veterinary para-professionals, and regulate their professional conduct.

The second issue is that in the same vein, the Association, in section 4 (a and e) is mandated to regulate the professional conduct of veterinarians, to investigate allegations of professional misconduct and impose sanctions as are necessary and yet it is the Council that ought to adopt and publish a code of ethics for veterinarians. The Council can also initiate disciplinary action. Further it is the Council that shall establish a disciplinary committee which is to hear and determine allegations of professional misconduct whether initiated by the Council or by

any person. This raises so many questions as to whether the Association and the Council are alternative forums for hearing allegations of misconduct. And if indeed that is the case, what would be the administrative implications of doing so and how practical would it be for two institutions under the same Act to be able to perform the same functions? This seems to be a fertile area for conflict. This duplicity and inconsistency in functions is equally perplexing.

The third issue relates to the second. The composition of the disciplinary committee according to section 63(1) comprises the chairperson, vice chairperson, the chairperson of the Council, a legal practitioner and a peer of the veterinary professional appearing before the committee. The Chairperson and Vice Chairperson in this context mean those of the Association according to section 2(1). The Council is the one mandated to establish the committee, so it is not clear why the Chairperson and Vice Chairperson of the Association should be part of the committee.

The last issue is which of the two institutions is superior to the other. The Council, having taken over functions of the Board of Veterinary Surgery ought ordinarily to have been the overall regulatory authority. However, it seems the Association has taken the center stage being given the mandate to register professionals and regulate the veterinary profession. The inconsistency is that it is the Council that actually ought to license the professionals and publish the code of ethics so a question of which institution actually administers this code comes to light. It is important to know which institution, for practical purposes, heads the profession. It is also important to have an autonomous organisation whose membership is voluntary to further the interests of its members. As the institutions stand now, membership

to both is compulsory and their roles are not certain or clear at all. This cannot help enhancing the image of the profession at all. A hybrid between the two institutions has no practical or legal sense in this manner.

1.3 PURPOSE OF THE STUDY

The ultimate aim of this Essay is to bring to light what seem to be the most incomprehensive aspects of the roles and functions of the Veterinary Council and the Veterinary Association of Zambia in the regulation of the profession. It aims to analyse how effective these institutions, mixed up as they are, will be in furthering the interests of the veterinary profession including, ultimately, the public.

Specific objectives of the essay are;

- (a) to bring to light the functions and inadequacies of the Veterinary Board of Surgeons under the repealed Veterinary Surgeons Act in the regulation of the veterinary profession.
- (b) to evaluate the composition, functions and objectives of the Veterinary Association before the current Vet Act was passed.
- (c) to ascertain what the rationale behind the hybrid of the Veterinary Council and Veterinary Association is.
- (d) to bring to the fore practical and theoretical implications of the hybridization of the functions of the aforementioned institutions
- (e) to ascertain (to what extent) the mischief that the lawmakers sought to address by the creation of the Veterinary Council and Association as two statutory bodies could possibly be achieved.

- (f) to ascertain in which manner and which of the two institutions will enforce the code of ethics.
- (g) to make a theoretical comparative study of the Veterinary Council and Association as they are under the Vet Act with those of South Africa and other commonwealth states.
- (h) Following the findings above, to consider how the two institutions may best be established and how they may work together to ensure the interests of the Veterinary professionals (both public and private), para-professionals and the public are protected and served.

1.4 SPECIFIC RESEARCH QUESTIONS

1. In what way did the Board of Veterinary Surgery function under the repealed Veterinary Surgeons Act, Cap 243?
2. What were its inadequacies in regulating the profession and disciplining its members?
3. Was there a code of ethics that the Board was mandated to administer and if so, how effective was it?
4. What prompted the need for the establishment of the Veterinary Council and Veterinary Association under the Vet Act?
5. Have the submissions by the stakeholders that took part in the formulation process of the above mentioned Act relating to the Veterinary Council and Association been fully taken into account and if not, why and to what extent have they not?
6. Is there conformity between the Act and Constitution of the Veterinary Association?
7. Which of the two bodies is the superior regulatory body of the veterinary profession according to the Act and which one will administer and enforce the code of ethics?

1.5 SIGNIFICANCE OF THE STUDY

1.5.1 Theoretical importance of the study.

This essay will strive to make a legalistic analysis of the Veterinary Council and Association as they stand under the Veterinary and Veterinary Para- Professions Act No. 45, 2010. The Essay will analyse the functions of the two institutions and roles in a way that will bring to the light, for all stakeholders concerned, their critical importance to the profession. Finally, the essay will discuss how best to establish the Veterinary Council and Association in order that their functions are effective to the benefit of the veterinary profession, the public and the animals.

1.5.2 Practical importance of the study

The basis of this Essay was deduced from a critical evaluation of the Veterinary and Veterinary Para- Professions Act No. 45, 2010. The importance of the veterinary profession cannot be over emphasised. The public depends on these Veterinary professionals to ensure animal health; animals that are indispensable in the food chain, a source of income, entertainment and companionship. Therefore, the practical value of this Essay will be important to not only the professionals but the public and the animals because it is in the interest of all mentioned that they are regulated by proper functioning bodies which will administer a professional Code of Ethics and Conduct. This will ensure animal health, that erring professionals are sanctioned by a transparent effective mechanism, and that a proper body will further the interests of the veterinary professionals to give them incentives to serve the public and animals better.

1.6 METHODOLOGY

This Essay will be based on information deduced and extracted from both primary and secondary sources. Primary information will be extracted through scheduled and structured interviews with the Veterinary Council and Association members, some private and public veterinarians and some livestock farmers. Secondary information shall be extracted from sources such as statutes, in particular, the Veterinary and Veterinary Para-Professions Act, 2010, the repealed Veterinary Surgeons Act of 1964: journals, scholarly articles, the internet; paper presentations and various reports by renowned practitioners. This work will largely be qualitative, as is normally the case with legal research and so questions of sampling techniques will not arise.

1.7 CONCLUSION

This chapter has given an outline of the inquiry on the problems relating to statutory regulation of the veterinary profession under the Veterinary and Veterinary Para-professions Act No.45 of 2010. It has brought to the fore the issues that are pertinent for evaluation and consideration under the Act, namely, those that relate to the institutional arrangement of the Veterinary Council and Association.

CHAPTER TWO

THE RATIONALE BEHIND THE VETERINARY AND VETERINARY PARA-PROFESSIONS ACT, 2010.

2.1 INTRODUCTION

This chapter will be divided into two parts. The first part will look at the Board of Veterinary Surgery provided under the earlier Veterinary Surgeons Act of 1964. It will review the composition, functions and performance of the Board before becoming defunct. It will then delve into the inefficiencies of the Director of Veterinary Services in carrying out the functions of the Board from the time it became defunct to date. This history is necessary to understand the rationale behind the new Veterinary and Veterinary Para-Professions Act, 2010 which has repealed the Veterinary Surgeons Act of 1964. The current Act now provides for the establishment of the Veterinary Council to replace the Board and also provides for the Veterinary Association.

In the second part, the Act will be assessed in the context of submissions made by stakeholders. This will be a prelude to analyzing the extent to which the submissions were accounted for in the new Act or misapplied in the formulation process which resulted in the mix-up of functions of the two institutions.

2.2 THE BOARD OF VETERINARY SURGERY

On the attainment of independence, Zambia inherited a lot of the colonial laws that were in place at the time. One of the laws inherited was the Veterinary Surgeons Act, Chapter 243 of the laws of Zambia. This was an Act, as its preamble states, ‘to provide for the registration of veterinary

surgeons; to provide for the regulation of the practice of the profession of veterinary surgery and medicine.’ Accordingly it provides for the establishment and constitution of the Board of Veterinary Surgery.¹ The Board was made up of the Director of Veterinary Services who chaired the Board, three veterinary surgeons appointed by the Minister (of livestock and fisheries) and two veterinary surgeons that were to be elected by the Veterinary Association.²

All veterinarians were not allowed to practice veterinary medicine without being registered. The Director of Veterinary Services was responsible for registering applicants if in his opinion, they satisfied the qualifications to be so registered³. He could also strike out any name from the register either upon recommendation to do so by the Board⁴ or under circumstances enumerated in section 12(2).

Further, the Board had the mandate to discipline registered professionals for professional misconduct if found guilty or if they were convicted of a felony.⁵ The Board of Veterinary Services headed by the Director regulated the veterinary profession.

2.2.1 THE DIRECTOR: INEFFICIENCIES IN REGULATING THE PROFESSION

The Board of Veterinary Surgery was apparently fully functional in terms of carrying out its duties as the regulator of the veterinary profession from 1964 until about 1973-74. However, after that, for whatever reasons, the Board was not ever constituted to this date. Even though names of people who were to sit on the Board were recommended by the Veterinary Association and other relevant authorities and presented to the Minister of Agriculture and

¹ Veterinary Surgeons Act, section 3.

² Ibid., 3, a b, c.

³ Ibid., 8.

⁴ Ibid., 13.

⁵ Ibid.

cooperatives at the time for final approval, nothing was ever done about them. The Board thus remained defunct to date.⁶ Former Director of Veterinary Services, Dr Zyambo attributed this to a lack of political will to work that swept through the government and the civil service. Professionals stopped caring about whether the Board existed or not, they were more concerned with making money and the fact that at some point, there was not enough money for veterinarians, they concentrated on making a living rather than caring about the legislative framework or body governing their profession.⁷

To cover this rather huge gap left by the defunct Board, the Director of Veterinary Services took over the functions of the Board. What this entails is that he had the mandate to oversee the registration, deregistration of professionals, discipline them and ensure that the professionals complied with the existing rules and regulations pertaining to their practice.⁸

This situation obviously gave a lot of power to the Director. He could register anyone who in his opinion should be registered whether he was properly qualified or not or from an approved university or not. There were no checks to this power. He could make decisions that affected the professionals and no one would have the avenue or platform to complain against him.⁹

The Code of Conduct was practically forgotten, professionals did not have the respect for it if they were even aware of it. No one could properly discipline erring professionals or even complain against them without a body in place to administer and enforce the Code.¹⁰

⁶ Interview :Dr Yona Sinkala. Principal Veterinary Epidemiologist, Ministry of Agriculture,Livestock and Fisheries;Vice President of the Veterinary Association of Zambia.30/12/2011

⁷ Interview; Dr Zyambo, Former Director of Veterinary Services 1980-85. Livestock services department, Lusaka. 12/04/2012

⁸ Interview:Dr Y. Sinkala

⁹ Interview: Dr King Nalubamba. Lecturer, University of Zambia, Lusaka., 13/04/2012.

¹⁰ Interview; Dr Zyambo.

Even the External Evaluation of the Veterinary Privatisation Programme of the Veterinary Privatisation Trust Board done in 1999 concluded that there was rampant disregard of the law of the land regarding the practice of veterinary medicine in Zambia.¹¹

To understand more of the illegal practices and their impact on the veterinary delivery system, a look at the submissions made by School of Veterinary Medicine, University of Zambia to the Committee on Agriculture and Lands of the Zambian Parliament needs to be considered below;¹²

‘Over 80% of cattle production belongs to the traditional sector The recent past has seen several livestock disease outbreaks mostly devastating the traditional sector while in general. This is an indication of the poor management practices and weak policies on livestock disease control in the traditional sector. The persistent cattle disease outbreaks have had a heavy toll on the economy in terms of lack of an export market and many countries not being able to get any beef from Zambia.’

‘However, from the late 1990’s, production of livestock has been unsatisfactory, mainly due to poor infrastructure and inadequate extension services coupled with unending livestock diseases. The common diseases encountered among the cattle population are east coast fever, foot and mouth, black leg, hemorrhagic septicaemia, red water and gall sickness among others. Control measures are not observed uniformly in the traditional sector, that is, whereas some may adhere to prescribed disease control practices, others may opt not to do anything, citing the costs and lack of other resources as impediments.’

¹¹ William O. Ogara and Kenny L. Samui. *External Evaluation of the Veterinary Privatisation Programme of the Veterinary Privatisation Trust Board*. 30th May to June 9, 1999. 26

¹² Dr Aaron S. Mweene, Dean, School of Veterinary Medicine. *Submission to the Committee on Agriculture and Lands: The status of Cattle Diseases in the Country*. 1-4

‘Problems encountered in controlling diseases are; there is inadequate sufficiently trained human resources in the livestock health industry. There is lack of effective coordination with related stakeholders on issues of control and management of livestock diseases. The current government policies on disease control are weak and not sustainable as they are more targeted at control rather than prevention. The beauraucracy involved in the operationalisation of the plans in the event of outbreaks is lengthy. Even then, when action is eventually taken, implementation is neither complete nor sustainable as these measures are usually temporal and may be suspended once the situation shows signs of slight improvements. Disease surveillance includes the application of livestock movement screening and control points. More often, these are put after protracted internal wrangling in the concerned departments or after much media and public outcry.’

‘Extension services on matters related to effective livestock delivery systems are ineffective. There is poor compliance. In most cases, there is lack of meat inspection due to home slaughter. There is little motivation among livestock health workers resulting from unsatisfactory working environments and remuneration.’

‘Recommendations offered to control these diseases effectively are; National response plans for all the major cattle diseases should be formulated. These will give detailed chains of command in times of outbreaks, thereby increasing disease containment as well as reducing the impacts of disease outbreaks there should be routine implementation of effective disease control measures. There should be handsome remuneration for veterinarians and other related livestock health workers including formulation of retention schemes. The government should have a trained critical mass of young field and laboratory workers in the relevant fields to ensure continuity.

There is need to subject the veterinarians and other related livestock health workers to viable continuing professional development (CPD) programmes for continued brushing up.’

‘For these recommendations to be possibly carried out, the current legislation ought to be updated as it is not effectively enforced. These laws include the Stock Diseases Act, Veterinary Surgeons Act, Public Health Act and the Cold storage Act. The absence of the Board of veterinary Surgery, the regulatory body of the veterinary profession, has left disease control activities vulnerable to abuse by unscrupulous individuals.’

2.2.2 BIRTH OF THE VETERINARY AND PARA-PROFESSIONS ACT

From the moment the Board became defunct, concerned veterinary professionals complained about the lack of an overseer of the profession.¹³ Before 1991, legislation was tailored to the provision of services by Government departments or state-owned enterprises. Clearly, the emergence of a range of other actors providing services necessitated a change in the legislation governing these services.¹⁴

With this change in political tide, the concerned Veterinary Professionals were served with a perfect opportunity to have veterinary legislation reviewed. They felt they needed a Council to head the veterinary profession because the Board had failed to take off indefinitely. Thus, in 1994, a meeting was organized by the Veterinary Association of Zambia which was a purely voluntary organization at the time to discuss the way forward. Recommendations were made setting out what they thought was the best way for the profession to be regulated. Recommendations of the meeting led to the veterinary department of the Ministry engaging a

¹³ Interview: Dr Sinkala .

¹⁴ Peter J. Sinyangwe and Nick J.L Clinch, *Primary Animal Health Care in the 21st Century; Increasing the Efficiency of Livestock Service Delivery in Zambia*.2009. 5

consultant who developed drafts on Animal Health, veterinary and veterinary para-professionals, veterinary drugs and veterinary public health.¹⁵ They wanted to come up with an efficient mechanism for the self-regulation of the profession. With a Council in place, there would be checks and balances that would prevent the making of arbitrary decisions and the abuse of discretion by the Director or the Minister where matters to do with the profession were concerned.¹⁶ Further there would be a Code of Conduct and/or Ethics that each professional who wants to practice would have to strictly adhere to.

However, no action was taken to complete the process until 2008. The genesis of the finally fruitful consultations started with Business licensing reforms (BLR) of 2008. Government embarked on implementing comprehensive business licensing reforms. These reform measures were undertaken through the second phase of the Private Sector Development Reform Programme (PSDRP) in the Ministry of Commerce, Trade and Industry with technical assistance from the World Bank Group. The overall objective of this reform was to substantially reduce the number of unnecessary licensing requirements and to make the licensing regime simpler, transparent, and focused on legitimate regulatory purposes thereby making Zambia more attractive to investment. In the course of preparing its report, the BLR committee directly consulted all Government Ministries, local authorities, regulatory authorities and the business community. This policy was deemed critical to efficient service delivery in business licensing and other regulatory areas.¹⁷

¹⁵ Yona Sinkala, Zambia's Veterinary Legislation Review; Presentation to OIE delegation, Lusaka. 12 December 2011

¹⁶ Interview :Dr Sinkala.

¹⁷ Ministry of Commerce, Trade and Industry, Private Sector Development Reform Programme: Creating a Vibrant Private Sector (October 2009), <http://psdp.org.zm/node/340>. (accessed 12/04/2012).)

However, though these reforms did not take root for reasons not of concern here, of relevance is that these reforms triggered the need to review a number of Zambia's legislation.¹⁸

The Private Sector Development programme lobbied for changes in legislation to simplify the processes that allow businesses to be registered and obtain licensing, making a business startup a simpler process.¹⁹ Thus, once again and finally, an opportunity to revise and repeal the earlier Veterinary Surgeons Act and others presented itself. The OIE (World Organisation of Animal Health of which Zambia is a member) came in to assist in this regard by typically conducting a Performance of Veterinary Services (PVS) Evaluation following a Gap analysis in 2009. Through the Legislation Support Programme, the OIE made recommendations to review veterinary legislation.²⁰

To this end, the Permanent Secretary of the Ministry of Agriculture and Cooperatives issued a public notice in each Government gazette declaring that the Ministry had developed draft amendment legislation of the Animal Health Act, the Veterinary and Veterinary Para-professions Act and the Animal Identification Act, that were being circulated for public comment. The public was requested to obtain copies of the draft legislation from the nearest government veterinary office and to send their comments to the Director of veterinary Services. The notice also declared that there would be a two day review meeting at Mulungushi International Conference Center where only written comments or submissions and their authors would be considered.²¹

¹⁸ Interview :Dr Sinkala

¹⁹ Ministry of Commerce, Trade and Industry, Creating a Vibrant Private Sector.

²⁰ Sinkala, Zambia's Veterinary Legislation Review.

²¹ Daily Mail, Times of Zambia. 12th April, 2010

However, apparently, the draft legislation were actually not available for at least two weeks after the notice was issued such that by the time they were available for scrutiny, enthusiasm had either waned or people had no time to make meaningful contributions or comments before the stakeholders meeting was to take place. Further, it has been said that the stakeholders meeting at Mulungushi conference Center proceeded in a different fashion than was anticipated. Government officials led the meeting instead of the authors of the written submissions as was declared in the public notice. As a result of the dissatisfaction of most of the members present, they were assured that another stakeholders meeting would take place but this never happened.²²

Good political will saw the passing of three Bills on veterinary services into Law in 2010, one of which was the Veterinary and Veterinary Para-professions Act.²³

2.3 SUBMISSIONS PRIOR TO PASSING OF THE ACT

The submissions made by the School of Veterinary Medicine have already been elucidated above and have been helpful in understanding the challenges met in the veterinary profession due to outdated legislation and a defunct Board.²⁴ To further understand the rationale behind the Veterinary and Veterinary Para-Professions Act, the submissions by other stakeholders made prior to the passing of the Act will have to be presented as well.

It has to be noted that some stakeholders are of the view that the consultation process was largely government driven. This mainly coming from Veterinarians at the University of Zambia (UNZA) who are for some reason or other not perceived as ‘public’ veterinarians. Of interest is the fact that both factions of professionals have their own views as to what led to the absurdities in the

²² Interview: Dr Nalubamba.

²³ Sinkala, Zambia’s Veterinary Legislation Review.

²⁴ Dr A.S. Mweene, Submission to the Committee on Agriculture and Lands.

Act (each blaming the other), when this should have been a straight forward issue. Setting up two professional institutions should not have been a problem at all.

Below are some of the submissions that were made by the stakeholders who had the opportunity to make their submissions.

The submissions largely called for the creation of an independent statutory body of professionals to regulate the professionals. Largely, this was to eliminate the practice that many white farmers had of flying in foreign veterinarians to tend their animals. Some stakeholders felt that these practices robbed local veterinarians of jobs as foreign veterinarians were being flown in to carry out jobs that the locals could do just as well.²⁵

With a law to the effect that a veterinarian could not practice veterinary medicine without first being certified and registered by the council, foreign veterinarians could not practice in this country at all unless all requirements were met. This would ensure that local veterinarians would be the first choice for any person who needed healthcare for their animals and it would also ensure that the people dispensing veterinary medicine were well qualified to do so.²⁶

An independent and strong statutory body was needed whether it is called the Association or Council. A body was needed that would ensure that the Code of Ethics is a mandatory Code to be strictly adhered to by all Professionals. With a defunct Board, the Code of ethics was barely even acknowledged.²⁷

Submissions were made to the effect the Veterinary Association should be a statutory body with compulsory membership. This would ensure that all the veterinarians would have no choice but

²⁵ Interview: Dr Edwell Mwaanga, Lecturer at University of Zambia, Lusaka, 22/12/2011

²⁶ Interview: Dr Mwaanga, 11/01/2012

²⁷ Interview: Dr Nalubamba

to be paid up members of the Association. This would give the Association the funds it needs to run effectively because membership to the Association was very low especially among public veterinarians, thus making it hard for the Association to function effectively.²⁸ This implies that the private professionals were vying for a structure similar to that of the Law Association of Zambia. They wanted a professional body that would both regulate the profession and promote the interests of the profession.

This is clear from the comments made by the President of the Veterinary Association on behalf of its members on the draft Act. The suggestions were that registration of the Veterinary and Veterinary Para-professions Bill be done by the Veterinary Association of Zambia while the Council will license the professionals instead. They proposed that the executive of the Veterinary Association should be responsible for the day to day affairs of the Association while the Council will for lack of a better term function as a ‘Board of directors’.²⁹ This implies that the first draft of the Veterinary and Veterinary Para-professions bill had initially separated the functions of the two bodies as stated by Dr. Sinkala, a draft which could not be made available to the author.³⁰

This is also clear from the submissions made by the Veterinary Association to the Committee of Agriculture and Lands which was mandated to scrutinize the Veterinary and Veterinary Para-professions Bill No. 39 of 2010.

Under part II which established the Veterinary Association in the Bill, the Association suggested ‘The title of the section should change from “President and Vice-President of Association” to Composition of Association”. This is in line with the “Composition of Council” and should

²⁸ Interview; Dr Mwanza. 29/12/2011

²⁹ Alfred.F. Mwanza, President of Veterinary Association; Comments on the Veterinary and Para-Veterinary Professions Bill, 2010. 1-2

³⁰ Interview :Dr Y. Sinkala.

therefore read “the members shall elect the following executive members of the Association: the President, the Vice-President, the Secretary, the Vice-Secretary, the Publicity Secretary , the Treasurer, three Committee members, four Regional Representatives, the Commonwealth Veterinary Association Councillor. The above is the current composition of the elected executive committee of the Veterinary Association of Zambia as provided for in its constitution.”³¹

On Part III which provided for the Veterinary Council, the Association suggested a deletion of the word ‘control’ in the subsection and the subsection should read “*The Council shall be responsible for the management of the affairs of the Association*”. The Association will be in control of their own affairs but under the management of the Council. This will be to ensure a smooth functional relationship between the Association and the Council³²

Some stakeholders observed that the creation by the Act of a Veterinary Association and the Veterinary Council of Zambia will result in duplication of functions and will cause confusion in the management of the two bodies. According to the stakeholders, it was not ideal for the Council to be responsible for the management and control of the Association. They proposed that there should only be one entity which will have the general and overall oversight and regulatory functions.³³

The Committee’s observations and recommendations;

The Committee was of the opinion that: ‘the Bill should have a clear provision for the structure of the Council stipulating who will lead the Council and the Mode of selecting the Chairperson and Vice Chairperson. The Bill also seeks to create a Veterinary Council of Zambia that is

³¹ Alfred. F. Mwanza, President of Veterinary Association ;*Submission To The committee on Agriculture and Lands of the Zambian Parliament on National Assembly Bill No. 39 of 2010.*

³² Mwanza. Submission to Committee on Agriculture and Lands.

³³ Report of the Agriculture and Lands on the Veterinary and Veterinary Para-Professions Bill, N.A.B No. 39 of 2010. 5th session of the 10th National Assembly. 24th September 2010. 5

responsible for the management and control of the affairs of the Association. the functions of these two bodies as stipulated in clauses 4 and 10 seem to overlap, this is clear in the wording of clause 10 (1) (a) which stipulates that the functions of the Council are to perform the functions of the Association. The committee recommended that the functions of the two structures be clearly spelt out. They further recommended that the structure of both the Association and the Council be provided for in the Bill order to remove the ambiguities created in the Bill.’³⁴

2.3.1 SUBMISSIONS V THE ACT

There are discrepancies between the submissions made by the stakeholders and what is obtaining in the Act when it comes to the Council, Association and their roles and functions.

Clearly, what the public stakeholders wanted was to create a Council which was to be the regulatory body of the Veterinary Professionals. The Association was to be another professional body constituted to represent the interests of the professionals. They did not want membership to the Association to be compulsory but that issue alone was not a hotly contested issue. They wanted an independent body of professionals to regulate the profession. And even in the event that membership to the Association is made compulsory, the Association was supposed to be a totally separate entity from the Council with each having its own elected executives and functions.³⁵

As for the representatives of the private veterinarians who made their submissions through the Veterinary Association, they wanted the Association to be at the center of regulation of the profession. Apathy towards the Association as well as the regulatory aspect would be dealt with

³⁴ Report on N.A.B no. 39 of 2010, 7.

³⁵ Interview :Dr Sinkala.

in this way because it would be a regulatory statutory body where membership would be compulsory. This would give the Association the respect it has lacked over the years. Most public veterinarians considered the Association defunct and were not actively involved in it.

They claimed that there were no benefits to be derived from a dead Association.³⁶ Therefore, low membership to the Association meant that it had low funds to undertake most of its functions.³⁷ So, to further bridge the gap between these factions of professionals, they pushed for the executive of the Association to form part of the Executive of the Council.³⁸ That way the Association would be in the middle of things together with the council thus ensuring that the Association had a hand in the smooth regulation and running of the profession through the two bodies. These submissions are what changed everything in the draft Act to what it is now, this is because the voice of the Veterinary Association is seen as the voice of the profession as a whole³⁹, notwithstanding its low membership.

As it stands now, functions of the Council and Association have been mixed up in a way which will be properly detailed in the next chapters. It is not clear which is the overall regulatory body of the profession and even if it has to be assumed that one institution is to function as a subcommittee of the other, as the Association wanted, it is not clear which of the two would take up that role.

The Committee on Agriculture and Lands responsible for conducting and evaluating the final submissions on the matter should have ensured that the recommendation made in its report to clearly spell out the functions of the two institutions should have been done after investigating

³⁶ Interview; Dr. Anna Songolo, Principal veterinary Officer, Livestock Services Department, Lusaka, 09/01/2012, Dr Zyambo, Dr. Mulenga,

³⁷ Interview; Dr Mwanza.

³⁸ Mwanza, *Comments on the Veterinary and Para-Veterinary Professions Bill, 2010*.

³⁹ Interview; Dr Songolo.

which body ought to perform what function. The stakeholders submissions should also have been clear in that regard.

2.4 CONCLUSION

This chapter has been presented in two parts. The first part extracted the rationale behind the Veterinary and Veterinary Para-professions Act. This was done by delving into its history and first taking look at the current Acts' predecessor, the Veterinary Surgeons Act of 1964. It brought to the fore the inadequacies encountered by the Director of Veterinary Services in carrying out the functions meant for the defunct Board.

The second part detailed the submissions made by stakeholders prior to the passing of the Act further understand the rationale behind the Act. It then did a comparison between the submissions made and what is obtaining in the Act and concludes with observations on the issues raised by the two institution provided for in the Act.

CHAPTER THREE

ANOMALIES IN THE VETERINARY AND VETERINARY PARA- PROFESSIONS ACT.

3.1 INTRODUCTION

This Chapter will look at the anomalies created by the Veterinary and Veterinary Para-professions Act in relation to the functions of the Veterinary Council and Veterinary Association. It will be divided into two parts. The first part will discuss the structure of the Medical Association and the Zambia Medical Association. The structure of the Law Association of Zambia will also be presented. This will allow for the comparison among the three professional bodies. Most importantly, they may explain the current structure of the Veterinary Council and Association as the two professions (the medical and legal profession) were points of comparison during the drafting of the Veterinary Act. The second part will discuss the constitution of the veterinary Association to analyse to what extent it complements its functions or makes them clearer and distinct from those of the Veterinary Council.

3.2 ANOMALIES IN THE ACT.

To understand what anomalies are obtaining in the Act and why, a look at the Medical Council and Association of Zambia as well as the structure of the Law Association of Zambia will be done. This is because these were two of the local professional bodies that were looked at as a basis on which to structure the veterinary institutions. A marriage between the structures of the professional bodies of the law and medical professions for the veterinary institutions was an attempt to coordinate different interests of the concerned stakeholders.¹An analysis of the foreign

¹ Interview: Dr Mwanza, 04/04/2011, Dr Nalubamba, 14/4/2012.

professional veterinary bodies that were looked at as ideal points of comparison will be looked at in the next chapter.

3.2.1 THE HEALTH PROFESSIONS COUNCIL AND THE ZAMBIA MEDICAL ASSOCIATION.

The Health Professions Council of Zambia (formerly called the Medical Council of Zambia established under Chapter 297 of the Laws of Zambia²) was re-enacted as such under the Health Professions Act No. 24 of 2009. The Health Professions Council is a regulatory body with statutory obligations to regulate the registration of health care facilities and health practitioners, as well as to maintain optimal standards of competence, care and professional conduct. The provisions that stipulate the establishment and functions of the Council are thus; section 3 (1) states ‘the Medical Council of Zambia established under the repealed Act shall continue to exist as if established under this Act and is for purposes of this Act hereby renamed the Health Professions Council of Zambia.

Section 4 (1) states ‘the functions of the Council are to— register members of the health profession and regulate the professional conduct of health practitioners; maintain appropriate practice standards among health practitioners that are consistent with the principle of self regulation and the promotion of high standards of public health; develop, promote, maintain and improve appropriate standards of qualification in the health profession; promote the integrity, and enhance the status, of the health profession including the declaration of any particular health practice to be undesirable for all, or a particular category of, health practitioners; (e) license public and private health facilities, accredit health services and monitor quality control and

² Medical and Allied Professions Act. section 3

assurance of health facilities and services; (f) represent, coordinate and develop the health profession and promote its interest; develop, promote and enforce internationally comparable practise standards in Zambia; investigate allegations of professional misconduct and impose such sanctions as may be necessary; (i) protect and assist the public in all matters relating to the practice of the health profession; advise the Minister on matters relating to the health profession;’ subsection (2) states ‘the Council may—determine and levy fees that the Council considers necessary to finance its activities under this Act; determine the fees payable for an inspection conducted for the purposes of this Act; determine fees for the accreditation of local and foreign training institutions and qualifications; and determine what portion of any fee is payable in respect of any part of a year and the date on which the fee or portion thereof is payable.’

Section 5 (1) states ‘The Council shall appoint a Registrar, who shall be the Chief Executive Officer, on such terms and conditions as the Council may determine. The Registrar shall be the Secretary to the Council and shall be responsible for the day to day administration of the affair of the Council, under the supervision of the Council. The Council may, whenever the Registrar is absent or is for any other reason unable to discharge the functions of the Registrar's office, appoint an acting Registrar to discharge the Registrar's functions. (4) The Council shall appoint, on such terms and conditions as the Council may determine, such other staff as may be necessary for the purposes of this Act.

Disciplinary action in contravention of the code of ethics or the Act is dealt with by the Council Disciplinary Committee established under Part VII of the Act³. Section 63 (1) states that ‘the Council shall establish a Disciplinary Committee which shall comprise the following members: a

³ Section 60-64

Chairperson; a Vice-Chairperson; the Chairperson of the Council; a peer of the health practitioner against whom a complaint of professional misconduct is made; and a lay member of the Council. The Chairperson and Vice-Chairperson shall be legal practitioners qualified to hold, or who have held, high judicial office.’ Section 62 (1) states that a person may lodge a complaint with the Disciplinary Committee against a health practitioner where the person alleges that the health practitioner has contravened the Code of Ethics or any provision of the Act. Section 62 (2) states that the Council may initiate disciplinary action where the Council has reasonable grounds to believe that a health practitioner has contravened the Code of Ethics or any provision of the Act.

The anomaly is that *all the above functions* of the Council *as they are* (with the substitution of ‘veterinary profession’ in place of ‘health profession’ of course) are delegated to the Veterinary Association in the Veterinary Act. The only ones that have been delegated to the Council under the Veterinary Act are the functions of⁴ licensing public and private health facilities, monitoring quality control and assurance of animal health facilities and services, protecting and assisting the public in all matters relating to the practice of the veterinary profession, promoting the integrity, and enhancing the status of the health profession including the declaration of any particular veterinary practice to be undesirable for all, or a particular category of, veterinary surgeons.

Another unusual situation is that some of the functions of the Association are to investigate allegations of professional misconduct, impose necessary sanctions, to promote alternative dispute resolution mechanisms and to serve as an arbitral institution of disputes of a veterinary nature. However, it is the Council that is mandated to establish a disciplinary committee.

⁴ Section 10 (d, e,g)

Therefore, this function should have been expressly delegated to the Council exclusively because it is the Council to adopt and publish a Code of Ethics, and it is the Council that should be the overall regulatory body.

In short, there is some confusion as to what would normally be the functions of a Veterinary 'Association' and those of a Veterinary 'Council'. In most countries, a Veterinary Association is a private institution with a voluntary membership, which generally promotes the interests the interests of the veterinary profession and veterinary para-professions. In a developing country situation in particular, a veterinary Association should be actively involved in the process of promoting the establishment of private veterinary practice and the integration of veterinarians and veterinary para – professionals for the provision of routine curative and preventive services at all levels within the various livestock production systems.⁵

In contrast, a Veterinary Council would normally be mandated as a 'statutory body' with the authority to register veterinarians and veterinary para-professionals according to defined criteria, and the powers to regulate veterinary service facilities, establish and regulate the necessary educational standards for each category of registered persons and then regulate the performance of registered veterinary surgeons and veterinary para-professionals according to defined standards in a 'Code of Conduct', through the establishment of a 'Disciplinary Committee'.⁶

The Zambia medical Association on the other hand is not a statutory body but a distinct association whose membership to it is voluntary. It promotes the interests of the members and

⁵ Howard Batho, John Woodford, Stefano Sotgia, *Veterinary Legislation Support Programme; Identification Mission Report, Zambia*. 12-17 December, 2011. 4

⁶ Batho, Woodford, Sotgia, *Identification Mission Report*, 4.

liaises closely with the Health Professions Council of Zambia on many issues affecting the profession.⁷

3.2.2 THE LAW ASSOCIATION OF ZAMBIA

The Law Association of Zambia (LAZ) is a body corporate established by the Law Association of Zambia Act, Chapter 31 of the Laws of Zambia. The Association's main policy-making body is the Annual General Meeting, comprising all registered members of the Association, which membership presently stands at five hundred. In between the Annual General Meetings the Association elects an executive, comprising the chairperson, vice-chairperson, secretary, treasurer and twelve Council members to run the day-to-day affairs of the Association.⁸

Section 10 (1) of the Act provides; for the proper management of the affairs of the Association there shall be an executive committee (herein referred to as "the Council") consisting of a chairman, a vice-chairman, a secretary and a treasurer (herein referred to as "officers") and not more than twelve other persons. The Constitution of the Council is provided for in section 10 (2) which provides that the members of the Council shall be members of the Association and shall be elected by the Association in general meeting; The Association has various committees of duly appointed Advocates responsible for various activities of the Association.⁹ This very Association both regulates the profession and promotes the interests of the members.

⁷Zambia Medical Association, "ZMA News: Zambia Medical Association gets a New Executive," Medical Journal of Zambia, 36 No. 2 (May 2009), <http://www.mjz.co.zm> accessed 08/04/2012.

⁸ Law Association of Zambia: Objectivess. www.laz.org.zm (January 2004)accessed 22/03/2012.

⁹ Section 13.

The fact that the Law Association has a council which constitutes elected members of the Association and runs the affairs of the Association may explain why the chairperson and vice-chairperson of the Association heads the Council as well. It may also explain why there is a mix-up in the roles and functions of the Veterinary Council and Association. Indeed, the bill of the Act¹⁰ in question was structured almost exactly as the Law Association of Zambia is structured.

For instance, section 8 (2) of the Veterinary and Veterinary Para-professions Bill¹¹ provided that the Council shall be responsible for the management and control of the affairs of the Association. Section 10 which stipulated the functions of the Council provided that one of the functions of the Council was to perform all the functions of the Association. In the final Act, these two provisions are not there but while it eliminated some confusion, the fact is the functions of the two institutions were not tempered with and were reproduced as they are in the new Act. This was done without properly delineating the roles and functions of each so as to properly eliminate any confusion that the deleted provisions brought about.

Those provisions were put there because the functions of the Association would necessarily be performed by the Council, thus making the Council the regulatory “Board” and the Association as part of the Council, just like the Law Association of Zambia is structured. To delete them without making adjustments to the functions of the two bodies so that they may be separate is what may account for the anomalies present between them. In fact, the Committee on Agriculture and Lands responsible for conducting and evaluating the final submissions on the

¹⁰ National Assembly Bill No. 39 Of 2010

¹¹ N.A.B No. 39 Of 2010

Act recommended that the functions of the two institutions be clearly spelt out¹². However, to recommend this without a clear picture of which body should perform what functions did not help clarify the matter. A poor marriage or coordination of different concepts accounts for the anomalies in the Act.¹³

3.3 THE CONSTITUTION OF THE VETERINARY ASSOCIATION

A look at the constitution of the Veterinary Association is necessary to assess in what manner it could possibly clarify the Associations roles, structure and functions.

As the constitution stands now, its aims are;“to promote, within Zambia, the interest of the veterinary profession, allied science and animal welfare, to maintain the status and traditional ethics of the profession, to facilitate the dissemination of professional knowledge and information and encourage the interchange of ideas and discussion of subjects of common interest, to encourage and assist persons in Zambia desirous of acquiring Veterinary professional qualification, to encourage and assist Government in preparation of legislation on matters relating to the veterinary profession, to ascertain and declare the cooperate opinion of members in such quarters as it is deemed from time to time to be desirable and to make or support representation to Government and other appropriate bodies on matters affecting the profession, to encourage good relations and understanding between members and the public, to form if deemed desirable, ethical committees for the consideration and settlements of professional difficulties.”¹⁴

¹² Report on N.A.B No. 39 of 2010, P 5

¹³ Interview: Dr Nalubamba.

¹⁴ Article 2.

These aims are of course consistent with those of a private professional body rather than a statutory regulatory body. Veterinary Associations represent the interests of the veterinary profession. They are committed to excellence within the profession and to the well being of animals. Their mission is to improve animal health, human health and agriculture and to advance the veterinary profession. They must also provide help and guidance for veterinarians to fulfill their professional roles.¹⁵

There are two essential aspects granted to self-governing organizations: the authority to license and the ability to discipline licensees. The licensing power is essentially the authority to decide who shall be permitted to earn their living by the pursuit of a particular calling. This means that professional organizations act as gatekeepers to the professions in their assessment of the qualifications of prospective members. Once an individual becomes a member of a profession, the professional organization has the power to regulate the conduct of the licensee by establishing rules of practice and standards of conduct enforceable through the discipline process.¹⁶

Licensure is the critical difference between the operations of a private non-legislated professional body and the responsibilities of a legislated, self-governing professional body. First, a private body cannot license an individual; only a public body can. Second, licensure's primary purpose is to protect the public through regulation of a professional's activities. Third, licensure essentially amounts to the granting of a monopoly to practice to a select group of individuals,

¹⁵Economides, *The Role of Statutory Bodies and Associations*.167

¹⁶McRuer, James Chalmer, Commissioner. *Ontario Royal Commission Inquiry into Civil Rights. McRuer Report 3, No.1 (1968-1971): 1163.*

which confers valuable rights to these individuals. The Supreme Court of Canada noted the importance of the licensing process:¹⁷

*“The regulation of professional practice through the creation and the operation of a licensing system, then, is a matter of public policy; it emanates from the legislature; it involves the creation of valuable rights; and it is directed towards the protection of vulnerable interests.”*¹⁸

As regards discipline, in order to ensure that the members of the association provide a high level of service to the public and maintain the dignity of the profession, professional bodies often set codes of ethics and codes of professional conduct. *“Professional ethics are that branch of moral science which treats of the duties which a member of a profession owes to the public, to his professional Brethren and to his client.”* The judicious enforcement of these codes is a hallmark of a true professional body.¹⁹

The constitution of the Veterinary Association of Zambia does not give the mandate to its executive to license veterinary professionals who are members. Membership to the constitution is not a prerequisite to practice veterinary medicine. Neither does the Constitution provide for the administration a code of ethics by which all members of the profession must adhere to. A member may be struck off the register of members by special resolution tabled in a general meeting by the executive committee were he has in the opinion of the executive committee acted

¹⁷ Robert Schulze, *What Does It Mean To Be a Self Governing Profession?* Discussion paper presented at 4th Annual workshop of the Saskatchewan Assessment Appraisers Association, (October) 2006: 6.

¹⁸ *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 6 W.W.R. 289 (S.C.C.).

¹⁹ Ken. G.K. Allred. *‘The professional Association- Guardian of the Public Interest,’* FIG XXII, International Congress Washington D.C, USA (April 19-26) 2002:8

or conducted himself in a way prejudicial or contrary to the best interest of the association and the members decision shall be final.²⁰

The Association cannot now turn into a regulatory body when a Council has been established to take over the functions of the Board of Veterinary Surgery. It is a properly constituted professional body for the members and should not be turned into a regulatory authority without a clear mandate. The regulatory authority should be left to the Council to avoid unnecessary overlapping of functions between the two institutions.

3.2 CONCLUSION

This chapter has given a clear outline of the anomalies inherent in the roles and functions of the Veterinary Council and Association under Veterinary Para-professions Act. It has explained how the anomalies may have come about by comparing the Veterinary Council and Association with the Health Professions Council, the Zambia Medical Association and the Law of Association. This chapter has also analysed the constitution of the Veterinary Association of Zambia to bring home the point that the two institutions ought to remain separate and maintain a capacity as either a regulatory body or a private professional body.

²⁰ Article 12.

CHAPTER FOUR

VETERINARY REGULATION IN SOUTH AFRICA

4.1 INTRODUCTION

This chapter will present the structure and functions of the veterinary Association and Council in South Africa to see if there are any lessons that can be learnt from them

The first part will start with explaining the structure and functions of the South African Veterinary Council under the South African Veterinary and Veterinary Para-professions Act No. 19 of 1982 as well its salient provisions. The South African Veterinary Association will also be looked at.

The second part will briefly outline lessons that Zambia can learn from South Africa's veterinary legislation and veterinary institutions.

4.2 SOUTH AFRICAN VETERINARY COUNCIL

The Veterinary and Para-veterinary Professions Act No. 19 of 1982 establishes the South African Veterinary Council (SAVC). The Council falls under the Ministry of Agriculture and lies in the Department of Agriculture. The preamble of the Act states; 'an Act to provide for the establishment, powers and functions of the South African Veterinary Council; for the registration of persons practising veterinary professions and para-veterinary professions; for control over the practising of veterinary professions and para-veterinary professions; and for matters connected therewith.'

Section 2 provides for the establishment of SAVC. Section 3 provides for the objects of the Council which are (a) to regulate the practising of the veterinary professions and para-veterinary

professions and the registration of persons practising such professions; (b) to determine the minimum standards of tuition and training required for degrees, diplomas and certificates entitling the holders thereof to be registered to practice the veterinary professions and para-veterinary professions; (c) to exercise effective control over the professional conduct of persons practising the veterinary professions and para-veterinary professions; (d) to determine the standards of professional conduct of persons practising the veterinary professions and para-veterinary professions; (e) to encourage and promote efficiency in and responsibility with regard to the practice of the veterinary professions and para-veterinary professions; (f) to protect the interests of the veterinary professions and para-veterinary professions and to deal with any matter relating to such interests; (g) to maintain and enhance the prestige, status and dignity of the veterinary professions and para-veterinary professions and the integrity of persons practicing such professions; (h) to advise the Minister in relation to any matter affecting a veterinary profession or a para-veterinary profession.

Constitution of the Council is provided for in section 5. It provides in subsection 1 (i) for the election of ten veterinarians or veterinary specialists by persons registered or deemed to be registered in terms of the Act to practice veterinary professions; (ii) the election of one representative of each para-veterinary profession by persons registered or deemed to be registered in terms of the Act to practise the para-veterinary profession concerned. (b) The Minister shall, after consultation with the outgoing council, appoint a selection panel, which must consist of— (i) three veterinarians or veterinary specialists;(ii) one para-veterinary professional; (iii) one non-veterinary professional. (c) The selection panel shall select— two persons on account of their knowledge of law; (ii) eight veterinarians or veterinary specialists:

(iii) two non-veterinarians. (d) The rector or principal of each university in the Republic that has a faculty of veterinary science shall nominate at least three veterinarians or veterinary specialists who are fit and proper persons.

Section 10 provides that the Council shall meet at least 3 times a year and in addition shall hold any special meeting at the written request of the Minister. Section 11 provides for an Executive committee which, subject to the provisions of the Act and the directions of the Council, may exercise all the powers and perform all the functions of the council.

Section 14 and 18 provides for the appointment of the registrar and the keeping of registers in respect of all persons whose applications for registration in terms of the Act have been approved by the council. Section 15 provides for the Funds of the council which shall consist of fines recovered under the Act, loans obtained by the Council with Approval of the Minister and any other moneys received or accruing to the council from any other source or under the Act.

Section 16 provides that the council ought to do its own bookkeeping and auditing of all its assets and liabilities of all financial transactions entered into by it. Section 17 mandates the Council to submit a report to the Minister six months after the close of its financial year.

Section 30 provides that the council may make rule as to the course of conduct to be followed by students, practicing veterinary professionals or para-professionals, minimum standards for consulting rooms, clinics, vet clinics or such other facilities and any matter which the council deems necessary or expedient for the achievement or promotion of its objects or for the exercise of its powers under the Act.

Section 31 provides that the council may, either as a result of a complaint or charge or allegation lodged with it or of its own accord, institute an inquiry into the conduct of a person who is registered or deemed to be registered in terms of this Act, or into an act or omission or alleged act or omission by such person in the practising of his or her profession, or into a contravention or alleged contravention of this Act or the rules by such person.

Section 33 provides for the disciplinary powers of which include to reprimand or caution him or her; impose a fine not exceeding the amount determined by the Minister by notice in the Gazette; (b) impose conditions and restrictions subject to which the person concerned may, for a specified period, practise the profession in respect of which he or she is registered; (c) suspend his or her registration for such period and subject to such conditions as the council may in each case determine; or (d) withdraw his or her registration.

These provisions are consistent with the SAVC's regulatory role.

4.2.1 SOUTH AFRICAN VETERINARY ASSOCIATION.

The South African Veterinary Association (SAVA) is a voluntary professional association of veterinarians in South Africa. It promotes the interests and activities of the veterinary profession and assists veterinarians to fulfill their role in the community. The mission of the South African Veterinary Association is to serve its members and to further the status and image of the veterinarian. They are committed to upholding the highest professional and scientific standards,

and to utilising the professional knowledge, skill and resources of our members, to foster close ties with the community and thus promote the health and welfare of animals and mankind.¹

The Association consists of a federal council and branches in each of the provinces of South Africa. Each branch has a representative on the Federal Council. The Association also has a number of Specialty groups. These are: Animal Behaviour Group, Avian Practitioners, Complementary Medicine, Equine Practitioners, Large Animal Practitioners, Veterinary Clinicians Group, Pig veterinary Society, Poultry Veterinarians, Veterinary Public Health and the Wildlife Group. These groups play a major role in looking after the interests of the members, organising congresses and lectures and giving input to the Federal Council.²

The Federal Council of the SAVA has a close liaison with the Veterinary Council and is able to comment on decisions made by the Veterinary Council. This structure ensures that the veterinary profession in South Africa is well represented and makes meaningful contribution to the welfare and standards of the profession.³ The SAVA is a very active body. Its membership currently exceeds 1650 members. Some of the highlights of its involvement on behalf of its members are the following:⁴

- The remuneration of veterinarians in the public sector was very actively pursued with the Department of Agriculture, especially through various Ministers, during the presidential

¹ South African Veterinary Association, *"History of the South African Veterinary Association."*

² Robert.D Sykes, *Veterinary Profession and practices in South Africa.OIE conference on Veterinary Medicinal Products in Africa*, Dakar, 25-27 March,2008. 3

³ Sykes, *Veterinary profession and practices in South Africa*.

⁴ South African Veterinary Association, *"History of the South African Veterinary Association."*

term of Dr AP Schutte (1976-1978), which had positive results for state veterinarians at Onderstepoort and in Field Services in the early 1980s.

- Purposeful liaison with other professions and related associations such as the Medical/Dental Association, the Pharmaceutical Association and Agricultural and Animal Science Societies and, more recently, the Black Veterinary Forum.
- Very active involvement in the affairs of the statutory South African Veterinary Board and South African Veterinary Council, its successor, by virtue of constant promotion of the status and career interests of veterinarians as professional scientists.
- Establishment of the South African Veterinary Foundation which supports various worthy causes, such as high priority research, that are in the interest of the profession in its widest sense.

The Association has also displayed a typical example of a professional Association, which is best described as an organisation of practitioners who judge one another as professionally competent and who have banded together to perform social functions which they cannot perform in their separate capacity as individuals.⁵

4.3 LESSONS FOR ZAMBIA

The South African Veterinary and Para-Veterinary Professions Act demonstrates a clear picture of the functions, objects and powers of the regulatory body of the Veterinary profession which is the SAVC. Our own Veterinary and Veterinary Para-professions Act does little in spelling out a clear mandate for the Regulatory body. Apart from mixing up the functions of the Council and Association, the Act in Part I of the first schedule is headed “Administration of the Association”.

⁵ Robert.K Merton, “*The Functions of the Professional Association*,” *American Journal of Nursing* 58, No. 1, (January 1958) <http://www.jstor.org/stable> (accessed 09/11/2012)

However, the provisions there under refer to the Council. For instance, the Seal of the Association is determined by the council and the rest of the provisions⁶ also refer to the council such as tenure of office and vacancy of a member of the Council, the proceedings of the Council, committees of the Council and allowances. The schedule should properly be headed “Administration of the Council” for the avoidance of doubt and to eliminate confusion in this regard.

The financial provisions in Part II of our Act refers to the funds of the Association instead of the Council. It provides that the funds of the Association shall consist of moneys as may be; paid to the Council by way of levies, levy grants, or donations, appropriated by Parliament or vest or accrue to the Council. The problem with this is very clear in that the Council should be in charge of its own financial aspects because it has the mandate to establish committees for the performance of its functions under the Act. The funds of the Council cannot vest in the Association, that does not make any sense because these should be two distinct bodies. It follows necessarily that any grants, raising of money by loans or otherwise, paying of allowances to staff of the Council should be done by the Council or any committee to which it may delegate this function, not the Association as the Act provides⁷.

After all, the members of staff, assets, rights, obligations, liabilities of the Board are to be transferred to the Council and all proceedings that were taken or being taken against the Board are to be instituted against the Council,⁸ NOT the Association. Therefore, the Council ought to ordinarily take care of its own financial issues, auditing, bookkeeping and reports because all these were being done by the Board. Bringing the Association into the mix will result in much

⁶ Section 1-4 of first schedule to the Veterinary and Veterinary Para-Professions Act.

⁷ Part II of first schedule

⁸ Second schedule, section 1-3

confusion, conflict of roles and absurdities. The South African Veterinary Act clearly sets out these provisions relating to the veterinary regulatory body, SAVC. Zambia can take a page out of its clarity in detailing the regulatory aspects of the body.

Further, since their first Veterinary Act of 1933, there have been at least three repeals of the Act, several amendments, the latest being in 2004, at least 3 Regulations promulgated, latest being in 2007 and rules (codes of Conduct and Ethics) relating to the practice of the profession, latest being passed in 2007. This shows the commitment and active role that the Council and Association play in seeking to fulfill their roles and functions as well as their coordinated efforts to do so. The Zambian Veterinary Association can learn how to actively undertake its role to further interests of the members and to coordinate with the Council to ensure that the Laws are regularly updated to meet new challenges and adapt to new situations affecting the veterinary profession, the veterinary surgeons Act was only repealed and replaced in 2010 from 1964!

4.4 CONCLUSION

This chapter has presented the structure and functions of both the South African Veterinary Council under the South African Veterinary and Para-veterinary Professions Act as well as that of the South African Veterinary Association. It has then extracted lessons that the Zambia can learn from them to improve the veterinary institutions as well as the veterinary legislation.

CHAPTER FIVE

RECOMMENDATIONS

5.1 INTRODUCTION

This chapter serves to provide recommendations and to give a general conclusion on the analysis of the Veterinary Council and Association under the Veterinary and Veterinary Para-professions Act.

5.2 RECOMMENDATIONS

Though the Act has generally set out its purpose of establishing regulatory institutions of the veterinary profession, consideration should be given to the following proposed amendments to the Veterinary and Veterinary Para-professions Act¹

- Remove from functions of the Association stipulated in section 4 (1) subsections (a) register veterinary and para-veterinary professionals, and regulate their professional conduct; (b) register students of veterinary and para-veterinary; (e) investigate allegations of professional misconduct and impose such sanctions as may be necessary; (m) in consultation with the Ministry responsible for education and the Technical Education Vocational and Entrepreneurship Training Authority, accredit universities, technical colleges, institutions and programmes of instruction leading to the award of qualifications of veterinary and para-veterinary professionals; and place all of these within Section 10 (1) which stipulates functions of the Council;

¹ Batho ,Woodford, Sotgia, *Identification Mission Report.4*

- Amend sub-section (c) of section 10 (1) which reads; ‘maintain appropriate practice standards among veterinary and para-veterinary professionals that are consistent with the principle of self-regulation and the promotion of high standards of veterinary services; to read ‘establish and regulate the minimum standards of education required for the initial registration and maintenance of registration of members of the veterinary professions and veterinary para-professionals’ ; place amended sub-section (c) in section 10 (1)
- Remove from section 10 (1) sub-sections (c), (b) participate in the development of veterinary practice standard setting; (d) promote the integrity, and enhance the status, of the veterinary profession including the declaration of any particular veterinary practice to be undesirable for all, or a particular category of, veterinary surgeons; (e) license public and private animal health facilities and monitor quality control and assurance of animal health facilities and services; (f) represent, coordinate and develop the veterinary and para-veterinary profession and promote its interest; (g) protect and assist the public in all matters relating to the practice of the veterinary profession; (h) make recommendations affecting, or relating to, the veterinary profession to the general meeting of the Association; (i) promote continuing professional development among veterinary professionals; and place in section 4 (1)
- In the case of sub-section (e) section 10 which read license public and private animal quality control and assurance of animal health facilities and services - and insert ‘set the standards for’...and license public and private.....and regulate (rather than monitor) ...quality control and assurance of animal health facilities and services,

- Add a new sub-section to 10 (1) ‘to establish and maintain registers for the registration of veterinary surgeons and the registration, enlistment and enrolment of veterinary para-professionals, as appropriate’.
- Add a provision for the Council to set fees for application, registration and annual retention of registration.

Once the proper roles of each body are spelt out clearly, the Council shall clearly emerge as the overall regulatory body in charge of regulating the profession while the Association shall be a professional body mainly for the advancement of the interests of its members. For practical purposes and for avoidance of doubt, this is important.

Under section 5 (3) provisions are made to identify the issues to be addressed through the constitution of the Veterinary Association. Sub-section (d) refers to the “classes of membership and the rights, privileges and obligations associated with each.” It is recommended that consideration be given to transferring this function to the Council, since the privileges, rights and obligations of different categories of members relates to statutory conditions of practice which should fall under the remit of a Statutory Body, rather than a voluntary Association.²

Although the Act makes the necessary provisions to allow the Council to set standards for veterinary education, and educational facilities providing training of the veterinary profession there is a need to develop Regulations as to precisely how the standards shall be set and how such standards shall be enforced. There are no provisions in the current legislation, which provide the Council with the authority to set the standards of education neither of veterinary

²Batho ,Woodford, Sotgia, *Identification Mission Report*. 5

para-professionals, nor for continuing professional development of veterinary para-professionals, and this should be included.³

The process of drafting veterinary legislation could be improved if there was specific drafting unit in the veterinary services department. In addition a compliance unit should also be established, as the legislation needs to be properly implemented on the ground.⁴

The veterinary services department should catalogue with accuracy, the Acts, Regulations and other legislation that are currently in effect, which have been repealed and which are obsolete so that a physical and digital repository of veterinary legislation can be established and maintained to allow reliable access, cross referencing, updating and tracking of the legislation. This will become all the more important as more legislation is promulgated and amendments to existing legislation enacted. For transparency and clarity it is crucial that stakeholders have access to a coherent set of the laws in force. This compendium must be made widely available for officials and the public.⁵

All veterinarians should show sound knowledge of the law and statutes under which they are operating. To achieve this requirement, it should be mandatory that all veterinarians at registration should have to buy a package of the relevant Acts and Code of ethics considered cardinal in the delivery of veterinary practice. The Inspectorate should always confirm the presence of the identified documents in each office of any veterinarian involved in delivery of veterinary services in whatever capacity or of whatever nature.

³ Batho ,Woodford, Sotgia, *Identification Mission Report*.4

⁴ Batho ,Woodford, Sotgia, *Identification Mission Report*,3.

⁵ Batho ,Woodford, Sotgia, *Identification Mission Report*. iii

The Association, instead of trying to impose compulsory membership to increase its fund base for its activities should come up with incentives to make membership to the Association attractive to the members by actively undertaking its role in promoting the interests of the members. This can be done, for instance, by enhancing education opportunities and any other benefits that a professional would seek or expect from being a member of such a professional body.

5.2 GENERAL CONCLUSION

The current Veterinary Act, for the most part addressed the necessary requirements for proper regulation of the veterinary profession through the establishment of the Veterinary Council and Association. The main deficiency in the Act is that the authority for the registration and monitoring of veterinarians and the para-professionals is given to the Veterinary Association rather than the Veterinary Council. In addition, a regulation is required to bring this law into force.

The preceding chapters have brought to the fore the anomalies present in the new Veterinary and Veterinary Para-professions Act. In particular, Chapter three has clearly detailed the anomalies and the possible reasons for the anomalies present in the structure and functions of the Veterinary Council and Association. The clearest reason identified being mostly a poor marriage of different concepts of professional bodies, these bodies being; the Health Professions Council, the Zambia Medical Association and the Law Association of Zambia.

Less dominant reasons are; a diversion of interests between public and private stakeholders, the former wanting an autonomous and independent body to regulate the profession while the latter

was more comfortable with a structure similar (albeit more representative and functional) to the obsolete Board of Veterinary Surgery. These latter reasons are outlined in chapter two which basically assessed the Act in the context of the submissions made by the stakeholders as well as gave a brief account of the performance of the Board of Veterinary Surgery under the repealed Veterinary Surgeons Act of 1964.

Chapter four presented a comparison between the Veterinary Association and Council of Zambia and those present in developed jurisdictions such as South Africa. This gives a clear picture of a proper delineation of functions between the two bodies which Zambia can learn from. After all, a good internal attribute of law is that it should be written for legal certainty and this jurisdiction offers a very good example.

The OIE (World Organisation of Animal Health) is the intergovernmental organisation in charge of preparing and adopting public standards and guidelines for the prevention and control of animal diseases worldwide and for improving animal welfare.⁶ The organisation has offered good recommendations to the Ministry of Fisheries, Agriculture and Livestock to serve this purpose in the Veterinary Legislation Support Programme identification mission report of 2011. The legislative identification mission to Zambia took place between 12th – 17th December 2011, at the request of the Government of Zambia. The objective of the mission was to make a general assessment of the situation regarding the veterinary legislation in the country and to recommend next steps. These progressive recommendations have been presented together with the authors recommendations in this very chapter.

⁶ World Organisation of Animal Health; *Transparency in International Standard Settings*, (December 2011.)<http://www.oie.int>. (accessed 01/04/2012)

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