

Summary

2006 Trend report notarial practice

The accessibility, continuity and quality of notarial services

Background

The core activity of the notarial profession comprises providing legal certainty by recording acts intended to have legal effect and/or legal relationships in official notarial deeds. Certain legal deeds under the law of persons, property law and corporate law are not valid, unless executed before a civil-law notary. The entry into force of the Dutch Notaries Act (*Wet op het notarisambt 1999* or *Wna*) introduced greater free market operation in the profession. This was supposed to result in 'acceptable fees', and better quality services. The greater free market operation has increased the tension between the role of the civil-law notary as a public servant and the role of the civil-law notary as a entrepreneur who has to take into consideration commercial interests. Commercial interests can clash with the public interests that the civil-law notary has to promote. What is more, other developments have caused changes in the area in which notaries are active. Consider developments occurring in neighbouring countries and other liberal professions, such as specialisation, economies of scale, and internationalisation. These processes have presented professionals with new dilemmas. Advanced specialisation seems to be at odds with the notarial duty to provide *full service*. Access to less profitable services may suffer. In addition, notaries have taken initiatives to work together with other parties in the market, such as insurers, banks and brokers, which may jeopardise the independence and impartiality of the notary.

The Ministry of Justice is responsible for access to notarial services and their quality and the pre-requisites to guarantee this quality. The Ministry wants to monitor the developments in respect of the *accessibility*, *continuity* and *quality* of services rendered by the notarial profession within this framework. The trend report tool was created to enable the Dutch Ministry of Justice to supervise the access to and quality of services rendered by lawyers, civil-law notaries and bailiffs. The first notarial practice trend report was completed at the end of 2004. In 2006 and 2007, the first bailiff practice and legal practice trend reports were published.

Object and issues studied

The object of this study is to record developments in terms of the accessibility, continuity and quality of services rendered by the notarial profession. The nature of the study is descriptive. Explanations and

forecasts regarding developments in the notarial practice fall outside the study's scope. The notarial services are outlined on the basis of the following questions:

1. What is the current situation and what are the developments in terms of the *accessibility* of the notarial practice?
 - demand (number and type of deeds, part of the population that seeks the professional help of a civil-law notary);
 - supply (number of civil-law notaries, junior civil-law notaries and firms of civil-law notaries);
 - financial accessibility (rates for deeds that are requested frequently).
2. What is the current situation and what are the developments in terms of the *continuity* of the notarial practice?
 - number of law graduates, junior civil-law notaries and civil-law notaries joining and leaving the profession;
 - attractiveness of the profession among junior civil-law notaries;
 - financial situation: turnover, costs and profitability.
3. What is the current situation and what are the developments in terms of the *quality* of the notarial practice?
 - professional ethics;
 - quality assurance;
 - the treatment of complaints and the results of supervision.

Study methods

For the collection of data, we first examined existing data that was obtained from several institutions, i.e. the Royal Notarial Association (*Koninklijke Notariële Beroepsorganisatie* or *KNB*), the Financial Supervision Agency (*Bureau Financieel Toezicht* or *BFT*), the Central Register of Testaments (*Centraal Testamenten Register* or *CTR*), the Post-graduate Education Centre (*stichting Centrum voor Postdoctoraal Onderwijs* or *CPO*) and the Amsterdam Court of Appeal. Secondly, we carried out secondary analyses of the statistical data obtained from Statistics Netherlands (rates study), Financial Supervision Office (commercial data) and the Dutch Tax Authorities (demand for types of deed). Thirdly, we used existing studies relating to the three areas of notarial services referred to above.

Results

Accessibility

The trend that surfaced in the previous trend report has continued: the rates for family-law related services are rising and those for real-estate services are falling. In the family-law practice, the average rates for last

wills and testaments and certificates of inheritance in particular have risen. The average rates in the real-estate practice have dropped primarily for the higher end of the real-estate market. Rates for individual mortgage deeds appear to be stabilising.

The supply – i.e. access to notarial services – has improved in the past few years, both in terms of the number of offices per firm and independent firms, and the number of civil-law notaries. However, the number of junior civil-law notaries has fallen since 2003. After an initial fall in the number of deeds executed between 1999 and 2001, a rising trend has been witnessed since 2002. In 2006, well over 1.8 million deeds were executed – about the same number as in 1999. Approximately 60% of the deeds concern real-estate services. In particular, the number of mortgage deeds have increased since 2002. In the family-law practice, the demand for certificates of inheritance and last wills and testaments has risen. This is due to new inheritance legislation that came into effect in 2003.

Continuity

The number of notarial law students has risen again since 2002. Between 1998 and 2006, the number of notarial law graduates fell to 191. What is more, the number of junior civil-law notaries leaving the profession is increasing. Junior civil-law notaries are especially critical of the workload in the profession and the poor fringe benefits.

The number of female civil-law notaries and female junior civil-law notaries is rising steadily. In 2006, 13% of the civil-law notaries were women. This trend is likely to continue over the coming years, given the high number of female junior civil-law notaries (61%).

Within ten years, almost a third of the civil-law notaries will retire due to reaching the pensionable age. Given the decreasing number of notarial law graduates and junior civil-law notaries, problems may occur if the number of civil-law notaries is not able to match the demand. In addition, the number of female junior civil-law notaries is increasing and it is this group that claims to encounter the most impediments in establishing themselves as civil-law notaries.

The financial situation at notaries' firms is susceptible to cyclical trends and is to a large extent determined by developments in the property market and the mortgage interest rate level. In the past few years, roughly 67% of turnover was realised in the property practice. After a steep decrease in the average turnover and profit between 2003 and 2004, the turnover and profits recorded by firms between 2004 and 2005 has once again risen. In recent years, around 5% of the notaries' firms have been in weak financial positions; this has affected relatively more small firms.

Quality and integrity

A study commissioned by the Hammerstein Committee revealed that there are no actual indications that the quality of notarial services has

suffered because of market forces. Civil-law notaries charging the lowest rates do not make more mistakes than their more expensive colleagues, and also provide a full range of services. However, the quality of the services may decline. More studies are required in order to see whether the fiercer competition has a negative influence on the professional standard and compliance with the professional rules. A recent study shows that the checks carried out by civil-law notaries on applications for mortgaged loans and conveyances of real estate sometimes do not come up to the mark. Audits of the civil-law notaries' designated accounts also reveal that civil-law notaries are at times slipshod where it concerns transactions via those accounts.

The KNB has taken initiatives as a response to the findings of academic studies into civil-law notaries, but the quality policy often is non-committal. The enforcement of the professional ethics depends primarily on the notarial regulators. Several committees, however, have pointed out that in particular the disciplinary system has shortcomings and needs to be revised. We are now waiting for the cabinet's response to the recommendations made by the Disciplinary Rules Working Group (*Werkgroep Tuchtrect*). The number of complaints filed with the Disciplinary Board has risen between 1999 and 2006. In 2006, 412 complaints were filed with the Board. In respect of about half of the complaints on which the Board rules, the Board ruled that they were well-founded. Since 2002, this boils down to between 113 and 140 well-founded complaints per year. The Disciplinary Boards do not record any data on the nature of the complaints, lead times or the identities of those filing complaints. Complaints filed with the KNB and claims sent to insurers mainly relate to registrable property and inheritances. The complaints often concern poor communication, settlements being completed at a slow pace and incorrect advice.