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# Sidelining of black lawyers by Eastern Cape 'shameful', says BLA

**Solicitor-general's report reveals R875m spent by health department**

**MPUMZI ZUZILE**

The Black Lawyers Association has described the Eastern Cape provincial government's minimal use of black lawyers to litigate on behalf of the state as shameful and unconstitutional. The provincial government has spent more than R1bn in legal fees in the 2022/23 year financial year, which ended on March 31, with a mere R111m spent on black lawyers.

A report by solicitor-general Fhedzisan Pandelani, seen by the Daily Dispatch, was presented to all Eastern Cape legislature committee chairs last week. It revealed that the provincial government spent R1.016bn in legal fees, R875m of which was spent by the health department.

The departments of public

works and infrastructure and education spent R35m and R25m respectively on legal fees.

BLA president advocate Bayethe Maswazi said: "It is such a shame that the Eastern Cape government continues with this unconstitutional practice."

Maswazi said BLA had repeatedly warned against the lack of commitment by the provincial government regarding fair briefing patterns when it came to legal work or services which were part of BBBEE.

"The disproportionate expenditure to white advocates and attorneys compared to black legal practitioners does not come as a surprise to us.

"It has always been the tendency of the government of the Eastern Cape and government in general to prefer white males above legal practitioners of historically disadvantaged origin," Maswazi said.

"We have also demonstrated repeatedly that this tendency has a correlation to the rate of transformation of the judiciary because if black legal practitioners are kept at the periphery of professional existence through skewed briefing patterns and culture, the quality of candidates available for judicial appointment is similarly limited to those that have acquired sufficient experience through government assistance by exposure to highly specialised work streams.

"If the preferred group is white, as it is the case now, it means judges of the future will be white. That is a constitutional abomination because the constitution requires the judiciary to reflect a fair racial and gender balance."

The report also reveals that government is the biggest consumer of legal services, incurring billions in costs annually.

"Various challenges in the

management of state litigation have been highlighted through various court judgments and studies and responses thereto have been ongoing since the advent of democracy."

The solicitor-general conceded in the report that there was a lack of a co-ordinated approach in the management of state litigation, which had resulted in:

- Prescription of claims;
- Default judgments;
- Increase in opportunistic litigation triggered by poor service delivery and weakness in administration;
- Lack/timeous/insufficient instructions, and;
- Cumbersome procurement processes and briefing of legal practitioners.

The roles and responsibilities between state organs and the state attorney's offices remained unclear in the management of state litigation.

"The state has no dedicated

litigation contingent liability central database to record all civil litigation claims as well as matters relating to consumption of state legal services," the report states. "Transformation of the legal profession, particularly the briefing patterns, has become a topical and contentious issue in South Africa."

Eastern Cape legislature chair of chairs MPL Tony Duba said the legislature had engaged three institutions — the Public Protector, Public Service Commissioner and solicitor-general — for the purpose of strengthening oversight.

Duba said the solicitor-general highlighted the abuse of power by senior management taking matters to court and that committees were encouraged to demand consequence management when frivolous matters were taken to court unnecessarily by accounting officers.

"We have agreed that matters

of litigation will be standing items in the meeting of portfolio committees as to monitor progress and also encourage the involvement of the solicitor-general including the transformative nature of briefings given to jurists," Duba said.

Last week, the Health Sector Anti-Corruption Forum received a report from the Special Investigating Unit (SIU) of more than R1.6bn worth of civil action matters instituted in the high court and the Special Tribunal.

This includes about R500m linked to an investigation in the affairs of the Office of the State Attorney on medical negligence and legal service claims in the Eastern Cape and Gauteng.

SIU spokesperson Kaizer Kganyago said 18 legal practitioners were being investigated by the SIU, which had rendered legal services to the Office of the State Attorney in respect of the claims.