



**MID-TERM REPORT BY THE CO-CHAIRPERSONS OF
THE LAW SOCIETY OF SOUTH AFRICA,
MVUZO NOTYESI AND JAN VAN RENSBURG
TO THE ANNUAL GENERAL MEETINGS OF THE CONSTITUENT MEMBERS OF THE LSSA**

When we took office as Co-Chairpersons early in April 2016 at the close of the Law Society of South Africa (LSSA) annual general meeting, we undertook to take forward a number of resolutions that were made at that time. Two of these have involved setting up two action groups; one on briefing patterns in the profession and the second on enhancing the role of women in the profession. More on these two initiatives below.

Legal Practice Act

Much of our first months in office have focused on developments around the Legal Practice Act 28 of 2014 (LPA). The National Forum on the Legal Profession (NF) – the transitional body setting in place the new dispensation for the Legal Practice Council – has met six times since it was set up when Chapter 10 of the LPA came into effect in February 2015. The NF is grappling with the rules for legal practitioners, the staffing and costs relating to the future Legal Practice Council as well as where provincial councils and committees will be located in the new dispensation, among other aspects. Developments at the NF are communicated to practitioners regularly by the LSSA and are documented in the ‘Legal Practice Act’ section on the LSSA website at www.LSSA.org.za.

Our eight representatives on the NF are doing a sterling job in contributing to the discussions and resolutions. The four sub-committees of the NF are all chaired by attorneys – Jan Stemmett, who chairs the Rules and Governance subcommittees, Lutendo Sigogo chairs the Human Resources and Admin subcommittee and Jan Maree the Education subcommittee. These committees, as well as the NF plenary, meet on Saturdays. The LSSA has set up a task team that meets regularly with our representatives to mandate them and to sensitise them to the thinking of the profession on various developments on the implementation process.

The LSSA is indebted to its representatives, including the Vice Chairperson of the NF, Max Boqwana, who are devoting many hours to ensure that the handover from the current dispensation to the new dispensation for the profession is as controlled and seamless as possible.

A new ‘home’ for legal practitioners

Against the backdrop of the changes to be brought about by the LPA, the LSSA and its six constituent members – the four statutory provincial law societies, the Black Lawyers Association and the National Association of Democratic Lawyers – have engaged in discussions on the future of a representative association for legal practitioners. This arises from the fact that, once the four law societies cease to exist, the LSSA itself will also cease to exist. This leaves the attorneys’ profession without a national ‘home’ to represent its

interests and without a unified voice to speak on its behalf, whether this be on burning issues, or on matters that affect the profession and the public directly.

The LSSA and its constituent members have resolved that such a 'home' should be established, taking the best of what the profession currently has to offer as regards education, communication – including our journal *De Rebus* which has served the profession for 60 years – and professional affairs in order to ensure that the profession is not left fragmented, rudderless and voiceless in the new dispensation. We owe it to all the attorneys who have gone before us that have put so much into the profession until now, and also to all the young, upcoming practitioners not to lose all that has been built and nurtured by our profession over the years.

Truth and Justice Award

One of the highlights of our term so far has been the institution of the Truth and Justice Award by the LSSA Council, and the presentation of the inaugural Award to outgoing Public Protector, Thuli Madonsela at a dinner in Pretoria on 7 September. The 'Truth and Justice Award' recognises consistent and exceptional promotion of and/or work done in terms of the Rule of Law, access to justice, protection and promotion of the Constitution and good governance.

In her address Thuli Madonsela thanked the LSSA for its support of the Office of the Public Protector. She said: 'You have not been afraid, as the LSSA, to issue statements that we be allowed to pursue our mandate without fear or favour.'

Ms Madonsela dedicated the award to her role model, attorney and freedom fighter, Priscilla Jana. She added that, of all the awards presented to her, the closest to her heart were the recognition from her peers in the legal field. These included the LSSA's Truth and Justice Award, the Sydney and Felicia Kentridge Award by the General Council of the Bar in 2015, and the South African Women Lawyers Association Award, received at the beginning of her term of office.

Turning to the role of lawyers in protecting and promoting the Constitution and to speak truth to power, Ms Madonsela reiterated her view that legal practitioners advising the state must always shy away from telling their clients what they want to hear and rather tell them what they need to hear. She called on lawyers to provide the kind of counsel they were proud of, adding that this would ensure that they are on the right side of history.

Election observation

As Co-Chairpersons we also had the privilege of being part of the LSSA's election observation initiative. First and foremost, we thank all the attorneys who served as election observers at the local government elections on 3 August this year. They were the eyes and ears of the public and devoted the full day to observing and recording their findings. We launched the election observer mission at a National Press Club function the week before the elections and were also invited by the Chairperson of the Electoral Commission (IEC), Glen Mashinini, to attend the launch of the impressive National Results Operations Centre in Pretoria.

In a press release on 5 August, and with the benefit of initial feedback from our observers, we noted that, on the whole, the elections had been free and fair. We pointed out that some of our observers had reported some irregularities. Details regarding these were noted fully in our final report published at the end of August. We recognised the degree of management and effective coordination necessary to ensure that elections are run according to legislation,

taking into consideration the number of voters and voting stations on Election Day. We commended the IEC on a job well done and recognised the important role it played in protecting and promoting our democracy. The LSSA's report to the IEC is available in the 'Our initiatives' section on the LSSA website.

Briefing challenges

At the end of March, the LSSA hosted a Summit on Briefing Patterns in the Legal Profession which was attended by practitioners from the attorneys' and advocates' branches, Justice Department representatives and representatives of state-owned enterprises (SOEs), business and government departments, as well as other consumers of legal services. Those attending the summit were taken briefly through past and present discriminatory practices that are experienced by legal practitioners when it comes to the distribution of work and briefing. The focus of the summit, however, was on finding solutions and devising a monitoring mechanism that will ensure that the identified resolutions are implemented. In preparing for the summit the LSSA sought to collate information on the distribution of legal work from government departments and SOEs as the largest consumers of legal services. Summit attendees drafted resolutions which are now being taken forward by an Action Group on Briefing Patterns, chaired by former LSSA Co-Chairperson, Busani Mabunda, and which includes Ishmael Semanya SC, Thandi Norman SC, Anthea Platt SC, Sam Mufamadi SC, Richard Scott, Mvuso Notyesi and Dion Masher, as well as Varsha Sewlall from the Justice Department. The Task Team is making progress in drafting a protocol on the procurement of legal services and undertaking research on the issue. The Director-General of the Justice Department, Vusi Madonsela, joined the action group meeting held at the end of September, at which a firm working relationship and commitment to cooperation was established. The action group is engaging the judiciary on its views and experiences on the issue of briefing. **The administrator of the SASSETA joined the group for its meeting this week to discuss initiatives that it can support towards transformation of the profession.**

Women in the profession

Another action group set up during our term is that dealing with issues affecting women in the profession. This action group is chaired by LSSA councillor, Mimie Memka. This Task Team is considering the practicalities relating to employment equity and transformation plans; creating an enabling environment for tracking and monitoring young attorneys; as well as considering a gender charter and gender strategies that can serve as a practical guideline to the profession. It will also consider systems for implementation of these policies.

Again this year, the LSSA hosted two sessions of the Significant Leadership training for women lawyers, in Johannesburg and in Durban, which were well received.

Foreign relations

The LSSA hosted a number of foreign visitors this year, including the President and executive members from Nigerian Bar Association, who met with the LSSA's Management Committee (Manco); the Bar Association of Sri Lanka on a study tour with the American Bar Association's Rule of Law Initiative; the Zimbabwean Council for Legal Education visited Legal Education and Development (LEAD) for an institutional study visit session; and a ministerial delegation from Vietnam met with LSSA representatives.

As Co-Chairpersons, we represented the LSSA at the International Bar Association Bar (IBA) Leaders' meeting, the SADC Lawyers Association Conference held in Cape Town in August – which we co-hosted with the SADCLA – and the IBA conference in Washington DC, as well as the Pan-African Lawyers Union (PALU) conference in Nairobi. The LSSA

became a member of PALU in 2016 and we look forward to co-hosting the PALU conference in Durban in July 2017. Earlier in September, Mr Notyesi attended the Third BRICS Legal Forum in New Delhi, India. This is an important forum for the profession and as BRICS countries we must accept, understand and acknowledge that we are obliged to stand together in order to achieve the greatest possible outcome for all, and most importantly, for our people.

Jan van Rensburg will represent the LSSA at the 20th Commonwealth Law Conference in Melbourne, Australia in April 2017 together with our representative on the Commonwealth Lawyers Association council, David Bekker. Mr Van Rensburg will participate in a panel discussion on 'Winning by Spinning? The Ethics of Litigating Civil Cases in the Media'.

The CEO, Nic Swart, addressed the International Regulators' conference in Washington on the concept of diversion in regulation.

We congratulate our representative on the IBA council, Tshepo Shabangu, who has been invited to join the IBA's Policy Committee. This is the 'think-thank' of the IBA and its Bar Issues Commission, and its main duty is to review all motions going to the IBA council which concern bar associations and law societies. Mr Notyesi attended the IBA annual conference in Washington in September 2016 where he participated in a discussion on cross-border practice in Africa.

At SADC Lawyers Association level, LSSA Councillor Max Boqwana was elected Vice President of the SADCLA and our second council representative is Noxolo Maduba.

We are proud of the positions held by our colleagues in these international bodies and the contribution they make there.

Voice of the profession

As the LSSA, we continue to engage with stakeholders and to speak out on issues of public relevance. During our term as Co-Chairperson, we have issued press releases on the following:

Earlier this month we welcomed the order by the Gauteng High Court on the release of the Public Protector's report on the 'State of Capture' and urged the court to consider punitive costs against the President. Recently we also welcomed the withdrawal of charges against the Finance Minister, and called on the National Director of Public Prosecutions, Shaun Abrahams to consider his position in the light of the severe consequences his actions had on our economy. We expressed our grave disappointment that a matter of this magnitude and implications was decided by the NDPP clearly without first obtaining all the necessary information and that the charges were instituted in the first place. We also called for parliament to investigate the Hawks.

We have added the voice of the profession to those calling on the South African Government to reconsider its withdrawal from the International Criminal Court.

We recorded our serious distress at the ongoing protests at our educational institutions, and announced that the LSSA council had resolved at its meeting at the end of September to offer mediation services by experienced attorney mediators to all the parties involved in the education dispute in an effort to resolve the current impasse

We expressed alarm at developments at the SABC when journalists were prevented from reporting on all newsworthy incidents. We urged the SABC board to create an environment in which journalists could report without fear or favour. We later urged the SABC to obey the

ICASA order to withdraw its censorship resolution. Recently we called for an investigation into the fitness of the SABC board to carry out its mandate in the public interest in the light of recent developments.

In July we were shocked at the murder of Kenyan human rights lawyer, Willie Kimani, by members of the Kenyan National Police Service.

In June we urged the government to ensure a climate for free and fair elections and, as indicated above, congratulated the IEC on the successful elections.

We expressed shock at the social media utterances by Judge Mabel Jansen and asked the Judicial Service Commission to deal with allegations of racism against her expeditiously and transparently.

We have expressed grave concern at views by President Zuma with regard to the courts and the judiciary. We continue to acknowledge and support Chief Justice Mogoeng Mogoeng and our judiciary publically for its independence and strong judgments made without fear or favour to anyone or any institution.

Comments on legislation

The LSSA has made a number of comments on draft legislation during our term, including appearing before parliamentary portfolio committees to make oral submissions on some of the Bills. Comments were made on the following:

- Issue Paper on guidance required to implement the Financial Intelligence Centre Amendment Act, 2016;
- Draft Taxation Laws Amendment Bill, 2016 to the Treasury and SARS, as well as to the Finance Portfolio Committee;
- South African Law Reform Commission Issue Paper 31 - Family dispute resolution: Care of and contact with children;
- Courts of Law Amendment Bill;
- Proposed amendments to the rules and forms of the High and Magistrates' Courts pertaining to execution against immovable property;
- Proposed amendment to the rules made in terms of the Small Claims Courts Act, 1984: Sheriffs' fees;
- Proposed insertion of Rule 52a in the Magistrates' Court Rules;
- Section 12e(4)(A) of the Income Tax Act 58 of 1962;
- Deeds Registries Amendment Bill, 2016;
- Draft Regulations to amend the remuneration and allowances of appraisers prescribed in terms of s 103 of the Administration of Estates Act, 1965; and
- Debt Collectors Amendment Bill, 2016.

***De Rebus* and communication**

De Rebus celebrates its 60th anniversary as the attorneys' journal this year. It has evolved from a simple, photocopied newsletter to our flagship communication and educational tool that is available to all practising and candidate attorneys in print, online and App format, with a circulation of well over 24 000.

Besides *De Rebus*, the LSSA continues to communicate news and practice-related information to practitioners through the *Legalbrief LSSA Weekly* every Friday morning – and we thank Juta for the continued cooperation in this initiative – as well as through regular advisories and e-newsletters.

Legal education

The LSSA's Legal Education and Development division LEAD strives to provide relevant seminars and workshops on bread-and-butter topics, but also seeks to present innovative, forward-looking workshops such as the one on 'The end of legal practice as we know it', which focused on the disruption of legal practice by new technologies and the changing demands of consumers.

E-learning is showing significant growth, with 379 practitioners having participated in training events online.

Besides the workshops and seminars, to date, 718 candidates have attended the various centres of the School for Legal Practice and 2002 have attended PLT courses.

A word of thanks to practitioners

We wish to thank practitioners who continue to serve on the LSSA Council and Manco, as well as on the LSSA's specialist committees. In addition, we thank the thousands of attorneys who drafted free wills for members of the public during National Wills Week from 12 to 16 September, as well as those who serve as commissioners in the Small Claims Court and who continue to do *pro bono* work – whether recognised or unrecognised – in this way promoting access to justice for the poor and indigent members of our communities and enhancing the status of our profession.

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